



Know Your Rights: an activist's guide to the law

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Know Your Rights

Introduction

The information in "Know Your Rights" is taken from an excellent document prepared by the Law Union of Ontario, titled "Offence/Defence Law for Activists." Parts of "Know Your Rights" paraphrase the Law Union document in order to abbreviate it, while other sections are direct quotes. We have chosen the sections that we think are most important for OPIRG activists, but we also highly recommend that you read the entire original document, which is available from our Resource Centre. The Law Union also offers free representation for activists facing charges under a variety of circumstances, so they are good people to know.

Part A - PUBLIC MEETINGS

The Canadian Constitution includes the Charter of Rights and Freedoms, which guarantees freedom of assembly and freedom of speech. However, these rights, like others, are not absolute and restrictions placed on them exist in the Criminal Code. Read these rights to mean the right of "lawful assembly" and "lawful speech".

An unlawful assembly is one in which more than two people meet for a common purpose, and in the course of the meeting conduct themselves in such a way as to give those in the neighbourhood a reasonable cause to fear that the meeting will be tumultuous (which has been interpreted to mean "violent") or to fear that the meeting will needlessly and without reasonable cause provoke others to disturb the peace tumultuously.

If you choose to hold the meeting in an obviously hostile neighbourhood, it will not be an unlawful meeting simply by virtue of the fact that the meeting might provoke disruption by those in opposition. There are not many subjects which would give reasonable cause to a disrupter so that the assembly itself could be called unlawful. An example might be a meeting which was inciting race hatred.

I. Disruption

The question of how to deal with disrupters at a public meeting can only be answered by common sense, and will depend on the situation. Your response might vary from throwing out a heckler to calling the police when a gang threatens violence. The fact that you've billed a meeting as "public" in no way means that you must admit everyone who shows up.

In order to avoid an "unlawful assembly" you are justified in denying admittance to, or

evicting, those who threaten a fight. When it comes to throwing someone out, it should be done as calmly as possible, in order to avoid a charge of causing a disturbance. If you anticipate disruption, designate certain people to act as security. This serves two purposes. Specific people will be on the alert to act swiftly and to avoid a commotion. Since responsibility for dealing with disrupters is delegated before the fact, other persons in attendance need not get involved in the disturbance.

You may also impose conditions upon persons admitted to a public meeting: for example, no cameras or tape recorders, etc. You are entitled to evict anyone who breaches a condition.

What if the police attend the meeting? Apart from special powers given by particular statutes, there is no general right for the police to enter and search premises. If the police attend the meeting and you do not wish them to be present, ask them why they are there. If they say they are simply observing you can ask them to leave. If they refuse to leave, however, it would be highly inadvisable to attempt to physically evict them, though you might mention your right to do so. Let them know that you are aware of your rights and will not be intimidated by their presence. Ask what division they come from and telephone the Staff Sergeant and ask that they be ordered to leave. If you do not get cooperation you should be sure to get the name of the person you are dealing with. Sometimes people in authority start to worry when they understand that the matter may be dealt with by the media or in the legislature, etc.

Remember that you can put conditions on entry and you can ask people to leave. In some instances you may want to have each individual entering a meeting to acknowledge that they are aware of the conditions of entry. One way to do this is to have them read something and indicate that they have understood and are prepared to comply. It is certainly possible to stipulate that you do not wish to have any police or anyone acting as an agent of the police present. Or, to give another example, it is possible to stipulate that no one working directly or indirectly for an employer is welcome, and that any such person will be considered a trespasser. This clear condition may assist later in tainting any evidence that such a person might attempt to give in a court of law. Certainly, in the eyes of the public, such a person will not be as credible when it is clear that they gained entry through lies. If you have specific concerns, consult a lawyer in order to know how to put into practice attempts to exclude particular individuals or types of individuals from meetings.

Part B - DEMONSTRATIONS, RALLIES, MARCHES

Introduction

The information in this section covers a wide range of scenarios. It is written by lawyers, remember, so a lot of what is here is presenting a worst-case scenario. Your average OPIRG volunteer is **NOT** being followed by the police or bugged; OPIRG events are only very rarely at risk of being considered indictable offences by the police. Nevertheless, we have included these sections because a lot of folks are involved in numerous groups, not just OPIRG, and because some of these questions have arisen in the past when planning events. In addition, the recent events at Seattle, Washington and Windsor have tended to encourage police to react somewhat more harshly than previously. On the other hand, projecting an image of openness has a long and honourable tradition among activists, so you might want to consider that as you peruse the info below. Happy reading!!

