

# Empowering Free Inquiry

## *A Proposal for An Act to Protect Free Expression at Alberta's Public Colleges and Universities*

Submitted to:

The Legislative Assembly of Alberta

By the Justice Centre for Constitutional Freedoms

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## Executive Summary

Universities are unique institutions. Their pursuit of knowledge and truth – the central purpose of universities – has been a cornerstone supporting and strengthening the liberty that undergirds our democracy political culture and key social and political institutions. Without this committed pursuit of truth, the preservation of the free society would be undermined, and so would be fundamental notions of justice, fairness and the rule of law.

Yet, Canadian public universities are increasingly an environment in which students are sheltered and protected from ideas and opinions with which they disagree. Almost weekly, we hear reports of censorship, the curtailing of divergent opinions, and even intimidation of faculty and students. Free inquiry, free expression, and events on campus are often disrupted, interrupted, and even physically obstructed, resulting in the shutting down of debate, discussion and events.

The very mission and purpose of higher education --the pursuit of truth and knowledge in preparation for a valuable, meaningful and productive life in society—seem under threat. Without the freedom to propose and hear new ideas, and the ability to criticize and debate ideas without fear of reprisal, universities fail.

Governments have a responsibility to maintain universities as bastions of free inquiry and the relentless pursuit of knowledge, including that which may run counter to the prevailing opinions of the day. Given that universities are generously supported by public funds, governments also have a duty to protect and promote, for its own sake and that of the free society, intellectual inquiry, free expression and open debate. As custodians of the public good, governments owe it to the public to maintain the centrality of the mandate for universities as robust centers of free inquiry, free expression and free articulation of opinion.

This draft legislation, “*An Act to Protect Free Expression at Alberta’s Public Colleges and Universities*,” proposes a model by which the Government of Alberta would protect the paramount value of free expression in the context of academic life, at all of Alberta’s public post-secondary institutions, by ensuring that public spaces on campus remain open to events and activities, without disruption, censorship or intimidation on the part of student unions, university administrations, or disruptive individuals or mobs, all in accordance with the fundamental freedoms enshrined in the *Canadian Charter of Rights and Freedoms*.

The *Charter* protects the right of all citizens to speak, as well as the right of people to hear, listen and consider diverse views. Censorship, whether effectuated by a formal university authority, or by unruly individuals or disruptive mobs, violates the rights of both speakers and listeners. The *Charter* also protects the freedoms of association and peaceful assembly, which are relevant to student clubs and campus events.

This proposed legislation would grant authority to the Minister of Advanced Education of Alberta to investigate complaints against universities, their faculty and administrators for undermining or failing to protect free expression, to form independent councils to investigate and weigh evidence and accusations pertaining to complaints. These independent councils shall

report to the Minister, who will also have the authority to levy fines from violating colleges and universities for up to \$50,000 for a first offense.

Ontario has already moved toward protecting freedom of expression on campus, by creating government policies that require universities to protect freedom of expression and assembly on campus, including a process of remediation and consequences for contraventions. This draft legislation urges Alberta legislators to provide substantive protection for the fundamental freedoms that make it possible for universities to effectively carry out their mission and provide students with the robust and rigorous education that they need and deserve.

The Justice Centre invites all legislators of all parties to consider adopting this legislation, making of Alberta the leader among all jurisdictions in Canada in advancing higher education by protecting free expression. In so doing, Alberta could simultaneously attract the brightest of young scholars and experienced world researchers, signalling that this is the jurisdiction in which the full amplitude of liberty will be given to pursue knowledge and research.

## *An Act to Protect Free Expression at Alberta's Public Colleges and Universities*

WHEREAS there should be no greater celebration of freedom of expression than at Alberta's public colleges and universities, and whereas 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;

WHEREAS the *Canadian Charter of Rights and Freedoms* protects the freedoms of conscience and religion, freedom of thought, belief, opinion, and expression, freedom of peaceful assembly, and the freedom of association for everyone in Canada;

WHEREAS 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, and whereas freedom of thought and speech and disagreement in ideas and beliefs, on every conceivable subject, is the essence of a free society;

WHEREAS the Legislative Assembly of Alberta has determined the exercise of the freedoms of conscience, religion, thought, belief, opinion, expression, peaceful assembly, and association to be critical components of the education experience for students, and requires that each public college and university in this Province ensure free, robust, and uninhibited discourse and debate by students and others on campus;

