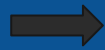




Report on Creating a Protest and Dissent Policy at the U of A

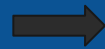
STUDENT LEGAL SERVICES 2024

Overview



Part 1: Who We Are

- About SLS
- Legal Education Project



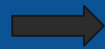
Part 2: Purpose

- Why This Report Matters
- Aims



Part 3: Legal Background

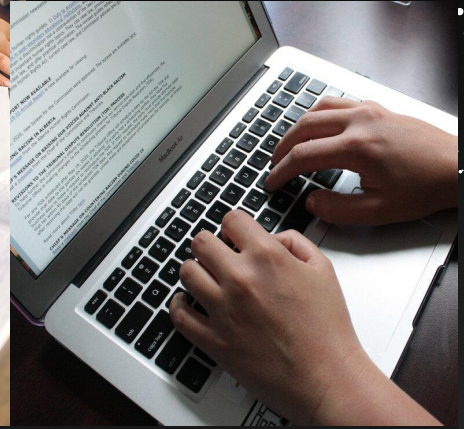
- Canadian Charter of Rights and Freedoms
- Statute
- Case Law
- University Policy



Part 3: Recommendations

- Summary of our Recommendations
- Questions Period

Who We Are



Legal Education and
Reform

Criminal Project

Civil and Family Law
Project

Special Initiatives
Project

Purpose

This Report is Forward looking → we want to assist the University of Alberta in writing a new protest policy that works better for everyone.

News / Local News



Alberta university encampment removals likely violated protesters' constitutional rights, legal experts say

'It looks to me like they've engaged in kind of a mass violation of protesters' constitutional rights'

Matt Scace

Published May 11, 2024 • Last updated May 31, 2024 • 4 minute read



Edmonton police cleared a pro-Palestine encampment on the University of Alberta quad early Saturday. PHOTO BY SHAUGHN BUTTS /Postmedia

Images from:
<https://calgaryherald.com/news/local-news/alberta-university-encampment-removals-likely-violated-protesters-constitutional-rights-legal-experts-say>

Purpose

This Report is Forward looking → we want to assist the University of Alberta in writing a new protest policy that works better for everyone.

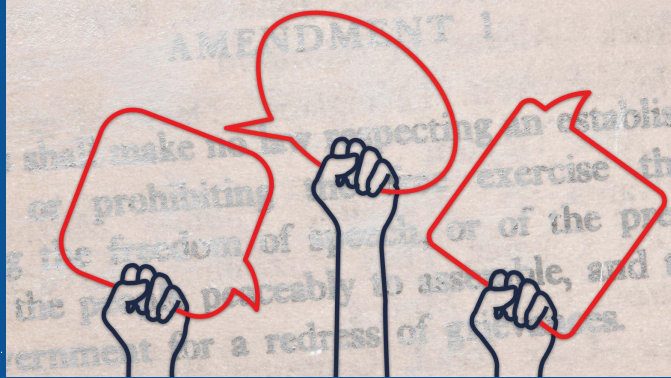


Image from:
<https://www.thedailybeast.com/what-the-left-keeps-getting-wrong-about-free-speech>

New Policy Should:

1. **Comply with relevant laws in Canada and Alberta;**
2. **Promote civil public discourse, freedom of expression, the educational mission of the University, public safety, and respect for fundamental values underlying the Canadian Constitution;**
3. **Clearly explain obligations, procedures, disciplinary measures, and communication pathways** between protesters, University administration, staff, and law enforcement officials, among others.

