



Council of Ministers of Education, Canada  
Conseil des ministres de l'Éducation (Canada)

**REPORT OF CANADA**

**CONCERNING THE APPLICATION OF THE**

**UNESCO RECOMMENDATION ON THE STATUS OF**

**HIGHER-EDUCATION TEACHING PERSONNEL**

January 2001

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## **Part I? Preamble and General Background**

### **1. Request of the Director General of UNESCO**

At its 29<sup>th</sup> session in 1997, the General Conference of UNESCO adopted the *Recommendation concerning the Status of Higher-Education Teaching Personnel*. For the purposes of this debate at UNESCO, Canada was represented by the Council of Ministers of Education, Canada (CMEC). Canada spoke for and voted for this recommendation.

The reporting process is pursuant to article 75, on the state of academic freedom and human rights in higher education around the world, which reads as follows:

“The Director General will prepare a comprehensive report on the world situation with regard to academic freedom and to respect for the human rights of higher-education teaching personnel on the basis of the information supplied by member states and of any other information supported by reliable evidence which he/she may have gathered by such methods as he/she may deem appropriate.”

In addition, article 74 states that “member states and higher education institutions should take all feasible steps to apply the provisions spelled out above to give effect, within their respective territories, to the principles set forth in this recommendation.”

This report is the response of Canada through CMEC to the request of the Director General.

### **2. General Background**

Canada is a vast country of ten provinces and three territories with a political structure that divides powers between the federal government and the provinces/territories. Canada has two official languages: English, the mother tongue of about 61 per cent of the population, and French, the mother tongue of approximately 26 per cent. It is also a country of recent immigrants from around the world who bring with them a great variety of cultural and educational backgrounds.

Canada is a constitutional democracy like many other countries around the world. Laws are established by freely elected legislatures and interpreted by the courts. Cabinet ministers are responsible to the legislatures for the activities of their civil servants, who are themselves professionals, normally recruited through a public process. Significant funding is voted by legislatures for higher education so that universities and colleges can remain a key part of, and contribute to, this civil society. Universities and colleges are a place of free and independent thought; they educate future citizens as well provide vocational training; they undertake research, funded by both governments and the private sector, the results of which are significant to the economy, to public administration, and to general culture.

Canada has a highly developed structure of higher education including universities, community colleges, Collèges d’enseignement general et professionnel (cégeps), and private institutions. Higher education in Canada has been transformed since the end of World War II by a dramatic increase in the number of students and the consequent rebuilding of old universities and the creation of new ones. The same period has also seen the development of the community college system, the scope of which can be seen

in a few figures. Canada had a population in 1998 of just over 30 million people. In 1996-97, Statistics Canada reported expenditures of \$15,576,900,000 on postsecondary education. There were 34,613 full-time teachers in universities in Canada and 24,366 in community colleges accredited by provincial governments. This has declined from 37,266 and 25,972, respectively, in 1992-93 (see Appendix A for breakdown by province).

The scale of change in Canadian higher education was noted in the response of the Government of British Columbia: “In the early 1960s, postsecondary education in the province was provided by one university (the University of British Columbia), an affiliated college, and a few vocational institutions. Today, the system comprises 28 differentiated advanced education institutions including six universities, five university colleges, eleven community colleges, three provincial education institutes, two Aboriginal education institutes, and the Open Learning Agency.” In 1998, British Columbia had a population of 4,009,000.

Education is a provincial/territorial responsibility. The decentralization of the country and its very size have ensured that there would be a variety of responses to the types of problems that Canada faces in the area of higher education and that are the subject of this recommendation. No one solution necessarily fits all.

## **Part II ? Higher Education: A Provincial and Local Responsibility**

### **3. Application of the Recommendation**

The UNESCO recommendation deals with such matters as institutional autonomy, academic freedom and tenure, academic self-governance, and the professional responsibilities of both academics and of universities as institutions, as well as the right to free collective bargaining and proper economic status. It applies to both universities and colleges.

A number of the provinces in Canada have taken the view, however, that the UNESCO recommendation applies primarily to the universities. The Government of Ontario states, for example, that “the recommendation primarily applies to the status of university faculty...”. The Government of Newfoundland and Labrador indicates that “the government and the post-secondary system in Newfoundland and Labrador support the general principles outlined in the UNESCO recommendations while recognizing that the mandate of the college is very different [from] that of the university.” The Government of Quebec states: “We have distinguished between cégep and university faculty.”

On the other hand, the Government of British Columbia reports: “British Columbia supports the general principles outlined in the UNESCO recommendation which include the basic principles of human rights and academic freedom for higher education teaching personnel.... British Columbia meets or exceeds the standards outlined in the UNESCO recommendation, and as such, believes that the recommendation is already *de facto* in place within the public higher education system of the province.... British Columbia will continue to uphold the principles and provisions of the recommendation.”

There are also a large number of private technical and vocational postsecondary institutions in Canada that form a third level of institutions, particularly in the larger provinces. In Ontario and Alberta, for example, they are governed by a provincial Private Vocational Schools Act. Similar legislation is about to come into effect in British Columbia.

#### **4. Institutional Autonomy**

(Articles 17–20 of the UNESCO Recommendation)

##### **(a) Universities**

The great majority of universities in Canada are separate institutions, not part of any formal provincial or national network. Sometimes they were founded by private groups of individuals or churches, sometimes by provincial governments. However, Canada is too small in population to sustain a rigid distinction between public and private institutions as in the United States, and, as a consequence, universities became mainly public in their financing and secular in their operations regardless of their original foundation.

Virtually all the provincial/territorial jurisdictions take the view that universities are autonomous institutions, financially supported by the state. As a consequence, most of the provisions of the UNESCO recommendation regarding such matters as academic freedom, tenure, academic self-governance, professional responsibilities, and terms and conditions of employment are the responsibility of the individual boards of governors. The response from the Government of Alberta is typical in this regard:

“Public postsecondary institutions in Alberta are autonomous, board-governed entities responsible, by legislation (the Universities Act, the Colleges Act, and the Technical Institutes Act), for their own internal management including establishing policies, procedures, and practices respecting the rights and freedoms of higher education teaching personnel, the duties and responsibilities of such personnel, and the terms and conditions of their employment. The branch does not become involved in matters of the latter nature.”

