

York University Statement of Policy on Free Speech

Draft – November 15, 2018

Purpose

1. York University wishes to affirm its longstanding protection of and support for free speech as a fundamental principle upon which it pursues its mission. This Statement of Policy has been informed and enhanced by submissions, comments and suggestions shared by many members of the York community who participated in consultations over a number of weeks in the Fall of 2018.

York's Definition of Free Speech

2. In light of York University's policies, and the laws governing the University, freedom of speech is the right to seek, receive, share and impart information and ideas of all kinds, in a variety of forms, including orally, in writing, in print, and in the form of art or music, or through any other media of one's choice. In the words of the Task Force on Student Life, Learning & Community (2009), the "University has an unwavering commitment to fundamental values of free expression, free inquiry, and respect for genuine diversity of thought and opinion." Preservation of free and open exchange of ideas and opinion for and by all members of the community through respectful debate, including robust rights to protest and express dissent, are central to the mission of York University. Attempts to prevent such free inquiry, whether from other members of the University community or from external groups, are inconsistent with this mission.

York's Policy on Free Speech

3. As set out in the *York University Act*, the objects and purposes of York University are, (a) the advancement of learning and the dissemination of knowledge; and (b) the intellectual, spiritual, social, moral and physical development of its members and the betterment of society. York University is committed to the goal of a welcoming and approachable campus, embracing global perspectives and differences in cultures, people and thinking, by engaging communities in collegial dialogue and supporting diversity awareness and cross-cultural knowledge.
4. York University reaffirms its commitment to provide an environment conducive to freedom of enquiry and expression where all members of the community may learn, teach, work and live, free from prejudice, inequality and discrimination based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.
5. A range of York Policies reflect the right of all community members and invited guests to express their views within the law without fear of intimidation or harassment. To guarantee this right, it is recognized that community members may be exposed to ideas or opinions they find disagreeable or offensive. Freedom of speech is not

absolute and does not protect expression that constitutes hate speech, harassment, threats, discrimination or otherwise violates the law. Consequently, the University will not tolerate members of our community or guests engaging in threatening speech or actions which violates York's commitments to ensure the safety of community members, as noted in various policies such as Disruptive and/or Harassing Behaviour in Academic Situations, Racism, Sexual Violence which address the priority of community safety and the harm that can arise from some forms of expression. These policies also provide recourse for those affected by such speech.

6. All persons having access to and use of University property must comply with York's policies and the laws of Canada, which circumscribe where, when and how speech may be permitted. Students, for example, are responsible for upholding an atmosphere of civility, diversity, equity and respect in their interactions with others, and should strive to make the campus safe, support the dignity of individuals and groups, and uphold individual and collective rights and responsibilities. The autonomy and responsibility of student groups over activities they organize or sponsor, and the development of their own policies in relation to freedom of speech and expression, are also affirmed.
7. This Statement of Policy draws from a number of policies at York University (set out in the Related Policy Section below), and the specific procedures in relation to complaints, dispute resolution, enforcement and remedies are set out under each underlying policy and also under applicable collective agreements.
8. York University affirms that it has in place mechanisms to deal with complaints and ensure compliance. Each of the existing policies underlying this Statement of Policy include mechanisms for interpretation, compliance and enforcement. Complaints that remain unresolved may be referred to the University Ombudsperson and to the Ontario Ombudsman. Additional guidelines, tool-kits, education and training with respect to free speech will be developed from time to time as needed.
9. York University will prepare an annual report on implementation progress, publish it online and submit it to the Higher Education Quality Council of Ontario (HEQCO).
10. This Statement will be reviewed coincident with the release of the first annual report, then 2 years following that and thereafter every five years.

Related Policies

Code of Student Rights and Responsibilities
Computing and Information Technology Facilities Policy
Disruptive and/or Harassing Behaviour in Academic Situations Policy
Firearms and Weapons Policy and Procedures
Hate Propaganda Guidelines
Healthy Workplace Policy
Policy Concerning Racism
Policy on Acceptance and Display of Commemorative Artwork
Postering Policy
Presidential Regulation Number 4 Regarding Student Government/Organizations
Prohibiting On-Campus Essay Writing Services Policy
School of Nursing Policy on Social Media
Sexual Violence Policy
Special Events and Visits of High Profile Guests Policy
Student Professional Behaviour Policy (BScN)
Student Professional Behaviour Policy (BSW)
Temporary Use of Space Policy
Workplace Harassment Prevention Policy
Workplace Violence Prevention Policy

York Working Group on Free Speech Policies¹

Mandate, Policy Principles & Resources

1. Background:

On August 30, 2018, the Ontario Provincial Government announced its intention to assure free speech protections at publicly funded Universities and Colleges. It is requiring every publicly-assisted college and university to develop and publicly post by January 1, 2019 its own free speech policy that meets the government's minimum standards. Those minimum standards have been stated as:

