Community Update: Sexual Violence Policy

In Response to Sexual Violence Policy Feedback, Carleton Makes Changes to the Sexual Violence Policy Draft and Commits to an Additional Resource for Survivors

Message from the Vice-President (Students and Enrolment)

The Government of Ontario mandated Ontario universities to create a stand-alone sexual violence policy, to be finalized and approved by university boards on or before January 1, 2017.

Following initial discussions and consultations, the Office of the Vice-President (Students and Enrolment) was tasked with the creation of Carleton’s Sexual Violence Policy. An important document in the campaign against sexual violence, it is vital that Carleton’s process be transparent, inclusive and reflective of its community. To accomplish this, members of Equity Services, Human Resources and my team conducted and took part in over 30 meetings, consultations and focus groups with Carleton student and union groups. A sexual violence policy website featuring an anonymous comment form was also created for those who preferred a confidential method to providing feedback and comments.

These broad consultations, and the feedback received, have allowed for a better understanding of the issues prioritized by Carleton stakeholders in the creation of a sexual violence policy.

A draft of the Sexual Violence Policy was shared with the Carleton community on October 6, 2016, to solicit Policy-specific feedback and comments. Submissions were received from over 140 individuals and from multiple groups, including: an “Open Letter” from the Carleton community; informal groups of faculty and/or staff; CUPE 2424; CUASA; and the GSA. All submissions were reviewed and considered. We are extremely pleased and proud with the involvement of the Carleton community in drafting such an important document.

Feedback and comments are addressed in this response document.

Many changes were made to the Policy as a result of the thoughtful and robust suggestions received during the consultations and in response to the draft. The result is a stronger policy that is now even more reflective of Carleton’s community and our shared values. The following highlights some of the changes made:

1. Modified the definition of "University Community" to eliminate the possibility that Respondents could suspend the complaint process by ending their relationship with the University.
2. Reworded the policy to ensure a survivor-centric approach to support services, by making it clear that Equity Services/Sexual Assault Support Services continues their traditional role of supporting and advising survivors of sexual violence.
3. Removed the clause that enabled the President to make exceptions.
4. Defined what is meant by "public statements", clarifying that those who have experienced sexual violence can still seek counselling and other support services, and speak to their friends and family.
5. Added language to address concerns about academic freedom by further outlining protections for faculty who teach sexually explicit material.
Though the Sexual Violence Policy is an important step in the right direction, and will be an important tool in combatting sexual violence in the community, many stakeholders agree that resources are also important to Carleton’s response to sexual violence. We will examine the need for increased training, education and resources in the implementation phase of the Policy, starting in January 2017. However, to assist students currently going through sexual violence trauma, we have added, as of November 2016, a counsellor with experience in trauma and sexual violence counselling to the Health and Counselling Services team.

The Sexual Violence Policy will now, inclusive of the changes above, be presented to our Board of Governors for approval, in keeping with the Government of Ontario’s mandated timeline.

As we move towards implementing the Policy, I would like to thank the entire Carleton community for its participation. Your contribution and help have been critical in ensuring a policy representative of our diverse campus and in providing a safe, healthy and respectful environment for all.

Sincerely,

Suzanne Blanchard, Vice-President (Students and Enrolment)

Highlights:

- Over 30 meetings, consultations and focus groups with Carleton student and union groups.
- Over 140 individual comments were submitted and reviewed.
- Many group submissions were also reviewed, including: an “Open Letter” from the Carleton community; informal groups of faculty and/or staff; CUPE 2424; CUASA; and the GSA.
- Following the call-for-feedback, the draft Policy was reviewed and modified to adopt recommendations from the Carleton community.
- The need for increased training, education and resources will be examined as of January 2017.
- The University is committed to offering students the resources they need and has added a counsellor with experience in trauma and sexual violence counselling to the Health and Counselling Services team.
Sexual Violence Policy Feedback Summary

Confidentiality

1. Amend the policy to allow the Sexual Violence Review Committee to inform the Complainant of the disciplinary action ordered.

While the University is committed to providing as much information as possible, we are bound by the Ontario Freedom of Information and Privacy Act (FIPPA) and there is a limit to what can be disclosed in general and to the Complainant. Section 9.7 has been reworded to clarify this obligation. The Section now reads:

“The decisions of the Sexual Violence Review Committee and the reasons in support of it must be in writing and be delivered to the Complainant and to the Respondent. The Freedom of Information and Protection of Privacy Act (FIPPA), prohibits the disclosure of the details of any disciplinary actions or consequences taken against the Respondent. The Complainant has a right to know the outcome of the investigation but not the details of the discipline unless sharing that information is permitted by FIPPA for health and safety reasons.”

