



COVID-19 orders and police powers in Ontario

Over the past year, Canadian governments have put in place emergency orders that give police and other a range of law enforcement officials increased powers to stop and question individuals.

Because of recent events in Ontario, we've put this fact sheet together to help Ontarians understand how COVID-19 emergency orders have changed their rights when interacting with police and other law enforcement officials.

The Ontario context

On April 16, 2021, the Ontario government enacted a sweeping expansion of police powers. CCLA [immediately called for repeal of the clearly unconstitutional regulation and announced our intention to launch a court challenge](#). That fight was won the next day, when the government retracted the April 16 emergency order.

But that does not mean that we are unconcerned about pandemic enforcement powers in 2021. Last year we put out a [report](#) that criticized the unnecessary, overzealous, punitive COVID-19 enforcement actions that took place in some parts of the country during the first wave of COVID-19. We raised particular concerns about the numerous incidents of discriminatory enforcement actions.

We also have concerns about enforcement powers that require individuals to identify themselves and answer questions; these powers prejudice the right to silence, and increase the risks of arbitrary detention and unreasonable searches. While Ontario's unconstitutional April 16th regulation was repealed, the more restrained emergency order that replaced it still expands the powers of police and other Ontario law enforcement officials. We are particularly concerned about the impact that pandemic enforcement powers to stop and question individuals is having on communities that are already disproportionately targeted by police, including Black and other racialized communities, Indigenous persons, and individuals living with mental health and addictions challenges and those who are precariously housed.

These enforcement powers are not necessary to confront COVID-19. They undermine effective public health measures and increase the risk of harm to the same racialized communities that are experiencing the highest rates of COVID-19 infections.

We support and join the call from the [Black Legal Action Centre](#) to repeal the expanded police powers.

The Canadian Civil Liberties Association is actively monitoring the enforcement of COVID-19 laws. If you have been stopped or questioned by law enforcement in relation to COVID-19 orders, please share your experience with us by filling out [this form](#) on our website.

Know your rights: COVID-19 and law enforcement in Ontario

Knowing your rights is an important tool to help you recognize when your rights have been violated. Asserting your rights in interactions with law enforcement can also help you if you later want to raise these issues in court or through a complaint. Sometimes, however, questioning police actions or verbally insisting on your rights can escalate interactions with law enforcement. Use your best judgment about what you need to do in order to stay safe. We encourage people to trust their instincts to protect their safety, and assert their rights calmly and politely when possible.

I'm walking down the street – can the police or other law enforcement officials approach me and ask me questions?

In many situations the police can approach people and ask questions. But you do not always need to answer their questions, and in many situations you can walk away. Read on for more information on when you might not be free to walk away, and when you might be required to answer police questions.

When can the police stop me from walking away?

The police can stop you from walking away if they are detaining you or placing you under arrest.

The police can detain someone briefly if they have reasonable grounds to suspect a person is connected to an offence they're investigating. A detention should be brief, and doesn't necessarily involve being physically restrained. For example, if the police tell you not to leave, you are being detained.

The police can arrest you in several different situations, including if they have a warrant for your arrest, if they see you committing a crime, or if they have reasonable grounds to believe you have committed or are about to commit a more serious crime. Often when this happens people are handcuffed and transported to the police station. The police can arrest you in several different situations, including if they have a warrant for your arrest, if they see you committing a crime, or if they have reasonable grounds to believe you have committed or are about to commit a more serious crime.

How can I tell if I'm being detained or arrested, or if I'm free to walk away?

Sometimes it can be very difficult to know whether or not you are free to walk away from an interaction with police or other law enforcement officials. If you feel it is safe, you can ask 'Am I being detained', 'Am I under arrest', or 'Am I free to go?'. If you are not being detained or under arrest, you can walk away.

If you are being detained or under arrest you have the right to speak to a lawyer, and the right to know the reason for your detention or arrest.

Do I have to answer police questions?

You almost always have the right to remain silent – meaning you do not have to identify yourself or answer any police questions – BUT there are some exceptions, including for example the requirement to provide ID when you are the driver of a car, or answering some types of questions during COVID-related detentions. *See the section on COVID-related detentions below for more information on your rights when police have stopped you because they believe you have violated a COVID-19 order.*

It may also be in your best interest to provide law enforcement with your name, address and date of birth if you are being charged or ticketed for an offence. Although you don't have a general legal obligation to provide identification, if the police are trying to ticket you or charge you with an offence and are not sure of who you are, they can arrest you until your identity is confirmed.

If you lie to the police, including lying about your name or address, you can be charged with obstructing justice or obstructing the police.

Can law enforcement detain me and force me to answer questions if they think I am breaking a COVID-related order?

In some situations, yes.

Police officers, bylaw officers and other law enforcement officials in Ontario have been granted new powers to enforce COVID-19 orders. These COVID-19 orders currently include regulations that place limits on indoor and outdoor gatherings, restrictions on the use of park amenities like picnic tables, and physical distancing requirements.

If the law enforcement officials have reasonable and probable grounds to believe you're not following a COVID-related order, they can detain you and ask you to identify yourself. In these circumstances, you must provide law enforcement with your correct name, date of birth, and address.

Law enforcement officials have additional powers when it comes to investigating possible illegal gatherings under COVID-19 orders. If a police officer or other official has a reasonable suspicion that you are participating in a gathering that contravenes COVID-19 orders, they can require a person to "provide information for the purpose of determining whether they are in compliance" with the gathering laws. This might mean they ask you for your name and address – but the law doesn't place limits on what information they can demand other than saying that it must assist in determining whether or not you are breaking COVID-19 restrictions on gatherings.

The reasonable suspicion standard – applicable when law enforcement is investigating a possible violation of gathering limits – is a lower standard than reasonable and probable grounds.

This is a brief summary of the law regarding police stops and questions in Ontario as of April 23, 2021. It is provided as legal information, not legal advice. You can find more information about your rights when it comes to police stops and questions in Ontario at www.stepstojustice.ca. Note, however, that the information may not include all the latest updates on how your rights have changed in light of new COVID-19 emergency orders. If you have been stopped or questioned by law enforcement in relation to COVID-19 orders, please share your experience with the CCLA by filling out [this form](#) on our website.