



Free Speech on Campus: The Pursuit of Truth as the Purpose of Education

Submission to the Wilfrid Laurier University
Task Force on Freedom of Expression

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Executive Summary

There should be no greater celebration of, and protection for, freedom of expression than at Canada's institutions of higher learning. Freedom of expression is the lifeblood of Canada's liberal democracy, and has been vigorously upheld by the courts of this nation as a fundamental and indispensable component of a free society. But despite the fact that today's students must be prepared to face a diverse range of opinions and expression in their future careers, and in public and private life, Canadian universities are increasingly an environment in which students are sheltered and protected from ideas and opinions which they do not agree with.

The creation of an artificial scholarly environment that is also unreflective of life in the real world is a profound failure of Canadian universities. Sheltering students from diverse ideas sets students up for failure, not success. The very mission and purpose of higher education is the pursuit of truth and knowledge in preparation for a valuable, meaningful and productive life in society, something that is only made possible by the freedom to propose new ideas, and the ability to critique and debate existing ideas without fear of reprisal. Canadian universities must stop paying mere lip service to freedom of expression. They must actually uphold it and defend it as part of the process of education.

This submission is intended to assist the Wilfrid Laurier University Task Force on Freedom of Expression in developing a thorough, principled statement on freedom of expression, and will focus on the question of where to draw the line to ensure the unfettered right to dialogue is protected.

The threshold for prohibited speech must be high, founded on a recognition of liberty and its good. Neither Canada's legal heritage nor its educational heritage confers a right on individuals to be free from offense or hurt feelings caused by another's expression. Universities where some topics are "not up for debate" are not able to pursue truth or provide a robust education. Universities have an obligation as educators to expose students to diverse expression that challenges their beliefs and opinions, even if those beliefs and opinions happen to relate to, or touch upon, what students consider to be their identity. The advancement of knowledge, the pursuit of truth, and freedom of expression necessarily include the freedom to study, disseminate, and advocate for diverse ideas, opinions and beliefs. Universities should not be an echo chamber.

What or where should the line be, that separates permitted speech from prohibited speech? A principled, objective standard must be adopted. The Justice Centre submits that the line should be drawn at hate speech as defined by the *Criminal Code of Canada*. This should not be confused with what a person might subjectively perceive as “hateful” because that person feels hurt or offended by a particular opinion, or because that person disagrees with a certain opinion. Hate speech attacks people rather than ideas. If the line is drawn at criminal hate speech, as opposed to any other type of speech that may subjectively be disliked by someone, the academic community will be sufficiently free to pursue truth and advance knowledge. The clarity provided by an objective standard of what constitutes prohibited speech will allow individuals to fully express themselves, and will preserve the mission and purpose of the university.

Introduction

Freedom of expression is the foundation of liberal democracy. The same holds true for universities, where freedom of inquiry, freedom of thought, and the freedom to criticize represent the cornerstone upon which western institutions of higher education have been built. The very mission and purpose of higher education is the pursuit of truth and knowledge in preparation for a life of usefulness in society, something that is only made possible by the freedom to propose new ideas and to critique and debate existing ideas without fear of reprisal.

It is easy to forget that in most of the world, and for most of human history, authoritarian and totalitarian regimes have prevented freedom of expression, and punished its exercise with incarceration, loss of professional standing, loss of property, violence and death. Out of terrible oppression has come the recognition of rights that are foundational, or inalienable. The recognition of such rights has been the genesis of modern progress, the rule of law and constitutionalism. Courts in Canada have repeatedly recognized the central importance of freedom of expression to human flourishing and the pursuit of truth. As the Supreme Court of Canada has stated, freedom of expression “is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society.”¹ “Freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the

¹ *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 19.

essence of our life.”² Further, “it is difficult to imagine a more important guarantee of freedom to a democratic society than that of freedom of expression.”³

This submission is intended to assist the Wilfrid Laurier University Task Force on Freedom of Expression in developing a thorough, principled statement on freedom of expression that aligns with the principles of academic freedom, freedom of speech, and the mission, vision and values of Wilfrid Laurier University. To that end, this submission will focus on the question of where to draw the line, so that liberty and the exchange of diverse opinions can be protected on campus. Regarding what expression should be permitted and protected on campus, and what expression should not, the Justice Centre submits that Wilfrid Laurier University adopt a statement regarding free expression on campus similar to the Template Resolution in Support of Freedom of Expression attached to this submission as Appendix “A”.

