

LEGAL AND TACTICAL GUIDE



**Palestine Legal Resources Canada
(PLRC)**

**SOLIDARITY ACTIONS, THE RIGHT TO PROTEST, AND
CRIMINAL ISSUES YOU MAY FACE | SEPTEMBER 2020**



**Just Peace Advocates
Mouvement Pour Une Paix Juste**

PROTEST

SOLIDARITY ACTIONS, THE RIGHT TO PROTEST, AND CRIMINAL ISSUES YOU MAY FACE²⁶

CONSTITUTIONAL RIGHT TO PROTEST

In Canada, the right to protest is protected under ss. 2(b), (c), and (d) of the Canadian *Charter of Rights and Freedoms*, which encompass the rights to freedom of expression, peaceful assembly, and association, respectively:

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

2. Everyone has the following fundamental freedoms:
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.

Protesting is a democratic right and is legal in itself. Protests are allowed on any public property so long as they remain peaceful. Public property includes government-owned spaces such as parks, government buildings, and public squares.

Private property is any property that is owned by one or more individuals. You can attempt to protest on private property, but may be asked to leave by the owner(s). Even if you move to a surrounding area that is designated as public property, the police may be called if the protest or demonstration is causing a disturbance to the nearby private property owner(s).

Take note that some spaces such as malls and schools often appear as public spaces but are usually privately owned. Accordingly, you should always research the venue and its potential owner, as well as any relevant municipal laws, before organizing or staging a protest.²⁷

²⁶ Sources consulted, relied upon, and used in the development of this section, in addition to the relevant jurisprudence, include Pivot Legal Society, "Legal Information for People Attending Wet'suwet'en Solidarity Actions", "Vancouver" Edition, (February 14, 2020); Harsha Walia, "Movement Defense: Legal Information for Cross-Country Wet'suwet'en Strong Actions" (2020); PEN Canada, "A Guide to Protest and Demonstrations in Canada" (2016); Leo McGrady and Sonya Sabet-Rasekh, "The Law of Protest Workshop" (2017), Canadian Association of Labour Lawyers 2017 Annual Conference; Canadian Civil Liberties Association, "Know Your Rights Guide to Protesting" (2020).

²⁷ PEN Canada, *supra*.

DO'S AND DON'TS OF DEMONSTRATIONS²⁸

DO

DO attend with a friend. Stay together and leave together.

DO tell someone who is not attending the protest where you will be and what time you anticipate to be home and have a plan to check-in. Put a support and/or emergency plan in place for childcare, eldercare, pets, etc.

DO bring a pen and paper to record detailed notes of any incidents that might occur during the demonstration, such as police interactions.

DO memorize or bring a phone number of a lawyer you can call in the event that you are arrested. Write the number in permanent marker on your body.

DO bring photo identification in case you are arrested. Having this may mean you are processed faster if you are taken into custody.

DO wear suitable and comfortable clothing, including shoes that are appropriate for running.

DO consider bringing a digital camera as an alternate means to a cellphone for capturing photos and video.

DO bring a water bottle. This can be used to bathe eyes in the event that police use tear gas.

DO consider wearing glasses and not contact lenses.

DO bring enough prescription medication in the original bottle to last a few days (note that you may still face issues gaining actual access to your medications if you are taken into police custody and should have an emergency plan for this, including a number for a lawyer on hand, if you think you will be at risk of arrest).

DON'T

DON'T bring illegal drugs.

DON'T bring anything that might be considered a weapon.

DON'T bring an address book or any other document that contains sensitive personal information.

DON'T bring a cellphone, if you are planning to risk being arrested. If you must bring one, ensure that it is password protected, and not activated with finger print or facial recognition.

²⁸ Pivot Legal Society, *supra* at 4; McGrady and Sabet-Rasekh, *supra*, at 20-24.

