



Resisting Censorship on Campus:

Your Right to Express Your Opinions

September 2019

Mail: #253, 7620 Elbow Drive SW, Calgary, AB • T2V 1K2
Web: www.jccf.ca • Email: mmoore@jccf.ca • Phone: (587) 998-1806

CRA registered charity number 81717 4865 RR0001

Contents

Get the Picture.....	1
Purpose of the University	1
Problems at the University	1
Protection at the University	2
Know Your Rights	2
Rights Based in Administrative Law	2
Rights Based in Contract Law.....	2
Human Rights.....	2
Protection from Criminal Behaviour.....	3
Rights Based on the <i>Canadian Charter of Rights and Freedoms</i>	3
Overcome Censorship.....	3
What is Censorship?.....	3
What to do	4
<i>Don't be intimidated:</i>	4
<i>Document the facts:</i>	4
Specific Responses	5
1. <i>Refusal to grant club status</i>	5
2. <i>Revocation of club status</i>	5
3. <i>Delay in granting event approval or space bookings</i>	6
4. <i>Denial of event approval or space booking</i>	6
5. <i>Cancellation of an approved event</i>	6
6. <i>Restrictions on advertising and printed materials</i>	7
7. <i>Restrictions or conditions on events</i>	7
8. <i>"Mob censorship" from other students</i>	7
10. <i>Imposition of "security fees"</i>	8
11. <i>Applying for Event Approval</i>	9

Get the Picture

Do you feel hindered from sharing your opinions honestly on campus? Do you sense the disapproval of others for raising controversial topics? Is there a general belief on your campus that if expression offends or disturbs people, it should be silenced?

Purpose of the University

Although recent events and a “politically-correct” culture often mar the freedom of expression on campus, if you answered “yes” to any of the above questions, then it may be helpful to understand the purpose of the university: to be a forum for expression, dialogue and debate.

This picture of a university campus as a forum for expression is frequently painted by the universities themselves. For example, the University of Toronto in outlining the “Purpose of the University” states:

Within the unique university context, the most crucial of all human rights are the rights of freedom of speech, academic freedom, and freedom of research. And we affirm that these rights are meaningless unless they entail the right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself.¹

In 2008, Dr. Stephen Toope, then-President of the University of British Columbia, stated that “the role of the University is to encourage tough questioning, and clear expressions of disagreement, but not the ‘silencing’ of alternative views. Universities are sites for the contestation of values, not places where everyone has to agree. That means that speakers we don’t like, or even respect, should be allowed to put forward their views....”² In February 2015, the President of the University of Alberta, Dr. Indira Samarasekera, issued a public statement that “[t]he University of Alberta will always start from a position that supports a right to freedom of expression..”³

The purpose of universities as a place to raise disturbing issues and tough questions is also recognized by the courts. For example, Justice Jeffrey of the Alberta Court of Queen’s Bench recognized the proper purpose of universities to be “a platform to engage in current and relevant societal issues . . . with divergent viewpoints on campus being encouraged, not curtailed....”⁴

Problems at the University

While the purpose of the university is quite clear, those who overlook or ignore that purpose often cause problems for free expression on university campuses. Each year the *Campus Freedom Index*, published by the Justice Centre for Constitutional Freedoms, reports numerous instances of

¹ <https://www.utoronto.ca/about-u-of-t/mission>

² <https://beta.theglobeandmail.com/opinion/ubc-president-talks-about-free-speech/article18451643/?ref=http://www.theglobeandmail.com&page=all>

³ <http://www.ualbertablog.ca/2015/02/>

⁴ *R v. Whatcott*, 2012 ABQB 231, at paras 32-33.

censorship and restrictions on expression within university campuses.⁵ These problems for free expression on campus are sometimes caused by other students, student unions and even university administrations.

Protection at the University

The Justice Centre has years of experience defending free expression on university campuses. The Justice Centre is frequently involved in providing legal advice and guidance to students confronted with restrictions on, or censorship of, their campus expression. While many of these situations are resolved without litigation, the Justice Centre has also brought court applications where necessary, to establish and defend the free expression rights of students.

