



**FOR  
RECOMMENDATION**

**PUBLIC**

**OPEN SESSION**

**TO:** Academic Board

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**DATE:** November 12, 2019 for November 21, 2019

**AGENDA ITEM:** 5

**ITEM IDENTIFICATION:**

Revisions to the *Policy on Sexual Violence and Sexual Harassment*

**JURISDICTIONAL INFORMATION:**

Under Section 5.4 of its Terms of Reference, the following matters fall under the purview of the University Affairs Board:

*“University-wide matters affecting members of the University community that are not governed by academic policies or employment policies are the responsibility of the Board. These include such matters as non-academic discipline, sexual harassment, freedom of speech, alcohol use on campus, and smoking policies.”*

**GOVERNANCE PATH:**

1. University Affairs Board [for recommendation] (November 13, 2019)
2. UTSC Campus Council [for information] (November 19, 2019)
3. UTM Campus Council [for information] (November 20, 2019)
4. **Academic Board [for recommendation] (November 21, 2019)**
5. Business Board [for recommendation] (November 27, 2019)
6. Executive Committee [for endorsement and forwarding] (December 4, 2019)
7. Governing Council [for approval] (December 12, 2019)

## **PREVIOUS ACTION TAKEN:**

The *Policy on Sexual Violence and Sexual Harassment* was approved by Governing Council on December 15, 2016.

## **HIGHLIGHTS:**

### *Background*

In 2016, the Government of Ontario passed Bill 132, the *Sexual Violence and Harassment Action Plan Act, 2016*, which, among other things, requires that all publicly-funded universities and colleges in Ontario have a policy that addresses sexual violence involving students enrolled at the institution, and that sets out the process for how the institution will respond to and address incidents and complaints of sexual violence. The legislation came into effect on January 1, 2017.

The *Policy on Sexual Violence and Sexual Harassment* was approved by Governing Council in December 2016 within this context. Created as a component of the University's four-part Action Plan on Preventing and Responding to Sexual Violence, the contents of the *Policy* were based on the recommendations of the Expert Panel on Sexual Violence Policies, chaired by former Dean of Law and Provost of Trinity College Mayo Moran. The draft policy was also the subject of extensive consultation with students, staff, faculty members and governors across the three campuses.

### *Review of the Policy on Sexual Violence and Sexual Harassment*

Section IX of the *Policy* provides for the University to “conduct a review of this Policy every three years that will include consultation with Members of the University Community including students, staff and faculty”, and to amend the Policy as appropriate. A similar requirement is outlined in Bill 132.

For this first *Policy* review, the University also invited feedback from the University community on two additional elements of its approach to preventing sexual violence that are key in supporting and operationalizing the *Policy*, namely the work of the University's Sexual Violence Prevention and Support Centre and the contents of the *Student's Companion to the Policy*, which helps students and those who work with students understand and navigate the Policy and address any questions about the Policy and the procedures surrounding it.

### *Consultation*

Consultation with members of the University community ran from May 10 to September 30 in order to satisfy government directives, received at the end of March, that universities should have their policy reviews completed “by September.”

The consultation process included the following components:

- An online consultation portal, through which students, staff, faculty members, alumni and governors could provide feedback. The portal received 191 submissions, including 157 from students.
- Drop-in in-person consultation sessions for students, staff and faculty members on all three campuses
- Meetings with particular stakeholder groups, including:
  - Academic administrators, such as Principals, Deans, Academic Directors and Chairs
  - Representative Student Committees and other student societies making up the Provostial Undergraduate Student Advisory Group;
  - Staff members and staff groups involved in student support, student life, or who have a specific role in operationalizing the *Policy*, including Deans of Students, staff from the Sexual Violence Prevention and Support Centre and the Office of Safety and High-Risk, and the Forum on Student Experience;
  - Campus Police on all three campuses
  - Legal counsel
  - Union leaders and Joint Health and Safety Committee representatives
  - Health and Wellness staff
  - Human Resources managers and directors
  - Chief Administrative Officers

### Revisions made

The University received a range of valuable feedback, the majority of which applied to either the contents of the *Student's Companion* or the work of the Sexual Violence Prevention and Support Centre. Stakeholders from student, staff and faculty groups praised the *Policy* in detail and spoke to the important role it has played in addressing and preventing sexual violence on campus. Suggestions for revisions were few and minor.