- A definition of freedom of speech.
- Principles based on the University of Chicago Statement on Principles of Free Expression:
 - Universities and colleges should be places for open discussion and free inquiry.
 - The university/college should not attempt to shield students from ideas or opinions that they disagree with or find offensive.
 - While members of the university/college are free to criticize and contest views expressed on campus, they may not interfere with the freedom of others to express their views.
 - Speech that violates the law or constitutes harassment or a threat is not allowed.
- That existing student discipline measures apply to students whose actions are contrary to the policy (e.g. ongoing disruptive protesting that significantly interferes with the ability of an event to proceed).
- That institutions shall consider official student groups' compliance with the policy as a condition for ongoing financial support or recognition, and encourage student unions to adopt policies that align with the free speech policy.
- That the college/university uses existing mechanisms to handle complaints and ensure compliance. Complaints that remain unresolved may be referred to the Ontario Ombudsman.
- That by September 1, 2019, the institution shall prepare an annual report on implementation progress, publish it online and submit it to the Higher Education Quality Council of Ontario (HEQCO).

2. Working Group and Mandate

¹ In these documents the terms "freedom of speech" and "freedom of expression" are used interchangeably.

In light of York's extensive, existing policy commitments with respect to free speech, the President established a Working Group on York's Free Speech Policies, in order to:

- (i) identify and integrate into a single, consolidated policy document York's policies relating to free speech;
- (ii) consult York community members on how best to address gaps or areas which require modifications in York's existing policies;
- (ii) determine if there are any gaps which need to be addressed or areas which require modifications to York's existing policies, and if so what process should be followed for such reform; and
- (iv) present recommendations for a consolidated policy statement, and related initiatives, in response to the Government requirement.

The Working Group consists of:

Chair: Lorne Sossin, Presidential Advisor on Community Engagement

Thabit A.J. Abdullah, Professor & Chair, Department of History, Liberal Arts and Professional Studies

Paul Axelrod, Professor Emeritus, Education

Jamie Cameron, Professor, Osgoode Hall Law School

Mazen J Hamadeh, Associate Professor, Health and Head of Stong College (Member of Senate Executive)

Marshall McCall, Professor and Chair, Department of Physics and Astronomy, Science

Heather Shipley, Advisor, Education & Communications, Centre for Human Rights, Equity, and Inclusion

John Wu, Schulich School of Business/Osgoode Hall Law School, Student Senator (Member of Senate Executive)

The Working Group is supported by Maureen Armstrong and Robert Everett of the Office of the University Secretary and General Counsel, and assisted by Sarah Cantrell, Assistant Vice-President Institutional Planning and Analysis, who also sits on a working group on this issue at the COU.

The Working Group will circulate a draft consolidated statement of policy document and invite comment and discussion by students, faculty and staff at in-person and digital consultations in November, 2018. The policy will be finalized in December, 2018.

3. (Draft) Definition of Freedom of Speech

The directive from MTCU requires Universities to adopt a definition of free speech for purposes of its protection and regulation. It is noteworthy that while the existing policy framework reflects a deep commitment and broad protection of expressive freedom, it is not a term that has been subject to a single definition at York University.

While discussion of the scope of expressive freedom has been and will continue to be important, the Working Group takes as its point of departure the existing legal definition of free expression by the Supreme Court of Canada in the context of section 2(b) of the *Charter of Rights and Freedoms*. In framing this constitutional protection of the *Charter* protection of “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication,” the Supreme Court of Canada in *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, provided the following description of “expression”:

"Expression" has both a content and a form, and the two can be inextricably connected. Activity is expressive if it attempts to convey meaning. That meaning is its content. Freedom of expression was entrenched in our Constitution and is guaranteed in the Quebec *Charter* so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream. Such protection is, in the words of both the Canadian and Quebec Charters, "fundamental" because in a free, pluralistic and democratic society we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual. (at p.968.)

This approach to free expression is reflected in the variety of free speech protection and regulation within several existing policies and procedures at York University.

Following past periods of strife at York, then President Shoukri issued statements on “free speech,” in which he described York’s approach to free speech in the following terms,

“Universities exist for the discussion of often difficult and uncomfortable ideas in a civil and respectful academic environment, because this is a critically important way to protect genuine freedom of thought and opinion.”

...

“It is the responsibility of those with strong views on either side of this debate to conduct themselves in a way that does not demonize others, nor create an atmosphere where intolerance is the inevitable outcome. Equally we will not tolerate members of our community engaging in speech or actions which may be or be perceived to be threatening. Nor is it acceptable to attempt to disrupt or

interfere with events on campus, even if some may find them distasteful. This includes actions by groups from outside the University, who have been warned that we will not tolerate attempts to silence students expressing themselves.”

We observe that the “Chicago Statement” referred to in the MTCU letter of September 12, 2018, captures a similar approach in the following terms: “Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community “to discuss any problem that presents itself.”

4. (Draft) Principles for a Freedom of Speech Statement of Policy

Free speech protection and regulation is governed by a variety of policies at York University. That said, until now, those protections and regulations have not been synthesized and consolidated into a separate and free-standing free speech policy at the University. In so doing, we are mindful that many of the most important aspects of assuring expressive freedom takes place not in the articulation of policies but in how policies are interpreted, applied and enforced. For this reason, we believe transparency, consistency and fairness in the administration of these policies is vital. The annual report in response to the MTCU directive is an important aspect of transparency, but the development of guidelines, tool-kits, best practices, education and training are important as well.