The Government of Ontario states: “Universities in Ontario are autonomous institutions that receive public funding from the province directly, by way of grants, and indirectly, by way of publicly supported student assistance. Each university in Ontario was created by an individual charter for that specific institution. This funding goes to support the functions of the university, including personnel salaries and benefits, library acquisitions, and general resources. These institutions also charge tuition fees to students, augmenting the public funding they are receiving.”

The same is true in Quebec: “The Quebec Minister of Education exerts influence over universities mainly through operating and capital grants. Although most university funding is provided by the Quebec Government, the institutions have exclusive control over academic matters and enjoy the planning and operating autonomy and flexibility required to deliver teaching and research, hire and remunerate staff, and coordinate and develop their operations.”

The same applies in New Brunswick: “... In New Brunswick, the government provides a percentage of funding to universities and does not get involved in human resource management.”

The Association of Universities and Colleges of Canada (AUCC), which represents universities and degree-granting colleges in Canada, has defined autonomy in terms of the following powers and duties: “to select and appoint faculty and staff; to select and admit and discipline students; to set and control curriculum; to establish organizational arrangements for the carrying out of academic work; to create programs and to direct resources to them; to certify completion of a program of study and grant degrees.” AUCC states that “... historically, the universities of Canada have struggled to achieve institutional autonomy and must continue to do so,” and that “... they have an obligation to society to resist outside intrusion into their planning and management and to insist that institutional autonomy be recognized by governments and others as the necessary pre-condition to their proper functioning.” AUCC also notes: “The reliance of universities on government financing and private donations may create pressures on the institutions and on their members to conform to short-sighted or ill-advised political, corporate, or personal interpretations of what should be studied and how it should be studied. It is the obligation of faculty members supported by their administrations, senates, and boards to ensure that these pressures do not unduly influence the intellectual work of the university.”

The result of this focus on local autonomy is that individual universities across Canada have developed policies or negotiated collective agreements to deal with such matters as academic freedom and tenure, professional responsibilities, and economic matters. In Ontario, for instance, the Government states: “The terms and conditions that higher-education teaching personnel operate under are ultimately set through negotiation between the faculty and the respective university’s administrative structures.” This decentralization has produced variation across the country although certain general themes do emerge.

Provincial/territorial governments do, however, exercise considerable influence on the universities as a consequence of public funding, as the response from the Government of Quebec notes. These governments have a legitimate concern to ensure that the funds provided are spent honestly and rationally and, from time to time, direct their money to support certain educational or economic aims other than simple per capita student funding. This is where disputes occur (see below under the section on the federal role for a more detailed discussion). Most governments see this as their democratic right, while others are concerned about micro-management that undermines the autonomy of universities and thus their ability to function properly. Some in the university community, for example, are concerned that an ever-growing focus on engineering, business administration, and medicine may seriously undermine the humanities and the fine arts in Canadian universities as well as the idea of a liberal education in general. There are very few large-scale private foundations in Canada whose funding could balance the power of the public purse, as is the case in the United States.

There is no simple formula that can be applied to judge university/government funding arrangements, and it is unlikely that disputes between governments and universities over this matter will disappear.

## **(b) Community Colleges and Collèges d'enseignement général et professionnel (Cégeps)**

The UNESCO recommendation recognizes that the nature of institutional autonomy may differ according to the type of establishment involved. In Canada there is a significant difference in this regard between universities and community colleges. The situation in relation to the community colleges is more varied than in the universities. First of all there is a fundamental difference in structure between Quebec and the rest of the country. In Quebec, students normally progress through a hierarchical structure of institutions from high school leaving to cégeps and then to university. In the rest of the country, universities and community colleges are parallel institutions, and students can proceed from high school to one or the other depending on their qualifications and interests. There are arrangements for credit transfer from community colleges to universities and vice versa. In addition, there is a growing clientele of university graduates seeking specific technical skills through a college program. The purpose of community colleges is to provide both technical and humanistic education but with a focus on the former. In Quebec the cégeps must provide university entrance for all undergraduate faculties as well as vocational education. Faculty at community colleges are not normally required to carry out research, but more and more do so. Some colleges have acquired limited degree-granting powers, especially in applied areas.

Most community colleges are also relatively new, having emerged after World War II, and there is a much greater variation in terms of autonomy. Some jurisdictions such as Nova Scotia have been part of the provincial civil service although that status is now changing. Others, as in British Columbia and Alberta, are more freestanding in their governance and operations.

Provincial/territorial governments tend to see their community colleges as more tied to the local labour market, and the majority of jurisdictions therefore claim a stronger role in policy making for colleges than for universities. The Government of Ontario states, for example, that community colleges are “semi-autonomous” public institutions under the general responsibility of the ministry with the advice of a province-wide body that, among other matters, provides academic advice and has exclusive responsibility for collective bargaining. This latter power means that “... collective agreements are reached at once, for all college academic staff across the province, in contrast to universities which operate on an institution-by-institution basis.” In Quebec there is special legislation for the cégep system, unlike the individual acts and charters that created the universities. In British Columbia, legislation has been established for the community college system. The majority of the members of the college boards are appointed by the provincial government, and provisions are in place to elect faculty, student, and staff representatives to the boards to ensure their participation in academic decision making.

## **5. Academic Self-Governance**

(Articles 21, 31, and 32 of the UNESCO Recommendation)

### **(a) Universities**

Academic self-governance in Canada is related to the idea of institutional autonomy. Universities in Canada have a large degree of self-government. In most cases universities have created academic senates or faculty councils that contain elected faculty and student representatives as well as *ex officio*

academic administrators. In the words of the Ontario response to the UNESCO recommendation: “Faculty are an integral part of the university governance system. Faculty are represented on the senates of their respective institutions... As the principal authority over university academic and institutional planning, this representation gives faculty direct input into the operations and goal setting of the universities.” The Government of Quebec described the universities as “... places where faculty enjoys preponderant influence.”

