

WHAT IS PROHIBITED? NON-ACADEMIC CONDUCT POLICIES IN CANADIAN UNIVERSITIES

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Abstract

Student conduct in Canadian universities is generally guided using student conduct policies, which are overseen by student affairs professionals. This structure around student conduct attempts to encourage appropriate behaviour or community standards among students attending university. The concepts of “conduct” and “misconduct” used at most universities in North America are influenced substantially by the Model Student Code template. This study examines what non-academic conduct is prohibited in the policies of universities in Canada and applies the “What’s the Problem Represented to Be” method of post-structuralist policy analysis to them. As a way to question or disrupt the representation of the “problem,” this study proposes two principles along with six guidelines for developing codes of conduct. This will help student affairs professionals and university administrators develop more educative approaches to non-academic conduct policies and provide new avenues for research into non-academic conduct.

Keywords: non-academic student conduct, policy, WPR, student affairs, Canadian universities

Résumé

La conduite des étudiants dans les universités canadiennes est généralement encadrée par des politiques de conduite étudiante, gérées par des professionnels des services aux étudiants. Cette structure vise à encourager un comportement approprié et à promouvoir les normes de la communauté chez les étudiants universitaires. Les concepts de « conduite » et d’« inconduite », utilisés dans la majorité des universités nord-américaines, sont largement influencés par le *Model Student Code* américain. La présente étude examine ce qui est interdit en matière de conduite « non académique » dans les politiques universitaires canadiennes et applique la méthode poststructuraliste d’analyse des politiques appelée « Quel est le problème représenté? ». Afin de remettre en question ou de repenser la représentation du « problème », la présente étude propose deux principes ainsi que six lignes directrices pour l’élaboration de codes de conduite. Cela permettra aux professionnels des services aux étudiants et aux administrateurs universitaires de développer des approches plus éducatives en matière de politiques sur les conduites « non académiques » et d’ouvrir de nouvelles pistes de recherche sur ce sujet.

Mots-clés : conduite des étudiants non universitaires, politique, WPR, services aux étudiants, universités canadiennes

INTRODUCTION

The student protest encampments at Canadian universities in 2024 have reignited the debate around how much guidance or control universities should exercise over the actions of students. The primary tool of this guidance or control discussed in this debate is the student codes of conduct (Baig, 2024), but left unexamined is how non-academic “misconduct” is represented as a “problem” in policies. Non-academic conduct is generally overseen by student affairs professionals and much of the work is based in student development theories, but the formal implementation is in code of conduct policies. This article examines those codes of conduct for unexamined or uncritical assumptions using a post-structural analysis based on Carol Bacchi’s (2009) “What’s the Problem Represented to Be” (WPR) method, and as such uses Bacchi’s convention of quotation marks around words to “signal contingency” (Bacchi & Goodwin, 2016, p. 12) for a frequently “uncontentious” (p. 12) term that here is treated with a critical eye.

Most scholarship in this area (Ali, 2024; Kenner, 2018) has focused on individual types of conduct or on the student affairs professionals who administer it. Unfortunately, there is a lack of research, especially in the Canadian context, examining specifically what non-academic conduct is prohibited in codes of conduct. For this study, the conduct policies of English-speaking public universities in Canada, as they existed in the spring of 2024, were analyzed for prohibited non-academic conduct and compared to each other, then assessed using the WPR approach. This research provides an insight into the common conduct expectations put on university students in Canada and examines how those commonalities have been produced. By seeing what is considered uncontroversial in conduct policies, we can better assess how students are treated as seen through university expectations.

As Carol Bacchi and Susan Goodwin (2016) point out, the important thing to understand about any policy is that “things could be otherwise” (p. 4). The way things are now has come from specific contexts and influences, but that is not necessarily how things need to be going

forward. Just because the context and influences for one university have resulted in a policy understanding does not mean other universities must adopt the same policies. This article closes with a proposal of two principles and six guidelines for developing a student code of conduct that disrupts the unexamined assumptions of the current codes.

LITERATURE REVIEW

Development of rules and requirements around student conduct has been ongoing for as long as there has been organized post-secondary education (Boren, 2019; Waryold & Lancaster, 2020). In Canada, these rules were based on the authority of the institution within its self-regulation (Krivy, 1982) and the concept of “*in loco parentis*” (Krivy, 1982, p. 40). As the number of students enrolled in post-secondary education in Canada grew in the 1960s, many universities began moving away from the use of *in loco parentis* to guide and manage conduct (Brulé, 2020; Krivy, 1982) and toward codes of conduct instead. Modern student conduct work is normally divided into academic conduct and non-academic conduct (Eerkes, 2010), and while academic conduct may be overseen by many groups depending on the post-secondary institution, student affairs professionals normally oversee non-academic conduct (Healy & Liddell, 1998; King, 2012; Winger et al., 2020). Their role being to “intercede in student misbehavior before it escalates” (King, 2012, p. 563), often relying on the theories of moral development and education espoused by Kohlberg (1981) or Noddings (1984). The concept of “conduct” and “misconduct” used at most universities in North America is influenced primarily (Ashley & Miller, 2022; Karp & Sacks, 2014; Waryold & Lancaster, 2020) by the Model Student Conduct Codes (Model Code), written in 1990 by Edward N. Stoner II and Kathy L. Cerninara and updated in 2004 by Edward N. Stoner II and John Wesley Lowery.

