

# Know Your Rights

## Guidelines for Peaceful Protesting/Gathering/Rallies and/or Attending Events (eg. Council Meetings, School Boards, Handing out Flyers)



**Disclaimer:** *The information provided in this resource is not intended to, nor does it constitute legal advice; instead, all information, content and materials are for general informational purposes only.*

We peacefully assemble and engage government officials because we have a moral and ethical duty to do so. It is critical that this engagement be consistent and ongoing in order to confront and curtail government overreach and any agenda to interfere with our democracy and/or violate our God-given, unalienable rights and freedoms.

The freedom to peacefully protest, freedom of speech, thought and belief, privacy, and the right to work are all protected rights and freedoms according to the Constitution and the Charter of Rights and Freedoms. **Protesting is a Constitutional Right/Freedom – not a privilege.**

Police, elected officials, educators, government employees, and lay people do not have the right to hinder or prohibit citizens from: expressing their opinion or concerns; engaging the public; or participating in all levels of civic engagement, except of course in accordance with the principles of fundamental justice. This means, in part, that any orders, statutes or regulations that purport to deny to you your rights and freedoms, cannot be arbitrary, overbroad, or grossly disproportionate.

### **The Charter of Rights and Freedoms:**

<https://action4canada.com/charter-right-resources>

**Section 2** addresses our “fundamental freedoms”. There are four fundamental categories of freedoms in total. **Section 2** states that: “every person has the following fundamental freedoms/liberties:

- a. Freedom of conscience and religion;
- b. Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c. Freedom of peaceful assembly; and
- d. Freedom of association.”

Freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. The term "freedom of expression" is sometimes used synonymously but includes any act of seeking, receiving, and imparting information or ideas, regardless of the medium used.

The right to gather and protest was held up in the Supreme Court ruling *Garbeau v. Montreal (City of)*, 2015 QCCS 5246 (CanLII), as was its analysis of the importance of freedom of expression.

<https://action4canada.com/wp-content/uploads/garbeau-v-montreal-protesting.pdf>

### **Guaranteed Right to not be Prohibited, Harassed or Detained**

#### **Section 7 – Legal Rights**

- Everyone has the right to life, liberty, and security of the person and the right to not be deprived thereof except in accordance with the principles of fundamental justice.

#### **Section 8**

- Everyone has the right to be secure against unreasonable search and seizure.

## Section 9

- Everyone has the right not to be arbitrarily detained or imprisoned.

## Section 10

- Everyone has the right on arrest or detention
  - (a) to be informed promptly of the reasons therefor;
  - (b) to retain and instruct counsel without delay and to be informed of that right; and
  - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

### Privacy:

The Supreme Court of Canada has emphasized in many cases, in the strongest possible terms, that a citizen's right to privacy is sacrosanct and subsumed in both s. 7 and 8 of the Charter and is of paramount importance to life, liberty, and security of the person, and protects citizens from unreasonable search and seizure.

<https://action4canada.com/wp-content/uploads/constitutionally-protected-privacy-rights.pdf>

Our Constitutional liberties, however, are not restricted to the Charter, and include those recognized at common law.\*

\* The common law as used herein, references the legally, judicially and Constitutional recognized, common law of England, which followed the flag here to Canada.

## Scenarios of situations wherein these guidelines may be needed:

### 1) Handing out flyers/brochures/leaflets in a public space (eg. School sidewalk)

The most important part of everything is the beginning: distributing flyers/brochures or leaflets is a Constitutionally protected freedom or liberty, even on most forms of public property, such as streets, which includes sidewalks.

*Committee for the Commonwealth of Canada v Canada* 1991 CanLII 119, L'Heureux-Dubé.

<https://www.canlii.org/en/ca/scc/doc/1991/1991canlii119/1991canlii119.html?searchUrlHash=AAAAAQATY29tbWl0dGVlIC9zIGNhbmFkYQAAAAAB&resultIndex=1>

If you are handing out flyers at a school and the principal calls the police, and the police tell you to leave:

You have the right to remain. In most provinces, you are permitted to be on the sidewalk as it is public property and you are therefore, under no obligation to leave.

In British Columbia however, pursuant to s. 1 "access zone", and s. 2(1), 3(1) of the *Access to Services (COVID-19) Act*, which is in force until July 1, 2023, one may be required to stay at least 20m (60') from the boundary line of all schools, hospitals, as well as vaccination and testing sites. Please note that this *Act* has not been challenged, nor judicially interpreted. Moreover, pursuant to s. 2(1), the only express prohibitions on your actions in this access zone are that you may not:

- a. Impede access to or egress from the facility;
- b. Physically interfere with or otherwise disrupt the provision of services at the facility; or
- c. Intimidate or attempt to intimidate an individual or otherwise do or say anything that could reasonably be expected to cause an individual concern for the individual's physical or mental safety.

