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

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EXECUTIVE SUMMARY

Academic freedom is widely recognised as essential to higher education in Canada, yet Canadian law lacks a common conception of the right. Outside Quebec, no statute defines academic freedom, and Canadian courts have not established its content or identified its rights-holders. Protection depends instead on the mechanism through which a dispute arises, including the *Charter*, Quebec's *Act Respecting Academic Freedom in the University Sector*, institutional policies, and collective agreements, each with its own conception of the right and its own class of rights-holders. This article draws on international human rights standards and identifies three foundational questions: what academic freedom is, who holds it, and what would justify restricting it. Measuring each of the Canadian mechanisms against the international standards, it examines the gaps in the protection of students and non-unionised staff whose academic activities fall outside employment-based protections, as well as weaknesses in the justification of restrictions. The article proposes a coherent Canadian framework that establishes a common definition and class of rights-holders, recognises institutional autonomy as a means of protecting academic freedom, and requires restrictions to be justified against aims that follow from the character of the right.

RÉSUMÉ EXÉCUTIF

La liberté académique est largement reconnue comme essentielle à l'enseignement supérieur au Canada, mais le droit canadien ne dispose d'aucune conception commune de ce droit. En dehors du Québec, aucune loi ne définit la liberté académique, et les tribunaux canadiens n'en ont établi ni le contenu ni les titulaires. La protection dépend plutôt du mécanisme par lequel un litige survient, notamment la *Charte canadienne*, la *Loi sur la liberté académique dans le milieu universitaire* du Québec, les politiques institutionnelles et les conventions collectives, chacun ayant sa propre conception du droit et sa propre catégorie de titulaires. Le présent article s'appuie sur les normes internationales relatives aux droits de la personne et dégage trois questions fondamentales : ce qu'est la liberté académique, qui en est titulaire et ce qui justifierait de la restreindre. Évaluant chacun des mécanismes canadiens à l'aune des normes internationales, il examine les lacunes dans la protection des étudiants et du personnel non syndiqué dont les activités académiques échappent aux protections fondées sur l'emploi, ainsi que les faiblesses dans la justification des restrictions. L'article propose un cadre canadien cohérent qui établit une définition

commune et une catégorie commune de titulaires, reconnaît l'autonomie institutionnelle comme un moyen de protéger la liberté académique, et exige que les restrictions soient justifiées au regard d'objectifs découlant de la nature même du droit.

INTRODUCTION

A professor suspended for a slur used in a pedagogical context; an appointment abandoned after a donor's objections reached the dean; four librarians cautioned for questioning the layoff of support staff at a staff meeting. Whether any of these situations engages a legal right to academic freedom in Canada, and whose right it is, depends on where the person works and under what contract. Canadian law has no settled way of answering either question, or of determining what must be shown before the right may be restricted. Protection depends instead on the instrument through which a dispute arises: the *Charter*, a provincial statute, an institutional policy, or a collective agreement. Each supplies its own conception of academic freedom, its own class of rights-holders, and its own means of assessing restrictions. Canadian protection therefore lacks a shared conception of the right, despite the number of instruments that provide for it.

Canadian courts have not provided that conception. They have been occupied with whether universities are subject to the *Canadian Charter of Rights and Freedoms* rather than with the content of academic freedom, and even where the *Charter* has applied, the cases have concerned student expression rather than teaching, research or curricular control. The other mechanisms fare no better. Collective agreements make academic freedom a term of employment whose scope depends on the bargaining relationship; institutional policies vary in coverage and leave universities deciding complaints against themselves. Quebec is the exception: its 2022 *Act Respecting Academic Freedom in the University Sector* defines the right by reference to a person's contribution to an institution's mission rather than employment status.

International human rights standards offer a basis for developing one. Read with their authoritative interpretation, the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR") and the *International Covenant on Civil and Political Rights* ("ICCPR") support an understanding of academic freedom as a distinct entitlement connected to teaching, learning, research and the pursuit of knowledge, held by those who participate in academic work. On this

account, institutional autonomy is instrumental in making individual academic freedom effective rather than a competing institutional interest. Restrictions fall in turn to be justified against a standard that the right itself supplies.

Part I develops that framework, addressing the status and content of academic freedom, its rights-holders, the relationship between individual academic freedom and institutional autonomy, and the requirements governing restrictions. Part II examines the four mechanisms through which academic freedom is protected in Canada, namely constitutional adjudication, provincial legislation, institutional policy and collective agreements, and identifies where each diverges from that standard. Part III turns to the external and internal pressures that make those divergences consequential, and to what a coherent Canadian framework would require.

I. ACADEMIC FREEDOM IN INTERNATIONAL HUMAN RIGHTS STANDARDS

A. Status, Sources and Limitations of Academic Freedom

To evaluate how the Canadian legal landscape approaches academic freedom, it is helpful to analyze how domestic protections measure up against international human rights standards. Achieving a comprehensive analysis requires understanding how international frameworks conceptualize academic freedom, specifically whether it functions as a standalone right, the scope of protections it offers, and who qualifies as a rights-holder.

Under binding international treaties to which Canada is a party, specifically the ICESCR and the ICCPR, academic freedom is essential to realizing the rights guaranteed under the right to education (ICESCR Article 13), to participate in cultural and scientific life (ICESCR Article 15), freedom of expression (ICCPR Article 19), and freedom of thought, conscience, and religion (ICCPR Article 18) (Shaheed, 2024 : paras 10, 30; Kaye, 2020 : paras 5, 8). As these Covenants do not explicitly list academic freedom as a standalone right, academic freedom has traditionally been treated as a derivative right arising from the rights protected under existing treaty frameworks. Notably, the UN Committee on Economic, Social and Cultural Rights (“CESCR”) affirmed in General Comment No. 13 (1999) that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students (General Comment No. 13, 1999 : paras 38–40).

