

AN ACTIVIST'S GUIDE TO SAFER PROTESTING

A LIST OF DO'S AND DON'TS TO HELP ACTIVISTS STAY SAFER AND KEEP
THE MESSAGE OF THE PROTEST AT THE FOREFRONT OF THE CONVERSATION



**ONTARIO
FEDERATION OF
LABOUR**



This guide is intended to provide you with an overview of your rights when protesting. This document is for informational purposes only. It does not constitute legal advice.



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YOUR RIGHT TO PROTEST IS PROTECTED BY THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS.



IT'S ALWAYS BEST TO BE PREPARED AND KNOW YOUR RIGHTS:

- Dissent is a hallmark of a democratic society and a person's right to protest and conduct picket activity is legal and protected under ss. 2(b) and 2(c) of the *Canadian Charter of Rights and Freedoms* which guarantees freedom of expression and freedom of peaceful assembly.
- These rights may be limited in some narrow circumstances (for example, if a demonstration aims to incite hatred against a marginalized group), but they are protected in the Charter.
- The police have a duty to facilitate peaceful protest. There are examples of Canadian police protecting assembly rights, but also some examples of rights violations.

HOW TO PREPARE FOR PARTICIPATING IN A PROTEST:

- Exercise your fundamental right of assembly peacefully and cooperate with the directions of police.
- Wear comfortable shoes and clothing.
- Bring snacks and water. This is a good time to use your reusable water bottle.
- Don't bring illegal drugs, weapons or unnecessary personal information such as address books, with you.
- Make sure to use a password, not a fingerprint, on your phone. This will protect against searches.
- Memorize phone numbers of your family and a lawyer who you can call. You can also write those numbers on your arm in permanent marker, in case you are arrested, detained, police take the paper from you, or you forget the numbers due to stress or injury.
- It is a good idea to be with 4 or 5 other people who have an agreement that they will stick together for the purposes of safety during the protest. These “affinity groups” provide for good self-defence. An isolated individual is an easier target for abuse from police or counter-protesters. Such an individual may find that they have no witnesses.
- Make sure that someone knows you are going to the demonstration such as a friend, family, or member of an affinity group. Make a plan to check in with that person after you have left the protest so they can contact the legal support team if they suspect you have been arrested. Make sure that your contact person knows the number of the legal team that can provide information if you are arrested.

- Let your contact know if your employer or someone else should be informed, if pets need to be fed, if emergency child, elder or other care needs to be arranged, etc.
- Bring three days' worth of essential medication with you in its original packaging in case you are detained.
- If you have a disability, special medical needs, or limited English or French, wear a bracelet or carry a card explaining your circumstances.
- Keep in mind that police may try to intimidate or threaten protesters who try to assert their rights or may act friendly in order to gain information or persuade you to waive your rights. When dealing with the police it is important to stay calm and politely assert your rights. Never physically interfere with the police if they decide to search, detain or arrest you. Be aware that certain people face increased risk of being targeted by the police because they are a member of a marginalized group. These groups include people with disabilities, people of colour/ racial minority, visibly queer or trans/intersex people, people with mental health issues. Use your good judgment, know your rights.



TIPS FOR INTERACTING WITH LAW ENFORCEMENT AT A PROTEST:

- Along with municipal police, there may be provincial police, and/or RCMP at the demonstration.
- The police are allowed to approach you and ask you questions. You do not have to answer questions if you don't want to. However, be polite.

- You are usually free to walk away from the police at any time unless they have detained or arrested you. Before you walk away it is a good idea to politely ask: “Am I free to go?” or “Am I being arrested or detained?” If the police tell you that you are free to go or that you are not being arrested or detained, the police do not have a right to hold you and you can just walk away.
- If the police tell you that you are NOT free to go, it probably means that you are being “detained.” The police are allowed to detain you without putting you under arrest. In order to detain you they must have reasonable grounds to suspect that you are connected to a crime. If you are detained, you are not allowed to walk away.
- In most cases, you are not required to provide your name, address, or identification. However, if you’re detained for a bicycle offence, you must provide your name and address. If you’re detained while driving, you must provide proper documentation.
- Do NOT lie or provide false documents to police.
- Be aware that police can sometimes mislead you, such as by offering false promises.
- If you are detained by the police, they must inform you that you can talk with a lawyer and must provide you with an opportunity to do so.
- If you are detained, you do not have to answer any questions posed by the police. A police officer can conduct a pat down if they believe that their safety, or the safety of others, is at risk. However, in most circumstances, a police officer is not entitled to search your cell phone during an investigative detention.
- DO say if you do not consent to a search. However, even if you do not consent to a search, there are circumstances in which police may still have a right to conduct a search.
- Do NOT resist a search or struggle during a search.

