DMQ

PROTECT THE PROTEST

Know Your Rights Guide

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Nolite te bastardes carborundorum

Contents of this guide:

- What are your rights and risks when protesting in Tiotia:ke/Montréal
- What to do when arrested or detained
- What happens when you're charged with a crime
- Example cases

This booklet outlines legal rights and procedures relevant to demonstrations of various forms.

The content in this booklet does not constitute legal advice. Consult DMQ or a lawyer for legal advice. The content is specific to the Tiohtià:ke/Montréal context and regulations as of 2026.

Right to Protest

Under Section 2(b) of the *Canadian Charter of Rights and Freedoms*, everyone in Canada has the right to peacefully protest, express their opinion, picket, and assemble with other people (1). This includes citizens, visitors, and individuals with no legal status in Canada. Here are some things to consider when planning a protest:

Location of Protest: You can plan a protest on public property that is accessible by the public (streets, parks, around government buildings, etc) (2). Some government offices ban protests if it disrupts the function and access of the space. You do not have the right to protest on private property without the owner's consent but some semi-public private spaces lie in a grey zone. The law recognizes the right to protest at universities, for example, even if they are privately owned. Highways are also a special case - while Quebec's Highway Safety Code states that traffic cannot be obstructed, marches are legal even when they obstruct traffic (3).

Permits: You do not need to obtain a permit or to warn the police in advance of a protest. If an officer asks you about your involvement in ar organization of the protest, you may ignore their questions and refuse to answer (2).

Basic (Legal) Preparation for a Protest:

- Write down a lawyer's number on your body that is not visible externally. Police have previously identified those with numbers written on their bodies as targets.
- Bring water and medication for ~3 days.
- Don't bring sharp objects (i.e., scissors, pocket knife, etc) as it can be considered a weapon if arrested.
- Turn off fingerprint and Face ID, and set up a passcode for your phone and Signal app if you are bringing your phone. Turn off notifications. Turn off your phone or at least put it on airplane mode.
- Tell someone you trust that you are attending the protest. Ideally attend the protest with others you know. If you get arrested, people you know can confirm your presence in jail by calling the station if they have your full legal name, so make sure to tell your emergency contact.

What is Detention?

Detention happens when a police officer stops you and you are not free to leave, even if they have not said that you are under arrest. It can be physical, such as being held in place, or psychological, meaning that the situation makes a reasonable person believe that they cannot walk away.

Under s. 9 of the Charter, everyone has the right not to be arbitrarily detained or imprisoned (1). They must have a valid reason. They cannot detain you simply because they do not like how you look, where you are standing, or who you are with.

Three rights apply to you immediately once detained (1):

1. You have the right to be told promptly why you are being detained.
2. You have the right to remain silent.
3. You have the right to speak to a lawyer without delay.

What to do if detained:

Do not answer any questions except in the following cases: if you are operating a vehicle, a bicycle, or engaged in an activity that is regulated by law, such as hunting, fishing, or traffic related activites, you must provide your name and identification.

In other situations, you may politely ask:

"Am I free to go?"

If the officer says yes, you can leave calmly. If the officer says no, your Charter rights apply immediately. Make sure to ask on what grounds you have been detained.

You **don't need to provide your name or identification**. However, they can take you to the station if you don't provide your name. If they ask you questions, you can respond:

"I don't wish to answer questions. I'd like to speak to a lawyer."

What is Arrest?

An arrest is more serious than a detention. It occurs when the police have reasonable and probable grounds to believe that you have committed, are committing, or are about to commit an offence. When this happens, they can take you into custody. Police may place you in handcuffs and take you to a police station for processing.

Charter Rights apply immediately upon arrest (1):

1. The officer must tell you the reason for your arrest.
2. You have the right to talk to a lawyer confidentially and without delay, and to be informed of that right.
3. You have the right to remain silent and not have your silence used against you.

Contacting your lawyer: You have the right to speak to a lawyer **in private**, either one you choose or one from legal aid duty counsel.

