

**ADVICE TO HONOURABLE DEMETRIOS NICOLAIDES
MINISTER OF ADVANCED EDUCATION**

FREEDOM OF SPEECH ON CAMPUS

PURPOSE

To provide a recommendation for moving forward on the Minister's approved option to protect freedom of speech on post-secondary campuses in Alberta.

RECOMMENDATION

- It is recommended the Minister send the attached letter (Attachment 1) encouraging institutions to individually adopt the Chicago Principles or develop their own policy in alignment with the Chicago Principles and approve the recommendations A1, B1, and C1.

BACKGROUND

- The United Conservative Party's election platform committed to "Require all universities and colleges to develop, post, and comply with free speech policies that conform to the University of Chicago Statement on Principles of Free Expression."
- The Chicago Principles (Attachment 2) are a brief statement affirming the rights of those at the University of Chicago to free and open debate and exchange of ideas, even if those ideas are considered unpopular by some (while acknowledging the limitations on free speech necessary to uphold the law and functioning of the university).
- To date, no Alberta post-secondary institution has formally endorsed or adopted the Chicago Principles.
- Most of Alberta's 26 publicly funded post-secondary institutions have a statement or multiple statements affirming the importance of free speech and expression on campus (AR 56396).
 - While there is great diversity in the form and strength of these statements, free speech is a widely accepted principle in formal campus policies in Alberta.
- In late 2018, the Government of Ontario required its publicly assisted colleges and universities to adopt the Chicago Principles, and Ontario institutions are also required to prepare an annual report on implementation progress, and any institutions that fail to comply will be subject to a funding reduction.
 - Some stakeholders in Ontario raised objections over the short timeline to adopt the Chicago Principles, the lack of consultation, and the perception that the government was seeking to solve a problem that did not exist.
 - The free speech policies have only been in place in Ontario for less than five months, making the success of the initiative difficult to evaluate; however, it was successful insofar as all institutions are now covered by policies that reflect the Chicago Principles.

KEY CONSIDERATIONS

- While the Chicago Principles have been adopted by many institutions in the United States, other institutions have chosen not to, or have developed their own, slightly different policies.
 - Stanford University is a notable example of the latter. While Stanford does not have a single policy specifically directed at free speech, several of its policies include aspects related to free speech or freedom of expression, focused on creating an inclusive culture that empowers active debate.
- No Canadian university had adopted the Chicago Principles prior to the government-mandated adoption in Ontario in 2018.
- Regardless of the free speech principles adopted on Alberta campuses, they will, inherently, be limited by legal and practical matters (which is acknowledged in the Chicago Principles).
 - This will require institutions' administration to exercise discretion in how to enforce freedom of speech on campus, which could invite controversy.
- While the Ontario government gave the Higher Education Quality Council of Ontario additional power to research, monitor, and investigate system-level progress on free speech in Ontario, no similar body exists in Alberta.
- Depending on how it is applied and enforced, it is not expected that stakeholders will react negatively to mandated free speech statements in Alberta. In the abstract, free speech is viewed by most stakeholders as fundamental to post-secondary education, though it is difficult to predict how stakeholders will react to real-life scenarios that will test the principles.
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- Institutions in Alberta tend to be fairly responsive in addressing government direction.
 - In recent years, institutions decided to take action on sexual violence on campus and determined that each institution would develop a related policy. The former Minister did not request this action, and the sole role taken by the former Minister was to ensure that a policy is in place (i.e. policies were not reviewed, approved, or enforced by that Minister).

ANALYSIS

- Canada's legal environment differs significantly from that of the United States with regards to hate speech, which may affect the development and implementation of institutional free speech policies.

27(1)(a);27(1)(b)(ii);27(c)(ii)

- The Minister has requested a draft letter to send to the institutions to require them to either formally adopt the Chicago Principles, or consolidate their existing free speech policies into one and demonstrate how the policy conforms to the Chicago Principles.
- The Minister publicly committed to have “thorough, collaborative consultations with institutions, faculty, and students” on the issue.
 - The suggested approach does not lend itself to an extensive consultation role for the Minister; however, the Minister may wish to task this responsibility to the institutions, and verify with students and faculty that they are being thoroughly and collaboratively involved.
 - Leaving consultation primarily to the institutions to conduct while developing the policy(ies) limits the Minister’s exposure to controversial topics, and operational and implementation concerns that will likely be raised.
- At this time, decisions from the Minister are needed to inform next steps and implementation, including the role of the Minister, and (relatedly) what will transpire in instances of non-compliance.