As a result of the feedback received, the following changes have been made to the *Policy*:

- Several definitions have been added, including definitions for 'interim measures', 'interim conditions', and 'non-adjudicative resolution'.
- A reference to the *Student's Companion* has been added in paragraph 9.
- Clarifications regarding interim measures and interim conditions have been added in several places throughout the document.
- A clarification regarding the role of the Office of Safety and High-Risk in maintaining the database of reports has been made in paragraph 44.
- A clarification concerning when respondents can respond to the allegations made against them has been made in paragraph 63.

Discussions will continue concerning what kinds of operational changes should be made in light of the feedback received on the work of the Sexual Violence Prevention and Support Centre. Revisions to the *Student's Companion* will also be considered in light of comments in that area.

**FINANCIAL IMPLICATIONS:**

There are no direct implications for the University’s operating budget at this time.

**RECOMMENDATION:**

Be It Recommended

THAT the proposed revisions to the *Policy on Sexual Violence and Sexual Harassment*, dated October 29, 2019, be approved, effective January 1, 2020.

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**DOCUMENTATION PROVIDED:**

- Revised *Policy on Sexual Violence and Sexual Harassment* (October 29, 2019)

# Policy on Sexual Violence and Sexual Harassment

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University of Toronto  
Governing Council

October 29, 2019~~November 1, 2016~~

# Policy on Sexual Violence and Sexual Harassment

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## DEFINITIONS

The following definitions are intended to assist in the interpretation of this Policy, as well as other related University policies:

**Member(s) of the University Community:** Includes students, faculty, librarians, post-doctoral fellows, and all employees of the University of Toronto. For clarity, faculty includes clinical, adjunct, status-only, retired, and visiting faculty. When used in reference to the University's training obligation with respect to this Policy, the term also includes contractors and members of the Governing Council of the University.

**Complainant:** A Member of the University Community who has Disclosed or Reported an Incident of Sexual Violence experienced by that individual.

**Respondent:** Someone against whom an allegation of Sexual Violence has been made.

**Disclosure:** The sharing of information by an individual with a Member of the University Community regarding an Incident of Sexual Violence experienced by that individual.

**Reporting:** The sharing of information by an individual with a designated Member of the University Community regarding an Incident of Sexual Violence experienced by that individual, with the intention of initiating one of the processes set out in this Policy, which could result in disciplinary action being taken against the Member of the University Community alleged to have committed Sexual Violence.

**Incident of Sexual Violence:** Includes any instance of Sexual Violence, including Sexual Harassment and all associated definitions provided herein.

**Sexual Violence:** Any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes Sexual Assault, Sexual Harassment, stalking, indecent exposure, voyeurism, and sexual exploitation.

**Sexual Harassment:** Includes but is not limited to engaging in a course of vexatious comments or conduct that is known or ought to be known to be unwelcome. For the purpose of this Policy, Sexual Harassment includes workplace sexual harassment. Sexual Harassment includes any sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome. Sexual harassment also includes a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance, where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

**Sexual Assault:** Any form of sexual contact without a person's consent, including the threat of sexual contact without consent. A Sexual Assault can range from unwanted sexual touching to forced sexual intercourse; and a Sexual Assault can involve situations where sexual activity is obtained by someone abusing a position of trust, power or authority.

**Cyber Sexual Violence:** Includes but is not limited to knowingly publishing, distributing, transmitting, selling, making available or advertising an intimate image of a person, knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct. An intimate image includes but is not limited to a visual recording of a person made by any means, including a photographic, digital or video recording, in which the person is nude and/or engaged in sexual activity. For the purpose of this Policy, Sexual Violence includes Cyber Sexual Violence.

**Cyber Sexual Harassment:** Includes but is not limited to Sexual Harassment conducted in whole or in part through electronic means, such as email, web postings, text messaging, and other forms of electronic behaviour. For the purpose of this Policy, Sexual Harassment includes Cyber Sexual Harassment.

**Gender-based Harassment:** Includes but is not limited to engaging in a course of vexatious comment or conduct related to a person's sex, gender, sexual orientation, gender identity or gender expression that is known or ought reasonably to be known to be unwelcome.