Attached as Appendix A is an overview of relevant legislation and policies.

Since the Working Group is developing a statement of policy on free speech drawn from existing policy frameworks, some aspects of the directive can be addressed simply by highlighting how these policies are responsive. For example, York’s existing Code of Student Rights and Responsibilities addresses the requirement in the directive relating to student discipline. Further, the question of how student groups deal with expressive freedom, and their relationship to York’s policies, is addressed through York’s existing Regulations Regarding Student Organizations.

With the recognition that the administration of policies relating to free speech can be enhanced by a clear set of governing principles, and in light of the importance of consolidating and clearly conveying the relevant policies relating to free speech, we have identified the following principles applicable to free speech at York University:

- 1) Open discourse, where points of view are freely and vigorously expressed and debated, is central to the mission of York University. Every effort must be made to ensure the protection and promotion of free speech.

2) Expressive freedom at York University is subject to the limits that are prescribed by law; these include the *Criminal Code* (prohibiting hate propaganda), the Ontario *Human Rights Code* and other laws (such as legal requirements of confidentiality and privacy protection).

3) The university is a distinctive setting. Academic freedom protects certain kinds of speech in certain settings at the University, and where it applies, additional protections from Senate policies, collective agreements and elsewhere may also apply. Like free speech generally, academic freedom is vital to the mission of the University but not absolute. Short of “hate speech,” there may also be legitimate constraints on speech at the University, inside and outside the classroom, that arise from an assessment of disproportionate impact for certain individuals and groups, the evolving standards of professional practice, and other contextual assessments. Faculty, for example, are not permitted to humiliate students. Under the Code of Student Rights and Responsibilities, students are required to treat community members with respect. Policies on sexual violence and harassment and racism set out other important constraints on the content of speech on campus. Such constraints should be applied with care so that legitimate dialogue is not unduly stifled.

4) Free speech activities at York University are also subject to a range of University policies and procedures, including policies on the temporary use of space, postering, use of computing facilities and others. Some of these policies and procedures relate to logistics and costs for events such as security; others may relate to the internal rules of various faculties, centres, institutes, student groups, etc. An inclusive approach to free speech is the underlying assumption and commitment of these policies and procedures. To reiterate, provided that the policies and procedures of the University are respected, speakers should be permitted to make their presentations free from interruption, threats or harassment.

5) As a general approach, protections for free speech on campus should be interpreted broadly, while constraints to free speech should be interpreted narrowly. To the extent that constraints on free speech exist at the University, they relate to the content of speech, not to the speaker. Even where some community members may find the presence of a particular speaker on campus upsetting or offensive, however, this cannot interfere with the right of groups to invite controversial speakers or the right of those speakers to share their views.

Appendix “A”: Relevant Legislation and Policies

A. Governing Legal Framework

The framework for understanding and disseminating York’s policies with respect to free speech includes both a range of policy instruments within the University, and a range of legal instruments outside the University which govern conduct within the University. Some of these legal instruments are set out below (as well as relevant excerpts from those instruments) – and please note that this is not an exhaustive list.

York University Act, 1965 -

<http://secretariat.info.yorku.ca/governance-documents/york-university-act-1965/>

4. The objects and purposes of the University are,
 - (a) the advancement of learning and the dissemination of knowledge; and
 - (b) the intellectual, spiritual, social, moral and physical development of its members and the betterment of society.

Criminal Code (R.S.C., 1985, c. C-46)

<https://laws-lois.justice.gc.ca/eng/acts/C-46/section-319.html>

Hate Propaganda

Advocating genocide

318 (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

- Definition of *genocide*

(2) In this section, *genocide* means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

- (a) killing members of the group; or
- (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.
- Consent

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

Public incitement of hatred

319 (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Wilful promotion of hatred

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Defences

(3) No person shall be convicted of an offence under subsection (2)

- (a) if he establishes that the statements communicated were true;
- (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

***Human Rights Code, R.S.O. 1990, c. H-19* –**

<https://www.ontario.ca/laws/statute/90h19>

“Ontario’s *Human Rights Code* is clear – the right of people to express their opinion is protected.” “Expressing Support for Freedom of Expression” (2011) - <http://www.ohrc.on.ca/en/annual-report-2010-2011-looking-back-moving-forward/expressing-support-freedom-expression>

Charter of Rights and Freedoms –

<https://laws-lois.justice.gc.ca/eng/Const/page-15.html>

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

As a general matter, Universities do not constitute “government” within the meaning of s.32 of the *Charter*, and therefore fall outside the ambit of its application. The question as to whether *Charter* protects expressive freedom under section 2(b) on campus continues to be the subject of debate, though the current state of the law reflects the view that the *Charter* itself does not apply—see

BC Civil Liberties Association v. University of Victoria, 2016 BCCA 162 (CanLII), <https://www.canlii.org/en/bc/bcca/doc/2016/2016bccca162/2016bccca162.html?searchUrlHash=AAAAAAAAAAEAFTlwMTUgQkNTQyAzOSAOQ2FuTEIJKQAAAEACy8yMDE1YmNzYzM5AQ&resultIndex=1>

That said, definition of “free speech” in *Charter* jurisprudence informs scope of concept within other legal instruments and University policies.