Definitions

1. Expand the definition of “Community” to address the possibility that respondents might suspend the complaint process by ending their relationship with the university.

The definition of “University Community” has been edited to address this and now reads:

“University community” means all individuals who have a relationship with or to the University (or had at the time of the incident), including but not limited to:

- Students, meaning individuals registered as students at the University, whether full-time or part-time (including special students), at the, non-credit, undergraduate or graduate level;
- All employees and faculty, including all unionized and non-unionized academic and support staff as well as those whose salary is paid through sources other than the University’s operating funds, such as grants, research grants and external contracts;
- Persons with an academic appointment including but not limited to adjunct, visiting and emeritus professors, post-doctoral or clinical fellows and research trainees;
- Contractors, consultants, suppliers or other entities engaged by the University to provide services or goods when on University property or while acting in a capacity defined by their relationship to the University;
- Members of the Board of Governors, of the Senate and any of their respective committees, as well as members of any advisory committee formed to help the University achieve its goals; and,
- Employees of both unionized and non-unionized employee and student groups when on University property or while acting in a capacity defined by their relationship to the University.
2. **Increase use of the term Rape Culture in the document.**

There were more comments related to the term Rape Culture than any other issue and people feel very strongly about this term. Some feel it is essential to use this term in order to continue the work of combating sexual violence. Some feel the term is incorrect, inappropriate and should not be in the policy. Still others agree with the definition but not the label of Rape Culture.

The policy has many objectives but one of the things it allows for is the articulation of our shared values in regard to combatting sexual violence. In section 2 of the policy there are a series of values that have received broad consensus including:

- Continually fostering an environment where members of the University community can live, study and work free of sexual violence;
- Recognizing that anyone can be harmed by sexual violence and that it is a fundamental affront to an individual’s rights, dignity and integrity;
- Ensuring that members of the University community who experience sexual violence are supported, treated with compassion and appropriately accommodated;
- Combating broader societal attitudes regarding gender, sex and sexuality that normalize sexual violence and undermine equality.

Statements like these form a basis from which education, awareness and prevention activities will be developed as part of the larger implementation strategy. Given the polarizing nature of the term Rape Culture, and taking into consideration the feedback received, it appears in the definitions section but not within the body of the document.

3. **Remove the term Rape Culture from the document.**

See above.

4. **Use “Intersectionality” more in the policy.**

The various intersecting forms of disadvantage have been acknowledged in Section 1.1. Addressing the issue of intersectionality is most appropriately done through the education, training and awareness activities that will flow from this policy.

5. **Use the term “Consent Culture” in the policy.**

Consent is defined in 4.1. to mean “an active, direct, voluntary, unimpaired and conscious choice and agreement to engage in sexual activity. [...]” The definition in the policy is clear that active consent is required to engage in sexual activity.

Including the concept of “consent culture” in education and training programs can be considered by Equity Services and the members of the Sexual Violence Prevention and Education Committee (SVPEC).

6. **The definition of sexual violence is too broad and lacks clarity.**
The definition of Sexual Violence is the statutory definition. The university is required to comply with the statute.

7. **Add Faith, Criminal background and Citizenship/Immigration status to the definition of intersectionality.**

Section 1.1 has been edited to refer to the protected grounds identified by the Ontario Human Rights Code. It now reads:

“As a community, Carleton University supports and is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated and is treated with the seriousness it deserves. Carleton acknowledges that individuals who are members of equity-seeking groups who experience intersecting forms of disadvantage based on the protected grounds in the Ontario Human Rights Code may be disproportionately affected by sexual violence and its consequences. The purpose of this Policy is to articulate Carleton University’s commitment to a safe, supportive and healthy campus and to confirm its commitment to provide support to those members directly affected by sexual violence.”

The protected grounds under the Ontario Human Rights Code are:

- Age
- Ancestry, colour, race
- Citizenship
- Ethnic origin
- Place of origin
- Creed
- Disability
- Family status
- Marital status (including single status)
- Gender identity, gender expression
- Receipt of public assistance
- Record of offences
- Sex (including pregnancy and breastfeeding)
- Sexual orientation.