More recent work by the Special Rapporteurs, interpreting the ICCPR's freedom of expression and the ICESCR's right to education, has moved toward treating academic freedom as an autonomous right with its own distinct normative status rather than as a by-product of the Covenants. The Special Rapporteur on the right to education describes academic freedom as encompassing the right to teach, to learn, to engage in discussion and debate with persons and groups inside the academic community, including in classrooms, and outside it, to conduct research, and to disseminate opinions and research results (Shaheed, 2024 : para 23). She notes an "emerging call for the consideration of academic freedom as a self-standing human right" (Shaheed, 2024 : para 11), and recommends that states ensure constitutional and legal recognition of academic freedom as an autonomous right applicable to researchers, educators and students (Shaheed, 2024 : para 84(a)). The Special Rapporteur on freedom of opinion and expression has made a parallel recommendation directed at the monitoring bodies themselves, urging United Nations human rights mechanisms and treaty bodies to characterise interferences as violations of academic freedom in their own right rather than only violations of some other right, such as freedom of expression (Kaye, 2020 : para 57).

Alongside these treaty-based developments are guiding principles which, though not binding on any state, provide further guidance on academic freedom, most notably the Inter-American Principles on Academic Freedom and University Autonomy ("Inter-American Principles") and the Principles for Implementing the Right to Academic Freedom drafted by an international expert working group in 2024 ("Working Group Principles"). The Inter-American Principles recognize that "academic freedom is an independent and interdependent human right", which serves an enabling function for the exercise of a series of other rights (Inter-American Principles: Preamble). The Working Group Principles state the proposition directly, defining academic freedom as "the human right to acquire, develop, transmit, apply, and engage with a diversity of knowledge and ideas through research, teaching, learning, and discourse" (Working Group Principles : Principle 1), while grounding that right in existing international human rights standards (Working Group Principles : Principle 2). The Special Rapporteur on the right to education has endorsed the Principles' approach, in particular the entitlement of all researchers, educators and students to academic freedom at all levels of education (Shaheed, 2024 : para 23). Together these instruments articulate, in more operational terms than the Covenants allow, what the treaty rights are increasingly understood to require.

Because academic freedom is protected through several provisions, the limitations regime applicable to it varies with the route taken. Restrictions reached through ICCPR article 19 must satisfy the cumulative three-part test in article 19(3): the restriction must be provided by law, drafted with sufficient precision that a person can regulate their conduct accordingly; it must protect only the interests the provision enumerates, namely the rights or reputations of others, national security, public order, public health or morals; and it must be necessary and proportionate. On the last requirement the burden lies with the state, which must demonstrate a direct and immediate connection between the expression and the threat, and must show that the restriction is "the least intrusive instrument among those that might achieve the same protective function" (Kaye, 2020 : para 24). Restrictions reached through the ICESCR fall under article 4, which permits limitations determined by law, compatible with the nature of the rights, and solely for promoting the general welfare in a democratic society (Shaheed, 2024 : para 24; Working Group Principles : Principle 2(c)). The framework recognises institutions as parties against whom academic freedom is asserted: autonomy is instrumental to the right precisely because institutions, public and private alike, violate the academic freedom of their own staff and students (Shaheed, 2024 : para 50).

In March 2026 the United Nations' Human Rights Committee examined Canada's seventh periodic report under the ICCPR and, for the first time in its Concluding Observations on Canada, referred expressly to "the right to academic freedom". The Committee recorded its concern that restrictions on peaceful assemblies, including the removal of demonstrators from protest encampments on university campuses, may chill the exercise of both the right of peaceful assembly and the right to academic freedom (Human Rights Committee, 2026 : para 49). It recommended that Canada take all necessary measures to guarantee that everyone can exercise freedom of expression, in accordance with article 19 and the Committee's General Comment No. 34, "as well as academic freedom", and ensure that any restriction satisfies the strict requirements of article 19(3) (Human Rights Committee, 2026 : para 50(a)).

The Committee's language names academic freedom as a right and, in the same breath, demonstrates why derivative protection cannot secure it. The phrase "as well as academic freedom" would be redundant if academic freedom were simply expression exercised on a campus. The standard attached to that guarantee, however, is the one governing expression, and since

academic freedom sits within the same guarantee, the natural reading is that restrictions on academic work must likewise be provided by law and necessary to protect one of the interests article 19(3) enumerates. Canada therefore has an authoritative statement that limits on academic work fall to be justified by reference to legality, necessity and proportionality, a standard no Canadian mechanism presently applies.

The same passage also shows the cost of protecting academic freedom derivatively. Expression is protected without regard to the competence of what is said; academic freedom is not, since its characteristic limits are disciplinary and internal to the practice of inquiry (Finkin & Post, 2009 : 42–43, 59–61; Turk, 2023 : 57–58). That the Committee made its recommendations through ICCPR articles 19 and 21 reflects the Covenant it supervises rather than a judgment about the nature of the right, as the education provisions on which academic freedom is most fully grounded lie in the ICESCR. The result names academic freedom as a right while measuring it against a standard built for freedom of expression. Canadian courts meet the same constraint domestically whenever the only available route runs through section 2(b) of the *Charter*.

B. Content and Rights-Holders

If academic freedom is a distinct right whose content is not exhausted by freedom of expression, the question becomes what that content is and who holds it. Canadian commentary has approached the first question through the *Charter*. In parts of Canada where direct legislative protection of academic freedom is lacking, scholars and jurists have argued that protection may be derived from 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 distinct from freedom of expression, and that the differences between them need to be observed carefully (Eastaugh, 2024 : 38–42; Go *et al.*, 2021 : 10–13).

While section 2(b) of the *Charter* protects the right to express opinions and ideas, academic freedom, by contrast, specifically protects scholars' ability to teach, research, and publish without interference (Eastaugh, 2024 : 9–11). It is an individual right of academics tied to the university's role in advancing knowledge (Eastaugh, 2024 : 10–11). Although its effective exercise depends on some degree of institutional autonomy, academic freedom remains primarily an individual right of academics, rather than a corporate right of universities (Eastaugh, 2024 : 8–11, 39–40).

