

British Columbia
Civil Liberties Association

The Arrest Handbook

A Guide to Your Rights

by David Eby



IMPORTANT NOTICE AND QUALIFICATION

This handbook has been prepared and published for information and educational purposes only. It is not legal advice and it is not intended that this handbook should in any way replace legal advice from a qualified lawyer. Individuals with specific legal problems should seek legal advice from a qualified lawyer. See the list of contact numbers on page 59 to locate a lawyer near you.

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by David Eby

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—*Dave Eby (2002)*

About the BCCLA

The B.C. Civil Liberties Association (BCCLA) is a registered charity, located in Vancouver, British Columbia. Since 1962 the BCCLA has worked to protect and promote civil liberties in British Columbia and Canada. Our programs include education, complaint assistance, legal reform and occasional litigation. The majority of our funding comes from private grants and donations. Contact us to make a donation. The BCCLA does not provide legal advice and is not a legal referral service.

To Order Copies of this Book

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Introduction

The B.C. Civil Liberties Association is the oldest and most active civil liberties group in Canada. With the support of the Law Foundation of B.C., we have published this handbook to help you understand your rights and responsibilities when you are dealing with the police.

The police are responsible for enforcing the law. Try to be polite and friendly at all times. While they are deserving of respect and assistance, they must also respect your legal rights.

If you find yourself in a serious situation with police, a lawyer can help you figure out what happened and what you can do. There are lawyers who can meet with you for little or no cost. You can call them using the phone numbers on page 59.

This booklet has important information about how you can expect the police to act, and how you can respond if you feel the police do not act properly. There are cards on page 62 you can carry with you to remind you of your rights.

USING THIS BOOK In this book, light bulbs mark information that is especially helpful or interesting to know. Stop signs appear beside very important information. Yield signs warn you to use caution in the situations described.



CRIMINAL CODE SECTION NUMBERS At the bottom of each page, the *Criminal Code* section numbers related to the topic are listed beside the word CRIMCODE. For example: “CRIMCODE 135, 136” means sections 135 and 136 of the *Criminal Code* are important. You can find a copy of the most recent *Criminal Code* at most libraries.

LEGAL WORDS You may not know some of the words in this book. To help you, words in *italics* are explained on pages 60 and 61.



The Police and Arrest

There are three reasons why a police officer would stop someone walking down the street. You have different rights in each situation.

Reason 1: The Police are Just Making Conversation

Police officers can use polite conversation to find a reason to hold you or arrest you. They could also be investigating an incident you saw or know about. They might simply be friendly. If you don't like the questions the police are asking, ask: "Am I free to go?" If the answer is yes, you can leave. If the answer is no, you are being *detained* (see Reason #2).

Reason 2: The Police are Investigating You (Detention)

The police can only detain you for an investigation if there are reasonable grounds to suspect that you are connected to a crime and your detention is necessary in the circumstances.

If you ask if you are free to go and the police officer says no, you have the right to be told why. Unless the answer is obvious, the

police officer must tell you what reason he has for holding you against your will. Remember the reason the police officer gives you, if he gives you one. Get the badge number or name of the police officer so that you will have it if you want to make a complaint.

Emergency Criminal Lawyers

If you have been arrested or *detained*, or you are being investigated by the police, you can contact a Legal Services Society criminal lawyer for free at 1-866-458-5500 in Metro Vancouver or 1-866-458-3300 outside of Vancouver.



If you are being detained but you are not under arrest, you aren't driving, and you haven't broken any laws, you don't even have to give the police officer your name. If you don't want to talk, say: "I want to remain silent." Sometimes, by staying silent, you can increase your risk of arrest or of harassment. You may want to tell police your name and address to show you are co-operative.

When you are detained, the police have the right to do a *pat-down search* for weapons. They might inspect the contents of your bags. If the police don't have a good reason to detain you, then this search is illegal. Remember the details so you can tell a lawyer or make a complaint.

Reason 3: The Police are Arresting You

You will know if you are under arrest because a police officer has said you are under arrest, or somehow made it clear that you are not free to go by physically holding you. If you are under arrest, and the police ask, you must tell them your name and address. You have the right to ask why you are being arrested. The police must answer unless the reason is obvious – remember what they say so you can tell your lawyer.

Being Detained

If you have not been arrested, but you are being held against your will, remember to:

- Ask why you are being held.
- Get the badge number or name of the police officer.
- Stay silent and tell the police you are staying silent (if you feel safe doing so). Use your common sense. Sometimes an explanation can end a police discussion more quickly.



CRIMCODE 495, 129

The arresting officer may release you right away with an *appearance notice* (a sheet of paper that tells you where and when to show up for court) if she believes that you will show up for court, not break any laws, and she is sure she knows who you are.

The police can do a full search of you and your personal property (see page 24 for details) if you are arrested. If you are taken to jail, you have a right to appear before a Judge or *Justice of the Peace* as soon as reasonably possible within 24 hours of your arrest.

If you are under arrest, co-operate physically with the police. Any pulling, kicking, punching, running or other physical resistance to avoid arrest could result in more charges. Going limp does

not count as resistance, but may not help your situation very much.

The police are only allowed to use as much force as is necessary to arrest you or ensure that the situation is safe. Any additional force is considered “excessive” force. If you feel that the police used more force than was necessary, you can

make a complaint or file a lawsuit (see pages 56–58 for details). If you have marks, cuts, bruises or other physical evidence, go to a doctor and have someone take photographs of your injuries. The doctor’s notes and the photographs can both be used as evidence in a trial or to support a complaint. Tell your lawyer about the police’s use of force.

Remaining Silent

Tell the police you want to remain silent and you want to speak to a lawyer. They may keep asking questions, but you don’t have to answer them (see page 17). Talk to a lawyer before you speak to the police after you have been arrested.



Reasons for Arrest

The law says the police must have a reason for arresting you. There are very few situations where the police are allowed to arrest you. You can only be arrested by the police if:

1. a police officer sees you committing a criminal offence;
2. a police officer has *reasonable grounds* to believe you have committed or are about to commit an indictable or hybrid criminal offence;
3. you have broken any law (including provincial laws and city bylaws) and you won't tell police who you are and where you live;
4. there is a warrant for your arrest (see page 12);
5. a police officer has reasonable grounds to think you have a mental disorder and are dangerous (see page 13);
6. you have breached the peace or are about to breach the peace (see page 15);
7. you are drunk or high in public (see page 16); or
8. a police officer has reasonable grounds to think you are a terrorist about to commit a terrorist act (see page 50).

Definitions – 3 Types of Offences

1. **Summary Offence** – The least serious offences. They generally have lower penalties.
2. **Hybrid Offence**
– Where the *Crown Counsel* can choose whether the offence is a **summary or indictable offence** depending on the situation.
3. **Indictable Offence** – The most serious offences. They have much higher penalties.



CRIMCODE 787, 2

CRIMCODE 495, 496, 497

For *hybrid* and *summary offences* (see box on the previous page for definitions), a police officer must release you immediately after arrest with an appearance notice unless she:

- can't identify you;
- needs to preserve the evidence of your alleged crime;
- needs to stop you from committing the alleged crime or repeating it; or
- has reasonable grounds to believe you won't come to court.

Arrest Warrants

A *warrant* is a piece of paper that a Judge signs to allow the police to do something. Arrest warrants order the police to arrest a specific person.

If the police say they have a warrant for your arrest, ask to see it. If it is possible (if the police officer has it with him and the situation is under control) the police officer must show it to you. It is rare for the police officer to have the warrant – usually she has been told there is an outstanding warrant by the police computer system. If it is not possible at the time of your arrest, the police officer must show you the warrant as soon as possible after you are arrested. You have the right to see the warrant.

When you read the warrant, make sure the warrant is actually for you. The warrant must:

- give your name or describe what you look like;
- include the reason why you are being arrested;
- order that you should be arrested; and
- be signed by a Judge or Justice of the Peace.

If you are arrested because of a warrant, you have all of the same rights and responsibilities after arrest as you always do. You have the right to remain silent. You must give your name and address. You have the right to talk to a lawyer.

