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The University’s Kafkaesque Direction on Temporary Structures and Overnight Protests: “*You are not supposed to see this.*”

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Document Commented On: University Direction on Temporary Structures and Overnight Protests, [2024-UC-003-A, revised May 3, 2024](#)

Questions about the authority exercised and the process followed by the University of Calgary when it acted on the “University Direction on Temporary Structures and Overnight Protests” (Direction) were raised in an earlier an ABlawg post on “[Encampments on Campus Part 2.](#)” As discussed in more detail in that earlier post, the Direction – identified as “2024-UC-003-A, Revised May 3, 2024” – was apparently sent to all U of C students by May 3 and handed out to pro-Palestinian protesters on campus on May 9, the same day the protesters set up their on-campus encampment and the Calgary Police Service (CPS) tore it down and forcibly removed those protesters. The Direction states that failure to follow the university’s [Use of University Facilities for Non-Academic Purposes Policy](#) (Facilities Policy) and the Direction “may constitute non-academic misconduct (students), cause for disciplinary action (staff), and/or grounds to be trespassed from the University of Calgary’s premises (all).”

These are potentially serious consequences for failing to follow the Direction, which is the source for the university’s ban on setting up temporary structures as part of a protest and protesting between 10 pm and 8 am. The Facilities Policy is not as specific about protests. It only “reserves the right to direct, limit or terminate” spontaneous demonstrations or other special events (Facilities Policy at section 5). The Direction appears to be what the university relied upon to call in the CPS; see its “[Statement on tents on campus](#)” dated May 9, 2024.

This post raises two concerns about the Direction. The first is about the lack of transparency and publication. The second is about the university’s failure to follow its procedures for revising its policies, as the Direction appears to be an amendment to the Facilities Policy. Both of these observations support an argument that the Direction is not a lawful exercise of authority by the University of Calgary.

Lack of Transparency and Publication

There are two transparency issues. The first is raised by the university’s failure to have a stable publication venue for those of its policies which are duly enacted, such as the Facilities Policy. If the university wants to enforce its policies, it needs to make them publicly accessible so those persons who are subject to the policies know what the rules are. Currently, university policies are not sufficiently accessible. The second issue is specific to the matter at hand: the Direction is not available anywhere on the university website.

Inaccessible policies

Trying to obtain an authoritative copy of a university policy, such as the Facilities Policy, or trying to determine if the Direction's revisions to the Facilities Policy have been incorporated into that Policy, sends a person down a [Kafkaesque](#) rabbit hole.

A search of the university's [website](#) for "policies and procedures" leads to the initial search result of University Legal Services' "University Policies and Procedures" webpage at <https://www.ucalgary.ca/legal-services/ucalgarys-policies-and-procedures>. However, a prominent "Notice" on the left-hand side of that page warns:

The *official version* of any University Policy or Procedure is the electronic version published on www.ucalgary.ca/policies; *we cannot guarantee the authenticity* of policies or procedures published elsewhere on the UCalgary website. (emphasis added)

The message delivered by this Notice is that authenticity of any policy published on the University Legal Services' webpage is not guaranteed because the official version is located elsewhere at www.ucalgary.ca/policies. The link to that webpage where the official versions are supposed to be found is not "live" but the URL can be entered into a search bar. Entering the URL leads to a webpage titled "Page access denied" that says either:

"Oops. Something went terribly wrong. You are not supposed to see this."

or

"Well then – this is really embarrassing. You are not supposed to see this."

These are incredibly bizarre messages for a link that says it takes a person to the official university policies webpage. Apparently, access to official, guaranteed-authentic versions of university policies and procedures is forbidden, even to staff and students.

All other efforts to access an official version of university policies failed. In the end, the most complete assortment of accessible university policies and procedures appears to be University Legal Services' unofficial and unauthenticated collection that is available from the "University Policies and Procedures" webpage. Is it that collection complete? There is no way to tell.

Non-publication of the Direction

The Direction may have been emailed to some or all members of the university community by May 3 (although neither of us received this email) and handed out to some or all of the protesters present on May 9. However, as the "Encampments on Campus Part 2" post noted earlier, the Direction was not available on the University Legal Services "University Policies and Procedures" webpage in late June. It is still not available there or anywhere else on the university's website.

