

Court orders protestor encampment to be removed from university campus (University of Toronto (Governing Council) v. Doe)

Encampments | Injunction | Litigation | Litigation & Dispute Resolution

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In general, universities around the world are a crucible for the exchange of passionate political ideas and the incubator of social movements. As a result of a terrorist act in Israel on 7 October 2023 and the subsequent war launched against Hamas in the Gaza Strip, pro-Palestinian and pro-human rights protests have become a regular feature of university campus life, with encampments being established at prominent universities for the purposes of changing, among other things, the investment policies of these educational institutions.

However as determined in *University of Toronto (Governing Council) v. Doe*, 2024 ONSC 3755, the ability to protest on a university campus does not give an individual protestor or a group of protestors the legal right to establish an encampment on university grounds. Establishing such an encampment constitutes a trespass that can be removed by a court ordered mandatory injunction notwithstanding that the protest and its encampment is peaceful and is absent of any form of hatred.

In this case, a group of protestors established an encampment at King's College Circle (the "**Front Campus**"), at the University of Toronto, in opposition to the war in the Gaza Strip.

After enduring weeks of occupation of the Front Campus by the protestors and failing to negotiate a solution to the encampment, the University delivered a Notice of Trespass requesting that the protestors disassemble the encampment and leave. The protestors refused to do so and Toronto police refused to remove the protestors unless a court order was obtained.

Accordingly, the University sought an injunction to have the encampment removed.

The University contended that the encampment should be removed on the grounds that the encampment was violent and was associated with antisemitic language and slogans, such as the phrases "from the river to the sea" and "glory to the martyrs" and the word "infitada".

As well, the University argued that the encampment constituted a wrongful appropriation of university property because it deprived other members of the university community and the public, including tourists, from being able to use the Front Campus. The University showed that the protestors had essentially appropriated control over the Front Campus and that the protestors controlled who was allowed to use this portion of the University's property. Entry to the Front Campus was controlled by a "gate team", "marshals" and an "onboarding" team. The protestors also had "greeters" who questioned any visitor who wanted access to the Front Campus. If a person declined to answer the questions posed by the greeters, entry was not permitted.

In response to the protestors' contention that the purpose of the encampment was to shed light on the University's investments policies and practices, the University showed that it had a divestment policy and process, and that the protestors did not have a right to impose their own process with their own timing on the University's process.

Also, the University argued that issues concerning its investments and the divestment process was a financial issue, not a freedom of expression issue.

In general, the protestors relied on the [Canadian Charter of Rights and Freedoms](#) to justify their encampment and the occupation of the Front Campus. They contended that the Notice of Trespass and the University's application to seek an injunction violated their rights to freedom of expression, assembly and association. In response to this argument, the University countered that it was not seeking to prohibit the protestors' speech on its property. Rather, the University was seeking an interlocutory injunction to remove the encampment, to limit the protestors' ability to erect tents and other structures on any University property, and to prohibit the protestors from occupying or gathering on the University property between 11 pm and 7 am.

Further, it was noted that in any event the protestors had failed to provide the requisite notice of constitutional question on the Attorneys General of Canada and Ontario. Accordingly, they could not rely on the [Charter](#).

Under Canadian law, a party seeking an interlocutory injunction must, in most cases, satisfy the court that there is a serious issue to be tried, that they will suffer irreparable harm if the injunction is not granted, and that the balance of convenience between the parties favours the granting of the injunction. Where a party seeks a mandatory injunction, which is what the University was seeking in this case, a strong *prima facie* case must be established instead of a serious issue to be tried.

However, as noted by the court, this three-part test does not necessarily apply in a trespass case. In a trespass case there is a strong presumption in favour of granting injunctive relief, especially where there is no arguable case against a plaintiff's right to possession. Thus, in a trespass case, the court is not obligated to consider whether there has been irreparable harm or whether the balance of convenience favours the granting of an injunction. Nevertheless, in this case, the motion judge considered all three parts of the test.

While the motion judge concluded that the protestors were peaceful and that language associated with the protests and slogans was not necessarily inappropriate, the University had established that there was a strong *prima facie* case of trespass under both the [Trespass to Property Act](#) and the common law. The protestors had entered onto the Front Campus, set up an encampment and excluded others from access to that property. As well, the protestors entered onto the Front Campus without any lawful justification and occupied that property for over 50 days.

The University had been dispossessed of its property and therefore there was a strong *prima facie* case for an ejectment.

With respect to irreparable harm, the motion judge found that the University had demonstrated that the expenses it incurred in connection with the protest were unrecoverable, that the act of trespass constituted strong irreparable harm, and that the University suffered some irreparable reputational damage.

With respect to the balance of convenience, the University suffered greater harm as a result of the protest and occupation than the protestors whose freedom to protest was not being absolutely prohibited by the University.

Based on the evidence, the motion judge found that the Front Campus was intended to be used as a public space for the entire university community and, that the University, as the owner of the Front Campus, had the right to decide how the Front Campus was to be used.

The motion judge reasoned that if the University was deprived of the ability to determine how the Front Campus was to be used, then a brutal free-for-all would be the end result because if the protestors could just take the Front Campus, nothing prevented a stronger group from forcibly taking over the Front Campus from the protestors for another cause.

As well, the motion judge explained that in regard to the protestors' argument that the granting of the injunction would impinge on their freedom of expression, their own conduct was inconsistent with freedom of expression because the only people who they allowed onto the Front Campus were those who agreed with their beliefs.

Lastly, the motion judge found that the law did not recognize inconvenience that might be suffered by the protestors as a result of their trespass.

With respect to the protestors' reliance on the [Charter](#), in addition to their failure to deliver the requisite notice to the Attorneys General, the court found that the [Charter](#) does not apply to protect trespass.



Even if the Charter did apply and the rights of protestors were infringed, the motion judge concluded that the common law and statutory law of trespass constituted reasonable limits prescribed by law.

The key takeaway from this case is that the right of an owner to control the use of his or her property is a strong right that will be protected by the courts. A non-owner cannot simply occupy an owner's land, including land that might be used as a public or quasi-public space, and then exercise control over that land or the public or quasi-public portion of that land. Further, the non-owner will not be able to wrap themselves in the flag of the Charter to dispossess the owner from the lawful use of their land.

The protestors were given until 6 pm a day after the motion judge's decision to clear their encampment. The protestors complied with the court's order, without incident. However, they left the following message on the Front Campus: "We Will Return". Whether they do so or not remains to be seen. A PDF version is available to download [here](#).

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