Know Your Rights

You have rights that protect your expression on campus. These rights arise from several sources.

Rights Based in Administrative Law

Universities make decisions under the authority of government legislation. Students unions also make “public” decisions reviewable by courts. Therefore, under administrative law, they owe a duty to make such decisions fairly and reasonably. What is fair will vary in each situation, but fairness always requires that the university and student union act with impartiality, integrity and good faith. Further, their decisions must not be based merely on their own whims or on the will of the majority, but rather must be based upon relevant considerations under the applicable legislation, policies or procedures, including consideration of students’ right to freedom of expression.

Rights Based in Contract Law

The Supreme Court of Canada has ruled that there is a contract between a university and a tuition-paying student of that university. Students also have contractual rights in regard to their student union. The policies of the university and the student union, including policies protecting students’ expression, make up the terms of the contract. Thus, universities and student unions have the contractual obligation to fulfill their responsibilities under those policies.

Human Rights

Human rights codes prohibit discrimination in relation to services and facilities open to the public on the basis grounds including religion, creed, and in some provinces, political belief. Denying students access to the services or facilities of a university or student union on the basis of the students’ religion, creed or political belief may violate the applicable human rights code.

⁵ <http://campusfreedomindex.ca/>

Protection from Criminal Behaviour

When people use violence or any other unwanted physical contact, or make threats, they are committing a crime. The *Criminal Code* also prohibits interrupting or disturbing a religious, moral, social or benevolent meeting, as well as damaging property or interfering with another person's use of property. Universities – and the police – have a duty to prevent such conduct.

Rights Based on the *Canadian Charter of Rights and Freedoms*

The *Canadian Charter of Rights and Freedoms* (the “*Charter*”) guarantees Canadians the fundamental freedom of expression. Courts have disagreed over the application of this guarantee at universities.

The Supreme Court of Canada has held that the *Charter* does not apply to the contract between a university and its employees, but noted that some actions of universities may be subject to the *Charter*.⁶

In Alberta, courts have held that universities must uphold the *Charter*'s guarantee of freedom of expression in making certain decisions, including those governing access to university property and decisions addressing student discipline.⁷ Courts in Saskatchewan have likewise applied the *Charter* to a university's bylaws restricting the distribution of advertising material and actions taken against those expressing their opinion on university campuses. In Ontario, however, the Court of Appeal rejected the application of the *Charter* to a decision of Carleton University rejecting a request for an outdoor display.⁸ The BC Court of Appeal has similarly held that the *Charter* does not apply to a university decision cancelling an outdoor display.⁹ The application of *Charter* rights to universities in other provinces remains undetermined.

Protecting the freedom of expression is not necessarily dependent upon a finding that the *Charter* applies to universities. Freedom of expression has been a fundamental freedom in Canada long before the *Charter*, and is protected under administrative law, contract law, criminal law and human rights law as discussed above.

Overcome Censorship

How can you practically overcome censorship at your university?

What is Censorship?

First you must be able to identify what is, and what is not, censorship. Not every restriction on expression is censorship. Universities are entitled to place restrictions on the time, place and manner of expression on campus, but those restrictions must be reasonable and applied universally

⁶ *McKinney v University of Guelph*, [1990] 3 SCR 229, 1990 Carswell 1019, at paras 42, 371 and 436.

⁷ *R v Whatcott*, 2012 ABQB 231; *Pridgen v University of Calgary*, 2010 ABQB 644, aff'd 2012 ABCA 139; see also *Wilson v University of Calgary*, 2014 ABQB 190.

⁸ *Lobo v Carlton University*, 2012 ONCA 498.

