

# EFFECTIVE AGGRESSIVENESS AND INCONSISTENCIES IN THE BIJURIDICAL TREATMENT OF AGGRESSIVE BEHAVIOUR: MIXED MARTIAL ARTS, BULLYING, AND SOCIOLEGAL QUANDARIES

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One of the most legally restricted elements of human nature is that of aggression and the intent to harm.\*\* Yet in combat sports such as mixed-martial arts (“MMA”) or boxing, one of the key elements in judging a fighter’s performance to determine a winner is “effective aggressiveness”. MMA used to be characterized by the pitting of various styles of martial arts against each other in order to determine the dominant form. Its current practice now focuses on the dominant fighter where each fighter deploys an individually hybridized fighting technique drawing on various martial arts.<sup>1</sup>

This paper seeks to address effective aggressiveness and the treatment of aggressive behaviour in the context of MMA in comparison to the balance of the formal Canadian legal landscape. I choose anti-bullying legislation, and its treatment of aggressive behaviour, as a counterexample to the treatment of aggressive behaviour within the MMA regulatory framework. By intertextually linking and superimposing these two categories of legislation, a critical lens drawing on institutional ethnography is applied. This is done to question and deconstruct the differential treatment of aggressive behaviour and the rationale behind the legislative mixed message sent. This lens also allows me to show the importance of a more thorough analysis and understanding of the imported internal frameworks of regulated activities that are candidates for decriminalization through amendments to Canada’s *Criminal Code* intended to ensure the *Criminal Code* is current to today’s reality.<sup>2</sup> The quandary faced within the fabric of the MMA community regarding its own treatment of aggressive

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\*\* The approach outlined by the author and the pinpointed focus of this article on aggressive behaviour and the notion of effective aggressiveness in MMA does not undertake to discuss civil or criminal liability for injuries inflicted in sport, extreme sports, and risk-taking behaviour, where the defence of consent may be engaged, or the application of consent as a bar to a charge of assault in sport, as these discussions are beyond both the scope and intent of this article.

<sup>1</sup> See e.g. Dale C. Spencer, *Ultimate Fighting and Embodiment: Violence, Gender, and Mixed Martial Arts* (New York: Routledge, 2012) at 74-75.

<sup>2</sup> See e.g. *House of Commons Debates*, 41st Parl, 1st Sess, No 259 (30 May 2013) at 1730 (Hon Christine Moore) [*House of Commons Debates*, No 259]; *Criminal Code*, RSC 1985, c C-46.

behaviour, where it is both reified as well as castigated through anti-bullying advocacy, will also be examined.

## 1. Theoretical Framework

This paper adopts a critical approach inspired by the methodology of institutional ethnography.<sup>3</sup> Two categories of legislation of have been intertextually linked by mapping the MMA community/cultural normative system. These two categories of legislation have been superimposed, then teased apart, in order to reveal a conflicting treatment of aggressive behaviour that sends a mixed message to the Canadian public. The point of this exercise is to explore how this inconsistent treatment may play out within the cultural milieu of Canadian children, youth, and young adults; how it arose in terms of the different actors and communities involved; and the rationale behind the differential treatment of aggression in different contexts. I also draw on the work of Brian Tamanaha in order to define, understand, and conceptualize MMA as both a social phenomenon and a community with grassroots elements and internal norms that interact in a legally pluralistic manner with the relevant dominant legal framework.<sup>4</sup>

For the purposes of this article, I accept the existence of regulated violence as settled law and as anterior to the subject of this article in order to build off this reality. Instead, I narrow in on generating a critical discussion of the treatment, mandating, and language surrounding aggression and aggressive behaviour as it appears in Canadian law and legislation, which is separate from a discussion of criminal or civil liability and the defence of consent. However, for further investigation into these issues, even though the literature on MMA is still developing, there is nonetheless a body of literature pertaining to boxing and the law. For example, *The Legality of Boxing: A Punch Drunk Love?* touches on a discussion of consent.<sup>5</sup> In addition, there is readily available general literature on consent and the law in sport and extreme sports provided by, for example, *Essentials of Sports Law*.<sup>6</sup>

## 2. The Mechanics of Regulation

### (A) The Unified Rules of Mixed Martial Arts

The Unified Rules of Mixed Martial Arts (“Unified Rules”), first codified by the New Jersey State Athletic Control Board in 2000 and adopted in April 2001, address the

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<sup>3</sup> I draw on this methodology to consider the implicated regulatory texts, the narratives of MMA community members, and the interactions between the two. See especially Dorothy Smith, ed, *Institutional Ethnography as Practice* (Lanham: Rowman & Littlefield Publishers, 2006), figure 4.5 at 85. See also Dorothy Smith, *Institutional Ethnography: A Sociology for People* (Lanham: AltaMira Press, 2005); Marie Campbell & Frances Gregor, *Mapping Social Relations* (Aurora: Garamond Press, 2002).

<sup>4</sup> See especially Brian Z Tamanaha, “Understanding Legal Pluralism: Past to Present, Local to Global” (2008) 30 Sydney L Rev 375 [Tamanaha, “Understanding”].

<sup>5</sup> Jack Anderson, *The Legality of Boxing: A Punch Drunk Love?* (Oxford: Birbeck Law Press, 2007) ch 4 at 83ff. See also Michael Beloff et al, *Sports Law*, 2nd ed (Oxford: Hart Publishing, 2012) at 5.90-5.91.

<sup>6</sup> Glenn Wong, *Essentials of Sports Law*, 4th ed (Santa Barbara: Praeger, 2010) at 85-86. See also Walter T Champion, Jr, *Sports Law in a Nutshell*, 3d ed (St Paul, Mn: Thomson West, 2005) at 216-23.

mechanics of a match and fighter safety precautions.<sup>7</sup> The Unified Rules grew out of the efforts of the United Fighting Championship (“UFC”) and other MMA event promoters to develop and apply an internal set of rules in order to respond to concerns regarding the health and safety of MMA participants.<sup>8</sup> Nevada’s MMA rules and regulations, which incorporate the Unified Rules, are the model usually followed by most jurisdictions. As such, when a jurisdiction lists that it is adopting the Nevada regulatory model, it is implicit that the Unified Rules are also implemented into the regulatory scheme.<sup>9</sup>

## (B) Decriminalization

In Canada the regulation of MMA is delegated, depending on the province in question, to the provincial or municipal body or agency, usually the athletic commission, responsible for overseeing athletics-related policy.<sup>10</sup> The recent decriminalization of MMA has altered the regulatory landscape in Canada. While MMA events have been held in Canada for quite a while, their legal status was ambiguous due to the prize fighting provisions in the Criminal Code.<sup>11</sup> Section 83 used to prohibit combative sporting competitions if they fell under the Section 83(2) definition of “prize-fight”.<sup>12</sup> MMA theoretically fell under this definition.<sup>13</sup>

However, there were two exceptions to this prohibition: (1) amateur boxing events; and (2) any boxing event sanctioned by a province’s designated athletics-related regulatory body, or any bout where the boxing gloves worn by fighters were not less 140 grams.<sup>14</sup> A pervasive uncertainty existed throughout the country as to whether or not MMA fell under the exception or not, and it was ultimately left open to the interpretation of each province. As such, while Section 83 of the Criminal Code theoretically “prohibited” MMA events, it was nonetheless possible for provinces to sanction MMA events if the prize-fighting exceptions were interpreted in such a way as to include MMA.<sup>15</sup>

Ontario, for example, lifted its ban on MMA events in 2010 for a number of reasons including the projected lucrative financial benefits linked to the growing

<sup>7</sup> See “Unified Rules and other MMA Regulations”, online: Discover UFC <<http://www.ufc.com/discover/sport/rules-and-regulations>>. And see the official version: Agency Proposal, *Mixed Martial Arts Unified Rules of Conduct*, NJ ADMIN CODE § 13:46-24A, online: New Jersey State Athletic Control Board <<http://www.state.nj.us/lps/sacb/docs/martial.html>> [Unified Rules]. See also Jordan T Smith, “Fighting for Regulation: Mixed Martial Arts Legislation in the United States” (2010) 58:2 Drake L Rev 617 at 625.

<sup>8</sup> *Ibid* at 626-28. For the American implementation of the Unified Rules, see *ibid* at 627-28.

