The State of Academic Freedom in Canada: Limits, Challenges and Opportunities

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EXECUTIVE SUMMARY

Academic freedom in Canada is not explicitly recognized as a uniform, standalone right, leaving its definition and protection uneven across institutions. Current safeguards rely heavily on collective agreements for unionized faculty and variable institutional policies, leaving students and non-unionized staff vulnerable. Judicial ambiguity, as seen in *McKinney v University of Guelph*, further complicates protection, while external pressures from donors and government priorities can shape research agendas and institutional decisions. Quebec's 2022 *Act Respecting Academic Freedom in the University Sector* offers a rare statutory definition and a potential model for uniform protection, though its long-term impact remains uncertain. This article argues that Canada's fragmented legal framework weakens academic freedom and calls for a coherent, rights-based approach aligned with international human rights standards, recognizing academic freedom as essential to the democratic mission of higher education.

RÉSUMÉ EXÉCUTIF

La liberté académique au Canada n'est pas reconnue explicitement comme un droit autonome et uniforme, ce qui laisse sa définition et sa protection inégales selon les établissements. Les mécanismes actuels de protection reposent largement sur les conventions collectives pour le personnel enseignant syndiqué et sur des politiques institutionnelles variables, laissant les étudiants et le personnel non syndiqué vulnérables. L'ambiguïté judiciaire, comme le montre l'affaire McKinney c. Université de Guelph, complique encore la protection, tandis que les pressions externes exercées par les donateurs et les priorités gouvernementales peuvent influencer les programmes de recherche et les décisions institutionnelles. La Loi de 2022 sur la liberté académique dans le milieu universitaire au Québec offre une définition législative rare et un modèle potentiel pour une protection uniforme, bien que son impact à long terme reste incertain. Cet article soutient que le cadre juridique fragmenté du Canada affaiblit la liberté académique et plaide pour une approche cohérente fondée sur les droits, conforme aux normes internationales en matière de droits humains, reconnaissant la liberté académique comme essentielle à la mission démocratique de l'enseignement supérieur.

INTRODUCTION

In Canada, academic freedom occupies an ambiguous legal status: it is celebrated as a core academic value yet lacks explicit and uniform recognition as a right, resulting in uneven protection across institutions. In practice, the safeguards of academic freedom depend on a patchwork of institutional policies, collective agreements, and judicial interpretations that provide varying degrees of protection for different academic actors. For faculty, protections are often confined to collective bargaining, leaving students and non-unionized staff without clear legal safeguards. Judicial treatment has further complicated the picture. In *McKinney v University of Guelph*, the Supreme Court affirmed that universities are autonomous institutions and generally not subject to the *Charter of Rights and Freedoms*, while leaving open the possibility that some university actions could constitute government conduct (*McKinney*, 1990). This ambiguity has led to inconsistent interpretations across provinces, raising unresolved questions about whether rights closely tied to academic freedom, particularly freedom of expression, apply in the university setting. Quebec's 2022 *Act Respecting Academic Freedom in the University Sector* ("Quebec Act") represents the first statutory attempt in Canada to provide a uniform definition of academic freedom and mandate inclusion of academic freedom protection in institutional policies. While the Act's long-term impact remains to be seen, it serves as a test case for whether statutory recognition can provide stronger and more coherent protections.

This article examines the limitations of Canada's current protections of academic freedom in higher education. Part I considers the legal landscape and highlights the constraints arising from Canada's fragmented protections, focusing on judicial tensions between university autonomy and accountability, and the variability of institutional policies and collective agreements. Part II argues that, under the current framework, academic freedom protections are precariously dependent on internal governance structures and institutional discretion rather than enforceable rights, leaving universities vulnerable to funding arrangements, government priorities, and private donor influence. Confronting these limitations presents an opportunity to envision a coherent, rights-based framework—one that situates academic freedom as integral to both university autonomy and accountability, and essential to the broader democratic and educational mission of higher education.

I. LIMITATIONS OF ACADEMIC FREEDOM PROTECTIONS IN CANADA

A. Canadian Legal Landscape on Academic Freedom

Most cases centering around academic freedom in Canada emerge from labour disputes, which are confined to contractual negotiations or adjudicated through employment tribunals (Robinson, 2019). This narrow focus has limited a broader exploration of academic freedom within the Canadian legal framework, leaving key questions regarding its application and protection unanswered. In 1990, the Supreme Court of Canada rendered statements on academic freedom in the case of *McKinney v University of Guelph* (*McKinney*, 1990). The Supreme Court considered whether the university could be constrained by the *Charter*, specifically section 15 (equality rights), and if so, whether a mandatory retirement age policy would be in violation. Although the Court did not offer a precise definition of academic freedom, Justice La Forest, in delivering the majority judgment, emphasized that academic freedom is a principle that is fundamental to "the protection and encouragement of the free flow of ideas", which lies at the heart of "free and fearless search for knowledge" and is "essential to our continuance as a lively democracy." (*McKinney*, 1990 : 286-7). In this context, the Court ruled that universities, when determining mandatory retirement ages, should not be considered government bodies for the purpose of requiring them to follow the *Charter*. *McKinney* left open room for the case of *Eldridge*, where the Supreme Court held that private entities delivering essential government services, such as hospitals providing medicare, may attract *Charter* obligations.

McKinney treats academic freedom as a form of institutional autonomy required by higher education institutions to fulfill their essential aims to provide education without state interference. Despite the absence of a rigid definition, *McKinney* established that academic freedom remains indispensable for upholding democratic values, the free exchange of ideas, and the search for knowledge, providing inherent flexibility to ensure academic freedom's adaptability to diverse contexts and circumstances. Across different provinces, Canadian courts have applied different interpretations and applications of academic freedom as it relates to the *Charter* and its application to university actions, particularly in cases determining whether the individual's *Charter*-protected freedom of expression has been violated. Subsequent cases involving universities show mixed results. At times, courts have applied the *Eldridge* reasoning, especially when universities acted in ways closely tied to public functions or governmental control (e.g., *Zaki*) (*Zaki*, 2021). In other

cases such as *AlGhaithy*, *Lobo* and *University of Toronto* (*AlGhaithy*, 2012 ; *Lobo*, 2012 ; *University of Toronto*, 2024), courts found the *Charter* did not apply, often due to a lack of sufficient ties to a public function. Overall, the applicability of the *Charter* to university decisions remains context-dependent, with courts evaluating the degree of government involvement or the public nature of the function being performed.

