



Canadian Association of University Teachers
Association canadienne des professeures et professeurs d'université

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Committee on Citizen Relations
Clerk : Mr. Mathieu LeBlanc
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RE: Bill 32: An Act respecting academic freedom in the university sector

Dear members of the Committee on Citizen Relations:

The Canadian Association of University Teachers (CAUT) is pleased to provide a written submission in response to the National Assembly of Quebec's Bill 32, "An Act respecting academic freedom in the university sector". While Bill 32 contains many elements which may help protect academic freedom, there are important provisions which have not been included in the legislation and some significant shortcomings. If the Bill proceeds as is, it could limit the scope of force of existing protections for academic freedom.

With a few amendments, including ones that align with the definition of academic freedom in the 1997 UNESCO "Recommendation concerning the Status of Higher Education Teaching Personnel", Bill 32 could be strengthened. The within submissions follow from CAUT's July 9, 2021 "Mémoire à la Commission scientifique et technique indépendante sur la reconnaissance de la liberté académique dans le milieu universitaire".

The meaning of academic freedom in Quebec and the rest of Canada

Academic freedom ensures that in their teaching, research, scholarship, publication, participation in the affairs of the university, and exercise of their broader rights as citizens, academic staff are not curtailed or censured by the administration, by colleagues, or by outside bodies or individuals. It includes the freedom of scholars to inquire into and challenge prevailing orthodoxies or systems, without being subjected to reprisal, such as denying them appointment or depriving them of their employment status, institutional rights, or privileges.

In 1977, the CAUT Council adopted a [comprehensive policy statement on academic freedom](#) that defines academic freedom as the right of academic staff, "without restriction by prescribed doctrine," the:

- freedom to teach and discuss;
- freedom to carry out research and disseminate and publish the results thereof, including the freedom to produce and perform creative works and to acquire, preserve, and provide access to documentary material in all formats;

- freedom to engage in service to the institution, to participate in its academic governance, and to express one's opinion about the institution, its administration, and the system in which one works; and
- freedom to exercise one's rights as a citizen (restricted only by law), including the right to contribute to social change through free expression of opinion on matters of public interest.

These four broad principal components of academic freedom – in teaching, research, intramural expression and extramural expression – also form the core definition of academic freedom in the 1997 UNESCO "Recommendation Concerning the Status of Higher-Education Teaching Personnel". The UNESCO document is the only international instrument defines academic freedom and was developed by the Canadian Commission for UNESCO, which engaged the services of the then Executive Director of CAUT. The core elements of academic freedom recognized in the Recommendation are as follows:

"26. Higher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens. Therefore, all higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education."

"28. Higher-education teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching. Higher-education teaching personnel should not be forced to instruct against their own best knowledge and conscience or be forced to use curricula and methods contrary to national and international human rights standards. Higher education teaching personnel should play a significant role in determining the curriculum."

"29. Higher-education teaching personnel have a right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics. They should also have the right to publish and communicate the conclusions of the research of which they are authors or co-authors [...]"

"31. Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution."

This broad understanding of academic freedom and its importance has been widely accepted in Quebec and the rest of Canada.

Removing the limitations on academic freedom

As emphasized above, academic freedom has four principal components: 1) the freedom to teach and discuss; 2) the freedom to carry out research and publish the results thereof; 3) intramural freedom to criticize one's institution and the system in which one works; and 4) the freedom to exercise one's rights as a citizen. Academic freedom always entails freedom from institutional censorship.

As it currently reads, however, Bill 32 restricts the exercise of academic freedom to only expression or activities related to an academic's "field of activity". This runs contrary to Article 26 of the UNESCO Recommendation which recognizes the right of academic staff to engage in general matters of public interest, and not just their areas of expertise, without fear of institutional reprisal or censorship. To take one example, it would mean that Noam Chomsky, a professor of linguistics, would not have the protection of academic freedom if he spoke out on broader political issues. The wording in the draft legislation would also have the effect of providing academic staff with less protection than currently exists in most collective agreements. There is therefore a risk that extramural utterances could be used to discipline or terminate academic staff who express controversial views. CAUT agrees with FQPPU and others that Bill 32 should be amended to eliminate the restriction limiting the exercise of academic freedom only to an academic's "field of activity".

Sections 3(a) and (b) of Bill 32 situate the exercise of academic freedom solely with respect to the teaching and research of academics. Academic freedom also applies to the artistic activities and creative expression of academic staff. Universities and colleges are home to a wide range of creative arts programs and academic staff in these programs should have the same recognition and protection of academic freedom in their creative expressions. Bill 32 should explicitly recognize this.

Academic freedom prevails over the duty of loyalty

Academic freedom, as noted in Article 31 of the 1997 Recommendation, includes the right of academic staff to freely express their views about their institution and the system in which they work. This is different from other workplace settings where employees owe a duty of loyalty to their employer. Similarly, academic freedom grants academic staff the right to investigate and discuss views that university administrators, donors and interest groups may find controversial. In other workplaces, expression of controversial views by employees may be constrained in as far as such expression causes reputational damage to the employer.