Although this structure is widespread in Canada, it nevertheless provokes questions about how one combines the managerial responsibilities of the university administration and board of governors with the requirements of academic self-government. It also raises issues about the relationship of accountability measures to the traditional forms of governance. At the same time, the rise of faculty collective bargaining has also raised questions about university governance.

In British Columbia there has been controversy over the governance of two new universities ? Royal Roads University and the Technical University of British Columbia. The Government of British Columbia noted that these two universities “... were created by legislation separate from the University Act, and with different governance provisions from the University Act. The differences are intended to provide the new universities with greater flexibility to respond quickly to changing educational needs. The legislation provides for an academic council instead of a university senate vested with legislative authority over academic matters. The academic councils exercise substantive authority over academic decisions as delegated by the president of each institution.

### **(b) Community Colleges and Collèges d’enseignement général et professionnel (Cégeps)**

All colleges are legally autonomous with their own boards of governors except the New Brunswick community college system. The boards are normally appointed by the provincial governments. However, self-governance varies from jurisdiction to jurisdiction. In Nova Scotia, for example, two students, one academic staff member, one administrator, and one support staff member are elected by their respective groups to the board. The other initial board members were appointed by the province, but now the board presents a list of nominations to the minister, who chooses from it. The appointment is then confirmed by the board. In British Columbia there are participatory structures that formally involve elected faculty, staff, and students on governing boards and on education councils, which have a specific set of powers under the College and Institute Act.

## **6. Academic Freedom and Tenure** (Articles 26? 30 of the UNESCO Recommendation)

### **(a) Definition of Academic Freedom in Canada**

The idea of academic freedom and its application in Canada has evolved considerably over the past century, as indeed have most institutional arrangements in universities and colleges. In his recent book, *Academic Freedom in Canada: A History*, Professor Michael Horn notes three major steps in that evolution. A hundred years ago academics began to establish the right to teach and to do research in controversial areas such as biology, theology, and philosophy without internal censorship in the university. A related matter was the establishment of the view that academics could publish their

research without fear of retribution even if it offended powerful or articulate groups in the community. This was a long process but was more or less complete by the 1960s.

The second step was the establishment of the principle that academics could engage in political, social, or economic discourse and controversy as any other citizen and could do so publicly without fear of discipline or dismissal by the university. The third step involved the principle that such free and independent discourse meant that academics could criticize publicly the educational system in which they worked and the institution that employed them.

Legislatures in Canada have not attempted to define academic freedom, as have those in the United Kingdom and New Zealand. Nor does the Canadian Charter of Rights apply to universities, since they are not, as the Supreme Court of Canada ruled, either state entities or agencies of the state. The charter applies to the activities of governments. The question of whether the Quebec charter applies to universities and colleges in that province has not been resolved by the courts.

There are several different ways in which universities and academics in Canada have sought to protect and guarantee academic freedom. The first of these is through the articulation of definitions of academic freedom at the local level, particularly in collective agreements involving the academic staff. The Canadian Association of University Teachers (CAUT) suggested a model for contracts: “The common good of society depends upon the search for knowledge and its free exposition. Academic freedom in universities is essential to both these purposes in the teaching function of the university as well as in its scholarship and research. Academic staff shall not be hindered or impeded in any way by the university or the faculty association from exercising their legal rights as citizens, nor shall they suffer any penalties because of the exercise of such legal rights. The parties agree that they will not infringe or abridge the academic freedom of any member of the academic community. Academic members of the community are entitled, regardless of prescribed doctrine, to freedom in carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the university and the faculty association, and freedom from institutional censorship. Academic freedom does not require neutrality on the part of the individual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge.”

AUCC also adopted a statement on academic freedom in 1988. It said that academic freedom was essential to the pursuit and dissemination of knowledge and understanding, fundamental to the rights of teachers to teach and of students to learn, and essential so that society may have access to impartial expertise on all issues including those surrounded by controversy (for the full text, see the appendix).

Most universities have adopted some variation on these themes either as a by-law or part of a collective agreement. Where the statement on academic freedom is part of the contract or collective agreement, it is then legally enforceable. These statements are generally in accord with the definition of academic freedom to be found in article 27 of the UNESCO recommendation.

## **(b) Tenure**

(Articles 45 and 46 of the UNESCO Recommendation)

The second approach in securing academic freedom came through the adoption of tenure arrangements. Tenure has its roots in the history of European and American universities in terms of three ancient academic goals ? intellectual independence, collective autonomy, and the time and financial security needed to carry on scholarly and scientific work. The North American view of tenure was first articulated in the great research universities of the United States as a continuing contract, after a rigorous probationary period, subject to dismissal for cause defined as proven professional or personal misconduct and, later on, for *bona fide* financial exigency. American ideas on tenure spilled over into Canada. For many decades in this century Canadian academics assumed that they had tenured positions within their universities despite the mixed and sometimes hostile view of the courts in the few cases that went before them. It was only in the 1950s and '60s that Canadian universities began to institutionalize the idea of tenure in terms of fair procedures for dismissal which were negotiated at the local level. This process was accelerated by the Duff/Berdahl Report (1966) that urged, among other matters, the adoption of proper tenure procedures. The response of the Government of Ontario to the UNESCO recommendation states: "Ontario universities operate under the tenure system, protecting the academic freedom of faculty members."

Tenure is not without its critics in Canada who see the tenure system as lacking flexibility and protecting the dull and unworthy. However, the Supreme Court of Canada in *McKinney v. University of Guelph* thought otherwise and declared that faculty "must have a great measure of security of employment if they are to have the freedom necessary to the maintenance of academic excellence which is or should be the hallmark of a university. Tenure provides the necessary academic freedom to allow free and fearless search for knowledge and the propagation of ideas."