You can ask to use your personal phone, or the police must provide you with one. You do not ever need to give your access code to the police to call your lawyer; they might ask for this, but they do not have the right.

If you are arrested, the only information you must provide are:

Name, Address, and **Birthdate (NAB). You do not need to show an identification card.**

You must provide identification only in the following cases:

- If you are driving a car, you must show your driver's licence and vehicle documents.
- If you are biking and break a traffic law.
- If you are caught committing a provincial offence, such as a bylaw violation, police can ask for identification to issue a ticket.
- If you are released with conditions, you may have to identify yourself to comply with those terms.

Steps if you are arrested:

1. **Try to stay calm.** Getting arrested can be stressful. Use whatever stress reduction methods work for you. This will help you make sure your rights are being respected.
2. **Stay silent.** It is never in your interest to talk to the police. Let a lawyer communicate with them on your behalf. Avoid discussing the situation with other people as well since those conversations might not be confidential.
3. **Listen carefully.** The officer should tell you that you are under arrest and for what reason. You have the right to know this information.
4. **Call a lawyer.** You have the right to a private phone call with a lawyer without unnecessary delay. If you cannot afford one, you can ask to speak with duty counsel, which is a free legal service available 24 hours a day.
5. **Don't resist arrest.** Resisting arrest can lead to additional charges under the Criminal Code (4).

You have a right to be searched in a reasonable manner.

Police may conduct a pat-down search to ensure you do not have weapons or evidence related to the alleged offence. They cannot use excessive force or conduct invasive searches without clear justification. If you believe the search is inappropriate, it's best to raise that issue with your lawyer rather than arguing at the moment.

You may tell the police your gender identity if you feel comfortable. The police your preference for a male or female officer to pat you down.

If you have certain injuries, inform the police right away. The police have to respect your basic needs upon arrest. For example, they must provide you with a bathroom if you need to use one, or water if you are dehydrated.

Feel free to ask for the name and badge number of the police officer.

FAQs on Arrests

Should I provide identification?

- Legally you don't need to provide ID, but doing so speeds up the process of identifying you. Before the police release you, they require some way of identifying you. If you don't provide ID, then they will have to search i.e. via social media to try to identify you, which can prolong your release. Some individuals choose not to show their ID in case their ID contains sensitive information.

What happens if I lie?

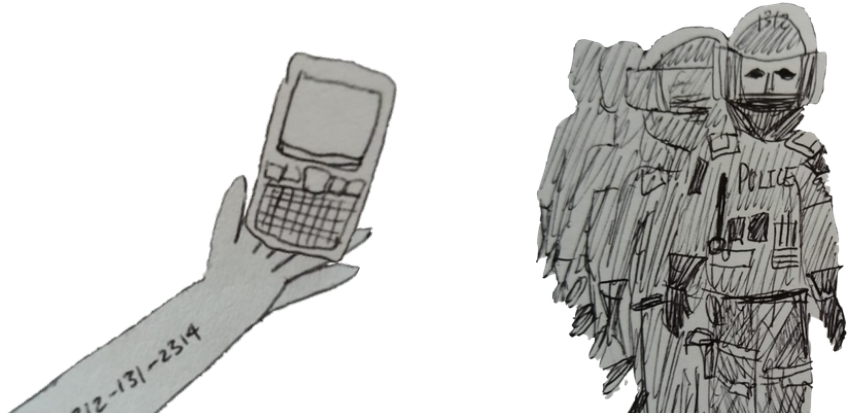
- Do not lie, provide a false name, or say anything untrue during detention or arrest. This may be used against you.
- Do not provide a false ID as this could lead to more serious charges.

What happens if I don't have a lawyer's number when detained or arrested?

- DMQ provides free arrest support for all protesters. We can be reached at **438-367-3376**. Legal aid lawyer, free of charge, are also available at **1-800-842-2213.**
- The police are required to help you find a lawyer, for example, by finding the number of a your lawyer on the Law Society directory (5).
- Police must let you speak to their lawyer in a private space.
- It is NOT true that you get only one call. Circumstances in which you can contact a lawyer more than once (5):
  - A new question arises after you've spoken to your lawyer and you need to consult with them again.
  - The charges have changed to a more serious crime than initially stated.
  - The police want to use another method of investigation or questioning (i.e., a lie detector).

