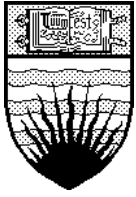


THE UNIVERSITY OF BRITISH COLUMBIA



SENATE POLICY: [J-500]

Okanagan and Vancouver Senates
c/o Enrolment Services
2016 - 1874 East Mall
Vancouver, B.C. Canada V6T 1Z1

Number & Title

J-500: *Academic Freedom*

Effective Date:

Upon approval by both Senates

Approval Date:

Vancouver Senate	TBD
Okanagan Senate	TBD

Review Date:

This policy shall be reviewed twelve (12) months after approval and thereafter as deemed necessary by the *responsible committees*.

Responsible Committees:

Okanagan Senate Academic Policy Committee
Vancouver Senate Academic Policy Committee

Authority:

The University's institutional autonomy to adopt its own policies and standards without governmental interference is established by its authority under the University Act. Academic governance is vested exclusively in its Senate.

University Act, S. 37

“(1) The academic governance of the university is vested in the senate and it has the following powers:

...(c) to determine all questions relating to the academic and other qualifications required of applicants for admission as students to the university or to any faculty, and to determine in which faculty the students pursuing a course of study must register;

(d) to determine the conditions under which candidates must be received for examination, to appoint examiners and to determine the conduct and results of all examinations; ...

(f) to consider, approve and recommend to the board the revision of courses of study, instruction and education in all faculties and departments of the university; ...

(k) to determine the members of the teaching and administrative staffs who are to be members of each faculty; ...

(n) to provide for the preparation and publication of a university calendar; ...

(o) to make recommendations to the board considered advisable for promoting the interests of the university or for carrying out the objects and provisions of this Act;”

S. 48

“(1) The minister must not interfere in the exercise of powers conferred on a university, its board, senate and other constituent bodies by this Act respecting any of the following:

- (a) the formulation and adoption of academic policies and standards;*
- (b) the establishment of standards for admission and graduation;*
- (c) the selection and appointment of staff.”*

“(2) Despite subsection (1), a university must not establish a new degree program without the approval of the minister.”

S. 66

“(1) A university must be non-sectarian and non-political in principle.”

Purpose and Goals:

This policy sets out the principle of academic freedom as a right enjoyed by *members* of the University and the obligations of the University to protect those rights. It is an update of the 1977 Statement on Academic Freedom, presented in the standard format for Senate policies. Because limits to academic freedom can prove subtle or difficult to anticipate, and because academic freedom flourishes in an environment of respect, academic freedom will thrive only if the University

and all its *members* shoulder the responsibility to support and safeguard its manifestations. This policy is intended to provide the common framework that will allow that to happen.

Applicability:

This policy applies to the entire University and is applicable to all *members* of the UBC Community while engaged in academic pursuits.

Exclusions:

There are no exclusions.

Definitions:

For the purposes of this policy:

Members of the UBC Community (“*members*”) means individuals who fall under one or more of the following categories:

1. student, which means a person who is presently enrolled at the university in a credit course or who is designated by resolution of the Senate as a student;
2. employees, including faculty and staff;
3. holders of teaching appointments;
4. post-doctoral fellows; and
5. anyone contractually obligated to comply with this Policy.

Applicant means any *member* who believes that their academic freedom has been violated and submits a request in writing to the Office of the Senate for a determination under this policy.

Application means a written submission by an *applicant* to the Office of the Senate.

Investigator means a person or persons appointed by an Ad Hoc Academic Freedom Committee to conduct interviews, gather information, and undertake other fact-finding activities to inform the work and determinations of the Committee.

Respondent means an individual or group alleged to have violated this policy.

Policy:

