

# ***Police Powers:***

## **Stops and Searches**



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People who are not Canadian citizens can be arrested and detained by the police and also by the Canada Border Services Agency (CBSA). This agency has the power to enforce immigration law. To arrest and detain a permanent resident, CBSA must have a warrant.

Our fact sheet called “**Being arrested and detained for immigration reasons**” has more on this topic. See the [back cover](#) of this booklet to find out how to order the fact sheet. It is also available on our website at <[www.cleo.on.ca](http://www.cleo.on.ca)>.

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**In most cases,** if you are stopped and questioned by the police, you do not have to answer their questions, but it is a good idea to be polite.

## **What if the police ask me who I am?**

If the police are thinking about arresting you, they will want to know who you are. There are several reasons to tell the police who you are:

- If the police are looking for someone else, you might avoid being arrested by showing that you are not that person.
- If the police think that you might have committed an offence, and you do not tell them who you are, they could arrest you and hold you at a police station until they find out who you are, or until they have to bring you to court for a bail hearing.
- If the police think that you have committed a minor offence and you tell them who you are, then, instead of arresting you, they could give you a paper telling you when to go to court.

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

If you are riding a bicycle, the police can stop you if they think you have broken provincial or municipal traffic laws. In such a case, you must stop and give them your name and address. If you refuse, they can arrest you.

There is no general requirement to carry identification papers. However, in some cases you may be required to have specific documents. For example, you must have a valid driver's licence with you when you are driving.

## **What if the police stop me while I am driving?**

If the police stop you while you are driving, they can ask to see your driver's licence, and your car registration and insurance. If you do not show them these documents, you can be charged with a provincial offence.

If the police have "reasonable grounds" to believe that you have been racing on a highway or performing a "stunt", they can take your car away from you and require you to give them your driver's licence. If this happens, you will not get your car back for at least seven days and your licence will be automatically suspended for seven days.

If the police suspect that you have been drinking alcohol, they can demand that you take a roadside breath test. They can also demand that you do "physical coordination tests" at the roadside. For example, you might be asked to perform a walk-and-turn test or to stand on one leg or to follow an object with your eyes. These tests are meant to check whether alcohol has impaired your ability to drive.

If the police have reasonable grounds to believe that your ability to drive is impaired by alcohol, or that you have more than the legal limit for alcohol in your blood, they can demand that you go with them to a police station to do a breath test for alcohol. This kind of test is sometimes called a “breathalyzer test”.

Depending on the results of the roadside breath test or the breathalyzer test, you might have to give up your driver’s licence to the police. Your licence would then be automatically suspended for a certain period of time.

If the police suspect that you have been taking drugs, they can demand that you do physical coordination tests so that they can check whether drugs have impaired your ability to drive.

If the police have reasonable grounds to believe that drugs have impaired your ability to drive, they can demand that you go with them to the police station for a drug evaluation. A specially trained police officer will do a series of physical observations and tests. If the evaluation is positive, the officer can demand that you provide a sample of your saliva, urine, or blood for a drug test.

You **do not** have the right to speak with a lawyer before taking a roadside test. But you **do** have the right to speak to a lawyer before doing a breath test or providing a sample for a drug test at the police station.

If you refuse a test, the police will charge you with refusing to comply with a demand that you submit to a test. Later, a court can decide whether you had a “reasonable excuse” for refusing. But it is hard to show

that you had a reasonable excuse. If the court finds that you did **not** have a reasonable excuse, you could be given the same penalty as if the police had caught you driving while impaired or with more than the legal limit for alcohol in your blood.

## What if the police question me?

The police can approach you and ask you questions but they must let you go on your way, unless they arrest you or they have grounds to detain you.

The police have the right to detain you if they are investigating a crime and they have a “reasonable suspicion” that you are connected to the crime. They also have the right to detain you at a “roadblock” if they are following up on a report that, a short time before, someone saw people nearby with handguns.

If the police think you might have committed a crime, you should tell them who you are. But, in most cases, you do not have to answer any questions. You can tell the police that you do not want to say anything until you speak to a lawyer.

However, if you have been in a car accident, the police might ask you for information that they require for an accident report. If you do not answer their questions, you could be charged with an offence.

**Anything** you say to the police might be used as evidence against you in court. The only statements that cannot be used against you are those, like an accident



report, which you must make by law. Even something you said *before* you were arrested, or while you were in the police car, could be used against you. This is true even for a statement you have not signed.

But, if the police have detained or arrested you, they should stop questioning you as soon as you ask for a lawyer. Just say, “I want to speak to a lawyer.” You do not have to say anything else. If the police continue to question you, do not say anything. Just ask again to speak to a lawyer.

