

Note: addresses and phone numbers of agencies listed in this booklet may have changed since publication. Please check phone book before calling.

**ARREST**

**CIVIL RIGHTS AND POLICE POWERS**



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**ARREST:  
CIVIL RIGHTS AND POLICE POWERS**

**BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**  
1988 Edition

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**NOTICE**

This handbook has been prepared and published for information and educational purposes only. Individuals with specific legal problems should not rely on the contents of this handbook and are advised to seek legal advice from qualified lawyers.

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## INTRODUCTION

The B.C. Civil Liberties Association has prepared this handbook in the hope that it will help citizens to be clearer about their rights and about police duties under certain circumstances. Careful attention to these mutual rights and duties **by all concerned**, is a necessary pre-requisite to the safe-guarding and cultivation of the citizen's liberty. Common sense and good manners are not often spoken of in this context, but it is most important that civilized behavior not be forgotten. Civil liberty implies not only rights, but obligations and responsibilities as well. We trust that those who use this booklet will not try to apply it in a rigid way, but in the light of their own reasonableness and the particular circumstances which face them.

If you find yourself in a circumstance described in this handbook, it is best that you obtain the advice of a lawyer before acting on any of the information herein. The ever-changing nature of the law and the complexity often involved in applying it to real-life circumstances limit the practical application of a general legal information handbook like this one. Generally speaking, this handbook sets out the range of conduct you can expect from police in the lawful exercise of their duties. You may always ask for an explanation of that conduct if you are concerned that it is inappropriate. However, if you disagree with the way you are being treated by the police, say so politely, but make every reasonable effort to comply with their direction. You should then contact a lawyer or one of the resource agencies listed at the back of this book as soon as possible.

## A. Arrest by Police with Warrant

If a police officer has a warrant to arrest you:

- (1) Ask to see the warrant. It **must** be produced at the time of arrest if it concerns civil debt (including non-payment of maintenance). If the warrant alleges another kind of offence and it is possible for him to do so, the arresting officer has a duty to produce the warrant upon request. If it is not possible or practicable for him to have the warrant with him when arresting you, the arresting officer need only tell you that the reason for the arrest is an outstanding warrant. He does not need to know the contents of the warrant before he arrests you, but he must show or read the warrant to you as soon after the arrest as possible. Remember that you have the right to read the warrant yourself.
- (2) Make sure the warrant really means you. It must name or describe you, set out the offence with which you are charged, and order that you be arrested and brought before the justice who issued the warrant, or before some other justice having jurisdiction in the same territorial division.

## B. Arrest by Police without Warrant

### I. Authority for the Arrest

Under sec. 450(1) of the Criminal Code of Canada, a peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence,

*NOTE:* Criminal offences are characterized as "summary conviction" offences (less serious crimes with fines up to

\$2000 or imprisonment up to 6 months), or "indictable" offences (more serious crimes which carry more severe penalties and require the charged person to submit to a different set of procedures on arrest and at trial). Some charges may be dealt with either by way of summary conviction or indictment. In these cases, there is a presumption that the Crown will proceed by indictment; thus, the procedures that apply to indictable offences (e.g. fingerprinting) are applicable until the Crown elects to proceed by way of summary conviction.

Some INDICTABLE OFFENCES are arson, breaking and entering, forgery, fraud, murder, sexual assault, and robbery. Indictable offences are all legislated federally and generally, but not necessarily, refer to offences within the Criminal Code. SUMMARY CONVICTION offences include violations of municipal by-laws, provincial laws, and several Criminal Code and other federal laws such as disturbing the peace and vandalism under \$50. *THIS POWER TO ARREST IS LIMITED IN RELATION TO MINOR OFFENCES WHERE THE PUBLIC INTEREST MAY BE SATISFIED WITHOUT TAKING A PERSON INTO CUSTODY* (see below, Alternatives To Arrest, page 11)

- (b) a person whom he finds committing a criminal offence, or
- (c) a person for whose arrest he has reasonable and probable grounds to believe that a warrant is in force within the territorial jurisdiction in which the person is found.

If a police officer says he is arresting you, but has no warrant:

- (a) Note the officer's identification - his number (if he is in uniform), or his badge (which you are entitled to see) if he is in plain clothes.
- (b) Ask him the reason for the arrest. Unless the reason is obvious, the arresting officer has a

duty to inform you of the reason for your arrest. While you may question the officer about your arrest, you may be laying yourself open to further charges if your questions are unduly persistent, irrelevant or made in an unreasonable manner.

- (c) If the officer will give you no reason for the arrest, contact a lawyer or the B.C. Civil Liberties Association **as soon as possible**, whether or not you have any money (see phone numbers, page 46).
- (d) If the officer has identified himself properly, you should go with him when requested to do so. If you believe that the arrest is improper, say so to the policeman and any witnesses, explaining your reason. Offering physical resistance to the arresting officer, however, may well lead to charges against you of assaulting or obstructing the officer.
- (e) **REMEMBER:** a police officer need only have reasonable and probable grounds for believing that you are committing or have committed an offence. Such a belief must be based on facts the officer has personally observed or has had related to him. You may be convinced of your own innocence, but other circumstances may indicate (quite reasonably) to the police officer that there are legitimate grounds for your arrest. Therefore, even if the police officer is wrong the arrest is not necessarily illegal.