B. Existing University Policies and Policy Statements

What follows is a list of the key policies which govern free speech at York University, and some excerpts from those policies of particular relevance to expressive freedom on campus. Again this list is not exhaustive. For example, the policy below on student governments and organizations refers to additional guidelines which may be contained in the hundreds of separate constitutions and internal policies of each student group and organization.

B.1 York University Policies and Plans

University Academic Plan 2015-2020

<http://secretariat.info.yorku.ca/senate/academic-policy-planning-and-research-committee/university-academic-plan-2015-2020-uap/>.

Our Mission Statement includes: We test the boundaries and structures of knowledge. We cultivate the critical intellect.

Our Values are:

Excellence: York strives for excellence in teaching and learning (or pedagogies), academic programs and research/scholarly/ creative pursuits enriching as well as educating, enabling as well as informing through fostering intellectual curiosity, innovation, and creativity.

Progressive: York is open minded, forward looking and flexible. We embrace innovative approaches, technologies and perspectives to solve problems, develop new understandings, solutions and discoveries that have an impact on our world.

Inclusivity and diversity: York is a welcoming and approachable campus embracing global perspectives and differences in cultures, people and thinking, by engaging communities in collegial dialogue and supporting diversity awareness and cross-cultural knowledge

Social justice and equity: York is socially responsible, and committed to the pursuit of social justice and equity issues to continuously challenge and transform society's understanding and existing norms through civic, scientific and cultural actions.

Sustainability: York values environmental, social, and fiscal sustainability through its programs, physical environment, and fiduciary practices.

Code of Student Rights and Responsibilities - <https://oscr.students.yorku.ca/student-conduct>

Introduction

York University is a place of research, teaching and learning where people value civility, diversity, equity, honesty and respect in their direct and indirect interactions with one another. Freedom of expression, freedom of association, freedom to study and to learn, freedom to engage in research, and the freedom to write and to publish are all recognized as central to the mission of the institution. It is acknowledged that these values can only be meaningful, and these freedoms fully realized, in an atmosphere of safety and security. All York students have rights and responsibilities as outlined in this document and are expected to uphold the identified values for the benefit of the entire York community.

...

1. Students have the following rights:

(2) The right to participate in activities for students at the University, without harassment, intimidation, discrimination, disruption or acts of violence.

4. All students have the rights and responsibilities articulated in the preamble. In keeping with these rights and responsibilities, students are responsible for conducting themselves in a way that supports research, teaching and learning, and upholding an atmosphere of civility, diversity, equity and respect in their interactions with others. Students should strive to make the campus safe, to support the dignity of individuals and groups, and to uphold individual and collective rights and responsibilities.

Program Specific Codes of Conduct

There are a variety of program specific policies and requirements which relate to free speech at York – for example, the “Social Media” policy for students in the BScN (Nursing) program incorporates a series of profession-wide restrictions on the use of social media - <https://secretariat-policies.info.yorku.ca/policies/school-of-nursing-policy-on-social-media/> which in turn forms part of a broader set of professional behavior requirements - <http://secretariat-policies.info.yorku.ca/policies/student-professional-behaviour-policy-bscn/>

Regulations Regarding Student Government/Organizations

<https://secretariat-policies.info.yorku.ca/policies/presidential-regulation-number-4-regulations-regarding-student-governments-organizations/>

10.(a) Students may form organizations to promote activities, causes or projects in which they are interested.

(b) Upon approval or authorization by the relevant body, such organizations are eligible to

- (i) receive grants from a sponsor, including a student government or a faculty, college, department or other academic unit, and
- (ii) receive funds generated by a levy approved in accordance with these regulations.

(c) All such organizations must, prior to receiving funds, provide the Provost with

- (1) a copy of their constitution or equivalent written statement of purposes and goals,
- (2) a current listing of the names and addresses of executive officers, including the treasurer or equivalent, and
- (3) an undertaking to observe the general regulations and policies of the university and the regulations and procedures governing financial accountability.

Policy on Temporary Use of University Space

<https://secretariat-policies.info.yorku.ca/policies/temporary-use-of-university-space-policy/>

1. Members of the York University community are encouraged and allowed to hold events and to engage in the full expression of their opinions on the University's premises, subject only to the principles and procedures outlined herein.
2. The lands and buildings of York University are private property and the University reserves the right to control access to its campuses, and the use of its space and facilities.
3. Persons who are not students, faculty, staff or members of a governing body of York University are considered guests of the University.
4. Members of the University and others may use University space provided that it is reserved in advance for organized purposes and that it is used in compliance with all University policies and regulations and municipal by-laws. For example, and without limiting the generality of the foregoing, users must comply with the University's food and alcohol policies, parking regulations, smoking restrictions, fire and safety requirements, etc. Federal and Provincial statutes and municipal by-laws relating to private property and the rights of individuals will apply without condition.
5. The University upholds the principles of freedom of speech and freedom from intimidation and harassment. All persons having access to and use of University space shall observe these principles, and the laws of Canada.

