



**CLEO** | Criminal Law

# **Police Powers: Stops and Searches**



**December 2018**

## **If you speak French**

In many cases you have the right to government services and legal proceedings in French, including hearings before French-speaking decision-makers.

If you have a legal problem, you can ask a lawyer or a community legal clinic about your French language rights.

## **Si vous parlez français**

Il existe de nombreuses situations où vous avez droit à la prestation de services gouvernementaux en français et à la tenue d'une instance judiciaire ou quasi judiciaire en français. Ainsi, vous pouvez avoir droit à ce qu'une audience à laquelle vous êtes partie soit tenue devant un décideur qui parle français.

Si vous avez un problème juridique, sachez que vous détenez des droits linguistiques en tant que francophone. Un avocat ou un intervenant d'une clinique juridique communautaire pourra vous renseigner à cet égard.

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People who are not Canadian citizens can be arrested and detained by the police and also by the Canada Border Services Agency (CBSA) for reasons set out in the Immigration and Refugee Protection Act. CBSA has the power to enforce immigration law. To arrest and detain a permanent resident in Canada, CBSA must have a warrant.

For information or advice about arrest and detention for immigration reasons, speak to an immigration lawyer. See [page 28](#) for information about getting legal help.

**In most cases**, if you are stopped and questioned by the police, you do not have to answer their questions, but it is a good idea to be polite.

There is no general requirement to carry identification papers. However, in some cases you may be required to have specific documents. For example, you must have a valid driver's licence with you when you are driving.

## III **What if the police ask me who I am?**

### **If the police are thinking about arresting you**

If the police are thinking about arresting you, they will want to know who you are. There are several reasons you may want to tell them who you are:

- If the police are looking for someone else, you might avoid being arrested by showing that you are not that person.
- If the police think that you might have committed an offence, and you do not tell them who you are, they could arrest you and hold you at a police station until they find out who you are, or until they have to bring you to court for a bail hearing.

- If the police think that you have committed a minor offence and you tell them who you are, then, instead of arresting you, they could give you a paper telling you when to go to court.

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

## **If the police are doing street checks**

There are rules about when the police can stop you on the street and ask you to identify yourself. This is called a “street check” or “carding”. The rules about street checks apply when the police are:

- investigating possible crimes or suspicious activities
- gathering information to help them do their jobs

## **Limits on racial profiling**

In general, police are not allowed to ask you who you are if part of the reason they are asking is only because they think you belong to a specific racialized community. This is true even if they are looking for someone of the same race, sex, and age group as you.

But if they have other reasons to think that you might be the person they are looking for, they may be able to ask you who you are. Here are some examples of such reasons:

- what you look like, including your height and weight, hair and eye colour, or what you are wearing
- where they stop you, but not just because it is a place where a lot of crime happens
- the kind of car you are in
- who you are with
- what you are doing

And if you refuse to answer or talk to them when you have the right to refuse, the police cannot use your refusal as a reason to ask you who you are.

## **What the police have to do during a street check**

When the police ask you who you are when doing a street check, they have to tell you:

- about your right not to answer, **and**
- why they are asking.

But they do not have to do this if they think it might put someone's safety at risk.

And they do not have to tell you why they are asking if it might identify someone whose identity they have to protect or if a police investigation would likely be affected.

The police must give you a receipt that includes:

- the police officer's name and badge number
- how to contact the Office of the Independent Police Review Director for a complaint against the police
- who to contact to find out what information the police have about you

The police have to give you a receipt whether you give them information about yourself or not.

If you are thinking about making a complaint against the police, get legal advice. See [page 28](#) for where to get legal help.

The rules about street checks do not apply when:

- the police reasonably suspect that a crime has been or will be committed
- you are being arrested or detained
- another law says that you have to identify yourself



- the police are acting under a warrant or court order
- the police are working undercover when they talk to you

## **If you are riding a bicycle**

If you are riding a bicycle, the police can stop you if they think you have broken provincial or municipal traffic laws. In such a case, you must stop and give them your name and address. If you refuse, they can arrest you.