**IF YOU BELIEVE YOUR ARREST WAS ILLEGAL, YOU MAY TAKE ANY OR ALL OF THE FOLLOWING ACTIONS:**

- (a) Submit a citizen's complaint against the arresting police officer(s) using the procedures described on page 41;
- (b) Raise the issue at your trial;
- (c) Seek prosecution of the police officer for false imprisonment and/or assault;
- (d) Sue the police officer for damages for false arrest.

**If you are a young person under the age of 18 years, you should be sure to inform the arresting officer of your age so that your case can be referred to the youth court where you will be afforded special protection.**

## **2. Alternatives to Arrest**

While a police officer has the power to arrest you without a warrant as described above, he has a duty under section 450(2) of the Criminal Code **not to arrest** you for certain minor offences that are committed in circumstances which lead him to believe that the public interest may be satisfied, and that you will appear in court voluntarily, without an arrest.

In deciding whether or not to arrest you without a warrant, a police officer must consider:

- (a) the need to identify you at the time of the offence and later in court;
- (b) the need to secure or save evidence of your

## D. Detention without Arrest

The validity of the laws governing detention without arrest which are described below may be challenged under the Charter of Rights in the near future. The following reflects the current status of these laws. The reader should be aware, however, that judicial challenges to these laws may substantially alter the procedures outlined below. Accordingly, individuals who are detained under these laws (or who fear that they may be) should consult a lawyer before acting on the basis of the information provided here.

### I. Offence Act: Section 81(1):

If a peace officer finds you intoxicated in a public place, he may have you detained until you are sober enough to leave without endangering yourself or others or causing a nuisance, or until some responsible person comes to take charge of you. This period of detention cannot exceed 24 hours. While you are detained, you have the right to make at least one phone call in private as soon as possible after you have asked to do so.

If the peace officer who has detained you thinks you are in need of remedial treatment because of your use of alcohol, he must take you before a physician within 24 hours. Where the physician certifies that you need treatment because of excessive use of alcohol and that voluntary treatment has not been arranged or will not be adhered to by you, you may be detained in a treatment centre or a psychiatric or observation unit for a further period of up to 72 hours.

The 72 hour detention can be extended, but only after a Court hearing at which the magistrate must be persuaded that you need compulsory treatment for your alcoholism. The Court, if persuaded, can order your continued attendance at or detention in an institution for the treatment of chronic alcoholics for an indeterminate period not to exceed 12 months.

### 2. Mental Health Act:

Normally, persons are involuntarily admitted to mental health facilities under the procedures set out in section 20 of the Mental Health Act, which requires a written application and two medical certificates. You should be aware, however, that emergency procedures exist whereby someone may be involuntarily admitted for at least 72 hours without the normal procedures being followed.

- (a) **Apprehension by the Police:** Under section 24(1) of the Mental Health Act, where a police officer or constable is satisfied from his own observance or from information received by him that you are acting in a manner likely to endanger your own or someone else's safety, *and* that you are apparently suffering from mental disorder, the officer may take you into custody and take you at once to the physician. If the physician certifies that you are mentally disordered and in need of some kind of care for your own or others' protection, you may be taken to a Provincial mental health facility, a psychiatric unit or an observation unit. Otherwise you must be released. If you are taken to one of the mentioned facilities and the Director is satisfied that a medical certificate has been



issued, you may be detained for a maximum of 72 hours unless during that period you are made an involuntary patient under section 20.

- (b) **"Form A" Warrant:** Under section 24(2) of the Mental Health Act, anyone can apply to a Provincial Court Judge or Justice of the Peace to have you detained under a "Form A" warrant. The person who applies must persuade the Justice that you are mentally disordered and dangerous to be at large. The Justice must also be satisfied that proceeding under the normal section 20 provisions for involuntary admissions, or conveying you to a mental health facility for examination, could not be done without dangerous delay. Once the Justice is satisfied that these conditions are met, he may issue the "Form A" warrant, which authorizes your apprehension and your conveyance and admission to a provincial mental health facility, a psychiatric unit or an observation unit.

*USE OF A "FORM A" WARRANT IS AN EXTREME MEASURE: IT IS THE ONLY ADMISSION PROCEDURE NOT REQUIRING A PRIOR EXAMINATION BY ANY PHYSICIAN.*

Detention under such a warrant cannot exceed 72 hours unless during that period you are made an involuntary patient under section 23.

