

**REVIEW OF STUDENT NON-ACADEMIC MISCONDUCT POLICY AND
PROCEDURE**

UNIVERSITY OF WINDSOR

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1. INTRODUCTION

1.1 The Scope of the Review:

I have been asked by Dr. Douglas Kneale, Provost of the University of Windsor, ('the University' or "Windsor") to review the University's non-academic student discipline regime and to provide my comments on its structure and soundness. Specifically, I have been asked to consider the following matters:

- Do the Policy on Student Conduct, ("the Policy"), and the "Procedures for Addressing Student Non-Academic Misconduct", ("the Procedures"), identify the appropriate parties to be engaged in the adjudication processes?
- Is the dual role of the investigator/adjudicator procedurally sound?
- Are the descriptions of the instances of misconduct, the processes for adjudication and the penalties described in the documents fair and sufficiently clear to ensure that both the University officials and the students involved understand them and can engage with them fairly and equitably as contemplated by the documents?
- Are the timelines appropriate and can they be enforced?
- What is the appropriate use of trespass orders?
- Are there any important things missing from the Policy or Procedures?

1.2 The Approach of the Review

This review has been a "paper exercise", conducted without knowledge of the University's experience with the past application of the Procedures or the culture of non-academic discipline at the University in general. I am mindful that both of these factors may have influenced the decision to have this review, but they have not formed part of my consideration in providing my opinions and suggestions.

By way of background and source material I have reviewed the University of Windsor Acts (1962-63 and 1968-69) to confirm the originating authority for student discipline.

The University Secretary, has provided me with links to the Policy and Procedures, a flowchart for the Procedures, and Forms 1.1, 1.2, 1.3 and 2 to be used by a complainant, by the student who is the subject of discipline proceedings, and the responsible University administrators as the discipline process proceeds.

In search of comparisons I have looked at the student non-academic misconduct processes as shown on the web sites of other Ontario universities: Guelph, Laurier, McMaster Queens, Toronto, Western and York. Having looked at these codes and procedures, it is clear that the

contents of all are similar, but none are identical. When comparisons may be helpful, I make reference to one or more of them throughout the report.

I have considered the Policy from the point of view of the University which seeks to maintain a community environment where all can safely work and study and I have considered the Procedure from the points of view of both the University and its students. I have not extended my review to the various complaint forms, although comments I am making may affect them.

Disciplining students' conduct is difficult and much more difficult than it was in the early nineteen sixties when Windsor became a university. The paternalistic relationship between a university and its students has been replaced by a relationship which treats university students as adults and what was then seen as the "privilege" of a university education is now considered a "right".

As the Policy says, Windsor's students are entitled to have their conduct assessed: "without concern to religion, race, colour, national origin, sex, sexual orientation, disability or age." They are also entitled to have their conduct adjudicated in accordance with the principles of natural justice: notice of the nature of the proceedings and the issues to be decided; disclosure of the evidence; and an opportunity to respond. The authority and responsibility of the officials who administer the policy must be clear and the procedure perceived as fair.

At the same time, an effective procedure will have to take into consideration and balance the ability of the University to administer an adjudicative process within the context of community expectations and available resources.

The wording of a procedure provides a path for consideration of most discipline matters, but not all circumstances can be anticipated and not all can follow a straightforward course to a decision. Inevitably there will be cases which present unique circumstances and may require actions or steps not specifically included in the procedure, for example, the involvement of the Assessment and Care Team contemplated by the Behavioural Intervention Plan. Therefore, there should be room for the decision makers to use their judgement and exercise their discretion in how closely the procedure is followed, provided that the standards of fairness established by the Policy are front of mind.

I have made a number of recommendations and suggestions, particularly with respect to the Procedures. While I understand that they have generally served the University and its students for their intended purposes, it is clear that they could benefit from a careful overview and a general editing. I understand that there is to be further consideration of the procedures and practice of non-academic discipline within the Windsor community this academic year, and I hope the suggestions and recommendations made in this report will be of some assistance in that process.

