

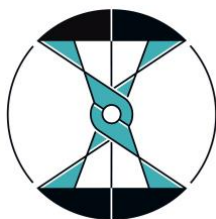
# **Independent Review of Queen's University's Policies and Procedures Related to Sexualized Violence**

*Prepared for Queen's University  
February 28, 2023*



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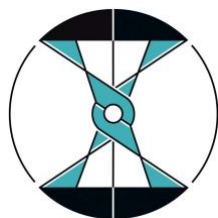
**REPORT OF THE INDEPENDENT REVIEW PANEL FOR QUEEN'S UNIVERSITY  
FEBRUARY 28, 2023**

**Executive Summary**

In the summer of 2022, Queen's University approached the Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR), to review its *Policy on Sexual Violence Involving Queen's University Students* and related policies and practices. Queen's engaged CCLISAR not because of a problem, particular case, or controversy, but in the interests of continuing to revise and improve its response to sexualized violence within the Queen's community. Queen's should be commended for its proactive commitment to a continual process of reflection and improvement regarding its policies and practices in response to sexualized violence.

The recommendations in this report are the result of a detailed and comprehensive review of the University's *Policy on Sexual Violence Involving Queen's University Students* and related policies and practices. For any post-secondary institution, developing policies and practices in response to sexualized violence that are trauma informed, harm reducing and procedurally fair, is a continual, ongoing process. The recommendations in this report were made possible by the open and transparent engagement by Queen's in the CCLISAR review process, and its recognition of, and commitment to, progressive change. CCLISAR was impressed by the sophistication and engagement of all participants in this review.

In the opinion of the Independent Review Panel that conducted this review, the policy and procedural responses to sexualized violence at Queen's are rigorous and highly professional. The recommendations in this report build on a solid foundation. The Queen's team responsible for sexual violence response across the University is well positioned to adopt the recommendations of this review in a manner suited to the Queen's University community.



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## A. THE CCLISAR REVIEW PROCESS

### **Queen's University's Engagement of CCLISAR**

In the summer of 2022, Queen's University approached the Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR), to review its *Policy on Sexual Violence Involving Queen's University Students* and related policies and practices (the "Policy" or the "Policy on Sexual Violence").

CCLISAR is a charitable, non-partisan organization that seeks to better understand (so that we can better address) the gap between Canada's seemingly progressive legal regime and its effects on the social problem of sexual harm and the experiences of survivors of sexualized violence. The Terms of Reference for the Independent Review Panel's (IRP) work are attached as Appendix A to this report and were made available online on the University's website.

The Terms of Reference for the Review committed CCLISAR to assessing the effectiveness of the University's *Policy on Sexual Violence Involving Students*, along with other policies and procedures with which it intersects. The primary emphasis for the review was on formal reporting procedures, with a view to ensuring the University has effective and trauma-informed responses to address sexualized violence, and procedures that are clear and fair to complainants and respondents. The IRP considered the ways in which the structure or implementation of the University's resources, policies, and procedures could be improved or enhanced, with a view to implementing change in the future.

A term of all CCLISAR independent reviews of university sexual violence policies is that the Final Report prepared by CCLISAR will be made public by CCLISAR. In this way, CCLISAR seeks to share knowledge on evolving and emerging practices in legal responses to sexualized violence.

### **Queen's Public Communications on the Engagement of CCLISAR**

Queen's explained the reason for its engagement of CCLISAR as follows in its [September 2022 communication](#) to Queen's community members:

As part of Queen's ongoing commitment to promoting an environment in which sexual violence is not tolerated, the University is reviewing its *Policy on Sexual Violence Involving Queen's University Students* with a focus on formal reporting processes and procedures.

Queen's provided a more detailed explanation of the CCLISAR review [here](#) and as follows:

Sexual violence is a reality on university campuses and many students will experience or know someone who has experienced sexual violence during their time at post-secondary.

Queen's is strongly committed to promoting a positive learning, living and working environment in which sexual violence is not tolerated. We work in partnership with students and community organizations to help prevent sexual violence through education, awareness, policy, fostering a culture of consent, community building, and safety programs. We also provide comprehensive and coordinated supports to students impacted by sexual violence.

This year, the university is reviewing its Policy on Sexual Violence Involving Queen's University Students to ensure we continue to have effective and trauma-informed responses and processes to address sexualized violence.

The policy is scheduled for regular review in 2023, and this review process is expected to be completed before the start of the 2023-24 year.

The review will focus on the effectiveness of the policy, along with other university policies and procedures with which it intersects. The primary emphasis will be on our formal reporting processes and procedures.

### **The Independent Review Panel's Process**

The CCLISAR IRP was comprised of IRP Chair, Joanna Birenbaum, Professor Elaine Craig (Schulich School of Law at Dalhousie University) and Professor Sonia Lawrence (Osgoode Hall Law School).

In August and September 2022, the IRP engaged in preliminary discussions with Queen's administrators as well as a comprehensive documentary review, including a review of multiple intersecting policies and procedures applying to students, staff and faculty, as well as reports relating to issues of sexualized violence and/or discrimination and harassment prepared by the University or student organizations. The IRP also reviewed publicly available discussions of sexualized violence at Queen's on social media, such as on the Instagram accounts @consentatQueens and @stolenatSmith (while the latter is focused on racial discrimination at the

Queen's business school, it does include stories of sexual harassment) both run by Queen's students. Finally, on a confidential basis, the IRP reviewed a sample of closed case files from the academic years 2017-2018 to 2021-2022 (active or ongoing matters were excluded), in which the complainant and respondent were students. These case files provided CCLISAR with valuable insight into how the process unfolds and what is working or not working in the procedures employed by Queen's for responding to incidents of sexualized violence.

In the period of October – December 2022, the IRP conducted consultations with student leaders at Queen's as well as one-on-one meetings with students who had been complainants or respondents under the Policy. The IRP also consulted with Queen's administrators and staff employed in various areas of the University relevant to the Policy, including senior administrators (e.g. Provost, Vice-Provost, Assistant Dean Student Life), and senior staff/administrators in Residence Life, Campus Security and Emergency Services, health and wellness, Sexual Violence Prevention and Response Services, and the Non-Academic Misconduct Intake Office ("NAMIO") and Student Conduct staff), legal counsel, the ombudsperson, and staff specializing in services for Indigenous students and in Equity and Inclusion. Persons and groups external to the University were also consulted, including external investigators retained by Queen's to conduct investigations under the Policy, and staff at the Sexual Assault Centre Kingston.

Queen's community members were informed of the CCLISAR review by Queen's by email and social media communications. During the 4 months that the IRP consultations were held, all Queen's community members were invited to provide confidential comments and feedback to the IRP at the [irp@cclisar.ca](mailto:irp@cclisar.ca) email address. CCLISAR received very little feedback from community members outside of the scheduled consultations. Unlike past reviews that CCLISAR has undertaken, this review was not sparked by a crisis or public event. This may be why CCLISAR did not receive much feedback by email from community members at large. In the IRP's view, Queen's is to be commended for initiating this review in the interests of continuing to improve its process for both complainants and respondents.

Consultation participants were provided a list of areas of interest to the IRP that they might want to provide feedback on, but the meetings were open ended. A copy of the discussion questions that were circulated in advance is attached as Appendix B. The IRP started each consultation meeting by explaining its mandate, and asking participants what they thought the IRP should know. The IRP also sought feedback in each meeting on any concrete recommendations that the consultation participants thought the IRP should make.

Consistent with the IRP's Terms of Reference, on January 10, 2023, a small "Expert Advisory Group" ("EAG") meeting was held, with representation from staff and senior administrator's at Queen's, a

student leader, and two experts external to Queen's (professors of law from other universities, who brought their own expertise in gender-based violence, trauma-informed practice, and procedural fairness in the context of institutional policies, to the discussion). The purpose of the EAG meeting was to canvass some of the issues and solutions identified by the IRP. The EAG discussion enriched the IRP's consultations and the comments made at that meeting were incorporated into this final report.

### **Acknowledgement of the Remarkable Contributions to the Consultations as well as the Limitations of the Process**

The IRP members wish to specifically acknowledge the remarkable positive constructive engagement in this review process by both student complainants and student respondents. IRP members are grateful for these contributions.

We also wish to acknowledge and thank the transparent and professional manner in which members of the team of individuals at Queen's responsible for conducting its processes and responses to sexualized violence engaged in this review.

Gender (broadly, including sexual orientation and gender identity) was the dominant frame generated by participants for most of the information provided by consultation participants (with some exceptions). Specific questions asked by the IRP about race and racism, however, sometimes produced different kinds of concerns. We did not hear concerns that BIPOC complainants were less likely to be believed. But we did hear concerns about what could be characterised as the perceived overwhelming whiteness of Queen's. More than one student leader suggested that BIPOC students felt exposed in a variety of different ways, including vulnerability to racist mis-identification as perpetrators, concerns that BIPOC perpetrators were more likely to be reported relative to white identified perpetrators, and barriers to reaching out as POC complainants. Some files revealed similar concerns raised by respondents. We were directed by our student consultees to social media sites where current Queen's students describe experiences with racist and sexual harassment at Queen's. Concerns about disability/ablism came up more often, sometimes because the sequelae of sexual violence included mental health issues, as well as for other reasons. Cultural difference, colonialism, language barriers and class/income disparities were also concerns on view in our review or raised during consultations. Our report reflects an intersectional approach to the problem of sexualized violence, one which looks beyond gender in understanding the experience students are having with the Policy at Queen's.



## Preliminary Note on the Purpose of this Report

The IRP's mandate was to listen, report on what we heard and read, and make recommendations for progressive change. We are not making findings of fact and examples used are illustrative and selective.

The requirement that all CCLISAR reviews be public is intended to generate discussion of the report within the University, including among those who may not have been directly involved in the consultations.

CCLISAR recognizes that there may be nuances or realities specific to Queen's that may need to be considered further by Queen's and its community, once this report and its recommendations have been released.

## B. QUEEN'S COMPLAINT PROCESS

This section of the report will describe the Queen's complaint process and make recommendations for change. We will also review comparative university policies, to assist in explaining and substantiating the IRP's recommendations.

The Queen's complaint process is professional and rigorous. The Policy involves both a comprehensive investigation and adjudication process, with a formal finding of breach under the Policy only being made at the conclusion of the adjudicated hearing. In general, the *Policy on Sexual Violence Involving Queen's University Students*, involves multiple steps and is procedurally complex and highly legalistic, both in terms of the language used and the procedural requirements, particularly at the adjudication stage.

The IRP recognizes that prior to engaging CCLISAR in 2022, Queen's had already proactively reviewed and revised the Policy during the period of 2019-2020, to improve the adjudicative hearing process in order to make it less onerous, complex, and adversarial. For example, Queen's removed any cross-examination or cross-questioning at the hearing. These changes were a step in the right direction, and a positive move away from a model that paralleled in some respects the adversarial criminal justice system. The IRP commends Queen's continued efforts to improve its process.

In this review, **the IRP recommends that the Policy be further amended to remove the adjudicative stage of the procedure** altogether. The IRP's recommendation to remove the adjudicative step under the Policy, is a logical next step for Queen's, consistent with the University's ongoing internal

policy review and development and, as discussed below, consistent with policies and practices at other post-secondary institutions across Canada.

### **Scope of the Policy and Initiation of Complaints**

The Policy is entitled *Policy on Sexual Violence Involving Queen's University Students*. In keeping with the title, the Policy applies where at least one of the parties is a student, although different procedures as set out in the Policy apply, depending on whether the respondent is a student, faculty member, visitor or employee (and whether the respondent is a unionized employee protected by a collective agreement).

The Policy applies to on and off campus conduct, provided the complainant and respondent were members of the University community when the incident occurred, and the respondent is still a member of the University community when the complaint is filed. The IRP notes that the Policy's broad scope, focused on the impact of sexualized violence on community members' ability to access education, work and residence at Queen's, is appropriate and to be commended, and is consistent with the University's legal and ethical responsibilities to its community and members.

Complaints must be initiated in writing to the Office of the University Secretariat and Legal Counsel. The written complaint must set out all of the facts alleged to constitute sexual violence and must attach all documentation upon which the complaint relies. The IRP recommends that this approach to initiating complaints be more flexible, which will make it more accessible for complainants.

The IRP heard about the impact on complainants of the requirement to make their initial complaint in writing as detailed as possible. One complainant talked about how hard, both practically and psychologically/emotionally that was to do. They had to write their complaint in between classes and while trying to maintain a demanding course load. A more flexible, less detailed, initiating document could address this problem.

### **Investigation of Complaints**

Once a complaint is submitted, Legal Counsel's office vets the complaint to ensure that the University has jurisdiction over the complaint and that, assuming the facts alleged are true, the allegations constitute sexual violence (e.g. rather than misconduct under a different University policy). If the complaint falls under the Policy, it is then referred for investigation. The IRP notes with approval and supports this effectively automatic referral to investigation under the Policy.

Complaints involving student respondents are referred to the Student Conduct Office for investigation. The Student Conduct Office reports ultimately to the Vice Provost and Dean of Student Affairs (a post currently held by Vice Provost and Dean Ann Tierney). Generally, the Assistant Dean Student Life & Learning (a post currently held by Assistant Dean Corinna Fitzgerald) acting as the Vice Provost's designate, determines whether the investigation will be carried out by an internal investigator at the Student Conduct Office or by an external investigator contracted by the University. Often more complex cases, involving many witnesses or very serious conduct where the University might seek a suspension or expulsion, will be referred to an external investigator. The external investigators retained by Queen's in the past were usually lawyers or a (female) former police officer, who have training and experience in sexual assault law and sexual violence investigations.

The respondent receives notice of the complaint in writing. The notice is provided to the respondent by staff in the Student Conduct Office or it is sent by email. The notice includes a summary of the allegations. As discussed in section C of this Report (Support for Student Respondents) below, there is no structure or staff designated to support student respondents at Queen's through this sometimes confusing process. **The IRP recommends that Queen's designate an office or staff for this purpose.**

From the IRP's case file review, it appears that the time-period from commencement of the complaint to completion of investigation (and any further steps prior to the file is closed) ranged from 2 months to 9 months. The length of investigations seemed to depend on the number of witnesses to be interviewed, number of documents to be reviewed, availability of witnesses (we saw some serious delays caused by requests by complainants or respondents to postpone meetings), delays in provision of records to the investigator and the schedule of the investigator, among other reasons. Some of the most serious delays were caused by complainant or respondent delay, rather than the University. We heard from students and others who have supported complainants or respondents, that the perception is that investigations take too long.

On the IRP's review of the case files, we observed that Queen's internal and external investigations are overall procedurally fair, rigorous, and thorough. The reports reviewed were well written and well supported. We have some comments on some of the investigation reports (which will be discussed briefly below), but overall, the investigations, especially in the period immediately preceding the review, (which in our view are the most important in terms of reflecting current practice), were thorough and of a high quality, and we believe would support discipline and remediation where warranted, without necessitating a duplicative adversarial hearing.