## II. QUESTIONING BY THE POLICE

### A. In General

*In general you have a right to remain silent whenever you are questioned by the police, whether or not an arrest is involved.*

The exceptions to this general rule are as follows:

- (1) If you are driving a motor vehicle when it is stopped by the police, you must tell them your name and address, and the name and address of the owner of the vehicle. You must also produce your driver's licence, the car registration and proof of insurance.
- (2) If you are driving a car that is involved in an accident, you must state your name and address, and the ownership of the vehicle.
- (3) A bicycle has been defined to mean a motor vehicle. Under the Motor Vehicle Act of British Columbia the driver of a motor vehicle is obliged to provide his name and address.
- (4) Following an arrest a police officer is under no obligation to release you and in fact is required by law to confine you unless he is able to ascertain your identity. Accordingly, once an arrest is effected it is a prudent policy to reveal your correct name and address. In the event an individual gives an alias or misdirects a police officer or fails to respond as he/she is required by law to do so, he/she may be open to a further charge of obstructing justice.

If none of those conditions applies to your situation,



and you prefer to say nothing in response to police questions, then you have the right to remain silent. Your failure to answer is not grounds for a legal arrest, and you cannot be detained or taken in for questioning unless a legal arrest has been made.

## **B. Questions Following an Arrest**

### **I. Right To Remain Silent**

As indicated above, you are not in general required to answer questions put to you by the police even after an arrest. *If you prefer to say nothing, tell the police officer you do not wish to answer questions before obtaining legal advice.* This is better than simply remaining silent without giving an explanation. Complete silence may be used as evidence that you agreed with statements made in your presence, especially if you could reasonably have been expected to reply to them.

### **2. Police Officer's Warning**

The new Charter of Rights now provides that upon arrest or detention you should be promptly informed of your right to retain and instruct legal counsel. Further, facilities should be made available for you to retain and instruct counsel. This has been interpreted to mean that within reason you should be afforded use of a telephone and be permitted to make several calls, if necessary, in order to locate counsel or someone who may assist you. However, there is no requirement that you are to be given unlimited access to a telephone, nor can you expect to be allowed a prolonged attempt to seek counsel. If, in fact, you do not know a lawyer, you are well advised to telephone a

relative or friend in an attempt to have them arrange for legal counsel to contact you. To do so you must leave some method by which counsel may contact you, and further, you must inform the police that you have requested counsel to contact you. Following arrest or detention, you must also be informed that any statement you may give may be used in evidence against you. However, you should be aware that even if this warning is not given, it will not invariably result in the exclusion of any statement that you might give to the police.

### **3. Statements**

If you choose to make a statement, you may write it out yourself. If you let the police officer do it for you, tell him you want to read his written notes and make any corrections you think are necessary. Remember, it is your statement, and you have every right to insist that it is accurate.

There is a common misconception that statements only refer to written communications. This is not true. In fact the majority of admissions and statements are made verbally. Even if there has not been a Charter warning informing you of your right to counsel, the reasons for your arrest, and that any statement you make may be used against you, there will not be an invariable exclusion of statements if there has been a failure to apprise you of these rights. Further, the fact you have made an exculpatory (or innocent) statement does not mean that the prosecutor will necessarily use those statements at your trial. *Accordingly, you should make no statement other than your name and address until so advised by your lawyer.*

#### 4. Lie Detector Tests

Before consenting to take a lie detector test, you would be wise to seek legal advice. Basically, police forces use these tests not to collect evidence for use in court, but to aid them in their investigations. Even though the results of the tests are not presently admissible by the Crown as evidence of the truth or falsify of the statements given by you during the test, the statements themselves can be admitted as evidence of your conversations with the police.

#### 5. Police Promises or Threats

Do not expect that the police officer can "make things easier for you" if you answer his questions. He has no authority to threaten you, nor to offer you promises such as "it will be better for your family (or friends, etc.) if you answer the questions or admit to the charge." Further, the police have no lawful authority to use physical violence, nor to expose you to suffering in order to make you answer their questions. It is not in the power of a police officer to make promises in the name of the court. You cannot help yourself by trying to persuade him to do so. On the whole, reasonable cooperation with the police is both right and wise, but if you are at all unsure about your position, the charge, or your rights, then polite silence accompanied by your request for legal advice is both legal and prudent.

### III. CONSEQUENCES OF ARREST

#### A. Identification Procedures

- (1) The police may take note of your bodily condition without violating your privilege against self-incrimination, which only protects you from having to disclose any knowledge you may have about an alleged offence. Thus, if you are charged with an indictable offence, or apprehended under the Extradition Act or the Fugitive Offenders Act, you may have to go through identification procedures and be photographed, measured, and fingerprinted. The police can exhibit you in the courtroom or in a police lineup and take note of your clothing and its condition.
- (2) It makes no sense to resist these procedures if you have been apprehended or charged as noted above. The police can use such force as is necessary to carry out fingerprinting and photographing procedures. It is also not advisable to object to appearing in a police lineup; such an objection may, in some cases, be admissible as evidence against you. It also gives the police the right to show you to the witness while you are standing by yourself, which may be far more harmful than taking part in a lineup. Whatever kind of lineup you are involved in, be sure to request that your counsel be present.
- (3) The Appearance Notice or Summons which tells you when to appear in Court may also give the time and place to appear for finger-

printing. It is very important that you read your Summons carefully, because if you do not appear for fingerprinting when ordered to do so, a warrant may be issued for your arrest.

