

## **Your Rights When Arrested or Charged**

### **Understanding the criminal justice system when you are arrested or charged with an offence**

#### **You have the right to talk to a lawyer**

If you are arrested or detained by the police, you have the right to "retain and instruct counsel". This means you have the right to talk to a lawyer without delay. You should be provided with privacy, a phone, and appropriate phone books to contact a lawyer.

Many lawyers are available to provide emergency telephone consultations free of charge, and many criminal lawyers are prepared to provide initial consultations free of charge or for a nominal fee.

If you can afford a lawyer but do not know one, contact the Lawyer Referral Service at 1-800-661-1095 for names and phone numbers of three lawyers.

If you cannot afford a lawyer, telephone the nearest Legal Aid office. Legal Aid can give you names and phone numbers of lawyers who will do work for the financially needy. If you are in a remand center, psychiatric institution, or correctional facility, arrange with the staff at the institution to see a Legal Aid officer to complete an application form.

#### **Why do you need a lawyer?**

You should talk to a lawyer as soon as you can after being arrested or detained by the police. A lawyer can tell you how to respond to formal demands made by the police, such as for blood or breath samples, and whether or not you would be wise to answer police questions or participate in a line-up. It is not always wise to remain silent, and a lawyer can tell you whether you should give up your right to remain silent.

When you appear in court to answer charges, you must make a number of complex decisions. For instance, you must decide whether or not to plead guilty, and if the charges are "indictable offences", which of three types of trials you should have.

You will need to know what evidence is expected to be called against you to defend yourself. You will need to know if this evidence will be admissible, or on what basis you might object to its admissibility. You may have to testify or call evidence yourself.

The Crown will always be represented by a knowledgeable lawyer. You should assume that your case will be handled by an experienced professional prosecutor. Even though the Crown has the burden of proving your guilt at a trial, the Crown will not necessarily call all the evidence that might help you explain your situation or answer the charges you face. The manner in which you try to defend yourself without a lawyer may actually make your situation much worse.

Even if you decide to plead guilty, you would be better off having a lawyer speak to sentence on your behalf. You should not guess what sorts of facts are important to courts in relation to the matter of sentence. You can not assume that the Crown prosecutor or judge will view your case leniently.

### **What types of offences are there?**

There are two classes of offences in Canada: indictable offences and summary offences. Indictable offences are more serious offences. The possible penalties are higher than for summary offences, although you may still face imprisonment or heavy fines for many summary offences.

Many offences are called "hybrid" or "dual" offences which means that the Crown can choose to have them dealt with in Court as indictable or summary offences. Impaired driving, possession of narcotics, and most crimes of theft and mischief are hybrid or dual offences.

There are three possible ways in which indictable offences may be tried: Provincial Court judge without a jury, Court of Queen's Bench judge without a jury, and Court of Queen's Bench judge with a jury. A lawyer can best advise you as to what trial method is best for your situation. You must attend court personally at all times. If not, a warrant will be issued for your arrest.

Summary offences are tried by a Provincial Court judge. In some instances, you may be excused by the Court from personally appearing in court. A lawyer can tell you if that is possible in your situation.

### **When can you be arrested?**

You can be arrested by a police officer if you are caught committing any criminal offence, whether it is summary or indictable. You can also be arrested by a person who is not a police officer if you are found committing an indictable or hybrid offence, particularly in relation to the property of that person. You can be arrested by a police officer who believes, on reasonable and probable grounds, that you have earlier committed an indictable or hybrid offence.

If you are arrested by a police officer or other person, you have the right to know the reason for your arrest. If you are arrested by a person who is not a police officer, you have the right to be taken promptly before a police officer or justice of the peace.

In the case of summary and hybrid offences, a police officer may choose, rather than take you to the cells, to release you on an appearance notice or some other form of document by which you promise to appear in court on a future date. Sometimes, you will get a summons in the mail later.