## **III What if the police stop me while I am driving?**

The police can stop you while you are driving and ask to see your driver's licence, and your car registration and insurance. If you do not show them these documents, you can be charged with a provincial offence.

The police have the right to stop you even if they have not seen you break the law. But they are not supposed to stop people because of their race. If this happens you might want to get legal advice.

If the police have "reasonable grounds" to believe that you have been racing on a highway or performing

a “stunt”, they can take your car away from you and require you to give them your driver’s licence. If this happens, you will not get your car back for at least 7 days and your licence will be automatically suspended for 7 days.

## **If the police want to find out whether you have been drinking**

If the police suspect that you have been drinking alcohol, they can demand that you take a roadside breath test. They can also demand that you do “physical coordination tests” at the roadside. For example, you might be asked to perform a walk-and-turn test or to stand on one leg or to follow an object with your eyes. These tests are meant to check whether alcohol has impaired your ability to drive.

The police can also demand that you take a roadside breath test even if they do not have any reason to suspect that you have been drinking alcohol. They can do this if:

- they have a roadside breath test device, and
- they were acting lawfully when they stopped you.

If the police have reasonable grounds to believe that your ability to drive is impaired by alcohol, or that you have more than the legal limit for alcohol in your blood,

they can demand that you go with them to a police station to do a breath test for alcohol. This kind of test is sometimes called a “breathalyzer test”.

The police can demand a breathalyzer test even if they did not see you driving and they do not know when you last drove.

Depending on the results of the roadside breath test or the breathalyzer test, you might have to give up your driver’s licence to the police. Your licence would then be automatically suspended for a certain period of time.

### **If the police suspect that you have been taking drugs**

If the police suspect that you have been taking drugs, they can demand that you do physical coordination tests so that they can check whether drugs have impaired your ability to drive. They can also demand that you give them a sample of a bodily fluid for a roadside drug test.

If the police believe that you have more than the legal limit for a drug in your blood or that drugs have impaired your ability to drive, they can demand that you provide blood samples, under medical supervision, for a drug test. They can also demand that you go with them to the police station for a drug evaluation. A specially trained police officer will do

a series of physical observations and tests. If the evaluation is positive, the officer can demand that you provide a sample of your saliva, urine, or blood for a drug test.

Depending on the results of the physical coordination tests, the roadside drug test, the blood test for drugs, or the drug evaluation, you might have to give up your driver's licence to the police. Your licence is automatically suspended for a period of time.

## **If the police want to test for alcohol or drugs**

You **do not** have the right to speak with a lawyer before taking a roadside test. But you **do** have the right to speak to a lawyer before:

- doing a breath test or a drug evaluation at the police station
- providing a blood sample for a drug test

If you refuse a test, the police will charge you with refusing to comply with a demand that you submit to a test. Later, a court can decide whether you had a "reasonable excuse" for refusing. But it is hard to show that you had a reasonable excuse. If the court finds that you did **not** have a reasonable excuse, you could be given the same penalty with a greater fine than if the police had caught you driving while impaired or with

more than the legal limit for alcohol or a drug in your blood.

## III What if the police question me?

The police can approach you and ask you questions but they must let you go on your way, unless they arrest you or they have grounds to detain you.

The police have the right to detain you if they are investigating a crime and they have a “reasonable suspicion” that you are connected to the crime. They can detain you only for a short time. If the crime they are investigating is serious, they can detain you a bit longer. They must tell you why they are detaining you.

The police also have the right to detain you at a “roadblock” if they are following up on a report that, a short time before, someone saw people nearby with handguns.

If the police think you might have committed a crime, you may choose to tell them who you are. But, in most cases, you do not have to answer any questions. You can tell the police that you do not want to say anything until you speak to a lawyer.

However, if you have been in a car accident, the police might ask you for information that they require for an accident report. If you do not give this information

when they ask you, you could be charged with an offence.