- (4) You cannot be lawfully forced to provide fingerprints until a charge has actually been laid. Nevertheless, the fact that you are under arrest normally means that there are reasonable and probable grounds for a charge to be laid. Accordingly, if you refuse to be fingerprinted, you may simply be adding needlessly to the time that you will spend in custody, since you will then have to be fingerprinted after the charge is laid.

If you are an adult or a young person under the age of 18 years, you may be fingerprinted if you are charged with an indictable or dual offence. (A dual offence is a criminal charge that may be prosecuted by indictment or by summary conviction - see page 9.)

## **B. Personal Searches**

The police have the right to conduct a search of your clothing, bags and car once they have arrested you. They may also conduct a medical search of your body as long as it is carried out to remove any object which you might use to injure yourself or others while in custody, and to obtain any articles which might have a bearing on the charge which has been laid. You are entitled to have returned and to keep in your possession any other article - *INCLUDING THIS BOOKLET*. You will be asked to sign a list of the things that were taken from you, and to sign again when they are

returned. It is your own responsibility to see that the list is complete and accurate and to make sure that you get back all your possessions.

A search after arrest is legal as long as the circumstances are such as to justify the search as a reasonable precaution, even if the police officer's suspicions are not justified by the result of the search. Thus even if you have nothing concealed on your person you should not resist. As in the case of arrest, if you have any doubt about the legality of the search, raise the matter with the officer and call it to the attention of any witnesses.

## **C. Right to Legal Counsel**

### **I. Right to See A Lawyer After Arrest**

If you wish to see a lawyer while you are under arrest, you have the right to telephone one. *DO NOT SAY ANYTHING TO THE POLICE ABOUT THE ALLEGED OFFENCE OR SIGN ANYTHING UNTIL YOUR LAWYER HAS ADVISED YOU*. You have the right to talk with your lawyer in private, although you will probably be in view of a police officer to make sure you do not attempt an escape. No one, however, has any right to overhear or record your conversation.

### **2. Legal Aid**

If you want a lawyer but cannot afford to pay for his services, you may be eligible for Legal Aid.

- (a) Financial Eligibility: Recent provincial cutbacks to Legal Aid funding have forced the Legal Services Society to restrict the availability of legal assistance for those who cannot afford a

lawyer. Previously, legal aid was generally made available to persons with certain types of legal problems, if having to pay legal fees would impair their ability to furnish themselves or their family with the essentials necessary to keep them decently fed, clothed, sheltered and living together as a family. These discretionary guidelines have now been replaced with more restrictive fixed income guidelines, with some discretion in particularly harsh cases. A user fee of \$10 for persons on social assistance and of \$30 for persons not on social assistance is also required.

- (b) Availability for Criminal Offences: Criminal legal aid is available to anyone who is financially eligible and is charged with an indictable offence, and all summary conviction offences where there is a likelihood that upon conviction there will be a sentence of imprisonment or the loss of means of earning a livelihood, or where some other special circumstances exist. Criminal legal aid is also available for proceedings under the Extradition Act, and the Fugitive Offenders Act. It is also available under the Young Offenders Act for all those offences which would be covered if the applicant were an adult. If a young person is ineligible for Legal Aid, he/she can always get a lawyer appointed by the court under the Young Offenders Act. Legal Aid is also available for all Crown appeals from any proceedings where an applicant would have been covered at trial, and for appeals by an accused person where the matter is one which would have been covered at trial and where the appeal has merit.

(c) Legal Aid is also available for family, human rights, and other civil law matters. In family law matters, legal aid is available for all urgent cases. The user fees described above also apply here.

(d) Where to Apply: The Legal Services Society has offices in most population centres of B.C. Each applicant is required to complete an application form setting out his financial circumstances.

A person in custody can apply for Legal Aid in many areas by contacting the Legal Aid Duty Lawyer in the Court, or a representative of the Salvation Army, the Elizabeth Fry Society, or a Native Courtworker. If an accused person has been unable to apply for Legal Aid before his first Court appearance he should tell the Judge that he wishes an opportunity to apply for Legal Aid.

If you do not qualify for Legal Aid (e.g., if the type of offence which you are charged with is not handled by the Legal Services Society or if you are not financially eligible) and you wish advice, the Vancouver Community Legal Assistance Society together with the UBC Law Student's Legal Advice Program (phone: 872-0271 or 228-5791) conduct a series of Legal Aid Clinics which offer free advice and a legal referral system for more difficult problems. If you are arrested and wish to talk to a lawyer, but do not know anyone in Vancouver, call CRISIS at 733-4111 at any time. CRISIS will refer your case to a group of lawyers who will contact you. The Law Society also sponsors a Lawyer Referral Service for people who wish assistance with any problem. You may contact the Lawyer Referral Service during working hours at 687-3221.

