

Mouzourakis & Company

Trial Lawyers

Criminal Law FAQ's

If you are charged with a criminal offence, the first thing you must do is not panic!

Remember, in most instances there is a basic right to remain silent when encountering policemen and this applies before and after arrest. A **suspect** does not have to identify himself unless the investigating officer has reasonable and probable grounds to believe that an offence has been, or will be committed. The officer does not have the right to detain a suspect nor to take him to the police station for questioning unless that person has been placed under arrest.

There are some exceptions to the general right of silence which arise in situations involving drivers (no passengers) of motor vehicles to produce to a peace officer, on demand, information pertaining to the identity of the driver, the owner, registration, insurance and so forth. There are other exceptions that cannot be discussed in the space provided here but it is important to also note that although it is a basic principle of our criminal law that no adverse inference can be drawn from a suspect remaining silent, there are some situations where an adverse inference can be drawn if the refusal to explain or deny an accusation was reasonably contemporaneous with the time of the alleged offence.

The Canadian Charter of Rights and Freedoms, otherwise known as the **Charter**, provides that everyone has the right on arrest or detention:

- * **To be informed promptly of the reasons for the arrest or detention;**
- * **To retain and instruct counsel without delay and to be informed of that right;
And**
- * **To have the validity of the detention determined by way of habeas corpus
and
To be released if the detention is not lawful.**

According to Canadian criminal law as prescribed in the **Criminal Code** a crime is broken into two basic components which, subject to some exceptions, must be present if one is to be convicted of a criminal offence. The Crown (government) must produce proof beyond a reasonable doubt that an accused person was guilty of having:

- i) The Actus Reus which means having done the unlawful act or deed; and

ii) Having the Mens Rea or guilty mind or intent to commit the unlawful act. Most crimes defined in our **Criminal Code** require proof of both of these elements if there is to be a conviction. In addition to the **Criminal Code** various statutes such as the *Narcotic Control Act*, the *Income Tax Act*, and so forth contain offences which are criminal in nature with serious penalties such as fines, imprisonment or both.

Our laws require that an accused person, upon arrest and detention, must be taken before a justice of the peace without unreasonable delay and in any event within 24 hours after arrest so that he or she may be dealt with according to law. The right of an accused person to obtain bail (also known as judicial interim release) is a complex area and must require the assistance of a lawyer.

If You Are Under Suspicion or Arrested:

- * Insist upon being told the reason for your detention or arrest;
- * Insist upon your right to seek the advice of a lawyer and insist upon your right to be given the opportunity to consult counsel before you answer any questions; and
- * Insist upon your right to remain silent regardless of any promises or inducements that may be offered to you unless you have first had the benefit of consulting with your lawyer.

To Protect Your Rights --- You Must Know Your Rights!