ENCOUNTERING THE POLICE²⁹

- At any protest or demonstration, it is likely that there will be a police presence there.
- You have the right to photograph, record, or videotape police officers who are on duty, and they cannot ask you to delete the content or seize the equipment used to take it. You cannot, however, interfere with or obstruct officers in the course of their duties.
- You are usually not required to provide the police with your name, address, or formal identification, however, there are a few exceptions:
 - **1)** If you are detained while driving, you must provide proper identification to the police.
 - **2)** If you have been lawfully arrested
- The police, including the provincial police and/or the RCMP, are allowed to approach you and ask you questions. You are not required to respond, but it is recommended that you remain polite to avoid a confrontation. Do not lie or provide false documents.
- The police cannot search you unless:
 - You consent to a search (do not consent to be searched);
 - They have a warrant to search you;
 - You have been detained and they are conducting a pat down or frisk search to check for weapons and assess for safety; or
 - You have been arrested.
- If the police approach you, you should first **ask if you are free to go**, and if the answer is “yes”, leave.
- If the police answer “no” or if the answer is unclear, you can ask, **“am I under arrest or detention?”**
 - If they answer “no” but continue to state that you cannot leave, get the officer’s badge number. You can also ask, **“why not?”**

• DETENTION

- If they answer “yes”, ask **“why?”**. You are entitled to know the reasons for your detention or arrest pursuant to s. 10(a) of the *Charter*.
- Get the police officer’s badge number.
- If you are detained by the police, you cannot leave and walk away.
- You have the right to remain silent pursuant to s. 7 of the *Charter* and the right to speak to a lawyer pursuant to s. 10(b) of the *Charter*. The police must inform you of your right to speak with a lawyer immediately upon detention, and provide you with an opportunity to do so.³⁰
- **Tell the officer that you would like to remain silent and that you would like to speak to a lawyer.**
- The police have a common law power to detain an individual for investigative purposes and conduct a pat down search if they believe that their safety, or the safety of others, is at risk.³¹

CHARTER OF RIGHTS AND FREEDOMS

- 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice
- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right

²⁹ Walia, *supra* at 2-4; Pivot Legal Society, *supra* at 6, 8-10; Canadian Civil Liberties Association, *supra*; McGrady and Sabet-Rasekh, *supra*, at 37-44.

³⁰ *R v Manninen*, 1987 CanLII 67 (SCC), [1987] 1 SCR 1233; *R v Suberu*, 2009 SCC 33 (CanLII), [2009] 2 SCR 460.

³¹ *R v Mann*, 2004 SCC 52 (CanLII), [2004] 3 SCR 59; See also *R v Clayton*, 2007 SCC 32 (CanLII), [2007] 2 SCR 725.

• ARREST

- If you are arrested, you continue to have the same rights under the *Charter* to be advised promptly of the reason for arrest (s. 10(a)); the right to retain and instruct counsel (s. 10(b)); and the right to remain silent (s. 7).
- However, you must provide your name and address to the police upon request and they have the right to conduct a search of your “immediate surroundings”, which includes you, your clothing, anything you’re carrying such as your backpack, purse, cellphone, etc., and your vehicle, if you are in one.
- If you are being arrested, engaging in a physical struggle with the police or attempting to or actually running away will likely result in further charges.
- Exercise your right to remain silent and speak to a lawyer as soon as possible.
- If you do not have a lawyer, you have a right to speak with a legal aid lawyer for free and police must allow you to contact them.

COMMON PROTEST CHARGES³²

Even though protesting is legal in Canada, you can run into encounters with the police if you break other laws in the act of demonstrating. The charges outlined below are the most common ones that arise in a protest context; however, you can be arrested for breaking any law at a protest. This list is not exhaustive. The section numbers (e.g. s. 175(1)) below refer to the relevant provision in the *Criminal Code*, which outlines the criminal laws across Canada.

Breach of the Peace – s. 31

- Peace officers have the right to arrest you to prevent or stop a breach of the peace. However, it is not a charge in and of itself, nor is there a record of the charge. The police will usually release you soon after the action unless they are going to charge you for breaking some other law, and in any case within 24 hours. It is a commonly used police tactic to use breaching

charges so the police can round people up, put them in police vehicles, drive them far from their original location, and release them there.

Causing a Disturbance – s. 175(1)

- If you cause a disturbance in or near a public place by fighting, screaming, shouting, swearing, singing, using insulting or obscene language, being drunk, impeding or molesting other persons, loitering or obstructing people, you may be charged with this offence, which is punishable with up to six months in prison or a \$5,000 fine.

