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Free speech on campus will prevail despite *Charter* ruling

The *Charter* does not protect university students' free expression rights on campus, according to the B.C. Court of Appeal ruling in *B.C. Civil Liberties Association and Cam Côté v. University of Victoria*.

The case arose in 2013, when UVic withdrew its approval for a peaceful campus event requested by a campus pro-life club, Youth Protecting Youth (YPY). UVic took its instructions from the University of Victoria Students' Society, a student union with a long track record of active hostility toward YPY. At various times in the past decade, the student union has denied club status to YPY; withheld club funding (given to all other campus clubs); prevented YPY from advertising its events; and had filed spurious "harassment" complaints against YPY, based solely on disagreement with YPY's beliefs and expression. The student union has not alleged that YPY members engage in disrespectful or offensive behaviour — the pro-life message itself constitutes "harassment". The student union is obviously not familiar with — or chooses to ignore — court decisions which unequivocally describe abortion as a subject which can be, and ought to be, debated.

YPY proceeded to hold its event as previously approved by UVic, by holding signs, handing out pamphlets, and engaging other students in discussion. UVic responded by imposing a one-year ban on YPY, which UVic lifted only after YPY commenced a court action.

In their court action against UVic, the

B.C. Civil Liberties Association and YPY president Cam Côté asked what a university's mission and purpose are. Should UVic be a forum for the expression and debate of ideas, including controversial and unpopular ones? Or should UVic determine the "truth" on behalf of everyone, and then coddle students' minds by ensuring they are "safe" from seeing or hearing challenges to established opinion and orthodoxy?

Walmart has no obligation to facilitate free expression on its premises. Stores rent space from malls to conduct business and earn profits, not to provide a forum for discussion and debate. Mosques, temples and churches are likewise private entities, which do not need to provide space for opposing views. The same goes for thousands of social, cultural, ethnic, political and charitable groups. Private associations can advocate freely for their own beliefs, and also require agreement with those beliefs as a condition for membership.

But as a public body exercising a public function, UVic is no Walmart. Canada's public universities exercise a monopoly power over granting degrees. A student who is expelled from a university for violating the university's speech code will find it very difficult, if not impossible, to become a teacher, nurse, doctor, accountant or engineer. As a taxpayer-funded institution created by B.C.'s University Act to fulfil a public responsibility, UVic is legally obligated to honour free expression on campus as a fundamental Canadian value.

Freedom of speech was recognized by the Supreme Court of Canada as a foundational value of our democracy long before the *Charter* came into force. In 1957, the Court described the free exchange of ideas as "little less vital to man's mind and spirit than breathing is to his physical existence." The Supreme Court has noted, quoting John Stuart Mill: "Ages are no more infallible than individuals; every age having held many opinions which subsequent ages have deemed not only false but absurd; and ... many opinions now general will be rejected by future ages, as it is that many, once general, are rejected by the present."

Universities should be educating robust, thinking minds. The law should not allow universities to become a lesser and distorted version of themselves.

The B.C. Court of Appeal made it clear that the *Charter* does not protect the rights of students to express their opinions on campus at UVic and B.C.'s other public universities. However, the door is wide open for students to advance strong non-*Charter* arguments in defence of their campus free speech rights. The current climate on campus being what it is, it likely won't be long before students get that chance.

Calgary lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms (JCCF.ca), which was an intervenor in the B.C. Court of Appeal in B.C. Civil Liberties Association and Cam Côté v. University of Victoria.