

# Know Your Rights

Your rights as an individual are enshrined in the *Charter of Rights and Freedoms*.

These rights protect us from arbitrary and unreasonable exercises of police power, such as illegal searches or unlawful intrusions into our privacy.

The *Charter* is crucial where an accused person is being prosecuted based on illegally obtained evidence. When police breach *Charter* rights, the illegally obtained evidence can be excluded from the trial, meaning that the prosecution is not allowed to rely on it to prove guilt.

Most people do not fully understand the importance of our rights until they are charged with a crime. Below you can find explanations of the practical protections that our rights provide. This should not be taken as legal advice for any specific situation. When in doubt, contact one of us to determine what your options are in dealing with an interaction with police.

## **Your Rights in Your Home**

A man's home is his castle. This is not just a common saying; it is a centuries-old principle which is enshrined in our *Charter of Rights and Freedoms*. The police or other law enforcement authorities can only lawfully enter your home under certain circumstances – otherwise they are the same as any trespasser. The home is seen under our law as the most private place, but there are exceptions to your protection against police intrusion.

*Police Coming to Your Door:* Any person, including a police officer, has your implied consent to walk onto your property for the purpose of communicating to you at your front door. If the police have a legitimate reason for communicating with you, such as responding to a call or seeking information for an investigation, then there is nothing wrong with this. Police are not, however, entitled to abuse this ability by using it to conduct a “sniff” test – just going to the front door to see whether there is any sign of criminal activity when someone answers the knock. There is also no obligation to answer the door when the police come knocking. There is no obligation to speak to the police at your door, and you can end any conversation with them whenever you choose.

*Police Entering Your Home by Invitation:* The police may come to your door to speak with you and in the process ask if they can come inside. You do not have to let them enter, but they are allowed to under law if you give them permission. If you are not sure whether to grant this permission, contact one of us before making this decision.

Giving the police permission to enter your home is not the same as giving them permission to search your home, but police may ask to do this as well and you may grant it. If you give police permission to search your home, then they can do so without a warrant. A search of your home by police is a serious intrusion of your constitutionally protected privacy interests and you should consult a lawyer for legal advice before making this decision.

*Search Warrants:* A search warrant is a judicial authorization to enter and search a place for evidence of a crime. They are often used for the search and seizure of illegal drugs or firearms, but may be related to a search for evidence of any crime. It may authorize the police to enter at night, and it may authorize the police to use force in making their entry. Police can detain the people found in the home while the search is being conducted, and may make arrests or lay charges based on what is found. The police may also seize any number of items found during a search in pursuit of their investigation. The validity of search warrants can be challenged later in court, and issues related to the release of items that are seized can also be dealt with later. Anything that is seized as evidence will likely be held at least until the related charges are over.

*Arrest Warrants:* In certain circumstances, police will obtain a warrant to enter a home where a wanted person is believed to be in order to arrest that person. The validity of these warrants can be challenged later in court.

*“Hot Pursuit”, Destruction of Evidence, and Other Circumstances:* Even without a warrant and without consent, police have authority under law to enter your home in certain circumstances. Police officers may be entitled to enter your home to pursue a fleeing suspect, even if the suspect is entering a home that is not his own. This is sometimes referred to as *hot pursuit*, and may include a drunk driver pursued by police who pulls into his driveway and runs into his home.

Police may have grounds to believe that entering a home is necessary to prevent the destruction of evidence of a serious crime. This may include flushing drugs down the toilet or burning or destroying DNA evidence related to a sexual assault or a murder.

Other emergencies may justify a warrantless entry by the police, such as responding to a distress call made over 911, an ongoing domestic assault, or some other circumstance where police reasonably believe that someone’s life or safety is in danger.

*Outside of Your Home:* Your gated backyard is also a private a place, but the trash that you leave on your driveway is not private. Once you leave trash out to be collected, you give up your privacy in the contents, meaning that police are as free as the garbage man to pick it up and take a look inside.

*Whatever the case*, contacting a lawyer directly for legal advice at the earliest opportunity is the best way to know what your rights are in protecting the privacy of your home.