## **(c) Just and Fair Grievance Procedures**

Academic freedom in Canada is also enhanced by the existence of just and fair grievance and arbitration procedures in which disputes over academic freedom as well as other matters can be resolved. Collective agreements in Canada are required by law to have a mechanism for the resolution of disputes, and most Canadian universities and colleges have adopted internal grievance procedures followed by outside independent arbitration for disputes that cannot be resolved by internal mediation. These procedures cover such matters as dismissal, or allegations of discrimination, or harassment in respect to other university decisions.

## **(d) Intellectual Property**

(Article 12 of the UNESCO Recommendation)

One of the subjects of negotiation is intellectual property in the form of copyrights, patents, and trademarks. Ownership and control of what one creates is a key element of academic freedom. This area has been a feature of university negotiations since the 1970s when issues pertaining to the copyright of television courses first emerged. Now there are additional and more complicated problems to deal with, arising from the use of the Internet for teaching and research and the development of distance education. By and large, university collective agreements recognize the rights of faculty as creators but also the need to provide for sharing of revenues when the institution provides special funding for

research as well as dealing with the question of residual rights when a faculty member leaves. New articles on intellectual property have been developed recently in a few universities. There is also a substantial article on intellectual property in the common agreement reached for all the community colleges in British Columbia (for more detail, see the section on the federal role).

#### **(e) Academic Freedom and Religious Universities**

In recent years provincial governments, particularly in Alberta and British Columbia, have created new private denominational universities with degree-granting powers. In Alberta, the government has authorized four private denominational degree-granting university colleges and is considering other applications. The Alberta institutions receive some government support but at a lesser level than the public universities. They are permitted by statute to have requirements for adherence to statements of faith, which means that some may not meet the academic freedom standards set out in the UNESCO recommendation, although their faculty, unlike in the universities, are free not only to create faculty associations but to unionize under the Labour Code, although none has done so. Their curriculum is reviewed and approved by the Private Colleges Accreditation Board, which is made up of the representatives of the universities and of the private colleges. PCAB does not accredit institutions but particular programs of study. The private colleges constitute about two per cent of the provincial student body.

In British Columbia, the provincial government has recognized one denominational university, Trinity Western University, as a degree-granting institution. This university maintains that, although it teaches from the perspective of its Christian views, it encourages freedom to inquire, right of access to a broad spectrum of representative information in each discipline, and a reasonable attempt at fair and balanced presentations. It is a private institution and operates under its own provincial act. This university receives no funding from the Government of British Columbia although its students are eligible for government-supported student loans and grants.

The creation of these new universities has raised a number of issues, including how much autonomy they actually have vis-à-vis their denomination, and how much academic freedom they should have when (as in Alberta) public funding is involved.

#### **(f) Academic Freedom and Private For-Profit Universities**

Canada has some experience with for-profit and not-for-profit private universities. The DeVry Institute of Technology in Calgary has applied for accreditation in Alberta. In New Brunswick, considerable discussion has been generated by the decision of the provincial and federal governments to provide \$600,000 to a new private for-profit Internet university in that province called Unexus offering an MBA program.

### **(g) Discrimination**

In recent decades, provinces across the country have adopted human rights legislation to protect the rights of individuals on the basis of gender, race or ethnicity, religious affiliation, and physical ability. These laws also apply to universities and colleges. More recently, the provinces and the federal government have extended these legal rights to gays and lesbians, sometimes as a consequence of court challenges. These rights extend beyond a prohibition of discrimination. In Ontario, for example, the government recently amended elements of the Family Law Act, recognizing that same sex partners are entitled to the same rights and responsibilities as common-law couples.

One important example of the attempt to overcome the exclusion of Indigenous peoples from higher education was the creation in 1976 of the Saskatchewan Indian Federation College, which is affiliated with the University of Regina. The college is controlled by the First Nations community, offers a range of programs in the arts, sciences, and professions, and has established international linkages with similar institutions in other countries.

Universities and colleges in Canada are trying to play a useful role in ending discriminatory practices and combatting the effects of such exclusion. They are subject to human rights legislation, and may be more active than the legislatures in this area if they so wish. They have adopted policies, including articles in collective agreements and university by-laws, to combat discrimination as well as harassment as urged in article 22(g) of the UNESCO recommendation. Universities and colleges have adopted academic and student programs of special interest to women and minorities and have engaged in outreach programs to encourage the participation of under-represented groups as suggested in articles 41 and 70 of the recommendation. Canadian universities were in the vanguard in promoting legal protection through collective agreements for gays and lesbians on their staff, long before the courts and the provincial legislatures acted. They have also taken measures to ensure that the universities are effectively open to the disabled. Considerable progress has been made, although there is still much to be done.

Non-discrimination intersects with academic freedom in the sense that the latter is not possible without the former.

### **(h) Censorship**

Canadian university libraries have few problems with traditional forms of censorship whether through the Criminal Code or through the actions taken by agents of Canada Customs at the border. There was a long history in Canada of book banning, but it seems generally to have petered out, at least so far as the universities and colleges are concerned. The same is true of films and videos in library collections, which in most provinces are rated with different categories rather than being banned or arbitrarily cut.

Two issues, however, have come to the fore in recent years. The first of these is child pornography. When a judge in British Columbia struck down the section of the Criminal Code dealing with possession of child pornography as being over-broad and contrary to the Charter of Rights, there was populist agitation to introduce draconian legislation. The Criminal Code currently allows a defense for artistic merit or for an educational, scientific, or medical purpose.

The second issue is the policing of the Internet. There is much discussion in Canada as elsewhere about such policing, but most of it is inconclusive, given the speed of technological change. Most universities and colleges forbid the use of university computers to download material that has been judged illegal by the courts either as pornography or as hate literature. However, this is virtually impossible to police, and in practice the most usual restriction, especially for students, is a time allotment.

A related question is the privacy of faculty communications on the Internet. CAUT has adopted a policy statement urging universities to ensure that such privacy is respected, rejecting the notion that the university owns and can control what appears on the Internet.

### **(i) Conclusion**

Overall, with regard to rights and freedoms, the Government of Quebec concludes that: “Quebec universities enjoy professional practice conditions that can be described as very advanced, in terms of both individual and collective rights and freedoms.”