<sup>9</sup> For a discussion of the reasons behind the popularity of the Nevada regulations as model, see *ibid* at 631.

<sup>10</sup> Municipal MMA regulation occurs in Alberta. See e.g. the Edmonton or Calgary Combative Sports Commission by-laws: City of Edmonton, by-law No 15638, *Edmonton Combative Sports Commission Bylaw*; City of Calgary, by-law No 53M2006, *Combative Sports Commission Bylaw*.

See also Smith, *supra* note 7 at 634.

<sup>11</sup> *Criminal Code*, *supra* note 2, s 83.

<sup>12</sup> *Ibid*, s 83(1).

<sup>13</sup> See also Layth H Gafoor, Paul Waldron & Hashim Ghazi, “Fighting for Certainty: The Legality of Mixed Martial in Canada”, online: (June 2013) *Just* at 38-39 <<http://www.justmag.ca>>.

<sup>14</sup> *Criminal Code*, *supra* note 2, s 83. See also Gafoor, Waldron & Ghazi, *supra* note 13.

<sup>15</sup> See also *ibid* at 40-41.

popularity of MMA in Canada. The Ontario government predicted that around 30,000 people could be attracted to an MMA event—which, it proposed, would generate approximately \$6 million in associated economic activity within Ontario.<sup>16</sup> In addition to these reasons for the decision to remove the ban, the grassroots quest for legitimacy sought by the MMA community/cultural normative system through the absorption and recognition of its internal rules and regulations, especially the Unified Rules, played an important role.<sup>17</sup> Other provinces took another approach to the federal MMA prohibition in order to respond to the growing public demand for MMA while capitalizing on the financial incentives MMA yielded. Quebec, for example, sidestepped federal prize-fighting provisions by renaming MMA as “mixed boxing” so that MMA regulation fell under the category of boxing.

All of this changed in June 2013 with the passing of Bill S-209.<sup>18</sup> This bill amended the prize-fighting provisions in the Criminal Code by extending the existing Section 83 exemptions and cleared up confusion as to whether or not MMA in fact fell under the previous exemption.<sup>19</sup> The amendments make MMA events legal across Canada as long as they meet the new stipulations under Section 83(2) where legality is conditional upon provincial or municipal regulation. Turning back to the prior provincial examples, the Athletic Commissioner of Ontario now has the unquestionable authority to sanction MMA events, and Quebec has no more need to sidestep the Criminal Code provisions against MMA by renaming it “mixed boxing”, although changes to Quebec’s mixed boxing regulations have yet to be made.<sup>20</sup>

### (C) The Unified Rules in Canada and the Quebec Exception

Within Canada, the Unified Rules have been implemented into the relevant legislative frameworks in sanctioning jurisdictions, such as within Ontario’s *Athletics Control Act*.<sup>21</sup> Quebec is an exception. Not only has Quebec not incorporated the Unified Rules, but its sanctioning legislation overseeing MMA never uses the term “mixed-martial arts”.<sup>22</sup> Instead, MMA in Quebec remains sanctioned and referred to under the term “mixed boxing”, which is defined as: “[A] combat sport during which contestants of the same sex fight standing or on the mat; when they fight standing, the contestants use kickboxing techniques unless modified in this Chapter; when they fight on the mat,

<sup>16</sup> *Ibid* at 40-41. See also Elaine Wiltshire, “Ontario legalizes mixed martial arts” (October 2010) 30:22 *Lawyer’s Weekly* 14; Miles Adam Park, “In the Octagon: Mixed Martial Arts Comes to Life” in Danielle S Coombs & Bob Batchelor, eds, *American History Through American Sports: From Colonial Lacrosse to Extreme Sports*, Vol 3 (Westport: Praeger, 2013) 295.

<sup>17</sup> See Wiltshire, *supra* note 16. See also the political and legal dialogues deployed actively by some MMA community members, for example the blog of British Columbia litigation lawyer and sports law consultant Erik Magraken: *Combat Sports Law* <<http://combatsportslaw.com>> [Magraken, Blog]. See also Tamanaha, “Understanding”, *supra* note 4 at 406.

<sup>18</sup> Bill S-209, *An Act to amend the Criminal Code* (prize fights), 1st Sess, 41st Parl, 2013 (assented to 19 June 2013).

<sup>19</sup> See also Erik Magraken, “And The Yeas Have It! MMA Given Legal Framework in Canada” (5 June 2013), online: *Combat Sports Law* (blog) <<http://combatsportslaw.com>> [Magraken, “Legal Frameworks”].

<sup>20</sup> See *Athletics Control Act*, RRO 1990, Reg 52. Note also the incorporation of the Unified Rules.

<sup>21</sup> *Ibid*.

<sup>22</sup> See *Regulation respecting combat sport*, OC 686-1998, s 3.1, r 11, c II-1.

the only permitted submission techniques are those described in this Chapter.”<sup>23</sup> This section describes the elements of MMA, from permissible striking, to grappling, to permissible take downs, to acceptable “ground and pound” and holds,<sup>24</sup> as well as the construction and measurement specifications of the octagonal ring.<sup>25</sup>

#### **(D) The Reasons behind Decriminalization**

Legalization has occurred in large part due to lobbying efforts by the MMA community. Not only has the UFC been active in this enterprise, but vocal fans of the sport have been prolific in their awareness-raising efforts regarding the legal and political challenges faced by MMA in Canada.<sup>26</sup> As stated right before Bill S-209 was passed: “MMA has established its seat at the main table of major sports in North America. It is an example of how a new and emerging sport, through its grass root popularity, can influence policy making and legislation.”<sup>27</sup> Popularity not only increases core and peripheral MMA participation and increasingly positive views of the sport, but it also yields lucrative economic results.<sup>28</sup> Legalization was also influenced by the rationale that greater regulation leads to better protection of MMA participants.<sup>29</sup> Increased ability to regulate post-decriminalization enables the implementation of safety standards and, it is hoped, reduces the attraction of unregulated underground events.<sup>30</sup>

Regulation also enables the establishment and enforcement of uniform rules for MMA events. Problems with inconsistency arise when the broadly accepted Uniform Rules are not incorporated into sanctioning MMA-related legislation. For example, while Quebec’s rules governing “mixed boxing” are not that different from the Uniform Rules, there are inconsistencies—which have led to uncertainty as to what rules govern the fight once fighters enter the octagon/ring.<sup>31</sup> Quebec also has an inconsistent history of allowing the Unified Rules to be applied to fights without enforcing Quebec’s own MMA regulations, but then sometimes refusing to follow this precedent.<sup>32</sup> Uncertainty and inconsistency when participating in a sport laden with as much risk as MMA is very dangerous. The argument for uniformity of rules buttresses the argument that legal regulation of MMA is beneficial for the safety of those who will participate even if the sport is illegal, and promotes fairness in the outcome of a fight.<sup>33</sup>

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<sup>23</sup> *Ibid*, s 195.1

<sup>24</sup> *Ibid*, s 195.28-195.31.

<sup>25</sup> *Ibid*, s 195.4(2).

<sup>26</sup> See e.g. Magraken Blog, *supra* note 17.

<sup>27</sup> Gafoor, Waldron & Ghazi, *supra* note 13.

<sup>28</sup> See *ibid* at 40-41.

<sup>29</sup> Magraken, “Legal Frameworks”, *supra* note 19.

<sup>30</sup> See Gafoor, Waldron & Ghazi, *supra* note 13.

<sup>31</sup> Smith, *supra* note 7 at 642-43.

<sup>32</sup> *Ibid* at 643-44. See also Erik Magraken, “The Dozens of Ignored Rule Violations at TUF Nations Finale” (17 April 2014) online: Combat Sports Law (blog) <<http://combatsportslaw.com>>.

<sup>33</sup> See e.g. Smith, *supra* note 7 at 644-45.