The Policy (s.12.6) describes the process that investigators will use when conducting an investigation, but does not expressly set out the scope of the investigation report. The written investigation reports reviewed by the IRP, however, generally include the investigator's conclusions of fact and credibility. Sometimes the reports also provide the investigator's conclusion on whether the policy was breached. The investigators, however, are not ultimately the decision-makers who determine whether a respondent has breached the Policy. We understand that this is a deliberate decision in the Policy as currently approved.

### **Completion of Investigation: Referral to Adjudication or Informal Resolution**

Completed investigation reports are provided to the Assistant Dean, Support Services and Community Engagement who "will consider the results of the investigation and decide whether to refer the matter for Adjudication" (Policy 12.11(i)). In making this decision, the Assistant Dean will consult (separately) with the complainant and respondent and decide whether the matter should be referred to Adjudication or informally resolved. Whether a complaint is referred to Adjudication or is informally resolved, is within the "sole discretion" of the Assistant Dean and will depend on the strength of the available evidence and, importantly, "whether the matter can be appropriately resolved without referral to Adjudication."

Investigations in which the investigator concludes, on a balance of probabilities, that the facts substantiate a breach of the Policy, are recorded in the Queen's internal record keeping system as a Finding of "Responsible." Where no such conclusion is arrived at by the investigator, the matter is recorded as a Finding of "Not Responsible." As noted above, a finding of Responsible at the investigation stage is not a formal finding that a respondent student engaged in sexual violence under the Policy.

The vast majority of cases in which a student respondent was found "Responsible" by the investigator under the Policy were resolved informally. The process by which the informal resolutions were arrived at often involved a form of negotiation or back and forth, with the complainant and respondent, facilitated by Queen's. The Queen's representative facilitating the informal resolution was sometimes the internal investigator assigned to the investigation, in others it was the Director of the Student Conduct Office. A proposed resolution document would be sent by Queen's to both parties, often by email, for discussion on a "without prejudice" basis. The content of the agreement sometimes required the respondent to acknowledge that a finding of responsibility had been made by the investigator and/or for the respondent to acknowledge that they engaged in misconduct under the Policy. In some sample files reviewed, the agreement was signed by both the complainant and respondent; in other sample files, it was signed only by the

respondent. In one sample case, despite a finding of fact and breach in the investigation, the respondent did not sign the agreement but terms (such as education/remediation) were imposed on the respondent regardless. Less frequently, where the respondent does not agree to the informal resolution and the allegations are at the more serious end of the spectrum, the complaint is referred to adjudication.

The informal resolution measures imposed on respondents have included educational programming and/or assignments, remediation, no contact orders, restrictions or loss of privileges, and residence relocation. Often some of these measures were already in place as interim measures. Occasionally the respondent has agreed to withdraw from the University. At Queen's, student leaders play particularly important roles and may have significant influence over other (often more junior) students. We observed that in more recent years, Queen's has restricted respondents from leadership roles where appropriate, either as an interim measure or informal resolution following a completed investigation (or both). In the IRP's view, this is a positive remedial and protective approach.

Finally, many of the informal resolution agreements indicate that consequences, including re-initiation of the Queen's complaint process, may follow from the breach of the agreement. For example, the following language can be found in some of the agreements:

The Complainant and Respondent acknowledge and understand that, by agreeing to the terms of this Agreement (as evidenced by their signatures), this Complaint will be considered resolved, the Student Conduct Office will cease the investigatory process and will close the case, and any rights to any further process or determination under the Policy on Sexual Violence are being waived. The Student Conduct Office retains the ability, however, to take any steps it feels warranted in the event that there is an allegation that the Respondent breached his obligations under this Agreement. For example, the case may be re-opened, the investigation may be resumed, and additional actions may be taken with respect to the Respondent's student status. A breach by the Respondent of this agreement may also constitute an additional instance of non-academic misconduct, which may be considered together with, or separately from, the Complaint. Furthermore, the Complainant may choose to pursue a remedy for any breach external to the University, and this Agreement does not prevent an external process from being initiated with respect to either any breach of this Agreement or the Complaint.

Some of the agreements the IRP reviewed included a mutual no-contact order, imposing terms on the complainant as well as the respondent. In the IRP's view, unless there is an indication that a complainant is deliberately compromising the respondent's ability to abide by interim or informal

resolution measures, or other similar exceptional circumstances, **complainants should not be required to sign no-contact orders or otherwise have measures imposed on them as a result of having made a sexual violence complaint.** Where a measure imposed on a respondent relates to their movements on campus (e.g. specific days for gym-attendance) the complainant should be consulted (in order to coordinate), but not required to sign an agreement.

Finally, on the subject of informal resolutions, an observation of the IRP from our review of the sample case files and our discussions with student respondents, is that where the investigator made a finding of “Responsible” but there was no formal determination under the Policy by an adjudicator (and rather the matter was “resolved informally”), the absence of a formal determination allowed, or may have allowed, at least some student respondents to avoid insight into and recognition of their acts. In other words, because there was no formal finding by an adjudicator, student respondents believed (or at least claimed) that they had not breached the policy and had not been found to have engaged in an act of sexualized violence, despite the investigator having concluded the opposite. One would hope that the conclusions of the investigator and the provisions of the informal resolution agreement would be sufficient for learning and remediation (for the respondent or both parties). However, from the perspective of certainty of outcome and education/remediation of the respondent, there is real value in an actual determination of breach at the investigation stage, which is lost when investigation findings are formally inconclusive and the complaint is then informally “resolved.”

In addition, a Policy in which a complaint could be found factually substantiated after a thorough investigation, and yet be “informally” resolved at the sole discretion of an administrator with no ultimate finding of responsibility or breach, likely does not meet student expectations for “survivor centred” processes.

### **Disconnect in Some Files Between the Facts and the Investigator’s Conclusions on Breach**

In the IRP’s review of the sample files, we noted in a few files, an issue relevant to ongoing training of internal and external investigators.

In some files, the respondent was found “not responsible” for a breach of the Policy, when the findings of fact in the investigation report clearly supported such a finding.

For example, in some cases involving sexual harassment, respondents were found “not responsible” because they did not appreciate the nature or consequences of their acts and/or were remorseful,

despite the facts of sexual harassment being made out. These findings deviate substantially from the Policy, and add a requirement, not otherwise set out in the Policy, that a respondent appreciate the nature and consequences of their acts of sexual harassment. In these cases, the actions of the respondent were in clear violation of the Policy.

In another file an external investigator made findings of fact that supported a sexual assault, yet concluded only that the respondent student had “sexually harassed” the complainant student (which error was later corrected in adjudication). We note that should this problem arise in the investigative model recommended by the IRP, it should be caught by the responsible administrator before the finding of breach is finalized, as discussed below.

As we have indicated earlier in this report, overall the Queen’s investigations are of a very high quality. No system is perfect and mistakes will always be made. At Queen’s, mistakes in investigation reports appear to have frequently been caught and corrected. The IRP’s observations on mistakes in the files as discussed above, does not detract from our positive conclusions with respect to the quality and substance of Queen’s investigations overall, but rather is intended to identify areas that would benefit from further training of internal and, as appropriate, external investigators, including on the definitions of sexual violence under the Policy and how to apply them.

## **Adjudication**

Only a small number of complaints are referred to adjudication at Queen’s.

The IRP’s review of the Queen’s case files and consultations with students, covered a period during which there was policy change at Queen’s. Accordingly, we heard criticism of an adjudicative process that had already been amended by the time CCLISAR had commenced its review. Specifically, effective late 2020, the adjudicative procedure was amended to eliminate cross-examination and make the hearing somewhat less legally complex and adversarial for participants, as compared to the procedure that was in place at Queen’s prior to these changes.

Under the Policy in effect as of CCLISAR’s review, the procedure for adjudication set out in the Policy is flexible, and can be limited to the Adjudicator receiving and reviewing the investigation report, asking questions of the parties to better understand the evidence, receive submissions, and make a decision. The Policy states that there will be no direct cross examination of witnesses and instead the parties will provide questions to the Adjudicator to ask the witness. This procedure represents a change from the previous procedure that more closely mirrored a formal adversarial hearing.

Section 12.16 and 12.17 of the Policy set out the procedure for a hearing as follows:

12.16. Purpose and conduct of the hearing:

(i) The purpose of the hearing is to allow the Adjudicator to understand the evidence gathered in the investigation, to receive additional evidence as the Adjudicator deems necessary, to decide whether to affirm or deny the Complaint (in whole or in part) and, if the Complaint is affirmed, to impose the appropriate sanction.

(ii) Whether the Complaint is affirmed or denied (in whole or in part) will be decided by the Adjudicator on a “balance of probabilities”. Determining if something is proven on a balance of probabilities means that it is more likely than not to have occurred.

(iii) The Adjudicator controls how the hearing will be conducted, but ordinarily follows the below procedure:

- a. The Assistant Dean and the Respondent will give short (10 minute) statements to set out their positions.
- b. The Adjudicator will question the Complainant, Respondent and any other witnesses who have been invited to attend.
- c. The Assistant Dean and the Respondent will give short (20 minute) statements to comment on what was said in the meeting and set out their positions, including their positions on appropriate sanctions.
- d. The Assistant Dean and the Respondent may provide questions to the Adjudicator that they would like the Adjudicator to ask the Complainant, Respondent and any witnesses at the outset of the hearing. The Adjudicator shall ask all submitted questions that are proper and that seek to elicit relevant evidence that is not already before the Adjudicator.

12.17. If either the Assistant Dean or Respondent believe the ordinary process should be modified or believe any particular procedure is required, they may write the Adjudicator (copying the other party) in advance of the hearing with a request for modification. The Adjudicator shall consider the request (and any objection to it) and shall answer it with a view to conducting a fair hearing. The Adjudicator may seek confidential legal advice to resolve requests for modification and to address other procedural matters.

The adjudicator is the Vice Provost and Dean of Student Affairs or their designate. In most cases, the respondent student has been represented by legal counsel.

The importance of the progressive move toward modifying (and in the IRP’s view, now eliminating) the adjudicative hearing at Queen’s, is underscored by the negative experiences shared with the IRP



by students who participated in hearings under the prior (more adversarial) procedure before the more recent changes by Queen's. The IRP heard about adjudications under the previous iteration of the Policy, that involved a full oral hearing, including examination and cross examination of the complainant and other witnesses. One complainant described a gruelling process of being asked questions by respondent's counsel over an extended period of time, in a hearing held over zoom, and not being permitted to receive any support from a support person during the breaks. Queen's advised that under current practice, all parties have been entitled to have support persons in their breakout rooms. Further, the hearings under Queen's current policy do not permit such extensive direct questioning of a complainant.

Although the changes to the adjudicative hearing at Queen's are a positive step forward, structurally adjudication remains a process which can cause stress and delay for the parties, is duplicative of the investigation, and is legally complex. As well, the structure arguably remains a model where the University effectively prosecutes. In terms of the legal complexity of the procedure, prior to the hearing being held, procedural steps akin to a criminal or quasi-criminal process are involved, including disclosure and pre-hearing motions. Pre-hearing motions have required the Adjudicator to determine issues such as consolidation of complaints, similar fact evidence and exclusion of witnesses. The adjudicative decisions are often lengthy (40 – 60 pages in length).

The IRP members reviewed the reasons for decision issued in cases in which an adjudicative hearing was held, including under the most recent modifications to the Policy. Many of these reasons were written by the Vice Provost and Dean Student Affairs (external lawyers have not been used in more recent years). The reasons for decision demonstrated superior knowledge of sexual assault law and procedural fairness, as well as superior skill in decision-writing. The quality of this final product, however, does not justify the lengthy process, particularly given that the (already high quality) investigation report is the foundation for the evidence in the hearing. In all of the cases we reviewed, the adjudicator upheld the findings of the investigator. In our view, this general pattern reflected the rigor evident in almost all of the internal and external investigation processes and analyses.

Other feedback we heard on the investigative and adjudicative process from the perspective of complainants included the following:

- One complainant commented on the word "complaint" and "complainant" in the Queen's Policy, indicating that after seeing the word so many times in the course of the process, the negative impact on them was to the effect of "I get it already, I'm a complainer...." and suggested that the word or term be changed to "report" and "reporter."

- Many complainants noted that they often went weeks not knowing what was happening in their case. This prompted anxiety and concern. There can be significant negative impact on complainants (and respondents) of weeks going by while hearing nothing. Better communications with the complainant during the course of the process, even if just to report that nothing has changed or happened since the last contact, would significantly improve the experience of these participants.
- A challenge of a procedure that requires complainants to prepare a detailed initial complaint, then participate in an investigation, and then provide evidence at hearing, is the problem of putting complainants in the position of giving “multiple statements,” which is emotionally demanding and, depending on the structure for the adjudicative hearing, potentially facilitates unfair scrutiny of any alleged inconsistencies as between their written statement, interview with the investigator, and then testimony at the hearing. While any finder of fact will properly consider inconsistencies in evidence, sexual violence procedures should minimize any requirement for multiple statements by complainants at various stages of the process. Removing parts of the process that are duplicative (such as by holding a hearing that duplicates an already rigorous and thorough investigation), is one way to achieve this.
- The support they received from SVPRS was essential. We want to ensure that this report reflects this positive feedback, which was repeated by a number of people we spoke to who had received SVPRS support.

### **Rationale and Precedent for Eliminating the Adjudicative Hearing**

Whether an adjudicated hearing is a full adversarial hearing or a modified hearing, there are unavoidable side effects of relying on a model that includes a multi-stage process culminating in a potentially adversarial oral hearing, rather than using an investigative model for sexual violence response at educational institutions. These side effects include: delay caused by multiple steps and/or in-person hearings; the problem of requiring the complainant to tell their story additional times (not only at the complaint and investigation stage, but again at the hearing); risk of re-traumatization of the complainant through examination and cross examination (depending on how questioning is handled by the institution); and the power imbalance, loss of agency and sidelining of the complainant’s human rights that can occur if the model is structured around an institution effectively prosecuting the respondent for a policy breach.

Queen’s confirmed that it has already adjusted its policy, as well as its procedure in practice, to move away from an adjudicative procedure that mimics a sexual assault criminal proceeding. However, in the IRP’s view, even adjudicative hearings that are designed to be less adversarial, but

in which a University effectively prosecutes a respondent student, are not aligned with one of the fundamental purposes of campus sexual violence policies, which is to give effect to the equality and human rights of complainant students to access education/work/residence free from sexualized violence. Moreover, while processes under a sexual violence policy may result in discipline of a respondent student, the policy's purpose is not exclusively, or primarily, disciplinary in nature. Universities are centrally concerned with education and knowledge creation, not the delivery of justice.

In 2019 when IRP Chair Joanna Birenbaum and Professor Karen Busby wrote *Achieving Fairness: A Guide to Campus Sexual Violence Complaints* (Thomson Reuters, 2020), eight of the twenty-five institutions whose policies they reviewed, included a procedure where student respondents had a right to an in-person full *de novo* hearing following an investigation (often categorized as an appeal). Since 2019, in the course of the ongoing review by post-secondary institutions (PSIs) of their sexual violence policies, there continues to be a trend in which PSIs are revising their sexual violence policies to shift to an investigative model with no *de novo* hearing and, in many cases, no in-person hearing at all. We provide some examples below. There is, however, some variability within these policies, also as discussed below.

