

# What is the difference between Academic Freedom and Freedom of Expression?

As discussed above, Academic Freedom is a term of employment that protects academic staff from censorship by the employer, or deference to prescribed doctrine imposed by the employer, as they fulfill their employment responsibilities of “teaching, research and other scholarly and creative activities and service” (Article 3.01”).

Freedom of Expression is a *Charter*-protected freedom: “Everyone has the following fundamental freedoms: ... freedom of thought, belief, opinion and expression...” (*Charter* s 2(b)). However, there are limitations on the constitutionally protected freedom of expression:

1. the “*Charter* [only] applies: to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and to the legislature and government of each province in respect of all matters within the authority of the legislature of each province” (*Charter* s 32(1)); and
2. the *Charter* “guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (*Charter* s 1); and
3. “Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter” (*Charter* s 33).

The *Charter* only applies to government (and their delegates’) actions. In Alberta, it is still an undecided question as to whether boards of governors of post-secondary institutions are delegates of “government” such that the *Charter* would apply to their actions (the Alberta Court of Appeal split 3 ways on that issue in *Pridgen v. University of Calgary*, 2012 ABCA 139, [2012] A.J. No. 443 (QL)).

Only if the *Charter* applies to the Board of Governors of the University of Alberta would academic staff be able to invoke the constitutionally protected “fundamental freedom” of “expression” *vis-à-vis* their employer, and then only in the context of their employment relationship.

In their personal capacities individuals (who are academic staff employees of the Board of Governors of the University of Alberta) enjoy the same constitutionally protected “fundamental freedom” of “expression” *vis-à-vis* “government” (and their delegates, such as police), as do all other Canadian citizens. However, the freedom of expression exercised off-duty is irrelevant to their employment relationship (unless the *Charter* s 2(b) does in law apply to boards of

governors of post-secondary institutions in Alberta. This legal question remains undecided in Alberta at this time.