1. *Members* of the University enjoy certain rights and privileges essential to the advancement and dissemination of knowledge, central among which is academic freedom. Academic freedom is distinct from freedom of expression and nothing in this policy extends or limits a *member's* freedom of expression.
2. Academic freedom is a fundamental principle of the University without which the University cannot function with integrity.
3. This Senate policy is the principal academic policy of the University with respect to academic freedom and all other Senate policies should be interpreted recognizing the highest importance of academic freedom to the University. In the event of any conflict between this policy and any policies issued by the Board of Governors or other issuing bodies within UBC, the conflict will need to be reconciled in a manner consistent with the respective jurisdictional powers of their issuing bodies and applicable law.
4. Academic freedom is the right, within the law and guided by scholarly integrity, to pursue what *members* deem to be fruitful avenues of inquiry, to teach, to learn, to discuss, to debate, to criticize and to receive the views of others unhindered by non-academic constraints whether external or internal to the University, and to engage in the unrestricted consideration of any viewpoint, acknowledging that the Senate, in its jurisdiction over academic governance, may limit the academic freedom accorded to individual *members*.
5. Academic freedom pertains not only to ideas that are established but also to ideas that might prove unpopular, contentious, dubious, or repugnant.
6. Academic freedom extends not only to the *members* of the University but also to any who are invited by *members* to participate in its forum.
7. Those who enjoy academic freedom must be willing to demonstrate that their opinions and ideas are either supported by a body of established knowledge or arise from scholarly activity.

8. The University as an institution has the right, under the University Act, to self-determination in adopting academic policies and standards. All *members* of the University must recognize this fundamental principle and must share responsibility for supporting, safeguarding and preserving this central freedom.
9. Any *member* of the University may submit an *application* to determine if their right to academic freedom under this policy has been contravened. The Senates shall jointly establish procedures to determine if this policy has been contravened in response to such an *application*. The Agenda Committees of the Senates shall jointly be responsible for amendments to the procedures of this policy and for reporting the changes at the following regular meetings of the Senates.
10. The Agenda Committees of the Senates will report annually on the applications for determination of matters of academic freedom under Section 9 of this policy, for their respective campuses.

Calendar Statement

Same as per policy above.

Consultations

The following were invited to provide comment during the development of this policy:

UBC Okanagan and Vancouver students, faculty and staff via UBC Broadcast email September 26, 2022 with link to consultation survey; Advisor to the Provost's Office on Academic Freedom; Office of the University Counsel; Graduate Student Society; Faculty Association; Ombuds Office; UBC Human Resources; and the Equity and Inclusion Office.

History

This is an update to the current UBC Senate policy on academic freedom which was endorsed in 1977 and adopted by the Okanagan Senate in 2005 when UBC Okanagan was established.

This is the first templated version of the policy.

Related Policies

None

Appendix

There is no appendix to this policy.

Procedures:

1. An *Application* under this Policy must be made in writing to the Office of the Senate and include the following:
 - a. The *Applicant's* request for a determination if this policy has been contravened.
 - b. The parties to the matter for consideration, including the identification of potential *respondents*.
 - c. The chronology of events from which the matter arose.
 - d. Steps taken to resolve the matter within their respective unit(s).
 - e. All written materials the *Applicant* wishes the Agenda Committee and/or the Ad Hoc Academic Freedom Committee to consider.
2. The Agenda Committee of the relevant Senate will make a preliminary determination if the matter may be one of academic freedom under Sections 4 and 7 of the policy. If so, they will strike an Ad Hoc Academic Freedom Committee and refer the *Application* to that committee for consideration. The composition of the Ad Hoc Academic Freedom Committee shall be determined by the relevant Agenda Committee. The Ad Hoc Committee shall receive appropriate support and training from the Registrar, who shall be their secretary.
3. The Ad Hoc Academic Freedom Committee has the discretion to handle applications as it sees fit, subject to procedural fairness requirements and, without limiting the generality of the foregoing, may:
 - a. conduct an inquiry to determine whether this policy has been contravened;
 - b. refer the matter to another appropriate body within the University for consideration; or,

- c. dismiss the *application*, without an inquiry where it is of the view that an inquiry cannot practically be undertaken or an inquiry will not serve a practical purpose.
4. If the Ad Hoc Academic Freedom Committee determines that an inquiry is warranted, it will:
 - a. make findings of fact regarding the allegations set out in the *application*;
 - b. exercise its academic judgement to determine whether there has been a breach of this Academic Freedom Policy on the basis of the facts as found;
 - c. if there has been a breach of this Academic Freedom Policy, determine what, if any, actions should be imposed and, if those actions are within the authority of the Senate, impose those actions on one or more of the *respondents* on behalf of the Senate, and if they are not within the authority of the Senate, recommend such actions to appropriate decision-makers who have the authority to implement those recommendations.
5. In conducting the fact-finding process referred to in Section 4(a) above, the Ad Hoc Academic Freedom Committee may utilize whatever process it determines to be appropriate under the circumstances (provided that the process meets procedural fairness requirements). Without limiting the generality of the foregoing, the Ad Hoc Academic Freedom Committee may:
 - a. request written submissions or documents from any individuals or relevant units of the University; and,
 - b. delegate the responsibility for making findings of fact to an *Investigator* to interview relevant witnesses, make findings of fact, and produce a report for the Ad Hoc Academic Freedom Committee's consideration.
6. If the Ad Hoc Academic Freedom Committee appoints an *Investigator*, the *Investigator* must possess the appropriate skills and experience for interviewing witnesses and writing an investigation report that sets out the relevant evidence and findings of fact in a manner that can be relied upon by the Ad Hoc Academic Freedom Committee and any other decision-makers to