Still, the two freedoms serve the same basic purposes. Both are meant to support democratic discourse, self-fulfillment, and the search for truth (Eastaugh, 2024 : 44; *Pridgen*, 2012 : paras 114–17). The truth-seeking argument is arguably stronger for academic freedom than for public speech in general because scholarly work is held to disciplinary standards that ordinary debate is not (Eastaugh, 2024 : 45–46). This means academic freedom can be read into section 2(b) rather than treated as an exception to it. Their overlaps also work in both directions: freedom of expression can give individual scholars a way to protect themselves against their own universities (Eastaugh, 2024 : 42). In *Pridgen v University of Calgary*, an Alberta Court of Appeal case, Paperny JA underscored this connection in *obiter dicta*:

> "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 115–17)

Even so, the two ideas should not be collapsed. Freedom of expression protects a person's interest in saying what they wish; academic freedom exists to serve a purpose, namely the production of knowledge, and so comes bundled with obligations that ordinary speech does not carry. It assumes that ideas will be judged and ranked by disciplinary standards, which is the opposite of free expression's premise that all ideas start out equal (Finkin & Post, 2009 : 38–39, 41–43). Graeme Moodie describes academic freedom as an "activity freedom" that follows from the nature of academic work and is "not a personal right of those who choose to do that work"; its justification, and therefore its extent, must be rooted in its relationship to academic activities "rather than (or only consequentially) to the persons who perform them" (Moodie, 1996 : 133, as cited in Fish, 2014 : 5). Moodie nonetheless confines the freedom to faculty exercising academic

functions, and Stanley Fish, endorsing Larry Alexander, treats it as a privilege of academics carrying a corresponding responsibility to act as academics (Alexander, 2006 : 884, as cited in Fish, 2014 : 19). On their own premise, however, the confinement is an addition rather than an entailment: if the freedom attaches to the activity rather than to the person, it reaches everyone whose work forms part of the search for knowledge, students and other institutional staff included. Whether students hold academic freedom remains contested, and the position taken in this article is that they do, though the content of a student's academic freedom, namely the freedom to learn, is not identical to a scholar's freedom to teach and publish, which carries an additional layer of professional responsibility.

The argument so far supports one claim about Canada's existing obligations and another about where international practice is heading; they should be kept apart. As a party to the ICESCR, Canada is bound by articles 13 and 15, and the Committee has said that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students, and that institutional autonomy must be consistent with systems of public accountability (General Comment No. 13, 1999 : paras 38–40). A protective regime that turns on employment category, and that leaves students and non-unionised staff without recourse, is difficult to reconcile with that requirement.

Treaty bodies and special procedures increasingly treat interferences with academic freedom as violations in their own right rather than as derivative claims under freedom of expression (Kaye, 2020 : para 57; Shaheed, 2024 : paras 11, 84(a); Human Rights Committee, 2026 : paras 49, 50(a)). That is a shift in how existing obligations are read, not a new treaty norm. Soft law instruments go further by recognising academic freedom as "an independent and interdependent human right, which enables the exercise of a series of other rights" (Inter-American Principles : Preamble) and it being a "human right to acquire, develop, transmit, apply, and engage with a diversity of knowledge and ideas through research, teaching, learning, and discourse" (Working Group Principles : Principle 1). What is notable about the Canadian position is not that it has rejected this trajectory, but that it has never reached it: by organising the question around whether the *Charter* binds universities, Canadian law has produced a substantial jurisprudence on the constitutional status of institutions and almost none on the content of academic freedom or on who holds it.

C. Institutional Autonomy

Institutional autonomy exists to make individual academic freedom effective, not to compete with it. The Working Group Principles set out how the individual right bears on institutional autonomy, providing that autonomy "should not be used by education institutions as a pretext to limit the exercise of academic freedom, including by punishing staff or students for the content of their research, teaching, or discourse, or the right of education staff or students to express freely their opinions about the institutions or systems in which they work." (Working Group Principles : Principle 3(h)). The formulation closely tracks the UNESCO Recommendation of a quarter-century earlier, which likewise warns against autonomy being used as a pretext to limit the rights of academic personnel (UNESCO Recommendation, 1997: para 20). The Committee on Economic, Social and Cultural Rights (CESCR) reaches the same position from the other direction, holding that the enjoyment of academic freedom requires institutional autonomy while insisting that self-governance remain consistent with public accountability, particularly given the scale of public investment (General Comment No. 13, 1999 : para 40). The Special Rapporteur on the right to education states the reason directly: institutional autonomy "should be considered as being instrumental to academic freedom, rather than the reverse", because there are many recorded instances of institutions, public and private, violating the academic freedom of their own staff and students (Shaheed, 2024 : para 50). Autonomy is the structural condition under which individual academic freedom is exercised, and it is answerable to that purpose. An institution that invokes autonomy against the claims of its own members has inverted the justification for the autonomy it asserts.

The Working Group Principles further set out the institutional safeguards required in operational terms. The appointment of oversight boards and governing councils, 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; so must decisions on academic, research and teaching content, curricula and materials; and staff and student unions must be able to form and operate without ideological or other discrimination (Working Group Principles : Principle 3(b), (e), (f), (g)). Every one of these protections runs against external actors. None exempts an institution from answering for how it treats its own members.

Taken together, these instruments describe academic freedom as a distinct right, held by those who take part in academic work rather than by those holding a particular contract; they treat institutional autonomy as existing to make that right effective rather than as a shield against it. Canada protects academic freedom through four mechanisms: judicial adjudication, statute, institutional policy and collective agreement. The sections that follow examine each against the above standard.

II. LIMITATIONS OF ACADEMIC FREEDOM PROTECTIONS IN CANADA

A. *Charter* Adjudication and Its Limits

Other than Quebec's provincial *Act Respecting Academic Freedom in the University Sector*, the rest of Canadian law contains no equivalent statement of what academic freedom is or who holds it. Most cases centering around academic freedom in Canada emerge from labour disputes, which are confined to contractual negotiations or adjudicated through labour arbitration (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 *McKinney v University of Guelph*. The 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, delivering the majority judgment, emphasized that academic freedom is fundamental to "the protection and encouragement of the free flow of ideas", which lies at the heart of the "free and fearless search for knowledge" and is "essential to our continuance as a lively democracy" (*McKinney*, 1990 : 286–7). *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. That framing has shaped everything since, in that academic freedom appears in the judgment as a reason for keeping the state out rather than as an entitlement of scholars against their own institutions. On that reasoning, 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*, 1990 : para 41). The Human Rights Tribunal of Ontario took a similar view of judicial restraint in *McKenzie v Isla*, holding 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).