These reasons for decriminalization also appear in the limited case law dealing with the old version of Section 83, such as *R v Chang*.<sup>34</sup> In this case the court found that the 2002 “Extreme Fighting Championship” event promoted by Mr. Chang in Saint John, New Brunswick constituted a prize-fight due to the various fighting techniques used and the pre-arranged nature of the fight.<sup>35</sup> Nonetheless, Judge Brien noted that if the popularity and public acceptance of combat sports of this genre were growing, then regulations would be needed for the safety of the contestants. He suggested that these would need to be achieved through lobbying efforts seeking a legislative response and resulting change in legislation.<sup>36</sup>

### 3. MMA Community, Grassroots, and Legal Pluralism

Viewing the MMA community through the lens of what Brian Tamanaha describes as a community/cultural normative system, within his framework for legal pluralism, provides a context for understanding the grassroots elements of the MMA community’s fight for legalization, legitimacy, and State regulation through the State’s absorption of the internal MMA rules and norms.<sup>37</sup> An understanding of the community provides a window into the space where seemingly disparate regulatory texts, those governing MMA and those intended to counteract bullying, become interconnected through the lives and narratives of MMA community members.<sup>38</sup>

#### (A) Core versus Peripheral Community Membership

While ties between community members exist across borders and in a number of forms, within this community/cultural normative system, a basic differentiation exists between core members of the MMA community and peripheral members. The difference between core membership and peripheral membership is generally distinguishable through levels of involvement. There are several specific signifiers of core membership and of truly “becoming a mixed martial artist”: fighting in

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<sup>34</sup> *R v Chang*, 2003 NBPC 11 [Chang].

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.* See also Gafoor, Waldron & Ghazi, *supra* note 13 at 40.

<sup>37</sup> *Supra* note 4 at 399. The precise definition of legal pluralism is highly contested, due predominantly to the difficulty in and disagreement over defining what constitutes “law” as well as a divide in the discussion between the colonial and post-colonial legal pluralism and the legal pluralism that exists in “modern capitalist societies” (Tamanaha, “Understanding”, *supra* note 4 at 376; Boaventura de Sousa Santos, *Toward a New Legal Common Sense*, 2nd ed (London, UK: Butterworths LexisNexis, 2002) at 472). For the present purposes, legal pluralism can be generally defined as “a context in which multiple legal forms coexist” in the same social field while more specifically acknowledging an anthropology of law oriented definition of “legal form” or “system” that accounts for “the system of courts and judges supported by the state as well as nonlegal forms of normative ordering” where rules can also be generated internally within a social field (Sally Falk Moore, “Law and Social Change” (1973) 7 *Law & Soc’y Rev* 719 at 720, Sally Engle Merry, “Legal Pluralism” 22:5 (1988) *Law & Soc’y Rev* 869 at 870, 878; Santos at 92, 95; Brian Z Tamanaha, “The Rule of Law and Legal Pluralism in Development” in Brian Z Tamanaha, Caroline Sage & Michael Woolcock, eds, *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge, Mass: Cambridge University Press, 2012) 34 at 34).

<sup>38</sup> See also Patrick Ewick & Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998).

professional events, injuries due to fighting, regular interaction with other fighters, and pain or body callusing.<sup>39</sup>

### *i. Core Membership*

Beyond the ability to physically deploy a fighting technique in the proper way in order to be accepted into the core MMA community, the physical demarcation of injuries carried by core MMA community membership are observable beyond the core membership and carry significance, or legitimacy, within the peripheral MMA community as well as within the larger social arena.<sup>40</sup> A striking example of the physical mark of injury is what is known as “cauliflower ear”.<sup>41</sup>

An extremely high level of pain is involved in MMA participation, even at the most basic or amateur level, as opposed to other sports.<sup>42</sup> As Greg Downey writes:

Pain is treated as a price paid for expertise or a filter assuring that only courageous individuals get involved in the sport ... pain forms a high barrier to entry against unworthy individuals. As in many athletic subcultures, entry into the athletic community is marked by willingness to endure pain and demonstrations of psychological resilience.<sup>43</sup>

Dale Spencer introduces the process of what he calls “body callusing” as linked to the pain element present within active core MMA members. Body callusing is the hardening of the fighter’s body and mind that is attained through training techniques and peaks when the fighter enters the octagon or ring, with the intent of turning the body into a weapon.<sup>44</sup> It is the gradual increase of a fighter’s pain tolerance and physical ability to withstand the practice of MMA.<sup>45</sup> As a core member, there is a shared understanding developed through the experience and tolerance of pain that all fighters endure and the long-term effects of MMA participation on their bodies.

### *ii. Peripheral Membership*

The interaction between core members and the currency needed for community membership differs from that of peripheral members and reflects the reality of their level of involvement, and physical ability to be involved, in MMA. The identification and common understanding shared by the core members are not only defined by significant or physically active participation in the sport, but usually results in more intense member interactions at a local level, which thickens the shared norms of everyday life that structure interactions.<sup>46</sup> The imagined identification and common

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<sup>39</sup> Spencer, *Ultimate*, *supra* note 1, ch 5 at 72ff.

<sup>40</sup> *Ibid* at 78-79.

<sup>41</sup> *Ibid* at 78 and at ch 5, n 3.

<sup>42</sup> *Ibid* at 89, 96. See Greg Downey, “Producing Pain: Techniques and Technologies in No-Holds-Barred Fighting” (2007) 37:2 *Social Studies of Science* 201 at 217.

<sup>43</sup> *Ibid*.

<sup>44</sup> Spencer, *Ultimate*, *supra* note 1 at 89, ch 6 n 1, 96. See also Dale C Spencer, “Habit(us), Body Techniques and Body Callusing: An Ethnography of Mixed Martial Arts (2009) 15:4 *Body & Society* 119.

<sup>45</sup> Spencer, *Ultimate*, *supra* note 1 at 96.

<sup>46</sup> See also Tamanaha, *supra* note 4 at 399.

understanding shared by the peripheral members, or what may also be seen as “fandom”, is thinner, more loosely defined, and exists on a national and international level rather than primarily local. The customs, habits, and choices made regarding leisure activities are the site of shared understandings amongst peripheral members.<sup>47</sup> In the context of MMA, according to a study conducted by Nancy Cheever, the MMA event, and the act of viewing these events, is more important to MMA fans than viewing sporting events is to fans of other sports.<sup>48</sup>

If the peripheral members, with their various degrees of peripheral involvement, were to independently constitute the MMA community/cultural normative system, it is possible that “the norms that bind and define the community may not be definite or reiterated enough to be considered ‘a system’.”<sup>49</sup> But when combined with the core MMA community members, a normative system and common understanding is established. This is especially true due to the internal regulatory framework provided by structuring elements like the Unified Rules that enable a shared understanding of the judging and rules of a fight, whether as a participant or as an observer.

### **(B) The MMA Community within the Social Arena**

The MMA community/cultural normative system must then interact within the greater social arena.<sup>50</sup> Tamanaha’s “social arena” is described as “an empty framing device that can be defined in any way, according to any criteria, that a particular researcher desires. An entire nation can constitute a social arena, as can a local community, or a transnational network of business people.”<sup>51</sup> In this case, I define the social arena of MMA as that of the State. The internal structuring norms, rules and frameworks of the MMA community/cultural normative system, notably, the Unified Rules, engage in legal pluralistic interactions with the dominant legal system, such as the Canadian formal legal system and regulatory framework. The interactions between the MMA community’s internal rules and the dominant legal framework occur within what Boaventura de Sousa Santos describes as “contact zones”.<sup>52</sup>

Absorption is the second of three strategies adopted by an official state legal system in dealing with legal pluralism within the social arena, and it is commonly accomplished by explicit incorporation or recognition of elements, such as the Unified Rules, that comprise existing community institutions, rules, or norms.<sup>53</sup> In reality, what

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<sup>47</sup> Nancy Cheever, “The Uses and Gratifications of Viewing Mixed Martial Arts (2009) 4:1 *Journal of Sports Media* 25 at 35. See also Tamanaha, *supra* note 4 at 399.

<sup>48</sup> *Supra* note 47 at 35.

<sup>49</sup> Tamanaha, *supra* note 4 at 399.

<sup>50</sup> *Ibid* at 396-97.

<sup>51</sup> *Ibid* at n 79.

<sup>52</sup> See e.g. Boaventura de Sousa Santos, *supra* note 37.

