



# Justice Centre

for Constitutional Freedoms

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## **The 2011 Campus Freedom Index**

Measuring the state of free speech at Canadian universities

By John Carpay and Michael M. Kennedy

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## Acknowledgements

The Justice Centre for Constitutional Freedoms (JCCF) acknowledges with gratitude the generous support of the Aurea Foundation, as well as the generosity of hundreds of Canadians from coast to coast who support the JCCF's research and litigation work in support of the constitutional freedoms of Canadians.

The authors acknowledge with gratitude the research and editing contributions made with respect to *The 2011 Campus Freedom Index* and *The state of campus free speech in 2011* (companion document) by numerous individuals, including Adelle Archer, Paige MacPherson, Jamie Hellewell, Adam Giancola, and Janet Keeping.

## About the authors

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Michael Kennedy graduated from Dalhousie University with a B.A. in political science and economics. Michael was the co-founder and Executive Director of the Dalhousie Liberty Society, a campus group dedicated to educating students about the philosophy of social, political and economic freedom. He is a Millennium Excellence Award laureate and has served in leadership roles for a variety of civic and community groups, including his local Kiwanis Club. Michael has worked in a number of policy roles, as a municipal policy assistant and as a research assistant with the Canadian Taxpayers Federation. A proud native of Cape Breton, Nova Scotia, he currently lives in Washington, DC, working for the American Council of Trustees and Alumni, an organization dedicated to promoting academic freedom, excellence and accountability at colleges and universities.



## About the Justice Centre for Constitutional Freedoms

*"Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has."*

The free and democratic society which the Canadian Charter of Rights and Freedoms holds out as our ideal can only be fulfilled by honouring and preserving Canada's traditions of freedom of speech, freedom of religion, freedom of association, other individual rights, constitutionally limited government, the equality of all citizens before the law, and the rule of law.

And yet these core principles of freedom and equality continue to be eroded by governments and by government-funded and government-created entities like Canada's public universities, and human rights commissions at the federal and provincial levels.

The Justice Centre for Constitutional Freedoms (JCCF) was founded in 2010 for the purpose of advancing and promoting the core principles of freedom and equality through education and litigation. The JCCF is a registered charity (charitable registration number 817174865-RR0001) and issues official tax receipts to donors for donations of \$50 or more. The JCCF is funded entirely by the voluntary donations of freedom-minded Canadians who agree with the Centre's goals, mission, vision and activities. The centre is independent and non-partisan, and receives no funding from any government or government organization.

Promoting discourse is not always enough. Therefore, the JCCF provides *pro bono* legal representation to Canadians facing a violation of one of their human rights or constitutional freedoms.

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Calgary lawyer and JCCF President John Carpay received the *2010 Pyramid Award in Ideas and Public Policy* from the Manning Centre for Building Democracy, in recognition of his work in constitutional advocacy. Student-at-Law Carol Crosson earned her LL.B. at the University of Calgary, and will be called to the Alberta Bar in 2012.



## Introduction

The Campus Freedom Index seeks to measure the commitment of Canada's public universities, as well as student unions, to upholding the rights of students to express their beliefs, opinions and philosophy on campus in a peaceful manner.

Dr. Stephen Toope, President of the University of British Columbia, has lamented that "in Canada we have seen many examples of students trying to shut down speakers with whom they disagree." In an interview with the *Globe and Mail*, Dr. Toope has asserted that "the role of the university is to encourage tough questioning, and clear expressions of disagreement, but not the "silencing" of alternative views. Universities are sites for the contestation of values, not places where everyone has to agree. That means that speakers we don't like, or even respect, should be allowed to put forward their views... [which can] then be challenged and argued over."

One of the biggest threats to free speech in Canada comes from universities which condone illegal activities on the part of people who obstruct, interrupt, interfere with, and effectively shut down the events and speeches of people they disagree with. Section 430 of the *Criminal Code* makes it an offence to obstruct, interrupt or interfere with any person in the lawful use, enjoyment or operation of property.

But universities in Ottawa, Montreal, Waterloo, Halifax, Vancouver, and Calgary have turned a blind eye to people physically obstructing and disrupting speech they disagree with. This failure to uphold the rule of law sends a very clear message in support of mob rule: "if you disagree with someone, then silence that person and prevent that person from expressing her or his views." Whether universities themselves restrict controversial and politically incorrect speech, or whether they fail to uphold the rule of law on campus, in both cases the end result is censorship.

A university's willingness to uphold free expression rights on campus is demonstrated in two ways. Firstly, universities and student unions can refrain from content-based censorship, and refrain from discriminating against students or campus clubs on the basis of belief, opinion, philosophy, or expression. Secondly, universities can uphold the rule of law in cases where people engage in criminal conduct (e.g. violence, physical obstruction, physical interference) against those whose expression they dislike or disagree with.

The Campus Freedom Index looks at the policies and principles of universities and student unions (what they say), and at their actions and practices (what they do).

Accordingly, the Campus Freedom Index assigns rankings in four distinct areas:

1. university policies and principles
2. university actions and practices
3. student union policies and principles, and
4. student union actions and practices

The methodology used in the Campus Freedom Index is explained in greater detail in a separate section.



## Methodology

The Campus Freedom Index seeks to measure the commitment of Canada’s public universities, as well as student unions, to upholding the rights of students to express their beliefs, opinions and philosophy on campus in a peaceful manner.

A university’s willingness to uphold free expression rights on campus is demonstrated in two ways. Firstly, universities can refrain from content-based censorship, and refrain from discriminating against students or campus clubs on the basis of belief, opinion, philosophy, or expression. Secondly, universities can uphold the rule of law in cases where people engage in criminal conduct (e.g. violence, obstruction, interference) against those whose expression they dislike or disagree with.

The Campus Freedom Index looks at the policies and principles of universities and student unions (what they say), and at their actions and practices (what they do). Accordingly, the Campus Freedom Index assigns rankings in four distinct areas: university policies and principles, university actions and practices, student union policies and principles, and student union actions and practices.