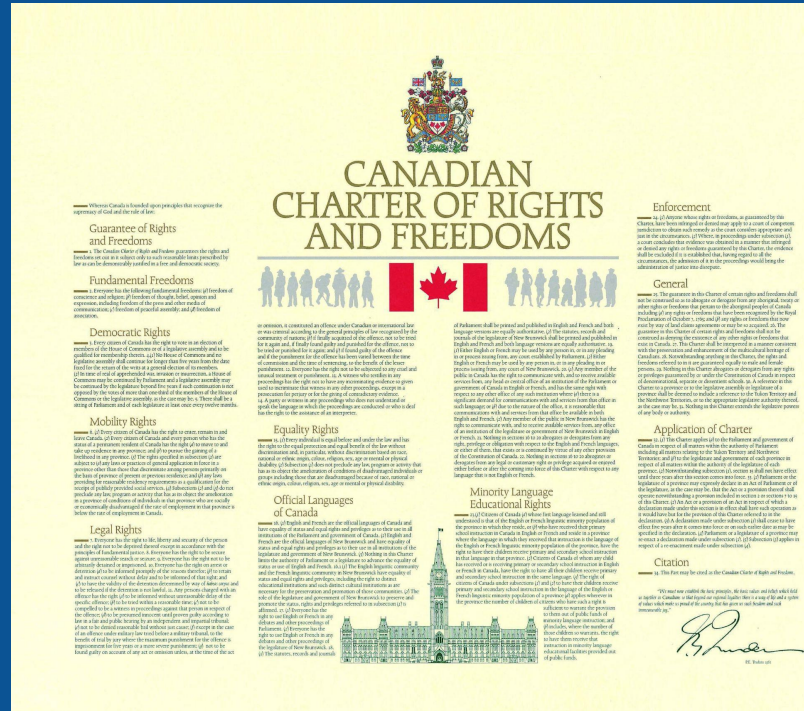
Legal Background

The Canadian Charter of Rights and Freedoms ("Charter") is the supreme law of Canada and applies to government actors and government actions.

- Section 2b - Free Expression
- Section 2c - Peaceful Assembly
- Section 2d - Freedom of Association
- Section 7 - Life, Liberty, Security of the Person

A university regulating the freedom of expression of its students via administrative decisions and policies has been considered a form of government action that is subject to Charter protections.

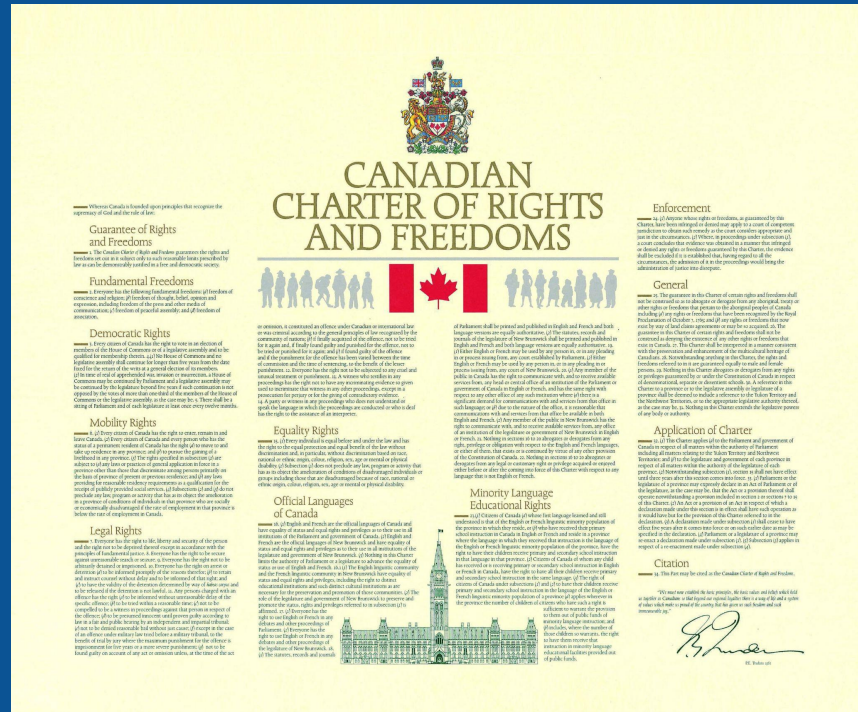
Charter protections CAN be limited.



Legal Background

"SLS believes that a **clear, unified protest policy** can help the University of Alberta determine, in advance, where they might reasonably limit one's Charter right to free expression in a way that is content-neutral, fair, and compliant with the Constitution."