2. THE AUTHORITY FOR STUDENT DISCIPLINE

2.1 The Authority for the Process is Provided by the University of Windsor Act(s)

it is important that the community understand the authority given to University officers to discipline unacceptable behaviour. In this case, that authority is established by the legislation which created and governs the University.

Windsor was incorporated by the Ontario legislature as Bill Pr36 in 1962-63 and continued with amendments in 1968-69. As none of the amendments in the latter legislation speak to the issue under consideration here, the legislation which establishes authority over student discipline governing legislation is Bill Pr36, (“the Act”).

Like the legislation which created several of its sister institutions, the Act describes the objects and purposes of the University as:

- (a) the advancement of learning and the dissemination of knowledge; and
- (b) the **intellectual, spiritual, moral, social** and physical **development of its** members and **students** and the betterment of society. [emphasis added].

This wording speaks to the University’s role in educating its students to be contributing members of society and implies a standard of appropriate moral and social behaviour. This language, emphasized by Windsor’s motto of “Goodness, Discipline and Knowledge”, provides authority for the establishment of a student code of conduct.

The authority over student conduct is shared among the Board, the Senate and the President. Except for powers specifically giving to Senate, s. 21 of the Act gives the Board power over the “government, conduct, management and control of the University” and authorizes it to make “rules and regulations” in respect to those powers.

The Board appoints the President who by s. 23(2) has “**supervision over** and direction of the academic work and general administration of the University and the teaching staff thereof, and the officers and servants thereof, and **the students** thereof.” [emphasis added].

Section 24 allows the establishment of the offices of vice-presidents to assist the President, and provides that the vice presidents shall have “such powers, rights and duties as may be assigned to them by the Board”.

Senate is given power under section 27 subsection (c) of the Act “**to regulate** the academic programs pursued in the University, and **the conduct, activities and discipline of the students**”. [emphasis added]

3. THE POLICY ON STUDENT CODE OF CONDUCT

3.1: Jurisdiction under the Policy is shared:

Pursuant to their shared authority under the Act, the Senate and the Board have each approved the Policy which establishes the Student Code of Conduct, (“the Code”).

The “Principles of the Code” include the expectation that students commit to a standard of behaviour that “stresses respect for the dignity and individuality of all persons and the rights and property of others” and that students will “be individually responsible for their actions” in both the academic and non-academic spheres. Accordingly, the Policy contains a “Statement of Academic and non-Academic Rights and Responsibilities” and lists examples of actions which illustrate behaviours that will be considered to “violate” the Code in each of the Academic and Non-Academic spheres.

A header on the document indicates that Senate has approved the Academic Rights and Responsibilities section of the Code and the Board has approved the Non-Academic Rights and Responsibilities section. In that way, each has effectively acknowledged both its own jurisdiction and the authority of the other to oversee the enforcement of the standards set out in the Code. However, the policy does not specifically assign responsibility for creating procedures for the enforcement of the standards set out in the Policy.

By Bylaw 31, Senate has established a process for adjudicating academic misconduct. The procedures for adjudicating non-academic misconduct were promulgated by the President under presidential authority provided by the Act. However, the link between the Board’s authority in approving the Code and the President’s authority to create the procedures and assign responsibility for discipline to the Provost’s team, is not obvious on the face of either the Policy or the Procedures. The authority for acting could be more transparent than is currently the case.

I recommend that at the end of the Policy and the beginning of the Procedures, there be included an indication that the Senate and President respectively, have authority to create the adjudication procedures for determining code breaches and setting penalties for misconduct under the Code.

It appears that some prohibited behaviours may cross over jurisdictions. These include the “other examples” listed as items xvi – xvii at the end of the Policy. Another example arises in respect to the crossover between Academic violation xi: “altering, destroying, hiding or otherwise restricting access to academic materials intended for general use”, and non-Academic violations xii and xiv: “alteration or misappropriation of computer records, data, software etc.” and “misusing library resources”.

