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# Research Ethics and Academic Freedom

Committee on Academic Freedom | February 2024

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## Introduction

This Opinion discusses the limits that academic freedom imposes on universities' regulation of research ethics.

The final paragraph of section 3 of the *Act respecting academic freedom in the university sector* expressly identifies a set of principles that may form the basis for contextual limits on academic freedom. One of these principles is compliance with the standards of ethical research. Given the broad and indeterminate wording of this paragraph and the importance of ensuring that it is interpreted in way that is consistent with academic freedom, it is critical to define the nature and scope of the parameters to be respected by regulatory processes that seek to ensure compliance with research ethics in universities.

At the outset, it must be made clear that, if the limits ethical standards place on academic freedom are to be valid, the processes by which they are applied must themselves align with the core principles of academic freedom. **Merely labelling a rule or decision as relating to “ethics” does not automatically create a standard that justifies imposing limits on academic freedom.** This consideration, as we will see, highlights the need for an authority empowered to oversee both policies on research ethics and the activities of research ethics boards. **Like any university policy or regulation, policies on research ethics must be congruent with the underlying requirements of academic freedom.** This Opinion will outline the main parameters that must be respected by universities in the regulation of research ethics as they pertain to academic freedom.

After a brief review of the principles that justify regulating research ethics in universities, this Opinion identifies the most significant failings in the administration of regulations in this respect. The conditions that processes of research ethics review must meet to ensure consistency with academic freedom are then outlined. It is worth noting here that only regulations and policies relating to research ethics are discussed; rules pertaining to “scientific rigour,” which could form their own distinct subject of analysis, are not addressed.



1.

The foundations  
of the regulation of  
research ethics

In the twentieth century, scientific communities were rocked by multiple scandals. Researchers cheated, falsified data or, worse, disregarded human dignity and public health. Research performed on behalf of financial backers like tobacco manufacturers or asbestos producers lent decisive weight to the interests of its benefactors. But ways of doing things once considered acceptable are no longer tolerated. Motivated by a concern to prevent abuse, granting agencies and universities have established rules to ensure that research is performed in accordance with high standards of ethics.

Since the implementation of the Tri-Council Policy Statement in 1998,<sup>1</sup> most universities and granting agencies have adopted rules requiring review of ethical aspects of research projects. Universities have also implemented rules to comply with the principles set out by the Canadian Council on Animal Care.<sup>2</sup>

Virginie Pirard explains that, “in the broadest and most common understanding of the term, ‘research ethics’ means the processes of reflecting on, questioning, and taking responsibility for – the three terms have equal significance – the implementation of new technical and scientific possibilities in a given society.”<sup>3</sup>

These processes should initiate open-ended deliberations. Hubert Doucet describes them as “involving responsible and ongoing dialogue among research ethics boards, researchers, and even participants to ensure the development of free research in a just society.”<sup>4</sup>

The fact is, however, that ethics review processes have departed from the ideal of open dialogue between researchers and those concerned by the approach taken to their research. Indeed, significant drift can be observed in both the mission and the administration of processes of research ethics review.

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1 Canadian Institutes of Health Research, Natural Sciences and Engineering Research Council, Social Sciences and Humanities Research Council, *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, <https://publications.gc.ca/site/eng/9.869462/publication.html>.

2 Canadian Council on Animal Care, *CCCA guidelines: Categories of welfare impact*, [https://ccac.ca/Documents/Standards/Guidelines/CCAC\\_guidelines-Categories\\_of\\_welfare\\_impact.pdf](https://ccac.ca/Documents/Standards/Guidelines/CCAC_guidelines-Categories_of_welfare_impact.pdf).

3 Virginie Pirard, (2021), “L'éthique de la recherche, histoire et territoire” <https://www.cairn.info/de-nouveaux-territoires-pour-l-ethique-9782749269658-page-21.htm>.

4 Hubert Doucet, “De l'éthique de la recherche à l'éthique en recherche” in *Éthique publique*, vol. 12, No. 1 | 2010, 13-30. <https://doi.org/10.4000/ethiquepublique.88>.