The threshold for prohibited speech must be high, founded on a recognition of liberty and its good. This threshold should be based on objective criteria, and not on subjective or arbitrary limits which aim to silence so-called “offensive”, “hurtful”, “problematic”, “discriminatory” or “non-inclusive” expression. Subjective standards inevitably result in the restriction of lawful and beneficial expression, and the oppression of students by those who have authority. We further submit that freedom of expression and academic freedom necessarily include the freedom to study and disseminate thoughts, opinions, and arguments that the majority considers “wrong”, “unsubstantiated”, or “not credible”. Neither academic freedom nor freedom of expression can flourish and provide their intended benefits in a climate where certain ideas or topics are not subject to debate.

PART I: Where the Line Should Not be Drawn

The University of Chicago Statement on Principles of Free Expression (Chicago Principles) describe what should be the demarcation between permitted and prohibited speech on campus in the following manner:

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may

² *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139, para 79, quoting *Boucher v. The King*, [1951] S.C.R. 265, at p 288.

³ *R. v. Kopyto*, (1987), 24 O.A.C. 81, at paras 194-196.

restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. ... But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University's commitment to a completely free and open discussion of ideas. In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed.⁴

Regarding the scope of the freedom of expression, the Ontario Court of Appeal has stated:

The exchange of ideas on important issues is often framed in colourful and vitriolic language. So long as comments made on matters of public interest are neither obscene nor contrary to the laws of criminal libel, **citizens of a democratic state should not have to worry unduly about the framing of their expression of ideas.** ... The vital importance of freedom of expression cannot be over-emphasized.”⁵ [Emphasis added]

1. “Offensive” and “Hurtful” Expression

While civility is a noble goal, if truth is to flourish then freedom of expression must supersede an artificial social politeness which prohibits disagreement. The pursuit of truth through honest discussions and frank debate is an activity that necessarily sometimes involves sharp disagreement, which in turn may cause offense and other “hurt” feelings. Students who have not encountered such debate and the free exchange of ideas are ill-prepared for reality. The real world is not a utopia where everyone uniformly thinks along the same lines. Therefore, the creation of an artificial scholarly environment that is entirely unreflective of life in the real world is a profound failure of Canadian universities. Sheltering students from diverse ideas sets students up for failure, not success. Such “education” stifles critical thinking and prevents the development of the ability to be independent and self-reliant, and is therefore worse than useless. The Supreme Court has recognized the integral role that freedom of expression plays in Canadian society, stating that

⁴ <https://freeexpression.uchicago.edu/sites/freeexpression.uchicago.edu/files/FOECommitteeReport.pdf>.

⁵ *R. v. Kopyto*, [1987] O.J. No. 1052, at paras 195-196.

“[t]he clash of critical discussion on political, social and religious subjects has too deeply become the stuff of daily experience to suggest that mere ill-will as a product of controversy can strike down the latter with illegality.”⁶ The Court has further stated that freedom of expression:

[M]akes possible our liberty, our creativity and our democracy. It does this by protecting not only "good" and popular expression, but also unpopular or even offensive expression. The right to freedom of expression rests on the conviction that the best route to truth, individual flourishing and peaceful coexistence in a heterogeneous society in which people hold divergent and conflicting beliefs lies in the free flow of ideas and images. If we do not like an idea or an image, we are free to argue against it or simply turn away.”⁷

Neither Canada’s legal heritage nor its educational heritage confers a right on individuals to be free from offense or hurt feelings caused by another’s expression. In other words, the right to express oneself peacefully necessarily constitutes a right to offend. As has been aptly noted in the Chicago Principles:

[I]t is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.⁸

2. “Phobias” and “isms”

Labels including the suffixes of -phobia, -phobic and -ism have proliferated in recent years. Added to the usual “racism” and “homophobia” are the undefined phobias of “Islamophobia” “transphobia”, and “biphobia”, and the isms of “ageism”, “ableism”, and “heterosexism”.⁹ The use of these terms has been increasingly inconsistent, to the point where these terms have little meaning

⁶ *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139, at para 79, quoting *Boucher v. The King*, [1951] S.C.R. 265, at p 288.

⁷ *R. v. Sharpe*, 2001 SCC 2, at para 21.

⁸ <https://freeexpression.uchicago.edu/sites/freeexpression.uchicago.edu/files/FOECommitteeReport.pdf>.

