

May 14, 2024

An Open Letter Regarding the Response to Recent Protests at the Universities of Alberta and Calgary

Editor's Note:

This post is a reproduction of a letter sent by faculty members at the University of Alberta and University of Calgary Faculties of Law to the Presidents of the Universities of Alberta and Calgary, Calgary and Edmonton Police Services, and the Alberta Crown Prosecution Service regarding the response to encampments at the universities on May 9 and 11, 2024.

May 14, 2024

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Re: The Response to Recent Protests at the Universities of Alberta and Calgary

As law professors at the Universities of Alberta and Calgary, we want to express our deep concern about the violent infringement of students' right to protest by the Calgary Police Service, Edmonton Police Service, University of Calgary, and University of Alberta on May 9 and 11, 2024.

Students have a right to protest on Alberta's university campuses. Their right to protest is protected by sections 2(b) (freedom of expression), 2(c) (freedom of peaceful assembly), 2(d) (freedom of association, and 7 (right to life, liberty, and security of the person) of the [*Canadian Charter of Rights and Freedoms*](#). Where the right to protest of members of marginalized groups is disproportionately impacted, equality rights may also be engaged. Courts have previously held that

tents and temporary structures can be forms of expression attracting *Canadian Charter* protection (see, e.g., *Vancouver v Zhang*, [2010 BCCA 450](#); *Batty v City of Toronto*, [2011 ONSC 6862](#)).

The Universities' discretion to serve notices of trespass is not unfettered. The Alberta Court of Appeal has clearly ruled that the regulation of freedom of expression by students on university grounds is a form of governmental action subject to the *Charter*: *UAlberta Pro-Life v Governors of the University of Alberta*, [2020 ABCA 1](#). Students who have erected temporary encampments for the purpose of peaceful protest were served trespass notices almost immediately after setting up and without meaningful engagement, severely constraining their right to protest. Arguments that the trespass notices are justified by fire hazards or other safety or operational issues cannot be sustained in light of the fact that the students do not appear to have been given a meaningful opportunity to understand and rectify any such concerns before the notices were served. In the absence of meaningful engagement, discretionary trespass notices and the decision to call in police to enforce such notices are not reasonable and proportionate limits on *Charter* rights.

These same rights apply vis-à-vis the Calgary and Edmonton Police Services. By enforcing trespass notices that appear to have been based only on the fear of safety risks and potential operational concerns, the Calgary Police Service and Edmonton Police Service likely violated the *Charter* rights of students. We are further concerned by the excess force and violence with which the Calgary Police Service and Edmonton Police Service cleared the camps. Video evidence suggests that police officers used force that went far beyond that which was necessary to effect law enforcement purposes. Under the *Criminal Code*, police officers cannot use force unless it is necessary to effect valid law enforcement purposes and cannot use more force than is necessary; to unnecessarily use force or use more force than necessary may constitute criminal assault and is a violation of the protestors' right to life, liberty, and security of the person under section 7 of the *Charter*.

Given the foregoing, we call on:

- The Alberta Crown Prosecution Service to withdraw all charges against individuals arrested at the student encampments;
- The Calgary and Edmonton Police Services to refer the incidents to ASIRT for investigation, and/or investigate the incidents themselves to determine if disciplinary sanctions and criminal charges are warranted against officers who used disproportionate force against protesters at the student encampments;
- The Universities of Alberta and Calgary to revoke their trespass notices; rescind any restrictions on students, staff, faculty, or alumni's ability to come to campus; apologize to their university communities for serving trespass notices on peaceful protesters; reaffirm their commitment to *Charter* rights; and allow students to peacefully protest in temporary encampments on university grounds;
- The Universities of Alberta and Calgary to establish policies for campus protests that establish clear and proportionate parameters for serving trespass notices and require meaningful engagement with protest organizers as well as a reasonable opportunity to address safety and other concerns before serving and enforcing trespass notices.

Sincerely yours,

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