WHAT TO DO IF YOU ARE ARRESTED:

- Politely ask why you are being arrested. You have the right to be informed promptly of the reason for your arrest.
- **DO NOT** resist arrest. **DO NOT** give explanation or excuses. Co-operate as much as possible.
- If you require specific accommodations or have a medical condition, explain it IMMEDIATELY where others can hear.
- You must provide your name, address, and date of birth. If you lie about this personal information, you can be charged with obstructing justice.
- Other than providing your personal information, you have the right to remain silent.
- **If your cell phone is password protected, there is no obligation on you to provide police with your password.** The police are sometimes entitled to search and/or seize your cell phone during a lawful arrest for certain purposes, including the preservation and discovery of evidence. If you do not provide police with your cell phone password, they may keep your phone and seek a warrant to override the password and search the phone. The lawfulness of these actions and the admissibility of any evidence obtained by police through the search of a cell phone are issues that can be determined later on at a trial.
- Ask for a lawyer. Once arrested, you have a right to speak to legal counsel, and the police must advise you of this right as soon as possible. You might want to say something like:
“I’d prefer not to answer any questions until I speak to my lawyer.”

- The police must stop questioning you until you have been given an opportunity to contact a lawyer. However, they may pressure you to speak. Continue to repeat that you would like to speak in the presence of a lawyer.
- You have the right to a telephone and the right to make more than one call, if necessary, in order to reach a lawyer.
- You have a right to speak to your lawyer in private.
- Once you have spoken to your lawyer, the police may continue to ask you questions. You do NOT have to answer these questions.
- The things you say to police are, in most instances, admissible against you at a trial and can prejudice your defence in ways you cannot anticipate. That is why people accused of a criminal offence are in most cases advised by counsel to exercise their right to remain silent when detained or arrested.

PHOTOGRAPHS/VIDEO:

- Except in Quebec, where there are some restrictions, it is legal for members of the public take video or photographs in public spaces.
- Media and the public must be aware they are subject to police action if they obstruct or hinder officers in performing their duties. If you intercede in a way that prevents an officer from performing their duty, you could be charged. However, it is not prohibited to record or photograph someone being detained or arrested.

- If police give you pushback about recording video or taking photographs, remain calm and say something like “Thank you, but I have the right to take video and photographs in a public place.”
- In a public setting there is no expectation of privacy, however, be respectful when posting pictures of people you do not know to social media.

IF YOU BELIEVE YOUR RIGHTS HAVE BEEN VIOLATED:

- If you believe your rights are being violated, record/document anything you can as soon after the incident as possible. For instance, try to record the incident on your phone or write down relevant information, such as the name of the police officer, their badge number and patrol car number, the location, date and time of the incident, a description of the incident and if possible, get contact information from any witnesses. Legal observers can be a big help.
- When speaking to an officer, you may request and record their badge number and whether they are from the RCMP, provincial, or municipal forces.
- If you are injured, seek medical attention. Take careful photos of any injuries as soon as possible, and if possible, both before and after treatment. If someone else takes the photos, make sure you have the name and contact information of the person who does take the photos. They can be your witness to the injuries. Keep all official paperwork and receipts for medical treatment.

- File a complaint. Many provinces and the RCMP have independent agencies to investigate complaints regarding police policies, services, or the conduct of police officers. In most provinces and with the RCMP, a person does NOT need to be the victim of the misconduct to submit a complaint. They also do NOT need to be a Canadian citizen. However, if you have been charged with an offence, it is recommended that you consult with a lawyer FIRST before filing a complaint against the police.
- If your complaint is against the RCMP, you should contact the **Commission for Public Complaints Against the RCMP**. If it is against provincial or municipal police, make a complaint with your local complaints body.
- You should speak to a lawyer for additional help. You may have a legal case for your suspected rights violation.

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ADAPTED FROM:

‘Know Your Rights Guide to Protesting’ – www.ccla.org

‘Interacting with Police’ – www.rabble.ca

‘Know Your Rights An Activist’s Guide to the Law’ – www.campusactivism.org

‘Protesting: Your Rights and the Law’ – www.constitutional.findlaw.ca

‘A Legal Guide for Activists’ – www.movementdefence.org



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A list of do's and don'ts to help activists stay safer and keep the message of the protest at the forefront of the conversation

The Ontario Federation of Labour (OFL) represents 54 unions and one million workers. It is Canada's largest provincial labour federation.

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