

Canada's Member-to-Member Code of Conduct on Sexual Harassment in the House of Commons: Progress or Regress?

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Introduction

The #MeToo movement has brought the issues of sexual harassment and violence against women sharply into the public's consciousness, and the realm of politics is no exception. As a male-dominated profession, females and other members of minority groups who seek (and hold) political office have historically faced opposition in the forms of violent and harassing behaviour. What is unique about today is the number of women publicly speaking out about their experiences in all workplaces. In politics, female politicians have begun speaking out in unison about the violence they have faced while running for, and sitting in, public office. In several respects, Canada's experiences in dealing with these issues are unique in that they pre-date the #MeToo movement and serve as an early template of state response worthy of analysis. In the fall of 2014, public allegations came to light that two female New Democratic members of Parliament had separately been sexually harassed by two male Liberal MPs. In response, the then leader of the Liberal party (at the time the third party in the House), Justin Trudeau, announced to the

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public that he had suspended the two MPs in question—Massimo Pacetti and Scott Andrews—from the party caucus for “personal misconduct” reasons. The Liberal party then conducted an internal investigation, which ultimately led to the permanent caucus dismissal of both MPs, and neither was permitted to run under the Liberal banner in the subsequent 2015 federal election (CTV *News*, 2016).

Criticism of Trudeau’s approach to these events centred on the fact that the male Liberal MPs were not given access to due process, that they were unnecessarily publicly shamed and that the findings of the private investigation (led by an outside human rights lawyer) were never made public.¹ From a gender equality perspective, these incidents raise at least two additional concerns. The first, that sexism and sexual harassment were clearly problems in the House of Commons. The second, that there was a gap in the regulatory framework that governs the behaviours of MPs related to sexual harassment. In effect, the House of Commons had no process in place for MPs or political staff to report sexual harassment on the Hill.

In response,² the House of Commons adopted a new *Code of Conduct on Sexual Harassment* governing non-criminal sexual harassment claims between MPs on June 9, 2015. While some observers have lauded the code as a positive step for Canadian democracy, the objective of this paper is to look beyond the initial accolades by asking the following three questions. (1) In what ways does the code respond to the wider problems of sexism and sexual harassment in Canadian Parliament? (2) How does the code interact with the pre-existing gendered norms embedded in Canadian parliamentary practice? And finally, (3) what can we expect in terms of making the workplace safer for female politicians in Canada now that the code is in place? To answer these questions, we analyze the code utilizing a feminist institutional lens and by drawing upon feminist studies of violence against women and sexual harassment in the workplace.

Our central argument in the paper is that in addition to its definitional limitations, the code leaves intact many of the institutional norms within which it operates, including those of party discipline and confidentiality, an adversarial style of debate and various parliamentary privileges. Although recently enacted, the gendered and interlocking nature of these parliamentary conventions therefore severely limits any potential the code may have to remedy the problems of sexual harassment specifically, and unequal gender relations broadly, in Canada’s House of Commons. Further, we show how Canada’s *MP-to-MP Code of Conduct* is a new institutional rule “nested” inside old intransigent institutions that not only fails to challenge existing patriarchal norms, but also reinforces and permits them under the guise of change.

The paper proceeds as follows. First, we review key insights from feminist institutionalism research, drawing particular attention to scholarship on the gendered/sexist norms inside Westminster parliaments. We also

Abstract. In 2015, the Canadian House of Commons passed a new code of conduct governing non-criminal sexual harassment between members of Parliament becoming the first of its kind in any Westminster system in the world. Using a feminist institutional and violence-against-women-in-politics approach, we assess how the code challenges, legitimizes and upholds traditionally gendered norms and institutionalized sexism within Canada's parliamentary system including parliamentary privilege, party cohesion and party discipline. Despite its novelty, we argue this code fails to enact positive gender-friendly institutional change and may do more harm than good in its efforts to curb sexual harassment.

Résumé. En 2015, la Chambre des communes du Canada a adopté un nouveau code de conduite en matière de harcèlement sexuel non criminel entre élus, le premier du genre au sein du système de Westminster au monde. En utilisant une approche féministe institutionnelle et de la violence faite aux femmes en politique, nous évaluons comment le code remet en question, légitime et maintient les normes traditionnellement sexospécifiques et le sexisme institutionnalisé au sein du système parlementaire canadien, y compris le privilège parlementaire, la cohésion et la discipline de parti. Malgré sa nouveauté, nous soutenons que ce code ne parvient pas à mettre en œuvre des changements institutionnels positifs favorables à l'égalité des sexes et qu'il peut faire plus de mal que de bien dans ses efforts visant à réduire le harcèlement sexuel.

introduce the concept of violence against women in politics and show how it relates to Canada's new code. Next, an overview of the main content and provisions of the *MP-to-MP Code of Conduct on Sexual Harassment* is provided. We then examine the code through a gendered lens by situating it within the broader structures and culture of Canada's Westminster Parliament. The paper expands on the literatures of feminist institutionalism and violence against women by showing how new institutional rules can be used to uphold and even reinforce masculinized norms that perpetuate violence against, and harassment of, female politicians. Although we have little expectation that a single code of conduct could successfully alter the broader sexist culture of any institution on its own, our insights serve as a cautionary note to gender-equality advocates that symbolic change that appears as substantive change can have detrimental effects for women by allowing rule makers to claim success and thus prevent further or more effective action be taken.