## 2.

Excesses in  
the administration of  
ethics regulations

The objective here is not to question the need for or the legitimacy of rules that seek to promote research ethics or the essential role played by the bodies responsible for their application. Most academics recognize the importance of meeting the highest ethical standards in carrying out their work. By the same token, it is also generally agreed that the interpretation and application of rules of ethics must bear in mind the diversity of contexts, developments in practice, and the types of issues that arise.

Nevertheless, problems are frequently observed, particularly in the operation of bodies responsible for applying standards of research ethics. In 2022, a report entitled “*Remettre les CÉRUL au service du bien commun*” (the Report), produced on the initiative of the *Syndicat des professeures et professeurs de l’Université Laval* (SPUL), documented some of the excesses experienced by professors.<sup>5</sup> The Report notes that:

*For several years, colleagues at Université Laval have repeatedly complained of difficulties in their interactions with the Comités d’éthique de la recherche de l’Université Laval (CÉRUL). The professors complain about the CÉRUL’s rigidity and hair-splitting, saying that the committees regularly impose abusive requirements that cannot be justified under any laws, policies, or rules relevant to research ethics, and arguing that these requirements seriously hinder their work and infringe upon their academic freedom.*

The professors recounted occasions where the purposes of ethics compliance requirements were subverted. They deplored all-too-frequent shifts in the focus of ethics requirements away from the legitimate imperatives of protecting vulnerable persons and towards aims centred on safeguarding the institution’s reputation. The Report explained that “many professors described demands and objections from the CÉRUL regarding their research projects that they feel were abusive because they were very far removed from the ethical aspects of the research.”

The Report also notes that “nearly all the professors consulted expressly asked to speak anonymously, many stating clearly that they feared reprisals and believed that speaking publicly could damage their careers.”

These statements illustrate the extent of the chilling effect exerted by processes of ethics review that offer no guarantees against arbitrary decision-making. The simple fact that a significant number of professors harbour such fears in itself raises concerns relating to academic freedom.

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<sup>5</sup> Syndicat des professeur-e-s de l’Université Laval, *Mettre fin au détournement des comités d’éthique – Remettre les CÉRUL au service du bien commun* (Québec, 24 August 2022) <https://spul.ca/actualites/comites-dethique-de-la-recherche-et-liberte-academique-universite-laval/>.

Processes of research ethics review have been transformed into bureaucratic procedures requiring participants to fill out forms and take other precautions that are not necessarily rationally connected to the foundational principles of research ethics. Indeed, one might even be led to suspect that the regulation of research ethics is sometimes conceived of as a way to protect the university's public image or brand, rather than as a way to impose standards ensuring conduct that is respectful of human dignity and of the other fundamental values of research ethics.

*No one disputes the need for universities to ensure that their research practices respect human rights and that vulnerable persons and all others affected by research are genuinely protected. No one challenges the need to respect animal well-being or any other imperative underlying the standards of research ethics. The problem from the perspective of academic freedom is the unpredictable, unjustified, and disproportionate nature of some research ethics policies or of their application in practice.*

The demands of research ethics would be more easily reconciled with academic freedom if practices of ethics review placed greater value on dialogue between researchers and ethics boards.





# 3.

The regulation  
of research ethics  
as a limit on  
academic freedom

According to the final paragraph of section 3 of the *Act respecting academic freedom*, the standards of ethics and of scientific rigour generally recognized by the university sector may provide a basis for acceptable contextual limits on academic freedom. However, like any potential limit on the exercise of a fundamental right, standards of ethics must meet certain conditions to be considered reasonable and justifiable.

As noted in the above introduction, it cannot be assumed that any principle labelled with the term “standard of ethics” is an inherently valid limit on academic freedom. On the contrary, precisely because they can restrict academic freedom, standards of ethics and the processes by which they are implemented must be subject to analysis in order to determine whether the limits they place on this fundamental freedom are reasonable and justified.

The corollary to this principle is that a standard of ethics may impose no more than is necessary to accomplish its justifying purpose. It cannot be assumed that every decision issued by a research ethics body is necessarily justified or that the limits such decisions impose on academic freedom are always reasonable.

