



ARVAY FINLAY LLP

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VIA EMAIL – president@viu.ca

Vancouver Island University
900 Fifth Street
Nanaimo BC V9R 5S5

**Attention: Dr. Deborah Saucier,
President and Vice-Chancellor**

Dear Dr. Saucier:

Re: Divestment Encampments

We are counsel for the Vancouver Island University Student Union (“VIUSU”). We write in connection with the University’s actions in response to the divestment encampments currently taking place on the Vancouver Island University (“VIU”) Nanaimo campus.

We appreciate that VIU is appropriately concerned with maintaining the safety and security of all members of the campus community. However, we have significant concerns that VIU’s immediate response to the encampment had a chilling effect on free expression by students on issues of public importance.

Foremost, we understand that VIU threatened campers with disciplinary action up to and including expulsion. This threat was made without any evidence that the peaceful encampment was in violation of any VIU policies. Any discipline would clearly restrict campers’ participation in a global political movement designed to exert political pressure and make their voices heard with respect to the actions of the Israeli state in Gaza. Indeed, the mere threat of discipline could only have a chilling effect on students’ exercise of their right to free expression on campus.

To the same effect, VIU’s immediate imposition of swipe card restrictions to access campus facilities sends a clear message to the VIU community that VIU is not a space that welcomes political expression and debate. The use of the system may also have resulted in unnecessary and unwarranted surveillance of students and staff. This is in addition to practical issues with how the restrictions were imposed, including a lack of notice and the use of an unreliable system that harmed students’ ability to access facilities.

While we acknowledge that VIU has since taken a more measured approach, VIUSU is concerned about the precedent created by VIU’s initial response to the encampment. To prevent these actions from occurring again, VIUSU respectfully requests that the Board of Governors initiate a full investigation into VIU’s response, and a public acknowledgement of how the initial mishandling of the encampment detrimentally affected students and freedom of expression on campus more generally.

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Background

On May 1, 2024, students of VIU established an encampment on campus in protest of the ongoing violence against Palestinian people. On May 2, 2024, VIU Security delivered a letter to the encampment notifying participating students that “overnight camping and erecting structures such as tents, shelters or barriers without permission of the university are not permitted,” and that if encampment continued, “Vancouver Island University students may face suspension, expulsion, and if applicable, be prohibited from graduation and convocation activities.”

Several other measures were enacted on May 2 in response to the encampment, including mandatory ID checks by private security personnel, the closure of all campus buildings except by keycard access, and the closure of the library between midnight and 9:00 a.m.

As of May 7, 2024, VIU had eased most of its campus restrictions, and VIU had extended an invitation to the VIU Muslim Women’s Club to participate in a dialogue concerning encampments.

VIU’s Threatened Discipline Limits Freedom of Expression

We have significant concerns that VIU’s threat of disciplinary action against students has had a significant chilling effect on freedom of expression by students, without any basis in VIU student conduct policies.

The student movement has long used divestment campaigns as a means of political activism designed to make students’ voices known on issues of public importance. The conduct of the Israeli government, and universities’ financial support thereof, are a subject of increasing importance to students internationally. VIU students who are participating in the encampment are doing so as part of an international political movement designed to bring attention to the plight of Palestinians in Gaza, who have continued to endure attacks for more than seven months.

Any imposition of discipline on students for participation in the encampment would constitute an infringement of those students’ rights to freedom of expression protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. The campers’ conduct is part of an important, meaningful and political debate concerning VIU’s investments and how they might support the Israeli government’s conduct. The encampments, in brief, are part of students’ participation in the democratic process.

Discipline for participating in encampments would constitute a clear restriction of that political speech. Discipline up to and including expulsion would directly suppress student voices. Indeed, the mere threat of discipline in the May 2 notice to campers could only serve to deter expression by other students who learn of the threat of discipline.

We acknowledge that the *Charter* typically does not apply to universities because they are not considered to be an arm of government. However, universities are subject to the *Charter* where they perform inherently governmental activities. VIU is subject to the *University Act*, which delegates power to a university president to suspend students and deal with matters of student discipline. This statutory authority includes the power to impose serious sanctions (e.g. fines, suspensions, expulsions) that go beyond the authority held by private individuals or organizations.

