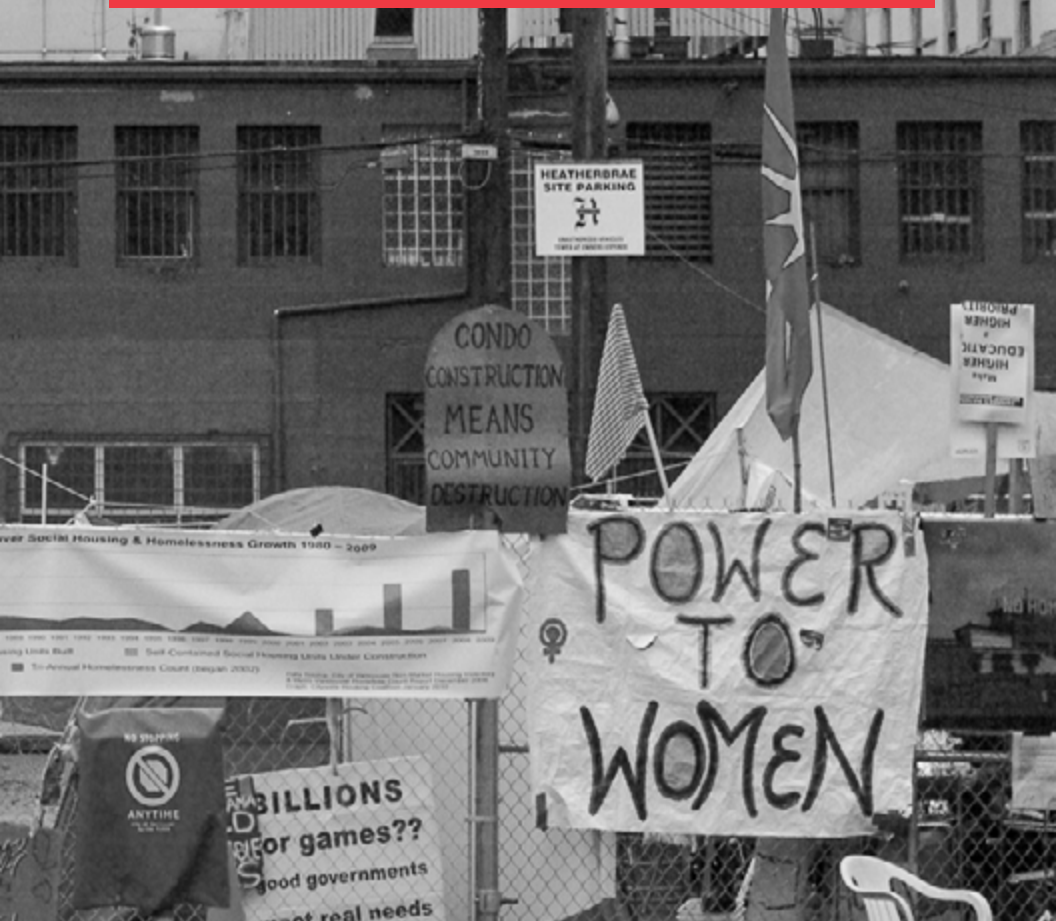


# KNOW YOUR RIGHTS:

## A guide for people who rely on public space



**PIVOT**  
LEGAL SOCIETY

We acknowledge the land on which we gather is the unceded territory of the Coast Salish Peoples, including the territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and sə́lilwətaʔt (Tsleil-Waututh) Nations.

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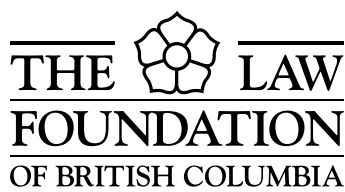
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Thank you to our funder:



## **Disclaimer**

This toolkit explains rights in general, as they relate to adults over age 19. It is not intended to provide legal advice on a particular problem. Each person's case or police complaint is different, and you may need to get legal help. The information in this booklet is up to date as of June 2019. This toolkit is a work in progress.

If you do not rely on public space, we encourage you to reach out to folks who do, in order to better understand their interactions with police, how they navigate these encounters safely, and the strategies they have come up with to be as safe as possible and still uphold their rights.

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## Introduction

In 2018-19, Pivot Legal Society engaged in a series of community-based workshops to gather input about what to include in this Know Your Rights toolkit. Based on our relationships with community organizations and outreach to specific groups that rely on public space, we heard regular stories about daily harassment by police officers, bylaw officers, and private security guards. This harassment then led to chronic displacement, seizure of personal belongings, and a climate of fear and distrust.

This toolkit is designed for people who rely on public space, as well as the advocates and service providers who work alongside them. We recognize that people need practical tools to support them in learning about, exercising, and defending their rights. In particular, this toolkit aims to highlight relevant rights for people who are criminalized due to their reliance on public space, participation in grey economies, and substance use.

This resource is not an exhaustive document. The information in this toolkit intends to provide some basic information and potential actions people can take when they are confronted by police or other authorities in public spaces.

## A note on safety

We also note that folks are often highly-informed and experts in their rights, especially when dealing with police. Regardless of their knowledge, however, law enforcement may act outside their scope and use threats and/or violence when dealing with marginalized individuals and communities. There are very limited tools and processes to ensure accountability, redress, or transformative justice when people have been harmed by police. Regardless of one's rights, we acknowledge that personal safety often supersedes any other considerations, no matter what is right or just.



## PART ONE:

# Street stops





VPD Vehicle #C8286 parked eastbound, near the intersection of East Hastings and Columbia in Vancouver, on the stolen homelands of the  $x^w m \theta k^w \acute{a} y \acute{a} m$  (Musqueam), Skwxwú7mesh (Squamish), and  $s \acute{e} l \acute{i} l w \acute{e} t a \gamma \acute{t}$  (Tsleil-Waututh) Nations. This location is routinely patrolled by police on Vancouver's Downtown Eastside. 2018.

# Street stops

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The right to move freely through the world without police interference is protected by the *Canadian Charter of Rights and Freedoms*.