## **D. Communicating with Friends or Relatives**

You may want to tell your closest relative or friend of the situation you are in and give him/her some essential information or instructions. If you can do this by placing a local telephone call, you should insist on using this method. Do not expect to be allowed unlimited use of the telephone, however, as there are usually many other people who also want to use it. If, because of distance or other circumstances, it is not practical to use the phone, ask the police for writing materials or ask them to arrange for you to send your message some other way (by telegram, etc). You will be expected to pay any expense connected with this communication.

*DO NOT MAKE A STATEMENT OR SIGN ANY DOCUMENT IN EXCHANGE FOR PERMISSION TO COMMUNICATE WITH A LAWYER, RELATIVE OR FRIEND.*

Usually you will not be able to see relatives or friends while you are under police arrest. If such a visit is permitted it will NOT be in private. The conversation will be listened to and you will not be permitted to give or receive articles during the visit. While you are in custody, a relative or friend can learn the nature of the charge against you, the date of first appearance, and bail or sureties (if any), by calling the Court Clerk's Office.

## **E. Communicating with a Lawyer**

There is a privilege attached between a solicitor and client so that a lawyer is precluded from relating anything told to him by a client unless the client

waives the privilege. Nevertheless, if you are aware of monitoring within the premises where you are talking with your lawyer, such as the monitoring of telephone calls from a custodial setting, the privilege may be deemed to be waived.

Further, there are often institutional by-laws and regulations allowing the opening of mail. The knowledge that this is likely or capable of taking place may operate as an implied waiver. It is therefore prudent that your communications with your lawyer occur in a place where there is no likelihood of legal monitoring.

## **F. Appearance before a Justice**

Whether you are arrested by a police officer with or without a warrant, or arrested by a citizen and turned over to a police officer, you have the right to be brought before a Justice within the territorial division in which you were arrested without unreasonable delay and in any event within 24 hours (where a justice is available), or as soon as possible (where such a justice is not available within 24 hours).

This right applies to any offence, but there are also provisions which may compel your release prior to your appearance before a justice.

## G. Release from Custody after Arrest

### I. By Arresting Officer

Generally speaking, if an officer has arrested you without warrant, he must release you as soon as is practicable, and either issue an Appearance Notice or plan to serve you with a Summons. An officer may, however, arrest you and hold you in custody in order to verify your identity, or to preserve evidence, or to prevent continuation of an offence, but he must release you once these conditions are met - unless he has reasonable grounds to believe that you will not appear in court.

### 2. By an Officer in Charge

Persons arrested and detained without a warrant, and persons arrested for an offence that carries a maximum penalty of five years or less, must be released by the Officer in Charge at the station as soon as is practicable. Such release is mandatory unless the Officer in Charge has reasonable and probable grounds to believe that continued detention is in the public interest or necessary to ensure your appearance in Court.

If your appearance in Court is the primary consideration, the Officer in Charge must have stronger reasons for your continued detention than the arresting officer had for the original arrest. Where the Officer in Charge has had time to make some inquiries about your situation, he should release you unless he has actual and concrete grounds to believe that you would fail to appear in Court if released.

If the Officer in Charge decides to release you, he may do so:

- (a) with the intention of serving you with a Summons later;
- (b) after you have signed a "Promise to Appear", which binds you to attend Court on the date, and at the time and place specified;
- (c) by releasing you on your own recognizance without sureties or deposit, but possibly including an acknowledgment that you will forfeit a sum of money up to \$500.00 to the Crown if you do not appear in Court on the specified day; or
- (d) by releasing you on your own recognizance, but requiring a deposit up to \$500.00 as security for your return if your normal place of residence is not within the province or within 100 miles of the place where you are in custody.

*Failing to appear after you have promised to do so is a serious offence. A warrant will be issued for your arrest, and, in all likelihood you will be kept in jail until your trial. In addition you will be charged with failing to appear as a separate offence, and probably be jailed for it if found guilty.*

## H. Bail

If you are not released by the arresting officer or the officer in charge but are detained in jail you must be brought before a Justice of the Peace within 24 hours where the information (the formal document containing the charge(s)) will be sworn against you by the prosecutor for the Crown. If the Crown decides not to proceed with the charge, then the Information will not be sworn, and you will be released.

In the more likely event that charges are proceeded with, the Court must still release you upon your own oral undertaking to appear, without any conditions, *unless* the prosecutor can persuade him or her that such a release is inappropriate. In that case, the Court may release you on the following terms:

- (1) on your own undertaking with certain conditions attached, such as an order to report regularly to designated persons, to remain within a certain area, or to avoid communication with certain persons;
- (2) on your own or someone else's recognizance without any deposit;
- (3) on recognizance with deposit of money or sureties if you reside in another province or more than 200 km away.

There is an important exception to the preceding comments: If you have been charged with an indictable offence while you are awaiting trial for another indictable offence, there is a very good chance that you will be held in custody until your trial.

The Crown may adjourn the bail hearing and remand you in custody, but the adjournment cannot

exceed three clear court days unless you consent to a longer period. In all but the most serious cases, you will be released on bail of some kind unless the prosecutor can persuade the magistrate that continued detention is necessary to insure your attendance in court or is necessary in the public interest or for the public's protection.

