



REUTERS/Patrick Doyle

Canadian police advance on protestors in front of Parliament Hill as they work to restore normality to the capital as trucks and demonstrators continue to occupy the downtown core to protest COVID-19 restrictions in Ottawa, Ontario, Canada, February 19, 2022.

## THE COMMITTEE TO PROTECT JOURNALISTS' GUIDE TO LEGAL RIGHTS IN CANADA

This guide covers legal rights journalists have, and risks they may face, when covering protests in Canada. Canada has strong laws protecting journalists as part of the constitutional right to freedom of expression, including the right to gather news. Law enforcement officers are broadly aware of these rights, but may not always observe them to the fullest in every scenario. In a protest, it is generally recommended that you comply with directions from police to prevent escalation and to ensure your safety. Unlawful state conduct can be challenged later in court. Your safety is always the priority.

This guide is current as of October 2022

# THE LAWS AFFECTING JOURNALISTS AT PROTESTS

## 1. LEGAL RIGHTS WHILE COVERING A PROTEST

The *Canadian Charter of Rights and Freedoms* (the “*Charter*”) establishes fundamental rights and freedoms for every Canadian. Section 1 of the *Charter* only guarantees those rights and freedoms to such reasonable limits as may be justified in a free and democratic society. Therefore, some limits on *Charter* freedoms may be lawful, such as where a limit is necessary to protect public safety. Note that Québec also has a *Charter of Human Rights and Freedoms* that applies in Québec only.

### FREEDOM OF EXPRESSION & FREEDOM OF THE PRESS

#### Key Takeaways

- You have the freedom to express yourself in Canada, including by reporting on protests. While expression may be limited where it impacts the rights of others, this is a high bar.
- Freedom of the press is constitutionally recognized and is connected to freedom of expression. In the protest context, these freedoms will inform the reasonableness of a search of a journalist or their belongings. The impact of protest restrictions on the gathering and dissemination of news will be relevant if a court reviews them. Generally, you are free to gather news without undue government interference.

Everyone has the freedom to express themselves in Canada. This is a fundamental freedom that has been recognized as a cornerstone of Canadian democracy. Canadian courts have been vigorous about upholding expressive rights, including those of the media.

Generally, expression encompasses any activity that conveys or attempts to convey meaning, including protesting and reporting on protesting activities. Freedom of expression includes the right to transmit news and other information, but also to gather this information without undue government interference. Freedom of expression does not provide journalists with immunity from criminal laws, but instead informs issues like whether a journalist must disclose a source to police and the reasonableness of a search or seizure (discussed more below in the context of searches generally).

## PEACEFUL ASSEMBLY

### Key Takeaways

- You have the right to peacefully gather on public property in Canada.

Everyone has the freedom of peaceful assembly in Canada. The freedom extends to public but not private property. Police also have a duty to facilitate peaceful protests on public property. The freedom to peacefully assemble may be limited if the gathering or demonstration threatens public well-being by destroying property or inciting hatred against an identifiable group, for example. Similarly, there may be laws against blocking access to courthouses or ambulance routes to hospitals. Governments may control the use of locations like parks for protests if it is genuinely seeking to balance the rights of others or to ensure safety or sanitation. In general, police cannot require you to submit to a search of your belongings or person to access a gathering area for a protest.

## DETENTION OR IMPRISONMENT

### Key Takeaways

- Not every interaction with police is considered detention.
- **QUICK TIP:** If a police officer stops you and you do not wish to speak with them, ask if you are being detained or arrested. If neither, you can walk away.
- **QUICK TIP:** Take note of officers' names and badge numbers during any police interaction.