The *Charter* contains the following sections which protect you during interactions with police:

**Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.**

**Section 8. Everyone has the right to be secure against unreasonable search or seizure.**

**Section 9. Everyone has the right not to be arbitrarily detained or imprisoned.**

Generally, police cannot stop you, make you answer questions or search your belongings. This applies to everyone – even if you have a criminal record or are on parole. The only exceptions are if the police have a search warrant or an arrest warrant in your name, or if you are being detained or arrested.

## Differences between arrest, detention, and street checks

Before discussing your rights, it's important to understand the difference between "arrest," "detention," and "street checks". The law regarding these three categories is confusing and often overlaps.

In some circumstances, police can detain you (stop you from leaving) for a limited amount of time, even though they don't have grounds to arrest you for committing a criminal offence. In some circumstances, police are simply trying to gather information and have no basis to stop you for any period of time (for example: street checks).

- Police can arrest you where they have "reasonable and probable grounds" to believe you have or are about to commit a criminal offence.<sup>1</sup>

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<sup>1</sup> *Criminal Code*, s. 495(1).

- Street checks are a practice whereby police stop, question, and, in certain circumstances, record your personal information in a police database.<sup>2</sup>
- If the police are just asking you general questions, you may not be detained.<sup>3</sup> A person is detained when “a reasonable person in the accused’s shoes would feel obligated to comply with a police direction or demand and that they are not free to leave”.<sup>4</sup>
- Police can detain you where they don’t have sufficient evidence to arrest you, but they are investigating a crime and have reasonable grounds to believe that you are connected to that crime.<sup>5</sup>

## Basic presumption and exceptions

The starting presumption with police is that you do not have to stop, answer their questions, let them touch you, or allow them to search your belongings.<sup>6</sup> In most situations there is no legal requirement to speak with police – you do not even need to give your name or address because individuals have the right to choose whether to speak to the police, even if they are not detained or arrested”.<sup>7</sup>

The following situations are the main exceptions to this rule:

1. You are being detained: If detained, you must stop, but you do not have to provide any information about yourself. Generally, detentions happen where police have reasonable grounds to suspect you have committed a crime, but not enough evidence to proceed with an arrest.
2. You are under arrest: If arrested, you must provide your name and address.
3. You are driving a car: If driving, you must provide your name, address, and registration if you are pulled over.

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2 Tulloch, M. H. (2018). Report of the Independent Street Checks Review. Queen’s Printer for Ontario at xiv.  
 3 *R v Suberu*, 2009 SCC 33 at para 3.  
 4 *R v Le*, 2019 SCC 34 at para 26.  
 5 *R v Mann*, 2004 SCC 52 at para 40.  
 6 *R v Suberu*, 2009 SCC 33 at para 28.  
 7 *R v Turcotte*, 2005 SCC 50 at para 51.

Passengers in the car do not have to give the police their names or addresses.

4. You are riding a bicycle and have broken a bylaw: If you are cycling and break a bylaw, you must provide your name and address.<sup>8</sup>

## Speaking with police

Sometimes when police approach you, you may not know if one of the four exceptions applies.

Interactions with police can be complex and stressful, and police are rarely clear about why they are talking to you, or whether you are legally required to engage with them.

These 3 phrases can help you figure out what the situation is and help protect your rights during the interaction:

1. Am I free to go?
2. I do not consent to the search.
3. I would like to remain silent.

### Phrase 1: “Am I free to go?”

In most circumstances, you do not have to interact with police and you may legally walk away. Asking “**Am I free to go?**” forces police to tell you whether they have a legal reason to make you stay, or whether they are simply trying to intimidate you into interacting with them.

- Even if you are having a friendly interaction, police are constantly investigating.
- Police may lie to you to obtain information from you: this is not unlawful.
- Anything you say to the police could be used as evidence in court.
- Under some limited circumstances, statements that you are required by law to provide, such as accident reports, cannot be used against you.

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8 *Motor Vehicle Act*, RSBC 1996, ss. 73(2) & 183 (1); *Moore v. The Queen* [1979] 1 SCR 195.

If you don't like the questions that the police are asking, ask:  
**"Am I free to go?"**

- If the answer is "yes", you may leave.
- If police keep talking to you anyway, ignore you, or say things like "I just have a few more questions", repeat: "Am I free to go?"
- If the answer is "no", you are either being detained or arrested and have the following rights:
  - To know why you are being held;
  - To speak with a lawyer; and
  - To remain silent.

Keep in mind that "a single forceful act or word" from police may be enough to prove that you were not allowed to leave.<sup>9</sup>

Even if you are legally required to stay with police, there are limitations on police authority. For example, police cannot use the following harmful tactics:

- Question you for an unreasonable amount of time;
- Threaten to hurt you, kill you, or destroy your belongings;
- Force you to have sex;
- Interrogate you under conditions of duress (for example: if you are naked, cold, or have not slept);
- Make you fear for your safety by following you around, talking to you, or watching you;
- Draw attention to your gender, beyond necessary discussions (for example: where to place you in custody); and/or
- Chain you up in an uncomfortable position or in a public place.

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9 *R v Grant*, 2009 SCC 32 at para 42.

## Phrase 2: “I do not consent to the search.”

In most cases, police can only search you if you have been placed under arrest, if they have a search warrant, or if you have consented to the search. If the police don't have legal authority to search you, you have the right to say “no” and the police can't legally threaten you or force you to be searched.

Since police can search you with your permission, the police may claim that you implicitly gave them permission by being quiet. Ensure that you say, “**I do not consent to the search,**” in order to make it clear that you know your rights and you are not giving them permission to search you. If a search results in criminal charges, make sure you tell your lawyer that you did not consent to the search. Anything obtained by the police during an unauthorized and non-consensual search could be excluded from court.<sup>10</sup>

Police can legally search you or your things in certain situations and if the police search you for any of these reasons, you must allow the search. These reasons include:

- i. Permission: You consented to the search.
- ii. You are detained: If you are detained, police may only do a frisk or pat-down search for weapons you could use to hurt them or yourself.<sup>11</sup> Although they may look in your bags, they cannot search for needle marks or drugs.
- iii. You are under arrest: If you are arrested, the police can do a full search of your body (not a strip search – unless they have a “good reason”) and personal possessions.<sup>12</sup>
- iv. Wrong place: If the police find you in a place where they are searching for drugs and have reason to believe that you have drugs on you.
- v. Wrong car: The police find you in a vehicle where people are transporting or drinking alcohol illegally, and they believe that you have alcohol.