## **Your Rights in a Vehicle**

Getting pulled over by the police while in your car is a common experience for many Canadians. Despite how frequent this experience is, most people aren't sure about the scope of the powers of the police to stop, question, search or otherwise interact with them during a stop of their car. Be it on the highway or a side street, your *Charter* rights apply to you and anyone else in your car. However, there are a few things that you should know to ensure that you are able to exercise your rights in the car if you need to.

Firstly, the law recognizes that there are a few issues that the police should legally be able to investigate in almost all driving situations. These issues include: whether or not the driver of the vehicle is licensed to drive; whether or not the motor vehicle is properly insured and registered; and whether or not the vehicle is in good working order. Unlike other situations, the police do not need grounds to believe that your licence, insurance or registration documents are not up to date in order to pull you over to investigate these issues. The rationale for this is that driving is not a right, but a privilege, and the power for a stop of this kind comes from the *Highway Traffic Act*.

However, this power does not allow the police to pretend to stop a car for a legitimate investigation of a *Highway Traffic Act* offence. If the real reason the police have chosen to stop your car is because they don't like the way you look or are just curious to stop you and see what you are doing, they will be breaching your right not to be detained, or arrested, arbitrarily, under s. 9 of the *Charter*.

Similarly, the police power to stop your car to investigate your licence, insurance, registration, or the safety of your car does not permit a wholesale search of your car or an investigation into the identity of your passengers. Since your passengers are not driving the car, they are not required to identify themselves to the police, unless the police have some other reasonable suspicion or belief that they are involved in a criminal offence. It stands to reason the police do not need to look into your trunk to see whether or not you have valid insurance or to determine whether or not you are wearing your seatbelt. Searches that go beyond the purposes of a *Highway Traffic Act* investigation will breach your right not to be unreasonably searched, protected by s. 8 of the *Charter*, unless the police can demonstrate that they otherwise had reasonable grounds or authority to search you.

The police may request that you allow them to search your vehicle over the course of a vehicle stop. A word to the wise: this ‘request’ does not need to sound like a request, but can sound a lot more like an order. You do not need to consent to allow the police to do this. If the police are asking or demanding that you let them search your car, make sure you insist on calling a lawyer right away, before you make any decision or give any permission.

Of course, if the police have grounds to believe you have committed a criminal offence, or if they observe you committing a *Highway Traffic Act* offence, they may have a right to stop your vehicle and conduct further investigations of you, and in some cases, your passengers. If you are stopped by the police, insist on your right to speak to a lawyer without delay and to be told why you are being stopped. This is the best way to ensure that your rights are protected.

### **Your Rights on the Street**

You are enjoying a walk in your area and a police officer tells you that he wants to speak with you. Most people who encounter this situation will stop and speak to the police officer until it becomes clear that the conversation is over. Most people believe that when a police officer asks to speak with you that you have no choice but to comply with the request. In reality, the *Canadian Charter of Rights and Freedoms* (*Charter*) affords everyone with many protections in these situations.

Section 9 of the *Charter* protects individuals from arbitrary detentions. A “detention” occurs when the police through words, or actions, force you to stop and remain with them. An obvious example of a detention is an arrest; the police by force ensure that you remain in their custody. However, a detention need not be so obvious; the police could simply say “stop” or “don’t move” and a detention would occur. Further, even less intrusive police conduct can cause a detention to occur such as a group of police officers surrounding you, an officer blocking your path in an intimidating manner; in these situations the police conduct can cause you to reasonably believe that you are not free to leave and these situations amount to “detentions” in law. Simply put, a detention occurs when the police’s actions cause you to reasonably believe that you are not free to walk away. The police are only permitted to detain you when they have reasonable grounds to believe, or suspect, that you are engaged in criminal activity. If the police do not have the required grounds the detention is illegal and any evidence they obtain can be excluded at trial.

The difficulty for you, and all other the citizen, being asked by the police officer for a conversation is that you do not know if the police have reasonable grounds to force you to remain. The ambiguity caused by this reality can easily be resolved, simply tell the police officer that you do not wish to speak to him or her and ask “Am I free to leave?” If the police officer tells you that you are free to leave, you can simply walk away. If the police officer tells you that you are not free to leave you are now detained and have to remain until they allow you to leave. When you are detained, section 10(a) of the *Charter* requires the police to tell you why you are being detained, and section 10(b) of the *Charter* requires them to provide you with the opportunity to speak to a lawyer in private as soon as possible. When you are detained, you are also under no obligation to say anything to the police, you do not have to answer

any of their questions or even give them your name and address; you are free to say absolutely nothing to the police. The police may make you feel like you have to answer their questions but the law allows you to remain silent. If you do choose to speak to the police anything you say must be the truth to avoid being charged criminally.