I. Preparing to Go

If you are concerned that the police not know that you are going to attend a particular demonstration, rally or march, then you should not discuss your plans for attending over the phone, nor in your home or any other place that might be bugged. Of course, you have to be of significant interest to the police for them to be bugging your house or your car. If that is the case then it's conceivable that you are being followed and perhaps should not be going to the demonstration at all. You will have to make a judgment call about the risk of being seen and how important your presence is at the demonstration.

II. Do You Want to be Identified When There?

It is safe to assume that the police photograph every demonstration, rally and march. They try to get pictures of every person in attendance. Other photographers will be in attendance as well, including members of right wing organizations & security firms compiling files. In addition the press will be taking pictures and it has become common for the police to obtain warrants to search for and seize pictures taken at demonstrations when they claim that the pictures will reveal a criminal offence.

The police will go through the pictures in order to identify individuals and they will update their files. Their concerns include knowing who was in attendance at demonstrations as well as establishing which individuals play leadership roles and the connections or affiliations of the individuals. ("Independent leftists" are more trouble in this respect.)

In the winter it is much easier not to reveal one's identity since scarves and hats can cover a great deal of the face. Eyes and ears are two features that are focused on for

identification. Wigs and eyeglass and other items can provide the aids necessary, if you are determined both to attend the demonstration and remain unidentified. Iranian students studying abroad have pioneered the use of masks (even bags over the head with eye holes cut out) in order to avoid identification by intelligence services.. In their case they were also trying to make a statement about the dangers of dissenting against the Iranian regime. **Note:** the wearing of obvious disguises, like masks, can make you of greater interest to the authorities and the undercover operatives who are mingling with the crowd. **In addition**, there is a specific criminal offence for being disguised or masked or having ones face covered with the intent to commit an indictable offence. So although it is lawful to disguise oneself or wear a mask, etc. merely to avoid being identified by the police or someone else, it is risky to do so in a situation where you might be accused of doing so for the purpose of committing an indictable offence.

The technique of obviously disguising oneself or wearing a mask may have the propagandistic value of dramatizing the fact that photographs are being taken and that freedom of assembly (so proudly touted by government officials responsible for the police activities) is not so free in fact. Remember that your clothing is identifiable as well as your face. Police informers in the crowd are also used to identify people and to listen in on your discussions.

The down side of going in disguise is: (1) if the police know you are in disguise then they become more interested in you; (2) media coverage of disguised people may be such as to suggest that the demonstrators are somehow up to no good rather than that the demonstrators have concerns for their own security and right not to be harassed; (3) people who might wish to join your cause may be turned off either because they are afraid of you or afraid of the things that have caused you to disguise yourself; and (4) the police may use the excuse of your disguise to charge you with the criminal offence of being masked or disguised with the intent of committing an indictable offence.

Obviously, one must weigh the arguments for and against going in disguise. The answer may depend on the type of demonstration and your capacity to make the reasons for disguise obvious. In the case of the Iranian students protesting the rule of the Shah- or later the Islamic fundamentalist regime - it was obvious to observers that they feared the government which they were opposing. In the case of demonstrations about Canadian issues it is not so obvious..

III. What to take with You

(a) Paper and Pen

The Pen is sometimes more powerful then the sword; especially later in the court where they do not allow swords. Use it to:

- write names of arrested persons and their phone numbers & their friends phone numbers, their condition before they disappeared from the scene, the words

spoken by police during their arrest, their words, the number of the car or wagon they are put into, etc., badge numbers and or descriptions of police involved in the arrest;

- write down police badge numbers (of those that are aggressive, those who make arrests or are just on the scene, since sometimes there may be testimony from police who were not in fact at the scene at all.

(b) Cameras

Of course, photographs and sound recordings are also useful;

- record significant conversations;
- record licence plates of vehicles (and/or squad car numbers if police vehicles) and the description and location of vehicles.