“Misconduct,” which is often referred to as conduct violating (Ashley & Miller, 2022) the code of conduct or departure from the community standards (Kenner, 2018), is normally responded to with sanctions determined by the

institution's code of conduct. Sanctions are intended to be a deterrence (Karp & Sacks, 2014) from engaging in prohibited behaviour, and the most serious sanction is the separation of the student from the institution in some way (Karp & Sacks, 2014), often called suspension or expulsion (Kenner, 2018). Although, in theory, sanctions are not supposed to be "punitive" (Kenner, 2018, p. 41), many conduct policies "feature retribution...and incapacitation" (Karp & Sacks, 2014, p. 156) that use "progressive restriction and exclusion" (p. 156) sanctions as an object lesson to discourage other students from engaging in "misconduct."

Recent changes in student conduct have attempted to adapt the processes into ones that are educative in both theory and practice (Ashley & Miller, 2022; Healy & Liddell, 1998; King, 2012; Stoner & Lowery, 2004), and much of the recent research focuses on adopting restorative justice models (Karp & Sacks, 2014; Klobassa & Laker, 2018) in place of, or in conjunction with, the Model Code method.

Other recent focuses in the literature are the structure of the code of conduct (Ashley & Miller, 2022; King, 2012), the process of conduct investigations and sanctions (Ashley & Miller, 2022; Kenner, 2018; Mawdsley, 2004), severe deviations from the code of conduct (Kenner, 2018; Piccinin, 2021) and the people involved in administering it (Miller & Salinas, 2019).

RESEARCH QUESTIONS

Within Canadian universities' non-academic "misconduct" policies, the research questions are:

1. What are the commonalities of prohibited conduct?
2. Are there any commonalities between similar universities?
3. What "problem" representations exist?

Policy Analysis Tool

The core of this study was done using the "What's the Problem Represented to Be" (WPR) method developed by Carol Bacchi (2009). This post-structuralist policy analysis allows for the

exploration of the potential conception of problems and "problemizations" (Bacchi, 2010, p. 4), exploring how the "problem" is conceived of within the policy and providing more context about the biases and assumptions in them. This is done using six questions and a reflexive step, here adapted from Bacchi and Goodwin (2016), Bletsas and Beasley (2012), and Arney and Krygsman (2022):

1. What is the "problem" represented (directly or indirectly) to be in the policy? What "problem" is stated to be, or seen being solved by, in the text of the policy?
 2. What assumptions underlie that representation? What must be assumed for the representation of the "problem" to make sense?
 3. How has this representation come about? What context is needed to understand the representation and power dynamics of the "problem"? What non-consensuses inform the representation?
 4. What is left unproblematic or unexamined in the representation; can it be approached from another way? What is presented as a necessity without providing evidence of necessity? What alternatives to this representation have been made?
 5. What effects or impacts are produced by this representation? How will it "limit or enable access to resources, or cause or relieve emotional or material distress" (Bletsas & Beasley, 2012, p. 39) for those impacted? Are the impacts of the representation different on different people?
 6. How and where has the representation been produced, disseminated, and defended, and how could it be questioned, disrupted, or replaced? Are there alternative ways to view both the intended "problem" and represented "problem" of the policy? Does the representation represent an ideology?
- Apply the above questions to any alternative ways or representations proposed.

METHODOLOGY

Because looking at policies from universities across Canada includes policies using very different language, this study was done in two parts. In part one, documents were identified and analyzed to determine commonalities and alignments. In part two, WPR was applied to the policies to understand the “problem” representations within those previously identified commonalities.

Document Identification

Only English-speaking public universities in Canada were considered for this study. To identify institutions to be part of this study, I used the *Enrolment by University: Fall 2022 Full-Time and Part-Time Fall Enrolment at Canadian Universities* list published by Universities Canada (n.d.). This list represents 1,415,509 university students in Canada. From this list, the English-speaking public universities ($n = 77$) were ranked by size and the largest of them identified to reach 50% of all university students in Canada ($n = 15$). Because most of this group ($n = 9$) were Ontario universities, it may not be representative of all regions due to different legislative conditions. To compensate for this, the next-largest public, English-speaking universities outside of Ontario were added to the list until the sample represented 60% of university students in Canada ($n = 21$). The final set included universities in Alberta (3), British Columbia (3), Manitoba (1), Newfoundland and Labrador (1), Nova Scotia (1), Ontario (9), Quebec (2), and Saskatchewan (1), as shown in Table 1.

