

KNOW YOUR RIGHTS

**A LEGAL TOOLKIT
FOR PROTESTORS**



This document is for informational purposes only. It does not constitute legal advice.

We at the Black Legal Action Centre (BLAC) and the Canadian Association of Black Lawyers (CABL) understand that for Black people, asserting our rights can come with significant risk.

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The following is a summary of your constitutionally protected rights to protest peacefully.

Your right to participate in peaceful demonstrations, protests, parades, meetings, picketing and other assemblies are all guaranteed constitutional rights. Section 2 of the *Canadian Charter of Rights and Freedoms*, in particular ss. 2(b) and 2(c), guarantee freedom of expression and freedom of peaceful assembly.

The right to protest, however, is not absolute and can be limited in some circumstances. The government can infringe your rights if it can show a compelling reason to do so. If you are a peaceful protestor, you should be able to exercise your constitutional right without consequence. The police must show a good reason to use their police powers to suppress your actions during a protest (example: suppressing a riot).

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DO I NEED A PERMIT TO HOLD A PROTEST?

NO, you do not need a permit in advance to hold a peaceful protest. Some municipalities have restrictions concerning noise ordinances or blocking some transportation routes. It's advised to check these in advance. You may also want to give notice to the police of a protest.

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WHERE AM I ALLOWED TO PROTEST?

You can peacefully protest on public property, which includes parks, town squares and government buildings. There may be an exception for some transportation routes.

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CAN I WEAR A MASK IF I AM PARTICIPATING IN A PROTEST DURING COVID-19?

YES, you can wear a mask while out protesting during the COVID-19 pandemic. Public health officials advise everyone to keep 2 meters apart from others and wear masks when going outside during the pandemic.

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DO I HAVE TO SPEAK TO THE POLICE IF THEY APPROACH AND QUESTION ME WHILE I'M PROTESTING?

NO, you don't have to speak with the police if you don't want to. The choice is yours to cooperate fully or refuse to participate. You can walk away from a police officer unless they have detained or arrested you. If you are detained, you have a right to know why. If the police are questioning you while you are detained, you do not have to answer; you have the right to remain silent and to ask to speak with a lawyer. A police officer must inform you about your right to counsel and provide you with a phone number for Legal Aid Ontario if you do not have counsel.

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WHAT CAN I BE ARRESTED FOR?

You can be arrested for breaking any law at a protest, but some of the more common ones are:

- Possession of a weapon dangerous to the public peace
- Causing disturbance
- Mischief of property
- Assault (includes assaulting a police officer; assault to resist arrest)
- Obstruct police
- Rioting
- Unlawful assembly

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WHAT ARE MY RIGHTS IF I AM ARRESTED?

- The police must tell you why you are being arrested or immediately release you if there is no reason.
- You have the right to speak with a lawyer in private as soon as possible. It's a good idea to have your lawyer's number and/or name. The police can look up your lawyer's number by their name.
- If you do not have a lawyer, you can speak with Legal Aid Ontario Duty Counsel, a free lawyer. The police will put you in touch with them.
- It is important not to resist arrest even if you didn't break any law. If you resist arrest, you will be breaking the law and can be charged with a criminal offence on that basis alone.



DO I HAVE TO SHOW THE POLICE MY IDENTIFICATION?

YES, the police can ask for your identification if they have reason to believe that you have broken the law or are suspected of breaking the law. You can be charged with obstruction of justice if you do not identify yourself. If the police have not provided you with a reason, you can refuse to show your identification or answer their questions. There could be serious consequences if you give the police a wrong name, address or fake ID.

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CAN THE POLICE SEARCH ME?

It depends. Under the law, a warrantless search is unconstitutional. Section 8 of the *Charter* protects you from unreasonable search and seizure. You are entitled to ask questions about the search. If a police officer is unable to articulate any reasonable basis to search you, there is likely no lawful basis for that search. The police must do the search in a reasonable manner. They aren't allowed to destroy your property for no reason. If the police violate this right, a court may later decide that the evidence they found through the unreasonable search can't be used against you.

If you protest in an area that could be the subject of a viable threat, the police might have a legitimate basis to ask you to identify yourself or to search your belongings. Examples of viable threats could include a courthouse or high-security government building.

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CAN I USE A VIDEO CAMERA TO RECORD A POLICE ENCOUNTER?

YES, you have the right to photograph, video, or otherwise record police officers who are on duty. It's always a good idea to document any incidents with police. Record the officer's badge number, name, division and get contact information from any witnesses. Officers do not have the right to ask you to delete your photos or to take away your equipment.

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WHAT CAN I DO IF I AM RACIALLY PROFILED DURING THE PROTEST?

If you were unlawfully detained, and you suspect that your race was a factor in your detention, you can address it in court or through a complaints process.

If you are Black, please reach out to the Black Legal Action Centre for assistance

Toll-Free: 1-877-736-9406 / TTY: 1-800-855-0511