If you are not released by the Court, or you believe that the conditions he sets are unreasonable, you may appeal to a Judge of the Supreme Court of B.C.

If you think that securities, difficult conditions, or money may be required by the Court before your release, you should seek legal advice before bail is set. Once it is set, most Judges hold that they have no power to vary it except in extreme circumstances. You would then have to appeal to the B.C. Supreme Court itself.

If you are held in custody awaiting trial, and your trial is delayed, you have the right to have a Judge review your position to decide whether or not you should be released from custody. In the case of most indictable offences, you have an automatic right to review of detention if the trial is not commenced within 90 days of being charged. The same rule applies in the case of summary conviction offences after 30 days.



## I. Evidence in Court

When you come to trial you do not have to give evidence. In legal theory you are "presumed innocent until proven guilty beyond reasonable doubt." It is up to the prosecution to establish its case beyond such reasonable doubt. If you do not give evidence no one may question you.

The advantage or disadvantage of remaining silent is generally a matter which calls for more legal and technical judgment than a layman possesses. It is therefore important to be advised by competent legal counsel.

There are several sections in the Criminal Code and in other statutes where "reverse onus" clauses are in operation. In effect, these provisions reverse the presumption of innocence by forcing you to prove certain facts which demonstrate your innocence. Such provisions are, on their face, contrary to the right to be presumed innocent and the right to remain silent which are enshrined in the Charter of Rights, and many of them are presently the subject of judicial challenges under the Charter.

Remember that, in Canada, evidence *may* be admitted and used against you in court even though it was obtained illegally by the police. This is why it is so important that you study carefully the advice given in this booklet regarding arrest, making statements, examining warrants, asking for identification numbers, questioning search procedures, and **above all** seeking legal advice.

## IV. POWERS OF SEARCH WHEN NO ARREST IS INVOLVED

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### A. Personal Search

In most cases the police cannot detain or search you unless you are under arrest and are told the reason for the detention. There are five circumstances, however, which enable the police to search you lawfully without first arresting you:

- (1) the R.C.M.P. have the power to search anyone found in a house which is being searched under a warrant;
- (2) the police may search you in any place (except in a dwelling house where they need a warrant) when they have reason to believe there is an illegal narcotic on the premises or on your person;
- (3) the police may search you if they have reason to believe you have a prohibited or restricted weapon;
- (4) They may search you for liquor under the Liquor Control Act.
- (5) Finally, they may search you if you give consent to the search. Note that if you do not state an objection to being searched, you may be deemed to have consented.

If it is not clear to you that the search falls within one of the first four categories, raise the matter and any objections that you may have with the officer and call it to the attention of witnesses, but **DO NOT PHYSICALLY RESIST THE SEARCH** or you may be open to charges of assault or obstruction. Police

officers in Canada do not have the authority to search you for "suspicion" or as part of a "routine check;" if those are given as reason for a search, you have good grounds to raise questions.

## B. Vehicle Search

A police officer may search your vehicle without a search warrant if he finds you committing an offence or if he has placed you under arrest. He may also search any vehicle, without a warrant, if he has reasonable grounds to believe that there may be narcotics, liquor or a restricted weapon in the vehicle.

However, a police officer's right to conduct this search without a warrant could be overruled by the Charter of Rights provision protecting citizens against unreasonable search (section 8). However, at this time it is not clear how the Charter will be applied to these circumstances.

**Remember**, however, that normally an officer **cannot** seize or search a vehicle without a warrant merely to hunt for evidence that an offence has been committed; he can do that only when the seizure or search is incidental to the arrest of a person involved in the alleged offence.

## C. Search of Premises with a Warrant

Ordinarily, all entries and searches of your home, shop, or other premises must be conducted under power of a search warrant or similar authorization. (This does not hold true if an officer finds an offence being actively committed or in the circumstances

mentioned below in section D. Search of Premises without a Warrant.)

- (1) A search warrant must be signed by a Justice of the Peace and contain a general description of the goods to be searched for by the officer and a description or address of the premises to be searched. The name of the offender or the accused does not have to be on the warrant to make it valid. The warrant must be in possession of the officer conducting the search, and he must exhibit it so that you can satisfy yourself that the search is lawful.
- (2) Examine the warrant carefully; check that the address is correctly entered, that the related offence is sufficiently described and that the warrant is valid on the date and at the time of the search.

*IF THE WARRANT IS IMPROPER IN ANY WAY, YOU MAY REFUSE ENTRY TO THE OFFICER.*

- (3) If you refuse admission to the police after they have shown you a proper warrant, they have the right to force an entry although before doing so they must make a formal demand that the premises be made open to them. If the police do not have a warrant, or if the warrant they have is invalid and you refuse to admit them, they may post an officer outside your premises until they have obtained a valid warrant.

This may take some time, and if you are totally innocent you may have the legal right to sue the police for defaming your character in the

eyes of your neighbours.

