

Please note that all situations are different, therefore this information may not be applicable in your circumstances. This is for informational and educational purposes only and must not be taken as true in all matters. Furthermore, this is not to be taken as legal advice



www.StandUpCanada.Solutions

YOUR RIGHT TO PROTEST

ONTARIO

Last updated: January 15, 2021

This document is for informational and educational purposes only and must not be taken as true in all matters. Furthermore, this is not to be taken as legal advice. Please note that all situations are different, therefore this information may not be applicable in your circumstances.

Also note that Stand Up Canada is a not-for-profit organization and is not providing legal services and/or advice.

This information was prepared and provided to Stand Up Canada by: Nirmala Armstrong (Lawyer), Amanda Armstrong (Lawyer), and Michael Persaud (Law Student) of Nirmala Armstrong Law Office and Jane Scharf (Paralegal) of MJS Legal Services.

We have five (5) references to help you when planning a protest, whether as a protest organizer or as a business owner protesting lockdown measures. Please keep in mind these important items that may help you reach your goal(s).

The following information may help support and clarify your Constitutional right and freedom to hold a peaceful protest. We sincerely hope this information will be useful to you and to help with open and clear communication between all members of society.

Legal Authorities: There are 3 different authorities, for ease of reference they are colour-coded as follows:

1. **Canadian Bill of Rights 1960 (Federal)**
2. **Canadian Charter of Rights and Freedoms 1982 (Federal)**
 - falls under the **Constitution Act of Canada 1867 to 1982**
3. **Police Services Act, Ontario 1990 (Provincial)**



Please note that all situations are different, therefore this information may not be applicable in your circumstances. This is for informational and educational purposes only and must not be taken as true in all matters. Furthermore, this is not to be taken as legal advice

1. CHARTER RIGHT TO PROTEST

Your **Canadian Charter of Rights and Freedom 1982 section 2** gives you a full right and freedom to protest. ALL of section 2 applies - you cannot have one without the other.

FUNDAMENTAL FREEDOMS

Marginal note: Fundamental freedoms

2. Everyone has the following fundamental freedoms

- (a) **freedom of conscience and religion;**
- (b) **freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;**
- (c) **freedom of peaceful assembly;** and
- (d) **freedom of association.**

Here is the link to the entire **Charter** for your reference: [Constitution Acts, 1867 to 1982](#)

Here is a link to a discussion by the Canadian Department of Justice including relevant case law on the freedom of assembly. [Charterpedia - Section 2\(c\) – Freedom of peaceful assembly](#)

2. a) POLICE – THEIR OBLIGATION

Interactions with the **Police** may be intimidating in some cases; however, it must be emphasized that when speaking to the Police you are presented with an opportunity to explain your agenda for your organized event. This will allow the Police to act accordingly so that they can ensure everyone is safe (**you want them on your side**). **It is their job to keep the public safe and control the traffic.** As an organizer it is in your best interest to ensure that both yourself, and those in attendance, make reasonable efforts to make sure that the protest is peaceful, to do otherwise may result in contravention of the *Charter*.

The Police must adhere to their **Police Services Act**, Ontario, section 1 - which is their Declaration of principles:

Declaration of principles

1 Police services shall be provided throughout Ontario in accordance with the following principles:

- 1. The need to ensure the safety and security of all persons and property in Ontario.
- 2. The importance of safeguarding the fundamental rights guaranteed by the **Canadian Charter of Rights and Freedoms** and the *Human Rights Code*.

Your freedom to **protest** falls under **section 2** of the **Canadian Charter of Rights and Freedoms**

- **the Police need to uphold this and not fine you for your Constitutional Right to protest under this [section 2](#)**

Here is a link to the [Police Services Act](#), Ontario

STAND UP
CANADA



DEBOUT
CANADA

Please note that all situations are different, therefore this information may not be applicable in your circumstances. This is for informational and educational purposes only and must not be taken as true in all matters. Furthermore, this is not to be taken as legal advice

2. b) POLICE - THEIR OATH

There are four (4) different Oaths - 3 out of 4 all make reference to upholding the Constitution of Canada. *The Canadian Charter of Rights and Freedoms* falls under the *Constitution of Canada*. You have a CONSTITUTIONAL RIGHT to PROTEST.

*"I solemnly swear (affirm) that I will be loyal to Her Majesty the Queen and to Canada, and that I will uphold the *Constitution of Canada* and that I will, to the best of my ability, discharge my duties as a member of the (insert name of municipality) Police Services Board faithfully, impartially and according to the Police Services Act, any other Act, and any regulation, rule or by-law."*

Here is a link to their [Oaths](#):

3. PROVINCIAL ORDERS AND FINES

When given a Provincial Order(s) and/or Fine(s), you are dealing with the provincial regulators. As a business, and business owner, you have rights when you receive an order. Below is listed several topics to help clarify some concerns you may have.

