

PALESTINIAN HUMAN RIGHTS ISSUES IN CANADA: A LEGAL & TACTICAL GUIDE



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Just Peace Advocates
Mouvement Pour Une Paix Juste

SURVEILLANCE AND LAW ENFORCEMENT

THE RIGHT TO PRIVACY

In Canada, a person's privacy interests are protected by s. 8 of the Canadian *Charter of Rights and Freedoms*. Section 8 of the *Charter* guarantees that:

Section 8 acts as a limitation on the search and seizure powers of the government, including police and other government investigators. The purpose of s. 8 is the protection of a person's privacy interests, not the protection of property. There are three zones in which an individual has a privacy interest:

**CANADIAN CHARTER
OF RIGHTS AND FREEDOMS**
**s.8 Everyone has the
right to be secure
against unreasonable
search and seizure.**

- 1) Personal (i.e., the body)
- 2) Informational
- 3) Territorial (i.e., places or things)

WHAT IS A "SEARCH"?

Police actions will only constitute a "search" where they intrude on an individual's **reasonable expectation of privacy**. A person's expectation of privacy varies depending on the environment, and there are some situations where the expectation of privacy is stronger.

People have high expectations of privacy in relation to searches of the body or person. While all searches of the body breach bodily integrity, the more invasive the search (e.g., DNA samples, strip searches, etc.), the higher the expectation of privacy.

With respect to informational privacy, the greatest protection is given to information about biological attributes or that which reveals intimate details of a person's lifestyle, health information, and/or personal choices.

Regarding territorial privacy, the more a place shares the quality of being a home, the higher the expectation of privacy. Places like airports, public parks, etc. have much lower expectations of privacy than a person's home.

WHAT IS A SEARCH WARRANT?

A warrant is a document that police obtain from a justice of the peace or judge that gives them legal authority to search a particular place for a particular item or items. The general requirements for obtaining a warrant are set out in s. 487 of the *Criminal Code*. Other sections of the *Criminal Code* address special types of warrants, such as warrants for wiretaps (s. 186) and DNA (s. 487.05).

In order to obtain a warrant, a police officer must appear before a justice of the peace (or judge) and swear *an information* – that is, they must provide evidence to show why the police need to conduct the search. This can also be done over the phone in special circumstances (s. 487.1). The evidence must specify where the police intend to search, what they intend to search for, and why the search is necessary for their investigation.

In order to issue a warrant, the justice of the peace must be satisfied that there are **reasonable and probable grounds** to believe that the items sought exist and will be found in the place police want to search. The justice of the peace must also be satisfied that there are grounds for believing a criminal offence has been committed, and that evidence of that offence will be found in the place to be searched. If the justice of the peace is satisfied by the police officer's evidence, the warrant will be issued.

The police must have the warrant with them when they conduct the search and they must knock and announce their presence before trying to force entry. The person who is being searched must be shown the warrant.

SURVEILLANCE AND LAW ENFORCEMENT ISSUES

- Law enforcement (local police, provincial police, RCMP) can use a number of methods to spy on you, some of which require permission from courts. Assume that your activities and communications may be monitored without your knowledge, in ways that don't require a court order, or under a court order that you don't know about, or even by private surveillance or intrusion. Be aware of the risks of different types of communication. Experts repeatedly warn that there is no such thing as "secure" electronic communication. Law

enforcement and private organizations often monitor activists' online activities and use the information against them in criminal cases or otherwise.