The websites for these universities were searched for conduct policies and documents that apply to non-academic “misconduct” and outlined prohibited actions or expected behaviours. Documents that outlined “conduct” requirements only for a subset of the student population, such as athletes or students in residence, were excluded.

Process of Analysis

Each set of documents was reviewed to identify all “conduct” specifically mentioned as being prohibited or leading to disciplinary actions against students, or against any member of a university. Each university’s list of prohibited “conduct” was then organized in NVivo 12 based on the types of “conduct” prohibited and specific prohibitions were identified, resulting in 45 “conduct” prohibitions which were then compared to the original codes of conduct to ensure accuracy. Although some universities used language that implied prohibitions that were specifically mentioned by other universities, only specific mentions were included in this analysis.

The policies as a whole and their commonalities were assessed using the WPR (Bacchi, 2009) tool. This involved approaching the common prohibitions, uncommon prohibitions, and rare prohibitions as policies in themselves, creating “heterogeneous strategic relations” (Bacchi & Goodwin, 2016, p. 6) with the purposes of “order maintaining” (p. 6). The six questions for WPR were used to guide the analysis of the policies to examine the “unexamined ways of thinking” (Foucault, 2000, p. 456) of the “accepted practices” (p. 456) contained in the policies to identify the “implicit problem representation” (Bacchi & Goodwin, 2016, p. 19) and to propose an alternative conception.

FINDINGS

Of the 21 universities included in the sample, all had substantial overlap on several prohibitions, as seen in Table 2.

The categories of “Damage,” “Disruption,” “Harassment,” “Sexual Violence,” “Theft,” “Unauthorized Entry or Use,” and “Violence and Threats of Violence” were included by all universities, and the only universities that did not include the categories of “Sexual Harassment” or “Information (IT) Damage, Alteration, and Security” had other policies that implied but didn’t name those prohibitions. “Alcohol” and “Weapon Possession” were named by all but two institutions: one institution has a “violation of law” policy that supersedes those prohibitions, and

Table 1
Universities' Non-Academic "Conduct" Policies

University	Province	Documents Identified	Specific Prohibitions
Athabasca University	Alberta	5	13
Concordia University	Quebec	7	21
Dalhousie University	Nova Scotia	10	32
McGill University	Quebec	13	22
McMaster University	Ontario	6	28
Memorial University of Newfoundland	Newfoundland & Labrador	8	23
Queen's University	Ontario	8	30
Simon Fraser University	British Columbia	14	24
Toronto Metropolitan University	Ontario	10	28
University of Alberta	Alberta	13	32
University of British Columbia	British Columbia	15	31
University of Calgary	Alberta	14	27
University of Guelph	Ontario	14	29
University of Manitoba	Manitoba	10	19
University of Ottawa	Ontario	11	33
University of Saskatchewan	Saskatchewan	11	31
University of Toronto	Ontario	8	18
University of Victoria	British Columbia	9	30
University of Waterloo	Ontario	11	19
Western University	Ontario	10	30
York University	Ontario	14	33

Table 2
Number of Universities for Each Prohibition

Prohibition	Universities
Damage	21
Disruption	21
Harassment	21
Sexual Violence	21
Theft	21
Unauthorized Entry or Use	21
Violence and Threats of Violence	21
Information (IT) Damage, Alteration, and Security	20
Sexual Harassment	20
Alcohol	19
Weapon Possession	19
Discouraging Reporting and Retaliation	17
Endangering Health and Safety	17
Policy Violation	17
Smoking	17
Violation of Law	17
Cannabis and Non-Alcohol Legal Impairment	16
Discrimination	16
Failure to Comply with Process	16
Fraud and Forgery	16
Hazing	16
Illegal Drugs	16
False or Bad Faith Accusation	15
Falsification of Information	14
Copyright Violation	12
Misuse of Identification	12
Breach of Privacy	11
Encouraging Misconduct	11
Failure to Comply with Officials	11
Safety Equipment Tampering	8
Civility and Climate Violation	7
Physical or Verbal Abuse	7
Responsibility for Guests	6
Bribery and Bribing Conduct Process	5
Pornography Creation or Display	5
Defamation	4
Animals on Campus	3
Class Recording and Course Materials	3
Fire	3
Hate Speech	3
Animal Abuse	2
Illegal Gambling	2
Cyberbullying	1
Posters Without Authorization	1
Self-Harm and Threats of Self-Harm	1

the other institution is Athabasca University, an online university. Prohibitions that only appear for six or fewer universities often included prohibitions other universities covered under broader categories, such as setting fires or cyberbullying. Excluding Athabasca University, the average university prohibits 27 behaviours and actions in their codes of conduct (see Table 1), with six universities listing over 30 prohibitions.

