

April 30, 2024

Dear President Gertler,

We are writing to express our deep concerns with a letter that Professor Sandy Welsh, Vice-Provost, Students, sent to all students on April 28, 2024, and which responds to demonstrations that are taking place, or which may take place, on university campuses. While ostensibly affirming the Administration’s commitment to free expression and lawful and peaceful protest, the letter purports to impose sweeping restrictions on the exercise of those freedoms on our campus. Through misrepresentations of what existing University policies provide, and by describing all buildings and lands as “private property,” the Administration seeks to entitle itself the ability to determine which protests on University premises are “authorized” and which are not. The Administration appears to believe that with the stroke of a pen it can transform freedom of expression from a fundamental right, the protection of which is the *sine qua non* of the University, into a privilege that the Administration may confer or deny at its pleasure. This cannot stand.

Professor Welsh’s letter, though seemingly directed at students, is of particular concern to our faculty and librarian members and their meaningful exercise of academic freedom, which cannot flourish in an institution that does not respect freedom of expression. Accordingly, we call on the Administration to promptly retract the letter, for the reasons we set out below.

Our concerns fall into three main categories. **First**, in our view, the purported blanket ban on encampments and building occupations constitutes an unreasonable, disproportionate, and entirely premature attempt to inhibit the lawful and peaceful exercise of freedom of expression on campus.

As our University’s *Statement of Institutional Purpose* affirms, freedom of speech is “(w)ithin the unique university context, the most crucial of all human rights.”¹ It is this right to “radical, critical teaching... with which the University has a duty above all to be concerned.”² Together with academic freedom and freedom of research, freedom of speech constitutes an essential, invaluable component of what it means to be a University: “for there is no one else, no other institution and no other office, in our modern liberal democracy, which is the custodian of this most precious and vulnerable right of the liberated human spirit.”³ Indeed, these rights are also

¹ University of Toronto Governing Council, *Statement of Institutional Purpose*, October 15, 1992 [“*Statement of Institutional Purpose*”].

² *Statement of Institutional Purpose*.

³ *Statement of Institutional Purpose*.

recognized in the *Student Code of Conduct*⁴ and form a central piece of our *Memorandum of Agreement*.⁵

Yet in Professor Welsh’s letter, sent on behalf of the Administration, the “necessary limits” placed on this most critical human right are, in fact, total blanket prohibitions on peaceful methods of protest and dissent under the guise of protecting the Administration’s property rights. These limits are asserted without qualification, without process, and without any semblance of dialogue with student leaders or faculty, librarians, and staff. The letter conflates all University properties—student residences, public squares, and lecture halls alike—under the same legal framework, irrespective of whether those spaces have historically been a site where peaceful protest and public assembly have been allowed to occur. Further, it does not explain why such a limit on expression is “necessary,” why it is proportionate in the circumstances, and why less restrictive measures cannot adequately address whatever legitimate concern that the Administration might have in mind (yet unarticulated). This approach is entirely unreasonable for any University, let alone the University of Toronto, which purports to be dedicated to fostering a community “with vigilant protection for individual human rights.”⁶

Second, the restrictions outlined in the letter fundamentally mischaracterize University policies, which provide ample protection of students’ rights to free speech. Specifically, the letter provides that:

Unauthorized activities such as encampments or the occupation of University buildings are considered trespassing. Specifically, our Code of Student Conduct prohibits intentional damage to University property, unauthorized entry and use of University property contrary to instructions, disruptions of University activities, and other offenses to property and persons.

Respectfully, there is no general, unqualified restriction under the *Code* nor any of the University’s policies on encampments or occupying University buildings. Rather, under the *Code*, presence on campus is only restricted in certain narrow circumstances⁷ which have not yet been engaged and which, in turn, reflect a commitment to encouraging students to freely use University premises in order to engage, associate, and pursue broader goals. As the *Code* recognizes, this kind of non-academic activity is “a valuable and important part of the life of the University and of its students.”⁸

Moreover, even if this were not the case, the *Code* provides explicitly in its Preface that “[n]othing in this Code shall be construed to prohibit peaceful assemblies and demonstrations, lawful picketing, or to inhibit freedom of speech as defined in the University.”⁹ This is mirrored in the *Statement on Freedom of Speech*, which recognizes the right to engage in peaceful assemblies and demonstrations, to organize groups for any lawful activities, and to make

⁴ University of Toronto Governing Council, *Code of Student Conduct*, December 13, 2019 [“Code”], s. A(8).

⁵ Faculty Association, *Memorandum of Agreement*, Governing Council and the University of Toronto Faculty Association, January 1, 2024 [“MOA”], Article 5.

⁶ *Statement of Institutional Purpose*.

⁷ *Code*, ss. B(4) and (5).

⁸ *Code*, s. A(4).

