

**CUPE**

# Guide

for Post-Secondary  
Institutional Policies  
on Sexual Violence  
and Harassment



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# About this Guide:

CUPE's Checklist for Post-Secondary institutional Policies on Sexual Violence and Harassment was created to serve as a resource for local unions who are engaging in consultations on the creation or review of a university or college sexual violence and harassment policy. Each section of the checklist contains recommendations on what a good policy from a union perspective should include, in addition to problematic elements that should not be included.

This guide was created to accompany the checklist in order to provide more information on the recommendations in the checklist, along with sample language. This can help you to identify areas of your institutional policy that should be strengthened or revised.

The sections below match the sections of the checklist. Each section can be read on its own to provide guidance for those topics that are most relevant to your local union.

The information in the checklist and in this guide is provided for educational purposes only and does not constitute legal advice. For further information and assistance, please contact your National Representative.

# Introduction

Sexual violence is any act – whether the act is threatened, attempted, or carried out – that targets a person’s sexuality, gender expression, or gender identity without their consent. It includes, but is not limited to, sexual assault and sexual harassment. Sexual harassment encompasses remarks and behaviours of a sexually oriented nature where the person responsible knows or ought to know that the behaviour is unwelcome. This includes unwelcome sexual advances, unwelcome remarks on someone’s appearance or gender expression, and public displays of sexually explicit or suggestive materials. Sexual harassment can take place in person or in digital space. Sexual assault is an act that is sexual in nature that takes place without the consent of the recipient or where consent has been obtained through force or manipulation.



## Introduction

An important conversation has been taking place on sexual violence and harassment at Canada's post-secondary institutions in recent years. Five provinces and one territory now require all post-secondary institutions to adopt standalone sexual violence policies; universities and colleges in many other provinces have also created sexual violence policies.

The creation of these policies stems from a recognition that post-secondary communities are unique. Reliance on criminal law and employment law does not always result in satisfactory outcomes for students and workers who have experienced sexual violence or harassment, nor do they provide ways for the community to advance safety and accountability.

The policies do not replace alternative methods of responding to sexual violence and harassment. Depending on who the survivor and who the respondent are, the following processes may be pursued in response to an incidence of sexual violence and harassment:

- Institutional complaint process
- Alternative resolutions (informal or restorative justice)
- Individual or policy grievance
- Workplace health and safety investigation
- Internal union trial procedure
- Human rights complaint
- Complaint to a professional regulatory body
- A criminal complaint

The decision of which process(es) to follow should be up to the survivor. The role of the local union is to provide support to a survivor and/or to a respondent as required by the process chosen by the survivor.

### A note on terminology:

People who have experienced sexual violence or harassment may choose to refer to themselves as a survivor or as a victim. It is important to respect the preferred terminology of the person who has experienced harm.

In this toolkit, we use the term "survivor" or the term "complainant" in connection with the official reporting and investigation process when referring to someone who has experienced harm.

We use the term "respondent" when referring to someone who has been alleged to have committed sexual violence or harassment.

## Introduction

The quality of post-secondary sexual violence and harassment policies varies significantly. In those jurisdictions with legislation, certain elements are mandated to be included in each policy. But across jurisdictions, sexual violence and harassment policies are still new enough that administrators, labour unions, legal representatives, sexual violence response coordinators, and researchers are still doing the work of figuring out what constitutes a good sexual violence and harassment policy and what best practices might help to shape and implement their policy. Many jurisdictions require regular reviews to ensure that the policy reflects new information and best practices and that it is being implemented effectively and as intended.

Whether your institution is creating a sexual violence and harassment policy for the first time or they are reviewing an existing policy, CUPE's checklist is a tool to help you identify factors that make the policy of a post-secondary institution a good policy from a union perspective.

It does not cover every element that could or should be in an institutional policy. There are toolkits and resources available that provide information on the elements that student advocates want to see in sexual violence and harassment policies or that offer considerations from legal scholars. You may be interested in checking out some of these additional resources listed below.

### **CUPE resources:**

- CUPE National's Stop Workplace Sexual Violence Guide
- CUPE Ontario's We Believe You: Sexual Violence and Harassment in Union Spaces

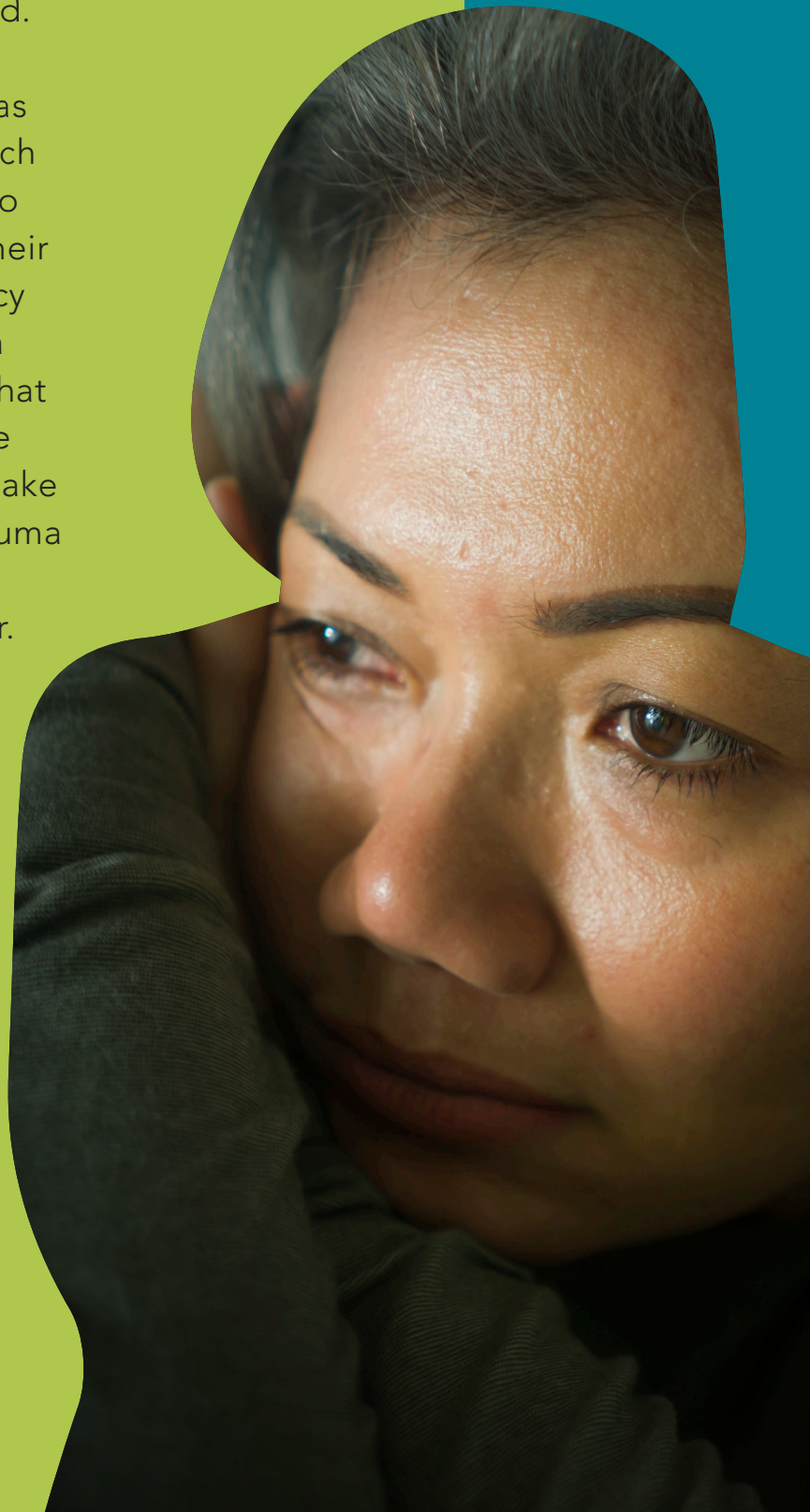
### **Other resources:**

- Achieving Fairness: A Guide to Campus Sexual Violence Complaints – Karen Busby and Joanna Birenbaum
- Campus Toolkit for Creating Consent Culture – Canadian Federation of Students-Ontario
- Courage to Act: Developing a National Draft Framework to Address and Prevent Gender-Based Violence at Post-Secondary Institutions in Canada – Possibility Seeds
- Our Turn: A National, Student-Led Action Plan to End Campus Sexual Violence – Students for Consent Culture Canada



# General

A good institutional policy on sexual violence and harassment should be survivor-centric and trauma-informed. This means that the policy should seek to empower the person who has been harmed, enabling them as much as possible to make decisions and to pursue a response that addresses their individual needs. However, the policy also needs to recognize that trauma impacts survivors in different ways that may impact their participation in the process. Trauma-informed policies take into consideration the effects of trauma on the survivor and, above all, seek to avoid re-traumatizing the survivor. (For more information, see CUPE's Fact Sheet: A Trauma-Informed Response to Sexual Violence and Harassment.)



**General**

Your institution's policy should respond to the needs of the whole campus community but should also recognize that some people are more likely to experience sexual violence due to their identity, social location, or real or perceived power in the institution, and that some survivors are more likely to experience barriers to reporting or to participating in an investigation. Decision makers may also be more likely to be biased, consciously or unconsciously, against certain participants based on their race, Indigeneity, gender identity or sexuality, socio-economic status, age, or ability.