Feminist Institutionalism and Westminster Parliamentary Norms

After a decade of research, feminist institutionalism (FI) has emerged as an important theoretical lens for scholars interested in the gendered dynamics of political institutions. One of its main contributions is the examination of gender inside of institutions as a rule, rather than as an add-on, to earlier schools of institutionalist thought (such as historical, neo-institutional, and sociological). With gender foremost in mind, FI scholars seek to

explain and analyze both the formal and the informal aspects of institutions, revealing the ways in which “old” masculine rules and norms have historically disadvantaged women (Waylen, 2014: 213).

Previous FI research has examined gender within Westminster institutional settings in particular (Chappell, 2006; Childs, 2004; Collier and Raney, 2016; Crewe, 2014; Lovenduski, 2014a, 2014b). Lovenduski argues that sexism is itself an institutionalized feature of Westminster parliaments, and women “may or may not face hostile men, but they do face institutions that are constructed to exclude women” (2014a:16–17). Arguably, Westminster parliamentary systems are even more prone to an orientation of social dominance that facilitates sexual harassment through their unwritten conventions, including the myth of neutrality, a foundation built on adversarial political debate and the embrace of parliamentary privilege (Collier and Raney, 2016).

Chappell suggests that the supposed “gender neutrality” inside of legislative arenas is a myth that hides the presence of a “gendered logic of appropriateness.” For her, the Westminster norm of bureaucratic neutrality masks the fact that “embedded assumptions about appropriate forms of behaviour in the public service are, in fact, masculine” (2006: 227). Moreover, the perception that such norms are “gender-free” helps to naturalize them, making them particularly challenging to replace. Those who come up against them run the risk of being branded as “deviants and punished through acts of censure, ridicule, or harassment” (603). The supposed neutrality of Westminster’s adversarial system is another example of Chappell’s “gendered logic of appropriateness.” The purpose of this adversarial system is to hold the government to public account as well as to offer voters exposure to the ideas of an alternative government in waiting via the theatre of Question Period. However, the norms and values of this adversarial system favour a masculinized style of debate—loud, argumentative and brash—and further buttress the logic of appropriateness inside of the legislature to the detriment of female actors. Westminster legislatures in particular embrace “intransigence or bullying” and “send the message that politics is an activity for men” (Lovenduski, 2014b:18).

We would suggest that the existence of parliamentary privilege adds another layer to the male logic of appropriateness inside of Westminster lower houses. Individual members of Canada’s Parliament possess certain privileges, rights, and immunities deemed “necessary” to ensure that they can properly represent their constituencies and fulfil their functions in the House. Privileges include “freedom of speech” inside the House, freedom from arrest, exemption from jury duty and exemption from attending court as witnesses (Moore and Robertson, 2001: 2). These rights allow MPs to be free from undue interference when asking questions, debating and legislating, and have long-standing roots in Westminster systems, with many arguing that protection of an MP’s free speech is “essential”

to the proper operation of parliament (Moore and Robertson, 2001; Wright, 2007: 3). Despite the fact that MPs are periodically reminded by the Speaker to avoid “unparliamentary” language, the procedural rules of the Canadian House of Commons contain no explicit prohibitions of sexist comments and attitudes from being expressed on the House floor.³

FI scholars have further assessed the potential for new “codified set[s] of rules” to re-gender already gendered institutions, with mixed reviews (Chappell, 2014; Mackay, 2014). For Waylen, positive results are more likely if “new institutions can offer opportunities for gender concerns to be incorporated more easily and fundamentally at the outset of an institution’s life than it is to ‘add them in’ at a later state” (2008: 273). Similarly, Mackay observes that institutional innovation can be supported or resisted through numerous strategies, including, for example, “remembering the old” and/or “forgetting the new” (2014: 550). She argues that “new” rules are in fact “nested” inside of older norms so researchers must be cognizant of how such changes are layered between, or “nested” atop, pre-existing structures that have historically privileged white men (551). In her study of the impact of new gender justice provisions in the 1998 Rome Statute of the International Criminal Court, Chappell found that there is overlap between newness and oldness as “legacies of rules and practices continue to ‘stick’ and operate to influence the interpretation and implementation of those rules, often distorting and diluting them” (2014: 591). While the concept of nested newness explains why new institutional rules can be impacted and at times usurped by older sticky norms, it does not consider the potential that new rules could actually *reinforce* those older norms under the guise of progressive change.

Feminist institutionalism also helps explain why women are frequently subjected to sexist, demeaning and harassing behaviour within politics. Rather than explain these events as the actions of a few sexist “bad apples,” we are calling to mind the wider institutional framework that facilitates such behaviours. This might include cultural norms of acceptability or turning a blind eye towards a sexist remark or innuendo, and more formal rules that prevent women from engaging as full representatives (such as placing women’s washrooms farther away than the men’s washrooms from the debate chamber). Although sexism has always existed in politics, the rising number of female politicians poses a challenge to the gendered *modus operandi* of legislatures globally. The increasing number of women in legislative spaces shines a light on “the extent of male control” alongside the “hidden expectations that exist within these [parliamentary] spaces” (Waylen and Chappell, 2013: 601).