Shorter-Term Decisions

A. Individual or System Policies

A1: Institutions Individually Adopt the Chicago Principles or Develop Their Own Policies in alignment with the Chicago Principles (recommended)

- Government would require all 26 institutions to individually issue a statement adopting the Chicago Principles or develop unique policies (that are in alignment with the Chicago Principles) to be enforced strictly on their campus.

Pros	Cons
<ul style="list-style-type: none"> • Allows for greater nuance to better reflect individual campus cultures and environments, including input from individual student and faculty groups. • Allows for greater specificity in the policy, given it does not have to apply across Alberta. • May be better understood and accepted by students, faculty and other stakeholders on campus given it would be developed “in-house”. • Consistent with the approach taken by universities in Ontario. 	<ul style="list-style-type: none"> • Inconsistency in policies would result in some institutions having weaker protections. • Does not reinforce the principle of coordination. • May be difficult for transferring students and institutional guests to understand different rules at different institutions.

A2. Institutions, as a System, Adopt the Chicago Principles or Develop a System-Wide Policy, in alignment with the Chicago Principles

- Government would require all 26 institutions to adopt the Chicago Principles or work together to develop a single policy to be enforced on campuses across Alberta.

Pros	Cons
<ul style="list-style-type: none"> • Would ensure policy uniformity across Alberta. • Would benefit students transferring institutions in Alberta, as they would face the same rules, regardless of the Alberta institution at which they chose to study. • Consistent with the principle of coordination, and reinforces the government message of asking institutions to work together as a system. • Clearer to institutional guests what the rules are at campuses across Alberta. • Consistent with the approach taken by colleges in Ontario. 	<ul style="list-style-type: none"> • Application of the policy would still be inconsistent, given the discretion that must be exercised by the institutions in enforcing the rules. • One-size-fits-all approach does not allow for flexibility and context at different institutions. • Higher-level, system-wide policy may be less specific, and provide less direction to institutions. • More difficult to incorporate the views of students and faculty to system-wide approach, as it would likely be led by institutional leadership.

Longer-Term Decisions

B. Role of the Minister

B1. Minister Has No Formal Role in Reviewing or Approving Policies (recommended)

- The Minister would not have a formal role in reviewing, approving or enforcing institutional free speech policy(ies). However, the Minister would ensure the institutions have developed appropriate policies.

Pros	Cons
<ul style="list-style-type: none"> • Empowers institutions to safeguard free speech on campus. • Consistent with the approach taken with institutions on sexual violence policies, where the Minister's sole role is to ensure institutions have developed them. • Would prevent additional bureaucratic hurdles and red tape for institutions to clear. • Limits the government's involvement, which limits the government's legal risk of facing a Charter challenge on the ground of Freedom of Expression. 	<ul style="list-style-type: none"> • Would not provide a role for the Minister in ensuring compliance with this important government priority. • Allows for possibility of abuses at institutions going unchecked, which could leave students and staff insufficiently protected. • Does not allow for government-enforcement of consequences for non-compliance with free speech principles.

<ul style="list-style-type: none"> • Would allow the Minister to avoid entanglement in contentious issues at institutions when they arise. • Consistent with the principle of institutional autonomy and board governance. • Would be more popular with institutions. 	
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B2. Minister Reviews, Approves and Enforces Free Speech Policy(ies)

- The Minister would review the policy(ies) developed by (in) the system, and would have a clear role in enforcing it (them), including the ability to penalize non-compliant stakeholders (including for scenarios where institutions charge excessive fees for security).

Pros	Cons
<ul style="list-style-type: none"> • Allows the Minister to ensure free speech is protected on campuses across Alberta. • Allows for enforcement measures, such as funding reductions, to ensure free speech is protected. • Somewhat consistent with the approach used in Ontario (where a government agency approves institutional free speech policies). 	<ul style="list-style-type: none"> • Could place the Minister at the centre of highly contentious debates at institutions such as abortion or gender issues. • Increases the government's legal risk of facing a Charter challenge on the ground of Freedom of Expression if the Minister becomes involved in approving policies. • Would subject institutions to additional approvals from government, which is inconsistent with the government's overall aim to reduce red tape.

C. Non-Compliance (if option B2 above is approved)

C1. Minister will Address Non-compliance on a Case-by-Case Basis (recommended)

- The Minister would review complaints about limitations on free speech, and if violations of the policy have occurred, determine appropriate consequences for the institution (the Minister only has authority to enforce consequences on the institution—the Minister does not have an accountability relationship with students or faculty).

Pros	Cons
<ul style="list-style-type: none"> • Maintains discretion for the Minister. • Allows the Minister to determine a reasonable and proportionate consequence for failure to comply 	<ul style="list-style-type: none"> • Some may argue that the threat of funding reductions to institutions is the only mechanism that will ensure compliance.

