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**“I no longer fear
Hell, I took a
course with
Professor M”**

Penalties and Expulsion for being openly critical of your Prof or a Program of Study?

Yes, Virginia Student, being publicly critical of your prof or institution of study may well lead to academic penalties including expulsion.

But do Courts uphold such disciplinary measures? Isn't free speech protected in Canada?

Two recent court decisions, one from Alberta and one from Nova Scotia, deal with these issues in different ways including by application of the Canadian *Charter of Rights and Freedoms*.

In the first, *Pridgen v. University of Calgary* 2010 ABQB 644, Madam Justice Strekaf found that Calgary University violated the *Charter* rights of two of its students (identical twins) who posted critical comments about one of their professors on FaceBook.

The students were enrolled (ironically) in the Faculty of Communication and Culture. Each took a “Law and Society” course with Professor M. As noted by the trial judge, Professor M was “not popular with her students”. One of those students, TS, created a “wall” on his Facebook page entitled, “*I NO Longer Fear Hell, I Took a Course with Professor M*”. A number of comments highly critical of Professor M were posted on the wall by students, including one comment each by Keith and Steven Pridgen.

Keith Pridgen posted:

“Hey fellow LWSO.homees...So I am quite sure M

is NO LONGER TEACHING ANY COURCES WITH THE U of C!!!!!! Remember when she told us she was a long-term professor? Well actually she was only sessional and picked up our class at the last moment because another prof wasn't able to do it...lucky us. Well anyways we should congratulate ourselves for leaving a M-free legacy for future L.S.W.O. students!"

Steven Pridgen's post read as follows:

Some how I think she just got lazy and gave everybody a 65....that's what I got. Does anybody know how to apply to have it remarked?

Ten students who had posted negative comments about Professor M. were called to a meeting with the Dean of the Faculty of Communication and Culture.

All ten students, included the Pridgen twins were found to have committed non-academic misconduct in accordance with the Student Misconduct Policy.

Keith was placed on probation for a 24 month period and was required to write an unqualified letter of apology to Prof. M. The letter would demonstrate that he knew why his actions constituted academic misconduct, reference the lessons he learned from the experience, and reflect a commitment to conduct himself "appropriately in the future."

He was to "refrain from posting or circulating any material that may be defamatory of Prof. M. and any other members of the university community, or unjustifiably bring the University of Calgary and /or the Faculty of Communication and Culture into disrepute". Failure to comply with those and other conditions would result in further sanctions, including suspension or expulsion.

Steven's Facebook message apparently was not as offensive as Keith's, since the Dean did not place him on academic probation. He was, however, required to write a letter of apology to Prof. M. with similar content to that of his brother.

They claimed the University violated their Charter-protected right of free expression

“The University is not a Charter-free zone”

Restricting criticism of professors is not necessary for maintaining an “appropriate learning environment”

Both students appealed internally to a Review Committee which upheld the findings of academic misconduct, but which reduced Keith’s probation from 24 months to 6 months. Steven’s penalty was increased from no probationary period to a four month period of probation.

The Pridgen twins sought judicial review of the disciplinary decisions. They claimed, among other assertions, that the University, through its application of the Policy, had violated their *Charter*-protected right of free expression.

Justice Strekaf found on the facts that the *Charter* applied to decisions of the University of Guelph. Her analysis of the 1990 decision of the Supreme Court of Canada in *McKinley v. University of Guelph* (a mandatory retirement case where the majority of the Court ruled that the *Charter* did not apply to universities) was that *McKinley* in essence left the door open for a Court to determine, on different facts, that the *Charter* did apply to a university.

After reviewing that decision and other decisions of the Supreme Court of Canada, Justice Strekaf said she was “satisfied that the University is not a *Charter* free zone”. Justice Strekaf went on to find that Section 2(b) of the *Charter* protected the students’ right to free expression, that those rights had been infringed and could not be justified under section 1 of the *Charter* as “as a reasonable limit prescribed by law in a free and democratic society”.

The disciplinary decisions were set aside. “I cannot accept that expression in the form of criticism of one’s professor must be restricted in order to accomplish the objective of maintaining an appropriate learning environment....As an educational institution, the University should expect and encourage frank and critical discussion regarding the teaching ability of professors amongst students, even in instances where the comments exchanged are unfavourable.”

An appeal of this decision seems likely.

“they shouldn’t come here, it was a horrible school, a waste of money and that they should go to the Nova Scotia Community College.”

Student Handbook: Students are expelled for behaviour that represents TEC “in a demeaning or negative fashion or to otherwise negatively affects the reputation of the School, its staff or its students.”

The second decision was that of Nova Scotia Small Claims Court Adjudicator Augustus Richardson, Q.C., in *Power v. TEC The Education Centre Inc.* (2010).

In 2008 Trevor Power left a career with the phone company to become a graphic design student at Halifax’s Centre for Arts and Technology, operating as “The Education Centre,” or TEC. Tuition came in at slightly more than \$20,000.00. Much to his dismay, however, Power soon concluded that the quality of the instruction he was receiving was substandard.

When he complained to the administration about various matters Power was assured they would be addressed. Still, it did nothing.

Finally he demanded return of his tuition. The school advised Power that he could leave TEC, but his tuition would not be refunded.

A short time later Power was in a class and happened to see the Centre’s program adviser giving two prospective students the grand tour of the facility. He abruptly stood up, left the class and approached the two students. He told them that “they shouldn’t come here, it was a horrible school, a waste of money and that they should go to the Nova Scotia Community College.” Mr. Power then returned to his class.

TEC expelled Power a few days later. After pursuing an unsuccessful internal appeal Power sued in Small Claims Court for the return of tuition paid and general damages.

In a letter of expulsion to Power, TEC stated that the expulsion was pursuant to the “Student Contract” and the terms of the Student Handbook. The letter stated that he had violated the provision which stated that student behaviour which would result in expulsion included “representing the school, its employees or its students in a demeaning or negative fashion or to otherwise negatively affect the reputation of the School, its staff or its students.”

The parties agreed that the student contract and a student handbook contained the only terms and conditions applicable to the claim. The evidence established that the Student Handbook

Adjudicator: ““no express or implied term forbidding a student from making negative comments about the School”

had not been given to Mr. Power at the time he signed the Student Contract.

Adjudicator Richardson reviewed both the provisions of the Student Contract and Handbook. He determined that examples of breach of policy or behaviours resulting in discipline set out in the handbook and contract did not “relate to the expression of negative comments about the School’s program.”

There was, the Adjudicator ruled, “no express or implied term forbidding a student from making negative comments about the School”.

TEC’s actions were arbitrary, and it expelled Mr. Power without cause. He was awarded his tuition as well as general damages.

Ann E. Smith is a member of the Education Law group at Burchells.