

Migrants Know Your Rights!

Ontario's Emergency COVID ID Requirement

What is the law?

On March 31st, the Ontario government passed an order under the Emergency Management and Civil Protection Act (EMCPA)¹ that empowers police and all provincial offenses officers to require anyone who they reasonably believe is breaking emergency laws to produce identification to them.²

This greatly expands the power of law enforcement, since, in addition to police, any provincial offenses officers including certain municipal bylaw officers, campus officers, TTC and other transportation constables, community housing constables, public health officers, and others require people to carry and produce ID with their correct name, date of birth, and address on request. It also allows these officers to charge and fine you for violating this order. Failing to correctly identify yourself carries a fine of \$750 for "Failure to Comply" or \$1,000 for "Obstructing the Provincial Offenses Officer".³

In addition, the City of Toronto signed emergency order No. 1⁴ (on April 1) and emergency order No. 2⁵ (on April 3) regulating physical distancing in City of Toronto parks and public squares. Any two people who don't live together, who fail to keep two metres of distance between them in a park or public square, can receive a \$1,000 ticket – the maximum set fine available. Officers could issue higher tickets that would be subject to the courts where fines could go up to \$5,000 upon conviction. Many other municipalities have begun to issue similar orders.

What does it mean for you?

Before this emergency ID requirement, there was generally no law that required individuals to carry or produce ID on request to police or bylaw officers unless they were operating a motor vehicle or cycling. In most cases, if the police stop you on the street, you do not have to show the police your ID, give them your name or date of both, or answer any questions.

¹ *Emergency Management and Civil Protection Act*, RSO 1990, c E9 at ss 7.01, 7.02(2) and (4), online: <https://www.ontario.ca/laws/statute/90e09>.

² *O Reg 114/20: Order Under Subsection 7.0.2.(4) of the Act – Enforcement of Orders*, online: <https://www.ontario.ca/laws/regulation/200114>

³ Ministry of the Solicitor General, "Public Required to Identify Themselves if Charged with Breaching an Emergency Order During the COVID-19 Outbreak" (31 March 2020), online: <https://news.ontario.ca/mcscs/en/2020/03/public-required-to-identify-themselves-if-charged-with-breaching-an-emergency-order-during-the-covid.html>

⁴ <http://app.toronto.ca/nm/api/individual/notice/1625.do>

⁵ <http://app.toronto.ca/nm/api/individual/notice/1626.do>

Now, if police or most other law enforcement officers ask you for your name, date of birth, and address, you now have to correctly identify yourself or risk being charged and fined.

Why is this order dangerous?

This order is dangerous for many reasons. First, it increases the risk of abusive police power. It makes it possible for a much larger number of law enforcement agents to give tickets and to potentially stop and harass people in public on the vague and arbitrary suspicion of breaking emergency laws, such as quarantine provisions, shutdown of non-essential businesses, or gatherings of over five people.

Second, like carding or street checks, it can mean racial profiling and an increased risk of arrest and detention. Essentially it gives many law enforcement officers an additional legal excuse to stop people for whatever reason. This particularly endangers Black and Indigenous communities and raises the risk that migrants can be stopped, arrested, and detained by immigration authorities, called in by frontline police and law enforcement officers. In fact, at this time, the only way someone can end up being detained by immigration authorities is if the police arrest someone and then call immigration (immigration enforcement is not making proactive investigations or arrests due to the crisis). This order greatly increases the risk of CBSA being called.

Thirdly, because many non-status migrants – especially poor and/or under-housed migrants – do not have identification, they may end up arrested or fined as a result. For example, when a person makes a refugee claim, their Identification documents are seized by immigration. Though immigration gives them a temporary identification, it expires in a short period and cannot be renewed. As well, it is often very difficult for homeless people in shelters (including those who are not migrants) to hold on to their identification and to obtain identification.