The needs of some survivors may be shaped by their cultural background, whether it is the history of colonization and residential schools for Indigenous survivors, or fear of ostracism from a religious or cultural community for others. A good institutional policy should acknowledge that some survivors may experience unique barriers or may need culturally specific supports to be able to participate in an investigation.

Your institution's policy should be easy to find and easy to understand. The policy should adopt accessibility as a general principle, ensuring that community members with diverse needs are able to participate as equals. This could include providing American Sign Language/Quebec Sign Language interpreters, foreign language interpreters, or ensuring that spaces used for hearings and for support services are barrier-free.

Finally, your institution's policy should provide a clear and comprehensive definition of consent, recognizing that consent must be active (and can't be inferred from a lack of resistance) and ongoing (consent can be withdrawn at any time and cannot be assumed just because someone consented previously). Your policy may also define certain situations in which consent cannot be given, including relationships of power imbalance such as between a student and their professor or between a researcher and their supervisor. (For instance, all policies in Quebec are required by law to prohibit teacher-student relationships.)

### *Examples of language:*

**Dalhousie University:**

"Survivor-Centric" refers to an approach that, wherever possible, seeks to empower the individual who has experienced Sexualized Violence by placing their needs at the centre of decision-making related to support and response.

**McGill University:**

"Trauma-Informed" means an approach that respects individual dignity and autonomy during processes associated with making a Disclosure or a Report, based on an understanding of: the impact that trauma can have on behaviour, decision-making, memory, and willingness to seek services or accommodations or in reporting incidents of Sexual Violence. A Trauma-Informed approach further

rejects myths and stereotypes about Sexual Violence (for example, that a person can give Consent by the way they dress or by being intoxicated) and recognizes the impact that Sexual Violence may have not just on an individual, but on communities, as well as the disproportionate impact of Sexual Violence on women, gender minorities, and persons who are racialized, Indigenous, and/or disabled. All processes under this Policy shall be Trauma-Informed.

### **University of Victoria:**

The following principles are intended to assist in the interpretation of this policy.

- 3.1 Because anyone can experience Sexualized Violence, this policy applies to all University Community members regardless of a person's social position or position within the University structures, hierarchies, and power relations.
- 3.2 Some individuals or groups experience Sexualized Violence at higher rates. Efforts to address Sexualized Violence should be grounded in an Intersectional understanding that each person's experience, and the relationship between those who are subject to the policy, will be affected by many factors, including but not limited to their sex; gender identity or expression; sexual identity; family status; Indigenous, racial, or ethnic background; language barrier; ability; faith; age; migration status; socioeconomic status; academic standing; as well as their position within University structures, hierarchies, and power relations.
- 3.3 Every Survivor or person who is Impacted by Sexualized Violence will engage with the University and this policy from their unique situation or position. Given existing hierarchies and power dynamics at the University, they may enter their engagement with the policy at a disadvantage.
- 3.4 Sexualized Violence does not exist or operate in isolation. Acts of Sexualized Violence can also be acts of colonial violence, racism, sexism, ableism, ageism, classism, religious intolerance, homophobia, transphobia, queer antagonism, trans antagonism, bi antagonism, and/or any other form of discrimination.
- 3.5 Sexualized Violence is a human rights violation and accordingly the principles and approaches to address Sexualized Violence must be linked to the University's broader equity and antidiscrimination initiatives and goals.

### **Ryerson University:**

Ryerson University is a diverse community and every effort to address issues of sexual violence needs to be grounded in an understanding that each person's experience will be affected by many factors including but not limited to sex, ancestry, race, ethnicity, language, ability, faith, age, socioeconomic status, sexual orientation, and

**General**

gender identity. It must be acknowledged that acts of sexual violence can also be acts of systematic oppression, including but not limited to sexism, racism, colonialism, ableism, homophobia, and/or transphobia.

Sexual violence impacts people of all genders. The university recognizes that sexual violence is overwhelmingly committed against women, and in particular women who experience the intersection of multiple identities such as, but not limited to Indigenous women, racialized women, black women, trans women and women with disabilities. Additionally, the university recognizes that those whose gender identity and gender expression does not conform to historical gender norms are also at increased risk of sexual violence. Due to the complexities of violence experienced by people with intersecting identities, the university is committed to ensuring that its responses, prevention efforts and supports take an anti-oppressive and trauma-informed approach so that all community members can access these supports and services with care.

**University of Winnipeg:**

Consent: The active, ongoing, informed, knowing, and voluntary decision to engage in mutually acceptable sexual activity. More specifically:

- a) Consent is active. It is not passive or silent; it must be affirmative and ongoing; it can never be assumed or implied;
- b) Consent cannot be coerced through harassment, manipulation, threats, or abuse of power;
- c) It is the responsibility of the person who wants to engage in the sexual activity to make sure that they have ongoing Consent from the other person(s) involved;
- d) Consent to one sexual act does not constitute or imply Consent to a different sexual act;
- e) Consent is required regardless of the parties' relationship status or sexual history together;
- f) Consent cannot be given by a person who is incapacitated by alcohol or drugs or who is unconscious or otherwise lacks the capacity to give Consent;
- g) Impaired judgment on the part of the person accused that leads them to think or believe there was Consent is not an excuse for an act of Sexual Violence;
- h) Consent can be revoked at any time by any participant;
- i) There is no Consent where one person abuses a position of trust, power, or authority over another person.

# Scope of the Policy

The scope of your institution's policy should apply to everyone who is part of the community, regardless of their role, and regardless of whether they are a permanent member of the community, a visitor, or an alumnus. While many policies are only addressed to students, this is not ideal since students may also be workers and workers may also be students. On some campuses, as many as one-third of workers are student-workers. Survivors shouldn't need to choose which identity they will use to pursue justice – they should be able to achieve redress, accommodations, and support as a whole person, a student and a worker. Complainants who are workers should be able to choose the process which they feel best responds to their experience and concerns rather than being forced to file a grievance.



Similarly, the policy should apply regardless of the location of an incident of sexual violence or harassment, recognizing that work and learning take place in many venues, both on-campus and off, as well as online. Ideally, the policy should apply to any incident that affects the work or learning of a complainant.

Policies should also clearly spell out what kinds of behaviours are covered, including the full spectrum of behaviours that constitute sexual violence and harassment: sexual assault, harassment, stalking, indecent exposure, stealthing (nonconsensual condom removal), voyeurism, unwanted communications of a sexual or gendered nature including sexual jokes or name-calling, and demonstration or distribution of sexually explicit material.

However, policies should not have time limits on reporting or investigating complaints. It can take a long time for a survivor to be ready to come forward and share their story. There is no statute of limitations on the harm that is caused by sexual violence and harassment, either for individuals or for the community.

Your institution's policy should acknowledge the existence of collective agreements and clearly state that in the case of differences between the policy and collective agreement language, the collective agreement takes precedence. This is because the collective agreement is a legally binding agreement that cannot simply be changed through the adoption of a new institutional policy. If your institution wishes to change something in your collective agreement to accord with the policy, they need to negotiate that change with your local.

### *Examples of language:*

#### **McMaster University:**

Unless otherwise specified in this Policy, the Policy and its provisions apply to all acts of Sexual Violence where the University has the jurisdiction to pursue, adjudicate, or take steps to safeguard the University community. All such acts of Sexual Violence are considered a violation of this Policy. The Policy applies to:

#### **All Members of the University Community ("Community Members")**

- a) Community Members include: students (graduate, undergraduate, and continuing education), staff, faculty, postdoctoral fellows, adjunct professors, visiting professors, sessional faculty, teaching assistants, clinical faculty, medical residents, volunteers, visitors, and institutional administrators and officials representing McMaster University.

**All University-related activities**

- b) University-related activities are activities (authorized and non-authorized) that occur on University premises or on non-University premises where there is a clear nexus to the working or learning environment at the University; and

**All instances of Sexual Violence**

- c) all instances of Sexual Violence that have occurred or are occurring during University-related activities.

**University of Regina:**

This policy applies to any person under the University's direction or who has a relationship with the University and who subjects a student, employee or any other member of the University community to sexual violence/misconduct in the context of a University matter, whether the sexual violence/misconduct is alleged to have occurred on or off University property. This includes: (i) students; (ii) employees (faculty, staff, and student employees); (iii) persons who teach and conduct research at the University; (iv) members of the Senate, Board of Governors or other committees of the University; (v) visitors, guests, coaches, clients, customers, suppliers, and volunteers; and (vi) contractors, subcontractors and/or their employees and any persons under contract to the University.

**Dalhousie University:**

[T]his Policy applies only when the alleged incident of Sexualized Violence occurs, whether the alleged incident occurs on or off campus, and through any medium:

- a. In the course of University-related programs, operations, or activities (including, but not limited to, classes, non-credit courses, co-op work placements, and field/practicum placements);
- b. Using university-owned or run property or equipment (including, but not limited to, telephones, computers, and computer networks);
- c. While participating in university-sponsored activities, events or organizations (including but not limited to field trips, athletic team road trips, conferences or training events, social functions); or
- d. In the context of non University activities where the conduct has a material negative impact on the University Community Member's living, learning and / or working environment.

**Concordia University:**

Concordia acknowledges that the decision to report an incident of Sexual Violence is a difficult one that can take time to reach. Therefore, there is no time limit for making a Complaint of Sexual Violence or misconduct. Complainants should be aware, however, that significant delays in reporting may negatively affect the University's ability to collect evidence and to act upon it, especially if the Respondent has since left the University.