In contrast to the broad definition established in *McKinney*, definitions on academic freedom drawn from international instruments have more specific stipulations. The most prominent and well-known definition of academic freedom is drawn from UNESCO's 1997 Recommendation concerning the Status of Higher-Education Teaching Personnel (UNESCO Recommendations), which states:

> "Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom, of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies." (UNESCO Recommendations, 1997: Article 27)

Similarly, the Canadian Association of University Teachers (CAUT) Academic Freedom Policy Statement (2018) closely aligns with the UNESCO definition, asserting that "all academic staff have the right to freedom of thought, conscience, religion, expression" including "freedom from institutional censorship," which echoes key elements of the UNESCO framework (CAUT). Consequently, many Canadian universities have adopted this definition or incorporated aspects of it into their own policies and collective agreements. Nonetheless, despite these broadly accepted references, there is no single, unified definition of academic freedom across Canadian universities. The concept of academic freedom remains contested and open to interpretation, allowing each institution to define it in its own way.

In Canada, Quebec is the only jurisdiction that has passed a statutory law on academic freedom. On June 7, 2022, Quebec's National Assembly passed Bill 32, *An Act Respecting Academic Freedom in the University Sector*. Introduced by Premier François Legault's Coalition Avenir Quebec government, the legislation was a response to a 2020 incident at the University of Ottawa, where a

professor was suspended for using the N-word in an academic setting. The Quebec Act defines academic freedom as the right to engage in academic activities—such as teaching, research, discussion, and creation—without doctrinal, ideological, or moral constraints (Quebec Act, 2022 : Article 3). It also protects the right for a person "to express their opinion about society and about an institution, including their respective institution, and about any doctrine, dogma or opinion" and "to freely take part in the activities of professional organizations or academic organizations" (Quebec Act, 2022: Article 3), offering a definition closely aligned with that set out in the UNESCO Recommendation.

B. Institutional Autonomy and the Limits of Accountability in Canadian Jurisprudence

International human rights instruments recognize academic freedom as essential to realizing the rights guaranteed under the International Covenant on Economic, Social and Cultural Rights ("ICESCR") and the International Covenant on Civil and Political Rights ("ICCPR").[1] The Inter-American Principles on Academic Freedom and University Autonomy ("Inter-American Principles") further recognize that "academic freedom is an independent and interdependent human right, which enables the exercise of a series of other rights" (Inter-American Principles: Preamble). Canadian law, however, does not explicitly protect academic freedom as a standalone right. In parts of Canada where direct legislative protection of academic freedom is lacking, scholars and jurists have argued that protection for academic freedom may be subsumed under section 2(b) of the *Charter*, which guarantees freedom of expression, including the right to teach, research, and disseminate ideas without interference (Turk, 2023 : 56-57). Others maintain that academic freedom is conceptually and somewhat distinct from the right to freedom of expression, necessitating careful observation of their differences (Eastaugh, 2024 : 38-42; Go *et al.*, 2021 : 10-13).[2] In *Pridgen v University of Calgary*, Paperny JA, in *obiter dicta,* underscored the close connection between the two rights:

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[1] The ICESCR protects the right to education (Article 13) and to participate in cultural and scientific life (Article 15), while the ICCPR guarantees freedom of expression (Article 19) and freedom of thought, conscience, and religion (Article 18). Together, these rights form the foundation of academic freedom—the ability to teach, research, publish, and exchange ideas without interference.

[2] While academic freedom and freedom of expression are closely related, they are not the same. Freedom of expression under section 2(b) of the *Charter* protects one's right to express opinions and ideas. Academic freedom, by contrast, specifically protects scholars' ability to teach, research, and publish without interference. It is tied to the university's

> "Academic freedom and freedom of expression are inextricably linked. There is an obvious element of free expression in the protection of academic freedom, whether limited to the traditional conception of academic freedom as protecting the individual academic professional, or applied more broadly to promote discussion in the university community as a whole . . . In my view, there is no legitimate conceptual conflict between academic freedom and freedom of expression. Academic freedom and the guarantee of freedom of expression contained in the *Charter* are handmaidens to the same goals; the meaningful exchange of ideas, the promotion of learning, and the pursuit of knowledge. There is no apparent reason why they cannot comfortably co-exist." (*Pridgen*, 2012 : paras 15-17)

Whether Canadian universities are legally obligated to safeguard academic freedom however, in practice, depends less on its conceptual link to the freedom of expression protected under section 2(b) of the *Charter*. Rather, Canadian Courts have consistently framed the issue around the threshold question of whether the *Charter* applies to universities. Courts have consistently approached this question with deference to institutional autonomy, framing their role with considerable judicial restraint. As mentioned earlier, in *McKinney*, the Supreme Court of Canada declined to apply the *Charter* to a university, reasoning that universities are autonomous institutions, not extensions of government (*McKinney*, 1990 : para 41). Similarly, in *Harelkin*, the Court showed judicial restraint in interfering with university governance, affirming that institutional autonomy encompasses the authority to make disciplinary and administrative decisions, absent clear legal breaches (*Harelkin*, 1979 : para 23). In the Human Right Tribunal of Ontario case of *McKenzie v Isla*, the Tribunal also held that "[w]ith respect to academic freedom, it is well-established that courts and tribunals should be restrained in intervening in the affairs of a university in any circumstance where what is at issue is expression and communication made in the context of an exploration of ideas, no matter how controversial or provocative those ideas may be." (*McKenzie*, 2012 : para 35)

Under international standards, institutional autonomy is understood as a functional safeguard for protecting individual academic freedom, rather than as an end in itself. The UN

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role in advancing knowledge and often depends on some level of institutional autonomy, but it remains primarily an individual right of academics—not a corporate right of universities.