TAKE DOWN INFORMATION BEFORE THE SHIT HITS THE FAN. You must anticipate, because once the action starts you will not necessarily have time to get enough down.

There is no general right to privacy in Canada. You can take any person's picture without his or her permission. The camera is a powerful weapon. At rallies and demonstrations, etc. they are essential. The more the better. BUT YOU MUST ARRANGE FOR THEM TO BE THERE. You can not rely on someone showing up with one. And you certainly can not count on someone with sufficient awareness about these matters turning up with a camera.

Use them to:

- provide some deterrence to police brutality. The sound of shutters clicking in those tense moments sometimes can prevent the police from doing things which they might otherwise do;
- take pictures of the licence plates that you want to record;
- take pictures of the police, both plain clothes "old cloths" and uniformed. Later witnesses may want to identify the officer who did the dirty deed;
- take pictures of those you only suspect are police. They may show up later in more interesting circumstances;
- take pictures of those who seem to be provocateurs;
- take pictures of those who you suspect of being fascist thugs;
- take pictures of any "incident" including arrests.

T

hese can be useful in the press and in court;

- get shots of the general lay out. This helps in court too.

Remember that cameras have a tendency to fall out of hands when they are capturing scenes that are damaging to the public image of the police. Often one finds that one obtains an excellent picture of a policeman's palm print rather than the scene one tried

to photograph. However, when there are many cameras it is possible to get pictures of these "accidents" where cameras are destroyed or of the police officer posing his palm for a photograph. Bring enough film!

Preserving the photographic evidence for the court is critical. The main problem is that of "continuity". This means that in the court it is necessary to show a continuous chain of possession of the film, negatives and prints. This must be done to counter any suggestion that these items have been tampered with. It is necessary to have the negatives so that it can be established that the prints are in fact derived from the negatives etc. Also, it must be shown that the prints made were not selected to avoid the more damaging evidence (or to provide only the damaging evidence).

The safest way to handle this problem of continuity is to have as few people as possible handle the film, negatives and prints. The best situation is to have one person take the pictures, and develop the film. In that case it is necessary to call only one witness. That witness can establish that there has been no possibility of tampering. It will be necessary to be able to establish that no other person has had the opportunity to come into possession of the film, negatives or prints. Therefore, you want to be able to say something like "I took the film home, I locked it in a drawer (or I placed it where no one else had access to it) and I developed the film myself and I can account for where these items were at all times from the time I put the film into my camera until I have brought them to court on this day".

This is the ideal scenario; however, there should be no trouble in taking the film to a professional firm for developing. But remember there are situations where film developers "cooperate" with the police. If the situation is a "heavy" one, you may want to not lose control of the film even for a minute.

The other concern that the court will have is that the photographer can testify that the print is an accurate reflection of what he or she saw with the naked eye through the view finder. For that reason it is necessary to use film that does not distort reality and also not to have any settings or lenses that would have similar results.

(c) Tape Recorders

It may be useful to record comments made by the police, a factory owner, scab, or provocateur or perhaps participants in your own demonstration; rally or march.

A recording device that is not visible has certain obvious advantages, but one that is visible may have the same deterrent effect that the presence of cameras often have. Evidence on sound tape is admissible in the court; however, as with film, there are certain procedures that must be followed:

- first, there is the problem of "continuity." (Read above with respect to photographs under heading "cameras");

- second, you must have someone who will be able to identify the voice; that is, someone who can connect the voice to a particular individual. Thus it is necessary to remember who was making the remarks you have recorded. In the case of a police officer you might want to write down the officer's name or badge number. With other individuals you will have to rely on some method of identification. You might want to indicate the place on the tape (by use of the counter) where the relevant recording begins and/or ends;
- third, you will have to be able to testify that the tape was run through and found to be clean before the recording in question was made. You don't want to have your recording of Bach played in the court before you get to the relevant portion;
- fourth, you will have to testify that the machine was in proper working order;
- fifth, make sure you have played the tape over after making the recording and heard voices that you can identify;
- sixth, make sure a transcript of the recording has been made. If typed then keep the original notes;
- seventh, make sure the transcript has been checked with the original recording by the witness who will introduce the recording in evidence.