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10 *R v Dhillon*, 2012 BCCA 254 at paras 76 and 79.

11 *R v Mann*, 2004 SCC 52 at para 45.

12 *R v Mann*, 2004 SCC 52 at para 45.

- vi. Warrant: If police have a warrant for your arrest, they can search you pursuant to the arrest. If police have a warrant to search a specific space, they can search the places set out in the search warrant. The police may only search you for things listed in the warrant and must show you the warrant if you ask to see it.

### Phrase 3: “I would like to remain silent.”

In most situations, you are not required to say anything to police, even if you are detained.<sup>13</sup>

In the following situations, you must provide your name and address:

- You are under arrest;
- You have broken any law (including provincial laws or city bylaws);
- You are pulled over while driving a car (this does not apply to passengers); and/or
- You are pulled over while biking and an officer alleges you have committed an offence (bikes are treated like cars in the context of traffic offences).<sup>14</sup>

In all other situations, even if you are legally detained, you are not required to provide any information to police.

If you have already provided your name and address and an officer tries to keep asking you questions, you can say: **“I would like to remain silent.”**

You can also say:

- **I want to know why I am being held.**
- **I would like to speak with a lawyer.**

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13 *R v Grant*, 2009 SCC 32 at para 30.

14 *Motor Vehicle Act*, RSBC 1996, ss. 73(2) & 183(1).

## Deciding to speak with police

You may decide to speak with police, even though you are not legally required to do so.

At times, this is a personal safety decision:

- You may want to tell an officer your name and address to show you are being cooperative.
- You may wish to justify whatever made the police suspicious, if you have not committed any crime.
  - Sometimes an explanation can end a police interaction more quickly.
  - Nonetheless, police may use your answers to “innocent” questions to justify further investigation.

Regardless of your choice: **it is better to stay silent than to lie.** Lying to police is grounds for a criminal charge of obstruction of a Peace Officer.<sup>15</sup>

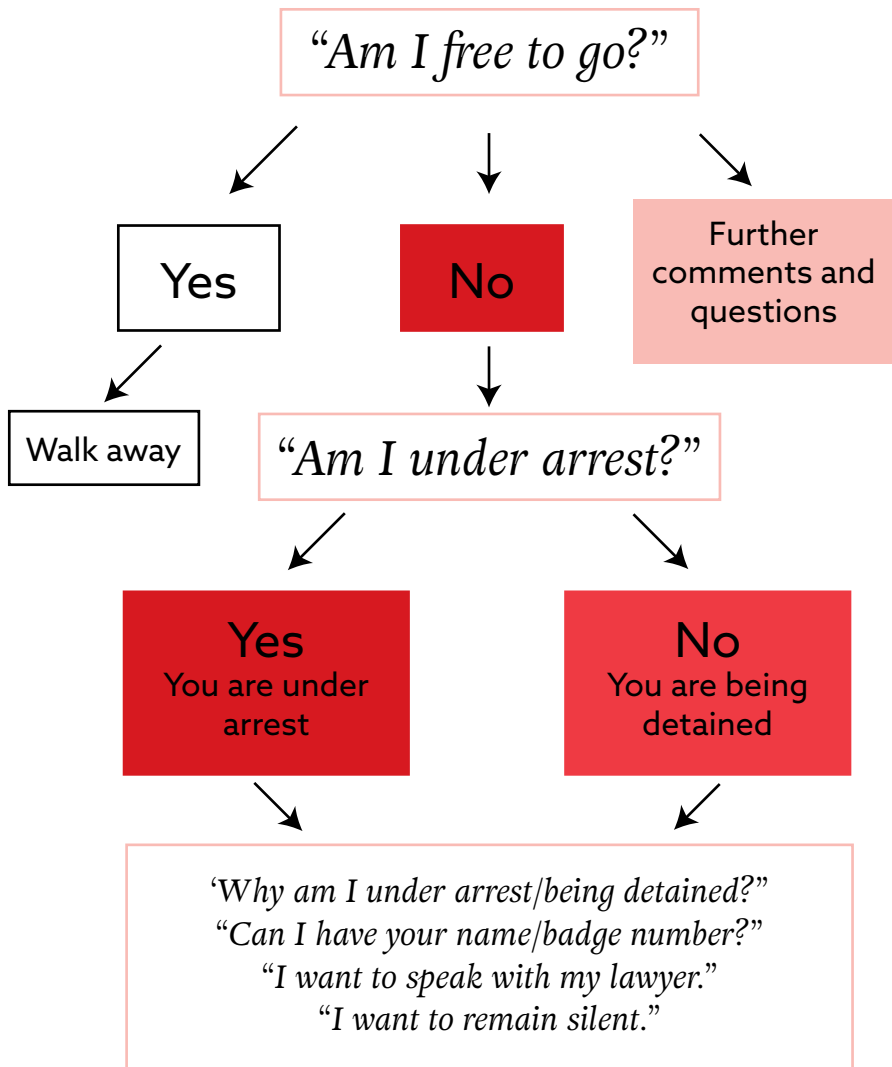
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15 *Criminal Code*, s. 129.



# Street stop flowchart

An officer walks up to you...



You don't have to say anything to police unless you are:

- under arrest;
- driving a car/involved in a car accident; or
- riding a bike.

You must provide your **name** and **address** but nothing else. If the bike/car is not your own, you must also provide the name and address of the owner.



## PART TWO:

# Rights upon arrest & detention



View of We Exist Tent City, located on Gordon Avenue in Port Coquitlam, on the stolen homelands of the Kwikwetlem, within the shared territories of the sə́ilwətaʔt təməxʷ (Tsleil-Waututh), xʷməθkʷəy̓əm (Musqueam), s̓qə́ciyaʔt təməxʷ (Katzie), and S'ólh Téméxw (Stó:lō) Nations. A red sign in the foreground reads “STOP Criminalizing Homelessness.” This tent city was dismantled by police shortly after it was established by people who rely on public space in the tricities. 2019.