Policy on Postering

<https://secretariat-policies.info.yorku.ca/policies/postering-guidelines/>

7. With the exception of University approved regulatory notices, postering inside classrooms, lecture halls and other teaching spaces is prohibited. Posters and documents relating to class instruction or other programmatic use of the teaching space are permitted, but shall be removed upon vacating the room/space.

Policy on Acceptance and Display of Commemorative Artwork

<https://secretariat-policies.info.yorku.ca/policies/acceptance-and-display-of-commemorative-art-work-guidelines/>

3. In determining whether to accept and display a work, the following considerations will apply:

The artistic merit of the work

The degree of difficulty of maintaining and the cost of insuring the work

Any special security measures required to protect the work

Whether the work or the individual or event it commemorates is so controversial as to engender activity which would compromise the work, the facilities or the activities of the university.

Hate Propaganda – Guidelines

<https://secretariat-policies.info.yorku.ca/policies/hate-propaganda-guidelines/>

1. York University reaffirms its commitment to provide an environment conducive to freedom of enquiry and expression where all members of the community may learn, teach, work and live, free from prejudice, **inequality and discrimination based on grounds enumerated in the Ontario Human Rights Code**. In such an environment there is no place for hate propaganda.

Policy Concerning Racism

<https://secretariat-policies.info.yorku.ca/policies/racism-policy-and-procedures/>

1. York University affirms that the racial and ethnocultural diversity of its community is a source of excellence, enrichment and strength.
2. York University affirms its commitment to human rights, and, in particular, to the principle that every member of the York community has a right to equitable treatment without harassment or discrimination on the grounds prohibited by the Ontario Human Rights Code, including race and ethnicity.
3. York University acknowledges its on-going responsibility to foster fairness and respect, to create and maintain a positive working and learning environment and to promote anti-racism.

Policy on Sexual Violence

<https://secretariat-policies.info.yorku.ca/policies/sexual-violence-policy-on/>

Sexual Harassment:

- a. Unwanted sexual attention of a persistent or abusive nature, made by a person who knows or ought reasonably to know that such attention is unwanted;
- b. The making of an implied or express promise of reward for complying with a sexually oriented request;
- c. The making of an implied or express threat of reprisal, in the form of actual reprisal or the denial of opportunity, for refusal to comply with a sexually oriented request; and/or
- d. Sexually oriented remarks and behaviour which may reasonably be perceived to create a negative psychological and emotional environment for work and study.

Sexual Violence:

Any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is

committed, threatened or attempted against a person without the person's consent and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation.

Policy on Computing and Information Technology Facilities

<http://secretariat-policies.info.yorku.ca/policies/computing-and-information-technology-facilities-senate-policy/>

2. Computing and information technology facilities may be used only in a manner which does not contravene York University's relevant policies, codes, agreements, and network protocols, and provincial and federal laws.

Policy on Workplace Harassment Prevention

<http://secretariat-policies.info.yorku.ca/policies/workplace-harassment-prevention-policy/>

The term, "workplace harassment" means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome; or workplace sexual harassment.

1. York University is committed to protecting all persons working for York University and shall take reasonable precautions to prevent workplace harassment.
2. Anyone who engages in workplace harassment shall be subject to complaint procedures, investigation, remedies, sanctions and discipline up to and including termination.

Policy on Special Events and Visits of High Profile Guests

<http://secretariat-policies.info.yorku.ca/policies/special-events-and-visits-of-high-profile-quests-to-the-university-policy/>

To ensure that special events and visits of high profile guests to the University are properly arranged and staged, the President shall, from time to time, establish formal procedures applicable to all members of the University community. These procedures will ensure the application of consistent standards for University events and will address appropriate protocol and operational considerations, including, but not limited to, co-ordination for scheduling within the University calendar, evaluating the adequacy of the budget to the project requirements, space, risk assessment, security arrangements, invitations, publicity & media relations, hosting.

B.2 Senate Motions and Policies:

In addition to University policy, Senate has also adopted a range of policies and motions which contribute to the framework of freedom of speech protections at York

Senate's Hortative Motion to SSHRC on Academic Freedom and the Role of the University (June 2009)

That the Senate of York University express to the *Social Science and Humanities Research Council* (SSHRC) its support for universities to organize and host academic conferences free from government intervention.

That the Senate of York University confirm that the principles of academic freedom prevail with regard to all academic activities undertaken under the auspices of the university as also expressed by the President of the University, the Chair and Chair-designate of the Board of Governors.