Recordings also have their uses for the media.

(d) Video Cameras Or Movie Cameras

These can be a very powerful weapon at demonstrations. They have all the advantages of the still camera and tape recorder and more. The problems of continuity of the tape will be the same as those discussed above with respect to cameras or tape recorders.

(e) Identification

If you are arrested, you sometimes (depending on the gravity of the offence with which you have been charged) can be released from the police station. However, one of the excuses for holding you until you appear before the court is that there is some doubt as to your identity.

You are not really obliged to identify yourself and provide your address (if you have one) when you are arrested or when you are being charged with any offence (but not being arrested). The general rule is that you do not have to carry identification in this country. However, you are very unlikely to be released from custody if you do not provide proper identification.

Something like a birth certificate or driver's licence should be enough. You will most likely not wish to provide the police with the knowledge of every club you belong to, your place of work, etc. In that case you should only take with you the identification you will require for release.

You may wish to carry no identification. As long as you provide your name and address (if you have one) you have fulfilled your obligations. You may find that you are held in

custody until your trial if the court is not satisfied that you have been identified. But after your trial and any sentence that you may have to serve you will be released because there will be no grounds for holding you. There is no right on the part of the state to hold someone for the purposes of identification when there are no charges pending. Of course, if you have committed an indictable offence (more serious than a summary offence) they will have the right to take your fingerprints and they may be able to match them up with your prints taken on an earlier occasion or later occasion. Providing a false name to the police may amount to "obstruct police" or "public mischief", or "obstruct justice". It is generally better to say nothing than to lie.

(f) Walkie-Talkies

These allow you to keep in touch with your friends who are 10 blocks ahead of you (you hope) at the other end of the march. They also allow you to speak to people who are walking the surrounding area to see if the police mounted squad or riot squad is forming up or to see if some fascist gang is approaching.

Of course, the police use these as well: therefore, you must remember that you will be talking to them as well (and they may be talking to you).

(g) Dress

Are your shoes good for running or do they fall off? Is your hair easily grabbed? Is your clothing conspicuous and therefore you are easily identified in the crowd etc.?

(h) A Lawyer's Phone Number

Have the organizers arranged for lawyers to be available? You should know the name of a lawyer you can trust and if possible know that a lawyer will be available should you get arrested.

IV. What to Leave Behind

Even the innocent are arrested (and arrest includes the right to search) so:

- leave your three joints behind;
- remember what might be construed to be a weapon (see separate section on this question);
- make your decision on what I.D. to leave behind (if not all);
- see section above on "what identification to take with you";
- leave behind your address books and any other papers that you don't want the police to see. There is no need to help them complete their charts on who is connected with whom.

Remember that your arrest may inspire the police to pay a visit to your home so you should also consider the security of your home. Thus leaving things behind may not mean leaving them in your home.

V. Going There

(a) By Car

You may want to park a good distance from the site if you are concerned with not being identified. If you don't, your licence plate may be traced. Warrants for unpaid tickets also provide the excuse for arrest and you will miss the march or your dinner after the march while you sit in the police station waiting to be bailed.

Inoperative lights or other obvious mechanical defects provide the excuse for police hassling and a request for production of a driver's licence, ownership and insurance. The police have a general right to stop cars to check these documents. Trying to show that their real motive was connected to your desire to attend a demonstration is difficult.

(b) By Public Transit

You might want to get off a few stops early or late in order to look over the scene.

(c) Scouting The Area

This is a useful practice. You will find that the police are doing the same thing. You are concerned (perhaps) with the fact that the riot squad is lined up three blocks away or at the closest police station. Or, you may find that a fascist gang is unloading its baseball bats from the trunk of a car and you the casual citizen will have obtained the licence plate, model of car and colour, and if you are really good a picture as well. You may then be able to alert your friends at the rally or march (this will be easier if you have your walkie talkie). You may want to alert the police (getting the name or number of the officer you tell) so that they will not be able to say later that they were unable to protect you because of the "surprise".

VI. At the Demonstration, Rally or March

(a) Who To Be With

In general, it is better to be with 4 or 5 other people who have an agreement that they will stick together. These "affinity groups" provide for good self defence. An isolated individual is an easy target for police abuse or fascist attack. Such an individual may find that he or she has no witnesses.