Special Rapporteur on the right to education stresses that institutional autonomy should be viewed as instrumental to academic freedom (Special Rapporteur on the right to education, Farida Shaheed, 2024 : para 50). The Inter-American Principles frame autonomy as a structural condition to protect both the academic community and society's right to access knowledge (Inter-American Principles, Principle II). Principle 3 (b), (e), (f) and (g) of the Principles for Implementing the Right to Academic Freedom detail many aspects of institutional autonomy (Working Group on Academic Freedom, 2024 : Principle 3). For example, the appointment of oversight boards and governing councils, as well as employment processes, including hiring, conditions of work, promotion, tenure, retention, admissions and disciplinary measures for staff and students must be free from political or external interference (Working Group on Academic Freedom, 2024 : Principle 3). Decisions on academic, research, and teaching content, curricula, and materials must likewise be protected from political or external influence or discrimination. Staff, student unions and associations must also be allowed to form and operate without ideological or other discrimination (Working Group on Academic Freedom, 2024 : Principle 3). Institutional autonomy is therefore a safeguard against external interference, but it does not exempt universities from accountability to legal and human rights standards.

In recent years, several Canadian cases have challenged the boundaries of institutional autonomy, especially regarding student expression protected under section 2(b) of the *Charter*. In *Pridgen*, the Alberta Court of Appeal unanimously reached the conclusion to quash the University's decision in discipling students for their Facebook comments (*Pridgen*, 2012). Although the quashing order was upheld on appeal, Paperny JA was the only Justice addressing the *Charter* applicability issue while the other judges resolved the matter on administrative law grounds (*Pridgen*, 2012). Paperny JA found that the University of Calgary Review Committee was obligated to interpret and apply the students' *Charter* rights, specifically their freedom of expression when exercising its statutory authority to discipline students for non-academic misconduct (*Pridgen*, 2012 : para 128). Paperny JA chose not to apply the *Eldridge* approach,[3] and found that the *Charter* applied as the university's decision was considered a coercive use of power of the state (i.e., the imposition of disciplinary sanctions). Paperny JA however explicitly

[3] If a private entity is completely controlled by the government, then all of their actions will be government actions and are subject to the *Charter*, however, in cases where only some of the entity's actions are granted under government authority, then only those actions will fall under the definition of government in s.32 of the *Charter* and are subject to its scrutiny. See *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 at 627-28.

acknowledged that the *Eldridge* framework remained available in the present case (*Pridgen*, 2012 : para 105). After reviewing relevant post-*McKinney* case-law, she concluded that "the decision in *Eldridge* was a move towards clarifying the broad statements in *Stoffman* and *McKinney* that could be interpreted as insulating some entities, like hospitals and universities, from the *Charter* with respect to all of their activities, even those that have significant public consequences" (*Pridgen*, 2012 : para 100).[4] Paperny JA further stated that "education at all levels, including post-secondary education as provided by universities, is an important public function cannot be seriously disputed." (*Pridgen*, 2012 : para 104). She also rejected an argument made by the University that the decision in question did not constitute a "specific governmental objective"—and therefore could not be made subject to *Charter* review— on the basis that the state had made no provision for how the specific matter was to be addressed (*Pridgen*, 2012 : para 104). In Paperny JA's view, "*Eldridge* does not require that a particular activity have a name or program identified, but rather that the objective be clear. The objectives set out in the [Post Secondary Learning] PSL Act, while couched in broad terms, are tangible and clear." (*Pridgen*, 2012 : para 104). In Paperny JA's view, the general objective was the provision of post-secondary education. Thus, the fact that the university was found to be acting in furtherance of providing post-secondary education would likely have proved sufficient to trigger the *Charter's* application under *Eldridge*.

In *U Alberta Pro-Life*, a 2020 Alberta Court of Appeal decision, the Court analysed the public function that universities exercise when considering whether a university has the right to prevent students from protesting on its campus (*U Alberta Pro-Life*, 2020). The Court found that universities have a legal obligation not to interfere with a student's freedom of expression, and held that a) the University acknowledges students' education as their core purpose; b) students' education requires freedom of expression; c) students' learning, sharing, and debate is critical to this core purpose; d) the rule of law requires freedom of expression to extend to students on campus; and (e) the University can maintain its autonomy and functionality even if it is required by the *Charter* to protect students' freedom of expression (*U Alberta Pro-Life*, 2020 : para 148). The Court ultimately found the *Charter* applicable under the *Eldridge* analysis, agreeing with Paperny JA that postsecondary education is a governmental objective and that fostering student free expression is central to the university's mandate (*U Alberta Pro-Life*, 2020 : para 148).

[4] See also *Wilson v University of Calgary*, 2014 ABQB 190.

In *Zaki*, the Manitoba Court of Queen's Bench held that the *Charter* applied to the expulsion of a medical student over allegedly "unprofessional" social media posts. The Court found that "administering non-academic student discipline was in furtherance of government policies" and was therefore subject to *Charter* scrutiny under *Eldridge* (*Zaki*, 2021 : para 154; Eastaugh, 2024 : 24). However, the case differs from the two above as the court found the university's relevant bylaws were enacted under a statutory mandate to "adopt and implement sexual violence policies" (*Zaki*, 2021 : paras 160–161, 168; Eastaugh, 2024 : 25).