**Consent:** The voluntary agreement of an individual to engage in a sexual act. Consent is positive, active and ongoing, and can be revoked at any time. Consenting to one kind of sexual act does not mean that consent is given for another sexual act or kind of activity. Consent is NOT obtained where a person is incapable of consenting – for example due to intoxication, or where a person is induced to engage in the activity by someone abusing a position of trust, power or authority.

As per the *Criminal Code of Canada*, it is not a defence to an allegation of Sexual Violence that the Respondent believed that the Complainant consented to the activity that forms the subject matter of the complaint, where (a) the Respondent's belief arose from the Respondent's (i) self-induced intoxication; or (ii) recklessness or wilful blindness; or (b) the Respondent did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the Complainant was consenting.

**NonPre-adjudicative Resolution:** As described in section 78, this terms refers to a resolution of the matters alleged in a Report that is agreed to by both the Complainant and the Respondent.

Also called "informal resolution" or "mediation" in the University's Code of Student Conduct, Pre-adjudicative Resolution occurs when both parties to a report of Sexual Violence reach and agree upon a signed, formal understanding addressing the complaint outside the context of a hearing process



## † STATEMENT OF COMMITMENT

1. All members of the University of Toronto (“the University”) community should have the ability to study, work, and live in a campus environment free from Sexual Violence, including Sexual Assault and Sexual Harassment.
2. Sexual Violence is a serious issue that undermines the health, well-being, and security of individuals, communities, and society. Addressing the causes and consequences of Sexual Violence requires the deliberate and collective efforts of governments, institutions, and citizens.
3. The University is committed to making available programs and resources to educate its community on the prevention of and response to Sexual Violence.
4. The University is committed to responding to and addressing incidents and complaints of Sexual Violence involving its students, staff and faculty, and to ensuring that those members of the community who are affected by Sexual Violence receive support.
5. The University recognizes that Sexual Violence can occur between individuals regardless of sex, sexual orientation, gender, gender identity or expression, or relationship status.
6. The University recognizes the intersection of Sexual Violence with discrimination and harassment, including but not limited to the grounds set out in the Ontario *Human Rights Code*. The University recognizes that individuals from historically marginalized communities may be disproportionately affected by Sexual Harassment and Sexual Violence.
7. Sexual Violence can be committed against any person and is an issue that requires an inclusive response. 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, women with disabilities, and racialized women. Additionally, the University recognizes that those whose gender identity or gender expression does not conform to historical gender norms are also at increased risk of Sexual Violence.
8. The University recognizes that individuals who have experienced Sexual Violence experience a range of effects that can profoundly affect their lives.

## †.1. APPLICATION AND SCOPE

9. This Policy applies to all Members of the University Community. All Members of the University Community will be offered appropriate support with respect to issues of Sexual Violence, regardless of their role in the University or the role of the person against whom an allegation is made. [A companion guide is available to provide more information about this Policy to students. ~~to this Policy is available~~](#)
10. This Policy relies on a centralized system of Reporting, investigation and decision-making for complaints of Sexual Violence in order to avoid actual or perceived conflicts of interest or reasonable apprehension of bias, to preserve privacy, to minimize risk of reprisal, and to ensure coordination and consistency across all academic divisions, campuses, and centralized services.
11. The Reporting procedure and the processes it initiates apply to all Incidents of Sexual Violence in which both the Complainant and the Respondent are Members of the University Community, regardless of whether the event occurred on campus, off campus, or using social media or other

electronic media. Support will be made available under this Policy to Complainants regardless of whether the Respondent is a Member of the University Community.

## ~~III.~~ III. EDUCATION, SUPPORT, AND RESOURCES

12. The University provides support to Members of the University Community who have experienced Sexual Violence and to those who receive a Disclosure or Report of an Incident of Sexual Violence. See paragraphs 38 and 55.
13. The University has established the University of Toronto **Sexual Violence Prevention and Support Centre** [“the Centre”) [link to be provided] with a tri-campus presence. The Centre has a mandate to conduct intake, accept Disclosure and Reporting of Sexual Violence, and provide support to individual Members of the University Community who have experienced Sexual Violence. The Centre will also provide education and training to Members of the University Community with respect to how to respond to Disclosures of Sexual Violence and how to support Complainants.
14. The University provides Sexual Violence education and prevention education for all Members of the University Community, including training on this Policy and awareness programs about Sexual Violence and personal safety.
15. The University provides education and training on this Policy to Members of the University Community who are likely to receive Disclosures or Reports to support those who Disclose with dignity and compassion and to inform them of their options in a safe and supportive manner.
16. The University provides support to Members of the University Community who have had an allegation of Sexual Violence made against them.