In CCLISAR's view, having an investigator who is trained and expert in sexualized violence investigations and trauma-informed practice and who interviews witnesses in an in-depth and iterative fashion, is a procedurally fair and rigorous process which is also respectful of the rights of all persons involved. This process is more appropriate and feasible to the delivery and administration of a university policy than an adjudicative model which attempts to replicate a criminal or quasi-criminal proceeding. A rigorous investigative process is also procedurally fair and respectful of the rights of both complainants and respondents, which include for complainants the right to health, safety, protection and access to learning, working and living at Queen's free from sexualized violence.

### **An Investigative Model**

In 2019, CCLISAR developed a sample sexual violence policy as part of an Independent Panel Review of another post-secondary institution. That policy can be found [here](#). Under this sample policy, complaints are investigated by an expert investigator (whether internal or external) who makes findings of fact and breach. Prior to accepting the investigator's report and deciding sanction, the responsible administrator has the power to require further investigation or clarification (in order to ensure the quality and rigour of the investigation). In this way, the responsible administrator maintains oversight of the process. Any appeal (referred to as "review" in the sample policy) of the

finding of breach or sanction, is limited to procedural fairness/egregious error by a panel that includes a lawyer with experience in administrative law and sexualized violence.

As discussed in the review of selected PSI policies below, a number build-in some form of quality control via institutional review of an investigator's report before it is finalized. There are a variety of ways that institutions include this within their policy to ensure that the investigation is thorough and fair, prior to the finding of breach being finalized.

Since 2019, CCLISAR has conducted two additional reviews of university sexual violence policies and procedures. CCLISAR continues to recommend the investigation model, including to Queen's University in this review. If Queen's accepts this recommendation, adopts an approach in which fact-finding rests with the investigator, and eliminates the adjudicated hearing in its policy, Queen's will be in good company with other PSIs who have adopted similar models. Examples of procedures adopted by other universities are summarized below to provide context for Queen's community members who will discuss, and ultimately decide whether to adopt, the recommendations in this Report.

In terms of the variability in comparative approaches, at some PSIs, the investigator makes findings of fact and the administrator makes findings of breach. At other PSIs, there is flexibility built into the policy to permit the administrator, in addition to the investigator, to meet with the parties and ask questions, although the format involves separate meetings and is not akin to an adversarial hearing.

One disadvantage to university administrators becoming involved in interviewing witnesses and assessing evidence is that many administrators do not have the expertise or training in sexualized violence to competently perform this role. They have also not had the benefit of hearing all of the evidence, unlike the investigator. That said, the IRP recognizes that leaving some discretion for an administrator to review the report and send it back for further investigation or otherwise provide some oversight serves at least two policy purposes: first, it may protect the institution from poor investigations (by allowing the administrator to fill in the gaps and correct mistakes) and, second, in respect of the finding of breach, it helps ensure that the institution maintains control over findings made under its policies (particularly where the investigator is external to the institution). The IRP also heard that in some cases, providing the respondent or complainant the opportunity to speak directly to the administrator in response to the investigator's report might support that person's interest in being heard.

In terms of the separation of the finding of fact from the finding of breach, as the Queen's investigation reports make clear, the finding of fact and the finding of breach in sexual violence cases tend to be so closely intertwined as to make separating them somewhat artificial.

Comparing selected university policies reveals the various approaches in investigative models which address concerns about maintaining institutional oversight of the investigator's report and the PSI's jurisdiction over its own policy.

### **Review of Selected Comparative University Policies**

#### *McGill University*

McGill underwent an extensive consultation process and revamping of its sexual violence policy in 2018/2019. The Policy now in effect<sup>1</sup> establishes the Office for Sexual Violence Response, Support and Education (OSVRSE) that supports survivors, and the Office for Mediation and Reporting (OMR), responsible for the investigation of all reports (complaints) of sexual violence and for all informal resolutions. Reports must be made in writing to the OMR and are investigated by a "Special Investigator" (an independent and impartial investigator trained in sexualized violence). The investigator makes findings of fact and a conclusion as to whether there is sufficient evidence to make a finding of breach of the policy, as well as recommendations for discipline. The report is submitted to the Provost. Where a finding of breach is made by the investigator, the Provost refers the report to the appropriate disciplinary authority to determine discipline/administrative action. There is no oral hearing akin to the current Queen's policy.

#### *Toronto Metropolitan University*

Under the policy at TMU<sup>2</sup>, the investigator gathers facts and the administrator (Vice Provost Students) makes the finding of breach based on the investigation report, but has discretion to ask to speak to the complainant and respondent (and other witnesses) should the Vice Provost choose to do so. These meetings are held separately with the individuals in question and are not a formal hearing. At TMU the right to appeal is limited to egregious error in respect of the finding of breach or unreasonableness of the sanction and is made to the Provost and Vice President Academic. The appeal is largely a paper process, but leaves space for the Provost to "interview the parties."

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<sup>1</sup> [https://www.mcgill.ca/secretariat/files/secretariat/policy\\_against\\_sexual\\_violence.pdf](https://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf)

<sup>2</sup> <https://www.torontomu.ca/policies/policy-list/sexual-violence-policy/>

### *York University*

York University updated its Policy on Sexual Violence in March, 2022.<sup>3</sup> Under its current policy, investigators “prepare a written report containing a detailed summary of the facts and evidence gathered”, the complainant and respondent are given an opportunity to prepare written submissions on the report (which are disclosed to each other), and this documentary record is provided to the Vice Provost students who decides breach and sanction and releases their decision in writing. The Vice Provost maintains discretion to hear submissions from the parties orally (separately) and/or to interview the investigator or any of the parties (again, separately). Appeals are limited to egregious error on the finding of breach and unreasonableness of penalty. Appeals do not involve a re-hearing of the evidence and will involve an oral hearing only in “exceptional circumstances.”

### *University of Ottawa*

Prior to June 2022, University of Ottawa’s sexual violence procedure relied on an investigator to do a thorough investigation and prepare a report that contains the investigator’s analysis of the facts and “conclusion regarding whether or not sexual violence occurred.” After the completion of the investigation, the investigator’s report was submitted to a Review Committee. The Review Committee convened a meeting and heard directly from the complainant and respondent (lawyers or others are not permitted to speak on their behalf). Based on the investigation report and the oral submissions of the parties (on breach and sanction), the Review Committee then determined breach and made recommendations on sanction/remediation. The Appropriate Authority (e.g. the Dean of the student’s faculty for respondent students), determined sanction. In June 2022, University of Ottawa’s updated sexual violence policy was approved.<sup>4</sup> The updated version eliminated the Review Committee. The investigator now makes findings of fact and breach. A preliminary and then final version of the investigation report is provided to both the complainant and respondent to respond to by way of written comments/submissions. The Appropriate Authority decides consequences, based on the investigator’s report and any final written submissions from the parties. Appeals are made in writing and are limited to egregious error/fresh evidence grounds (i.e. availability of fresh evidence previously unavailable, and fundamental procedural error resulting in prejudice).

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<sup>3</sup> <https://www.yorku.ca/secretariat/policies/policies/sexual-violence-policy-on/>

<sup>4</sup> <https://www.uottawa.ca/about-us/policies-regulations/policy-67b-prevention-sexual-violence>

### *University of Victoria*

Investigations of reports of sexual violence at the University of Victoria are overseen by the Executive Director of the Equity and Human Rights Office. “Reports” under this policy have the same meaning as “complaints” under Queen’s Policy. Most Reports will be investigated. The reasons for not investigating a report include that another policy or procedure is either more appropriate or underway, the passage of time has made an investigation impractical, there is insufficient information to proceed with the report, or the allegation has already been adequately addressed by another process. The complainant can seek a review (by a panel of three administrative authorities) of a decision by the Director to decline to initiate an investigation.

Investigations at UVic are generally done by external investigators trained in sexualized violence. The investigator makes findings of fact and breach. When the investigator makes a finding of breach, the responsible administrator imposes sanction.

In terms of the investigative process, the investigator collects the facts (interviews witnesses etc.) and submits an interim summary of information (summaries of witness interviews and other information) to the Director. It would appear that if the investigation is inadequate at this stage, the Director can provide guidance and direction. After review of the interim summary by the Director, the complainant and respondent are given a copy (redacted as appropriate) and have the opportunity to respond, prior to the investigator finalizing their findings.

The appeal process at UVic depends on the nature of the sanction. Regardless, no appeal involves a re-hearing of the evidence. Section D21.00 states: “An appeal under these procedures is a pure appeal only, not a re-hearing. The appeal body will review the information available to the decision maker, but will not hear new information” (e.g. new witness statements; cross-examine witnesses).

Where the sanction involves measures less serious than suspension or expulsion, appeals are generally heard in writing (although the “appellate authority” has the discretion to convene a meeting on request of a party). The grounds of appeal are limited to procedural fairness/egregious error or an argument that the penalty is unreasonable. The appeal can be dismissed summarily if no valid ground of appeal is raised.

Appeals where a student is suspended (or expelled) at UVic, are conducted in accordance with a separate policy and procedure (the Senate Committee on Appeals). This procedure applies to all non-academic student appeals involving suspension (or expulsions). The Senate Appeals process at UVic is legalistic and complex and will not be summarized here. In general, however, the process is not a *de novo* hearing and new evidence will generally only be permitted if it was not discoverable

at the time of the investigation. The appeal may proceed in writing or in-person. The appeal panel, however, is not comprised of persons with expertise in sexualized violence. The IRP is not familiar with UVic's appeal process, so cannot provide insights into it, but on the basis of the written procedure, the IRP expresses some concern about an appeal process that involves persons who are not expert in sexualized violence reviewing decisions made by those who are. The Committee is also comprised of students, which composition is often not appropriate for sexual assault matters.

### *Summary of Selected Policies*

In sum, since 2015/2016 and continuing since 2019, there has been a trend toward eliminating oral hearings in sexual violence procedures involving students. To the extent that there are procedures for meetings or interviews with complainants/respondents after the investigation is complete, they are often discretionary and are intended as a fail-safe in the event of a poor or incomplete investigation report.

### **Being 'Heard' by the Administrator – Various Approaches for Queen's Consideration**

The IRP heard from persons who acted as Adjudicators under the current Queen's Policy, who observed that in some cases there is real value in student complainants and respondents being able to speak directly to the decision-maker, in terms of their subjective experience of being heard. Some students shared the same observation.

The IRP understands that there is a desire at Queen's to maintain in its Policy, an opportunity for students to meet with the administrator who is the decision-maker on sanction or breach/sanction (depending on how the Policy is amended).

There are a number of ways to achieve this end as discussed in the review of the comparative policies above. Queen's should decide which approach works best for Queen's, provided:

- the opportunity for a student to meet with the decision-maker is an opportunity, which a student can choose to participate in or not;
- the purpose of the meeting is for the student to provide their views on breach and/or sanction;
- the administrator's role is not to re-assess the facts;



- the student speaks for themselves at the meeting rather than through counsel or other representative;
- the forum is non-adversarial;
- the other party (respondent/complainant) is not present; and
- the responsible administrator who meets with the students is someone with appropriate experience in sexualized violence and procedural fairness.

The IRP's recommendation is that the responsible decision-maker for sanction at Queen's should be the Assistant Dean of Student Life & Learning (the "Assistant Dean"). The investigator makes the finding of fact and breach, but the investigation report is not final until it has been accepted by the responsible administrator (the Assistant Dean). This allows the Assistant Dean to review the investigation report with a view to sufficiency of the reasoning and completeness of the investigation, and to ensure there are no errors or gaps in terms of the application of Queen's Policy. The Assistant Dean may send the investigation report back to the investigator for further investigation or analysis.

Under this model, there are different options for how Queen's might provide an opportunity for the parties to be heard after the investigation report has been submitted. The three options below provide for a face-to-face meeting with the Assistant Dean (which the Assistant Dean either has the discretion to offer the parties or must offer the parties), the purpose of which meeting is for the parties to provide their views on sanction or both sanction and breach. The IRP recommends that Queen's choose one of the following:

- Prior to acceptance of the investigation report, the Assistant Dean may choose to meet with the complainant and respondent to hear submissions on the investigation report finding and sanction;
- Prior to acceptance of the investigation report, the Assistant Dean must offer the complainant and respondent an opportunity to provide their responses in writing (or orally) on the finding of breach, as well as on sanction; or
- The Assistant Dean accepts the investigation report and only hears from the complainant and respondent on sanction (whether in writing or by a meeting).

## Legalistic Standard Form Communications

Another observation that the IRP made in its review of the Queen's case files is the legalistic nature of the standard form communications.

All universities face the challenge of achieving the right balance in the language used in sexual violence (and other) procedures, in terms of making them accessible and plain language, while at the same time reflecting the seriousness of the allegations and the potential consequences of the process, and ensuring that the language is precise and standardized to avoid misunderstanding.

The standard form Notice of Investigation that is provided to student respondents includes the following statement (emphasis added):

...the information obtained as part of this investigation, which includes interview notes, will be held in confidence and will generally only be used as part of the university processes identified in this letter and the Policy and the Code. However, there are some circumstances under which Queen's University may be compelled by law to disclose this information. This disclosure may be as a result of a civil or criminal process that could be initiated in the future. **As a result, you may wish to consult with legal counsel before meeting with me in my role as the investigator.**

This is one example of several in the Queen's process of standard forms in which respondents are encouraged to consult with (or retain) legal counsel and where, more generally, the written communication with student respondents is very formal and legalistic in tone.

Respondent (or complainant) students may wish to consult with or retain legal counsel to support them in sexual violence investigations, and that is their right. The role of counsel in these situations is generally to provide advice to the client. In an investigation, legal counsel does not provide evidence on behalf of the witness when they are being interviewed (lawyers should generally be silent in an interview, but may ask procedural or clarification questions). In processes where written submissions are invited, legal counsel may write the submissions (with or without attribution).

The combination of a legalistic procedure that mirrors so many aspects of the formal justice system, coupled with complex and legalistic forms, raises the stakes, and makes legal representation for the respondent potentially very important. Yet the respondent may be unable to hire counsel and is provided with almost no guidance in this regard. The complex nature of the adjudication process also potentially creates an imbalance or disadvantage for respondent students who are not represented. In other words, in an effort perhaps to maximize procedural fairness for respondents,

Queen's current process may well present a fairness barrier to respondents, except those with the resources to retain sophisticated legal counsel. The IRP accordingly recommends that Queen's undertake a plain language review of its sexual violence forms and communications in addition to eliminating the adjudicative hearing in its procedure.

Further, either as part of this review, or in addition to it, the IRP recommends that except perhaps in the most serious of cases in which expulsion is a likely outcome, and provided Queen's designates internal support persons for the respondent (as recommended below), Queen's should not actively encourage or direct respondent students to consult with legal counsel. The Queen's process should be fair and supportive of respondent students without legal representation. To the extent that encouraging respondents to consult legal counsel is a way to protect Queen's, this is problematic both because the process should be procedurally fair for students without legal counsel and because, again, such references are only a meaningful option for the more (or most) privileged students.

