

Free Expression on Campus

Know Your Rights

**JUSTICE CENTRE FOR
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The law is on your side

Your club's freedom of expression rights have a strong legal basis:

1| Protection under Contract Law

In *Young v. Bella*, the Supreme Court of Canada ruled that there is a contract between a tuition-paying student and her/his university. Freedom of expression is a term of that contract, as explained by the university's statements about academic freedom, its mission and vision, and other written policies. The university is breaching this contract when it tries to limit, restrict, or censor unpopular speech on campus. The same legally binding contract exists between a student union and the student who pays dues to that student union.

2| Protection under Administrative Law

Your club has the right to be treated the same as every other club on campus, regardless of its beliefs, opinions, or philosophy.

Decision-makers at a university or in a student union must make decisions based on proper considerations, without discrimination on the basis of an irrelevant criterion. In the university context, the popularity of one's beliefs or opinions is not relevant, and does not justify discrimination. Student union leaders and university officials cannot make their decisions on arbitrary considerations, such as their own personal whim, feelings or opinion.

In *Roncarelli v. Duplessis*, the Supreme Court of Canada held that every public decision-maker must exercise his/her authority in good faith, not based on personal likes and dislikes. Basically, if a decision-maker treats one group differently, without a good reason con-

nected to the purpose of the legislation, he or she is not operating in good faith. A decision not based on good faith breaches administrative law.

University or student union authorities do not have the authority to discriminate against you because they don't like your beliefs, opinion or philosophy.

3| Protection under Human Rights Codes

In some provinces, political belief is protected under the human rights code. Check the human rights code in your province, and you may find that it protects your right to express your opinions on campus without discrimination based on your beliefs and opinions.

4| Protection under the *Charter*

Freedom of expression is protected under the *Charter*, but it remains unclear whether the *Charter* applies to university campuses. In 1990, the Supreme Court of Canada ruled in *McKinney v. University of Guelph* that the *Charter* does not apply to the contract between the university and its employees.

In *Pridgen v. University of Calgary*, the Alberta Court of Queen's Bench ruled that the University of Calgary was subject to the *Charter* when disciplining students. This decision was upheld by the Alberta Court of Appeal. In *R. v. Whatcott*, the Alberta Court of Queen's Bench ruled that members of the public, including non-students, have a right to distribute literature on campus.

In opposition to these Alberta decisions, the Ontario Court of Appeal has ruled that Carleton University was not subject to the *Charter* in its dealings with students' free expression rights on

campus.

Outside of Alberta and Ontario, it is uncertain if the *Charter* will protect students' right to free-dom of expression on university campuses. However, your free expression rights are protected in every province under the law of contract and under administrative law.

What is Censorship?

Reasonable rules and regulations that are applied fairly and equally to all students and clubs (e.g. a requirement to book space on campus for an event) do not constitute censorship.

Censorship occurs when a student union or university restricts or limits your right to communicate your beliefs and opinions with other people.

Examples include: being denied your right to form a campus club; being denied equal access to booking rooms or space on campus for events; being charged security fees that are not imposed on other clubs holding similar events; or being required to limit the visibility of your display.

When you Encounter Discrimination

1) Go up the authority chain to find out if other clubs receive the right you are being denied. Ask the university or student union representative to give you examples of other clubs who have been treated similarly. If the representative is unable at the outset to give you an example of other clubs which have been treated similarly, assume that there is no club that is being treated in the same manner. *No* answer is often *the* answer.

- 2) Do your own due diligence. Document any other instances where clubs are allowed the right you are being denied. If you find out, however, that all other clubs are treated similarly, then you do not have a basis for a complaint of discrimination.
- 3) Don't negotiate on essentials. If you know that you are suffering discrimination, do not re-sign yourself to it.
- 4) Prepare your club for the possibility of discrimination before it occurs. Demands from universities and student unions are often last-minute. Have a meeting with club members in advance to discuss:
 - a) The discrimination your club may encounter;
 - b) Your legal rights;
 - c) The stand you intend to take;
 - d) The temptations to give in that you may encounter; and
 - e) The practical steps you are prepared to take.
- 5) If your campus club is affiliated with a national organization or other off-campus group, contact that group first, to obtain information, advice, and support.
- 6) Contact a lawyer if you reach a fork in the road. The JCCF may be able to offer advice and, if need be, *pro bono* legal representation for your club.

The JCCF will ask for specific and detailed information on the incident. You will need support from club members to quickly gather this documentation. Prior to the JCCF agreeing to provide representation for your club on your behalf, you will be asked to make a commitment to stand up for your rights.

Contact the JCCF at info@jccf.ca

The Following Positions Will Undermine your Success:

“Maybe if we yield on this point, it will pave the way for a better relationship in the future”. Don’t be naïve. If you give up ground now, you will have to work even harder in the future to regain it. Your decision will set the tone for the future of your club, and for other clubs in the nation. If one university or student union succeeds in illegally restricting your club, this will provide a precedent for other authorities to do the same to other clubs.

“We are used to being discriminated against- it is par for the course, so maybe we just need to give in”. Discrimination toward campus clubs with unpopular messages may be common at present, but you are only making it worse for your club and others if you submit to it. Canada’s public universities and student unions have a legal obligation to treat all viewpoints and opinions equally; do not allow them to deny their legal obligation.

“If you make a fuss, it will be worse for you in future”. It might get worse before it gets better. Don’t fall for the idea that a lack of conflict at present indicates success.

“We don’t want to lose the present chance we have to share the message”. You may, like any-one who has suffered discrimination, have to go through some trouble at present to pave the way for the future. Be forward-thinking.

The university or student union may say “we just want to work together” to disguise the fact that it is discriminating against your club by restricting or censoring your expression on campus. Working in harmony is a laudable goal, but don’t make it the *only* goal. It is not worth submitting to discrimination or censorship in order to avoid making waves.