## ~~IV.~~ IV. III. PRINCIPLES RESPECTING PROCESS

17. A person who has made a Disclosure and/or a Report of Sexual Violence has autonomy in decision-making, and in particular with respect to whom to Disclose, whether to Report, whether to pursue recourse to the criminal or civil justice systems, and whether to access support and accommodations as described in paragraphs 38 and 55.
18. The University is committed to the provision of a fair process for all parties and one that respects due process and procedural fairness.
19. The University is committed to reducing barriers to Disclosure and Reporting of incidents of Sexual Violence. In that regard, Complainants will not be asked to repeat their accounts more than is necessary for the implementation of this Policy.
20. The University process will appropriately accommodate the needs of Members of the University Community who are affected by Sexual Violence.
21. The University will not tolerate any retaliation, through any means including through social or other electronic media, against anyone who Discloses or Reports an Incident of Sexual Violence, or who participates in a University process that is addressing allegations of Sexual Violence against a Member of the University Community.
22. Confidential counselling and support will be made available as quickly as practicable to any Member of the University Community who experiences an Incident of Sexual Violence.

23. The University will respond to Disclosures and/or Reports of Sexual Violence fairly and expeditiously.

#### IV. CONFIDENTIALITY AND PRIVACY

24. The University will treat Disclosures and Reports of an Incident of Sexual Violence in a confidential manner and in accordance with the *Freedom of Information and Protection of Privacy Act*.
25. The University will limit sharing of information to those within the University who need to know the information for the purposes of implementing this Policy, including providing accommodation, ~~Interim c~~Conditions and ~~Interim m~~Measures, and the investigation and decision-making processes; and taking corrective action resulting from those processes. For example, where a Complainant wishes to make a Report, fairness to the Respondent will require disclosure of the Complainant's identity and the material allegations being made.
26. Confidentiality cannot be maintained where information needs to be disclosed in order to address a risk to the health and safety of Members of the University Community or where the University is obliged by law to disclose the information. For example, confidentiality cannot be maintained where:
  - a. an individual is at risk of imminent and serious harm to themselves or others;
  - b. Members of the University Community may be at risk of harm; and/or
  - c. reporting or investigation is required by law (for example, but not limited to, an incident involving a minor, or obligations related to occupational health and safety or to human rights legislation).

#### V. ACCESSING THE POLICY: DISCLOSURE AND REPORTING

27. Disclosure and Reporting are separate actions that the Complainant can choose to take. The Centre offers confidential support and services to those who have experienced Sexual Violence.
28. Disclosure is the sharing of information by an individual with a Member of the University Community regarding an Incident of Sexual Violence experienced by that individual.
29. Reporting is the sharing of information by an individual with a designated Member of the University Community regarding an Incident of Sexual Violence experienced by that individual, with the intention of initiating one of the processes set out in this Policy, which could result in a disciplinary action being taken against the Member of the University Community alleged to have committed Sexual Violence. The Centre also manages the initial process for Sexual Violence Reporting. Individuals at the Centre and at Campus Police will be designated to receive Reports under this Policy.
30. A Member of the University Community who witnesses an Incident of Sexual Violence affecting another Member of the University Community should contact the Centre or Campus Police immediately.
31. The University recognizes that an individual who has experienced an Incident of Sexual Violence may require time and reflection before making the decision as to whether or not they wish to make a Disclosure or a Report of the incident. Notwithstanding those considerations, individuals who have experienced an Incident of Sexual Violence are encouraged to make a Disclosure and/or Report as

soon as they are able to do so, recognizing that the passage of time may affect the University's ability to address the issues raised by a Disclosure or a Report.

