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## LEGAL TOPIC: POLICE POWERS OF ARREST

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### INTRODUCTION

When a person is alleged to have committed a Criminal offence, this person must be brought before the court to answer for any such offence and to pay the consequences of having committed any such offence, this could be in the form of a jail sentence, a simple fine or even community service. In law, powers are given to both police officers and interestingly, private citizens to enforce powers of arrest of suspected offenders. Today we'll discuss the powers of the police to effect an arrest.

### WHAT IS AN ARREST?

Arrest is best defined in the case of **Alderson v Booth (1969) 2 Q.B. 216:**

*"To arrest a person is to restrict his freedom under lawful authority. It usually involves the taking hold of a person, through touching, no matter how slight is sufficient. Words alone may also amount to an arrest if the form of words used is calculated in the circumstances of the case to bring to a person's notice that he is under compulsion, and does bring it to his notice and he then submits to the compulsion."*

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## STATUTORY POWERS OF POLICE ARREST (WITH OR WITHOUT WARRANT)

Where do police officers get their powers from? Let us have a look at some of the legislation under which these powers of arrest are specifically given to police officers (not security firms or security personnel). It must be noted that these statutory powers are not limited to the following:

**Section 45 (b) and 46 (1) of the Police Service Act Chapter 15:01** confer these powers as follows:

45. A police officer—

*(a) shall preserve the peace and detect crime and other breaches of the law;*

*(b) may arrest, charge and bring before a summary Court a person found committing any offence rendering him liable to arrest without warrant, or whom he reasonably suspects of having committed any such offence;*

46. (1) A police officer may arrest without a warrant—

*(a) a person who is charged by another person with committing an aggravated assault in any case in which such police officer believes upon reasonable ground that such assault has been committed although not within his view, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender;*

*(b) a person who commits a breach of the peace in his presence;*

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*(c) a person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;*

*(d) a person in whose possession anything is found which may reasonably be suspected to have been stolen or who may reasonably be suspected of having committed an offence with reference to such thing;*

*(e) a person whom he finds lying or loitering in any public or private place or building and who does not give a satisfactory account of himself;*

*(f) a person whom he finds in any public or private place or building and whom he suspects upon reasonable grounds of having committed or being about to commit an offence; or*

*(g) a person found having in his possession without lawful excuse any implement of housebreaking.*

According to **Section 3 of the Criminal Law Act Chapter 10:04:**

3. *(1) The powers of summary arrest conferred by the following subsections shall apply to capital offences or offences for which a person (not previously convicted) may, under or by virtue of any written law be sentenced to imprisonment for a term of five years, and to attempts to commit any such offence; and in this Act, including any amendment made by the Law Revision (Miscellaneous Amendments) (No. 1) Act 1979 in any other written law, “arrestable offence” means any such offence or attempt.*

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*(2) Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence.*

*(3) Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence.*

*(4) Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.*

*(5) A police officer may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence.*

The **Summary Offences Act Chapter 11:02** grants the power of arrest to Police Officers throughout the act for different offences, for example, **Section 36 (1)** gives this power to the police for items suspected to be stolen

*36. (1) A constable may arrest without warrant any person having in his possession or under his control in any manner or in any place anything which the constable has reasonable cause to suspect has been stolen or unlawfully obtained.*

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There are other pieces of legislation such as the **Larceny Act** and **Domestic Violence Act** that grant further powers of arrest.

Warrants are usually issued for Indictable Offences (more serious offences such as murder where an accused person has a right to trial by jury) and are obtained from a Magistrate or Justice of the Peace.

### **REASONABLE CAUSE OR REASONABLE GROUNDS FOR SUSPICION**

The term “reasonable cause” pops up frequently where powers of arrest are conferred without a warrant.

Reasonable cause basically means a state of facts found to exist that would warrant a **reasonably** intelligent and prudent person (the arresting officer) to believe that a person has violated the law. The arresting officer must be able to show this reasonable cause.

As per **Dallison v. Caffery (1964) 2 All ER 610 at 619 D per Diplock LJ:**

*The onus of establishing reasonable and probable cause for an arrest lies on the police.*

**Nigel Lashley v The Attorney General of Trinidad and Tobago Civ Appeal No 267 of 2011, Narine JA:**

The test for reasonable and probable cause has a subjective as well as an objective element. Therefore, *the arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the*

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*existence of objective circumstances, which can reasonably justify the belief or suspicion.*

## **RIGHTS OF AN ARRESTED PERSON**

An arrested person has Constitutional Rights and these rights are heavily supported by the common law.

Under **Section 5 (2)(c) of the Constitution of Trinidad and Tobago**, an arrested person has a right to be informed of the reasons for the arrest, his right to an attorney, his right to be brought promptly before the appropriate judicial authority and of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful.

### **Jason Khan & Keron Williams v The Attorney General of Trinidad and Tobago, CV2014-01187:**

*“For an arrest to be lawful the person being arrested must be informed of the fact that he is under arrest and the reasons for that arrest albeit not at the same time if not practicable.”*

**John Lewis and Co Ltd v Tims [1952] Ac 676** holds that *a person should be taken as soon as possible before appropriate authorities*. The appropriate authorities are usually the nearest police station or the Magistrate’s court if open.

In the **Privy Council Appeal (No. 32 of 1978) of Thornhill v Attorney General of Trinidad and Tobago**, the right to instruct and retain a legal adviser was confirmed as a Constitutional right.

### **REMEDIES**

If a person is arrested without reasonable cause or without any of their Constitutional Rights being observed by the arresting officer(s), relief is available under Civil Law. This also opens the gate for any such police officer who effected an unlawful/wrongful arrest to be disciplined accordingly.

*It is well-established that failure to comply with published policy will render the exercise of compulsory powers which interfere with individual freedom unlawful: **R (Lumba) v Secretary of State for the Home Department [2011] UKSC 12; [2012] 1 AC 245**. It is also likely to expose the individual officer to disciplinary action.*

In **Alphonsus Mondesir v The Attorney General of Trinidad and Tobago Sinanan J** (as he then was) stated as follows:

*“It must be remembered that an arrest involves a trespass to the person which is prima facie tortious. This trespass by the arrestor continues so long as he retains custody of the arrested person. The arrestor must justify the continuance of his custody by showing that it was reasonable.*

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