⁹ See section 3.02 of the Wilfrid Laurier University *Gendered and Sexual Violence Policy and Procedures*, where terms such as “biphobia, transphobia, homophobia and heterosexism” are not defined and yet are categorized as examples of “gendered violence”: <https://www.wlu.ca/about/governance/assets/resources/12.4-gendered-and-sexual-violence-policy-and-procedures.html>.

in an academic or intellectual sense, or at least no clear meaning that is commonly understood by all. Rather, these terms are regularly used to prevent discourse that someone finds disagreeable. These terms are targeted *ad hominem*s, used to attack or label the individual or group responsible for the expression. They are typically employed as a means to silence ideas and opinions and avoid any attempt to engage or refute the opposed ideas and opinions. For example, when women (or men) express opposition to “transgendered” physical males having access to women’s locker rooms and changing facilities, those who disagree with this view will denounce its adherents as “transphobic,” rather than dialogue as to the validity or invalidity of such concerns. Similarly, when people criticize Islam, or certain elements or components of Islam or of Islamic cultures, they are denounced as “Islamophobic,” and this denunciation then forms the basis for not responding to actual criticism or arguments.

Individuals should be free to label speech they disagree with as anything they want. Free speech at universities (and elsewhere) includes the freedom to label another’s speech as (for example) “homophobic” or “sexist” or “racist.” However, such labels must not be used by universities to censor expression. By definition, a phobia is an *irrational* fear, without a basis in reality. The rejection of certain ideas, or the reasoned criticism of arguments, even if expressed in a manner that some listeners consider offensive, is not irrational. Nor can disagreement with ideas be equated with expressing hatred towards a person or group. It is not, for example, “transphobic” to critique the gender theories that underlie the transgender movement, or “Islamophobic” to critique Islamic beliefs and practices, or “homophobic” to critique the claim that sexual orientation is immutable, any more than it is “Christophobic” to criticize Christianity or “capitalophobic” to criticize capitalism. Beliefs, ideologies, practices, and theories are criticized daily on Canadian campuses, as they should be. Such criticism should not be arbitrarily contained: no idea or system of thought should be beyond criticism or “not up for debate”.

Similarly, labels such as “bigot” or “racist” have been employed in an attempt to discredit and censor both ideas and individuals. Again, freedom of expression entitles individuals to engage in *ad hominem* attacks (thereby exposing their own lack of intellectual rigour), but such labelling does not justify censorship on the part of university administrators or professors. The point is not

whether one person is a “white supremacist,”¹⁰ or whether another is a “racist.” Rather, the point is that even if an individual is labeled in such a way, such labels must not be used by universities to censor debate and ideas. The marketplace of ideas exists as a prerequisite to the pursuit of knowledge and the advancement of truth. There can be no true progress, whether social or technological, where dialogue is suppressed and authoritarian requirements that everyone agree in thought and speech are the norm. There will always be persons who despise and hate what other members of the university community think. But when those individuals seek to silence the people they disagree with, it is a grave failure and abuse of authority for the university itself to follow suit, instead of facilitating and protecting the free exchange of ideas.

3. “Human Rights”, “Discrimination”, and “Harassment”

More than any other, the terms “human rights” and “discrimination” have been used to justify censorship of unpopular expression. Although “discrimination” has a distinct legal meaning, it has also taken on a divergent cultural meaning, and found its way into many university policies where its interpretation is overly broad, and its application is often subjective. A proper understating of “discrimination” and “harassment” acknowledges that only individuals are capable of experiencing these affects, not ideas or beliefs.

Freedom of expression must include the right to “discriminate” against ideas, beliefs, ideologies, theories and arguments. Properly understood, it is not discriminatory or harassing to, for example, harshly criticize Christianity as a belief system, even if that criticism is expressed to a Christian. It may be hurtful or uncomfortable for a Christian to hear such expression, because they base part of their identity on their belief system, but such negative emotional experiences do not justify censorship. Genuine harassment goes far beyond mere criticism of someone’s ideas, or even insulting someone for the ideas they adhere to. As noted above, *ad hominem* contributes little, but it is distinct from harassment, which is a pattern of conduct that seeks to bully, disturb or intimidate the targeted individual or group. Harassment can and should be prohibited by universities, if it is properly defined as inappropriate behaviour, and not as the expression of “offensive” or “inappropriate” ideas. This narrow prohibition does not interfere with the freedom to express ideas about scientific, literary, political, moral, religious or philosophical matters.

