



Frequently asked questions about search warrants

1. Can the police just kick down my door to get in to my house?

The general rule is that police are required to announce their presence, announce that they have a search warrant and request permission to enter. If permission is denied then they are entitled to use reasonable force to conduct the search. If you are not at home at the time of the search, the police are entitled to use reasonable force to enter your residence and conduct the search. The police may dispense with the proper announcement when executing a search warrant of a home where the circumstances of the case show a real threat of violent behaviour to the police or to third parties (*R. v. Genest*, [1989] 1 S.C.R. 59).

2. Do the police have to show you the search warrant?

The police have to tell you that they have a search warrant and are at your house to conduct a search. However, they only have to show you the actual warrant if you ask to see it. You should ask to see the search warrant.

3. When the police give you the warrant that you have asked to look at, what things should you be looking for?

You should carefully review the warrant to determine:

- (a) the premises covered;
- (b) the date and time which the warrant permits the police to be present on your property to conduct a search;
- (c) the specific documents or objects that are being searched for;
- (d) the alleged offence(s) to which the items to be searched for relate.

If the deadline for the police to enter your property in the search warrant has expired then you can legally refuse the police entry onto your property.

Search warrants generally cannot be carried out at night unless a judge concludes that there are reasonable grounds for the search warrant to be carried out at night (s. 488 of the Criminal Code).

Do not agree to let the police expand their search beyond the specific documents or objects that are listed in the search warrant, or the premises which are specified in the warrant.

4. Can the police search people who are in the house at the time a search warrant is executed?

A search warrant does not give the police the authority to search a person who is in the residence at the time the warrant is executed. There are only three circumstances in which the police can search someone while conducting a search warrant.

Firstly, the police can search you if they arrest you. Once you are under arrest, the police can search you for any object that may be a threat to the safety of the police, the accused or the public, or that may facilitate escape or act as evidence against the accused (*Cloutier v. Langlois* (1990), 53 C.C.C. (3d) 257 (S.C.C.)).

Secondly, the police can search you if they have reasonable grounds to believe that you are in possession of evidence related to the warrant (*R. v. Le*, 2001 BCCA 658).

Thirdly, the police can search you for officer safety when such a search is reasonably necessary (*R. v. MacIsaac*, [2001] O.J. No. 2966 (Sup. Ct.)). The police search for officer safety can be a pat down or frisk search to check you for weapons. This means that the police cannot empty out your personal belongs from your pockets or bag. They can merely take the necessary steps to identify and confiscate any weapons that you may have on you.

5. If the police arrest you, what rights do you have?

The police have to tell you immediately that you are under arrest and why. They have to immediately inform you of your right to call a lawyer. The police have to promptly let you call a lawyer once they have you under arrest and have the situation under control (*R. v. Strachan*, [1988] 2 S.C.R. 980). This means that the police are entitled to establish control of the premises and all the people in the premise before they provide any arrested person with their right to contact counsel. You have the right to make the call on your house or cell phone.

The only information that you have to provide the police is the information that is listed on your driver's license: your name, date of birth and address. It is a criminal offence to provide the police with incorrect identification information.

Do not answer any other questions that the police may have for you. Prisons are full of people who are there because they answered the police's questions. Exercise your right to silence.

6. If the police do not arrest you, what are your rights?

Generally, police officers have no special authority over persons found in premises being searched pursuant to a search warrant. You should be allowed to leave the property being searched (Hutchison and Morton, *Search and Seizure Law in Canada* (1991) at pp. 17-9.) The only exception to this rule is that occupants may be restrained so far as is necessary to accomplish the search contemplated by the search warrant.

Section 8 of the *Canadian Charter of Rights and Freedoms* provides that "[e]veryone has the right to be secure against unreasonable search or seizure" which has been interpreted to mean that any police search must be carried out in a reasonable manner. The police do not have a free hand to do whatever they want while searching a residence.

You should ask the police whether you can leave. If they refuse to let you leave then you should ask whether you are under arrest. If you are not under arrest, then ask why you cannot leave the residence. This will be good evidence for later challenging the reasonableness of the police search.

Despite the above, the reality is that frequently the police handcuff everyone in the residence while they conduct the search, or require them to stay in a room that is not being searched and does not interfere with the search. If this happens, you are detained and you have a right to counsel and you should request it. Make a note if the police refuse this request. Also make a note if the police deny you your basic dignity, such as access to the bathroom or food and water or cause unreasonable damage to your property. A court may later find that such police actions made the search unreasonable and the evidence obtained from the warrant might be excluded.

7. What if the police threaten to trash your place if you do not cooperate?

The police cannot make such a threat but they often do. Any police search has to be conducted reasonably in order to be constitutional. As you have the right to silence, you are under no obligation to tell the police where the items that they are searching for are located. Such an admission from you will be used against you at a later date. The police are allowed to move furniture, tip out the contents of drawers, etcetera while conducting a search. They do not have to replace everything before they leave.

8. What other steps should you take?

If you have a video camera, cell phone camera or camera, take pictures and video of the police during the search.

Even if you are not arrested or detained you should call a lawyer to get legal advice. You have a right to confidential conversations with a lawyer, so make the call from a place where the police cannot hear you talking.

After the search is completed, you should take photographs of any damage done to your property by the police officers during the search. You should also write down your **detailed** recollections of the search (what the police said to you, what they did, and what happened to you).

You can also go to the Clerk of the Provincial Court and get a copy of the Warrant, the sworn Information used to obtain the warrant and the Return, showing what was seized.

9. Are you entitled to use force if the police are acting illegally?

The short answer to this is yes, but only reasonable force. However, you should not do this because you will probably be beaten up or worse and you can be confident that the police version of what happened will be dramatically different from yours and they will charge you for assaulting a police officer and obstruction of justice.

So, do not attempt to stop the police if you think that they are going too far. Rather, take good notes and document their actions and make an appointment to see a lawyer.