(b) What You Say

Remember the stranger beside you may not be a friend. Standard police practice includes placing officers in a crowd (some wired for sound perhaps). Parabolic microphones, which pick up sound from a great distance (including your suggestion to trash the building), are standard police equipment as well.

(c) What They Say

Write down or tape record the words of provocateurs and, of course, get their pictures. (See section above on cameras and tape recorders.)

(d) Pointing Out The Undercover Police

It is certainly nice for someone to know that they are speaking to or within hearing range. of a police officer. Even the most innocent conversations can be misconstrued and of course there is the danger of embellishment. Some courts have held that in some circumstances exposing an undercover police officer will amount to the crime of "obstruct police". Of course there are ways not to commit the crime and accomplish one's purpose. It is not uncommon for large numbers of people to begin chanting and pointing to an officer. Certainly one has a right to privacy to the extent that one can attend a demonstration and not have agents of the state spying on one.

Part C - Common Offenses Charged

Introduction

This section outlines some of the criminal charges police are likely to lay on demonstrators, whether or not they are warranted. This is certainly one case where knowing the rules can help you avoid a nasty surprise, so we strongly suggest that you read this even if you have no intention of doing anything remotely illegal.

The most common offenses charged at demonstrations, rallies or marches are assault; assault police in the execution of their duty; assault to resist arrest; obstruct police in the execution of their duty; mischief to property; causing a disturbance; possession of a weapon dangerous to the public peace or carrying a concealed weapon; and trespass. Less common are unlawful assembly, riotous assembly and conspiracy.

(I) Assault

This offence includes not only touching someone without their consent but also attempting or threatening by acts or gestures to apply force to another person.

(ii) Assault Police

This is an assault on a peace officer. The peace officer must be engaged in the execution of his (or her) "duty" otherwise it is just common assault.

In some instances an assault will not be illegal, because it is done in self defence or there is some other lawful excuse. Similarly with assault police. If the police officer is not in the execution of his or her duty you may get away with the assault. But don't count on it.

(iii) Assault to resist arrest

The arrest may be your own or that of someone else. The arrest must be legal for this charge to be made out; However, this is a hard one to beat also, since the courts tend to lean over backwards to avoid finding an arrest is not legal. One is allowed to use "reasonable force" to resist an illegal arrest of oneself. There is some doubt about your right to aid someone else who is being illegally arrested, although the English common law tradition said you could. Certainly you have a right to assist someone where the police are using excessive force. The problem is convincing the courts that excessive force was being used.

(iv) Obstruct Police

Once again the police officer must be in the execution of his or her duty. Your interference (or obstruction) must be wilful. For instance, if you are knocked into a police

officer while that officer is trying to make an arrest and the person being arrested escapes then you will not be guilty. But if you intentionally interfere you will be guilty. If the arrest is illegal you have no problem, at least theoretically. You could be charged with this offence if you uncover an undercover officer (see Activist Sheet #12 re: "pointing out the undercover police").

(v) Mischief to property

To be convicted of this offence you must wilfully destroy or damage property or render property dangerous, useless, inoperative or ineffective or obstruct, interrupt or interfere with the lawful use enjoyment or operation of property etc. This is the one they use when you destroy the newspaper box after they print another racist or sexist article or when you stop a car trying to cross a picket line or sit inside some building when you are asked to move, etc.

(vi) Causing a disturbance

You have to do this in or near a public place and not be in a dwelling house. You can do it by fighting, screaming, shouting, swearing, singing (presumably the wrong songs) or using insulting or obscene language. Also this can be done by being drunk and as well by impeding or molesting other persons. There are other methods as well. This is the charge they trot out when they don't like the chants at your demonstration or they claim that your picket is impeding the traffic (pedestrian or vehicular).

(vii) Possession of a weapon dangerous to the public peace and concealed weapons

See the special section devoted to these charges in the full document.

(viii) Trespass

This is not a "criminal offence"; it is a "provincial offence". However, you probably won't appreciate the difference while you are being arrested, carried to the paddy wagon and lodged in a cell before your release. At the moment the maximum fine is \$1,000.00. In addition, the court can make an award of up to \$11,000.00 for damages caused by the trespass.