In Ontario, Legal Aid pays lawyers known as “duty counsel” to provide free legal advice, 24 hours a day. Ask the police for the toll-free telephone number for duty counsel. Or contact a lawyer you know.

In most cases, a lawyer will advise you not to talk to the police. This is usually the best advice. If you do choose to talk to the police, keep in mind that giving false information can be a criminal offence. And if you lie to the police, the fact that you lied might be used as evidence against you.

If you try to stop other people from cooperating with the police, you could be charged with obstructing justice or obstructing the police.

Once you have spoken to a lawyer, the police may continue to ask you questions. Even if you say that you do not want to answer, they can continue to ask. However, you have the right to remain silent and do not have to answer.

## If the police suspect me of a crime, will they arrest me?

It depends. If the crime is minor, you might be charged without being arrested if you tell the truth about who you are, and the police believe that:

- you will not destroy evidence,
- you will not repeat the offence, and
- you will go to court as required.

If the crime is serious, you will be arrested. To find out whether the police are arresting you, you can ask them politely, “Am I under arrest?” If you are, ask them why.

Later, the police might release you from the police station. They could ask you to agree to certain conditions before letting you go. Or you might be kept in police custody and then taken to court, usually within 24 hours of your arrest.

At the court, you will be given your first opportunity for a bail hearing. At this hearing, a judge or justice of the peace will decide if you should be released, and on what terms and conditions. The judge or justice of the peace may order you to be detained until your trial is over if he or she believes that you will not show up for trial or you might commit another offence if you are released.

## What are my rights if I am arrested or detained?

The Charter of Rights and Freedoms, which is part of the Canadian Constitution, sets out your rights.

If you are arrested or detained, you must be:

- told why you have been arrested or detained,
- told immediately that you have the right to a lawyer,
- told about Legal Aid and your right to free legal advice, and
- allowed to speak to a lawyer, in private, as soon as possible, if you ask to do so.

If you are under the age of 18, you should also be allowed to contact your parents or guardian and to have them with you when you talk to police, if you want them there. You do not have to choose between calling your parents or guardian and calling your lawyer. You can do both.

If you ask to speak to a lawyer, the police should stop questioning you. And if you have been arrested, the police should give you the 24-hour, toll-free number to get free legal advice from duty counsel. This is a lawyer provided by Legal Aid Ontario.

Once you have spoken to a lawyer, the police may continue to ask you questions. Even if you say that you do not want to answer, they can continue to ask. However, you have the right to remain silent and do not have to answer.

## Can the police enter my home?

The police can enter your home if they have:

- a warrant that allows them to enter your home to arrest someone,
- a search warrant, or
- permission from you or from someone else in authority in your home.

They can also enter your home in some urgent situations ([see pages 10 to 12](#)).

The police do not have the right to come to your door so that they can look into your home for evidence to use against you. But, if they have a reasonable suspicion that an impaired driver is parked in your driveway, the police can go onto your driveway.

## What are my rights if the police have a search warrant?

A search warrant is a written order from a judge or justice of the peace. This order gives the police the right to search your home and take certain items that they find. If the police have a valid warrant to search your home, they can break down the door if you do not let them in.

The police should show you the warrant. If they do not show it to you, ask to see it.

Make sure that the information on the warrant is correct. Check whether your address is right, and see if the warrant shows the dates and hours when it can be used. Also, check the warrant for the signature or name of the judge or justice of the peace who ordered it. The warrant must say who signed it, and the place, date, and time they signed.

If the warrant contains wrong information, tell the police. Usually, a warrant is valid even if there are small problems, such as a spelling error. If the warrant has mistakes in it, you can ask the police to leave, but you should not try to stop them from entering or make them leave your home.

If the police have a valid warrant, they can use “reasonable force” to enter your home. If you try to stop a legal search, you can be charged with obstructing the police.

## **What are my rights if the police ask to enter my home?**

If the police do not have a warrant, they need permission to enter, except in certain urgent circumstances (see pages 10 to 12). This permission can come from you, or from someone else in your home who has the authority to permit them to enter. This person is usually an adult.

If you do not want the police to enter, tell them. If you do not tell them, they may think that you are agreeing to let them in.

If the police enter your home to do a search, and they arrest or detain you, they must tell you about your right to contact a lawyer.

Again, if the police enter your home without permission, do not try to stop them. Tell them you want to call a lawyer right away.

## **In what urgent situations can the police enter my home?**

Usually, before entering a home to arrest someone, the police must get a warrant for that purpose and they must say who they are and why they wish to enter.

However, the police can enter without a warrant or permission in order to arrest or apprehend someone when they have reasonable grounds to believe that:

- they need to enter in order to prevent someone inside from being seriously injured or killed, or
- there is evidence in your home that relates to a serious offence, and they need to find that evidence right away or it might be lost or destroyed.