## **Appeal Procedure**

The Policy on Sexual Violence, consistent with many PSI sexual violence policies across the country (as discussed in the section on comparative policies above), is limited to procedural fairness and egregious error in the Adjudicator's decision having regard to the evidence before the Adjudicator. Any Appeal must be filed within 10 days of the decision, which is an appropriate timeline. The Appeal is in writing and is final (s.13.1 – 13.4 of the Policy).

The IRP supports limiting appeals to egregious error, as set out in the Queen's Policy.

The Policy, however, only gives respondents a right of appeal. A student complainant can appeal neither the finding on breach nor the unreasonableness of the sanction.

A policy that centres the participatory role of the complainant within the frame of respecting that survivor's human rights, should grant both complainants and respondents a right to appeal (on the narrow grounds under the Policy).

Of the comparative policies reviewed above, TMU, York and the University of Ottawa grant complainants standing to appeal findings of breach and sanction, while McGill has no appeal process.

**The IRP recommends that the Policy be amended to grant complainants a right of appeal under the Policy on both the findings of breach and sanction.** Since the appeal process is time-sensitive, the grounds of appeal are narrow, and the appeal is generally or always in writing, granting student respondents and complainants a right of appeal should not unduly delay the conclusion and closure of these investigations where no egregious error was made.

If Queen's adopts the recommendation of the IRP to remove the adjudicated hearing, the Vice Provost and Dean of Student Affairs, who currently hears adjudications, can dedicate their role under the Policy to hearing appeals (rather than appeals being heard by the Provost and Vice-Principal (Academic), as set out in the current Policy). The Vice Provost and Dean of Student Affairs has the expertise in sexual assault law and procedural fairness, as well as hands-on experience in implementing the Policy, and is thus well situated to move from an adjudicative role to determining appeals under the Policy.

### **Separation of Informal or Alternative Resolution and Investigation**

As is clear from this Report to this point, the IRP is recommending that findings of fact and breach be made by the investigator (or the finding of breach be made by an administrator following the investigation) and that Queen's eliminate the step, following the completion of the investigation, of a referral either to "adjudication or informal resolution." As discussed above, Queen's may insert into the Policy an opportunity for either or both of the complainant and respondent to meet separately with the administrator before the decision on sanction (or breach and sanction) are made, but an adjudication is not required.

If this recommendation is accepted, there may still be situations where, for a variety of reasons, representatives at Queen's are engaged in facilitating resolutions on consent of all parties. These situations may include alternative resolution at the request of the complainant either before or in the course of an ongoing investigation or, if the IRP's recommendation to expand the scope of immediate measures is accepted, in some cases where Queen's is canvassing a respondent's consent to the permanent or ongoing imposition of immediate measures (in the absence of a complaint and investigation).

In general, a fundamental principle of alternative resolution in sexual violence processes is that either party can refuse to complete the alternative resolution and can choose to continue with the formal process.

Particularly if Queen's adopts the IRP's recommendation that the Investigator makes the findings of fact (or fact and breach), it will be critical that the investigator never wears two hats.

Where resolution processes are facilitated, Queen's should be careful to ensure that the Queen's representative involved in the facilitated resolution has not been or will not be involved in any investigation involving the matter.

## **RECOMMENDATIONS**

**RECOMMENDATION 1:** Queen's revise its Policy to eliminate the adjudicative hearing and to assign to the investigator the findings of fact and the finding on whether or not a breach of the Policy has occurred. The Assistant Dean Student Life & Learning decides sanction. Queen's may provide the complainant and respondent an opportunity to meet with the Assistant Dean prior to any decision being made by the Assistant Dean.

**RECOMMENDATION 2:** Queen's amend the Policy to grant complainants as well as respondents a right to appeal of both the findings of breach and sanction; and (under a model where there is no adjudicated hearing) to assign the Vice Provost and Dean of Students the role of hearing appeals.

**RECOMMENDATION 3:** Queen's undertake a plain language review of its notices and forms under the Policy on Sexual Violence oriented to making them more accessible and less likely to distress or traumatize complainants or respondents.

**RECOMMENDATION 4:** Queen's significantly reduce or remove reference in its forms used under the Policy, to legal counsel and/or to encouraging complainants or respondents to retain legal counsel. The Policy (s.12.7) makes clear that parties may be supported by support persons, including legal counsel. In general, however, university sexual violence processes involving students

should be designed such that it is not necessary for students to retain legal counsel, nor for the university to repeatedly encourage them to do so.

**RECOMMENDATION 5:** Queen’s consider changing the language of “complaint” and “complainant” to “report” and “reporter” in the Policy.

**RECOMMENDATION 6:** Queen’s ensure that any alternative or informal resolution process is facilitated by a Queen’s representative who is not involved in the investigation, and that appropriate confidentiality/anonymity protections (‘firewalls’) are in place.

**RECOMMENDATION 7:** Queen’s Policy permit complainants to provide an overview of allegations in the initial written complaint (sufficient to establish the nature of the complaint), but leave open the possibility for the details to be provided directly to the investigator.

**RECOMMENDATION 8:** Mutual no-contact orders, either as an interim measure, facilitated resolution term, or order/sanction arising from the outcome of a complaint, should be the exception. Complainants should not face measures imposed on them following a disclosure or complaint.

## C. IMPROVING COMMUNICATIONS FOR COMPLAINANTS

In the consultations, a concern that the IRP heard a number of times from different sources was that complainants and/or respondents are not always kept adequately up to date on investigation processes, causing increased stress and distrust in the process.

This concern was raised in respect of both internal and external investigations.

The IRP acknowledges that capacity constraints could play a significant role in this issue. While internal or external staff may be stretched, ongoing communication with complainant and respondent students is essential to maintain trust in the institution and integrity of the process, as well as to prevent students turning to other outlets to express their frustration.

One possible way to address gaps in communication is to formalize the requirement that the parties be informed on a regular basis of the status of the investigation. On the one hand, sexual violence policies need to be manageable and not impose unduly onerous obligations on those charged with implementing the policy. On the other hand, if the Policy mandated regular updates, all parties (and those who implement the Policy) would have clear expectations, and a mandatory communication

provision in the Policy would by necessity generate efficient systems to ensure those communication requirements were met.

We heard that the cases where students experienced a communication gap included cases where the complainant was supported by the SVPRS. Where the complainant student is supported by the SVPRS, and the student has confirmed that they want to receive information through the SVPRS, the University should strive to make the exchange of information as easy and straightforward as possible. For example, it should be sufficient for the complainant to confirm by email that they want the involvement of the SVPRS and, unless instructed otherwise, the investigator should send all communications to both the SVPRS and to the complainant (noting that some complainants specifically want the support of SVPRS so that they don't have to receive potentially stressful or destabilizing emails in their inbox).

The IRP recommends that the Policy be amended (and until that time a commitment be made publicly by Queen's) to communicate with the parties every 14 days on the status of the investigation, even if only to say that no progress has been made. The IRP consulted with those who currently implement the Policy, to determine if this 2-week timeline is manageable, and were advised that it is. The IRP acknowledges the openness of Queen's in these discussions, its recognition that communication can sometimes be a gap (due to workload/capacity constraints), and its commitment to implementing a 2-week follow-up procedure (whether formally in an amended policy or informally). The IRP recognizes that time can slip by and it is easy for investigators and administrators to lose track, especially given limited resources and competing priorities and responsibilities. The value of improved communications, however, cannot be overstated. They will support a trauma-informed approach and will assist in building trust by students in Queen's and its processes. For those students who don't want a potentially triggering call or email in their inbox every two weeks, they can opt not to receive the information or for it to be sent to their support person with whom they can check in when they're ready.

Finally, there was significant discussion in the Expert Advisory Group meeting about how best to give effect to improved communications. The idea of a (secure) portal where students could go to access information when they're ready, was discussed.

The IRP's strong view is that a portal or other web-based platform which requires complainants and respondents to log in to check for information is not recommended. First, this approach would likely be experienced as a burden by many: something else to remember to do, to log-in to, and which requires them to initiate the information seeking. Second, and more importantly, it is impersonal. The need for communication includes not only the content of the information but the human contact. Even if the follow-up is by email, there is a difference between a portal and the initiation

of an email by the investigator (or administrator) to the students. The complainant and respondent can hit “reply” to ask questions, and it is not on their shoulders to chase down information that they feel should be coming to them without additional steps on their part. Any web-based platform also always carries the inherent risk of a data breach.

## RECOMMENDATIONS

**RECOMMENDATION 9:** Investigators be required to communicate with the parties (respondent and complainant) every 14 days on the status of the investigation, even if only to say that no progress has been made.

**RECOMMENDATION 10:** Queen’s simplify, as necessary, the process for complainants to consent to support from SVPRS and to receive communications about the process *through* the SVPRS.

## D. SUPPORTING RESPONDENTS

A trauma-informed approach to sexual violence procedures for students includes a concern for the impact on respondent students of receiving notice of a complaint and participating in an investigation, as well as recognizing that respondents may have their own trauma histories. The sexual violence process can be as mystifying and overwhelming for respondents as it is for complainants, and respondents can similarly fall through the cracks or experience stressful gaps in communication. One respondent told us they were directed to the University ombud, who they perceived to be ill-equipped to provide more than general procedural information. The University Ombud confirmed this perception, noting that the role of the office has changed over time and that they receive questions about the sexual violence procedure infrequently.

We note as well that the counselling needs of respondents might need to be flagged to University Counselling Services.

Immediate support for respondent students through a designated support person under the Policy can help reduce retaliation, collusion (whether innocent or otherwise) and gossip, following notice of a complaint (or a request for immediate measures).

The roles of the supports for the complainant and respondent should be set out in the policy, appendices to the policy, or in explanatory materials that supplement the policy. The supports and services for complainants and respondents need not be identical.



The role of the support person for the respondent should include:

- providing information to the respondent on the various processes under the Policy
- acting as a support person for the student throughout these processes
- acting as a liaison to co-ordinate academic or residence accommodations requested by the respondent or arising from any interim measures
- assisting the respondent in providing information to the University (for example on risk assessment or interim measures)
- providing information about confidentiality and privacy and the limits of confidentiality

The role of the Queen's respondent support person isn't as an advocate or someone who effectively represents the respondent in the process.

In our consultations, the IRP canvassed which office within Queen's is best situated to provide this support for respondent students. The IRP recommends that the Office of the University Ombudsperson be formally designated under the Policy to provide the above support for respondent students. Over the next few years (if not longer) that role should be provided by a staff person from the Student Conduct Office who is seconded to the Ombud office for this purpose. The reason for this recommendation is that the Student Conduct Office staff are already familiar with the Policy and procedures and should have the requisite training to provide this support immediately. The staff person(s) designated to support respondents should have similar training to those who support complainants, in the sense of trauma-informed practice and an understanding of the Policy, procedural fairness and sexualized violence.

## RECOMMENDATIONS

**RECOMMENDATION 11:** The Office of the University Ombudsperson be trained and designated under the Policy to assist respondent students. For the first year(s) a staff person from the Student Conduct Office may be seconded part-time to the Ombud office for this purpose.

## E. IMPROVING USE OF IMMEDIATE MEASURES

Under the Policy, interim measures may only be imposed on a student respondent if a complaint is filed. This approach to interim measures is relatively common across many PSI policies. That said, a number of PSI policies include provisions which permit the institution to impose interim measures

on a respondent following a disclosure (see for example University of British Columbia,<sup>5</sup> St Francis Xavier University<sup>6</sup> and sections 49-53 of McGill's policy.<sup>7</sup>

As will be discussed below, in its past three reviews, CCLISAR has recommended that the use of interim measures (we prefer the term "immediate" measures and will use this unless specifically referring to the current Queen's policy), be expanded to make them available following a disclosure (either temporarily or longer term if a complaint is made or the respondent consents) rather than only after a formal report, provided procedural fairness to the respondent is also protected. However, before we address this recommendation, we will first describe what we learned about the use of interim measures following a complaint under the current Policy on Sexual Violence at Queen's and, in other cases, following a disclosure in Queen's residence.

### **Interim Measures Following Formal Complaint under the Policy on Sexual Violence at Queen's**

The IRP asked Queen's to provide us with a breakdown of interim measures ordered by the Student Conduct Office following a complaint under the Policy on Sexual Violence. We were provided information about 30 files over a period of years. In these files the following interim measures were identified: "no contact" orders were made in every case; in a few cases a respondent was removed from residence; and in a few cases the respondent experienced a restriction on, or loss of, privilege (often involving leadership roles in student organizations). Notice of Prohibition and Provision of Information were also listed in about half of the cases. In cases involving misogynistic/sexually suggestive sheet signs, interim measures were not put in place since the sheet signs were removed before Campus Security and Emergency Services spoke to the students involved, or at the moment that CSES arrived. These students were required to complete educational modules and assignments as final outcomes. These sheet sign cases tend to be initiated by campus security and not contemporaneous student complainants.

### **Immediate Measures upon Disclosure (without a formal complaint) in Queen's University Residence Life Procedures**

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<sup>5</sup> [https://universitycounsel.ubc.ca/files/2022/05/Sexual-Misconduct-Policy\\_SC17.pdf](https://universitycounsel.ubc.ca/files/2022/05/Sexual-Misconduct-Policy_SC17.pdf), s.8.3.7 of UBC's Sexual Misconduct Policy, as it intersects with UBC's *At Risk Behaviour Policy*, [https://universitycounsel.ubc.ca/files/2022/05/At-Risk-Behaviour-Policy\\_SC13.pdf](https://universitycounsel.ubc.ca/files/2022/05/At-Risk-Behaviour-Policy_SC13.pdf).

<sup>6</sup> <https://www.stfx.ca/sites/default/files/Sexual%20Violence%20Policy.pdf>

<sup>7</sup> [https://www.mcgill.ca/secretariat/files/secretariat/policy\\_against\\_sexual\\_violence.pdf](https://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf)

Under the Residence Life Response to Disclosure of Sexual Violence policy, Queen's, through the Manager on Call (Residence Life), may impose interim measures on an alleged perpetrator of sexual violence in response to a *disclosure* (see section 5.4 of the Queen's Policy on Sexual Violence for the definition of disclosure) in residence. These measures can include no contact orders and residence relocation, for either the alleged perpetrator or the disclosing student.<sup>8</sup>

Responses to disclosures in residence will be discussed in the next section below, including the risks to Queen's arising from actions taken under the Residence Life policy and processes. For the purposes of this section, however, it is important to highlight that in one significant area of campus life (residence) that is high risk for acts of sexualized violence, Queen's is already imposing interim measures following a disclosure without a formal complaint under the Policy on Sexual Violence.

### **Rationale for Making Immediate Measures Available Following Disclosure (without a formal complaint) in Queen's Policy on Sexual Violence**

In this review, CCLISAR specifically asked to speak to students who had participated in investigations following formally filed complaints (in which case interim measures were available).

