

Overview of the Free Speech Statement of Policy

In the document “What We Heard” the Working Group identified themes that emerged during the consultation phase prior to the release of a draft statement in November. Consultations have continued since Senate and the Board of Governors discussed the draft. The Group has endeavoured to seek out and respond to extensive advice received during the process.

In the final phase of its deliberations the Working Group received and reviewed the following:

- additional comments submitted by MachForm
- summaries of discussions at Faculty Council meetings
- correspondence from the Toronto and York Region Labour Council

The Working Group also took note of the open letter addressed to President Lenton and Senate Executive circulated by a group of senators. Amendments to the text of the Statement of Policy and the Resources and Project document respond directly to elements of that letter.

As a result of the helpful feedback, minor changes have been made to the Statement of Policy itself. Religion has been added to the categories enumerated in section 4. Section 8, which addresses the policies that inform the Statement, now makes an explicit commitment to the timely, consultative and effective review of relevant policies that inform the Statement. A change has also been made to the Free Speech Resources and Projects document to reflect a suggestion that the role of the Ombudsperson be taken up as part of the next steps we recommend.

The Working Group is confident in the approach taken to the Statement of Policy and is pleased that it has been endorsed. Some issues that emerged in the course of consultations fall outside the Working Group’s mandate and can only be taken up by others. We note that the President has helpfully provided commentary and commitments on this aspect.

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