Everyone has the right not to be arbitrarily detained or imprisoned. Detention is distinct from arrest. Detention occurs where police temporarily suspend your right to simply walk away. Police may detain you if they have a reasonable suspicion that you are implicated in known criminal activity under investigation. There must be a clear connection between you and a particular past or ongoing offence. Detention can occur by physical restraint or where you reasonably conclude based on the circumstances you must comply and are not free to go. Any detention must be brief. Police may not detain you to "ferret out criminal activity", follow a hunch, or determine whether someone is "up to no good". Police suspicion must be particularized to a specific criminal activity. If you are stopped by police and do not wish to speak with them, ask if you are being detained. If not, you can walk away.

Not all interactions with police qualify as detention. Police can interact with members of the public and ask general questions, though you have no obligation to respond, and you are not required to identify yourself unless you are under arrest. Be aware that a simple conversation with police may transition to detention once a more focused line of inquiry begins.

Police may arrest you without a warrant if they reasonably believe you have committed or are about to commit an offence. You may be charged with minor offences without being arrested.

Since police in Canada are expected to be aware of protections for media reporting on matters of public interest, journalists should identify themselves as such in all interactions with police.

## RIGHTS UPON ARREST OR DETENTION

### Key Takeaways

- If you are arrested or detained, you have the right to be informed why and to call a lawyer. You also have the right to remain silent, but it is best to clearly identify yourself as a journalist and assert the journalistic sensitivity of your belongings before exercising that right.
- **QUICK TIP:** Have proof to support your status as a journalist, such as an assignment letter, press pass, or phone number to reach your editor.
- **QUICK TIP:** Record a lawyer's number on a piece of paper and bring it with you or write it somewhere on your body.

You have the following rights upon being arrested or detained:

- to be promptly informed of the reason for the arrest or detention;
- to speak with a lawyer without delay and to be informed of that right; and
- to challenge the validity of the detention in court.

Once arrested or detained, you also have the right to remain silent and to refrain from answering questions. However, if you are under arrest, you should provide your correct name, address, and date of birth, or you could be charged with obstructing justice. After you have consulted a lawyer, police may try to persuade you to speak or to give a written statement. However, you still have no obligation to talk to police and your right to silence remains. Police must have given you an opportunity to call a lawyer and to make an informed choice about whether to speak or not. Your silence cannot be viewed as an indicator of guilt later.

Although you have a right to remain silent when detained or arrested, it is best to first clearly identify yourself as a journalist to police, and in any event while reporting on a protest (e.g. consider press badges, vests or other identifying items of clothing). Journalists are likely to be excluded from the scope/enforcement of an injunction, for example (discussed below). Being a journalist will also explain your presence if a protest becomes disruptive. Carry proof that demonstrates you are a journalist, such as an assignment letter or press pass, or write down your editor's phone number. Police may be wary of protestors claiming to be journalists and so adequate support is key. If possible, record as much of an interaction with police as possible so there is evidence you identified yourself as a journalist. Police may dispute your version of events later.

As mentioned, it is best to comply with police directions to avoid escalation. Unlawful arrest or detention can be challenged in court afterward.

## SEARCH & SEIZURE

### Key Takeaways

- Generally, unless police have a warrant, they can only conduct searches if you have been detained or arrested. If detained, searches are limited to a pat down for safety.
- If the initial arrest or detention was illegal, so is the subsequent search.
- A lawful search must still be conducted reasonably, without violence or property destruction. Freedom of expression and of the press will inform whether a police search of a journalist or their property is reasonable. Be sure to identify yourself as a journalist when interacting with police.
- In the absence of a warrant, your cell phone may be searched if you are under arrest or seized if police have reasonable grounds to believe it contains evidence of a crime. However, you are not required to provide the password to police.
- **QUICK TIP:** Always clarify you are a journalist and assert the journalistic sensitivity of your property.
- **QUICK TIP:** Use a coded phone password rather than facial ID or thumbprint.

You have the right to be free from unreasonable search or seizure. As a result, police require lawful authority to conduct a search or seize property wherever you have a reasonable expectation of privacy. A reasonable expectation of privacy exists in your person, including pockets and bags, as well as vehicles. Generally, in the absence of a search warrant, police only have authority to conduct a search if you provide informed consent or if you have been detained or arrested. If police ask to conduct a search of you or your belongings, ask why, and under what lawful authority, the search is being conducted. Typically, police cannot require you to submit to a search to access a protest area.