¹⁰ https://www.vice.com/en_ca/article/nzd4px/black-lives-matter-toronto-called-justin-trudeau-a-white-supremacist-terrorist.

The inherent problem with relying on discrimination or harassment as a threshold for determining which expression should be prohibited is exhibited in the current debate regarding transgender rights. This is a debate which has been largely suppressed and stifled, not only through *ad hominem* attacks, but also through formal human rights complaints that have been filed purely on the basis of the peaceful expression of opinion. Despite being illogical, it has become common to label any criticism of gender theories as an attempt to “erase” or “deny” the “existence” of transgender individuals. Hence people claim that such “discriminatory” expression should be censored. The fallacy of thinking that criticism of an idea, namely gender theory, amounts to a “denial” of an identity associated with that idea, has caused “inclusion” to mean the exclusion of unpopular ideas. Likewise, “discrimination” should not be used to limit free expression based on a conflation of an individual’s (or group’s) beliefs and their identity. Universities that support some topics being “not up for debate” are not able to pursue truth or provide a robust education.

“Human rights” have also been used to further censorship on university campuses for much the same reason. Again, “human rights” has a distinct legal meaning, which includes qualifications and exceptions. But in campus culture, the term has become expansive and subjective. For example, it is not, nor should it be, a “human right” not to feel uncomfortable. Universities have no legal or moral obligation to avoid exposing students to expression that challenges their most deeply held beliefs and opinions, even if those beliefs and opinions happen to relate to, or touch upon, what students consider to be their identity.

4. “Diversity, “Inclusion” and “Social Justice”

Increasingly, universities have made so-called “social justice” a higher priority than providing a robust education. In contrast to the pursuit of truth, the idea of “social justice” often seeks to impose particular ideological constraints on the ability to study, teach, and debate. These constraints are based on vague notions of “diversity” and “inclusion”. Yet, the “social justice” movement has rejected the most important diversity of all: the diversity of thought. As the Supreme Court has stated, “in a free, pluralistic and democratic society we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual.”¹¹ By rejecting diversity of thought, the “social justice” cause seeks to suppress all dissent and do so by whatever means necessary. In extreme cases, these means have included academic and non-academic

¹¹ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at para 42.

discipline by university administrators and professors and threats of violence and property damage at the hands of students. As psychologist Jonathan Haidt has observed, truth and “social justice” are inherently opposed and cannot co-exist. As Haidt states, “universities that try to honor both will face increasing incoherence and internal conflict.”¹²

5. “Safety”, “Violence” and “Microaggressions”

In a disturbing trend on Canadian campuses, the word “safety” has been employed to further censorship. Students increasingly label expression they disagree with as “violent” and claim they are “unsafe” when exposed to ideas they find offensive. In campus culture, “safety” has come to mean not having one’s ideas and beliefs challenged. Hence the proliferation of so-called “safe spaces” where dissent and diversity of thought are prohibited, and compelled ideological conformity to “social justice” ideals is the norm.

Of all institutions, universities should be the first to recognize that words are not violence, but rather expressions of thought. Hearing strong criticism of one’s deeply held beliefs is not physically harmful or in any way “unsafe,” however emotionally uncomfortable it may be. Emotional discomfort is inevitable at a university where freedom of expression flourishes. Instead of being enabled to further censorship and shield themselves from disagreeable ideas, students should be taught that being exposed to unpopular, offensive, and uncomfortable ideas is a necessary part of not only a good education, but of the pursuit of truth and of living in a free society.

The concept of offensive words and ideas causing “mental harm” has been debunked by Emory University professor of psychology, Scott Lilienfeld. Reviewing all the scientific literature on “microaggressions” (innocuous actions, comments or even facts that are perceived to be “discriminatory” or an identity-based insult), Lilienfeld concludes that “there is little to no empirical evidence” to support the claim that being exposed to offensive words and ideas causes mental harm. Lilienfeld explains that with most claims of mental harm by “microaggression”, the harm exists subjectively in the mind of the would-be victim but not in objective reality. Specifically, “there is no evidence that microaggressions are correlated with indicators of either prejudice or aggression” in those expressing the offensive idea. Furthermore, his findings indicate

¹² <https://heterodoxacademy.org/2016/10/21/one-telos-truth-or-social-justice/>.

the personality of would-be victims, and not the action, comment, or fact presented to them, is the key variable as to whether a claim to mental harm will be made. He states people with heightened “negative emotionality” (the kind of personality trait that sometimes develops in a student from hearing repetitive university lectures declaring their status as “oppressed”) are more likely to report being somehow harmed by “microaggressions” than others, even though experiencing the same stimuli or situation.¹³ If Canadian universities are to fulfil their mission to teach students how to think, then universities must repudiate the notion that feelings of discomfort that result from exposure to different or offensive ideas are somehow “aggressive”, or constitute a threat to one’s “safety.”