Trespass involves entering unlawfully (without permission of the owner or occupier) another person's land when that land is enclosed or it is a garden or lawn or notice has been given by word of mouth, writing or posters or signs. (See separate section of the complete handbook for fuller discussion of this offence.)

(ix) Unlawful assembly

You can commit this offence by getting together with 2 other people (at least) with intent to carry out some common purpose and you assemble in a manner that causes people near by to fear that (a) you will "disturb the peace tumultuously" or (b) you will needlessly and without reasonable cause provoke others to "disturb the peace tumultuously".

(x) Riot

This is an unlawful assembly that makes it. That is one that in fact "has begun to disturb the peace tumultuously". If a sheriff or sheriff's deputy etc., reads certain magic words after a riot has started and you are still around after 30 minutes you will have committed a much more serious offence. This is also true if you interfere with the reading of the magic words.

(xi) Conspiracy

The essence of this charge is the making of the agreement. Nothing has to actually happen, the agreement itself is the crime. This is why you always need two people to accomplish this crime. You have to agree to commit a summary or indictable offence. You do not have to do anything other than make such an agreement. The prosecutors like this charge because there are special rules of evidence which apply and make their task easier: for example, anything any of the "conspirators" does to further the conspiracy can be used to convict you as well as that other person. This is why you have to be careful about where you talk, who you talk with (try to exclude agents from your planning meetings as they have a way of hearing things that are not said) and what you say (do not agree to do anything unlawful).

(xii) Counselling offences

They can get you for advising others to commit offenses.

(xiii) Being a party

If you even encourage someone to commit an offence you could be convicted of being a party to the offence. The result is the same as if you had done the acts yourself. Certainly doing anything to assist in the commission of the offence will make you a party. Helping people after, to escape or hide, etc., can also get you in trouble. If you are merely passive, ie: do nothing to stop someone from committing an offence, you will not be found guilty as a party.

Part D - MEETING THE POLICE

POLICE QUESTIONING, ARREST AND DETENTION

I. Common Questions

(a) Concerning Questioning

- When do I have to talk to the police?
- When do I have to answer their questions?
- When do I have to identify myself?
- When do I have to stay in the presence of the police?
- When do I have to go with the police?

(b) Concerning Detention

- When can the police detain me i.e. stop me or prevent me from leaving?
- Can I be searched when I am detained?
- Do I need to answer questions when I am detained?
- For how long can I be "detained"?

(c) Concerning Arrest

- How do I know I have been arrested?
- When can the police arrest me?
- What do I do when I am arrested?
- What are my rights when under arrest?
- How long can I be held?
- How do I get released from custody?

II. The Answers

The present law is such that it can be said that either you are under "arrest" or you are being "detained" or you are free to go on your way without interference.

(a) Questioning

Re: Speaking to police or answering questions in general

In general you are under no obligation to speak to police

officers or to answer their questions. The police only have certain powers and in general they have no power to make anyone talk to them or to require anyone to answer their questions. You may choose to speak to them or answer questions but you are certainly not required to do so. This is the general rule.

Political activists may well wish to assert their right to not talk to the police or to answer their questions. This will depend on the circumstances. You may want to talk to them and assist them when they are performing a useful function. When you are arrested or detained your right not to talk to the police or answer questions still exists but you may decide to speak or to answer some questions in those circumstances. (See discussion below.)

Re: Identifying yourself in general

In general a person in Canada has no obligation to identify him or herself to the police or to carry identification nor to provide evidence of immigration status. In fact, there is no obligation to do so when arrested or detained, although one may choose to do so for very practical reasons like ensuring one is released from custody. However, one may even choose not to identify oneself when arrested or detained. (See discussion below for examples when this might be the sensible choice.)

There are two clear exceptions:

1. If you are the driver of a vehicle (and note that we mean driver, not passenger), you are required to produce ID if a cop requests it. But that's all: you don't have to talk with him/her. Actually, the Highway Traffic Act (Ont) requires that you produce your driver's licence, ownership and insurance. Even if you cannot, if you give reasonable identification the police cannot arrest. If you refuse to identify yourself or if you fail to provide reasonable information to identify yourself you may be arrested.
2. Where you have committed a provincial offence (not a criminal offence) then the police will have to send you a summons or give you a ticket and you will have to identify yourself for them to do that. If you do not, then for certain provincial offenses you could be arrested. So, what should you do if a cop starts talking to you on the street or elsewhere?