CRIMCODE 514, 29, 511, 497



CHAPTER 2

Imprisonment Without Charges

The *Mental Health Act*

Under the *Mental Health Act*, police officers can use force to take you to a hospital for an exam by a doctor if they think that you are acting in a way that is dangerous to yourself or other people, and you seem to have a mental illness that needs treatment. A police officer must see you acting this way himself, or receive reports of your behaviour from other people – including members of your family.

Another way you could be taken to an institution under the *Mental Health Act* is if a person (usually a family member or friend) asks a Judge or Justice of the Peace to force you to be examined by a doctor. They must show there are reasons why you are dangerous to yourself or others, that you have a mental disorder and that you need treatment. Being dangerous to yourself means that your physical or mental health will be harmed if you are not taken into custody and treated. If a Judge gives that order, any person can take you by force to a mental health facility (usually a hospital) for an exam.

If a doctor examines you and issues a certificate saying that you have a mental illness, and you require treat-

Car 87

In Vancouver, the police often respond to mental health emergencies using **Car 87**. **Car 87** is a regular police car staffed with a nurse or other psychiatric personnel and a police officer.



ment and care to prevent further mental or physical harm to yourself or others, you can be held and treated for up to 48 hours. If you are not already at a hospital, anyone can take you to a facility using force once a doctor issues that certificate.

If another doctor then examines you and agrees with the first doctor, you can be held against your will for a full month at the institution before another review. A child under 16 may be taken to a mental health facility if a parent or guardian asks for the child to be taken there.

Mental Health Detention Review

You should be told your rights when you are first taken to the location where you will be held for treatment. You have the right to challenge the reasons why you are being held by asking for a review panel. A review panel is a group of three people who have the power to release you if you convince them you should not be held for treatment. You have the right to be represented by a lawyer or other person at your review panel hearing.

You can request a review panel by asking staff for the form used to request a review panel. After you complete the form and hand it in, the review panel must be held within two weeks.

Mental Health Rights

If you want to know more about your rights when appearing in front of a mental health review panel, you can call the B.C. Mental Health Law Program at 604-685-3425 or 1-888-685-6222. They may also be able to provide you with an advocate who will appear with you in front of the review panel.



See B.C. *Mental Health Act*

Breach of the Peace

Section 31 of the *Criminal Code* allows the police to arrest you for breaching the peace. Breaching the peace means you are causing a disturbance that involves some potential for violence. Usually, simply causing a disturbance or being a nuisance without violence is not enough reason for the police to arrest you.

Even though you can be arrested for breaching the peace, there is no specific offence of breaching the peace. This means that police must release you after they arrest you unless they are going to charge you for breaking another law. Police usually use *Breach of the Peace* to arrest people and release them in another area away from the problem. They may keep you in a cell for a brief period.

A B.C. Court of Appeal case (*Hayes v. Thompson, 1985*) suggests the police are able to arrest you before you breach the peace if they have reason to believe that you are just about to breach the peace. This means police can arrest you even if you haven't yet breached the peace.



Police Accountability

If you feel you were arrested inappropriately for ***Breach of the Peace***, you should consult a lawyer or make an official police complaint (see page 56 for details).



Public Intoxication

Public areas are areas where anyone can go. They may be government owned, but can also be privately owned. Public areas include parks, bars, restaurants, malls, the beach and the street. A public area is not your own home, a hotel room, or the house of a friend. If you are in a public area and you are intoxicated, the police can arrest you under the *Offence Act*, Section 91(1). Intoxicated means that you are so drunk or high that you are unable to care for yourself, you are a danger to yourself or others, or you are causing a disturbance.

Your Rights

Remember! Even if you have a mental illness, you are intoxicated in public, or you are breaching the peace, you still have all of your rights, including the right to talk to a lawyer and the right to remain silent.



If you are arrested because you are intoxicated in a public area, the police must release you when you are sober. They must also release you if an adult who is sober and responsible asks the police to release you into his care.

A law still exists that could allow the police to force you into treatment for being an alcoholic. This law is rarely, if ever, used.

See B.C. *Offence Act*



Talking to Police

Identifying Yourself

Sometimes, even though you don't have to, it's a good idea to give the police your name and address. Use your common sense. Most of the time, according to the law, you do not have to give the police any information.

You only have to give police your name and address if:

1. you are under arrest;
2. you are driving a car. Passengers in the car do not have to give the police their names or addresses; or
3. a police officer is giving you a ticket (for breaking a city bylaw or any other law) or serving you an *appearance notice*.

The Right to Remain Silent

You have the right to remain silent. Except for polite conversation, it is best not to say anything to the police until you have spoken to a lawyer.

Fake ID

Don't ever give the police a wrong name and address, or fake ID. You could face serious charges.



What to say to police:

1. Be polite.
2. Do you want to leave? Ask: “Am I free to go?” If yes, then go.
3. If you are not free to go, ask: “Am I under arrest?” If yes, ask why.
4. If you are under arrest, say: “I want to remain silent. I want to speak to a lawyer.” Give your name and address if the police ask. Get the police officer’s badge number.
5. If you are not under arrest, but you can’t leave, ask why. Get the police officer’s badge number.

You have the right to remain silent, except where you must give the police your name and address.



CRIMCODE 129, 403

Undercover Police Officers

Undercover police officers are police officers who do not wear uniforms and pretend not to be police officers. They may dress like an inmate, if they are undercover in jail. They may dress like a homeless person. They may dress like a businessperson.

When police are in undercover investigations, they are allowed to:

- lie about being a police officer, no matter how many times you ask them directly “Are you a police officer?”;
- lie about their name, background, personal information – anything; and
- break the law (in some situations).

Undercover police officers are not allowed to ignore your rights.

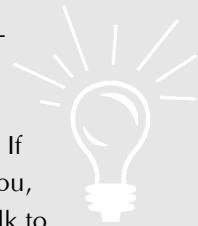
Blowing a Police Officer’s Cover

If you know someone is an undercover police officer and you warn other people, you could be charged with a criminal offence.



Undercover Rights

Just because a police officer is in plainclothes or is undercover does not mean that he or she gives up any of the powers a regular police officer has. You also keep all of the rights you always have when dealing with the police. If a plainclothes or undercover police officer has stopped you, you still have the right to remain silent and the right to talk to a lawyer.





Citizen or Private Security Arrests

People who aren't police officers, including business owners, security guards, homeowners, or people on the street, can make arrests in some situations. They don't have the same arrest powers as police.

Members of the general public and security guards are the same. They can only arrest you if they actually see you commit an indictable or *hybrid offence* (see page 11 for definitions), or if they see you running away from the police. Unlike police, if they only have *reasonable grounds* to believe you broke the law, it's not enough. People who own property, or security guards protecting property,

can arrest you if they see you committing a crime related to their property.

People who own land can make rules you must follow to stay on their private property. Privately owned property includes some property that is open to the public, like malls, stores, restaurants and bars. If you don't follow the rules, the owner (or their guards) can ask

you to leave. If you don't leave, you become a trespasser and they may use reasonable force to remove you.

The Charter of Rights

The *Charter of Rights and Freedoms* covers arrests by private citizens. You have the right to remain silent and the right to a lawyer. You must be handed over to the police as soon as possible after your arrest.





Questioning and Investigation

You always have the right to remain silent, except for when you must give your name and address to the police (see page 17 for details). Police often use tricks to get you to talk, both before and after you are arrested. Any written or spoken statement to the police or other people may be used against you. There is no such thing as an “off-the-record” discussion with police.

Before you have been arrested

FRIENDLY CONVERSATION – Police can use “friendly” conversation to find reasons to detain you (see page 8 for details). Be polite, but be careful when speaking with police. If you are concerned about the questions the police officer is asking, ask: “Am I free to go?” If they say yes, then go. If they say no, you are being *detained*.

After you have been arrested

More Questions –Police may keep asking you questions even after you have asked to speak to a lawyer. You can keep saying: “I want to remain silent. I want to speak to a lawyer.”

Written Statements

If you decide to make a written statement to the police before a lawyer is present, insist on writing it yourself or reading the document before you sign it to ensure it is correct.



Lying – Police officers are allowed to lie. They may say: “Your friends have already told us everything,” “We have evidence,” or “We already know what really happened.” Even if your friends have talked or the police have the evidence they need, it rarely helps to talk before you speak with a lawyer.

Threats – Police are never allowed to threaten you in any way. They are not allowed to tell you that you will face more charges if you do not co-operate or that your current charges will become more serious. Tell your lawyer if you have been threatened or made to feel unsafe.