Neither the Policy nor Procedure indicate whether or how a decision will be made, or which system of adjudication to use to address these cross over issues. The question of who determines how a crossover matter is to be adjudicated, as an academic or non-academic violation, could be clarified.

3.2 The Description of Non-Academic Violations:

The Code and example violations listed in the Policy are generally consistent with the expected behavioural standards and prohibited actions described in the codes of the comparator universities. However, each of the other institutions describes similar expectations and prohibitions differently. All but Windsor, group and list the behaviours by categories.

Western has organized similar prohibited actions into 10 categories; the University of Toronto has 9.

York has 6 categories as follows: Breach of University Policies, Procedures and Rules; Abuse of or disrespect for the processes of the Code; Disruption or interference with University Activities; Damage to the property of the University or its members; Conduct that would be recognized as a breach of the law and/or disregard for the health and safety of the University community or its members; Threats of harm or actual harm to a person's physical or mental well-being.

McMaster lists its violations under 4 more general headings: Safety of Oneself and the Community; Personal or University Property; Community Standards; Legal and Illegal Substances. It also sets additional responsibilities and expectations for residence students and student athletes.

Guelph's categories are even more general: Diversity, Integrity, Learning, and Safety.

These headings are helpful to both parties: to the student for elaborating on the logic for including the specific prohibited behaviours; and to the decision maker, who can rely on the more general headings when a specific action complained of is not specifically listed among the examples.

I suggest that if the Policy is amended, the behaviours that violate the Code are placed in categories for easier reference.

3.3 A Code of Conduct or a Policy on Student Rights and Responsibilities?

The University of Ottawa does not have a Code of Conduct, and the creation of one at that institution has been a matter of recent controversy. Ottawa student advocates have argued in the press that a "code" is condescending and is a mechanism for control over students which

derogates from their freedoms for expression and student action. I have not used Ottawa as a comparison for that reason.

Two of the comparators: McMaster and York, have framed their current documents not as behavioural codes but as statements of “student rights and responsibilities”. Rather than conveying an initial impression that the university is exerting control, their documents appear to place a duty on their students to contribute to an atmosphere of civility, equity and respect at the university. Notwithstanding, McMaster’s document continues to refer to “violations” of the code, whereas York lists behaviours under the heading “Community Standards for Student Conduct”. Instead of “violations, York’s document describes examples of behaviours that “fall below the standard of conduct that is expected of all students”, and states that its system is “intended to be educative and promote accountability among students toward their peers and other members of the York community”.

There is merit to York’s approach. Its wording frames students as community members with an entitlement to pursue their studies, participate in activities, engage in dialogue, have their person and property respected by others, etc. In exchange, they share substantial responsibility for the quality of campus life as illustrated in part by the examples of the below-standard behaviours which are the same those identified at other institutions.

4. The PROCEDURES FOR ADDRESSING STUDENT NON-ACADEMIC CONDUCT

4.1 Who should be involved in the adjudication process?

The President has authority over student discipline but it can be delegated. With the exception of the President’s retained power over expulsions and exclusions, the Procedure delegates the authority for adjudicating and decision making to the Provost and the Associate Vice-President Student Experience, (“the AVP”). Each of them is also given the power to “designate” or “delegate” all or part of that authority in turn.

Although the President has authority over the supervision of students under the Act, given presidential responsibilities at a university the size and complexity of Windsor, it can be expected that the exercise of that authority will be delegated in whole or in part. Courts and administrative tribunals have recognized that given the complications of contemporary administrative regimes, some delegated power can also be further delegated provided that ultimate responsibility remains with the authorized authority. In Windsor’s case, the President retains authority for appointing the adjudicators and for approving the most serious of penalties: exclusion or expulsion.