# Rights upon arrest & detention

The *Charter* sets out your rights if you are arrested or detained:

## **Section 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.

## **Detention**

Police may detain you in the following circumstances:

- If there are reasonable grounds (more than suspicion or intuition) for police to suspect that you are connected to a particular crime.<sup>16</sup>

Police may not detain you in the following circumstances:

- If you are in a high-crime area, but have no connection to a particular crime<sup>17</sup>; and/or
- If you are being detained in connection to an offence that occurred a long time ago and there is no warrant for your arrest.<sup>18</sup>

## **Right to silence**

- If you are being detained for a criminal offence, you are not required to provide any information to police.
- If you are being detained for a bylaw offence you are required to provide the officer with the information necessary to fill out the bylaw ticket (name, date of birth, etc.).

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16 *R v Mann*, 2004 SCC 52 [Mann] at para 45.

17 *R v Mann*, 2004 SCC 52 [Mann] at para 47.

18 *R v Dhillon*, 2012 BCCA 254 at para 79.

## Search upon detention

- If you are detained, police may only do a frisk or pat-down search for weapons you could use to hurt them or yourself. In some cases, they may also look in your bags. They cannot search for needle marks or drugs.

## Arrest

The Arrest Handbook<sup>19</sup> outlines the only reasons that police can arrest you:

1. A police officer sees you committing a criminal offence;
2. A police officer has reasonable grounds (more than suspicion) to believe you have committed or are about to commit an indictable or hybrid offence;
3. You have broken any law (including provincial laws or city bylaws) and you won't tell police who you are and where you live;
4. There is a warrant for your arrest;
5. A police officer has a reason to think you have a mental disorder and are dangerous;
6. You are about to breach the peace (ex. fighting, causing excessively loud noise); and/or
7. You are drinking alcohol or consuming illicit drugs in public.

At the time of arrest:

- The police are only allowed to use as much force as is necessary to arrest you or ensure that the situation is safe. Any additional force is considered "excessive" force and may constitute police misconduct.
- Any pulling, kicking, punching, running, or physical action to avoid arrest could result in more charges or use of force; going limp does not count as resistance and is advisable.
- The police may search you, your clothes, and anything

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19 Eby, D. (2009). The Arrest Handbook. BC Civil Liberties Association.

you are carrying as long as they believe that the search is necessary for the safety of the police and the public, to protect evidence from destruction, or to discover evidence that may relate to your guilt or innocence.

- They can also search your “immediate surroundings,” including your car, if that is where you are arrested.
- Strip searches are very invasive and only allowed when there are reasonable grounds to suggest that it is necessary to find weapons or evidence. Strip searches should be conducted at a police station.<sup>20</sup>

## Your rights when arrested

When arrested, one has the right:

- To be told why one is being arrested,
- To be searched in a reasonable manner,
- To remain silent except you must tell police your name and address, and
- To talk to a lawyer, in most circumstances. If you ask to speak with a lawyer, the police may not continue questioning you.
- Do not answer any questions until you have spoken to a lawyer.

The police may keep asking questions; other than giving your name and address, you don't have to answer them. Do not lie to police, including giving a fake name or address, as this could result in more charges.

## Police obligations upon arrest

1. **Police must tell you why you are being arrested** (unless it's obvious)

You have the right to be informed promptly of the reason for your arrest. If you are unsure, you should politely ask the police officer why you are being arrested.

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20 <https://stepstojustice.ca/questions/criminal-law/when-can-police-search-me>

## 2. **Give you your right to counsel (a lawyer) & respect your right to silence**

Once you are arrested, you have the right to speak to a lawyer, and the police must advise you of this right as soon as possible. The police must also tell you about Legal Aid and your right to free legal services. If you ask to contact a lawyer, the police must provide you with a telephone; you have the right to speak to a lawyer in private.

The police must also stop questioning you until you have been given an opportunity to contact a lawyer. Once you have spoken to your lawyer, the police may continue to ask you questions. You do not have to answer these questions.

## **Custody and release**

- The police may decide to release you at the scene of arrest on the basis of one of the following documents: a summons, Notice to Appear, Promise to Appear (with or without an undertaking), or Recognizance (with or without an undertaking). These documents advise you of the offence you allegedly committed and give you a time to appear in court.
- You may be kept in jail for up to 24 hours before appearing before a judge or justice of the peace.

## **Brydges Line**

If you are arrested, detained or in custody, you can call and speak with the Brydges Line. This is a province-wide, toll-free telephone service available 24 hours a day, 7 days a week.

You are entitled to multiple phone calls until you reach a lawyer. Once you reach a lawyer and have a conversation with them, the police may continue to question you, as your right to speak with a lawyer will have been fulfilled.

**Phone number: 1-866-458-5500 (call no charge)**



## Other types of arrests

### Arrest with a warrant

A warrant is a document that a judge uses to allow the police to do something. Arrest warrants order the police to arrest a specific person. If the police have a warrant for your arrest, ask to see it. You have the right to see the warrant as soon as possible. When you see the warrant, make sure it is actually for you.

### Arrest under the *Mental Health Act*

Under *Mental Health Act*<sup>21</sup> police officers can use force to take you to a hospital for an exam by a doctor if they think that you are acting in a way that is dangerous to yourself or other people, and you seem to have a mental disorder that needs treatment. The police may be contacted due to complaints about you from other people, their direct observation of your behavior, or in response to requests for assistance from health professionals or family members. The police can become involved under the *Mental Health Act* even if you have not committed a criminal offence.

### Immigration detention

People who are not Canadian citizens can be arrested and detained by the police and also by the Canada Border Services Agency (CBSA) for reasons set out in the *Immigration and Refugee Protection Act*. CBSA has the power to enforce immigration law. To arrest and detain a permanent resident in Canada, CBSA generally must have a warrant. An immigration officer can arrest and detain someone without a warrant if the officer has reasonable grounds to believe the person is inadmissible to Canada and (i) is a danger to the public or (ii) is unlikely to appear at a hearing; or if the officer is not satisfied of the person's identity.<sup>22</sup>

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21 *Mental Health Act*, s. 28(1).

22 *Immigration and Refugee Protection Act*, s.55(2).



## Breaching the peace

Breaching the peace means you are causing a disturbance that involves some potential for violence.<sup>23</sup> There is no specific offence of breaching the peace. This means that police must release you after they arrest you and remove you from the area, unless they are going to charge you for breaking another law.