Well, if you are not in the mood to have a friendly conversation with a cop, you have a right to walk away or stay where you are and say nothing. It may make sense to be polite but that is for you to decide. Unless you are under arrest or "detained" you have the right to walk away. Sometimes walking away is your best bet but there is no hard and fast rule.

Even if you are arrested or "detained" you have no obligation to say anything. And as a general rule it is better to assert your right to say nothing.

REMEMBER THAT IT IS MUCH BETTER TO SAY NOTHING THAN TO LIE!
LYING TO THE POLICE (ABOUT YOUR IDENTITY OR OTHER THINGS) CAN LEAD
TO A CHARGE OF OBSTRUCT POLICE AND SOMETIMES OBSTRUCT JUSTICE.
ASSERTING YOUR RIGHT TO SAY NOTHING IS NO PROBLEM.

Re: Your obligation to remain in the presence of the police or go with them somewhere.

YOU HAVE NO OBLIGATION TO REMAIN IN THE PRESENCE OF THE POLICE OR
TO GO ANYWHERE WITH THEM UNLESS YOU ARE BEING "DETAINED" OR YOU
HAVE BEEN "ARRESTED."

There is no such thing as being taken in for questioning. Either you are arrested or you are not. Either you are detained or you are not. Even if the police are searching your house, you probably have a right to leave, although they may have a right to detain you. They will have a right to prevent you from interfering with the search. On the street, in a restaurant or anywhere else, if you wish to remove yourself from the presence of the police you should very clearly assert your right to leave and you should say words to the effect "if you are not arresting me or detaining me then I am going to leave". if you are getting the feeling that you are being prevented from leaving you should definitely be saying "I am not consenting to being prevented from leaving." Similarly, if you are being required to go somewhere with the police you should be saying "I am not consenting to going with you and if I am not under arrest or you are not detaining me I wish to go on my way." You may choose somewhat more colourful language, although it may help to be polite but firm. It is amazing how often the police claim that people have remained in their presence or gone with them voluntarily and that they had no idea that the person had any objections. Some police officers have a way of thinking that you have invited them into your house. In court they will certainly be saying that you invited them in. Again, you must be firm (and polite) by stating very clearly that you are not consenting to their presence in your house (or car etc). One way of making it clear that you are not inviting them in for a chat is to walk out yourself and leave them in your house. Of course, you will have to carefully weigh the pros and cons of leaving the police alone in your house, even if their evidence will be tainted or inadmissible in court.

Part D - Complaints Against the Police

In 1990, the police complaints pilot project in Metropolitan Toronto was extended to the whole of Ontario. Every victim of police misconduct in Ontario now has access to an "independent" review mechanism for police complaints.

The bad news is that in the vast majority of cases, the system does nothing to prevent or punish police misconduct. Increasingly, the focus of the complaints system has been to protect the police rather than to assist complainants.

(a) How To Lay A Complaint

Complainants may make a complaint at any police station, at the office of the Public Complaints Investigation Bureau of the local police force, or at the local office of the Police Complaints Commissioner. Forget about the police station, unless your brother-in-law happens to be the officer-in-charge. We recommend that you make your complaint at the Office of the Police Complaints Commissioner because it is not run by police officers and you will feel more comfortable in making your complaint.

However, do not expect a lot of guidance in the process. We also recommend that you consult a lawyer, or someone else who is familiar with the complaint process, before you make a complaint, and that you review a draft of your written complaint with your legal advisor before you file it.

If you are going to make a complaint, make sure you do so within 6 months after the incident. Do not wait until any criminal proceedings against you have been concluded, since that may well take you outside the 6 month limitation period.