## VII.VI. DISCLOSURE

32. A Disclosure does not result in a Report being made and does not initiate a process to address the Incident of Sexual Violence. The decision to Disclose and the decision to Report are separate decisions.
33. A Disclosure can be made to any Member of the University Community. A Disclosure may relate to a Respondent who is or is not a Member of the University Community.
34. The Centre is the first point of contact for a Member of the University Community affected by an Incident of Sexual Violence to obtain academic, employment, or other accommodations and services. A Member of the University Community who receives a Disclosure should inform the Complainant about this Policy and direct them to the Centre.
35. The University recognizes that such Disclosures are often shared in confidence, that the Complainant may have an expectation of confidentiality, and that in many cases confidentiality is essential in order for Complainants to come forward. The person to whom the Disclosure is made may consult with the Centre for advice but except as directed by the Complainant or as indicated by the provisions in the "Confidentiality and Privacy" section of this Policy, is expected to hold such information in confidence.
36. Members of the University Community outside of the Centre who receive a Disclosure of an Incident of Sexual Violence and who receive the Complainant's permission to do so can provide to the Centre the name and contact information of the person who made the Disclosure and the date of the Disclosure to them for follow-up support and services.
37. The University respects a Complainant's right to choose whether and how to pursue action related to an Incident of Sexual Violence, subject to the provisions set out in the "Confidentiality and Privacy" section of this Policy. In particular, when the University is made aware of an Incident of Sexual Violence that poses a risk to the health and safety of Members of the University Community, the University will take steps to maintain their health and safety.
38. The University will make support and services, including counselling, access or referrals to medical services, and academic and other accommodations, available to Members of the University Community who Disclose having been affected by an Incident of Sexual Violence. Support services will also be made available to Members of the University Community who are Respondents. Persons affected by an Incident of Sexual Violence should contact the Centre to obtain such support and services. See also paragraph 55.
39. A Complainant is not required to make a Report about an Incident of Sexual Violence in order to obtain the support and services or accommodations referred to in this Policy.
40. The Centre will make support staff available by phone, email, or through Campus Police on a 24/7 basis. These staff members can provide guidance and support to a Complainant through the process of Disclosure and/or Reporting.
41. The Centre can, on a confidential basis, consult or seek the assistance of other internal personnel or resources of the University to facilitate the safety, follow-up, and support of those involved in a Disclosure of Sexual Violence.

## ~~VIII.~~VII. REPORTING

### A. REPORTING PROCESS

42. The Centre is responsible for receiving Reports of Incidents of Sexual Violence involving a Member of the University Community in a non-emergency situation.
43. In an emergency, Campus Police or 911 should be the first point of contact. In case of emergency, Sexual Violence can be Reported to Campus Police, which is in turn required to inform the Centre as well as municipal police services. A Report can also be made at a later date following the incident.
44. Reporting can be initiated in person, by phone, or online. A Complainant can also request that the Centre staff file a Report on their behalf. The [Office of Safety and High -RiskCentre](#) will maintain a confidential database of Reports received.
45. The University has the jurisdiction to investigate Reports of Sexual Violence made against a Member of the University Community under this Policy.
46. The University does not have the jurisdiction to address allegations made against a person who is not a Member of the University Community. However, in the event of such allegations, the University will provide support to Complainants who are Members of the University Community (see section entitled “Education, Support, and Resources”) and may be able to take measures such as restricting access to campus by the person against whom allegations are made.
47. A Complainant is not precluded from reporting an Incident of Sexual Violence to municipal police services if they have Reported the incident to the University. A Complainant is not precluded from Reporting an Incident of Sexual Violence to the University if they have reported the incident to municipal police services. A Complainant may choose to Report to one or the other, to neither or to both.
48. Once a Complainant has made a Report of an Incident of Sexual Violence to the Centre, the Complainant has initiated the University’s Reporting process. The intention of this Policy is for the Reporting process and each of its steps to be completed as expeditiously as practicable.
49. Both the Complainant and the Respondent have the right to be accompanied by a support person and a union, association, or legal representative at any point during the Reporting process and subsequent processes under this Policy. The support person and union, association, or legal representative, whether or not Members of the University Community, are expected to adhere to the provisions outlined in the “Confidentiality and Privacy” section of this Policy.
50. Confidentiality requirements may change once the Complainant or the University decides to Report under this Policy. In addition to the provisions outlined in the “Confidentiality and Privacy” section of this Policy, all Members of the University Community who are involved in receiving a Report of an Incident of Sexual Violence or who are involved in addressing or investigating it should treat the matter as discreetly and confidentially as practicable, within the context of their roles in implementing this Policy. Information will only be shared to the extent necessary to carry out responsibilities under this Policy or as required to provide a fair process during the investigation and decision-making process.