### 1. University policies and principles – criteria for rankings

University policies and principles with a ranking of “Good” featured most or all of the following:

- A clear and unequivocal commitment to freedom of expression, set out in one or more of the following documents: mission statement, vision statement, statement on academic freedom, Code of Conduct or Code of Student Behaviour, and public statements by the university’s president or other senior officers
- Support for free speech that is not qualified by, or contradicted by, a ban on speech which university administrators consider to be “discriminatory,” “offensive,” “hurtful,” “provocative,” “disrespectful,” “insulting,” or “divisive”
- Space-booking and facility-rental policies which do not discriminate against students or student groups based on opinion, philosophy, belief, or content of expression
- Anti-disruption policies which make it clear that obstructing, interfering with, or interrupting the expression of other people is unacceptable conduct
- An absence of “student facilitators” and other university officials paid to promote or enforce ambiguous and politically correct ideals variously characterized as “equity” or “diversity”
- Human rights policies, anti-discrimination policies, and anti-harassment policies which include provisions indicating clearly that these policies cannot be used to limit, restrict or censor the expression of ideas on campus
- Security fee policies which do not penalize controversial expression by charging tuition-paying students extra money to secure their basic right to be protected from violence and from other criminal conduct (e.g. obstruction, interference, interruption)
- The absence of language policies and speech codes which seek to eradicate things like a “negative environment,” “heterosexism,” and a “chilly climate”

The authors acknowledge that a university’s internal human rights policies, anti-discrimination policies, and anti-harassment policies do not necessarily restrict the expression of opinion on social, political, religious, philosophical and other matters.



However, experience with federal and provincial human rights laws has demonstrated that good intentions to promote human rights have nevertheless resulted in citizens being prosecuted for having peacefully expressed their opinions. Prosecutions for “discriminatory” or “disrespectful” speech have been launched against Ezra Levant, Stephen Boissin, William Whatcott, Calgary Bishop Fred Henry, Maclean’s magazine, and many other people and publications. Therefore, a university’s human rights policies are reviewed to see whether they include express language indicating that:

- the policies cannot be used to censor speech or restrict academic freedom
- the policies apply only to university employees while working, and not to speech on campus generally.

In the absence of such clarity, these policies leave the door open to being abused as a tool to censor the expression of ideas that some may find offensive or hurtful.

University policies and principles with a ranking of “Poor” featured most or all of the following:

- An absence of a clear and unequivocal commitment to free expression in documents such as the university’s mission statement, vision statement, statement on academic freedom, Code of Conduct or Code of Student Behaviour, and public statements by the university’s president or other senior officers
- Qualified support for free speech, with policies and principles that empower university administrators to restrict or censor speech which they consider to be “discriminatory,” “offensive,” “hurtful,” “provocative,” “disrespectful,” “insulting,” or “divisive”
- Space-booking and facility-rental policies which discriminate against students or student groups based on opinion, philosophy, belief, or content of expression
- The absence of anti-disruption policies which make it clear that obstructing, interfering with, or interrupting the expression of other people is unacceptable conduct
- The existence of “student facilitators” and other university staff empowered to promote or enforce ambiguous and politically correct ideals variously characterized as “equity” or “diversity”
- Human rights policies, anti-discrimination policies, and anti-harassment policies which lack provisions indicating clearly that these policies cannot be used to limit, restrict or censor the expression of ideas on campus
- Security fee policies which penalize controversial expression by charging tuition-paying students extra money to secure their basic right to be protected from violence and from other criminal conduct (e.g. obstruction, interference, interruption)
- Language policies and speech codes which seek to eradicate things like a “negative environment,” “heterosexism,” and a “chilly climate”
- Policies empowering the university to shut down spontaneous peaceful expression on campus even when students have not violated any university rule, regulation, policy or bylaw

University policies and principles with a ranking of “Mediocre” featured a mixture of the factors set out above.



## 2. University actions and practices – criteria for rankings

University actions and practices with a ranking of “Poor” featured one or more of the following:

- Failing to uphold the rule of law by condoning criminal conduct on campus, including violence and physical obstruction, interruption and interference directed at those who are peacefully expressing their opinions on campus (e.g. a university condoning the interruption and shutting down of an event by protesters, such that the event’s speaker cannot be heard)
- University restrictions imposed only on one particular viewpoint, opinion, philosophy or expression, which are not based on any university rules, regulations, policies or bylaws (e.g. a university demand that one particular group turn its signs inwards so that no passers-by can see them)
- The university’s denial of equal access to venues, facilities, or prominent places on campus to one club or group based on its viewpoint, opinion, philosophy or expression (e.g. insisting that a particular group can only use an out-of-the-way back-room that has no walk-by or walk-through traffic, while allowing all other groups access to prominent and high-visibility locations on campus)
- Threatening students with charges of trespassing, or charges of non-academic misconduct, or both, as a consequence for failing to submit to a discriminatory demand of the kind explained in the two points above
- Carrying out the threats, by charging students with trespassing or non-academic misconduct or both when they fail to submit to discriminatory demands
- Forcibly shutting down the peaceful expression of controversial expression on campus, or forcibly preventing it from taking place
- Imposing security fees uniquely on clubs which have an opinion, view or philosophy which university administrators consider to be controversial, offensive, or provocative
- Preventing controversial speakers from speaking on campus, or treating speakers differently depending on the speaker’s opinion, view or philosophy

University actions and practices with a ranking of “Good” featured none of these factors.

## 3. Student union policies and principles – criteria for rankings

Student union policies and principles with a ranking of “Good” featured most or all of the following:

- Club ratification (certification) policies which do not allow the student union to refuse status to a club, or remove status from a club, based uniquely on the club’s belief, opinion, philosophy or expression
- Student election policies which do not empower the Chief Returning Officer (or other officials) to censor the content of election campaign materials on grounds that the materials are “discriminatory,” “inequitable,” “offensive,” or “negative”
- The absence of a requirement that all campus clubs must promote “equity,” “diversity,” “equality” or another political goal established by the student union



- A clear and unequivocal commitment to freedom of expression, set out in an official document, that is not qualified by, or contradicted by, restrictions on speech which the student union deems to be “discriminatory,” “offensive,” “hurtful,” “provocative,” “disrespectful,” “insulting,” “divisive,” or “inappropriate”
- Space-booking and facility-rental policies which do not discriminate against students or student groups based on opinion, philosophy, belief, or content of expression
- An absence of student union staff who are paid to promote or enforce ambiguous and politically correct ideals variously characterized as “equity,” “diversity,” or “equality”
- Human rights policies, anti-discrimination policies, and anti-harassment policies which include provisions indicating clearly that these policies cannot be used to limit, restrict or censor the expression of ideas on campus
- The absence of language policies and speech codes which seek to eradicate things like a “negative environment,” “heterosexism,” and a “chilly climate”

The authors acknowledge that a student union’s human rights policies, anti-discrimination policies, and anti-harassment policies do not necessarily restrict the expression of opinion on social, political, religious, philosophical and other matters.