⁹ *BC Civil Liberties Association v University of Victoria*, 2016 BCCA 162.

to all expression, regardless of its content. Content neutrality is a key part of freedom of expression: the content or subject matter of your expression should not dictate your freedom to express it. Rather, the fact that your opinion may be a minority or unpopular view means that it is all the more deserving of protection.¹⁰

Universities are also entitled to restrict criminal expression, including hate speech and obscenity. Hate speech is speech that would objectively expose a group to hatred in the sense of vilification and detestation (e.g. dehumanizing groups of people as animals, or categorically stereotyping them as pedophiles), and not merely repugnant or offensive speech. Obscenity is the undue exploitation of sex, or of sex along with crime, horror, cruelty or violence.

Beyond these narrow limitations, further attempts by the university or student union to limit what can be said or expressed amount to censorship.

In spite of the law, universities and student unions frequently have policies and rules prohibiting “offensive”, “discriminatory” or “inappropriate” expression. Since these rules and policies depend on the subjective discretion of the university or student union officials, they can result in illegal censorship of unpopular, controversial and minority expression.

How can you tell if your expression is being censored? Ask yourself whether you or your group are being treated differently than other groups. Are other groups permitted to set up displays where you are not? Do you have to complete additional forms, or pay additional fees, to have your event approved? Are the university’s or student union’s policies applied differently to you than to other groups? If your answer is “yes” to these or other similar questions, you are being censored.

What to do

In any situation where you are facing censorship, remember the following:

Don’t be intimidated:

Remember that the purpose of the university is to provide a forum for debate and discussion even of controversial topics. The law protects your right to express your views on campus. Further, the lawyers at the Justice Centre are available to help defend your freedom of expression.

Document the facts:

To defend your rights and overcome censorship, it is crucial to document the important facts, such as what the university or student union officials tell you, what their policies say, instances where other groups are permitted the right you are denied, and the actions of others that are violating your rights. It is wise to record oral communications with campus security and other university officials, or to take notes on the date, time, identity of the speakers and what was said. When a direct encounter inhibits your expression, video record it.

¹⁰ See *R v. Zundel*, [1992] 2 SCR 731, 753.

Specific Responses

When you face censorship, it is easy to be overwhelmed. But be encouraged! Others have faced identical or similar situations and have overcome the censorship! What follows is a description of common situations faced by students, and responses that have been effective in overcoming these instances of discrimination.

1. Refusal to grant club status

Having official club status can be essential for accessing student club funding, space-booking privileges and other important benefits.

When a student union refuses to grant your group club status, your first step should be to make inquiries to determine why your application for club status was rejected, and get the reasons in writing. The rejection could be based on the failure to meet a requirement universally imposed on all clubs, in which case you will want to immediately comply with those requirements. However, carefully consider whether the rejection is in fact based on the student union's disagreement with a club's views.

Unfortunately, student unions are often naïve or ignorant about the importance and application of Canada's fundamental freedoms, including freedom of thought, opinion, belief and expression. Student unions however are frequently dominated by the views of the perceived majority or most vocal group. Yet, student unions owe their student members a legal duty to comply with their own rules and policies, and to do so fairly and in good faith.

In these circumstances, a letter from the Justice Centre on your behalf to your student union can inform them of the importance of respecting fundamental freedoms, of your right to equal treatment and of the potential legal consequences for not treating all groups fairly and reasonably. In some cases, student unions have responded to such letters by granting club status which they had previously refused.

2. Revocation of club status

If your club status has been revoked, the crucial first step is to determine and document the student union's reasons for revoking your group's club status. This may require you to make inquiries of your student union, expressing a genuine desire to receive the student union's explanation in writing.

Once you have determined why the student union revoked your club status, and have also determined that the revocation of your club status amounts to censorship (as discussed above), you should contact the Justice Centre for assistance, to inform the student union that the revocation of your club status violates your legal rights, and to warn the student union about its legal duty to respect your rights.

3. Delay in granting event approval or space bookings

Some student groups have faced delays from the student union or university administration in processing their applications for event approval and space bookings. If you feel that your application is subject to an unnecessary delay, keep detailed records of the information you submitted and when you submitted it. Keep copies of all email exchanges and also keep notes on oral communications: what was said, by whom and when. Be aware of any policies or representations from the university or student union concerning application processing times (often available on their websites).