(b) Police Investigation

Under Part VI of the Police Services Act, the police are required to do the initial investigation of complaints. These investigations are conducted by the Public Complaints Investigation Bureau of the relevant police force. The experience of complainants who have dealt with police officers at the investigative stage of complaints is that they are strongly biased in favour of the police and against the complainants. This bias is demonstrated in the efforts of the investigators to dissuade complainants from proceeding with their complaint(s), and in the writing of interim and final investigation reports. Like complainants in sexual assault cases, complainants against the police often feel that they are the ones being investigated. Most people cannot afford to have a lawyer present when they are being interviewed by the police complaint investigators. However, it is important to remember that you, the complainant, do have

some control over the proceedings. Don't be afraid to say no if the investigator asks you questions which you consider irrelevant or embarrassing. The investigator does not need to know every aspect of your private life in order to properly investigate your complaint.

(c) Police Mediation

Part VI of the Police Services Act provides that the officer in charge of the Public Complaints Investigation Bureau, with the consent of the complainant and the suspect officer, may attempt to resolve the complaint informally. The police officer who is acting as "mediator" generally attempts to persuade the complainant not to proceed with the complaint, using one or more of the following techniques:

- (a) telling the complainant that the complaint is not likely to be successful;
- (b) trying to persuade the complainant that his or her perception or memory are faulty;
- (c) telling the complainant that the officer's previous record has been impeccable;
- (d) attempting to make the complainant feel guilty about getting the officer into trouble.

In a significant number of cases, these tactics are successful, and the complainant abandons the complaint. Unless you are likely to be satisfied by the standard police "no fault" apology ("we are sorry that you were upset by this incident"), mediation by a police officer is probably a waste of your time.

(d) Police Adjudication

Part VI of the Act provides that the Chief of Police or his designate (usually a Deputy Chief) shall review the final investigation report and decide whether any further action is warranted. In Metro Toronto, the Deputy Chiefs have consistently rejected more than 90% of the complaints (usually about 95%) on which they are required to make a decision, mostly on the basis of "insufficient evidence".

In other words, when you make a complaint, do not expect a favourable decision from the Deputy Chief. If you are looking for a quick fix, forget it. If you want your complaint to result in disciplinary proceedings against an officer, you are in for a long and tedious process.

(e) Review By Police Complaints Commissioner

After the Deputy Chief rejects your complaint, you have 30 days to request a review by the independent Office of the Police Complaints Commissioner. If the Commissioner feels you have a good case, he can refer your case to a board of inquiry for a full hearing. This process used to be a somewhat effective check and balance against bad police investigations of complaints and/or bad decisions by the Deputy Chief. Not any

more. Prior to 1990, approximately 1 out of 100 complaints resulted in a full board of inquiry hearing. Now, the figure is closer to 1 in 200.

(f) Interaction With Other Proceedings

A police complaint has a life of its own, at least in theory. For example, if you decide to lay a criminal charge of assault against a police officer, you can lay a police complaint and initiate a civil suit, all at the same time.

If you are planning to commence a civil suit against the police, and if you are not facing any charges, it is usually a good idea to lay a complaint, if only to obtain evidence for your civil suit. Frequently, you will not know the name of the officer whose conduct you are complaining about, and you can get this information from the complaint investigation.

However, if you are facing charges, particularly serious criminal charges, you should consult your criminal lawyer before making a police complaint. It may be tactically unwise to allow yourself to be interviewed by the police. This is a judgment call in each case.

(g) Board Of Inquiry Hearings

If you are one of the 1 in 200 people who are fortunate enough to make it all the way to a board of inquiry, your chances of success are still less than 25%. Prior to 1990, the success rate used to be closer to 50%, but the prosecutions of these complaints have become increasingly wimpy over the past few years. Although the Supreme Court of Canada has repeatedly said that the police complaint process is a civil proceeding, not a criminal proceeding, the Office of the Police Complaints Commissioner insists on giving police officers most of the protections enjoyed by criminal defendants, including full pre-hearing disclosure of every document that might possibly help them win their case. Lawyers for the Police Complaints Commissioner tend to treat complainants as a necessary evil, not as a member of their team. The supposed neutrality which they are attempting to demonstrate, effectively tips the balance in favour of the police.

The complainant is a party to the board of inquiry, and is entitled to legal representation. If you can get a lawyer, law student, community legal worker or some other qualified person to represent you at the hearing, you will improve your chances of success, and will feel less like a piece of furniture at the board of inquiry hearing.