McKinney nonetheless left an opening, developed seven years later in *Eldridge v British Columbia (Attorney General).* There, the Supreme Court held that an entity is subject to the *Charter* where it is governmental in nature, and also where an otherwise autonomous body implements a specific government policy or programme, in which case *Charter* obligations attach to that activity (*Eldridge*, 1997 : paras 43–44). The appellants, who were deaf, challenged the failure to fund sign language interpretation as part of publicly insured medical services. The Court held that hospitals were not government, but that in delivering medically required services under provincial legislation, they were carrying out a government policy, and were answerable under the *Charter* when doing so. The *Eldridge* framework therefore distinguishes autonomy from government responsibility: an institution need not be controlled by the state to be subject to the *Charter* when performing a function through which it implements government policy, and the obligation attaches function by function, so an institution may be bound in respect of some activities and not others. After *Eldridge*, Canadian courts have not settled whether universities fall within that reasoning, and the resulting caselaw falls into two streams.

In the first, courts have accepted that a university's autonomy does not insulate it from *Charter* review when it acts in furtherance of the government's objective of providing post-secondary education. These cases have largely arisen from student expression protected under section 2(b). In *Pridgen*, the Alberta Court of Appeal unanimously quashed the University Review Committee's decision to discipline students for their Facebook comments, with only Paperny JA addressing the Charter. She held that the Review Committee was obliged to consider the students' freedom of expression when exercising its statutory disciplinary authority (*Pridgen*, 2012 : para 128), resting *Charter* application on the coercive character of the university's decision rather than on *Eldridge*, while confirming that the *Eldridge* route remained available, since the provision of post-secondary education under the Post-secondary Learning Act is a clear and tangible governmental objective even though it is not framed as a named program (*Pridgen,* 2012 : paras 104–5).

Paperny JA's suggestion in concurrence became the Alberta Court of Appeal's holding in *UAlberta Pro-Life*, which held that a university may not interfere with students' freedom of

expression on campus and that *Charter* compliance does not compromise institutional autonomy. The Court applied *Eldridge* directly, agreeing with Paperny JA that post-secondary education is a governmental objective and that providing students a forum for expression is central to the university's mandate (*UAlberta Pro-Life*, 2020 : para 148). The Manitoba Court of Queen's Bench in *Zaki* later held that administering non-academic student discipline furthered government policy and was reviewable under *Eldridge* (*Zaki*, 2021 : para 154). The case is narrower than the two above, however, since the relevant bylaws were enacted under a specific statutory mandate to adopt sexual violence policies rather than under the general mandate to provide post-secondary education (*Zaki*, 2021 : paras 160–61, 168).

The second stream runs the other way. Courts in Ontario and British Columbia have treated institutional autonomy as the decisive fact, holding that a university's freedom from outside control severs the connection to government that *Eldridge* requires. In *AlGhaithy*, the Divisional Court held the Charter inapplicable to the dismissal of a medical resident, relying on legislation providing that "the management, discipline and control of the University shall be free from restrictions and control of any outside body" (*AlGhaithy*, 2012 : para 76). Statutory independence, enacted to secure the university's academic mission, was read as severing the connection that would make the university answerable for a decision the Court itself described as academic. The Court distinguished *Pridgen* on the ground that Alberta legislation requires universities to carry out a specific government objective of facilitating access to post-secondary education, with no equivalent in Ontario (*AlGhaithy*, 2012 : para 78). *Charter* protection therefore turned on provincial drafting. In *Lobo*, the Ontario Court of Appeal held that a university does not implement a specific government policy or program when it books space for non-academic extra-curricular use (*Lobo*, 2012 : para 4). The reasoning in both conflates two distinct questions: *Eldridge* asks whether a decision furthers a government policy, not whether government controls the decision-maker.

The British Columbia Court of Appeal reached the same conclusion in *BC Civil Liberties Association*, which concerned a student group sanctioned for holding an unauthorized demonstration on campus. The Court framed the issue as whether the university's provision of a public forum for free expression could be attributed to government, and held 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).

The pattern persisted in the more recent *University of Toronto* case, which arose from a pro-Palestinian encampment on campus. The Ontario Superior Court granted the university an injunction requiring the removal of encampment, and held in an alternative analysis that the *Charter* did not apply, relying on *Lobo* for the proposition that decisions about the management of university property are not made in furtherance of any government policy (*University of Toronto*, 2024 : para 230). Because the *Charter* holding was not necessary to the result, its precedential weight is limited, but the case illustrates how readily a narrow reading of *Lobo* can be extended from booking a space on campus, to removing a protest. These decisions have a common approach: they describe the activity narrowly, then find that nothing so narrow implements a government programme.

The Supreme Court recently cast doubt on this approach. School boards, like universities, had at times been held outside Charter review under *Eldridge* because of their operational independence (*Calgary Roman Catholic Separate School District No 1*, 2007 : paras 127–32; *Hamilton*, 2009 : paras 16–17). In *York Region*, citing *UAlberta Pro-Life* with approval, the Supreme Court departed from those decisions and affirmed that public education is inherently a governmental function (*York Region District School Board*, 2024 : para 81; Eastaugh, 2024 : 33). The second stream's reasoning fails to recognise that university independence is itself a necessary mechanism for implementing government policy: delivering university-level education and research as public services requires establishing and funding universities that are, by design, self-governing (Eastaugh, 2024 : 33–34). By means of "a technical splicing" of a limited number of Supreme Court precedents, those judgments transform a contextual and purposive inquiry into a question of formal control (Forcese, 2018 : 22). The resulting jurisprudence stands in contrast to the international standards set out in Part I, which treat institutional autonomy as existing to protect academic freedom rather than as a barrier to accountability.

The unsettled state of *Charter* applicability leaves those whose academic freedom has been infringed without reliable judicial redress, and pushes them toward internal policies and collective agreements, which the following sections examine. The deeper problem is that even the favourable line of authority delivers less than it appears: what *Pridgen* and *UAlberta Pro-Life* decided concerned the expression of students on university grounds. *Pridgen* contains the fullest Canadian judicial treatment of the relationship between academic freedom and freedom of expression, though Paperny JA’s discussion was obiter (*Pridgen*, 2012 : paras 115–17). In *UAlberta Pro-Life*,

the Court found it unnecessary to delve into what it called Paperny JA's "illuminating discussion" of why the two should not be conceptually competing values, and expressly reserved the position of academic staff, observing that staff and students stand quite differently and that *Charter* obligations toward faculty "might be problematic" because academic staff already hold contractual and statutory rights (*UAlberta Pro-Life*, 2020 : paras 136–37). The example it offered, an academic who refuses an assigned course and insists on teaching another, is a question of curricular control, and it was left for another day. A research programme curtailed, an appointment blocked on political grounds, a curriculum directed from outside the discipline: these are the interferences the standards set out in Part I address directly, and none has come before a Canadian court as an academic freedom claim. Canadian courts have not established that academic freedom is protected by the *Charter*, and on the reasoning illustrated here they have not been asked to. Settling the threshold question in favour of applicability would improve Canadian law, without giving academic freedom the legal recognition it presently lacks.