By contrast, courts in both Ontario and British Columbia have, on several occasions, declined to apply the *Charter* to universities under the *Eldridge* framework. In *Lobo*, applying *Eldridge* and *McKinney*, the Ontario Court of Appeal held that the *Charter* did not apply to a university's decisions about the allocation and use of its property for students' non-academic extra-curricular uses (*Pridgen*, 2012; *Lobo*, 2012; Eastaugh, 2024 : 25-26). Another case where the *Charter* was found to not apply is *AlGhaithy*, in which it was argued that the university's decision to dismiss a student from a medical residency program was subject to *Eldridge* review (*AlGhaithy*, 2012). Unlike *Lobo*, the decision was clearly tied to the university's academic mandate, yet the Divisional Court held the *Charter* inapplicable due to the absence of formal governmental control. The Court observed that "legislation governing the University provides that 'the management, discipline and control of the University shall be free from restrictions and control of any outside body'", suggesting this severed the link between the government and the university's decisions (*AlGhaithy*, 2012 : para 76).

In *BC Civil Liberties Association*, concerning a decision to sanction a student group for having held an unauthorized demonstration on university grounds, the BC Court of Appeal concluded that the *Charter* did not apply to the University's regulation of its outdoor space. The Court framed the central issue as whether the university's role in providing a "public forum for free expression" could be attributed to the government. It found that it could not, since the government had "neither assumed nor retained any express responsibility" for offering such a service (*BC Civil Liberties Association*, 2016 : para 32; Eastaugh, 2024 : 29-30). In doing so, and contrary to *Pridgen* (and later *UAlberta Pro-Life*), the court adopted a narrow reading of the *Eldridge* criteria.

University of Toronto arising from pro-Palestinian encampments on campus, highlights this continuing vulnerability. In that case, the university sought and obtained an injunction to

remove protesters, arguing that their presence disrupted academic operations. The Ontario Superior Court granted the order, prioritizing property rights and institutional authority over the expressive activities of students and faculty, some of whom claimed the encampments were exercises of academic freedom to critique institutional policies (*University of Toronto*, 2024 : para 34-39; Eastaugh : 2024, 31-32).[5] It is noteworthy that the Supreme Court recently disavowed a similar line of reasoning in *York Region*, which held that the *Charter* applies to school boards as "government" pursuant to the (broader) *Eldridge* test (*Calgary Roman Catholic Separate School District No 1*, 2007 : paras 127–132; *Hamilton*, 2009 : paras 16–17). Like universities, school boards at times have been excluded from *Charter* review under *Eldridge* on the basis of their operational independence (*Calgary Roman Catholic Separate School District No 1*, 2007 : paras 127–132; *Hamilton*, 2009 : paras 16–17). However, the Supreme Court, in reasons that cited *UAlberta Pro-Life* with approval, expressly overturned these decisions, affirming that "[p]ublic education is inherently a governmental function" (*York Region District School Board*, 2024 : para 81; Eastaugh, 2024 : 33).

Relying on formalistic reasoning of the anti-*Charter* cases fails to recognize that university independence is itself a necessary mechanism for the implementation of governmental policy (Eastaugh, 2024 : 33). The delivery of university-level education and research as public services requires the establishment and funding of universities, which, by design, must operate as largely self-governing institutions (Eastaugh, 2024 : 34). This distinctive feature of the public good provided by universities should not obscure the fact that their core role is to carry out government policy. The analogy to *Eldridge's* is instructive: just as the diagnostic independence of doctors and the operational autonomy of hospitals do not sever their connection to the state's policy of delivering health care, neither should the independence of universities or their scholars be seen as breaking the link to education policy. In both contexts, independent judgment is integral to the very service the state aims to deliver.[6] To treat independence and self-governance as proof against

[5] Injunction granted 2 July 2024.

[6] The relationship between the hospital and the state in *Eldridge* was closely analogous to that of universities: a framework of general legislative and administrative constraints paired with lump-sum funding that left the institution and individual physicians with substantial discretion to determine the services offer and allocation of budget: *Eldridge* at paras 32–33.

judicial oversight is to mistake a defining feature of universities for evidence that they lie beyond the reach of *Charter* scrutiny.[7]

When considered as a whole, the jurisprudence shows a divided pattern: while some courts have adopted a liberal approach to extending *Charter* scrutiny, others have relied on universities' operational autonomy to deny its applicability. The latter judgments depart from *Eldridge*'s instruction to adopt a contextual and purposive analysis. By means of "a technical splicing" of the limited number of Supreme Court precedents, these judgments transform the inquiry into a question of formal control (Forcese, 2018 : 22). This narrow approach produces a fragmented jurisprudence that stands in stark contrast to international principles, which recognize university autonomy as compatible with, not opposed to, accountability.

The absence of a settled stance in Canada on whether universities are subject to *Charter* scrutiny leaves those whose academic freedom has been infringed without reliable judicial redress. In practice, individuals are often left to pursue remedies through internal policies or collective agreements. This judicial gap places added weight on institutional mechanisms, making them the primary, though imperfect, avenue for protecting academic freedom in Canada.

C. Institutional Policies

When statutory or constitutional law does not provide explicit legal protection for academic freedom, scholars and institutions often rely on universities' own autonomous policies to safeguard their rights, allowing each institution to define and enforce protections in line with its governance structures. Institutional policies can however create tensions that challenge the exercise of academic freedom. University policies, designed to regulate conduct and ensure a safe working environment, can inadvertently or deliberately encroach upon the autonomy of scholars to teach, research, and express ideas freely. In the Canadian context, tensions between institutional policies and academic freedom have become more visible in recent years. For instance, many universities have adopted "institutional neutrality" policies in relation to contentious international issues, such

[7] Contra *University of Toronto (Governing Council) v Doe et al* at para 238. As Érik Labelle Eastaugh contends, this line of reasoning addresses a critique raised by Noura Karazivan—namely, that universities are distinct from hospitals because there is no public entitlement to a university education: Karazivan, Noura, « Qualifier ou Graduer? L'application de la Charte canadienne des droits et libertés aux Universités » (2016) 36 *National Journal of Constitutional Law* 161 at 185. Unlike hospitals, which provide essential services accessible to the general public, universities must exercise discretion in admissions to preserve academic quality and uphold scholarly standards.

as the crisis in Gaza, which in practice can function as a tool for suppressing dissent and limiting academic speech (Johal, 2025). CAUT has warned that such neutrality, together with mechanisms like "respectful workplace" rules and risk-management offices, can be used to cloak censorship and disincentivize faculty from engaging with difficult topics (Johal, 2025).

