

November 14, 2023

[REDACTED]

100 West 49th Avenue
Vancouver, BC
V5Y2Z6
(sent by email)

Dear [REDACTED]

Thank you for the invitation to the Academic Freedom and Freedom of Expression Advisory Committee for its input as part of Langara College's investigation into comments made by Langara instructor Dr. Natalie Knight on October 28th at the Vancouver Art Gallery Public Square regarding Hamas's attack on Israel on October 7th.


We commend the College for taking a patient approach in its investigation before it decides whether any formal action against Dr. Knight is justified. We understand that there are deeply conflicting and passionately held opinions about what should be done in response to Dr. Knight's comments. The best way to navigate these circumstances is for the College to inform itself as well as it can before any decision is made. The Advisory Committee is pleased to offer its input. Thank you for providing a clear question to answer and for helpful related documents and materials, including a link to a video of Dr. Knight's speech, a transcript of it, and a transcript of an interview between the College and Dr. Knight from November 6th.

The Advisory Committee met on November 9th and 14th to discuss and answer the following question you posed:

Did the statements made by NK during her speech at the Art Gallery on October 28th represent an exercise of her protected expression rights under the Statement, or did some of those statements go beyond such protections and fall into one or more of the narrow categories of expression that are not protected under the Statement?

"The Statement" refers to the Langara College Statement of Principles on Academic Freedom and Freedom of Expression adopted at Langara in May 2021. We shall refer to this as the "Statement of Principles." [REDACTED]

[REDACTED]



The Advisory Committee discussed this question at length and concluded by consensus that, based on evidence it is aware of at this time and subject to some limitations of its own expertise (clarified below), Dr. Knight's remarks represented an exercise of her protected expression rights under the Statement of Principles and that her remarks did not fall into any of the categories of expression that are not protected under the Statement of Principles.

The Statement of Principles recognizes a narrow range of exceptions to academic freedom and freedom of expression. We list them below and then explain why we do not believe Dr. Knight's remarks contravene those limits. To begin with, the context under which Dr. Knight made her comments was an important consideration for the Advisory Committee. We note that Dr. Knight's remarks were made as a private citizen and were not made as a representative of Langara. Those remarks can arguably claim protection as a part of a citizen's right to freedom of expression under *The Canadian Charter of Rights and Freedoms*. This qualifies our position. If Dr. Knight's remarks purported to be an expression of the views of the College or were made on campus, that would be a separate matter from the one under consideration. The Statement of Principles recognizes Langara community members, including its faculty, to have rights to freedom of expression and it explains that these rights need to be recognized alongside rights to academic freedom in order for each to afford protections they are intended to provide. The Statement recognizes that these rights are complementary. Academic freedom in particular presupposes a right to freely express ideas in public discourse in order to permit scholars to pursue and express ideas without fear of sanctions or recrimination by the College. It acknowledges that tolerating "offensive" and "distasteful" ideas is part of a commitment to academic freedom and freedom of expression, subject to the exceptions noted. Dr. Knight's remark that Hamas's October 7th attack, which targeted and killed many hundreds of Israeli civilians (at the time of writing this letter, reportedly about 1200 persons, including civilians and military personnel) was "brilliant" and "amazing" is understandably highly offensive to many persons. The fact that Hamas is categorized as an illegal terrorist group under Canadian law will also understandably add to the sense that Dr. Knight's remarks were inappropriate and even subject to sanction.

The Statement of Principles acknowledges the following exceptions to freedom of expression. It says:

Langara will only restrict expression of ideas that:

1. violate the law, including by defaming a specific individual or by criminally actionable conduct;

2. constitute a genuine threat of harassment to a person or persons on campus;
3. unjustifiably invade privacy or confidentiality; or
4. pose an immediate, direct, and substantial threat to the conduct of the activities of the College.

We discuss each of these restrictions in turn.

1. It is unclear that Dr. Knight's remarks violated any law that would restrict her reported speech. There has been some public discussion of whether her remarks constituted hate speech. We are not lawyers and so cannot express a legal opinion on this. This aside, it is the Advisory Committee's view that in the absence of what appears to be a clear violation of Canadian law restricting speech, the presumption should be that her speech is not prohibited. This lack of clarity is acknowledged in effect in public discussion in the wake of post-October 7th pro-Palestinian protests about whether in the absence of a law that prohibits endorsement or glorification of terrorism, there should be legislative changes to prohibit such speech (Mike Hager and Colin Freeze, ["Rallies raise question of whether Canada should have a law against public cheering of terrorism,"](#) *The Globe and Mail*, October 14, 2023). This article noted that the Canadian government in 2019 strengthened rights to expression by eliminating a crime of "promoting terrorism" and replacing it with a crime of counselling "another person to commit a terrorist offense." A plain meaning of Dr. Knight's remarks was not that she was counselling another person to commit a terrorist offense. Her remarks in the Langara interview provided to us indicate that she does not and did not mean to endorse killing of innocent persons "of any nation."