In this context, sexism and sexual harassment (as well as racism, and homo- and transphobia) can be thought of as tools of reinforcement, to be deployed when the natural order of patriarchy that is embedded within legislatures is perceived to be under attack from outsiders (Puwar, 2004).

In response, the presence of women is met with resistance, and women must conform to the pre-established (masculine) behaviours of the institution or be subjected to reprisals for non-compliance. Russell and Trigg argue that an orientation of social dominance where one social group holds a place of privilege or dominance over another in the workplace can further facilitate sexual harassment (2004: 566). An orientation of social dominance where men are assumed to be the natural actors/participants and women are viewed as strangers or interlopers helps lay the groundwork for sexist attitudes.

Here, we supplement the insights of FI scholars with those from the emerging scholarship on violence against women in politics, which is understood as a significant deterrent for women entering into, and staying in, politics globally (Krook and Restrepo Sanin, 2016; Krook, 2017; National Democracy Institute, 2016: 13). Violence against women in politics (VAW-P) serves “to frighten other women who are already politically active, deter women who might consider engaging in politics and to communicate to society that women should not participate in public life in any capacity” (NDI, 2016: 13). VAW-P is best understood as a continuum that includes sexist remarks, innuendos and behaviours, sexual assault, symbolic violence (the sexualisation of women’s bodies), psychological violence (death, rape or abduction threats or taunts), economic violence (restricting women’s economic access to resources) and sexual or gendered harassment (for example, see Krook, 2017). Bringing the feminist institutionalism and the VAW-P scholarship together, in the next section we pay particular attention to how the code interacts with, and buttresses, a wider institutional and patriarchal culture that perpetuates violence against women in politics, broadly understood.

Canada’s *MP-to-MP Code of Conduct on Sexual Harassment: Contents and Procedures*

While workplace sexual harassment codes have been regularly adopted across the country, including inside the federal public service, the House of Commons had avoided such regulations until 2015. Notably, to date Canada is the only Westminster country to have passed an MP-to-MP based code of conduct on sexual harassment specifically and one of only four national parliaments (including South Africa, Costa Rica and Thailand) that have “provisions that explicitly protect members against sexist remarks, sexual harassment and threats of violence from other members” (International Parliamentary Union, 2016: 9). The Canadian MP-to-MP code follows the adoption of another policy that addresses the sexual harassment of political staffers working for MPs, and was created

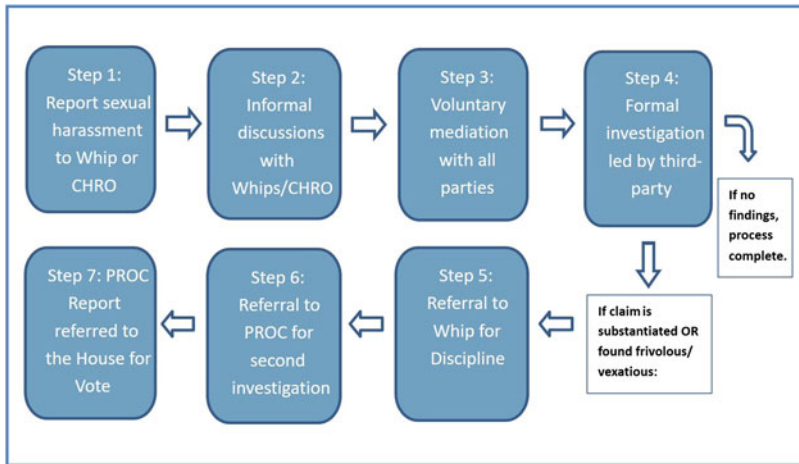
as a separate, standalone policy as parliamentary privilege dictates that members of the House have the right to regulate their own affairs.⁴

Similar to many legislatures around the world, sexism and sexual harassment are not new phenomena in the Canadian House of Commons. Female MPs have been taunted, ridiculed, teased, shamed and harassed on numerous occasions (Collier and Raney, 2016). This heightened sexist culture reached such a level in 1990 that several female MPs created a cross-party organization, the Association of Women Parliamentarians (AWP), to attempt to curb the use of derogatory names and sexist insults against women.⁵ Despite women's electoral gains over time, Canada's House of Commons remains a male-dominated space where sexism continues to occur, and the 2015 code of conduct purports to combat this non-gender-friendly atmosphere. Drafted by an all-party sub-committee of the Standing Committee on Procedure and House Affairs (PROC), the code was amended to the Standing Orders of Parliament as an appendix, meaning that it is now part of the permanent, formal rules of the House. This means that it will remain in effect until members choose to amend, suspend or repeal it. To facilitate a sexual harassment-free environment, the revised standing orders include a specific rule of conduct that prohibits one MP from sexually harassing another. All MPs must also sign a pledge which states that "as a Member of the Parliament of Canada, I commit to contribute to a work environment free of sexual harassment. Part of our mission is to create a workplace free of sexual harassment" (Canada, 2015a: 2).