Searches “incident to arrest” and “incident to detention” have some differences:

- Searches incident to detention (which police can sometimes do further to an investigation but is short of an actual arrest) can only be conducted to ensure safety. A safety search is generally limited to a pat down for weapons. To do a safety search police must reasonably believe personal safety, or the safety of the public, is at risk.
- Searches incident to arrest can occur to (1) ensure police or public safety, (2) prevent the destruction of evidence, or (3) find evidence of the offence for which you were arrested.

If the arrest or detention leading to a search was arbitrary, the search itself is unlawful.

Any lawful search must also be conducted reasonably, meaning searches must occur without violence, violations of dignity, or property destruction (including journalistic materials). Freedom of expression and the press recognized in the *Charter* informs what is a reasonable search or seizure where a journalist is involved.

Cellphones have a unique legal status. In general, police may search your cell phone incident to your arrest but there are added protections due to the heightened privacy interests at play. In addition to the usual limitations on searches incident to arrest, police must document the places searched in the phone at what

time, and the extent, purpose, and duration of each place searched. The search must be tailored to the investigative purpose and so unfocussed browsing is not allowed. Generally, the search will be limited to recent calls, photos, or texts. If your phone has a password, you are not required to give it to police owing to your right to remain silent. The law on thumbprints and facial ID is not entirely settled in Canada and although the same principles likely apply, for more certain protection use a coded password instead. As mentioned, police cannot destroy your property during a search, including any recordings on your device. If you are arrested and police search your phone, emphasize that it contains journalist materials/data, or confidential sources, if the case, and request that they limit their search to non-confidential source materials.

Materials that would disclose journalists' confidential sources are protected by the *Journalistic Sources Protection Act* ("JPSA"). The JPSA (1) allows journalists to challenge the disclosure of sensitive journalist material in court and (2) creates a special protective procedure for handling search warrants targeting journalist materials. The JPSA mostly provides procedural courtroom protections, but it becomes relevant if materials or equipment are seized (discussed below).

In general, police should be very careful about seizing a journalist's equipment, including a cell phone. They may have legal authority to do so where (1) the journalist consents to the seizure; (2) the journalist is being arrested, as described earlier; (3) the police have a warrant issued in accordance with the protections of the JPSA; or (4) the police reasonably believe the journalist's equipment will provide evidence related to an offence. In the latter situation, a seized item still requires a warrant issued in accordance with the JPSA to search it, providing an opportunity to challenge the intended search in court. If police want to seize your equipment (notebook, voice recorder, phone, camera) on the basis it contains evidence of an offence, identify yourself as a journalist, insist on the journalistic sensitivity of your property, and request to keep it in your possession until a warrant is issued. Failing that, request that the equipment be protected and sealed until the matter is resolved in court. Whenever police seize property, they are required to report the seizure to a judge.

## RIGHT TO RECORD

### Key Takeaways

- When on public property, you are free to record police if doing so does not obstruct their duties or investigation. Recording restrictions may apply on private property.

You are free to record video or take photographs in public where people have a lower expectation of privacy. However, note that in Québec a person has greater rights to their own image and so you require consent to publish a photo of a person taken in public where they are identifiable. There are some exceptions: consent is not required for photos of crowds where individuals are not easily recognizable, where a person appears incidentally in a photo of a public place, or where an individual takes on a high profile in a public matter. Significantly, consent is not required for photos of individuals if the photo serves to legitimately inform the public on a matter of public interest. This is a common exception for media and should include a large public gathering like a protest. Overall, consider pros and cons in terms of avoiding escalation if a person objects to being photographed or recorded.

Journalists, as well as the public, are free to record police so long as recording does not interfere with an active investigation or police duty. For example, you may record police arresting a protestor, but be careful not to get in the way of the arrest for your safety, and also to avoid allegations of obstruction.