## Public intoxication

If you are in a public area and you are intoxicated, the police can arrest you. Intoxicated means that you are so drunk or high that you are unable to care for yourself, are a danger to yourself or others, or you are causing a disturbance. You must be released when you are sober.

## Sobering units & cells

A sobering unit is a short-term facility where intoxicated people are held until they become sober, typically within 4-24 hours. There are six sobering units in BC: Vancouver, Surrey, Victoria, Duncan, Nanaimo, and Port Alberni. In the remainder of the province, the police may bring an intoxicated person to a hospital emergency unit or a jail cell in a police detachment (the cell may be a designated sobering cell or a regular jail cell). The RCMP have an internal and national cell policy, and each municipal police department should have an internal cell policy regarding duration, medical care, and release.

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23 *Brown v Durham Regional Police Force*, 1998 CanLII 7198 (Ontario Court of Appeal).



## **PART THREE:**

# **Rights in my home**



Window into one of the structures built by a resident of Anita Place Tent City, in Maple Ridge, on the stolen homelands of the s̓q̓əciyaʔt̓ təməxʷ (Katzie) and Kwantlen Nations. There is a sign that reads “THIS TENT IS MY HOME” posted to the left of their window. 2019.

## Rights in my home

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If you try to prevent police from entering your home, you may be charged with obstructing the police. Practically speaking, it may not serve you to fight with the police. We recommend that you strongly assert that **you do not consent** to them entering your home and then step aside. If the police enter your house, they are required to give proper notice to you by knocking on the door, ringing the doorbell, and telling you the reason they are entering. There is an exception if police are entering in urgent circumstances.

### Circumstances when the police are allowed to enter your home:

- i. Permission: The police have permission from you or someone else in authority in your home to enter. If you do not wish the police to enter your home, you should tell the police clearly that you do not agree to their entry.
- ii. Arrest Warrant: The police have a warrant, authorizing them to enter your home to arrest someone.
- iii. Search Warrant: The police have a search warrant, authorizing them to enter your home, conduct a specific search, and take certain items that they find. If the police have a valid search warrant, they must identify themselves and ask for permission to enter – if you refuse, they may enter your home without permission. In most cases, the police must also show you a copy of the warrant. Make sure that the information on the warrant is correct. For example, check that the correct name and address are listed and see if there are any time limits about when the police can use the warrant. The police are expected to act reasonably in their search. They are not allowed to use excessive force or damage property for no reason.
- iv. Urgent Circumstances: There are urgent, also known as exigent, circumstances that require the police to enter your home for the purpose of ensuring the safety of those in the home. An urgent circumstance includes:

- A 911 call has been made and the police believe that entry to your home is necessary to prevent death or serious injury. This call can be made from anywhere, including a payphone, and can be made anonymously.<sup>24</sup>
- Where the police believe that someone in the home is in need of emergency services.
- To help someone who has reported a domestic assault to safely remove their belongings.
- To protect people from injury if the police suspect that there is a drug laboratory in the home.
- If the police are chasing someone who they believe has just committed an offence and the person runs into a house, the police can follow them in. This is because a person who enters a house, or someone else's, to get away from the police who are chasing them because they have just committed an offence cannot expect their privacy to be protected.

## Once police enter your home:

- If they do not have a warrant, they can take steps to secure the safety of the officers and those in the home if they reasonably believe it is necessary to do so, but must take care only to search to the extent necessary.<sup>25</sup>
- If the police enter a home and see evidence of a crime in plain view (for example a firearm or illicit drugs) this will permit them to seize items or conduct further searches.
- If the police have an **arrest warrant**, they generally cannot search a home incidental to that arrest, unless exceptional circumstances exist.<sup>26</sup>
- If the police have a **search warrant**, they must confine their search to the terms of the warrant.

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24 *R v Serban*, 2018 BCCA 382.

25 *R v Macdonald*, 2013 SCC 3.

26 *R v Feeny*, 1997 CanLII 342.

## Privacy in tents

We believe that people who shelter in public space, whether in tents or informal structures, should have the same rights as people who live in houses. There is an argument that you should have privacy rights in your tent similar to those a housed person has in their home, but the law in Canada is not clear on this issue.

### **R v Picard**<sup>27</sup>

In the recent case of *R v Picard*, the BC Provincial Court found that although someone who resides in a tent has a reasonable expectation of privacy, a tent is not a home when it is placed somewhere illegally. In this case, the tent was located on the sidewalk of a city street in Vancouver. Following the arrest of Mr. Picard, police searched a tent located on the sidewalk of Alexander Street in Vancouver. At trial, Mr. Picard objected to the search of his tent and argued that it was not proper for the police to search the tent incidental to his arrest and rather, much like a home, a warrant was required. Mr. Picard testified that the tent was his home and he lived in it with his girlfriend. The Court found that because Mr. Picard did not have a legal right to live in his tent on the sidewalk, the tent was not a “home” in the legal sense and the law that would have protected him from a warrantless search of a traditional home following his arrest did not apply. This meant that because Mr. Picard was suspected of trafficking drugs from his tent, the police were permitted to search it in the course of arresting him.

### **What to avoid if you shelter in public space:**

- If you physically interfere with an investigation, you may be charged with Assault and/or Obstructing a Peace Officer– we do not recommend physically barring police from entering your tent.
- If you physically obstruct an officer trying to enter the space, you risk being charged with Assault and/or Obstructing a Peace Officer.

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27 *R v Picard*, 2018 BCPC 344.

## What you can do if you shelter in public space:

- Hang a sign that states “**This Tent is My Home;**”
- Close your tent when you are not inside it;
- Close your tent when you see police, fire, or bylaw staff nearby;
- If police want to look in your tent, tell them that the tent is your home and you **do not consent** to them looking in or searching your tent;
- Ask them on what basis they are searching your tent and/or your belongings;
- Monitor and document police behaviour; and
- If you are arrested based on a tent search, ensure that you tell your lawyer that the tent was your home and you took steps to inform police (for example that you had a “**This Tent is My Home**” sign displayed).

## Encampments

Police are legally allowed to enter tent cities or other informal settlements without notice or permission.

