

The Rights and Duties of CUEFA Members

The Right to Academic Freedom: General Principles

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CUE’s Collective Agreement (dated January 24, 2022) refers to “Academic Freedom.”

1. What is Academic Freedom?

“Academic Freedom” includes the right of educators to: use their best professional judgement in relation to their teaching, research, and other scholarly work; participate in the governance and academic life in the institution in which they work; and exercise their rights as citizens without sanction by their employer.”

The 4 components of academic freedom are:

- i) Freedom in Teaching:** “Academic freedom in teaching includes not only the freedom to rely on one’s professional judgment as to course content, but also the freedom to decide on appropriate teaching and assessment methods.” “University teachers must have the freedom to use their best professional judgment about how and what to teach.” “They must be free to model freedom of mind and critical thought in their classrooms because these are the purposes of the university.” “Academic freedom for teaching protects and ensures pedagogical diversity.”
- ii) Freedom of Research, Scholarship and Creative Work:** This freedom is based on the principle that: “advancement of knowledge depends on academics having the freedom to rely on their professional judgment about the issues to address, perspectives to be pursued, methods to be used, and freedom to share their findings with colleagues, the academic and scientific community, and the public.”
- iii) Freedom of Intramural Expression:** The freedom is “the right of academic staff to comment on any aspect of policy, practice, or issues in the institutions where they work. ‘Intramural’ does not refer to where the expression takes place, but rather to its subject – the academic staff member’s own institutional context of issues, policies and practices.” The substance of this freedom is “the privilege of the teacher in a university or college to utter and publish opinions in the course of teaching and research and to

exchange opinions with faculty colleagues without liability to official censure or discipline...”

“The origin of and rationale for intramural academic freedom are related to academic staff self-governance of universities.” “Intramural academic freedom authorizes robust faculty engagement in all aspects of the academic life of the university, whether in departmental or faculty meetings, university meetings, exchanges with university administrators, faculty listservs or exchanges with colleagues. The functioning of every university depends heavily on faculty discussion about difficult and often contentious academic decisions in relation to hiring, curriculum, policies, and academic priorities and perspectives.”

iv) Freedom of Extramural Expression: “Like freedom of intramural expression, freedom of extramural expression does not refer to the location in which a person is speaking, but rather to the subject of their speech. It is academic staff expression made in relation to matters of public interest or concern, whether or not it is related to their area of scholarly expertise.”

“All higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and policies affecting higher education [as well as social and cultural issues]. They should not suffer any penalties simply because of the exercise of such rights.”

“The reason that faculty extramural expression rights are a component of academic freedom is that faculty can promote knowledge or model independent thought in the classroom only if they are actively and imaginatively engaged in their work. If faculty experience their institutions as repressive, they will be vulnerable to forms of self-censorship and self-restraint that are inconsistent with the confidence necessary for research and teaching. The harm would be enhanced if faculty were confused about which communications were protected by freedom of research and which communications would be exposed to punishment if freedom of extramural speech were not a recognized dimension of academic freedom.”

Source: James L. Turk, "Academic Freedom in Canada: Its Origins, Components and Limits," *Canadian Labour and Employment Law Journal* 25 (2023), 35-72.

2. Limits on Academic Freedom: "There are limits to academic freedom which are not trumped in certain academic contexts by the [Charter] right to freedom of expression." "Academic freedom is both broader and narrower than freedom of expression. It is broader in that it allows academic staff to follow their best professional judgement in their approach to teaching and scholarship without sanction by the employer or outsiders, as well as to comment critically on any aspect of the institution in which they work and to exercise their rights as citizens without sanction by the employer. It is narrower than freedom of expression in that academics can be sanctioned in certain contexts for expression that betrays unfitness for their profession."

a) Academic Policies

The final judge of standards of academic work and academic freedom is not the corporate institution, but the collective academic staff in the institution and in the collectivity that constitutes the academic disciplines within which scholars work." "The disciplines that protect academic freedom can also be used to deny the freedom to some." "The disciplines install explicit and tacit normative standards... which can serve important mediating functions, but which, when they are taken as dogmatic precepts, become instruments of punishment..."

