

May 3, 2024

Dear University Presidents:

Re: Palestine solidarity protest actions and encampments on campus

The BC Civil Liberties Association (“BCCLA”) is the oldest and most active civil liberties organization in Canada. Since 1962, we have worked to extend and defend civil liberties and human rights in British Columbia and across Canada.

We write today in respect of the protest encampments and actions that are emerging across Canadian university campuses in solidarity with the Palestinian people, similar to those seen in the United States. In this time of heightened and rising tension, we urge you to take every necessary step to facilitate freedom of expression and assembly on your campuses and safeguard the fundamental freedoms of university students, faculty, and staff.

Universities’ role as forums for open debate, learning, and study have rendered them key sites of discussion and dissent, a vital function in a healthy democratic society. The freedoms of expression, assembly, and conscience enshrined in the *Canadian Charter of Rights and Freedoms*¹ are reflected in the values of academic freedom promoted and cherished by institutions of higher education across Canada and, indeed, the world. In times like the present, when experts and the International Court of Justice alike have identified Israel’s actions in Gaza as a plausible genocide, emotions run high and stated commitments to the fundamental freedoms of expression, inquiry, and assembly are sorely tested by popular and political pressure. Sadly, many of your American colleagues have buckled under this pressure and summoned militarized police onto their campuses, with the predictable and appalling result that hundreds of students, faculty, and staff members have been summarily suspended, criminalized, or brutalized for their political expression in recent weeks. As we are seeing, the forcible arrest and decampment of political demonstrators has an escalatory effect on discourse and conflict, as well as representing a grave threat to both the safety of demonstrators and their *Charter*-protected rights. These actions do not keep students safe, and this pattern cannot be allowed to repeat in Canada.

To ensure it does not, you must hold fast to the core principles of academic freedom and freedom of expression. This requires a recognition of the fundamental freedoms at play and their importance, including the freedom to dissent; a commitment to viewpoint-neutral and procedurally fair processes for any disciplinary measures that may result from protest or

¹ Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11.

counterprotest activities; and resistance to the conflation of antisemitism and political critique of Israel's actions and policies.

The BCCLA encourages you to keep the safety of *all* participants in university life at the forefront of your mind as you face these challenges. Universities have a duty to protect all members of the university community from harm irrespective of their opinions. Any perceived discrimination or discriminatory harassment should be handled in accordance with established policies and processes in a way that is fair to all concerned. Care must be taken to avoid the hasty implementation of any ad-hoc measures that abridge or deny respondents their right to be heard before a fair and impartial decision-maker.

We are particularly concerned that, in statements by some universities, we are already seeing a simplistic and reductionist narrative of unidirectional threat being used against those in the Palestinian solidarity encampments. This must be understood in the greater political context where civil liberties in Canada are being significantly chilled due to claims conflating antisemitism with political critique of Israel and with political expression in support of Palestinians. Indeed, this conflation constitutes anti-Palestinian racism and is part of the ongoing and targeted silencing of Palestinians and allied voices in support of Palestinians.² It is essential to recognize that the student encampments, like the Palestinian liberation movement more broadly, include strong representation of marginalized and racialized groups, including Palestinians, Arabs, other people of colour, Muslims, Indigenous students, and Jewish students. Use of force against these students perpetuates racism and sends the discriminatory message that the safety and education of these students is less important than that of other students.

We also urge particular caution against reliance on the International Holocaust Remembrance Alliance's 2016 working definition of antisemitism (the "IHRA Definition"), which has been increasingly applied in legal and formal administrative contexts notwithstanding that it is designed to be considered "non-legally binding".³ The IHRA Definition is so controversial that in 2017 leading experts in the study of antisemitism and related fields – including academics from Israeli universities – released the Jerusalem Declaration on Antisemitism⁴ (the "JDA") in response, stating that the IHRA Definition "caused confusion and generated controversy, hence weakening the fight against antisemitism."⁵ Of particular concern to the authors of the JDA was the over-representation of supposed examples of antisemitism related to the contemporary state of Israel in the IHRA definition, some of which the expert drafters of the JDA explicitly identify as non-antisemitic. The JDA itself has been critiqued by Jewish groups for maintaining the

² See Arab Canadian Lawyers Association, "Anti-Palestinian Racism: Naming, Framing and Manifestations" (25 April 2022), online (PDF): <<https://www.canarablaw.org/s/Anti-Palestinian-Racism-Naming-Framing-and-Manifestations.pdf>>

³ International Holocaust Remembrance Alliance, "Working definition of antisemitism" (last visited 1 May 2024), preamble, online: <<https://holocaustremembrance.com/resources/working-definition-antisemitism>>.

⁴ JDA, "The Jerusalem Declaration on Antisemitism" (last visited 1 May 2024), online: <<https://jerusalemdeclaration.org/>>.

⁵ *Ibid.*

position of the Israel-Palestine conflict as central to discussions of antisemitism, even as the historical forms of antisemitism that long preceded the advent of the state of Israel continue to imperil Jewish people worldwide.⁶ For these reasons, it is the BCCLA's view that the IHRA Definition is an inadequate and inappropriate resource to inform or shape any policy in respect of antisemitism in the university community.

Thank you for your attention to this matter. If the BCCLA can be of any assistance to your institution in upholding our shared values of freedom of expression and academic freedom, please do not hesitate to reach out to the writer directly.

Sincerely,



Aislin M. Jackson
Policy Staff Counsel

⁶ See e.g. Independent Jewish Voices Canada, "Principles for Dismantling Antisemitism" (6 April 2021), online:<<https://www.ijvcanada.org/jerusalem-declaration/>>.