Disputes over academic freedom have, however, not disappeared in Canada as a consequence of these procedures. Most are regulated through grievance and arbitration procedures. But new challenges arise. There was a very public case at the University of Toronto recently in which the question was raised as to whether private companies that contract to do research in the university can forbid the publication of the results, particularly when those results are negative. More generally, can the university continue to be a place of independent research in an age of commercialization? Who will fund independent scientific or public policy research? Does peer evaluation collapse in the commercial age? If so, how is quality maintained?

Questions have arisen about censorship and privacy on the Internet (see above). Questions also arise when a politician attacks a university because of a controversial department or faculty member. Is that joining in the academic debate, or is it intimidation and an attempt to limit that debate? Is academic freedom violated when the courts demand the research notes of a faculty member who has promised confidentiality to his or her research subjects in an area of community controversy?

Old questions also re-emerge. How will the increase in private sector funding of university research affect academic freedom, free speech and independent research? Are speech codes and attempts to regulate the behaviour of faculty members a violation of academic freedom or a necessary step in combatting harassment and disruption on campus? The answers to these questions will determine whether the idea of academic freedom continues to evolve in Canada as one that maximizes freedom as it has for the past hundred years.

## **7. Free Collective Bargaining**

(Articles 52–56 of the UNESCO recommendation and the ILO conventions 87, 98, and 154 and recommendation 163 attached as appendix to the recommendation).

## **(a) Universities**

Collective bargaining regimes have existed in Canada throughout most of the 20th century. They have been regulated by provincial and federal labour law. However, it was only in the late 1960s that academic staff in Canadian universities began to create faculty unions and to engage in collective bargaining under labour law. Generally speaking, academic staff in universities have the same rights to form unions and negotiate contracts as other workers in Canada. The majority of academic staff in universities are unionized and tend to have extensive collective agreements that deal not only with salaries and benefits, but with a whole range of matters of concern to the faculty ranging from academic freedom to copyright provisions. Collective bargaining in universities in Canada includes the right to strike ? a right that has been exercised by faculty on a number of occasions over the past 30 years. The first faculty union began in Quebec, and the government of that province notes that the conditions of work for academics in universities remain the result of free negotiations between faculty unions and their institutions under the Labour Code. The government is not a party to these negotiations.

Where university faculty do not bargain under labour law, that is their free choice, with the exception of the province of Alberta where labour relations are regulated through the Universities Act. The act, however, includes provisions that require the parties to set out policies respecting the settlement of differences and the negotiation of future agreements. All the universities in Alberta and all but one of the colleges have interpreted the legislation to mean that they must set out an arbitration process to settle their disagreements. One college agreement sets out the right to take a strike vote.

In practice, faculty in universities who do not unionize and negotiate under labour law nevertheless tend to negotiate private agreements that are similar to collective agreements but without the right to strike.

## **(b) Community Colleges and Collèges d'enseignement général et professionnel (Cégeps)**

The situation is somewhat different for community colleges and varies from jurisdiction to jurisdiction. For example, in Quebec bargaining takes place at three levels. Salaries and benefits are negotiated directly with the government at the provincial level according to the law on public sector bargaining. Other negotiations take place between the negotiating committee of the colleges, plus the representatives of the government, with the unions over the main lines of the collective agreements. Other terms and conditions are negotiated locally.

In Ontario the individual college boards of governors, as employers, negotiate through the Ontario Council of Regents the terms and conditions of employment of academic staff. In this way, collective agreements are reached at once, for all college academic staff across the province. In British Columbia the colleges reached a common agreement in 1998 that was negotiated under the provincial labour code. On the other hand, colleges in Alberta negotiate individually under their own legislation. In Nova Scotia the two community colleges have moved from being part of the civil service to independent institutions that now bargain collective agreements with the faculty. The response of Nova Scotia commented that "because of the many changes in governance at the college level, ... teaching faculty have had their rights enhanced in a collective agreement that is more reflective of a teaching environment rather than a bureaucracy." In Saskatchewan the regional colleges are unlike community colleges elsewhere. They are not typical credit-transfer institutions. They act as brokers for credit classes and,

almost exclusively, the teaching personnel are on a sessional basis from the universities. Collective bargaining is not a feature of these arrangements.

By and large Canada, in terms of freedom of association and of collective bargaining for academic staff in universities and colleges, is adhering to articles 52-56 and to the ILO conventions attached to the recommendation.

There are, however, a few exceptions that do not fit with the above definitions of freedom of association and of collective bargaining. In Alberta the Universities Act and the Colleges Act allow the boards of governors as employers to unilaterally designate the members of the bargaining unit. In the early 1980s the Confederation of Alberta Faculty Associations (CAFA), the provincial-level university faculty association, complained to the International Labour Organization (ILO) that this was a violation of convention 87 of the ILO.

The Alberta Colleges and Institutes Faculty Association representing community college faculty made the same complaint. The ILO upheld both complaints. CAFA and the ILO agreed that the problem could be resolved if disputes over designation could be put to independent binding arbitration. The ILO recommendation has not yet been acted on by the province, nor is this an historical curiosity since there are ongoing disputes at both the university and college levels. Convention 87 is now referenced into the UNESCO recommendation.

In general, part-time teachers in Canada, whether in universities or community colleges, may not be treated in the manner set out in section 72 of the UNESCO recommendation. They do not normally receive proportionate salaries and frequently have fewer or no benefits including no access to the local pension plan. In the past, part-time faculty in various parts of the country have encountered roadblocks limiting their access to collective bargaining, although these are now disappearing.

## **8. Library Collections**

(Articles 11 and 22 (o) of the UNESCO Recommendation)

These articles note that universities cannot function properly without adequate libraries. Funding of university libraries has not been a priority of provincial or federal governments in recent years, even though they are an essential tool for academic researchers and for students.