<sup>53</sup> Tamanaha, *supra* note 4 at 403-404.



the MMA community/cultural normative system seeks is absorption by the dominant legal framework. For example, it is UFC policy to only hold events in states or provinces with an athletic commission that oversees and regulates MMA.<sup>54</sup> And the UFC will actively seek to have regulation established in order to hold an event in a jurisdiction where MMA is not yet sanctioned. This is distinct from the traditional desire of many sports organizations that seek decreased government regulation and oversight or hope to avoid it altogether.<sup>55</sup>

#### 4. Effective Aggressiveness and the Unified Rules

The Unified Rules, which are incorporated at the provincial level once a province begins to regulate MMA and adopts the Nevada regulatory model, introduce the notion of effective aggressiveness under the provisions for judging.<sup>56</sup> The provisions that touch on effective aggressiveness include:

- 14(C): “Judges shall evaluate mixed martial arts techniques, such as effective striking, effective grappling, control of the ring/fighting area, effective aggressiveness and defense.”
- 14(D): “Evaluations shall be made in the order in which the techniques appear in (c) above, giving the most weight in scoring to effective striking, effective grappling, control of the fighting area and effective aggressiveness and defense.”
- 14(H): “Effective aggressiveness means moving forward and landing a legal strike.”<sup>57</sup>

Since effective aggressiveness is linked to landing a legal strike, it is also connected to effective striking, which is “judged by determining the total number of legal strikes landed by a contestant.”<sup>58</sup>

##### (A) Effective Aggressiveness in Quebec’s MMA Regulations

Quebec’s regulations for “mixed boxing”, which remain despite the amendments to Section 83 of the Criminal Code, are slightly different. Even though the Unified Rules are not used here, “aggressiveness” is still a factor judges must consider in determining the victor.<sup>59</sup> “Aggressiveness” is “demonstrated by the contestant’s forcing the fight during the round by making the greater number of attacks.”<sup>60</sup>

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<sup>54</sup> Smith, *supra* note 7 at 623.

<sup>55</sup> *Ibid* at 622-24.

<sup>56</sup> *Supra* note 7, s 14.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ibid*, s 14(E).

<sup>59</sup> *Regulation respecting combat sport, supra* note 27, s 195.18(2).

<sup>60</sup> *Ibid*.

## (B) MMA and the Reification of Aggressive Behaviour

### *i. Judge Preference*

While effective aggressiveness is but one of the elements considered in judging a fight, and despite the fact that Section 14(D) of the Unified Rules places it as the third most important consideration, careful consideration of the decisions of judges, viewership interest, and the language of MMA promoters demonstrates that effective aggressiveness is actually one of the most important elements considered in MMA events, if not the most important.

In a statistical assessment of UFC fights between November 2000 to 2009, based on data provided by FightMetric (the UFC's official statistics provider), Collier, Johnson, and Ruggiero set out to investigate which elements of a fight are the most important in determining which fighter is the winner.<sup>61</sup> To win a fight, unless there is a knockout or submission, the winner is determined by a panel of three judges. The authors look to demonstrate the correlation between strikes (attempted and landed kicks and punches), power strikes, knockdowns, and damage inflicted, on the one hand, and the outcome of a fight, on the other.<sup>62</sup> Specifically, they focus on the subjective degree of importance attributed by judges to certain acts of aggression over others.<sup>63</sup>

The data collected demonstrates that attempted jabs to the head and other attempted jabs lead to a greater probability of winning than if a jab is landed.<sup>64</sup> The authors suggest that the amount of punches attempted may ultimately demonstrate a fighter's domination in the fight, leading to a decision in their favour.<sup>65</sup> Rather than being in line with the Unified Rules, which were in place during the UFC fights that comprise the data, this would instead seem to be in line with the definition of effective aggressiveness found in Quebec's MMA regulations. As noted previously, Quebec's regulations judge effective aggressiveness by whether a fighter "forces a fight during a round," which is done through a "greater number of attacks". Whether or not the attacks were successful is inconsequential.<sup>66</sup> The Unified Rules, on the other hand, emphasize the actual *landing* of a legal strike.<sup>67</sup>

The data also demonstrates that attacks that are the most visually violent and harmful also lead to a greater probability of winning. The authors therefore suggest

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<sup>61</sup> See online: FightMetric <<http://www.fightmetric.com>>. The authors consider data from 2000 onward as this is when the current version of the Unified Rules came into effect: Trevor Collier, Andrew L Johnson & John Ruggiero, "Aggression in Mixed Martial Arts: An Analysis of the Likelihood of Winning a Decision" in R Todd Jewell, ed, *Violence and Aggression in Sporting Contests: Economics, History and Policy* (New York: Springer, 2011) 97 at 103.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid* at 101.

<sup>64</sup> *Ibid* at 106.

<sup>65</sup> Collier, Johnson & Ruggiero note that this may also be due to the inability of judges in the sampled data to accurately determine whether or not a fighter in fact landed the strike since they, unlike FightMetric, did not have the benefit of television monitors (*ibid* at 106-107).

<sup>66</sup> *Ibid.*

<sup>67</sup> *Supra* note 7, s 14(H),(E).

that judges are more inclined to award the fighter who deploys the most harmful and violent of attacks.<sup>68</sup> Again, the aggressiveness of the behaviour is determinative in winning.

## ii. Audience Preference

Where Collier, Johnson and Ruggiero specifically note the audience appeal of the violent component of UFC,<sup>69</sup> Nancy Cheever focuses more broadly on the elements that draw the audience, or the peripheral MMA community members, to the sport of MMA. Based on data drawn from online surveys, Cheever notes that MMA community members generally value the skill of the fighters, the mechanics behind the mixed fighting technique, and the competitive element over the violent aspect of the matches.<sup>70</sup> She nonetheless identifies the five characteristics considered the most entertaining by the MMA viewership base as: (1) violence, including “blood and brutality”; (2) the competition and sporting element, including a competitor’s skill and technique; (3) drama, including the possibility of upset victories and the “underdog quality” of smaller fighters using fighting technique to triumph over larger opponents; (4) “old school technique”, including submissions, tap outs, and grappling; and (5) “new techniques”, including the realistic “street-fight” element brought by combined fighting techniques and knockouts.<sup>71</sup>

Accordingly, by concentrating on the commercialization and reification of aggression in order appeal to the MMA community and viewership base, MMA promoters appear to be focusing on the entertainment value of MMA rather than the overarching preference of MMA community members. Downey describes how a Zuffa (the parent company of UFC) public relations executive emphasized the importance of a fighter’s ability to “put on a good show” in order to be asked back, regardless of whether or not the fighter won the match.<sup>72</sup> And to “put on a good show” meant that the fighter had to be “aggressive and exciting to watch.”<sup>73</sup> Thus, even if effective aggressiveness is not the most important aspect in the judging of a fight, it is highly important for the fighter’s career to be effectively aggressive. Not being sufficiently aggressive could forestall the fighter’s ability to gain professional experience, or to fight at all. Downey also suggests that with the implementation of time limitations on fights leading to the need for decisions on inconclusive fights, judges began to favour

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<sup>68</sup> *Supra* note 61 at 107.

<sup>69</sup> *Ibid* at 98.

<sup>70</sup> *Supra* note 47 at 36-40. Cheever designed her survey around six questions she developed in 2007 and administered between January 2007 and February 2007 through an online magazine (<sherdog.com>). Males were the primary population of interest based on previous studies showing a connection between viewing violence and violent behaviour amongst males in particular, but females were not deterred from participating in the survey. The data was drawn from a targeted convenience sample comprised of about 3500 fans of mixed martial arts worldwide. Of the 3515 MMA fans that viewed the survey, 2734 completed the full 60 questions that comprised the survey. The survey blocked participants from responding more than once. The final sample included the responses of 2723 participants once the responses with incomplete data were removed along with inaccurately completed responses. (*ibid* at 32).

<sup>71</sup> *Ibid* at 39-40 (for categories that draw viewership); *ibid* at 42 (for entertainment value). Cheever acknowledges the limitations of the self-reporting nature of an online survey, which also required participant computer access (*ibid* at 50).

<sup>72</sup> *Supra* note 42 at 216.

