

KNOW YOUR RIGHTS WITH POLICE



Empowering Lives Through Law

Goals of this Presentation

- To provide basic information about rights of individuals when interacting with law enforcement
- To provide some strategies for dealing with some situations that may arise during a police encounter

What this Presentation is NOT

- An attempt to engage in “police bashing”
- A confidential venue protected by solicitor-client privilege
- A forum for individual legal consultations

Respectful Space

- Recognize that people will have had varied experiences with law enforcement – we ask that all participants are treated with respect
- Recognize the amount of police encounter experience will be varied – there is no such thing as a stupid question
- This presentation will try to take into account the realities of potential situations, not just the law on “paper”

POLICE QUESTIONING

“carding”

Police Questioning

- In most situations, police can ask any questions they like
 - Key: in most circumstances, you are not required to answer the police officer's questions or provide any identification or other documents.
- Important Exceptions:
 - If person is placed under arrest or is detained;
 - The driver of a motor vehicle;
 - The operator of a bicycle.

Police Questioning

- If you are **driving a car**, you must provide your name, date of birth, driver's licence, registration and insurance documents
 - No special rules for passengers – is same as being a pedestrian (i.e. no obligations unless you are breaking a law such as not wearing a seatbelt; open liquor; etc.)
- If you are riding a bicycle, you must provide your name, date of birth, and identification if asked
- If you are placed under arrest or you are advised you are being detained and/or investigated for something, you are required to provide the police with your name and date of birth

Police Questioning

- If you were the driver of a motor vehicle that was involved in an accident, you are required to provide certain information to the police
 - Should ask to speak to a lawyer before completing it

Police Questioning

- If only a pedestrian, you are not required to provide anything, including:
 - Name/Identification/Date of Birth
 - Information about where you have been
 - Information about where you are going
 - Information about any incident you may have witnessed
 - Information about contents of your pockets/backpack, whether you are in possession of illegal items, etc.

Police Questioning

If, while walking down the street, I am stopped and asked where I am going and for identification, what should I do?

Rights: Not obligated to answer or provide identification

- May choose to keep walking
- May choose to politely ask “Am I under arrest/investigation?” and, when police say no, then continue on your way
- May choose to provide name/identification/other information, even though not required
- May choose to ask your own questions, such as name/badge #

Police Questioning

If I assert my right to not provide information or identification, how might the police react?

- You must assess the situation you are in
- You may feel it is easier to comply with request than to assert your rights
- You may feel it is safer to do both – “I know my legal rights and that I am not required to answer your questions but my name is _____ and I am going to school and if there is nothing else, I will be going now.”

Police Questioning

Key Points:

- 1. You are not required to answer police questions if you are not being arrested, detained/under investigation, driving a motor vehicle, or riding a bicycle**
- 2. You have no obligation to go anywhere with the police unless you are arrested or detained/under investigation**
- 3. You are always better to say nothing than to lie**



ARREST & DETENTION

Arrest & Detention

- Upon arrest or detention, you have certain legal rights pursuant to the *Canadian Charter of Rights and Freedoms*:
 - Section 10(a) – right to be advised of the reason for your arrest/detention
 - Section 10(b) – right to contact a lawyer for legal advice

Arrest & Detention

- It is important to exercise your right to contact a lawyer if you are detained or arrested
 - Helps to avoid incriminating yourself
 - Need to get advice about your particular situation and charge
- When you are under arrest or being investigated, police cannot elicit evidence from you without first allowing you the opportunity to speak to counsel if you so desire

Arrest & Detention

Exception to right to contact lawyer – impaired driving stops:

- You do not have the right to talk to a lawyer before providing a sample of your breath (small handheld device) at the roadside
- You do have the right to talk to a lawyer before doing a breath test at the police station or on the police bus (large, table-top machine) and/or before doing a drug test

Detention

What is “detention”?

- Not free to leave or move as you like
- Can be:
 - Physical (handcuffs, placed in a police car, movement blocked, etc.); and/or
 - Psychological (reasonable person in the situation would feel they are unable to leave)

Detention

When is detention likely to occur?

- When police have reasonable grounds to **suspect** someone is connected to a crime but they need to investigate further
 - May have information about a crime; you may look like the person they are looking for; etc.
- REMEMBER: if police question you, it is important to understand their reasons for doing so – if they are talking to you, it is likely that they suspect you are involved in something or may know something about a crime

Detention

Key Points:

1. **You are “detained” anytime you are physically unable to leave a police encounter OR when a reasonable person in your situation would feel unable to leave**
2. **If you are detained, you have the right to know the reason for the detention and to talk to a lawyer**
3. **You should ALWAYS take the opportunity to talk to a lawyer**

Arrest

What does it mean to be “under arrest”?

- Usually occurs when an officer decides s/he has reasonable and probable grounds to believe you committed a criminal offence
- Often (but not always) involves being handcuffed, placed in the back of a police car, etc.

Arrest

When can the police arrest a person?

- When they have a **warrant** or are aware of an outstanding warrant
- When they have **reasonable and probable grounds** to believe the person has committed a criminal offence
- When they **find/observe** someone committing a criminal offence

Arrest

Upon arrest, what rights does every person have?

1. Right to be advised why they are being arrested (i.e. for what offence)
2. To be advised of right and provided an opportunity to contact a lawyer
3. To be cautioned that anything that may be said could be used in Court

Arrest

What information must be provided by an arrested person?

- Name
- Date of birth

Arrest

Am I obligated to answer other questions posed by the police?

- No – upon arrest, after providing your name and date of birth, you should only:
 - Ask to speak to a lawyer
 - Politely refuse to provide any other information
 - Remain silent, even if you believe you have done nothing wrong
 - Remain silent not only to police but to everyone you encounter at the police station and in custody if you are not released

Arrest

Why should I not talk to the police? Shouldn't I tell them I am innocent?