Promises – The police are not allowed to promise you anything to convince you to make a confession. Don’t make any “deals” with the police without speaking to a lawyer first. In B.C., police can only recommend charges. Crown counsel are responsible for approving charges only when there is a substantial likelihood of a conviction and the charges are in the public interest.

Lie Detector Tests – You must give permission before police can do a lie detector test. The police will never release you just because

you pass a lie detector test. They only use these unreliable tests as part of their investigations. Anything you say during a lie detector test is admissible in court. The results of the test are never admissible, even if the police say that you have failed.

Dial-A-Law

If you need help with a legal problem, the Legal Services Society Law Line can help you better understand your issue. Call 604-687-4680 in the Lower Mainland or 1-800-565-5297 elsewhere.



Lawyers

Lawyers are experts in the legal system. They can help make sure you get a fair trial and are treated properly by police.

Lawyers are treated differently than non-lawyers by Judges. The Judge can force anyone except your lawyer to testify in court about what you have said or done. If you say something to a friend, family member, counselor, cellmate, police officer or anyone other than a lawyer, that information can be used against you in court. If no one else is listening to your discussions with your lawyer, anything you tell your lawyer will be kept secret and can't be used against you in court. If you are under 18, you are allowed to have a trusted adult with you and your lawyer.

Sometimes, if you talk in confidence to a religious leader, like a priest, minister or rabbi and some others, the court may allow your conversation to stay secret, but there are no guarantees. You should use caution when deciding to share sensitive information with these people.

Talking to Your Lawyer

If you are somewhere where other people are listening, or you are talking on a prison phone or using prison mail, you should not give important information to your lawyer. Wait until you are face to face with the lawyer before you tell the lawyer important information.





Personal Searches

Most searches happen because people tell the police it is okay to search. A police officer might ask: “Can I just have a look in your bag?” or “Can you roll up your sleeves?” (to check for needle marks). You have the right to say no and the police can’t legally threaten you or force you. If you don’t give permission, the only times the police can search you or your things are when:

- The police have *reasonable* grounds to believe that you are carrying alcohol that will be used for an illegal purpose, illegal drugs, or a weapon.
- The police have *detained* you (see page 8 for definition) to ask you questions. If you are detained, they can only do a frisk or pat-down search for weapons. They may also look in your bags. They cannot search for needle marks or drugs.

Needles

Tell the police if you have needles before they search. They will probably find them anyway and it is better to avoid the risk of injuring a police officer.



Strip Searches

Police can strip search only if they have *reasonable grounds* to believe you are hiding something under your clothes or in a body cavity (see page 32 for exceptions). These searches must always be done by a person of the same sex. The police cannot use strip searches as a threat.



- The police have arrested you. If you are arrested, the police can do a full search of your body and personal possessions.

Resisting a Search

Never physically resist a search, even if you think the search is illegal. Say: “I do not consent to this search.” Consult with a lawyer or make a complaint instead (see pages 57 and 58 for details).



Vehicle Searches

You have different rights when you are driving than when you are walking. When you are driving, police can stop you for many reasons, including to check whether you are impaired. When you are walking, they need a reason they can explain and justify before they can stop you. Just because the police stop your car does not mean they can search you or the car. The police can only search your car if:

1. You give them permission. You do not have to give police permission. If they ask: “Can I see in your trunk?” or “Can you show me what’s inside that bag?” you can say no.
2. The police have reasonable grounds to believe that you have committed a criminal offence, like drunk or dangerous driving (traffic offences don’t count).
3. You are arrested.

CRIMCODE 129, 270

4. They see something sitting in your car in plain view (empty alcohol bottles, rolling papers, security tags, bolt cutters, etc.) or smell something (drugs, alcohol) that raises suspicion and gives them reasonable grounds for the search. Your age, race or gender are not reasonable grounds.

If you are going to assert your rights, be reasonable and polite. You may wish to calm down the situation by asking the police officer why she needs to search your car, or by explaining the reasons why you wish to refuse permission to search.

Breathalyzer Machines

Police can ask you to blow into a breathalyzer machine to figure out if you have been drinking and driving. If you do not blow into the machine, you can be charged with another offence that is just as serious as drinking and driving.



See page 32 for more information about breathalyzers.



Location Searches

You have your strongest right to privacy when you are at home. Police need a very good reason to search where someone lives. Most of the time, police cannot search your house, apartment or trailer without a search *warrant*. A search warrant is a written document, signed by a Judge or *Justice of the Peace* that allows the police to search a specific place.

Location Searches Without a Warrant

Police can only search your home if they don't have a warrant in five situations:

1. They ask if they can search, and you say: "Yes."
2. They are chasing a person who has run into your home. The police must tell you the purpose of their search and ask you to let them in. They can come in even if you say no.
3. Someone is in immediate danger (for example, police have received a 911 call from the house).
4. The police have a reason to believe that evidence of a crime is being destroyed.
5. You or someone else is arrested in your home. Police can search the area around where the arrested person was found. They may search a house for other people if a person is arrested in the house to keep evidence secure until they get a search warrant.

Location Searches with a Warrant

Generally speaking, the police must knock before entering a house and must show you the search warrant in order to enter your home. They may not knock if they think there are weapons at your house, or if they believe that you would destroy evidence before they could get in. If you get a chance to read the warrant, read it carefully. A search warrant must include:

- a general description of what the police are searching for;
- a signature by a Judge or Justice of the Peace;
- a deadline that limits the length of time the police can use the warrant; and
- the correct address of where the search is to be located.

If a search warrant is missing any of these four things, or if the warrant is out of date, you can tell the police they can't search your house. Your name or the name of the person who owns the property does not have to be on the warrant.

Illegal Searches

If the police search your home without a *warrant*, and none of the situations on page 27 apply, the search is probably illegal. Do not physically resist the search – you will be arrested or restrained. Say “I do not consent to this search,” ask for badge numbers or names, and call a lawyer for assistance.



Unless the warrant says otherwise, or there are “unusual circumstances,” the police must do their search during the day. You do not have to be home for the search. If you are not home, the warrant must be posted in an obvious place. After the search is complete, the warrant is expired. In

that case, the police cannot stay on your property or return to your property to search again later without another, different warrant.

CRIMCODE 487, 488, 489

If you refuse the police entry to your home, they may force their way in legally if they have a valid search warrant or reason to search (see pages 27-28 for when the police can search your house legally). If the information on the warrant is incorrect, a police officer may wait outside of your house until the police get a warrant with the correct information.

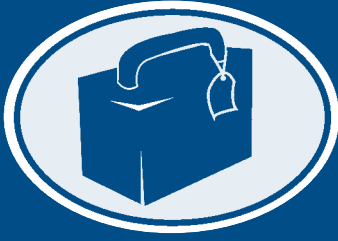
If the police have searched your house, and you think it was an illegal search, call a lawyer. A lawyer can tell you if a police search was illegal.

Remember, you must be *detained* or arrested before police can search you legally (see pages 8, 9, 10 and 32 for details). If you are not under arrest, but you are detained, police can only do a *pat-down search*.



Answering Police Questions

Just because police have permission to search your house doesn't mean that you or other people in the house must answer their questions. You still have the right to silence and the right to talk to a lawyer.



Property Rights

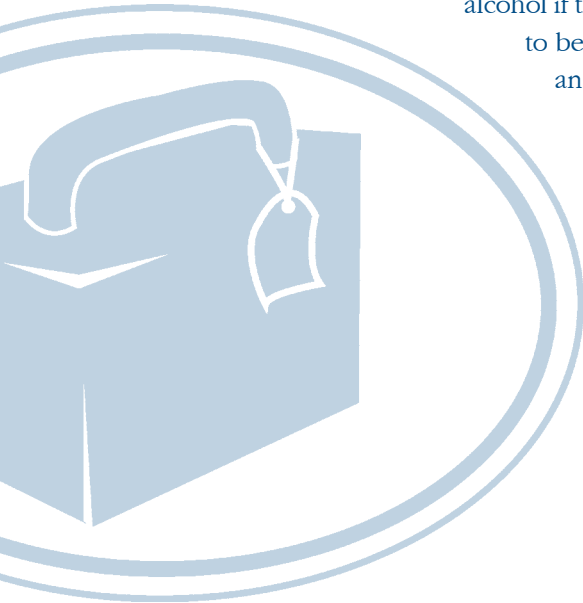
Seizing Property

If the police “seize” your property, it means they have taken your property. The police can only take your property if they believe it is somehow connected to a crime.