51. The University will take reasonable steps to protect Complainants and others who participate in a University process that is addressing allegations of Sexual Violence from retaliation, including: advising individuals in writing of their duty to refrain from committing an act of reprisal, and sanctioning individuals for a breach of that duty. The University may also address the potential for reprisals by providing an accommodation appropriate in the circumstances. Threats of or acts of retaliation will be treated as Incidents of Sexual Violence.

## B. UNIVERSITY RESPONSE

52. When the Centre receives a Report of an Incident of Sexual Violence, it will take steps to engage as soon as practicable in an intake discussion with the Complainant.
53. At the intake discussion, the Centre will provide assistance to the Complainant and will discuss with the Complainant the potential available options. The Centre will outline information about available support and services, including information about accommodations, i~~nterim c~~onditions and i~~nterim m~~asures and accommodations that may be available to address the immediate situation.
54. The Centre can, on a confidential basis, consult or seek the assistance of other internal personnel or resources of the University for direction, and can consult or seek the assistance of external parties relevant to the particular incident being Reported.
55. Some of the options that may be made available to the Complainant at the first point of contact following a Report include, but are not limited to:
  - a. referral to contacts for suitable support, services or resources available within and outside the University and in the municipality. Information about external community services is available at [link to be provided];
  - b. where appropriate, communication with the person said to have engaged in Sexual Violence to inform them that the conduct is unwelcome and to note the no-retaliation provisions of this Policy;
  - c. availability of academic accommodation and i~~nterim c~~onditions and i~~nterim m~~asures, including those~~i~~nterim m~~asures provided for under and in accordance with other University policies such as the *Code of Student Conduct*, collective agreements, employment agreements, and human resources policies and guidelines:
    - i. Examples of such measures for students include: separation of the parties, exam or assignment deferral, class and/or schedule changes, emergency bursaries, and/or housing changes;
    - ii. Examples of such measures for employees include: making changes that are not disciplinary but precautionary to avoid contact between parties.~~
  - d. information about the investigation and decision-making processes that may occur, depending on the role of the Respondent within the University community.
56. The Office of Safety and High Risk will be responsible for coordinating the implementation of accommodations, i~~nterim c~~onditions and i~~nterim m~~asures as expeditiously as practicable, including referrals as appropriate for the purposes of addressing any non-compliance.

## C. ASSESSMENT AND APPOINTMENT OF AN INVESTIGATOR

### a) ASSESSMENT

57. While the Centre receives Disclosures and initiates Reports, the assessment and investigation processes will be coordinated through the Office of Safety and High Risk.
58. Upon receipt or completion of a written Report, the Centre will send the Report to the Office of Safety and High Risk, which will assess the Report to determine whether the matter falls within the scope of this Policy. If it is determined that the matter falls within the scope of this Policy, the Office of Safety and High Risk will decide whether to commence an investigation.
59. The Complainant can choose not to request an investigation by the University and has the right not to participate in any investigation that may occur. Where a choice not to participate in an investigation is made, the Complainant will be advised that this may affect the nature of the investigation and the ability to draw conclusions from any investigation report. For further clarity about what will occur in this situation, see the section of this Policy entitled “University’s Obligation when a Complainant Requests No Investigation or Chooses Not to Participate.”
60. If the Office of Safety and High Risk makes the determination that the Report does not appear to fall within the scope of this Policy, or decides not to commence an investigation, the Office of Safety and High Risk will notify the Complainant of this determination. The Office of Safety and High Risk will also determine whether or not to disclose the fact that allegations were made and any other information to the Respondent.
61. If there is a determination that a Report will not be investigated, the Complainant may seek a review of that decision by making a request in writing within 14 days of the decision to the Vice-President and Provost or designate or to the Vice-President, Human Resources & Equity or designate, who will review the matter and advise the Complainant of their decision in writing.

### b) APPOINTMENT OF AN INVESTIGATOR

62. Once a determination has been made to commence an investigation, a competent person with the appropriate skills, training and/or experience will be appointed to conduct the investigation. The investigator will either be someone who is a Member of the University Community or a person who is external to the University, as appropriate to the circumstances.
63. The Office of Safety and High Risk will send written notice to the Respondent that an investigation of a Report of Sexual Violence under this Policy is being initiated and provide the name of the investigator. This notice will include the particulars of the incident Reported and indicate that the Respondent will have ~~an~~ opportunity to respond to the allegations. The notice will indicate that the Respondent has the right to seek legal advice and to bring a support person, including a union or association representative, or legal counsel, to any meetings during the investigation.