There must be a rational connection between a rule of ethics or its implementation and the basic principles that justify its existence. For example, free and informed consent should be required only in situations involving vulnerable people. And while free and informed consent naturally requires informing subjects, doing so need not invariably involve filling out long forms. Information-gathering through interviews with persons in positions of authority generally does not raise the issue of the vulnerability of the interviewee. In this type of situation, the requirement that interviewees provide written consent cannot be rationally justified by the objectives underpinning the standards of ethics.

*The decisions of ethics boards and the administrative measures that implement them must outline the rules and the reasoning on which those decisions and measures are based, and they must explain the relationship between the requirements, their justifications, and the measures that they impose.*

### 3.1 The core of academic freedom: Respect for autonomy and pluralism

The corollary to the right to academic freedom defined in section 3 of the *Act respecting academic freedom in the university sector* is the need to ensure that the processes by which academic conduct is reviewed do not indirectly entail an obligation to comply with a doctrine, an ideology, or a particular moral stance.

University teaching and research are not unambiguous activities. As they are an exercise of the freedom of expression, their practice can be described in terms drawn from a vast spectrum of notions of good and bad. It would not be said that freedom of religion is reserved only for those who practice “the right religion”; why, then, should academic freedom be conditioned on compliance with a specific conception of “the right research”?

*It seems clear that standards that claim to set down “good practices” can be indicators of reasonable conduct. The very principle of academic freedom, however, means that these indicators must be part of a process that takes into account the multiplicity of ethical models that co-exist in pluralist university environments.*

Basing a determination as to whether a fault was committed on a single current of thought elevates that current of thought to a legal rule. If the process include minimal precautions, its results may be irreconcilable with academic freedom as guaranteed by law.

Christian Hervé, Michèle Stanton-Jean and Marie-France Mamzer define research ethics and integrity as:

*A critical evaluation by the professionals themselves, open towards other disciplines in a spirit of interdisciplinarity, considering both the legitimacy of the acts and their consequences, whether individual or collective.<sup>6</sup>*

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<sup>6</sup> Christian Hervé, Michèle Stanton-Jean & Marie-France Mamzer, *Autour de l'intégrité scientifique, la loyauté et la probité – aspects cliniques, éthiques et juridiques* (Paris: Dalloz, 2016), back cover text.

The very definition of the right to academic freedom excludes doctrinal, ideological, and moral constraints, and calls instead for genuine dialogue among researchers. This is quite the opposite of finical rules and forms that are far too often imposed simply to limit liability.

Similarly, the *Act respecting academic freedom*, like the very notions at the heart of genuine ethics review processes, does not permit the imposition of standards of ethics and rigour that require compliance with a specific doctrine, ideology, or moral understanding.

Ensuring effective respect for academic freedom means guarding against the risk created by standards that claim to be based on research ethics yet privilege one specific vision over all others – for example, a narrow definition of research activity allowing little room for criticism.

Academics whose ethics differ from what is applied by an ethics review board, a disciplinary body, or a recognized expert are for all intents and purposes subjected to standards based on ethics they do not share.

*Admittedly, on some occasions it is impossible to identify any model of ethics underpinning observed conduct. But there is a significant range between the clearly unacceptable and the debatable, or the acceptable to some but unacceptable to others. To ensure respect for academic freedom, the process of determining whether a violation has occurred must acknowledge that range.*

Accordingly, an ethics review board that imposes its own views of good and bad on a given activity or that forbids the use of a word or expression without rigorous justification acts in a way that is inconsistent with academic freedom.

For academic freedom to prevail, the reasoning supporting the review of academic work must take into account that there are a plurality of understandings of how that work may be accomplished.

Espousal of a single model of ethics or responsibility inhibits the exercise of academic freedom significantly. By allowing the application of a rule that finds fault with the smallest deviation from the preferred ethical guidelines, freedom is limited to what this narrow standard allows.

In practical terms, this means that decision-makers must consider the premises underlying their reasoning with due critical distance. For example, there is danger in finding that specific academic conduct is wrongful on the basis of a single expert opinion without evaluating the assumptions underlying that opinion. In practice, it is tantamount to transforming mere opinions – which may reflect a biased and partial view of the scientific or disciplinary practice in question – into an imperative legal rule.

