

Palestinian Human Rights Issues in Canada: A Legal & Tactical Guide

CHAPTER 2: PROTEST RIGHTS



Just Peace Advocates
Mouvement Pour Une Paix Juste

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2 PROTEST RIGHTS

A QUICK GLANCE

CONSTITUTIONAL RIGHT TO PROTEST

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. While protesting is legal, this does not mean the police will not intervene (even in peaceful protests). Be prepared.



TL;DR (too long; didn't read)

Protesting on public property is a legal right in Canada. However, the police may still choose to disrupt and target protesters. Be prepared, protest with another person, have an emergency plan, gather necessary supplies / information, and leave unnecessary items at home.

IN-DEPTH: Protest Rights



CONSTITUTIONAL RIGHT TO PROTEST⁸⁰

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:

(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.⁸¹ 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 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.⁸² It is important to remember that police may target lawful protests (e.g., peaceful protests on public property). Therefore, be prepared when you engage in your right to protest.

IF YOU ENCOUNTER THE POLICE⁸²

- 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.
- 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.
- If the police approach you, you should first ask if you are free to go, and if the answer is “yes,” leave.

Check out [Section 3: Criminal Issues You May Face](#) for more details on your rights and what to do if the police say “no.”

COMMON PROTEST CHARGES⁸⁴

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

⁸⁰ Sources consulted, relied upon, and used in the development of this section, in addition to the relevant jurisprudence, include “Legal Information for People Attending Wet’suwet’en Solidarity Actions”, *Pivot Legal Society (PLS)* (23 March 2020), online: <[Link](#)>; Harsha Walia, “Movement Defense: Legal Information for Cross-Country Wet’suwet’en Strong Actions”, *Yinoh Access* (2020), online: <[Link](#)>; 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, online: <[Link](#)>; “Know Your Rights Guide to Protesting”, *Canadian Civil Liberties Association (CCLA)* (2020), online: <[Link](#)>.

⁸¹ For more information, see Lawyers’ Rights Watch Canada, *The Right to Dissent* (Vancouver: Creative Commons, 2017), online: <[Link](#)>.

⁸² PEN Canada, *supra* note 80.

⁸³ Walia, *supra* note 80 at 2-4; PLS, *supra* note 80 at 6, 8-10; CCLA, *supra* note 80; McGrady & Sabet-Rasekh, *supra* note 80 at 37-44

⁸⁴ Walia, *supra* note 80 at 4-6; McGrady & Sabet-Rasekh, *supra* note 80 at 44-49; PEN Canada, *supra* note 80.

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.

(A) Breach of the Peace – s. 31

Police 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. They 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.

(B) 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.

(C) Common Nuisance – s. 180

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

(D) 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.

(E) Unlawful assembly – s. 63

This involves an assembly of three or more people who gather with the intent to carry out any common purpose, in a manner that causes others around them to reasonably fear they will "disturb the peace tumultuously" or will provoke others to do so. "Tumultuous" involves an element of actual or threatened violence.⁸⁵ 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.⁸⁶ 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)).

(F) 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)).

(G) Resisting or Obstructing a Peace Officer – 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.

(H) 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 offense may be punishable by up to five years in prison.

RECENT EVENTS

- After a year and a half legal battle, all protestors labelled as the "Indigo 11" were vindicated. Despite millions of dollars, pre-dawn raids, and 11 arrests, prosecutors failed to secure any convictions.⁸⁷ The Indigo 11 were accused of vandalism, allegedly plastering an Indigo store with posters and red paint, due to CEO, Heather Reisman's, charity work supporting former IOF soldiers with taxpayers money.⁸⁸
- As of 2025, multiple municipalities are attempting to squash the *Charter* protected right to protest. As of April 2025, the City of Toronto is considering a proposal which would make demonstrations directly outside places of worship, faith-based schools, and cultural institutions illegal.⁸⁹ The City is holding public consultations ahead of its May Council meeting, when staff are expected to provide a report on recommendations and a proposed by-law.⁹⁰ This comes after the City of Edmonton passed a similar by-law in February 2025.⁹¹ Other cities like Ottawa, are also considering these restrictive measures.⁹²

⁸⁵ *R v Cote*, 2011 ONCJ 778, citing *R v Bernitt*, 1997 CanLII 12528 (BC CA).

⁸⁶ In 2022, the government invoked the Emergencies Act in response to the ongoing mass protests commonly known as the "Freedom Convoy." In 2024, the Federal Court ruled that the invocation of the Act violated provisions of the Charter. See *Canadian Frontline Nurses v Canada (Attorney General)*, 2024 FC 42.

⁸⁷ Jennifer Pagliaro, "Last of Indigo 11 Receive Conditional Discharges with Probation for 12 Months", *The Toronto Star* (11 April 2025), online: <Link>.

⁸⁸ Nisha Toomey, "I'm One Of The 'Indigo 11.' Here's Why I Did It", *The Maple* (20 January 2025), online: <Link>.

⁸⁹ "Public Consultation for a Proposed Demonstrations Bylaw to Protect Vulnerable Institutions", *City of Toronto* (2025), online: <Link>.

⁹⁰ Muriel Draaisma & Dale Manuodoc, "Hundreds Gather in Downtown Toronto to Protest Against 'Bubble Zone' Bylaw Plan", *CBC News* (17 April 2025), online: <Link>.

⁹¹ "Public Spaces Bylaw", *City of Edmonton* (2025), online: <Link>.

⁹² David Fraser, "Ottawa to Mull Restricting Protests Outside 'Vulnerable Institutions'", *CBC News* (16 October 2024), online: <Link>.

DO this

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

DO document any medical injuries and seek/request medical attention.

DO tell someone who is not attending the protest where you will be and what time you anticipate being home and have a plan to check-in. Put a support and/or emergency plan in place for child-care, 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, as well as a family/friend's number. 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 do this

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, not activated with finger print or facial recognition, and location is turned off.



POTENTIAL LONG-TERM REPERCUSSIONS TO CONSIDER

Being arrested/charged at a protest could result in a criminal record, which could have severe negative repercussions on one's employment, housing, travel, 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.**

⁹³ Pivot Legal Society, *supra* note 80 at 4; McGrady & Sabet-Rasekh, *supra* note 80 at 20-24.

ABOUT

Just Peace Advocates is a Canadian, independent organization promoting the human rights of the Palestinian people and those who 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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