Senate Policy on Responsible Conduct of Research - <https://secretariat-policies.info.yorku.ca/policies/misconduct-in-academic-research-policy/>

Senate Policy on Faculty Responsibilities - <https://secretariat-policies.info.yorku.ca/policies/responsibilities-of-faculty-members-statement-and-procedures/>

3. The statement of collegial responsibilities which follows pre-supposes an understanding of the traditional values of university life--that receiving an appointment at a university has meant and still means to most colleagues a commitment to a life of scholarship and creativity, and that the full professional energies of faculty members will be placed at the service of the academy and their disciplines. A tenured appointment guarantees freedom of thought and action to its holders. With this guarantee comes a commitment to the community of one's academic peers to use those freedoms for the purposes for which they are intended. This shared trust must not be abused, either by inordinate or indiscreet paid activity which fails to meet the general criteria outlined below, or by failure to fulfil one's university obligations. A university cannot function by constantly coercing faculty members to live up to their scholarly or creative responsibilities, or to refrain from taking on outside paid work which is neither reflective nor innovative. However, the university must nonetheless be in a position to account to all of its members and to society at large for the way in which those responsibilities are discharged. It must therefore possess knowledge of the behaviour which will permit such an accounting, and must accept responsibility for dealing with abuse.

Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations (2006)

<http://secretariat-policies.info.yorku.ca/policies/disruptive-andor-harassing-behaviour-in-academic-situations-senate-policy/>

Policy

Senate affirms that no individual or group of individuals shall cause by action, threat or otherwise, a disturbance that obstructs any academic activity organized by the university or its units.

York is committed to policies that support the teaching and learning of controversial subject matter. Students and instructors are, however, expected to maintain a teaching and learning environment that is physically safe and conducive to effective teaching and learning for all concerned, and to be civil and respectful at all times within the learning environment, including within classrooms, laboratories, libraries, study halls and other places where academic activities are conducted and in areas proximate to those where academic activities are taking place.

It shall be the responsibility of the course director or other supervisor to determine the appropriate academic response and follow-up resulting from a disruption.

C. Statements from York Presidents:

<https://www.yorku.ca/secretariat/senate/committees/apprc/documents/AcadFreedom/YorkUniversityStatementsandDeclarations2009-2010.pdf>

President 's Statement on Free Speech: A Reminder of Our Rights and Responsibilities (26 February 2010)

“It is the responsibility of those with strong views on either side of this debate to conduct themselves in a way that does not demonize others, nor create an atmosphere where intolerance is the inevitable outcome. Equally we will not tolerate members of our community engaging in speech or actions which may be or be perceived to be threatening. Nor is it acceptable to attempt to disrupt or interfere with events on campus, even if some may find them distasteful. This includes actions by groups from outside the University, who have been warned that we will not tolerate attempts to silence students expressing themselves.”

University statement on building academic communities (June 16, 2009)

President's Statement on Academic Freedom and the Role of the University (May 21, 2009)

D. York Collective Agreements

YUFA, OHFA and CUPE collective agreements all include reference to “academic freedom” – for example, the YUFA-York Collective Agreement provides:

10.01 The parties agree to continue their practice of upholding, protecting, and promoting academic freedom as essential to the pursuit of truth and the fulfilment of the University’s objectives. Academic freedom includes the freedom of an employee to examine, question, teach, and learn; to disseminate his/her opinion(s) on any questions related to his/her teaching, professional activities, and research both inside and outside the classroom; to pursue without interference or reprisal, and consistent with the time constraints imposed by his/her other University duties, his/her research, creative or professional activities, and to freely publish and make public the results thereof; to criticize the University or society at large; and to be free from institutional censorship. Academic freedom does not require neutrality on the part of the individual, nor does it preclude commitment on the part of the individual. Rather, academic freedom makes such commitment possible.

10.02 When exercising their rights of action and expression as citizens, employees shall endeavour to ensure that their private actions or expressions are not interpreted as representing positions of York University. Any published views of the Administration concerning yufa shall be clearly identified as representing the views of the York University Administration.

Collective Agreements also include important protections against harassment, including CUPE 3903 (Article 4), as well as YUFA (Article 3)

The Working Group does not see this policy exercise as derogating from any of the rights or procedures contained in collective agreements to which York is a party.

E. York Task Forces, Reviews and Inquiries

York's president announced the creation of a Task Force on Student Life, Learning & Community (2009) “Rights and Responsibilities Within the University” - https://www.yorku.ca/president/communication/reports/docs/TaskForce_FINALREPORT.pdf

“32. The most important principle that needs to guide the action of the University on the matters considered by this Task Force is (from our Terms of Reference) the University’s unwavering commitment to fundamental values of free expression, free inquiry, and respect for genuine diversity of thought and opinion. The core missions of the University are research, teaching and learning. We foster the scholarly and civic development of the University’s students in a safe

and secure learning environment. Preservation of academic freedom and free and open exchange of ideas and opinion for and by all members of the community through respectful debate are central to these missions.

33. It follows that universities are and should be sites of scholarly, intellectual and political engagement, places in which provocative questions can be asked which intentionally seek to disturb the status quo and which need to be raised free of intimidation and harassment. Universities are and should be places of controversy. Intimidation or harassment of members of the community in an attempt to limit their freedom of inquiry or expression of opinion has no place on a university campus. Fully respecting expressive freedom in a manner consistent with the laws of Canada means that points of view with which some or even the vast majority of us may disagree, which for some of us may even be intolerable, must be able to be raised and explored in a variety of academic and scholarly venues.

34. We affirm the principle that the University must be open to the widest range of reasoned debate and argument and that attempts to prevent such free academic inquiry, whether from other members of the University community or from external groups, are inconsistent with the purpose of the University.

