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November, 2021

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PROTESTERS

NOVEMBER, 2021



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

The information in this Guide is legal information, not legal advice. If you are looking for legal advice please consult a lawyer.



Protesting is an essential democratic tool and is given constitutional protection through the *Canadian Charter of Rights and Freedoms*' guarantees of freedom of expression, freedom of peaceful assembly and freedom of association. Protests are one way that individuals and communities can send a loud message to elected officials and others in positions of power. Public events and protests can bring attention and momentum to an incident or cause you care about, which can put the issue onto the public agenda and open the doors for meaningful change. A protest can range in size from a one-person event to a march that draws hundreds of thousands of people. Regardless of size, **it is important that you understand your rights when planning or attending a protest—that is the purpose of this guide.**

While we have set out some of the legal parameters relevant to protests, civil disobedience (in other words, knowingly breaking the law) can play an important role in struggles for societal change. Some individuals and groups may choose not to apply for permits, or may plan on taking actions that can lead to arrest or criminal charges. These are decisions that individuals and communities make for themselves regarding how to achieve social change. It is important to know the law and your rights. It is also important to acknowledge that not everyone will agree that it should be followed in all circumstances.

The information in this guide is divided into two sections: general information about your constitutional rights related to protest activities, and more specific information relevant to police interactions at protests. The information is a general overview of rights in the context of protests and is not intended to be legal advice. If you have question about a specific protest or police interaction, you should contact a lawyer.



PLANNING A PROTEST OR A PARADE/MARCH

Does it matter where my protest takes place?

Yes, your rights to protest differ depending on whether you are on public or private property.

The easiest way to hold a protest is to have it take place on public sidewalks, in public parks, or on other property publicly owned by a government (not private businesses or individuals) that is accessible to the public. It is important to understand that some areas which may seem public, like malls, are actually private property. It is helpful to research the owner of the place on which you plan to protest as you can be asked to leave private spaces. Protests can take place on private property with the permission of the property owner.

What can I do at a protest?

Once you find a good place to hold your protest you can gather, make speeches, hold signs, and hand out flyers. Your constitutional rights will generally protect all these activities as long as you are not physically blocking passersby, roads, or access to building entrances.

There are some specific instances where there are further restrictions—some provinces have placed limits on anti-abortion protests near health care clinics, for example. If the area is subject to an injunction that limits protest activity, protesters may be arrested if they choose to violate the terms of the injunction. While these types of restrictions are rare, injunctions are increasingly being used by private companies (such as land developers and resource extraction companies) to try to ‘evict’ protesters engaged in lengthy blockades or occupations.

If you want to organize a larger demonstration or protest that will include marches on roadways and interruption to traffic, you will have a few issues to consider. Although peaceful assembly is a constitutionally protected activity, the right to peaceful assembly, like all rights in the *Charter*, is subject to

“reasonable limits”. This means that the government can restrict rights—including protests—in certain ways without violating the *Charter*.

A protest that endangers others, damages property or significantly restricts essential services and processes within society is unlikely to receive constitutional protection. For example, a rule prohibiting protest routes that block ambulance access to the hospital has been found to be a reasonable limit on the right to protest. Acts of violence and speech that threatens violence are not protected under the *Charter*, and there are various sections of the *Criminal Code* that can be used to limit protest activity.

Provinces, territories and municipalities also have different local laws that, if you just read them, might seem like they would significantly restrict protest activities. Highway traffic laws and noise bylaws, for example, frequently prohibit the types of activities you see at protests. This doesn’t mean that all protests that block traffic or make noise are off limits—that would defeat one of the core purposes of the right to freedom of assembly. But it does mean that if your protest is going to be large and disruptive, there are additional steps you may want to consider.

Some requirements contained in bylaws might be found to be unconstitutional if challenged before the courts. For example, there once was a Montreal bylaw requiring that the exact location and itinerary of a gathering had to be communicated to the police before the event took place (even if the event would not block traffic). But then the Quebec Court of Appeal found this requirement to be overly broad, unreasonable and arbitrary. Montreal ultimately repealed the bylaw at the end of 2019, noting the importance of the right to protest. In Saskatchewan, a bylaw that required a permit to protest on the grounds of a legislative building was also ruled unconstitutional. The court noted that public squares have traditionally been used to express public dissent and was concerned that the bylaw failed to accommodate Indigenous spiritual practices, noting the integral role that lands play in the exercise of Indigenous spirituality. If you have concerns about the legality of a bylaw that is negatively impacting your ability to protest, you may want to consult with a lawyer or alert CCLA.

What about counter-protests and counter-protesters?