- Infiltration of organizations by undercover agents or informants is common. Be aware of people who suggest and encourage violent/unlawful action, whose background you don't know, who are divisive, or who appear suddenly and become actively engaged without prior known activism in the area. Agents can perform illegal activities and lie to you without penalty.
- If confronted by law enforcement, you may be asked to provide your name, address, and identification. You are not required to do so unless:
 - **1)** You are detained while driving, and then you must provide proper identification to the police.
 - **2)** You have been lawfully arrested.
- You are not required to say anything else, even if pressured to do so. If you decide to speak to law enforcement, be aware that anything you say can be used against you, your community, or group. If you decide not to talk to law enforcement, state clearly that you do not wish to talk (i.e., that you would like to remain silent, as is your right pursuant to s. 7 of the *Charter*), and would like to speak with a lawyer. Even if you want to speak with law enforcement, it is best to have a lawyer present, especially if you are under investigation or under arrest. 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.
- Do not lie or provide false documents to the police. Silence and a lawyer may be best in any situation involving law enforcement potentially investigating you.
- If law enforcement asks to search you or your home, you can say explicitly "I do not consent to a search." You may be deemed to have consented to a search by your actions (e.g., by opening the door, letting them in, etc.) If they come to your home and you do not want to talk to them or let them in, you may talk through the door or step outside, and tell them your lawyer will contact them.

- If law enforcement has a search warrant, you can demand to see it before letting them in. To make sure it is a valid warrant, check for a judge's or justice of the peace's signature, specific language about where and what the search is for, and the correct name and/or address. You could be charged with obstruction of justice if you try to stop an authorized search from taking place. If you believe a search is not authorized, tell law enforcement but do not try to stop them. You can say "I do not consent to this search" and can challenge the search later if anything they find is used against you, and/or make a complaint. Be sure to record the officers' names and badge numbers and what they did during the search.
- If you want to find out what information the government is collecting about you, consider using tools like the federal Access to Information and Privacy (ATIP) Online Request¹¹² under the *Access to Information Act*¹¹³ and/or provincial, territorial, and municipal public records request laws to discover information/records that federal, state or municipal government agencies or officials have about you or your group. These requests can also be used in other contexts to expose communications and documents coming from government actors, government or public university contracts, investments, or other relationships with target companies, etc. Sustained follow-up may be needed to obtain requested documents if the public agency is resistant to your request and to follow up on delays, etc. Contact us for resources to help you with such requests.
- Despite all of these warnings, be smart, rather than paranoid — do not let it hamper your activism!

¹¹² See <https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/request-information.html>. Each request costs \$5.00 CAD.

¹¹³ R.S.C., 1985, c. A-1

HOW TO MAKE A FREEDOM OF INFORMATION REQUEST

The following provides links to federal, provincial, and territorial access to information and privacy legislation, as well as information on requesting access to governmental records.

FEDERAL [*Access to Information and Privacy \(ATIP\) Online Request*](#)

ALBERTA [*Freedom of Information and Protection of Privacy Act \(FOIP Act\)*](#)

BRITISH COLUMBIA [*Freedom of Information and Protection of Privacy Act \(FOIPPA\)*](#)

MANITOBA [*Freedom of Information and Protection of Privacy Act \(FIPPA\)*](#)

NEWFOUNDLAND [*Access to Information and Protection of Privacy Act*](#)

NEW BRUNSWICK [*Right to Information and Protection of Privacy Act*](#)

NORTHWEST TERRITORIES [*Access to Information and Protection of Privacy \(ATIPP Act\)*](#)

NOVA SCOTIA [*Freedom of Information and Protection of Privacy Act \(FOIPOP\)*](#)

NUNAVUT [*Access to Information and Protection of Privacy Act \(ATIPP Act\)*](#)

ONTARIO [*Freedom of Information and Protection of Privacy Act \(FIPPA\)*](#)

PRINCE EDWARD ISLAND [*Freedom of Information and Protection of Privacy Act \(FOIPPA\)*](#)

QUEBEC [*Commission d'accès à l'information*](#)

SASKATCHEWAN [*The Freedom of Information and Protection of Privacy Act*](#)

YUKON [*Access to Information and Protection*](#)

Note that municipalities have separate legislation, which will need to be researched separately. For example, in Ontario, the municipalities are covered under the [*Municipal Freedom of Information and Protection of Privacy Act \(MFIPPA\)*](#).

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.

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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.

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Please send questions and corrections to info@justpeaceadvocates.ca.

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