However, experience with federal and provincial human rights laws has demonstrated that good intentions to promote human rights have nevertheless resulted in citizens being prosecuted for having peacefully expressed their opinions. Prosecutions for “discriminatory” or “disrespectful” speech have been launched against Ezra Levant, Stephen Boissin, William Whatcott, Calgary Bishop Fred Henry, Maclean’s magazine, and many other people and publications. Therefore, a student union’s human rights policies are reviewed to see whether they include express language indicating that:

- the policies cannot be used to censor speech or restrict academic freedom
- the policies apply only to university employees while working, and not to speech on campus generally.

In the absence of such clarity, these policies leave the door open to being abused as a tool to censor the expression of ideas that some may find offensive or hurtful.

Further, the authors believe that student unions should have the right to discipline and campus clubs for failing to abide by reasonable rules and regulations. The penalty imposed on a club should be proportionate to the seriousness or severity of its violation of a rule, and may include decertification in some instances. However, student unions should not be able to discipline or decertify clubs based solely on the club’s beliefs, opinions, philosophy or expression.

Student union policies and principles with a ranking of “Poor” featured most or all of the following:

- Club ratification (certification) policies which allow the student union to refuse status to a club, or remove status from a club, based uniquely on the club’s belief, opinion, philosophy or expression
- Student election policies which empower the Chief Returning Officer (or other officials) to censor the content of election campaign materials on grounds that the materials are “discriminatory,” “inequitable,” “offensive,” or “negative”
- A requirement that all campus clubs must promote “equity,” “diversity,” “equality” or another political goal established by the student union



- Restrictions on speech which the student union deems to be “discriminatory,” “offensive,” “hurtful,” “provocative,” “disrespectful,” “insulting,” “divisive,” or “inappropriate”
- Space-booking and facility-rental policies which discriminate against students or student groups based on opinion, philosophy, belief, or content of expression
- Student union staff who are paid to promote or enforce ambiguous and politically correct ideals variously characterized as “equity” or “diversity”
- Human rights policies, anti-discrimination policies, anti-harassment policies, and language policies which can be used to limit, restrict or censor the expression of ideas on campus, and to eradicate things like a “negative environment,” “heterosexism,” and a “chilly climate”

Student union policies and principles with a ranking of “Mediocre” featured a mixture of the factors set out above.

#### **4. Student union actions and practices – criteria for rankings**

Student union actions and practices with a ranking of “Poor” featured one or more of the following:

- Refusing to grant official club status to, or removing official club status from, a club based solely on the club’s belief, opinion, philosophy or expression
- Imposing restrictions on the expression of a campus club, based solely on the club’s belief, opinion, or philosophy
- Denying equal access to venues, facilities, or prominent places on campus to one club or group based on its viewpoint, opinion, philosophy or expression (e.g. insisting that a particular group can only use an out-of-the-way back-room that has no walk-by or walk-through traffic, while allowing all other groups access to prominent and high-visibility locations on campus)
- Preventing controversial speakers from speaking on campus, or treating speakers differently depending on the speaker’s opinion, view or philosophy

Student union actions and practices with a ranking of “Good” featured none of these factors.

In all four categories, the rankings place greater weight on more recent policies and practices, and less weight on the principles and actions of the past.



## The 2011 Campus Freedom Index – Rankings

A summary of rankings for the 18 universities and student unions studied

<u>University and student population</u> (enrolment)	<u>Category 1</u> (University policies and principles)	<u>Category 2</u> (University actions and practices)	<u>Category 3</u> (Students Union policies and principles)	<u>Category 4</u> (Students Union actions and practices)
<b>University of Victoria</b> (20,040)	Mediocre	Poor	Mediocre	Poor
<b>University of British Columbia</b> (49,830)	Good	Good	Mediocre	Good
<b>Simon Fraser University</b> (29,470)	Good	Poor	Good	Good
<b>University of Calgary</b> (30,770)	Mediocre	Poor	Poor	Poor
<b>University of Alberta</b> (37,130)	Mediocre	Mediocre	Poor	Good
<b>University of Saskatchewan</b> (19,360)	Mediocre	Good	Poor	Poor
<b>University of Manitoba</b> (27,430)	Mediocre	Good	Mediocre	Mediocre
<b>Lakehead University</b> (8,710)	Mediocre	Good	Poor	Poor
<b>University of Western Ontario</b> (29,910)	Good	Poor	Poor	Poor
<b>Wilfred Laurier University</b> (17,160)	Mediocre	Good	Mediocre	Poor
<b>University of Toronto</b> (78,900)	Good	Poor	Mediocre	Good
<b>Queen's University</b> (23,820)	Mediocre	Good	Mediocre	Good
<b>Carleton University</b> (21,000)	Good	Poor	Poor	Poor
<b>University of Ottawa</b> (40,400)	Mediocre	Poor	Poor	Mediocre
<b>McGill University</b> (34,600)	Mediocre	Poor	Poor	Poor
<b>University of New Brunswick</b> (10,670)	Mediocre	Good	Mediocre	Good
<b>Dalhousie University</b> (16,720)	Mediocre	Poor	Poor	Good
<b>Memorial University of Newfoundland</b> (18,570)	Good	Good	Poor	Poor

The basis for these rankings is explained below, at pages 10-21.