Sometimes the protest you have planned may draw the attention of other groups who wish to counter your message. Similarly, sometimes you may want to organize a protest as a way to counter one that is already happening or is planned. The freedom to peacefully protest and express yourself is a right that belongs to everyone, regardless of whether you agree with their point of view, and even if you find it deeply offensive.

Sometimes when police know that more than one protest with conflicting points of view will be taking place in or near the same space, they will set out designated areas for each group. This may be particularly important if there are concerns that violence between the two groups may break out, or that one group may threaten or intimidate participants in the other group. If this is a source of concern for your group, you may want to consider getting in touch with police in advance to see if they can assist.

What should I consider if I want to organize a protest that will block traffic?

If you are planning a protest that won't involve blocking traffic or interfering with the public's access to public spaces, you can generally plan your event without reaching out to municipal authorities or seeking a permit.

If you intend to block traffic or set up a rally with speakers and sound equipment, you should consider whether you want to apply for a permit or meet any other legal requirements before the event. Keep in mind that the process for planning large events may take a few weeks, so do your research and, where necessary, apply early. You can usually find out about protest-related applications or requirements by going to your municipality's website or contacting city hall.

If you do plan to organize a bigger protest that will disrupt traffic, you may also want to consider reaching out to the local police to see if they can help block or redirect traffic and facilitate a safe protest.

Not all groups, however, feel it is appropriate or safe to work with the police or government officials prior to their event. This is a decision that each group needs to make for themselves.



POLICE INTERACTIONS AT PROTESTS

Although peaceful assembly, freedom of expression and freedom of association are constitutionally protected activities, those who plan to attend a protest should understand that there are some risks associated with protesting, particularly if participants plan to engage in civil disobedience or other disruptive activities that could lead to arrest. Civil disobedience can play an important role in advancing social justice and protecting our rights and freedoms. However, those who participate should understand the potential consequences of arrests and convictions on their future employment prospects, immigration status and ability to travel and obtain rental housing. Such consequences will impact people differently, so it is important to get information and advice about the impact arrest may have for your particular situation and clearly communicate the potential risks involved with the planned activity.

If you are concerned that the police might try to interfere with your protest or arrests might take place, march organizers can put a plan in place before the protest for a lawyer to be on call to assist in case there are arrests. Organizers can also see if there are legal observers who can attend the protest and provide support. There are often great organizations geared to providing legal support to protest groups—ask around and do some research to see who is active in your local area.

If you are concerned about possible police interactions at a protest, here are some things you can do before the protest to help prepare:

- Make sure a friend or family member knows that you are going to a protest
- If you are arrested you may not be able to look up numbers on your phone—memorize emergency numbers to call
- If you have medication you need to take regularly, consider carrying a three-day supply, in its original packaging, in case you are detained
- Make sure your phone is password protected and that your screen locks automatically—make it a pass code rather than face or fingerprint recognition
- Consider the possibility of police detaining or searching you, and leave any contraband (including illegal drugs), sensitive personal information or anything that could be considered a weapon at home
- If possible, plan to go to a protest with a group of people for support
- If you plan on bringing children, make sure you know what they are wearing in case you get separated, arrange an emergency contact who can pick up your child in case you are arrested and pin that person's information to the inside of your child's clothes.

The questions that follow focus on police encounters at protests, marches and other public gatherings. While much of the information is applicable to other types of police encounters, we have attempted to highlight issues that protesters in particular may run into.

What do I do if a police officer stops and questions me at a protest?

Police officers can ask questions, but you have the right to silence and do not need to answer, provide any information, or assist them (although if you knowingly obstruct them or interfere with them doing their jobs, you may be arrested and/or charged). For your own safety, it is usually best to try to remain calm and be polite during police interactions. If an officer stops you or tries to ask you questions, you can ask, “Am I being detained?” If they say no, then you are free to walk away from them without answering any of their questions. They may avoid the question, so if you are comfortable, you can just remain silent, or continue asking if you can walk away until you get a “yes” or “no”. If they tell you that you are not free to go, then you should ask “why not?”, as you have a right to know.

You also generally do not need to provide your name, address or ID to the police if they stop you. However, in the context of the COVID-19 pandemic, police powers in relation to public health orders have changed frequently and there may be broader police powers to demand personal information in relation to a COVID-related offence. You should look up the state of the law in your area for current information.

If you are pulled over while driving, the police can demand that you show your drivers’ licence. If you are being ticketed or charged in any other circumstance the police usually just ask for your name, birthdate and address so they can write the ticket. While you can refuse to provide your ID for non-driving offences, note that if you are being arrested or ticketed for an offence and the police are unsure of who you are, they can detain you in order to confirm your identity. You can be charged with obstruction of justice if you provide false information or lie to the police.

