



## **The Right to Remain Silent**

The presumption of innocence: It's a fundamental principle of the Canadian justice system pursuant to which an accused is presumed innocent until proven otherwise, that is, until the person themselves 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. The right to remain silent applies as much during the police investigation as it does throughout the judicial process. Thus, a suspect, whether or not detained, has the right to remain silent and to decide not to answer questions from the police. However, police officers do not have an obligation to advise all persons with whom they wish to speak that they have the right to remain silent. It is only when they detain a person that the police have an obligation to inform the person of that right.

Detention means the suspension of an individual's right to liberty through a significant physical or psychological restraint. However, not every contact with the police constitutes detention and nothing prevents the police from interacting with a citizen. A person can be said to be detained from the moment when, through the actions or words of the police, the person is no longer free to leave whenever they wish, whether or not they have been formally arrested.

At this stage, the right to remain silent is intended to prevent a person from having to incriminate themselves by helping the police to gather evidence against them. Thus, apart from the obligation of the person being detained to identify themselves, they have no obligation to assist the police in the search for evidence, including by answering questions or providing a statement. However, a person under arrest or being detained who knows and understands their right to remain silent may nevertheless decide to speak freely and voluntarily to the police. In such a case, what they say may be used against them if a trial is held.

The right to remain silent also applies during the trial of an accused. This means that an accused is never obliged to testify in their own defence. They can simply remain silent and challenge the prosecution's evidence. They can also call defence witnesses. In addition, at no time can the prosecution force an accused to testify.

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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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## Legal Brief\*

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### The Right to Remain Silent (continued)

As a general rule, the choice to remain silent cannot and must not be interpreted as an indication of guilt. With rare exceptions, a negative inference cannot be drawn from the fact that the accused has not testified. This is because it is never up to the accused to prove their innocence, but rather up to the prosecution to prove the accused's guilt beyond a reasonable doubt.

However, once again, despite the right to remain silent, an accused may choose to testify in their own defence. This means that the accused agrees to be questioned by their own lawyer, but more importantly, to be cross-examined by the prosecution. In such a case, the accused's version will be part of the evidence and the judge will have to evaluate this version with the rest of the evidence to determine whether or not the accused is guilty.

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