Beyond faculty, policy protection for students remains limited. According to a 2021 report by Scholars at Risk and the Human Rights Collective, only 8 of the 23 Canadian higher education institutions analyzed explicitly recognized academic freedom for students, with the remainder confining such protections to faculty members (Go *et al.*, 2021 : 8). At the time of the report, the University of British Columbia was noted as having a broader inclusion of academic freedom, given their academic policy applies "not only to the regular members of the University, but to all who are invited to participate in its forum."[8] In contrast, Simon Fraser University states that their Academic Freedom Policy in their collective agreement are directed specifically towards "academic staff" (Simon Fraser University).

In addition, universities generally establish a distinction between academic freedom and policies addressing discrimination and harassment. In practice, however, the rules governing these two areas often intersect, which can create conflicts that are not always adequately resolved. Separate policies may protect one set of interests while inadvertently undermining the other, particularly when academic freedom collides with harassment allegations. According to the 2021 report by Scholars at Risk and the Human Rights Collective, of 23 universities across Canada analyzed, nine universities do not explicitly reference harassment and discrimination articles in the academic freedom policy (University of Toronto, Western University, University of Ottawa, McGill University, Université de Laval, Université de Montréal, and Université de Quebec a Montréal) (Go *et al.*, 2021 : 14). The study highlights that the lack of explicit alignment between harassment/discrimination policies and academic freedom protections can generate conflicts that directly affect faculty and students.

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[8] See University of British Columbia, [online], [https://vancouver.calendar.ubc.ca/campus-wide-policies-and-regulations/academic-freedom/introduction]. The Senate is currently reviewing the UBC Academic Policy, which will be replaced by a new draft policy. See University of British Columbia Senate, *Senate Policy J-500: Academic Freedom*, [online], [https://scs-senate-2021.sites.olt.ubc.ca/files/20250514-Vancouver-Senate-Materials.pdf] at p. 86. Note the concerns raised in an open letter cautioning that the proposed policy, if adopted in its current form, could significantly weaken protections for academic freedom, diverge from national and international standards, and undermine the university's core mission of fostering research, learning, and global citizenship. See University of British Columbia, *Open Letter to the UBC Senate Opposing the Proposed Academic Freedom Policy*, [online], [https://scs-senate-2021.sites.olt.ubc.ca/files/20250514-Vancouver-Senate-Materials.pdf] at p. 104.

University policies typically define harassment broadly, encompassing behaviors that create a hostile work environment, which can include speech or scholarship deemed offensive.[9] While such definitions aim to protect employees and students, they can inadvertently ensnare academics whose work challenges prevailing norms—precisely the kind of inquiry academic freedom is meant to defend. For instance, a professor's controversial lecture content or public statements might be framed as harassment under a university's code of conduct, triggering investigations or sanctions that sidestep the broader protections of the academic freedom policy. Faculty facing harassment allegations tied to their academic work often find less recourse, as seen in the arbitration-focused *Webber v Ontario Hydro*, where workplace disputes fall under collective agreements rather than direct judicial review (*Webber*, 1995 : paras 49-50).

Lastly, institutional policies often place universities in the dual role of adjudicator and potential violator of academic freedom. As the Inter-American Principles and the UNESCO Recommendations emphasize, any interference with academic freedom must be lawful, necessary, and proportionate (Inter-American Principles : Principle VII), with accountability systems that are transparent, fair and equitable, and that ensure meaningful participation from faculty organizations (UNESCO Recommendations : Articles 23–24). In practice, institutional policies may lack safeguards against conflicts of interest—administrators who restrict academic freedom may also adjudicate complaints—and rarely provide protections against retaliation.[10] This creates a chilling effect, discouraging individuals from raising concerns and leaving academic freedom vulnerable even where policy protections exist.

D. Quebec's Act Respecting Academic Freedom in the University Sector

Quebec's *Act Respecting Academic Freedom in the University Sector* establishes a legal framework that guarantees academic freedom (Quebec Act, 2022 : s.3). The Act requires universities to adopt policies that recognize and protect academic freedom according to its statutory definition, positioning it as a higher authority intended to safeguard faculty and students from undue interference. While a unified statutory approach could help reduce the uncertainty

[9] See e.g., McGill University, *Policy on Harassment and Discrimination* (2021), s. 4.1, defining harassment as conduct that "adversely affects the work environment."
[10] See University of British Columbia, *Open Letter to the UBC Senate Opposing the Proposed Academic Freedom Policy*, [online], [https://scs-senate-2021.sites.olt.ubc.ca/files/20250514-Vancouver-Senate-Materials.pdf] at p. 104.

created by Canadian case law, inconsistent institutional policies, and union-negotiated collective agreements, in practice, institutional policies—such as those addressing workplace harassment, often operate with greater immediacy and specificity, reflecting administrative priorities rather than statutory ideals. Complaints under harassment policies can still trigger investigations or sanctions, even where the Quebec Act would provide protection, citing workplace safety obligations under provincial labor laws like the *Act Respecting Labour Standards (Act Respecting Labour Standards*, 2024 : s. 18). This creates a paradox: although the Quebec Act offers a legal shield, its application can falter against the immediate, localized power of institutional mechanisms.

In addition, the Quebec Act introduces requirements that may raise concerns about institutional autonomy by allowing government intervention in university affairs. Under the Act, universities must adopt a policy to establish a committee of students and staff to oversee its implementation, and handle complaints related to academic freedom (Quebec Act, 2022 : Article 4). The committee is also responsible for developing sanctions for policy violations (Quebec Act, 2022 : Article 4). Universities must report to the Minister annually on the number of complaints received and the measures taken in response (Quebec Act, 2022 : Article 8). If an institution fails to comply with the Act's requirements, the authorized Minister can appoint an official to enforce corrections at the university's expense (Quebec Act, 2022 : Article 7).