There was no substantial difference between universities based on their age or student population, but there were differences among universities based on their province or region among the less-common prohibitions. British Columbia universities were more likely to include defamation in their “conduct” policy, with two of the three B.C. institutions including it, while Ontario universities were more likely to hold students responsible for the “conduct” of their guests, with over half of Ontario institutions including that prohibition. Alberta universities were the most likely to include language about civility and social climate, but they were the least likely to include language around discrimination; however, Alberta universities, along with Saskatchewan and Manitoba universities, were more likely to include language specifically prohibiting verbal abuse. Ontario universities included more language than any other provincial group regarding tampering with safety equipment and about complying with university security, but was the province where institutions were least likely to include “Hazing” as a category separate from abuse, violence, or harassment. British Columbia and Alberta universities had more prohibitions related to misuse of identification or requiring students to carry and provide identification, while Ontario universities, when they included language around identification, additionally prohibit security from using identification requests to profile or “card” students.

WHAT IS THE PROBLEM REPRESENTED TO BE?

What Is the “Problem” Represented, Directly or Indirectly, to Be in the Policy?

Although every university has different wording in their policies, Queen’s University summarizes the purposes of the policies by stating “this Code of Conduct sets expectations of student behaviour” (Queen’s University, 2021, p. 3). Many institutions talk about these codes being in place to uphold of the type of learning or educational environment or community they are attempting to create (Dalhousie University, 2021; University of British Columbia, 2023; York University, 2020) and that the code of conduct is there to be specific about what a university means when they say “standard of conduct expected of students in non-academic matters” (University of Saskatchewan, 2016, p. 4). Deviations from this standard of conduct are seen as “problems” that require a policy, thereby guiding the actions of, primarily, student affairs professionals in applying “solutions,” usually in some form of “sanctions.” It is also common to specify the legislative context of this “problem” (University of Alberta, 2022; York University, 2020), showing that the “problem” of student “misconduct” is not one conceived solely by the university, but is one that is impacted by governmental oversight. The problem representation, then, is that student “behaviour” must be guided by the university, and that “deviations” from the preferred “behaviour” must be corrected by the application of “sanctions.”

What Assumptions Are Underlying That Representation?

Most policies have geographical boundaries attached to them which define what the policies mean by “campus” and when they assume that students’ behaviour can be regulated by the university. For example, Memorial University of Newfoundland’s (MUN) code of conduct applies to “misconduct” “which takes place on University property, premises and to the use of Univer-

sity telephones, computers, and networks, including email addresses and hosted websites” (Memorial University of Newfoundland, 2017, p. 3), setting a geographical and digital boundary to the policy. However, the policy also applies to students off “campus” when they are engaged in activities directly connected to the university, such as attending classes and events occurring off-campus, or where they are “designated representatives of Memorial University” (Memorial University of Newfoundland, 2017, p. 3) This geographical and digital bounding is near universal among the policies. Some universities also add that conduct done near (University of British Columbia, 2023) the university is included, but, in general, unless the conduct impacts the access to “campus” or the education of another person or may have impacts on the safety of those at the university (Queen’s University, 2021; University of Manitoba, 2021; University of Toronto, 2019), it is excluded from the scope of policy. Three universities—MUN, University of Victoria (2017), and York University (2020)—also hold students responsible for reputational damage to the university, such as “in circumstances when...the conduct complained of may damage the reputation of the University” (Memorial University of Newfoundland, 2017, p. 3).

Two assumptions are at play here. First is that the code should only oversee conduct that occurs while a student is undertaking the work of being a student. This extends the policy to all “misconduct” done on the “campus” or occasionally “near” the “campus.” Another assumption is that if the conduct “impacts” the university and its mission or the educational goals of other students, even though the actions were done off the “campus,” that behaviour should also be regulated by the university. The three universities that include the “reputation” of the university expand the oversight of what “impacts” the university to any behaviour that is reported in a newspaper as being done by a student at the university. The advent of information technology complicates the geographical boundary. If a student is on “campus” and using their personal laptop, or personal mobile data, to harass someone who is not connected to the university, it could be considered connected to the universi-

ty. In this way, the location of “campus” in both physical space and through digital technology is created through these policies. Some universities add limitations to restrict it, while others imply any impact on the university makes it a matter under the code of conduct policy.

Most universities (the exception being Concordia University) have a student-specific code of conduct separate from any code of conduct applying to employees. This implies that behaviour in the code may include “misconduct” that is not considered “misconduct” if done by an employee. Many universities (McMaster University, 2023; Queen’s University, 2021; University of Ottawa, 2022; University of Saskatchewan, 2016; University of Victoria, 2017; York University, 2020) include language in their codes specifying that students who are also covered by a university collective agreement are covered first by the collective agreement if the conduct was connected to their employment, perhaps assuming that the conduct of students may be more controlled by the university than that of employees.

