**ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION**

**IN EDUCATIONAL INSTITUTIONS**

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| **Name of the country/entity submitting information** | **Canadian Association of University Teachers**  **Association canadienne des professeures et professeurs d’université** |

**General framework**

1. Academic freedom in Canada has limited constitutional or statutory protection. Only the province of Quebec has legislation enacted in 2022 specifically addressing academic freedom. [Bill 32, An Act Respecting Academic Freedom in the University Sector](https://perma.cc/2UGL-L8KR), defines academic freedom as the right to engage freely in discussion, teaching, and research “without doctrinal, ideological or moral constraint, such as institutional censorship.” It also includes the right to express opinions about society and institutions, as well as any “doctrine, dogma or opinion.”
2. In the rest of Canada, the strongest legal protections for academic freedom are contractual and are embedded in and enforced through collective bargaining agreements negotiated by faculty unions. This legal framework has proven to provide strong protections for academic freedom because almost all university and college faculty in Canada are unionized and covered by legally binding collective agreements. Most agreements define academic freedom consistent with the *1997 UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel* as right of academic staff, without restriction by prescribed doctrine, to:
3. Freedom to teach and discuss.
4. Freedom to carry out research and disseminate and publish the results thereof, including the freedom to produce and perform creative work and to acquire, preserve, and provide access to documentary material in all formats.
5. Freedom to engage in service to the institution, to participate in its academic governance, and to express one’s opinion about the institution, its administration, and the system in which one works.
6. Freedom to exercise one’s rights as a citizen (restricted only by law), including the right to contribute to social change through free expression of opinion on matters of public interest.
7. Because academic freedom has limited statutory or constitutional recognition, Canadian courts have rarely addressed the issue. However, when doing so they have granted academic freedom a broad and liberal interpretation. In 1990, Mr. Justice La Forest wrote for the majority in *McKinney v. University of Guelph* (a mandatory retirement case), in *obiter dicta*, that academic freedom is “an issue of pressing and substantial importance”[[1]](#endnote-1) as it is necessary to allow “free and fearless search for knowledge and the propagation of ideas”[[2]](#endnote-2) that is “essential to our continuance as a lively democracy.”[[3]](#endnote-3) In *Maughan v. University of British Columbia,* the court found that academic freedom, understood as the “freedom to express and explore ideas to advance both knowledge and understanding,”[[4]](#endnote-4) is akin to a *Charter of Human Rights* value insofar as it is “a critically important value in a free and democratic society.”[[5]](#endnote-5) In *Pridgen v. University of Calgary*, Madam Justice Paperny wrote: “In my view, there is no legitimate conceptual conflict between academic freedom and freedom of expression. Academic freedom and the guarantee of freedom of expression contained in the Charter are handmaidens to the same goals; the meaningful exchange of ideas, the promotion of learning, and the pursuit of knowledge.”[[6]](#endnote-6) In *Parent c. R*, the court stated that “academic freedom and the importance of institutions of higher learning and academic research are key components of a democracy that values freedom of thought and expression.”[[7]](#endnote-7)
8. The most substantive legal decisions about academic freedom have been made by labour arbitrators in Canada. In these cases, it has been determined that academic freedom serves an essential role in a democratic society and requires a broad interpretation. Arbitrator Sims, in *University of Saskatchewan*, held that: “…academic freedom and its protections are concepts to be interpreted liberally in ways that allow them to achieve their purpose.”[[8]](#endnote-8) In *University of Manitoba Faculty Association*: “The principle of academic freedom is of fundamental importance not only to the university and professors, but to the whole community.”[[9]](#endnote-9) Arbitrator Goodfellow, in *York University*, wrote:

There are few concepts or principles more important to the healthy and vibrant functioning of a university than academic freedom. The academy is and must be a bulwark against conventional thought and received opinion not just for the benefit of its members but for society at large. It is through free thought, investigation, and the development and dissemination of ideas that society advances and progress is made. Today’s accepted practices and beliefs become tomorrow’s discredited notions and out-moded ideas when exposed to the freedom of public debate and scientific scrutiny. The university has an essential role to play in this process – a role that can only be fulfilled if academic freedom is broadly defined and jealously guarded.[[10]](#endnote-10)