Does remaining silent to their questions make me look guilty?

- No. Remaining silent and refusing to answer the police's questions cannot be used against you as evidence in court.



Police Conduct at Protests:

Policing of protests has become more aggressive in recent years. Tear gas, pepper spray, and physically charging at protestors are commonly deployed in Montréal. Various guides online have resources on how to take precautions at protests (i.e., Educaloi). The content below describes the behaviour of the police and related legal precautions to take.

Trickery: Police are allowed to use trickery in order to investigate a crime, but it cannot shock the conscience of the public. Thus, **do not speak to anyone but your lawyer**. **Police can lie** about the law, or they can use people to get information that you say to informants they have planted. For instance, they may tell you that they have video evidence of a crime they claim that you have committed when they don't, or claim your friend has already confessed.

Here are examples of what the police ARE NOT allowed to do:

- verbally insult aspects of your identity
- physically hurt, harass, bully, or threaten you (i.e., by saying your charges will become heavier if you don't answer their questions)
- destroy something that belongs to you
- refuse to give you their name and badge number

If any of the above occurs to you, film a video if possible, record what happened on paper, and/or tell your lawyer as soon as possible. Take photos of any injuries as well. Police brutality, failure to read out your rights properly, and refusal to give name and badge # could lead to charges being dropped. Don't be afraid to repeatedly ask for the name and badge number.

While police might use a lie detector, and your verbal responses can be used as evidence, the **lie detector test** cannot be used against you, as the results are deemed **unreliable**.

Police-Specific FAQs

Do the police have to warn the crowd once they deem a protest illegal?

- Not necessarily. If they don't announce that a protest is illegal, you cannot be charged with attending an illegal protest (unlawful assembly charge), but police are not legally obligated to warn you before they arrest you.

What happens if an officer misgenders me?

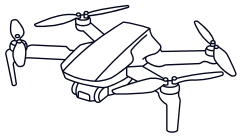
- If they misgender you, you can correct them. If they don't respect your gender, this is a violation of your rights.

Can I film the police?

- Yes, you have the right to film police officers as long as your filming does not impede police work or block their path. The police could charge one with "obstruction of justice or police work" if they believe the filming is "impeding" their work.
- Police may threaten you to stop filming, but you can still film and have the right to know their name and badge number, as long as you are not blocking their work.

What are you allowed to say to an officer?

- You are allowed to chant anti-police slogans and call the police out on their behaviour. While some municipalities try to use by-laws to make insulting a police officer a penal offence, it is not a crime and indeed is protected by your right to free speech under the Charter. As long as you are not inciting violence, then your comments are likely permissible (1).



How do the police surveil protests?

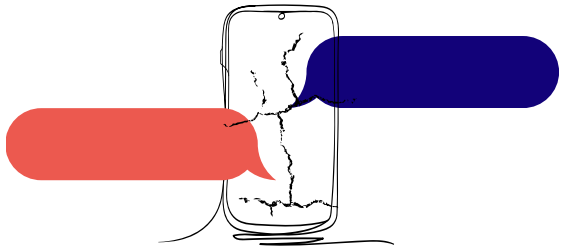
- Police use handheld cameras and drone footage to track live activities. Drone footage has historically zoomed in and monitored individuals wearing black, unidentifiable clothing.
- Police cyberexperts monitor public social media accounts both before a protest and after.
- The RCMP has admitted to using data collecting technology to scan phones. To date, the SPVM have not admitted to using this practice.