However, in CCLISAR's experience more generally, a common area of concern for survivors who have disclosed (but not formally filed a complaint) is that they had to change schedules, classes, study spaces, study, living and socializing patterns, friendship groups etc. In more extreme (but unfortunately not uncommon) cases, the inability to impose measures on an alleged perpetrator following a disclosure can lead to even more serious harm to survivors, including withdrawal from classes and from the University. Immediate measures without formal complaint can also benefit the student named as the alleged perpetrator in the disclosure, in the sense that a formal investigation (and finding of breach) may be avoided where the immediate measures meet the needs of the disclosing student, and the alleged perpetrator agrees to their remaining in place for the necessary period of time.

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<sup>8</sup> The Residence Life Response to Disclosure of Sexual Violence document provided to the IRP (entitled 2022-23 Residence Life Response to Disclosure of Sexual Violence.pdf) directed logging of disclosures as follows: "The RLCOC will include notes on the disclosure in the form. The RLCOC will use the language "complaint" to refer to the incident, "complainant" to refer to the reporting student and "Respondent" to refer to the person they identify as responsible for the behaviour. Uses language "wants to make report the complaint" if the student mentions wanting to do so, versus a disclosure." This should be clarified. If there was no formal complaint, the language should clearly so indicate. The phrase "disclosing student" is more appropriate than complainant in such a situation. Likewise, without a formal complaint, the language of Respondent is misleading.

In CCLISAR's view, immediate measures following a disclosure without requiring the filing of a formal complaint are an underutilized resource for PSIs and present an approach to addressing the immediate needs, health, safety, and well-being of disclosing students, in a manner that can be carefully balanced with the rights and interests of respondents. The availability of immediate measures following a disclosure also addresses the risk that a survivor will feel that the institution "did nothing" following a disclosure, or feel that they, the survivor, bore the brunt of any and all accommodations.

The IRP observed that many of the informal resolutions following Queen's investigations included the kinds of measures that could be put in place as immediate measures. A student alleged to have perpetrated sexualized violence may well agree to having such measures in place longer term. These measures may include no contact orders, residence relocation, educational requirements (including one-on-one sessions), class changes, complete or partial restrictions on attendance at specific campus locations, restrictions on leadership positions or positions of authority, etc.

For some survivors, a finding that the Policy on Sexual Violence has been breached is an important part of their healing and access to justice. Many others, however, report primarily because they seek safety and certainty. For reasons relating to factors such as their mental and physical health and their ability to continue to function in the educational setting, as well as protecting them from retaliation or other negative social responses, they might not want to see the respondent in class or in the library, but they don't necessarily want to impose an investigation on themselves or the respondent, nor do they want the respondent punished (as opposed to educated). These survivors may well choose *not* to trigger an investigation if measures which meet their health and safety needs could be imposed on the respondent following a disclosure.

Further, the structured nature of immediate measures keeps the process distinct from mediation or alternative resolution. Alternative resolutions and mediations are not a substitute for the availability of immediate measures. They serve different purposes. Alternative resolution shifts the responsibility to the parties to arrive at an agreement and, in CCLISAR's experience in past reviews, is frequently experienced by the survivor as pressure from the university to negotiate.

Immediate measures following a disclosure, on the other hand, offer a structured process in which institutional actors can take control of the situation and respond to the disclosure immediately. In some cases a respondent may agree to leave a measure in place, avoiding the need for a complaint and investigation. In other cases this will not occur, and a complainant will have to decide whether to proceed with a complaint and investigation. But the ability to impose immediate measures will facilitate Queen's supporting the mental/physical health of the complainant, meeting the

immediate living and learning needs of the complainant, and in some cases avoid -- for all involved parties -- the stress and trauma of a complaint and investigation.

The procedure for imposing immediate measures should be trauma-informed, clear, detailed and procedurally fair to complainants and respondents. Such a process has the potential to meet the goals of ensuring the educational/living/working safety and flourishing of complainants and protecting the procedural fairness rights of respondents. As noted, in some or possibly many cases, it might also avoid the stress and time required for an investigation.

Prior to finalizing this report, and consistent with CCLISAR's process as set out in the Independent Review Panel Terms of Reference, the IRP sought feedback on various recommendations from the Queen's community and the attendees of the EAG meeting. Much discussion was held in these consultations and the EAG meeting on the issue of how long immediate measures can be in place, absent the agreement of the respondent student, before such measures either must be modified or lifted, or the survivor/disclosure must initiate a formal investigation. From the perspective of those who support survivors, there was an emphasis on the need for these stabilizing measures to be in place for a meaningful period of time; from the perspective of the rights of respondents, the focus was on procedural fairness, the extent of the impact of the measure on the respondent and the length of time imposed (absent agreement or the initiation of a formal complaint).

It is difficult to specify a time period in the policy because a number of variables may inform what is necessary to meet the interests of the parties and the University, including most obviously the immediate measure sought. The more onerous the measure on the respondent, the greater the procedural fairness rights and protections to which they are entitled. Accordingly, in most cases, immediate measures following a disclosure may only provide a stabilizing and protective function for a limited period of time (unless extended by agreement of the respondent). For example, if the immediate measures involve something more than a no-contact order or other order that has a minimal impact on the respondent, procedural fairness for the respondent would likely limit the duration to a reasonably short period of time. During this period, the survivor's immediate needs to continue accessing education are met and, assuming the survivor does not choose to proceed with a formal investigation, the respondent can decide whether they can accept all or some of the measures imposed.

To be clear, expanding the Policy to include an express power to impose immediate measures following a disclosure (and before or without the filing of a complaint) will not (in most cases) allow an institution to impose significantly detrimental measures on a respondent for a significant period of time (absent consent). The allowable measures and their duration will depend on the facts of the disclosure, and the existence of other factors and considerations (such as prior history, independent

corroborating information, the seriousness of the risk factors to continued access to education for either the survivor or respondent or the university community generally, the existence of criminal charges etc.).

The IRP notes that McGill's policy takes a similar flexible approach. Immediate measures may be imposed following a disclosure or report where "there may be a risk to any Member of the University Community" (which risk would appear to include risk to the survivor's health, safety or access to education). Rather than set a specific procedure, McGill's policy states that "any immediate measures shall...ensure that Procedural Fairness, as applicable in the context, is maintained...".<sup>9</sup>

In terms of implementing a policy change to expand imposition of immediate measures following a disclosure, communications internally would be required to ensure that those receiving a disclosure know to advise the student making the disclosure that immediate measures may be available. This could be added to the list in section 10.7 of the Policy. The SVPRS (who are informed of all disclosures) can provide further and more detailed information about immediate measures and the process and criteria by which such measures may be imposed either to the person to whom the disclosure was made (10.7.g) or to the student themselves (10.7.f). The IRP notes that in almost all cases, imposing immediate measures on the respondent will require revealing the discloser's name and allegations to the alleged perpetrator. The student who made the disclosure should be carefully informed about the fact that their name and the nature of the allegations will not stay confidential if immediate measures are sought.

The discloser should be given an opportunity to share their health, safety, and living/education needs and concerns with Queen's. Sharing this information will usually involve the SVPRS, but may involve Residence Life and/or the Assistant Dean Student Life (often the authority responsible for determining and imposing immediate measures). The alleged perpetrator will similarly be provided with the opportunity to speak to the impact of the imposition of immediate measures, either before the immediate measures are imposed, or as part of a request for review of any decision to impose immediate measures.

The IRP acknowledges that even in cases where a respondent student might agree to the continued imposition of an interim measure, they may not feel empowered to contact the Assistant Dean of Student Life if they have experienced a change in circumstances. Accordingly, CCLISAR's view is that it would be helpful/prudent to include a provision in the policy which requires the University to check-in with the student on whom measures were imposed, and to assess whether there are unexpected negative impacts on the respondent that require assessment/re-assessment.

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<sup>9</sup> [https://www.mcgill.ca/secretariat/files/secretariat/policy\\_against\\_sexual\\_violence.pdf](https://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf)

A rigorous and, we believe, procedurally fair, procedure for imposing immediate measures on a student alleged to have perpetrated sexual violence following a disclosure, developed by CCLISAR, is set out in full below. We are reproducing this example in full below as an example of how such measures could be incorporated into Queen's' existing policy if Queen's adopts a more prescriptive approach (as opposed to simply committing to "procedural fairness" as set out in McGill's policy). The IRP's view is that a more detailed procedure is preferable, to guide the actions of administrators and ensure that procedural fairness, particularly in the case of immediate measures following a disclosure (without a complaint), is indeed respected.

### **Sample Detailed Immediate Measures Policy Provisions**

#### **1. IMMEDIATE MEASURES**

- 1.1 Immediate Measures may be imposed by the Assistant Dean Student Life & Learning on a student Respondent at any time following a disclosure or complaint of sexual violence.
- 1.2 Immediate Measures may be initiated at the request of the Complainant or on Queen's own initiative.
- 1.3 Where a Complainant requests Immediate Measures following a Disclosure, the Complainant must consent to the release of their name and the general nature of the allegations to the Respondent. The release of the name and some information about the allegations is necessary for the process to be procedurally fair.
- 1.4 Immediate Measures include, but are not limited to:
  1. No contact/communication orders
  2. Arrangements to minimize encounters in learning, living or working environments such as changes in class schedules or sections, residence location, work schedules or assignments
  3. Suspension of ability to participate in team practices or games
  4. Restricting campus privileges of the Respondent
  5. Restricting access to part or all of the Queen's campus on the part of the Respondent, up to and including a campus ban/no trespass order
  6. Administrative suspension of the Respondent.
- 1.5 Immediate Measures may be imposed on a student Respondent by the Assistant Dean Student Life & Learning where there is reasonable cause to believe that Immediate Measures are required to achieve any of the following:
  1. To protect the safety, security or academic, residence, or employment well-being of the Complainant or any other Member of the Queen's community

2. To address any risk posed by the Respondent to the safety and well-being of the Complainant and/or to the Queen's community
3. To maintain confidentiality and/or the integrity of a Queen's investigation or anticipated investigation
4. To discourage or prevent retaliation; or
5. To minimize disruption to the learning, residence or working environment at Queen's

If one or more of the above factors is present, the Assistant Dean of Student Life & Learning may also consider whether Immediate Measures are required to:

6. To maintain and build community trust and confidence in Queen's; and/or
7. To maintain and promote a campus environment in which sexual violence is not tolerated.

1.6 In addition to the above factors, the Assistant Dean Student Life & Learning shall consider:

1. The wishes and expressed needs of the Complainant
2. The views of the Respondent, if available
3. The nature and seriousness of the alleged conduct
4. The impact of the conduct on the Complainant and/or on the Queen's community
5. The impact of the proposed measures on the Respondent, and
6. Whether the Respondent is in a position of trust or authority

1.7 Any Immediate Measures imposed shall be reasonable and justified in the circumstances to meet the above goals.

1.8 The Respondent shall receive notice in writing from the Assistant Dean Student Life & Learning that the Assistant Dean either intends to impose Immediate Measures, or in cases under para. 1.17 and 1.18, that the Assistant Dean has already imposed Immediate Measures.

1.9 The Respondent may provide a response to the Assistant Dean Student Life within 48 hours following receipt of the notice. The timeline for the Respondent's response may be extended in extenuating circumstances.

1.10 The Respondent's response may include consent to the Immediate Measure on an interim basis, with a request that it be reconsidered or reviewed based on additional information, within a specified period of time.



- 1.11 The Complainant will be provided a copy or summary of the Respondent's response to the imposition of Immediate Measures, and 48 hours to respond. The timeline for the Complainant's response may be extended in extenuating circumstances.
- 1.12 The Assistant Dean Student Life shall consider the information provided by the parties in making the decision on Immediate Measures. The Assistant Dean of Student Life may also consult internally within Queen's, as necessary, in making their decision.
- 1.13 Within 48 hours of the imposition of Immediate Measures on a Respondent, the Assistant Dean Student Life will provide a written letter to the Respondent by email or to the Respondent through the [support person for the Respondent at Queen's], setting out the decision made, the information relied on in making that decision, and the reasons for the decision.
- 1.14 At any time either the Respondent or the Complainant may request that the Assistant Dean Student Life modify or remove the Immediate Measures. Such request should be made to the Assistant Dean of Student Life.
- 1.15 A request for reconsideration of the Immediate Measures is appropriate in cases where there has been a change of circumstances. Where a request to reconsider the Immediate Measures is made, the other party will be advised of the request and provided an opportunity to respond.
- 1.16 If Immediate Measures are amended or modified by the Assistant Dean Student Life, a decision letter confirming any changes, the measures remaining in place, and the reasons for the amendments, shall be provided to both the Respondent and the Complainant.
- 1.17 In urgent circumstances, such as where delay may cause harm to the Complainant and/or to the Queen's community or any Member of the Queen's community, the Assistant Dean Student Life may impose Immediate Measures immediately and prior to hearing from the Respondent.
- 1.18 In cases under 1.17, Notice in writing of the Immediate Measures shall be provided to the Respondent through the [name appropriate office or position] within 24 hours of the decision being made. The Respondent shall have an opportunity to respond within 14 days. The Assistant Dean Student Life shall consider any submissions or new information provided by the Respondent and may modify or reconfirm the Immediate Measures.
- 1.19 The Immediate Measures imposed, and the time-frame for their imposition, will be determined on a case-by-case basis, having regard to the relevant facts and considerations set out in paragraphs 1.5-1.7 above and the principles of procedural fairness.
- 1.20 If the Immediate Measure is a suspension or campus ban, any formal investigation will be undertaken on an expedited basis.
- 1.21 Student Respondents may be provided support (as appropriate) in continuing their education (such as in the case of a campus ban), which may be requested through the [insert appropriate office].

1.22 Immediate Measures imposed on a student Respondent may remain in place indefinitely where:

1. The Immediate Measures meet the needs of the Complainant and the Complainant and Respondent consent; and
2. The Immediate Measures address the safety, remedial, and campus culture responsibilities of Queen's.

1.23 Despite any agreement by the parties to continue the Immediate Measures indefinitely, any party may subsequently request a reconsideration of the Immediate Measures, or the complainant may elect to initiate a Complaint.

1.24 Except where the Immediate Measures are limited to no-contact orders or library/study/gym/meal hall schedules, every four weeks after the Immediate Measures are imposed, the Director or their designate will contact the Respondent, to provide the Respondent an opportunity to inform the University about the impact on their living, working or studying conditions at the University caused by the Immediate Measures.

## RECOMMENDATIONS

**RECOMMENDATION 12:** Queen's amend its Policy on Sexual Violence to include the power to impose Immediate Measures on a student respondent following a disclosure, prior to a complaint being filed and/or without a complaint being initiated.

## F. SPECIFIC PROBLEMS RELATED TO SEXUAL VIOLENCE IN THE RESIDENCES

### Residence Life Investigations or Information Gathering

Residences pose unique and difficult issues for post-secondary institutions. With the exception of certain smaller residence communities (such as graduate students), students living in residence are often in their first year or young(er) in age. Incidents, including incidents of sexualized violence, often involve alcohol or other substances, occur at night, and disclosures are often made in the wee hours of the morning or otherwise during non-business hours.