4.2 Dual role: Investigator/Adjudicator

The form of adjudication set out by the procedure is one where the decision maker takes an active role in the investigation of the matters at issue. The investigatory system, (often called the “inquisitorial system”), is well recognized as suitable for circumstances in which the matters in issue are raised by specialized regulations and where parties may or may not be represented by counsel. In some judicial systems, (e.g. in France and other European countries) this is the norm for courts. In Ontario, it is the norm for numerous provincial tribunals. In contrast is the adversarial system in which the adjudicator, (e.g. the judge and/or jury in most civil and criminal matters in Canadian courts), relies on the representatives of the parties to provide evidence, cross examine and make arguments based on the evidence, generally without much intervention.

Windsor’s system relies on an active investigator/adjudicator. This is also the system at Western and Laurier and at first instance, at York, (there called “local adjudication”). At Windsor, as at these other institutions, the adjudicator can assign some or all of the investigation to another identified investigator. With the exception of Guelph and Laurier, the process begins at all of the institutions with an attempt to reach a resolution at an informal meeting before invoking the more formal adjudication process.

When no resolution is reached, McMaster has an adversarial model before a single hearing officer. York and Queen’s have provided for the possibility of either one adjudicator or a panel. The York procedure allows the university to determine if matters will be heard by panels either before or after the initial settlement effort and the “local adjudication”. Queen’s provides for the student to choose to appear before a single designated administrator (the default option) or before a Student Conduct Panel comprised of 2 university employees and a student. The University of Toronto appoints a “Hearing Officer” but that official has some powers of enquiry. She/he is not bound by strict rules of evidence and may take notice of “matters generally within the knowledge of members of the University Community” which are not otherwise presented as evidence at the hearing. In whatever way they are conducted, all of the procedures I reviewed contain the requirement of procedural fairness.

Similar to Windsor; Laurier, Queens, York and Toronto provide for “interim” or “emergency” measures to be taken before any formal investigation, where the university assesses and determines that certain incidents of prohibited behaviour raise issues of individual or community safety.

4.3. Timelines

It is usual and appropriate to set some time lines for compliance with and completion of stages of the adjudication process. Windsor’s Procedure establishes time lines and also provides the decision maker with the needed discretion to extend the deadlines should circumstances warrant the extension.

There is no timeline set by the Procedure for initiating a complaint. It makes sense that since the procedure is for student discipline and the penalties address student engagement in the

University, that there would be no jurisdiction for the University to act under the Procedures in respect to a complaint against a graduate. That said, in cases of academic misconduct, for example falsifying data for a dissertation, the jurisdiction of the university can extend past the awarding of a degree, and the penalty could be that the degree is rescinded.

An individual who failed or declined to make a complaint against a student before the student's graduation may have the basis of a civil action against the student after graduation. A claim might also be made against the university if it can be shown that the university had knowledge of the facts which would form the base of a complaint but failed to act, or acted unfairly. The procedure specifically mentions the circumstance of a survivor of a "sexual misconduct" incident having the right not to participate in any investigation. While it is beyond the scope of this review to address details involving such cases, the University can take measures to reduce the potential for future liability both where it proceeds or does not proceed to discipline in those circumstances.

The Procedure commits that Step 1, the initial investigation will "normally" be completed within 28 calendar days of having received the complaint and that a decision will "normally" be both made and conveyed to the parties within 35 calendar days from the receipt of the Complaint.

An expeditious consideration of the matters in issue is desirable for reasons of fairness to both the student and complainant, and in order that certain sanctions, if imposed, will have the desired effect within an appropriate time frame.