**Ryerson University:**

In the event that a conflict arises between the provisions of this policy and any relevant collective agreement, the terms of the collective agreement prevail.



# Responding to Sexual Violence and Harassment

## **CONFLICT OF INTEREST**

Most policies designate a person or an office who is responsible for implementing the sexual violence and harassment policy, for designating or hiring an investigator, and for determining sanctions once a finding has been made. This could be a Vice President, a Dean, or the Director of an Office of Sexual Violence Response and Prevention. But the people filling this role are also members of the post-secondary community with relationships to other community members. This means that sometimes, there is a real or perceived conflict of interest on the part of the person responsible for implementing the policy.



Your institution's policy should acknowledge the possibility of this conflict of interest and provide guidance on what should happen if a conflict of interest is present or perceived to be present.

For instance, a report of misconduct against a college or university president should not be presided over by another member of the senior administration team.

### *Example of language:*

#### **University of British Columbia:**

11.1 If a Director or staff member of the Sexual Violence Prevention and Response Office, the Director of Investigations, an Investigator, or a UBC authority empowered to impose discipline has a real or apparent conflict of interest in an Investigation, or where there exists a reasonable apprehension of bias, that individual will not continue to be involved in the Investigation and UBC will appoint an appropriate individual to act in that role for the purposes of that Investigation.

## **DISCLOSURE AND REPORTING**

For many reasons, survivors may find it easier to disclose sexual violence and harassment to someone they already know well or already engage with on a daily basis, such as friends, roommates, professors, or support staff. For the survivor, the response of the person they disclose to can have a significant impact on their well-being and on their willingness to report. But post-secondary institutions can't simply assume that every community member will know how to best respond to a disclosure. Policies need to clearly identify how faculty, staff, and students should respond if someone discloses an incident of sexual violence or harassment to them. This should include guidance on where or to whom the survivor should be referred, what information should be given to them about their options, and when recipients of disclosure have a duty to report. Training should also be offered to community members on how to respond in a trauma-informed way.

For survivors who decide to proceed with a formal institutional process, the policy should clearly state how official reports of sexual violence and harassment must be made – whether they can be made verbally or must be submitted in writing – and which office or person receives these reports.

## Responding to Sexual Violence and Harassment

**Disclosure:** a disclosure occurs when someone reveals to another member of the community that they have been subjected to sexual violence or harassment.

**Reporting:** a report is a formal statement submitted as part of the institution's process for handling complaints of sexual violence and harassment.

**Third party reporting:** a third party report is submitted by someone other than the survivor, allowing the survivor to remain anonymous.

**Anonymous reporting:** the complainant or a witness to an incident can submit a complaint without identifying themselves.

Your institution's policy should also identify who can make a report. The best policies will allow for complaints to be submitted anonymously or by third parties, rather than requiring the survivor to come forward and file a formal complaint. This does not mean that third party and anonymous reports should be dealt with in the same way as complaints filed by the survivor. On the contrary, procedural fairness requires that a respondent has a right to hear and respond to an accusation. They cannot do so if all of the information about an incident is not disclosed. This is especially true in cases involving disciplinary measures. Discipline should never be used in cases of third party or anonymous complaints.

However, given the barriers to reporting, third party and anonymous reports can be an important tool in keeping survivors and campuses safe. They can lead to campus risk assessments, allow for structural changes that do not affect the rights of any one individual (such as installing lights or windows or changing door locking practices), and help to identify trends. In some cases, having several third party reports filed about a single perpetrator may persuade survivors to come forward and formally report.

There are also software programs which can connect a user who has filed an anonymous report to support services and can notify them if someone else files a report about the same person, allowing them to reconsider their options.

The policy should be clear about these limitations to third party and anonymous reporting so that both survivors and community members have reasonable expectations about what will happen after a report is filed.

Once a report has been made, the policy should offer clear guidance to complainants about what happens next. In order to ensure that the process is survivor-centric, this should include multiple options for the survivor rather than forcing the survivor down one path. This could include an investigation, alternative resolution measures, a grievance, a police report, or simply a risk and safety assessment.

The policy should also identify how a respondent is to be informed that a report has been made concerning them.

### *Examples of language:*

#### **Lakehead University:**

What to do if you receive a Disclosure

- 8.5.1. A University Community Member who receives a Disclosure should be respectful and supportive, provide assistance as appropriate, and encourage the individual to visit the Office of Human Rights and Equity to explore possible supports, services and accommodations as well as complaint options. The University Community Member who receives the Disclosure should maintain strict confidentiality with respect to that Disclosure unless there are reasonable grounds to believe that there is a safety risk, or the University has a legal duty to investigate the matter.
- 8.5.2. A University Community Member who receives a Disclosure and has reasonable grounds to believe that an individual is at imminent risk of self-harm is encouraged to seek assistance from one or more of the emergency services outlined in Appendix B and stay with the individual until emergency assistance is provided to the individual.
- 8.5.3. A University Community Member who receives a Disclosure and has reasonable grounds to believe that one or more individuals at the University or within the wider community may be at risk of harm is encouraged to seek assistance from one or more of the emergency services outlined in Appendix B.
- 8.5.4. A University Community Member who receives a Disclosure and contacts emergency services as outlined above in section 8.5.2 or 8.5.3, is encouraged to Report the situation to the Office of Human Rights and Equity.
- 8.5.5. A University Community Member who is an Employee should keep track of all Disclosures, in an anonymous way, and report these to the Office of Human Rights and Equity for aggregate data reporting (see section 12.3.1).

- 8.5.6. A University Community Member who receives a Disclosure and requires support, services or accommodations as a consequence of the Disclosure, should report to the Office of Human Rights and Equity to request same.

**University of Victoria:**

- 14.1 The SVRO will provide Survivors with information about their options and the processes available to them, and with referrals where appropriate. Process options for Survivors may include:
- (a) Disclosure to a member of the University Community;
  - (b) a Report to the University;
  - (c) a statement to the University through a Third Party;
  - (d) a grievance through their union;
  - (e) a report to the police through an approved agency;
  - (f) a report of a crime directly to the police;
  - (g) a human rights complaint to the BC Human Rights Tribunal;
  - (h) a civil suit.

**York University:**

- 10.1 The Centre is responsible for receiving all non-emergency reports of sexual violence. Any community member who experienced sexual violence by another community member may commence the reporting process by contacting the Centre in person or electronically
- 10.2 A complaint is finalized on the date on which it is received by the University in writing and signed by the complainant. The complaint will include the following:
- a. name of the Complainant
  - b. name of the Respondent (if known); and
  - c. a description of the particulars including but not limited to date(s), time and location where the incident(s) occurred.

**University of Winnipeg:**

- 12.2 A Report may be filed by someone other than the Survivor but should only be done so with the approval of the Survivor except in limited situations outlined in section 17 (Confidentiality). Witness Reports or anonymous Reports, where made by someone other than the Survivor, should still contain identifying information such as names or physical descriptions of those involved, if known. These Reports can be filed in the same manner as any Complainant Report.

- 12.3 The University will accept these Reports for the purposes of:
- a) Determining whether there is evidence of a safety concern for the UW Community;
  - b) Identifying whether it is reasonable or required for the University to investigate; and/or
  - c) Compiling statistics related to Sexual Violence.
- 12.4 Anonymous or Third Party Reports, while accepted for the above purposes, will generally limit the University's ability to investigate. In addition, anonymous Reports cannot be used as the basis for disciplinary action in accordance with University collective agreements and principles of procedural fairness.

**Mount Saint Vincent University:**

Within five (5) business days of receiving a Report, the Responsible Authority shall provide written notice to the respondent(s) of the Report. The notice shall include of a summary of the allegations, a copy of this Policy, and that an investigation will be initiated.

**INTERIM MEASURES**

Interim measures are actions or restrictions implemented to ensure the safety of the survivor and the campus community, while ensuring that the survivor is supported as student and/or worker. Interim measures could include no contact orders, change of residence, restricting building access, or, in extreme cases, banning someone from campus. Importantly, interim measures are not disciplinary and should not be seen as evidence of guilt.

The policy should not require a formal report to be filed in order for interim measures to be implemented. They should also be available in cases where a survivor has disclosed an incident but not filed a formal complaint or in instances where an institution believes it must take action to prevent harm to the community. For some survivors, the most urgent need is to feel a sense of safety and once that need is satisfied, they don't desire any further measures.

The policy should state who is responsible for determining which interim measures will be applied, as well as clearly identifying the criteria for determining which interim measures will be implemented. For instance, criteria should include that the interim measures selected must be necessary to ensure safety, responsive to the needs of the survivor and least disruptive to the survivor, proportionate to the severity of the alleged conduct, and in accordance with the collective agreement. The policy should explain how and when the respondent will be informed

of these measures. Finally, the policy should identify what will happen if the interim measures put in place are violated and who is responsible for overseeing compliance.

Interim measures are not intended to be permanent and unchanging. The complainant and respondent should both be able to request changes based on new developments. The interim measures should also be reviewed periodically to see if they are still necessary and if they are working as intended. Policies should provide a timeline for interim measures to be reviewed and state who will be responsible for conducting that review.