A process that respects the supra-legal nature of academic freedom must go further and free itself of such unilateralism. It must ensure that all academics share the concept put forward by the expert opinion or the ethical precepts on which the review claims to be based or, at a minimum, that their vision of what constitutes ethical conduct is shared. If that is not the case, it must be explained how the application of a liability regime that dictates an ethics not chosen by the researcher can constitute a reasonable limit on academic freedom.

Any other approach to analyzing a professor's conduct would impose a partial and biased view of what constitutes reasonable teaching or research practice. Finding fault on this basis would enforce one ethics for all, even for those who have chosen to adhere to a different model.

To find that a standard of ethics has been breached, the conduct observed must be analyzed on a continuum of reasonableness, rather than evaluated by a single individual, peer group, ethics board or disciplinary committee, or on the basis of one expert opinion.

Decision-makers must align their role with the imperatives of protecting academic freedom. Ethics reviews may be considered when determining whether conduct is wrongful, if that perspective is combined with a process ensuring that the academic community at large does indeed regard the conduct in question to be wrongful.

This means abandoning a mechanical application of ethical precepts. Different models of reasonable conduct must be recognized, and fault be found only where it is established that no reasonable person would have acted in such a way.

Thus framed, the process of evaluating academic work guarantees that it will target only conduct that is actually wrongful, or in other words, conduct that is condemned by all academics, regardless of their beliefs, preferences, or values. By not imposing an ethics grounded in a specific school of thought on academics who would not otherwise adhere to it, this approach reflects the imperatives of academic freedom and the pluralism of academic institutions.

## 3.2 Standards of ethics must be articulated

Among the essential guarantees that standards of ethics must provide is that they be articulated in accessible language so that a reasonable person involved in the area of activity concerned is able to understand their meaning and to conduct their activities accordingly.

*While examination of ethics is an opportunity for dialogue, something often encouraged by research ethics experts, at a certain point it must also lead to guidelines sufficiently clear to permit researchers to design their research projects and determine their methodologies accordingly.*

A university that takes measures to limit academic freedom must do so in an appropriate way. The mere invocation of an ethical principle is not sufficient to impose a constraint. Limitations on academic freedom must be based on statements clearly identifying what is permitted and what is prohibited.

In the *Act respecting academic freedom*, the principles of “standards of ethics” and “scientific rigour” set out in the final paragraph of section 3 refer to undefined prescriptions. The notions are undelineated, and their meaning depends on what is considered acceptable in the relevant sector. This type of standard generally operates without explicit techniques of overdetermination, which are usually provided by the authorities who spontaneously adopt and then implement the standard, based on their own conception of it. Defining this type of standard or spelling it out in policies can remove the leeway its indeterminacy confers on decision-makers.

That is why a decision that limits academic freedom must be based on a rule that meets the criteria of legality, that is to say, one that requires, prohibits or punishes and that is set down and accessible to those who are bound by it. University bodies cannot simply rely on their own understanding of ethical “principles” to punish an activity protected by academic freedom.

Ethics review boards bring people together for reflection and discussion so that they can determine whether a proposal meets the degree of reasonableness expected from a research project. In most situations, encouraging open discussions between boards and researchers should lead to a shared understanding of the issues and concerns and provide an opportunity to identify innovative solutions to new problems.

Standards can be expressed as prohibitions or obligations, and this is the case in most policies adopted by academic institutions or bodies that support research activities.

However, in various university spheres, standards of conduct are often expressed as notions that are vague or variable in content, such as in some “responsible research conduct” policies in force in Quebec universities. The vague notions used to articulate a general duty to comply with standards of ethics and rigour refer to the requirements of normality or quality.

When a genuine dialogue among researchers exists, research ethics review processes can provide opportunities to formalize implicit standards for academic practice. Explicitly defined and jointly determined ethical principles from which obligations can be inferred are no longer vague and may then form a body of rules to guide the review of research conduct.