The ability to record may be different on private property. Private property, including areas commonly accessible to the public such as shopping malls and hospitals, may have rules about who you can and cannot record. Hospitals, for example, restrict recording to protect patient privacy. If you are recording in such an area, you may be asked to leave the premises.

Police cannot require you to delete a video recording. However, consider sending important videos to another person after recording, or have videos automatically upload to the cloud, should your phone be damaged or seized.

In Canada, it is legal to record a private conversation you are involved in. Canadian law only requires that one individual in the conversation consents to the recording.

## 2. LEGAL RISKS WHILE COVERING A PROTEST

### TRESPASS

#### Key Takeaways

- Keep an eye out for “No Trespassing” signs or other indicators that restrict entry onto private property. Comply with location restrictions and barriers, absent emergency circumstances.
- In Ontario, you can be liable for trespassing even if there are no signs posted. However, there is an implied permission to enter onto private property in certain circumstances.
- In Alberta, the property owner is generally required to post signs or give verbal or written notice that entry is forbidden, unless the land is farmland or is separated by a fence or natural boundary.

When covering protests on or near private property, journalists should be mindful of local trespass laws which can vary by province and territory. Private property includes commercial spaces such as office buildings and shopping malls as well as physical infrastructure such as railways.

In general, trespass requires some form of direct or physical intrusion onto another person’s property without their permission. While trespass is usually defined as unlawful entry onto private property, it also includes not leaving someone’s property when asked to or engaging in an activity on their property that they do not allow.

Trespassing during the day, on its own, is not a criminal offence. Trespassing at night, however, between the hours of 9:00 p.m. and 6:00 a.m., is an offence punishable by summary conviction under Canada’s *Criminal Code*. Most provinces in Canada also have additional trespass legislation, which goes into more detail about what constitutes trespass and the penalties.

In Ontario, property owners are not required to post “No Trespassing” signs to warn people against trespassing. If you do not have permission to be on someone’s property, at any time of day, then you are technically trespassing. In extreme cases, you could be arrested and fined up to \$10,000. The property owner has the lawful right to arrest you until a police officer arrives.



That said, the law in Ontario recognizes an implied permission to enter onto private property in certain circumstances – for example, where there is a pathway leading to a door. Implied permission also arises where the property owner conducts themselves in a way as to not prohibit individuals from entering upon the premises (i.e., the property owner is aware that people are entering onto their property without their express permission and fails to take any action to prevent this from continuing). For this reason, among others, journalists rarely face trespass cases in court.

In Alberta, the onus is generally on the property owner to give notice that entry is prohibited. Property owners are required to post signs or give verbal or written notice warning people against trespassing, unless the land is a lawn or garden, is used for cultivation (e.g., farmland), is separated by a fence or natural boundary (e.g., a river), or is enclosed in any other manner that indicates the property owner intends to keep people out or keep animals in. Be careful in those cases, where no notice is required.

If you trespass in Alberta, you can face large fines and if you trespass despite having been notified by signs not to enter, jail time is possible.

Also be aware that some provinces have unique or specific trespassing laws, such as Alberta's *Critical Infrastructure Defence Act* or Ontario's *Security from Trespass and Protecting Food Safety Act*. The former prohibits public access to or obstruction of certain infrastructure and creates the opportunity to expand what is considered "critical". The latter law targets trespassing near farms, farm animals, or interacting with farm animals during transport. These laws are being challenged in court, but it is important to be aware of them and others like them.

Separate trespass rules may also apply to Indigenous reserves and Band Councils may have enacted by-laws that limit access by non-members. Band Councils may also have by-laws impacting other matters, such as nuisances, public health, and disorderly conduct.

