

A legal guide for protesters

Solidarity

Solidarity involves a broad range of behaviours and tactics to take care of each other using group decision making, before, during and after the protest.

Before the protest

Be aware of the specific needs of each member of your affinity group that might arise during the protest, arrest or detention. For example, be aware of:

- whether people are at high risk of police attention (people with disabilities, people of colour, visibly gay/lesbian/bi/queer/trans/intersexed people),
- whether a member's immigration status would put them at risk if arrested,
- psych survivors and people with mental health issues,
- members who are parents,
- people with criminal records, or who are out on bail, on probation or parole,
- minors,
- medication that a member would need if detained, and
- known organizers.

Let your affinity group know if you want to play a role with a low-risk of arrest. Plan for the possibility of arrest – let each other know if work or family should be contacted, if pets need to be fed, etc. Decide what conditions you are comfortable signing to get out of jail before the protest. Have someone from your affinity group be a legal point person to communicate with the legal team.

During arrest

Think about how to support the people being arrested. Notice who is witnessing the arrest and the circumstances, including descriptions and badge numbers of cops.

After arrest

Report the arrest to the legal team. Write down what you witnessed right away.

If you are arrested and detained in a group, support each other, especially people who are more vulnerable to oppression. Use group decision-making to decide if you want to use noncompliance tactics to have demands met.

Support people all the way through the court process. This can involve fundraising for the defence, keeping track of everyone as they go through the process, doing media, and attending court.



Legal rights

While there is a difference between your rights in theory and your rights in practice, it is important to understand your rights when dealing with the police. Asserting your rights when confronted by the police can help protect them. However, everyone must use their own judgement in deciding whether to assert their rights. Knowing your legal rights may, at the very least, help if things end up in court or if you decide to take legal action against the police.

Speaking to the police

You have the right to remain silent. Whether you are stopped by the police or arrested, you never have to make a statement to the police. The only thing you would have to tell the police is your name, address and birth date, and only if you have broken a law. This right is protected by s. 7 of the *Charter of Rights and Freedoms*.

Section 7 does not affect the right of the police to use undercover officers. The police are allowed to question suspects not under arrest. And the police are not required to advise you of your right to remain silent, even when you are arrested.

It is better not to say anything to the police than to lie – lying can lead to charges of obstruction.

Anything you say to the police can be used as evidence against you. Never speak to the police about other people. The police use interrogation techniques designed to make people give statements. Even seemingly unimportant comments can help them to make connections between people and groups in our movements, or to become more familiar with our modes of communication. Choosing to exercise your right to remain silent will not be held against you by the court, although the police might try to convince you otherwise.

Before the protest, write the lawyer's number on your body in permanent marker.

If you are arrested and you ask for a lawyer, the police are supposed to stop questioning you until you have had a reasonable chance to speak with your lawyer.

Identifying yourself

You do not have to identify yourself to the police, unless:

- you are arrested or have broken a municipal bylaw or provincial law, (if you do not identify yourself, you can be charged with obstruction),
- you are driving a vehicle (you must show your driver's licence — passengers do not have to identify themselves),
- you are in a bar or movie theatre (you must prove you are old enough to be there), or
- you are in a park (some municipal bylaws might require you to identify yourself to police).

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

Activists who refuse to identify themselves as a solidarity tactic when charged with a criminal offence will usually be held until they do identify themselves, or until the justice of the peace orders them to identify.

Search and Seizure

The police cannot search you unless:

- you are arrested (the police can do a full search of you and your possessions, but only to find and prevent the destruction of evidence, and for the safety of officers — searches must not be abusive),
- you are detained (the police can pat you down to feel for weapons that they have a reason to think you might use against them or yourself),
- you have a search clause as a condition of probation,
- the police have a search warrant,
- you consent to a search (but you never have to consent to a search), or
- the police have a good reason to believe you are carrying drugs, a weapon or open alcohol.

Otherwise, any search by the police is illegal. Tell the police you are not consenting if they try to search you, even if you think the search might be legal. Make sure witnesses hear you refusing the search. Your refusal may make anything they find inadmissible and may allow you to pursue sanctions against the officers for illegal search and seizure. It is probably not a good idea to physically resist a search — the police have a right to use necessary

force to make you comply with the search if they have reasonable grounds to believe it is lawful.