Finally, this order is bad for public health. It means that migrant workers, who are already the hardest hit by the COVID-19 pandemic and who must often continue working in essential services, are driven further underground and face greater challenges in accessing critical transportation, health, and housing services. Courts, prisons, and immigration detention facilities are incubators for the transmission of COVID and these coercive mechanisms will only increase the speed of its spread.

It is important for us to work together to fight against this unjust order!

What can you do if you are being stopped by police or another law enforcement officer?

Develop a strategy if you are confronted by an officer

- If the police speak to you, under the new order you are required to provide your name, date of birth, and address. However, you should not answer any other questions as this may be used against you in subsequent removal proceedings. You have a right to silence.
- If you get stopped by officers who do not have a warrant for your arrest, you may still be required to produce your name, date of birth, and address or risk getting fined.
- Generally, only police have the powers to arrest or detain, however they can ONLY do so if they have reasonable cause to believe you are breaking a criminal law – not producing ID is not a criminal offense but can still result in a ticket.
- Municipal by-law officers and most other provincial offenses officers generally DO NOT have the powers to arrest or detain.
- If you've already identified yourself to frontline officers, and they keep asking you questions, you SHOULD NOT answer them. You can ask the officers, "am I being detained or am I free to go?"
- Eventually they will either arrest you or let you go. Running away during questioning may lead to additional charges.
- However, if CBSA are called in by other law enforcement, they DO have the power to arrest and detain you if you do not properly identify yourself or they have reasonable grounds to believe you are here without valid status.
- If an officer claims to have a warrant for your arrest, you have the right to ask to see it.
- Make sure you are the person named on it and that it is dated and signed.
- If there is a mistake, point it out to the officer.

Create a safety plan in case you are detained

- Have the number of a trusted lawyer or immigration consultant.
- Give a spare set of house keys and email information to someone you trust and who can access your important documents and tell others living at your house what happened.
- Have the number of someone who can contact your lawyer, take care of your children/dependents, tell your work about your absence, and be a bondsperson.
- Find support from friends, family, religious or community organizations, neighbours, and other allies who can rally together to help you get out of detention.
- Give someone you trust your immigration client ID so that a lawyer can locate you if you are detained.
- Know your specific risk of immigration and criminal arrest and detention (e.g. is there a warrant out for your arrest? Do you have expired immigration status that may put you at risk?)

What you can do if you are arrested

- If you are arrested and detained you have a right to:

- Know the reason(s) for your detention;
 - Use an interpreter;
 - Talk to a lawyer or other legal representative;
 - Receive medical attention;
 - Practice your religion; and
 - Contact a representative of your country's embassy or consulate. Speak to a lawyer first if you are afraid of your government and may want to make a refugee claim
- If you are being held in Toronto at the Immigration Holding Centre (which is usually referred to as "Rexdale") you can request the assistance of TRAC for legal information. TRAC operates an office at the Immigration Holding Centre Mondays to Thursdays. Their telephone number is 416-401-8537.
 - Staff from Legal Aid Ontario's Refugee Law Office regularly go to Immigration Detention Centres in the Toronto area. They can provide legal advice by phone and might be able to represent you at your detention review if you meet their eligibility criteria. You can call the Refugee Law Office collect at 416-977-8111 or toll-free at 1-800-668-8258.
 - For criminal matters, duty counsel are still available for bail hearings and other criminal matters but may only be available by phone during the COVID-19 outbreak.
 - The increased risk of contracting COVID-19 may be a relevant factor to argue for release or bail as current jails and detention facilities are overcrowded, have poor hygienic conditions, and limited ability to self-isolate.

For more information:

Migrant Know Your Rights Guide (No One is Illegal Toronto)

<http://toronto.nooneisillegal.org/knowyourrights>

Immigration Law and Sex Workers' Rights Guide (Butterfly)

[Immigration Law and Sex Workers' Rights](#)

I am not a Canadian citizen. Can immigration authorities detain me? (Steps to Justice)

<https://stepstojustice.ca/steps/refugee-law/1-understand-reasons-you-can-be-detained>

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