Seizing Your Phone

- Police generally are not allowed to search your phone unless they have a warrant. If they do have a warrant, ask to see it. A warrant has a judge's signature, location, time-range, scope of search, and an official court seal. When police have a warrant, they can take your phone, but you don't have to give them your password. They can use software to try to access the contents on your phone.
- Upon arrest or detention, the police are only permitted to seize your device and attempt to search it if (6):
  - The arrest is lawful
  - Police have a **reasonable belief** that doing so will protect the public from immediate harm, or have a reasonable belief that you will destroy evidence.
  - Police have a reasonable belief that you have evidence of a crime.
  - Police must take detailed notes.
- Police may try to use your face or fingerprints to access the contents of your phone to unlock it.
- Whether this is lawful or not is still not certain, as it does not explicitly force one to break their right to silence, but biometric data can be considered personal information.
- As a bystander, police might ask to see your phone: You have a right to refuse, but police may then subpoena you or get a search warrant if they have "reasonable belief" that you have evidence.

Should I use my phone to call my lawyer?

- While police may offer this option, there have been cases in the past where police have grabbed the phone once the arrestee unlocked it to call their lawyer. This is an unlawful search and the courts may exclude any evidence obtained from it. Evidence may be considered inadmissible s. 24 of the Charter orders a remedy to be sought when a right has been violated.



After Arrest Procedure

After being processed, you may be released with or without conditions. If you're released, you will receive a paper with your next court date, as well as the date to get your fingerprints scanned.

If you're not released, you will brought before a judge for a bail hearing within 24 hours. At that hearing, the court will decide whether you can be released before trial and under what conditions. Always read and understand the conditions before signing. If you violate the conditions, you may face new charges. If you are unable to comply with the conditions, tell your lawyer who can help get them changed.

At the first opportunity, take the time to write a testimony with all the details pertaining to your arrest while it is still fresh in your mind. If you remember the timing of the events, that helps to form the chronology of the incidents that occurred. Seal your testimony in an envelope, write a date, and address the envelope to your lawyer.

Also, keep in mind that if they arrest you on Friday, they will hold you at the station over the weekend (and during public holidays).

Arrested

Taken to the police station

Jail cell

May be released with or without conditions and with a Promise to Appear, which is a document saying when to go to court. Common release conditions include not going within the vicinity of certain places, not contacting certain people, or obeying a curfew.

Bail hearing in front of judge within 24 hours (+) to be released.

Bail hearing: The Crown has the burden to present evidence, and will argue whether you should stay detained or be released under conditions.

Common Charges for Activists (under Criminal Code):

1. **Mischief** (s.430): damaging or interfering with property, like chaining yourself to a building and vandalizing a building.
2. **Obstructing a peace officer** (s.129): interfering with police duties, even verbally or by standing too close.
3. **Assaulting an Officer** (s. 270) includes pushing onself off of an officer, spitting on an officer, or closing a door on an officer.
4. **Unlawful assembly** (s.63) and **Riot** (s.64) – a gathering of 3 or more people who the police determine might disturb the peace.
5. **Disguise with intent** (s.351(2)) – wearing a mask or face covering to conceal identity with intent to commit an offence.
6. **Obstruction of justice** (s. 139): interfering with judicial proceedings (i.e. bribing a judge, destroying evidence, etc).

Note that it is a crime to assist others or conspire with others to commit these crimes, even if you do not perpetrate the crime directly (Aiding (s. 21(1)(b)) and Abetting (s. 21(1)(c))).

While these consequences can sound serious, the key is preparation and community support.

Ticket vs. Crime:
Crimes are listed in the Canadian Criminal Code and carry a possible prison sentence. By-laws are regulations, such as graffiti and noise by-laws. When you violate a by-law, you can be ticketed and fined.

Protesters have been ticketed for postering, wheatpasting, and even writing in chalk on sidewalks. If this happens to you, you can try to challenge the ticket as a violation of your freedom of expression.

Freedom of Speech:

Freedom of expression includes the right to speak in an unpleasant way like shouting. Freedom of expression is not intended to simply protect speech on neutral topics, but also controversial ones.

As a general rule, most speech is protected but our society draws a line for hate speech. **Hate speech** is defined in the Criminal Code as promoting, or spreading hatred of a identifiable group (distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability) (7). Hate speech attempts to clearly dehumanize a group publicly.

