

## **Powers of arrest and search, with and without a warrant**

### **Without a Warrant:**

- Underlying principle : reasonable suspicion - common law definition [**Allen v Wright (1838)**] : - “Information must be such that a reasonable man, acting without passion or prejudice, would fairly have suspected the person of committing the offence.”
  
- Therefore, if acting without a warrant, the decision to arrest must be based on sound reason and judgment, and basically common sense, which is of course rooted within the parameters of the various statutes which confer the powers of arrest on police officers.
  
- Information needed to substantiate reasonable suspicion is not the same that is needed in court to formulate an ‘answerable case’ before the courts. (topic to be discussed on a later show).
  
- Police have powers of arrest under various statutes, however, the time allotted for the show only permits us to touch on a few of them, namely, the CPC, the Penal Code and the Police Act.
  
- Under s. 104 of the Penal Code, police officers may arrest without warrant in the following circumstances:
  - 1) Any person found to be committing an offence against the person or property which is provided for under this Code that the offender may be punished by imprisonment.  
Eg. Wide ambit of offences, from theft to assault to criminal damage.
  
  - 2) Any intoxicated or idle or disorderly person found in any way disturbing the peace, whether in a public or private place, and causing public annoyance, or guilty of any other offence against the law which may be an outrage of public decency or morality.  
Eg. A Sunday night at the fries.
  
  - 3) Any person found during the night lying or loitering in any highway, yard or other place and who there is good cause to suspect of having committed, or being about to commit, any offence against this Code.
  
  - 4) Any person that another person positively charges or states that he suspects of having committed any crime or the offence of stealing or obtaining goods by false pretences, or receiving stolen goods, or the offence of cruelty to or causing injury to an animal, if the charge or suspicion appears to the officer to be well-founded and the informant is willing to accompany the officer and at the police station is willing to co-

operate to prosecute the charge.

and 5) any person that another person charges with having committed an aggravated assault, if the officer has good reason to believe that such an assault has been committed, although now within his view, and that by reason of its recent commission a warrant could not have been obtained for the apprehension of the person charged.

- Powers may appear to some to be wide, because by definition alone, many situations and scenarios can be made to fit under the umbrella mainly because the question at the time of arrest is whether or not the officer himself deems there to be reasonable suspicion of a crime. Because the powers are so wide, citizens are protected until Article 19 of the Constitution which states:

19 (2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him; and in the case of a person who has not attained the age of eighteen years he shall also be afforded a reasonable opportunity for communication with his parent or guardian.

Therefore as soon as you intimate that you are desirous of having a lawyer present, the officers should no longer question you, until your attorney has arrived, and minors cannot be questioned on their own. What a lot of persons don't know is that they aren't under any obligation to speak with the police either. You sometimes hear stories where the investigating officer informs the person arrested that he doesn't in fact need to have an attorney present. However, it would be in anyone's best interest to have an attorney present if the option is available to them.

(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) (c- for the purpose of bringing him before a court in execution of the order of a court; and d- upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

- (4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

Therefore, if you are arrested and after having gone through the entire procedure, the arrest, the detention, the trial, and of course you were acquitted of the charges, if it can be proven that the officers involved were over zealous or simply incompetent in the carrying out of their duties, to the detriment of the citizen, this section gives an avenue to exercise their constitutional rights and receive monetary compensation for the inconveniences caused as well.

There have been many cases that have dealt with this very issue, the more famous ones being Merson v Cartwright and Tynes v Barr

Logically, with an arrest will come a search. According to the CPC:

15(1) Subject to the provisions of section 16 of this Code (which deals with the search of women), whenever a person is arrested by an officer or a private person, the officer making the arrest or to whom the private person makes over the person arrested may search such person in a place in safe custody all articles other than necessary wearing apparel found upon him:

Provided that whenever the person arrested can be legally admitted to bail and bail is furnished, such person shall not be searched unless there are reasonable grounds for believing that he has about his person any -

- (a) stolen article; or
  - (b) instrument of violence or offensive weapon; or
  - (c) tool connected with the kind of offence which he is alleged to have committed; or
  - (d) other article which may furnish evidence against him in regard to the offence.
- (2) The right to search an arrested person shall be exercised with strict regard to decency.
- (3) Where any property has been taken from a person under this section and such person is not charged before any court but is released on the grounds that there is not sufficient reason to believe that he has committed any offence, any property taken from him under the provisions of this section shall forthwith be restored to him.
- (4) An arrested person shall be furnished with a receipt for any property which has been taken from him under this section, and the receipt shall specify that property.

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