### 3.3 Standards and decisions must be connected to the foundations of the regulation of research ethics

Like any rule that limits a fundamental freedom, standards of research ethics must be founded on rational justifications connected to the *raison d'être* of the regulation. It is incumbent on those invoking or applying these standards to explain their justifications.

Many research ethics decisions affirm precepts *ex cathedra*, often presenting them as self-evident. Justifying a rule, however, means explaining the relationship between its foundations and the requirements it imposes. For example, the protection of vulnerable persons is one of the most important foundations of the regulation of research and is an imperative at the core of several of the requirements imposed on researchers. Other foundations can be invoked, such as compliance with transparency requirements, rigour or probity.

For example, probity, a synonym of rightness, integrity, honesty, and rectitude, refers to the virtue of scrupulous observance of the rules of social morality, or to the duties imposed by honesty and justice. Probity also refers to the requirement of good faith.

Standards of ethics must be justified in reference to the foundations supporting the regulation of ethics. There must be a demonstrable relationship between a standard and its underpinnings. For example, if a standard is said to be based on a need to respect individual dignity, it must be possible to explain how the limits placed on the freedom to conduct research are related to the protection of dignity. Here again, we can see the critical importance of processes that initiate genuine dialogue between researchers and the other persons concerned.

A standard of ethics must aim for a sufficiently important goal to justify a limitation on academic freedom. Accordingly, its purposes must be known, articulated, and demonstrated. Hence the obligation on anyone invoking a rule of ethics to identify the goals or purposes sought by the standard. The protection of vulnerable persons, for example, justifies rules of ethics or of responsible research conduct.

Often, however, requirements imposed by research ethics bodies are not justified. The Report on the CÉRUL explains:

*Colleagues also pointed out that the CÉRUL's wish to exert control is expressed through bureaucratic zeal, with boards adopting a legalistic attitude leading them to demand a plethora of documents for reasons incomprehensible from the point of view of research ethics. Once again, a need for boards to validate a number of research-related documents before approving projects is understandable; what is more difficult to grasp, however, is how some of the documents they request are connected to ethical issues and how failure to submit them could justify blocking research projects. To provide but one example of this type of demand (as numerous as they are varied) with hard-to-fathom reasons, colleagues report that their minimal-risk projects could not be approved until they had provided CÉRUL with a copy of the message they would send to persons wishing to participate in the research but who reached out only after the data-gathering was complete. The messages were answers from the researchers, saying essentially, "Thank you for your interest, but we have completed the data collection phase and we no longer need participants for this research study."*

It must be possible to establish how the demands by such bodies are related to respect for the dignity or autonomy of the research subjects. For example, a research ethics standard that seeks to limit the right to collect public information from a person in a position of authority and acting in that capacity would not be justified.

Consequently, the authority responsible for reviewing compliance with ethical standards must refrain from passing judgment on the value of a research activity without identifying issues related to the justifications and foundations of the standards of research ethics.



*To constitute reasonable limits to academic freedom, conduct review processes established by universities must acknowledge the plurality of truths that can result from the coexistence of competing processes of validation. They must reflect the plurality of views on what is true or reasonable that co-exist in democratic spaces. Genuine dialogue makes it possible to develop rules of research ethics and practices of review that respect academic freedom.*

In short, the proliferation of forms and bureaucratic requirements cannot replace rigorous justification of the measures demanded in the name of research ethics.

### 3.4 Standards of ethics must be reasonable and proportionate

The limits imposed on academic freedom cannot be merely reasonable. Once justified, a standard must apply only to what is necessary to ensure the protection or integrity of vulnerable persons.

The relevance of standards to ensure respect for human dignity and other imperatives are generally a matter of consensus. It is in the application of ethics policies where unreasonable and disproportionate measures are observed.