However, a timeline of 35 days, start-to-finish, seems unrealistically short. Considerations of the appropriate length of time for any particular matter will have to take into account a number of factors, for example:

- the schedule of the adjudicator,
- the time needed to pursue options for settlement,
- the need for a Behaviour Intervention Plan,
- the possibility that another investigator will be assigned to the case, (as in sexual misconduct matters)
- identification, contact with, and interviewing of witnesses,
- time to retain and instruct counsel if needed,
- time for the student to complete a written response to the allegations,
- time for the adjudicator to consider all of the evidence, come to a decision on result and penalty if any, and draft a decision.

Western's process contains no timelines. The Queen's process requires only that the adjudicating body (either an individual or a panel), notify the parties in writing of a decision including reasons and sanctions, within 10 business days of the date of the adjudication. (Queen's adjudicators can also extend or abridge the time limits).

Laurier's process sets no specific limits but used phrases such as "in a timely way", and "as promptly as possible". York's process allows the local adjudicator to set timelines and allows the University Tribunal the discretion to grant "postponements" of the hearing dates on request when reasonable.

Some timelines are more important than others. Given the rhythm of an academic year, and depending on the nature of a complaint, it is reasonable and perhaps necessary, to set a time limit for the receipt of a response from a student defendant, both in terms of filing a written response and attending at the initial meeting with the AVP. However, the procedure should be flexible enough to take into account factors which may affect the parties' ability or willingness to participate in the process. In each case the adjudicator will have to balance the time it will take to provide the student a fair right of reply and full participation in the discipline proceeding with other factors such as the type of violation, its effect on all involved, the mental or physical health of the complainant or student, or corresponding criminal or civil proceedings. For those and other reasons, it is desirable that the procedure give the adjudicator the ability to adjust time lines as needed. When all factors are considered, flexibility is extended and a final timeline is set, if one or another party fails to meet the time line, the procedure can provide for the adjudicator to make a decision on the evidence at hand.

The appeal process, Step 2, also has 2 adjudicative steps: the determination of the request for an appeal, and the hearing of the appeal itself. The current time limit for submitting a request for an appeal, (14 days), and for making a decision on whether to hear an appeal, (10 days), seems reasonable. Given the allowable grounds for an appeal, the 14 -day notice to the appellant of the hearing of the appeal also appears reasonable. However, as in the case of the initial hearing, it is desirable to provide the decision maker with the option of extending the time if needed for the adjudicator, the student or the complainant.

The requirement that an appeal decision is to be made and delivered within 7 days after the last submissions or conclusion of an oral hearing seems short. For consistency with the other time lines in the procedure, it could be amended to 10 or 14 days.

4.3 Exclusion from Campus and Trespass

I have been asked to address the issue of when trespass can be used by the Campus Police to exclude a student from the campus.

As currently written, the Procedure has 4 possibilities for excluding a student from campus activities, facilities or the campus as a whole. They are:

- Where there is an immediate risk to persons or property: there can be an interim suspension or exclusion from campus before a hearing under the "Extraordinary Power of Suspension and Exclusion" set out in section 9 of the Procedure. (this requires Presidential approval)

- An exclusion from campus facilities for a specific period of time as a sanction after a hearing, under paragraph 7, section II of “Appendix A”,
- An exclusion from the campus with or without conditions as a sanction after a hearing, under paragraph 8, section II of “Appendix A”.
- A “suspension” which excludes a student from “classes or other privileges or activities” for a specified period of time as a sanction after a hearing, under paragraph 9, section II of “Appendix A”.

Section 2 of the Ontario Trespass to Property Act, R.S.O. 1990 Chapter T.21, (“the Trespass Act”), creates as an offence, the entry of a person on to premises when that persons enters without the “express permission” of the “occupier”. As the entity which has both ownership and control of the campus, Windsor is the occupier of the premises.

The Trespass Act allows for limited permission to enter the premises, and also for limited exclusion. Students who have been given a penalty which limits or excludes their presence on Windsor’s campus, have had their right to be on campus restricted or withdrawn. Their attending on campus in violation of their penalty and in the absence of special permission to do so, is a trespass.