1. Academic freedom, like all expressive freedoms, has limits. It is not a license to break the law, such as engaging in harassment or discrimination, nor to disregard one’s professional duties and responsibilities. It is not a defense against academic dishonesty, libel, or breach of ethical standards.
2. These legal and professional limits do not preclude vigorous debate or sharply negative criticism. Academic staff need not be gentle, nice, or diplomatic in their scholarly activities and expression, so long as they do not violate the law or their professional obligations.
3. In Canada, academic freedom is generally considered to be a professional right limited to university and college academic staff. It ensures that in their teaching, research, scholarship, publication, participation in the affairs of the institution, and exercise of their broader rights as citizens, academics are not curtailed or censored by the administration, by colleagues, or by outside bodies or individuals.
4. The main challenges to academic freedom in Canada include the erosion of tenure, the procedural protection for academic freedom. Universities and colleges in recent decades have increasingly employed academics on part-time and fixed-term teaching contracts. It is estimated that about one-third to one-half of academic staff in Canada today are on short-term and precarious contracts.
5. This shift in the status of employment has significant implications for academic freedom. The procedural protection for academic freedom traditionally has been the tenure system. Tenure provides that an academic, following a lengthy and rigorous probationary period, can only be dismissed for just cause, such as bona fide financial exigency or grave misconduct. Tenure is intended to safeguard academic freedom by ensuring that academics cannot lose their positions because of their speech, publications, or research findings even when their work risks offending powerful interests, including powerful donors or governments.
6. Today, the more universities and colleges use non-tenured instructors the more academics there are who lack the procedural protection of tenure. Contract academic staff who pursue controversial topics that offend powerful interests need not be fired outright. Rather, they may find that their contracts are simply not renewed. Stronger procedural protections and job security provisions are needed for contract academic staff so that they fully exercise their academic freedom without fear of reprisal.
7. The influence of private donors is also an ongoing concern. Canada has experienced major controversies where corporate research funders have attempted to influence research results. The most notable case is that of [Dr. Nancy Olivieri](https://www.caut.ca/docs/af-reports-indepedent-committees-of-inquiry/the-olivieri-report.pdf?sfvrsn=0) at the University of Toronto who received funding from a pharmaceutical company to run a trial of a drug it had developed. During the trial, Dr. Olivieri determined the medication posed significant risks for some patients, but the company threatened legal action to prevent her from sharing her research results. The University did not initially defend her academic freedom.
8. Recently, the Canadian federal government announced [restrictions](https://science.gc.ca/site/science/en/safeguarding-your-research/guidelines-and-tools-implement-research-security/policy-sensitive-technology-research-and-affiliations-concern) on international academic research collaborations funded by the national research granting agencies. The new policy focuses on broadly defined concerns about “national security” to limit scientific exchanges, primarily with Chinese institutions and academics. This has raised concerns that the government is interfering in academic freedom by unduly restricting scientific research.
9. Academic freedom has also been tested in recent months as campuses have been caught up in debates over the Israel/Gaza conflict. Several professors and students expressing support for Palestinian rights have faced censorship, disciplinary measures, and targeted on-line harassment.

**Autonomy of educational institutions**

11. Universities in Canada generally enjoy autonomy over their internal academic affairs, including freedom over the selection of students, recruitment of staff, setting of standards, awarding of degrees, design of curriculum, and allocation of funds, as well as freedom from non-academic interference in the academic governance of the institution.

12. Increasingly, however, some provincial governments are adopting instruments such as mandate agreements and funding mechanisms with the aim of aligning universities’ activities with the government’s goals of meeting specific labour market needs and contributing to economic growth and innovation in identified sectors. Consequently, some universities are facing more state supervision over their academic activities.

13. Almost all universities (and some colleges) in Canada operate under a bicameral system of governance where a Board is assigned authority for administrative and financial matters, while a Senate or equivalent senior academic body is responsible for academic decisions.

14. Most universities have adopted institutional policies concerning academic freedom and institutional autonomy. For instance, in its guidelines on the acceptance of donations, the [University of Toronto](https://www.provost.utoronto.ca/planning-policy/donations-provostial-guidelines/) states it “values and will protect its integrity, autonomy, and academic freedom, and does not accept gifts when a condition of such acceptance would compromise these fundamental principles.” The challenge has been that policies and guidelines are not legally binding and have not always been followed.