- (4) Any goods seized under a warrant must be connected with an offence mentioned in the Criminal Code, the Narcotics Control Act, or the Food and Drug Act. The officer may seize the goods specified in the warrant, and anything else that he believes has been obtained by or has been used in the commission of an offence. Once a Justice is satisfied that seized goods need not be held any longer, he should order that the goods be returned to the person from whom they were seized or to the person entitled to their possession.
- (5) Remember that persons on premises which are being searched under a search warrant need not answer any questions put to them by the police officers conducting the search. Simple refusal to answer their questions will not amount to obstruction.

## D. Search of Premises Without Warrant

There are certain circumstances which allow police officers to search premises without a search warrant.

- (1) They may search any place, other than a dwelling house, where they have reasonable grounds to believe that illegal drugs may be kept or cultivated, or that evidence may be obtained of infractions of the Narcotics Control Act.
- (2) Where they have authority to arrest someone, whether with or without a warrant, they may search a dwelling or any other place without warrant when they have reason to believe that

the fugitive is on the premises. This power extends to the premises of persons other than the one to be arrested.

Before such a search, however, the police officers must announce their presence, declare their authority as police officers and the purpose of their search, and request entry.

You should not physically resist such a search; it is authorized as long as the officers had reasonable grounds to believe that the fugitive was on the premises, even if it later turns out that the officers were wrong.

- (3) The police may enter any place without warrant if they have reasonable grounds to believe that someone there is keeping or distributing liquor illegally.
- (4) When someone is actually arrested, the police may search the place in which the person was found.

If a police officer has no valid warrant and does not give one of the four reasons above as the grounds for his search, he has no authority to make the search and you have the right to refuse to submit to it.

If the police officer nevertheless forces his way into your house, he is a trespasser. You can ask him to leave, stating your reasons to him and any witnesses. In theory, you can eject a trespasser with reasonable force. It might, however, be wiser to telephone an immediate complaint to the police (Vancouver Police - 665-3321; RCMP-Vancouver 732-4511) and to explain what has occurred to your lawyer, or the civil liberties association nearest you.

they will discharge you, but if otherwise, they will direct the officer to search you. As long as the officer has reasonable cause to suspect that prohibited goods are on you, the search is legal even if no such goods are found. Thus, once again you should not physically resist searches of this nature.

#### **D. Other Agencies**

There are many other agencies whose officers have various powers of entry and search of premises, seizure of goods and detention of persons. They are too numerous to describe here, but you should be aware that such officials as Fisheries Officers, Health Inspectors, Revenue officials, and some Marketing Board officers - to give just four examples - may in certain circumstances operate in ways that are similar to the authorized police activities described in this booklet.

## **VI. CIVILIAN COMPLAINTS AGAINST THE POLICE**

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### **A. Alternative Choices of Action**

If you think you have been arrested illegally, handled with unnecessary force, or treated unfairly by the police in any way, you may decide that you want to do something about it. There are three major alternative courses of action that you might choose in order to have your complaint heard and acted upon:

#### **I. Criminal Charges**

Because police are subject to the same criminal laws as ordinary citizens, a constable who commits a criminal offence can be charged with the offence and tried in criminal court. You can call the appropriate Chief Constable or Commanding Officer and ask for a full investigation of the complaint with a view to laying charges. You will undoubtedly need a lawyer to pursue this course of action.

#### **2. Civil Suit For Damages**

A large number of remedies available in civil courts may be applied to complaints about the police. The remedies usually involve payment of money for damages suffered by a complainant through the actions of the police. Civil litigation is usually very expensive, however, and should not be considered for most situations. You should seek legal advice before proceeding with either a criminal or civil action.

### **3. Complaints Under the B.C. Police Act/RCMP Act**

The B.C. Police Act and the federal RCMP Act provide a framework for attempting to resolve disagreements between citizens and police officers without going to court. These complaint procedures emphasize informal conciliation as the most appropriate method for resolving conflicts between police officers and members of the public, but also provide for more formal arrangements in cases where conciliation fails or is inappropriate. The B.C. Police Act applies to municipal police who carry out policing duties in all municipalities in the province. The RCMP Act applies to RCMP officers in B.C. who carry out policing duties in the rest of the province.

Through the Police Act and R.C.M.P. Act procedures, the police forces of this province are accessible to the average citizen, and some assurance exists that high standards of police discipline will be maintained. Complaints under these Acts can be pursued without the need for legal counsel, at least in the majority of cases, and such complaints are the most practical mechanism for resolving all but the most serious or complex citizen-police controversies. The complaint procedures are described in more detail below.

#### **B. The B.C. Police Act**

Under the new B.C. Police Act, which is expected to be in force late in 1988, a member of the B.C. Police Commission will be designated the Complaint Commissioner. If you do not wish to complain directly to the police, the Complaint Commissioner will receive your complaint and forward it to the relevant

municipal police force. Additionally, the Complaint Commissioner will advise and assist you during the investigation of your complaint, and ensure that it is dealt with according to the Police Act. The Complaint Commissioner can review complaint files, and if he/she believes the investigation is inadequate, he/she can request a reinvestigation of the complaint.