If you have paid for property with money that came from crime (even if you didn’t know), or you have used property when you were committing a crime, or owning the property itself is a crime, the police can take it. They can also take property that might give them evidence, like videos, camera film, pictures, or anything else they can use to prove their case. Police can seize alcohol from you if you are drinking in public and you are not in a licensed bar or restaurant. Police may also seize unopened

alcohol if they have *reasonable grounds* to believe it is going to be used for an unlawful purpose (e.g. being taken to a location to drink in public).

The court should order your lawfully owned property returned once it is no longer valuable as evidence. Your illegally owned property may be destroyed and



will not be returned to you, even if you are not charged. If police do not return your lawfully owned property, you should contact a lawyer.

Alcohol will not be returned to you if you are convicted of an offence under the *Liquor Control and Licensing Act*. You are convicted if you are given a ticket and you don't fight it in court and win. If you don't get a ticket and your alcohol is seized, you can have it replaced or be compensated. Write to the General Manager of the Liquor Control and Licensing Branch within 30 days requesting compensation. Include as much detail from the incident as possible.

Attn: General Manager
Liquor Control and Licensing Branch
PO Box 9292 Station Prov Govt
Victoria, British Columbia
V8W 9J8

E-mail: lclb.lclb@gov.bc.ca

Photographs

Police can take photographs or video of you in public as part of an investigation, but you do not have to co-operate by standing still or showing your face unless you are under arrest (see page 40 for details). Be careful: running away from a camera could give police a good reason to detain you legally. Just turn and walk away.



Breathalyzers, Blood and DNA Samples

Canadian law protects your body from the police. The police can never take blood or hair samples from your body for analysis without your permission or a *warrant* from a Judge. However, the police do not need a warrant to collect materials that may contain your DNA, such as hair, tissue or bandages if you have thrown them in the garbage.

A Judge will give police a *DNA warrant* to get a sample from you if they can convince the Judge that they can meet the following two conditions:

1. they have *reasonable grounds* to believe you were involved in a serious *indictable offence*, including offences like murder, sexual assault, arson or rape; and
2. DNA evidence will link you directly to the crime or prove your innocence.

If you are suspected of having been drinking while driving a car, boat or other motor vehicle, the police have a right to demand that you give a breath sample. A breath sample is given into a “screening device,” usually at the roadside. If you refuse, you may be charged for not co-operating, which can be just as serious as drinking and driving.

The result of the test, by itself, will not ordinarily be enough evidence to charge you with impaired driving but will give the police reasonable grounds to believe that you are impaired. The police then have the right to demand that you take a breathalyzer test or give a blood sample. If the result of either test indicates a level of alcohol in your blood that is greater than .80 milligrams, the police can charge you with impaired driving. They may not use these samples for DNA evidence. Talk to a lawyer before giving police permission to do a mouth swab or take a blood or hair sample.

CRIM CODE 487.05 and following



Other Agency Search Powers

Private Security

Private security has only the same rights to search as a regular person does. They can't search you unless you give them permission or they have arrested you (see page 20 for when a non-police officer can arrest you). If security has arrested you, anything more than a *pat-down search* for weapons could be an illegal search. If you have been searched by private security without your permission, contact a lawyer or the B.C. Civil Liberties Association.

Customs

Because they are protecting borders, Customs officers have special permission to do searches. Unlike police, they can search your car, your bags, your pockets or do a pat-down search on a “hunch” without *reasonable grounds*.

If you have any complaints about what a Canada Customs officer does or says, ask for the Superintendent On Duty. At U.S. Customs, ask for a supervisor.

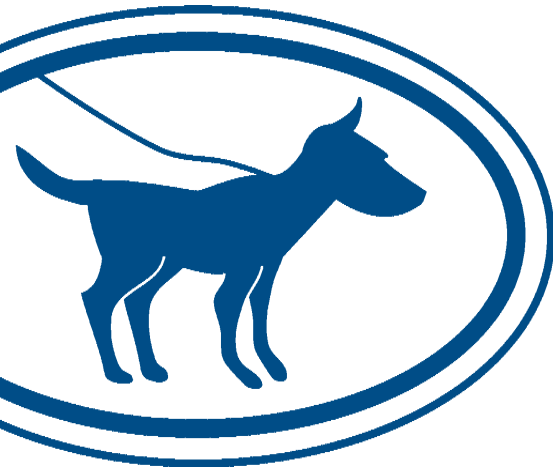
Canada Customs officials must follow the *Charter of Rights and Freedoms*. This means strip searches can only be done where the Customs officer has reasonable grounds to believe you are hiding something under your clothes or in a body cavity. U.S. Customs guards must have a “reasonable suspicion” to do more than a search of your outer clothes.

If a Canada Customs officer wants to do a strip search, you have the right to be taken before a *Justice of the Peace* or a Chief Officer. You can ask to speak to a lawyer before this hearing. The officer that wants to do the search must convince the Justice or the Chief Officer there is a good reason for the search. If there is no

good reason, the Judge will tell the Customs officer to release you. You also have the right to a lawyer in the U.S. before any search beyond a pat-down search and search of your outer clothes.

If you are not honest with Canadian or U.S. Customs about things you are bringing over the border, they may take your property. You may lose the property permanently, or you may have to pay a fine. If they take something from you, they must give you a receipt that includes information on how to get your property back.

Customs officials must follow the same arrest procedures as police officers. You have the right to remain silent and to talk to a lawyer if you are arrested at the border.



See Customs Act, Canada Customs and Revenue Agency Act and Canada Border Services Agency Act

Special Law Enforcement Personnel

Many groups like transit authorities, railway companies, and environmental authorities have their own law enforcement employees. Members of these special police forces are often *special provincial constables* or members of Designated Law Enforcement Units (DLEU) under the B.C. *Police Act*. They have the same rights and powers as regular police officers, but are responsible for enforcing only the laws relating to their employer's interests or to protecting their employer's property.

There are many government agencies that have different powers of entry, search, seizure, and *detention*. These groups may operate in similar ways to police. For information on the powers of other agencies, use the blue pages (government pages) of the phone book to find the information phone number for that agency. You can also consult with a lawyer. For information about *CSIS*, the Canadian Security Intelligence Service, see page 52.

Special Provincial Constable and DLEU Complaints

Making a complaint against *Special Provincial Constables* or Designated Law Enforcement Units is different than for regular police. Contact the Office of the B.C. Police Complaint Commissioner for assistance at 604-660-2385 or 1-800-663-7867 or call the relevant agency and ask about how to make a formal complaint.



See B.C. *Police Act*



After Arrest

Even after you have been arrested, you still have the right to remain silent. You also have the right to speak to a lawyer. This section tells you what happens after the police arrest you.

Personal Search

After you are arrested, the police can search your clothing, bags or car for objects or weapons you could use to harm yourself or someone else, or aid in your escape. They can also look for anything illegal or evidence that you have broken any other laws.

Usually, if you have just been arrested, you will be taken to the police holding cells to wait to go to court. You may also be taken to the courthouse jail cells or in rare situations, the *remand centre*. Either before or just after you arrive at the holding cells, all of your property will be taken by the police. You will be asked to sign a list of everything the police have taken. Make sure the list is correct. If it isn't, don't sign it.

If you are kept in police holding cells, the police do not have the right to strip search you (this will often be the case for *public intoxication* or minor offences where you are held for fewer than 24 hours).

If you are taken to a remand centre, you may have to change into a prison uniform. Corrections officials may perform a strip search if you will be in contact with other prisoners. All strip searches must be done by a person who is the same sex as you. If you feel you are being searched inappropriately, tell the searching officer and any potential witnesses. Although police or corrections officials can do a strip search, they cannot do a body cavity search without *reasonable grounds*.

See *Canadian Charter of Rights and Freedoms*

Right to Speak to a Lawyer

You have the right to speak to a lawyer as soon as possible. The police will give you access to a phone. You have the right to use the phone as often as you need to actually speak to a lawyer. There are usually phone numbers posted near the phone for the lawyer referral service and *legal aid* (see page 39 for information about legal aid). A lawyer will help you ensure that your rights are respected and that you receive a fair hearing.