Once you have taken the above steps, you can be confident in contacting the university or student union to request that they approve your application in a timely manner. Include reference to the timeline showing the unacceptable delays and any relevant representations or policies.

If you do not receive a satisfactory response, you may need to forward your request to a manager or supervisor in the department. It may be necessary to continue appealing up the chain of authority in order to remedy the delay.

You should contact the Justice Centre at any point to seek advice or assistance in persuading the university or student union to approve your event or space booking in a timely manner. It's never too early to get a lawyer's opinion, especially when such opinion comes from experienced litigators and without charge.

4. Denial of event approval or space booking

Here again, the crucial first step is to determine and document the reason(s) why the university or student union denied your application for event approval or space booking. Sometimes a university or student union's reasoning will not be apparent. In other situations, the reasons provided may not in fact be the real reasons for the university or student union's decision to deny your application. It is often important to learn whether other groups are permitted to hold similar events or are granted similar space bookings as you had requested.

Once you have determined that the denial of approval for your event or space booking is censorship, you should contact the Justice Centre for advice or assistance in challenging the denial of approval.

5. Cancellation of an approved event

When an event which was previously approved is subsequently cancelled, an immediate response is usually required. Do not hesitate to contact the Justice Centre to provide immediate assistance in responding.

The cancellation of a previously-approved event is an extreme action, only justified in rare circumstances. Again, it is helpful to determine the reasons for the university's or student union's cancellation.

It is quite likely that the cancellation of your event constitutes a very direct form of censorship. In consultation with the other members of your group and with advice from the Justice Centre, it may be appropriate to proceed with the event as previously approved (in spite of the illegal cancellation by the university or student union) in order to confront this censorship.

In such a case, it will be helpful to have the Justice Centre represent you in prior and subsequent discussions with the university or student union in order to assert your rights and defend your actions.

6. Restrictions on advertising and printed materials

If the university or student union places restrictions on your advertising or printed materials, request that they provide their reasons, in writing, for imposing the restrictions. Even if the restrictions ostensibly apply to all groups, it may be that a representative's interpretation of terms in a policy such as "offensive" or "appropriate" is resulting in the censorship of your expression. The fact that the censorship may be ostensibly supported by a policy will not keep it from being found to be illegal.

If possible, document instances where other groups do not have restrictions place on their similar advertising or printed materials. Explain to the university or student union how the restrictions violate your freedom of expression and demand that they remove their restrictions on your expression.

As a group committed to defending freedom of expression on campus, the Justice Centre is willing to help you challenge restrictions and policies censoring speech on campus.

7. Restrictions or conditions on events

If the university or student union imposes restrictions or conditions on your event, demand an explanation in writing. Sometimes it will be obvious that the university is fairly and reasonably imposing a particular restriction on your event, while at other times you may need to determine if other groups are subject to the same restrictions or conditions.

If the restriction amounts to censorship of your views (see prior discussion), explain that to the university or student union, and demand that they remove their restrictions or conditions from your event. If they refuse to remove the restrictions, contact the Justice Centre in order to further pressure the university to cease censoring your expression. In *Wilson v. University of Calgary*, for example, the court found that the University's requirement that a pro-life group turn their signs inward so as not to be visible to passersby was unreasonable.¹¹

8. "Mob censorship" from other students

If you are expressing opinions or hosting speakers that other students disagree with, they may try to silence your expression. This may take the form of destroying your posters and material, the disruption of your events, the blocking of your display, or all three!

¹¹ *Wilson v University of Calgary*, 2014 ABQB 190.