Earlier iterations of Bill 32, which formed the basis for the Act, granted the Minister of Higher Education the authority to "order an educational institution to include in its policy any element indicated by the Minister," and make "corrections" to non-compliant policies (Leckey and Ghabrial, 2022). Articles 4 to 6 of the bill also required universities to draft policies subject to ministerial approval (Leckey and Ghabrial, 2022). Such powers would have allowed the Minister to alter individual university policies, raising serious concerns about political interference in research and teaching. An open letter signed by 130 Quebec university professors warned that, while the Act acknowledges academic independence in its preamble, it simultaneously undermines this principle (Leckey and Ghabrial, 2022). With the full impact of the Quebec Act remain to be seen, it remains important to monitor whether it creates leeway for government interference in the institutional autonomy of universities. A key takeaway, however, is that introducing a more uniform definition of academic freedom could help provide clearer guidance and stronger protections for the academic community.

E. Collective Agreements

Academic freedom in Canada is often presented as a negotiated right established through labour law and defined within the collective agreements that set the terms of academic employment. Around 90 percent of university faculty are unionized, giving the wide coverage of these agreements (Lynk, 2020 : 47). In the broader education sector, 74.2% of employees were unionized in 2021 (Ribaric and Kumar, 2025 : 3).[11] Collective agreements are typically renegotiated every three to four years between faculty unions and university administrations, and allow for regular reassessment and adjustment of academic freedom's scope (Lynk, 2020 : 47). As a result, many agreements include detailed definitions of academic freedom (Lynk, 2020 : 47). When disputes arise, faculty unions can challenge administrative decisions through mandatory labour arbitration, an expert, accessible forum in which decisions are legally binding (Lynk, 2020 : 47).

Collective agreements, intended to safeguard the rights and working conditions of faculty, may paradoxically restrict academic freedom by imposing rigid frameworks that prioritize union interests over individual scholarly autonomy. These agreements, negotiated between university administrations and faculty unions, belong to the union as a collective entity rather than the institution itself. The terms and language of these agreements vary considerably across Canadian institutions (Ribaric and Kumar, 2025 : 2) and can be susceptible to ideological capture and political sensitivities, reflecting the union's broader agenda rather than the diverse intellectual pursuits of individual professors. This dynamic can stifle academic freedom by aligning faculty obligations with union priorities—such as standardized workload formulas or grievance processes—that may conflict with the unfettered pursuit of research, teaching, and expression central to academic life.

According to a 2025 study analyzing collective agreements from 44 Canadian universities, approximately 27% of institutional collective agreements closely mirror the CAUT exemplar,[12] while the majority, 57%, incorporate limiting factors that place qualifications or additional

[11] With reference to Statistics Canada, 2022.

[12] The CAUT exemplar outlines six components of academic freedom (AF): (1) AF serves the public good, not just personal privilege; (2) no restrictions on research, teaching, or intra/extramural speech; (3) neutrality is not required of faculty; (4) intellectual pursuits must remain free from ideological constraint; (5) participation in collegial governance is essential; and (6) AF resides with academic staff, not the institution. See Ribaric, Tim and Rahul Kumar (2025), « How Do Collective Agreements Stack Up? Implications For Academic Freedom », *Journal of Collective Bargaining in the Academy*, vol. 16, n° 1.

obligations on the exercise of academic freedom (Ribaric and Kumar, 2025 : 1). In other words, the exercise of academic freedom in these cases is conditioned by expectations of decorum and responsibility. For example, the University of Manitoba provides that "Academic Freedom also carries the responsibility to respect the rights and freedoms of others. In particular, Members are expected to recognize the right of other members of the academic community faculty, staff, and students to express their opinions" (University of Manitoba Faculty Association & University of Manitoba, 2021 : 153, as cited in Ribaric and Kumar, 2025 : 20) while Western University requires that academic freedom be exercised "in a manner consistent with the scholarly obligation to base Research and Teaching on an honest and ethical search for knowledge" (University of Western Faculty Association & University of Western Ontario, 2022 : 7, as cited in Ribaric and Kumar, 2025 : 20).

Canadian case law reinforces the primacy of collective agreements in resolving disputes, further constraining academic freedom. In *Webber*, the Supreme Court of Canada held that disputes arising under a collective agreement fall within the exclusive jurisdiction of arbitration, precluding direct recourse to the courts unless the issue lies outside the agreement's scope (*Webber*, 1995 : paras 49-50). For professors asserting that their academic freedom have been infringed under the collective agreement, arbitration is the only legal recourse under the union's framework. The process, while structured, binds faculty to the union's interpretation and representation, limiting their ability to independently challenge constraints on their scholarly autonomy.

The heavy reliance on unions in bringing claims extends to potential *Charter* claims, where professors alleging violations of rights like freedom of expression under *Charter's* section 2(b) face significant hurdles. Since collective agreements govern workplace disputes, a professor seeking to file a *Charter* violation claim against a university policy or union rule is often at the whim of the union, which controls access to legal resources and grievance processes. Without union support, a professor's ability to escalate a *Charter* challenge is curtailed by the significant financial and procedural barriers to pursuing litigation individually, in turn embedding academic freedom within the union's discretionary purview rather than constitutional guarantees. In *McKinney*, the Supreme Court declined to extend *Charter* protections to university employment matters, suggesting that academic freedom in Canada operates within institutional and contractual bounds rather than as a standalone right (*McKinney*, 1990 : paras 41-43).