Can a police officer search me at or on my way to a protest?

The police cannot search you without your consent or a reason. At a protest, the most likely justification for a search without your consent is that you are being detained or arrested.

The police may ask to search you or your bag while you are walking in a public space, such as in a park or on the sidewalk. If you do not want the police to search you or your bag, you should make it clear that you do not consent to being searched. Don’t hold out or offer your bag to the police, and say, “I do not consent to being searched”.

If the police continue to ask to see your bag after you have told them you do not want to be searched, you should ask if you are being detained or arrested. If they say no, then they do not have the right to conduct the search and you are free to walk away.

Unless there are very specific and special circumstances—a festival in a park with limited access, for example—the police are not allowed to prevent you from going into a public park or walking down the street towards a protest because you did not allow them to search you.

If an officer tells you that you are not allowed to go somewhere without being searched, you will likely be given the choice of deciding not to enter the area. If you do not think that the police search perimeter was lawful you can record the officer’s name and badge number and make a complaint after the interaction. If you try to push police, even if you think the police are engaged in unlawful activity, it could result in your arrest.

If you are being detained or arrested the police do have the ability to search you without your consent. More information about police powers to search you after a detention or arrest is below.

When do the police have the ability to arrest or detain me?

The police can detain a person if they have reasonable grounds to suspect you have been involved in a crime. A detention should be brief and is not the same as being arrested. A person who is arrested, for example, is often taken to a police station; detentions usually happen on the street, or wherever the police have stopped you. For more information on the difference between a detention and an arrest consult this resource from Steps to Justice.

Police have the power to arrest people in a variety of different circumstances. A common situation that might lead to an arrest at a protest is that the police see you committing a crime or there are grounds to believe you are about to commit a serious offence.

Some examples of offences that might take place at a protest include:

- Common nuisance, which might involve causing physical injury or endangering the lives, safety or health of the public (section 180 of the *Criminal Code*);
- Mischief, which includes destroying or damaging property and interfering with use of property. Vandalizing private property during a protest might lead to this kind of charge (section 430 of the *Criminal Code*);
- Causing a disturbance, for example by impeding others; fighting; screaming; shouting; swearing; singing or using obscene language; obstructing people in a public place (section 175 of the *Criminal Code*).
- You are publicly intoxicated (drunk or high) and are putting safety at risk; and
- You have breached the peace or are about to breach the peace (being noisy or causing a non-violent disturbance is usually not enough for arrest). Breaching the peace is not a criminal offence so you will not be charged.

Police have the power to detain people for “breach of the peace” and to disperse protests that “breach the peace”. Under section 31 of the *Criminal Code*, police may arrest people they find committing a breach of the peace or where there are reasonable grounds to believe the person is about to join in or renew the breach of the peace.

It can be hard to define what constitutes a “breach of the peace”, but courts have said that it will typically involve some level of violence and some risk of harm. It is important to understand that while police have the power to arrest for “breach of the peace”, it is not actually a criminal charge in itself. If you are arrested for breaching the peace, you should be released soon after the event (or at least within 24 hours), although sometimes you may be taken to another location by police.

The police are not allowed to arrest you “for your own safety” or to prevent someone else from committing a crime against you (like assault).

If you are detained or arrested, try to stay calm and avoid antagonizing the police, for your own safety. Physically resisting arrest can lead to criminal charges. Note that going completely limp does not count as resisting arrest, but holding onto something, pulling, or running does. Remember that you can also be charged with assault if you spit on, kick or punch an officer (or anyone else) during arrest.

If you are told that you are not free to go but do not believe there are grounds for your arrest or detention, you should not attempt to leave—this might give rise to a criminal charge. You should write down everything you remember about the encounter as soon as you can, including the officer’s name and badge number. You can raise concerns about the legality of a police action with a lawyer or in a complaint later.

What are my rights if I am arrested or detained?

You have the following rights when being detained or arrested:

- The right to be told the reason for your detention or arrest
- The right to remain silent
- You do not have to speak to the police or answer any questions after you are arrested, other than to provide your name and address.
 - » You do not need to provide information on your immigration status

It is almost always best to stay silent. It can be unwise to try to give excuses or explanations, as everything you say can be used against you as evidence if you are charged with an offence.

- Note that law enforcement can try to mislead or trick you, for example, by offering false promises.
- If you lie, you can be charged with a criminal offence.

- Once you have asked to speak with a lawyer (see below), the police should stop asking you questions until you have had the chance to talk with counsel. If they continue asking, simply ignore the questions and repeat your request for a lawyer.