### *Example of language:*

#### **University of Alberta:**

##### **3. INTERIM MEASURES**

- a. Interim measures are non-disciplinary conditions that may be imposed on a person alleged to have committed sexual violence. The University may impose interim measures in response to either a disclosure or a complaint where the allegations would:
  - i. if proven, constitute sexual violence, and
  - ii. with regard to all of the circumstances, be a risk to an individual, the community or the integrity of any potential investigation.
- b. The purpose of such interim measures is to ensure personal safety, discourage or prevent retaliation, prevent further sexual violence, protect confidentiality, minimize disruption to the learning, working or University Residence environment and/or preserve the University's ability to conduct a thorough investigation.
- c. Having regard to all of the circumstances, where interim measures are imposed, they must be appropriate and proportionate to the seriousness of the alleged conduct, and as minimally restrictive as possible to achieve their purposes. As a result, interim measures will be based on considerations including, but not limited to:
  - i. the reasonable wishes of the person who experienced the sexual violence,
  - ii. the nature and/or severity of the alleged conduct,
  - iii. reasonably credible information about patterns of conduct or previous history of sexual violence or other misconduct,
  - iv. the potential impact of the measures on the person(s), including on their academic program and/or employment,

## Responding to Sexual Violence and Harassment

- v. the potential impact of the measures on the learning, working or University Residence environment,
- vi. in the case of employees, in accordance with their relevant collective agreement, and
- vii. any other relevant information.

Examples of interim measures can be found in the University's Sexual Violence Interim Measures Information Document.

- d. The decision to impose interim measures will be made by:
  - i. in the case of students, the Vice-Provost and Dean of Students, or designate.
  - ii. in the case of faculty and staff, the Provost and Vice-President (Academic) and/or the Associate Vice President (Human Resources), or designate.
  - iii. in the case of postdoctoral fellows, the Vice-President (Research), or designate.

Decision makers may consult as needed in determining whether to impose interim measures and the nature of those measures.

- e. In all cases, decisions on interim measures must be provided in writing and include:
  - i. particulars of the measure(s),
  - ii. information about the right to request a reconsideration,
  - iii. information about relevant complaint processes, if applicable, and
  - iv. referrals to supports and/or services.
- f. The person(s) on whom interim measures are imposed may request a reconsideration from the decision maker after sixty (60) days or such earlier time as agreed to by the decision maker. Further, at any time, the decision maker may on his or her own initiative reconsider the interim measures imposed and renew, revise, or revoke any or all of the measures, or impose additional interim measures.
- g. Interim measures will be re-evaluated when a complaint process is concluded.

## INVESTIGATIONS, ADJUDICATION, AND SANCTIONS

### Investigations

Once a report has been filed, the next step in many cases is for the institution to conduct an investigation (unless the complainant has opted for an alternative process). Your institution's policy should clearly explain who is responsible for overseeing an institutional investigation, how an investigator will be selected and what the mandate of an investigator will be.



**Investigation:** the process of collecting information on the alleged incident from the complainant, the respondent, and any witnesses. This information can be obtained through interviews and the collection of records, documents, and other material evidence.

**Adjudication:** making a decision, first as to whether there is sufficient evidence of guilt (on balance of probabilities), and second as to what the appropriate sanction should be.

**Sanctions:** the penalty for having breached the sexual violence and harassment policy, other institutional policy, or collective agreement.

An investigator could be either internal or external. An internal investigator could be someone whose full-time job is to conduct investigations or they could also be employed in other roles on campus. An external investigator is someone hired from outside the campus community. There are pros and cons to both internal and external investigators and not every institution will have the resources to hire an external investigator or access to a pool of trained external investigators.

Regardless of whether they are internal or external, all investigators should be specifically trained on conducting sexual violence investigations and should be culturally competent and trauma-informed. Furthermore, if your institution's policy provides for internal investigations, there should also be clear language regarding conflict of interest, so that an investigator with other roles on campus is not allowed to investigate someone they work with in one of their other capacities.

The mandate of the investigator could be simply to gather evidence to be turned over to the adjudicator for a decision as to whether a policy was breached or the investigator may be tasked with adjudicating whether a complaint is substantiated or not.

The policy should explicitly state what kinds of documents and evidence can be collected during the investigation, how they will be stored, and where they will be stored to ensure privacy and confidentiality.

The policy should also clearly state what the rights of the complainant and the respondent are at each stage of the process. The complainant should not be treated as an observer who launched the formal process but has no role to play in it. Rather, the complainant should have participatory rights at each stage of the process, such as the right to participate in the investigation and respond to the evidence that is collected; the right to defend themselves against attempts to use their personal or medical information as justification for the assault; the right to be accompanied by a support person or to have a support person intervene on their behalf; the right to be informed of timelines and

delays; and the right to be informed of what decisions have been taken and why. The rights of the complainant should include the right to not participate in the investigation if that is their choice.

The respondent also has rights: the right to know and respond to all of the evidence against them; the right to a fair hearing; the right to have a support person; the right to a timely decision; and the right to be informed of the reasons for a decision.

These rights are essential to ensuring that the process will be guided by the principle of procedural fairness: a legal principle that says people have the right to be informed in advance of a decision that will affect them, to a fair and unbiased hearing before the decision is made, and to be informed of the reasons for the decision. What is required at each stage to ensure that this standard is met may vary according to the seriousness of the decision and its consequences, so that the right to a fair and unbiased hearing may look different in practice when the potential outcome is a written reprimand as opposed to expulsion or termination of employment.

It is important that the policy identifies that both complainant and respondent may be represented by a support person. This person may be a union support person, as the union has a duty to represent their members and the institution may not bar the union from doing so. All participants who are unionized should be informed of their right to be represented by their union.

Although both complainant and respondent should have the right to respond to the evidence collected during the course of the investigation, this does not necessarily mean face-to-face or in the format of a cross-examination. The policy should offer alternatives to in-person meetings for complainants who do not feel safe meeting in-person with the respondent, including separate meetings with the investigator, and video-taped or written submissions.

Your institution's policy should also identify measures to reduce other barriers to participation for both complainant and respondent, including the right to have an interpreter, ASL interpreter, or assistive devices.

### **Adjudication and Sanctions**

The policy should identify who, apart from the adjudicator, will receive a copy of the investigator's final report and what information will be made available to parties who do not receive a full copy of the report, including the respondent, the complainant, and the respondent's union. Because of the confidential nature of the proceedings, information should not be disclosed to third parties (see the section on **Privacy and Confidentiality** below), but the procedural rights of the respondent and complainant require that they be given enough information to understand the reasons for the final decision and enough information to be able to make an informed decision on whether to appeal. However, there may be valid reasons for not sharing a full and unredacted report in the name of privacy.

The final stage of the process is for the adjudicator to make a decision regarding whether the policy was breached (if this is not part of the investigator's mandate) and to decide what sanctions, if any, will apply. Your institution's policy should clearly identify who is responsible for making these decisions. Who the adjudicator is may depend on whether the respondent is a student, a worker, or both.

Some policies allow for penalties for "frivolous or vexatious" complaints. But this puts survivors in the position of fearing that if their complaint is not substantiated by the investigation that they will be punished. Your institution's policy should not allow for any sanctions against a complainant for an unsubstantiated complaint.

Finally, some policies allow for complaints to be put on hold if the survivor chooses to pursue another process simultaneously, usually a criminal complaint. There may be legitimate concerns about safeguarding the rights of the respondent if they are also defending themselves against a criminal case, however this should not be used to withhold the right to receive redress and protection as a student or a worker, not to mention the interest of the community in ensuring safety and accountability.

### *Examples of language:*

#### **Yukon University:**

The SVR team will coordinate the investigation and all related processes. The SVR team will appoint an impartial investigator who has knowledge, training and experience in sexualized violence investigations and related issues. The investigator will be familiar with the policy and operate within the principles and processes identified. The investigator may be internal or external to the College. Where the complainant or respondent reasonably believe that the investigator may have a conflict of interest they may request an alternative investigator. The SVR team will consider their concerns to determine whether or not to assign an alternative investigator.

#### **University of Prince Edward Island:**

13.5 Formal Resolution

- (a) When a decision is made that formal resolution is the appropriate course of action, the Sexual Violence Prevention and Response Office will appoint an investigator to conduct a full investigation.
- (b) The steps taken to investigate a complaint may vary but will generally involve the following:
  - (i) the complainant and the respondent are informed in writing that an investigation is being undertaken, describing the allegations and the possible sanctions.

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- (ii) the respondent is given the opportunity to provide a written response to the complaint and the complainant has the opportunity to reply to the written response;
  - (iii) the investigator conducts one or more separate interviews with the complainant and respondent to obtain any additional information, documents, names of witnesses and other evidence that may be considered relevant; both parties will never be interviewed at the same time;
  - (iv) relevant documentary and other evidence is compiled; and
  - (v) interviews are conducted with witnesses or other persons who may have relevant evidence.
- (c) Either party may decline to be interviewed by the investigator and/or to provide relevant evidence. The investigation report will reflect that a party was given the opportunity to participate in the investigation but did not do so.
- (d) During the course of investigation, the investigator will keep the parties apprised of the status of the investigation and the expected time to completion. While the time to investigate and complete an investigation report will vary depending on the circumstances of the case, it is expected that investigation reports will be finalized within 60 calendar days.
- (e) Following completion of the investigation, the investigator will prepare a written report containing a detailed summary of the facts and evidence gathered. A complete copy of the investigation report will be provided to the complainant and respondent.
- (f) The complainant and respondent will be provided an opportunity to make written submissions with respect to the investigation report. Any submissions received by either party will be disclosed to the other.
- (g) At any time prior to the investigator's report being forwarded to the Vice-President, Academic & Research, the complainant may request informal resolution.
- (h) The investigation report and the submissions of the parties will be presented to the Vice-President, Academic & Research for a decision as to whether or not, based on a balance of probabilities there has been a breach of this Policy. Prior to a decision being made, oral submissions may be undertaken as follows:
- i. At the request of one or both of the parties or at the discretion of the VicePresident, Academic & Research.
  - ii. If oral submissions occur, the parties will not be required to be in the same room together when making submissions if they elect to provide oral submissions.