The university as a workplace is distinct because of academic freedom. Academic staff must not be constrained from exercising their academic freedom because of a perceived duty of loyalty. Bill 32 explicitly limits the exercise of academic freedom to that which complies with the "mission of an educational institution" which would seem to circumscribe academic expression to fidelity to the institution's mission, however it may be defined. Academic freedom should grant academics the right to criticize the decisions made by administrators, and even challenge the mission itself. CAUT recommends that Bill 32 be amended to make it clear that academic freedom includes the right of academic staff to express their views of their institution and that this prevails over the traditional duty of loyalty an employee owes their employer. It is critical that this aspect of academic freedom be clearly articulated, and that institutions have a positive obligation to uphold and defend the academic freedom of academic staff.

Protecting academic freedom and collegial governance

Collegial governance and shared decision-making are intricately linked to academic freedom. The principle of collegial governance ensures that academics have the right and obligation to set educational policies and standards through their majority role on academic governance bodies. Academic freedom in collegial governance manifests itself in departmental decision-making, curriculum design and faculty participation in governing bodies as stakeholders. However, Bill 32 does not currently protect academic freedom in collegial governance and decision-making. CAUT recommends amending section 3(4) to address this omission.

Respecting collective agreements and the arbitral process

Unlike other jurisdictions, academic freedom in Quebec and the rest of Canada has limited statutory or constitutional recognition. Rather, the strongest legal protections for academic freedom are contractual and are embedded and enforced through collective agreements negotiated by faculty unions. This legal foundation has worked well, providing academics in Quebec and the rest of Canada with some of the strongest and most enforceable protections in the world.

It is important that the academic freedom of all academic staff be protected and promoted, and not just for those who are unionized. Bill 32 may have the potential of expanding legal protections for academic freedom to those not covered by a collective agreement, such as academic administrators. However, where academic staff associations have negotiated academic freedom language in their collective agreements, that language must be recognized, along with the grievance and independent arbitration processes in place to protect those rights. Labour arbitrators are neutral third parties who have developed extensive expertise in understanding academic freedom. Bill 32 proposes the creation of university panels to adjudicate academic freedom cases. This threatens to take away rights academic staff currently have under labour law. It is not clear that these panels would be as independent as a labour arbitrator. The panels also raise potential jurisdictional conflicts with the grievance and arbitration process. CAUT therefore recommends that section 4 (1) to (5) of Bill 32 not apply where collective agreements which protect academic freedom have been negotiated. Further, CAUT recommends that where no such collective agreement is in place, and post-secondary institutions are required to implement independent councils, they be composed of members with expertise in academic freedom and who are at arms' length from the institution's administration.

Protecting Institutional Independence

The autonomy of universities is a necessary condition for achieving the goals of higher education. Academic staff require an environment in which they have the ability to set and implement their own policies and priorities to protect free expression and academic freedom, and to ensure that outside influence does not curtail the academic mission. Government or donor interference in the educational policies and practices of universities is anathema to the goals of preserving, transmitting and advancing knowledge for the common good. CAUT agrees with the FQPPU's proposal and reasoning when it explained,

*"that Article 4 clearly frames the obligations of institutions and opposes the idea that the law requires the adoption of a specific policy on academic freedom. Such a policy could only conflict with collective agreements. In addition, academic freedom is a positive right that transversally influences all academic norms and policies that are the responsibility of the institution."*¹

The minister must not have the power to interfere with the autonomy of universities – this would be an alarming and dangerous precedent. CAUT therefore recommends additions, amendments and deletions to sections 4, 5, 6, 7 and 9.

CAUT's proposed amendments

The most practical means of meeting the broad and liberal purpose of academic freedom would be to adopt paragraphs 26, 28, 29 and 31 from the 1997 UNESCO "Recommendation concerning the Status of Higher Education Teaching Personnel" (please see above) or to adopt [CAUT's Policy Statement on Academic Freedom](#).

¹ Submissions: *Consultations particulières et auditions publiques sur le projet de loi n° 32 Loi sur la liberté académique dans le milieu universitaire : Positions et propositions de la FQPPU*, May 10, 2022

"1

The institution serves the common good of society, through searching for, and disseminating knowledge, and understanding and through fostering independent thinking and expression in academic staff and students. These ends cannot be achieved without academic freedom. All academic staff members have the right to academic freedom.

2

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to teach and discuss; freedom to carry out research and disseminate and publish the results thereof; freedom to produce and perform creative works; freedom to engage in service; freedom to express one's opinion about the institution, its administration, and the system in which one works; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. Academic freedom always entails freedom from institutional censorship.

3

Academic freedom does not require neutrality on the part of the individual. Academic freedom makes intellectual discourse, critique, and commitment possible. All academic staff members have the right to fulfil their functions without reprisal or suppression by the employer, the state, or any other source. Institutions have a positive obligation to defend the academic freedom rights of members.