Ironically, as the proposition that “words are violence” has taken hold on Canadian campuses, the use of actual physical force and threats of violence to silence unpopular ideas has increased. Emboldened by the inaction and wilful blindness of university administrations, students have used physical obstruction, noise and vandalism to property to prevent the expression of ideas they disagree with.¹⁴ Some students and some university administrations have even claimed that physically preventing other people from speaking is itself a legitimate form of expression. The perpetrators of bad behaviour justify their conduct on the basis of their “emotions” and “feelings”. The more that this claim is accepted, the more frequent will be the (now institutionally-legitimized¹⁵) use of force to silence people that one disagrees with. Further, as the Supreme court has stated, despite the broad scope of freedom of expression, “violence as a form of expression receives no such protection”,¹⁶ and freedom of expression “would not protect the destruction of property”.¹⁷ Ensuring liberty and academic freedom on campus requires not merely permitting the widest possible range of expression, but also protecting that expression from censorship, especially when such censorship has its roots in fomented anarchy or institutional bias.

¹³ See Scott Lilienfeld, “Microaggressions: Strong Claims, Inadequate Evidence” (2017) 12:1 Perspectives on Psychological Science 138.

¹⁴ <https://www.jccf.ca/our-cases/#uvic>; <https://www.jccf.ca/our-cases/#ualberta>; <http://www.cbc.ca/news/canada/hamilton/mcmaster-debate-with-controversial-professor-jordan-peterson-disrupted-by-activists-1.4031843>. Numerous example of protesters using physical obstruction and interruption to shut down debate on campus can be found at www.CampusFreedomIndex.ca.

¹⁵ The real world does not accept “but I couldn’t control my feelings” as a defense to criminal activity, and it is a disservice to students to teach them that they are not expected to control themselves.

¹⁶ *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 at para 43.

¹⁷ *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 27.

6. “Wrong” Expression

As John Stuart Mill famously wrote, “to refuse a hearing to an opinion, because they are sure that it is false, is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility.”¹⁸ The advancement of knowledge, the pursuit of truth, and freedom of expression necessarily include the freedom to study, disseminate, and advocate for ideas, opinions and beliefs that the majority consider to be wrong. History is replete with examples of “wrong” ideas that were suppressed, only to be proven correct in time. In 1633, Galileo was persecuted by the Church in relation to his belief that the earth moved around the sun. For most of human history, in virtually all civilizations on all continents, slavery in various forms was accepted as normal, natural and legitimate. Women were once refused the right to vote and were considered not to be “persons”. Each of these ideas was cherished by the majority, who sought to suppress all dissent. Each of these ideas was to fall casualty to human progress that only occurred as the result of social and scientific debate.

Labelling a theory, a set of ideas, or an argument as “wrong” should never be used by universities (or any other institution in our free and democratic society) to justify censorship. It is not difficult to see why. Again, as the Supreme Court has observed:

“At the core of freedom of expression lies the need to ensure that truth and the common good are attained, whether in scientific and artistic endeavours or in the process of determining the best course to take in our political affairs. Since truth and the ideal form of political and social organization can rarely, if at all, be identified with absolute certainty, it is difficult to prohibit expression without impeding the free exchange of potentially valuable information.”¹⁹

If an idea is considered by the majority to be “unsubstantiated by peer review” or “academically not credible”, then those who disagree are free to refute or ignore such an idea. To refute or to ignore an idea is entirely different from the silencing of “wrong” ideas and opinions. Censoring “wrong” ideas, or allowing an angry mob to do so, benefits no one because it hinders the pursuit of truth, deprives students of being exposed to the widest possible diversity of ideas, and robs students of the opportunity to learn how to think, so as to become capable of refuting bad ideas.

¹⁸ John Stuart Mill, "On Liberty" in *On Liberty and Considerations on Representative Government*, Oxford (1946), at p 16.

¹⁹ *R. v. Keegstra*, [1990] 3 S.C.R. 697, at para 92.