"Through such policies, administrators can ensure that they are upholding their commitment to free speech and treating the constitutional rights of staff, students, and community members with appropriate care." - pg 8



Legal Background

TRESPASS LAW IN ALBERTA

1. Petty Trespass Act, RSA 2000, ("PTA")
2. Trespass to Premises Act, RSA 2000 ("TPA")

Key Points

- No distinction between private and public property is made
- Having a legal right to be on the property or land one is being accused of trespassing on is a complete defense.
- Protesters on a university campus in Alberta who believe that they have a legal, Charter-protected right to protest in a certain area may not be trespassing under the TPA.



Legal Background

The University of Alberta does not have a policy that comprehensively covers protest and dissent.

Operating Procedures Regarding Unapproved Demonstrations and Protests

- References a collection of existing policies that apply to protest and dissent.
- Not comprehensive - doesn't mention Protocol for Urgent Cases of Disruptive, Threatening or Violent Conduct.
- Policies must be read as a whole to understand their purpose, intent, and application



Legal Background

The University of Alberta does not have a policy that comprehensively covers protest and dissent.

Statement on Freedom of Expression

- Commitment to “free expression in all forms of communication, including non-violent protest and dissent”
- Subject to the limitations imposed by Canadian or Alberta law. → DO NOT FORGET THE CHARTER!

We believe the University has a legal obligation to apply the principles of free expression fairly, evenly, and impartially.



Legal Background

The University of Alberta does not have a policy that comprehensively covers protest and dissent.

Discrimination, Harassment and Duty to Accommodate Policy

- Limits on expression to promote a safe learning environment that supports dignity and equity for all persons.

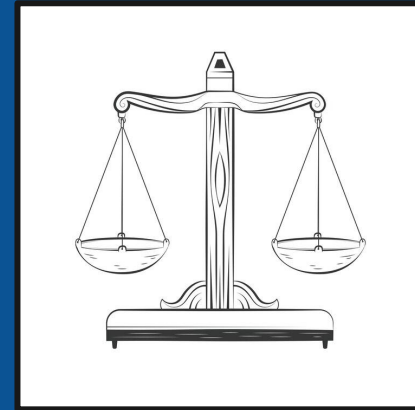
Student Conduct Policy

- Outlines forms of misconduct that can occur during protests.



Recommendations

1. University of Alberta should create **a single policy** outlining the responsibilities of administrators and community members with respect to protests and demonstrations on campus.
2. **Mutual respect** must be at the core of this policy.
3. **All protests and demonstrations should be prima facie permitted, regardless of form or subject matter, unless:**
 - a. Important University operations have been compromised. This does not include incidental disruptions which are an accepted part of protests; or
 - b. The health and safety of others are at significant risk; or
 - c. Others' fundamental rights and freedoms are being infringed.
 - d. **Limits on protests imposed by the University must be consistent with binding jurisprudence on section 2(b) of the Charter.**



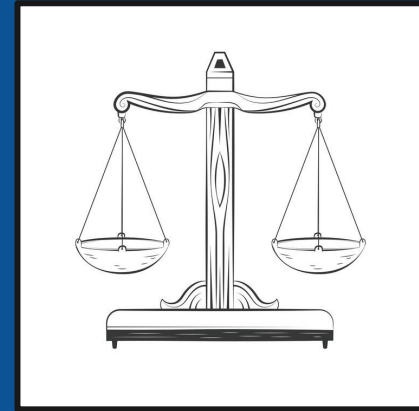
Recommendations

4. University administrators must accommodate protest activity as much as is reasonably possible and respond to concerns with restraint and respect for the Charter rights of individuals and groups.

→ Issues that arise from a demonstration should be addressed with a **minimum amount of police involvement.** Forceful repression should be avoided at all costs.