Students affected by Poor University actions and practices: **301,810**

Students affected by Poor Students Union policies and procedures: **257,170**

Students affected by Poor Students Union actions and practices: **182,960**

**NOTE:** University enrolment data available for 2010 from the Association of Universities and Colleges of Canada

[http://www.aucc.ca/canadian-universities/facts-and-stats/tuition-by-university/?page\\_id=6210](http://www.aucc.ca/canadian-universities/facts-and-stats/tuition-by-university/?page_id=6210)



## Executive Summary

### *The best and the worst*

	The Best	The Worst
<b>Category 1:</b>  <b>University policies and principles</b>	Simon Fraser University  University of Western Ontario  University of Toronto	Dalhousie University  Queen's University  University of Ottawa
<b>Category 2:</b>  <b>University actions and practices</b>	University of Manitoba  Memorial University  University of Saskatchewan	University of Ottawa  University of Calgary  Carleton University
<b>Category 3:</b>  <b>Students Union policies and principles</b>	Simon Fraser University  University of British Columbia  University of Manitoba	University of Ottawa  University of Calgary  Carleton University
<b>Category 4:</b>  <b>Students Union actions and practices</b>	Simon Fraser University  University of British Columbia  University of Toronto	Carleton University  Memorial University  Lakehead University



## University policies and principles – rankings

As is explained in greater detail in the section on Methodology, the analysis of a university's policies and principles is entirely distinct from the university's actions and practices. Some of the universities receiving a ranking of Good in respect of their policies and principles also received a ranking of Poor in respect of their actions and practices.

This section provides only a *summary* of the findings. Further information about each university and student union can be found in the companion document to the 2011 Campus Freedom Index: *The state of campus free speech in 2011 – A report on 18 Canadian universities*.

Of the 18 universities included in this Index, only six received a ranking of Good:

- University of British Columbia
- Simon Fraser University
- University of Western Ontario
- University of Toronto
- Carleton University
- Memorial University of Newfoundland

These six universities all have clear and unequivocal commitment to freedom of expression, set out in one or more of the following documents: mission statement, vision statement, statement on academic freedom, Code of Conduct or Code of Student Behaviour, and public statements by the university's president or other senior officers. UBC's statement on academic freedom, and SFU President Andrew Petter's statement on respectful debate, are concise and compelling. The U of T reiterates its commitment to free expression on campus repeatedly in numerous documents, policies and statements.

Further, these six universities have statements in support of free expression which are not diluted or undermined by qualifications suggesting that speech is acceptable only if university officials decide that the expression is not "discriminatory," "offensive," "hurtful," "provocative," or "disrespectful." These universities also have clauses or sections in their human rights policies (including anti-harassment policies and anti-discrimination policies) which state that these policies cannot be used, construed or interpreted so as to stifle free speech on campus.

With the exception of the University of Toronto, these six universities do not have policies which require or which permit additional security fees to be charged to students for peacefully expressing controversial or unpopular ideas. This is significant because students already pay for security through their tuition fees, and the imposition of additional security fees acts as a real barrier to prevent students from expressing minority or unpopular opinions on campus. Further, Canadian universities receive billions of dollars from taxpayers each year, and these funds are available to provide security for all students, regardless of the popularity or unpopularity of a person's beliefs, opinions, or expression.

The imposition of additional security fees for controversial expression is also problematic because it assumes that those who engage in criminal conduct (e.g. violence, uttering threats, physical obstruction, physical interruption of other people's lawful activities) are not fully responsible for their actions, and that the blame for such conduct must be assumed by those who are peacefully and lawfully exercising their right to express their opinions. Such reasoning is a "blame-the-victim" approach, which has been



appropriately rejected in other contexts. For example, it is now commonly accepted that women are not responsible for sexual assault, even if they are not dressed conservatively, or walking outside after dark. The idea that a woman is “asking for it” has thankfully been rejected, yet this same idea has found new life in the minds of some university administrators, who believe that a person victimized by criminal conduct for having expressed an unpopular opinion on campus must somehow share the blame with those who engaged in the criminal conduct. Demanding that students pay extra money for security when expressing unpopular views is effectively assigning blame to those students if they are victimized by criminal conduct: they are “asking for it” and must therefore pay extra money for security, in addition to what they already pay through tuition fees. A more enlightened view places 100% of the responsibility for criminal conduct on those who engage in it, without assigning any blame to victims.

The University of Western Ontario and the University of Toronto also have policies which make it clear that students cannot interrupt or interfere with the free expression rights of people they disagree with. Such “anti-disruption” policies should not be necessary, since the physical disruption of events is a Criminal Code offense. However, it is preferable for universities to have such policies in place, to deal with cases when students obstruct, interrupt or interfere with the peaceful expression of opinion on campus. In such cases, anti-disruption policies make it possible to discipline students without needing to have the students charged criminally.

The remaining 13 universities in this Index have policies and principles ranked as Mediocre because they feature some or all of the following:

- An absence of a clear and unequivocal commitment to free expression in documents such as the university’s mission statement, vision statement, statement on academic freedom, Code of Conduct or Code of Student Behaviour, and public statements by the university’s president or other senior officers
- Qualified support for free speech, with policies and principles that empower university administrators to restrict or censor speech which they consider to be “discriminatory,” “offensive,” “hurtful,” “provocative,” “disrespectful,” “insulting,” or “divisive”
- The existence of “student facilitators” and other university staff empowered to promote or enforce ambiguous and politically correct ideals variously characterized as “equity” or “diversity”
- Human rights policies, anti-discrimination policies, and anti-harassment policies which lack provisions indicating clearly that these policies cannot be used to limit, restrict or censor the expression of ideas on campus
- Security fee policies which penalize controversial expression by charging tuition-paying students extra money to secure their basic right to be protected from violence and from other criminal conduct (e.g. obstruction, interference, interruption)
- Language policies and speech codes which seek to eradicate things like a “negative environment,” “heterosexism,” and a “chilly climate”
- Policies which empower the university to shut down spontaneous peaceful expression on campus even when students are not breaking any rules, policies, bylaws or regulations

The Dalhousie University Office of Human Rights, Equity and Harassment Prevention has a plethora of strategies, practices, and policies which can be used to stifle the free expression of opinion on campus in the name of promoting “inclusion,” “respect,” and “diversity.” Students are urged to conduct meetings with people while seated in circles, to be mindful of the “dominance” of Christian holidays in western culture, to learn about and acknowledge “other traditions and celebrations,” and to



refrain from laughing at “heterosexist” jokes. Dalhousie tells its students to promote the “fact” that “diversity” benefits everyone, without “diversity” having any clear meaning or definition that is commonly understood by all.