In addition, collective agreements protect individual that are part of the collective agreement only. Students and non-unionized staff, such as sessional instructors or administrative personnel, effectively have no standing within processes of arbitration protected under collective agreement, leaving their academic freedoms unprotected. Unionized sessional faculty enjoy stronger academic freedom protections than non-unionized faculty, and those represented by faculty associations have more robust protections than those in other public-sector unions (Ross, Stephanie, Savage and Watson). As non-unionized academic employee without the protection of collective agreement and resources from representation from unions, sessional faculty suffers incredible difficulty to meaningfully exercise their right to academic freedom without fear of reprisal (Ross, Stephanie, Savage and Watson).

While collective agreements provide academic freedom protections for unionized faculty, arbitration processes focus narrowly on faculty–union disputes and do not extend to broader campus dynamics, such as student expression or the rights of precarious workers. The bureaucratic nature of collective agreements, which is focused on compliance and uniformity from collective negotiation, can stifle the flexibility and dissent inherent to academic inquiry. In *Pridgen*, for example, the *Charter* upheld student rights, yet faculty remained bound by the constraints of collective bargaining frameworks (*Pridgen*, 2012 : paras 115-18). Therefore, although collective agreements secure important protections, their structure and adjudication sometimes restrict rather than expand the full scope of academic freedom across the university community, creating gaps where infringements fall through without sufficient recourse.

II. CHALLENGES AND OPPORTUNITIES

A. Pressure from External Stakeholders and Their Impacts on Institutional Decisions

The limitations examined in Part I across Canadian jurisprudence, institutional policies, and collective agreements highlight that the protection of academic freedom cannot rely solely on court adjudication, collective-bargaining frameworks or institutional decisions; universities also operate within a wider ecosystem of external influences that shape decisions and priorities, sometimes at the expense of scholarly independence. The autonomy of educational institutions has long been shaped by a broad array of external stakeholders, including national laws, state policies, education ministries, courts, accreditation bodies, funding agencies, NGOs, corporations, research councils,

civil society groups, professional associations, and the media (Norris, 2025 : 6). These external pressures often influence institutional policies and administrative decisions, blurring the line between decisions made by universities themselves and those shaped by unseen political or financial forces.

Canadian universities operate within a framework where external stakeholder influence is pervasive and structural, at times impacting the institution's decision and agenda under the public's radar. While these impacts of external pressures are at times difficult to measure, the concept of academic freedom, monitored globally by the Varieties of Democracy Institute (V-Dem) and the Academic Freedom Index (AFI), centers on the professional independence of individual scholars and their right to research and teach without censorship (Norris, 2025 : 8).[13] This view holds that scholars should be free from external pressures or accountability to university administrators, government bodies, or donors, which form the core basis of institutional autonomy prescribed under international standards.

According to the AFI Update 2025, 34 countries and territories have recorded declines—including the United States, United Kingdom, India, and Russia—while only eight saw improvements (Kinzelbach, 2025 : 2-3). Over 40% of the global population lives without academic freedom (Kinzelbach, 2025 : 10-11). Canada ranked 37th, with the United States at 85th (Kinzelbach, 2025 : 10). Although academic freedom is central to universities' missions, it is increasingly under threat.

Recent developments across Canada reflect this broader global pattern of political interference and shrinking academic space. In February 2025, the Quebec Minister for Higher Education intervened to cancel courses on Palestinian literature and blocked a professor's appointment over alleged political associations (Laberge, 2025). Alberta's 2024 Provincial Priorities Act sought to control federally funded research to align with provincial ideology, though exemptions were later granted to universities (Venne, 2025). Nova Scotia's Bill 12 allows the government to impose restructuring plans, limit research funding, and appoint university board members, raising concerns about institutional autonomy (Venne, 2025). Federally, Conservative leader Pierre Poilievre has previously pledged to cut research funding for "woke" topics (Venne,

[13] Citing Lott, Lars and Janika Spannagel (2023), « Quality Assessment of the Academic Freedom Index: Strengths, Weaknesses, and How Best to Use It », V-Dem Working Paper 2023:142.
and Spannagel, Janika and Katrin Kinzelbach (2023), « The Academic Freedom Index and Its Indicators: Introduction to New Global Time-Series V-Dem Data », Quality & Quantity 57:3969-89.

2025). As Robin Whitaker of the CAUT notes, these actions show that Canada is not immune to the global erosion of academic freedom (Venne, 2025).

Canadian universities are partially funded by government bodies. Statistics Canada published that provincial funding accounted for 32.5% ($15.1 billion) and federal grants made up 11.4% ($5.3 billion) of total revenue of all universities in 2020/2021 (Statistics Canada, 2022). In 2024, 35 higher education institutions surveyed by CASE Insights on Philanthropy (Canada) reported more than $1.7 billion in new commitments and nearly $1.6 billion in funds received from donors (Trumble, Campisi and King, 2025 : 5, 8).[14] The decline of public research funding in the United States has also created ripple effects in Canada. Since early 2025, the Trump administration has repeatedly announced freezes and cuts to federal research budgets, jeopardizing thousands of cross-border projects and joint initiatives with Canadian universities. These reductions have already led to fewer grant approvals and uncertainty for researchers who rely on international collaboration and funding stability (Evidence for Democracy, 2025).

As governments reduce their financial support (Wong, 2024; CAUT), universities are turning to private donors and corporate partnerships to bridge the gap, creating a dynamic where academic autonomy is traded for fiscal stability. Many large donations are earmarked for specific research or educational purposes set by donors, which can shape institutional priorities and subtly influence academic direction. At times, private donors were granted the ability to appoint a majority of the program's steering committee, giving them control over budget, hiring, and curriculum—potentially shaping the program's priorities in line with particular perspectives (The Canadian Press, 2012). Requirements of private donors can suppress dissenting voices and curtail academic freedom, as institutions prioritize financial relationships over scholarly integrity.

The dynamics between external funding and academic activity are reflected in cases documented by the CAUT (CAUT), which demonstrate how financial and political pressures can infiltrate academic decision-making, blurring the boundary between external influence and internal governance. At the University of Toronto, negotiations to hire international law scholar Valentina Azarova were abruptly terminated in 2020, after a donor and sitting judge raised objections to her research on Israel and Palestine (CAUT). The case revealed how donor interests can shape university appointments, raising serious questions about whether institutional autonomy is sufficient to safeguard academic integrity in the face of financial dependence. At Laurentian

[14] The report is based on donors of all types: individuals, corporations and foundations.