35. Universities must also proactively protect free expression including speakers whose views may be deemed to be controversial. This is particularly important in our case because from the information we have been given, it seems that the most disruptive incidents that have occurred on campus, those which have interfered with classes (and which should be noted are fewer in number than the general impression that has effectively circulated in the media and even within our own campus) have occurred when rival groups attempt to 'shut down' one another. These are confrontations, in short, in which student groups attempt to stifle one another's expressive freedom through intimidating or harassing behaviours. These are also the events in which tensions are at their highest and in which the possibility of violence is the most pressing. Part of the protection of freedom of expression is the prevention of its abuse. Expression used to silence others is not defensible."

Iacobucci Report https://www.yorku.ca/acreview/presidents_response.pdf (2009)

F. Centre for Human Rights, Equity and Inclusion

Resource Guides:

- Hate Propaganda: A Guide for Students, Faculty & Staff
- La propagande haineuse : Guide pour les étudiants, les membres de la Faculté et le personnel
- Sexual Harassment: A Guide for Students, Faculty, & Staff

- Sexual Assault: A Guide for Students, Faculty, and Staff
- Gender Expression/Gender Identity: A Guide for Students, Faculty, & Staff (Inclusive Language)
- Accommodating Creed (Religion): A Guide for Students, Faculty, & Staff
- Accommodating Disability: A Guide for Students, Faculty, & Staff
- Accommodating Family: A Guide for Students, Faculty, & Staff
- Faculty Resource Guide: Teaching Students with Disabilities
- Understanding Racism: A Guide for Students, Faculty, & Staff

Inclusion Lens: Event Management Tool

- Inclusion Lens - an Event Management Tool designed to assist York University in engaging all peoples in events!

York University Statement of Policy on Freedom of Speech

Free Speech Resources and Projects

Draft – November 15, 2018

Building on York University's Statement of Policy on Free Speech and the submissions, comments and suggestions shared by many members of the York community who participated in consultations over a number of weeks in the Fall of 2018, the Working Group believes it is important to undertake a range activities and further consultations in relation to free speech at the University.

The Statement of Policy on Free Speech includes the recommendation that, "Additional guidelines, tool-kits, education and training with respect to free speech will be developed from time to time as needed." Below, we elaborate on these recommended next steps.

1. Tool-Kit on Protest

The Working Group heard from a number of community members that the rules relating to protest at York are vague, and there is a perception that those who participate in protest activities may be subject to "reprisals" of various kinds. A "tool-kit" which includes the relevant policy language, examples of permitted and prohibited activities, and further resources for advice and recourse, would go some way to address the current ambiguity. In addition to providing an important source of information for those wishing to engage in protest, such a tool-kit could also form the basis for additional training and education for University staff. While there is significant expertise at York on these issues, the Centre for Human Rights, Equity and Inclusion, which already has developed a tool-kit for those planning events, might be well-suited to this project. The Working Group emphasizes the importance of broad and inclusive consultations in the development of such tool-kits.

2. Interpretive Guidelines

The Working Group heard from many members of the York community that their concern lay not in the general language of a Statement of Policy on Free Speech but how such policies have been and will be interpreted and applied. Interpretive Guidelines, which include examples and commentary, could be helpful in several areas, and we would identify interpretive guidelines around the Temporary Use of University Space policy (for example, when additional charges for security would be required), the Student Code of Rights and Responsibilities, the policy concerning Racism, and the Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations, as high priorities. In each setting, the Working Group would recommend a broadly consultative process for developing such guidelines, including the involvement of student bodies such as YFS and YUGSA, among others.

3. Web Portal for Free Speech Policies and Resources

Given the importance of clarity and access to information on free speech, the Working Group recommends the development of a single web portal on free speech, which would house York's Statement of Policy on Free Speech, Annual Reports and other publications developed in relation to the Statement of Policy, and would include tool-kits and interpretive guidelines, and links to relevant underlying policies.

4. Ongoing Discussion on Free Speech

The Statement of Policy commits York University to prepare an annual report on implementation progress, publish it online and submit it to the Higher Education Quality Council of Ontario (HEQCO). The Working Group recommends that a process be created for community members to provide ongoing input into the further development of resources relating to the Statement of Policy on Free Speech.

5. Addressing Gaps and New Policies

This process has highlighted how dynamic the area of free speech, and its limits, has become. York University has a long and rich history of fostering an environment in which ideas are freely and respectfully exchanged and debated and evolving its policies and procedures to reflect the needs and interests of the community. The Working Group sees value in reviewing the Statement of Policy on Free Speech and related policies at regular intervals to ensure they remain relevant and effective.

Freedom of Speech Policy Working Group WHAT WE HEARD

On October 25, 2018 the Working Group posted a discussion document with respect to the development of a freedom of speech policy. It invited all members of the community to provide input on the subject through several media including submitting remarks in writing, posting to a Facebook page dedicated to the subject, or attending one of four town halls (one at Glendon campus, two in-person sessions on the Keele campus and one e-town hall). In addition, discussions on the topic have been undertaken at Faculty Council meetings and submitted to the Working Group.