Another challenge specific to the residence environment is that the front-line staff (e.g. Dons) are themselves often young and/or relatively untrained, non-professional students. Residences are supported by full-time professional managers, but there are limits to their capacity and expertise.

Queen's residences are governed by a number of policy documents and are run by a staff that includes staff dedicated to enforcing codes of conduct in residence. The Residence Conduct Process document, which applies to all conduct or behaviour in residence, sets out a points system for students who are found to have violated the Residence Contract and Community Standards. Section 4.4 of the Residence Conduct Procedures identifies who investigates incidents, depending on the severity of the incident or the points already accumulated by the student in question (whether the residence life coordinator; residence conduct coordinator; manager, residence conduct; or case manager, non-academic misconduct). If the student has already accumulated demerit points or where the conduct is serious, the "manager of residence conduct" investigates.

Co-existing with these procedures is a policy that relates specifically to sexual violence in residence: the Residence Life Response to Disclosure of Sexual Violence policy.

It is not clear to the IRP how these three policies intersect (i.e. the Residence Conduct Process document, the Residence Life Response to Disclosure of Policy on Sexual Violence, and the Policy on Sexual Violence). Critically, managers and other staff in the residences perform quasi-investigations of breaches of the residence contract in certain circumstances (except when they are investigated by the Student Conduct Office).

Where the incident in a residence involves sexual violence, the Residence Life Response to Disclosure of Sexual Violence policy appropriately refers survivors to the Policy on Sexual Violence and encourages them to consent to the release of their name/contact information to the SVPRS for support (and to learn about the option of filing a complaint).

If the *Residence Conduct Process* is only intended to apply to incidents that do not involve sexual violence, then in theory, sexual violence incidents would never be investigated by the Residence Life staff or administrators. They would only be investigated by a Student Conduct investigator from NAM, or an external investigator, after a formal complaint was filed.

In reality, however, it was clear to the IRP from the sample closed files, as well as from the information obtained in the consultations, that Residence Life staff do conduct at least quasi-investigations or preliminary investigations in sexual violence cases, before a complaint is filed.

One reason why residence staff appear to engage in investigations (or preliminary discussions and interviews with witnesses) in cases of sexualized violence is their obligation to meet the immediate safety needs of the survivor, by considering the imposition of interim measures on the respondent student, including no contact orders and relocation of residence. As one consultation participant noted, if a survivor and alleged perpetrator are in the same residence, they might be in close contact, including in intimate spaces, such as the bathrooms: “residence context is unique...it is not an option not to act absent a complaint.” Other circumstances also might require some investigation in order to consider any action, such as if the reporting student could not identify the person alleged to have breached the policy by name.

The IRP also saw some evidence that students in residence are frequently not clear on the distinction between reporting and disclosing under the Policy on Sexual Violence, even when it has been explained to them. A survivor may feel that because they disclosed to their Don, or the Residence Life Coordinator, the University has information on which it should act. If there were allegedly multiple breaches of the Policy on Sexual violence by the same individual, the expectations and pressure on the University to act can be immense.

Another related feature of the unique context of residence is that Residence Life staff are responsible for the wellbeing of the residence community as a whole, and allegations, rumours and gossip about sexual violence can take on a life of their own.

Where interim measures are requested by the discloser/complainant or are otherwise identified by residence staff as being needed, the Residence Life Coordinator on Call (RLCOC) is directed by the *Residence Life Response to Disclosure of Sexual Violence* policy to obtain information from the complainant/survivor about what happened. More generally, the RLCOC is directed to support community members and bystanders and to “speak to anyone who was involved and debrief with them.” On the one hand, there is direction to Residence Life staff to listen, be supportive, and not ask a lot of questions; on the other hand, we heard that there was a need to “triage the information” to get a “broader understanding” of the incident, given the reality of information that “swirls around” residences. Residence Life staff felt detailed information was often required in order to know what interventions might be called for.

As a result, and due to the unique context of residence and the need, or perceived need, for an immediate response by the University, interim measures in response to a disclosure in residence are not necessarily coordinated with steps under the Policy on Sexual Violence. In fact, interim measures under the Residence Life process via the Residence Life Response to Disclosure of Sexual Violence policy may happen entirely independently of the Policy on Sexual Violence.

The IRP appreciates that there is some coordination and overlap between Residence Life and the Policy on Sexual Violence (Student Conduct Office) which is not visible from the policies themselves. For example, we recognize that Residence Life and Student Conduct staff are both represented on the Assessment and Care Team, which meets weekly to assess potential risk to campus and individual safety. There is coordination or communication between the Sexual Violence Response Coordinator and the Residence Support Coordinator (and other Residence Life staff), and the more serious residence conduct incidents (including those incidents of sexual violence where a formal complaint is filed) are investigated through the student conduct unit.

Nevertheless, at least in some cases, the response to a sexual violence disclosure within residence (even if characterized as ‘information gathering’) has looked very much like an initial investigation, which has been undertaken by Residence Life staff. This approach risks tainting evidence in any investigation under the Policy and can contribute to a climate of gossip and escalation which can create safety risks for residence communities.

The IRP does not have a recommendation that will fully solve the problem of gossip and escalation in residence following a disclosure. We recognize that communication between a close and large group of individuals can be complex and difficult to control, to the detriment of everyone involved in an incident of sexual violence. The IRP does, however, recommend that the process for imposing immediate measures on a student respondent in residence be more rigorous, structured and integrated with the Policy on Sexual Violence.

Residence Life staff should not be conducting investigations or preliminary investigations to impose interim measures. If witness interviews are required to assess risk to protect the disclosing student or others, these interviews should be conducted by the trained investigators in the Student Conduct Office. If Queen’s revises its Policy to permit imposition of immediate measures on students named in disclosures, this procedure should apply to students in residence who are alleged to have breached the Policy on Sexual Violence. In other words, the procedure and final decision-making for imposition of interim/immediate measures (other than perhaps no contact orders) in response to sexual violence incidents in residence, should be taken out of the hands of the residence Manager on Call and put in the hands of the decision maker under the Policy on Sexual Violence. The residence staff (including the Manager on Call) may be consulted or involved in the process, but the process should not be siloed from, or run parallel to, the Policy on Sexual Violence. The immediacy needs of residences – that is, the after-hours nature of many disclosures or complaints – is challenging but should not be used as a blanket reason to parallel or bypass the University’s process.

Before leaving the subject of residences, the IRP wishes to share two concerns that arose in the consultations or the file review.

The first concern related to anecdotes about incidents in residence, which stories may assist Queen's in its future training of student leaders/Dons in residence. In the consultations, we were told of one or more occasions where student misconduct related to sexualized violence (e.g. male students in residence tearing down the shower curtains in the women's showers) was treated as a minor misdemeanor. The IRP recommends that what might seem as more 'minor' acts that contribute to rape culture be properly identified by residence staff as sexualized violence and treated as such under the Policy. This approach would also align with Queen's strong response under the Policy to the hanging of sheet signs.

The second concern relates to escalation of vigilantism in residence. Cultural shifts towards increased belief in and support for survivors (at least some of the time and/or within certain communities), may have the positive benefit that some undergraduate students who disclose or report gain the support of their peers (including male peers). But sometimes that support can go too far. The IRP heard of incidents where student respondents faced explicit threats from peers. The risk of this kind of behaviour occurring may be particularly high in residence. The quick escalation of ostracization and verbal, written and even physical threats against respondents who are living in a dorm room and have been identified as a perpetrator of sexual violence is easily foreseeable. Further, the targeting of certain respondent students might be impacted by factors including racism.

We also observed in our sample file review, that many files showed that friends of the complainant were involved in a variety of different ways, including support for the complainant or, related to that support, attempting to reach out to witnesses or otherwise gather evidence. This happened both before and after the formal complaint was filed, and sometimes in clear breach of non-disclosure warnings.

Universities do not want to discourage reporting by sanctioning survivors for breach of confidentiality when they report, or by sanctioning those who support survivors. On the other hand, the IRP heard about cases where respondent students received threatening communications and where it was not clear whether there was any sanction of the student who engaged in this form of vigilantism. The impact on the respondent can be serious.

The IRP hopes that better integration of the residence and sexual violence policies and procedures as recommended below, will be a step toward addressing this serious risk.

## RECOMMENDATIONS

**RECOMMENDATION 13:** Queen's should revisit its Residence Life Response to Disclosure of Sexual Violence policy to ensure that preliminary investigations are not being informally done by Residence Life staff, prior to a complaint being filed. Interim/immediate measures in response to sexual violence incidents in residence should be formalized and integrated into the procedures under the Policy on Sexual Violence. Information gathering for the purposes of assessing interim measures (or other institutional response) in cases of sexualized violence should be conducted by investigators trained in sexualized violence. Given the short timelines required for a response in many cases involving sexual violence in residence, the IRP expects that those investigators would be from the Student Conduct Office and not external investigators.

### G. CLARIFYING THAT SEXUALIZED INTIMATE PARTNER VIOLENCE FALLS UNDER THE QUEEN'S POLICY ON SEXUAL VIOLENCE

In the course of the consultations, some Queen's community members queried whether Queen's should add intimate partner violence to the conduct that is caught by the Policy on Sexual Violence.

Sexualized violence that occurs between intimate partners who are both Queen's community members at the time of the incident and where the respondent is a member of the Queen's community at the time of the complaint, is already caught by the Policy. To the extent this is not understood by community members, this gap in understanding could be addressed by either or both of communication/education strategies and/or by revising the Policy to include a statement to the effect that the Policy applies to sexualized violence between intimate partners.

For example, in McGill's Policy, the definition of sexual violence includes the following:

Sexual violence can be committed by anyone, including but not limited to a spouse, an intimate or dating partner, a friend or acquaintance, a family member, a known individual, or a complete stranger.

Some PSI policies (such as Western University), include “Gender-Based Violence” in the name of the policy and/or in the definition of conduct caught by the policy. At Western University, the definition of “Gender-Based Violence” is synonymous with the standard legislated definition of sexual violence (see s.1.08):

**Gender-Based and Sexual Violence:** Any sexual act or act targeting a person’s sexuality, gender identity and 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, cyber harassment and sexual exploitation.

[https://www.uwo.ca/univsec/pdf/policies\\_procedures/section1/mapp152.pdf](https://www.uwo.ca/univsec/pdf/policies_procedures/section1/mapp152.pdf)

Intimate partner violence is deeply rooted in patriarchy and gender inequality, both of which are also the basis for most sexualized violence. The term “intimate partner violence”, however, may capture conduct that is neither sexual or sexualized in nature nor targets a person’s gender or sexuality.

In the IRP’s view, the best response to the concern heard in the consultations that Queen’s community members are unclear that the Policy applies to sexualized violence within intimate partner relationships, is to include a clarifying statement in the policy similar to that found in McGill’s policy, accompanied by educational efforts that explain the scope of the Policy. To the extent that this approach may potentially exclude certain forms of intimate partner violence that are not sexualized or do not target a person’s gender (e.g. a student couple get in a fight in a bar, in which a female student slaps a male across the face), this exclusion is appropriate. The University however maintains discretion on a case by case basis to determine whether any particular complaint of intimate partner violence falls under the Policy due to the sexualized or gendered nature of the conduct.

## RECOMMENDATIONS

**RECOMMENDATION 14:** Queen’s update the definition section of its policy to make clear that sexualized violence under the Policy can occur between intimate partners; and Queen’s educational/communication explanatory materials on the Policy make clear that the Policy applies to sexualized violence within intimate partner relationships.



## H. STUDENT COMPLAINTS INVOLVING FACULTY AND STAFF & ADDRESSING THE BILL C-26 REQUIREMENT FOR EMPLOYEE SEXUAL MISCONDUCT POLICY

### **The Policy Should Be Express About Prohibiting or Regulating Sexual Relationships between Faculty/Staff and Students**

The Policy is silent about sexual relationships between faculty (and staff) and students and when/whether these are prohibited. In general, such relationships appear to be permitted at Queen's.

In the IRP's view, the permissive approach to faculty/staff relationships with students at Queen's, particularly where that faculty (or staff member) is or may be in a position of influence over that student's education or career, is out of step with current policies and approaches and needs to be addressed by Queen's.

In our consultations, the IRP heard concerns about the power imbalance between faculty and graduate students, and the risks of these relationships for the students involved. We also heard that the barriers to reporting when the perpetrator is a faculty member are even higher than when the respondent is a student.

Sexual intimacy between faculty/staff and students may sometimes produce long-term healthy and happy relationships. When it does not, however, the impacts on students can be life-long and devastating.

In the United States, a number of Ivy League schools have prohibited faculty-student relationships for decades. For example, Harvard, Yale and Stanford have long had such policies<sup>10</sup> and in 2015, Harvard passed a blanket prohibition on faculty having sexual or romantic relationships with undergraduate students regardless of whether the faculty is in a supervisory role.

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<sup>10</sup> See for example: <https://infoforfaculty.fas.harvard.edu/book/sexual-harassment>; <https://www.gse.harvard.edu/students/handbook/consensual-relationship-policy>; <http://catalog.yale.edu/dus/university-policy-statements/teacher-student-consensual-relations/>; <https://share.stanford.edu/policies-and-procedures/overview-stanford-policies/guidelines-consensual-relationships>; <https://adminguide.stanford.edu/chapters/guiding-policies-and-principles/harassment-discrimination/consensual-sexual-or-romantic>.

In Canada, various universities, including McGill in its June 2022 updated policy, prohibit sexual relationships between faculty and students they teach or over whom they have academic authority or may influence the student's academic progress.

Institutions that do not have an express provision prohibiting or regulating faculty/staff-student relationships, generally rely on their conflict-of-interest policies to address faculty/staff-student relationships. However, these policies are not particularly accessible to students and often don't set sufficiently clear standards. These policies are unlikely to be the source for students to seek clarity about their interactions with faculty/staff. A clear standard in the sexual violence policy signals to students that if they are subjected to unwanted attention, they don't need to doubt themselves or prove to the university that the conduct was not consensual. It also provides them with a strong policy basis on which to resist the attention and/or report.

CCLISAR's sample policy is found at Appendix C. CCLISAR's policy recommends that sexual relationships between teaching staff and students be prohibited as follows, which language would apply to senior administrative staff who are in a position of academic authority over the student:

Sexual relations between a student and a member of the Teaching Staff are prohibited when the staff member:

- i. Is in a position of academic authority over the student
- ii. Might in the foreseeable future be in a position to exercise authority over a student
- iii. Has or may have an influence over the student's academic progress or
- iv. Collaborates academically with the student.