### **What is a lawful arrest?**

Arrest means that you are being held against your will. It is not an arrest if the police stop you and ask your name and address. To make a lawful arrest the police should identify themselves, tell you that you are being arrested, the reason for the arrest, and that you have a right to get a lawyer without delay. If there is a warrant, the police should show it to you.

If practicable, the police may touch you on the shoulder as a gesture of physical confinement.

### **Do you have to answer the questions asked by the police?**

If the police identify themselves, arrest you, and tell you the reason for the arrest, you must go with them. If the police do not do these things, you are free to leave.

The police must ask questions as part of their job in investigating crime. However, the police cannot force you to answer their questions.

Anything you do say to the police or put into writing at this time or later can be used against you in court. You have the right to remain silent when stopped and asked questions, whether or not the police tell you that you have this right. Ask them if you are under arrest and the reasons for the arrest. You should seek legal advice before giving up your right to remain silent.

### **What if the police stop you when you are driving?**

Under provincial law, the police have the right to stop any motor vehicle and to ask the driver to produce a driver's licence, vehicle registration and ownership documents, and proof of insurance. Your condition or the condition of your vehicle may authorize the police to investigate further and even subject you to formal demands, such as for blood or breath samples. You have the right to talk to a lawyer before complying with these demands, but not if you are only asked to provide an ALERT roadside sample.

If you have been involved in a motor vehicle accident, whether or not your own vehicle has been damaged, you must remain at the scene of the accident and give all reasonable aid, particularly if someone has been hurt.

When you are a driver who has been involved in an accident, you may be required to answer some questions (beyond those related to your licence, registration, ownership, and insurance) or make a report about the accident, but you should talk to a lawyer first in order to be certain of your duties.

### **What can the police do after they arrest you?**

The police have the right to search you for weapons and for any evidence relating to the offence. They can take you to the lock-up and book you. If the offence is an indictable or hybrid one, they can fingerprint and photograph you.

### **Will you need bail?**

After you have been arrested by a police officer, or by any other person who has turned you over to a police officer, you are entitled to appear promptly before a justice of the peace or judge to answer any charges that are being laid against you. In any event, you are to appear within 24 hours.

The justice of the peace or judge may decide to order that you remain in custody, or may require that you deposit money or property with the court to ensure that you will appear in court if released. This money and property is often called "bail" although that term is not a formal one in Canadian law. The word you will hear from the justice of the peace or judge is "recognizance" or "undertaking".

If you deposit money or property with the court, it can be forfeited if you do not appear in court or if you commit any further offences or breach any special conditions imposed by the court. If someone else signs as a surety for your appearance, that person may also lose the amount of their surety if you do not appear.

When you appear before a justice of the peace or judge, you are entitled to have a lawyer with you to speak to whether you should be released and, if so, whether there should be bail. As this is important to you, you should have a lawyer speak for you. If you did not arrange to have a lawyer present when you first phoned a lawyer on

your arrest, you should ask to speak to the Legal Aid duty counsel who should be available in the cells or court house where you are detained.

If the justice of the peace or judge orders that you remain in custody, there are certain rights of appeal that can be pursued, but you will need a lawyer to carry these out for you.

### **What happens at the first appearance?**

If you need time to speak with a lawyer or relatives or friends before pleading, you may ask the judge to adjourn or remand your matter to another date. Once you explain your reasons, the judge will usually grant your request.

Normally with summary offences you will enter a plea: guilty or not guilty. If the plea is guilty, the court can deal with sentencing right away or set another date to deal with sentencing. The Crown will usually give the judge the information available from the police about the offence, and tell the court if you have a record. You or your lawyer will then be given a chance to speak to provide an explanation or information which will assist the court in deciding what your sentence should be.

With most indictable offences you may choose trial by Provincial Court judge, or by Queen's Bench judge, or Queen's Bench judge and jury. Depending on what election is made, either a trial date or a preliminary hearing will be set at a time that is convenient for you and your lawyer. On some indictable offences the trial must be in Provincial Court, so if you plead not guilty a trial date will be set.