8. **“Survivor Centric” should be defined and embodied throughout the document.**

The document is survivor centric in outlining the supports that are provided to survivors.

Sections 6.5 a) through d) have been reworded to remove the Sexual Violence Review Committee (SVRC) from the support phase of the process except for circumstances where the Director of Equity Services deems their involvement would be beneficial.

These sections now read:

**6.5 Follow-up on disclosure**

a) When a person reports sexual violence to University Safety and/or Equity Services, an Equity Services Advisor will contact the person to learn more about the circumstances, the person’s
needs and expectations, and the outcome sought. The Equity Services staff member will make every effort to assist the person and will discuss options to address or resolve the matter in a timely and supportive way. The appropriateness of these options will depend on the person’s needs and on the circumstances. The following list of examples (which is not exhaustive) includes:

- Providing referrals to contacts for suitable supports, services or resources available at the University and in the city, including the Sexual Assault Services Coordinator;
- Sharing information on what the person can do or what the Equity Services Officer or other person may do to intervene in the situation;
- Discussing the availability of interim academic or employment accommodation or other measures to stabilize a situation, to protect the person from retaliation or the threat of retaliation, to address safety or other concerns, and/or to otherwise support the person. Examples of measures for students include exam or assignment deferral, class and/or schedule changes, housing changes, and no-contact orders. Examples for employees include making changes that are not disciplinary but precautionary to avoid contact between parties or placing the Respondent on a temporary non-disciplinary leave with pay;
- Providing information on methods available to facilitate a resolution;
- Describing the process of filing a formal complaint under Section 9 of this Policy; and,
- Information about any other available options to address or resolve the matter.

b) Where appropriate the Director of Equity Services will engage the Sexual Violence Review Committee to ensure the safety, follow-up and support for those involved in a report of sexual violence.

c) The Sexual Violence Review Committee (SVRC) is composed of:

- Vice-President Students and Enrolment or designate (Chair)
- Director of Equity Services
- Director of Health and Counselling Services
- Director of University Safety
- Director of Student Affairs (when the Complainant or Respondent is a student)
- Director of Employee and Labour Relations (when the Complainant or Respondent is an Employee)

All members of the SVRC will receive sexual violence and procedural fairness training.

d) Equity Services must ensure that the following steps occur:

- The person who has experienced sexual violence is given information regarding internal and external personal support and advocacy services, and internal (non-criminal) and external (criminal and other legal proceedings) complaint processes;
- Appropriate academic, employment or other accommodation and interim measures are made available and implemented to stabilize the situation and/or separate the parties and to address any safety or security concerns; and,
- A threat assessment is conducted as required.

9. **Because the definition of consent states that consent can be “withdrawn at any time” it implies that it can be withdrawn after the incident.**

Withdrawing consent after the incident is not condoned or encouraged by the definition. Consent can be withdrawn at any time during sexual activity. After the withdrawal of consent, the activity should immediately cease.

**Exceptions**

1. **Remove the clause that enables the President to create exceptions to the policy.**

This clause has been removed.

**Policy Review & Reporting**

1. **Policy should be reviewed every year.**

It is important to see the policy in action for a significant period before it is reviewed. The policy will be reviewed on the 3 year timeline required by the Ontario government. This said, there is no provision that prevents the University from reviewing the policy sooner if it is determined that there are clauses that need to be amended. All feedback sent to svpolicy@carleton.ca will be valued and considered as they are shared.

2. **Who will review the policy?**

The policy will be reviewed by Equity Services and the Office of the Vice-President (Students and Enrolment). Students, Staff and Faculty will have the opportunity to contribute feedback during the review. Ultimately, the Board of Governors (as required by statute) is responsible for its review, amendments and approval.

3. **Annual reports from Equity should be reviewed by the Sexual Violence Prevention and Education Committee (SVPEC).**

As per 5.3 b) the SVPEC will be contributing data to these reports. As required by statute, annual reports will be provided to the Board of Governors.

4. **The Investigators report should be returned directly to the Sexual Violence Review Committee.**

Sections 9.5 and 9.6 have been re-worded to reflect this change
Procedural

1. **It should be clearly defined that the Complainant and Respondent don’t have to be in same hearing together.**

   In most circumstances, the Complainant and the Respondent will attend separate meetings with the Sexual Violence Review Committee. That said, in some cases procedural fairness may require that the Complainant and Respondent attend the same meeting. These decisions will be made contextually with an understanding of the required legal obligations. If attending the same meeting is required by law, other protections can be put in place such as both the Complainant and the Respondent being able to access support persons and/or legal counsel to assist them.