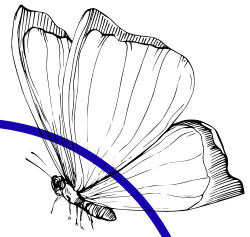
Key features of hate speech in the code (7):

1) **Advocating Genocide** (s. 318): Advocating or promoting genocide against an identifiable group.
2) **Public Incitement of Hatred** (s. 319(1)): Inciting hatred against an identifiable group in a public setting (i.e. park, streets, mall, social media).
3) **Wilful Promotion of Hatred** (s. 319(2)): Willfully promoting hatred against any identifiable group.
4) **Wilful Promotion of Antisemitism** (s. 319(2.1)): Condoning, denying or downplaying the Holocaust in public.

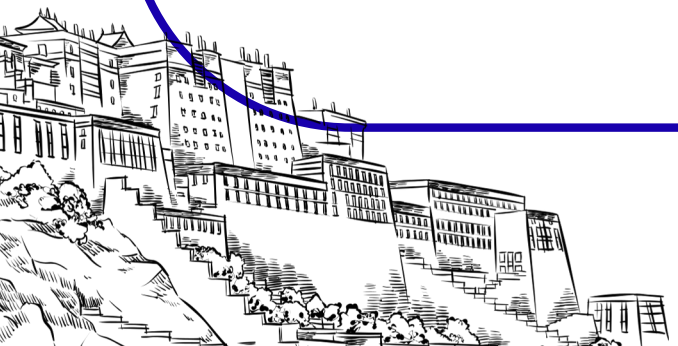
Defences to the crime of hate speech include if the statement is:

- true
- a religious opinion or belief made in good faith
- part of a discussion that was for the public benefit
- made in good faith to point out and remove hate speech

Note: Hate speech laws do not apply to the private domain. However, if an email or recording is leaked to the public (i.e., via social media), then you can face a defamation lawsuit or disciplinary proceedings at work.



> **Freedom of expression is a crucial aspect of the democratic commitment...because it helps to ensure that participation in the political process is open to all persons.**
>
> *-Supreme Court of Canada*



SLAPP and Anti-SLAPP Legislation

SLAPP stands for 'Strategic Lawsuit Against Public Participation,' often used by corporations or conservative organizations to pro-actively intimidate activists from criticizing their actions or policies. They can drag activists, organizations, and journalists through a long and costly lawsuit as a means to silence their voices (8). Four provinces have anti-SLAPP legislation - Quebec, Ontario, British Columbia, and Manitoba - to allow defendants to dismiss the SLAPP lawsuit early on in the proceedings by demonstrating the issue is of public interest (8).

Anti-SLAPP legislation has been successful in stopping many of these abusive lawsuits. However, now corporations are trying to use criminal laws to achieve the same purposes. Claiming to be "victims", corporations insist that Prosecutors file criminal charges against protesters who criticize them. Examples include banks who press charges for peaceful sit-ins at their branches or car companies who press charges for non-violent demonstrations outside their dealerships.

Sentences for Protesters:

In order of severity from 1 → 8 (1 least severe, 8 the most)

1. **Peace Bond:** No criminal conviction; an agreement to keep the peace and not contact the victim for a period of time.

2. **Alternative Measures (GAMP/PMRG):** Only for first-time offenders. Community service, written apologies, or donations are often required, following which the charges are dropped.

3. **Absolute Discharge:** Court finds you guilty, but you face no conditions or criminal record (7).

4. **Conditional Discharge:** Court finds you guilty. Once you comply with certain conditions (eg. community service), you receive a discharge and face no permanent criminal record (7).

5. **Suspended Sentence:** Finding of guilt and sentence imposed. You do not have to perform your sentence unless you commit any other crimes during a certain probationary period.

6. **Fine:** Up to $5000 for summary offences.

7. **Probation:** Under surveillance for up to 3 years to ensure you don't commit any other crimes.

8. **Imprisonment:** Jail sentence for a maximum of 10 years for mischief-related charges. House arrest is the main form of prison for most offences.