Remember when you are calling from jail that the police could be listening on the phone. Tell the lawyer what you have been charged with and where you are. Try to arrange to meet in person with your lawyer before any hearings. Anything you say to a lawyer in private is secret and can't be repeated by the lawyer in court without your permission. Prison phone lines are not private.



Translators

If you do not speak English well and a translator could help you understand the police better, ask for a translator. You do not have the right to a translator for police questioning, but they may bring one to you anyway. Remember, you do have the right to remain silent and you also have the right to a lawyer. Any time you have to go to court, you have the right to have a translator. MOSAIC can provide you with a translator for a fee at any time (1-877-475-6777).

Duty Counsel

If you have not had the chance to call a lawyer, or if you didn't know who to call, don't panic. When you appear in court there will be a lawyer there who can help you called *Duty Counsel*. Duty Counsel will be able to help you explain to the judge what you would like to do.

If you would like to get a lawyer or apply for *legal aid*, tell Duty Counsel and she will tell the Judge. She may be able to give you the address and phone numbers you need to find a lawyer or get legal aid.

Duty Counsel can help you:

- set a date for your trial (see page 42 for details);
- get the Judge to set *bail* or release conditions for you (see page 43 for details);
- make a guilty plea and tell the Judge why you deserve a less severe sentence; and
- find out if you qualify for a diversion program (see note below).

Diversion Programs

Diversion programs ask people to take responsibility for breaking the law through community service or other activities. If you are a first-time offender and you are unlikely to break the law again, you may be a good candidate for diversion. If your case is diverted, the **Crown** will not charge you or if you have already been charged, they will not continue to prosecute the charge. A diversion program allows you to avoid a criminal charge, a conviction and the court process if you complete it successfully. Ask your lawyer or *Duty Counsel* for details.



Legal Aid

If you can't afford a lawyer, you may be able to get legal aid. If you get legal aid, the government pays for a lawyer for you. The rules for who receives legal aid are different in each province.

In B.C., to apply for legal aid, you need to call the Legal Services Society office in your area. If you are in jail, call the Legal Services Society office collect and choose the option given by the answering machine that is for people in jail. If you go to court before you can apply for legal aid, tell the Judge or Duty Counsel you would like to apply for legal aid.

Not everyone gets legal aid. In order for you to qualify, you must have:

1. a problem that is covered by legal aid;
2. a very low income; and
3. no other way to get help.

Problems covered by legal aid in B.C. include: criminal charges where there is a strong possibility you will go to jail, some serious family law problems (violence, child endangerment), deportation, and some other issues. The Legal Services Society will tell you if your problem is covered. If your income is above welfare rates, you may have to pay some money. If you apply for legal aid and you are told you don't qualify, you can appeal the decision. Ask for an appeal form from the Legal Services Society office.

Legal Aid Phone Number

The Legal Services Society office number for Metro Vancouver is 604-408-2172; 1-866-577-2525 (toll free, outside of Metro Vancouver).



Identification Procedures

If you have been charged with a *hybrid* or *indictable offence*, or convicted of an indictable offence, or you have been arrested under the Extradition Act or the Security of Information Act (formerly the Official Secrets Act), the police have the right to take your picture, measurements and fingerprints. In all other situations, they require your permission. You have the right to say no.

If you are fingerprinted or photographed but you are not convicted, you can request that the police destroy the copies of your fingerprints and photos they have on file. A recent Ontario Court of Appeal decision (*R. v. Dore*, 2002) suggests the police may have to destroy the fingerprints if you request, without charging you money for the service.

If you are released from jail, your *appearance notice* or summons may have information about when you will be fingerprinted. Even if you feel police do not have the right to take your fingerprints, do not miss this appointment. If you do, a *warrant* may be issued for your arrest and you may face more charges. Talk to a lawyer instead.

Police may ask you to appear in a police lineup for identification. You have the right to have your lawyer present when this happens. You have the right to refuse to participate in a lineup. The police may sometimes arrange for witnesses to look at you without your consent or knowledge to identify you.



Visits from Friends or Relatives

It is unlikely visits from friends or relatives will be permitted until after your *show-cause hearing* (see page 42). Although you don't have the right to call family or friends, the police may let you call them to explain where you are and what help you need.

Be careful what you say during this call and during any visits with family and friends. The police may be listening. Information you tell your family and friends is not secret and can be used in court against you. If you are not released and are held before your trial date at a *remand centre*, you will be able to have visitors by appointment. Your lawyer should be able to tell you how to arrange for visits.

Release by Police

The police may release you at any time after they arrest you. They might release you without charges. Even if you are released without being charged, the police may still send you a summons later or re-arrest you for the same offence later if they find more evidence. A summons is a piece of paper that orders you to go to court on a certain day for a hearing.

The police may give you an appearance notice or undertaking to appear. An appearance notice is a piece of paper that tells you to show up for court at a certain time. It may also tell you when to go to the police station to be fingerprinted. Read it carefully and show up on the date(s) and times listed.

If you don't show up for fingerprinting or your trial, you could be arrested and held in jail until your trial date. It could also be counted as another charge against you. Often, people who would have won their trials because of an illegal search or other police

Contacting Family and Friends

Do not sign a statement for the police so that you can see family or friends. You can send messages to them through your lawyer. Whatever you say in your statement will be used against you in court.



misconduct still get a criminal record because they are charged for not going to their trial (called “failing to appear”). If you don’t show up, you also can’t take advantage of *diversion programs* (see page 38).

If the police release you, they can make rules for your release that you must follow. If you think the police conditions are too restrictive, you can wait until your court appearance for the Judge to set conditions for your release. If you are from outside of B.C., the police may ask you to pay a deposit similar to *bail* to make sure you come to your trial.

Show-Cause Hearing

If you are not released within 24 hours, the police must bring you to court for a *show-cause hearing* to explain why they did not release you and to set a date for your trial. If you don’t have a lawyer, Duty Counsel should be in the courtroom area to help you.

If you have not been able to contact a lawyer up to this point, explain why you have not contacted a lawyer to the Judge. The Judge may give you time to find a lawyer. Duty Counsel should be able to help you talk to the Judge. She can also help you find a lawyer or apply for legal aid.

During the show-cause hearing, the judge will consider whether to release a person from jail or not. The Judge may release you if you promise to appear in court for your trial. He may give you rules to follow after you are released. These rules can include not talking to some people, curfews, not drinking, not going to certain places, or whatever other rules the Judge feels will help you not break the law before your trial. Your lawyer will try to talk the Judge into reducing the number of rules for your release. Tell your lawyer if the rules will interfere with your job or where

you live. The Judge may also require bail be posted before you are released (see below).

In most situations, *Crown Counsel* will have to convince the judge that you should be held in jail or that rules should be included if you are released. Crown can apply to the judge to delay the show-cause hearing for up to three days to obtain further information.

Bail

Bail is an amount of money the Judge says the court needs to make sure you show up for your trial. The money can come from you, your friends, or your family. When you show up for your trial, the person who paid the bail is entitled to get the bail money back.

If the Judge is convinced during your show-cause hearing that bail is needed to make sure you come to your trial, or if Crown Counsel asks for bail, the completion of a show-cause hearing can be delayed for up to three days. You will wait in jail until your hearing to consider whether bail is needed or not.

Your lawyer can help you during your bail hearing to reduce the amount of money the court asks for in bail. Whether or not you will be allowed to leave on bail depends on your criminal record, the strength of the Crown's case, the charges against you, and other information the Judge knows about you.

If you are allowed bail by the Judge and somebody pays it for you, you will be released. If you do not appear for your trial after being released, the bail money will belong to the court. The person who gave the money to the court will not get it back, and you will be arrested.

Sureties

You may be released without bail if you have a *surety*. A surety is a person who lives in the province who, generally, has a job and a place to live. They may promise, on your behalf, that you will appear in court. If you don't appear in court, your surety may face charges.

You may need to provide both a surety and bail before you are released. If the court refuses to release you on bail, or releases you with conditions you think are too serious for the crimes you are charged with, you can appeal the decision. You will likely need a lawyer for that appeal.

