

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 law enforcement power 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 to 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 violation of 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

What does it mean for you?

Before this emergency order, 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.

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 coercive order is dangerous for many reasons. First, it increases the risk of abuse of police power. It gives a broad power for a much larger number of law enforcement officer to give

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>

tickets and potentially stop and harass people in public for vague and arbitrary suspicion of breaking emergency laws, such as quarantine restrictions, shutdown of non-essential businesses, or gatherings of over five people.

Second, it increases the problems involved with carding or street checks such as racial profiling and 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 of migrants being stopped, arrested, and detained by immigration authorities who are often 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, many non-status migrants – especially poor and/or under-housed migrants – do not have identification and may end up arrested or fined as a result. For example, when a person makes a refugee claim, their Identification is 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, it is bad for public health. It means that migrant workers, who are already the hardest hit by the COVID-19 pandemic and often must 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 transmission of COVID and using these coercive mechanisms now will only increase the speed of spread.

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

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

Develop a strategy of what you will do if you are confronted by a law enforcement officer

- If you get stopped by officers who don't have a warrant for your arrest, you may 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.
- However, if CBSA get 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 you've already identified yourself to frontline officers, and they keep asking you questions, you do NOT need to answer them. You could ask the officers, "am I being detained or am I free to go?"
- If the police speak to you, under Ontario's Emergency COVID ID Requirement, you are required to provide your name, date of birth, and address. However, you are NOT required to answer any further questions.
- Eventually they will either arrest you or let you go, running away during questioning may lead to additional charges.
- 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.

Safety plan checklist

- 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 bondsman.
- 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're afraid of your government and want to make a refugee claim.
- If you're 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.

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>

Prepared by:

No One is Illegal Toronto

Ontario Coalition Against Poverty

Butterfly: Asian and Migrant Sex Workers Support Network

International Human Rights Program, University of Toronto Faculty of Law