The right to speak with a lawyer:

- Say, “I want to talk to a lawyer.” The police should stop questioning you.
- If you require a translator, advise the police so they can ensure any legal advice you receive is through a translator or lawyer who speaks your language.
- You have the right to speak to a lawyer without delay and the police must allow you to contact your lawyer or to contact someone who can help you find a lawyer.
- You have the right to speak to your lawyer privately.



Can the police search me if I am being detained or arrested?

The police have greater powers to search you if you are being detained or are under arrest.

If you are being detained, they are allowed to do a search for safety. This usually means they can do a pat down search of your body to look for weapons. They can also feel your bag from the outside to see if it feels like there might be a weapon inside. If they do think you have a weapon or something that could be used to hurt them, they can take it away from you.

If you are being arrested, the police can do a more thorough search of you and your belongings. This can include a brief search of your phone if it is unlocked. If it is locked you do not have to unlock it for them. The police are allowed to seize your property for safety reasons or to preserve evidence.

What do I do if I witness unlawful or concerning police actions?

If you see police behaviour that is concerning to you, try to see the police officer's name and badge number. Once you are able you should write down as many details as you can about the encounter to help create a record of what happened.

You can also record a police interaction on your cell phone. Your right to film and photograph on-duty police officers is protected under Canada's constitution. While there have been instances of officers trying to tell people that they are not allowed to film, this is generally not true and police officers have been disciplined for wrongfully preventing people from recording the police. Your right to film police can be limited if your safety is at risk or if you are obstructing the police in doing their jobs. Generally, though, while an officer may order you to move back from an arrest or a physical danger, they do not have the power to order you to stop filming or taking pictures. For more information on your rights when filming the police see our [Filming & Photographing Police Know Your Rights Guide](#).

If you are taking videos and photos at a protest you should be mindful of the fact that not everyone there might be comfortable having their photograph taken. If you are filming the police, try to stay focused on the police. Try to respect others' wishes if they ask not to be filmed or photographed.

Once the interaction is over you can consider filing a complaint. Most provinces and the RCMP have independent agencies to receive complaints regarding the conduct of police officers. If your complaint is against the RCMP, you can contact the [Commission for Public Complaints Against the RCMP](#). If it is against provincial or municipal police, make a complaint with your local complaints body.

In most cases, you do not need to be the victim of misconduct or a Canadian citizen to submit a complaint. For example, you can complain to the [Civilian Review and Complaints Commission for the RCMP](#) if you were involved in the incident, witnessed the incident, or are authorized to file the complaint by the person who was involved in the incident.



Can the police seize my phone?

If you are arrested, police may seize your cell phone and do a preliminary search so long as it is not locked. Because of this some people documenting police actions try to send photos or video to friends after they are done recording. It is good practice to make sure that your phone is locked with a passcode (not facial or fingerprint ID).