⁹ *Code*, s. A(8) [emphasis added].

reasonable use of University facilities,¹⁰ and in the *Statement of Institutional Purpose*, which affirms that the rights it guarantees “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.”¹¹ Accordingly, given that students’ speech and peaceful assembly plainly fall within the boundaries of lawful expression, the *Code* and the University’s associated policies, in fact, authorize them to be present on campus and exercise that expression.

Furthermore, when acting to inhibit students’ freedom of expression, the Administration remains subject to the *Charter of Rights and Freedoms* (“*Charter*”).¹² The use of public spaces and structures to convey political expression is deeply rooted in history and has been recognized to form part of the “very heart of the values sought to be protected by the freedom of expression guaranteed by s. 2(b) of the *Canadian Charter*.”¹³ Public, community spaces are “paradigmatically, a place which is traditionally used to express public dissent.”¹⁴

Whether by virtue of the *Charter* or according to any good faith implementation of the University’s own policies, any interference by the Administration with students’ freedoms of expression, assembly, and association must be demonstrably justified and proportional. Indeed, under this framework, a certain amount of inconvenience and disruption must necessarily be tolerated in respecting individuals’ freedom to protest. Again, as the *Statement of Institutional Purpose* affirms, the freedom of speech, academic freedom, and freedom of research 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.”¹⁵

Finally, we are also deeply concerned by the content and tone of this letter at a time when no large-scale or prolonged protest has yet taken place on our campus. Given the demographic makeup of recent or ongoing protests on other campuses, we can expect that, if such a protest were to occur here on our campuses, there would undoubtedly be Arab, Muslim, Jewish, Indigenous, Black, and other students participating. The prospective, and thus speculative, characterization of these students exercising their rights to free expression as disruptive to the University’s activities or a potential “safety risk” is not only premature, but also insulting and discriminatory, driven by latent stereotypes about who these individuals are and what they are like. Moreover, not only does the Administration’s novel invocation of its “property rights” and “trespass” in response to what we can expect will be peaceful political expression on campus send an implicit but clear message to these students that they do not belong, but it also unnecessarily opens the door to police action.

We denounce these implicit assumptions and the risks and harms they entail in the strongest terms, as we denounce anti-Palestinian racism, antisemitism, Islamophobia, and all forms of oppression and discrimination. *Hate is never acceptable and has no place on campus*. This includes not allowing our preconceptions about entire groups of people to inhibit legitimate and lawful expression. In this vein, we would remind the Administration of its commitment under the *Statement on Freedom of Speech* to “allow the fullest range of debate” and not to “limit that

¹⁰ University of Toronto Governing Council, *Statement on Freedom of Speech*, May 28, 1992 [“*Statement on Freedom of Speech*”].

¹¹ *Statement of Institutional Purpose*.

¹² *UAlberta Pro-Life v Governors of the University of Alberta*, [2020 ABCA 1](#) at para [148](#).

¹³ *Vancouver (City) v Zhang*, [2010 BCCA 450](#) [“*Zhang*”] at paras [40-43](#).

¹⁴ *Saskatchewan v Durocher*, [2020 SKQB 224](#) at paras [36-37](#).

¹⁵ *Statement of Institutional Purpose*.

debate by preordaining conclusions, or punishing or inhibiting the reasonable exercise of free speech.”¹⁶ Far from obstructing or interfering with public spaces, using these spaces for peaceful assembly and protest enhances the very democratic discourse that the *Statement on Freedom of Speech* seeks to promote.¹⁷

We want to be clear: one need not have a particular position on Palestine or Israel to find this incursion on the freedom to peacefully protest on campus offensive. This freedom is safely guarded by the University’s policies, the *Charter*, and, perhaps most importantly for UTFA members, the *Memorandum of Agreement*. In particular, under the *Memorandum of Agreement*, our members have the right to political expression and academic freedom, which, among other things, includes the right to be free from institutional censorship and the right to “criticize the University of Toronto and society at large.”¹⁸ These protections most certainly include the right to participate in assemblies and demonstrations on campus.

As scholars and educators, we are responsible for creating, rather than foreclosing, spaces for dialogue and change. This is part and parcel of what it means to be a University. There can be no academic freedom at a University that censors its students. Accordingly, at minimum, we call upon the Administration to immediately retract its April 28, 2024, letter and its position that encampments and occupying University buildings constitute trespassing. Moreover, as scholars and educators, we would also invite you to consider this urgent political moment as an opportunity to engage student leaders on their own terms and vindicate the radical, critical values underlying our *Statement of Institutional Purpose*.

Sincerely,

The UTFA Executive Committee

¹⁶ [Statement on Freedom of Speech](#).

¹⁷ [Zhang](#) at paras 39-40.

¹⁸ Faculty Association, [Memorandum of Agreement](#), Governing Council and the University of Toronto Faculty Association, January 1, 2024, Article 5.