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

Quebec's *Act Respecting Academic Freedom in the University Sector* ("Quebec Act") is the first Canadian statute offering protection for academic freedom. 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 (CBC, 2022). The Quebec Act defines academic freedom as the right to engage in "activity through which the person contributes to carrying out the mission of an educational institution", such as teaching, research, discussion, creation, publication, "without doctrinal, ideological, or moral constraints, such as institutional censorship" (Quebec Act, 2022 : Section 3). The definition also includes the freedom "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: Section 3). Substantively, the Act's definition tracks the UNESCO Recommendation element for element: freedom from doctrinal constraint, in teaching, discussion, research and publication, freedom from institutional censorship, and freedom to take part in professional and academic bodies (UNESCO Recommendation, 1997 : Article 27).

The Act offers protections beyond the UNESCO Recommendation. The UNESCO Recommendation confines the entitlement to “higher-education teaching personnel”; the Act applies to every person contributing to an educational institution's mission, extending statutory protection beyond faculty to non-unionised staff and students. And where UNESCO protects opinion about the institution or system in which a person works, the Act protects opinion about society and about any doctrine, dogma or opinion, extending to extramural expression that Article 27 of the UNESCO Recommendation does not reach (Quebec Act, 2022: Section 3).

Quebec’s drafting choice has been noticed internationally. Reviewing how states define academic freedom, the Special Rapporteur on the right to education takes Quebec as an example of the approach she endorses, noting with approval the definition adopted (Shaheed, 2024 : para 7). She situates the Quebec definition alongside the Inter-American principle that academic freedom belongs to every individual who forms part of an academic community, and alongside Guatemala's approach, which does not differentiate between teachers and students or among educational levels (Shaheed, 2024 : para 7). On the rights-holder question set out in Part I.B, the Quebec Act keys protection to academic function rather than employment status, as some institutional policies also do. What distinguishes it is that the definition applies across the province as a matter of law, rather than depending on which instrument a particular university happened to adopt.

Statutory recognition of academic freedom addresses the gap identified in the preceding section. Where the *Charter* jurisprudence has produced no ruling on what academic freedom protects or who holds it, the Act answers both questions directly. The Act requires every institution to adopt a policy pertaining exclusively to university academic freedom, to establish a representative committee of students, officers and personnel to examine complaints, and to set out the measures applicable where the right is violated (Quebec Act, 2022 : Section 4). A standing body of that composition is something no other Canadian jurisdiction requires, and it gives students and staff a role in examining complaints that would otherwise rest with the administration. The policy also must not prevent ideas and topics that could offend from being broached during an activity contributing to the university mission (Quebec Act, 2022 : Section 4). The limits of the Act are as instructive as the achievement. It leaves to each institution the decision whether a particular restriction engages academic freedom, and sets no standard by which such a restriction is to be justified. Institutional policies therefore continue to determine how a dispute is first characterised

and acted upon, through procedures that operate before any question of statutory protection is resolved.

The oversight provisions raise a different question. Universities must report to the Minister annually on complaints received and measures taken (Quebec Act, 2022 : Section 8), and where an institution fails to comply the Minister may appoint an official to enforce corrections at the university's expense (Quebec Act, 2022 : Section 7). Earlier iterations of Bill 32, which formed the basis for the Act, went considerably further, empowering the Minister of Higher Education to "order an educational institution to include in its policy any element indicated by the Minister" and to make "corrections" to non-compliant policies, with institutional policies subject to ministerial approval under sections 4 to 6 (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 professors warned that the Bill acknowledged academic independence in its preamble while undermining it in its operative provisions (Leckey and Ghabrial, 2022). Those provisions did not survive. The episode nonetheless shows why the account of institutional autonomy set out in Part I matters: autonomy exists to make individual academic freedom effective, so a ministerial power to dictate the content of institutional academic freedom policies is not a neutral enforcement mechanism. It would have given the Minister control over the instrument through which the right operates in each institution, held by the actor against whom the right most often needs to be asserted. A uniform legal definition provides clearer guidance and reaches those whom no other instrument covers; whether the narrower oversight powers in the enacted Act are exercised in the spirit of the Act is the question worth watching.

C. Institutional Policies

Outside Quebec, no statute supplies a definition of academic freedom, and institutional policy is the operative source of protection. Most definitions are found in collective agreements rather than in standalone policies (Forcese, 2018 : 32), and while they vary, there is considerable constancy on the core essentials, with many using wording consistent with CAUT's model clause (Forcese, 2018 : 32). The most widely cited international formulation is UNESCO's 1997 Recommendation, which provides:

> ". . .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 Recommendation, 1997: Article 27).

CAUT's 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" (CAUT). CAUT also publishes a model clause for collective agreements, and many Canadian universities have adopted its wording or incorporated aspects of it (Forcese, 2018 : 32; Ribaric and Kumar, 2025 : 1). 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. It is also, on its face, narrower in coverage than the standard set out in Part I, since the UNESCO Recommendation addresses higher-education teaching personnel while General Comment No. 13 extends academic freedom to staff and students alike. Where statutory or constitutional law provides no explicit protection for academic freedom, scholars and institutions often rely on universities' own autonomous policies, allowing each institution to define and enforce protections in line with its governance structures. Reliance on institutional self-regulation creates vulnerabilities of three kinds: the university adjudicates complaints against itself; policies can fail to cover the people doing academic work; and policies can be turned against the work they exist to protect.

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 Recommendation 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 Recommendation : Articles 23–24). In practice, institutional policies may lack safeguards against conflicts of interest (for example, where administrators who restrict academic

freedom may also adjudicate complaints) and may provide few protections against retaliation.[1] This creates a chilling effect, discouraging individuals from raising concerns and leaving academic freedom vulnerable even where policy protections exist.