which the Ad Hoc Academic Freedom Committee may choose to make recommendations.

7. If the *respondent* is an employee, the Ad Hoc Academic Freedom Committee may request that Human Resources assist the Ad Hoc Academic Freedom Committee to identify an appropriate *Investigator* and prepare appropriate terms of reference for the *Investigator*. If the *respondent* is a UBC student, the Ad Hoc Academic Freedom Committee may request that the President's Advisory Committee on Student Discipline take on the role of *Investigator*.
8. Upon receipt of the *Investigator's* report, the Ad Hoc Academic Freedom Committee will determine whether to accept the report and adopt the *Investigator's* findings of fact as its own.
9. Determining whether there has been a breach of this Academic Freedom Policy on the basis of the findings of fact requires academic judgement. The Ad Hoc Academic Freedom Committee will not delegate responsibility for making this determination.
10. At the conclusion of its inquiry, the Ad Hoc Academic Freedom Committee shall:
 - a. make a determination as to whether the policy has been contravened;
 - b. inform the *Applicant* and any *respondents* or other relevant individuals or units of the University of the determination of the Ad Hoc Academic Freedom Committee; and,
 - c. if a breach of this Academic Freedom Policy is determined to have occurred, make recommendations for this particular *application* and/or changes to University procedures or practices to avoid similar situations in the future and if it is of the view that actions against a *respondent(s)* are warranted, either impose such actions on behalf of the Senate if they are within the authority of the Senate, or recommend those actions to appropriate decision-makers who have the authority to implement those recommendations if the recommended actions are not within the authority of the Senate. (Remedies such as employment discipline or student discipline are not within the jurisdiction of the

Senate.)

11. The Ad Hoc Academic Freedom Committee shall normally take no more than 60 days from the date of an *application* to conduct an inquiry. If more than 60 days is required for a particular *application*, the relevant Agenda Committee may grant an extension.
12. In their annual reports to the Senates, the Agenda Committees shall state the number of applications for determination of matters of academic freedom received, their disposition, and the general nature of the applications, and shall draw Senate's attention to any other matters of general significance in the University that have arisen out of the Ad Hoc Committee on Academic Freedom's work.

DRAFT



Additional information on issues relating to the draft Policy on Academic Freedom (J-500)

At the most recent joint meeting of the Senates' Academic Policy Committees, the Chairs were advised to prepare responses to several questions and concerns brought to the Committees' attention on the draft of the Academic Freedom Policy (J-500). This document provides such responses.

In addition to the specific points below, the Chairs would like to note that the Policy working group approached the revision with an assumption of collegial governance, and a desire to draft the policy in the positive: as an articulation of the fundamental right and responsibility that is academic freedom at UBC.

1. Jurisdiction vis-à-vis the Collective Agreement for faculty

A question was raised regarding the legal jurisdiction of the Senates relative to the Collective Agreement for faculty members. There is reason to believe that the Senates have jurisdiction over academic freedom despite or in addition to what may be in a collective agreement. First, in the legal case of the Faculty Association of UBC v. UBC in relation to Student Evaluation of Teaching, an arbitrator ruled in 2008 that he had no jurisdiction under the Collective Agreement to pronounce upon Senate policies, relying on the University Act's assignment of power over academic governance to the Senates. The arbitrator's ruling indicated that he would not find jurisdiction even if the academic policy provisions had labour relations consequences and that they possibly conflicted with the Collective Agreement. This arbitrator's decision was upheld by the BC Court of Appeals in 2010.¹ The Supreme Court of Canada declined to hear an appeal by the Faculty Association, so the original ruling by the arbitrator stands.²