- iii. The parties may have a support person present.
- iv. The Vice-President, Academic & Research may request to meet with the investigator and/or any witnesses prior to making a decision.
- v. If either party declines to participate in an oral submission, they may be provided with questions in writing from the Vice-President, Academic & Research and will have the opportunity to provide written answers.
- vi. If any new evidence is presented either orally or in writing, both parties may be given the opportunity to respond in writing prior to a decision being rendered.

### **University of Alberta:**

#### 5. Complainant Rights in Complaints Process

- a. The applicable procedures for investigating and adjudicating complaints of sexual violence are required to adhere to the principles of procedural fairness. Adherence to such principles is necessary to ensure that persons accused of sexual violence are protected by receiving a fair adjudication. At the same time, the procedures for investigating and adjudicating complaints of sexual violence must also be conducted with due regard to their effects on the complainant. Having such regard is necessary in recognition that investigatory and adjudicative processes can themselves cause additional trauma to a complainant. In balancing these obligations, investigators and adjudicators will be mindful to conduct their functions in a way that reduces, to the extent possible, the risk of additional harm to the complainant, while ensuring procedural fairness for the person accused in the complaint.
- b. Without limiting the foregoing, but subject to the provisions of any applicable collective agreement, the complainant will have the right to:
  - i. be accompanied by a support person throughout their participation in any investigatory or disciplinary proceedings,
  - ii. be informed of, make and respond to procedural requests,
  - iii. make oral or written representations on their own behalf, through their support person or other appropriate party, regarding impact and sanction,
  - iv. receive a copy of the written reasons for the decision.

**Ryerson University:**

Complainants and respondents will be provided with a support person throughout the investigation and decision-making process by the university. Support for complainants will be facilitated by Consent Comes First. Support for respondents who are students will be facilitated through the Student Conduct Office. Support for employees who are respondents will be facilitated by Human Resources, consistent with any existing relevant collective agreement provisions. Complainants and respondents also have the right to identify an alternate support person or representative of their choosing to accompany them to any meetings or proceedings related to the handling of their case. Support persons may include a friend, family member, employee union representative, legal representative, colleague, etc.

**Ryerson University:****The Rendering of the Decision**

The decision maker will review the final report from the investigator. The decision maker may also request an opportunity to meet with and ask any questions of the investigator, the complainant, the respondent and/or any witnesses separately before rendering a decision. Any in-person meetings will be transcribed so as to document any new evidence presented that does not appear in the investigator's report. If in the course of these meetings, new information is presented by any party, the complainant and respondent will be given the opportunity to respond to or question that new information, in person or in writing before the decision is rendered. The complainant will not be required to appear before a decision maker in the presence of the respondent.

Within 20 business days of reviewing the investigator's report and completing all requested meetings with parties involved and reviewing all additional written submissions or questions submitted by either party, the decision maker will render a decision and where applicable assign an appropriate sanction/remedy. The time frame to render a decision may be extended in extenuating circumstances and the extension will be communicated to the parties.

The final decision prepared by the decision maker will indicate whether there has been a breach of the policy or not.

If there is a finding that the policy has been breached, the decision maker may consider the following in determining an appropriate sanction:

- i. The sanction or remedy sought by the complainant
- ii. The principle of progressive discipline and the university's role as an educational institution

- iii. The requirements under any relevant collective agreement
- iv. The nature and severity of the incident
- v. Any other relevant factors

The decision maker will provide both the complainant and the respondent with a summary of the investigation results, their decision, reasons for the decision and any applicable sanctions.

Any request by either party to receive a copy of the investigation report will be subject to restrictions under the Freedom of Information and Protection of Privacy Act.

## **APPEALS**

Institutions currently take very different approaches to appeals, with some allowing a full re-hearing and others allowing only administrative reconsideration of the existing decision in cases of significant errors. Institutions are also not consistent in allowing both complainant and respondent (and their unions) access to the information that might allow them to file an appeal.

Appeals are an essential part of ensuring that justice has been achieved. They allow for procedural errors to be redressed, for unreasonable decisions to be challenged, and for new evidence that has only just come to light to be presented. Ensuring a fair and transparent appeal process will also prevent participants from filing for judicial review, which could further traumatize the survivor.

Both the respondent and the complainant should be able to file an appeal. The policy should identify how an appeal is to be filed and who the appeal must be filed with. The policy should also clearly state which elements of an investigation a complainant or respondent has the right to appeal: the investigation report, an adjudicative decision, and imposition of sanctions or discipline.

While there are legitimate concerns about how an entirely new hearing may re-traumatize a survivor, particularly if cross-examination is permitted, these concerns should not be used to exclude new evidence from being considered by the appeal process. There are methods of reviewing evidence that do not require an adversarial in-person process to assess the validity of evidence. Excluding evidence that could make a difference to the outcome simply based on when it became available is not justice and does not allow the community to move forward toward healing.

### *Examples of language:*

#### **Yukon University:**

The complainant or respondent involved in a formal complaint under this policy have the right to appeal the decision or imposed sanction.

The decision letter will identify the individual responsible for an appeal in the case and the process for accessing that option.

Those wishing to appeal a decision or sanction will be required to submit a written request to the appropriate individual within 5 business days of communication of the decision.

Appeals will be considered on the following grounds:

- There is new information that could not be reasonably presented earlier potentially rendering the original decision unreasonable in light of the new information presented,
- An alternative sanction is being suggested, or
- There is clear evidence of lack of procedural fairness and/or bias or unfair treatment in the process.

#### **Carleton University:**

- 10.1 An appeal is not an opportunity for the Complainant or the Respondent to repeat the information provided to the Sexual Violence Review Committee. The right to an appeal is not automatic and an appeal will only be considered if it meets the following requirements:
- a) The appeal is of a final decision of the Sexual Violence Review Committee;
  - b) The appeal is submitted by either the Complainant or the Respondent;
  - c) The appeal must be made within 15 days after the date of the final decision that is the subject of the appeal;
  - d) The appeal includes the reasons for the appeal, the reasons why the appeal should be granted, the arguments in support of the appeal and the outcome sought;
  - e) The appeal must demonstrate that:
    - There has been a fundamental procedural error in the making of the final decision and that such error has caused or will cause actual prejudice to the person seeking the appeal, or
    - There are new facts relevant to the final decision that were not available and could not have been provided to the Sexual Violence Review Committee. [...]



- 10.2 The appeal must be made to the University Secretary. Following receipt of the appeal, the University Secretary will convene the Appeal Board. The Appeal Board consists of the Assistant Vice President of Human Resources and the Provost and Vice President Academic or their delegates, who will receive sexual violence and procedural fairness training. The Appeal Board will be chaired by a person external to the University Community who has the appropriate legal training.
- 10.3 The appeal process is conducted in writing. The Complainant or Respondent, as the case may be, will be advised of the appeal and do not need to respond to the appeal unless the Appeal Board sends a letter requesting them to do so.
- 10.4 The Appeal Board reviews the appeal, determines whether the appeal meets the requirements of paragraph 10.1 of this Policy. Following review of the written submissions, the Appeal Board may in its sole discretion convene a hearing to determine the matter. All decisions of the Appeal Board are final.

## **ALTERNATIVE RESOLUTIONS**

Not every survivor who files a report wants to go through the process of a formal investigation and adjudication or the adversarial processes of filing a grievance or a police report. Alternative resolution processes can be an important tool to provide a survivor with a sense of healing or justice, but they must be approached carefully and thoughtfully so as not to cause further harm.

Alternative resolution processes can include Indigenous or cultural practices such as a healing circle, restorative justice practices such as Circles of Support and Accountability or conferencing, training, or an apology.

In order to ensure that an alternative process is not used to evade accountability, cause further harm to the survivor, or protect the interests of the post-secondary institution at the expense of the survivor, alternative resolutions should only be initiated when the survivor requests it, with the fully informed consent of the respondent. The respondent should be aware that participating in an alternative resolution process begins with an admission that their actions have caused harm and seeks to find ways to making things right with the individual who has been harmed and with the community. Without the fully informed and willing participation of the respondent, an alternative process is not likely to be successful.

Alternative resolutions are also not easy to design and implement simply for being less formal than an investigation. Specially trained facilitators should be made available to work with the complainant and the respondent in designing and implementing an alternative process.

There is one exception, however: your institution's policy should not offer mediation as an alternative to a formal investigation. Mediation is about seeking a mutually acceptable resolution where conflict has arisen between two parties. It is not about holding an offender accountable or about meeting the needs of a survivor. It presumes a certain amount of responsibility or guilt on the part of both parties. It is also unlikely to be effective since it fails to acknowledge the significant harm that one party has caused the other.

The policy should not lock survivors into the alternative resolution process, once initiated. A survivor should be able to decide whether the process is working for them or not and if they would prefer to return to a formal investigation or other process instead.

### *Example of language:*

#### **Carleton University:**

In appropriate circumstances, a Complainant may be willing to resolve the matter before an investigation is commenced or completed, or before a decision is made by the SVRC. A Respondent could also initiate an alternative resolution process by notifying Equity Services. Equity Services will follow-up with the Complainant and Respondent to determine their willingness to participate in an alternative resolution process. For it to be a meaningful process, participants must engage voluntarily and remain free from reprisal. At any stage during the process, either the Complainant or the Respondent may indicate they would like the complaint to move to or resume the investigation and decision-making process.