A wide range of questions, suggestions and concerns have been shared. The following provides a summary of the key messages received.

The Obligation to Have a Policy and Its Content

1. Creating a policy

The provincial government is motivated by an intention to provide for right wing racist, sexist, and anti-LGBTQ activism on campuses and to prevent community members from protesting these views. The University of Chicago statement has been used in Chicago to invite right-wing extremists to speak on campus, and to silence students who protested them. Ultra right-wing speech is particularly harmful to the York community given the racial, cultural and gender diversity of our students, faculty and staff.

The government is encroaching on the autonomy of the university and this initiative should be opposed by the university.

Some endorsed the principles of the Chicago statement or the statement itself. Others worry that it lays the groundwork for curtailment of protests. Similarly, some welcome the Ford government's initiative out of a desire to avoid the "shutting down" of speakers, stop arbitrary labelling and marginalization of individuals as extremist, and reduce the costs to organizers when controversial speakers are invited. Others are concerned that extremists have been emboldened by the government's mandate, and are stealthily encroaching on campuses.

The relationship between free speech and safety, wellbeing and mental health was frequently highlighted in open forums. For some, the unrestrained exercise of free speech and freedom of expression can result in harms resulting from anxiety or shaming. For others, the very essence of a university is to expose students to ideas they may find provocative or in some ways offensive in (ideally) a scholarly sharing of perspectives.

Some worried that the University was creating a policy from scratch and would abandon its values and convictions. Others appreciated the robust framework and accepted that view, expressed by the working group, that the University has a robust, policy-rich context and decades of experience dealing with challenging situations. In this light, it is not necessary to draft a new policy. The goal is to draw upon existing documents to create a statement of policy that reliably consolidates them.

2. Definition of Free Speech

The limitations to free expression based on hate speech should be explicitly mentioned in the definition portion of the policy.

The definition of free speech should not include language that is racially, religiously or sexually coded.

Consider expanding the definition of free speech beyond the conventional, liberal conception based on a negative right, to include other conceptions--such as an Indigenous conception--that would ground a positive right. E.g. Anishinaabe constitutional order which focus on responsibilities rather than a vision of individuals as autonomous.

The consultation document issued by the working group – some found it dense and conceptually ambiguous, others found it thorough and consistent – did not address academic freedom *per se*. (This was done out of respect for collective agreements and the special nature of academic freedom). Even so, the rights and responsibilities of faculty members came into view. Do instructors have a special burden to be sensitive to their students? Are there limits to the kind of research conducted and disseminated? Must speech be grounded in “factuality”? Is “opinion” legitimate if it challenges, for example, the human causes of climate change as opposed to the actions best able to address climate?

3. Scope and Content

Statements that are demonstrably false should not be permitted under a free speech policy, when the evidence that such statements ARE demonstrably false, is well known, and the false statement is likely to cause significant harm. (e.g. "Adolph Hitler's Nazi Germany did not murder millions of people", or "There are biological differences that make men smarter than women.")

The policy should include a corresponding right to freedom from discrimination, that is, it should balance classic liberal notions of freedom with diversity and equity. It may be helpful to identify what is *out* of scope such as private conversations or posting on social media not tied to York e-mail or servers. Notions of intent may be germane, for

deliberate offence may differ from the kinds of passionate, even distasteful exchanges that require negotiation in the class room setting.

Freedom to protest must be upheld. The Chicago Principles acknowledge freedom “to criticize and contest views” but indicate that they may not “interfere with the freedom of others to express their views”. How will “interfere” be defined? Individuals asked: who defines and policies anti-racism? Who defines what is “disruptive?” Is it the length of time, the number of people involved, the forcefulness?

The scope of the policy should be clear. How will this apply to invited guests and uninvited visitors? Does it apply to students while engaged in experiential education opportunities?

The policy and procedure must take into consideration the diverse campuses of York. The special nature of Glendon was cited in this regard, where close quarters may magnify issues around use of space.

The Working Group and Consultation

The Working Group does not have any members from elected student governments and should. It has insufficient student representation. Greater student representation will assist identifying key issues.

Given the level of expertise that exists within certain departments (e.g. Equity Studies), it was disappointing that the working group did not undertake a more pro-active outreach program. The working group was advised to familiarize itself with actual case studies when campus controversies turned on free speech debates.

There were a number of requests to provide a detailed record of the consultations available as context and out of a commitment to transparency and accuracy.

Concerns Regarding How the Policy May be Applied

Many student groups are concerned that the policy will be against them to prevent them from speaking out on issues of importance to them. It could have a significant chilling effect on free speech and student activism.

Although the Working Group itself will not be responsible for implementation, there were suggestions about concrete steps:

- Training (mandatory or voluntary) for members of the community or public education on what a university is and why freedom of speech is essential
- Creating of toolkits or other forms of guidance
- The development of illustrations

- Creation of “speakers’ corners” or designating times when classes are not held adjacent to areas set aside for demonstrations
- A free speech and privacy ombudsperson
- (New) mechanisms for sanctioning those who prevent the exercise of free speech