McGill's current policy is below:

#### **Code of Conduct: Romantic and Sexual Relationships between Teaching Staff and Students**

**8.1** The University is committed to cultivating and maintaining a safe academic environment for students based on integrity and respect. Students have the right to a safe and respectful learning environment that fosters their academic success. Members of the Teaching Staff bear the responsibility of conducting themselves with professionalism and integrity at all times in their contacts with students. The following Code of Conduct applies to all members of the Teaching Staff:

- 8.1** i) No member of the Teaching Staff may enter into or initiate a sexual or romantic relationship with a student where the member of Teaching Staff:

- a. has academic authority over the student;
- b. has an influence over the student's academic progress; or
- c. collaborates academically with the student.

ii) Breach of the prohibition set by Section 8.1(i) shall be subject to a disciplinary sanction of at least suspension without pay, unless the facts warrant a less severe sanction. The member of the Teaching Staff may also be subject to administrative measures.

iii) With the exception of graduate students who hold appointments as Teaching Staff (e.g., as teaching assistants), if a member of the Teaching Staff enters into a romantic or sexual relationship with a student not included in the prohibition defined in Section 8.1(i), but where the student is nevertheless enrolled in the Teaching Staff member's Faculty or where it is likely that the Teaching Staff member will have academic authority or influence over the student's academic progress (e.g., where the Teaching Staff member teaches a mandatory course in the program in which the student is enrolled), the Teaching Staff member must immediately disclose the intention to enter into this relationship. The disclosure must be in writing following the process prescribed by the *Regulation on Conflict of Interest*. In such cases, administrative measures will be implemented to ensure that the Teaching Staff member has no academic authority or influence over the student concerned.

iv) Romantic or sexual relationships between a member of the Teaching Staff and a student in the same Faculty, which existed *before* the student enrolled at McGill or before the member of the Teaching Staff had an academic appointment at McGill, are governed by the *Regulation on Conflict of Interest*.

**8.2** Romantic or sexual relationships in the context of other relationships characterized by a power differential (e.g., professors and the heads of their academic unit; staff and their managers) are governed by the *Regulation on Conflict of Interest*.

**8.3** In interpreting and applying this Code of Conduct, the University shall take into consideration the varied settings in which students pursue their respective educational programs (e.g., field, clinical, graduate, continuing studies).

**8.4** In this Code of Conduct, "student" includes any postdoctoral fellow, whether deemed an employee or not.

**8.5** The University shall ensure that it communicates about, and delivers education on, this Code of Conduct to all Members of the University community.

**8.6** Breach of this Code of Conduct on Romantic and Sexual Relations between Teaching Staff and students are in violation of the present Policy and are subject to the [Procedures](#) associated with this Policy.

CCLISAR recommends that Queen's revise its Policy to prohibit sexual relationships between teaching staff and students and to clearly set standards within the policy for any other sexual

relationships between faculty/staff and students. A strict and clear policy can achieve fulsome protection of students while leaving limited space for non-exploitative relationships that must be disclosed to the university.

CCLISAR's sample language above is an example of how Queen's might implement this recommendation.

### **Bill 26 Requirement for Employee Sexual Misconduct Policy**

On December 8, 2022, [Bill 26, An Act to amend various Acts in respect of post-secondary education](#) received Royal Assent in Ontario.

Under Bill 26, s.16.1(8) of the *Ministry of Training, Colleges and Universities Act* requires institutions to have an "employee sexual misconduct policy" by July 1, 2023. The "employee sexual misconduct policy" may be part of another policy, including the sexual violence policy required under the Act.

It is important that, to the extent possible, students obtain all information they need about sexual violence (including misconduct) at Queen's, in one policy document.

If Queen's adopts CCLISAR's recommendation to prohibit sexual relationships between certain faculty/staff and students and to require disclosure of other relationships, this prohibition/regulation, should be expressly set out in the Policy on Sexual Violence.

Further, CCLISAR recommends that the Bill 26 "employee sexual misconduct policy" be embedded in the Policy on Sexual Violence in respect of any other acts (such as sexual harassment), rather than a stand-alone policy. Queen's will need to further revise the Policy to add a section that sets out the disciplinary outcomes for sexual misconduct toward a student.

## **RECOMMENDATIONS**

**RECOMMENDATION 15:** Queen's prohibit sexual relationships between faculty/staff and students over whom the faculty/staff have a teaching relationship or academic authority or influence; and that Queen's require faculty/staff to immediately disclose any other sexual relationship with a student. Queen's

current permissive approach is out of step with current understandings of the significant potential harms and risks of these relationships to students.

**RECOMMENDATION 16:** Queen’s embed the newly required “employee sexual misconduct policy” under Bill 26 into the Policy on Sexual Violence Involving Queen’s Students.

## I. OVERLAPPING POLICIES AND PROCESSES

A challenging area for all PSIs is the overlap between policies and procedures.

### **Harassment and Discrimination Prevention and Response Policy**

Sexual harassment is prohibited conduct under the Queen’s Harassment and Discrimination Prevention and Response Policy (the “H&D Policy”) as well as the Policy on Sexual Violence. The procedures under these policies, however, are different.

For example, under the H&D Policy, the first step once a complaint is made, is that the complaint is screened by an Intake Assessment Team. The Intake Assessment Team may decide not to refer a complaint of sexual harassment for investigation for a number of reasons, including that the complaint was made more than a year after the incident in question and/or because the complaint contains insufficient information.

Under the Policy on Sexual Violence, there is no timeline for filing a complaint (provided the respondent is still a member of the university community). Further, under the Policy on Sexual Violence, provided the conduct, if true, constitutes sexual violence, all complaints are investigated and there is no other pre-screening or vetting.

The IRP recognizes that the Intake Assessment Team has the discretion to extend the timeline for filing a complaint under the H&D Policy, and may well do so routinely with sexual harassment complaints. The strict language of the H&D Policy and Procedure, however, nevertheless imposes different criteria.

Sexual harassment complaints should not be subjected to differential scrutiny and review depending on which Policy or office they were initially filed under.

The IRP recommends that the H&D and Sexual Violence Policies be more expressly harmonized, with the H&D Policy making clear that all complaints of sexual harassment will be processed in accordance with the Policy on Sexual Violence.

The IRP was advised by Queen's that the H&D policy is currently under review and revision, and that some of these issues are already being addressed. The IRP did not review the revisions to the H&D policy that are currently underway, and acknowledges that our recommendations and observations are based on the H&D policy in effect at this time.

### **Sexual Violence Complaints Involving Faculty/Staff respondents**

Since 2015/2016, most PSIs have established an office, like Queen's Sexual Violence Prevention and Response Services, as a central resource for survivors to receive information and support. Further, for those survivors who make complaints (regardless of the parties to the complaint), all such complaints are at least initially received and processed through another central location within the university (whether legal services, an investigations office, etc.).

One of the benefits of a centralized approach is that one location in the institution has a systemic (and systematic) view of disclosures and reports of sexual violence at the university. Or to put it another way, that central location has its finger on the pulse of what is going on, and can identify patterns and issues, which may inform education and policy change.

At Queen's, information is more siloed. The Office of Legal Counsel, for example, receives all complaints and directs them to the correct area of the university for investigation (e.g. Student Conduct, Human Resources, Faculty Relations), but there is no requirement (or practice) that procedural or substantive information about those complaints is channeled back to a central office or location. In particular, ongoing information about what happens to complaints after they are referred to Faculty Relations or Human Resources is missing, including the time taken to investigate, whether alternative resolution was engaged, and the outcome of the complaint (or investigation) and any remediation or discipline ordered.

From what the IRP heard, after referral of a complaint to Human Resources or Faculty Relations, there is what could fairly be described as an informational 'black hole'. This needs to be addressed. The accountability processes within the University for the processing of complaints should be the same whether the respondent is a student, faculty or staff. Obviously the terms of any collective agreement must apply, but it is not clear to the IRP how collective agreement terms would or should

impact any centralized office from receiving ongoing information for accountability and transparency purposes, including to ensure that both the University and the survivor/reporter are kept up to date on the progress of a complaint and investigation (and which would include information on any immediate measures imposed).

## RECOMMENDATIONS

**RECOMMENDATION 17:** The Policy on Sexual Violence and Harassment and Discrimination Prevention and Response Policies should be harmonized and all complaints of sexual harassment should be processed under the Policy on Sexual Violence.

**RECOMMENDATION 18:** The Policy on Sexual Violence should be amended to require reporting on the processing and outcomes of all sexual violence complaints to a central office.

## J. TRANSPARENCY, ACCOUNTABILITY AND REPORTING OF DATA

In past CCLISAR reviews, CCLISAR has recommended that PSIs provide much greater transparency and detail in the data on sexual violence that is reported publicly.

The IRP's review of Queen's Policy was very focused on certain aspects of the Queen's policy involving students and there was minimal discussion in the consultation sessions about Queen's public reporting of data. Nevertheless, this is an area that the IRP believes all universities need to address, at least in part because we repeatedly heard student consultation participants suggest that the University was doing "nothing" about sexual violence. At a minimum, students should have an opportunity to learn about what the University is doing.

Queen's has produced four annual reports as required under ss.7 and 7.1 of the *Ministry of Training, Colleges and Universities Act*. The reports meet the minimum requirements of the Act, but lack information that would contribute to a better understanding of experiences of sexual violence by community members, and more importantly, that would increase trust in the University and its procedures in terms of demonstrating how Queen's takes action in cases of reported sexual violence.

For example, the 2021-2022 report to the [Board of Trustees](#), provides information on the number of disclosures, but does not provide information on whether those disclosures related to sexual

violence experiences at Queen's (or, for example, childhood sexual abuse or sexual violence experienced in other parts of the students' lives). Nor does the report provide a breakdown on whether disclosures relating to Queen's involved peer on peer violence or faculty/staff. The 2021-2022 report provides information on the number of complaints made by students and the categories of sexual violence involved in those complaints, but again does not provide information on how many of the complaints involved student, staff or faculty respondents. Crucially, it provides no information about the imposition of interim measures or about final outcomes.

The IRP appreciates that privacy concerns limit the formats in which Queen's can share information about cases. On the other hand, Queen's is a relatively large university, with over 25,000 undergraduate students alone. Techniques such as data banding – grouping together cases over a number of years - could be used to present more detailed information without compromising privacy and anonymity.

Attached as Appendix D is an excerpt from the University of Manitoba's sexual violence policy, which offers an example of much more detailed data collection and publication.

## **RECOMMENDATIONS**

**RECOMMENDATION 19:** Queen's collect and publish more detailed information on sexual violence disclosures and formal complaints, including information about outcomes, while continuing to protect the privacy/anonymity of individuals.

## **K. OTHER ISSUES FROM THE CONSULTATIONS**

A number of other issues were mentioned in the consultations that the IRP wishes to reflect in this Report.

The first relates to the role of specialized services/safe spaces for BIPOC and LGBTQ students in immediate measures and sanction. It is not uncommon for the parties to a sexual violence incident to be from the same cultural or other community. Where they are both students, both parties may rely on or use the same centres at the University, whether Yellow House Student Centre, the International Student Centre, or the Four Directions Indigenous Student Centre.



These Centres, and the staff/directors who run them, play an important role in creating and maintaining safe spaces for BIPOC/LGBTQ students. Sometimes this protective and supportive role can involve seeking to protect a complainant from a respondent. Sometimes the respondent may frequent the Centre or play a leadership role within it.

When this situation arises, a possible challenge for Queen's is the extent to which the University can consult with the Centre(s) to assess, impose, or modify immediate measures, "informal" resolutions or sanctions imposed by Queen's on respondents. On the one hand, Queen's may miss important information if the Director of the Centre is not consulted in any way in the decision-making. On the other hand, there may be privacy concerns, either for the discloser/complainant or respondent or both. In addition, these Centres may have their own norms and values to consider with respect to sexual violence even without a formal complaint. For instance, a Centre may take the position that an interim measure which imposes a kind of "time sharing" arrangement on the respondent and complainant with respect to the Centre is inappropriate. The Centre may wish, because of a disclosure prior to formal complaint, to bar an alleged perpetrator. On the other hand, the alleged perpetrators and/or respondents may be particularly in need of the kind of support these Centres can provide through their staff.

A related concern or issue involves staff at these Centres being asked to assist with the education or remediation of respondents because of their specific connection to the respondent. The complex relationships that these Centres are expected to build with specific and somewhat marginalized student communities might well include the desire to work with community members who commit sexual violence. But they might well not, or the limited service capacity might already be significantly overwhelmed by urgent student need, including the needs of survivors of sexual violence.

Finally, in the IRP's consultations, there were discussions about how/when Indigenous restorative justice practices could be engaged under the Queen's Policy, without co-optation. Given the location of Queen's, its commitments to reconciliation and Indigenous ways of knowing and justice structures, there appears to be a gap in terms of Queen's having or developing a relationship with a restorative justice practitioner with expertise in sexualized violence, for example with a connection to the Haudenosaunee community at Tyendinaga. Any such relationship should be developed in consultation with, and supported by, the Four Directions Centre and other Indigenous leadership groups within Queen's.

## RECOMMENDATIONS

**RECOMMENDATION 20:** Queen's should develop, in consultation with the Four Directions Student Centre and Indigenous leaders on campus, a structured approach to when Indigenous restorative practices will be engaged in sexual violence cases and which restorative justice practitioners should be retained to facilitate any such processes.

**RECOMMENDATION 21:** Queen's should consult with the Centres which serve BIPOC, LGBTQ and international students, on information sharing in sexual violence disclosures and reports and the role of these Centres in immediate measures and sanctions.

## L. CONCLUSION

Queen's approached CCLISAR to undertake this review because Queen's was interested in improving its Policy. Queen's should be commended for taking this step, and for retaining external experts to prepare an independent and public report. As described in this Report, in various areas, such as the generally high quality of the investigation reports and adjudicated decisions, Queen's formal procedures were well-developed. The recommendations in this Report are aimed at making the Policy and practices at Queen's better, as part of what will no doubt be an ongoing process of progressive change.

The IRP has made over twenty recommendations, some of which can be implemented immediately or in the very short term, and others which require Policy change, which take longer.

The IRP is grateful for the time, strength and energy of all those who have been involved in this process, including the support staff, consultees, administrators, survivors, service providers, respondents and other community members. We continue to learn through this process and hope that the IRP's recommendations will assist Queen's in its progressive steps to improve responses to sexualized violence on campus.

## LIST OF RECOMMENDATIONS

1. Queen's revise its Policy to eliminate the adjudicative hearing and to assign to the investigator the findings of fact and the finding on whether or not a breach of the Policy has occurred. The Assistant Dean Student Life & Learning decides sanction. Queen's may provide the complainant and respondent an opportunity to meet with the Assistant Dean prior to any decision being made by the Assistant Dean.
2. Queen's amend the Policy to grant complainants as well as respondents a right to appeal of both the findings of breach and sanction; and (under a model where there is no adjudicated hearing) to assign the Vice Provost and Dean of Students the role of hearing appeals.
3. Queen's undertake a plain language review of its notices and forms under the Policy on Sexual Violence oriented to making them more accessible and less likely to distress or traumatize complainants or respondents.
4. Queen's significantly reduce or remove reference in its forms used under the Policy, to legal counsel and/or to encouraging complainants or respondents to retain legal counsel. The Policy (s.12.7) makes clear that parties may be supported by support persons, including legal counsel. In general, however, university sexual violence processes involving students should be designed such that it is not necessary for students to retain legal counsel, nor for the university to repeatedly encourage them to do so.
5. Queen's consider changing the language of "complaint" and "complainant" to "report" and "reporter" in the Policy.
6. Queen's ensure that any alternative or informal resolution process is facilitated by a Queen's representative who is not involved in the investigation, and that appropriate confidentiality/anonymity protections ('firewalls') are in place.
7. Queen's Policy permit complainants to provide an overview of allegations in the initial written complaint (sufficient to establish the nature of the complaint), but leave open the possibility for the details to be provided directly to the investigator.
8. Mutual no-contact orders, either as an interim measure, facilitated resolution term, or order/sanction arising from the outcome of a complaint, should be the exception.