## **SUPPORTS**

Your institution's policy should provide for a variety of supports for individuals affected by sexual violence and harassment and include information on resources available off-campus as well, including:

- Trauma-informed counselling
- Medical and health support
- Academic and/or workplace accommodations
- Access to safe housing, including help to find appropriate housing and emergency funds to pay for housing

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- Information on reporting to police or to professional bodies
- Paid gender-based violence leave
- Providing an interpreter
- Access to an advocate
- Access to cultural supports such as an Indigenous elder
- Access to legal services

Supports should be made available to every member of the community who is affected by sexual violence and harassment whether they are a survivor, a respondent, a person who has caused harm, a witness, a first responder, or a support provider. Support should not be contingent on having filed a formal report. There should also be no statute of limitations on supports and no requirement that the incident have occurred while the survivor was a member of the post-secondary community.

These supports should be coordinated through a centralized office on campus. This will prevent survivors from having to disclose their story repeatedly in order to obtain support and accommodations or from needing to negotiate individually with each professor or supervisor.

The policy should protect anyone who is involved in disclosing, reporting, responding to, or the investigation of an allegation of sexual violence and harassment against retaliation.

Finally, the work of responding to sexual violence and harassment – including receiving disclosures, conducting investigations, and providing supports – is not easy work. The people who do this work may experience vicarious trauma and various mental and physical health challenges. On too many campuses, these workers are also in precarious, poorly-funded positions. Your institution's policy should recognize the work and emotional burden of those who receive disclosures and those who do the work of responding and ensure that appropriate supports are put in place for them. Your local union should also fight to ensure that these are permanent, well paid positions.

### *Examples of language:*

#### **Ryerson University:**

4. Commitment to Support and Accommodation for People Affected by Sexual Violence
  - a. All Ryerson students and employees should expect to receive support through the appropriate office if they are affected by sexual violence.
  - b. Survivors may access supports, accommodations and/or academic considerations regardless of when, where or by whose hand they experienced an incident of sexual violence.

- c. Consent Comes First will work with individual survivors in determining their support and/or workplace and academic accommodation and/or academic consideration. Each survivor's needs will be different, and the types and forms of support and accommodation made available will be tailored to the survivor's needs on a case-by-case basis.

**University of Prince Edward Island:**

- 6.1 Supports and services are available to community members affected by sexual violence, irrespective of when or where the incident occurred. The Sexual Violence Prevention and Response Office will maintain an up-to-date list of supports and services offered by the University and in the community. The University will publicize the availability of this information to members of the University community.
- 6.2 It is not necessary to file a report or complaint in order to access the services provided by the University. Equally, accessing these services does not constitute filing a report or complaint to the University.
- 7.2 The Sexual Violence Prevention and Response Office facilitates support, services and accommodations based on the circumstances of the incident and the needs and wishes of the person disclosing and/or reporting. The Sexual Violence Prevention and Response Office is available to assist with:
  - (a) referrals to University resources and community agencies;
  - (b) referrals to medical services;
  - (c) academic / workplace accommodations;
  - (d) housing relocation for students living in residence;
  - (e) coordination of safety planning;
  - (f) access to emergency housing;
  - (g) coordination emergency financial assistance;
  - (h) referrals to on and off campus counselling services;
  - (i) information about reporting options;
  - (j) decision-making and navigating University processes;
  - (k) managing the flow of information among departments or offices where necessary;
  - (l) coordinating with other institutions, where a student may be cross-registered, in respect of access to supports and accommodations;

**Sheridan College:**

It is contrary to this Policy for anyone to retaliate, threaten to retaliate, or engage in reprisals, against a Complainant or other individual for:

- having pursued rights under this Policy, the Ontario Human Rights Code, or other applicable legislation;
- having participated or co-operated in an investigation under this Policy, or other applicable legislation; or
- being associated with someone who has pursued rights under this Policy, the Ontario Human Rights Code, or other applicable legislation.

Sheridan takes reasonable steps to protect persons from reprisals, retaliation and threats. This may entail, for example, advising individuals in writing of their duty to refrain from committing a reprisal and sanctioning individuals for a breach of this duty. Sheridan may also address the potential for reprisals by providing an Accommodation appropriate in the circumstances.

**PRIVACY AND CONFIDENTIALITY**

For both survivors and respondents, confidentiality in disclosing, reporting, and investigating an allegation of sexual violence and harassment is very important. Privacy, employment, and human rights legislation may also limit what information can be revealed and to whom. Finally, confidentiality is essential to ensuring the integrity of an investigation into an allegation of sexual violence and harassment.

However, there are also occasions where disclosure is required by law or is necessary to prevent harm to an individual or to the community. Too much confidentiality may also cause further harm to the survivor, if they are prevented from knowing the outcome of an investigation or from being allowed to share their own personal story. Finally, an overemphasis on privacy and confidentiality may result in a judicial challenge to an investigation or a decision if either the complainant or respondent believes that lack of information inhibited their ability to respond to arguments in the case or to appeal decisions.

Privacy law differs across jurisdictions and institutions may receive differing interpretations of that law from their legal teams. For that reason, there is no one-size-fits-all best policy regarding confidentiality and disclosure. However, the best policies will clearly identify both the extent and the limits of confidentiality so that both complainants and respondents know what to expect and those who are receiving disclosures or providing supports know what their obligations are under the policy.

This includes clearly explaining:

- The limits to confidentiality, such as if there is imminent risk of harm or when disclosure is required by law
- Who has the right to information disclosed during an investigation
- Who will receive a full copy of the investigator's findings and who will receive a partial or redacted version of the investigator's findings
- Who will be informed about sanctions or disciplinary measures
- Where records pertaining to the investigation will be stored and for how long this information will be kept

### *Examples of language:*

#### **McMaster University:**

37. The University recognizes that confidentiality is a crucial consideration in creating an environment in which individuals feel able to Disclose incidents of Sexual Violence and to access Support, Accommodations, and information. The University will share identifying information only in circumstances where it is necessary in order to administer this Policy, to address safety concerns, or to satisfy a legal reporting requirement. In such circumstances, the minimum amount of information needed to allow such concerns to be addressed, or to meet such requirements, will be disclosed. Such circumstances include those where:

- a) an individual is at risk of harm to self;
- b) an individual is at risk of harming others;
- c) there are reasonable grounds to be concerned about risk of future violence or the safety of the University and/or broader community;
- d) disclosure is required by law, for instance, suspected abuse of someone under the age of 16, reports of intimate partner/domestic violence, or to comply with legislation, such as the Occupational Health and Safety Act the Workplace Safety and Insurance Act, or with human rights legislation; and/or
- e) to comply with the reporting requirements of regulatory bodies and/or professional licensing bodies.

#### **Mount Saint Vincent University:**

A copy of the investigation report shall be shared with the complainant, the respondent, any bargaining agent representing the respondent, and the individual within the Mount responsible for taking disciplinary action against the respondent... Within ten (10)

business days of receiving the investigation report, the responsible authority shall notify in writing the respondent, and any union representing the respondent, of their decision as to whether there has been a breach of this Policy, and, where appropriate, any sanction or remedial action. At the same time, the complainant shall receive notice in writing of the outcome of the Report, including any sanction or remedial action.

**University of British Columbia:**

7.4 To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation findings and the evidence upon which these findings are based. Complainants and Respondents will be provided with a copy of the Investigation Findings. The FIPPA may require UBC to remove Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, each will only receive the portions of the Investigation Findings that are relevant to them.

7.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons including informing the Complainant of any restrictions that may have been imposed upon the Respondent's movements, activities, or contact with the Complainant.

**Fleming College:**

All records resulting from formal Sexual Violence Prevention reports will be kept in a secure central registry and will not be a part of the academic or employment record of the persons involved. Keeping these records will be the responsibility of the Administrator of the Sexual Violence Prevention Policy, under the direction of the Vice President Student Experience. Access to these records will be restricted to authorized College employees as per the Colleges' Access to Privacy Policy, or as may be required by law. All records will be kept according to College Policy #6-603, Data Record Retention and Disposition.

**University of Winnipeg:**

Complainants, Respondents, and witnesses are free to speak about their own experiences. However, individuals are not permitted to divulge information that they learned solely as a result of the investigation process, which they did not know beforehand unless the other parties give permission to do so, and by doing so, they would be in breach of this Policy.

# Prevention

An institutional sexual violence and harassment policy should not just be about responding to incidents of sexual violence and harassment as they occur. It should also be about creating a campus climate that prevents sexual violence and harassment from occurring in the first place.

This requires investing in education and training to ensure that everyone who is part of the campus community understands consent, the structural and pervasive nature of gender-based violence and rape culture, and how to safely and effectively intervene in instances of sexual violence or harassment.

In order to ensure that this training is relevant to and meets the needs of diverse parts of the campus community, the institutional policy should provide for the creation of a committee to oversee education and prevention, with representation from students, staff, faculty, and senior administration. Training should not be one-size-fits-all, but should be delivered in conjunction with unions and student groups to ensure that training is relevant and that there is buy-in from community members.





**Prevention**

The committee should also have in its mandate the conduct of regular campus safety audits. These safety audits should consider the physical infrastructure of campus as well as the policies and practices of the institution and should provide an opportunity for input from all community members.