Common Nuisance – s. 180

- This offence involves stopping people from exercising/enjoying their rights, or endangering the lives, safety or health of the public. Common nuisance can be punishable by up to two years in prison.

Mischief – s. 430(1)

- This includes willfully destroying or damaging property, rendering property dangerous, useless, inoperative or ineffective, or obstructing, interrupting or interfering with the lawful use, enjoyment or operation of property. This would include spray-painting, chaining doors shut, smashing windows, slashing tires, or blockading entrances. Mischief can be punished by a life sentence if you endanger someone’s life. Mischief that damages property, the value of which exceeds \$5,000, can be punished by up to 10 years in prison or a \$5,000 fine.

Unlawful assembly – s. 63

- This involves an assembly of three or more people who gather with the intent to carry out some common purpose, in a manner that causes others around them to reasonably fear that they will “disturb the peace tumultuously” or will provoke others to do so. “Tumultuous” involves an element of violence and this charge is most common when protests involve violent clashes with the police. Although the police will usually announce that an assembly has become unlawful (usually by ordering you to disperse), it is not essential. This law gives significant discretion to police, but has typically only been used in mass protests such as the 2012 Quebec student protests. Unlawful assembly can be punished by six months in prison or a \$5,000 fine (s. 66(1)). If you are wearing a disguise, the prison sentence could increase to five years (s. 66(2)).

³² Wallia, *supra* at 4-6; McGrady and Sabet-Rasekh, *supra*, at 44-49; PEN Canada, *supra*.

Rioting – s. 64

- This is when a group of three or more people actually do cause a violent disturbance. Rioting can be punished by up to two years in prison, but that sentence could increase to 10 years if you are wearing a disguise (s. 65(2)).

Resisting or Obstructing a Peace Officer (i.e., Resisting Arrest) – s. 129

- You can be charged with this if you resist or willfully obstruct a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer. This includes if you resist being arrested or try to prevent a police officer from arresting someone else. Holding onto a pole or struggling against arrest is resisting, however going limp or refusing to unlock is not resisting.

Assaulting a Peace Officer – s. 270

- This involves an assault of a peace officer engaged in the execution of their duties or a person acting in aid of such an officer. This offense includes resisting or preventing the lawful arrest or detention of you or another person. This offence may be punishable by up to five years in prison.

COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43

137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

(a) to encourage individuals to express themselves on matters of public interest;

(b) to promote broad participation in debates on matters of public interest;

(c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and

(d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.

POTENTIAL LONG TERM REPERCUSSIONS TO CONSIDER

Being arrested and charged at a protest could result in a criminal record, which could have severe negative repercussions on one's employment, housing, travel prospects, and immigration status, as well as lead to social stigma. Having a criminal record could also jeopardize one's immigration or refugee application for individuals seeking permanent residency and/or citizenship status in Canada, and lead to deportation. Even if the charges are dropped or dismissed, the incident may still appear on Criminal Record Checks.

ABOUT

Just Peace Advocates is a Canadian, independent organization promoting the human rights of the Palestinian people and those that stand in solidarity for the human rights of the Palestinian people. Its vision is to provide a civil society voice focused on governmental, institutional, and societal accountability to the rule of law, and the standards of international human rights and humanitarian law for the rights of Palestinian people.

The work of Just Peace Advocates is accomplished through research, monitoring, education, communications, advocacy, programs, and service provision.

DISCLAIMER

This guide is meant to provide basic information on legal issues that Palestinian rights activists may face, and tips on how to navigate them. It provides some generally applicable information and some campus-specific information for student activists. Any legal information in this resource is intended for general educational purposes and is **NOT a substitute for legal advice** – federal and provincial laws differ, laws may change, and the application of all laws depends on the specific facts of a case. Make sure to consult with a lawyer before relying on any information you find here.

For legal advice on your campaign or about a specific issue you are facing, or to report incidents of repression of your activism, please email info@justpeaceadvocates.ca.

We are also glad to provide workshops or schedule meetings to discuss your particular needs, whenever possible.

Just Peace Advocates thanks Palestine Legal for allowing us to have access to their existing resources and giving us permission to update them to the applicable Canadian legal context. For more information about Palestine Legal, see palestinelegal.org.

JUST PEACE ADVOCATES

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