<sup>73</sup> *Ibid*.

contestants who act aggressively in order to respond to the fighting techniques preferred by MMA audiences.<sup>74</sup>

Since aggressiveness appears so prominently in MMA, Quebec's treatment of effective aggressiveness is a better indicator of the importance that it carries in judging a round, while the Unified Rules do not reflect this reality. First of all, in Quebec's regulations "aggressiveness" appears as second only to "the recurrence and power of legal blows" in importance within the list of factors that judges are to take into account in judging the effectiveness of the contestants.<sup>75</sup> This is in contrast to the second to last position of importance accorded to aggressiveness within the Unified Rules.<sup>76</sup> While effective aggressiveness, according to the Unified Rules, is defined as "moving forward and landing a legal strike," the mechanics of visibly accomplishing this incorporate the intent to harm the opponent and inflict damage.<sup>77</sup> This is reflected both in viewer commentary and MMA community commentary as well as by UFC promoters. Quebec's MMA regulations provide a more straightforward description of how effective aggressiveness is, in reality, demonstrated "by the contestant's forcing the fight during the round by making the greater number of attacks."<sup>78</sup> This description better communicates what is expected of the fighter. Rather than simply "moving forward", the fighter is expected to maintain a high level of active violence, and rather than simply "landing a legal strike," the fighter is expected maintain a high frequency of dynamic attacks on the opponent. Demonstrating this behaviour provides the visual identifying factor in quantifying effective aggressiveness, especially for peripheral MMA community members who may have less knowledge of the nuanced techniques deployed by fighters and often focus on the visible and audible signs of the effective aggressiveness.<sup>79</sup> This is further demonstrated by the preference for a fighter to "finish the fight", where a fight is ended by knockout, submission, or referee stoppage before it goes to decision, which will be discussed subsequently.

### *iii. The Encouragement of Effective Aggression by MMA Promoters*

Arguably the most apparent encouragement of maximum aggression within a fight is the extra money awarded at the end of UFC events. Prizes are awarded for the submission of the night, the knockout of the night, and the fight of the night that demonstrated the most impressive behaviour, or was the "best show", which we have seen is determined through the level of effective aggressiveness displayed.<sup>80</sup> But Downey's suggestion that aggression is favoured and encouraged by judges and promoters is also apparent in the narrative deployed by current UFC President Dana

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<sup>74</sup> *Ibid* at 210.

<sup>75</sup> *Supra* note 27, s 195.18

<sup>76</sup> *Supra* note 7, s 14 (C)-(D)

<sup>77</sup> *Ibid*, s 14(H)

<sup>78</sup> *Supra* note 27, s 195.18(2)

<sup>79</sup> These signs may include: audible noise upon the landing of a strike, appearance of pain on the face of the opponent being struck, appearance of swelling or blood over the course of the fight, minimal fighting and manoeuvring before a strike or take down attempt, and minimal defensive manoeuvres as opposed to offensive attempts.

<sup>80</sup> Downey, *supra* note 42 at 216.

White, who will often apologize to the UFC viewer base after fights if a fighter has not “finished a fight” or displayed an appropriate level of aggression.

For example, Anderson “The Spider” Silva has a reputation for not trying hard enough to “finish the fight”. Even worse, Silva is known for clowning around in the ring, taunting his opponent, and feinting. After one fight in particular, UFC 112, in post-fight interviews, White publicly shamed Silva for his behaviour and fighting technique during the fight, even though Silva clearly won the fight by decision. White repeatedly describes Silva’s behaviour and the fight as a disgrace and an embarrassment, and White promises to make it up to the fans who feel angry and cheated for Silva not having “finished the fight”.

White’s language reveals the reaction to the self-regulation of a fighter’s level of aggressiveness when faced with the paramount importance of fighting with the proper level of aggression for the sake of the show.<sup>81</sup> In discussing Silva’s fight, White suggests that “if you’re that talented, be Mike Tyson, go in and finish it in two minutes,” and then goes on to state that “he [Silva] shows these little signs of absolute genius and greatness. The flying knee to the head ... he threw it like a punch, that’s what this guy is capable of. That’s what I think he could do every second of every round, *but for some reason he chooses not to.*”<sup>82</sup> While we have seen the importance and encouragement of aggressive behaviour within MMA, an uncontrolled variable is introduced through the fighter’s own desire, or lack of desire, to deploy the proper level of effective aggression sought by the viewers and promoters. In the case of Silva and UFC 112, he did not deploy the level of aggressiveness desired of him. In response, Silva’s employers made it known that they were both disappointed and concerned.

Another example of the importance placed on the ability to “finish a fight”, or satisfactorily demonstrate aggression, can be seen in the press’s treatment of former UFC Welter-weight Champion Georges “Rush” St. Pierre (“GSP”). While considered a dominant champion fighter, a common criticism of St. Pierre is that he has become a “boring” fighter, due to a few fights where he failed to “finish” his opponent.<sup>83</sup>

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<sup>81</sup> See also Raul Sanchez Garcia & Dominic Malcolm, “Decivilizing, Civilizing or Informalizing? The International Development of Mixed Martial Arts” (2010) 45:1 *International Review for the Sociology of Sport* 39 at 54.

<sup>82</sup> See especially the press conference post-UFC 112 regarding the Anderson Silva v Demian Maia fight: “Once again, Dana White apologizes for Anderson Silva’s performance” (April 2010) online: Cage Potato <<http://www.cagepotato.com>>. See also Keith Harris “The real reason Dana White is so mad at Anderson Silva for clowning around at UFC 112” (11 April 2010) online: Cageside Seats <<http://www.cagesideseats.com>>; Kevin Iole “Unrepentant Silva makes mockery of sport” (10 April 2010) online: Yahoo! Sports <<http://sports.yahoo.com>>; “Dana White Weighs in on Anderson Silva’s Loss, Claims of Throwing the Fight, and more (video)” (7 July 2013) online: MMA Weekly <<http://www.mmaweekly.com>>; “Dana White tells Jim Rome he will cut Anderson Silva if he pulls this crap again” (video) (April 2010) online: Cage Potato <<http://www.cagepotato.com>>.

<sup>83</sup> Jonathan Snowden, “UFC 167 Exclusive: Georges St Pierre swears it’s not his fault he’s boring” (15 November 2013) online: bleacher report <<http://bleacherreport.com>>; Damon Martin, “Georges St Pierre Legacy: Will Not Finishing Fights Define his Career?” (18 March 2013) online: bleacher report <<http://bleacherreport.com>>; Nathan Smith, “GSP Does Better than Finish Fights, He Finishes Careers” (November 2013) online: Cage Potato <<http://www.cagepotato.com>>; Richard Raycraft, “Georges St Pierre is not a true fighter” (19 March 2013) online: the gazette <<http://www.westerngazette.ca>>.

Looking to the particular fights in question, for St. Pierre to have satisfactorily finished the fight, he would have had to dislocate the shoulder or snap the elbow of his opponent after having successfully placed him in an arm bar submission hold, or he would have had to knock out his opponent even after the other fighter had already developed a goose egg (scalp hematoma) that covered the majority of the upper part of his face.<sup>84</sup> Even though St. Pierre continued to hit the gruesome wound repeatedly after inflicting it, this was still not enough to satisfactorily “finish the fight”.<sup>85</sup>

Again, it becomes apparent that the uncontrolled variable in the aggressiveness of a fight is the fighter’s decision as to how much aggression they will deploy. White’s criticism of Silva and fan criticism of St. Pierre show dissatisfaction with the choices the fighters have made to self-regulate the aggressiveness of their fighting techniques. Even these professional fighters, or professional aggressors, considered by some to be two of the greatest MMA fighters of all time, did not always seek to maximize aggressive behaviour and the extent of possible damage they could inflict on their opponent. Yet external pressure was present for them to stop such self-regulation in future fights.

This highlights the internal moral quandary of deploying aggressive behaviour in the context of MMA. This also mirrors the quandary existing within Canadian law where, on the one hand, aggressive behaviour is heavily controlled and seen as an indicator of castigated behaviour, such as bullying, but on the other hand, aggressive behaviour is a required element in the Unified Rules that are adopted within the Canadian legislative framework for the regulation of MMA events.

## 5. Regulating Aggression

### (A) The State Monopoly on Violence

Since violence is an unavoidable element of MMA, from a Weberian perspective, it is not surprising that the rules of MMA have been incorporated into the dominant legal framework as an extension of the State’s monopoly on violence.<sup>86</sup> But though this violence is regulated by the State and accepted under the banner of consent-based sport activities, aggression within broader Canadian society is usually considered to be unacceptable or violent behaviour, rather than a positive attribute.