They can also enter your home without a warrant or permission if they are in “hot pursuit” of someone whom they have the authority to arrest. For example, the police would be in hot pursuit if they were chasing someone from the scene of a crime and they saw that person enter your home.

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The police can also enter your home:

- to give emergency aid to someone inside,
- to protect the life or safety of someone inside if they have a reasonable belief that a life-threatening emergency exists,
- to protect the life or safety of people in the home if someone heard a gunshot inside,
- to investigate a disconnected 911 telephone call,
- to help someone who has reported a domestic assault to remove their belongings safely,
- to protect people from injury if the police have reason to suspect that there is a drug laboratory in the house, or
- to help animals in immediate distress because of injury, illness, abuse, or neglect.

Under child welfare law, the police can enter your home without a warrant to remove a child if they have reasonable grounds to believe that the child is:

- neglected or abused and is “in need of protection”,
- a “runaway” under the age of 16, who was in the care of a children’s aid society, and the child’s health or safety might be at risk during the time needed to get a warrant, or
- under 12 years old and has done something that would be an offence if someone 12 or older had done it.

Your landlord also has the right to enter your home in an emergency. Landlords can ask a police officer to come with them.

Unless you have given the police notice not to enter your property or home, they can do so in order to protect your property from being damaged or stolen.

## **When can the police search my home?**

The police can search your home if:

- they have a search warrant,
- you understand what they want to do and you give them permission — this is known as “informed consent”, or
- they have reasonable grounds to believe that there are drugs, drug-related things, or evidence of another offence in your home, which might disappear or be destroyed if they took the time to get a search warrant.

The police may also be able to search your home if another person with authority in your home has consented to the search.

There are limits to where and how the police can search, and they cannot destroy property unless they need to. The police can search only for evidence that is listed in their warrant, and they can look only in places



where they might find the evidence. So, for example, they cannot look for a stolen piano in your underwear drawer.

However, if the police are searching for evidence that is listed in the warrant and they discover something related to another crime, they can take it and use it as evidence.

Usually, if the police take from your home something that was legally in your possession, they must return it to you within three months, unless a justice of the peace orders that they can keep it longer. If you are not charged and the police do not return your property within three months, contact the police and ask them to return it. If necessary, you can apply to a court to have it returned.

## When can the police search me?

The police can search you, your clothes, and anything you are carrying if they arrest you or if you give them “informed consent” to search you. The police can also search you if:

- they find you in a place where they are searching for drugs and they have reason to believe that you have drugs,
- they find you in a vehicle where people are transporting or consuming alcohol illegally and they have reason to believe that you have alcohol on you illegally, or

- they have reason to believe that you have an illegal weapon or one that was used to commit an offence, and it might be removed or destroyed if they took the time to get a search warrant.

If the police wish to search you for any of the reasons listed above, you do not have a choice and you should not try to stop them.

If the police have detained you because they have reasonable grounds to suspect that you are connected to a crime and they need to detain you to investigate, they have limited powers to search you. They can do a protective “pat down” search for weapons if they believe that their safety or the safety of others is at risk.

A strip search is not a routine procedure. The police should not do a strip search unless they have reasonable grounds to believe that it is necessary. You should not have to take your clothes off in front of someone of the opposite sex or in a public place. If the police ask you to agree to a strip search, you should tell them that you want to speak to a lawyer right away.

If the police search you because they think you have committed an offence and find something related to another offence, they can charge you with the second offence. For example, if they find illegal drugs while looking for stolen property, they can charge you with possession of illegal drugs.

If you believe that you are being searched illegally or without a good reason, tell the police you object to the search and talk to a lawyer as soon as possible.

## How do I get legal help?

Legal Aid Ontario provides legal assistance for low-income people. Services include:

- assistance by duty counsel in some matters for eligible clients who appear in court without a lawyer,
- legal aid applications and information over the phone,
- legal resources and referrals, and
- a certificate program to pay for a lawyer.

To get legal aid services, your legal issue must be one that Legal Aid Ontario covers, and you must be financially eligible. If Legal Aid Ontario cannot help, they will refer you to somewhere that can.

For more information, visit <[www.legalaid.on.ca](http://www.legalaid.on.ca)> or call:

Toll-free ..... **1-800-668-8258**

Toll-free TTY..... **1-866-641-8867**

Toronto area ..... **416-979-1446**

Toronto area TTY..... **416-598-8867**

The Lawyer Referral Service provides names of lawyers who can help you or who accept legal aid certificates. They can refer you to a lawyer in your area for a free half-hour consultation. Call toll-free **1-800-268-8326** or **416-947-3330** in the Toronto area.



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