## Talking to the police

**Anything** you say to the police might be used as evidence against you in court. The only statements that cannot usually be used against you are those, like an accident report, which you must make by law, or those that you make at the roadside before you have the opportunity to speak to a lawyer. But the police **can** use an accident report or roadside statement in deciding whether to make a demand for a roadside test or a breathalyzer test.

Even something you said **before** you were arrested, or while you were in the police car, could be used against you. This is true even for a statement you have not signed.

If the police have detained or arrested you, they should stop questioning you as soon as you ask for a lawyer. Just say, "I want to speak to a lawyer." You do not have to say anything else. If the police continue to question you, do not say anything. Just ask again to speak to a lawyer.

In Ontario, Legal Aid pays lawyers known as "duty counsel" to provide free legal advice, 24 hours a day.

Ask the police for the toll-free telephone number for duty counsel. Or contact a lawyer you know.

In most cases, a lawyer will advise you not to talk to the police. This is usually the best advice. If you do choose to talk to the police, keep in mind that giving false information can be a criminal offence. And if you lie to the police, the fact that you lied might be used as evidence against you.

If you try to stop other people from cooperating with the police, you could be charged with obstructing justice or obstructing the police.

Once you have spoken to a lawyer, the police may continue to ask you questions. Even if you say that you do not want to answer, they can continue to ask. However, you have the right to remain silent and do not have to answer.

### **III If the police suspect me of a crime, will they arrest me?**

It depends. If the crime is minor, you might be charged without being arrested if you tell the truth about who you are, and the police believe that:

- you will not destroy evidence,
- you will not repeat the offence, and
- you will go to court as required.

If the crime is serious, you will be arrested. To find out whether the police are arresting you, you can ask them politely, "Am I under arrest?" If you are, ask them why.

Later, the police might release you from the police station. They could ask you to agree to certain conditions before letting you go. Or you might be kept in police custody and then taken to court, usually within 24 hours of your arrest.

At the court, you will be given your first opportunity for a bail hearing. At this hearing, a judge or justice of the peace will decide if you should be detained until your trial is over. Or, they may order that you be released, and on what terms and conditions.

### **III Can the police arrest me in order to prevent a terrorist activity?**

Yes, the police can arrest you if they have reasonable grounds to suspect that arresting you or having certain conditions put on you is likely to prevent the activity. The government plans to change the law to say that the police can do this only if they have reasonable grounds to suspect it is necessary to prevent the activity.

If a judge finds that the police have reasonable grounds for their suspicion, the judge can order you to agree to certain conditions. For example, you could be required to agree:



- not to have any firearms or explosive substances in your possession
- to surrender your passport or other travel document
- to stay within a certain area

If you do not agree to the conditions, you could be detained for up to a year.

## III **What are my rights if I am arrested or detained?**

The Charter of Rights and Freedoms, which is part of the Canadian Constitution, sets out your rights.

If you are arrested or detained, you must be:

- told why you have been arrested or detained, and why the police are investigating you,
- told immediately that you have the right to a lawyer,
- told about Legal Aid and your right to free legal advice, and
- allowed to speak, in private, to a lawyer of your choice, as soon as possible, if you ask to do so.

The police do not have to give you an opportunity to speak to a lawyer unless you say that you want to. And if you speak to a lawyer, the police can assume that

you got the legal advice you needed. So if you did not understand what the lawyer told you or you are not satisfied with the advice you got, tell the police that you want to:

- speak to the lawyer again, or
- speak to another lawyer.

### **If you are under 18**

If you are under the age of 18, the police have to treat you differently than an adult. This applies if you are arrested or detained or if they suspect that you have committed a crime.

The police should tell you that:

- you do not have to say anything,
- anything you say may be used as evidence against you,
- you have the right to speak to a lawyer,
- you have the right to contact your parents or guardian, and
- you have the right to have your parents or guardian and a lawyer with you, if you want them there, when the police question you.

You do not have to choose between calling your parents or guardian and calling a lawyer. You can do

both. And, if you contact them, you can have your parents or guardian **and** a lawyer with you when the police question you.

## **If you ask to speak to a lawyer**

The police should stop questioning you if:

- you ask to speak to a lawyer, and
- you make a reasonable effort to contact and speak to a lawyer.