That every large university in Canada has a code of conduct policy that covers similar non-academic behaviour displays an assumption that non-academic behaviour must be regulated by the university. All policies in some way prohibit active or potential violent or harmful acts against people or property (violence, threats, theft, damage, harassment, sexualized violence, damage to information technology systems, weapon possession). The only other universal prohibitions are those against unauthorized entry or facility use and disruption of the university or activities at the university.

Disruption policies are most frequently used in the case of protests that university administrators decide have gone beyond what is appropriate (Baig, 2024; Strasser, 2024). Many policies include limitations on how broad the prohibition on disruption is, such as Simon Fraser University’s policy limiting behaviour and action(s) that are both disruptive and “endangers or threatens” (Simon Fraser University, 2021, p. 2) other students or staff, while other universities prohibit any and all disruptions on “campus” that “interfere with the business, ac-

tivities or services” (University of Calgary, 2021, section 3.[b]) on “campus.” The final policy that is near-universal is limiting the access to “controlled and legal substances” (Royal Canadian Mounted Police, n.d., Types of Drugs section). These policies often mirror similar prohibitions present in municipal bylaws or in provincial laws regarding age of access and locations of use.

The assumption of these policies is that students must be guided away from “misconduct” while on “campus.” The universal prohibitions imply that these prohibitions are the matters that a university must discuss in their codes of conduct. Students then, even though no longer under *in loco parentis*, are still being educated regarding their moral development and proper “behaviour” by the university, and the “campus” is the “classroom” for the purposes of this education.

How Has This Representation Come About?

Post-secondary education in Canada is a provincial jurisdiction. This means that every province has specific legislation guiding universities in how they are composed and how they operate. Although every province uses different wording, they assign oversight of student conduct to a specific role or group. Ontario (Government of Ontario, 1972, 2008), Manitoba (Government of Manitoba, 2023), and Newfoundland and Labrador (Government of Newfoundland and Labrador, 2022) institutions all assign the creation of student conduct rules to the institution’s board of governors or equivalent, with the president normally delegating application. Alberta (Government of Alberta, 2004), Quebec (McGill University, 2023), and Nova Scotia (Dalhousie University, 2005) institutions assign it to the university’s academic governing body and allow them to delegate as they see fit. Saskatchewan has a unique tricameral structure and assigns creation of student conduct rules to the Senate, a governing body made up of provincially elected representatives and other community and organizational representatives (University of Saskatchewan, 2024). British Columbia (2023) institutions assign oversight of student conduct

to the school’s president. While this shows that the “problem” of student “misconduct” is one that is embedded in provincial legislation, the specific prohibitions are rarely included.

The two most unique contexts are those of British Columbia and Ontario. British Columbia states specifically that the university is not liable for “any act or omission of a student” (Government of British Columbia, 2023), which provides legislative weight to universities not being *in loco parentis*, although this may be tested as part of a lawsuit in British Columbia Supreme Court (CBC News, 2023). Ontario has recently passed legislation requiring every university to have a “freedom of speech” policy (Office of the Premier, 2018) that specifies that “disruptive” speech is counter to the policy, making Ontario the first province to require policies prohibiting disruption. Ontario is also in the process of giving the Minister of Training, Colleges and Universities further power to “specify topics to be addressed or elements to be included in a college or university’s policy” (Government of Ontario, 2024, section 19, para. 4).

Although none of the universities specifically cite the influence of the Model Code, six universities (Dalhousie University, 2021; Queen’s University, 2021; University of British Columbia, 2023; University of Ottawa, 2022; University of Saskatchewan, 2016; York University, 2020) borrow at least one phrase directly from the 1990 or 2004 versions of the Model Code. For example, the University of Saskatchewan (2016) uses the wording “theft or damage to the property of the university or its members” (p. 6), which is adapted from “theft of and/or damage to property of the [College] [University] or property of a member of the [College] [University] community” (Stoner & Cerminara, 1990, p. 100). The Model Code has been well represented in Canadian codes of conduct. The 18 specific prohibitions in the Model Code align with 29 of the identified 45 prohibitions in Canadian university codes of conduct.

Broadly, the Model Code prohibitions (Stoner & Lowery, 2004) fall under the categories of active or potential violent or harmful acts against people or property (including sexualized violence); unauthorized entry, use, or

disruption; access to controlled and legal substances; safety issues; other illegal behaviour and violation of policies; conduct that directly affects the conduct process; failure to comply with security and provide identification; and conduct that is not a “credit upon the [College] [University] community” (p. 34). The only common prohibitions in Canadian university codes of conduct that are not listed in the Model Code are smoking and discrimination. The only prohibition in the Model Code that is not common in Canadian university codes of conduct is “failure to comply with directions of [College] [University] officials or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so” (p. 29), which appears in only 11 of the Canadian university codes. The final point of the Model Code is “students are required to engage in responsible social conduct that reflects credit upon the [College][University] community and to model good citizenship in any community” (pp. 33–34), a new addition to the Model Code that was not present in the original 1990 version. This addition is only represented in seven Canadian university codes of conduct, with language around civility and social climate “stated in the affirmative” (p. 34).