If you are not acting in any of these stated manners above, you should still be able to protest outside of these facilities and/or hand out printed material. This will require, however, that you take all preventive actions to ensure you comply with these requirements, ie: no obstructing drivers or people entering or leaving the facility, no interfering with any services being provided (including teaching), nor intimidating or attempting to intimidate anyone. If anyone is doing any of these actions, you must exit this 20m boundary immediately.

**Note:** If any such order, statute or bylaw defeats your freedom of protesting, you may wish to consider a challenge to it. You can file your challenge on the factual basis that it completely prohibits you from exercising your rights and freedoms to expression and free speech. If you are 60 feet (or any greater distance) from the nearest entry point where students enter the school, you likely may not be able to hand out any informational flyers at all. This is not a reasonable restriction on your rights and freedoms, it is a denial.

If the police are contacted and the officer persists in asking you to leave, ask him on what grounds and to provide the section of the *Criminal Code* or other statute that expressly prohibits you from carrying out your specific actions. Do not talk in generalities. Simply being present at a location may not be an offence, but yelling or screaming at the location likely will be. Details are critically important.

You are NOT committing a hate crime, or intimidating anyone, or causing 'public mischief' by handing out flyers. It is not a crime nor an offence,\* it is a Constitutionally enshrined freedom or liberty, and therefore you should not be compelled to leave.

\* Protesting vile, sexually explicit and/or pornographic material being given to children is not a hate crime. Hate is defined in the *Criminal Code* s. 318. You have a Constitutional right/freedom to hate what is being taught to our children in schools and the harm that it is causing. You have a right/freedom to express that hatred and talk to other people about it. However, you do not have a right/freedom to express violence about it. You are expressing your hate and disapproval about the explicit materials/resources, and opposing what schools are teaching and that is not hate against a person. There is no arrestable offense being committed.

If the officer is persistent, file an immediate complaint. (See below for more information).

## **2) Attending a public meeting such as a council meeting or Board of Trustees meeting**

Attending public meetings and voicing opposition to policies or legislation is NOT a crime or in violation of any codes of conduct as long as you are not making threats or committing acts of violence. Your words are the only weapons you should be wielding and as long as they are respectful and on point, and you are not prohibited from any lawful order, statute or bylaw\* from speaking, there is absolutely no reason anyone has a power to remove you, censor your concerns or shut down a meeting. The primary concern is to follow procedures as much as possible.

\* See rules of some city councils for such procedures. For example, City of Kelowna Bylaw 9200 requires you, as a condition precedent to speaking before Council, to give them Notice of what you plan to say, and the date, and obtain their permission to speak. This does not validate in any way that such Bylaw is Constitutional, but it has not yet been challenged.

## **3) Peaceful Protests**

If you are going to organize or attend a protest, determine where the location is going to be, what the issue is, and if protesting is prohibited or restricted by an Order, Statute, or Bylaw. For example, in BC you may not be able to protest within sixty feet of a school or hospital depending on how you are planning to protest. You need to research all your local bylaws and provincial statutes where you live, prior to your protest to ensure that there is no actual law expressly prohibiting your specific protest and how you plan to protest. Remember that laws restricting rights and freedoms, must be strictly construed in your favour.

Print off copies of the relevant Order, Statute, or Bylaw and know exactly what you can and cannot do. Contact your municipality for a copy of their applicable bylaws or ask them where on the website all the bylaws are located.

There are strategic ways of protesting. Make sure there's nothing prohibiting you from being in a location. If there is, then you want to make sure you understand the limitations and comply with them. If there is no express law preventing you from being there, then you have a Constitutional liberty to be there.

If the police are contacted and show up at the gathering, unless you are under arrest or being detained, you do not have to answer any questions, and you do not have to tell them who you are.

#### **You can ask them questions:**

Who phoned you?

What did they say?

If the police attend, you can subsequently do an Access to Information Request to get a copy of all complaints that were filed with the police, or your city council, at that time. Request a copy of any written complaints that were filed against you, as well as the notes and emails (including attachments) of all attending police officers, and the audio and transcripts for the phone call that resulted in the police attending to the protest or rally. (See below for further instructions on dealing with the police).

#### **a) What to bring?**

If you are going to attend a protest of any kind, be prepared. Bring pens and paper. Bring recording devices, both video and audio. Ensure that you have dedicated people for video and audio work, in addition to that of private attendees.