<p>based on circumstances.</p> <ul style="list-style-type: none"> • Does not limit the Minister from cutting funding to non-compliant institutions. 	<ul style="list-style-type: none"> • Leaves the government open to criticism that its approach to enforcement is less robust than that taken in Ontario. • May expose the government to legal risk of a Charter challenge if the Minister enforces consequences for violations of the policy.
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C2. Non-Compliant Institutions are Subjected to a Funding Reduction

- The Minister would review complaints about limitation on free speech, and if violations of the policy have occurred, the institution would be subject to a reduction in funding proportionate to the violation.

Pros	Cons
<ul style="list-style-type: none"> • A funding reduction is a serious consequence which would ensure the institution's administration takes the policy seriously. • Consistent with the approach taken in Ontario. • Could allow saved funding to be directed to other government priorities such as other post-secondary institutions, other departments, or fiscal savings. 	<ul style="list-style-type: none"> • Funding reductions could result in programming or research cuts at the institutions. This could harm students and faculty, many of whom would have played no role in the limitation on free speech. • Higher legal risk to government of facing a Charter challenge if the Minister cuts funding for violations of the policy. • Such cuts could result in decreases in enrolment, which could affect post-secondary revenues, participation rates, and workforce development. • While student groups receive some funding from institutions, it would be difficult for institutions to pass on the funding reduction to students or faculty. This approach could punish the wrong organizations and leave the perpetrators unpunished. • Decisions on the proportionality of the funding reduction would be highly discretionary and subject to criticism. Given Alberta's funding model, which lacks targeted funding for strategic initiatives, a funding cut would be difficult to calculate.

APPROVAL _____ **DATE** _____
Honourable Demetrios Nicolaides
Minister of Advanced Education

ATTACHMENTS:

1. Letter to Board Chairs (for individual policies)

29(1)(a)

CONTACT: Peter Leclaire, Assistant Deputy Minister
Advanced Learning and Community Partnerships, 780-641-9349



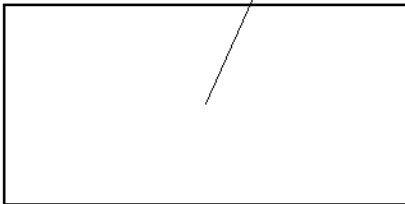
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June 14, 2019

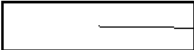
AR 56510

Non Responsive



Non Responsive

Dear



The Government of Alberta is committed to protecting and promoting free speech as a fundamental tenet of the academic experience, as reflected in the University of Chicago Statement on Principles of Free Expression.

Alberta's post-secondary institutions demonstrate their commitment to free expression through a variety of free speech protections and statements already in place. Whether through statements on academic freedom, codes of conduct, or other policies, institutions underscore the importance of free speech on campus. I would like to thank you for the work you do every day to protect this important aspect of post-secondary learning.

To ensure clarity at all institutions, the government is asking that each institution either formally adopt the Chicago Principles, or develop a policy that consolidates its existing protections and demonstrates each institution's commitment to free speech. All 26 publicly funded post-secondary institutions are required to adopt the Chicago Principles or to develop a stand-alone policy. It is expected either option will be in place and publicly available by October 15, 2019.

The stand-alone policy should align with the substance of the Chicago Principles, while also respecting the unique context at each institution. To achieve this, your policy should, at a minimum, reflect that:

- Institutions are places of open discussion and inquiry, committed to protecting and promoting free expression.

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Non Responsive

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- Community members have the right to criticize and question other views expressed on campus, but cannot obstruct or interfere with others' freedom of speech.
- Institutions should not attempt to shield students from ideas or opinions they disagree with or find offensive. Mutual respect and civility are valued, but do not constitute sufficient justification to limit free speech.
- Free speech may be limited if it violates the law.
- Free speech may be limited if it is incompatible with the functioning of the institution.

Please provide Mr. Peter Leclaire, Assistant Deputy Minister, Advanced Learning and Community Partnerships Division, with either the commitment to formally adopt the Chicago Principles or a copy of your institution's intended policy for confirmation of its alignment to the above-stated requirements, by email at peter.leclaire@gov.ab.ca. Policy drafts should be submitted to Mr. Leclaire no later than September 23, 2019. The department will notify you once your approach has been approved so you can post your free speech policy or statement of adoption of the Chicago Principles on your website by the October 15, 2019 deadline.

Thank you for your contribution to this important work. I look forward to working with you to continue to ensure free speech is supported in Alberta's post-secondary system.

Sincerely,



Demetrios Nicolaidis
Minister of Advanced Education