The Model Code is firmly connected with legislative, legal, and cultural constraints of the United States of America (Stoner & Lowery, 2004). The “problem” represented in the Model Code is “the moral and intellectual development of students” (p. 2). The Model Code is also closely tied to a “formal process, emphasizing authority and control” (Karp & Sacks, 2014, p. 156) and presupposes that it will be used in connection with a “[university] judicial system” (Stoner & Cerminara, 1990, p. 108) based on hearings.

Every university builds their policies themselves, often with guidance or advice from each other and from consultants or lawyers. Because of this, it is common in university policy to see similar methods used for similar policies, especially around important topics such as sexualized violence. The specific shape of this “problem” representation within Canadian university codes of conduct, however, is impacted by more than institutional policy development,

as both the Model Code and the assumptions built into provincial legislation have guided this representation.

What Is Left Unproblematic or Unexamined in the Representation, and Can It Be Approached Another Way?

The nine prohibitions that are in nearly all university codes of conduct represent many actions that are illegal. Violence, theft, property damage, harassment, sexualized violence and harassment, trespassing, and damage to information technology infrastructure or security are all covered already by legislation and bylaws. Even protest, the most common implementation of the disruption prohibition, is limited in certain ways by legislation and bylaws.

In most cases, this is a matter of taking something that is illegal and extending it in policy to something that skirts legality, such as Toronto Metropolitan University’s (2021) policy prohibiting “Possessing and/or distributing weapons, including replicas of weapons” (section 6.4). Replica weapons are normally not illegal, but this allows university security to not need to concern themselves with whether a weapon is real or a replica before considering it “misconduct.”

Other universities use the code of conduct to hold students responsible for illegal acts that would not be normally prosecuted. Six universities hold a student responsible for an illegal act done by a guest of theirs on “campus.” In addition, there are times that a university may want to follow their process before, during, or after a legal proceeding. The majority of universities leave the decision of whether criminal charges will pause or end student disciplinary action to those overseeing “misconduct” cases (McMaster University, 2023; Toronto Metropolitan University, 2021; University of Saskatchewan, 2016), while other universities specify that any conduct case must be paused (Concordia University, 2022), and still others state that the charges themselves are a student conduct matter (Memorial University of Newfoundland, 2017; University of Victoria, 2017). The Univer-

sity of Victoria (2017) limits this power by stating that only behaviours and actions specifically occurring on “campus” could be considered a student conduct matter (p. 1), but Memorial University of Newfoundland (2017) takes the opposite approach by including language about allowing charges against a student that impact the reputation of the university (p. 3) to be considered “misconduct.” The specificity of illegal conduct as “misconduct” under the student code makes it clear that the code is there to allow the university to exercise control over students’ actions to provide an educative path to correct the student.

The default assumption in the codes is that “misconduct” is responded to with the application of “sanctions” (Western University, 2019, p. 1), “penalties” (University of Guelph, 2020, p. 5), and “disciplinary action” (Athabasca University, 2004, p. 3). This leaves the role of restorative justice models or other alternative resolutions in student conduct policies less clear. Less than half of the codes of conduct mention restorative practices ($n = 9$); while policies identify that “misconduct” is not a criminal matter and the goal is to support the community, the core of them is punitive: “any Student who engages in Non-Academic Misconduct in relation to a University Matter will be subject to discipline” (University of Manitoba, 2021, p. 5). Any other option is seen as an “Alternative” (Toronto Metropolitan University, 2021, p. 25) to the punitive sanctions. Only three universities (Memorial University of Newfoundland, 2017; University of Victoria, 2017; York University, 2020) use restorative practices as the default assumption in the policy.

The assumption of control through codes of conduct and the focus on punitive sanctions is an extension of the legislative contexts these documents exist within. The legislative background to these policies sees the use of suspension as the primary response to student discipline, making all other “sanctions” in a code of conduct an “alternative” to suspension. In the codes themselves, however, suspension is portrayed as the maximum sanction, with more preferred sanctions that are punitive, educative, or restorative. Because the legislative context is not something universities have control over, the focus of these policies is on setting

standards of behaviour and providing tools for the university to use to guide an individual student back to the path of “right” behaviour before suspension would be warranted. Unexamined, then, is whether these codes of conduct could be “transformative” (Brulé, 2020, p. 43) or restorative with “sanctions that restore harmony” (Concordia University, 2022, p. 5) within the community.

What Effects or Impact Are Produced by This Representation?

University disciplinary decisions are held accountable through judicial review (Chewter, 1994). Most non-academic misconduct judicial reviews revolve around whether the process was followed and whether it was fair (*Freeman-Maloy v York University*, 2004), but some focus on whether the policies themselves are allowed within the legislative framework (*Pridgen v University of Calgary*, 2012) and the level to which the Canadian Charter of Rights and Freedom applies (*BC Civil Liberties Association v Victoria University*, 2016). What is not questioned through judicial reviews is the right of a university to prohibit acts which, through violence or threats of violence, impact access to education, including acts of sexualized violence (Salvino, n.d.), or the proper running of an institution.

