

The Arrest Pocketbook

A Guide to Your Rights



IMPORTANT NOTICE AND QUALIFICATION

This Pocketbook has been prepared and published for information and educational purposes only. It is not legal advice, and it is not intended to in any way replace legal advice from a qualified lawyer. Individuals with specific legal problems should seek legal advice from a qualified lawyer.

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The B.C. Civil Liberties Association (BCCLA) is one of the oldest and most active civil liberties groups in Canada. We have published this Pocketbook to empower people by providing information about what their rights are in interactions with police and law enforcement.

This book is a pocket-sized, shorter version of the full-length BCCLA Arrest Handbook. A digital version of The Arrest Handbook can be downloaded using the QR code on the back of this pocketbook.

This pocketbook is available in Cantonese, French, Mandarin, Punjabi, and Spanish.

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www.bccla.org

The BC Civil Liberties Association is based on the traditional, unceded, and ancestral territories of the hən̓q̓əmiñəm speaking xʷməθkʷəy̓əm (Musqueam) people and səliłwətaʔ (Tsleil-Waututh) Nation, and the Skwxwú7mesh sníchim speaking Skwxwú7mesh Úxwumixw (Squamish Nation). These lands and the languages derived from them were never freely given up for settler occupation. As a predominantly settler organization, we acknowledge our complicity in colonial violence through our continued occupation of these lands. Our work spans the traditional territories of hundreds of diverse Nations. We are grateful for their stewardship, including ongoing resistance to the destruction of these lands. We believe that the realization of human rights and civil liberties can never be achieved until the Indigenous Peoples of these lands can be fully self-determined. In this spirit, we pledge to use our resources to oppose violations of the rights and freedoms of Indigenous people now and in the future.

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Interacting with the Police

Most of the time you do not have to talk to the police. The law does not allow for police to randomly stop you and ask you for any personal information, except in specific contexts.

Police might use “friendly” or “voluntary” conversations to find reasons to detain you, or to get information about you and people you know. Everything you say to the police can be used as evidence against you in court. You can choose to speak with the police, but you can't be forced to do so. If you're not being detained or arrested, you always walk away. If you are being detained or arrested, you can say: “I want to remain silent.”

Identifying Yourself to Police

You only have to give the police your information when:

- You're under arrest.
- You're driving a car. Passengers in the car do not have to give the police their names or addresses.
- A police officer is giving you a ticket (for breaking a city bylaw or any other law) or serving you an appearance notice, undertaking to appear, or summons.

What to say to Police

- You can always ask: "Am I free to go?" If they say Yes, then you can go.
- If you are not free to go, you can ask: "Am I under arrest?" If they say Yes, you can ask: "Why?"
- If you are under arrest, you can say: "I want to remain silent. I want to speak to a lawyer." Give your name and address if the police ask. If you are unhoused, you can say so, or you can say "no fixed address." You can ask for the police officer's badge number.
- If you are not under arrest, but are told you can't leave, you can ask: "Why?" and ask for the police officer's badge number.

Filming the Police

You have the right to film the police.

If the police tell you that you are creating a safety issue or getting in the way of their duties, follow their directions on where to stand.

If the police try to take away your phone, you can tell them: "I do not consent," but don't physically resist as this could be dangerous or lead to charges.

Be mindful that if police think your recording(s) may contain evidence of an offence, they may take your phone without your consent. Always remember this possibility if you are filming protest actions.

If you are filming the police while they arrest someone else, doing things like yelling or swearing at the police may have negative outcomes for the person being arrested.

Record badge numbers, names or other identifying information of any police who you think weren't following the law. If police don't identify themselves, note the date, time, location and, if possible, a description of the officer(s). This information will help you if you file a police complaint.

Being Detained

The police detain you when they limit your freedom to move around. This could be by physically restricting you, or by making you believe you aren't free to go. If you're not sure whether you are being detained, you can ask the police: "Am I free to go?" If the answer is yes, you can leave. If the answer is no, you are being detained.

You have the right to be told why you're being detained unless the answer is obvious. The police might also conduct a pat-down search for weapons, and they might look at the contents of your bags. If it turns out that the police didn't have the right to detain you, then they also wouldn't have the right to search you. Get the badge number or name of the police officer and remember the details and reason for detention so you can tell a lawyer or make a complaint.

Being Detained while Driving

If you were stopped while driving, you have to give the police your license, vehicle registration and proof of insurance if they ask. You also have to give the police your name and address, and the name of the owner of the vehicle.

If the police believe your car, or a car you are driving, was involved in an accident, or in breaking a law, you have to tell the police who was driving the car at the time.