In addition to prohibiting member-to-member sexual harassment, the new code includes preventative measures such as a briefing on the code by the Chief Human Resources Officer (CHRO) at the start of each new parliament and CHRO-led educational activities which include training of MPs on preventing sexual harassment in the workplace.⁶ Also, a new icon for the harassment prevention section was added to IntraParl (the internal parliamentary website). Additionally, CHRO-led presentations to party caucuses and electronic information reminders of the code are to be provided to new and existing MPs.

In the event of a claim of sexual harassment between two MPs, the code also includes a resolution process (see [Figure 1](#)). The first step of the resolution process occurs when a complainant reports a sexual harassment allegation. (If the complainant and respondent are from the same party, the complainant may report to either their party whip or to the CHRO; if they are from different parties, they may report directly to the CHRO). The next step occurs when the CHRO and/or whip involved discuss(es) the matter informally with the respondent. If a solution does not present itself, the CHRO or whip (if involved) may then initiate a voluntary, confidential mediation process with the complainant and respondent (if both agree). Members have access to the House of Commons

FIGURE 1
MP Code of Conduct on Sexual Harassment: Resolution Process
(Complainant-Driven)



Source: Constructed by the authors based on the PROC House Committee's 38th Report on the *Code of Conduct for Members of the House of Commons on Sexual Harassment*.

Administration's program, *Finding Solutions Together*, which provides confidential facilitation services to its employees. If mediation does not occur (or is unsuccessful), the CHRO may then request that the complainant file a formal complaint. Upon receipt of a formal complaint, the CHRO is empowered to contact a third-party investigator who will investigate and prepare a report, a draft of which is circulated to all parties for comment prior to finalization.

Based on the investigator's report, the code allows for three possible outcomes: (1) a finding of insufficient evidence of sexual harassment; (2) a finding of sufficient evidence to support a claim; or, (3) a finding of insufficient evidence to support a claim and where the complaint was actually frivolous, "vexatious," or not made in good faith (that is, false). In the first instance (a null finding), the matter will be closed. In the latter two cases, the code introduces two separate disciplinary procedures. If a claim is substantiated, the complainant may advise the CHRO that they believe further action is warranted against the respondent. Conversely, if a complaint is found to be false, the respondent may advise the CHRO that they believe further action is warranted *against the complainant*. The CHRO then communicates the results of the report to the whip concerned (the respondent's whip in the event of a substantiated claim; the complainant's whip in the event of a false claim), who then proposes an appropriate

disciplinary action. In either scenario, if the proposed sanction(s) is deemed unsatisfactory to either party, the complainant/respondent may propose additional remedies to the CHRO, who will communicate these to the concerned party whip. If the party whip agrees with the additional proposed measures, the matter is then closed. However, if the whip does not agree, or if either member does not agree, the matter is subsequently referred to the Standing Committee on Procedure and House Affairs (PROC) alongside a copy of the investigative report.

Should a complaint reach this stage, the PROC Committee is to prepare its own report to be tabled in the House. Through *in camera* proceedings, the committee may decide whether all, some, or a summary of the investigator's report may be used as evidence. The members who are subjects of the investigation have the right to address the committee at this stage of the process. The PROC committee may further "recommend any sanctions that the House of Commons has available to it to address the findings of the investigation report" (Canada, 2015a: 7). If the matter has been referred to the committee, up to and until the committee tables its report to Parliament, the member who referred the matter may at any point withdraw their request for further investigation. Once the committee has tabled its report, a motion to accept is then voted upon on the floor of the House.

Using information from the proceedings of the All Party Committee on the Code of Conduct for Members, text from the final report of the committee, as well as the text of the code itself, we now analyze these issues using a gender and politics and feminist institutionalist lens.⁷ Our analysis focuses on key areas: its narrow definitions, the role of party whips, parliamentary privileges, parliamentary debate rules and the code's internal review mechanisms.

Codifying Sexual Harassment Prevention in the House: Analysis

Textual limits: Narrow definitions and myths of sexual harassment

Textual limits of the code include a limited definition of sexual harassment; the perpetuation of myths of false reporting; as well as a tendency toward victim blaming. Our first consideration is of the actual text of the code itself and how it defines the problem it seeks to address. Here, we see that the code's definition of what constitutes sexual harassment is quite limited compared to other definitions of sexual harassment used by human rights commissions in Canada. In particular, the Committee on the Code of Conduct for Members *Report* settled on the following definition: "A Member shall not sexually harass any person. Sexual harassment, in this context means unwanted conduct of a sexual nature that detrimentally affects the work environment" (Canada, 2015a: 3). The restriction of conduct covered to include only that of a "sexual" nature is narrow

compared to the definition used by the Ontario Human Rights Commission (OHRC) in its *Policy on preventing sexual and gender-based harassment*. The OHRC definition has evolved over time to include behaviour “against someone due to their sex,” which may “also constitute sexual harassment, even if the behaviour is not explicitly sexual.” This can include “vexatious comments, directed towards women due to their sex or sexuality” (OHRC, 2013). Clearly, the OHRC definition is more open to curbing a wider range of sexist behaviour in the workplace. It also specifically recognizes intersectionality and its compounding impacts on sexual harassment including “race, marital status, and sexual orientation” (OHRC, 2013), which are currently absent from the House of Commons code.⁸