If you have been arrested or detained, the police should give you the 24-hour, toll-free number to get free legal advice from duty counsel. This is a lawyer provided by Legal Aid Ontario.

After you speak to a lawyer, the police may continue to ask you questions. Even if you say that you do not want to answer, they can continue to ask. However, you have the right to remain silent and do not have to answer.

Unless you are under 18, the police do not have to let you have a lawyer with you while they question you. If you have spoken to a lawyer, the police do not usually have to let you speak to a lawyer again during the same interview. But they might have to let you do this if something has changed so that you need to get legal advice again. For example, this could happen if the police start to question you about a different and more serious crime.

## III Can the police enter my home?

The police can enter your home if they have:

- a warrant that allows them to enter your home to arrest someone,
- a search warrant, or
- permission from you or from someone else in authority in your home.

They can also enter your home in some urgent situations ([see page 19](#)).

The police may come up to your door to talk to you unless you have told them not to. But they do not have the right to come to your door just so that they can look into your home for evidence to use against you.

The police can go onto your driveway if they have a reasonable suspicion that an impaired driver is parked there.

## III What are my rights if the police have a search warrant?

A search warrant is a written order from a judge or justice of the peace. This order gives the police the right to search your home and take certain items that they find. The police usually use a search warrant

during the day. A search warrant for drugs may be used day or night.

Before they come in, the police should knock and tell you why they are there. But they do not have to knock first if that might lead to:

- evidence being destroyed, or
- someone being harmed.

If they knock and you do not let them in, they can break down the door.

The police should show you the search warrant. If they do not show it to you, ask to see it.

Make sure that the information on the warrant is correct. Check whether your address is correct, and see if the warrant shows the dates and hours when it can be used. Also, check the warrant for the signature or name of the judge or justice of the peace who ordered it. The warrant must say who signed it, and the place, date, and time they signed.

If the warrant contains incorrect information, tell the police. Usually, a warrant is valid even if there are small problems, such as a spelling error. If the warrant has mistakes in it, you can ask the police to leave, but you should not try to stop them from entering or make them leave your home.

If the police have a warrant, they can use “reasonable force” to enter your home. If you try to stop a legal search, you can be charged with obstructing the police.

### **III What are my rights if the police ask to enter my home?**

If the police do not have a warrant, they need permission to enter, except in certain urgent situations (see page 19). This permission can come from you, or from someone else in your home who has the authority to permit them to enter. This person is usually an adult.

If you do not want the police to enter, tell them. If you do not tell them, they may think that you are agreeing to let them in.

If the police enter your home to do a search, and they arrest or detain you, they must tell you about your right to contact a lawyer.

Again, if the police enter your home without permission, do not try to stop them. Tell them you want to call a lawyer right away.

## III In what urgent situations can the police enter my home?

Usually, before entering a home to arrest someone, the police must get a warrant for that purpose and they must say who they are and why they wish to enter.

However, the police can enter without a warrant or permission in order to arrest someone or take them into custody when they have reasonable grounds to believe that:

- they need to enter in order to prevent someone inside from being seriously injured or killed, or
- there is evidence in your home that relates to a serious offence, and they need to find that evidence right away or it might be lost or destroyed.

The police can also enter your home without a warrant or permission if they are in “hot pursuit” of someone whom they have the authority to arrest. For example, they would be in hot pursuit if they were chasing someone from the scene of a crime and they saw that person enter your home.

And the police can enter your home to look for evidence if:

- they have reasonable grounds to believe there is evidence in your home, for example, drugs or weapons, and
- they need to act immediately so that the evidence will not be lost or destroyed.

