

## Chapter 2: The Police

This chapter will focus on when you come in contact with the police. This chapter does not include situations where the police sometimes have additional powers, for example, when they enforce trespass laws on behalf of landlords.

### 1. Can the police talk to me whenever they want?

A police officer can try to talk to you whenever they want, just like any other stranger can try to talk to you. But you do not have to stay and listen to the police unless the police officer is arresting you, detaining you, or giving you a ticket.

You always have the right to ask the police why they want to talk to you and if you are free to go.

Here are some things that can help you figure out whether you have to stay:

- Ask: “Am I free to go?”
- Ask: “Why are you questioning me?”
- If the police officer is searching you and you don’t think it’s right, say, “I do not consent to the search.” But do NOT physically resist.
- Say: “I want to speak to a lawyer.” (You should ask to make a telephone call right then if you have a cell phone).

### 2. Do I have to give my name and address?

In most situations, you do not have to give your name or address to the police.

But there are some situations where you have to give the police your name and address. One example is if you are stopped by the police while you are driving a car or riding a bicycle.

If you are in a situation where you have to give your information to the police and you don’t do it, then the police can charge you with obstructing justice. The same is true if you lie to the police about your information.

It is generally a good idea to be polite, provide your name, and ask why the police officer is asking you questions. You do not have to answer any other questions and you can choose to remain silent. Be careful if you say anything because it can be used against you.

### 3. How do I know if I am being detained by the police?

You are detained when the police stop you from leaving, even if the police do not touch you and even if you are not handcuffed. Once the police act or speak in a way that makes you feel like you can’t leave, you are detained. For example, if they stand in your way or if they come very close to you, you might be detained.

*R. v. Grant, 2009 SCC 32*

If you are not sure whether you are being detained, you should ask the police officer, “Am I free to go?” If the officer tells you that you are free to go, then you can walk away if you want to.

#### **4. When are the police allowed to detain me?**

The police may only detain you if they think that you are connected to a recent or ongoing crime and that detaining you is necessary. The police should detain you for as little time as possible. If there is no clear connection between you and the crime, then the police officer may be breaking the law by detaining you. This is called an “arbitrary detention.”

#### **5. When are the police allowed to arrest me?**

The police may only arrest you if they think that you have committed a crime. If you are arrested, the police have to tell you why they are arresting you. They also have to tell you about some of your rights.

#### **6. What are my rights when I am detained or arrested?**

Any time you are detained or arrested, the police will:

- Tell you why they are arresting you.
- Tell you that you can speak to any lawyer you want.
- Ask if you want to speak to a lawyer. Always say “YES.”
- Give you a phone number for a free lawyer service called “Duty Counsel.”

You also have some extra rights that the police don’t have to tell you about. These include:

- You have the right to remain silence. You do not have to say anything to the police. It is usually best to stay quiet even if the police keep asking you questions.
- As soon as you ask to speak to a lawyer, the police are not allowed to ask you any more questions. If they don’t stop asking questions, tell them again that you want to speak to a lawyer.
- The police have to give you a chance to call a lawyer in private. Normally, they will let you do this in a private room at the police station. Sometimes you can do this with a cell phone before going to the police station.
- If you have a specific lawyer, the police have to give you a chance to speak to that specific lawyer.

**The two most important things to remember is that:**

- **You don’t have to tell the police anything other than your name, and**
- **You should always ask to speak to a lawyer.**

#### **7. When can I be searched by the police?**

The police may only search you in four situations:

- a. If the police have a search warrant.
- b. If you are being detained (safety search only).

- c. If you are being arrested.
- d. If you give the police permission to search you.

If the police search you outside of these four situations and they find illegal things, a judge might decide that the illegal things cannot be used as evidence.

a. Search warrants

A search warrant usually allows the police to search a place (for example, an apartment or a storage locker), but the police can also get a warrant for DNA (blood, hair or saliva). If the police come to your place with a search warrant, you should ask to see the warrant and check that:

- the address on the warrant is your address,
- the police are at your house at a time the warrant says they can be there,
- the warrant is signed by a judge or a justice of the peace, and
- the police only look in places where the item(s) they are allowed to look for could actually be (e.g.: they cannot search for a stolen piano in a cookie jar).

b. Search on detention

If the police are detaining you and they have a reasonable suspicion that their safety or the safety of others is at risk, then they may do a pat-down search. Sometimes they are also allowed to go through your bag if they think that there might be something dangerous in the bag. The police cannot search your pockets unless they feel something in there that they think is dangerous.