You can ask police to wait at the entrance to the camp until you find the person they are looking for or some other trusted person, but they don't have to agree.

## Living in your car

If you are sleeping in your car in a place where the car cannot legally be, or in a place where a bylaw prevents sleeping in cars, you must identify yourself so that the officer can write you a ticket. If sleeping in your car, ensure you remove keys from the ignition and safely stow them in your vehicle.

## PART FOUR:

### *The Good Samaritan Drug Overdose Act*

The entrance to the pop-up Overdose Prevention Site, located on Royal Crescent Avenue in Maple Ridge, on the stolen homelands of the s̓q̓əciy̓aʔɫ təməxʷ (Katie) and Kwantlen Nations. This site was shut down by police shortly after it was established by substance use activists in Maple Ridge. Signs and placards are visible in this photo, including ones that read “IT’S NOT A WAR ON DRUGS – ITS WAR ON PERSONAL FREEDOM”, “CRIMINALIZATION KILLS”, “HARM REDUCTION WORKS” and the words “LIVES LOST” inside a circle with a slash down the middle. 2019.



IT'S NOT

A WAR ON  
DRUGS

IT'S WAR ON Personal  
freedom!

Overdose  
Prevention  
Site



ALIZATION  
ILLS

HARM  
REDUCTION  
WORKS

# The Good Samaritan Drug Overdose Act

We believe that drug overdoses are a medical emergency and should be treated as such. *The Good Samaritan Drug Overdose Act (GSDOA)* is meant to encourage people to call 911 in the event of an overdose without fear of charge or arrest. It does not, however, provide adequate legal protection for people who use drugs and you may still be deterred from calling 911 when an overdose occurs.

The GSDOA provides some legal protections if you are at the scene of an overdose when police arrive —whether you are the caller, the person needing medical attention, or a bystander at the scene. ***The GSDOA does not provide blanket immunity against all charges.***

## Overview of GSDOA Protections:

Does	Does Not
<ul style="list-style-type: none"><li>• Protect people at the scene against charges of <b>simple drug possession</b> (section 4(1) of the <i>Controlled Drugs and Substances Act</i>).</li><li>• Protect people at the scene against charges for breaching court conditions <b>where the underlying offence is simple drug possession.</b> This is limited to conditions of:<ul style="list-style-type: none"><li>• <b>Parole;</b></li><li>• <b>Pre-trial release;</b></li><li>• <b>Probation orders;</b> and</li><li>• <b>Conditional sentences.</b></li></ul></li></ul>	<ul style="list-style-type: none"><li>• Protect people at the scene against charges for more serious offenses, such as:<ul style="list-style-type: none"><li>• <b>Production, possession for the purpose of trafficking of controlled substances;</b></li><li>• <b>Warrants;</b> and</li><li>• <b>All other crimes besides simple possession.</b></li></ul></li><li>• Protect individuals at the scene against charges for breaching court conditions where the underlying offense is anything other than simple drug possession.</li></ul>

## Are you protected by the *Good Samaritan Drug Overdose Act*?

When Police Arrive at the Scene	Are You Protected by the Act?	
	Yes	No
You are in possession of illegal drugs for your own personal use (section 4(1) of the <i>Controlled Drugs and Substances Act</i> ),	x	
You are violating a condition of your parole, pre-trial release, probation order, or conditional sentence for a <b>simple possession charge</b> .	x	
<p>You are in possession of illegal drugs and you intend to sell them – or it looks that way to police because:</p> <ul style="list-style-type: none"> <li>• You have a large amount of drugs on you;</li> <li>• You have a large amount of cash on you; and/or</li> <li>• You have drug-selling equipment on you, such as scales or packaging materials.</li> </ul>		x
You are in the middle of selling illegal drugs or some other more serious offence, such as robbery or assault.		x
You are violating a condition of your parole, pre-trial release, probation order, or conditional sentence for <b>an offense that is not simple possession</b> .		x
There is an outstanding warrant for your arrest.		x



## **PART FIVE:** **Seizure by police**



Two Vancouver Police Department officers speak with an unseen person, sheltering on an East Hastings Street sidewalk in Vancouver, on the stolen homelands of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səɫílwətaʔɫ (Tsleil-Waututh) Nations. 2015.

# Seizure by police

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"Seizing" your property means the police are taking your property. We have heard that it is a regular practice for police to routinely dispose of personal property that belongs to people who rely on public space. This is a harmful practice.

## What you can say

If the police are attempting to take your belongings, advise them of the following:

- "I need my belongings to survive. By taking them the police are putting my health and safety at risk."
- "If you are seizing my belongings pursuant to bylaw, the police should be aware those bylaws may not stand up to constitutional scrutiny."
- "Section 7 of the *Charter* prohibits the government from threatening the life, liberty and security of the person, except in accordance with the principles of fundamental justice. The *Charter* overrides any City bylaw."

## When can police seize my belongings?

The police should only take your property if they have **reasonable grounds to believe** the property is connected to a crime (Criminal Code s.489(2)), namely, if they claim your property:

- Was obtained by the commission of an offence (e.g. stolen, bought with proceeds of crime);
- Was used in the commission of an offence (e.g. a weapon the police claim you hit someone with); and/or
- Will give evidence in relation to an offence.

## Getting your property back

### Illegally owned property

This type of property may be destroyed, and will not be returned to you. Note, this is even if you bought the property fairly, but was stolen by someone else.

### Lawfully owned property

Police rarely provide paperwork when they are seizing your belongings. If the police ask you to sign a waiver, be careful, this may be called "a waiver of voluntary relinquishment," in which you state you are agreeing to give your property to police and not ask for it back. The police may threaten to arrest you if you do not sign the waiver – this is not legal.

## Record the following information

If you can, try and write down the following information:

- Officer name and/or badge # (shirt, license);
- Items seized;
- File # (if provided); and
- Date your belongings were seized.

## Call your local property office

If your property is seized, and no charges are laid, you can try to call your local police property office and ask them to return your property.





**PART SIX:**  
**Bylaw enforcement**





Surrey RCMP, Bylaw Enforcement and Fire Service staff assemble behind a garbage truck during the dismantling of the tent city on 135A Street, in Surrey, on the stolen homelands of the s̓qəciyaʔt̓ təməxʷ (Katzie), s̓cəwaθenaʔt̓ təməxʷ (Tsawwassen), S'ólh Téméxw (Stó:lō), Kwantlen, and Stz'uminus Nations. 2018.

