

Know your rights and use them

What do you do if you are questioned, searched or arrested by police?

In Alberta, a conviction for a criminal offence will result in a criminal record. It is a stigma that could remain with a person for the rest of his life.

Only by obeying the law can a person avoid such a stigma but walking the straight and narrow isn't all that easy if you don't know your rights.

The following summary was originally put out by the Yorkville Diggers but has been revised for Alberta by the Edmonton Social Planning Council.

To protect the individual from abuse, the law requires that particular laws may only be enforced against him if "due process" of law is preserved. There is no constitutional Bill of Rights in Canada; no superior general constitutional safeguards. All that we can check here is that the particular legislative body is acting within the area carved out for it.

Hence, if we want to preserve our freedom in Canada as fully as possible, it is important to be vigilant of those who enforce the law.

In Canada, if it is a bad law, all you can do is try and get it changed by publicity, political action, disobedience, protest, martyrdom, or lobbying.

Whatever you are doing about it, is a choice you the individual have made, and you can't make a proper choice unless you know what the law is and hence your rights.

NARCOTICS

It is illegal to possess, export, import, or traffic in a narcotic. The narcotics schedule includes: opium, its preparations; alkaloids, and derivatives (excluding apomorphine); coca leaf and crude cocaine, their preparations, etc.; cannabis sativa (marijuana) and its preparations; and morphine (excluding apomorphine).

Possession means personal possession or having a narcotic in the possession or custody of another, or having it in any place, whether or not that place belongs to him, or is occupied by him. With the knowledge and consent of all members of a group, possession by one member may be construed as possession by all.

Trafficking means to manufacture, sell, give, administer, transport, deliver, distribute or to offer to do any of these.

The penalty for possession of a narcotic may be up to seven years. In certain circumstances, (usually a first offence and a good past record), a Court may suspend sentence for possession. The penalty for possession for the purpose of trafficking in or pushing a narcotic may be up to 21 years (life) in jail. Suspension for trafficking is unlikely. For importing or exporting a narcotic, the

minimum penalty for the first offence is seven years, possibly life. Cultivation of opium or cannabis will incur a penalty of up to seven years.

LSD (Lysergic Acid Diethylamide) and Thalidomide are Schedule "H" drugs, which means they can be used legally only with the authority of the Governor-General in Council (Federal Cabinet).

ALCOHOL

Alcohol is a depressant. It impairs the normal functioning of your body. It is illegal for a minor to possess or consume it unless in the presence of parents in a non-public place. Irrespective of age, it is illegal to drive while impaired, to carry an unsealed bottle of liquor or open box of beer in the passenger compartment of your vehicle. It is illegal to consume liquor in public places other than those set aside for that purpose.

QUESTIONS BY POLICE

With three exceptions and one partial exception, you are not legally compelled to answer any questions put to you by a police officer. The exceptions are:

1. If you are the driver of an automobile you must, upon demand, produce your Driver's License, the Registration Certificate of your car, and any evidence of insurance. If you are the driver and you have been involved in an accident involving injury or death to a person or property damage to an apparent extent of \$100 or more you are obliged to give a report of the accident to the investigating police officer.

2. In Edmonton, if you are in breach or appear to be in breach, of a City by-law, The Edmonton City Police are entitled to require from you your name and address. If you refuse to give it, you are liable to a fine but they cannot arrest you under this by-law.

3. The Vehicle and Highways Traffic Act, however, provides that in cases where identification is necessary (where a driver does not have his license or in jay walking), in order to put the provisions of the Act into effect, the police may require name and address to be given, and may arrest you if you don't comply.

The following points should be kept in mind:

a. A person cannot be arrested for refusing to answer questions and a person cannot be detained for questioning if he is not under arrest.

b. If you are not accused of a crime, politely ask why you are being questioned and whether or not you are under suspicion.

c. If you are accused of a crime, and you are not guilty, you may simply deny the accusation and nothing more. Your silence cannot be held against you.

d. If you are accused of a crime, and you are guilty, you are within your rights to say nothing.

e. There is no such thing as "We want you for questioning," or "Come down to the station. We want to ask you a few questions." You do not have to go with an officer if he tells you these things. You are under no obligation to enter his car unless you are under lawful arrest.

f. You never have to tell a police officer whether you have a job or a place to stay and you never have to carry or show an officer your wallet, your money, or your identification, although you might avoid a vagrancy charge by doing so.