Showing the controversial nature of codes of conduct, since 2008 the Canadian Federation of Students (CFS; 2020) has opposed all non-academic codes of conduct that include any of 16 criteria (p. 96). The main concerns identified are (a) procedural fairness; (b) sanctions against those not directly involved in violations; (c) restricting freedoms, or disruptive political activity; and (d) lack of involvement of the student union in the development and implementation of the code. Further, CFS proposes that any policy should not apply off “campus” or to online behaviour, should not apply to actions that would not result in discipline of an employee, and should not be applied “for any incident for which the individual has already been penalized under the Criminal Code of Canada, or any other ordinance or statute” (CFS, 2020, p. 96),

and, finally, the sanctions should not impact academic standing, grades, funding, or access to employment.

Many ($n = 12$) policies include some sort of wording saying that it is “misconduct” if there is a “refusal to provide identification” (Athabasca University, 2004, p. 2) or failure “to abide by the written directions or instructions of Campus Community Police” (University of Guelph, 2020, p. 3) when they ask for identification. Perhaps in response to incidents—such as the one at University of Ottawa (Ramlakhan, 2019)—highlighting the racial disparities in the enforcement of these provisions and “carding” (Levins, 2019), some institutions include a caveat to this in an attempt to make sure that the requirement to provide identification does not become a “carding” policy used to harass historically excluded students. For example:

Refusing to provide identification upon request by a University Official or employee acting in the course of that person’s duties, provided the University Official or employee has reason to believe the student is committing, has committed or is about to commit a violation. (University of Alberta, 2022, p. 13)

The impact of requiring compliance with security may not be seen by those who develop the policy. Students who were carded as a method of harassment will normally not come to the attention of administrators unless the student resists the request, perhaps resulting, as seen at the University of Ottawa, in the calling of municipal police, or in the student being accused of other misconduct for refusing to comply with officials. This is made more important by the lack of clarity (Cheong, 2023) about the role of university security in enforcing the code of conduct.

Finally, the most visible impact produced is via the application of the prohibitions against disruption. This is behaviour that is not violent or threatening violence but does impact the operations or use of the university. The CFS (2020) asserts that such non-academic prohibitions “threaten the democratic rights of students to actively participate and engage in issues that

they so wish to support” (p. 96). On the other hand, Ontario’s 2019 mandate that “every publicly-assisted college and university...develop and publicly post its own free speech policy” (Office of the Premier, 2018, para. 1) still requires that codes include a caveat that free speech actions that are “ongoing disruptive protesting that significantly interferes with the ability of an event to proceed” (Ontario Office of the Premier, 2018, Free Speech Policy section) do not receive free speech protections. Most institutions’ versions are adapted from the Model Code’s wording:

13. Participating in an on-campus or off-campus demonstration, riot or activity that disrupts the normal operations of the [College] [University] and/or infringes on the rights of other members of the [College] [University] community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area. (Stoner & Lowery, 2004, p. 30).

Although all universities in the sample prohibit disruption, many of them (Simon Fraser University, 2021) only prohibit disruption that is actively violent, while others prohibit disruption that threatens physical or “psychological harm” (McGill University, 2019, p. 3). The effects of these various policies have been seen in their application during the 2024 protests against the Gaza War (Baig, 2024; Strasser, 2024) as universities struggled to determine the best way to maintain operations during disruptive protests.

How and Where Has the Representation Been Produced, Disseminated, and Defended, and How Could It Be Questioned, Disrupted, or Replaced?

Because every university in the sample had some form of code of conduct, and for those in Ontario it is legislatively mandated, the representation of the problem has been disseminated to nearly every university in Canada. The

assumption in Canada, often pushed by government, is that all universities should have them, while the CFS (2020) pushes back against that understanding by holding the position that these codes are overbroad in what they prohibit and how they are implemented. The legislative component, however, means that all universities in the sample had some sort of legislation empowering the university to deal with non-academic “misconduct,” up to and including permanent suspension from the university. This means that universities without a policy on non-academic misconduct lack limitations on that legislative power, and so the determination of what “misconduct” is and how it should be responded to is left up to the individual or group identified by the legislation.

For this reason, the “problem” representation has been disseminated as universal, but that does not mean that the adoption of the assumptions in the Model Code—including that a sanction must be intrinsically punitive—serves Canadian universities well. It is possible to develop a code of conduct that identifies what non-academic “misconduct” is, provides a way to handle accusations of “misconduct,” and is educational and community-focused first.