However, before action can be taken against trespassers, they must be given clear “notice” that their presence is prohibited. That notice can be given in various ways, but in respect to students who have had their right to be on campus restricted or removed, the notice is best given in writing by being included in the decision of the adjudicator, and/or by a special “trespass notice” given coincident with the decision.

If students who are under a suspension or exclusion order attend on campus, section 2 of the Trespass Act provides that “if they do not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier” they are “guilty of an offence” and on conviction are liable to a fine of not more than \$10,000.

It is therefore apparent that trespass is an action to be taken following a decision of discipline, (including the Extraordinary Power of Suspension and Exclusion), and not instead of it. Campus police are likely the officials who would be called upon to act as the persons authorized by the University to enforce an exclusion or suspension order, including through the mechanism provided by the Trespass Act. Section 9 allows authorized officers such as the campus police to arrest a trespasser, but requires them immediately thereafter to “promptly call for the assistance of a police officer” and turn the trespasser over to the police.

4.4. What is Missing from the Policy and Procedures

4.4.1 Other procedures

I have already referred to the possibility that along with the University's process, a complainant (including the University itself), may institute criminal or civil proceedings. Managing an adjudication along with a criminal or civil proceeding and providing detailed steps for doing so in a procedure is difficult. However, if it is intended that the University be entitled to proceed with adjudicating violations of its Code while either criminal or civil proceedings are undertaken, (by it or by third parties), a statement to that effect is desirable and necessary. There is no reference to other judicial proceedings in either the Policy or Procedures. Most of the other universities address the possibility of extra-university action, but do so in varying ways.

York includes in the section on the application of its code, a simple statement that the university "may also invoke, in place of or in addition to its own procedures, civil, criminal or other remedies which may be available to it as a matter of law".

McMaster refers to the issue in a section entitled "Involvement of Civil Authorities" noting that "proceedings under this Code may be carried out prior to, simultaneously with, or following other off-campus proceedings, including civil or criminal proceedings."

Western provides that "Nothing in this Code precludes the University from referring an individual matter to the appropriate law enforcement agency either before, during or after disciplinary action is taken by the University under this Code. A student may be subject to criminal prosecution and/or civil proceedings, notwithstanding and in addition to, disciplinary action taken by the University against the student under this Code".

In its section on "General Provisions", Queen's provides that "The Code and this Procedure do not preclude any member of the Queen's community impacted by non-academic misconduct from pursuing criminal or civil action."

The University of Toronto takes a different approach which implies that its first recourse may be to outside authorities. Its Preface states: "Provisions for non-academic discipline should not attempt to shelter students from their civic responsibilities nor add unnecessarily to these responsibilities. Conduct that constitutes a breach of the Criminal Code or other statute, or that would give rise to a civil claim or action, will often be adequately dealt with by the appropriate criminal or civil court. In cases, however, in which criminal or civil proceedings have not been taken or would not adequately protect the University's interest and responsibilities as defined below, proceedings may be brought under a discipline code of the University, but only in cases where such internal proceedings are appropriate in the circumstances."

4.4.2 Bonds, Fines and Other Sanctions

Although it includes "restitution" among its sanctions for code breaches, unlike some of its sister universities, Windsor does not impose fines. Having the ability to impose a financial penalty on students adds another level of discouragement for the commission of inappropriate acts, not only against property but also against persons, rules and regulations. The following

examples illustrate additional penalties which could be considered as additional to Windsor's current sanctions.

Toronto provides for "a fine or bond for good behaviour not to exceed \$500." It also provides for "public service work up to 25 hours."

Queen's provides for a bond, (called a "conditional fine), as well as a "monetary fine" for which "an amount and timeline for payment must be specified".

York limits restitution for damages to \$500, but provides for a "refundable fine up to \$500" which acts as a bond, and fines that can be as high as \$1,000.