Neither have the Direction's changes to the Facilities Policy been incorporated into the unofficial version of that policy that is available. If the Direction does revise the Facilities Policy (as we argue in the next section), this omission is contrary to sections 4.1, 4.8, 4.12, and 4.14 of the [Procedure for Developing Policies and Procedures](#), which requires the Provost and Vice-President (Academic), as the Approval Authority, to direct University Legal Services to publish university policies and their revisions and requires University Legal Services to publish policies and their revisions as instructed.

Failure to follow the University's Policies on Policies

There are two issues associated with the university's failure to follow its own policies in the case of the Direction. The first issue concerns the meaning and scope of the word "direction" as it appears in the Facilities Policy and whether that policy allows additions to the definition of "prohibited conduct" to be made outside the policy-making process. The second issue is about the manner in which the Direction's substantive changes to the Facilities Policy were implemented, as they were not done in compliance with the university's rules on revising policies in its "[Policy on Establishing Policies and Procedures](#)."

An examination of the legal status of the Direction should begin with the Facilities Policy because that policy is the university's governing rules on conducting a protest on campus. The Facilities Policy defines a demonstration as follows: "'Demonstration' means a public gathering of people to express some sentiment by explicit means such as picketing, parading, carrying signs or shouting, usually in favour of or opposed to some action or opinion." Notably, this is not an inclusive definition (i.e., the policy uses the word "means" rather than "includes"), so a demonstration for the purposes of the Facilities Policy is only what is set out in the definition. The pro-Palestinian protest and encampment could be viewed as a public gathering of people, but an encampment could be understood as something more than just a gathering. A purposive reading of the Policy would however likely conclude the pro-Palestine protest and encampment was a "demonstration."

This is important because the Facilities Policy does not prohibit a "demonstration." Indeed, a contextual reading of the Policy indicates that demonstrations are allowable activities on campus. In particular, section 5 states that the university recognizes spontaneous demonstrations will happen on campus:

The University recognizes that spontaneous Demonstrations or other types of Special Events may arise. The University reserves the right to *direct*, limit or terminate these gatherings or activities. (emphasis added)

The Facilities Policy does explicitly prohibit some activities on campus. The Facilities Policy states at section 4.3 that "No person will engage in Prohibited Conduct while on or using University Facilities." "Prohibited conduct" is defined in section 3(c) to mean:

- i. conduct prohibited by law;
- ii. conduct that threatens or endangers the health or safety of any person or creates in such person a reasonable fear that such a result will occur;

- iii. the use of force or violence, actual or threatened;
- iv. conduct that threatens or interferes with the maintenance of appropriate order and discipline in the operation of the University, including its academic programs;
- v. any conduct that results in damage or defacement of University Facilities;
- vi. inciting, aiding, or encouraging others to engage in Prohibited Conduct; and
- vii. any conduct that is contrary to University policy or specific University *direction*" (emphasis added)

The apparent theme or character of prohibited conduct in this list is that which is violent, threatening, or damaging, and therefore all general references in this definition should be read and interpreted in this context. This would include reading “conduct prohibited by law”, which must include consideration of the *Charter*, as one of us explained in [Encampments on Campus: Trespass, Universities, and the Charter](#).

The phrase “specific University direction” in section 3(c)(vii) likely explains the institutional name of the “University Direction on Temporary Structures and Overnight Protests” one-page document about temporary shelters and overnight protests. The use of the word "direction" or a version of it arises only two times in the Facilities Policy, in sections 5 and 3(c)(vii), both quoted above.

In the context of “specific University direction” and “spontaneous Demonstrations,” it seems that the reference to a “direction” in section 3(c)(vii) can reasonably be understood as a specific, on-the-scene oral or written command about specific conduct. Given the absence of a definition of “direction” in the Facilities Policy and the lack of a description about who can issue these types of directions on behalf of the university, we submit it is not reasonable to interpret and apply the word “direction” in the Facilities Policy as an open-ended, catch-all power to add other types of conduct to the lengthy list of Prohibited Conduct and to do so outside of the university’s policies for the development and establishment of policies and procedures. We note as well that the Facilities Policy is otherwise meticulous in section 6 about delegating specified responsibilities to defined Approval Authorities and Implementation Authorities.

