

Academic Freedom and the *Charter*

By

Linda McKay-Panos

February 10-11, 2022

Outline

- Example
- Caselaw discussion of academic freedom
- Relationship between freedom of expression and academic freedom
- Application of *Charter* to universities/ post secondary institutions
- Should academic freedom be protected by the *Charter*?

INTRODUCTION

Recent event: CTV News Calgary—January 5, 2022

- “A tenured professor fired from Mount Royal University last month says she plans to take the matter to arbitration through her union.
- A statement from the southwest Calgary university on Tuesday didn't give a reason for the termination, saying only that it ‘can confirm that Frances Widdowson is no longer a faculty member.’
- MRU is committed to fostering expression and free speech, and strives to be a model for allowing opposing viewpoints to co-exist," the statement read.
- The university unequivocally supports academic debate and will always defend the rights of faculty related to academic freedom. However, academic freedom does not justify harassment or discrimination.



Alberta
Civil Liberties
Research
Centre

INTRODUCTION

Recent event: CTV News Calgary—January 5, 2022

Fired Mount Royal University professor says she plans to appeal

- Mount Royal employees have the right to work in an environment that is respectful and free from harassment. The collective agreement and MRU policies outline a process for resolving issues of workplace conduct, and decisions are always made following rigorous due process.
- ‘The MRU community is committed to a learning environment free from harassment and discrimination for our students, faculty, staff, alumni, donors and the broader community.’
- Reached at her home on Wednesday, Widdowson declined to discuss the specifics of her case, citing pending arbitration, but said her firing on Dec. 20 was the result of what she called a ‘woke culture’ on campus.

INTRODUCTION

Recent event: CTV News Calgary—January 5, 2022

- ‘I was questioning woke-ism, woke ideas at the university, so asking questions, and this could not be tolerated by woke activists, which is basically identity politics that has become totalitarian,’ she said.
- ‘That's kind of the environment that was gradually becoming more and more poisonous.’
- An associate professor in the department of economics, justice and policy studies, Widdowson was hired at MRU in 2008 to be what she called ‘a critic of Indigenous policy, two years after receiving her PhD in political science from York University.’

Academic Freedom and the *Charter*

Academic freedom: Caselaw

Mckinney v University of Guelph, [1990] 3 SCR 229 per Justice LaForest:

“It is worth repeating the government's (or rather the universities') pressing and substantial objectives in the present case. They are:(2) to preserve **academic freedom** and the collegial form of association by minimizing distinctive modes of performance evaluation. **Academic freedom and excellence is essential to our continuance as a lively democracy.**”

Academic Freedom and the *Charter*

Academic freedom: Caselaw

Mckinney v University of Guelph, [1990] 3 SCR 229; Justice LaForest:

“Tenure provides the necessary academic freedom to allow free and fearless search for knowledge and the propagation of ideas.”

Per Justice Wilson (dissenting): “The essential function which the principle of academic freedom is intended to serve is the protection and encouragement of the free flow of ideas. Accordingly, government interference in this realm is impermissible.”

Academic Freedom and the *Charter*

Academic freedom: Caselaw

Pridgen v University of Calgary, 2012 ABCA 139 per Justice
Paperny

[113] ...“Academic freedom, as that idea has come to be understood, is an important value in Canadian society. it does not follow that it trumps freedom of expression.”



Alberta
Civil Liberties
Research
Centre

Academic Freedom and the *Charter*

Relationship between freedom of expression and academic freedom

Pridgen v University of Calgary, 2012 ABCA 139 per Justice Paperny

[113] I reject the argument by the University, supported by the intervener Association of Universities and Colleges of Canada, that the application of the *Charter* in these circumstances undermines or threatens the University's academic freedom or institutional autonomy.