- Any statement you make to the police can ONLY be used against you
- The only time you should tell your side of the story is in your lawyer's office and, potentially, on the witness stand in Court
- Giving a police statement will only serve to create potential inconsistencies in your story on which you will be cross-examined at trial
 - What you tell your lawyer is privileged – cannot be used against you in Court

Arrest

The police just want to get some “biographical information” from me. No big deal, right?

- Never provide any information EXCEPT your name and date of birth
- For example, information about where you live may be important to the charges you face – you are not required to provide this information
- For example, information about tattoos, scars, etc. may be important to questions of identity – you are not required to provide this information

Arrest

The police say they already know what happened - isn't it better to just try and explain myself?

- Police are allowed to lie during interrogations – can say they have evidence they don't really have
- You are NEVER better off explaining yourself during a police interrogation
 - The case will end up in Court where a Judge, not the police, will decide what will happen
- You are ALWAYS better to wait, explain the situation to your lawyer, and let them determine how to best present your position to the Judge

Arrest

I don't have or know any lawyers – what do I do?

- The police are required to assist you in contacting a lawyer and will provide you with a 1-800 number where you can speak to a lawyer and receive free advice
- They will also provide you with a phonebook in case you don't remember the phone number for a lawyer you wish to call
- If you are having trouble finding the number for the lawyer you want to call, you should ask the police to assist you
- You are entitled (within reason) to get advice from a particular lawyer and can ask the police to wait for a returned phone call from the lawyer of your choice if they do not answer

Arrest

Key Points:

- 1. Make sure you understand what you are charged with – ask the police officer to write it down**
- 2. Ask to speak to a lawyer and make sure you advise the lawyer of the precise charges you are facing**
- 3. Do not talk to the police at ANY TIME, except to provide your name and date of birth**
- 4. Do not talk to anyone else at the police station**



SEARCHES

Searches

- Right against unreasonable search & seizure is protected by section 8 of the *Canadian Charter of Rights and Freedoms*
- In practice, right means that searches should only be conducted in certain limited circumstances that have been found to be justifiable in law

Searches

Can the police search me if I am detained?

- Yes – the police can perform a “pat down” search of your person to protect their safety and safety of others
 - May remove anything from your pockets that feels like it could be a weapon
 - Cannot go under your clothes; should not remove anything from your pockets, etc. that does not feel like something that could harm them (i.e. soft items)

Searches

Can the police search me if I am arrested?

- Yes – upon arrest, the police can frisk you, your clothing (jackets, etc.), and anything you are carrying or that is in your immediate vicinity for the purposes of finding:
 - Anything that may pose a risk to you, the officer, or the public; and/or
 - Evidence for the prosecution of an offence

Searches

When can the police enter my home?

- Generally speaking, the police can only enter or search your home if:
 - They have a search warrant
 - They have a warrant to enter to arrest someone in your home
 - They have permission from you or someone else in a position of authority (e.g. adult) in your home
 - Exigent (urgent) circumstances

Searches

What are some examples of exigent circumstances?

- Hot pursuit (chasing someone)
- Someone inside may be seriously injured or killed
- Evidence inside must be found right away or it may be lost/destroyed
- Someone needs emergency aid
- To investigate a disconnected 911 call
- To help an animal in immediate distress
- If a child inside the home is in need of protection

Searches

When can the police search my home?

- With a warrant
- With consent, or
- If they believe there is evidence inside that would be destroyed if they took the time to get a warrant
- If police are in your home or on your doorstep, they can look at anything in “**plain view**” and, if necessary, use these observations to obtain a warrant to search the premises

Searches

The police are at my door – what do I do?

- You are not obligated to open the door
- If the police have a warrant or other exigent reason to enter, they may break down the door
- If you choose to open the door, you do not need to and should not invite the police inside your home
- You are always within your right to tell the police to come back with a warrant if they want to come inside your residence

Searches

The police have a warrant to search my home... What should I do?

- Ask to see the warrant and check to make sure the address is correct and that the police have come on the date and time listed on the warrant
- If you try to stop police from executing a search warrant, you can be charged with obstruction

Searches

Can I refuse to allow the police to conduct a search?

- You should never physically resist a police search – but you should always state that you are not consenting to the search
- If the police ever ask your permission to search something (e.g. a backpack, purse, etc.) while you are detained, you should always refuse to consent to such a search
 - Could state, “I know that, since I am not under arrest, the Charter protects my right to refuse to allow you to search my [bag/purse/etc.] and I wish to exercise that right. I am not consenting to a search.”

Searches

During a detention, a police officer is emptying my pockets (or demanding that I empty my pockets). What do I do?

- Ask the officer if you are being arrested – if not, tell them politely that you know your rights and you refuse to empty your pockets
- If the officer begins to empty your pockets, state to them politely that you know your rights, you are not consenting to this search, and ask for their name and Badge #
- Do not get into a physical confrontation with police – remain courteous but firm in stating that you are not consenting

Searches

During a detention, the police searched my backpack and found something illegal. I told them I was not consenting to the search. I got charged anyway. Now what?

- Make sure to inform your lawyer that you told the police you were not consenting to the search
- If anyone was with you or nearby, ask them to write out a statement of what they observed and provide their phone #s so your lawyer can contact them
- Your lawyer can bring an application in Court to try and have the evidence seized by the police excluded

Searches

Key Points:

- 1. It is important that you always politely indicate you are not consenting to a search, even if you believe the police are entitled to search you**
- 2. If the police ask your permission to search a place or your person, you should always refuse as is your right**
- 3. Never get into a physical confrontation; always politely but firmly express your knowledge of your rights**



QUESTIONS?

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