



Justice Centre for Constitutional Freedoms

September 27, 2019

VIA EMAIL

Ron McKerlie
President
Mohawk College
135 Fennell Avenue West
Hamilton, ON, Canada L9C 0E5
president@mohawkcollege.ca

Dear Mr. McKerlie,

RE: Imposition of security fees on the organizers of “Uncensored: The State of Free Speech in Canada”

We write further to incidents surrounding an event titled “Uncensored: The State of Free Speech in Canada” (the Event) scheduled to occur on September 29, 2019 at the McIntyre Art Centre on the Fennell Campus of Mohawk College. The Event will feature an American, Dave Rubin of the Rubin Report and Maxime Bernier, leader of the People’s Party of Canada.

We wish to commend Mohawk College for facilitating the Event and resisting demands to cancel the event. However, Mohawk College’s reported imposition of a security fee—and subsequent increase of that security fee—on the organizers of the Event places a price on what is a basic right at an institution which exists to facilitate the operation of the marketplace of ideas, the search for truth, and the peaceful expression of opinion. Such action also conflicts with Mohawk College’s commitment to *free* expression and infringes freedom of expression as protected by section 2(b) of the *Canadian Charter of Rights and Freedoms*. Placing a price on free speech restricts the expression of those without the means to pay, which creates an uneven playing field in the marketplace of ideas and results in a chilling effect on freedom of expression at Mohawk College—a consequence which Mohawk College ought to be loath to produce.

We request Mohawk College rescind its unlawful demand that the organizers of the Event pay a security fee as a precondition to expressing and listening to speech at Mohawk College.

Freedom of Expression on College Campuses

Freedom of expression is not merely an aspiration or ideal; it is the lifeblood of liberal democracies and the cornerstone of higher education. There should be no greater celebration of, and protection for, freedom of expression, including the expression of minority or unpopular viewpoints, than at institutions of higher learning, such as Mohawk College. 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 Further, freedom of expression “protects the right to receive expressive material as much as it does the right to create it”.²

Further, pursuant to subsection 2(4) of the *Ontario Colleges of Applied Arts and Technology Act, 2002*, Mohawk College is an agent of the Crown to which the *Charter* applies. Mohawk College is constitutionally bound by section 2(b) of the *Charter* to uphold freedom of expression on its campuses.

We commend Mohawk College for permitting an external group to book a room and host a speaking event at which minority and unpopular views will be expressed and discussed. We also applaud Mohawk College for not cancelling the Event when, inevitably, Mohawk College received criticism for permitting the Event on one of its campuses. In hosting the Event, despite opposition to the unpopular views to be expressed during the Event, Mohawk College respected free expression on its campus to a greater degree than many universities in Canada.

Notwithstanding 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 colleges and universities are increasingly an environment in which students are sheltered from ideas and opinions which they do not agree with. 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 or the imposition of additional barriers. Mohawk College ought to stop paying mere lip service to freedom of expression and, instead, uphold it and defend it as part of the process of education.

Courts have stated that colleges and universities are to facilitate the free exchange of ideas for the good of society. As the Alberta Court of Queen’s Bench notably remarked:

Does anyone actually expect to attend a university campus and encounter only the ideas they already embrace? Are only select viewpoints now permissible on our university campuses? John Stuart Mill in his essay "On Liberty" opined that "he who knows only his own side of the case, knows little of that."³

One of the purposes of freedom of expression is “to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”⁴ As the Supreme Court of Canada has elsewhere stated, “the guarantee of freedom of expression serves to protect the right of the minority to express its view, however unpopular it may be; adapted to this context, it serves to preclude the majority's perception of ‘truth’ or ‘public interest’ from smothering the minority's perception.”⁵

Difficult though some may find the issues that will be discussed by Dave Rubin and Maxime Bernier, there must be room on university campuses for free and open discussion regarding all issues facing society. The open discussion of various views, even if considered controversial by some, enriches

¹ *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 [*Dolphin Delivery*] at para 12.

² *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 SCR 1120 at paras 40- 41 citing *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at pp 1339-1340.

³ *R v Whatcott*, 2012 ABQB 231 at para 33.

⁴ *Saskatchewan (Human Rights Commission v Whatcott)*, 2013 SCC 11 at para 50.

⁵ *R v Zundel*, [1992] 2 SCR 731, at p 753.

discourse both on and off campus and is essential to one of the purposes of higher education—the pursuit of truth.

By imposing a security fee as a precondition to the Event proceeding, Mohawk College is acting contrary to its stated commitment to free expression on campus and acting in a manner contrary to section 2(b) of the *Charter*.