Karp and Sacks (2014) identified that the use of restorative practices in conduct processes increased student learning and the “social ties to the institution” (p. 157), both of which have been previously identified as decreasing the “risk of re-offence” (p. 156). The embracing of the Model Code and its attendant assumptions places the use of restorative practices as an “alternative” to a method using hearings and sanctions. As a disruption to those Model Code assumptions, I present two principles with attendant guidelines for developing a code of conduct and conduct process:

1. The “prohibitions” must encourage the development of the university as community:
 - a. Prohibitions should be focused on actions that “harm” or threaten “harm” toward people, property, or the community (excluding reputational harm).

- b. Expression, including disruptive expression, that does not constitute “harm” is not prohibited.
 - c. Employees and students are both part of the community, and so prohibitions for both, outside of an employee’s duties, should align.
2. The “jurisdiction” must focus on the university as community:
 - a. Individuals are responsible for their own actions, not for the actions of others.
 - b. A matter must be tied to the university substantially to be considered misconduct, meaning that harm must have happened at a university-controlled location or event, or come to another member of the university community because of a connection through the university.
 - c. Being charged with a crime or violation by another organization does not automatically become misconduct at the university unless the actions also contravened the code of conduct.

Apply the Above Questions to Any Alternative Ways or Representations Proposed

The “problem” representation remains, then, that student “behaviour” must be guided by the university, but now the guidance is to support the development and maintenance of “community.” This representation assumes that the entire community must be guided, not away from “misconduct,” but toward supporting and developing the “community.” The assumptions of universal prohibitions remain but are limited to actions that “harm.” Students, rather than being the recipient of “moral education,” become part of a “community” focused on learning together. Finally, the assumption of guiding student behaviour beyond the “campus” is removed.

Intentionally and explicitly moving away from using the Model Code as the default or starting point is how this representation comes

about. However, it is important to recognize that, as provincially regulated and legislated institutions, the legislative requirements and assumptions will still impact codes of conduct. Replacing the Model Code allows for a commitment to restorative practices as the default.

Left unproblematic and unexamined is that the role of the decision makers and conduct professionals has an outsized impact on the implementation. Because restorative practices require the participation and consent of the person accused of “misconduct,” the person “harmed,” and a neutral third party to support the process, it may be possible for the decision maker or conduct professional to deny access to restorative practices for discriminatory reasons.

The matter of illegal behaviour and municipal bylaw violations that happen on “campus” remains a question of concern even when following these principles. Our justice system sometimes overlooks, or inconsistently addresses, acts that are potentially illegal, or bylaw violations that are not normally investigated or prosecuted. However, it is more common (Velázquez, 2023) for visible minorities to be investigated or charged than White people. Is it more fair to a student to say that you will report all potential illegal behaviour to local authorities, or is it more fair to work with local authorities to determine a line beyond which they will be called, as recommended in the Model Code (Stoner & Lowery, 2004, p. 37), and using the university process for other matters?

The addition of “harm” to the “community” allows the prohibition of acts such as fraud or intellectual property violations to be included, though there is no physical harm from them. This was added because they are acts that cause problems for the community through impacting access, misappropriating resources that are supposed to help or support other members of the community, or opening the community and institution to legal ramifications.

The largest presupposition is that there must be methods by which a community may regulate itself through prohibitions and, because a university in Canada is created with a set structure through government legislation, that the oversight of those regulations to maintain the

community is held by the administrators of the university. This could be questioned or disrupted, but that may result in a policy proposal that is not possible in the current legislative structures. This is not to say that it would not be better for a more democratically designed structure to exist for regulating the community, but that it would require a disruption of governmental policy rather than university policy.

LIMITATIONS

This post-structuralist policy analysis is limited in that it focuses on the policies as written rather than the policies as enacted; in addition, conduct policies are reviewed and changed frequently. Conduct policies are impacted by the university administration and student affairs practitioners who oversee their implementation, as well as the executives and managers who impact the interpretation of the policies and procedures. Future work should expand on this by reviewing post-secondary institutions in Canada beyond universities, explore the impact of conduct procedures and prohibitions on students in Canada, as well as explore the difference between the policies in writing and the policies in practice. Further research should be done into the implications of the wide use of the American Model Code (Stoner & Lowery, 2004) in the Canadian context and the impact of those engaged within the conduct field who use community-minded and restorative approaches.

CONCLUSION

Most Canadian university students have a non-academic code of conduct that prohibits various actions and is based on or guided by the American Model Code (Stoner & Lowery, 2004). This may result in the adoption of assumptions within a student conduct system that have their roots in American jurisprudence, rather than in the Canadian university context. Through applying the “What’s the Problem Represented to Be” approach, I examined the unproblematic assumptions within codes of conduct and proposed two principles to disrupt the “problem” representation in codes of conduct, which are:

1. The “prohibitions” must encourage the development of the university as community.
2. The “jurisdiction” must focus on the university as community.

By applying these principles, universities and student affairs professionals may question the assumptions within their codes and examine community-minded and restorative approaches. This can help educational institutions develop a more educative approach to non-academic conduct.

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