

Arrest

Summary

To prevent crime and to make sure that there is order in the community, police officers are given special powers to search, arrest and detain any individual who is committing, has committed or who is believed to have committed a criminal offence. However, these powers are limited by certain basic rights guaranteed to all Canadians in the *Canadian Charter of Rights and Freedoms*.

The police can apply to the court for a **warrant** to arrest an individual whom they believe has committed a criminal offence.

The police can arrest an individual without a **warrant** if:

1. The individual has committed an **indictable offence**;
2. The police believe, on reasonable and probable grounds, that the individual has committed or is about to commit an **indictable offence**;
3. The individual has been found committing any criminal offence; or
4. There are reasonable and probable grounds to believe that there is an outstanding warrant for the arrest of that person.

In some circumstances, people can also be arrested for **summary conviction offences** without a **warrant**.

When making an arrest, the police officer must inform the accused person:

- that they are under arrest;
- of the reason for the arrest;
- of the right to call a lawyer and the availability of free legal advice over the telephone; and
- that anything they say to the police may be used in evidence against them.

An individual who is under arrest must go with the police and have fingerprints and a photograph taken. Although the police have the right to ask further questions as part of their investigation, the accused person has the right to remain silent and to refuse to make a statement or sign a confession.

Lesson Plan Overview

Criminal law is an area of law that deals with criminal offences and consequences when someone is found guilty.

This lesson plan introduces students to the concept of arrests and basic rights under the *Charter*.

Activities & Discussion

Questions:

- 1) If someone is under arrest and do not have a lawyer, who can they call?
- 2) Take a look at [Legal Aid Manitoba's](#) website. Who qualifies for Legal Aid and what kinds of matters does Legal Aid handle?
- 3) Read the [R. v. Grant](#) case summary that deals with arbitrary detention, and answer the discussion questions.
- 4) Read the [R. v. Suberu](#) case summary that deals with detention and right to counsel, and answer the quiz questions.

Glossary

Habeus Corpus – a writ requiring a person in custody to be brought before a judge to be released unless they are shown to be lawfully detained.

Indictable Offences – more serious offences. Examples include murder and theft over \$5,000.

Summary Conviction Offences – less serious offences. Examples include trespassing and shoplifting.

Warrant – a court order that gives the police various powers, for example to arrest someone, or search a home.

- 494 (1)** Any one may arrest without warrant
- (a) a person whom he finds committing an indictable offence; or
 - (b) a person who, on reasonable grounds, he believes
 - (i) has committed a criminal offence, and
 - (ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.
- (2) The owner or a person in lawful possession of property, or a person authorized by the owner or by a person in lawful possession of property, may arrest a person without a warrant if they find them committing a criminal offence on or in relation to that property and
- (a) they make the arrest at that time; or
 - (b) they make the arrest within a reasonable time after the offence is committed and they believe on reasonable grounds that it is not feasible in the circumstances for a peace officer to make the arrest.
- (3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.
- (4) For greater certainty, a person who is authorized to make an arrest under this section is a person who is authorized by law to do so for the purposes of section 25.

- 495 (1)** A peace officer may arrest without warrant
- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
 - (b) a person whom he finds committing a criminal offence; or
 - (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.
- (2) A peace officer shall not arrest a person without warrant for
- (a) an indictable offence mentioned in section 553,
 - (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
 - (c) an offence punishable on summary conviction,
- in any case where
- (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence,or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence,may be satisfied without so arresting the person, and
 - (e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.
- (3) Notwithstanding subsection (2), a peace officer acting under

Relevant Law:

Criminal Code of Canada – [sections 494 and 495](#)

Charter of Rights and Freedoms – [section 10](#)

subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

- (a) any proceedings under this or any other Act of Parliament; and
- (b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

The Canadian Charter of Rights and Freedoms

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of **habeas corpus** and to be released if the detention is not lawful.