Complainants should not face measures imposed on them following a disclosure or complaint.

9. Investigators be required to communicate with the parties (respondent and complainant) every 14 days on the status of the investigation, even if only to say that no progress has been made.
10. Queen's simplify, as necessary, the process for complainants to consent to support from SVPRS and to receive communications about the process *through* the SVPRS.
11. The Office of the University Ombudsperson to be trained and designated under the Policy to assist respondent students. For the first year(s) a staff person from the Student Conduct Office may be seconded part-time to the Ombud office for its purpose.
12. Queen's amend its Policy on Sexual Violence to include the power to impose Immediate Measures on a student respondent following a disclosure, prior to a complaint being filed and/or without a complaint being initiated.
13. Queen's should revisit its Residence Life Response to Disclosure of Sexual Violence policy to ensure that preliminary investigations are not being informally done by Residence Life staff, prior to a complaint being filed. Interim/immediate measures in response to sexual violence incidents in residence should be formalized and integrated into the procedures under the Policy on Sexual Violence. Information gathering for the purposes of assessing interim measures (or other institutional response) in cases of sexualized violence should be conducted by investigators trained in sexualized violence. Given the short timelines required for a response in many cases involving sexual violence in residence, the IRP expects that those investigators would be from the Student Conduct Office and not external investigators.
14. Queen's update the definition section of its policy to make clear that sexualized violence under the Policy can occur between intimate partners; and Queen's educational/communication explanatory materials on the Policy make clear that the Policy applies to sexualized violence within intimate partner relationships.
15. Queen's prohibit sexual relationships between faculty/staff and students over whom the faculty/staff have a teaching relationship or academic authority or influence; and that Queen's require faculty/staff to immediately disclose any other sexual relationship with a

student. Queen's current permissive approach is out of step with current understandings of the significant potential harms and risks of these relationships to students.

16. Queen's embed the newly required "employee sexual misconduct policy" under Bill 26 into the Policy on Sexual Violence Involving Queen's Students.
17. The Policy on Sexual Violence and Harassment and Discrimination Prevention and Response Policies should be harmonized and all complaints of sexual harassment should be processed under the Policy on Sexual Violence.
18. The Policy on Sexual Violence should be amended to require reporting on the processing and outcomes of all sexual violence complaints to a central office.
19. Queen's collect and publish more detailed information on sexual violence disclosures and formal complaints, including information about outcomes, while continuing to protect the privacy/anonymity of individuals.
20. Queen's should develop, in consultation with the Four Directions Student Centre and Indigenous leaders on campus, a structured approach to when Indigenous restorative practices will be engaged in sexual violence cases and which restorative justice practitioners should be retained to facilitate any such processes.
21. Queen's should consult with the Centres which serve BIPOC, LGBTQ and international students, on information sharing in sexual violence disclosures and reports and the role of these Centres in immediate measures and sanctions.

# APPENDICES

## APPENDIX A

### Terms of Reference for Independent Review of the Policy on Sexual Violence Involving Queen's University Students and Related Procedure and Practices at Queen's University

#### Background:

Queen's University (the "University") recognizes that the issue of sexualized violence on university campuses is an evolving issue and is committed to meeting its legislative requirements as set out by [the Ontario Government](#). Adopted in 2016, the University has undertaken to review its policy at minimum, every three years.

Since then, Queen's developed a Sexual Violence Prevention and Response Working Group (now *Task Force*) in 2013, which is comprised of a cross-campus network of students, faculty and staff. This groups has historically been involved in providing input and insight into supports to students, training programs for students, faculty and staff, and awareness and education resources as well as policy development.

In 2019, the provincial government released a [summary report on the 2018 Student Voices on Sexual Violence survey](#) and in February 2020, the province released [detailed responses](#) to the survey. In 2021, Queen's conducted the [Student Experiences Survey](#), with the goal of understanding further the impact of systemic racism, exclusionary and discriminatory behaviours, and sexual violence experienced by students on campus.

As part of the University's regular and ongoing efforts to address and eradicate sexual violence, Queen's University seeks to obtain an Independent External Review as outlined below.

#### Mandate:

Queen's University will engage the Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR) to conduct a comprehensive review of the University's sexual violence policies, procedures, and practices as part of our regular review process outlined in the *Policy on Sexual Violence Involving Queen's University Students*.

### **Scope of Independent External Review:**

The Independent External Review will assess the effectiveness of the University's *Policy on Sexual Violence Involving Students*, along with other policies and procedures with which it intersects. The primary emphasis will be on complaints made under the Policy, with a view to ensuring the University has effective and trauma-informed responses to address sexualized violence, and procedures that are clear and fair to complainants and Respondents. The Independent External Review will consider policies and procedures as they relate to students who experience sexualized violence. The review will include a consideration of the ways in which the structure or implementation of the University's resources, policies, and procedures could be improved or enhanced, with a view to implementing change in the future. The Independent Review Panel (IRP) that undertakes the review will produce a report that will summarize the review process undertaken and the information gathered (in anonymized form) and make recommendations aimed at improving the University's policies and procedures, with an emphasis on formal reporting procedures. This report will be public.

### **Description of the Review Process:**

The review process will involve four stages.

Stage 1. An Independent Review Panel (IRP) will conduct a document review of the University's relevant policies and procedures as well as any other documentation and materials provided by the University or requested by the IRP. This stage of the review will include a review of sample complaint files. The documentary review may also include review of other university policies on sexualized violence and relevant secondary literature and reports. Any documents produced by Queen's to the IRP during the document review process that contain personal identifying information will be held in strict confidence by the IRP and will be used only for the purpose of this review mandate.

Stage 2. The IRP will conduct consultations with representative members of the University community, with a focus on complainants and Respondents who have participated in complaint processes, student leaders or groups engaged in sexual violence issues on campus, faculty and staff involved in administering the policy, as well as staff, faculty and students who represent a diversity of experiences and views. The IRP may also meet with external community organizations or individuals (such as external investigators) as appropriate.



These consultations will be conducted over the equivalent of a three-day period in October and November 2022 and will be done virtually. The University will manage the scheduling and coordination of the consultation meetings.

The University community will also be invited, during the months of October and November 2022 to provide confidential written input to the IRP. The IRP will use the email address of the IRP Chair [[IRP@cclisar.ca](mailto:IRP@cclisar.ca)] for the purpose of receiving comments and information regarding the operation of the University's *Policy on Sexual Violence Involving Queen's University Students* and any policies with which it intersects. This email and its intended purpose will be made public by the University in September 2022.

Any comments, observations, or insights offered during these consultations or in writing will remain unattributed in CCLISAR's report. The IRP's notes and emails received through the IRP's designated email account, and internal correspondence between members of the IRP will not be produced to the University or made public.

Stage 3. A background document identifying issues and any areas of concern with and/or improvement regarding the University's policies and procedures along with possible measures to address these areas of concern and/or improvement will be circulated to an Expert Advisory Group [EAG]. This group will meet for a half day to one-day online workshop to discuss the issues and ideas reviewed in the background document. The meeting shall take place virtually on January 10, 2023. The Expert Advisory Group will provide advice at this workshop to the IRP.

Stage 4. The IRP will finalize its report and will provide it to the University by February 6, 2023.

### **Composition of the Independent Review Panel:**

The Independent Review Panel will be comprised of three individuals external to the University. The Chair of the IRP, Joanna Birenbaum, is a practicing lawyer with expertise in gender-based harm and university-related complaints processes. The second and third members of the IRP, Professor Elaine Craig and Professor Sonia Lawrence are legal academics with training and expertise in legal responses to sexualized violence. Brief biographies of the IRP members can be found below.

### **Composition of the Expert Advisory Group:**

The Expert Advisory Group will be comprised of the three panel members of the IRP, two additional members selected by CCLISAR who are external to the University, the chairs of the Sexual Violence Prevention and Response Task Force (SVPRTF) and up to five additional members of the university community, selected by the Chairs of the SVPRTF in consultation with the IRP. Members of the EAG from the University community will have relevant experience in university complaints processes and/or legal processes for responding to sexualized violence (e.g. adjudication or investigation) and/or expertise regarding issues of gender-based harm. The Chair of the IRP will also chair the EAG.

The Expert Advisory Group will provide advice to the IRP on the proposed recommendations.

### **Timeline for the Review:**

#### September 2022:

Finalize terms of reference/contract

Begin review of documents provided by University

Compile list of relevant stakeholders for consultations (in consultation with University)

Schedule first round of consultations (in collaboration with University)

#### October and November 2022:

Document review and consultations with members of the University community.

#### December 2022:

Draft background document for EAG Workshop.

January 10, 2023: Expert Advisory Group Workshop

#### January 2023

Follow up interviews and consultations as necessary and requested by the IRP

February 6, 2023: CCLISAR Submits IRP Report to the University

**Joanna Birenbaum** is a litigator in Toronto with over two decades of expertise in gender equality and sexual violence. Her diverse practice in these areas includes constitutional litigation, civil sexual assault claims, employment law, human rights and workplace investigations, representing complainants in sexual history and records applications in criminal sex assault proceedings, defending malicious prosecution and defamation claims targeting women who have reported sexual violence, and Supreme Court of Canada appellate advocacy. Joanna also prosecutes for a regulated health college in Ontario and advises institutions and employers on sexual violence policies and procedures. Joanna was a 2014-2015 McMurtry Fellow at Osgoode Hall Law School and adjunct faculty at Osgoode (2014-2017). In addition to her private practice, Joanna is the Director of Capacity Building for CCLISAR (Canadian Centre for Legal Innovation in Sexual Assault Law Response). Joanna has published in the area of sexual violence including her most recent book, co-authored with Professor Karen Busby, “Achieving Fairness: A Guide to Campus Sexual Violence Complaints” published by Thomson Reuters (March 2020).

**Elaine Craig** is a Professor of Law at Dalhousie University. She has researched and published extensively on sexual assault law in Canada. Dr. Craig is the author of *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession* (2018 McGill-Queens) and *Troubling Sex: Towards a Legal Theory of Sexual Integrity* (2012, UBC Press). Dr. Craig teaches sexual assault law, gender, sexuality and law, and constitutional law. She has testified before Senate and House of Commons Standing Committees on proposed law reforms to the criminal law of sexual offences and is a regular public commentator on legal responses to sexualized violence. Dr. Craig is the Director of Research for CCLISAR (Canadian Centre for Legal Innovation in Sexual Assault Law Response). In June 2022, Professor Craig was awarded an honorary doctorate of laws by the Law Society of Ontario.

**Sonia Lawrence** is a Professor of Law at Osgoode Hall Law School. Her work centers on the critical analysis of the legal conception of equality. Her research interests include gender, race, critical race feminism, feminism, equality law and the Canadian Charter of Rights and Freedoms. Professor Lawrence has served as the Director of Osgoode’s Institute for Feminist Legal Studies for over a decade and has also served as the Director of Osgoode’s Graduate Program. Professor Lawrence clerked for Chief Justice Beverley McLachlin of the Supreme Court of Canada and pursued graduate work at Yale Law School.

## APPENDIX B

### Consultation Questions

- Please describe or explain your role in the sexual violence policy and discuss what works/does not work from your perspective/ role
- Are students generally aware of how to report? How well understood is the reporting process?
- How does the Queen's procedure for responding to incidents of sexual violence encourage disclosures/reports or pose a barrier to disclosures/reports?
- What feedback has Queen's had with respect to the resolution process prior to referral to a hearing? What reasons do complainants give for agreeing to resolution rather than proceeding to a finding when the complaint is substantiated at the investigation stage? Are complainants/Respondents satisfied with the process/outcome?
- Tell us about the process for imposing interim measures on Respondents. How is it received by complainants/Respondents/other students? Do Respondents appeal? Is the level of procedure appropriate? Do interim measures tend to effectively address the needs of complainants to continue to attend work/school? Do the measures effectively minimize gossip or unhealthy social dynamics?
- What trends (if any) has Queen's noticed in terms of social support for complainants or Respondents when complaints have been filed and investigations ongoing? Are there any lessons to be drawn from this?
- Tell us more about the assessment of whether a case is appropriate for diversion.
- Describe the differences in the process when students are supported by legal counsel vs. when they are not supported by legal counsel.
- Discuss your perspectives on the spectrum of different behaviour that is captured by the sexual violence policy at Queen's (e.g. sheet signs vs. sexual assault) and the application of the policy and procedure, and the decision-making with respect to remedial measures imposed, to the spectrum of misconduct.
- For student advocates: What have they advocated for in terms of Queen's sexual violence policy and practices? What proposals have been implemented/not implemented? What works about the reporting process? What does not work? Do they have any concrete suggestions for change?
- For the external organizations: What feedback do they hear from students that access their services, about incidents of sexual violence at Queen's, whether to report, and the experience of reporting?

## **APPENDIX C**

### **Sample Policy Language on Sexual Relations between Faculty/Staff and Students**

#### **Prohibition on Sexual Relations between teaching staff and students**

Sexual relations between a student and a member of the Teaching Staff are prohibited when the staff member:

- i. Is in a position of academic authority over the student
- ii. Might in the foreseeable future be in a position to exercise authority over a student
- iii. Has or may have an influence over the student's academic progress or
- iv. Collaborates academically with the student.

#### ***Other Sexual Relations Strongly Discouraged***

Sexual relations between Teaching Staff and students, in circumstances other than those described and prohibited above, are strongly discouraged.

#### ***Mandatory Disclosure***

If a member of the Teaching Staff and a student engage in sexual relations, the Teaching Staff member must disclose this engagement within 48 hours of the occurrence.

A Disclosure pursuant to this policy may be made to the Academic Vice President or to a union representative who will provide the information to the Academic Vice-President.

Upon the coming into effect of this Policy, all Teaching Staff must disclose past and current sexual relations with any current university students in a timely manner in accordance with this policy, whether or not the sexual relations occurred or commenced prior to the coming into force of this Policy.

#### ***Application to Graduate Students***

This Policy does not apply to sexual relations between graduate students who also hold teaching positions, so long as one of the graduate students is not in a position of authority over the other graduate student.

#### ***Managing the Conflict of Interest***

Where a conflict of interest has been disclosed, administrative measures will be implemented to ensure that the Teaching Staff member has no academic authority or influence over the student concerned.

#### ***Presumption of Sexual Violence***

Where a Teaching Staff member fails to disclose sexual relations with a student in accordance with this Policy, it is presumed that the relations are a breach of this Policy and may be investigated as sexual violence under this Policy.

## **APPENDIX D**

### **EXCERPT University of Manitoba Sexual Violence Policy re Aggregate Reporting**

#### **ANNUAL REPORT**

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.