Lakehead University “encourages the free exchange of ideas and opinions, but insists that the free expression of views must be made with respect for the human dignity and freedom of others.” If a person complains that his “human dignity” has been “disrespected” by the expression of an opinion on campus, will the university uphold the speaker’s freedom to express her opinion, or will the university censor the speech in order to ensure that “human dignity” is “respected”?

The University of Manitoba has a Respectful Work and Learning Environment Policy, which prohibits any form of discrimination or harassment, including speech deemed to be “discriminatory” or “harassing.” The policy is not limited to prohibiting sexual harassment in a workplace, and can be used to stifle campus free speech.

The University of Ottawa “reserves the right to determine the number of security guards required for an event, with costs to be covered by the user,” without any clear or defined guidelines. A divisive event, featuring a controversial speaker or unpopular expressive content, may lead to an extremely high (and involuntary) invoice for security personnel, which may be prohibitive to student-run groups, thereby stifling freedom of expression on campus.

Queen’s University hired “student facilitators” to intervene anywhere on campus if they overheard “homophobic,” sexist, racist, or any “discriminatory” language. According to the University, “they were tasked with spotting “spontaneous teaching moments” concerning issues of race, religion, gender, sexual orientation, ability and social class, and to respond – either actively by posing questions to spur discussion, or more passively through activities like poster campaigns or movies.” The university abandoned this program after concerned students created a Facebook group entitled “Queen’s University Students and Alumni for Free Speech.” However, the fact that this program made it past the “drawing board” stage is disconcerting, and says a great deal about the mindset of university administrators at Queen’s.

The University of New Brunswick bans speaking “in a disorderly, disruptive, indecent or offensive manner” and prohibits any “comment or conduct that ought reasonably to be known to have the effect of creating an intimidating, humiliating, hostile or offensive working or learning environment.” While some of these interdictions may be consistent with Criminal Code prohibitions on disruption and interference, they can also be used to stifle the free expression of opinion on campus, as the prohibition on “offensive” speech is entirely subjective. The fact that anyone can file a complaint upon hearing something she or he considers “offensive” is troubling.

The Wilfrid Laurier Student Code of Conduct seeks to eradicate “negative environment,” defined as “One or a series of comments or conduct that creates a negative environment for individuals or groups and are related to the prohibited grounds. The comments or conduct must be of a significant nature or degree and have the effect of “poisoning” the work or study environment. A complainant does not have to be a direct target to be adversely affected by a negative environment. It includes conduct or comments that create and maintain an offensive, hostile, or intimidating climate for study or work. Examples include but are not limited to exposure to graffiti, signs, cartoons, remarks, exclusion, or adverse treatment related to one or more of the prohibited grounds.”



## University actions and practices – rankings

This section provides only a *summary* of the findings. Further information about each university and each student union can be found in the companion document to the 2011 Campus Freedom Index, called *The state of campus free speech in 2011 – A report on 18 Canadian universities*.

Eight of the 18 universities in this Index received a ranking of Good in respect of their actions and practices:

- University of British Columbia
- University of Saskatchewan
- University of Manitoba
- Lakehead University
- Wilfrid Laurier University
- Queen’s University
- University of New Brunswick
- Memorial University of Newfoundland

These eight universities refrain from content-based censorship, and refrain from discriminating against students or campus clubs on the basis of belief, opinion, philosophy, or expression. Of equal importance, they uphold the rule of law and enforce Criminal Code prohibitions against violence, physical obstruction, and physical interference with the lawful activities of other people.

The actions and practices of the University of Alberta were generally good, however, the U of A receives a ranking of Mediocre for having chosen to argue against free expression as an intervener in *Pridgen v. University of Calgary*. More information about the *Pridgen* case, which is now before the Alberta Court of Appeal, is found below, as part of the University of Calgary section.

Nine of the 18 universities received a ranking of Poor, as follows:

### Carleton University

- denies equal access to university resources and facilities to a campus pro-life club (Carleton Lifeline). Carleton allows all other campus clubs to use Tory Quad, a prominent place on campus, while prohibiting Carleton Lifeline and its members from using this venue.
- imposes restrictions on Carleton Lifeline’s freedom of expression that are not imposed on any other campus club: to turn its signs inwards. Carleton tolerates visually disturbing images displayed by other groups on campus. For example, People for the Ethical Treatment of Animals has shown graphic photos of the clubbing and killing of seals.
- charged four of its own students with “trespassing” for attempting to express their views on campus. Crown Prosecutors decided to stay the charges, indicating they were without merit.
- threatened Carleton Lifeline students with non-academic misconduct for peacefully expressing their views on campus.
- condoned criminal conduct perpetrated against Carleton Lifeline members engaged in the peaceful expression of opinion on campus, namely the physical obstruction of Lifeline’s expression by opponents who disagree with it.



- forcibly prevented Carleton Lifeline students from setting up a stationary display on campus, and confiscated the students materials.

#### The University of Calgary

- found ten students guilty of non-academic misconduct for having posted innocuous comments on a Facebook page which criticized a professor for her remarkable and demonstrable incompetence, and ordered the students to write letters of apology or face consequences including expulsion. Two of the students, Keith and Steven Pridgen, successfully challenged the university's conduct in court. The university appealed its loss to the Alberta Court of Appeal, which will render its decision in the months ahead.
- imposes restrictions on Campus Pro-Life that are not imposed on any other campus club: to turn its signs inwards. At the same time, the U of C tolerates visually disturbing images displayed by other groups on campus: graphic photos of faces which have gone through windshields (by a pro-seatbelt group) and photos of those tortured by the Chinese Communist government for adhering to the Falun Gong religion.
- threatened to charge its own students with "trespassing" and with "non-academic misconduct" if the students did not comply with the university's demand that they turn their signs inwards so that no passers-by can see the signs.
- charged its own students with trespassing, but Crown Prosecutors decided to stay the charges, as the U of C could not explain what rule, policy, regulation or bylaw the students were violating.
- found eight students guilty of "non-academic misconduct" for having resisted the university's censorship demand that they turn their signs inwards so they cannot be seen by passers-by.
- condoned criminal conduct perpetrated against Campus Pro-Life members engaged in the peaceful expression of opinion on campus.

