

Encampments on Campus Part 2

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Last week we posted commentary about the University of Calgary’s May 9, 2024 response to an on-campus encampment (see “[Encampments on Campus: Trespass, Universities, and the Charter](#)”). An ABlawg reader subsequently sent us a copy of a University document entitled “Temporary structures and overnight protests” (Direction), which was apparently handed out to protestors on May 9. The document does not seem to be available on the University’s [Policies and Procedures webpage](#), which is we are calling it a direction rather than a policy. And while the document does not have “direction” in its title, it internally references itself as a “direction”, as we describe below.

There are a few things of note in the Direction. In its first paragraph, it states that “Temporary structures and overnight protests are not allowed on campus.” This reads as an absolute ban on protests that have a particular form, timing, and location. The second paragraph goes on to state that “putting up temporary structures is not allowed on the University of Calgary campuses without prior permission” (emphasis added), which seems to contradict the first paragraph. However, this apparent inconsistency is resolved in the third paragraph, which states that “temporary structures cannot be set up as part of a protest”, confirming that permission will not be granted for protest encampments. This is an important point to clarify because absolute bans on particular forms of expression are more difficult to justify than laws or policies that allow certain types of expression in certain circumstances – for example, those based on a permitting process (see *Montréal (City) v 2952-1366 Québec Inc.*, [2005 SCC 62 \(CanLII\)](#) at paras 46, 90).

Another point to note is that the Direction is dated “Revised May 3, 2024.” This date is consistent with a statement by Calgary Police Service (CPS) Chief Mark Neufeld at the May 29, 2024 Regular Meeting of the Calgary Police Commission (video available [here](#)) that there was dialogue between the University and CPS about possible on-campus protests ahead of May 9 (at 29:40; see also the June newsletter from [The University of Calgary Faculty Association](#) (TUCFA) mentioned in our earlier post). Chief Neufeld also expressed his belief that the Direction had been sent to all University of Calgary students by May 3, 2024. In the question-and-answer portion of the Police Commission meeting, Councillor Jennifer Wyness asked what made the University protest different from any others that had occurred in Calgary since October 7, 2023, such that different tools needed to be used. Chief Neufeld’s response was straightforward – the difference was that the May 9 protest involved an encampment (at 1:08:15-1:09:07). This response echoes the remarks of President Ed McCauley in his [statement to the campus community](#) on May 10, 2024, that “because, for safety and operational reasons,

temporary structures as part of protests and overnight protests are not permitted, the individuals who set up the encampment were provided a written summary of the university’s policies and procedures and asked to remove their camp.” These statements reveal the importance of the Direction in shaping the actions of the University and CPS on May 9, as the President’s words about “safety and operational reasons” repeat the Direction’s third paragraph, which appears to cite itself as the authority for this justification for the ban by referring to a “University Direction on Temporary Structures and Overnight Protests.” There was also much talk at the Police Commission meeting of University property as private property, but we addressed that issue in our previous post and will not rehash our arguments here.

Also noteworthy is the Direction’s statement that “[t]he University reserves the right to direct, limit, or terminate [spontaneous Demonstrations or other types of Special events].” This language comes from the [Facilities Policy](#), which we addressed in our previous post. However, it bears repeating that while the University may assert its rights over university property (e.g., the right to exclude trespassers), it also has duties to respect the *Charter* rights and freedoms of protestors. Those *Charter* duties, flowing from the University’s engagement in governmental action in its regulation of expression on campus, supersede any of its rights under trespass legislation and university policies/directives. As we noted in our previous post, the *Charter* is the supreme law of Canada and all other laws and policies, and their application by actors such as universities, must be consistent with the *Charter*.

A final point about the Direction is that the rationale for the bans on temporary protest structures and overnight protests is said to be “[t]o protect the safety of the campus community and maintain the operations of the university.” President Ed McCauley also appealed to safety and operational concerns in his statement to the campus community. But justification for a violation of *Charter* rights is a contextual exercise, and the facts underlying any specific safety and operational concerns on May 9, 2024 remain unclear – short of the fact that the protest involved an encampment. We contend that the mere fact that a protest occurs via an encampment is not a sufficient basis for forcibly dismantling that protest, even though Chief Neufeld and President McCauley suggest otherwise. The University needs to demonstrate actual safety and operational concerns of this particular encampment based on evidence, and not just based on policies or directives. At the risk of sounding like a broken record, the University must comply with the *Charter* in relation to expression on campus, and simply putting in writing that an encampment will always be considered unsafe and disruptive of operations does not suffice.

As we also noted in our previous post, what is needed is transparency about the evidence that the University relied upon as justification for forcibly dismantling the encampment on May 9. An independent review, as called for by The University of Calgary Students’ Union and The University of Calgary Faculty Association’s President, is one way for the University to provide open access to this evidence.

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