**Resource alert:** METRAC, a Toronto-based organization that works to end violence against women and youth, has worked with universities and colleges across the country to offer a comprehensive campus safety audit, involving community stakeholders in a review process to identify safety concerns and recommend solutions.

*Examples of language:***Carleton University:**

The University has a Sexual Violence Prevention and Education Committee (SVPEC) with representation from students, staff, faculty and senior administrators. This committee will be chaired by the Director of Equity Services and report to the President. Individuals will be invited to self-nominate/apply for the SVPEC. Equity Services and the Office of the Vice-President (Students and Enrolment) will collaborate to choose an appropriate number of members from across the university to serve on the committee. Generally speaking the purposes of the SVPEC will be to:

- a) Encourage the University community to work together to promote a safe learning, living and work environment for the members of the University community;
- b) Contribute to a campus atmosphere in which sexual violence is not tolerated;
- c) Make recommendations to the Office of the President on this Policy for consideration during a review process and with regard to sexual violence prevention and awareness;
- d) Make recommendations to the Office of the President on resources required or other measures related to addressing sexual violence and support services; and,
- e) Consider and recommend proposals for new training programs brought forward by Equity Services and monitor the coordination, implementation and success of training programs related to sexual violence.

**University of Ottawa:**

The University will establish a committee on the prevention of sexual violence with representation from students, academic staff, employees and senior administrators. This committee will report to the President, who will keep the Administrative Committee informed of its activities. Generally speaking, the purposes of this committee will include the following:

- a) encourage student organizations, faculties and administrative units to work together to promote a safe learning and work environment for the members of the University community;
- b) receive and consider the annual reports from the Human Rights Office in respect of sexual violence, including the following:
  - i. the number of times supports, services and accommodation relating to sexual violence are requested and obtained by students and information about the supports, services and accommodation;
  - ii. initiatives and programs established to promote awareness of the supports and services available to students;
  - iii. the number of incidents and complaints of sexual violence disclosed by students, and information about the incidents and complaints;
  - iv. the implementation and effectiveness of this Policy;
- c) make recommendations to the Office of the President on this Policy with regard to sexual violence;
- d) make recommendations to the Office of the President on additional resources required or other measures related to addressing sexual violence;
- e) make a report of its activities annually to the Office of the President for submission to the Board of Governors;
- f) consider and recommend proposals for new training programs brought forward by the Human Rights Office and monitor the coordination, implementation and success of training programs related to sexual violence;
- g) monitor the implementation of, and access to academic accommodations and other interim measures reported to it as referred to in paragraph 8 b), to address sexual violence across campus using a survivor-centred approach.

# Data Collection and Reporting

Currently, most institutional policies have very minimal provisions regarding the collection and disclosure of data, if they have any at all. But understanding the policy's effectiveness requires data on the implementation of the policy. Data is also essential to a better understanding of campus safety and measures to prevent sexual violence and harassment.



At a minimum, your institution's policy should require the collection and regular disclosure of statistics regarding:

- The number of complaints submitted
- The number of third party and anonymous reports submitted
- The number of investigations
- The number of investigations concluded with disciplinary measures
- The number of investigations that were suspended due to withdrawal by the complainant
- The number of complaints suspended due to the resolution of another process such as a criminal proceeding or human rights complaints
- The number of cases addressed through alternative resolutions or informal measures

Ideally, statistical information would also be collected and disclosed regarding the demographics of the complainants (ie. age, gender, ethnicity, students v. workers).

Other areas where it would be helpful to have data collected and publicly reported include statistics on:

- Use of interim measures
- Sanctions applied
- The number of survivors referred to support services
- The types of support services required
- Provision of training

This will help universities and colleges to identify gaps in their policy or in the implementation of their policy and ensure that they are properly funding and supporting each arm of the policy.

However, because this information is sensitive and compiling it could include access to confidential information, your institutional policy should clearly identify who will keep these records, where they will be stored, and how this information will be disclosed.

### *Examples of language:*

#### **The University of Manitoba:**

2.11 The OHRCM will produce and provide an annual report to the Designated Officer, outlining:

- (a) Information on activities undertaken to raise awareness and contribute to prevention, including the type of activity and the number of students and staff who attend;

- (b) De-identified data regarding the number and types of Disclosures and Formal Complaints received;
- (c) De-identified data on process factors such as the number and types of Investigations conducted and whether they resulted in a finding of Breach or No Breach;
- (d) Aggregate anonymized data on Complainant and Respondent roles at the University;
- (e) De-identified data on fairness factors such as time to process and the identity of investigators;
- (f) Lessons learned flowing from after-action reviews;
- (g) Information regarding observable trends and commentary on the implementation and effectiveness of the Policy; and
- (h) Other relevant information which may further the implementation of the Policy and its Procedures.

2.12 The annual report will be made available to the University Community.

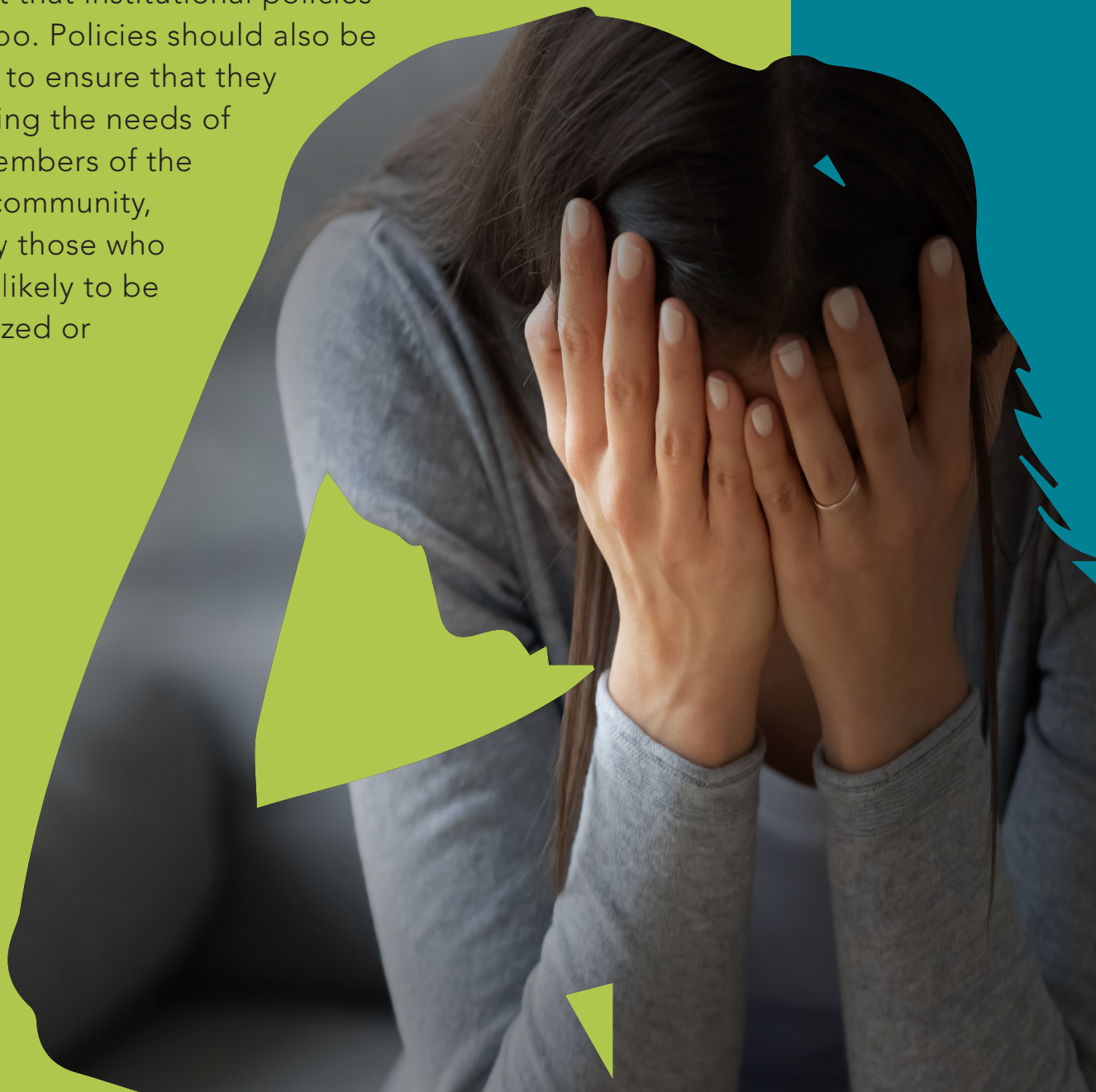
#### **Dalhousie University:**

5. Annual Reporting by Human Rights and Equity Services:  
At the end of each academic year, the Vice-Provost Equity and Inclusion will deliver an annual report to Senate and Board of Governors, through the President's Advisory Committee on Sexualized Violence, which will include:
  - a. the number of Disclosures and Reports;
  - b. a representation of the Reports by type (Complainant or University-Initiated);
  - c. representation of the Reports by kind of outcomes (e.g., dismissal of Reports, Non-Investigative Stream, Investigative Stream);
  - d. a representation of Investigation Stream outcomes (e.g., no finding or finding of sexualized violence); and
  - e. a representation of the sanctions applied as a result of a finding that an act of Sexualized Violence was committed.

The Report will be made available to Members of the University Community.

# Policy Review

Our understanding of best practices in responding to sexual violence and harassment, along with information about trauma and its impacts on survivors, is changing all the time. It's important that institutional policies change too. Policies should also be reviewed to ensure that they are meeting the needs of all the members of the campus community, especially those who are most likely to be marginalized or ignored.