Second, it should be noted that the 1977 Statement on Academic Freedom issued by the UBC Senate was later included into the Collective Agreement only starting in 2006.³ Importantly, the wording was included in the "recitals" portion of the Agreement. In contracts, recitals are statement of facts and circumstances, and they come before the words "AND HAVE AGREED AS FOLLOWS." Thus, academic freedom as stated in the Collective Agreement is not part of the provisions negotiated by the parties to the Agreement; instead, they reflect what factually existed at the time of the agreement. In other words, the Collective Agreements could not have included academic freedom in the recitals had the UBC Senate(s) not previously weighed in on the issue; if not for the 1977 Statement, the parties to the Collective Agreement would have had to negotiate and agree on specific language with respect to academic freedom and include it in the sections that follow the words, "AND HAVE AGREED AS FOLLOWS."

The above analysis suggests that the Senates are able to proceed with transforming the 1977 Statement on Academic Freedom into a Policy on Academic Freedom, unencumbered by what is presently stated in the Collective Agreement.

¹ 2010 BCCA 189 (<https://www.bccourts.ca/jdb-txt/CA/10/01/2010BCCA0189.htm>).

² 2010 SCC 33745 (<https://decisions.scc-csc.ca/scc-csc/scc-l-csc-a/en/item/11967/index.do>).

³ UBC Faculty Association, "Academic Freedom History and Principles: Excerpt from the Smith Report, 7 October 2015," Page 7.



2. Academic freedom relative to other policies

There was concern that the December draft of the policy was unclear with respect to the priority of academic freedom in relation to other policies, particularly those issued by the Board of Governors. Of specific note, there was concern that academic freedom was placed lower in priority. The present draft seeks to clarify this ambiguity in Policy Paragraph 3.

3. Freedom to critique the University or administration

Some members of the University suggested that the policy on academic freedom should include the freedom to critique the University. The basis of this suggestion derives from the Canadian Association of University Teachers (CAUT) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). While the Academic Policy Committees were sympathetic to this suggestion, we concluded that including such a provision would be outside the scope for the proposed policy.

Firstly, it is questionable where such critiques of the institution or its administration would be considered academic in nature. Academic freedom must necessarily involve matters *academic*, and it is precisely this characteristic that makes it a matter of academic governance and therefore in the purview of the Senates of UBC as empowered by the University Act; non-academic matters are outside the authority of the Senates. For this reason, the Committees believe that the Senates lack jurisdiction in making policy or pronouncements on the more general freedom of expression.

Second, the proposed policy applies to various classes of members, only some of which are faculty (or “teaching personnel” in the UNESCO recommendation). It is doubtful that the Senates have jurisdiction to empower non-faculty staff with the freedom to critique the University or the administration. Such rights are either matters of freedom of expression or matters that need to be negotiated in labour relation agreements. While the policy provides for academic freedom when a member is engaged in academic pursuits, the Committees do not accept the argument that critiques of the University necessarily fall within the boundaries of academic freedom *solely* on the basis that the University is an *academic* institution. Certainly, some such critiques do bear on academic matters, and the protections of academic freedom would apply in such cases.

Third, the freedom to critique the institution was not included in the 1977 Statement on Academic Freedom. The transformation of the Statement to a Policy was not intended to materially alter (expand or restrict) academic freedom, so a material change of this nature was not considered to be within scope.

4. Definition of “academic pursuits”

Some commentators felt that the term “academic pursuits” or “academic” needs to be defined in the policy given its central role in defining when members enjoy academic freedom. The Academic Policy Committees believe that such a definition was impractical and unnecessary. The range of academic activities at UBC (and institutions of higher learning in general) are many, varied, and changing, and any definition faces a high risk of omitting the academic activities of some members now or in future. Insofar as “academic” is not defined in the University Act, the absence of a definition in the proposed policy is consistent with the governing legislation. When necessary, the determination of whether a member was engaged in academic pursuits will be made by the Ad Hoc Academic Freedom Committee on a case-by-case basis when the Committee considers an Application under the Policy.

Prepared April 2025 by Drs. Kin Lo and Jannik Haruo Eikenaar, Chairs of the Senates’ Academic Policy Committees