



CANADIAN
CONSTITUTION
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Know Your Rights: A Guide to Protest in Canada




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A Guide to Protesting Safely and Legally in Canada



From the Freedom Convoy in Ottawa to demonstrations against the war in Gaza, more Canadians are exercising their rights to peacefully protest.

But what exactly are those rights? Peaceful protest is protected in Canada primarily by sections 2(b) (freedom of expression) and 2(c) (freedom of peaceful assembly) of the Charter of Rights and Freedoms, which is part of Canada's Constitution. Since these freedoms are constitutionally protected, all government acts and laws must comply with them – unless the government can demonstrate that the limits they've imposed are reasonable and justified in a free and democratic society.



So what are those reasonable limits? Both protesters and police often don't know. That can lead to unconstitutional police action in some cases, and frustrating police **inaction** in other cases.

This guide aims to help educate Canadians about when, where, and how they can protest without breaking laws or violating other people's rights.

This guide is not legal advice. If you have questions about a specific legal matter, contact your own criminal defence lawyer. If you're organizing a protest where you think you could be arrested, you may wish to contact a criminal defence lawyer in advance, or at least have their phone number written on your arm or on a piece of paper in your pocket.

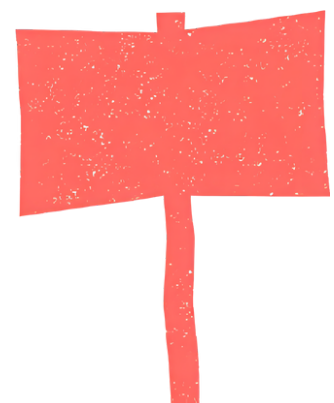
This guide was created by the Canadian Constitution Foundation, a legal charity dedicated to defending Canadians' rights and freedoms. **For more information, visit [TheCCF.ca](https://www.theccf.ca).**





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Where is it legal to protest?



As a general rule, you can legally protest in the following places:

- On local streets and sidewalks, but not the middle of busy highways,
- In municipal parks and squares, but not usually overnight,
- In municipal council meetings using signs, if you're not disruptive,
- Outside legislative buildings including on their grounds,
- Inside the parts of public buildings where you are not interfering with the actual function of the place, such as inside a subway station before the turnstiles or inside an airport before security screening,
- In the public areas of public universities and colleges – but keep in mind that many universities and colleges are private spaces where the Charter does not apply, and the law is still developing in this area.



Where is it illegal to protest?



As a general rule, you usually cannot legally protest in the following places:

- On or inside privately-owned property such as office buildings, shopping malls, or private homeowners' front yards and driveways,
- Inside the non-public areas of government-owned property, which are those areas where protest would interfere with the historical or actual function of the place, such as inside a minister's office, past the turnstiles of a subway station, or in the secured area of an airport,
- Inside "bubble zones," which are geographic spaces outside certain places like abortion clinics, churches, schools, hospitals and day cares where municipal or provincial governments have banned protests due to past disruptions. (The CCF asserts that bubble zones are unconstitutional restrictions on speech and assembly, but bubble zones outside abortion clinics have been upheld by some lower courts. Some municipalities also purport to ban certain types of speech in streets and parks. Check with your local bylaw enforcement department or a lawyer to confirm the rules in your community.)



Do I need a permit to protest?



Many municipalities and provincial legislatures have bylaws or policies in place that say permits are required in order to hold a rally or demonstration.

It is the CCF's position that these permit requirements cannot be enforced in many cases, but we cannot strictly say they are unconstitutional because each law is different and most of these laws have never been challenged in courts. One law that was challenged was a City of Montreal bylaw that required that protest organizers submit an itinerary of their protest in advance to police or face fines. A court struck down that bylaw in 2018.



Are protest marches legal?

Yes. Moving protest marches on local streets or sidewalks are constitutionally protected peaceful assembly and expression.

That's because this activity is compatible with the historical and actual functions of streets, which has long included political demonstrations, and because protest marches, unlike blockades, typically don't coerce or constrain other people or interfere with their rights in any substantial way.


If you want to engage in a street march, you're not likely to face arrest as long as you **keep it moving**. If other protesters start to blockade, your best bet is to leave, because you may find yourself charged with a crime.



Are blockades legal?




Blockades – that is using one’s body or property to block another person – have been a feature of many protests in recent years, from Indigenous activists standing in the way of Coastal Gaslink Pipeline construction in B.C. in 2020, to anti-vaccine mandate protesters parking their big rigs in the streets of Ottawa during the 2022 Freedom Convoy.



Contrary to popular belief, blockades are illegal. More than a dozen judicial decisions confirm that those who believe their right to peaceful assembly will protect them from prosecution for blockading are mistaken.

Police generally do not arrest people who engage in **brief** blockades such as standing in an intersection for a minute or two, but there is no minimum amount of time that police must wait before slapping on handcuffs and restoring the flow of traffic.