The police can also enter your home for any of the following reasons:

- to give emergency aid to someone inside
- to protect the life or safety of someone inside if they have a reasonable belief that a life-threatening emergency exists
- to protect the life or safety of people in the home if someone heard a gunshot inside
- to prevent something that may be about to happen, if they have a reasonable belief that their entry is necessary to stop it or to protect their safety or the safety of the public
- to investigate a 911 telephone call
- to help someone who has reported a domestic assault to remove their belongings safely
- to protect people from injury if the police have reason to suspect that there is a drug laboratory in the house



- to help animals in immediate distress because of injury, illness, abuse, or neglect

Under child welfare law, the police can enter your home without a warrant to remove a child if they have reasonable grounds to believe any of the following:

- the child is neglected or abused and is “in need of protection”
- the child is a “runaway” under the age of 16, who was in the care of a children’s aid society, and whose health or safety might be at risk during the time needed to get a warrant
- the child is under 12 years old and has done something that would be an offence if someone 12 or older had done it

The police cannot enter your home without a warrant just to investigate whether a child’s mother or father is a good parent.

Your landlord also has the right to enter your home in an emergency. Landlords can ask a police officer to come with them.

Unless you have given the police notice not to enter your property, they can go onto your property to protect it from suspected criminal activity.

## III When can the police search my home?

The police can search your home if any of the following apply:

- they have a search warrant
- you understand what they want to do and you give them permission — this is known as “informed consent”
- they have reasonable grounds to believe that there are illegal drugs, weapons, or evidence of another offence in your home, which might disappear or be destroyed if they took the time to get a search warrant

The police may also be able to search your home if another person with authority in your home has consented to the search.

### Limits on the power to search

There are limits to where and how the police can search, and they cannot destroy property unless they need to. The police can search only for evidence that is listed in their warrant, and they can look only in places where they might find the evidence. So, for example, they cannot look in your closet for something so big it could not fit there.

However, if the police are searching for evidence that is listed in the warrant and they discover something related to another crime, they can take it and use it as evidence.

The police cannot search your personal computer just because they have a search warrant for your home. They need a search warrant for the computer.

## **Getting your property back**

Usually, if the police take from your home something that was legally in your possession, they must return it to you within 3 months, unless a justice of the peace orders that they can keep it longer. If you are not charged and the police do not return your property within 3 months, contact the police and ask them to return it. If necessary, you can apply to a court to have it returned.

## **||| When can the police search me?**

### **Being arrested**

When they arrest you, the police can search you for any of the following reasons:

- to ensure their own safety or the safety of the public
- to prevent the destruction of evidence

- to find evidence of the offence for which they arrested you

In some situations they may also have the right to search your car for the same reasons.

If you are being arrested for a recent sexual assault, they may have the right to swab your penis.

If they have reasonable grounds to believe you have evidence in your body that relates to the crime they are arresting you for, they can confine you in a way that enables them to recover the evidence. For example, this might happen if they believe you swallowed illegal drugs that you were smuggling.

The police may have the right to search your cell phone when they are arresting you. This is more likely to apply if you are being arrested for a serious offence, for example, drug trafficking or a crime of violence. But they can search for additional evidence only when searching promptly is important to their investigation. They do not usually have the right to look at everything on your phone.

## **Consenting to a search**

The police can also search you if you give them “informed consent”. This means you understand the possible consequences of the search and you agree to let them search you. The search must be limited to what

you have consented to. But when they ask for your consent, the police only have to give the reasons they know about at the time.

So if you do not put limits on how the police can use what they find, they may be able to use it against you in the future. For example, they could keep a DNA sample that you give them and check it in a future investigation.

## **Searches for safety reasons**

If the police have detained you because they have reasonable grounds to suspect that you are connected to a crime and they need to detain you to investigate, they have limited powers to search you. They can do a protective “pat down” search for weapons if they believe that their safety or the safety of others is at risk. They can also search for weapons in your area if they have a serious concern about safety and a “pat down” search is not enough.

The police can also do a “safety search” if:

- they have reasonable grounds to believe that there is an imminent threat to the safety of the police or the public, and
- the search is necessary to eliminate the threat.

## **Searches at public facilities**

The law also gives the police power to search you in or on your way in to:

- court proceedings
- electricity generating stations
- nuclear facilities
- correctional institutions

This includes the power to search things that you have with you and a car that you are in.