"Academic freedom allows academics to convey their thoughts passionately or dispassionately; to react to events with enthusiasm or despair; to respond to research findings with joy, surprise or anger..." "University administrations have introduced 'respectful workplace' and 'civil discourse' policies to set prescribed limits on this aspect of academic freedom. Usually born of a well-intentioned desire for civil and respectful interaction... these policies set up regulatory regimes that treat incivility and disrespect in the same manner as universities rightly deal with illegal behaviours of discrimination, harassment and violence.... These policies also provide for investigations to be undertaken and findings to be made by people who lack the background, knowledge and experience to evaluate whether behaviour is consistent with professional and academic norms." "Given the subjectivity of what constitutes 'disrespect' and 'incivility'.... any regulatory policy directed to punishing disrespect and incivility will necessarily result in selective regulation of speech in which even-handed application is impossible.... The mere existence of these policies inhibits and chills frank discussion and candid discussion." "When enforced they

pose even a greater danger to the mission of the university... and inappropriately restrict academic freedom to the detriment of those charged, and to the embarrassment of those administering the policies.”

“A university’s determination as to whether any contested behavior [by an academic] falls within or outside the bounds protected by academic freedom must be made **both** in reference to professional academic norms **and** by academic colleagues who have the competence and understanding to interpret those norms... Any consideration of disciplinary action must be undertaken in a manner consistent with the applicable collective agreement...”

- b) The Law:** “The law is a limit on academic freedom.” “Academic freedom is not a license to break the law. It’s not a license to engage in hate speech, discrimination, harassment, or libel. If an academic breaks the law, that is not protected by academic freedom.”
- c) The Collective Agreement:** The provisions of the collective agreement limit academic freedom.
- d) The Profession:** The ethical obligations of the profession also limit academic freedom.

Source: James L. Turk, “Academic Freedom in Canada: Its Origins, Components and Limits,” *Canadian Labour and Employment Law Journal* 25 (2023), 35-72.

3. Universities, Academic Freedom, and Disciplinary Action

“While the law as well as the professional obligations of ethical behaviour impose limits on academic freedom, a claim that a member of the academic staff has transgressed the law or an obligation under a university policy or a professional code does not vitiate one’s academic freedom unless and until that claim is substantiated through procedures consistent with academic freedom. Similarly, a claim by a member of the academic staff that their academic freedom has been violated must be dealt with by the university through procedures consistent with its commitment to academic freedom.”

“The purpose of academic freedom is to ensure that teaching, research, scholarship and publication, participation in the life of one’s university, and the exercise of broader rights as a citizen are not inappropriately curtailed or abrogated by the university itself, by colleagues, by students, or by outside bodies or individuals. The standard the university must use in examining any claim is a professional one. That means that the university’s

determination as to whether any contested behavior falls within or outside the bounds protected by academic freedom by must be made **both**:

- in reference to professional academic norms... **and**
- by academic colleagues who have the competence and understanding to interpret those norms.

To do otherwise is to violate academic freedom.”

“Any consideration of disciplinary action must be undertaken in a manner consistent with the applicable collective agreement, or in the absence of a collective agreement, in a manner that ensures procedural fairness and natural justice.”

“Where a challenge to the exercise of academic freedom is brought forward outside the university – in a court, before a human rights tribunal, or in the court of public opinion – the university’s obligation to protect academic freedom means that it must immediately conduct its own internal assessment, consistent with the procedures noted above, to determine if the academic staff member’s academic freedom is at risk. If it is, the university must do one of two things, depending on whether the matter arose as a part of the member’s academic work. Where it did so arise, the university is obligated to provide the academic staff member with financial aid and other support to obtain independent legal advice or to ensure that such support is provided for the defense of the individual in the external proceeding. Where the matter did not arise as part of the member’s academic work, but is nevertheless to an exercise of academic freedom – for example, the laying of criminal charges because of participation in a protest against government military policy – the university does not have an obligation to aid in the individual’s legal defense. However, it does mean that that the university must not normally itself take any action against the individual because of their extra-mural expression.”

“If it is to act in accordance with academic freedom principles, the university may take action against an academic staff member for their external behavior only in circumstances in which that behavior renders the member unable to fulfil their employment obligations or indicates unfitness for their position within the university. In relation to the latter, universities cannot discipline ‘unless [the academic staff member’s behaviour] bears on professional competence, and judgments of professional competence... are primarily reserved for faculty determination.’”

CUE’s Administration does NOT always follow the above guidelines when disciplining members.

Source: James L. Turk, “Academic Freedom in Canada: Its Origins, Components and Limits,” *Canadian Labour and Employment Law Journal* 25 (2023), 35-72.

4. Academic Freedom and Institutional Autonomy:

“Institutional autonomy recognizes that the university and its academic work must be insulated from the control of governments and other non-university forces in society.”