Dress for the weather and your anticipated length of stay. Have water.

ID is optional but recommended, as this will assist with your release if arrested and/or jailed. Bring one piece only.

Phones are both beneficial and a risk. Keep any materials on your phone to a minimum in case you are arrested. Keep your phone and all emails and social media sites locked. The law in this area requires any search of your cell, incident to an arrest, to be necessary. However, that may not stop the police from searching everything on your phone and possibly lying about it. For example, searching a phone found upon someone charged with drug trafficking, may be required for obvious reasons. There is no reason to search your phone for anything, on a charge related to your Constitutional right to protest.

Do not bring weapons, computers, credit cards, lots of money, etc.

### **Interactions with Government Agents/Police:**

Always ensure that you record or have persons available on location to record all your interactions, including those people in attendance. Do not speak with police unless you or someone else are recording it.

If a police officer approaches and engages you in conversation, ask the enforcement agent/police constable for identification, badge number – write it down along with your name, the date and time.\*

\* Pursuant to the *Police (Uniforms) Regulations* of the *Police Act* (B.C. Regulations 564/76, s. 8), all uniformed officers must have a badge bearing their identification number or name on it. Common law also requires all police officers to identify themselves, via a name or ID number. A wilful refusal to so do, could be considered obstruction of justice if it is intended to prevent you from holding them accountable at law.

Take detailed notes describing the event at the time of any interaction. Include what was said and by who. Review your video if available as an aid when writing your notes. Add the date and time on your notes and sign each page. Notes will be critically important should any legal issues arise. The notes that you write as quickly after the discussions/events, will be the most trustworthy and important. Notes written a month after the event, will likely have little value. Your notes can be used to refresh your memory during court if they were made shortly following the encounter. Scan all notes and save into your computer and never make changes to them, so that the date noted on your computer, is the date of the event. This way, no one can ever allege that you changed your notes. After the fact, you cannot change your notes so be as precise and detailed as possible.

Advise the agent/officer you are exercising your “guaranteed” Charter of Rights to life, liberty, and security of the person, as well as your s. 2 Charter freedoms of speech, freedom of expression and/or the freedom to assemble.

As noted above in the *Committee* case from the Supreme Court of Canada, and in *Beaudoin v B.C.* 2021 BCSC 512, a case from the B.C. Supreme Court in 2021 (para. 148, 249, 251), you have the freedom or liberty to protest peacefully on and in most public property. **Distributing leaflets in airports for example, has been recognized as a Constitutional freedom in the *Committee* case.**

**i. If you are not being arrested or detained:**

If you are not being arrested or detained, either walk away or stand your ground. You are not required to leave an area if police ask you to leave. Be respectful, but insistent that you are not leaving.

If the police persist, ask if you are being detained or are under arrest. Ask that they show the Statute, or Law that says, in express and specific terms, that you are breaking some specific law and that they have the power to force you to leave. If they don't have the Statute or the Law that allows them to do that, and they are still insisting you leave, then ask them what facts do they rely upon to support any power they are exercising to force you to leave, eg. you are harassing people or causing mischief or causing a disturbance.

The police can not lawfully make any physical contact with you if you are not under arrest or detained, unless it is to prevent harm to others or to stop you from breaking the law. Law enforcement officers do not have the power to search you or your property without a warrant if you are not under arrest or detained. If you are detained, the officer may do a 'pat down' search if there are reasonable fears for officer's safety or that of others. They do not have the power to seize anything. If they claim they can, then have them show you what law gives them the power to do so and that you want to see it.

In the absence of an offense being committed and/or being put under arrest or detained, you are under no obligation to tell the police who you are or answer any questions. Case Law is clear that there is no common law duty to identify oneself to the police: see *R. v. Moore* 1978 CanLII 160 (SCC), [1978] S.C.J. No. 82  
<https://www.canlii.org/en/ca/scc/doc/1978/1978canlii160/1978canlii160.html>

**ii. If you are arrested or detained:**

Law enforcement do not have the power or right to stop or interfere with your right to protest unless there is an Order, Bylaw, or Statute or a principle of common law, a power of arrest of common law or under some statute, that allows them to interfere with your liberty. You do not need to justify that you are protesting. The law is that anyone taking control of you or preventing you from so doing, must prove, at law, their power to do so. The onus is on law enforcement to justify their interference with your basic liberty.

You have the right under s. 9 of the Charter and our common law, not to be arrested or detained arbitrarily. The police must have a reasonable reason for so doing – a hunch or gut feeling is not a legal basis for arrest or detention, and an officer must by law (s. 10 of the Charter), convey the reasons for arresting or detaining you immediately to you (*R v Mann* 2004 SCC 52). If you are being detained for investigative reasons, it must be as brief as possible.