Universities and colleges should routinely ask survivors and all the participants in an investigation or alternative resolution process for their feedback on the process, using that feedback to revise policies and practices as necessary.

However, having a timeline for regular reviews is also an important part of a strong institutional policy on sexual violence and harassment. The review process should mandate feedback from a variety of sources to ensure that the review is as meaningful and comprehensive as possible. This should include formal consultations with unions, student groups, and support services such as women's centres, Indigenous student services, and LGBTQ2+ student services; online platforms, surveys, or forums; and townhalls.

The review should include an evaluation of the implementation of the sexual violence and harassment policy to ensure the policy is actually accomplishing what it commits to doing.

### *Examples of language:*

#### **University of Victoria:**

- 27.1 The University will continue to monitor best practices and research, and will review and update this policy and its associated procedures whenever it is reasonable to do so.
- 27.2 In any event, the University will review this policy at least once every three years, and when directed to do so by the provincial government. This should include consultation with Students, staff, faculty, and librarians.

#### **McGill University:**

A triennial review of this Policy shall be conducted by a working group chaired by the Provost (or delegate) and comprised of one representative each of: OSVRSE, Human Resources, University Residences/Student Housing, SSMU, PGSS, MACES, MCSS, SACOMSS, the Senior Equity & Inclusion Advisor, JBSCE, AGSEM, AMURE, AMUSE, MAUT, MUNACA, MUNASA, MCLIU, SEU. This review shall include an assessment of the effectiveness of the educational measures established in this Policy, as well as recommendations aimed at their enhancement.

#### **McMaster University:**

- 15. The Policy will be reviewed annually for compliance with the Occupational Health & Safety Act. The Policy will be reviewed every three years in accordance with the Sexual Violence and Harassment Plan Act in a process inclusive of input from students, key University constituencies, women's organizations and other community partners with expertise in Sexual Violence.
- 16. Student participation in the three-yearly policy review process will be coordinated by the Equity and Inclusion Office in collaboration with the McMaster Student Union, and the McMaster Graduate Student Association, and will include a diverse cross-section of campus partners with experience and expertise related to Sexual Violence prevention and response.

# Conclusion

Having an effective policy on sexual violence and harassment is an important tool in responding to and preventing sexual violence and harassment in post-secondary communities. However, it is only the first step; if policies are not implemented effectively they are nothing more than lip service. If students and workers are not aware of or do not understand the policy, the policy will make no difference. Implementing the policy requires resources: specially-trained employees to carry out the commitments made by the policy, funding for offices of sexual violence prevention and response, funding for training, etc.

In addition to advocating for a strong institutional policy, your local union should advocate for:

- Permanent, full-time work for employees hired to respond to sexual violence and harassment, to provide supports, and training
- Comprehensive training, implemented in cooperation with the local union
- Plain language resources available on the website and as posters and fact sheets, outlining:
  - What a community member's responsibilities are if someone makes a disclosure to them
  - What your options are if you have experienced sexual violence and harassment

Your local union should also consider what changes to your collective agreement you may wish to negotiate in your next round of collective bargaining, including:

- Recognition of the institutional sexual violence and harassment policy
- Paid leave for survivors of gender-based violence
- Accommodations and mental health supports for those who are involved in responding to incidents of sexual violence and harassment
- Training for all staff on workplace sexual violence and harassment



# Checklist

## for Post-Secondary Institutional Policies on Sexual Violence and Harassment

### GENERAL

Your institution's policy should:

- Be survivor-centric and trauma-informed
- Be inclusive and intersectional
- Be culturally sensitive
- Be accessible and written in plain language
- Define consent

### SCOPE

Your institution's policy should:

- Apply to every member of the community, including students, faculty, staff, contractors, visitors, alumni and former staff
- Clearly spell out what kinds of incidents and behaviours are covered and should include the full spectrum of sexual violence and harassment
- Cover all incidents that can affect someone's ability to work or learn as part of this post-secondary community, regardless of whether they happened on-campus, off-campus at a school event, at a work placement or practicum, or online
- Clearly state that the policy does not supersede collective agreements

Your institution's policy should not:

- Have time restraints or a statute of limitations

### RESPONDING TO SEXUAL VIOLENCE AND HARASSMENT

#### Conflict of interest

Your institution's policy should:

- Acknowledge that there are situations in which the person who normally has responsibility for oversight of the policy should not be involved in investigating or responding to an incident of sexual violence and harassment due to conflict of interest or a close relationship with the respondent

## Disclosure and reporting

Your institution's policy should:

- Allow for disclosure to any member of the post-secondary community by providing clear guidance to faculty, staff and students on how to respond if someone discloses an incident of sexual violence or harassment to them
- Outline a clear process for reporting incidents including who receives reports and how they must be made
- Allow for third party reports but clearly spell out how third-party reports will be dealt with
- Allow for anonymous reports but clearly spell out how anonymous reports will be dealt with
- Offer multiple options and clear guidance to all complainants about what happens once a report has been made
- Identify how a respondent is to be informed once a report has been made involving them

Your institutional policy should not:

- Treat third party and anonymous reports the same way that it treats reports by a survivor

## INTERIM MEASURES

Your institution's policy should:

- Provide for the use of interim measures to protect survivors and to safeguard the campus community while an investigation or other procedure is taking place
- Clearly state that interim measures are about community safety and not about discipline
- Allow for interim measures to be implemented even if a formal report is not filed
- Identify who decides what interim measures will be applied and what the criteria are for determining interim measures
- Explain how respondents will be notified
- Identify what happens if interim measures are violated
- Provide a timeline for the review of interim measures and state who will be responsible for conducting the review

## INVESTIGATIONS, ADJUDICATION, AND SANCTIONS

Your institution's policy should:

- Explain who will be responsible for an institutional investigation, how an investigator will be selected, and what the mandate of the investigator will be

- Require all investigators to be culturally competent and trauma-informed
- Explain what kinds of documents and evidence will be collected during the investigation, how they will be stored, and how long they will be stored
- Identify what the rights of the complainant and the respondent are at each stage of the process, particularly with regard to procedural fairness
- Clearly state that both respondents and complainants have the right to be represented during the investigation and adjudication process, including representation by their union
- Offer alternatives to face-to-face meetings between the complainant and respondent and other measures to reduce barriers to participation for the complainant
- Identify what measures are available to ensure accessibility such as translation or assistive devices
- Identify who will receive a copy of the investigator's report and what information will be made available to parties who do not receive a full copy of the report
- Identify who is responsible for deciding if the policy has been breached and what sanctions, if any, will be imposed

Your institution's policy should not:

- Allow for sanctions against a complainant if a complaint is not substantiated
- Put an institutional investigation on hold if the complainant chooses to pursue another process simultaneously

## **APPEALS**

Your institution's policy should:

- Allow both complainant and respondent to appeal a decision
- Clearly state the grounds for granting an appeal
- Allow the appeal to consider new evidence that has only just come to light rather than simply reviewing the evidence put forward during the investigation

## **ALTERNATIVE RESOLUTIONS**

Your institution's policy should:

- Allow for restorative justice alternatives to a formal investigation
- Ensure that any alternative resolution processes are initiated only upon request by the survivor

- Require that alternative resolution processes be pursued only with the fully informed consent of the respondent
- Provide that specially trained facilitators be made available in cases where restorative justice approaches are requested
- Allow for movement between different processes, allowing participants to decide if the current process is working for them or not

Your institution's policy should not:

- Include mediation as an option for responding to sexual violence and harassment

## **SUPPORTS**

Your institution's policy should:

- Provide for supports including but not limited to trauma-informed services such as counselling and medical support; academic and workplace accommodations; access to safe housing; and information on reporting to police or professional bodies
- Make supports available to complainants, respondents, first responders, bystanders, and any other member of the community affected by sexual violence and harassment
- Offer a centralized process for obtaining supports and accommodations so that a person requesting support only needs to make one disclosure
- Protect complainants against retaliation
- Recognize the work and vicarious trauma of people who receive disclosures or respond to incidents of sexual violence and harassment

## **PRIVACY AND CONFIDENTIALITY**

Your institution's policy should:

- Emphasize the importance of confidentiality
- Identify when confidentiality cannot be maintained, such as, for example, if there is imminent risk of harm to an individual or the campus community or when disclosure is required by law
- Clearly spell out who has rights to what information, including information disclosed during an investigation, the findings of the investigator, and sanctions or disciplinary measures

- Clearly spell out where this information will be kept following an investigation and for how long this information will be kept

Your institution's policy should not:

- Prevent complainants from sharing their personal story

## PREVENTION

Your institution's policy should:

- Create a committee to oversee education and prevention efforts with representation from students, staff, faculty, and senior administration
- Provide for training on consent, sexual violence and harassment, and trauma-informed responses to disclosure for all members of the post-secondary community
- Commit to conducting regular campus safety audits, with participation from the campus community through diverse channels

## DATA COLLECTION AND REPORTING

Your institution's policy should:

- Require regular public reporting on the number of complaints, the number of third party and anonymous reports, the number of investigations, the number of cases concluded with disciplinary measures, the number of cases suspended along with why they were suspended, and the number of cases addressed through alternative resolutions or informal measures
- Identify clear rules for how records are kept and who has access to them

## POLICY REVIEW

Your institution's policy should:

- Have a mandatory review process with a variety of channels provided for community members to offer feedback
- Provide a clear timeline for reviews