## INJUNCTIONS

### Key Takeaways

- Check if there are any court orders preventing access to an area ("injunctions") or other restrictions in place that might affect access or impede your ability to effectively report the news.
- In considering whether to grant an injunction, courts will consider the presence of journalists and the impact of the injunction on newsgathering activities.
- **QUICK TIP:** Bring ample evidence to support your status as a journalist and make your status known to officers enforcing an injunction. Ideally, have an assignment letter and your editor's phone number readily available.

Injunctions are court orders that prevent people from acting in certain ways (e.g., blocking access to a road or bridge). Depending on the circumstances and the rights engaged, a private company or government entity might ask for an injunction to restrict the activities of protesters. The wording of the injunction will determine its scope and effect.



Injunctions can be enforced by the police. A police officer will typically read the injunction out loud at the protest site, to ensure that everyone in attendance is aware of the injunction and understands its implications. You can be arrested and charged with contempt of court for disobeying an injunction even if you are not specifically named in the order. That being said, the evidence must show that you knew of the injunction and were in a position to know that your acts were contrary to the injunction.

Injunctions should generally not extend to journalists when they are simply reporting on protests and courts will view a request for an injunction against journalists critically. In fact, the presence of journalists at a protest performing functions different from those of ordinary protestors (i.e., newsgathering) is something judges will consider when deciding whether to grant an injunction that could impact journalistic activities.

Further, police should not set up checkpoints or exclusion zones to restrict journalists within injunction areas, nor should they shepherd journalists around injunction areas, unless absolutely necessary to enforce the order. If police do, journalists can apply to a court to vary the injunction to prohibit that way of enforcing it. [Such an application was successful in the context of the Fairy Creek protest in British Columbia.](#)

Before reporting in an area that you know is covered by an injunction, consider challenging the injunction in court, especially if you believe its enforcement will prevent you from effectively carrying out your newsgathering activities.

## CROWD DISPERSAL

### Key Takeaways

- Disperse from a riotous area if lawfully ordered to do so.
- You may record how police are dispersing the crowd, and your own interactions with police, as long as you are not interfering with or obstructing law enforcement activity.

The actions of protestors at non-peaceful protests may prompt police to move in and try to disperse the crowd. Examples include:

- Common nuisance, which might involve causing physical injury or endangering the lives, safety or health of the public;
- Mischief, which includes destroying, damaging, or vandalizing property;
- Causing a disturbance, for example by fighting, screaming, shouting, or using obscene language;
- Breaching the peace, which usually involves some level of violence and a risk of harm.

Police have the power to disperse protests that breach the peace and to arrest and detain people who have breached or are about to breach the peace. However, a police officer cannot arrest someone who is not breaking the law simply because they believe doing so will prevent others from breaching the peace.

Police are generally required to issue warnings ordering protestors to disperse before making arrests. If a riot breaks out, you may hear a designated official read over a loudspeaker what is known as the "Riot Act", which

requires everyone in the area to immediately disperse and peacefully leave. The “Riot Act” has only been read a few times in Canada and is not widely used, but if it is used you should make best efforts to comply with the proclamation.

In rare circumstances, the military may be called upon to help disperse crowds and restore order where there is a riot ongoing or where a disturbance is likely to occur. In these circumstances, soldiers are not in the service of the local police but are empowered to act as constables and are considered peace officers under the law. In addition to their normal powers and duties, they can patrol public areas to protect people and property and make arrests, just like the police.

## POLICE USE OF FORCE AND OBSTRUCTION

### Key Takeaways

- Police can only use reasonable force to overcome resistance in appropriate circumstances.
- **QUICK TIP:** If you are being arrested or detained, stay calm and do not physically resist the arrest. Explain that you are a journalist, identify your media outlet and show your press credentials. Ask to speak with a lawyer and stay silent.
- **QUICK TIP:** Take note of badge numbers and officer names during police interactions, if possible.

Canada’s *Criminal Code* allows police officers to use force in the course of their duties, but it is a crime for police to use excessive force. Essentially, police officers are allowed to use as much force as required in the circumstances, provided the force is necessary for the purpose the officer is using it for, and the officer is acting on reasonable grounds.