2. **Survivors should have an advocate (who can speak alongside them) to support them through any reporting and accommodations-seeking processes.**

   Section 8.4 outlines the provisions of the support person. Complainants and Respondents may access a support person of their choosing. Specifically the policy suggests that the Complainant may wish to seek the support of the Sexual Assault Services Coordinator and the Respondent may wish to seek the support of Ombuds Services. Both these areas are able to provide support and assistance.

3. **Reports to Campus Safety should be kept confidential and not released to Equity Services if the survivor does not wish to.**

   The University has a responsibility to keep the University Community safe and sharing reports of sexual violence between University Safety and Equity Services may be legally necessary.

4. **Complainants and Respondents should be given a choice of investigators. Short list from which they would choose. At the very least they should be able to choose the gender of the investigator.**

   An investigator will be identified by the Sexual Violence Review Committee (with guidance from General Counsel). The individual will have appropriate training in investigating incidents of sexual violence and will have expertise in both procedural fairness and Canadian case law.

5. **The University Secretary should not decide whether the complaint is indeed Sexual Violence.**

   As stated in 9.2 a) the Sexual Violence Review Committee determines whether the complaint meets the definition as per the policy. It is only in cases where the Committee decides that the complaint does not meet the definition and refers the complaint to another policy or process that the Complainant may ask the University Secretary to review the decision.

6. **There should be no timelines in the process.**

   Process timelines are set to ensure that all steps in the process are completed in a timely fashion. Allowances have been made to accommodate for the schedules of outside actors (such as the investigator) and for convening meetings with internal parties such as the Complainant, Respondent and members of the Sexual Violence Review Committee.

   All members engaged with the process will treat it with the utmost respect and ensure that steps are completed as quickly and thoroughly as possible.
7. **Complaints and submissions should not have to be in writing. Complainants and respondents should be able to reply in a way that best suits them.**

Providing a written record of the complaint is essential for clarity of intent at each step of the process and is a procedural fairness requirement. In addition to these statements, Complainants and Respondents will also have the opportunity to present orally and in writing to the Investigator and the Sexual Violence Review Committee.

8. **In the case where the parties involved are University employees, the Manager/Supervisor should not receive the investigation report and decision of the Sexual Violence Review Committee.**

According to the Collective Agreements the Manager/Supervisor is the one who imposes discipline on an employee and must receive these reports for that purpose. The people receiving the report will normally be Directors of departments or Deans and they are bound by strict confidentiality and privacy rules.

9. **The right to Union representation should be added to 8.4.**

This is articulated in 9.4 b) and the University will comply with all obligations in the collective agreement.

10. **Complainants should have blanket immunity from prosecution under other university policies.**

When a complainant discloses an incident of sexual violence, there may be factors (such as underage drinking or drug use) that would normally lead to prosecution under other policies.

The Sexual Violence Policy’s mandate is to focus on sexual violence and the complaint at hand, independently of other policies. This said, as the breadth or severity of all possible violations cannot be predicted, the concept of “blanket immunity” was not included into this policy.

11. **The relevant union should receive the report of the SVRC at the same time as the Manager/Supervisor**

The individual member will be responsible for forwarding the report to the union if they wish.

**Public Statements**

1. **Please clarify what is meant by “public statements”.**

Section 8.5 b) has been reworded to clarify what is meant by public statements. It now reads as follows:

“To ensure procedural fairness while a formal complaint process is underway, the Complainant, the Respondent and others who may have knowledge of the matter, including a support person, must maintain confidentiality in accordance with this Policy and not make public statements (for example: media, public and/or social media statements) that may jeopardize the proper handling of the matter. The confidentiality obligations do not prevent a person from seeking counselling, treatment, support services or from speaking to friends and family. Any questions regarding confidentiality obligations under this Policy can be clarified by contacting the individual who receives the formal complaint.”
2. Remove the prohibition on Complainants’ making public statements before, during and after the complaints process.

See above. Procedural fairness requires that both Complainant and Respondent refrain from making public statements as they can impact the process.

3. Neither complainants nor respondents should be banned from public statements rather they should just withhold names of those involved.