Another textual limitation is that the code only covers cases of “non-criminal sexual harassment” between members of Parliament. If there is a potential that a criminal offence has occurred, “the office of the Law Clerk and Parliamentary Counsel is advised, and the matter will be referred to the appropriate law enforcement agency, following the agreement from the complainant” (Canada, 2015a: 2). There is no delineation in the language of the code itself between non-criminal sexual harassment and criminal sexual harassment or sexual assault. This lack of clarity may dissuade members from using the code if they are unsure of how their specific experience of harassment should be categorized.⁹

We also see disturbing trends toward potential victim blaming embedded within the code. Foremost among these is the inclusion of a disciplinary process in the event of a claim that is found to be “frivolous” or “vexatious.” In these cases, the code introduces a new process designed to protect (mostly male) MPs from false claims by allowing for a complainant to be punished should their claim be deemed false. The inclusion of this provision is reflective of negative gender stereotypes that downplay female complainants’ credibility in cases of sexual harassment and sexual assault and perpetuate and accept disproven rape and sexual assault myths. Incidents of false reporting of sexual assault or harassment are statistically similar to incidents of false reporting for other crimes (approximately 2 to 8%). However, the belief behind rape and sexual assault myths is that women lie about being assaulted or harassed anywhere from 20 to 50 per cent of the time.¹⁰ Drawing upon this stereotype/myth can presumably further protect or insulate the rights and privileges of potential perpetrators of sexual harassment and create a chilling effect on female complainants that may lead to underreporting of valid complaints.¹¹

Taken together, the code’s limited definitions of sexual harassment and willingness to perpetuate the myths of false reporting and victim blaming render it flawed from the outset. Even though the enactment of a policy normally indicates that the workplace is ready to recognize and address the problem of sexual harassment, as Dekker and Barling observe (1998: 9), a weak and ineffectual policy can problematically do more damage

than good by *increasing* incidents of sexual harassment rather than curtailing them.

Institutional contexts: The role of party whips

Although the new code allows for the CHRO's involvement, political parties retain considerable power and influence over the process. Party whips can facilitate informal conversations with a complainant and/or respondent from their own party; they are involved in the mediation and investigations processes; and they may "co-ordinate any disciplinary and/or accommodation measures deemed necessary" during the resolution phase of a complaint (Canada, 2015a: 4). It is also important to bear in mind the historical importance of party whips to the smooth functioning of parliamentary systems. Historically, whips have served to maintain several of the main operating features integral to Westminster systems, including but not limited to protecting party secrecy, party cohesion, and collective responsibility. Westmacott observes that party whips often "serve as a 'sounding board' for the concerns of backbenchers and to determine whether accommodation can be reached when the party position and that of an individual member come into conflict" (1983: 15–16). In Canada, where parliamentary parties are strongly controlled by the centre (in terms of parliamentary committee assignments, assigning questions during debate, and doling out party resources like office budgets, staff, and travel money), the party whip plays a critical role in preserving this tradition.

In the code, the whip's role may be especially influential during the informal discussions and voluntary mediation phases, allowing a party to seek quick and quiet resolutions. As central gatekeeper figures within the code, party whips are likely to be confronted with two contradictory tensions. The first is that they deal with allegations of sexual harassment fairly and in accordance with the new code. The second is based on the historical expectation that as party whips they will ensure that minimal damage is inflicted upon their party. The code therefore introduces a potential new conflict of interest for party whips as they must potentially weigh the interests of justice against those of strong, hierarchically-controlled political parties. In many cases, it is foreseeable that as "old actors," whips may choose to resort to old legacies of the past by seeking to make problems go away.

The adversarial nature of the House may also curtail the willingness of members to report an allegation of sexual harassment and compound the problem of underreporting. Given the hegemony of masculine norms in parliamentary debates, members may not want to appear "weak" to their party whip and may be reluctant to file a complaint which shows them to be vulnerable or unable to satisfy the expected rigours of the institution. The prospects of having to bring forward their complaints to their (likely male and

likely more senior) party whip—whose job it is to maintain party discipline and cohesion—may serve as a further disincentive for victims to report harassment. In an occupation where party support and positive media attention are important elements of professional success, complainants, especially new members or backbenchers who possess weaker institutionalized power, may be reluctant to report an allegation or escalate a claim, lest it weaken their chances of promotion within their party or hurt their chances of re-election.

The code also gives the whips considerable leeway over disciplinary actions for code violations and it offers no standardized recommendations for appropriate sanctions based on specific behaviours. It does this by not allowing the CHRO to propose sanctions, leaving these decisions to the total discretion of the parties. As a consequence, a number of scenarios are foreseeable: different parties might choose to impose different sanctions for the same offense.¹² When sexual harassment occurs between two members of the same party, a whip could discipline the offending member lightly in secret or they could vary their punishments on a case-by-case basis, depending on the MPs involved (for example, if the respondent is a high-profile figure within the party, there may be a stronger incentive to invoke a gentler sanction). Thus, Canada's Parliament has effectively enacted a Code of Conduct where the consequences of MP-to-MP sexual harassment are negotiable: MPs may or may not be punished seriously (or at all) when they violate the code, based on the whims of the parties involved.