VAGRANCY

In order to commit vagrancy you must be all three of: (1) wandering abroad or trespassing, (2) have no apparent means of support and (3) fail, when required by an officer, to justify your presence in the place where you are found.

"Justify your presence" means that if an officer asks you what you are doing, you must tell him.

SEARCH

Police officers have no general power to search. In Alberta, they have, however, a general power of search for liquor in a vehicle or on the person of anyone found in a vehicle or conveyance of any description, or any other place.

A. Search of Person: You need not comply with an attempt to search you unless the police officer has reasonable and probable grounds that justify the search. A police officer does not have to tell you what the reasonable and probable grounds he has in mind might be. It is difficult to decide if you have to comply.

If you have been arrested, a police officer may then lawfully search your person.

B. Search of Your Room: A police officer may not enter to search your room unless he has a Search Warrant or a Writ of Assistance.

He may enter to arrest anyone where he has reasonable and probable grounds for believing that an indictable offence has been committed by the person he wants to arrest.

If you do not insist on your rights when a police officer comes to search, it may be too late to complain afterwards.

If a police officer enters the premises without a warrant and against your will, you can pick up the telephone and call the Duty Inspector in charge of the Patrol Division of the City Police.

TELEPHONE SURVEILLANCE

Under the City of Edmonton Telephones Bylaw No. 2295, the Superintendent of the Telephones Department may, with legal authority (a Court Order) applied for by the Chief Constable, place a surveillance device on the number named in the Court Order. There are no "beeps."

ARREST

A police officer may arrest without Warrant anyone whom he finds committing a criminal offence. This includes less serious offences such as vagrancy, causing a disturbance, or petty trespass. A person must actually be doing this act at the time of arrest.

More serious offences are known as "indictable" because, with a few exceptions, you are entitled to a jury trial on them. A police officer may also arrest without Warrant anyone who, on reasonable and probable grounds (eg. in the vicinity where an indictable offence has been committed or about the time it was committed), he suspects as having committed such an offence.

Indictable offences include possession of or trafficking in narcotics, offences related to controlled or restricted drugs, murder, arson, rape, and theft over \$50.

The two things an officer must do in order to make a lawful arrest are tell you: (a) that you are under arrest . . . if asked and (b) what the charge is or what the act is that he complains of . . . if asked. If you do not ask, you may well have no right to be told. If an arrest is not made lawfully, but you have complied to accompany him, you have no grounds for complaint later.

Whether the arrest is good or not, the first thing to do is to get the policeman to identify himself by at least his number. He is obliged to do this.

There is no such thing as an arrest for "suspicion of something".

With no exception then, every citizen has a right to proceed about his lawful business unless he is being "lawfully questioned" or "lawfully arrested." If you are arrested you should remember that you are under no obligation to answer any questions, submit to any tests, or sign anything.

Apart from giving your name and address, it is generally in your interest to insist on being allowed to phone your lawyer and to have your lawyer present before answering any questions, submitting to any tests, or signing any statements whatever.

Never, under any circumstances forcibly resist a police officer. If improperly arrested, ensure there are witnesses and contact a lawyer. You can sue the officer and if he even touches you to enforce an improper arrest, you can sue him for assault and false imprisonment.

PHONE CALLS

After being arrested, you may make a call if you ask for it. It is uncertain whether you have a right to a phone call but the police usually grant one. Be sure to advise your lawyer if you did not have permission to make one.

LEGAL AID

If the offence with which you are charged is indictable, and you cannot afford a lawyer, you are entitled to have one appointed for you under the Alberta Legal Aid Plan. The application forms may be had on request from the police prior to your appearance in court.

THE BREACH

If you are unsure of reaching your "someone" with what appears to be your only phone call, you may call the Welfare Information Service at 429-6227. These people will help to contact the person you want to reach and the number is open 24 hours a day. If you are denied a phone call and legal aid prior to your appearance in court, mention the fact to the magistrate or judge. He will adjourn the case without plea.



THIS IS A CAMPUS PATROLMAN . . .
... does HE know our rights?

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