The second vulnerability concerns coverage. A 2021 comparative analysis of academic freedom policies at 23 Canadian higher education institutions found that only eight explicitly recognized academic freedom for students, while the remaining institutions limited such protections to faculty members (Go *et al.*, 2021 : 8). Among the eight, McMaster University and Carleton University extend policy protections to students. McMaster's Statement on Academic Freedom extends protection to those invited to participate in its academic fora (McMaster University, 2011), while Carleton's institutional policies recognize rights applicable to students (Go *et al.*, 2021 : 25). The University of Alberta, in contrast, includes students within its Statement on Free Expression, while its academic freedom provisions in the faculty collective agreement apply to faculty (Go *et al.*, 2021 : 8). This distinction matters because the vehicle determines the coverage: students are not parties to faculty collective agreements and therefore fall outside the strongest protections available. As the analysis observes, protection under freedom of expression does not necessarily extend to the more specific forms of protection associated with academic freedom, such as the freedom to pursue controversial areas of research (Go *et al.*, 2021 : 8). While international instruments identify rights-holders by participation in academic work, most Canadian institutional policies identify them by employment category, so that protection is weakest for those whose position in the institution is most precarious, and whose exposure to reprisal is correspondingly greatest.

Policies that 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 Canada, tensions between institutional policies and academic freedom have become more visible in recent years. Many universities have adopted "institutional neutrality" policies in relation to contentious international issues, such as the crisis in Gaza and the campus protests it generated (Johal, 2025). CAUT's then-president, Peter McInnis, describes the requirement that members of the university community be respectful and polite as a means of cloaking censorship, on the reasoning that raising Gaza is necessarily contentious and therefore impolite (Johal, 2025).

1 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.

McInnis attributes the growth of institutional risk management to universities' concern about provoking provincial governments and donors (Johal, 2025).

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 comparative analysis, of 23 universities across Canada analyzed, nine make no reference to harassment and discrimination provisions within the academic freedom policy (of which the study names only seven: University of Toronto, Western University, University of Ottawa, McGill University, Université Laval, Université de Montréal and Université de Quebec a Montréal) (Go *et al.*, 2021 : 14, 25). The analysis concluded that academic freedom faces "potential dangers" under the notion of discrimination and respectful workplace policies, and that while faculty remain protected, students become vulnerable where they are not comprehensively covered by both (Go et al., 2021 : 17).

University policies typically define harassment broadly, encompassing behaviours that create a hostile work environment, which can include speech or scholarship deemed offensive.[2] While such definitions aim to protect employees and students, they can inadvertently ensnare academics whose work challenges prevailing norms, which is the kind of inquiry academic freedom is meant to defend. The University of Ottawa provides a concrete illustration. In 2020, a professor was suspended after using a racial slur in a pedagogical context. The professor was eventually reinstated, but only after an open letter signed by more than 500 Quebec professors and sustained public debate (Go et al., 2021 : 13). A complaint set a conduct process in motion, and the question whether the underlying activity was protected academic work arose, if at all, only afterwards. Where academic freedom is not referenced in the harassment and discrimination policy under which a complaint proceeds, nothing directs the decision-maker to weigh the restriction against the academic interest at stake, or to ask whether it is necessary and proportionate to a legitimate aim, or whether a less intrusive measure would serve — the analysis international standards require before academic work may be restricted.

2 See e.g., McGill University, *Policy on Harassment and Discrimination* (2021), s. 4.1, defining harassment as conduct that "adversely affects the work environment."

D. 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 these agreements wide coverage (Lynk, 2020 : 47). They are typically renegotiated every three to four years between faculty unions and university administrations, allowing regular reassessment of academic freedom's scope, and many contain detailed definitions (Lynk, 2020 : 47). When disputes arise, faculty associations can challenge administrative decisions through mandatory labour arbitration, an expert forum in which decisions are legally binding (Lynk, 2020 : 47). Together these features explain why academic freedom in Canada has been described as a labour right (Robinson, 2019).

Collective agreements are negotiated between university administrations and faculty associations, and belong to the bargaining unit rather than to the individual academic. Their terms and language vary considerably across Canadian institutions (Ribaric and Kumar, 2025 : 2), so their content depends on what a particular bargaining relationship has produced. The scope of a professor's academic freedom is therefore determined less by the principle itself than by the wording of a document they did not individually author. Measured against the standard set out in Part I, an entitlement that international instruments treat as a right held by those who take part in academic work is, in Canada, a term of employment held by a bargaining unit.

According to a 2025 study analyzing collective agreements from 44 Canadian universities, approximately 27% of institutional collective agreements closely mirror the CAUT exemplar,[3] while the majority, 57%, incorporate limiting factors that place qualifications or additional 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 (Ribaric and Kumar, 2025 : 20). 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

3 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.

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 and University of Western Ontario, 2022 : 7, as cited in Ribaric and Kumar, 2025 : 20). The Western formulation states a disciplinary standard internal to scholarship, which is the kind of limit the purposive account discussed in Part I already contemplates. The Manitoba formulation imports an obligation whose content is set in part by the reactions of others. Neither clause was drafted against the standard that governs restrictions on academic freedom, because nothing in the process required it: international standards ask whether a restriction is necessary and proportionate, while collective bargaining asks what both sides will accept.

Canadian case law reinforces the primacy of collective agreements in resolving disputes. In *Weber*, the Supreme Court held that where a dispute arises from the collective agreement, the claimant must proceed by arbitration and the courts have no power to entertain an action in respect of it (*Weber*, 1995 : para 50). The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the agreement (*Weber*, 1995 : para 52). For a professor asserting an infringement of academic freedom, arbitration is therefore the forum, and access to it runs through the association.

The exclusivity *Weber* establishes shapes how academic freedom claims are decided in practice. Reviewing the reported decisions, Forcese identified at least thirteen labour adjudications turning on academic freedom, and found the limits applied to be drawn from the collective agreements themselves and "often tied to reasonableness" (Forcese, 2018 : 36, 40). Reasonableness has been assessed by reference to the time, place, content and style of the speech at issue (*University of Manitoba (Re)*, 1991 : para 98, as cited in Forcese, 2018 : 36), and by the expectation that a professor "should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others" (*Concordia (Petkov)*, 2014 : para 233, as cited in Forcese, 2018 : 36). Lynk's review of the same body of awards finds that arbitrators have tended to adopt a *comme les autres* approach, drawing on the arbitral rules developed for insubordination and loyalty to the employer in non-academic unionized workplaces "rather than employing a

contextual application of the distinctive nature of academic freedom to the factual issues on expression before them" (Lynk, 2020 : 50).