#### The University of Ottawa

- sent a threatening letter to outspoken American conservative author and pundit Ann Coulter, warning her of potential civil and criminal penalties, prior to her speaking on campus.
- failed to provide adequate security for Ann Coulter's scheduled event, thereby contributing to the event's cancellation in the face of violence-threatening protesters.
- actively explored ways of preventing Burmese human rights activist Ka Hsaw Wa from speaking on campus because her speech was thought to be critical of the corporate practices of a donor to the university.

#### Dalhousie University

- cancelled an agreed-upon speaking engagement with Jared Taylor on the subject of racial diversity, accusing the speaker of racism
- cancelled an agreed-upon speaking engagement with British MP George Galloway "because he speaks about controversial topics" and event organizers were unable to pay extra security fees
- failed to provide security for a debate about abortion sponsored by "Pro-Life at Dal" even after having been paid a \$350 fee; made no effort to find out who vandalized the room prior to the event and who was responsible for setting off stink bombs throughout the event; and afterwards suggested to Pro-Life at Dal that it not sponsor any future events on campus



### Simon Fraser University

- demanded that a campus pro-life club, SFU Lifeline, turn the signs of its display inwards so that passers-by would not be able to see the signs
- condoned the physical obstruction and physical interruption of the pro-lifers' display by opponents who used large rolling bill-boards to block the display from view
- allowed the use of university property (the rolling bill-boards) by those engaging in illegal conduct to obstruct, interrupt and interfere with the peaceful expression of opinion on campus

### The University of Toronto

- demanded of its pro-life club that it set up its campus display in such a manner that passers-by would not be able to see the signs, or alternatively that the pro-life club use a room with no walk-by traffic; no other campus club has faced similar demands
- charged a \$400 security fee to the Ontario Public Interest Research Group for hosting an event connected to Israeli Apartheid Week; groups with "non-controversial" or "non-offensive" expression are not charged security fees

### The University of Western Ontario

- denied access to a prominent space on campus to Western Lifeline, which wanted to organize a forum for women to speak about their own experiences with abortion. Aside from a vague reference to "community standards" the UWO has not provided Western Lifeline with any reason or rationale for denying space that is available to all other groups and clubs on campus

### McGill University

- failed to uphold the rule of law when an event called "Echoes of the Holocaust" was forcibly disrupted by protesters who effectively shut down the event and prevented the speaker from being heard
- failed to uphold the rule of law at a Conservative McGill event when group of protesters blocked the room entrance and threatened to attack the speaker. Campus Security eventually helped the organizers of the event make sure the speaker was safe, but subsequently the administration did nothing to pursue those who had threatened violence and engaged in disruptive activities

### The University of Victoria

- undermined respect for the rule of law by condoning property damage by a student group called the "Food Not Lawns Collective." The students dug up a section of lawn in front of the UVic library and started planting a garden. The "gardeners" continued digging after police and campus security told them to stop, yet the police and campus security did not charge or arrest anyone, nor did the university pursue other sanctions like non-academic misconduct. The conduct of these "gardening" students goes far beyond, and outside of, a reasonable understanding of the right to express one's opinions in a peaceful and non-physical manner. Free expression is not a license to damage property, disregard reasonable "time, place and manner" rules (like needing to book space), and (through obstruction) prevent public property from being used by others. Tolerance for this sort of activity, along with its chaos and anarchy, actually undermines the free speech rights of students. The university's failure to uphold the rule of law in this case could inadvertently serve to encourage those who would use obstruction and interference to silence the speech of those they disagree with.



Rankings in this Index place greater weight on current and recent policies and actions, and less weight on the principles and practices of the past. For example, SFU's ranking of "Poor" is based on its recent censorship demands, and failure to uphold the rule of law, notwithstanding an excellent track record in the past decade. In the same way, UBC's ranking of "Good" is based on its recent actions in upholding the campus free speech rights and upholding the rule of law, notwithstanding its frequent failures in the past decade to do so.

## Student union policies and principles – rankings

This section provides only a *summary* of the findings. Further information about each university and student union can be found in the companion document to the 2011 Campus Freedom Index, called *The state of campus free speech in 2011 – A report on 18 Canadian universities*.

Only one of 18 student unions receives a ranking of Good in respect of its policies and principles.

The Simon Fraser Student Society (SFSS) does not have any policies which censor, or discriminate against, any students or student groups on the basis of the content of expression, or on the basis of a group's opinion, belief, philosophy, or expression.

Ten of the 18 student unions receive a ranking of Poor in respect of their policies and principles, as follows:

### The University of Calgary Students' Union

- has an "Acceptable Display Procedure" which empowers the Operations and Finance Committee to restrict or prohibit demonstrations, displays and expression which the Committee deems to be "offensive" or "inappropriate." This enables the Students' Union's elected officials or staff to censor any speech which they dislike or disagree with.
- requires that all election campaigning "must be positive in nature" and bans "negative campaigning." While arguably a noble ideal, in practice this means that if an auditor found that student politicians had spent Students' Union funds illegally or inappropriately, and if those same student politicians sought re-election for another year, then sections 19 and 57(e) of the Elections Operations Procedure would preclude opposition candidates from raising financial mis-management as an election issue, as this would constitute "negative campaigning."

### The Carleton University Student Association (CUSA)

- equates the Heritage Foundation, one of the most well-known and respected conservative think-tanks in the U.S., with the KKK and the White Aryan Resistance, as groups to be banned from campus.
- prohibits its services from carrying or distributing any material that CUSA deems to constitute "racism, sexism, xenophobia, ableism, sizeism, ageism and homo/bi/lesbophobia"
- declares itself in support of "a woman's right to choose her options in the case of pregnancy" and goes on to state that CUSA will deny resources, space, funding, and official club status to any group which disagrees with that position.



