

HANDOUT 3: Legal Rights under the *Charter*

Legal Rights

- Everyone has the right to be secure against unreasonable search and seizure.
- The police must have reasonable grounds for searching you or your home and any evidence that is unlawfully obtained may be excluded at trial.
- Everyone has the right not to be arbitrarily detained or imprisoned. A person must be held in custody on reasonable grounds and must be brought before a judge or justice as soon as possible or within 24 hours of detention to decide if the detention is lawful (habeas corpus).
- Everyone has the right on arrest or detention to be informed promptly of the reasons and to consult counsel without delay and to be informed of that right.
- The police use the *Charter* warning to provide this information.
- Everyone has the right to a fair trial within a reasonable time.
- Everyone is innocent until proven guilty beyond a reasonable doubt. Crown counsel must present evidence to an unbiased judge or jury in an open court to prove the accused's guilt. The accused does not have to prove anything or call any evidence.
- Everyone has the right to be tried by a judge and jury where the punishment for the offence charged is over five years' imprisonment. This provision guarantees the right to be judged by one's peers and it keeps our justice system in touch with the opinions of ordinary people and with changing community standards.
- Everyone has the right not to be compelled as a witness and to remain silent when accused of a crime.
- Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. The punishment should fit the crime and it should meet with the broad public standard of acceptability.

Charter Warning

I am arresting you for: (state reason for arrest including the offence and provide known information about the offence, including date and place).

It is my duty to inform you that you have the right to retain and instruct counsel in private without delay. You may call any lawyer you want. There is a 24-hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge and the lawyer can explain the legal aid plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with a telephone number. Do you understand? Do you want a lawyer?

If an arrested or detained person initially indicated that he or she wished to contact legal counsel and subsequently indicates that he or she no longer wishes to exercise the right to counsel, read the following additional Charter warning:

You have the right to a reasonable opportunity to contact counsel. I am obligated not to take a statement from you or to ask you to participate in any process which could provide incriminating evidence until you are certain about whether you wish to exercise that right. Do you understand? What do you wish to do?

Official Warning

You are not obligated to say anything, but anything you do say may be given in evidence.

Questions

Which three legal rights do you think are the most important? Explain your answer.

True or False

1. You can be held under arrest for as long as the government wants _____.
2. Evidence obtained without a search warrant may not be admissible in court _____.
3. In a court of law, the accused has to prove he or she is innocent _____.
4. You must be read your *Charter* rights if you are arrested _____.
5. Your freedoms are guaranteed as long as you don't interfere with the freedoms of others _____.