When you are detained the police have certain powers that allow them to search you. If you are being arrested the police can search you and your clothing if they have reasonable grounds to believe that evidence will be found. If they police are stopping but do not have grounds to arrest you they can conduct a pat down search of the exterior of your body (they are not entitled to search your pockets) when they have reasonable grounds to believe that you pose a safety risk to them, yourself, or the public.

During your next walk in your community you now know how to respond to a police request to speak to you. Remain calm, ask the correct questions and the situation will become clearer. The situation will be stressful but there is no need to feel helpless – you know your rights.

## Speaking to the police

In general, you have the right not to answer any questions the police ask you. It can be a good idea to use this right, because what you say to the police, no matter when or where, could be used against you.

However, there are some times when the law says that you must give your name and address to the police.

You can ask to speak with a lawyer before you answer any other questions.

## Giving your name and address

The police do not have the right to demand your name or address without a reason. Generally, a police officer can only ask you to give your name and address if they believe you:

- have committed an [offence](#)
- are about to commit an offence.

For example, a police officer can ask you for your name and address if they believe you bought alcohol and you are under 18.

Other times the police can ask for your name and address are:

- if you are driving a vehicle or boat and a police officer signals for you to stop. You must stop and show the police officer your licence or permit
- if you are on the tram, train, bus or on public transport property ([public transport inspectors](#) and [protective services officers](#) can also ask for your name and address)
- if you are in a hotel or licensed premises (staff can also ask your age)
- if they believe you have information that could help them investigate an [indictable offence](#). They must tell you what offence they think you can help them investigate.

The police must tell you why they want your details. If they don't give you a reason, you should ask for it.

It is an offence to refuse to give police your name and address or to give police a false name and address if they have a lawful reason to ask you for your details.

## Answering other questions

Police may want to ask you more questions. They may start by questioning you as a [witness](#). Then they may question you as a suspect. The police should tell you if they think you are a suspect in a [criminal offence](#). They will tell you your rights before they [question you](#).

In either case, you do not have to answer any other questions because you have the right to be silent. If the police officer tells you that you are breaking the law by refusing them information, ask to speak with a [lawyer](#).

However, if someone was using your car or motorbike and the police officer asks you for that person's name, you have to give it. If you do not, the police could [charge](#) you with an offence.

## What you say could be used as evidence

There is no such thing as speaking 'off the record'. Anything you say to a police officer may be used by them to [arrest](#) or charge you. The police could use the things you said as [evidence](#) in court to show that you broke the law.

## Being asked to move on from a public place

In some situations police can direct you to leave a public place if they suspect you are:

- disrupting or are likely to disrupt the peace
- behaving in a way that may be dangerous to public safety
- likely to cause injury or damage to property.

They do not have to do this in writing, they can just tell everyone to move on. They can also ask you for your name and address if they are going to give you a direction to move on.

This is likely to affect people who are homeless or people with mental health issues.

Police cannot direct you to move on if you are demonstrating about a political issue or taking part in employment strike action.

## What happens if you do not move on

If an officer gives a direction, you have to stay away from that place for up to 24 hours. If you refuse to move on or stay away from the area without a reasonable excuse, the police can issue an on-the-spot fine of [two penalty units](#).

If the matter is heard in court, the maximum fine is [five penalty units](#).

## Going to the police station

If the police want you to go with them to a police station, you can refuse unless they are [arresting you](#) or in special circumstances such as:

- when you're driving and they want to do a breathalyser or drug test
- they're investigating a report of [family violence](#)
- they believe [you're mentally impaired](#) and need to be taken into [custody](#).

Always ask why they want you to go with them. If you ask the police, they must also give you their name, police station and rank. You can ask for this in writing.

## Making a statement

A [statement](#) is a written document to the police. It is your version of events. You may be asked to make a statement as a witness or a suspect.