**Funding**

15. Most academic research funding in Canada is provided by three federal public granting agencies covering the social sciences and humanities, the natural sciences and engineering, and the health sciences. Grant applications are assessed through a peer review process to ensure independence from government.

16. At times, the federal government has tried to earmark research funding available to universities and colleges to align with its political priorities. This has created a shift toward more politically targeted rather than investigator-driven research. The current government has sought to restore some balance by significantly investing in investigator-driven research.

17. The proliferation of collaborations between universities and private research funders has prompted calls for institutions to develop a clear and consistent set of principles to protect academic integrity and the public interest. The Canadian Association of University Teachers has proposed [specific guidelines](https://www.caut.ca/sites/default/files/guiding-principles-for-university-collaborations-april-20121.pdf) for institutions to adopt to ensure that academic freedom and institutional autonomy are the predominant and prevailing considerations in developing, deciding upon, and assessing private research collaborations.

**Surveillance**

18. To date, surveillance has not been raised as a major concern or threat to academic freedom at Canada’s universities and colleges.

**Freedom of expression in teaching and access to books**

19. At the level of higher education in Canada, academic freedom grants instructors broad latitude over all aspects of classroom instruction and discussion, It includes the freedom of academic staff to select and organize course content and instructional activities, to assess and evaluate student academic performance, to employ the pedagogical approach of their choice, and assign material, including textbooks, in a manner consistent with relevant academic standards and the course description approved by the academic body of the institution.

20. In their classroom discussions, there is no requirement that academic staff follow a proscribed perspective or remain neutral. Contract language protecting academic freedom specially prohibits the imposition of a “proscribed doctrine” and asserts that academic freedom does not require neutrality, but rather makes intellectual discourse, critique, and commitment possible.

21. The exercise of academic freedom in the classroom is subject only to the limits of the law, professional academic standards, and official policies and procedures set by academic governance bodies. Academic freedom in teaching does not confer legal immunity against libel, hate speech, or harassment and discrimination as defined in Canadian law. Academic freedom does not trump human rights, including the rights of students with disabilities who may require appropriate accommodation, such as extra time for completing tests, exams, and assignments.

22. Teachers at the primary and secondary level of education do not have the same freedom in teaching as college and university professors. School teachers generally must work with a pre-approved curriculum developed by the provincial ministry, and with pre-selected textbooks and learning materials. In some cases, teachers are permitted to express ideas and use other materials in the classroom if they do not conflict with the course of study, school policy, or school program.

23. In a 2013 decision, the [British Columbia Court of Appeal](https://canlii.ca/t/fxhj4) ruled that schoolteachers who wore buttons and displayed posters I the classroom with political messages were exercising their right to free expression. This right could not be curtailed by school authorities so long as such expression did not detract from the education of students.

1. *McKinney v University of Guelph* 1990 CanLII 60 (SCC), [1990] 3 SCR 229 at page 281. [↑](#endnote-ref-1)
2. *McKinney* (SCC*)* at page 282. [↑](#endnote-ref-2)
3. *McKinney* (SCC)at pages 286-287. [↑](#endnote-ref-3)
4. *Maughan v. UBC*, 2008 BCSC 14, at para. 2. [↑](#endnote-ref-4)
5. *Maughan* (BCSC) *ibid* at para. 2. [↑](#endnote-ref-5)
6. *Pridgen v. University of Calgary*, 2012 ABCA 139, at para. 117.  [↑](#endnote-ref-6)
7. *Parent c. R*., 2014 QCCS 132, at para. 123. [↑](#endnote-ref-7)
8. *University of Saskatchewan v University of Saskatchewan Faculty Association,* 2015 CanLII 27479 (SK LA),<<https://canlii.ca/t/gj429>>. [↑](#endnote-ref-8)
9. *University of Manitoba Faculty Association and University of Manitoba*, 1991 CanLII 13023 (MB LA), <<https://canlii.ca/t/jbgl2>>. [↑](#endnote-ref-9)
10. *York University and York University Faculty Association*, 2007 CanLII 50108 (ON LA), <<https://canlii.ca/t/1ts19>>, pp. 14-15. [↑](#endnote-ref-10)