Preserving precedence: MP privileges

Rather than challenge some of the older rules and norms in Parliament that facilitate sexual harassment in politics, Canada's new code appears to perpetuate a number of them.

In this way, the code illustrates how new practices nested within older, deeply entrenched ones serve to enable sexist behaviours in the workplace. Committee deliberations about the code emphasize and highlight concerns that parliamentary privileges of speech, confidentiality and privacy must not be challenged. During its February 2015 meeting, the deputy law clerk and parliamentary counsel noted that one of the main challenges in creating any policy or code of conduct to combat harassment between members of the House was to ensure that it explicitly does not infringe upon freedom of speech during debates (Canada, 2015b). Thus, the code instructs that confidentiality is germane due to the "sensitive nature of sexual harassment" and that "no more [information] than is sufficient for the public to understand the circumstances and consequences of the resolution" can be disclosed (Canada, 2015a: 3). It is not clear what would constitute information that is "sufficient for the public" but the code also reaffirms the requirement that privacy be protected in that "no information

that would enable the identity of an involved individual should be revealed” (Canada, 2015a: 3).

The prioritization of parliamentary norms of privilege in this case is problematic as stringent and widespread privacy protections could hinder progress in curbing sexist behaviour inside of the House of Commons. The end result means that “Canadians may never know whether an MP has been found to have sexually harassed another parliamentarian” (Thompson, 2015: 1). Additionally, disciplinary actions taken will almost always be hidden, rendering such incidents invisible for others to learn from in order to help deter the behaviour. Confidentiality of both parties, the complainant and the respondent, is maintained, for example, should both parties agree to the disciplinary actions proposed by a whip. In these cases, neither MP would be named publicly *even if a respondent has accepted a disciplinary action against them*. Importantly, the only point at which a respondent who has violated the code might be named publicly is in the PROC report tabled to the House, which is the very last step of a long process (Section 26 of the code). Even then, the public naming of an offender is not required by the code.¹³

Equally disturbing is that the code allows for an MP who has been found to have sexually harassed another MP to go without punishment. This situation might occur in cases where an investigator’s report substantiates a claim yet a complainant decides to no longer pursue further action (Section 26 (1)). In the event that a complainant no longer wishes to pursue the matter, the case would be considered closed. The code does not explicitly provide for the House to press a case forward of its own volition. Allowing a member to evade responsibility when they have been found to have sexually harassed another member is troubling, and it also presupposes that the House has little collective interest in punishing this behaviour. Proactive House action using the code also could have more clearly delineated the boundaries of acceptable behaviour within the House along gendered lines. As is, allowing for “conditional” punishments in proven cases of sexual harassment is a missed opportunity to reinterpret the House’s collective right to discipline its members in ways that would likely benefit women.

In the event that a complainant chooses to press their case forward to the PROC committee, although the committee is permitted to propose a disciplinary action against the member of the House, by convention these collective powers are, in actuality, seldom exercised in Canada (O’Brien and Bosc, 2009). This scenario is also likely to be quite rare, and would require that a complainant (or respondent) has escalated a claim through the long resolution process, whereupon a parliamentary committee of fellow MPs would adjudicate upon it (and is not bound by the findings of the investigator’s report). It is therefore highly unlikely that the PROC committee would be willing to break with historical precedence in these

instances by, for example, calling out an individual member for contempt of Parliament or calling them to the Bar of the House, for even the most serious of code offences.¹⁴ More likely is that old institutional patterns and path dependencies that protect certain parliamentary privileges (such as party secrecy and freedom of speech) will prevail, and discipline will be meted out sparingly and discretely as has been done historically.

Unchallenged androcentric debate conventions

The code is further silent on the deeply ingrained institutional culture that has made it acceptable to taunt, ridicule and demean (mostly female) parliamentarians. These behaviours occur even in the presence of the “long-standing tradition of respect for the integrity of all members” in House proceedings (Marleau and Montpetit, 2000). When unparliamentary language is used in the House, the Speaker is to “take into account the tone, manner and intention of the Member speaking; the person to whom the words were directed; the degree of provocation; and, most importantly, whether or not the remarks created disorder in the Chamber” (Marleau and Montpetit, 2000). In recent times, the Speaker of the House has not always called on members when unparliamentary language or behaviour occurs in the House, and heckling has reached unprecedented levels. In one report, 69 per cent of MPs reported that heckling was a problem in the House, while female MPs reported that the nature of heckling they experienced was gendered in nature (Samara Institute, 2015). Less is known about how MPs behave in other parliamentary spaces such as their offices or committee hearings where the scrutiny of the media and the public’s attention are absent. Recent events since the code’s adoption show that sexist language and inappropriate behaviour are still occurring. Ironically, on International Women’s Day March 8, 2017, in response to a female colleague’s phone ring tone during an *in camera* House Standing Committee meeting, a male Liberal MP asked a female Conservative MP “where’s your pole to slide down on?” (Rana, 2018). The present reality that sexist behaviour and language are not considered unparliamentary as a rule in the Canadian House of Commons exposes the limits of this code in addressing the wider institutional-cultural climate that makes sexual harassment permissible in the first place.