“The claim of institutional autonomy can, however, undermine academic freedom when it is invoked by the university board or senior administration to restrict or override the academic freedom rights of academic staff.”

“With the university becoming increasingly a corporation managed by its senior administration rather than a collegium of its academic staff, institutional autonomy is often invoked not to protect professional self-regulation by academic colleagues within the university but to intrude on the academic staff’s academic freedom rights.”

The CAUT Policy Statement on academic freedom states: “Academic freedom is a right of members of the academic staff, not of the institution. The employer shall not abridge academic freedom on any grounds, including claims of institutional autonomy.”

Source: James L. Turk, “Academic Freedom in Canada: Its Origins, Components and Limits,” *Canadian Labour and Employment Law Journal* 25 (2023), 35-72.

5. The Effects of Social Media on Academic Freedom:

“Too often the development of rules around social media have produced new attempts to limit academic speech. The rights and limits of academic freedom are not altered by the medium of expression – whether in teaching, research, intramural expression, or extramural expression. The rights of academic freedom and the limits to those rights are the same regardless of how the expression is conveyed.”

see James L. Turk, “Academic Freedom in Canada: Its Origins, Components and Limits,” *Canadian Labour and Employment Law Journal* 25 (2023), 35-72.

6. What does CUE’s Collective Agreement (CA) say about the Right to Academic Freedom?

CA provisions that confirm that faculty and ASOs both enjoy the right to Academic Freedom:

- 2.1: The parties agree that the terms and conditions of this article on Academic Freedom apply only to the Members.
- s. 30.1: The following Articles of this Collective Agreement apply to the Academic Service Officers:...
- (2) Academic Freedom

CA provisions defending the right to Academic Freedom

- Preamble: Concordia University of Edmonton is a community of learning grounded in scholarship and academic freedom, preparing students to be independent thinkers, ethical leaders, and citizens for the common good.
- s. 2.1: The parties agree that the terms and conditions of this article on Academic Freedom apply only to the Members.
- s. 2.2: “academic freedom grants Members the right to pursue knowledge and truth in their research and to disseminate the findings of that research both in their publications and in their classrooms.”
- s. 2.4: “the freedom to challenge established paradigms, to propose new theories, and to debate conventional thinking in all areas of inquiry.
- s. 2.5 “Members are free openly to examine, criticize, and dispute various academic points of view. “
- s. 2.6: Members enjoy the same freedoms and exercise the same responsibilities as other citizens “when speaking and writing outside the institution on blogs, Facebook, Instagram, LinkedIn, radio, Reddit, Snapchat, television, TikTok, Twitter, or YouTube, or in books, cinematic productions, magazines, newspapers, podcasts or scientific journals.
- s. 2.8: “Academic freedom does not require neutrality on the part of the Member. Academic freedom makes intellectual discourse, critique and commitment possible.”
- s. 2.9: In exercising their legal rights, Members shall not be hindered or impeded by either Party in any manner contrary to this Agreement.

Right to Participate in Research and Scholarship

- s. 8.6.1 The parties agree that all Faculty Members in a university community have the right and responsibility to participate in research and scholarship (including the

preparation or performance of creative works and reflective inquiry) and the dissemination of the results of research by means appropriate to the discipline. Faculty Members who apply for and receive a reduction in teaching assignment for the purposes of research or are engaged in graduate instruction or supervision have an increased responsibility to engage in scholarly activities. Scholarly activities include publications, performances, presentations, compositions, creative work and other such activities. Faculty Members who engage in such scholarly activities have the responsibility to show integrity therein, and to make efforts to disseminate the results of their scholarship or exhibit the results of their creative work.

CA Provisions re: Duties and Responsibilities of Members concerning Academic Freedom

- s. 2.5: “Members are expected to exercise their academic freedom conscientiously by seeking accuracy in all their statements and by respecting other scholarly perspectives.”
- s. 2.6: “Mindful that the public may judge the profession and the institution by their public comments, the Parties agree that Members should strive to be accurate, respect the opinions of others, and, when necessary, distinguish personal comments from those authorized on behalf of the University. The University assumes no responsibility for views expressed by Members when speaking and writing outside the institution.”
- s. 2.7: “Members have a responsibility to support the academic freedom of students by encouraging free inquiry, by showing respect for dissenting student opinions, and by providing the opportunity for discussion and the expression of varying viewpoints, while treating all students fairly, respectfully, and without prejudice.”
- s. 2.9: “Academic freedom does not confer legal immunity and carries with it the duty to use that freedom in a responsible manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge.”