Canadian university libraries have borne a heavy share of the reduced public funding for higher education. This has come at a time when the development of digital alternatives to locally held collections has placed an added transitional cost on budgets already stressed by the combined pressures of increased serial subscriptions and costs plus the weak Canadian dollar. Canadian university libraries must buy a considerable amount of their books and serials from abroad in order to remain internationally competitive. The costs of foreign books and serials, which are a significant part of university collections, have escalated dramatically with the decline in value of the Canadian dollar.

## Part III — Role of the Federal Government

### 9. Federal Funds for Postsecondary Education

While education is a provincial/territorial responsibility, there are a number of areas where federal departments have programs that touch on the concerns of the UNESCO recommendation. In financial terms the most important role of the federal government has been the transfer of substantial operating funds, without restriction, to the provinces/territories through the Canada Health and Social Transfer (CHST). This aspect of federal/provincial relations does not fall within the scope of the UNESCO recommendation except to say that the substantial cuts to this program in the 1990s contributed greatly to the difficulty of universities and colleges in maintaining the type of academic services noted in the recommendation (e.g., proper library services and up-to-date equipment). The Canada Foundation for Innovation has earmarked \$20 million over three years to fund the Canadian National Site Licensing Project (CNSLP) with the goal of dramatically increasing the quantity, breadth and depth of the most current research literature available to Canadian academic researchers (see <http://www.uottawa.ca/library/cnslp/>).

Provincial premiers have recently called on the federal government to fully restore the funding of the CHST, particularly for postsecondary education. A coalition of national higher education organizations called on the federal government to increase its transfer funding for the provinces by \$2 billion. The federal government also plays a major role in student funding through the Canada Student Loans program and the millennium scholarships.

### 10. Policies of the Federal Government concerning University Research

The federal government is also a direct sponsor of university research through the two, formerly three, federal funding councils (the Natural Sciences and Engineering Research Council (NSERC) and the Social Sciences and Humanities Research Council (SSHRC)), and the Canadian International Development Agency. The Medical Research Council (MRC) no longer exists, but was a major funder of research during the years covered by the table below. MRC expenditures are not, however, included in the table. NSERC and SSHRC funds were cut as well in the mid-1990s but have been recently restored. The size of this funding can be seen in the following figures:

Natural Sciences and Engineering Research Council			Social Sciences & Humanities Research Council	
> Fiscal Year	Expenditures Current dollars	Expenditures Constant 1989 dollars	Fiscal Year Expenditures Current dollars	Expenditures Constant 1989
> 1989-90	313,673	313,673	54,608	54,608
> 1990-91	383,981	372,792	57,760	56,077
> 1991-92	394,906	373,300	60,395	57,091
> 1992-93	406,270	379,051	65,172	60,805
> 1993-94	398,576	367,463	63,343	58,398
> 1994-95	402,034	365,593	63,547	57,787
> 1995-96	384,286	341,142	63,455	56,331
> 1996-97	380,389	332,616	58,256	50,940
> 1997-98	363,909	316,135	59,559	51,740
> 1998-99	410,905	358,293	61,096	53,273
> 1999-2000*	430,562	N/A		

\*planned expenditure

The federal government has also announced a series of three new initiatives involving university research — the creation of the Canadian Institutes of Health Research, the Canada Foundation for Innovation, and just recently the creation of 1,200 new research chairs in Canadian universities: the equivalent of recruiting the faculty of a major university overnight. In combination, these new initiatives and Chairs have injected significant new funding into the system.

There are three aspects of federal funding of university research that touch on issues raised in the UNESCO recommendation.

### **(a) Ethics of Research**

(Article 34 of the UNESCO Recommendation)

The first of these relates to the ethics of research. The three councils have developed policies on research ethics that universities must implement if they are to receive federal research funds.

The first of these is the Tri-Council *Policy on Integrity in Research and Scholarship*, of January 1994. Section V of the UNESCO document refers to the duty of universities and colleges to promote integrity in research. The Tri-Council Policy not only requires institutions to promote integrity but also to have in place a fair process to investigate allegations of misconduct. In terms of researchers themselves, the following issues listed under article 34 of the UNESCO document are mentioned explicitly in this policy:

- ?? requirement for scholarly research and dissemination of results
- ?? honesty in research
- ?? authorship practices (plagiarism)
- ?? maintaining the confidentiality of confidential information (see also NSERC Peer Review Manual)
- ?? avoiding conflicts of interest

The *NSERC Researcher's Guide 1999* deals with financial accountability, and the *NSERC Peer Review Manual* with objectivity in peer review. The *SSHRC Grants Guide* also deals with financial accountability, and its manuals for committee members address objectivity/conflict of interest in the peer review process in order to ensure the fair adjudication of proposals.

On behalf of the three councils, NSERC visits universities to give information sessions on integrity in research and to raise awareness of the policy. In 1999 it led a Tri-Council review exercise to discover the lessons learned from the application of this policy and whether it needs to be revised or strengthened.

The second major Tri-Council ethical documents deals with research involving humans entitled: *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, August 1998. This too sets out a general ethical policy and requires universities to develop policies to implement them. It also directly references the definition of academic freedom found in article 27 of the UNESCO document. The decentralized approach to policy making inherent in this document has caused some

significant implementation problems at the local level where in some cases there has been a tendency to over-regulate and theorize rather than to focus on real problems. The three councils, however, have undertaken to assess the impact of the policy statement and to see if it needs any changes by 2001.

In addition, researchers using animals must comply with the Canadian Council on Animal Care Guidelines. NSERC also monitors the research it funds for possible effects on the environment, as required under the Canadian Environmental Assessment Act.

The federal government is also planning to create a new program in medical and health research called the Canadian Institutes of Health Research. The CIHR will have a component on ethical research that is in the process of development. It can, therefore, be fairly said that federal research councils have set out professional and ethical principles and regulations that more than meet the recommendations of the UNESCO document in regard to the integrity of research and research on human subjects.

### **(b) Federal Legislation and Policy on Intellectual Property**

(Article 12 of the UNESCO Recommendation)

The second area where the federal government and the research councils directly affect the universities is through legislation and policy on intellectual property. Copyright and patent law is a federal responsibility, and the federal government has been reworking this legislation over the past decade so that the law could be modernized to meet new legal and technical challenges. The university community has had some serious reservations about the impact of these changes on university research and university libraries, particularly concerning restrictions on fair dealing that may penalize Canadian university researchers and reward foreign publishers.