Review of Detention Hearing

If you are not allowed bail and are kept in jail until your trial, you will be brought before a Judge to review why you are being kept in jail after a certain period of time. If your trial has not started within 30 days for *summary offences*, you will have a hearing. If your trial has not started within 90 days for *indictable offences*, you will have a hearing.

If you are facing a very serious charge (treason, murder, and others) you may not be allowed these hearings.

Jailhouse Informants and Undercover Police as Prisoners

Police may put a police officer in street clothes or in a prison uniform in a cell with you to get information. They may also force your cellmate or another prisoner to testify at a trial. Do not talk with people in jail about what you are charged with and whether you are guilty or innocent.





CHAPTER 11

Youth and the Law

People younger than 18 have more rights and protection under the law than adults. The police must be very clear with you about your rights and use simple language that you can understand.

If you are in a dangerous or threatening situation, call 911. If your problem involves the police, or you are in a situation where you don't want the police involved directly, call the Helpline for Children at 310-1234 (no area code needed, B.C. only) or TDD 1-866-660-0505.

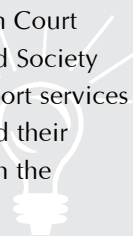
Just like an adult, you have the right to remain silent. You should never feel threatened by the police because of what they do or say. You also have the right to understand what is happening. Ask questions if you do not understand what is going on.

You may want to tell the police your side of the story, but you should wait until your lawyer arrives. Your lawyer can help make sure that your rights are protected. Tell the police or the Judge you want to speak to a lawyer and they will get you one. You do not need to apply for *legal aid*. Lawyers are free for young people.

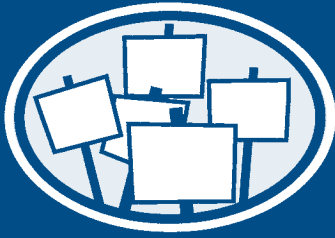
Your parents will be contacted as soon as the police can call them. If they are not around, you can give police the name of a close relative or trusted adult friend who can come to the jail instead. You have the right to have another adult person with you other than your lawyer. If there is no-one else who can look out for your rights, the Judge may act as guardian (temporary parent) for you during the hearings.

Young people are not usually put in the same jail as adults. Young people are kept by themselves, or in a special location just for youth.

Help for Youth in Court
The John Howard Society
offers many support services
to help youth and their
families deal with the
justice system.



See *Youth Criminal Justice Act*



Civil Disobedience and Protest

Activists often choose to engage in “civil disobedience.” Civil disobedience is a form of protest that involves breaking the law. What makes civil disobedience different from simple disobedience is that it is breaking the law in order to:

- convince the government or a third party to do or stop doing something;
- demonstrate the seriousness of the issue at hand for the protesters; or
- draw attention to an issue or cause.

Civil disobedience is, by definition, non-violent towards people or property. Activists accept the consequences of breaking the law in order to increase public awareness of an issue. There are many different legal issues to think about when you are participating in civil disobedience, considerations that are not present for regular arrests.

Planning

It is helpful to make contact with the police and establish a relationship before any major protest action. If you plan civil disobedience, or if people are arrested, your police contact can be a useful source of information before, during and after the event.

The police tend to trade information tactically, which means you should decide before the action what information you want to release. A group spokesperson should be appointed and given a cell phone for the event to encourage communication with the police.

Organizers should ensure activists doing civil disobedience are prepared and trained for potential consequences, including tear gas, pepper spray, and time in jail. Although civil disobedience may result in an *absolute* or *conditional discharge* (s. 730 and 731), activists should also be adequately prepared for the social consequences of a criminal record.

Contacting a lawyer before the demonstration who will agree to represent arrested activists is very helpful. Activists can write the lawyer's number, or an emergency contact number, on their arms in permanent marker to ensure they keep the number after arrest. Make sure your lawyer understands the intent and purpose of civil disobedience and jail solidarity plans that will be practised.

Common Charges

Knowing common criminal charges can help you prepare for arrest.

Frequently, activists face Mischief (s. 430) charges in conjunction with protests. If police wish, they can enact the "riot act," a part of the *Criminal Code* (s. 67 and 68) that requires people to clear the streets within half an hour of special words being read aloud by police, or risk arrest.

There is significant risk of activists being arrested under *Breach of the Peace* (s. 31) (see page 15 for details). Police may choose to use Breach of the Peace to arrest activists in anticipation of what they believe may be physical violence against people or property.

In addition to regular criminal charges, restitution orders (an order by a Judge to pay for damage caused) have been issued where activists have damaged property.

CRIMCODE 730, 731, 430, 67, 68, 31

Recording Information

For demonstrations, it is often helpful to have a video record of police and protester actions. Use caution: any film not belonging to members of the established media is at greater risk of being taken by police as an item that could give evidence of a criminal act. Film can be taken even while it is still in a camera (which means the camera would be taken too).

Badge numbers or names of police officers involved in questionable conduct should be recorded. According to their own internal policies, police must identify themselves if you request that information. If they don't, you may wish to file a police complaint.

Police Photography and Video

Police often use video cameras at protests. If you make a written request, the police may let you view the evidence they have collected. If you are charged with an offence, you will have the right to see the video and photographs of you taken by the police.

If the police don't let you view the tapes and photos, you may be able to force them to give you copies of images collected by municipal police officers through a request under the B.C. *Freedom of Information and*

Protection of Privacy Act (provincial law). Visit www.oipcbc.org or call 250-387-5629 for further information (or call Enquiry B.C. for toll-free access).

Images collected by the RCMP can be accessed through the *Privacy Act* (federal law). To request information using this law,

use the forms available on the Federal Privacy Commissioner's (FPC) website (www.privcom.gc.ca). Call the FPC's office for details at 1-800-282-1376.



Avoiding Film Seizure by Police

To avoid seizure of film by police, people photographing demonstrations often address and stamp envelopes in advance and drop completed film into mailboxes.

Jail Solidarity

When a large number of people have been arrested, people engaging in civil disobedience may choose to engage in “jail solidarity.” While this booklet is not the forum for discussing such activities, here are a few important tips.

- Going limp while being arrested is not considered “resisting arrest.”
- Refusal to give names or addresses is often done during jail solidarity. By refusing to self identify after arrest, you risk further charges or increased time spent in jail while police attempt to identify you or negotiate with spokespeople.
- Jailed activists should watch out for potentially vulnerable fellow arrestees who stand out: gay/lesbian/bisexual/transgendered activists, people of colour, youth under 18, immigrants and anyone who might face greater scrutiny or harassment by guards or police once behind bars.
- People should avoid talking about why they were arrested and their guilt or innocence in jail. Police routinely have informants placed in jail populations in these situations.

Civil Disobedience Handbook

The Environmental Law Centre at the University of Victoria has published a helpful handbook on civil disobedience. To order a copy, call 250-721-8188 or e-mail elc@uvic.ca. The handbook is also available at <http://www.elc.uvic.ca>.



Also see *Protesters' Guide to the Law and Civil Disobedience in B.C.* by Leo McGrady, Q.C. at www.cupe.bc.ca/pdfs/020308c.pdf



Anti-Terrorist Legislation

Overview of the Law

After September 11, 2001, the Federal Government brought in restrictive “anti-terrorist” laws that could severely affect your rights. The laws are available at www.parl.gc.ca and include the *Anti-Terrorism Act* and the *Public Safety Act*.

Anti-terrorism laws are intended to be used only in emergency situations; however, activists and recent immigrants or refugees – especially people from predominantly Muslim or Arab countries – may be targeted by police or *CSIS* for investigation under this legislation.

According to the *Anti-Terrorism Act*, there are two ways to be considered a terrorist. The first way is to commit a terrorist act. The second way is to be a member or supporter of a group that is included on the government’s list of terrorist groups.

A terrorist act is any act or omission, in or outside Canada that is committed for political, religious or ideological purposes to intimidate the public or compel a government or organization to do a certain act. The terrorist act must intentionally cause death or serious bodily harm, endanger someone’s life, cause substantial property damage that could result in bodily harm, or interfere with an essential service (other than as a result of protest or strike).

The Canadian government has started compiling the official list of terrorist groups. To find out which groups are on the list, visit www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx. The Public Safety Canada website is: www.publicsafety.gc.ca/abt/wwa/min-eng.aspx. The phone number for Public Safety Canada is 1-800-830-3118.