In *University of Saskatchewan v University of Saskatchewan Faculty Association*, Arbitrator Sims considered grievances by four librarians who were investigated, and had letters placed on their personal files, after criticising the conduct of layoffs at a staff meeting. Sims accepted that academic freedom is to be interpreted liberally so as to achieve its purpose, but held that it “is exercised in a collegial and institutional setting” and must be read alongside statutory workplace health and safety obligations and the university’s own harassment policy (*University of Saskatchewan*, 2015). Because an employer facing a harassment complaint must be able to investigate, he reasoned, the threshold for finding that such an investigation itself breaches academic freedom cannot be set at the mere making of a complaint. Both grievances were dismissed. As Lynk observes, what the ruling did not directly answer was whether placing the letters of caution on the librarians' personal files might reasonably chill the exercise of intra-mural expression, which was central to the grievances (Lynk, 2020 : 54). The reasoning balances academic freedom against the institution's competing obligations. It does not ask whether the restriction served a legitimate aim, whether it was necessary, or whether a less intrusive measure would have served, which is the analysis Part I identifies as governing restrictions on academic freedom.

One award comes closer. In *York University*, where the collective agreement guaranteed the right to criticize the university without any requirement that academic freedom be exercised "responsibly" or "reasonably", Arbitrator Goodfellow held that a university replying publicly to a professor's criticism must perform a "highly judicious balancing act", and that in many instances "the better option may be to choose silence and to allow public discussion or debate to take its course" (*York University*, 2007 : para 30, as cited in Lynk, 2020 : 59). That approaches a least-intrusive-means analysis, and it followed from how one agreement had been drafted rather than from any standard requiring it.

The *Saskatchewan* case also exposes the limits of who can invoke academic freedom at all. One grievor testified that he raised questions on behalf of support staff who feared reprisal, precisely because faculty enjoy collective agreement protections that administrative staff do not. Academic freedom was available to be litigated only by those inside the bargaining unit, and only through their association.

The reliance on unions extends to potential *Charter* claims. Since collective agreements govern workplace disputes, a professor seeking to challenge a university policy on *Charter* grounds would in most cases find the dispute directed to arbitration, and without union support would bear the financial and procedural burden of litigating alone. An individual's access to any forum at all therefore depends on a collective body's decision, which is a different thing from holding a right. The prior difficulty identified in Part I remains in any event: the *Charter* would first have to apply, and *McKinney* declined to extend it to university employment matters (*McKinney*, 1990 : paras 41–43).

Collective agreements also protect only those within the bargaining unit. Students and non-unionized staff, such as sessional instructors or administrative personnel, effectively have no standing in arbitration under a collective agreement to which they are not a party, and no equivalent forum elsewhere. Unionized sessional faculty enjoy stronger academic freedom protections than non-unionized faculty, and that those represented by faculty associations are better protected than those in other public-sector unions (Ross et al., 2021). Without the protection of a collective agreement or the resources of union representation, non-unionized academic employees face substantial difficulty exercising their right to academic freedom without fear of reprisal (Ross et al., 2021). Measured against a standard that identifies rights-holders by their contribution to academic work rather than by their contract, this is not an incidental gap but a systematic mismatch between the protective mechanism and the right it is asked to protect.

III. CHALLENGES AND OPPORTUNITIES

A. External Pressure, Internal Threats and Institutional Decision-Making

The limitations examined in Part II 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 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).[4] 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 et al., 2025 : 2–3). Over 40% of the global population lives without academic freedom (Kinzelbach et al., 2025 : 10–11). Canada ranked 37th, with the United States at 85th (Kinzelbach et al., 2025 : 10). Canada's position is comparatively strong, but it is not static. Recent developments across Canada reflect the 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 priorities, though exemptions were later granted to universities (Venne, 2025). Nova Scotia's *Act Respecting Advanced Education and Research*, which received Royal Assent in March 2025, empowers the Minister to require a university to enter a revitalization process and to withhold operating funds if it does not comply, and allows the Minister to determine the province's key research priorities (*Advanced Education and Research Act*, 2025 : ss 4A, 7(3)). As Robin Whitaker of CAUT notes, these actions show that Canada is not immune to the global erosion of academic freedom (Venne, 2025).

4 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.

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).[5] 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 are 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 attached to private donations can curtail academic freedom where they reach decisions about appointments or academic content.

Norris distinguishes threats arising outside the academy, imposed through state law and funding, from those arising within it (Norris, 2025 : 5–8). The internal threat is not institutional discipline but the informal pressure of a prevailing culture and the self-censorship it produces: scholars hesitate to express heterodox views in their teaching, research and departments because of how colleagues are expected to react (Norris, 2025 : 7–8).

The dynamics between external funding and academic activity are reflected in cases documented by CAUT, which demonstrate how financial and political pressures can enter 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 terminated in 2020, after a donor and sitting judge raised objections to her research

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

on Israel and Palestine (CAUT, 2020). An independent review by the Hon. Thomas Cromwell declined to draw the inference that external influence played any role in the decision (Cromwell, 2021 : 6). Members of the Faculty of Law responded that the review's own undisputed findings — a breach of a confidential hiring process, senior administrators relaying a donor's objections, and the abrupt termination of advanced negotiations within forty-eight hours — could not support that conclusion, particularly given Cromwell's stated refusal to resolve disputed facts or assess credibility (Emon et al., 2021). At Laurentian University, psychology professor Michael Persinger was removed from teaching a course in December 2015 after a single student complaint. An arbitrator later found the removal improper and contrary to the collective agreement, and held that the university had "failed to consider Dr. Persinger's academic freedom"; the award required the university to follow a consultative process before removing a professor from the classroom, and to cease publicly inviting complaints against faculty (CAUT, 2019).