If the police suspect you are drinking and driving, they can do an investigation at the roadside before you speak to a lawyer. This includes asking you if you've been drinking, performing sobriety tests, and using a roadside breathalyzer. Other than these requirements, you have the right to remain silent and to speak with a lawyer before saying anything else to the police.

Being Arrested

The police have to tell you if you're under arrest and the reason for your arrest, unless it is obvious. Remember the reason they give for arresting you so that you can tell your lawyer later. If you are under arrest, and the police ask, you must tell them your name and address.

Use of Force by the Police

The police are only allowed to use as much force as is necessary to arrest you or ensure a situation is safe. If you feel that the police used more force than needed, tell your lawyer and record your injuries. Doctor's notes and pictures could help support a trial or police complaint.

If you're under arrest, don't physically resist the police. Going limp does not count as resistance, but the police may react negatively to this as well.

Reasons for Arrest

The police must have a reason for arresting you. You can only be arrested if:

- They see you committing a criminal offence.
- They have reasonable grounds to believe you have committed or are about to commit an indictable (serious) or hybrid criminal offence.
- They have reasonable grounds to believe you have breached or are about to breach any state ordered conditions of a summons, appearance notice, undertaking to appear or release order.
- There is a warrant for your arrest.
- They have reasonable grounds to think that they need to arrest you to stop a terrorist act.
- You have broken any law, including provincial laws and city bylaws, and you won't tell police who you are and where you live.
- They see you "breach the peace" or have reasonable grounds to believe you are about to "breach the peace"
- There is a specific law that lets the police arrest you for something you have done. For example, if you are drunk or high in public.

Arrest Warrants

A warrant is a piece of paper that a judge uses 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, you have the right to see it. You can ask: “Can I see the warrant?” If the police don’t have the warrant with them at the time of your arrest, the police have to show you the warrant as soon as possible after you are arrested.

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

- Your name or a description of what you look like.
- The reason why you are being arrested.
- The order that you should be arrested.
- A signature of a Judge or Justice of the Peace.

Whether or not you’re arrested with a warrant, you still have the right to remain silent and the right to speak to a lawyer. You must give your name and address.

The Mental Health Act and Involuntary Treatment

Under the *Mental Health Act* in BC the police are allowed to detain and take you to a medical professional if they see or are told that you may have a “mental disorder” **and** that your behaviour is likely to put your own safety or the safety of others at risk.

You have the right to challenge why you are being held, and can do this in a couple ways:

- You can ask a nurse: “Can you give me a Form 7 so I can have a review panel hearing?”
 - You may check a box for free representation from the Mental Health Law Program at the Community Legal Assistance Society (CLAS) if you are eligible.
 - You can consult online resources about these review processes from the Mental Health Review Board and CLAS to help you prepare.
 - You can call Access Pro Bono for a free 30-minute legal advice appointment to be walked through the review process.
- You can make an application in court. You can get more information from the Community Law Program at CLAS.

Protest and Indigenous Resistance

In Canada, you have the right to protest in most public places.

Blockading or occupying bridges, roadways, rail lines, ports and legislatures can be illegal under provincial or federal laws. The police may not immediately enforce these laws because they are supposed to think about your constitutional rights and freedoms, which come first before other laws.

Unlike protest, Indigenous resistance is grounded in Indigenous ways of knowing and being. When Indigenous Peoples stand in the way to defend and protect lands and waters, they are doing so as an act of self-determination.

The likelihood that police involvement will end either a protest or Indigenous resistance action greatly increases if and when a court has issued an injunction directed at protesters. The enforcement of these injunctions allows police to remove, arrest, and criminalize Indigenous land and water defenders and other activists.

If you're planning to resist or protest, think about the potential for police violence or for charges to be laid against you.

Personal Searches

You can be searched if:

- You tell the police it is okay to search you or your belongings, or if you simply obey when asked. The police still need to prove that you had the authority to consent and that your consent was voluntary.
- The police have a warrant, or if they have special permission under laws like the *Criminal Code*.
- You have been arrested lawfully. The search is limited to yourself, your nearby belongings, and the area near where you were arrested.
- The police have reasonable and probable grounds that you have committed an offence, or are about to, to find weapons or evidence.
- In some cases, the police have reasonable suspicion that you have committed an offence or are about to, to find weapons or evidence.

Pat-down Searches

A pat-down search is a type of body search where an officer touches the outside of your clothes to check for weapons or evidence of a crime.

When you are detained, police can only do a pat-down search for the purpose of the officer's safety, not to look for evidence. The police can't check your pockets unless the pat-down search reveals that you are carrying a weapon. Police can check your bags for weapons or evidence of a crime.