We note that public statements at rallies are often expressed without nuance to encourage expressions of support and anger to respond to what is believed to be serious or outrageous injustice. They are also attention-seeking for specific causes. This can be a regrettable feature of freedom of expression, but it is a practical reality that our laws broadly recognize and tolerate, partly because it reflects the fact that rallies often use unnuanced and inflammatory language to promote support for and notice of causes and because of the difficulty of crafting exceptions that would not interfere with legitimate protests or that would censor apparent endorsements of violence in political tracts from Plato to some Marxist and anarchist writings, among others. Prevention of such expressions of ideas is regarded by defenders of free expression as counterproductive, presenting its own dangers including the creation of apparent martyrs. As far as we can tell, Dr. Knight's remarks fall into the category of inflammatory, attention-seeking public speech. Her clarifications of her views of the limits of what she intended should not be

surprising to anyone who has familiarity with rhetoric used in public protests. Her words, including encouraging a “fighting spirit,” were open to some interpretation, and she has clarified this for the College. This carries some weight, which the College can assess from its interviews with her, in addition to the lack of clear evidence that she violated the law even on a different interpretation of her views.

2. As the views of a private citizen expressed outside the classroom and off the Langara campus and not under its auspices, it cannot be argued that Dr. Knight’s remarks constitute a threat of harassment to a person or persons on campus. Her remarks may be understandably regarded as offensive by many members of the Langara community, but members cannot complain that she has harassed them, which would require evidence that her remarks targeted a specific individual or individuals who are members of the Langara community.
3. There was no unjustifiable invasion of privacy or confidentiality by Dr. Knight, which would require disclosure of personal information that she was not entitled to disclose about a person or persons.
4. Dr. Knight’s remarks do not pose an immediate, direct, and substantial threat to the conduct of the activities of the College. There have been no disruptions to the operation of the College in the wake of her remarks. It is possible that there may be protests should she return to work, but protests of the views and activities of scholars are not unfamiliar features at post-secondary campuses. For example, anti-vivisectionist and animal experimentation protests are tolerated, as are protests about the scholarly or political views of some instructors. The College must be mindful, too, not to be pressured to submit to a version of “the heckler’s veto” where the purpose of a protest is to prevent someone from performing rightful activities at a post-secondary institution by disrupting the normal operation of the institution. We also do not believe there is any evidence that Dr. Knight cannot teach Jewish or Israeli students fairly in her classrooms. It is likely in our view that some students will feel uncomfortable attending her classes because they find her views offensive and so will not enrol in her classes. This is not an unfamiliar choice that students make from time to time. Most of us know of cases where students make decisions not to enrol in certain classes because they find the known views of the instructor distasteful or offensive.

Those reading this letter should know that the Statement of Principles does not require [REDACTED] to seek advice from the Advisory Committee in employment disputes involving matters of academic freedom and freedom of expression at the

College, although it does not exclude requests for advice in these circumstances. The Statement of Principles does state that it is expected that its contents will inform deliberations in that context. Regarding how the Statement of Principles should inform deliberations, it is important to emphasize that it was adopted recently after a more than two-year intensive, iterative process of consultation involving faculty, administration, students, academic support staff, and Langara Council reviewing drafts of the Statement of Principles. The result can be fairly described as a consensus document on the part of the Langara community. This is an important, and indeed unusual achievement, in development of post-secondary academic freedom and free expression codes. In our view, it is appropriate, if not required, to have asked the Advisory Committee's advice in this case to help inform how the Statement of Principles is to be understood, and we hope that our remarks are helpful.

It is also worth noting that the review process described in the Statement of Principles was designed specifically to address questions of academic freedom and freedom of expression that arise regarding activities on campus or under the auspices of the College. It is not clear that the Advisory Committee has a role in this case under these terms either, since Dr. Knight's remarks were not made under the College's auspices or on campus.

If the College thinks that the Advisory Committee may be called upon in future to assist in cases like this one, consideration should be given to amending its terms of reference. The Advisory Committee can assist with this if that would be helpful.

Please feel free to circulate this letter as you see fit. The Advisory Committee would appreciate some notice if you decide to make it publicly available.

Thank you again for inviting our input. Please let us know if we can clarify any of our remarks or whether you have other questions.

Sincerely,

[Redacted signature block]