### The Dalhousie Student Union

- can withhold club status, or grant additional privileges, “as it deems necessary.” The authors of this Index believe that student unions should have the right to discipline and (ultimately) decertify clubs for failing to abide by reasonable rules and regulations. However, student unions should not be able to discipline or decertify clubs based solely on the club’s beliefs, opinions, philosophy or expression.
- has election policies which require that only one (1) registered campaign for each possible answer to a referendum or plebiscite question, thereby restricting the free expression of those who advocate for a “yes” or “no” for reasons other than those of the official “yes” and “no” campaigns.
- empowers an “Elections Committee” to approve or disapprove of campaign displays and literature, thereby permitting content-based censorship.

### The Lakehead University Student Union (LUSU)

- issued a “presidential decree” requiring clubs to ensure that their messages are ‘positive’ as a condition of having official club status: *“Campaigns must be positive in nature and cannot slander the opposing stance of the campaign; All club publications shall not have content that may be deemed as offensive or in bad taste to any identifiable group.”* It should be noted that this decree has not been enforced.
- declared itself to be officially pro-choice in 2008, and further declared that those who think differently must keep their speech and actions in accordance with the student union’s stance on the subject. LUSU claims that it is not opposed to those who hold pro-life positions “so long as these groups do not advocate, encourage, support, or condone the denial of choice to any other women.”
- provides additional funding to clubs promoting gender issues, gay pride, multiculturalism, environmentalism, and aboriginal issues, while excluding religious and political party clubs from receiving official club status and funding. While the denial of funding, as well as the granting of additional funding, do not affect the campus free speech rights of various groups, discriminatory funding policies are a clear departure from the basic principle that all opinions, beliefs, and philosophies should be treated equally on a university campus.

### The Students’ Society of McGill University (SSMU)

- has an Equity Policy which endorses dialogue on controversial political issues, but only if such dialogue is on “legitimate” topics and “conducted in a respectful, non-coercive, collegial manner that conforms to the policy on discrimination and harassment.” The student newspaper *McGill Tribune* pointed out that “the legitimacy of a topic and the respectfulness and collegiality of debate are subjective and open to interpretation and discussion. That an appointed committee has the power to remove a club’s funding if they deem it in contravention of one of these is antithetical to the stated purpose of encouraging open discussion.”
- calls itself an “anti-oppressive” organization, defining oppression as “exploitation, marginalization, powerlessness, cultural imperialism, and violence, imposed by a dominant class of people onto a powerless class of people through systems and interpersonal interactions.” The inclusion of “interpersonal interactions” in the definition of “oppression” gives greatest license to infringement of free speech, because any feelings of powerlessness evoked from a conversation would be in violation of SSMU’s Equity Policy.
- has an Equity Committee which can remove a club’s funding if this Committee deems the club’s action or discussion to be in violation of the Equity Policy.
- backs a “Safe Space” program which bans politically incorrect speech in places were Safe



Space plaques are posted.

#### The Memorial University of Newfoundland Students' Union

- denies ratification to any group that it considers to be of a “homophobic, racist, ageist, sexist or otherwise discriminatory nature.” This empowers student politicians to censor any speech they deem to be “discriminatory” by forcing restrictions on to a club, or denying ratification entirely.

#### The Student Federation of the University of Ottawa (SFUO)

- has a policy which denies club status to any group with “discriminatory clauses,” or that is affiliated with any organization that has “discriminatory” policies or practices.
- employs the use of “gender parity speaking privileges” which requires giving half of the available speaking opportunities to members of each gender, regardless of the male-female ratio of the audience present for a particular meeting.
- maintains a Poster Policy that bans “hate/fear mongering.” While arguably a laudable ideal, it is not difficult to fathom how this could be used against, for example, posters advertising a campus event about Palestinian terrorist attacks on Israeli cities, at which a victim of these attacks is the speaker. One could argue that this was “fear mongering” and generating “hate” against Palestinians (or at least against terrorists)

#### The University of Saskatchewan Students' Union (USSU)

- will de-ratify any campus club which engages in behaviour that USSU deems to be “unfit for an inclusive, welcoming, and open learning environment.” There is no definition, and there are no guidelines, as to what could be considered “unfit for an inclusive, welcoming and open learning environment,” such that USSU has broad, unfettered power to de-ratify a campus club based on its views, opinions, philosophy and expression.
- has a Table Space Rental Policy which disallows “offensive materials,” again conferring broad powers on USSU to decide what it considers “offensive.” Oddly, the policy also states that “Respect for divergent points of view is expected at all times.”

#### The University of Western Ontario University Student Council (USC)

- prohibits “potentially libellous language or statements” or “statements made to damage a person’s or group’s reputation.” It could be a worthwhile goal to discourage the tort of defamation, which applies only to individual reputations, not groups. However, any policy that seeks to protect the reputation of an entire group of people will invariably result in the censorship of speech. Any discussion of public policy (e.g. immigration; aboriginal policy; welfare policy; criminal justice; economics) and many discussions on religion and philosophy involve comments about *groups* of people. The law has never recognized a tort of group defamation, because doing so would have the effect of shutting down the discussion of politics, religion, philosophy, and other matters.

#### The University of Alberta Students' Union

- requires that posters from students or student groups cannot be approved if they contain material that is “sexist, racist, homophobic, or otherwise defamatory,” as well as “any poster that contains offensive pictures or language” and “any poster that is not written in English or French.” All publications “must be in good taste, and relevant to the needs of the student population.” Laudable ideals, no doubt. But censors are always motivated by ideals which they themselves consider to be laudable. What criteria are used to decide what is “relevant to the needs of the student population”? What is deemed to be in good taste, and by whom? Such



vague terms give a great deal of discretion to the student union's Executive Committee to determine which messages may be distributed through publications and which may not.