WHEREAS the Legislative Assembly of Alberta has determined that public colleges and universities in this Province are failing to adequately protect freedom of expression, and are contributing to the suppression of diverse opinions on campus;

WHEREAS freedom of expression does not include the right to disrupt, obstruct, interrupt or interfere with the right of other people to express their opinions;

WHEREAS the Legislative Assembly of Alberta has determined that public colleges and universities in this Province are also responsible for upholding the rule of law and free expression on campus, and must not abdicate that responsibility by imposing the costs of providing adequate security on students who seek to exercise their legal rights to express their opinions in a peaceful manner, through events, debates, displays or otherwise;

WHEREAS the Legislative Assembly of Alberta has determined that a substantial amount of taxpayer dollars is appropriated to public colleges and universities each year and as such, the Legislative Assembly of Alberta must ensure that all public colleges and universities uphold freedom of expression, in furtherance of the mission and purpose of colleges and universities.

### **Definitions**

1. In this Act,

“College or university” means every college of applied arts and technology and every university in the Province of Alberta that receives regular and ongoing operating funds from the Government of Alberta for the purposes of post-secondary education.

“Common areas of campus” means the generally accessible areas of campus where members of the university community and the public are commonly allowed, such as, but not limited to, grassy areas, treed areas, quadrangles, walkways, hallways, lobbies, cafeterias, lounges or other similar common areas. “Common areas of campus” does not include areas where access is typically restricted for regular university use, such as offices, libraries, laboratories, gymnasiums, dormitories, study rooms and classrooms when in use for the teaching of scheduled courses.

“Disruptive activities” include, but are not limited to, disruption, interruption, obstruction, blockading, shouting, theft, vandalism, violence, threats, the activation of a fire alarm in the absence of fire, the production or creation of loud or disruptive noise, and all other forms of interference that diminish the ability of students, student organizations and faculty members to exercise their legal rights to assemble, and to express and listen to opinions and ideas. For greater clarity, peaceful protest and peaceful counter-protest are not “disruptive activities” provided that they do not prevent or impede others from exercising their legal rights to associate, speak, hear and listen.

“Freedom of expression” means the freedom to express oneself through any lawful verbal, pictorial or written means by which individuals may communicate ideas to one another, including but not limited to the production and utilization of art and visual media such as signs, pictures, and motion pictures, the spoken word, including speeches, and the written word, without the imposition of costs as a condition for exercising this right, and without restrictions except those that accord with the rule of law. Freedom of expression also includes the right to peacefully assemble, peacefully protest, and the right to distribute and

receive expressive material, be it written, spoken, or visual. For further clarity, freedom of expression is a right held by all members of the university community and all members of the public, including students, and includes the right to express ideas, opinions, facts, beliefs, theories, and political philosophies that others consider to be wrong, offensive or false. Only criminal hate speech as defined by the *Criminal Code of Canada* is excluded from this definition of freedom of expression. Discussion and debate about the propriety or validity of “hate speech” laws, or other restrictions on free speech, shall not be precluded from protection.

“Rule of law” means the maintenance of order through the stable, equal and predictable enforcement of policies and procedures, for the benefit of all individuals and all groups, including but not limited to campus clubs and other student organizations. The rule of law means the absence of chaos, and the absence of the arbitrary or unauthorized exercise of power, achieved by the fair and equal application of clearly defined rules and policies to all persons and groups. The rule of law means that all individuals are equally subject to the policies and procedures governing the community, and that no person or group is to be treated preferentially, regardless of individual or group identity and regardless of the content of their opinions, ideas or beliefs that are expressed or that are sought to be expressed. For further clarity, the rule of law requires that colleges and universities enforce their respective policies and procedures in a consistent, accountable and predictable manner, including intervening to protect freedom of expression, which includes taking disciplinary action against those who act in contravention of relevant policies and procedures.

### **Protection of Free Expression and Academic Freedom**

2. All common areas of campus shall be deemed public forums where everyone is permitted to exercise their right to freedom of expression and academic freedom. Any person, student or otherwise, who wishes to engage in non-commercial expressive activity in the common areas of campus at colleges and universities, shall be permitted to do so freely, subject only to reasonable restrictions on the time, place and manner of the expression, with such restrictions narrowly tailored in service of a significant institutional interest, and only when such restrictions employ clear, published criteria that do not discriminate in regard to the content of the expression or proposed expression.
3. No college or university or campus organization shall deny a student, student organization or faculty member any benefit, right or privilege available to any other student, student organization or faculty member on the basis of political, conscientious, religious or other beliefs, or the content of expression or proposed expression, except in accordance with the rule of law.
4. No college or university shall deny a student, student organization or faculty member the ability to use classrooms and auditoriums for non-commercial expressive purposes, such as, but not limited to, holding meetings, viewing films, giving speeches, participating in debates, and listening to invited speakers, except in accordance with reasonable, written

regulations, such as prioritizing regular class time, that do not discriminate based on the content of the expression or proposed expression