University, psychology professor Michael Persinger was removed from teaching due to complaints about his use of provocative language and teaching examples (CAUT). The controversy underscored how institutional reputation management can override pedagogical freedom, particularly in politically sensitive contexts. Finally, ongoing disputes at McMaster University over procedural fairness in internal disciplinary proceedings illustrate how the absence of independent appeal mechanisms can leave academics without effective recourse when university governance structures themselves become the site of rights violations (CAUT).

Taken together, these cases point to a systemic vulnerability: academic freedom in Canada can be compromised both by external pressures from donors, governments, and political actors, and by internal institutional mechanisms that reflect or reproduce those pressures. In a legal and policy environment where protection is fragmented and accountability remains uncertain, universities often act as both the protectors and violators of the very freedom they claim to uphold, which make the reliance on collective agreements and institutional policies insufficient as the primary safeguard of academic freedom. The cumulative effect is a regime where infringements can fall through the cracks without adequate redress.

B. Turning Limitations into Opportunities

As set out in Part I, Canada's current protection of academic freedom remains uneven. Cases where courts have found that universities fall outside the scope of the *Charter* have limited the development of a consistent rights-based foundation for academic freedom and left individuals outside collective agreements with few avenues for redress. While collective agreements often safeguard faculty members, these mechanisms rarely extend to contract instructors, students, or researchers outside unionized settings. Institutional policies also differ significantly in definition, scope and application, at times leaving universities as both the adjudicators and potential violators of academic freedom. This fragmented framework has created gaps where infringements can fall through, leaving the broader academic community without clear remedies or uniform standards of protection.

As the Special Rapporteur on the right to education notes, there is an "emerging call for the consideration of academic freedom as a self-standing human right." (Special Rapporteur on the right to education Farida Shaheed, 2024 : para 11). The Inter-American Principles reaffirm this view in the preamble stating that "academic freedom is an independent and interdependent human

right, which enables the exercise of a series of other rights" (Inter-American Principles : Preamble). Similarly, the Special Rapporteur on the right to freedom of opinion and expression has recommended that academic freedom violations be addressed as autonomous violations rather than as derivative claims under freedom of expression (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye, 2020 : para 57). Canada should meaningfully review these approaches, recognizing the unique social importance of safeguarding an independent academic community.

Quebec's Act illustrates that statutory recognition of academic freedom may offer a path toward more consistent and enforceable protections, although concerns persist about potential governmental interference if excessive powers over internal university affairs are granted. At minimum, Canada could explore implementation and adoption of a widely recognized definition of academic freedom aligned with international human rights standards and treaty obligations. Such a definition would move beyond the fragmented formulations currently scattered across collective agreements and institutional policies, ensuring that protections are applied consistently regardless of institutional governance structures. Equally important is a clearer and more consistent understanding of judicial remedies, particularly whether academic freedom is encompassed within the *Charter* and what recourse exists when violations occur. Without such clarity, both individuals and institutions remain uncertain about the enforceability of academic freedom as a fundamental right.

On the other hand, international principles emphasize that institutional autonomy is not an end in itself, but a means to safeguard the independence of teaching, research, and expression. Autonomy is not absolute but requires a careful balance: universities must retain self-governance and the capacity to protect individual academic freedoms, while remaining accountable to legal and human rights standards. First, institutional autonomy in Canada must be recognized as a substantive principle guiding government legislation and policy, not merely as a principle of judicial restraint. This balance exists alongside pressures from donors, government priorities, and public accountability, creating a complex and sometimes conflicting environment that requires constant checks and balances. Second, respecting autonomy does not exempt universities from oversight; rather, it ensures that state action does not inadvertently undermine academic freedom or contravene international norms. Maintaining this dynamic balance requires a sustained

commitment to ensure that oversight protects academic freedom without becoming interference, and that autonomy does not devolve into isolation from democratic responsibility.

Specifically, Canada should uphold international standards by establishing clear rules to ensure that hiring, working conditions, admissions, promotions, tenure, retention, and dismissal decisions remain free from political or donor interference (Special Rapporteur on the right to education Farida Shaheed, 2024 : para 48). In line with the Abidjan Principles on the human rights obligations of States, states must also regulate private involvement in education to ensure that respect for academic and pedagogical freedoms forms part of the minimum human rights standards applicable to educational institutions (Special Rapporteur on the right to education Farida Shaheed, 2024 : para 48; Abidjan Principles, 2019). Likewise, institutional decisions on academic, research, and teaching content, curricula, and materials must be free from interference or discrimination (Special Rapporteur on the right to education Farida Shaheed, 2024 : para 48). Transparent national or institutional guidelines governing private donor agreements could help ensure that external funding does not distort research agendas or academic priorities.

Moving forward, Canada could benefit from a coherent framework for academic freedom that aligns with international human rights standards while reflecting the realities of Canadian higher education. While there is no single formula for achieving this balance, the current fragmentation presents an opportunity to move toward a framework that better aligns with international human rights principles to strengthen the protection of academic freedom.

CONCLUSION

Canada's protection of academic freedom shaped by collective agreements, institutional policies, and uneven judicial treatment creates both opportunities and challenges. As threats to academic freedom become more visible and widespread globally, Canada must look ahead to reconsider its existing structures and establish stronger safeguards for those most vulnerable to violations. With international standards offering guiding principles on how best to protect academic freedom, Canada now has an opportunity to align its laws and governance frameworks with these principles, balancing institutional autonomy, public accountability, and individual rights. In doing so, it can strengthen universities' role as independent, democratic institutions dedicated to the pursuit of knowledge and the public good, while ensuring a safe and enabling environment for academic inquiry.

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