Simply not using people’s names in the public statements is not sufficient in that others who are familiar with the parties will be able to deduce the parties referred to in the statements.

Resources

1. Commit to expanding the services that will be provided to survivors of sexual violence.

Carleton will examine the need for increased training, education and resources in the implementation phase of the Policy, starting in January 2017. However, to assist students currently going through sexual violence trauma, Carleton has added, as of November 2016, a counsellor with experience in trauma and sexual violence counselling to the Health and Counselling Services team.

2. Addition of the CUSA Service Centres as resources.

There are several informal and peer resources that are not included in the document. Some of these include:

- CUSA Service Centres
- Various peer support and mentorship networks on campus
- Residence fellows and residence managers

Although students may seek help through these channels the areas listed have been restricted to those that have official responsibility and ongoing training to support those who are disclosing an incident of sexual violence.

3. List of off campus resources should include EFAP.

EAFP is one of many resources that Equity Services and Health and Counselling Services would refer to in counselling employees who have experienced sexual violence.

Scope

1. Clarify the scope of policy. Does it apply to behavior off campus when not engaged in university activities?

The policy applies both on and off campus and also applies when the complainant and the respondent are not engaged in university activities.

2. There should be language in the policy that protects academic freedom. What about teachers who teach porn or other sexually explicit material?

Section 5.1 c) has been re-worded to address this. This item now reads:
“Contribute to a campus atmosphere in which sexual violence is not tolerated while recognizing academic freedom (as outlined in the Collective Agreement and in the Carleton University Statement of Conduct and Human Rights) for students, faculty and staff to explore controversial topics related to this issue”

Sexual Violence Review Committee and the Appeal Board

1. **Appeal Board should have external representatives or representatives from across the university.**

Section 10.2 has been edited to add that the Appeal Board will be chaired by an individual external to the University with appropriate legal training. It now reads:

“The appeal must be made to the University Secretary. Following receipt of the appeal, the University Secretary will convene the Appeal Board. The Appeal Board consists of the Vice-President Finance and Administration, the Associate Vice President of Human Resources and the Provost and Vice President Academic or their delegates. The Appeal Board will be chaired by a person external to the University Community who has the appropriate legal training. All members of the Appeal Board will receive sexual violence and procedural fairness training.”

2. **Sexual Violence Review Committee is too small – should include faculty, staff and students.**

The Sexual Violence Review Committee has five members (in cases where either the Complainant or Respondent is both a student and employee the committee will be 6). This size is to help maintain confidentiality in review process.

The members of this committee are people who are already regularly involved in complaints of sexual violence and student and/or employee misconduct.

As outlined in the policy, members will receive training on sexual violence and procedural fairness. Having consistent membership on the committee supports consistent decision making and ensures that all members of the committee are appropriately trained.

Administrators, in their roles as officers of the university adjudicate and enforce many other policies (e.g. the Student Rights and Responsibilities Policy, the Alcohol Policy, the Campus Ban Policy) related to conduct on the campus. These officers of the university regularly carry out these duties as part of their jobs without the involvement of outside actors.

3. **Sexual Violence Review Committee is too large.**

See above.

4. **Sexual Violence Review Committee should be made up of third party experts with no ties to the University.**

See above.
5. **Members of the Sexual Violence Review Committee should have appropriate Sexual Violence Training.**

Members of the Sexual Violence Review Committee will be given appropriate training in both sexual violence and in procedural fairness.

6. **Will Complainants have the right to ask that some members of the SVRC be excused because they don’t feel comfortable with them? Alternately could a Complainant choose to present to only one member of the SVRC?**

In the interest of procedural fairness all members of the Sexual Violence Review Committee must hear from the Complainant and be able to ask clarifying questions. If only one member were to hear the complaint and then report back, the report would be an interpretation of what was heard.

**Training and Education**

1. **Provide more details on the prevention and education activities.**

The Sexual Violence Prevention and Education Committee will consult with Equity services and determine the scale and scope of prevention and education activities. Members of the community are welcome to provide recommendations by sharing them with svpolicy@carleton.ca.

2. **Education and training should be mandatory meaningful and ongoing.**

The Sexual Violence Prevention and Education Committee (SVPEC) will be struck to ensure that there will be a group engaged in ongoing discussions about prevention and education.

3. **Who will be on the Sexual Violence Prevention and Education Committee?**

Section 5.2 has been re-worded to clarify this further. It now reads:

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