Failure to follow policy on amendments

The Direction entitled “Temporary Structures and Overnight Protests” and numbered 2024-UC-003-A and said to have been “Revised May 3, 2024” was not the first version of this document. There was an earlier direction entitled “Temporary Structures” and numbered 2024-UC-0003 that was dated three days prior, on April 29, 2024 (First Version). In addition to the title change, the versions differed in the following ways:

- The First Version acknowledged “the right to protest and the right to free expression at the University of Calgary”, whereas the Direction acknowledged “the right to free expression at the University of Calgary, which includes the freedom to critique and contest the expression of others.” This new wording is from the university’s “[Statement on Free Expression](#)” dated December 19, 2019, a document created following the UCP government’s directive to all Alberta post-secondary institutions to draft a policy on free

expression. See Gayathri Peringod, “[U of C drafting government-mandated statement on free expression](#)” *The Gauntlet* (10 October 2019).

- The First Version self-referentially referred to itself when saying “Under **University Direction on Temporary Structures**, temporary structures cannot be set up as part of a protest and protests cannot occur overnight” (emphasis in original). The Direction referred to itself as the source of the bans.
- The First Version banned overnight protests (as quoted in the previous bullet point), whereas the Direction was more specific, saying instead that “protests cannot occur between the hours of 10pm and 8am.”
- The First Version stated that “Failure to follow these policies and directives constitutes non-academic misconduct (students), cause for disciplinary action (staff), and/or grounds to be trespassed from the University of Calgary’s premises (all).” The Direction changed “constitutes” to “may constitute.”

A number of questions arise from the fact that there is no transparency and the university failed to follow its own policy on revising policy here. Why was the First Version amended after only three days? Was there a rush to get the First Version in place? What was the process followed to create the First Version and to amend it? Who had input into the changes to the First Version? Was the First Version – numbered 2024-UC-0003 – the third direction created by the university in 2024 and, if so, what were the other two directions about? Were there directions in the years preceding 2024? If there are other directions, are any of them still in effect? Did any of them purport to amend university policies?

The Direction purports to substantively amend the Facilities Policy by specifying that “temporary structures cannot be set up as part of a protest and protests cannot occur between the hours of 10pm and 8am.” These are two very specific and absolute bans on certain ways of and times for protesting. They are substantive amendments that add to the list of Prohibited Conduct and potentially attract serious adverse consequences, including charges of non-academic misconduct, cause for disciplinary action and grounds for issuing a notice of trespass.

The university’s Policy on Establishing Policies and Procedures defines “policy” in section 3(e) as “a statement that *regulates* University activities, operations or structures and ... ii. sets out *how the University expects members of the University Community to conduct themselves* generally or in particular circumstances” (emphasis added). The Direction’s banning of temporary structures and overnight protests is a statement that regulates protest activities and temporary structures and sets out how the university expects its students, staff, and others to conduct themselves in the particular circumstances of protesting. It does so in a way that amends an existing policy. The Direction therefore seems to fall squarely within the definition of “policy.”

In addition, under section 4.1, the Policy on Establishing Policies and Procedures requires that:

University Policies and Procedures and Unit Policies and Procedures will be: a) presented in the standard format; b) *formally approved*; c) maintained centrally and *accessible to the University Community*; and d) reviewed by the Implementation Authority at least once every five years. (emphasis added)

There is no indication of the process by which the Direction was developed or whether it was formally approved or by who. Under section 4.7 "University Policies and Procedures may be approved by: a) the Board or its delegate; b) the General Faculties Council or its delegate; or c) a member of ELT or their delegate" (referring to the Executive Leadership Team which is the President, Vice-Presidents and the General Counsel). Section 4.8 sets out who decides who needs to approve a policy and it is "the University Secretary in conjunction with the Implementation Authority." Implementation Authority "means the most senior administrator with responsibility for the matter that is the subject of the approved or proposed Policy or Procedure."

The Direction substantially amends the Facilities Policy. Despite this significance, the substantive revisions made by the Direction were not made in accordance with the university's rules on the creation or revision of its policies. If the established process for substantively revising the Facilities Policy was not followed, the Direction is arguably *ultra vires* and unenforceable.

The fact the Direction is not a public document that is accessible to the university community as required by university policies, as discussed above, is another reason it may not be enforceable. It is a basic principle of administrative law, the rule of law, and procedural fairness that people must know the rules that govern their actions.

Conclusion

This ABlawg post is the fourth to comment on the legal context for the university's precipitate exercise of force in response to the May 9, 2024 pro-Palestine protest on campus. It is the fourth to call for more transparency from President McCauley and the rest of the University of Calgary's Executive Leadership Team. The focus here is on the Direction, seeking disclosure of the process for developing it, who had input in the process, why the Facilities Policy was amended with the Direction rather than by the prescribed amendment process, and why the Direction remains unavailable to members of the university community and the public.

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