McMaster imposes fines up to \$500 in the case of violations related to smoking, late move out of residence, false alarms, failure to exit during a fire alarm, and tampering with fire safety equipment.

Western does not impose fines but includes among its sanctions "prohibition or limitation of employment at the University", and "forfeiture of University awards or financial assistance".

4.5 Editing the Procedures

My consideration of the Policy and Procedures does not include a mandate to make specific edits. However, although its principles and process are generally sound, the Procedure is in need of careful editing for coherence, for language use, and generally for greater clarity.

I noted earlier that I have tried to see the documents through the eyes of students who must navigate the process of responding to a complaint against them. I have assumed that the designated adjudicators will have developed an ability to overlook inconsistencies in language in favor of the key concepts. However, that is not so easily done without long familiarity with the procedure.

In many places, the procedure is confusing. With careful editing, the document could be much clearer for both the students and administrators. I am therefore taking the liberty of suggesting only a few of the items that could most benefit from such editing.

4.5.1 Definitions

In order to make the procedure clearer, some attention to the definitions is warranted. Some are unclear or confusing. In more than one instance, the wording of a definition extends beyond defining a word or concept to a more detailed description of meaning or responsibility; wording which would be better placed within the procedures themselves. Examples of those include the definitions of Adjudicator, Associate Vice-President Student Experience, Restorative

Justice, Sexual Misconduct Response and Prevention Officer, Subject Matter Expert and Teachable Moment.

Example 1:

- The definitions of “**Adjudicator**” and “**Associate Vice-President Student Experience**” are confusing. They are not definitions but substantive statements as to who can adjudicate complaints.

Individuals facing discipline should have a clear idea of who has authority to determine their case: in other words, who/what official will be making a decision and if necessary, imposing a penalty.

The definition of “Adjudicator” in the Procedure is “the Provost (or designate)”. In fact, it is only after the initial adjudication that the Provost is given decision making authority and part of that authority is withheld by and for the President when the recommended penalty is exclusion or expulsion from the University. The next definition contradicts the first. Under the heading “Associate Vice-President Student Experience”, the wording states that it is the AVP (or designate) who “normally” acts as investigator and adjudicator rather than the Provost.

These two definitions are further complicated by the use of the word “designate”, which usually means that a position or authority is given to a specific person or office. However, the use of the term in the definition of both Adjudicator and AVP and the circumstances around designation by these two officials, implies delegation to an unspecified person or office, rather than a clear designation.

That aspect is particularly confusing with respect to the AVP. As noted, that office is given the authority to “normally” investigate/adjudicate, with authority to “designate” someone else to act. The definition provides for the usual circumstances where the AVP might designate/delegate, i.e. the AVP’s absence or inability to act; but it also specifies that in those circumstances, it is the President who is to designate a replacement.

There is no identification of an office or position to which the Provost can delegate/designate his appellate authority or in what circumstances he is authorized to do so.

In contrast, the corresponding Senate process establishes the committee to hear allegations of academic misconduct, publishes the names of the members of the adjudicating panels and “designates” those who will substitute in the absence of a regular panel member.

The University Secretary has advised that typically the AVP Academic (or on occasion a Law Faculty member), steps in to substitute for the Provost or the AVP, usually when the AVP is in a conflict or perceived conflict of interest. Rather than the current delegation of the AVP and Provost’s authority on an *ad hoc* basis, for reasons of transparency, it would be helpful to

“designate” the offices or individuals who will serve as alternate decision makers both in the first instance and on appeal.

Example 2:

- **“Member of the University Community”** places emphasis on the Campus Police and is limited to faculty, staff and students. Only listed members can file a complaint.

Only York and McMaster join Windsor in requiring that a complaint be filed by a “community member”. Even so, McMaster’s process provides no definition of community members. Like Windsor, York defines its “community members” as faculty, staff and students

Windsor’s definition begins by naming the Campus Police and continues with “any and all faculty members, staff members and students”. Separately identifying the campus police and placing them first in the list, conveys the message that most incidents of prohibited conduct will be as a result of a Complaint by the campus police force, and that they will be the Complainant in the procedure. Neither may be nor should be the case, although it would be expected that the campus police would be the initial recipients of notice about many campus incidents.