### If you are a suspect

You do not have to make a statement. If you choose to make a statement, the police may charge you on the basis of what you say in it. Police will charge people when they believe there is evidence to show that the person broke the law. Sometimes the only evidence against you is what you said in your statement or in the record of your interview.

If you want to make a statement [get legal advice](#).

### If you witness a crime

The police cannot force anyone to make a statement. However, they may get a [subpoena](#) to make you go to court to give evidence.

### Signing the statement

If you do decide to make a sworn statement, the police will ask you to sign it under [oath](#). An oath is a solemn promise that the statement is true.

Read the statement carefully. The police can charge you with perjury if you make a statement that you know is not true, so do not sign it unless you agree with everything in it.

You can also change the statement before you sign it.

## Getting police details

If a police officer asks you for your name and address, you have a right to ask them for their details.

The police officer does not have to give you their details automatically. Ask for their name, their rank and the police station where they work. You can also ask for these details in writing. This information may be useful later. For example, you may want to [complain about the police officer](#) or report them. The police officer can be fined if they refuse to give you their name, rank and police station

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Here, from the Criminal Code of Canada Section 34, is the self-defense provision in view:

34 (1) A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances.

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34 (2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

(a) the nature of the force or threat;

(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

(c) the person's role in the incident;

(d) whether any party to the incident used or threatened to use a weapon;

(e) the size, age, gender and physical capabilities of the parties to the incident;

(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;

(f.1) any history of interaction or communication between the parties to the incident;

- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

## Changes to the Citizen's Power of Arrest, Self-Defence and Defence Of Property Laws in Canada

Author: Daniel Brown

web-policetape On June 28th, 2012, Bill C-26 (also known as) the Citizen's Arrest and Self-defence Act, received Royal Assent and came into force on March 11th, 2013.

The bill has expanded on the citizen's arrest powers and reformed the law with respect to the self-defence and defence of property provisions in the Criminal Code of Canada.

### Citizen's Arrest:

Looking first at the changes to the citizen's arrest power, Bill C-26 has amended section 494(2) of the Code by authorizing a private citizen to make an arrest within a reasonable period of time after he or she finds someone committing a criminal offence that occurred on or in relation to their property.

This expanded power of arrest granted in the new law will only be authorized when there are reasonable grounds to believe that it is not feasible in the circumstances for the arrest to be made by a police officer.

Prior to the change in legislation, a private citizen was only permitted to make an arrest if the perpetrator was found committing a criminal offence on or in relation to that private citizen's property.

The amendments to the section now eliminate the requirement that the offender be caught in the criminal act as long as he/she is apprehended within a reasonable time after the offence is committed.

### Self Defence and Defence of Property:

Bill C-26 also changes the self-defence provisions of the Criminal Code. Sections 34-37 of the Code have been repealed and replaced by one new self-defence provision. The amendment now permits a

person who reasonably believes themselves or others to be at risk of the threat of force, or of acts of force, to commit a reasonable act to protect themselves or others.

Amendments to the defence of property provisions have also repealed sections 38-42 of the Criminal Code in favour of one new defence of property provision. The new provision permits a person in “peaceable possession” of a property to commit a reasonable act (including the use of force) for the purpose of protecting that property from being taken, damaged or trespassed upon.

Prior to these amendments, the self-defence provisions dealt with a person who used force to protect himself or another from attack depending on various aspects of the particular situation, such as whether they provoked the attack or not and whether they intended to use deadly force. The new amendments clarify and streamline our self-defence laws by no longer requiring the accused to pigeonhole his actions into one of the many (and often confusing) self-defence sections in the Criminal Code.

#### Use of Deadly Force

Despite the significant changes to the law of self-defence and defence of property, Bill C-26 does not make any changes to the law with respect to the use of deadly force as it relates to self-defence or defence of property.

In Canadian law, the use of deadly force is only permitted in very exceptional circumstances – for example, where it is necessary to protect a person from death or grievous bodily harm. Canadian courts have clearly stated that deadly force is not considered reasonable in defence of property alone.

self-defense laws in Canada.

Number One: Defending yourself, contrary to popular belief, is NOT against Canadian law. The Criminal Code of Canada very specifically allows self-defense and defense of property in Sections 34 and 35.