The ownership and exploitation of intellectual property is a related matter. Article 12 of the UNESCO document deals with the intellectual property of academic staff. It states that "... the intellectual property of higher-education teaching personnel should benefit from appropriate legal protection, and in particular the protection afforded by national and international copyright law." There has been considerable controversy over this matter in Canada caused by the development of a federal position in this area.

The policy of the Social Science and Humanities Research Council is more flexible. The council states: "copyrights and any intellectual property developed under SSHRC funding are owned by the principal and co-investigators or by the university, depending on the intellectual property arrangements as defined by the university where the grant holder is employed. Scholars receiving SSHRC grants for research activities that involve a partnership must retain ownership of all intellectual property and publication rights accruing from the joint initiatives."

### **(c) Autonomy and Strategic or Targeted Research**

(Articles 17–19 of the UNESCO Recommendation)

The third area of discussion involving the federal funding of research arises from the desire of the federal government to target research money in areas of national importance and to enhance commercialization. The government argues that in an era of restricted funding, there must be direction in the use of the funds, and that the councils can best exercise that function in consultation with both the university

community and the federal political leadership. Furthermore, they suggest it is not unreasonable for the government to insist that a university system that is mainly publicly financed should devote more of its energies to solving problems of importance to the country. One example of this approach is the new Canada Foundation for Innovation that is to provide \$1.4 billion to universities in the areas of science, health, engineering, and the environment, requiring up to 40 per cent of the costs to be funded by the provincial/territorial governments. The councils also suggest that the Centres of Excellence program demonstrates that a strategic approach can be flexible and need not be restricted to the hard sciences.

The consequence has been discussion over whether or not this is a sound approach and how it accords with the provisions in the UNESCO document on institutional autonomy. Some suggest that it is impossible to produce discoveries in science on demand. Others have suggested that the federal approach undermines the humanities and liberal arts education in general or ignores public policy research that cannot fit into commercial categories.

Some suggest that it is impossible to predict the long-term economic or technological future and that the country is better served by the proper funding of the ongoing teaching and research work of the universities, thus creating an intellectual free market more likely than the government to produce new and innovative ideas. They also doubt that foreign companies that increasingly dominate the Canadian economy will be much interested in investing in Canadian university research rather than in their home country, and consequently the role of the state needs to be enhanced.

AUCC sees the recent announcement of the funding of 1,200 new research chairs by the federal government along with the Canada Foundation for Research and the Canadian Institutes of Health Research as “important building blocks in creating the knowledge infrastructure Canada will require in the future.”

## **11. Royal Military College**

There is only one university and no community college under the direct jurisdiction of the federal government. The Royal Military College opened its doors in 1876 with a focus on science and engineering. In 1959 the college received degree-granting powers in arts, science, and engineering from the Ontario legislature. The civilian faculty of the Royal Military College are covered by their own collective agreement with the federal Treasury Board. This was first negotiated in 1995 and recently renegotiated, and, among other matters, guarantees the college’s commitment to academic freedom and tenure for the members of the bargaining unit. The collective agreement process accords with chapter IX of the UNESCO document and the ILO documents attached. The federal government recognized the distinctive nature of the college when it excluded the civilian faculty from the government’s uniform job classification system, partly because of its policy on academic freedom that did not apply to the federal science laboratories or to any other part of the federal civil service. However, other federal legislation such as federal human rights legislation applies to the college, as do federal wage controls.

## **12. Other Federal Programs**

A number of federal government departments offer direct research grants of their own that are open to university researchers. The Canadian International Development Agency, in particular, has close ties to the university community — 44.7 per cent of all sponsored research comes from the federal government.

## Appendices

## A. Expenditures on postsecondary education by province/territory 1996-97

### Expenditures on postsecondary education

	1996-97				
	Canada	Newfoundland and Labrador	Prince Edward Island	Nova Scotia	New Brunswick
	\$ Millions				
<b>Postsecondary education</b>	<b>15,576.9</b>	<b>29.7</b>	<b>12.0</b>	<b>50.8</b>	<b>390.4</b>
Operating	12,118.8	26.1	10.9	37.4	299.3
Community colleges	3,221.1	26.1	10.9	37.4	48.1
Universities	8,897.7	x	x	x	251.2
Capital	1,262.8	0.5	–	1.6	26.4
Scholarships, awards, and cost of loans <sup>1</sup>	1,822.7	1.4	1.1	1.2	41.2
Other direct departmental expenditures	372.7	1.7	-0.1	10.5	23.6
<b>All sources of funds</b>	<b>15,576.9</b>	<b>29.7</b>	<b>12.0</b>	<b>50.8</b>	<b>390.4</b>
Federal government <sup>2</sup>	1,785.1	0.9	0.8	20.0	35.3
Provincial governments	9,682.4	21.1	5.4	27.6	246.7
Municipal governments	1.7	–	–	–	–
Fees and other sources	4,107.8	7.7	5.7	3.2	108.4
– nil or zero					
x data unavailable, not applicable or confidential					
1. Excluding the value (principal) of loans.					
2. In addition to the direct funding reported here, the federal government also provides indirect support in respect of postsecondary education to provinces and territories under the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977, and under the Official Languages in Education Program.					
<b>Source:</b> Statistics Canada, CANSIM, cross-classified tables 00590203, 00590206.					