I assume that at Windsor, as at most universities, there are a number of persons who regularly work/live or otherwise attend on campus who are not described as faculty, staff or students. Examples of these might include contractors of various kinds, partners of residence students who live on campus, and guests of the University. If they are to be allowed to make a complaint, the category of community members should be expanded. If they must complain through an official such as a Dean, departmental manager, the AVP or the Campus Police, that should also be mentioned in the procedure.

The Code extends the University’s jurisdiction over students to behaviour which occurs off campus during University activities. It is unclear whether complaints can be made by other parties affected by inappropriate behaviour during such activities, or again, whether University Community members (as currently defined) must be the initiators of a Complaint.

4.5.2 Numbering, Headings, Order of Listed Items

Not all of the paragraphs in the Procedures are numbered and not all the important paragraphs are given headings. Having consistently numbered paragraphs and items with headings creates the opportunity for a table of contents, and much easier access to relevant parts of the procedure.

Numbering and Headings:

Section 5.1.3 provides 2 notable examples of paragraphs which should have numbers and headings:

- A small paragraph following subsection 5.1.3 d), allows for the AVP to offer a “teachable moment”. Although the concept has been referred to in the definitions and under 5.1.2, this is the place where that would happen and should be noted with a heading and a numbered paragraph.
- Following that paragraph is another very important one without a header. It describes the factors that are to be taken into consideration by the AVP in determining what sanction(s) should be imposed.

Order of Listed Items:

Each of 5.1.2 and 5.1.3 provide examples of lists in which the order of items is inconsistent and/or illogical:

- 5.1.2 d) lists in point form, some illustrations of matters to be taken into account in determining the need for a disciplinary response. Logic dictates that there is an order to the consideration of whether, when, and how to proceed. The “nature and scope of the conduct” is rightly referred to as a first consideration in the beginning of the section. However, in the point form examples below, the “severity of the breach and impact on others” (arguably a different way of saying the same thing), is listed last. [Note: this paragraph is repeated in Appendix A].
- 5.13 lists the alternatives available to the AVP on completion of the investigation but they are also not listed in logical order. Item c) is the attempt to mediate, and provides that if a mediated settlement is not reached, the AVP should decide between a) and b). It would be logical to list the alternatives in a chronological order of consideration, i.e. a, d, c, b: dismiss if no misconduct (a); attempt a “restorative mediation” if possible (d); if no acknowledgement of wrongdoing, attempt a mediation and settlement (c); if that doesn’t work, proceed to make a determination and impose a sanction (b).

6. CONCLUSION

In these pages, I have addressed the issues put to me on the understanding that this review precedes a further review to be undertaken within the University. Despite my comments and the examples from other universities which have been used for comparison, I emphasize the difficulty inherent in reflecting in a policy or procedure, all of the factors and circumstances which present themselves to those charged with the responsibility for considering student non-academic discipline as they follow the course of their considerations.

Nonetheless, I hope that through the examples given, those who will consider the Policy and Procedures going forward can benefit from an observation of the range of alternative

approaches taken and different wording used by other institutions in addressing a similar task: ensuring that the standards of community behaviour are met by students and that where they are not and complaints are received, necessary and appropriate action is taken. The position of the university and the sanctions placed on the student, if any, may depend on numerous factors and circumstances, but will be investigated, adjudicated and decided on the basis fairness, without prejudice and following the principles of natural justice.

It has been both a challenge and a pleasure to be asked to look at the Policy and Procedures and I am grateful for the opportunity. My thanks to Dr. Kneale and to Ms. Wintermute for their guidance and support. I hope that my comments will help with the considerations to come.