CA Provisions concerning University Administration’s Duty to Uphold Academic Freedom

- s. 2.3: “The University upholds academic freedom of Members, recognizing it as essential to a properly functioning university. The University affirms the Statement of Universities Canada on Academic Freedom and Institutional Autonomy.”
- s. 2.4: The University will “encourage, in the spirit of academic freedom, the active questioning by Members and students of any secular, sacred, or ideological status quo.”

- s.2.7: The University agrees “to uphold, protect, and promote academic freedom as essential to the University's objective to serve the common good through searching for, and disseminating, knowledge, truth, and understanding, and through fostering independent thinking and expression by Members and students.”
- s. 2.9: The university shall not hinder nor impede members (in any manner contrary to CA) in exercising their legal rights (related to academic freedom).
- s. 2.10: The University recognizes that, as at any institution, freedoms are never absolute. Where the limits of academic freedom are alleged to have been exceeded, the University will apply the principles of procedural and natural justice in its investigations. Contraventions of s. 2 of the CA and/or the University's Statement of Academic Freedom will be dealt with according to Article 13 (Discipline: Faculty Members) or Article 25 (Grievance and Arbitration) or Article 38 (Discipline: Academic Service Officers) of the Collective Agreement.

7. CUE Policies, Statements and Agreements Referring to Academic Freedom

- CUE's Mission, Vision and History
- CUE's Academic Calendar (s. 1.0)
- CUE's Academic Plan (2023-28)
- CUE Strategic Direction (2023-28)
- CUE's Freedom of Expression Policy (AD2010)
- CUE's Statement of Institutional Integrity
- *Magna Charta Universitatum*

8. CUE University Policies that May or Do Violate Academic Freedom

- CUE's Code of Conduct Policy and Procedures
- CUE's Discrimination, Harassment and Accommodation Policy and Procedures
- Board of Governors' Bylaws
- GFC Bylaws

9. Government Legislation on Academic Freedom

- The Government of Alberta has adopted the *University of Chicago Statement on Principles of Free Expression*:

<https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>

- All publicly funded post-secondary institutions in Alberta must “either endorse the Chicago Principles on free expression or develop a policy that is consistent with the principles.”
- All post-secondary schools must provide “annual free speech reporting” to the Minister of Advanced Education,
- Sources: <https://www.cbc.ca/news/canada/calgary/university-of-lethbridge-demetrius-nicolaides-frances-widdowson-1.6731738>
<https://www.cbc.ca/news/canada/calgary/free-speech-demetrius-nicolaides-ucp-university-lethbridge-1.6735905>

10. Academic Freedom and Other Important Issues

a) Academic Freedom and the Employee Duty of Loyalty to the University

See David Robinson and Sarah Godwin, “The Academic Exception to the Employee Duty of Loyalty,” *Canadian Labour and Employment Law Journal* 25 (2023), 91-118.

b) Academic Freedom as a Labour Right

See June Mills, Mary-Elizabeth Dill and Adril Weaver, “Academic Freedom as a Labour Right: Development, Context, and Implications,” *Canadian Labour and Employment Law Journal* 25 (2023), 73-90.

c) Academic Freedom and Defamation

See Peter Jacobsen, Emma Romano, and Agatha Wong, “Defamation in Academia: A Legal and Practical Limit on Academic Freedom,” *Canadian Labour and Employment Law Journal* 25 (2023), 119-148.

d) Academic Freedom, Equality, and Discrimination

See Faisal A. Bhabha, “The Campus Battle over Expression and Equality: Combatting Discrimination by Restricting Freedom?” *Canadian Labour and Employment Law Journal* 25 (2023), 149-84.

e) Academic Freedom and Canadian Charter of Rights and Freedoms

See Linda McKay-Panos, “Should the *Charter of Rights and Freedoms* Protect Academic Freedom at Universities?” *Canadian Labour and Employment Law Journal* 25 (2023), 185.

Sources:

David Robinson, “Defending Academic Freedom,” *University Affairs*, February 14, 2024.

Michael Lynk, “Academic Freedom and Labour Law – The Canadian Experience,” *Canadian Labour and Employment Law Journal* 25 (2023), 25-34

James L. Turk, “Academic Freedom in Canada: Its Origins, Components and Limits,” *Canadian Labour and Employment Law Journal* 25 (2023), 35-72.

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Linda McKay-Panos, “Should the *Charter of Rights and Freedoms* Protect Academic Freedom at Universities?” *Canadian Labour and Employment Law Journal* 25 (2023), 185.