An “unsticky” code: Weak maintenance and review procedures

Our final consideration is of the code’s review and reporting procedures. Section 51 allows for the House PROC committee to undertake a review of the code within a two-year timeframe after coming into force. This mandatory, one-time review was presented to the House on October 25, 2017, and includes three proposed modifications, none of which would significantly alter the gendered power dynamics we discuss above.¹⁵

Furthermore, the review provisions include no reporting requirements, meaning that the CHRO (or any other legislative office or body), is not mandated to report on the implementation of the code to Parliament. While the CHRO must keep records on individual, reported incidences for a period of five years (after which the records are destroyed), it is not empowered to track or collect data on compliance over time. This omission stands in contrast, for example, to the powers of the CHRO over the separate 2014 policy on sexual harassment with MPs' staff, whereby the officer must submit an annual report to the PROC on the implementation and use of the policy. Similarly, the ethics commissioner (an independent officer of Parliament), must table her or his report annually in the House and publish the results on the ethics website for public access on compliance with the MP conflict of interest code (separate from the harassment codes). Even if the MP-to-MP sexual harassment code contained substantive preventative measures, this weak review mechanism would make it difficult for such changes to "stick" over time, a key component for re-gendering of political institutions to occur.

These deficiencies raise concerns about a lack of transparency and accountability. Without sufficient tracking of the problem, it will be impossible to know whether the code is actually working to reduce the number of incidences of sexual harassment in the House over time or whether they are being used at all. Another consequence is that MPs and the public will never know the current depth of the problem of sexual harassment as supported by evidence and data. This is despite the fact that 58 per cent of female politicians on the Hill reported in a recent survey that they had experienced "sexual misconduct" in their jobs (Ryckewaert, 2018). Although many female MPs are aware that this behaviour is rampant in politics (see Nash, 2017), if women feel they are the only ones reporting this behaviour, that may prove to be a powerful disincentive for them to do so. Instead, female legislators might continue to accept another prevalent myth that sexual harassment is "just the cost" of women doing politics (NDI, 2016).

The code's lack of transparency is also problematic and may actually provide parties with more "cover" to keep such instances out of the public eye. When asked by the media whether he would be punishing his MP for the sexist "pole" statements made in committee in March 2017, Prime Minister Trudeau declined to comment, citing the new code as the reason for his silence (Russell, 2017). A week later, the male MP in question stood in the House to publicly apologize to the MP whom he harassed. Given the highly secretive nature of the code, we are not able to confirm whether the public apology arose because the code had been implemented, or whether this was the lone disciplinary action taken against the MP who made the remark. This case reveals how the code's confidentiality provisions can be used by party leaders, or "old actors," to claim plausible deniability throughout a sexual harassment claim. By way of comparison,

Liberal leader Justin Trudeau was unable to evade responsibility for the behaviour of his members in 2014 due to intense media awareness and attention at the time. Under the code's cloak of privacy, the media and public will be kept in the dark on the scope and depth of this problem more often than not.

The code's deficiencies have been further revealed since the emergence of the #MeToo movement. In the aftermath of further allegations of inappropriate behaviour against MPs from all three main federal parties, the Liberals, Conservatives and NDP signalled their intentions to adopt party-level policies and/or codes to address this problem. In spring 2018 the House of Commons plans to offer "mandatory" in-person training on sexual harassment on the Hill, but this requirement was not added to the permanent text of the MP-to-MP code. Without codification, however, it is entirely possible that once the #MeToo movement fades from public consciousness, the parties will be left again to their own devices and revert to old habits and behaviours. Even during the intense media spotlight of late 2017 and early 2018, some MPs have been publicly skeptical about the need for additional measures to be taken beyond the existing code (Rana, 2018).

In early 2018, a Liberal government motion to further review the code beyond the mandated 2017 PROC review, was debated and ultimately passed unanimously. While this announcement provides an opportunity for change to occur, our findings suggest that these are unlikely to result in meaningful improvements unless reviewers pay attention to the cultural underpinnings of Canadian Parliament itself, alongside the deeply rooted masculinized norms and rules that legitimize sexist behaviours in the first place.

Conclusion

The #MeToo movement has brought the problems of violence against women and sexual harassment into the global spotlight. As politicians outside Canada seek to find solutions to address them, Canada has been considered an early leader in dealing with this problem in federal politics. In the IPU's preliminary report on the subject in 2016, Canada's new code of conduct is referenced as a positive development. Our analyses suggest otherwise. Foremost among our concerns is that the code leaves intact, and remains embedded within, pre-existing norms and procedures of Canada's Westminster-style of governance which themselves are gendered. Our paper thus provides a cautionary note to feminist activists on the hazards of adopting essentially symbolic rule changes that leave intact and ultimately reinforce masculinized power structures, even when they appear to directly address these gender imbalances. In the end, these changes at present appear to do more harm than good.