You will likely encounter one or more police officers while reporting at a protest. It is important to note that police do not have the authority to forcefully detain or arrest individuals who are gathered peacefully, even if the stated purpose is to prevent violence by others. In other words, police are not allowed to arrest you “for your own safety” or to prevent someone else from committing a crime against you (like assault).

If you find yourself in a situation where you are being arrested or detained, try to stay calm and do not physically resist the arrest, as you could be charged with obstructing the police, assaulting a peace officer, or assault with intent to resist arrest. Instead, calmly assert your rights, comply with law enforcement, and ask to speak with a lawyer without delay. Be sure to tell police you are a journalist and show them your press credentials, which you should carry at all times.

As noted above, you have the right to make recordings of police officers and protestors in public spaces, provided you do not threaten the safety of others or obstruct law enforcement activity. At all times, the recording or covering of protests and/or law enforcement activity should be conducted in a manner that does not obstruct or threaten the safety of others or physically interfere with law enforcement. It is illegal in Canada to resist, assault or intentionally obstruct a police officer in the execution of their work.

## HARASSMENT, VIOLENCE, AND INTIMIDATION

### Key Takeaways

- **QUICK TIP:** If reporting in a hostile environment, consider using a smaller camera, if any, and leaving your other equipment behind. If possible, have someone accompany you to monitor your surroundings.
- **QUICK TIP:** Avoid escalation with harassers and retain any information regarding perpetrators should criminal charges or civil recourse be pursued later.

In recent years, journalists have found themselves increasingly subject to harassment, violence and intimidation, including while covering protests in Canada. For example, journalists have been shouted at, spat on, and physically assaulted while reporting on anti-vaccine protests across the country. (Spitting on someone may be a criminal assault in Canada punishable by up to five years in prison.)

If your mandate involves reporting in a hostile or dangerous environment, and if feasible, it may be prudent to have someone accompany you to monitor the situation around you while you work. If you find yourself in a large crowd, you should take note of your nearest exit. Broadcast reporters may want to use smaller cameras and leave larger news cameras, tripods, and lights in their vehicles, in order to stay mobile if tensions escalate and things get out of hand.

## ENVIRONMENTAL LAWS

### Key Takeaways

- If covering a protest in remote or natural areas, be aware that federal and provincial laws protect the integrity of species and habitats.
- **QUICK TIP:** Identify any sensitive species that may be protected in the area and be mindful of your impact.

If recording video or taking photographs in an area where sensitive species may be present, note that provincial and federal laws prohibit harming or harassing such species or disturbing their nests. This may occur inadvertently while trying to photograph sensitive species, such as by removing vegetative cover near the nest of a threatened species to photograph young. To minimize your impact on wildlife, maintain distance, avoid using flash, and avoid pursuing animals with a drone. Plant species may be similarly protected. Care should also be taken when reporting in areas near all fish and fish habitat as federal law protects them from destruction or alteration.

REUTERS/Blair Gable. Demonstrators confront police officers during the “Rolling Thunder Ottawa” protest in Ottawa, Ontario, Canada April 29, 2022.



## CASE STUDIES

### 1. REPORTING ON AREAS UNDER INJUNCTION

**Scenario:** A photojournalist is dispatched to a remote area to capture interactions between protesters of a development project and police. Prior to heading into the field, the news organization dispatching the journalist contacts local authorities to alert them that the journalist will be in the area working on assignment. The protest area is subject to an injunction prohibiting interference with road access to the development project. The police surround the group of protesters, read out the injunction, and begin to arrest protesters. The journalist identifies themselves as such to officers. Nevertheless, they are arrested. The journalist is released after almost 3 days upon promising to appear in court on charges related to breaching the injunction. The journalist’s video recording of the arrest demonstrates that they identified as a journalist, contrary to police claims.