## D. INVESTIGATION

64. The investigation must be completed in a timely manner, taking into consideration the circumstances of the particular matter including its complexity and the requirements of fairness and due process.

65. The investigator will provide the Respondent with a reasonable opportunity to respond in writing or orally to the allegations. If the response is oral, the investigator should normally confirm the content of the response with the Respondent in writing. If the Respondent does not respond within a reasonable timeframe set by the investigator, or chooses not to participate in the investigation, the investigator may proceed in the absence of their response.
66. The investigator will provide the written particulars of the response from the Respondent, if received, to the Complainant. The Complainant may submit a reply to the response within a reasonable timeframe set by the investigator. If no written reply is received within the time requested, the investigator can proceed in the absence of a reply. The investigator will provide the written particulars of the reply from the Complainant, if received, to the Respondent.
67. The Complainant and Respondent may choose to submit any additional information to the investigator, including the names of any potential witnesses.
68. The investigator may choose to conduct interviews with either or all parties at any time during the investigative process at the investigator's discretion or at the request of a party. The investigator may also choose to seek witness information.
69. The investigator will act in a timely, fair, impartial, and professional manner. The investigator will treat the information gathered during the investigation in a confidential manner in accordance with the requirements of this Policy.
70. The investigator will remind individuals contacted of the provisions outlined in the "Confidentiality and Privacy" section of this Policy and keep confidential the personal information of the people contacted.
71. Following the completion of the investigation, the investigator will provide to the Office of Safety and High Risk a written confidential report containing a summary of the information gathered during the investigation and the findings of fact made based on the balance of probabilities.
72. The Office of Safety and High Risk will inform the Complainant and the Respondent (and/or their designated representatives) in writing of the results of the investigation, with a reminder as to the provisions outlined in the "Confidentiality and Privacy" section of this Policy.

#### E. DECISION-MAKING AND APPEAL PROCESS

73. In the case of a student Respondent, the investigation report will be reviewed by the Vice-Provost, Students or delegate to determine whether or not the matter will be referred for a hearing under the *Code of Student Conduct* in order to determine whether or not Sexual Violence occurred and, if so, the appropriate penalty or remedies. Appeals against the decision of the Hearing Officer may be made to the Discipline Appeals Board of the Governing Council as provided for in the *Code of Student Conduct*.
74. In the case of a staff member Respondent, the investigation report will be reviewed by the Vice-President, Human Resources & Equity or designate, who will determine whether workplace violence and/or Sexual Violence occurred and, if so, the appropriate sanctions or discipline and corrective action, having regard to appropriate factors such as the nature of the offence and any mitigating or aggravating circumstances. The Respondent will be notified in writing of the decision and any discipline or sanction imposed and will have access to the grievance process under the relevant collective agreement or human resources policy in order to appeal.



75. In the case of a faculty member or librarian Respondent covered by the Memorandum of Agreement with the University of Toronto Faculty Association, the Vice-President and Provost or designate, in consultation with the Vice-President, Human Resources & Equity, will review the investigation report and determine whether workplace and/or Sexual Violence occurred and impose the appropriate discipline, sanction or corrective action, having regard to appropriate factors such as the nature of the offence and any mitigating or aggravating circumstances. The Respondent will be notified in writing of the decision and any discipline or sanction imposed and will have access to the grievance process in Article 7 of the Memorandum of Agreement in order to appeal. If the appropriate sanction is determined to be termination, the Vice-President and Provost will recommend that termination proceedings be instituted in accordance with the applicable policies and procedures of the University.
76. In the case of a Member of the University Community who holds more than one role – for example, a student who is also an employee – or in the case of multiple Respondents who hold different roles, or in the case of a Respondent who is a Member of the University Community who is not covered in paragraphs 73-75, the University will decide which process(es) will apply in the circumstances of the particular case.
77. A determination that a Member of the University Community has committed an act of Sexual Violence may result in a number of possible outcomes, including the imposition of education and training, corrective action such as relocation or change of duties or supervision, reprimand, suspension, termination or expulsion, commensurate with the nature of the incident complained of and taking into account all other relevant considerations and in accordance with the applicable University policies and procedures, collective agreement, employment contract, or Memorandum of Agreement.
78. If any existing policy's adjudicative process includes "informal resolution" or "mediation", or in any other situation where it has been specifically agreed to by both the Complainant and the Respondent, with the assistance of [the SVP Centre?] an opportunity to endeavour to reach a Non-Adjudicative Resolution is available subject to two conditions: If any existing policy's adjudicative process includes "informal resolution" or "mediation", this Policy acknowledges that such Non-Pre-adjudicative Resolution is acceptable only under two conditions:
- Both parties must consent to such ~~Pre~~Non-adjudicative ~~R~~resolution, and
  - Such ~~Pre~~Non-adjudicative ~~R~~resolution must not require any face-to-face meeting between the Complainant and the Respondent.
79. If the Respondent's relationship to the University ends and that person is no longer a Member of the University Community, the University may choose to suspend the processes under this Policy. If the Respondent becomes a Member of the University Community again, the University can reinstate the process with notice to the Complainant and Respondent. A leave of absence or any other temporary break from the University does not constitute the end of a relationship with the University for the purposes of this Policy.