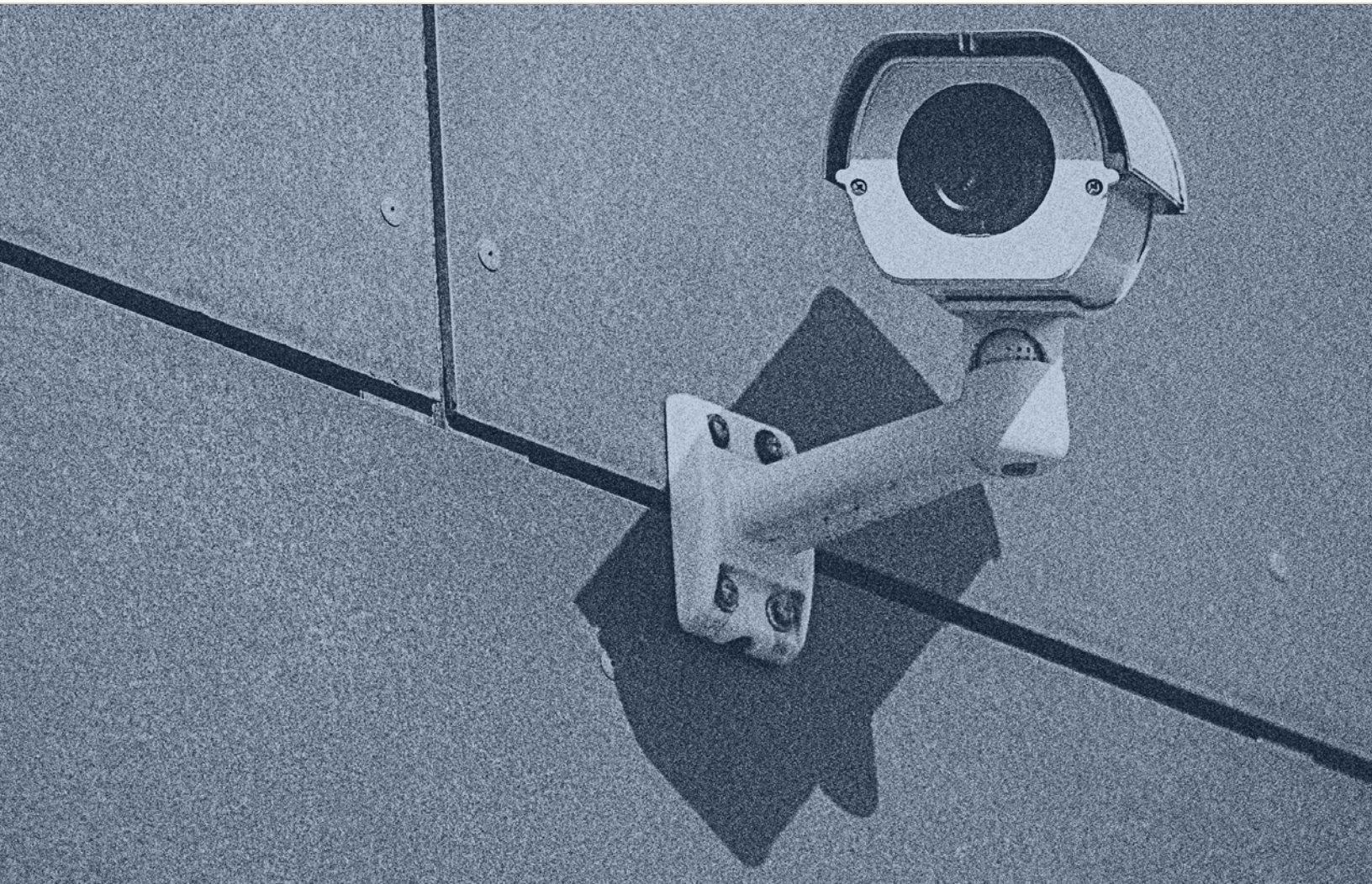
Sometimes police may tell a person that if they do not stop filming or immediately delete a video, the police will seize their phone as evidence. This is a tricky area—the police *may* be able to seize your phone if it contains evidence of a crime being committed. This is another reason why it might be helpful to upload videos to the cloud or send them to a friend through an encrypted messaging service (like Signal) immediately after capturing them. Remember that lying to the police can result in criminal charges.

If the police demand that you hand over your phone, you can ask whether you are under arrest or if they have a warrant. If they say no to both questions, ask what grounds they have to seize your phone. If they say that they can seize your phone because it contains evidence of a crime, be clear that you do not consent to the search or seizure of your phone. Offer to provide your contact information and state that you will not delete the video and will provide it to the police after they obtain a warrant. If the police insist that they can seize your phone, you may consider offering to send the video to the police so that you can keep your phone, but this could harm others if your footage is incriminating. Remember to ensure that your phone is locked (with a passcode) if the police do seize your phone. You do not have to tell them your passcode or unlock your phone, even if they ask.

Should I worry about surveillance when I'm at a protest?

It is common for large events to attract police interest, which may include physical presence and/or social media monitoring. Canadian spy agencies have also previously spied on activists and people exercising their right to protest. It would be a reasonable precaution to assume a police officer might see any publicly-posted social media comment you make, particularly if you tag it with a hashtag associated with the event. Tools like IMSI Catchers (which mimic cell towers to collect the numbers of those in the vicinity) might also in some cases be deployed. It never hurts to take reasonable precautions, depending on your own risk thresholds. You may wish to leave your cell phone at home (or keep it turned off and locked until you need it), or use a prepaid phone bought for the purpose. On any phone, you may wish to turn off location tracking—keeping in mind you might have to do that in one or two different places in the settings on your device to really shut it down.

You should always lock your phone as a matter of personal security, but in a protest setting you should use a password, not a fingerprint or facial recognition, which might provide greater protection if the police attempt to unlock your phone without your consent. While the law is somewhat unsettled on whether police can eventually compel you to unlock your phone if they obtain a warrant to search it, you do not need to provide an officer with your password during an encounter with the police or an arrest. You can exercise your right to remain silent and refuse to input your password. Ideally, use an encrypted messaging app, such as Signal to protect the content of your communications (this is a good idea all the time, not just at a protest). And if you're worried about your device possibly being seized, back up your data before you hit the streets. For a more detailed guide on how to defend your devices and data from surveillance attempts, check out the Electronic Frontier Foundation.



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