It is illegal to be a member of terrorist groups or provide any service for terrorists. It is also illegal to give them any financial or resource support. If you provide a service or support for these groups, you could be arrested. Groups providing resources or money for charities operating in conflict areas should use caution and ensure those groups are not providing support to a listed terrorist group.

How the Law Affects Your Rights

Special police powers to arrest terrorist suspects to prevent terrorist acts and to investigate terrorism under the *Anti-Terrorism Act*, expired in 2007. However, in 2008 the Stephen Harper government expressed the intent to give these special powers back to police. You will need to contact a lawyer or law library to determine whether these powers are in force.

If these special powers are in force, and used against you, you will likely know it. Some of the rights you would ordinarily have could be ignored, legally, by the police.

Even if you have done nothing wrong, you can be arrested by police and held for 24 hours if they have reason to believe you are about to participate in a terrorist act. You must be brought in front of a Judge within those 24 hours, and if the Judge believes you are about to participate in a terrorist act, you can be held for a total of 72 hours before you are released with conditions. Conditions will typically include restrictions on who you can talk to, where you can go and what you can do.

If the police suspect that you have knowledge of an upcoming terrorist attack you could be arrested and forced to give evidence to the police in court – even if you are not personally involved. You would have the right to a lawyer, but you would not have the right to remain silent.

See *Anti-Terrorism Act*, 83.01 and 83.33 of *Criminal Code*

CSIS

CSIS is the Canadian Security Intelligence Service – Canada’s main spy agency. Most of their information is collected through interviews with people. You have the right not to participate in interviews with CSIS. If you are approached by CSIS, you have the right to tell them you do not want to talk to them. You may want to contact a lawyer to ask for advice.

If you decide to talk with CSIS, make sure that you record the interview on video or audiotape so that you have a record of what you said, and what the agents of CSIS said. Asking a lawyer to sit in on the interview is a good idea. Ask the agents: “Am I a suspect?” or “Why are you asking me these questions?”

You can end a CSIS interview at any time. Tell the agents that you want to end the interview, and then leave. You can only be forced to speak by a Judge in a courtroom – not by the police or by CSIS.

If you have a complaint about CSIS activities, you must complain to the director of CSIS first. If you don’t hear back or you get an unsatisfactory response, you can then send your complaint to the Security Intelligence Review Committee (SIRC) who

will investigate and issue a report with recommendations to the Minister of Public Safety.

For questions about CSIS, you can call the SIRC at 613-990-8441. Complaints can be mailed to:

The Director
Canadian Security Intelligence
Service
P.O. Box 9732, Station “T”
Ottawa, Ontario
K1G 4G4

Security Intelligence Review
Committee
P.O. Box 2430, Station “D”
Ottawa, Ontario
K1P 5W5
Fax: 613-990-5230

Your Rights as a Suspected Terrorist



Even though you are a suspected terrorist, you still have the right to a lawyer and the right not to answer questions until your lawyer arrives.

See Canadian Security Intelligence Service Act



Poverty and Drug Law Issues

There are many laws that have a greater impact on poor people and drug users. These laws can be used to target them unfairly. This section discusses some of these laws.

Panhandling

Under Canadian law, asking for change (panhandling) is not illegal. Cities may make rules about panhandling that only let you ask for change in certain places and in certain ways. For example, in Vancouver you can panhandle, but the law says you can't:

- ask for change when you are in a group of three or more;
- lie or sit on the sidewalk and ask for change;
- ask the same person more than once for change;
- ask people in cars for change;
- ask for change within 10 meters (33 feet) of a bank or bank machine; or
- follow people or walk ahead of them after asking for change.

If you are blocking people walking on the sidewalk or you are leaning on a building, you can legally be asked to move by police. Police may use traffic violations or the panhandling bylaws in Vancouver to discourage people who are poor from asking for change.

Loitering

Loitering is usually considered “hanging out” in a place without having a specific reason for being in that place. All citizens have the same right to be on park benches, park grass or on public streets. If you are asked by police to “move along,” you can ask why. Use your common sense in asserting your right to be in a public space. If you are in a municipal (city) park and refuse to move, police officers may charge you with loitering, a bylaw offence that would result in a fine. On the street, loitering is also a bylaw offence if you block or slow down pedestrians or cars.

Sleeping in Public

Most beaches and parks in Vancouver are municipal (city) parks. Some, like Iona Beach and Pacific Spirit, are regional parks. Sleeping overnight is banned in all parks in Vancouver, whether municipal or regional. You can sleep in some regional parks if you have a camping permit.

There is no rule against sleeping in parks during the day. There is a rule in city parks in Vancouver against “loitering” that could be used by police to prevent you from sleeping in the park during the day. There is no rule against loitering in regional parks.

Vancouver traffic bylaws and most other B.C. city bylaws prevent sleeping in the street by not allowing you to block traffic. Traffic includes people walking, as well as cars.

If you are sleeping on private property, you can be

Police Wake-up Calls

If the police use too much force when waking you up, you can file a police complaint. Remember the police officer’s badge number and the date, time and place where you were sleeping.



See Vancouver Street and Traffic Bylaw

escorted off of the property with as much force as is necessary by the property owner or by a security guard.

The law says the police, security guards and private citizens can only use as much force as is “reasonably necessary” to enforce the law. For example, if the police find you sleeping, they can’t kick you or hit you to wake you up.

Sex Trade Workers

Prostitution is technically not illegal in Canada, but there are many laws that make it difficult to sell or buy sex for money legally and safely. Just because you are a sex-trade worker does not mean you have fewer rights than any other person.

You still have the right to remain silent if you are questioned by police. You also have the right not to identify yourself unless you are under arrest. You do not have to allow police to take your picture, and you do not have to give samples for *DNA testing* to the police (see page 32 for details). The police do not have the right to take condoms or any legal item from you unless you are under arrest.

Loitering in an area known for prostitution may give the police legal grounds to detain you and ask you questions. You do not have to answer their questions. See page 17 for a list of situations where you must give your name and address to police officers.



Needle Mark Searches

The police may ask you to roll up your sleeves to figure out if you are using IV drugs like heroin. You do not have to show your arms to police unless you have been arrested. At most, when you are **detai**ned, police are allowed to do a **pat-down search** for weapons and look in your bags for weapons.



Police Accountability

There are many ways you can take action if you feel the police have not acted properly. Each different action plan has good and bad things about it. Going to court is expensive and takes a long time, but might get you money for injuries or other damage. Sending in a complaint is cheaper, but is less likely to pay compensation. Complaints can result in criminal charges or discipline for the police officer involved.

Using the Courts

Criminal Charges

Police officers and security guards must obey the law, just like regular citizens. If you want to lay criminal charges against a security officer, you can call the police. If you want to lay criminal charges against a police officer, you may be able to convince *Crown Counsel* to lay criminal charges. You will need a lawyer to help you with this process. Police complaints can also result in criminal charges.

Civil Suit

You can sue the police for hurting you or damaging your property, which may result in some money to help you replace what was damaged or pay you for your pain and suffering. This kind of lawsuit can be very expensive. You should consult a lawyer to help you understand if this approach would help you.

If you choose to sue the police, you can sue in British Columbia Supreme Court, or in Small Claims Court. Small Claims Court is easier to understand than Supreme Court, and is less expensive. Pivot Legal Society has a guide to suing in Small Claims Court that

can help you. The guide is available from Pivot Legal Society, 678 East Hastings Street, Vancouver, V6A 1R1 and on the internet at www.pivotlegal.org.

Complaint Processes

Police complaints are the cheapest and fastest way to take action if the police have acted improperly, but they can still take a long time to resolve. Complaints can result in criminal charges, firing, suspension or discipline for the police officer involved. Threats from police officers towards people who complain are very rare and completely illegal; if you are threatened for making a complaint, immediately call the BCCLA, the office of the Police Complaint Commissioner, or a lawyer.

To make a complaint, write a letter as soon as possible after the incident. Describe the incident as accurately and honestly as you can. Include the date, time, and place. Include the badge numbers or names of the officers involved if you know them; if you don't, give a description – the investigators should be able to find out who it was. At the end of your complaint letter, include the action you want the police to take.