5. No college or university shall deny a student, student organization or faculty member the ability to invite individuals to speak on campus, and to use classrooms, auditoriums, or public places designated for such purposes, except in accordance with reasonable regulations that respects the rule of law.
6. Colleges and universities shall not impose any security costs on students, student organizations or faculty member as a condition for exercising their right to peacefully assemble, and peacefully express and listen to opinions and ideas through displays and events. For greater clarity, this includes the right to invite speakers, and to listen to them.
7. Colleges and universities may impose security costs on individuals who engage in disruptive activities, and on individuals who encourage, incite, promote, plan or advocate for the use of disruptive activities, or who threaten their deployment.
8. Colleges and universities shall uphold the rule of law on campus, including the free expression rights of students, student organizations and faculty members, by adequately protecting the lawful expression of students, faculty members and invited speakers against disruptive activities.

### **Investigation and Penalties**

9. The Minister of Advanced Education shall investigate complaints against a university or college alleging a contravention of one or more of sections 2 through 8 herein. The Minister of Advanced Education shall review and consider all complaints and shall, within six months of the tendering of the complaint, render a written decision in response.
10. The Minister may create a Council wholly separate from institutional faculty-councils or boards of governors, or any member who sits thereon, and delegate the investigative and decision-making powers in section 9 herein to the Council, which may sit from time to time as necessary to hear student complaints regarding the violation of one or more of sections 2 through 8 of this Act.
11. The functions of the Council are to receive, investigate and make findings regarding complaints from students in respect of a suspected or alleged contravention of *An Act to Protect Free Expression at Alberta's Public Colleges and Universities* or any of the amended provisions contained therein.
12. The Council shall have the power to receive evidence and investigate as necessary, and the public college or university that is the subject of the complaint shall provide all evidence and materials related to the student complaint to the Minister of Advanced Education or the Council, as the case may be. The results of any investigation, and its processes, shall be publicly available.

13. If the Minister of Advanced Education, or the Council, upon investigation finds a contravention has occurred, the Minister of Advanced Education shall levy a fine against the college or university not to exceed \$50,000 for a first offence, and not to exceed \$100,000 for any and all subsequent offences.
14. An appeal from the decision of the Minister of Advanced Education or the Council regarding complaints of contravention of sections 2 through 8 herein shall lie to the Court of Queen's Bench of Alberta by judicial review.

### **Amendments**

15. The *Post-Secondary Learning Act*, SA 2003, c P-19.5 is amended as follows:

The preamble is amended to add the following:

WHEREAS the legislature of Alberta intends freedom of expression and academic debate to exist at all public colleges and universities, and expects and requires all public colleges and universities to protect said freedom as a component of its core mandate;

Section 15.1, "Freedom of Expression", is added.

Section 15.1(1) "Definition" is added and will read:

"Freedom of expression" means the freedom to express oneself through any oral or written means, including but not limited to the production and utilization of art and visual media such as signs, pictures, and motion pictures, the spoken word, including speeches, and the written word, without the imposition of costs as a condition for exercising this right, and without restrictions except those that accord with the rule of law. Freedom of expression also includes the right to peacefully assemble, peacefully protest, and the right to receive expressive material, be it written, spoken, or visual. For further clarity, freedom of expression is a right held by all members of the public, including students, and includes the right to express ideas, opinions, facts, beliefs, theories, and political philosophies that others consider to be objectionable, inappropriate, wrong or offensive. Only criminal hate speech as defined by the *Criminal Code of Canada* is excluded from this definition of freedom of expression.

Section 15.1(2) "Application" is added and will read:

This section applies to every college of applied arts and technology and to every university that receives regular and ongoing operating funds from the government for the purposes of post-secondary education, and the Board of Governors, Faculty Counsel, Dean's Counsel, Student unions, and college or university campus security shall operate in a manner consistent with the upholding of its principles.

