



LEGAL INFORMATION NOT LEGAL ADVICE

SUMMARY SHEET

Palestinian Solidarity for Arts Organizations in Canada: Legal Webinar with BCCLA

Your Right to Boycott / Your Right to Support the Palestinian Campaign for the Academic and Cultural Boycott of Israel (PACBI)

Although not yet explicitly recognized in a binding court decision, your right to boycott as an expression of your political views can be strongly claimed as protected by Canada's constitution under sections 2(a) (freedom of conscience) and 2(b) (freedom of expression) of the [Canadian Charter of Rights and Freedoms](#). You have the freedom of expression and conscience to make purchases and/or support causes based on your political beliefs.

At present, there are no enacted laws that have attempted to curtail boycotting in Canada. In 2016, the House of Commons voted to formally condemn the Boycott Divestment and Sanctions (BDS) campaign, but this was a symbolic motion, not law.

What constitutes a "symbolic motion?" Here is an example:

Imagine that the government declared June 25 to be "Wear a Hat Day," without making it illegal to not wear a hat on that day. Because there is no legal consequence for not wearing a hat, the declaration would be considered a "symbolic motion," rather than a law.

However, symbolic declarations by the government may in effect chill freedom of expression. For example, people might feel afraid to not wear a hat on Wear a Hat Day, even if it's not a legal requirement. Therefore, it is very important to remember the crucial difference between a *symbolic motion* and the *law*: it is not illegal to disregard the former.

Does PACBI Violate Human Rights Codes in Canada?

No. Human Rights Codes aim to protect people against identity-based discrimination while accessing services, goods, and facilities. For more information, consult the specific "protected grounds" in the applicable federal, provincial or territorial Human Rights Code.

Endorsing PACBI does not violate Human Rights Codes, because boycotting Israeli academic and cultural institutions for their complicity in Israel's denial of Palestinian human rights does not amount to discrimination against a person because of their identity. That said, there is always a general risk of complaints alleging identity-based discrimination. To mitigate potential legal risks, be sure to consistently communicate that your organization's endorsement of PACBI specifically applies to Israeli academic and

cultural institutions, and the state of Israel as set out in the [PACBI guidelines](#). Report any suspicious engagement and seek proactive legal advice.

What are the legal implications of the International Holocaust Remembrance Association (IHRA) Definition of Antisemitism?

In 2019, Canada symbolically adopted the *non-legally binding* IHRA Definition of Antisemitism as part of Heritage Canada's anti-racism strategy. For a list of symbolic endorsements of IHRA across the country see: [Appendix C: List of Adoptions/Endorsement of the IHRA Definition](#).

The IHRA Definition is currently non-legally binding, meaning it does not impose a legal obligation on arts organizations or individuals. The IHRA Definition has yet to be adopted into law or interpreted or validated by any Canadian courts. As it stands, the IHRA Definition cannot be used as a legal tool to prevent organizations from endorsing PACBI.

What impact could the IHRA Definition of Antisemitism have on our organization's funding?

BCCLA is currently aware of only one area where use of the IHRA Definition is being explicitly applied in a way with direct legal and financial consequences: Heritage Canada's Multiculturalism and Anti-Racism Program (MARF). MARF funding recipients are required to sign an attestation that they will "not undermine the Charter and Heritage's Anti-Racism strategy", which includes the IHRA Definition. Failure to comply can result in funding being clawed back. If you're a worried applicant or recipient, reach out to us or a lawyer to discuss the options and implications for your organization.

While PACBI and Palestine solidarity generally do not violate funding agreements, review the terms of your existing and new funding agreements carefully, because they are all different, binding contracts. There may be some risk, for example, if your funding agreements have broad "morality clauses" or "funder disrepute clauses. If you have any questions, seek legal advice.

If you face threats to your funding from Palestine solidarity activities, document it and request disclosure. Respond promptly with clear writing and credible sources. Seek legal advice promptly.

Does PACBI compliance impact our organization's charitable status?

Organizations with charitable status can generally engage in public, non-partisan political expression, but actual work activities and use of charitable funds always need to be within the scope of the organization's purposes.

There may be a potential risk to your charitable status if:

1) you are an arts organization with arts-only charitable purposes

and

2) Any **funds/resources** allocated for what's referred to as **Public Policy Dialogue and Development Activities (PPDDAs)**¹ that— should a complaint be filed or there be an audit— the Canada Revenue

¹ We recommend reviewing the Canada Revenue Agency's guidance on PPDDAs:

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>

Agency (CRA) finds to be outside of your purposes. PPDDAs refer to activities like lobbying, or even public statements with opinions about policies or laws of any level of Canadian government.

Signing onto PACBI and following its guidelines would not qualify as a PPDDA. First, PACBI is political expression that does not specifically address Canadian governmental policy. Second, simply adhering to PACBI does not reflect use of charitable funds and resources. Rather, adherence simply informs decision-making at an operational level. The restriction on PPDDAs is primarily meant to target those participating in or trying to influence partisan political affairs, and from charitable funds being substantively used for policy research, development, and advocacy on issues that are outside of the charitable purposes. That said, arts organisations can engage in PPDDAs that are directly related to the arts or their respective purposes, as long as they are not directly or indirectly supporting or opposing a political party or candidate for public office.

Things like signing on to PACBI, closing your space in solidarity with a strike, and making general public statements or policies about anti-oppression and anti-racism are not PPDDAs. On the contrary, these actions can be seen as supporting an organisation's equity-seeking purposes. Get legal advice if you are unsure.

Does PACBI violate procurement law?

PACBI generally does not violate procurement law. Generally speaking, procurement law does not necessarily apply to any organization that received government funding. Rather, procurement law is limited to companies that are contracted to provide services to the government. However, it is always wise to consult the procurement law legislation in your jurisdiction. In Ontario, for example, procurement law applies to charities receiving over \$10 million in funding.

Are board members of our organization personally liable?

There are generally very limited circumstances where a board member could be held personally liable. These commonly include, but are not limited to: improper use of funds, failure to pay employees, and acting outside of an organization's purposes. Be sure to check whether your organization has directors and officers insurance, and what such insurance covers.

Legal Resources

For specific legal questions regarding your organization, we strongly recommend seeking independent legal advice.

On charity status and related questions, you can consult a charity lawyer such as Sheldon Faulk at www.dogoodlaw.ca

To be connected with lawyers who support Palestine solidarity, there are two referral services in Canada:

- **Legal Centre for Palestine**, [Legal Support](#)
- **Just Peace Advocates**, [Legal advice about Boycott Divestment and Sanctions \(BDS\)](#)