If you blockade, expect to be charged with criminal mischief, which is defined under s. 430 (1)(d) of the Criminal Code as obstructing, interrupting or interfering with any person in the lawful use, enjoyment or operation of property. You may even be charged with intimidation, which is defined under section 423(1)(g) of the Criminal Code as blocking or obstructing a highway for the purpose of compelling someone to do something or not do something they are allowed to do. If there’s an injunction in place against blockading, you may be charged with contempt of court. Even **encouraging** blockades on social media may qualify as the crime of counselling mischief.



Are sit-ins legal?

From Mahatma Gandhi's occupation of the Dharasana Salt Works in 1930 to the 1960 takeover by four African-American students of the whites-only section of Woolworth's lunch counter in Greensboro, North Carolina, "sit-ins" have been an important part of many civil rights movements.

As noble as sit-ins can sometimes be, **they are often not constitutionally protected**. Rather, they tend to be a form of civil disobedience, where people break laws with the goal of showing that other laws are unjust and ought to be changed.


Those who engage in civil disobedience must understand that, even though they may believe strongly in the righteousness of their cause, **they are still risking charges for crimes like mischief and/or trespassing**. If convicted, a person who engaged in civil disobedience may get a lighter sentence because they were attempting to fight injustice, but don't count on it.



Are protest encampments legal?



Generally no. Protest encampments are a form of expression, but many courts have found that protest encampments are subject to reasonable limits including laws that forbid camping overnight in parks, laws against erecting structures in parks, and laws against trespassing.



Protesters can typically return each morning to the same site and engage in peaceful protest, but those who stay overnight may face arrest.

The same is true of university campuses. Courts have typically found that universities are entitled to enforce trespass laws against campers, both in cases where the university is found to be part of government, such that the Charter applies, and where the university is considered **private**, such that the Charter does not apply.



Do I have to move if the police tell me to move?



It depends. Police are allowed to arrest a person for “breach of peace” if they have reason to believe that person is about to act out violently. On the other hand, there is no common law power to arrest a provocateur who is acting lawfully in order to prevent a breach of the peace against them.

Still, police often believe that the best way to keep the peace is to keep protesters and counter-protesters physically separated by ordering protesters onto one side of a street or into one section of a park, while requiring counter-protesters to stay on the other side of the street or in another part of the park. The CCF believes this practice violates the rights of those who wish to engage verbally with the other side, but you may not want to test your luck; there have been instances of counterprotesters arrested for breach of peace simply for verbally confronting the other side.

Arrest for breach of peace is an unusual power because it does not lead to charges. Rather, it usually leads to a short “time out” in a jail cell until police believe the peace has been restored and they can safely release the person.



What can I say at protests without violating the law?



In Canada, the Supreme Court has been clear that even the most subjectively offensive speech is protected. This makes sense because the entire point of free speech is to allow individuals to speak their minds without censorship. In practice, this means courts will not uphold restrictions on speech based on its content, but only based on its **effects**, such as where the speech is incitement to violence against a group.

The main limits are the four Criminal Code hate speech provisions:

- advocating or promoting genocide, with genocide defined as killing members of an identifiable group or deliberately inflicting on the group conditions of life calculated to bring about the group's physical destruction with intent to destroy the group in whole or in part (s. 318(1));
- inciting hatred against any identifiable group where such incitement is likely to lead to a breach of the peace (s. 319 (1));
- communicating statements, other than in private conversation, that wilfully promote hatred against any identifiable group
- (s. 319 (2)); and
- communicating statements, other than in private conversation, that wilfully promote antisemitism by condoning, denying or downplaying the Holocaust (s. 319 (2.1)).

Some municipalities have passed constitutionally-questionable bylaws that threaten tickets for merely offensive speech uttered in streets or in parks, which they label “harassment” or “bullying.” The CCF is challenging one such a bylaw in Waterloo Region, Ontario. Consult your municipality’s bylaw department or a lawyer to learn if such a law is in place in your community.

When does an assembly become unlawful?



Section 63(1) of the Criminal Code defines “unlawful assembly” as a gathering of three or more people who gather in a way that causes people in the neighbourhood to reasonably fear that the gathering “will disturb the peace tumultuously; or will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously.” To disturb the peace “tumultuously” was defined by B.C.’s appeal court as creating “an atmosphere of force or violence.”

Section 64 of the Criminal Code describes a “riot” as “an unlawful assembly that has begun to disturb the peace tumultuously.”



It is a crime to be a member of an unlawful assembly (s. 66(1)) or to participate in a riot (s. 65(1)).

The Criminal Code says that police, mayors or other officials can declare that an assembly has turned into a riot by proclaiming the following: “His Majesty the King charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business on the pain of being guilty of an offence for which, on conviction, they may be sentenced to imprisonment for life. GOD SAVE THE KING.”

If you hear these words, you had better leave or face charges!



Can I wear a mask or face covering at a protest?



Yes. Montreal had a ban on wearing masks at protests but it was struck down by a court in 2018. The CCF is not aware of other mask bans.

That said, it is a crime to wear a mask or other disguise to conceal one's identity without lawful excuse while taking part in a riot (s. 65(2) of the Criminal Code) or when engaged in unlawful assembly (s. 66(2)).