Academic Freedom and the *Charter*

Relationship between freedom of expression and academic freedom

Pridgen v University of Calgary, 2012 ABCA 139 per Justice Paperny

[113] The Supreme Court of Canada has described the purpose of the section 2(b) guarantee of free expression “to promote truth, political and social participation, and self-fulfilment” (*Ross*)and has commented that ‘[i]t is difficult to imagine a guaranteed right more important to a democratic society’: (*Edmonton Journal*)



Academic Freedom and the *Charter*

Relationship between freedom of expression and academic freedom

Pridgen v University of Calgary, 2012 ABCA 139 per Justice Paperny

[114] Academic freedom and freedom of expression are not conceptually competing values. Freedom of expression, of course, is guaranteed to all Canadians. Academic freedom is usually confined to the professional freedom of the individual academic in universities and other institutions of higher education; the freedom to put forward new ideas and unpopular opinions without placing him or herself in jeopardy within the institution.



Academic Freedom and the *Charter*

Relationship between freedom of expression and academic freedom

Pridgen v University of Calgary, 2012 ABCA 139 per Justice Paperny

[114] ...It has also been described as having an aspect of academic self-rule – the right of academic staff to participate in academic decisions of the university, and, more broadly, an aspect of institutional autonomy – the right of the institution to make decisions, at least with respect to academic matters, free from government interference: see Eric Barendt, *Academic Freedom and the Law* (Oxford: Hart Publishing, 2010) at pp 23-34.

Academic Freedom and the *Charter*

Relationship between freedom of expression and academic freedom
Pridgen v University of Calgary, 2012 ABCA 139 per Justice Paperny

[115] 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. Interestingly, the protection of free speech on campus is not universally seen as a threat to academic freedom.

Academic Freedom and the *Charter*

Relationship between freedom of expression and academic freedom

Pridgen v University of Calgary, 2012 ABCA 139 per Justice Paperny

[117] ...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. That said, if circumstances arise where these values actually collide, a section 1 analysis would be required to properly balance them. ...



Academic Freedom and the *Charter*

Application of *Charter* to universities/post secondary institutions

- There is confusion about whether “public” activities at universities should invoke application of the *Canadian Charter of Rights and Freedoms (Charter)*.
- **Two recent lines of authority** have reached different conclusions. The 2016 decision of the British Columbia Court of Appeal in ***British Columbia Civil Liberties Association v University of Victoria***, and the recent emergence of decisions from Alberta and Saskatchewan, which conflict with those from Ontario and BC, support the position that the Supreme Court of Canada (SCC) needs to address the question.

Academic Freedom and the *Charter*

Application of *Charter* to universities/post secondary institutions

Charter **does** apply:

- ***Pridgen ABQB 2010*** Justice Strekaf of the Alberta Court of Queen's Bench ruled that the University infringed section 2(b) and this could not be saved by section 1 of the Charter. Justice Strekaf also held that the University was “not a Charter-free zone.” [non academic misconduct]
- ***Pridgen ABCA 2012*** upheld on admin. law grounds; Justice Paperny alone addressed *Charter* issue (consolidation of s 32 cases)

Justice Paperny listed five categories of situations in which the Charter could apply.



Academic Freedom and the *Charter*

Should academic freedom be protected by the *Charter*?

***Charter* s 1: Pridgen**

[123]academic freedom and institutional autonomy
.....would inform a thorough analysis of whether a particular
infringement is justifiable as a reasonable limit
on *Charter* rights. If in some future case a university can
establish that the protection of a *Charter* right will interfere
with academic freedom or institutional autonomy, the latter
could, in my view, adequately be protected as a reasonable
limit pursuant to section 1.

Academic Freedom and the *Charter*

Should academic freedom be protected by the *Charter*?

Charter s 1: Pridgen

[124] The chambers judge noted that freedom of expression, while vitally important in a democratic society, is not an unqualified right. The University must be able to place reasonable limits on speech on campus in order, for example, to maintain a learning environment where there is respect and dignity for all. ...

Academic Freedom and the *Charter*

Freedom of Expression and s 1

High Value
CORE of FOE



**High threshold for
limit justification**

Low Value

**Commercial
Hate
Obscenity**

**Lower threshold
for justification**

INTERNAL
LIMITS

**Not
protected**

Violence
Threats of
violence



Alberta
Civil Liberties
Research
Centre