Considering that the legality of MMA is conditional upon proper provincial or municipal regulation, and that these regulations incorporate the Unified Rules, “effective aggressiveness” necessarily becomes part of the regulatory framework in place for the conduct and judging of MMA events. Thus, the dominant legal framework absorbs the MMA’s community/cultural normative system’s internal rules. Even in Quebec, where the Unified Rules are not incorporated, “aggressiveness” is

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<sup>84</sup> UFC 111: GSP v Dan Hardy (27 March 2010).

<sup>85</sup> UFC 124: GSP v Josh Koscheck (11 December 2010).

<sup>86</sup> Spencer, *Ultimate*, *supra* note 1 at 7.. See also Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Berkeley: University of California Press, 1978).

still a factor included in the regulatory framework.<sup>87</sup> But this acceptance, or sanctioning, of aggression in the context of MMA is at odds with the manner in which aggression is regarded in most other legislative and regulatory contexts. A prominent and pressing example of this is the legislation dealing with bullying, which illustrates the differential treatment of aggressive behaviour that I wish to highlight and deconstruct.

## **(B) Bullying and Aggression**

In addition to recent changes in the legality of MMA events, another recent development in legislation dealing with aggressive behaviour is the much needed anti-bullying legislation that is being introduced across Canada.

### *i. Bullying and Aggression in Schools*

Many provinces across Canada, including Ontario, Alberta, Quebec, Nova Scotia, New Brunswick, and Manitoba have anti-bullying legislation in place.<sup>88</sup> Others, including Saskatchewan, British Columbia, Newfoundland and Labrador, and the Yukon have established policies or strategies to tackle bullying.<sup>89</sup> Turning to the example of Ontario, the *Accepting Schools Act* (Bill 13) was fully implemented in February 2013 and given Royal Assent about a year before the decriminalization of MMA.<sup>90</sup> The *Accepting Schools Act* is significant, among other reasons, for establishing a definition of “bullying” that identifies the “aggressiveness” of the behaviour as a key indicator of bullying behaviour, along with the repetitive nature of this aggressive behaviour.<sup>91</sup>

### *ii. Bullying and Aggression in the Workplace*

Bullying does not necessarily end once the school context has been left behind.<sup>92</sup> Attention to workplace bullying is slowly growing within provincial and federal

<sup>87</sup> *Supra* note 27, s 195.18(2).

<sup>88</sup> For Ontario see Bill 13, *An Act to amend the Education Act with respect to bullying and other matters*, 1st Sess, 40th Leg, Ontario, 2012 (assented to 19 June 2012) [*Accepting Schools Act*]. For Alberta see Bill 3 *Education Act*, 1st Sess, 28th Leg, Alberta, 2012; *Education Act*, SA 2012, c E-0.3, 1(1), 31, 35. For Quebec see Bill 56, *An Act to prevent and stop bullying and violence in schools*, 2d Sess, 39th Leg, Quebec, 2012 (assented to 15 June 2012). For Nova Scotia see Bill 30, *Promotion of Respectful and Responsible Relations Act*, 4th Sess, 61st GA, Nova Scotia, 2012 (assented to 17 May 2012). For New Brunswick see Bill 45, *An Act to Amend the Education Act*, New Brunswick, 2012 (assented to 13 June 2013). For Manitoba see Bill 18, *The Public Schools Amendment Act* (Safe and Inclusive Schools), 2nd Sess, 40th Leg, Manitoba, 2012 (assented to 15 April 2012).

<sup>89</sup> Saskatchewan, Ministry of Education, *Saskatchewan’s Action Plan to Address Bullying and Cyberbullying* (2013); British Columbia, Education, *Safe, Caring and Orderly Schools Strategy* (2012); Newfoundland and Labrador, Department of Education, *Safe and Caring Schools Policy* (2006); Yukon, Yukon Education, *Safe and Caring Schools Policy* (2008).

<sup>90</sup> *Accepting Schools Act*, *supra* note 88. See also Ottawa Catholic School Board, “Bill 13: Accepting Schools Act Information for Parents” at 11, online: Ontario Catholic School Board <<https://bbboard.ocsb.ca>>.

<sup>91</sup> *Accepting Schools Act*, *supra* note 88, s 1(1).

<sup>92</sup> The Chief Public Health Officer’s Report on the State of Public Health in Canada, “Youth and Young Adults in Transition” (2011), ch 4ff (“Bullying and Aggression”), online: <[www.phac-aspc.gc.ca](http://www.phac-aspc.gc.ca)> [Chief Public Health Officer Report].

legislative frameworks but still remains underreported and generally lacking in effective legislative treatment, in addition to suffering from a dearth of relevant scholarship, policy, and analysis related to the matter.<sup>93</sup> Although effective legislation related to workplace bullying is generally lacking in Canada, examples can be found in the *Canada Health and Safety Regulations* at Section 20.3(b) (Part XX - “Violence Prevention in the Work Place”) as well as in limited provincial occupational or workplace health and safety legislation, such as British Columbia’s “Policy Item D3-115-2” of its *Occupational Safety and Health Guidelines*.<sup>94</sup> Workplace bullying is described by The Professional Institute of the Public Service of Canada as “the tendency of individuals to intentionally use aggressive or unreasonable behaviour or comments to hurt or isolate an employee.”<sup>95</sup> Distinguished from harassment, the Chief Public Health Officer’s Report on the State of Public Health in Canada in 2011 (a report that specifically assessed “Youth and Young Adults – Life in Transition”) situates workplace bullying as behaviour that often appears alongside and defined interchangeably with aggression in the workplace context. Aggressive behaviour is identified as a category of behaviour that includes factors that contribute to workplace violence and is viewed as an indicator of unacceptable and discouraged behaviour.<sup>96</sup>

### (C) Inconsistent Messages

A mixed message is sent by the formal legal framework. The law simultaneously encourages legally sanctioned aggression within events to be viewed by the public, regardless of whether consenting adults are involved, while attempting to curb aggression in bullying by establishing working definitions and castigating aggressive behaviour. Superimposing the regulatory texts that MMA actors have themselves brought together through internally conflicting narratives amplifies the problem of legalizing MMA and mandating its regulation, which is inextricably linked to the notion of effective aggression.

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<sup>93</sup> As few as 3% of cases are reported: *ibid*. See also The Professional Institute of the Public Service of Canada, “Pocket Guide on Bullying and Violence in the Workplace” (2009) at 7, online: <<http://www.pipsc.ca>> [“Pocket Guide on Bullying”]. For an example of orienting scholarship related to the matter in the United States, see David C Yamada, “The Phenomenon of ‘Workplace Bullying’ and the Need for Status-Blind Hostile Work Environment Protection” 88:3 (2000) 475.

<sup>94</sup> *Canada Occupational Health and Safety Regulations*, SOR/86-304; *Occupational Health and Safety Regulation*, BC Reg 296/97. For the *OSH Guidelines*, see online: <[www.worksafebc.com](http://www.worksafebc.com)>. See also the *Workers Compensation Act*, RSBC 1996, c 492. For a general overview of legislative developments related to workplace bullying that seek to address a lack in effective available protective laws for victims of this form of bullying, see also Karolina Dec, “Workplace Bullying: A Legal Reform” (2010) online: <[bullyfreebc.ca](http://bullyfreebc.ca)>. See also The Canadian Initiative On Workplace Violence, online: <[www.workplaceviolence.ca](http://www.workplaceviolence.ca)>. Instances of litigation related to workplace bullying tend to be confined to the realm of union grievance procedures, which sometimes wind their way up to tribunals, such as the Occupational Health and Safety Tribunal Canada, see e.g. *VIA Rail Canada Inc v Cecile Mulhern and Unifor*, 2014 OHSTC 3, or a provincial Workers Compensation Appeal Tribunal, see e.g. *WCAT-2014-01259 (Re)*, 2014 CanLII 42725 at para 49 (BCWCAT).

<sup>95</sup> “Pocket Guide on Bullying”, *supra* note 93 at 7, online: <<http://www.pipsc.ca>>. Examples of additional provincial resources for workplace bullying can be found in the Ontario Safety Association for Community and Healthcare, “Bullying in the Workplace: A Handbook for the Workplace” (Toronto: Ontario Safety Association for Community and Healthcare, 2009), online: <[www.osach.ca](http://www.osach.ca)>.

<sup>96</sup> Chief Public Health Officer Report, *supra* note 92. See also Marlene Habib, “Bullies Can Make Workplace Intolerable”, *The Globe and Mail* (6 September 2012), online: <[www.theglobeandmail.com](http://www.theglobeandmail.com)>.