→ The purpose of a protest is to cause some degree of disruption to get an important point across. As such, **incidental disruption of the University's operations should not be considered a breach of University policy.**

→ It would be unjust to limit one's right to free expression because of the reactions of others—something which is beyond the protesters' control. If potential aggressive or violent responses are anticipated, the protesters and University should prepare for it in advance with reasonable measures



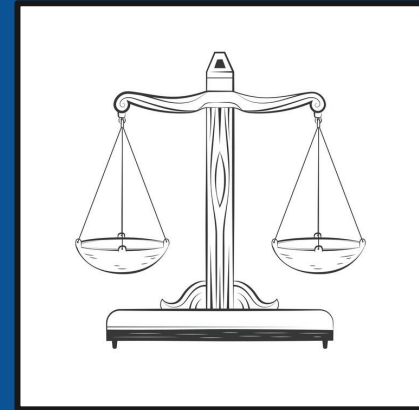
Recommendations

5. We recommend that the University appoint **a member or members of the University administration to monitor, coordinate, and respond to organized protest activity** on or near campus in a manner similar to (or as part of) the existing Protocol for Urgent Cases of Disruptive, Threatening or Violent Conduct.

We recommend that the role of appointed coordinators and decision makers include special responsibilities when protests and dissent are the primary cause of disturbance; namely, this individual or group would need to be **impartial, focused on peaceful de-escalation and be guided by the goals of promoting public safety and productive dialogue between all parties.**

The University of Chicago's "Dean-on-Call" program has a similar function and can serve as a useful guide.

6. **Accessibility, openness, honesty, and transparency** must guide the University's response to demonstrations held on University property → communication, keeping people informed, importance of evidence in justifying a PROPORTIONATE response.



Recommendations

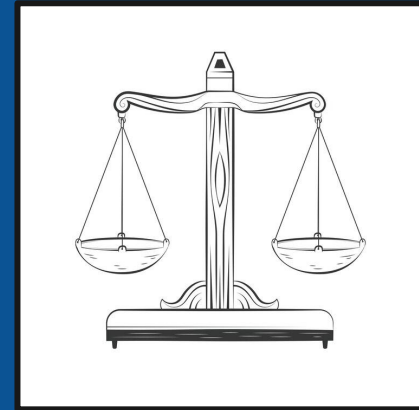
7. University students and staff, and any users of University facilities, must **respect and further the University's educational mission when exercising their freedom of expression through protest and dissent.**

→ No harassment or illegal behaviour

→ Anyone engaging in a demonstration must respect rules that are put in place to protect public health and safety. **E.g. building occupancy limits, building closures, noise restrictions,** etc.

→ We recommend that the University encourage, but not mandate, those organizing demonstrations to make advance arrangements with the appropriate University officials prior to the planned demonstration.

8. It is only by **going through the courts** that the University can ensure that the Charter rights of protesters are properly balanced against the autonomy of the University.

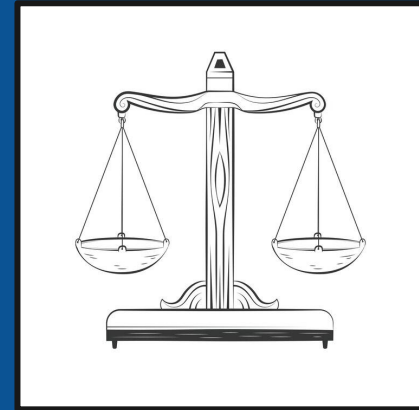


Recommendations

9. The University protest policy and its implementation must comply with corresponding obligations under the Truth and Reconciliation Commission ("TRC") Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples Act ("UNDRIP Act"), and the University of Alberta Indigenous Strategic Plan ("ISP"), "Braiding Past, Present, and Future."

→ In light of the history of state-sanctioned and police violence against Indigenous peoples in Canada, any decision to involve the police or use force against Indigenous students or community members on campus must only be taken as a last resort, recognizing that such acts go directly against the University's commitments to decolonize and reconcile with Indigenous peoples.

→ The policy should require University administrators and decision makers to explicitly consider how their actions with regard to protests will affect Indigenous students and community members. **That consideration should be made in writing, before any action is taken.**



Questions?