**Analysis:** Courts have consistently held that injunctions meant to prevent disruption by protesters should not prevent journalists from reporting. However, the reality is that wherever an injunction is in place in relation to a protest, journalists face the risk of arrest by police enforcing the injunction. The journalist took several key precautions to avoid arrest in the scenario. First, the journalist identified themselves as a member of the media in advance. Your status as a journalist explains why you are in the area, which impacts whether it is reasonable for the police to believe you are violating the injunction. If police are aware that you are a journalist who is only there to report on the protest, they

should not arrest you, as you are very likely not in violation of the injunction. Injunctions are typically tailored to prohibit disruptive activity while allowing for press freedom. Second, carrying an official letter of assignment or other press credential can help to demonstrate to police that you are a member of the media. In some cases, police have been suspicious of protesters claiming to be members of the media to avoid enforcement of the injunction. You should be ready to face this suspicion and provide ample evidence of your status as a journalist on assignment.

Despite these precautions, the risk of arrest remains. Make a plan for the possibility that you are arrested, and consider the following:

1. You should submit to arrest, even if you know it is wrongful. While in general you should not be arrested for documenting a protest, not following police instructions creates a safety risk and a risk of being charged with a criminal offence.
2. There may be conflicting accounts of key moments in your arrest, such as whether you identified yourself as a journalist to the police. If you think you may be arrested, consider recording as much as possible to substantiate your recollection of the events and to identify officers. Remember that you have a right to record police unless it results in obstruction.
3. You have a right to call a lawyer upon arrest. If you have access to a lawyer through your media organization or otherwise, make sure to get their name and number in advance. During arrest, you may be separated from your phone and other belongings, so consider writing this number on a piece of paper and carrying it on you rather than storing it in your cellphone.

## 2. FOLLOWING TRESPASSING PROTESTORS INTO AN INJUNCTION ZONE

**Scenario:** A reporter is sent to cover protests by Indigenous groups opposing a development project. The protestors have blocked access from the public roads to the private construction grounds, interrupting the construction work. The project owner obtains an injunction prohibiting anyone from trespassing on the construction grounds, interfering with persons trying to lawfully access the grounds, or otherwise aiding and abetting any person breaching the injunction. Despite the injunction, protestors eventually trespass onto the construction grounds. The reporter, aware of the injunction, follows the protestors onto the site to record and take notes. A day later, the reporter receives notice that they must now appear in court to show why they should not be found in contempt of the court for breaching the injunction order. What should the reporter do?

**Analysis:** The reporter should consider bringing an application to vacate the injunction and appearance orders as they apply to him. Courts have previously held that injunction orders aimed at prohibiting trespass do not necessarily apply to journalists who are simply recording and reporting on the events on the private property, provided the aim of the injunction is to address protests. Any journalist reporting on protestors who are acting in breach of an injunction order must therefore ensure that *none* of their actions could be construed as aiding or abetting the protestors according to the wording of the injunction. Depending on the wording, the journalist may only report, observe, and record.

A reporter should always read the terms of an injunction before reporting on any kind of activity that breaches an injunction. Courts have stated that an injunction order could prohibit any kind of trespassing, whether for the purpose of engaging in protests or not. In such a case, a journalist who

trespasses only to report and record still risks being held in contempt of the court. Consult the terms of an injunction to know what is and what is not prohibited.

A reporter should also pay attention to the persons named in an injunction, if any. A reporter who believes they were improperly named in an injunction order may wish to apply to have that order vacated as it applies to them, in advance of going on site.

### 3. PRESS FREEDOMS DURING LARGE DISRUPTIVE PROTESTS

**Scenario:** A multilateral political meeting generates a large-scale protest in a city's downtown. Police are on alert for individuals who plan to disrupt the political meeting. The movement of journalists throughout the city is being restricted by police. Some journalists are told to leave the protest area and threatened with arrest if they stay. Some are herded with protesters into a small area and prevented from leaving, a process called 'kettling'. Other journalists are arrested while they attempt to report on the protest.