## **Strip searches**

A strip search is not a routine procedure. The police should not do a strip search unless they have already done a “pat down” search and have reasonable grounds to believe that a strip search is necessary to find weapons or evidence related to the reason that you are being arrested.

A strip search should be done at the police station unless there is an urgent reason to do it before taking you to the station. You should not have to take your clothes off in front of someone of the opposite sex. If the police ask you to agree to a strip search, you should tell them that you want to speak to a lawyer right away.

## Other reasons to search you

The police can also search you if:

- they find you in a place where they are searching for drugs and they have reason to believe that you have drugs
- they find you in a vehicle where people are transporting or consuming alcohol illegally and they have reason to believe that you have alcohol on you illegally
- they have reason to believe that you have an illegal weapon or one that was used to commit an offence, and it might be removed or destroyed if they took the time to get a search warrant
- they find you in a vehicle or a boat and have reasonable grounds to believe there is cannabis in the vehicle or boat, unless the cannabis is not readily available to anyone **or** is in its original unopened packaging

If the police wish to search you for any of these reasons, you do not have a choice and you should not try to stop them.

If the police have reasonable grounds to suspect that you have illegal drugs in your possession, they may be able to use a drug sniffer dog to search you.

## Evidence found on a search

If the police search you because they think you have committed an offence and find something related to another offence, they can charge you with the second offence. For example, if they find illegal drugs while looking for stolen property, they can charge you with possession of illegal drugs.

If you believe that you are being searched illegally or without a good reason, tell the police you object to the search and talk to a lawyer as soon as possible.

## How do I get legal help?

**Legal Aid Ontario** provides legal assistance for low-income people. Services include:

- legal advice from duty counsel over the phone for people in police custody
- assistance by duty counsel in some criminal matters for eligible clients who appear in court without a lawyer
- legal information and advice over the phone
- legal resources and referrals
- a certificate program to pay for a lawyer



To get legal aid services, your legal issue must be one that Legal Aid Ontario covers, and you must be financially eligible. If Legal Aid Ontario cannot help, they may be able to refer you somewhere that can.

For more information, visit [www.legalaid.on.ca/en](http://www.legalaid.on.ca/en) or call:

Toll-free ..... **1-800-668-8258**

Toronto area ..... **416-979-1446**

Toll-free TTY ..... **1-866-641-8867**

Toronto area TTY ..... **416-598-8867**

The **Law Society of Ontario** has a directory of all lawyers licensed to practise law in Ontario. You can search the directory by name, address or postal code, language, or area of law.

Visit the Law Society website at [www.lso.ca](http://www.lso.ca) to locate the directory or call them at.

Toll-free ..... **1-800-668-7380**

Toronto area ..... **416-947-3315**

The **Law Society Referral Service** is an online service that gives you the name of a lawyer in your area who can give you a free consultation for up to 30 minutes. You can ask for a lawyer who speaks your language, or a lawyer who accepts Legal Aid certificates.

You can also call them on the crisis line if you are unable to use the online service, for example if you are in custody, in a shelter or in a remote community without access to the internet. This line is available from Monday to Friday, 9:00 a.m. to 5:00 p.m.

Visit [www.findlegalhelp.ca](http://www.findlegalhelp.ca) or call them at:

Toll-free Crisis Line .....**1-855-947-5255**

Toronto area Crisis Line .....**416-947-5255**

**JusticeNet** is a not-for-profit organization that helps people access legal services when their income is too high to qualify for legal aid but too low to afford legal fees. If your net family income is less than \$59,000, JusticeNet will refer you to a directory of lawyers and paralegals who provide help at reduced rates depending on income.

You must register and pay a \$25 fee to use the website. This fee may be returned to you if you do not find a professional to work with. Visit the JusticeNet website at [www.justicenet.ca](http://www.justicenet.ca).

CLEO's **Steps to Justice** website has step-by-step information about common legal problems, including police stops and searches. Visit [www.stepstojustice.ca](http://www.stepstojustice.ca) and see the information in the **Criminal Law** section.

This booklet gives only general information. You should get legal advice about your own situation.

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