Can the police use drones to record me at a protest?



This is unclear. Police have begun to use drones to record video at protests that can later be used to identify people who break laws, and to collect evidence. This practice is so new that courts have yet to comment on it.

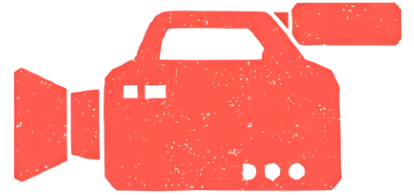
What we do know is that just because you're out in public, that doesn't mean you have no reasonable expectation of privacy. Where the state interferes with a reasonable expectation of privacy, they've engaged in a search. Section 8 of the Charter says everyone shall be secure against unreasonable searches. Searches only tend to be reasonable when they are made with consent, when police have a warrant, or when they are done in exigent circumstances, such as to prevent death or serious injury.

If a drone is being used to spy on people at protests without advance notice and without proper justification, that may very well be unlawful search. If you have concerns that you were spied on by a drone, contact a lawyer.





Can I film or livestream a protest?



Yes, you can film or livestream at a protest, **but** there are a few things to know.

First, if police demand that you move further away from them because where you're standing is interfering with an investigation, or because they are conducting an arrest, you should comply. If you do not, you may be charged with obstruction of a peace officer (s. 129 of the Criminal Code).

Second, it's important to consider that police may be able to confiscate your phone if they have reason to believe you filmed a crime being committed and there is evidence on your phone. One way to avoid having your privacy breached is to have your phone protected with an old-fashioned password rather than unprotected or openable with facial recognition, since police have been known to try opening phones this way. **You should not give them your password and contact a defence lawyer for advice.**

Finally, many people are under the mistaken impression that you cannot film them in public without consent. This is simply untrue. However, getting in their face could provoke a bad reaction and compromise your safety.



Can police search me at a protest?



Typically not without your consent. For example, a court found Toronto police had no authority to set up a checkpoint at the edge of a public park where protesters were meeting and search backpacks as a condition of entering the park. (Note: this rule might not apply at certain events like a ticketed concert in a public park.)



Police can search you if they have detained you for investigative purposes, but only for safety reasons. This means police can pat you down to look for weapons, in order to protect their own safety, and feel the exterior of your bag for weapons. If you're unsure whether you are being detained, just ask.

If police have decided to arrest you, in addition to a safety search, they are allowed to search you and your belongings for evidence. If your phone is unlocked, police may be allowed to search it for evidence. However, **police cannot demand the password or force you to unlock your phone without a warrant.**





Am I required to answer the police's questions?

Generally no. You have a right to remain silent at all times. Police are allowed to ask questions for investigative purposes. If you don't want to speak to a police officer, simply ask whether you are being detained. If they say no, you can simply walk away. Even if you are detained or arrested, you still do not need to answer any questions.

Keep in mind that if you do speak to a police officer and lie, you could be charged with obstructing a peace officer (s. 129 of the Criminal Code).



Am I required to show identification at a protest?

No, you are not required to show police ID, unless you are driving, in which case you must provide your driver's license upon request.

If you're being ticketed, you will likely be asked for ID. While you technically aren't required to give it to police, it is probably a good idea because they can detain you if they feel that it's necessary to confirm your identity.



What happens if I'm told I'm under arrest?



For your own safety, you should do your best to comply with the officer's demands, since they can use reasonable force to arrest you, and that can lead to injury. Remember, **you do not have to answer the police's questions.**



Police must tell you why you've been arrested, and allow you to speak with a lawyer as soon as possible. **You must be provided with a telephone to reach a lawyer, and the phone number of "duty counsel," who are criminal defence lawyers paid for by taxpayers.** You are entitled to contact any lawyer you choose, and entitled to keep calling until you reach a lawyer.



What should I do if I witness police misconduct?



If you believe police engaged in misconduct, you should take photos and videos, write down what you believe might be helpful in an investigation, and try to get the contact information of other possible witnesses.

You may ask police for their badge numbers and take pictures of their badges. You can also take pictures of an officer's patrol car number.

Next, you can contact your province's or territory's independent complaints agency. The agencies include but are not limited to:

- Nova Scotia: [Office of the Police Complaints Commissioner](#)
 - Ontario: [Law Enforcement Complaints Agency](#)
 - Quebec: [Commissaire à la déontologie policière](#)
 - Manitoba: [Law Enforcement Review Agency](#)
 - Saskatchewan: [Public Complaints Commission](#)
 - RCMP: [Civilian Review and Complaints Commission for the RCMP](#)
 - British Columbia: [Office of the Police Complaint Commissioner](#)
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If you believe your rights were violated and you are interested in seeking assistance from the CCF, [please use this form to contact us](#). Please note that the CCF does not have criminal defence lawyers on staff and cannot arrange for a criminal defence lawyer to defend you against your charges. The CCF may be able to work with your lawyer to provide support on constitutional issues, such as peaceful assembly and free expression.

