

# INTERNATIONAL STUDENTS' RIGHTS & IMMIGRATION CONCERNS DURING PEACEFUL PROTESTS & OCCUPATIONS:

## Some answers to common questions

(based on extensive consultations with an immigration lawyer & a legal committee)

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### **Will participating in a peaceful protest get me deported?**

Most demonstrations are peaceful without any arrests or altercations. So generally speaking, participating in a peaceful demonstration **will NOT get you deported**, especially if you are well-informed and smart about it. No matter what, police will NOT bring you to the airport merely because you participated in a protest. A long legal process would have to take place before that could ever happen. And you can take steps to avoid being arrested in the first place. At a peaceful demonstration, you can generally assess the level or risk *before* attending, as well as *during* the demonstration:

- **Before the protest:** You can ask the protest organizers what level of risk the protest is (sometimes protests are described as 'yellow,' 'green' or 'red,' depending on whether they are family-friendly vs. risking possible arrest). If it is a family-friendly or peaceful march, there are not many reasons for which you could get arrested, yet of course there is always some degree of risk since we can't predict others' behavior around you.
- **During the protest:** You can pay attention to what's going on: Usually police give a dispersal order before making any arrests - this gives you an opportunity to leave the demonstration before it is declared an "unlawful assembly." If you follow the dispersal order and leave, you will usually be okay. Leave in groups, stay on busy streets, and try to blend in. Simply be wise and conscious of the different ways of protesting.

### **But what if I *am* arrested?**

If you are peacefully protesting and are arrested, you might be let go without any charges. After making a dispersal order, if people refuse to leave sometimes the police will carry out a mass arrest (arresting many people at a time) and drop them off a few blocks away, as a way to break up the protest. If this is the case and you are arrested (but not charged), the arrest **would NOT affect your immigration status**. Usually there is nothing on your record *for just getting arrested*, and it should be deleted from your file, but there are some cases where this doesn't happen. Even if it stayed on your record, it would not affect your immigration status.

### **But what if I am *arrested and charged*?**

Being charged means that you are formally accused of an offense. After being arrested, if you are also **charged**, the most likely offense that you would be charged with in a peaceful demonstration would be "unlawful assembly" – assuming you were not engaging in property destruction or violent behavior. If you are charged during a mass arrest for "unlawful assembly," there is a high chance that your charges would be dropped. Charges usually stay on your record, but this does not make you inadmissible to Canada if the charge is "unlawful assembly."

If your charges are not dropped, the next step would be waiting for your trial, which could take up to approximately two years to see if you are either acquitted (declared 'not guilty') or convicted (declared 'guilty').

You would declare on your student visa and permanent residence application that you were either charged and acquitted, or convicted for "unlawful assembly," and you would explain the circumstances under which you were arrested, charged, and acquitted or convicted (for more details see appendix at the end of this document).

Convictions will definitely stay on your record. If you are convicted of "unlawful assembly," you usually just get a fine. A conviction of unlawful assembly **would NOT affect your immigration process**, because "unlawful assembly" it is not an "indictable offense," but rather is considered to be a 'summary offense' (a minor offense that does not render you inadmissible to Canada).

## What does “committing an offense” mean?

To do something that is considered by authorities to constitute offense regardless if whether you were arrested, charged or convicted.

## What is an “indictable offense”?

Any offense categorized as such under the law, usually referring to what they consider serious offenses that tend to carry larger sentences and/or fines.

## So what could make me inadmissible to Canada?

You are inadmissible to Canada if:

- 1) You are **convicted** of an offense that carries a **maximum term of imprisonment of at least 10 years**, regardless of what your actual sentence is;
- 2) You are convicted of an offense punishable by way of **indictment** (in other words, as an “indictable offense”) or of **two offenses** arising from different incidents.

If you don’t fall in any of these two categories, your immigration process will NOT be affected. So, “unlawful assembly” does not fit any of the above categories, *except if it is your second time* being charged for “unlawful assembly.”

While much less probable, there are other offenses that you could be charged and convicted of at a protest, *especially if you decide NOT to behave peacefully*, all of which render you *inadmissible* for immigration to Canada:

- “Obstructing police” (an example would be if you prevent a police officer from completing his duties) (*summary or indictable offense*, max. 2 years)
- “Assaulting police” (*indictable offense*, max. 5 years)
- “Mischief over \$5000” (an example would be destroying or damaging property) (*indictable offense*, max. 10 years)
- “Mischief under \$5000” (deemed an *indictable offense*, max. 2 years)

## What if I occupy a building or a classroom, or try to prevent a class from taking place?

Occupying private spaces, even if it is just making noise to prevent classes without stopping circulation, could be considered “mischief,” which if you were convicted for, would render you inadmissible to Canada. However, for *internal* soft occupations or picket lines (trying to prevent classes from taking place) *inside* universities, it is very rare for the police to intervene or to lay mischief charges. It is mostly closed occupations of entire university buildings (that don’t let anyone enter or leave the premises) that risk resulting in police intervention on university grounds. Since the beginning of the strike (including class preventions) at Concordia, police have not been called once because of classroom picket lines.

## Is there a difference in how this might affect my visa vs. my PR application?

- For renewal of *temporary visas* (study, work visa), having been convicted or having committed a minor offense is a less serious concern.
- If you intend to apply for *permanent residence*, a conviction or having committed an offense that renders you inadmissible is of serious concern.

## So what's the main point?

It is ***your right*** to peacefully protest, and the risk of it affecting your immigration process is very, very low if you peacefully demonstrate and if you do not participate in direct actions! So don't let anyone tell you that you can't democratically and peacefully protest and to stand up for your rights! The Constitution of Rights and Freedoms (which includes the right to protest) applies to ***anyone on Canadian soil***.

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### ***Appendix: Immigration tips in the case of charges or convictions***

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**In the case that you are charged or convicted and don't have access to a lawyer, here are some tips for filling out your applications for visas or Permanent Residence:**

If you are *arrested, charged or convicted*, you should report this when renewing your student visa and/or applying for permanent residence. That's because any kind of immigration permit, visa or application (e.g. student visa, work permit, PR application) will *always* ask you about your criminality. More specifically, in any immigration application they will ask you both:

1. Whether you have ever been convicted of a crime;
2. What offenses you have committed (offenses for which you were charged, even if you were never convicted).

Considering there is always a chance that arrests or charges stay on your record, it is **always best to be honest** and report these cases for #2, because the worst thing is to be considered as having lied to authorities. If charged and acquitted with a good defense, you would explain exactly that: That you were charged and acquitted because you had a good defense. If you were wrongfully arrested, you should also clarify this. Below are more detailed suggestions from the lawyer of how to proceed in different cases:

#### ***When renewing temporary visas:***

- Answer truthfully
- Explain circumstances under which conviction or commitment of offense, as the case may be, occurred
- If offense is a summary offense, specify
- If convicted, show remorse and raise any arguments that demonstrate that it was an isolated incident if that is the case
- If acquitted, specify
- If charges dropped explain why and, depending on the circumstances, explain why you would have been acquitted had the charges stuck

#### ***When applying for permanent residence:***

- See all of the above, and
- If convicted or committed an offense that renders you inadmissible, if appropriate, request an exemption to the inadmissibility on humanitarian and compassionate grounds
- If appropriate obtain a pardon prior to applying
- Determine if you are "deemed rehabilitated" (depending on the nature of the offence, five or 10 years must have passed since completion of the sentence imposed for your crime, in addition to other requires to be deemed rehabilitated), in which case your inadmissibility is overcome.