PART II: Where Should the Line Be Drawn?

What or where should the line be at Canadian universities, that separates permitted speech from prohibited speech?

If ever there was any doubt, recent events have confirmed that the standard must not be a subjective one, or one based on vague and ill-defined buzzwords that have been used repeatedly to silence unfavourable opinions on Canadian campuses. A principled standard must be adopted. The Justice Centre submits that the line should be drawn at hate speech as defined by the *Criminal Code of Canada*. The relevant section states:

319 (2) Every one who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Defences

(3) No person shall be convicted of an offence under subsection (2)

- (a) if he establishes that the statements communicated were true;
- (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

Criminal hate speech should not be confused with what a person might subjectively perceive as “hateful” because the person feels offended by a particular opinion, or the person disagrees with an idea or belief. Speech is not “hateful” merely because the majority labels it as such.

The authors of this paper, who are fully aware of numerous incidents of censorship at universities across Canada in the past decade, are not familiar with any case where the speech that was silenced on campus qualified as hate speech under the *Criminal Code*.

According to the Supreme Court of Canada, criminal hate speech actively encourages listeners to regard certain individuals or groups with utter contempt, or to become violent towards such individuals or groups. Criminal hate speech excludes ridicule and satire, which are legitimate forms of expression that humiliate implicated individuals or groups. Criminal hate speech is any expression that “in the view of a reasonable person aware of the context and circumstances, ... exposes or tends to expose any person or class of persons to detestation and vilification.” Practically, such expression would be:

Representations that expose a target group to detestation, and tend to inspire enmity and extreme ill-will against them, which goes beyond mere disdain or dislike. Representations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. **Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.**²⁰ [Emphasis added]

Criminal hate speech attacks people rather than ideas. For example, to say “humanity would be better off if nobody believed in Judaism” is not hate speech, while “Jews are a plague that should be eradicated” is hate speech. As another example, to say “gender is based on biological sex, which is binary and immutable” is not hate speech, and neither is “transgender people suffer from a psychological illness.” But to say “transgender people should all have their heads smashed in” is hate speech. In both examples, the latter statement encourages violence and goes beyond mere insults. The former statements are expressions of ideas and, however offensive, are not criminal hate speech. The following statements, for example, also do not qualify as criminal hate speech:

- “Christianity is based on fantasy and the Bible is full of errors.”
- “Islam is a violent religion and promotes theocracy.”
- “Abortion is murder.”
- “Socialism Kills”
- “Feminism is an unbalanced social theory.”
- “Marriage is between a man and a woman.”
- “God is dead.”
- “The residential school system produced benefits.”

²⁰ *Whatcott v. Saskatchewan Human Rights Tribunal*, 2013 SCC 11, at para 41.

All of these statements would likely be experienced by at least some individuals as “offensive”, “hurtful” and “not-inclusive,” and clear violations of the ideals of “diversity”, “inclusion” and “equality”. Each of these statements would be considered false or “extreme” by at least some people. And yet these statements do not encourage violence; they merely express ideas. A university should expect, and require, that students who are met with ideas with which they disagree master themselves, holding their emotions under the control of intellect and reason. Real education imparts the ability to exchange ideas, not silence and censor and oppress those who one disagrees with. This is so even when an idea may offend or serve to discredit one’s cherished personal views.

If the line is drawn at criminal hate speech, as opposed to any other type of speech, the academic community will be truly free to pursue truth and advance knowledge. The clarity provided by an objective standard of what constitutes prohibited speech will allow individuals to fully express themselves and will preserve the mission and purpose of the university, which is to provide students with a diverse and robust education. A clear standard will allow the university to consistently uphold the rights of all students in accordance with a discernible rule of law.

Conclusion

Freedom of expression ensures “that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”²¹ As an essential precondition of the search for truth, freedom of expression is a means of promoting a “marketplace of ideas” in which competing ideas vie for supremacy. While freedom of expression provides no guarantee that the truth will always prevail, freedom of expression promotes the vigorous and honest search for truth in ways which would be impossible without such freedom. One need only look to societies where free expression has been curtailed to see the adverse effects on the advancement of knowledge and on human creativity. No one has a monopoly on truth, and therefore our system is predicated on the belief that in the marketplace of ideas, the best solutions to public problems should be allowed to rise to the top.