Requiring speakers and listeners to pay, in order to express and hear ideas, instead of requiring payment from those who disrupt and attempt to silence, results in the censorship of valuable ideas and perspectives. By putting a price on *free* speech, Mohawk College has contributed to the creation of a chilling effect on expression on its campus and not adhered to its stated commitment that freedom of expression:

Freedom of expression, which means the right to speak, write, listen, challenge and learn, must be protected as it is essential to discovery, critical assessment and the effective dissemination of knowledge and ideas and leads to social and economic advancement.

Colleges must be places that allow for open discussion and free inquiry where diverse voices can be heard and ideas and viewpoints can be explored and discussed freely and debated openly without fear of reprisal, even if these are considered to be controversial or conflict with the views of some members of the college community. Although colleges greatly value civility and all members of colleges share responsibility for maintaining a climate of mutual respect, it is not the role of colleges to shield members of the college community from ideas and opinions that they may find disagreeable or offensive. It is up to individuals and not colleges to make such judgments for themselves and to debate and challenge ideas that they find unacceptable.

Members of the college community are free to criticize and contest the views of others; however, they may not obstruct or interfere with the freedom of others to express their views. The rights of others to express or hear ideas must also be respected.⁶

The organizers of the Event and those intending to speak at and attend the Event are peaceful. Any risk of disruption or concerns regarding violence and safety arise *solely and entirely* from unruly persons who do not respect the individual rights of others or the rule of law. A security fee risks a “hecklers veto”—the power of obstructive and lawless individuals and groups to stifle dialogue and the exchange of ideas they disapprove of. The likelihood of “protests” and unsupported fears about “safety” do not justify penalizing peaceful speakers by imposing security fees. The Court of Queen’s Bench of Alberta rejected the University of Calgary’s reliance on an unspecified reference to “safety and security” as justification for censoring the peaceful expression of opinion on campus.⁷

The intention of disruptive protestors is often to “de-platform” speakers they disapprove or disagree with, effectively silencing such speakers. Various juvenile and sometimes criminal means are typically employed to achieve this objective, including threatening to protest an event and vandalize the venue and to disrupt the event through tactics such as triggering fire alarms and employing noise makers. Such lawless and disruptive individuals are motivated to continue engaging in, and threatening to engage in, such conduct because they have come to expect Mohawk College and other universities to respond by

⁶ Policy Statement on Upholding Free Speech, <https://www.mohawkcollege.ca/about-mohawk/leadership-and-administration/policies-and-procedures/policy-statement-on-upholding>.

⁷ *Wilson v. University of Calgary*, 2014 ABQB 190 at paras 153-162.

putting a price on expression they disagree with through the imposition of large security fees or by simply canceling speaking events. The inevitable result is that only the few able to *pay* are able to express their minority viewpoints at Mohawk College and other colleges and universities. Such minority viewpoints are therefore expressed less and less—the exact desired outcome of censorious protestors and which Mohawk College ought not contribute to.

One must question if the imposition of security fees is intended by Mohawk College to be a disincentive to those attempting to express and listen to minority or unpopular viewpoints in an effort to indirectly effect the cancellation of speaking events such as the Event, and thereby absolve Mohawk College of being required to act to uphold the freedom to express minority or unpopular views on campus.

By extorting security fees from those who seek only to express their opinions and listen to others, Mohawk College has effectively blamed the victim and encouraged the bullies. This punish-the-victim approach tacitly condones mob disruption of free expression and encourages further attempts at campus vigilante censorship.

Mohawk College is subject to constitutional obligations to uphold the rule of law and freedom of expression on its campuses. It should not respond to increasingly frequent disruption tactics by imposing security fees on those who abide by the rules and seek only to express their views in a peaceful manner. If Mohawk College wishes to collect security fees, it should collect from the rule-breakers who seek to silence views they disagree with.

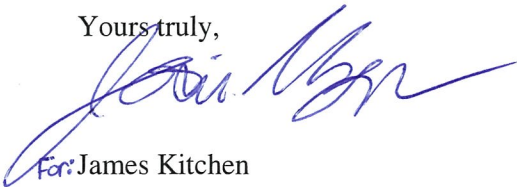
Conclusion

Freedom of expression is a core component of intellectual inquiry and the basis for academic freedom. On a campus dedicated to the pursuit of truth and open academic discourse—which Mohawk College ostensibly strives to be—students will encounter unwelcome expression.

We extol Mohawk College for upholding free expression on its campus by committing to proceed with the Event despite concerted efforts to cancel it. However, we urge Mohawk College to rescind the imposition of a security fee on the organizers of the Event and to discontinue the practice of imposing security fees on those who desire to peacefully express themselves because of the unlawful behaviour of others.

Govern yourselves accordingly.

Yours truly,



For: James Kitchen

Justice Centre for Constitutional Freedoms

c.c. Mohawk College Board of Governors
Tom Ferns, General Counsel and Corporate Secretary
Henry Colyn, Chief Building & Facilities Officer
Mohawk College Security and Emergency Management
Maxime Bernier, People's Party of Canada
Dave Rubin