# Bylaw enforcement

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In BC, local governments (AKA municipalities) also use a wide variety of bylaw enforcement practices and approaches that interfere with the daily lives of folks who rely on public space. When it comes to enforcing bylaws, your community may have a specialized team, a chief administrative officer, or a single bylaw enforcement officer ("bylaw officer"). Some local governments have agreements with an external agency to carry out all or part of their bylaw enforcement – this agency could be a private company, municipal police, or another local government. Bylaw officers have the authority to issue a municipal ticket information or a bylaw notice. All police officers also act as bylaw officers in BC.<sup>28</sup>

## Common types of bylaws

If you rely on public space in any way, you may be impacted by the following types of bylaws:

- Bylaws governing possessions;
- Bylaws governing camping; and
- Bylaws governing traffic on sidewalks.

That being said, the existence of a bylaw does not necessarily mean that bylaw officers know how to enforce it. In some situations, an inspection conducted by a bylaw officer may be considered an unreasonable search and a violation of the *Canadian Charter of Rights and Freedoms*. This violation is based on the following:

- Individual's reasonable expectation of privacy;
- Intrusiveness of the search;
- Stigma associated with the offence; and
- Feasibility of obtaining a warrant, and the usefulness of a warrant.

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28      *Police Act*, s. 4.2(2)(c)(i)(A).

## Authority of bylaw officers to enforce these provisions

If you are found to be contravening a municipal bylaw, you could face the following consequences:

1. Municipal ticketing;
2. Prosecution under the *Offence Act*;
3. Bylaw offence notice;
4. Direct enforcement;
5. Civil proceedings; and/or
6. Seizure of possessions.

## What can you do?

If you are being ticketed, ensure the following:

1. Ask for proof that the person issuing the ticket is a bylaw enforcement officer
2. Ask which by-law they are using to ticket you

## Disputing a bylaw

- Municipal tickets are disputed in provincial court.
- Bylaw offence notices are disputed through an adjudication system (this is different from court).
- Offence act prosecutions are heard in provincial court.

**If you do not respond** to a municipal ticket at all (i.e. you do not pay the fine and do not notify the local government that you wish to dispute it) the local government may submit the ticket to the court for consideration by a justice. The justice must review the ticket and will convict you and impose the penalty if the ticket appears to be in order – even in your absence.



**PART SEVEN:**

# **Ministry of Children and Family Development**



Neighbouring tents at Anita Place Tent City, in Maple Ridge, on the stolen homelands of the s̓q̓əciy̓aʔt̓ təməxʷ (Katzie) and Kwantlen Nations. In a 2009 report, the Representative for Children and Youth in BC noted that “a ‘place of your own’ is crucial to every family feeling protected and secure, and provides shelter, safety, privacy, an identity and a place to care for each other.” 2017.

# Ministry of Children and Family Development

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In BC, social workers investigate complaints of child abuse or neglect on behalf of the Director of Child Welfare and Family Development.<sup>29</sup> These social workers may be employed by the Ministry of Child and Family Development ("MCFD") or a Delegated Aboriginal Agency.

If you do not let a child protection social worker meet with you and your child, they can make a court application that allows a social worker, police officer, or specific person to enter the premises or vehicle or board the vessel specified in the order and to search for the child, by force if necessary.

Social workers and police officers may request to meet with your children. Social workers and police officers have the power to remove children from your home and they do not need a court order to do this. If you are very nervous about talking with a social worker, ask a supportive family member or friend to be present. If you are interacting with a social worker, take notes about any conversations you have, including the date, time, who was present, and what was discussed. Any time a social worker says you have a court date or asks you to sign any documents (papers) about your child, you should **try to get legal advice as soon as possible**.

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29 *Child, Family and Community Service Act.*







## PART EIGHT:

# Private security guards





A private security guard surveys the front entrance to Anita Place Tent City, in Maple Ridge, on the stolen homelands of the s̓q̓əciy̓aʔɫ təməx<sup>w</sup> (Katzie) and Kwantlen Nations. A sign in the foreground reads “YOU ARE UNDER SURVEILLANCE.” 2019.

## Private security guards

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Security guards work for private businesses or stores; they are not city employees or police officers.

Security guards have to treat you fairly, and they are not allowed to discriminate against you because of your race, disability (including addiction), or other protected grounds.

If security guards are making you leave a particular location, they do not need to give you a reason. A security guard can ask you to leave private property and they can ban you if rules are broken.

### Basic rights

- You do not have to give a security guard any information, including your name.
- A security guard cannot bother you if you are outside on the sidewalk in front of their store or in the alley out back if this is public property.
- Security guards have to treat everyone equally.
- If a security guard mistreats you or discriminates against you, you can ask for their name and who they work for, and make a complaint.

### Arrest and detention

- Security guards usually cannot arrest or detain you.
- A security guard can only arrest you if they see you committing a crime or running from the police. In those cases, security guards can hold you until the police come.
- Security guards can only search you if they arrest you; they can only engage in a pat-down search.
- Security guards cannot search your bags or other belongings without you saying it's okay.
- You may need to consent to a search if you are attending a private event (e.g. concert).

- If you are not under arrest, you can decline the search.
- If you are detained or arrested, you can remain silent and wait to speak with a lawyer.
- You do not have to speak with a security guard or let them search you.

If someone refuses to leave private property when asked, they may be viewed as a trespasser. Guards can use reasonable force to remove trespassers and they can make a citizen's arrest if a trespasser actively resists lawful efforts to remove them.

## Complaints

### Licensed security guards

- If you wish to make a complaint about a security guard, do your best to find out their name, who they work for, and their security license number.
- Even if you do not have this information, you should take your complaint forward with as much information as you have available.
- Complaints about licensed security firms or guards can be made to the Security Programs and Police Technology Division of the Ministry of Public Safety and Solicitor General.
- You can contact this office via phone (1 855 587-0185, press option 1), email ([securitycompliance@gov.bc.ca](mailto:securitycompliance@gov.bc.ca)), or mail (PO Box 9217 Stn Prov Govt, Victoria, BC V8W 9J1).