The University of Toronto case involves an external actor influencing an appointment; the Laurentian case involves an institution restricting pedagogical choices in response to internal complaints, which is the internal threat Norris describes. International standards address both. Appointments and employment processes, including hiring, promotion and tenure, are among the decisions the Working Group Principles require to be insulated from political or external interference, as are decisions on academic, research and teaching content, curricula and materials; the Principles also call for safeguards on the financing of institutions, including definitions of conflict of interest, reporting requirements and public disclosure (Working Group Principles : Principle 3(b), (c), (e), (g)). Canadian protections examined in Part II reached Persinger and did not reach Azarova, and the difference lay in the mechanism rather than the seriousness of the interference. Persinger was a unionised faculty member with an academic freedom clause in his collective agreement and an association willing to grieve on his behalf. The appointment negotiations at Toronto fell outside any agreement, and the review that followed was voluntary and its findings unenforceable. A remedy was available to Persinger because of who he was and where he worked, not because the interference was more serious or the right more clearly engaged.

B. Turning Limitations into Opportunities

As set out in Part II, Canada's protection of academic freedom is uneven, and the unevenness is structural rather than accidental. Each mechanism supplies a definition that binds only within its own instrument, and each identifies rights-holders on its own basis. Most disputes are decided outside the courts altogether, by arbitrators construing collective agreement clauses and, where the claimant falls outside a bargaining unit, by institutional committees applying institutional policy. Every one of these decision-makers determines the content and holders of academic freedom in the course of applying its own instrument, and each does so against a different measure. The sections that follow set out what a shared standard would require, beginning with the definition and working through to the actors against whom it would operate.

The direction of international practice, discussed in Part I, is toward recognising academic freedom as a right in its own terms rather than as an application of some other right (Shaheed, 2024 : paras 11, 84(a); Kaye, 2020 : para 57; Inter-American Principles : Preamble). Canada has recently seen what the alternative produces. When the Human Rights Committee addressed academic freedom in its 2026 Concluding Observations, it could reach the question only through articles 19 and 21 of the ICCPR, so that restrictions on academic work fell to be assessed under a limitations clause designed for expression (Human Rights Committee, 2026 : paras 49, 50(a)). A statutory definition would remove that constraint domestically, and it is the precondition for everything that follows: until academic freedom has a settled content, there is nothing against which a restriction can be measured.

Canadian protection is keyed to employment category, while the standard set out in Part I identifies rights-holders by their participation in academic work. Quebec has shown that the second approach can be drafted into Canadian legislation: its Act protects every person contributing to an institution's mission, reaching students and non-unionised staff who fall outside every other mechanism examined here. The approach is available to other provincial legislatures.

A definition settles what the right covers; it does not settle when the right may be overridden, and no Canadian mechanism presently requires that analysis. Harassment and discrimination policies commonly make no reference to academic freedom, so nothing directs the decision-maker to weigh a restriction against the academic interest at stake (Go et al., 2021 : 14). Arbitrators read academic freedom alongside an institution's competing statutory and policy

obligations, without asking whether the measure taken was necessary or whether a lesser one would have served (*University of Saskatchewan*, 2015). And the *Charter* jurisprudence has not reached the question (*UAlberta Pro-Life*, 2020 : paras 136–37).

Academic freedom is not absolute, and the limitations analyses found across the human rights instruments differ in the aims they permit while sharing a common structure: a restriction is expected to be prescribed by law, to serve an identified aim, to be necessary to it, and to go no further than that aim requires, with the burden falling on the party imposing it (Kaye, 2020 : para 24; Shaheed, 2024 : para 24; Working Group Principles : Principle 2(c)). The structure would carry over. What would change are the aims capable of satisfying it, and those follow from the account of the right set out in Part I. Because academic freedom protects inquiry conducted according to disciplinary standards rather than expression as such, a requirement that research and teaching rest on an honest search for knowledge states what the right protects rather than limiting it. Rights-holders are identified by their participation in academic work, so the equal participation of others in that work can justify a restriction, as can protection from discrimination, which is a condition of such participation. Interests external to the enterprise, such as an institution's reputation, its funding relationships, or a government's policy preferences, would not qualify, whatever their weight in the institution's own deliberations. That standard would operate against institutions as well as governments. The international framework contemplates institutions as parties against whom academic freedom is asserted: autonomy is instrumental to the right precisely because institutions restrict the academic freedom of their own staff and students (Shaheed, 2024 : para 50), and may not be invoked as a pretext for doing so (Working Group Principles : Principle 3(h)). Adopting the standard would require the institution imposing a restriction to identify which of those aims it serves, and to show that nothing short of the measure taken would have served it.

The same instrumental account of autonomy constrains governments, though in the opposite direction. Institutional autonomy in Canada should be recognised as a substantive principle guiding legislation and policy, and not only as a reason for judicial restraint. It constrains governments from using funding conditions, appointment powers or curricular mandates to direct academic content, limits that recent provincial statutes and ministerial decisions have tested. Respecting autonomy does not exempt universities from oversight; it ensures that state action does not undermine academic freedom or contravene international norms. Three measures would give

that principle content. First, hiring, working conditions, admissions, promotions, tenure, retention and dismissal decisions should be insulated by law from political or donor interference, as should decisions on academic, research and teaching content, curricula and materials (Shaheed, 2024 : para 48). Second, private involvement in education should be regulated so that respect for academic and pedagogical freedoms forms part of the minimum standards applicable to institutions receiving private support (Shaheed, 2024 : para 48; Abidjan Principles, 2019). Third, donor funding should be subject to safeguards that include definitions of conflict of interest, reporting requirements and public disclosure (Working Group Principles : Principle 3(c)). Canadian universities are currently under no obligation to disclose the terms on which such funding is accepted, which is the difficulty identified in Part III.A.

CONCLUSION

Canada's protections for academic freedom do not operate from a common conception of the right. The result is a system in which whether a person is protected at all, and how, depends heavily on the instrument through which a dispute happens to arise.

The international framework offers a basis for resolving that problem. It treats academic freedom as a distinct entitlement held by those who participate in academic work, and institutional autonomy as a means of securing that entitlement rather than an independent interest capable of displacing it. Translating that approach into Canadian law would provide a common definition, extend protection to participation in academic work rather than to employment category, and require restrictions on academic activity to be justified. Quebec demonstrates that the first two of these reforms are legislatively possible; the remaining step would give the standard practical force.

The need for such a framework is not theoretical. Where the law does not identify academic freedom as a distinct right, disputes about teaching, learning and research are resolved through collective agreements and institutional policies. Protection is fragmented, and the system can decide whether a university acted lawfully without ever asking what academic freedom is, who holds it, and what would justify restricting it. A coherent Canadian framework would make that inquiry unavoidable.

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