Free Advice

For free legal advice, contact these organizations:

- Western Canada Society to Access Justice
1-877-762-6664 and/or
604-878-7400.
www.accessjustice.ca
- Pro Bono Law of B.C.
604-893-8932
<http://probononet.bc.ca>
- Lawyer Referral Service
604-687-3221 (\$25 plus tax for first half-hour)



Be sure to include your return address and phone number and keep a copy of your letter for reference. For more information on how to file a police complaint, contact the BCCLA and ask for a police complaint brochure or visit www.bccla.org to access the brochure on the web.

Royal Canadian Mounted Police (RCMP) Complaints

Send complaints about the RCMP to:

The Commission for Public Complaints Against the RCMP

#102 – 7337 137th Street

Surrey, British Columbia

V3W 1A4

B.C. Municipal Police Complaints

Send complaints about Vancouver Police Department or other municipal (city) police in B.C. to:

The Office of the Police

Complaint Commissioner

#320 – 1111 Melville Street

Vancouver, British Columbia

V6E 3V6



Important Phone Numbers

B.C. Civil Liberties Association	604-630-9754
Brydges Line (free emergency criminal lawyers)	1-866-458-5500
Enquiry B.C.*	604-660-2421 or 1-800-663-7867
Information and Privacy Commissioner of B.C.	250-387-5629
John Howard Society	604-872-5651
Law Line (Legal Services Society)	604-408-2172 or 1-866-577-2525
Lawyer Referral Line	604-687-3221 or 1-800-663-1919
Legal Aid	604-601-6300 or 1-866-577-2525
Liquor Control and Licensing Branch (Victoria)	250-387-1254 or 1-866-209-2111
Mental Health Law Program	604-685-3425 or 1-888-685-6222
MOSAIC Non-Profit Translation Services	604-254-0469 or 1-877-475-6777
Office of the Police Complaints Commissioner	604-660-2385 or 1-800-663-7867
Ombudsman (B.C. Provincial)	1-800-567-3247
Prisoner Legal Services	604-853-3114 or 1-866-577-5245
Privacy Commissioner of Canada	1-800-282-1376
RCMP Police Complaints	604-501-4080 or 1-800-665-6878
Refugee Assistance	1-888-622-6337
Salvation Army Pro Bono Lawyer Program	604-694-6647
Security Intelligence Review Committee	613-990-8441
UBC Law Student Advice Program	604-822-5791
Vancouver Area Network of Drug Users	604-683-8595
Society to Access Justice (<i>Pro Bono</i> Lawyers)	604-482-3195

*Long distance B.C. government numbers can be accessed for free through Enquiry B.C.



Important Legal Words

Absolute Discharge – A decision by a court to not impose punishment or a criminal record on someone guilty of a criminal offence, but only if it is in the best interests of that person and not contrary to the public interest.

Appearance Notice – A sheet of paper given to you by the police or the court that requires you to show up for court on a certain day. Not showing up to court will result in further charges, and you won't be able to participate in *diversion programs*.

Arrest – The action of a person holding another person against that person's will. Police, private security and private citizens can all make arrests in certain situations.

Bail – Money placed by you or your family or friends with the court to support your promise that you will show up for your trial.

Breach of the Peace – The arrestable action of causing a disturbance. Usually involves some threat of violence. There is no charge for Breach of the Peace; the police must release the arrestee shortly after arrest or charge the arrestee with another offence.

Car 87 – A regular police car, staffed with a police officer and a mental health professional, usually a nurse, that responds to suspected mental health emergencies.

Civil Suit – A court case used to recover costs that result from the wrongful actions of another person.

Conditional Discharge – A decision by a court to not impose punishment or a criminal record on someone guilty of a criminal offence, but only if it is in the best interests of that person, not contrary to the public interest, and if the conditions imposed by the court have been met.

Crown Counsel (also "Crown") – The lawyer who is speaking on behalf of the government against the accused in a criminal trial.

Counsel – A lawyer.

CSIS – Canadian Security Intelligence Service. Canada's spy service.

Defence Counsel – The lawyer for the accused in a criminal trial.

Detention (Detained) – The state of being held by police so they can investigate you. Police must have "articulable cause" (they must be able to explain why) to detain a person for investigation purposes.

Diversion Programs – Programs, generally for first-time offenders, that may allow them to avoid jail and criminal records in return for community service work, apologies and meeting certain conditions.

- DNA** – The blueprint of life that contains a genetic “fingerprint” unique to you. *DNA* fingerprints can be read from bodily substances including blood, hair and semen.
- DNA Testing** – The police process of reading your genetic fingerprint and comparing it to *DNA* found at a crime scene.
- Dual Offence** – see *Hybrid Offence*.
- Duty Counsel** – The free lawyer at the courtroom who can help people set court dates, plead guilty and sometimes help in applying for *legal aid* or finding a lawyer.
- Hybrid Offence** – An offence *Crown Counsel* can choose to proceed with as either a *summary* or *indictable offence*.
- Indictable Offence** – The most serious kind of offence. Murder, manslaughter and aggravated assault are all *indictable* offences. Pronounced “in-di-ta-bal.”
- Justice of the Peace** – A court official, sometimes a local lawyer, who can take the place of a Judge for more minor legal hearings, including issuing warrants.
- Lawyer** – An expert in the legal system, a professional certified by the provincial law society. Also called *Counsel*.
- Legal Aid** – Money from the government that pays for a lawyer for you.
- Pat-Down Search** – A search performed by pressing hands along a person’s body outside their clothing. Also called “frisking.” Usually used to check for weapons.
- Prosecutor** – see *Crown Counsel*.
- Public Intoxication** – The arrestable offence of being so drunk or high you are a danger to yourself or others, or you are causing a disturbance. Must occur in a place accessible to the public.
- Reasonable Grounds** (Reasonable Cause) – A good reason to believe something. Usually used to say that police need some evidence beyond just a “hunch” or a suspicion before they arrest you or search you.
- Remand Centre** – Where you are held until your trial if the Judge decides not to release you at your *show-cause hearing* or you can’t provide bail money.
- Show-Cause Hearing** – If you are not released by police, the hearing during which the police explain why you were not let go and during which the date for your trial is set. Usually the Judge places conditions (*bail*, no drinking, etc.) on your release.
- Special Provincial Constables** – A designation for people who are not regular police officers, yet still have many of the powers of police. Transit police are an example of *Special Provincial Constables*. The complaint process is different for these constables than for the police.
- Summary Offence** – The least serious kind of offence. Generally carries a maximum penalty of six months in jail and/or a \$2,000 fine.
- Surety** – Someone, usually with a job and residence in the province where the offence was committed, who is willing to go to court and promise that you will appear for your court date.
- Warrant** – A piece of paper issued by the court ordering police to do something. *Warrants* can, among other things, order the search of a residence (search *warrant*) or require the arrest of a person (arrest *warrant*).

Know Your Rights!

If you have been stopped by police:

- You have the right to ask: “Am I free to go?”
- If yes, then leave.
- If no, ask “Am I under arrest?” If yes, ask for the reason why.

If you are not under arrest:

- Ask why you are being detained.
- The police need a good reason to detain you. They must tell you why, if it’s not obvious.

If you are under arrest:

- Police need to have seen you break the law, have a warrant for your arrest, believe you have a mental disorder or have a good reason to believe you have broken the law in order to arrest you.

If you have been arrested:

- **Say NOTHING except for your name and address.** Ask to speak to a lawyer. Ask for and remember badge numbers and the reason given for detaining or arresting you.
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Important Numbers

Lawyer Referral Line	1-800-663-1919
Law Line (Dial-a-Law)	604-408-2172
Legal Aid in Vancouver	604-601-6206
Pro Bono Law of B.C.	604-893-8932
Salvation Army Pro Bono Program	604-694-6647
UBC Law Student Legal Advice Program	604-822-5791
The Law Centre (Victoria)	250-385-1221
B.C. Civil Liberties Association (BCCLA)	604-630-9754

To talk to a criminal lawyer right away, call 1-866-458-5500

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FOR
freedoms
for 45 years
IN BRITISH COLUMBIA



**British Columbia
Civil Liberties Association**

The Arrest Handbook is a guide to your rights and responsibilities when you deal with the police. Arrest, detention, searches, seizures and complaints are all covered in easy-to-understand language. Also included are special sections on mental health detentions, civil disobedience and protest, poverty law and anti-terrorist law.

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www.bccla.org