## 6. MMA and Bullying

Interestingly, the conflicting treatment of aggressive behaviour within the formal legal framework, which will be addressed further in the following section, is mirrored within the narratives of MMA fighters, beyond the self-regulation of aggressiveness used during a match. A large number of MMA fighters as well as promoters, such as the UFC, are heavily involved in anti-bullying advocacy. While it may seem inconsistent for an individual involved in an aggressive sport, sometimes seen as a professional aggressor, to become an anti-bullying advocate while spending their days training for events where they seek beat up their opponent, taking a look into the narratives of these fighters and their pasts is revelatory.

Georges St. Pierre is a good example of a Canadian fighter who takes an active stance against bullying. He has spoken at length about the bullying he encountered growing up, both in his autobiography,<sup>97</sup> and also through the Georges St. Pierre Foundation. The Foundation states that its primary goal is to “Help youth, stop bullying and promote physical activity in schools.”<sup>98</sup> Considering his lived experience with bullying, it is clear why St. Pierre has aligned himself with anti-bullying initiatives. As he describes in his autobiography: “The truth is that bullying has helped make me who I am. Without it, without the obstacles, I might not be where I am. The story would be different. Bullying was part of the world I grew up in, at a key period in my life, and I got through it.”<sup>99</sup> He goes on to conclude: “Maybe the most important lesson I learned from my youth is that I don’t ever want to make someone else feel the way these bullies did to me.”<sup>100</sup>

Current UFC Lightweight Sam Stout from Ontario is another fighter heavily involved in anti-bullying activism, even though he states that he never personally experienced bullying. Stout, who also runs an MMA program for kids at the gym he co-owns in London, Ontario, is careful to note that violence is setting-specific and that it is not condoned outside of the gym unless it is deployed for the purpose of self-defence.<sup>101</sup> This message regarding setting-specific aggressive behaviour is also referred to by former professional MMA fighter and Yukon MP Ryan Leef in promoting MMA as an effective mechanism to *counteract* bullying. Through a program called “Leaders in Life: Mixed Martial Arts against Bullying”, which he

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<sup>97</sup> Georges St Pierre & Justin Kingsley, *The Way of the Fight* (Toronto: HarperCollins, 2013).

<sup>98</sup> See online: The Georges St. Pierre Foundation <<http://www.gspofficial.com/gsp-anti-bullying>>.

<sup>99</sup> St. Pierre & Kingsley, *supra* note 91 at 23.

<sup>100</sup> *Ibid* at 22-24. See also Interview with Georges St. Pierre (9 April 2013) on *CBC Radio Q*, online: CBC <<http://www.cbc.ca>>.

<sup>101</sup> Fightline, “Sam Stout: Violence Against People Who Are Not Willing Participants Just Isn’t Right” (25 June 2011) online: Fightline <<http://www.fightline.com>> (based on an interview conducted by Fightline with Stout). See also Ken Wiebe, “Sam Stout making impact inside and outside the Octagon” *Winnipeg Sun* (12 June 2013) online: *Winnipeg Sun* <<http://www.winnipegssun.com>>.

established, Leef runs anti-bullying clinics where youth are taught basic MMA skills, such as grappling and boxing.<sup>102</sup>

Leef de-emphasizes the aggressive nature of these skills and instead focuses on the discipline, respect, self-control, and confidence-building that can be provided by martial arts training, which he suggests may benefit both victims of bullying as well as bullies.<sup>103</sup> Interestingly, Leef notes that since MMA is a sport rapidly increasing in popularity, and since youth are increasingly exposed to MMA, it is important to contextualize the aggressive behaviour they observe in MMA fights in order to contain potential emulation of this behaviour in uncontrolled and unsafe environments.<sup>104</sup>

While the narratives of some MMA fighters may reveal a rationale behind their support of anti-bullying campaigns, it is even more surprising to learn of the involvement of MMA promoters, such as the UFC, in anti-bullying advocacy. For example, the UFC, along with the Toronto Police Service, held a high-profile anti-bullying event for youth in Toronto in 2011, which raised questions from the general public.<sup>105</sup> As noted previously, the post-fight dialogue after UFC matches by spokespersons for the UFC does not shy away from publicly shaming fighters for failing to exert what is seen as enough effective aggression or the ability to finish a fight to the level of the audience satisfaction.

The stated rationale behind UFC anti-bullying advocacy is to use the iconic status that many top MMA fighters have with youth as a platform to promote anti-bullying campaigns. Nonetheless, it is unsurprising that anti-bullying advocacy groups, in speaking about the Toronto event, expressed concern regarding the idolizing of MMA combatants who become famous through their violent acts.<sup>106</sup> But as Katie Neu, co-founder of *BullyingCanada.ca*, notes, an argument exists for the value of separating the MMA fighter from their consensually adopted profession that takes place in a controlled environment.<sup>107</sup>

On the other hand, the other co-founder of *BullyingCanada.ca*, Rob Frenette, has actively opposed the use of MMA in anti-bullying projects. For example, he issued a complaint to the Canadian Broadcasting Standards Council (“CBSC”) in 2009 with regard to a reality television program called “Bully Beatdown” broadcast by MTV

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<sup>102</sup> See online: Inspiration Unlimited <<http://www.inspirationyk.ca>>. See also Jonathan Russell, “MP Ryan Leef to use MMA to combat bullying” *Whitehorse Daily Star* (9 November 2011) online: *Whitehorse Daily Star* <<http://www.whitehorsestar.com>>.

<sup>103</sup> Debate between Ryan Leef and Wendy Craig, “Can you fight bullying with mixed martial arts” (11 September 2013) on Q with Jian Ghomeshi, *CBC Radio*, online: *CBC Radio* <<http://www.cbc.ca>> [Leef debate]. See also Russell, *supra* note 96.

<sup>104</sup> Leef debate, *supra* note 97; Russell, *supra* note 96.

<sup>105</sup> Michelle McQuigge, “MMA fighters make good anti-bullying ambassadors, says Toronto mayor’s brother” *Global News* (5 December 2011) online: *Global Toronto* <<http://globalnews.ca>>; “MMA fighters deliver anti-bullying message” *CBC News Toronto* (6 December 2011) online: *CBC News Toronto* <<http://www.cbc.ca>>. This campaign was part of a larger UFC initiative in Canada “UFC Community Works”: see e.g. “UFC Launches \$129,000 Community Initiative” (6 April 011) online: *UFC* <<http://www.ufc.ca>>.

<sup>106</sup> McQuigge, *supra* note 102.

<sup>107</sup> *Ibid.*

Canada.<sup>108</sup> The premise of the show was to give bullying victims a chance to confront their bully.<sup>109</sup> This was done by choosing a bully based on videos submitted by victims of bullying, then approaching the bully and offering them the chance to fight a trained MMA fighter with the potential of winning \$10,000 if they beat the MMA fighter—otherwise the \$10,000 was given to the victim of the bullying. In his complaint, and in his subsequent request for review of the CBSC decision by the Canadian Radio-television and Telecommunications Commission (“CRTC”), Frenette argues that the use of MMA in this way suggests and encourages both violence and retaliation to bullying through fighting.<sup>110</sup> The message, in other words, that is being sent about aggressive behaviour is that it is acceptable in some contexts, when consent is involved, when it is being used in retaliation, and so on; but not in others, much like the mixed message sent by the existing legal framework.

However, *Bully Beatdown* is a television show. While the mixed message transmitted in fusing MMA and anti-bullying is uncomfortably palpable, the mixed messages transmitted by MMA community members are the tip of the iceberg. The Canadian legal framework must also reconcile regulating and sanctioning the encouragement of effective aggressiveness with simultaneously castigating it as a signpost for bullying and other unacceptable violent behaviour.

## 7. The Rationale behind Conflicting Legislation

### (A) Parliament’s Incomplete Assessment of the MMA Community’s Internal Regulatory Framework: The Unified Rules

It is not the intention of this article to argue that MMA events should not have been decriminalized; rather, the intention is to highlight that amendments and updates to the *Criminal Code* that have significant societal import must receive a more careful and holistic investigation.<sup>111</sup> As discussed above, the Unified Rules, which include the encouragement of effective aggression, are fundamentally important to the practice of MMA, especially within the context of MMA events that sit at the centre of both core and peripheral MMA community membership. In decriminalizing MMA for the purposes of clearing the way for provincial (or municipal) regulation, there was a dearth of discussion as to what the legal pluralistic interactions of the MMA community/cultural normative system within Canada’s formal legal system and regulatory framework would entail.