<http://laws-lois.justice.gc.ca/eng/acts/C-46/page-6.html#h-9>

Number Two: Should you find yourself in the unfortunate position where you must defend yourself with deadly force, you will be arrested and charged with a crime. Crown prosecutors seemingly don't like Canadians doing what is required to stay alive so you absolutely will go to trial on whatever charges are laid against you.

Number Three: Unless you've done something terribly wrong, the odds of you being convicted are on your side. The CSSA has dealt with many of these types of cases over the years, and in only one case was the individual convicted. To re-cap:

Yes, you will be charged with a very serious crime.

Yes, this will be the most stressful time of your life.

Yes, this entire process will cost you a lot of money.

However, at the end of it all, justice will usually prevail and you will not go to prison. More importantly, you and your loved ones will still be here.

You absolutely must understand the law and your responsibility under it once you engage the individual or individuals attempting to do harm to you and/or your loved ones.

There are things you cannot do or you will certainly go to prison. Your use of force must be "reasonable" in the totality of the circumstances and that reasonableness will be decided by a judge months or even years after the fact.

Citizen's Arrest and Self-defence Act

S.C. 2012, c. 9

Assented to 2012-06-28

An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons)

SUMMARY

This enactment amends the Criminal Code to enable a person who owns or has lawful possession of property, or persons authorized by them, to arrest within a reasonable time a person whom they find

committing a criminal offence on or in relation to that property. It also amends the Criminal Code to simplify the provisions relating to the defences of property and persons.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Marginal note:Short title

1. This Act may be cited as the Citizen's Arrest and Self-defence Act.

R.S., c. C-46CRIMINAL CODE

Marginal note:1992, c. 1, s. 60 (Sch. I, s. 20)(F)

2. Sections 34 to 42 of the Criminal Code are replaced by the following:

Marginal note:Defence — use or threat of force

34. (1) A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances.

Marginal note:Factors

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

(a) the nature of the force or threat;

(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

(c) the person's role in the incident;

(d) whether any party to the incident used or threatened to use a weapon;

(e) the size, age, gender and physical capabilities of the parties to the incident;

(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;

(f.1) any history of interaction or communication between the parties to the incident;

(g) the nature and proportionality of the person's response to the use or threat of force; and

(h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

Marginal note: No defence

(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

Defence of Property

Marginal note: Defence —property

35. (1) A person is not guilty of an offence if

(a) they either believe on reasonable grounds that they are in peaceable possession of property or are acting under the authority of, or lawfully assisting, a person whom they believe on reasonable grounds is in peaceable possession of property;

(b) they believe on reasonable grounds that another person

(i) is about to enter, is entering or has entered the property without being entitled by law to do so,

(ii) is about to take the property, is doing so or has just done so, or

(iii) is about to damage or destroy the property, or make it inoperative, or is doing so;

(c) the act that constitutes the offence is committed for the purpose of

(i) preventing the other person from entering the property, or removing that person from the property, or

(ii) preventing the other person from taking, damaging or destroying the property or from making it inoperative, or retaking the property from that person; and

(d) the act committed is reasonable in the circumstances.

Marginal note: No defence

(2) Subsection (1) does not apply if the person who believes on reasonable grounds that they are, or who is believed on reasonable grounds to be, in peaceable possession of the property does not have a claim of right to it and the other person is entitled to its possession by law.

Marginal note: No defence

(3) Subsection (1) does not apply if the other person is doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

3. (1) Subsection 494(2) of the Act is replaced by the following:

Marginal note: Arrest by owner, etc., of property

(2) The owner or a person in lawful possession of property, or a person authorized by the owner or by a person in lawful possession of property, may arrest a person without a warrant if they find them committing a criminal offence on or in relation to that property and

(a) they make the arrest at that time; or

(b) they make the arrest within a reasonable time after the offence is committed and they believe on reasonable grounds that it is not feasible in the circumstances for a peace officer to make the arrest.

(2) Section 494 of the Act is amended by adding the following after subsection (3):

Marginal note: For greater certainty

(4) For greater certainty, a person who is authorized to make an arrest under this section is a person who is authorized by law to do so for the purposes of section 25.