The findings here represent a new typology within feminist institutionalist studies of legislative codes of conduct that are “nested” on top of historical institutional rules. Although early days, this code provides a useful case study of how formal changes can *appear* progressive on the surface yet still provide ample opportunities and “cover” for traditional actors to cleave to old habits and behaviours that undermine positive, gendered change, which in the end makes matters worse. We can further pinpoint the longstanding androcentric norms inside Canada’s Parliament that create disincentives for meaningful change to occur, including party discipline, the adversarial nature of parliamentary debates, the myth of neutrality of the roles and expected behaviours of elected MPs, and the hyper-protection of freedom of speech inside of the rules of parliamentary privilege. As we demonstrate, Canada’s new code is not a case of simply old actors and new institutions but rather of old actors working with, and perhaps hiding behind, a new institutional lever, operating under intransigent and very old androcentric rules. Our study shows the limited but potentially detrimental effect of formal institutional rule changes to advance gender equality when such changes *reinforce* instead of directly tackle the deeply patriarchal norms that undergird Westminster systems.

As the first of its kind in the world the Canadian House of Commons’ adoption of an MP-to-MP code of conduct on sexual harassment in 2015 appears as robust change; it telegraphs to the Canadian public and international observers that Canada’s Parliament is a global leader in dealing with the problem of sexual harassment in politics. Despite this symbolic change, many interlocking and powerful informal rules have been left intact and, in some cases, strengthened. As we have shown, these norms constrict the (albeit limited) transformative potential of this code to fundamentally improve the gendered dynamics of Canada’s Parliament. An added danger with this approach is that it allows public officials to proclaim a positive “feminist” outcome, when in reality very little has been done to help deal with the problem of violence against women in politics.

A final concern is that the MP-to-MP-code of conduct falls short of intersectional equity expectations when compared to other workplace sexual harassment policies and procedures in place in jurisdictions outside the Canadian House of Commons. It is much narrower than similar workplace policies and fails to deal with the broader organizational workplace norms that are predictors of sexual harassment in the first place.¹⁶ Unfortunately, due to the secrecy surrounding the issue to date and with the code itself, we may never know if this new MP-to-MP code is having a positive—or more disturbingly a negative—effect on the House of Commons as a safe, equal and inviting workplace for female and male legislators alike. At this point in time, our analysis shows that the latter is more likely than the former.

Notes

- 1 Notably, both accused MPs were named yet the two female NDP MPs were not. The NDP MPs also refused to participate in the Liberal party investigation and declined to speak with the external investigator. See Christie Blatchford (2015) and Rex Murphy (2015).
- 2 And in light of the highly public scandal and prosecution of former CBC radio host Jian Ghomeshi for numerous alleged incidents of sexual assault between October 2014 and May 2016. Ghomeshi was found not guilty of all criminal charges in these cases.
- 3 A list of 106 words and phrases found to be unparliamentary by past speakers in Canada and included in Beauchesne's *Rules & Forms of the House of Commons of Canada* (1986) does not include sexist words (Thompson, 2011). Hansard (the official record of parliamentary debates) does not record heckling, sexist or otherwise.
- 4 At the time of writing, the House of Commons was currently reviewing this staff policy (Bill C-65), which could bring further protections against violence and harassment to all federally regulated workplaces. However, this particular review does not include MP-to-MP sexual harassment.
- 5 One such incident included MP Sheila Copps being called a "slut" (Trimble and Arscott, 2003: 118).
- 6 The code does not include provisions for the content or delivery of training which was initially only offered online and was voluntary. However, at time of writing the House announced that three-hour in-person training for all MPs and staff would be mandatory and completed before June 2018. It was not clear whether MPs who already took the online training would also be required to take the in-person training or what penalties would be assessed for MPs who failed to complete the training altogether (Rana, 2018). It is also not clear how effective these relatively short three-hour training sessions would be.
- 7 Only two of the sub-committee's ten meetings between December 8, 2014, and May 11, 2015, were public.
- 8 The social media threats MP Iqra Khalid received after introducing a motion that sought to recognize Islamophobia in Canada serve as a recent example. In one tweet she read out to the House, the sender said he'd like to: "[Blank] you gently with a chainsaw" (Payton, 2017).
- 9 Research shows that most incidents of workplace sexual harassment are unreported. See Macdonald (2012) for further details.
- 10 Belief in this particular rape myth varies across communities and college campuses but remains significantly higher than actual incidents of false reporting (See Edwards et al., 2011: 767).
- 11 Since its 2015 implementation, the Conservative party whip reported that although he has received no claims, he has received questions on the code's definition of sexual harassment (Nash, 2017).
- 12 According to Macdonald, when a range of sanctions are potentially available it is often the "least stringent" that are chosen in sexual harassment cases (2012: 9).
- 13 The code states that the PROC committee "may" name a member who is being sanctioned (rather than "shall" name them). This terminology affords the committee sufficient wiggle room to make it possible that any (or every) MP who sexually harasses another MP could never be named publicly.
- 14 Since 1991, only two MPs have been called to the Bar of the House to apologize for their actions (see O'Brien and Bosc, 2009).
- 15 These include that the CHRO must provide copies of a formal complaint to each whip; the investigator may adjust the scope of the investigation when facts are not in dispute; and that complainants/respondents may suggest further disciplinary action to the CHRO within 15 days of being informed of the whips' proposed disciplinary actions (Canada,

- 2017). At time of writing, a Liberal motion to conduct an additional fuller review of the code passed unanimously; that review is presently ongoing.
- 16 We encourage any future review of the code to consider these better and more comprehensive existing policies in other workplaces at a minimum.

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