Strip searches should not be done by an officer of the opposite sex or in a public area, and the police are not supposed to conduct strip searches routinely.

The police are allowed to stop you for any reason if you are driving a car. The police are allowed to search your car only if:

- you consent (but you do not have to consent to a search of your car),
- you have committed a criminal offence,
- you are arrested, or
- they see something in your car that gives them a reasonable cause for doing a search, such as the smell of pot or beer bottle caps.

The police can seize your property only if it is connected to a crime. This includes property used in committing a crime or property that could be used as evidence of a crime, such as videos.

Arrest and Detention

Detention

If the police start asking you questions, ask if you are free to go. If the police say "no," you are being detained — the police are investigating you because they believe you have committed or are about to commit a crime.

Ask why you are being detained — the police must tell you the reason. The police must have reasonable grounds to suspect that you are connected to a particular crime. Their reason has to be more than a hunch. You do not have to identify yourself or answer their questions — you have to identify yourself only if you are told you have broken the law. The police must tell you of your right to a lawyer. The police can pat you down, but only to look for weapons if there are reasonable grounds to believe that there is a safety risk.

Arrest

The police can arrest you only if:

- they have seen you committing an offence,
- they have reasonable grounds to believe you have committed an indictable or hybrid offence,
- they have a warrant for your arrest,
- they have reason to think you have a mental disorder and are dangerous,
- you have breached the peace or are drunk in a public place, or

- they have reason to believe you are a terrorist about to commit a terrorist act.

If you are arrested, you have the right to be told what you are charged with and that you have a right to the lawyer of your choice. Ask to speak to your lawyer immediately, and do not make any statements to the police. Do not sign any declarations. Do not discuss your case with anyone while being held in jail, and do not ask others about their cases. The police may have someone planted in the cells posing as prisoners, or a prisoner may act as an informer to get some benefit for themselves.

Don't bring drugs, weapons or your address book with you to a protest — don't make the cops' jobs easier!

Court Appearances

You must be brought before a justice of the peace “as soon as practicable”, and in any case within 24 hours. You might be released from the police station either by the “officer in charge” or by a justice of the peace if one is brought to the station or by teleconference.

You may be released in the following ways:

- by the police once you have identified yourself – a notice to appear will be sent to your house by the police and you may be asked to sign a promise to appear (it is up to you to decide if you can live with any conditions it may contain),
- by the justice of the peace, possibly with conditions on your promise to appear, or
- after a bail hearing in court – you may have to post bail, have a surety sign for you or agree to conditions (curfew, limits on activities, travel, etc.).

If you decide not to identify yourself or to provide your address when you are arrested, you will likely be held for a bail hearing in court.

Of course, you may also be held until your trial, but if you don't have a prior record and the charges aren't too serious, you will undoubtedly be released. You have a right to reasonable bail guaranteed by the *Charter*, and unless there are special circumstances (like you have a case pending for something else) it is up to the Crown to demonstrate why you shouldn't be released.

The court may refuse to release you if it believes:

- you are a danger to society,
- you will not show up for your trial, or
- releasing you would bring the justice system into disrepute (we are not sure exactly what this means either...)

Consequences of arrest

It can take a really long time if you take your case to trial. You may also have to consider your ability to travel to the jurisdiction that you were arrested in.

If you plead guilty or are found guilty, you may face any combination of the following sentences:

- absolute/conditional discharge,
- suspended sentence (you don't have to serve your sentence unless you commit another crime within a given amount of time),
- probation (with conditions),
- community service,
- fines, or
- prison.

If convicted, you will have a criminal record which is publicly accessible to anyone who asks. A criminal record can make it difficult to travel (including to the US), cause immigration difficulties, and reduce chances of some kinds of employment. It could also affect a child custody battle.

Common Charges

Assault

This offence involves any application of force on another person without their consent – mere touching is enough. It also includes attempting or threatening, by acts or gestures, to apply force to another person.