**Analysis:** This scenario engages journalists' right to move freely to follow stories of their choosing and to be free from arbitrary detention. Courts have ruled that police should not set up 'exclusion zones' which prevent access to journalists, as journalists should have the ability to decide what is newsworthy and should not be prevented from pursuing stories by police, so long as they are not interfering with police duties. In the case of large-scale protests, police may be wary of making exceptions to those seeking entry to blocked off areas. For that reason, it is important to come equipped with ample proof demonstrating that you are a journalist on assignment. However, if after asserting your rights, your access is ultimately blocked by the police, do not act contrary to their orders. You risk being arrested, which poses a threat to your safety, the integrity of your equipment, and, ultimately, your ability to report your story. If you are prevented from leaving an area by police, you are being detained. While this detention may be contrary to your right to be free from arbitrary detention, it is best to follow police instructions in the moment and challenge them later. Upon being detained, police have a right to pat you down for weapons. However, you do not have to consent to a more extensive search.

### 4. PUBLIC EMERGENCY POWERS & HARASSMENT OF JOURNALISTS

**Scenario:** Mass protests against a controversial piece of legislation have overtaken various cities, blocking roadways and shutting down services. The protestors are distrustful of the media and have harassed on-duty journalists numerous times. Journalists have been screamed at, insulted, shoved, and spat on. To put an end to the volatile protests, the government invokes emergency powers that will allow law enforcement to disperse the protestors and make arrests with greater ease. A journalist has been sent to cover one of the ongoing protests.

**Analysis:** Law enforcement may either not be able or willing to provide protection to the reporter and the reporter's news team. It is therefore prudent to have security arrangements in place before attending the areas where protests are held.



Protestors might challenge reporters seeking to record the protests. A journalist recording protestors in a public place is entitled to do so without seeking the protestor's permission. The reporter is also not required to leave at the request of protestors provided the reporter is on public property. However, avoid escalation to ensure your safety. If an incident occurs, retain any information regarding the identity of harassers and the incident itself in case criminal charges are pursued later.

The journalist's ability to report on the protests can be limited by emergency powers. Actions taken by the state under emergency powers could include but are not limited to: (1) establishing zones or areas where protests are prohibited, (2) prohibiting travel to and from or within any area where protesting is prohibited, (3) increasing the ease with which law enforcement can make arrests, (4) setting up barricades, and (5) imposing curfews.

Any journalist covering protests where emergency powers have been invoked should be aware of the heightened legal risks involved with reporting. Police may be less discriminating in who they choose to arrest. Journalists can run afoul of emergency regulations if they enter zones which have been barricaded or otherwise deemed to be protest-free. Journalists should heed all boundary restrictions and curfews that have been introduced by the state or law enforcement. When in doubt, journalists can consult the written orders and regulations that stipulate what kind of activity has been prohibited under the emergency orders. Exceptions may have been made for journalists.



REUTERS/Patrick Doyle

Women and police: People protest against COVID-19 mandates on Canada Day, in Ottawa, Ontario, Canada July 1, 2022.



## ABOUT US

### COMMITTEE TO PROTECT JOURNALISTS

The Committee to Protect Journalists (CPJ) is an independent, non-profit organisation that promotes press freedom worldwide. We defend the right of journalists to report the news safely and without fear of reprisal. Every year, hundreds of journalists are attacked, imprisoned, or killed. For more than 40 years, CPJ has been there to defend them and fight for press freedom. With a team of more than 50 experts based around the world, CPJ documents and denounces press freedom violations, meets with heads of state and high-ranking officials, spearheads or advises on diplomatic efforts, and works with other organisations to ensure that justice prevails when journalists are jailed or murdered. CPJ also provides comprehensive, life-saving support to journalists around the world through up-to-date safety information and rapid response assistance. For more information about CPJ and the support available to journalists, please visit [www.cpj.org](http://www.cpj.org).

### THOMSON REUTERS FOUNDATION

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### Acknowledgements & Disclaimer

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