#### F. UNIVERSITY'S OBLIGATION WHEN A COMPLAINANT REQUESTS NO INVESTIGATION OR CHOOSES NOT TO PARTICIPATE

80. The Complainant can choose not to request an investigation by the University and has the right not to participate in any investigation that may occur.

81. If a Complainant requests that the University not investigate or act on their Disclosure or Report of an Incident of Sexual Violence, the University will consider that person's request but may decide to proceed, having regard to the health and safety of Members of the University Community and its obligations and responsibilities. In such cases, the Complainant has a right to choose not to participate in such an investigation.
82. The Complainant is entitled to receive other support outlined in this Policy regardless of whether they decide to request an investigation or choose not to participate in one.
83. If requested by the Complainant and subject to any applicable legal obligations and access to information and privacy legislation, the Complainant will be informed of the outcome of such an investigation.

#### G. UNIVERSITY'S OBLIGATION WHEN SOMEONE OTHER THAN THE COMPLAINANT MAKES A REPORT OR A REPORT IS MADE ANONYMOUSLY

84. An allegation of Sexual Violence made by someone other than the Complainant can also be Reported to the University. However, the University's ability to address the allegation will depend on a number of factors regarding the information available and the Complainant's decision respecting whether or not to participate in a University process.
85. It may transpire that an allegation of Sexual Violence is Reported to the University anonymously. The University's ability to address the allegation will be dependent on a number of factors, including the information available to substantiate the allegation and to permit a fair process.
86. In such circumstances, the University will make a determination under the section of this Policy entitled "Assessment and Appointment of an Investigator."

#### ~~IX~~.VIII. REVIEW

87. The University recognizes that appropriately addressing Sexual Violence on campus is an evolving issue and that the University will revisit this Policy and its associated resources and other related and existing University policies on a regular basis.
88. The University will conduct a review of this Policy every three years that will include consultation with Members of the University Community including students, staff and faculty, and will amend the Policy as appropriate.

## APPENDIX: REFERENCES TO OTHER POLICIES AND LEGISLATION

### Selected Relevant Legislation

- Ontario Bill 132, Sexual Violence and Harassment Action Plan Act, 2016
- Ontario Regulation 131/16: Sexual Violence at Colleges and Universities
- Freedom of Information and Protection of Privacy Act (FIPPA)
- Ontario *Human Rights Code*
- *Criminal Code of Canada*

### Selected Relevant University of Toronto Policies and Guidelines

- Code of Student Conduct
- Policy with Respect to Workplace Harassment
- Policy with Respect to Workplace Violence
- Human Resources Guideline on Civil Conduct
- Statement on Prohibited Discrimination and Discriminatory Harassment
- Guidelines for Employees on Concerns and Complaints Regarding Prohibited Discrimination and Discriminatory Harassment
- Standards of Professional Practice Behaviour for all Health Professions Students
- Policy on Conflict of Interest – Academic Staff
- Conflict of Interest and Close Personal Relations
- Conflict of Interest and Close Personal Relations Protocols for Chairs and Academic Administrators
- Guideline Regarding Close Personal Relations between Senior University Administrators