Breach of the Peace

This gives the police the right to arrest you to prevent a breach of the peace but isn't a charge in itself. There is no record of the charge. They will usually release you soon after the event or action, and in any case within 24 hours.

Causing a disturbance

This offence includes fighting, screaming, shouting, swearing, singing, using insulting language, impeding or molesting people, or loitering in a public place and obstructing people. It has to be in or near a public place.

Unlawful assembly

You can commit this offence by getting together with at least two other people, intending to carry out some common purpose, in a manner that causes people nearby to fear that you will “disturb the peace tumultuously”, or without a reasonable cause, provoke others to “disturb the peace tumultuously”. Tumultuous involves an element of violence.

Riot

This is an unlawful assembly that in fact “has begun to disturb the peace tumultuously”. If a sheriff or sheriff’s deputy etc., reads certain magic words after a riot has started and you are still around after 30 minutes you will have committed a much more serious offence. This is also true if you interfere with the reading of the magic words.

Note: Both riot and unlawful assembly are crimes of mere presence. All the Crown needs to demonstrate is that you were part of the “common purpose” (e.g., you were participating in the demo or action), and that you stayed when it became an unlawful assembly. You don’t actually have to have done anything to contribute to the “tumultuous” nature of the assembly. Although the police will usually announce that an assembly has become unlawful (usually by ordering you to disperse) it is not an essential part of the offence.

Contempt of court

Contempt of Court Contempt of court covers a number of things that are considered disrespectful or disobedient of the court. These can range from things done in the courtroom (like swearing at the judge) to disobeying a court order (eg: an injunction).

Civil Contempt: Usually, when someone disobeys a court order, the court will just assess damages against the person (make them pay every time they disobey the order).

Criminal Contempt: The court has the power to convict someone for contempt under criminal law. In the case of an injunction, the court will only convict you if:

- 1) you knew about the injunction; and
- 2) you disobeyed it in a public, flagrant and continuous way.

The punishment for contempt is not for the action itself (eg: blocking a road) but because you are not respecting the rule of law (you are publicly saying you don’t care what the court says).

If the injunction includes Jane Doe, John Doe and persons unknown, it applies to you, even if you were not a party to the original injunction. The injunction applies even if it was made a long time ago, unless it was an interim injunction (with an expiry date).

Intimidation by blocking a road

Involves blocking or obstructing a highway without lawful authority, to prevent people from doing something they have a lawful right to do.

Resisting or obstructing a peace officer

You can be charged with this offence if you resist or wilfully obstruct a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer.

This includes resisting arrest – going limp or refusing to unlock is not resisting. Holding onto a pole or struggling against arrest is resisting. Locking down when the officer has placed you under arrest is resisting. As a general rule, anything you do more than you would do if you were unconscious that is not cooperating with the arresting officer is probably resisting arrest.

Anything you do to interfere with an officer in the lawful execution of their duty is considered obstruct police. This could include laying down in front of a police car or getting in the way of an arrest. You could also be charged with this offence if you uncover an undercover officer.

Assaulting a peace officer/resist arrest

This is an assault of a peace officer engaged in the execution of his or her duty or a person acting in aid of such an officer. This offence includes resisting or preventing the lawful arrest or detention of you or another person. If the officer exceeds his or her powers so far as to exceed his or her duty and authority, the officer is no longer acting in the execution of duty.

Mischief

Includes wilfully destroying or damaging property, rendering property dangerous, useless, inoperative or ineffective, or obstructing, interrupting or interfering with the lawful use, enjoyment or operation of property.

This would include spraypainting or chaining doors shut, as well as blockading entrances.

Assault by trespasser

You are deemed to have committed assault if you trespass on property and resist an attempt by the owner or someone acting under the owner’s authority, to prevent your entry or to remove you.

The owner must be in peaceable possession of property, meaning that the possession must not be seriously challenged by others.



Produced for Resistance Without Reservation, 2004. Based on material provided by the Libertas Legal Collective, Copwatch Vancouver, the University of Victoria Environmental Law Centre and the Toronto Common Front Legal Posse.

The information in this handout is not intended to serve as legal advice. The laws are always changing.