



THE RIGHT TO A LAWYER

The presumption of innocence: It is a fundamental principle of the Canadian justice system pursuant to which an accused is presumed innocent until proof to the contrary, that is, until the person admits their guilt or, at trial, the prosecution shows their guilt beyond a reasonable doubt.

From this fundamental principle, there stems another one that is just as important: the right to remain silent. More specifically, a person who is being detained or is under arrest has the right to remain silent and has no obligation whatsoever to incriminate themselves by helping the police gather evidence against them. As for the police, they have the obligation to inform the person of this right as soon as the person is detained, in other words, as soon as the person no longer has the option to leave as a result of a physical or psychological restraint.¹

In order to ensure that the right to remain silent is respected, the law provides that the person also **has the right to retain and instruct counsel (i.e. the right to a lawyer) without delay and to be informed of that right.**

Thus, when a person is being detained or is under arrest, the police must first inform them "without delay" of their right to a lawyer. In other words, the person must be informed of their right immediately after being detained or arrested by the police, and only emergency situations involving a security issue can be used to justify the police gaining control over the situation before informing the person of their right. In addition, the police must expressly inform the person that they can retain any lawyer they want, that they can have the services of a legal aid lawyer free of charge and that there are duty counsel available 24 hours a day who offer free services over the phone.

Once all of this information has been given to the person being detained or under arrest, if the person asks to exercise their right to a lawyer, they can consult the chosen lawyer without delay. Here, too, the police can delay the exercise of that right in certain special situations, such as when there is a security issue or when the health of the person requires that the person first receive care. Thus, except in these special situations, the police must facilitate access to the requested lawyer by, for example, providing the person with access to a phone and telephone book and by allowing the person to speak with their lawyer in private. The police cannot and must not question the person or try to get information from the person as long as the person has not had a reasonable opportunity to speak with a lawyer.

However, this prohibition on questioning the person applies to the police only if the person being detained or under arrest acts with reasonable diligence in exercising their right to a lawyer. For example, a detained person who is unable to reach their lawyer after a reasonable period of time will have to consider calling another lawyer, failing which the police will be able to begin questioning.

¹ [R. v. Grant, \[2009\] 2 S.C.R. 353, par. 21](#)

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



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The prohibition will also end if the person, acting in a free and informed manner, waives the right to consult a lawyer.

In general, a person being detained or under arrest has the right to consult a lawyer only once. However, this does not mean that the person is entitled to only one phone call,² and the police must allow the person to consult a lawyer more than once if doing so is necessary for the person to truly exercise their right. Such a situation can arise if the lawyer contacted by the person was not in a position to advise the person, if the situation has changed and the person is now suspected of a more serious offence or if the police want to use new investigation methods.

Once the person has received the advice of a lawyer or has had a reasonable opportunity to do so, the police will be able to question them. It is important to note that the right to a lawyer does not mean that a detainee can require the presence of a lawyer during questioning by the police.

In conclusion, it is important to mention that the right to a lawyer is a fundamental right that contributes to a fair judicial process by ensuring that the detainee is informed of their rights and obligations.

If you are being detained or are under arrest, it is important to ask to speak with a lawyer, regardless of what you think about the extent of your responsibility for the alleged facts.

² [Stevens v. R., 2016, QCCA 1707, par. 75.](#)

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