As soon as you become aware that others are intending to obstruct, disrupt or otherwise interfere with your event or expression, document that information and provide it to the university’s security services immediately. Many universities have a “Code of Student Conduct” (or similar document) that expressly prohibits the obstruction, disruption and interruption of events on campus. Check out your university’s Code of Student Conduct and see what it says. If people who block or interrupt your event or display are violating the Code of Student Conduct, this fact should also be brought to the attention of campus security and university administrators, by way of a formal written complaints that also mention the particular page, section or paragraph of the Code of Student Conduct.

The university has a duty to protect expression on campus, and it is important that the university be promptly notified in order to allow it to fulfill its responsibility. Be familiar with the policies at your university relating to disruption or harassment. Request that the university fulfill its duty to protect expression and prevent student misconduct.

If the university does not take decisive action in response to your request, contact the Justice Centre so that we may assist in putting further pressure on the university, to uphold the university’s legal duty to support and facilitate free expression and debate on campus.

9. Criminal conduct directed at your group or your group’s event

Some behaviours, in addition to violating the Code of Student Conduct, are also prohibited by the *Criminal Code of Canada*. For example, pushing, shoving and unwanted touching are “assault” under the Criminal Code.¹² Uttering threats, and spitting on someone, are both criminal behaviour. Encouraging others to commit such criminal actions¹³ and planning with others to commit crimes are also *Criminal Code* offenses.¹⁴ Section 430 of the *Criminal Code* prohibits as criminal “mischief” the actions of one who “damages or destroys property” or who “obstructs, interrupts or interferes” with another person’s use of property.¹⁵ Section 176 of the *Criminal Code* makes it a crime to interrupt or disturb a meeting being held for a religious, moral, social or benevolent purpose.

If you are facing or experiencing these kinds of actions, you should notify the police immediately, and also file formal, written police complaints and provide photo, audio and video evidence of what took place.

10. Imposition of “security fees”

Sometimes a university will demand that a student group pay a “security fee” as a condition for holding an event on campus. Typically, the university will justify this censorship on the basis of real or threatened opposition by those who oppose the opinions of the group that wants to put on

¹² See *Criminal Code*, section 265(1).

¹³ See *Criminal Code*, section 464.

¹⁴ See *Criminal Code*, section 465(1).

¹⁵ Similarly, section 176 of the *Criminal Code* makes it a crime to interrupt or disturb a meeting being held for a religious, moral, social or benevolent purpose.

the event. The university adopts a “blame the victim” approach which unfairly holds the student group responsible for other people’s illegal behaviour, rather than holding responsible those who engage in the illegal behaviour. In practice, the imposition of “security fees” prices controversial speech out of existence.

If the university demands that you pay “security fees”, request that it provide a written explanation of why “security fees” are required. It may be helpful to explain how the nature of your event (a presentation, peaceful demonstration, etc.) does not create a security risk, unlike some events which do create such as risk (e.g. events with alcohol). Know that it is not appropriate for the university to impose “security fees” based on the kinds of views expressed even if those views are controversial.

When faced with a demand for “security fees,” contact the Justice Centre to assist in challenging that demand. The Justice Centre will assist you in explaining to the university how imposing “security fees” violates the fundamental freedom of expression and the rule of law by placing the cost of perpetrators’ misconduct on the victims of that misconduct. Universities have an obligation to maintain security on university campuses, particularly in order to carry out the university’s purpose as a forum for discussion and debate of different ideas, even controversial ones.

It may be necessary to agree to pay the “security fees” under protest, in order to proceed with your event. If you do so, be prepared to challenge the “security fees” immediately after your event occurs, in order to meet the timelines and procedures for making such a challenge.

11. Applying for Event Approval

When applying for event approval, do not give the university or student union any excuse to censor your expression. It is important to describe the event and your activities. You should however, decline to predict the opposition or reactions of others to your event – such actions are not your responsibility.

As a general rule, do not request special security for your event. The university already has a legal obligation to make the campus a forum for expression. As mentioned above, report specific information that raises security concerns directly to the university security services or law enforcement.

Remember that the purpose of the university campus is a forum for the expression and debate of even very controversial views. Censorship of any kind is unacceptable on a university campus.