First-time offenders typically get a conditional or absolute discharge or alternative measures. This means that first-time offenders don't typically receive permanent criminal charges.

Those with an absolute discharge can clear their record **after 1 year**, and for a Conditional Discharge, one can clear it **after 3 years**.

Those who are found guilty of a crime and have not received a discharge can apply for a pardon after **5 years (summary conviction) or 10 years (indictable offence).**

If you plead guilty or are found guilty to a ticket, it does not show up on your criminal record.

Impact of a criminal record:

Employment

- Employers can't fire or refuse to hire someone with a criminal record, unless the crime relates specifically to the job tasks, as it can be considered discriminatory under Quebec's Charter (12).
- Jobs that typically require a criminal record check: Caregiver, teacher, nurse, social worker, government employee, anyone working with children, elderly, or disabled folks, drivers, delivery couriers, and finance-related positions (accountant, bank teller, etc).

Housing:

- Landlords can refuse an apartment to someone with a criminal record (12).

Travel:

- Various countries have different rules about letting foreigners in with a criminal record. In particular, it is difficult to enter the US with a criminal record.

Politics of Arrest

Police have been known to abruptly arrest a protestor in a lawful protest as a dispersion tactic. In these cases, protestors can see the charges dropped when police lack evidence to move forward with the trial. Without enough evidence against you, cases can be dropped or withdrawn.

It is important to acknowledge that the police and judicial system have inherent biases. Indigenous, Black, racialized, Trans, unhoused, migrant, and disabled peoples are policed and prosecuted more harshly. Being aware of this, allies can step up, for example, by recording interactions, witnessing arrests, or ensuring legal observers are present. By knowing one's rights, the goal is to minimize fear and ambiguity, and be prepared.

Legal Proceedings for Arrestee

1. Arrested:
When you are arrested, you may be released immediately with a promise to appear in Court on a certain date, or taken to the police station.

2. Bail Hearing:
If you are not released by the police, you have the right to be brought in front of a judge within 24 hours. The judge decides on whether to release you or not, and potentially on what conditions.

3. Finger Print Collection:
You must go to the police station to scan your fingerprints and provide a photo (typically right before first appearance).

4. First Appearance:
At the first appearance, you can enter a plea of guilty or not guilty. You will also receive the proof that the state has against you.

5. Pro-forma Hearings:
These are pre-trial hearings to set further dates, for parties to obtain further evidence, or other admin matters. There is no assessment of the charges. The process is intended to structure the trial. This stage can take months or years.

6. Trial:
All evidence is presented by both sides. The state has the burden of proving the accused committed the crime beyond a reasonable doubt.

7. Sentence:
If you are found guilty, a judge will decide on your sentence.

Case Studies of Protests

1. 2012 Tuition Hike Protests in Montréal:
   - The tuition hike protests from 2011 to 2014 had a total of 5,895 arrests during 185 activities (10).
   - By-law P-6 was created during this time to ban wearing masks and planning demonstrations without warning authorities. While there were many mass arrests during this period, many of the charges under By-law P-6 (the most common charge made) were dropped or acquitted due to lack of evidence.
   - This was similar to the mass arrest at the Toronto G20 protest in 2010, where 95% of 1140 people arrested had their cases dropped or were found not guilty (10).

2. Last Generation Bridge Hang:
   - Climate activists hung from the Jacques Cartier Bridge to block the road and create awareness of Enbridge's Line 9B pipeline in 2024.
   - The charges for the activists who climbed to the top of the bridge were dismissed due to the unfair treatment they received by the Prosecutor.

3. Black Lives Matter Protests
   - In the US, there were at least 10,000 arrests nationwide during BLM; most cases were dropped. Across 12 jurisdictions, it was found that at least 90% of cases were dropped or dismissed (13).

4. Border Blockade: During an anti-COVID-19 protest in Alberta, 2 individuals were sentenced to 6 and a half years in prison for possessing a firearm and pipebomb with conspiracy to use it against the police (14). This is the longest known sentence for a protester in Canadian history, at least publicly speaking.

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