



## COMMITTEE REPORT

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**SESSION:**

Public   
Non-Public

**ACTION REQUESTED:**

Decision   
Consultation   
Information

**TO:** Academic Council

**DATE:** November 27, 2018

**SLT LEAD:** Robert Bailey, Provost and Vice-President, Academic (Interim)

**PREPARED BY:** Niall O'Halloran, Policy and Compliance Advisor

**SUBJECT:** Freedom of Expression Policy – Recommendation for Approval

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**COMMITTEE MANDATE:**

- Under the Policy Framework, Academic Council is a mandatory consultation body for this policy. We submit this report for information, including a summary of comments received from consultation, and changes made to the policy since it was last presented to Academic Council on October 23, 2018.

**PURPOSE OF POLICY INSTRUMENT:**

- The purpose of this Policy is to confirm the principles and management of free expression in the University community.

**BACKGROUND/CONTEXT & RATIONALE:**

- In August, the provincial government mandated that all universities in Ontario draft a policy on freedom of speech to have in place by January 1, 2019. This follows the Premier's campaign promise to uphold free speech on every Ontario publicly-funded university and college campus.

## CONSULTATION:

The committee followed the Policy Framework consultation process for new policy development, including Academic Council. The dates of these meetings are listed below:

- Policy Advisory Committee (September 17, October 25)
- Online Community Consultation (October 12-October 22)
- Academic Council (September 25, October 23)
- Administrative Leadership Team (November 13)
- University Student Union (November 1)
- Audit and Finance Committee (November 19)
- Board of Governors (November 29)

Changes recommended by Academic Council and others are reflected in the November 14 redline version of the draft.

### Consultation Comments Received and Response:

- UOIT Student Union should be consulted on this Policy. **Response:** The UOIT Student Union has been consulted and were supportive of this Policy as drafted.
- Members of the Faculty of Social Science and Humanities should be consulted. **Response:** All members of the University Community were provided an opportunity to consult on the draft using the Policy Consultation Notice Board. Comments are reflected in this report.
- UOIT Campus includes online environment, but the online environment should be more clearly defined. **Response:** The draft has been updated to include a definition of the online environment that encompasses social media accounts (Twitter and Facebook), email, the University website, and web applications (Google apps for Education). Any online media associated with the University are subject to the Policy.
- An Academic Council member asked if the Freedom of Expression Policy protects a faculty member who makes a critical comment about the university administration on Facebook. **Response:** This policy covers Freedom of Expression on university online media (including the University's Facebook page) broadly, but there is a distinction that must be drawn between Academic Freedom and Freedom of Expression. This policy does not govern Academic Freedom.
- Review Wilfrid Laurier's Statement on Freedom of Expression policy, which includes the concept of "*inclusive freedom*" which espouses a commitment to the robust protection of free expression, and the assurance that all members – including those who could be marginalized, silenced, or excluded from full participation – have an opportunity to meaningfully engage in free expression, enquiry, and learning". The Policy should commit to protecting marginalized populations against speech acts that do not qualify as defamation, threat, harassment, discriminatory harassment. Without this commitment, the Policy could be used to protect people causing harm. **Response:** We have revised the Policy to include a commitment to the concept of Inclusive Freedom, as well as a statement on the type of environment the University endeavors to provide.
- Develop a University statement that encapsulates or contextualizes the Policy and speaks to the spirit of the Policy. A number of other institutions have such statements. **Response:** We have adopted an existing policy statement from the University's Booking and Use of Space Policy that speaks to the environment the University endeavors to provide.
- What constitutes an "undue or significant disruption" under section 6.1? How will such decisions be made under the Policy? **Response:** We are unaware of any incidents

specific to UOIT that would constitute an undue or significant disruption. This will need to be evaluated on a case by case basis. Efforts will be made to continue the University's functioning while allowing protests to occur. The draft has been updated to clarify that the Policy Owner, in consultation with the General Counsel and Campus Safety will determine when an "undue or significant disruption" must be addressed by limiting Freedom of Expression, including protest, under this Policy.