Section 15.1(3) “Freedom of Expression Policy” is added and will read:

Every college or university described in subsection (2) shall develop and implement a freedom of expression policy that

- (a) includes a statement that it is not the proper role of the college or university to shield individuals from lawful expression including, without limitation, ideas, opinions, and beliefs they find unwelcome or offensive, or consider to be wrong;
- (b) provides that the common areas of campus will be open to any speaker to exercise their rights to engage in lawful, non-commercial expression within the limits of reasonable time, place and manner restrictions and only when such restrictions employ clear, published criteria that do not discriminate in regard to the content of the expression or proposed expression;
- (c) prohibits the university from censoring or otherwise restricting the lawful expression of students except in accordance with reasonable time, place and manner restrictions, and only when such restrictions employ clear, published criteria that do not discriminate in regard to the content of the expression or proposed expression;
- (d) prohibits the university from denying a student, student organization or faculty member any benefit or privilege available to any other student, student organization or faculty member on the basis of political, conscientious or religious beliefs and viewpoints, or based on the content of the expression or proposed expression;
- (e) permits students, student organizations and faculty members to book, for no more than a nominal fee, the use of classrooms and auditoriums for expressive purposes, such as, but not limited to, holding meetings, viewing films, giving speeches, listening to invited speakers, and participating in debates, subject only to reasonable restrictions which employ clear, published criteria that do not discriminate in regard to the content of the expression or proposed expression;
- (f) permits students, student organizations, and faculty members to invite speakers to the college or university and to use, for no more than a nominal fee, classrooms and auditoriums for the purpose of hosting the speaker, subject only to reasonable restrictions which employ clear, published criteria that do not discriminate in regard to the content of the expression or proposed expression;



- (g) defines disruptive activities in accordance with this Act, and prohibits disruptive activities;
- (h) permits students, student organizations, and faculty member to engage in peaceful protests and counter-protests which do not constitute disruptive activities;
- (i) prohibits the university from imposing security costs on students, student organizations or faculty members in respect of their right to peacefully assemble or peacefully express themselves, including the right to invite and listen to speakers;
- (j) provides that the college or university will enforce the rule of law on campus by intervening to protect freedom of expression from disruptive activities, and specifies that those who engage in disruptive activities will be disciplined, with penalties imposed on those found guilty of disruptive activities;
- (k) sets out the process for how the college or university will respond to incidents of non-compliance with this policy by students and the disciplinary measures that will be utilized; and
- (l) addresses any other topics and includes any other elements required by the regulations; and otherwise complies with the requirements set out in the regulations.

Section 15.1(4) “Publication” is added and will read:

Every college or university described in subsection (2) shall publish its freedom of expression policy on its website and shall make a copy of the policy available to anyone who requests it.

Section 15.1(5) “Training” is added and will read:

Every college or university described in subsection (2) shall provide training on its Freedom of Expression Policy to the following persons:

- (a) Members of the college’s or university’s governing board or council, and other senior or executive administrators;
- (b) Faculty members;
- (c) Security staff;
- (d) All staff in the areas of student relations and student advocacy;
- (e) All students holding elected positions with the college or university's student association, if any student association exists; and
- (f) All new students upon enrolling at the college or university.

Section 15.1(6) “Enforcement and Compliance” is added and will read:

Implementation of a Freedom of Expression Policy as prescribed in subsection 15.1(3) will be a requirement as part of all future agreements between the colleges and universities and the Government of Alberta. For further clarity, failure to implement and enforce a Freedom of Expression Policy as prescribed in subsection 15.1(3) will result in the college or university receiving no Government of Alberta funds upon the expiry of the applicable College and University agreements with the Government of Alberta.

Section 15.1(7) “Regulations” is added and will read:

The Lieutenant Governor in Council may make regulations relating to freedom of expression at colleges and universities described in subsections (1) and (3), and governing freedom of expression policies required under this section, and without limiting the generality of this power, may make regulations,

- (a) governing processes that shall be followed and persons who shall be consulted in the development and approval of freedom of expression policies, and in their review and amendment, and governing how student input shall be provided and considered in such development, review and amendment;
- (b) governing topics that shall be addressed or elements that shall be included in freedom of expression policies;
- (c) governing the provision of training to faculty member, staff, students and other persons about freedom of expression;
- (d) respecting the publication of freedom of expression policies and the promotion of awareness of the policies;
- (e) governing any other matter that the Lieutenant Governor in Council determines is necessary or advisable relating to freedom of expression on college and university campuses, including,
  - (i) governing all matters relating to freedom of expression policies and their implementation, and
  - (ii) governing other measures that colleges and universities shall implement, or other things that colleges and universities shall do, to address the freedom of expression of students.