If you are arrested, police can only do a pat-down search as part of a search incident to arrest. This is to make sure that you are carrying weapons or hiding evidence. Police can also search your bags, your car, your phone, your camera, and other things nearby.

Strip Searches

A strip search is another type of body search where police ask you to move or remove some or all of your clothes, so that your private areas are visible.

The search should be:

- **Done at a police station** unless the police have reasonable and probable grounds to believe that it is necessary to search right away for objects that could hurt someone.
- **Done in a way that protects the health and safety of everyone involved.**
- **Authorized by a supervising police officer**, if possible.
- **Done by an officer with the same gender as you**, unless the situation is urgent, and an officer of that gender is unavailable.
 - If you are two-spirit, trans, non-binary, or otherwise gender-diverse, you have the right to self-identify your gender to police and choose if the search is done by a male or female officer, or both. If you choose both, you can choose who searches which part of your body.

- **Completed by the fewest number of officers** necessary.
- **Done using minimum force.**
- **Carried out in a private area.**
- **Done as quickly as possible**, and in a way that ensures you are not completely naked at one any one time.
- **Done only by looking** at, and never touching any private areas.
- **Documented** by the police, with reasons for the search and a description of the way it was conducted.

A body cavity search is the third type of body search which is only conducted if a strip search shows there is a weapon or evidence in a body cavity. A body cavity search must also follow the same rules for strip searches, listed above. You also have the choice between removing the object yourself or having it removed by a trained medical professional.

Vehicle Searches

The police can search your car if:

- You give them permission. If a police officer says, “Can you show me what’s inside that bag?” and you do, that is giving permission. You can say “No” to questions like this. Do not physically try to stop them if they continue the search. You can enforce your rights at a later time.
- You are arrested while driving or in your car.
- They have reasonable and probable grounds to believe that you have committed a criminal offence, such as dangerous driving.
- You are stopped for a traffic offence **and** then an officer sees something to give them reasonable suspicion that you have committed a crime, or are about to. For example, if an officer pulls you over for speeding, and then notices a strong smell of marijuana, they could have reasonable suspicion that you were driving while impaired.

Cell Phone and Computer Searches

The police generally have to get a warrant to search your personal electronic devices.

If you're arrested, the police can only search your cell phone if:

- The arrest is lawful,
- Police have one of three specific law enforcement reasons to search,
- The nature and extent of the search matches one of those reasons, and
- The police take detailed notes about what they searched, and why.

The three specific reasons to search are: to protect the police or public, to preserve evidence, or to find evidence. However, the officer should only be looking at recent emails, texts, and photos, not digging through messages you sent weeks ago.

Seizing Property

Seizures are when police officers take something that belongs to you, and hold it for safety reasons, to collect evidence, or to present at a court proceeding. To seize something, the police need:

1. **Your permission.**
2. **A warrant.** It should specify the things or types of things being seized.
3. **Reasonable and probable grounds** to believe that taking the item(s) is necessary for public safety or will show evidence of a crime.

The police can seize:

- Anything you paid for with money that came from criminal activity, even if you didn't know it.
- Any property involved in a terrorist activity or organization.
- Property that you may have used to commit a crime, or property that is a crime to own, like an illegal handgun.
- Anything that might give them evidence. The court should order your lawfully owned property returned by the end of the court process.

Important Phone Numbers

Access Pro Bono Mental Health Program	....604-482-3195 ext.1500/1-877-762-6664
Access Pro Bono Summary	
Advice Program	..... 1-877-762-6664
Atira Women's Resource Society	...604-331-1407 ext.114
Bella Coola Legal Advocacy Program	.....250-982-2110
Brydges Line BC	..... 1-866-458-5500
Community Legal Assistance Society	604-685-3425 or 1-888-685-6222
Disability Law Clinic	.. 236-427-1108 /1-800-663-1278
The Law Centre	.....250-385-1221
Legal Aid BC	..... 604-408-2172/1-866-577-2525
Migrant Workers Centre	.....604-669-4482
MOSAIC	.....604-254-9626
Native Courtworker and Counseling Association of BC	.....604-985-5355
Society for Children and Youth	.....778-657-5544
South Asian Legal Clinic of British Columbia	.....604-878-7400/1-877-762-6664
UBC Law Students' Legal Advice Program	.. 604-822-5791

ACCESS THE FULL ARREST HANDBOOK

This book is a pocket-sized version of the full-length BCCLA Arrest Handbook. A digital version of The Arrest Handbook can be accessed using the QR code below.



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