4

All academic staff members have the right to freedom of thought, conscience, religion, expression, assembly, and association and the right to liberty and security of the person and freedom of movement. Academic staff members must not be hindered or impeded in exercising their civil rights as individuals, including the right to contribute to social change through free expression of opinion on matters of public interest. Academic staff members must not suffer any institutional penalties because of the exercise of such rights.

5

Academic staff members are entitled to have representatives on and to participate in collegial governing bodies in accordance with their role in the fulfilment of the institution's academic and educational mission. Academic staff members shall constitute at least a majority on committees or collegial governing bodies responsible for academic matters including but not limited to curriculum, assessment procedures and standards, appointment, tenure and promotion.

6

Academic freedom is a right of members of the academic staff, not of the institution. The employer shall not abridge academic freedom on any grounds, including claims of institutional autonomy."

Otherwise, CAUT respectfully suggests the following amendments to the definition of academic freedom in Bill 32.

"1. The purpose of this Act is to recognize, promote and protect university academic freedom in order to support the mission of university-level educational institutions, which includes the production and transmission of knowledge through research, creation and teaching activities and through services to the community."

Nothing in this Act is meant to undermine the academic freedoms contained in collective agreements between academic staff and institutions. Where a collective agreement between academic staff and an institution already provides for academic freedom, then the more

expansive interpretation applies. Collective agreement provisions and grievance and arbitration processes set out in collective agreements supersede this legislation.

[...]

*"3. The right to ~~university~~ academic freedom is the right of every **post-secondary academic staff** person to engage freely and without doctrinal, ideological, ~~or~~ moral constraint **or the duty of loyalty**, in an activity through which the person contributes, ~~in their field of activity, to carrying out the mission of an educational institution.~~*

The right includes the freedom

- 1° to teach;*
- 2° to conduct research and disseminate the results;*
- 3° to produce and perform creative works;*
- 4° to acquire, preserve, and facilitate the dissemination of and access to information documents in all formats;*
- 5° to critique society, institutions, doctrines, dogmas and opinions; and*
- 6° to freely **engage in collegial governance and decision-making**, and to take part in the activities of professional organizations or university organizations.*

It must be exercised in accordance with the standards of ethics and of scientific rigour generally recognized by the university sector and taking into account the rights of the other members of the university community."

Every educational institution must protect and promote academic freedom.

*"4. Every educational institution must ~~adopt, after consulting the members of the university community, a policy pertaining exclusively to university academic freedom~~ **ensure the conformity of all its standards and policies with the recognition of the right to academic freedom. In addition, it will have to ensure that.***

The policy must ~~set out or provide for at least the following:~~

- ~~1° the establishment and composition of an independent and expert council, which includes faculty representation, whose main functions are to oversee the implementation of the policy, examine complaints about violations of the right to university academic freedom and, if applicable, make recommendations concerning such complaints or about any other matter relating to university academic freedom;~~*
- ~~2° the operating rules of the council referred to in subparagraph 1, including those concerning the procedures for processing complaints;~~*
- ~~3° the measures and penalties applicable in the event of a violation of the right to university academic freedom;~~*
- 4° the establishment of awareness-raising and information measures for the university community, including those that are intended to improve recognition and protection of university academic freedom; and*
- 5° the establishment of resources and instructional tools to ensure promotion of and due respect for university academic freedom, including an advisory service.*

~~The policy~~ *The standards and policies of a higher education institution must not have the effect of preventing ideas and topics that could offend from being broached during an activity that contributes to the university mission or of requiring that such an activity be preceded by a warning when it involves such content.*

~~The institution must send its policy to the Minister within 15 days of its adoption and of any amendment made to it.~~

~~The policy must be published on the institution's website.~~

~~"5. Every educational institution must appoint an academic freedom officer responsible for the implementation of the policy.~~

~~6. The Minister may, if the Minister considers it necessary for protecting university academic freedom, order an educational institution to include in its policy any element indicated by the Minister.~~

~~The Minister may also, if an institution fails to adopt a policy that complies with section 4, have the necessary corrections made by the person designated by the Minister, at the institution's expense and in the manner determined by the Minister.~~

~~The institution must collaborate with the person designated by the Minister.~~

~~"7. Every educational institution shall report annually to the Minister, at such time and in such manner as the Minister may determine, on the implementation of its policy on academic freedom. Accountability shall include, but is not limited to:-~~

~~1° the number of complaints processed and their processing time;-~~

~~2° the measures and sanctions applied, if any;~~

~~3° any other information required by the Minister.~~

[...]

~~"9. The academic freedom policy that must be adopted by an educational institution under section 4 must be adopted no later than (indicate here the date that is one year after the day on which this Bill receives assent)."~~

Changes to Bill 32 are required to protect academic freedom for all post-secondary staff in Quebec. Once amended, the Bill will be an important tool for academic staff, and a significant legislative precedent.

CAUT would be pleased to provide further details and answer any questions you may have.

Thank you for your consideration.

Best regards,



David Robinson
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Canadian Association of University Teachers