- has an elections bylaw requiring all candidates in student union election campaigns to have all campaign material, including materials expressive of their beliefs and viewpoints, "approved in form, **content**, and cost by the Chief Returning Officer (CRO) before they may be used in campaign activities." The CRO must be provided with "the complete contents of the proposed campaign material, including text, images and layout." The policy does not set out criteria or other guidance, thereby empowering the CRO to censor election campaign materials on the basis of their content, and impose penalties for violations.
- may terminate a student group's registration or suspend a student group's activities, but does not limit this power to cases where a group (or its members) have violated any rule, regulation, bylaw or policy.

The remaining seven of the 18 student unions received a ranking of Mediocre in respect of their policies and principles:

- University of Victoria
- University of British Columbia
- University of Manitoba
- Wilfrid Laurier University
- University of Toronto
- Queen's University
- University of New Brunswick

## Student union actions and practices – rankings

This section provides only a *summary* of the findings. Further information about each university and each student union can be found in the companion document to the 2011 Campus Freedom Index, called *The state of campus free speech in 2011 – A report on 18 Canadian universities*.

Seven of the 18 student unions received a ranking of Good in respect of their actions and practices:

- University of British Columbia
- Simon Fraser University
- University of Alberta
- University of Toronto
- Queen's University
- University of New Brunswick
- Dalhousie University

There are no reported incidents of the Student Unions at these seven universities restricting or censoring speech, denying access to rooms and venues on campus, or engaging in other acts of discrimination against a group on the basis of its opinion, belief, philosophy or expression.

Nine of the 18 student unions received a ranking of Poor in respect of their actions and practices:



#### The University of Calgary Students' Union

- banned the campus Reform Party Club in 1998, reversing its position only when court action was threatened.
- stripped Campus Pro-Life of its official club status in February of 2009, even while admitting that the club had not violated any rule, policy, bylaw or regulation of the Students' Union or of the University of Calgary. The club obtained legal representation, and was eventually reinstated in June of 2010 when a new group of student politicians were elected to the Students' Union positions.
- denied use of the South Courtyard Stage (a prominent, high-traffic area within the Students' Union building) during the 2010-11 academic year to an event called "Echoes of the Holocaust" while making the same space available to all other campus clubs and groups.
- withdrew its approval for the South Courtyard Stage to be used for "Silent No More," an event consisting of women speaking publicly about their personal experience with abortion. The Students' Union promised that the South Courtyard Stage would be available for this event on March 16, 2011, and out-of-province speakers booked their flights for that date. The Students' Union then declared the South Courtyard Stage would not be available on March 16, and allocated this space to another group on that date.

#### The Carleton University Student Association (CUSA)

- decertified Carleton Lifeline in November of 2010, based solely on the pro-life group's beliefs and opinions. CUSA has invited Carleton Lifeline to amend its club constitution to support the pro-choice position on abortion, after which Carleton Lifeline can once again be certified as a campus club.

#### The Lakehead University Student Union

- demanded in 2008 that a campus pro-life club, Lakehead University Life Support, refrain from advocating its stance on abortion, and refrain from approaching any students to share the club's viewpoint, refrain from any display or expression of any kind (except small posters announcing the date, time and venue of club meetings). When Lakehead University Life Support refused these conditions as unreasonable, LUSU stripped the club of its status. In the past three years, the ban has been lifted and reinstated at various times. It remains unclear whether the club will be ratified during the current 2011-2012 academic year.

#### Students' Society of McGill University (SSMU)

- removed official club status from Choose Life in 2009 after it hosted an event called "Echoes of the Holocaust," claiming the group's "hate speech" and use of "questionable statistics from questionable sources" violated the Equity Policy. The SSMU reinstated Choose Life in 2010, but subject to restrictions on expression that are not imposed on any other campus club.

#### The Memorial University of Newfoundland Students' Union (MUNSU)

- removed club status from MUN for Life in 2007 for not adhering to MUNSU's pro-choice position on abortion. The club has not been reinstated.

#### The University of Saskatchewan Students' Union (USSU)



- removed club status from the University of Saskatchewan Students for Life temporarily in the fall of 2009, on the basis of the club's opinions and philosophy, and reinstated the club subject to conditions and restrictions not imposed on any other campus group.

#### The University of Western Ontario University Student Council

- denied equal access to prominent space on campus to Western Lifeline in 2011 when it sought to organize an event called "Silent No More," which features women who speak about their personal experiences with abortion. No explanation has been provided as to how the students' expression would violate the Community Standards Policy, which is claimed as the basis for the denial.
- demanded extra money for security from the organizers of the Ann Coulter speaking engagement, in contrast to the absence of such demands when left-wing speakers came to UWO.
- removed club status from Solidarity for Palestinian Human Rights after this campus club created a mock wall in the USC premises as a representation of the wall dividing Israel from the Palestinian territories. Included in the display was a map of historical Palestine with the word Palestine in Arabic. The symbol was deemed offensive to Jewish and Israeli students and was considered speech that harassed and targeted students. The club was eventually reinstated.

#### The University of Victoria Students' Society (UVSS)

- banned the Canadian Forces from the UVic Career Fair in the fall of 2007, in accordance with the UVSS policy against the "militarization" of Canadian society.
- banned the sale of *Macleans* magazine within the Student Union Building, because the magazine had failed to apologize for an article entitled "Too Asian."
- denied funding to a pro-life club, Youth Protecting Youth (YPY) in 2008 and 2009 for contravening the UVSS Policy on Gender, and for hosting a debate on abortion on campus.
- removed club status from Youth Protecting Youth altogether in 2010, and reinstated the club only after the club sued the UVSS and won an out-of-court settlement.
- voted to "censure" Youth Protecting Youth in the fall of 2010, in response to a harassment complaint filed against the club for having held a pro-life event on campus, an event which no person was compelled to attend.

#### The Wilfrid Laurier University Students' Union (WLUSU)

- refused to grant official club status to the "Laurier Free-thought Alliance," whose mission was "to promote a fulfilling life without religion and superstition." The student union denied status "due to the need to respect and tolerate the views of others," but partially reversed its position by eventually allowing the group to be recognized on condition that it change the wording of its mission statement

Student unions at the University of Manitoba and the University of Ottawa received a ranking of Mediocre in respect of their actions and practices.