### Unlicensed security guards

Complaints about an unlicensed guard should be made directly to the guard's employer.



**PART NINE:**  
**Copwatch**



Five RCMP officers assemble outside of Anita Place Tent City, in Maple Ridge, on the stolen homelands of the s̓qəciyaʔt təməxw (Katzie) and Kwantlen Nations. There is an RCMP car in the foreground. 2018.



# Copwatch

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Recording and documenting police actions is a well-known strategy for community members to demand police accountability. Copwatching involves following police, recording them, and observing their actions. This is legal as long as you keep a reasonable distance and are not physically interfering with an investigation.

If you have questions about an officer's conduct, you can ask them questions, such as "Why are you on site?" They do not have to answer your question, but their information may be helpful. Whenever possible, we recommend you copwatch with another person. If you are interacting with police, do your best to have another person present. If you're filming, try to do so with a group of people.

## To identify a specific police officer:

- Request the police officer's **surname** and **badge number**:
  - Most officers are required by their policies to provide this information upon request.
- If an officer refuses to provide this information, there are other ways to identify them:
  - Badge # on shirt (generally at chest level or on sleeve); and/or
  - Car # or Licence Plate # (Police Departments know which officer was in each car on each day).

## Common issues with Copwatch:

- If the police tell you to stop filming – advise them **“It is not illegal to film an officer.”**
- If the police tell you to leave an area – advise them **“I am just observing, I am not interfering.”**
  - Note: there may be times when police force you to leave due to a safety issue, such as a live weapon.
- If the police try to seize your phone or camera – advise them **“My phone is not evidence and I do not consent to you taking it.”**
  - You can offer to send the video, if they tell you the recording may produce evidence of a crime.

## Obstructing police:

If you rely on public space and regularly interact with police, you may have heard the term “obstructing a police officer.” Obstruction means you are **resisting or willfully obstructing** a police officer in the course of their legal duty, for example: during arrest (standing between the officer and the person about to be arrested) or during an investigation (blocking a doorway police need to enter).

Obstruction has two possible meanings: (i) to intentionally resist or obstruct a peace officer who is in the lawful execution of their duties, or any person lawfully acting in aid of such an officer<sup>30</sup> or (ii) to omit, without reasonable excuse, to assist a peace officer who is arresting a person or preserving the peace.<sup>31</sup>

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30 *Criminal Code*, s. 129(a).

31 *Criminal Code*, s. 129(b).



**PART TEN:**  
**Complaints**





A view into a tent city set up by Namegans Nation in Saanich, on the stolen homelands of the WSÁNEĆ (Saanich) and Lekwungen (Songhees) Nations. This tent city was established shortly after its homeless residents were forcibly evicted from another tent city, Camp Namegans. Five visible signs in the photo read "HOMES NOT HATE!", "Eviction is not the answer, Fix the system!", "Poverty is NOT a crime!", "No Justice on STOLEN LAND!", and "BASICS: WATER FOOD \*HOUSING\* eh". 2018.

# Complaints

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During this project, we met many people who had complaints about particular police officers. Unfortunately, there are no free legal resources to help people make complaints about police conduct in BC. This remains a critical barrier to police accountability in BC.

If you do wish to make a complaint about a particular police officer, there are 3 relevant organizations to be aware of:

## Municipal Police

In BC, there are 14 municipal police forces operating, in Abbotsford, Central Saanich, Delta, Nelson, New Westminster, Oak Bay, Port Moody, Saanich, Vancouver, Victoria, West Vancouver, as well as Stl'at'imx Tribal Police, and Transit Police. If you have a complaint about a municipal police officer, the [Office of the Police Complaint Commissioner](#) (OPPC) has jurisdiction.

## OPCC contact information

Website: [opcc.bc.ca](http://opcc.bc.ca)

Mailing Address:

PO Box 9895, Stn Prov Govt, Victoria, BC V8W 9T8

Telephone: 250.356.7458

Toll Free: 1.877.999.8707

Fax: 250.356.6503

Email: [info@opcc.bc.ca](mailto:info@opcc.bc.ca)

## Royal Canadian Mounted Police (RCMP)

In BC, the RCMP "E" Division is also responsible for municipal, provincial, and federal policing. The RCMP has over 100 [detachments in BC](#). If you have a complaint about the RCMP, the [Civilian Review and Complaints Commission for the RCMP](#) (CRCC) has jurisdiction over complaints.

### CRCC Contact Information

Website: [crcc-ccetp.gc.ca/en](http://crcc-ccetp.gc.ca/en)

Mailing Address: Civilian Review and Complaints Commission for the RCMP, National Intake Office, P.O. Box 1722, Station B, Ottawa, ON K1P 0B3

Toll Free: 1-800-665-6878

TTY: 1-866-432-5837

## Death or serious harm

In BC, the [Independent Investigations Office](#) (IIO) investigates police-involved incidents that result in death or serious harm to determine whether or not an officer may have committed an offence. The IIO has jurisdiction over both municipal police forces and the RCMP.

### IIO Contact Information

Website: [iiobc.ca](http://iiobc.ca)

Mailing Address: Independent Investigations Office, 12th Floor, 13450-102nd Avenue, Surrey, BC V3T 5X3

Toll-free: 1-855-552-4622



## **PART ELEVEN:** **Additional resources**



City of Vancouver Street Operations workers dismantle a homeless person's tent that was set up on Heatley Avenue, in Vancouver, on the stolen homelands of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and sə́ilwətaʔt (Tsleil-Waututh) Nations. One worker carries a sign that reads "CROSSWALK CLOSED". 2019.

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A view into the tent city established in 2010 at 58 West Hastings, in Vancouver, on the stolen homelands of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and sə́ilwətaʔt (Tsleil-Waututh) Nations. This tent city was women- and Indigenous-led. Numerous banners and placards are visible in this photo, including ones that read “Housing is a Right”, “BILLIONS for games?? good governments meet real needs”, and “CONDO CONSTRUCTION MEANS COMMUNITY DESTRUCTION” and “POWER TO WOMEN.” The red flag of the Rotisken’rakéhte (Kahnawake/Mohawk Warrior Society) is flying. 2010.