Call the B.C. Civil Liberties Association (687-2919) or the B.C. Police Commissioner (660-2385) if you wish to know whether the Complaint Commissioner is available to help you. In the event that the Complaint Commissioner is not yet set up, either organization will advise you about the complaint process and, if you wish, help you to file a complaint.

The Police Act provides three ways to resolve complaints - an informal conciliation procedure, a formal investigation, and a public inquiry. Typically, you would begin with the first of these and then proceed to the next if your complaint has not been satisfactorily resolved. The B.C. Civil Liberties Association can assist you in making your initial contact with the police, and can discuss with you which procedure seems most appropriate for your situation. You can also contact the Association if you believe that your complaint is not being handled properly by the police force to whom it was referred.

#### **1. Informal Conciliation**

In most cases, the police will try to resolve a complaint informally. However, if your complaint is very serious, you may want to indicate that you feel that attempts at informal conciliation are inappropriate and ask to proceed to step 2 below. The informal conciliation stage is designed to mediate relatively

minor disputes (e.g. over the level of service in response for a request for assistance) and should not be used in cases where serious abuses are alleged and any delay in beginning a formal investigation may hamper the ability of the police to get at the truth or redress a serious problem.

At the informal stage, no written statements are required, and all discussions are conducted "without prejudice" so that they cannot be used in other proceedings. You will be interviewed, perhaps together with the other police officer(s) involved, and attempts will be made to reach a mutually satisfactory settlement. If such a settlement is not reached you may want to proceed to a formal investigation.

## **2. Formal Investigation**

A formal investigation will proceed much like a regular police investigation. A written statement will normally be required from a complainant, and witnesses will be questioned and evidence sought or examined. Statements made at this stage can be used in other proceedings. At the conclusion of this investigation, you will receive a notice stating whether or not your complaint was founded and whether any disciplinary action taken.

## **3. Public Inquiry**

If you are still not satisfied following the completion of a formal investigation, you may proceed to a public inquiry which will be held by the local Police Board. A public inquiry is governed by many formal procedural rules and you should arrange for a lawyer to represent you or help you prepare for presenting your case. (It is possible that provisions governing the appointment of a public inquiry may change under

planned amendments to the Police Act. When you initially file a complaint, you may wish to find out what the present procedures are.)

**NOTE: The Chief Constable may refuse to investigate your complaint if he believes that it is trivial, vexatious or made in bad faith. You may appeal this decision to the local Police Board which will appoint a sub-committee to review the Chief Constable's decision.**

## **C. RCMP ACT**

The RCMP will investigate complaints about its members using a process similar to the formal investigation procedure under the Police Act (described above). If you are dissatisfied with the formal investigation of your complaint, you may appeal to the RCMP Public Complaints Commission. The Commission, expected to be operative in September 1988, is empowered to receive appeals, to review the results of an internal investigation, and to order a public inquiry if it feels it is in the public interest. Statements made by citizen complainants are inadmissible in proceedings outside the complaint process.

At the time of publication of this handbook, you may initiate a complaint against an RCMP officer(s), or appeal the results of a formal investigation, by writing:

The Commanding Officer  
E Division Headquarters  
Royal Canadian Mounted Police  
657 West 37th and Heather  
Vancouver, B.C. V5Z 1K6

## D. PREPARING A COMPLAINT

If you wish to make a complaint against a municipal police officers or a member of the RCMP, you should make note of the following items: time, date, location, and nature of the complaint, and identities of all parties and witnesses. It is a good idea to put this information in written or letter form. Try to restrict your comments to two or three pages of most. Remember, this is a letter *to initiate* a complaint - you may make further written statements later during the investigation if this seems necessary.

If you need someone to help you put your complaint in writing or any other general assistance contact the B.C. Civil Liberties Association or the B.C. Police Commission for assistance. Police officer(s) responsible for investigating internal disciplinary matters may also be available to help you prepare a written complaint.

~~B.C. Civil Liberties Association  
#518 - 119 West Pender Street  
Vancouver, B.C. V6B 1S5  
(telephone: 687-2919)~~

B.C. Police Commission  
#405 - 815 Hornby Street  
Vancouver, B.C. V6Z 2E6  
(telephone: 660-2385)

B.C. CIVIL LIBERTIES ASS'N.  
425 - 815 WEST HASTINGS ST.  
VANCOUVER, B.C. V6C 1B4

Phone: 687-2919

## VII. IF YOU NEED A LAWYER

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If you need a lawyer but do not know or cannot afford one, contact one of the following agencies for assistance:

Legal Services Society  
Vancouver Office  
195 Alexander Street  
Vancouver, B.C. V6A 1N3  
(telephone: 687-1831)

Lawyer Referral Service  
1148 Hornby Street  
Vancouver, B.C. V6Z 2C3  
(telephone: 687-3221)

The Native Courtworkers and  
Counselling Association of B.C.  
219 Main Street  
Vancouver, B.C. V6A 2S7  
(telephone: 681-0281)