You have a right to remain silent. Get ready to use it. Do not answer any questions, no matter how many times they ask! If they ask repetitively and you finally give in and answer questions, this can be used against you in court and they will consider this to be a waiver of your rights and freedoms. You do not need to answer any questions.

You are entitled to ask questions, such as:

- Why am I being arrested or detained?
- What facts are you relying on to arrest or detain me?
- What facts or laws do you rely upon to force me to move from my location?

Do not resist arrest as this could lead to you being injured and/or further charges. Once released you can decide to sue for unlawful arrest and/or file a complaint and/or lay your own criminal charges.

If you are arrested or detained and refuse to provide your name and identifying information, and have no ID on you, the police may, pursuant to **s. 495(2)(d)** and **s. 498(1.1)** of the *Criminal Code*, hold you in custody for as long as reasonably necessary for them to determine who you are. Whether you are arrested or detained, you have the right to immediate counsel.

You are entitled to receive free legal representation if arrested or detained and only when taken into custody (Canada wide). You must be given access to your preferred lawyer or a free legal aid lawyer as soon as possible following any arrest (make note of any delays in access to a lawyer). When provided access to the lawyer you must be given privacy for the conversation. Following that conversation, maintain silence.

Bear in mind that charges may not necessarily be laid under the *Criminal Code*, but may be laid if the police allege violations of provincial statutes as well. Many provinces incorporate certain sections of the *Criminal Code* into their statutes.

Police frequently use falsified charges of nuisance (**s. 180**), mischief (**s. 430**), or causing a disturbance (**s. 175**) to justify arresting or detaining you, just to take you away from the area. Know these sections of the *Criminal Code* and have them with you, in case you are falsely accused of these offences.

***Criminal Code* s. 175** says that:

“Everyone who,

- a) not being in a dwelling house, causes a disturbance in or near a public place
  - i. by fighting, screaming, shouting, swearing, singing, or using insulting or obscene language, or
  - ii. by being drunk ...
  - iii. impeding or molesting others...

is guilty of an offence punishable on summary conviction.

The operative thing is not the fact that you are yelling or swearing (which you should not be doing anyway), it is that the yelling or swearing has to have caused an externally manifested disturbance in or near a public place.

If no one in the public is disturbed, no offence has been committed. It is important for you to know the law in this area.

**Criminal Code s. 180** says that:

**Common nuisance**

- 180 (1)** Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who commits a common nuisance and by doing so
- (a)** endangers the lives, safety or health of the public, or
  - (b)** causes physical injury to any person.
- (2)** For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
- (a)** endangers the lives, safety, health, property or comfort of the public; or
  - (b)** obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.

**Criminal Code s. 430** says that:

**Mischief**

- 430 (1)** Everyone commits mischief who willfully
- (a)** destroys or damages property;
  - (b)** renders property dangerous, useless, inoperative or ineffective;
  - (c)** obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
  - (d)** obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

**iii. If you are issued a fine/ticket:**

- Respectfully accept the fine/ticket – at this point you will have to give your name and address to the police officer
- You should write on the fine/ticket: I do not waive any of my rights and freedoms
- Check off the section indicating that you intend to dispute the fine/ticket.
- Immediately dispute the fine/ticket on the back of the summons
- When you get home, take photographs/copies of the tickets as a record for your computer file

iv. **File an Access to Information or Privacy Request for information about the incident**

- **Privacy Request** – for information that they have about you.
- **Access to Information** – for information on the policies the RCMP follow and how they deal with protesters (eg. at drag queen events). Police are provincial and combine both requests into one document.

There will be differing procedures to follow depending on which legal body you are making the request to. For example, Federally, there is a difference between a Privacy Request and an Access to Information Request. The latter will cost you \$5, which you should include in your Xpresspost mail to them. The location for either of these requests will usually be on the Federal Government site involved, eg: the RCMP Access to Information Division.

Provincially, most if not all provinces usually combine these two requests, and you can simply send them your request by Xpresspost as well, so you have proof of service, to the address on their website. If the police force is provincial or municipal, for example the Ontario Provincial Police (OPP), or the Vancouver Police Department (VPD), then you would need to make a request to the province or municipality where your police are located.

**Further Actions:**

**File a Complaint Against Law Enforcement**

<https://action4canada.com/filing-a-complaint-law-enforcement>

**Filing a Human Rights Complaint**

<https://action4canada.com/filing-human-rights-complaints>

**Freedom of Information Requests**

<https://action4canada.com/freedom-of-information-requests>