Actions taken pursuant to that power, including suspending students for postering activities, are therefore inherently governmental, and thus require VIU to comply with the *Charter*.¹

The threat of discipline is all the more problematic because VIU has not pointed to any policies that the campers have in fact infringed. In the May 2 notice to campers, VIU stated that overnight camping and erecting structures without permission is not permitted by VIU policies. However, we have been unable to locate any VIU policies that explicitly prohibit overnight camping or the erection of structures. At the time the May 2 notice was issued, none of the campers had engaged in any disruptive conduct contrary to VIU's Disruption-Free Learning and Working Environment Policy, nor had they engaged in any conduct that would threaten the safety of members of the University community and thus warrant action under the Health and Safety Policy or VIU's Emergency Preparedness Plan. To the contrary, VIU has consistently acknowledged that the encampment is "peaceful and calm". Given VIU's own commitment to "actively [supporting] peaceful demonstrations... and the right to freedom of expression,"² it is unlikely that the encampment could be considered a violation of the Student Conduct Code. The threat of discipline was completely unwarranted.

We acknowledge that VIU appears to have moved away from its threat of discipline and has invited a dialogue with respect to the demands of the campers. We welcome VIU's change in approach. We emphasize that going forward students should not be put under threat of disciplinary sanction for engaging in a peaceful encampment in pursuit of justice for Palestinians, or other political speech.

VIU's Restriction on Movement on Campus was Unwarranted and Harmed Students

VIU's immediate imposition of restrictions on movement on campus was disproportionate to the threat posed by the encampment, and harmed students and the culture of VIU.

Foremost, the immediate imposition of campus restrictions sends a clear signal to VIU students and faculty that VIU is not a site where expression of political views will be welcomed. The measures taken by VIU were completely disproportionate to the peaceful actions of the campers. Imposing drastic restrictions on campus movement, with no warning, can only serve to chill political expression.

Additionally, we have serious concerns that permitting access only by way of swipe card access could result in unwarranted surveillance of VIU students. We are unaware of whether the swipe card function collects and stores card holders' information, and if it does, how long the information is retained or to whom access is provided and for what purposes. To the extent information is being collected and retained without consent, concerns may arise with respect to VIU's compliance with s. 26 of the *Freedom of Information and Protection of Privacy Act*. Given that the encampment was at all times peaceful prior to the imposition of the restrictions, it is difficult to understand how the collection of information concerning all students' movement across campus is in any way necessary to VIU's activities.

¹ Peter W. Hogg in *Constitutional Law of Canada*, 5th ed. Supp. (Toronto: Thomson Reuters, 2021) at §37:8; *Huerto v. College of Physicians and Surgeons*, [2001 SKQB 431](#); *Knutson v. Saskatchewan Registered Nurses' Association (1990)*, [75 D.L.R. \(4th\) 723 \(SKCA\)](#); *Pridgen v. University of Calgary*, [2012 ABCA 139](#) per Paperny J.

² Vancouver Island University, May 4, May 5, May 6 and May 7 Statements/Updates, <https://news.viu.ca/statement-about-encampment-viu-campus>

VIUSU has a number of additional practical concerns about the means by which the restrictions were imposed that have been communicated to VIU previously.

First, the access restrictions were only communicated to a limited cohort of the VIU community, specifically enrolled summer students and staff. The restrictions were not communicated to VIUSU. The access restrictions were imposed with immediate effect and without prior notice to students. The effect was that many students were caught unaware, and were unable to access facilities necessary for them to participate in their studies.

Second, the keycard swiping function is not always functional. VIUSU received many reports of students for whom the swiping function did not work, with the result that they faced challenges accessing necessary facilities.

Conclusion

The threat of discipline and surveillance of and restrictions on movement on campus in response to a peaceful encampment send a clear signal to the VIU community that political speech is not welcome. This is contrary to VIU's own Mission, Vision, and Values Policy, which lists amongst VIU's goals the promotion of awareness of global cultures, issues and conditions and the role played by the region nationally and internationally, as well as a culture of respect, transparency and accountability. Stifling debate and free expression with respect to the events in Gaza undermines those objectives.

We are pleased that VIU has taken steps to engage with campers, and eased restrictions on movement across campus. Nevertheless, VIUSU is concerned about the dangerous precedent set by VIU's initial reaction to the encampment. VIU's disproportionate response to the encampments must not be repeated.

The only way to ensure that these events are not repeated is through accountability. VIUSU respectfully requests that the Board of Governors direct a full investigation into VIU's initial response to the encampment, and that the results of that investigation be reported publicly to the VIU community. VIU should also take full responsibility for the effect that the initial response had on freedom of expression by issuing a statement acknowledging the mishandling of the encampment, and confirming its commitment to ensuring freedom of expression on campus. VIUSU looks forward to continuing to engage with VIU with respect to this and other important issues on campus in a respectful dialogue that facilitates students' freedom of expression going forward.

Yours truly,

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Per:



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cc Board of Governors (jolene.edmunds@viu.ca)
Minister of Post-Secondary and Future Skills, Hon. Lisa Beare (psfs.minister@gov.bc.ca)
Client