A close reading of the House of Commons Debates that occurred during the third reading of Bill S-209 reveals that a great amount of discussion went into the history of MMA in Canada and its history in general.<sup>112</sup> The debates also considered

<sup>108</sup> *Complaint regarding the broadcast of Bully Beatdown on MTV Canada* (7 March 2011), 2011-006, online: CRTC <[www.crtc.gc.ca](http://www.crtc.gc.ca)> [*Bully Beatdown Complaint*].

<sup>109</sup> *Ibid* at 1.

<sup>110</sup> *Ibid* at 2; *MTV Canada re Bully Beatdown* (1 April 2010), 08/09-1667, online: CBSC <[www.cbsc.ca](http://www.cbsc.ca)> at 1-2 (Appendix).

<sup>111</sup> *Supra* note 2.

<sup>112</sup> See e.g. *House of Commons Debates*, No 259, *supra* note 2 at 1730 (Hon Christine Moore).

the importance of regulating MMA for the health and safety of athletes, and the benefits of regulating MMA for both economic and social reasons.<sup>113</sup> The existence of both unknown and famous (i.e. Georges St Pierre) Canadian MMA fighters as well as Canadian MPs who are MMA fighters was considered, as well as the use of MMA as a healthy activity for youth that provides confidence to children and “that goes a long way in ensuring that bullying at school will not happen.”<sup>114</sup>

Other discussions centred on MMA’s evolution over the years into a legitimate and well-regulated sport that is not as violent or dangerous as may be popularly perceived.<sup>115</sup> Medical witnesses heard by the Senate committee were referred to and studies were cited in showing that injury rates (such as concussions) are not as high as in other sports, such as boxing,<sup>116</sup> and that MMA rules better deal with and regulate these kinds of injuries to athletes than, for example, football or hockey.<sup>117</sup> Yet, at no point in these detailed debates did any discussion appear in relation to the mechanics of the rules of MMA in terms of how the fights are run and judged. This element is never addressed or questioned.

Certainly, at the federal level, the objective was decriminalization rather than regulation, but the intention was nonetheless decriminalization for the purposes of enabling regulation.<sup>118</sup> Considering the in-depth discussion of MMA in the Parliamentary debates, it is remiss that its attached internal regulatory framework was ignored in assessing MMA events as a candidate for decriminalization. Decriminalizing MMA, and accepting the provincial regulation of MMA (which, as noted above, was already in place in a number of provinces) necessarily involved accepting, and sanctioning, the absorption of MMA’s internal regulatory framework, rules, and norms pertaining to effective aggressiveness. And this was done without examining them or testing them for synchronicity with the dominant Canadian legal framework. As such, the mandating and acceptance of the promotion of effective aggression within the MMA context slipped past scrutiny while other legislative efforts, such as those pertaining to anti-bullying for example, have been working towards curbing the reification of aggressive behaviour.<sup>119</sup>

## (B) Slippage

Naomi Mezey’s discussion of the “slippage” that exists where law and culture intersect provides another way of understanding the conflicting treatment of aggression within the context of legislation. Slippage occurs between a law’s aims and its actual effects,

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<sup>113</sup> See e.g. *House of Commons Debates*, 41st Parl, 1st Sess, No 247 (6 May 2013) at 1115 (Hon Robert Goguen) [*House of Commons Debates*, No 247]; See e.g. *ibid* at 1140 (Hon Sean Casey); *House of Commons Debates*, No 259, *supra* note 2 at 1820 (Hon Massimo Pacetti).

<sup>114</sup> See e.g. *House of Commons Debates*, No 247, *supra* note 107 at 1155-1200 (Hon Glenn Thibeault).

<sup>115</sup> See e.g. *ibid* at 1140 (Hon Sean Casey); *ibid* at 1140 (Hoang Mai); *House of Commons Debates*, No 259, *supra* note 2 at 1800 (Hon Mathieu Ravignat).

<sup>116</sup> See e.g. *ibid* at 1745 (Hon François Lapointe); *ibid* at 1815 (Hon Massimo Pacetti); *House of Commons Debates*, No 247, *supra* note 107 at 1125-40.

<sup>117</sup> See e.g. *ibid* at 1110 (Hon Matthew Dubé).

<sup>118</sup> See e.g. *ibid* at 1140 (Hon Hoang Mai).

<sup>119</sup> See e.g. the *Accepting Schools Act*, *supra* note 88.

“between the production and reception of law and legal meaning.”<sup>120</sup> Mezey suggests that a “legal prohibition might effectively eliminate a social practice. Or, more likely, it will alter the meaning of the practice, hence changing the purposes and effects of the practice in a way not entirely contemplated by—and in some cases directly contrary to the aims of the legal rule.”<sup>121</sup>

Applying Mezey’s argument to aggressive behaviour, if aggression were to be prohibited in all contexts rather than discouraged only in certain undesirable contexts, such as the schoolyard and workplace, the opposite effect might arise where prohibition may actually increase the symbolic power of the outlawed behaviour.<sup>122</sup> In that sense, the State maintains an interest in keeping a monopoly on violence and allowing aggression in certain contexts.<sup>123</sup> The acceptance of aggression in the MMA context, as well as the awareness-raising attempts by the MMA community regarding the unacceptable nature of bullying, might thus counteract slippage.

While BullyingCanada.ca suggests that bullying ends almost immediately when peers intervene, it remains to be seen if the awareness-raising of anti-bullying campaigns deployed by the MMA community and the arguable confidence boosting effects of practicing MMA are effective in leading to peer castigation of bullying.<sup>124</sup> Or if, as Rob Frenette argued in relation to the Bully Beatdown television program, the use of MMA, regardless of the premise, instead encourages both violence, aggression, and retaliation to bullying through fighting.<sup>125</sup> Regardless of the avoidance of slippage, a holistic examination of MMA and its internal regulatory framework should not have been left out of the debates surrounding Bill S-209.

## CONCLUSION

The regulation of aggression is a reality of combat sports. Through the legalization and regulation of MMA, effective aggressiveness has been incorporated into the Canadian legal framework. The manner in which aggression is treated in the context of MMA imports the norms of the MMA community, which include additional expectations and pressures regarding the satisfactory performance of effective aggressiveness by MMA fighters in the ring. This reification of aggression is poignantly inconsistent with anti-bullying legislation introduced elsewhere in Canadian law that works to dissuade the use of aggression in the schoolyard and workplace.

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<sup>120</sup> Naomi Mezey, “Law as Culture” (2001) *Yale JL & Human* 35 at 58.

<sup>121</sup> *Ibid* at 58-59.

<sup>122</sup> *Ibid* at 59.

<sup>123</sup> Spencer, *Ultimate*, *supra* note 1 at 7. See also Weber, *supra* note 86.

<sup>124</sup> See online: BullyingCanada.ca <<http://www.bullyingcanada.ca>>. See also Nova Scotia, “Bullying & Cyberbullying: What We Need to Know” at 14-15, online: Anti-bullying Web Site <<http://antibullying.novascotia.ca>>. See e.g. *House of Commons Debates*, No 247, *supra* note 107 at 1200 (Hon Glenn Thibeault).

<sup>125</sup> *Bully Beatdown Complaint*, *supra* note 102; *MTV Canada re Bully Beatdown*, *supra* note 104.

It is possible that the difference in how aggression is dealt with in regards to MMA as opposed to with bullying can be justified or explained as an avoidance of slippage. As well, the umbrella of the State's monopoly on violence can be seen to extend over MMA through government regulation, while the aggression of bullying does not fall under the same conditions. Nonetheless, the schism between these developing areas of the law paint an irreconcilable picture of aggression that plays out in the cultural fabric and living rooms of Canada, where both the law and MMA encourage aggression in one context, and discourage it in another. Ultimately, in amending legislation related to the practices of community/cultural normative systems, such as the MMA community, it is important that the internal regulatory frameworks, such as the Unified Rules, be tested for consistency with the balance of Canada's dominant legal framework, which has not been the case in the decriminalization of MMA in Canada.