*R. v. Mann*, 2004 SCC 52

c. Search on arrest

If you are being arrested, the police may search you and your property for safety reasons and also to find evidence.

*R. v. Stillman*, [1997] 1 SCR 607

d. Search with your permission

If you are not detained or arrested and you give the police permission to search you, then you can be charged for any illegal items they find on you. If you act in a way that suggests that you are giving permission for the police to search you, then they may be allowed to search you even if you don't say "no" out loud. For example, if the police ask you what is in your bag and you open the bag up without saying anything, the police may think you have given permission for them to look inside the bag. According to the law, your permission only counts if you understand the reason the police are searching you and you agree to the search for that reason.

*R. v. Borden*, [1994] 3 SCR 145

## **8. When can cell phones be searched?**

In most situations, the police are not allowed to search your cell phone without a warrant, even if you are arrested. In urgent cases, the police can search your cell

phone without a warrant. For example, if the police urgently need the information in your phone to keep someone safe or if the police investigation would be seriously hurt if they have to wait for a warrant. If the police search your phone without a warrant, they are only allowed to search the recent items related to the urgent situation.

*R. v. Fearon, 2014 SCC 77*

### **9. Do not physically resist being searched**

If the police start searching you without your permission, you can say, “I don’t want you to search me,” or, “I do not consent to the search.” If the police continue searching you, you should not resist. If you physically resist, you may be charged with resisting arrest or assaulting a police officer. Later, you will get a chance to tell a lawyer that the police searched you without your permission. Your lawyer will tell the judge and the judge may decide that the things the police found cannot not be used as evidence.

### **10. Statements to the police**

**The most important piece of advice that a lawyer will give you is to remain silent and do not make any statements to the police.** A statement is anything you say, even if you don’t think the police are listening to you and even if the police are not writing anything down. Just stay quiet and don’t say anything.

The police can record anything you say. Many police officers have audio or video recorders that will record what you say and do. The police are also allowed to use tricks and sometimes lie to you in order to make you think it is a good idea to tell them something. It can be stressful and intimidating when the police are trying to get you to say something. The times when you are stressed can be the worst times to say anything to the police.

#### What if I want to give a statement?

Before you give a statement, the police must tell you that you have the right to have a lawyer and your parent(s) or an adult with you. Those people can be there before and during a statement. If you decide you want to make a statement, you should wait until a lawyer is there and you have talked to the lawyer in private.

s.146(2)(b)

If you “blurt out” a statement before the police have had a chance to tell you about your rights, the police may still be able to use your statement against you. Even if the police forget to tell you about your rights, a judge might still let the police use the statement against you.

s.146(3); 146(6)

#### The police are telling me that I can make a statement without talking to a lawyer first. Is this right?

It is legally correct. You can “waive” or give up your right to talk to a lawyer and/or your parent(s) before making a statement, but it is not a good idea to do this.

Normally, the police officer has to either videotape you or get you to sign something saying that you agree to “waive” your rights.

s.146(4)

If I do make a statement to a police officer, how will it be used?

Anything you say can be used against you in court. Even if you refuse to sign a written statement the police can still use the statement against you in court. If you want to make a statement, you should wait until after you have talked to a lawyer in private and the lawyer is with you.

Any statement you make to the police can only be used if it is voluntary. If you have made a statement without talking to a lawyer first, check with your lawyer after the statement to see if it was made voluntarily.

s.146(2)(a)

**11. What about statements I make to get Extrajudicial Measures?**

If you make a statement in order to be eligible for extrajudicial measures (EJM), your statement cannot be used against you in court. See also Chapter 5 – Extrajudicial Measures and Extrajudicial Sanctions.

s.10(4)

**12. What if the police violated my rights?**

If you believe that the police have violated your rights or acted improperly, you should collect as much information about the incident as possible. There are different ways for you to officially complain about the way you were treated by the police depending on where you live. You should speak to a lawyer in your province or territory for advice.