A. What rights do I have once I receive a Provincial Order(s) and/or Fine(s)?

RIGHT TO APPEAL

You may appeal any decision pertaining to your matter that is made by the government. It is important to note that not all rights to appeal are absolute, therefore, this is dependent on your circumstances.

Your right to appeal allows you an opportunity to be heard and to challenge a decision made. This right is protected under **Section 7** of the *Canadian Charter of Rights and Freedoms* (*Charter*). The right to be heard is a very important constituent of the principle of natural justice. It allows the parties to present their case and inculcates the confidence of the deliverance of justice. Section 7 protects your right to natural justice.

B. What rights do I have if my business is arbitrarily closed?

POTENTIAL VIOLATION OF RIGHTS RE: ARBITRARY BUSINESS CLOSURE

The following is a list of rights that may be potentially violated should your business be arbitrarily closed without due process:

- (i) The right to be presumed innocent until proven guilty [s.11(d) *Charter*]
- (ii) The right to have a fair trial in court [s.11 *Charter*]
- (iii) The right not to suffer cruel or unusual punishment [s.12 *Charter*]
- (iv) Everyone has the right to be secure against unreasonable search or seizure [s.8 *Charter*]



Please note that all situations are different, therefore this information may not be applicable in your circumstances. This is for informational and educational purposes only and must not be taken as true in all matters. Furthermore, this is not to be taken as legal advice

C. How can I challenge Provincial Order(s) and/or Fine(s)?

RIGHT TO BE CLEARLY ACCUSED

Having the right to be clearly accused under the *Charter* means that you must know clearly what you are being accused of. This is an important right, as it allows for full answer and defence.

During COVID-19, the accusation that a business, or business owner is violating a Public Health Order(s) can arguably be unclear. This may be proven by providing evidence contrary to the following:

- (i) Accuracy of the PCR tests;
- (ii) Infection vs death rate; and/or
- (iii) Non-isolation and identification of a COVID-19 virus

Proving the above mentioned may lead to an unclear accusation, as the legislation will be challenged and could be unfounded.

D. I am facing punitive measures by the municipal and provincial laws, is this constitutional?

Only the Federal Government has the authority to make punitive laws in the interest of the public under section 91.27 of the ***Constitution Act of Canada*** (*Constitution*). **Any, and all, public health laws that are punitive in nature are arguably unconstitutional.**

In addition, the measures resulting from the ***Reopening Ontario Act*** are **punitive and potentially out of legal scope.**

Therefore, an **order and ticket** given to a business for staying open **may be challenged on its constitutionality.**

E. Are there limits to police power RE: Provincial Order(s) and/or Fine(s)?

POLICE SERVICES ACT

The police **oath** and **principles** in the ***Police Services Act*** commits the police to respect all your ***Charter*** rights and freedoms. It does not say in the *Police Services Act* that there are any conditions when the rights and freedoms can be overridden.

The police administration, the municipality, and the Province do not have any authority to order an officer to violate the principles and oath under the *Police Services Act*. This commitment to the citizen's rights is absolute.



Please note that all situations are different, therefore this information may not be applicable in your circumstances. This is for informational and educational purposes only and must not be taken as true in all matters. Furthermore, this is not to be taken as legal advice

BILL OF RIGHTS 1960 RE: POLICE POWER

Please note that the **Bill of Rights 1960** (*Bill of Rights*) applies to all police because they are regulated under the *Canadian Criminal Code* which is federal. In the **Bill of Rights**, the rights can only be overridden by the Parliament of Canada. Therefore, **there is no authority under municipal and provincial laws to override the Bill of Rights**. Furthermore, the **Bill of Rights**, unlike the **Charter**, **does not have any override clause** such as Sections 1 and 33 of the **Charter**. Therefore, unless the Parliament of Canada so orders, **police must regard our fundamental rights delineated in the Bill of Rights, which are identical to those stated therein the Charter**.

Here is a direct link to the [Canadian Bill of Rights](#) 1960

4. KNOWLEDGE IS POWER

Stand Up Canada wants to help support and educate those wishing to exercise their fundamental right to peaceful assembly and protest.

As such, Stand Up Canada will send you a document named “**Ontario Declaration of Emergency Analysis**”. This has been updated with **city specific** COVID-19 information which may be helpful to address what’s going on in your city or town. This is for informational purposes which you could share with everyone in your city i.e., your mayor, town council, police, and/or friends and family. Information specific to your city can be found on Page 5 of the attached document. Please note that this document normally does not contain any city specific information. We decided to make an insert for each city where protests will be held. This document will be included as a separate PDF attachment on our email to you along with this publication.

5. SUGGESTED READING

We are including a wonderful article called "[How to Have a Lawful Public March and Peaceful Protest](#)" written by Kimberly Neudorf of Aylmer, Ontario.

...thank you Kimberly!

**STAND UP
CANADA**



**DEBOUT
CANADA**