- Recommendation that the final bullet point of section 6.1, "Unduly disrupt and significantly interfere with the functioning of the University" be removed because it does not directly relate to the University's legal obligations and it is too broad to interpret. Additionally, section 7.1 be revised to include the modifiers from section 6.1, "undue" and "significant". **Response:** The language in this bullet point is consistent with the Ontario Government's recommendation that individuals who engage in "ongoing disruptive protesting that significantly interferes with the ability of an event to proceed" should be subject to disciplinary measures. The modifiers are intended to ensure that the University must make attempts to continue its functions while respecting the right of individuals to protest. Where the functions of the University can continue with modifications to address risks or obstructions (e.g. moving meetings or events, additional security), the Policy Owner, in consultation with the General Counsel, and any other applicable staff (e.g. Risk Management, Campus Security), will make the decision to do so under this Policy. Section 7.1 has been amended to include the modifiers from Section 6.1.
- Policy seems significantly weighted toward physical rather than virtual spaces. The use of the term "obstruct" suggests that only disruption of expression or movement in the physical space contravenes the Policy. **Response:** The intent of the Policy has always been to capture both the physical and virtual spaces. Expression can be obstructed online, and online conduct may be considered to "unduly disrupt" the expression of others, e.g. denial of service attacks that target a UOIT web stream. In order to make this more clear, we have made edits to the definitions, adding the terms University Space and Online University Environment which are used throughout the Policy.
- The Policy should include the "right to be heard". In some cases loudspeakers are set up that are used to drown out unpopular speakers and stop them from being heard. **Response:** We would consider the use of a loudspeaker as a possible act of "obstruction" of the right of free expression under the Policy to be addressed by the mechanisms in the Policy.
- Clarify the definition of "functioning of the University" to include activities in support of the University's main functions including support services such as Facilities. **Response:** We would consider those to fall under the administrative activities of the University.
- Section 6.1 should prohibit disruption of free access and passage on the campus. **Response:** This Policy balances the competing rights of various members of the University community, and as such will allow protest that does not unduly disrupt or significantly interfere with the functioning of the University. Where protest affects free access and passage on campus, the University will weigh risks to health and safety (including evacuation in case of emergency), alternate routes and access for persons with disabilities in making its determination about time, place and manner of protest. These decisions will be made by the Policy Owner, in consultation with the General Counsel and any other relevant personnel.
- Develop procedures for addressing complaints under this Policy, and for determining which speakers will be invited by the University to speak at University hosted events. **Response:** Subsequent to the development and approval of this Policy, the Provost's Office will work on procedures to address complaints under this Policy. Procedures will include an online form and process for reporting concerns under this Policy, and a

process for reviewing and addressing them. We will also determine whether additional guidance is required when inviting speakers to University hosted events. Note that under the Booking and Use of Space Policy, student groups and external groups can bring speakers to events at the University.

- The Policy should address conduct by employees of the University. **Response:** Section 9.4 was added to address conduct by employees in contravention of the Policy.

#### **LEGISLATIVE COMPLIANCE:**

- This policy is consistent with the Ontario government's mandate for university free speech policies and will meet the requirements to report annually to HEQCO beginning September 2019 as legislated by the government.
- This policy is consistent with, and applies, Canadian laws regarding free speech in its categorization of what is permitted speech in University Space and the Online University Environment. Where speech is prohibited by law, it will also be prohibited by the policy.

#### **NEXT STEPS:**

- The draft will be brought forward for approval to the Board of Governors (November 29)

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#### **SUPPORTING REFERENCE MATERIALS:**

- Freedom of Expression Policy (draft)



Classification Number	LCG XXXX
Framework Category	Legal, Compliance & Governance
Approving Authority	Board of Governors
Policy Owner	Provost and Vice-President Academic
Approval Date	DRAFT FOR CONSULTATION <u>VERSION 2 Nov 6</u>
Review Date	TBA
Supersedes	

## FREEDOM OF EXPRESSION POLICY

### PURPOSE

1. The purpose of this Policy is to confirm the principles and management of free expression in the University community.

### DEFINITIONS

2. For the purposes of this Policy the following definitions apply:

**“Freedom of Expression”** means the free expression of ideas and perspectives through a variety of media, including text, performance, images, or the spoken word (free speech), either virtually or physically, by individuals or groups.

**“functioning of the University”** means carrying out University academic, research, and administrative activities ~~of university function~~.

**“Inclusive Freedom”** means a commitment to the robust protection of free expression, including the expression of those who could be marginalized, silenced, or excluded from full participation.

**“Online University Environment”** means all online media including websites, email, social media accounts, online learning tools and applications provided, managed or self-identified as belonging to the University. This includes the University’s website, branded Twitter and Facebook Live events, as well as online learning and collaboration tools such as Google Apps for Education.

**“University Members”** means individuals who are:

- Employed by the University;
- Registered as a student, in accordance with the academic regulations of the University;
- Holding an appointment with the University, including paid, unpaid and/or honourific appointments; and/or
- Otherwise subject to University policies by virtue of the requirements of a specific policy (e.g. Booking and Use of University Space) and/or the terms of an agreement or contract.

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~~“**UOIT University CampusSpace**” means any location owned, leased, rented or otherwise occupied by the University, the physical (north and south locations) and virtual (online) UOIT environment.~~

#### SCOPE AND AUTHORITY

3. This Policy applies to all University Members, ~~and~~ authorized visitors, and guests to ~~the UOIT Campus~~ University Space and the Online University Environment.
4. The Provost and Vice-President, Academic, or successor thereof, is the Policy Owner and is responsible for overseeing the implementation, administration and interpretation of this Policy.