**B. Number of full-time academic staff in the universities, colleges, and cégeps by province/territory 1992-97**

**Full-time teachers**

	1992-93	1993-94	1994-95	1995-96	1996-97	
	Universities					
<b>Canada</b>	<b>37,266</b>	<b>36,910</b>	<b>36,402</b>	<b>36,044</b>	<b>34,613</b>	
Newfoundland & Labrador	1,049	959	943	962	885	
Prince Edward Island	178	199	196	183	188	
Nova Scotia	2,062	2,067	1,999	2,004	1,950	
New Brunswick	1,208	1,189	1,181	1,183	1,160	
Quebec	8,924	9,013	9,019	8,919	8,705	
Cégeps	12,863	13,405	13,919	13,652	13,224	
Ontario	14,050	13,837	13,456	13,362	12,539	
Manitoba	1,784	1,741	1,757	1,677	1,575	
Saskatchewan	1,509	1,480	1,422	1,430	1,410	
Alberta	3,233	3,165	3,080	2,981	2,852	
British Columbia	3,269	3,260	3,349	3,343	3,349	
Yukon	–	–	–	–	–	
Northwest Territories	–	–	–	–	–	
Overseas	–	–	–	–	–	

- nil - zero	
<b>Source:</b> Statistics Canada, Catalogue no. <a href="#">81-229-XPB</a> .	

## **C. AUCC Statement on Academic Freedom and Institutional Autonomy**

### **ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA**

#### **STATEMENT ON ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY**

##### **Introduction**

It is the essence of a university freely to pursue knowledge and understanding and to search for the reasons for things. This search implies that some of the reasons are unknown or uncertain and that opinion about them must be questioned. The right and the responsibility to raise such questions is the justification for academic freedom.

Constraints on academic freedom may arise both from inside and from outside universities. It is a major responsibility of university governing bodies and senior officers of universities to maintain an environment in which academic freedom is realized. Threats to freedom of inquiry, independent judgement and free expression may come from administrators, students or faculty members, sometimes in groups, who attempt to require all members of a department or faculty to adhere to a particular version of orthodoxy. The reliance of universities on government financing and private donations may create pressures on the institutions and on their members to conform to short-sighted or ill-advised political, corporate or personal interpretations of what should be studied and how it should be studied. It is the obligation of faculty members, in particular supported by their administrations, senate and boards, to ensure that these pressures do not unduly influence the intellectual work of the university. When conflicts arise because of such pressures, it is essential that a full airing and consideration of a broad range of viewpoints be possible.

It is essential that universities have the freedom to set their research and educational priorities. How the members of universities will each and impart skills, conduct research and the pursuit of knowledge, and engage in fundamental criticism is best determined within the universities themselves. It is here that academic freedom, in its collective form of institutional autonomy, can ensure freedom of inquiry for individual faculty members and students. Historically there has been a struggle for university autonomy, arising from the conviction that a university can best serve the needs of society when it is free to do so according to the dictates of the intellectual enterprise itself.

Freedom of inquiry must have as its corollary a high degree of respect for evidence, impartial reasoning and honesty in reporting. It should include a willingness to make known the underlying assumptions and the results of the inquiry. All research and scholarship must be conducted ethically, with full consideration of the implications and in ways that respect fully human rights as defined in law.

In their relations with students, faculty members and others who work in the universities have an obligation to ensure that the students' human rights are respected and that they are encouraged to pursue their education according to the principles of academic freedom embodied in the university itself. In relation to the wider society, universities should accept the obligation to account for their expenditure of funds, through their boards and through public audits of their accounts.

### **Principles**

1. The AUCC believes that the principles of academic freedom and institutional autonomy are essential to the fulfillment of the role of universities in the context of a democratic society.
2. The AUCC believes that academic freedom is essential to the fulfillment of the universities' primary mandate, the pursuit and dissemination of knowledge and understanding. Freedom of inquiry is fundamental to the search for truth and the advancement of knowledge. Freedom in teaching, justified by the special professional expertise of the faculty members, is fundamental to the protection of the rights of the teacher to teach and of the student to learn. Academic freedom is essential in order that society may have access to impartial expertise for knowledgeable comments on all issues studied in universities, including those surrounded by controversy.
3. The AUCC recognizes the obligation of universities to ensure the academic freedom of individual faculty members to conduct inquiries, to make judgements, and to express views without fear of retribution. The practice of tenure is one important means of meeting this obligation. In addition, decisions relative to appointments and the granting of tenure and promotion must be conducted according to principles of fairness and natural justice.
4. The AUCC recognizes that the universities should ensure that students are treated according to principles of fairness and natural justice and are encouraged to pursue their education according to the principle of academic freedom.
5. The AUCC recognizes that historically the universities of Canada have struggled to achieve institutional autonomy and must continue to do so. The Association affirms that this autonomy provides the best possible condition for the conduct of scholarship and higher education essential to a free society. As centres of free inquiry universities have an obligation to society to resist outside intrusion into their planning and management and to insist that institutional autonomy be recognized by governments and others as the necessary pre-condition to their proper functioning. Institutional autonomy includes, inter alia, the following powers and duties: to select and appoint faculty and staff; to select and admit and discipline students; to set and control curriculum; to establish organizational arrangements for the carrying out of academic work; to create programs and to direct resources to them; to certify completion of a program of study and grant degrees.

6. The AUCC recognizes that the academic freedom of individual members of universities and the institutional autonomy accorded to the institutions themselves involve the following major responsibilities to society: to conduct scholarship and research according to the highest possible standards of excellence so that society may benefit; within the constraints of the resources available to them, to ensure high quality education to as many academically qualified individuals as possible; to abide by the laws of society; and to account publicly through Boards and audits for their expenditure of funds.

May 5, 1988

#### **D. CAUT Statement on Academic Freedom**

Model Clause on Academic Freedom

CAUT Information Service: 53-1

Approved by CAUT Council, May 1977.

The common good of society depends upon the search for knowledge and its free exposition. Academic freedom in universities is essential to both these purposes in the teaching function of the university as well as in its scholarship and research. Academic staff shall not be hindered or impeded in any way by the university or the faculty association from exercising their legal rights as citizens, nor shall they suffer any penalties because of the exercise of such legal rights. The parties agree that they will not infringe or abridge the academic freedom of any member of the academic community. Academic members of the community are entitled, regardless of prescribed doctrine, to freedom in carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the university and the faculty association, and freedom from institutional censorship. Academic freedom does not require neutrality on the part of the individual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge.

**Approved by CAUT Council, May 1977.**

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