

Professor Neil Guppy
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Dear Neil,

The UBCFA received feedback on the Freedom of Expression Statement from several faculty members and from David Robinson, the Executive Director of CAUT and Michael Conlon, Executive Director of CUFA BC. No one endorsed the Statement as written. Several concerns were expressed, ranging from fundamental to editorial:

1. Concerns about Conflating Academic Freedom and Free Speech

The concern most frequently expressed was that the Statement conflates freedom of expression and academic freedom, and is likely to exacerbate, rather than to reduce, confusion between these concepts.

2. Legal Limits on Freedom of Expression

There was confusion about why such a Statement was necessary, given existing legal limits on Freedom of Expression (e.g., hate speech, creating a hostile environment). Some expressed concern about the Statement's potential to be used to illegitimately limit or control speech on campus (e.g., against authority figures and against university teachers carrying out their educational duties). University teachers may take people outside their comfort zones, introducing them to new facts, perspectives, methods of inquiry, etc., thus they need the pedagogical freedom required to help students become scientists, literary critics, economists, and so on.

3. Individual versus Institutional and Cultural Harassment and Power

It was also pointed out that the Statement does not recognize that people currently have unequal voice, or freedom of expression, based on their social identities and power. The Statement ignores this and focuses on individual expression, overlooking institutional and cultural expressions that cause harm.

4. Editorial Suggestions

There were numerous editorial suggestions for improving the document, such as removing the choice to reference the university's international status or to focus on current events. If taken into account, they would pare it down considerably by removing what are deemed to be questionable or unnecessary claims and issues.

In conclusion, the UBCFA believes it is unwise for UBC to issue a statement on “Freedom of Expression,” unless such a statement clearly distinguishes freedom of expression from academic freedom and emphasizes that the latter is what is central to the mission of a university and what we must uphold and protect.

In his message of November 8 to the university community, President Ono explained that the draft Freedom of Expression Statement was prompted by his September 5 letter¹ to the university community, in which he stated, “I also want to reaffirm my personal commitment to academic freedom.”¹

It is unclear why a Freedom of Expression Statement was drafted to reaffirm President Ono’s personal commitment to academic freedom. This contributes to confusion between freedom of expression and academic freedom. It is also unclear why such a statement would not be written by and come from President Ono himself to reaffirm his personal commitment to academic freedom. Finally, it is unclear why a statement on the purpose and definition of academic freedom would be necessary given that we already have one in the Collective Agreement² and a detailed history and definition of the concept thanks to the Smith Report.³

Any Freedom of Expression Statement should distinguish the concept from Academic Freedom and emphasize the latter’s importance to a university, and should be written by experts, not delegated to inexperienced community members⁴. Ideally, our academic leaders would be able to personally speak with courage, conviction, and authority on what academic freedom is and its central purpose to the university, and how it differs from freedom of expression.

For a brief analysis of the distinction between academic freedom and freedom of expression, see Robert Post’s (Professor of Law and former Dean, Yale University) and Emma Cunliffe’s (Professor of Law, University of British Columbia) recent articles.^{5,6}

Freedom of expression – to state one’s opinion, no matter how ignorant or wrong – is allowed in the public sphere of democratic societies. Freedom of expression may also be allowed of students by faculty in their classrooms when faculty are able to constructively guide students to identify their underlying assumptions, evaluate those assumptions with reason and evidence, and help students learn. As Post

¹ Santa Ono, 2017. <https://president.ubc.ca/letter-to-the-community/2017/09/05/looking-ahead-to-2017-18/>

² UBCFA Collective Agreement, 2014-16. <http://www.facultyassociation.ubc.ca/assets/media/Faculty-CA-2014-to-2016.pdf>

³ Lynn Smith, 2015. http://www.facultyassociation.ubc.ca/assets/media/Academic-Freedom-History-and-Principles_HonLynnSmith.pdf

⁴ Emma Cunliffe, 2017. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3083561

⁵ Robert Post, 2017. <https://www.vox.com/the-big-idea/2017/10/25/16526442/first-amendment-college-campuses-milo-spencer-protests>.

⁶ Cunliffe, *ibid*.

puts it, “The purpose of universities is to teach students how to discriminate between better and worse ideas, as well as to determine what we know on the basis of our best possible ideas.”⁷

Academic freedom exists to protect the university’s core mission of advancing knowledge through teaching and research. In 2001 former president Martha Piper noted that, unlike freedom of expression, “academic freedom must be accompanied by academic responsibility.”⁸

Universities recognize expertise and imbue it with responsibility by hiring and tenuring faculty based on the quality of their ideas and grading and evaluating students based on the quality of their ideas.⁹ Expertise should thus be coupled with academic decision-making and power at the university. For this reason, “Academic freedom requires that academic staff play a major role in the governance of the institution.”¹⁰ Faculty who demonstrate excellence in research and teaching are responsible for developing research programs and teaching curriculums, training and evaluating students, and selecting and evaluating other faculty.

Academic freedom can get confused with freedom of expression at a university, however, when expertise becomes decoupled from power at the institution. This happens, for example, with the growth of contingent faculty and non-academic staff, when non-experts in positions to control resources are allowed to direct academic discourse and decision-making, and when expertise is not recognized in faculty who come from, or advocate on behalf of, historically oppressed groups. The decoupling of expertise from power within universities erodes faculty governance and academic freedom (see Table), and risks leaving the evaluation of ideas to powerful parties who lack scholarly expertise on those topics.

		Expertise	
		Low	High
Power	Low	Vulnerable non-experts (e.g., students, communities)	Vulnerable experts (e.g., untenured faculty)
	High	Powerful non-experts (e.g., politicians, administrators, donors)	Powerful experts (e.g., tenured faculty)

UBC’s academic leadership should be clear in defending academic freedom as central to the primary function of our university,¹¹ how it differs from freedom of expression, and on how both are constrained by equality rights within the institution.¹² Our recommendation is for the academic leadership of UBC to speak with courage and conviction about academic freedom and its importance, and to issue a

⁷ Post, *ibid.*

⁸ Cunliffe, *ibid.*

⁹ Post, *ibid.*

¹⁰ CAUT Policy Statement on Academic Freedom. <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-academic-freedom>

¹¹ UBCFA Collective agreement, *ibid.*

¹² Cunliffe, *ibid.*

statement on freedom of expression only if it clearly serves that purpose. We advise against delegating a statement on freedom of expression to the campus community and risk confusing it with, and thus undermining, academic freedom in the process.

While the Faculty Association appreciates the opportunity to provide feedback to the University on the proposed Freedom of Expression statement, we wish to confirm that any comments and recommendations made by us are made on a without prejudice basis to any position we may take with respect to the statement in the future. The Association therefore reserves our right to challenge the statement and its application, in whole or in part, as we see fit, including through the grievance and arbitration process.

Respectfully Submitted,



Nancy Langton
President, UBC Faculty Association