#### POLICY

The University endeavours to provide a safe environment, conducive to personal and intellectual growth, not only free of discrimination, injustice and actual or threatened violence, but also characterized by understanding, respect, peace, tolerance, trust, openness and fairness. The University is fully committed to promoting and advocating academic freedom and Freedom of Expression. At the same time, it has a responsibility to ensure that all members of its community can reasonably expect to pursue their work and studies in a safe and civil environment.

~~UOIT-The University~~ is committed to free and open inquiry into all matters and, therefore, guarantees all of its community members the broadest possible latitude to speak, write, challenge, and learn in an environment of Inclusive Freedom. This policy articulates that commitment, as well as the limits on Freedom of Expression and the constraints on protesting or challenging the Freedom of Expression of other community members.

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#### 5. Assertion of Freedom of Expression

- ~~5.1.~~ 5.1. Consistent with the Ontario Human Rights Code, all University Members, ~~and~~ authorized visitors, and guests are encouraged to express ideas and perspectives freely and respectfully on the UOIT Campus in University Space and in the Online University Environment.

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#### 6. Limits on Freedom of Expression

- 6.1. The Freedom of Expression described in Paragraph 5 is restricted in that it may **not**:
  - Interfere with the university’s legal obligations and/or violate municipal, provincial or federal law
  - Defame an individual or group
  - Constitute a genuine or credible threat, harassment, or discriminatory harassment based on a protected ground under the Ontario Human Rights Code

- Breach fiduciary, contractual, privacy, or confidentiality obligations or commitments
- Unduly disrupt and significantly interfere with the functioning of the University

**6.2.** The University may reasonably regulate the time, place and manner of expression in accordance with the Booking and Use of University Space Policy.

**6.2.6.3.** The Policy Owner or delegate, in consultation with General Counsel and/or relevant personnel, will be responsible for decisions that may result in limits on Freedom of Expression under this Policy, including the determination of when expression unduly disrupts or significantly interferes with the functioning of the University.

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## 7. Limits on the Protest and Challenge of Freedom of Expression

**7.1.** Subject to the limits in section 6, University Members, ~~and~~ authorized visitors, and guests are free to criticize and contest any view expressed on the UOIT Campus in University Space or the Online University Environment, and to criticize and contest speakers who are invited to express their views in University Space or the Online University Environment on campus, but they may not unduly obstruct or otherwise significantly interfere with the freedom of others to express views they reject or even find abhorrent.

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**7.2.** Conduct by students in contravention of this Policy will be subject to investigation and sanctions under the Student Conduct Policy.

**7.3.** The Policy Owner or delegate, in consultation with General Counsel and/or relevant personnel, will be responsible for making determinations regarding when protest and challenge of Freedom of Expression unduly obstructs or otherwise significantly interferes with the freedom of others.

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## 8. Responsibilities of Student Associations and recognized Student Organizations

**8.1.** Student associations recognized under the Student Associations Accountability Policy are encouraged to adopt a policy that aligns with this Policy.

**8.2.** All recognized student organizations are expected to act in compliance with this Policy, as stated in the Policy on Recognition of Student Organizations.

## 9. Complaints

**9.1.** General complaints related to Freedom of Expression in University Space or the Online University Environment under this policy can be submitted to the Office of the Provost for resolution. The Office of the Provost will develop procedures for receiving and resolving complaints, including a form and a means for receiving complaints on its website.

~~9.1.9.2.~~ Complaints related to decisions made by the University under this Policy will be addressed pursuant to the Safe Disclosure Policy.

**9.3.** Complaints related to the activities of recognized student organizations will be addressed pursuant to the Policy on Recognition of Student Organizations.

9.4. Complaints regarding conduct by Employees in contravention of this Policy will be addressed by the following means:

- a) Harassment, violence or discrimination will be investigated under the Policy Against Harassment, Violence and Discrimination in the Workplace, and in accordance with any applicable collective agreements.
- b) Other violations can be addressed by the procedures for receiving and resolving complaints in section 9.1, in accordance with any applicable collective agreements.

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#### MONITORING AND REVIEW

- 10. This Policy will be reviewed as necessary and at least every three years. An initial review will be conducted within the first year of implementation. The Policy Advisory Committee, or successor thereof, is responsible to monitor and review this Policy.

#### RELEVANT LEGISLATION

- 11. Ontario Human Rights Code

#### RELATED POLICIES, PROCEDURES & DOCUMENTS

- 12. LCG 1111 Student Conduct Policy
- LCG 1123 Intellectual Property Policy
- LCG 1110 Policy on Recognition of Student Organizations
- LCG 1117 Student Association Accountability Policy
- LCG 1119 Safe Disclosure Policy
- LCG 1119.1 Safe Disclosure Procedure
- LCG 1105 Harassment and Discrimination Policy
- LCG 1137 Policy Against Violence, Harassment and Discrimination in the Workplace
- LCG 1137.1 Procedures to Prevent and Address Violence, Harassment and Discrimination in the Workplace