Freedom of expression and academic freedom must include the right to criticize ideas and belief systems in the strongest possible fashion. Today, few people object to the ruthless and aggressive

²¹ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at para 42.

criticism of human slavery, eugenics, and polygamy, because these are almost universally considered to be terrible ideas. This same approach must be applied to the criticism of all other ideas, including fashionable and popular beliefs about gender, sexuality, race, religion, etc. It is only through the freedom to viscerally criticize ideas that bad ideas are exposed, and the pursuit of truth is made possible. Unfair, incorrect and unfounded criticism is beneficial. Unjust criticism causes people to think, and to better understand their existing beliefs. This in turn leads individuals, and society at large, to re-commit to what is true and just. For example, advocacy for the physical or moral superiority of a race or ethnic group forces people to think through and appreciate their commitment to racial equality. This in turn leads to a deeper commitment to upholding ideals.

Canadian universities must stop merely paying lip service to freedom of expression, treating it as an aspiration or ideal that cannot be attained. Freedom of expression is a core component of intellectual inquiry and the basis for academic freedom. There should be no greater celebration of, and protection for, freedom of expression, including the expression of minority viewpoints, than at institutions of higher learning. Permitting the censorship of unpopular ideas and beliefs on campus deprives students of the right to hear diverse expression, which necessarily includes minority opinions and ideas that the majority disapproves of. In order to serve the purpose of preparing students for a life of public service in the real world, public educational institutions ought to be a locus of peaceful, vigorous debate where diversity of thought is cultivated, not regressive enclaves of censorship.

Appendix “A”: Template Resolution in Support of Free Expression

Be it resolved that:

- (1) The University recognizes that within the unique university context, the most crucial of all human rights are freedom of expression and academic freedom. The University affirms that these freedoms are meaningless unless they include the right to raise disturbing questions and provocative challenges to the values embraced by society at large, and even by the University itself. The right to engage in open debate, criticize ideas, express controversial and unpopular ideas, and to challenge society’s core beliefs, is essential for the pursuit of truth, and for preserving a free and democratic society.
- (2) The principle purpose of a University is to prepare students for a life of usefulness and success in the broad and diverse world. It would be a profound institutional failure to create a false environment where students are taught and enabled to echo only their own pleasing sentiments and are not trained to engage different views through critical thinking, respectful dialogue, while under the control of their intellect and reason.
- (3) The University has a duty to actively support this human right to unfettered, critical dissemination, teaching and research, because, apart from the University, there is no other institution or office in our modern liberal democracy which is the custodian of this most precious and vulnerable right of the liberated human spirit.
- (4) The University affirms that the principles of academic freedom, which protect the right of professors to pursue controversial areas of research and to express and disseminate unpopular and even offensive ideas, apply equally to students. All students enjoy the freedom to study, debate, and disseminate ideas, regardless of their popularity.
- (5) The University accepts that the free and open exchange of ideas will generate controversy, lead to academic disputes, and cause discomfort among members of the University, and in the wider community. In such cases, the University will support and protect the free speech rights of all persons, including and especially those who adhere to unpopular beliefs or controversial opinions.
- (6) The University recognizes that it is not the proper role of the university to attempt to shield individuals from ideas and opinions they find controversial, unwanted, or offensive. Concerns about civility and mutual respect must never be used as a justification for silencing debate, however offensive or disagreeable those ideas may be to some.
- (7) The University recognizes that freedom of expression is limited to peaceful means and non-coercive methods. The University expressly rejects the use of violence, physical force, and physical coercion as methods to express one’s views, or as methods to prevent others from expressing their views. Controversial or unpopular ideas should be

- addressed through debate, reason, and argument, and not by silencing one's opponents through blocking, obstructing, disrupting or otherwise suppressing unpopular or controversial speech on campus.
- (8) The University recognizes that the *Criminal Code of Canada* places certain restrictions on freedom of expression. Apart from these restrictions, the peaceful expression of ideas on campus should be supported and encouraged.
 - (9) The right to free expression is complemented by the right to freedom of association, whereby individuals are free to cooperate in groups. All students enjoy the right to form and join the campus club (or clubs) of their own choosing, to hold and advertise meetings, to invite speakers on campus, to sponsor debates, to engage in peaceful assemblies and demonstrations, and to have equal access to University facilities, spaces and resources. No student, and no campus club, shall be discriminated against on the basis of belief, opinion, or viewpoint.
 - (10) The University will interpret and apply its founding documents, rules, by-laws, regulations, policies and procedures in accordance with these principles.