In 2019, the Canadian Association of University Teachers (CAUT) lamented the onerousness of ethics processes that are so time-consuming that they become an obstacle to academic freedom. It is not uncommon for researchers to censor themselves and avoid controversial subjects rather than devote months to administrative procedures just to seek authorization for a research project.<sup>7</sup>

Rigid and fastidious interpretations of rules, excessive zeal, inordinate delays, or requirements that specific platforms be used in the research are all unreasonable and unjustified approaches. The same tendency has been observed in the requirements for certificates of ethics review before results can be published. Research involving humans is subject to the obligation to provide an attestation proving that the individuals concerned provided their free and informed consent. Universities have added further requirements, such as rules governing conflict of interest and probity.<sup>8</sup>

<sup>7</sup> Marco Fortier, "Des contrôles éthiques font tiquer les chercheurs" in *Le Devoir* (12 April 2019) <https://www.ledevoir.com/societe/education/551985/tensions-ethiques-a-l-universite>.

<sup>8</sup> Bartha Knoppers, "Les enjeux éthiques de l'évaluation éthique" in Pierre Trudel & Michèle Jean (eds.) *La malréglementation* (Montreal: PUM, 2010) at 52 et seq.

It is important to ensure that the implementation processes are transparent and that the right to appeal decisions of bodies regulating research is guaranteed.

*The reasonableness of limitations based on standards of ethics must necessarily be evaluated in light of their objective.*

*Once it is established that the objective is consistent and compliant with the rule of ethics, the infringement of the freedom resulting from that rule must be evaluated to determine whether it is minimal and proportional to its objectives.*

However, compliance with academic freedom require guarantees against conduct that is inconsistent with it. As the Report on the CÉRUL shows, professors who agreed to provide testimonials to the Report's authors asked to remain anonymous. The mere existence of a climate causing reasonable persons to fear significant consequences for publicly criticizing the processes of ethics boards is in itself a violation of academic freedom. Like all forms of freedom of expression, academic freedom must be exercised without fear of reprisals. Guarantees providing for the respect of pluralism and mechanisms to assess the soundness of decisions rendered in ethics review processes are essential.



4.

Recourses  
before the university  
committee on  
academic freedom

Like any regulation of university activities, research ethics policies and the decisions rendered in their application must be consistent with academic freedom.

Section 4 of the *Act respecting academic freedom* requires universities to adopt a policy providing for the establishment of a committee to “examine complaints about university academic freedom and, if applicable, make recommendations concerning such complaints or about any other matter relating to university academic freedom.” It seems appropriate to foreground the recourses available before the committee provided for in the Act in the hopes of motivating bodies that regulate research ethics to adopt practices that are consistent with academic freedom.

*It is clear that any decision rendered by a university body that regulates research must be open to examination by the committee on academic freedom. This committee must be empowered to review the decisions and practices of research regulation bodies to ensure that they are consistent with academic freedom.*

Similarly, the committee should be able to revise any decision by an ethics board that proves to be inconsistent with academic freedom. Recourse before the academic freedom committee is an additional avenue over and above what is often made available through collective agreements.

*However, the body established under section 4 of the Act respecting academic freedom should also be able to examine systemic constraints on the exercise of academic freedom that can arise from practices relating to research ethics. Beyond the situations at issue in individual complaints, some practices may be irreconcilable with academic freedom in certain contexts.*

It is the duty of bodies responsible for ensuring the exercise of academic freedom to recognize that individual professors are not responsible for everything. Institutions must also provide meaningful responses to systemic issues.

## Conclusion

Pursuant to the final paragraph of section 3 of the *Act respecting academic freedom*, this freedom may validly be limited by the standards of research ethics. But it is not sufficient simply to affix the label “ethics” on a requirement for it to constitute a reasonable and justified standard limiting academic freedom.

This Opinion explains the precautions and processes necessary to ensure that the regulation of research ethics is in practice aligned with academic freedom.

Standards of ethics and the processes by which they are applied cannot impose limits beyond what is reasonable in a pluralistic university, or beyond what has been established to be necessary to accomplish a legitimate purpose. Reasoning otherwise would amount to subjecting academic freedom to any standard at all that claims to set out an obligation to respect the dignity or sensitivities of a given group of people.

Therefore, to ensure respect for academic freedom, it is essential that policies that set out standards of research and the practices employed to apply them be carefully circumscribed. Furthermore, to guarantee academic freedom, individual decisions and the practices and policies emanating from university bodies that regulate research must be subject to examination by academic freedom committees.

