

Note regarding the draft:

These Procedures are **new**; they do not exist in the current version of the *Policy against Sexual Violence*.

Procedures for the Investigation of Reports of Sexual Violence

1. McGill's *Policy against Sexual Violence* ("the Policy") establishes that acts of Sexual Violence constitute serious misconduct. This document sets the procedures by which Reports of Sexual Violence made pursuant to the Policy will be investigated.
2. These Procedures are meant to facilitate the investigation of Reports of Sexual Violence. Consequently, the Investigator has full authority to adapt the Procedures when necessary for the purpose of carrying out an investigation.
3. These procedures shall be reviewed and amended as necessary to facilitate the smooth implementation of the Policy, and in any case at least every two years, with appropriate stakeholder consultation.
4. Words capitalized herein are given the meaning ascribed to them in the Definitions section of the Policy.

Reports to the Special Investigator

5. Any Survivor who wishes to Report an incident of Sexual Violence shall do so by contacting the Special Investigator (Sexual Violence) ("Special Investigator") for the University.
6. The Special Investigator, in the initial communications with a Survivor or Respondent, shall:
 - a. provide the parties with a copy of or an active hyperlink to the Policy and other relevant policies;
 - b. inform the parties of their rights and responsibilities in regard to an investigation; and
 - c. inform all parties of available support resources for them both on- and off-campus (see Appendix 1).
7. The Special Investigator will use Trauma-Informed investigation techniques.
8. The Special Investigator shall ensure that investigations adhere to the principles of Procedural Fairness and the presumption of innocence.

Rights of the Parties

9. Throughout an investigation, parties may be accompanied by and receive guidance and support from an advisor, who must be a person acting without remuneration in this capacity and a Member of the University community.
10. Survivors and Respondents have access to support services. Support for Survivors will be facilitated by the Office for Sexual Violence Response, Support and Education (OSVRSE).

Support for Respondents who are students will be facilitated through the Dean of Students or Student Services. Support for employees who are Respondents will normally be facilitated through the Employee and Family Assistance Program and the association or union for the employee group to which the Respondent belongs. For greater certainty, staff of OSVRSE shall not act as Advisor of the Survivor in the context of the investigation or of the following steps (disciplinary hearings, mediation, etc.)

11. During an investigation, the Special Investigator will not communicate with or meet the Survivor and Respondent together.
12. In an effort to maintain the integrity of the investigative process and the parties' respective rights to privacy, the parties, witnesses, and advisors who participate in an investigation have a duty to maintain confidentiality throughout and following the process.

Filing a Report

13. A Survivor must make a Report in writing by email or letter submitted to the Special Investigator (Sexual Violence). The Report should set out in sufficient detail: the act(s) in question that the Survivor experienced as Sexual Violence, the identity of the Respondent, and information about the incident, and any additional relevant information.

Withdrawing a Report

14. A Report may be withdrawn at any time by the Survivor. Where a Report is Withdrawn, the Special Investigator will notify the Respondent immediately.
15. Even where a Survivor has communicated the intention to withdraw a Report or discontinue involvement with an investigation, the Special investigator may proceed with an investigation if this is deemed justified under University regulations and policies or necessary to protect the safety of the University Community, or at the request of the Respondent. In such cases, the Special Investigator shall seek authorization from the Provost to continue with the investigation.

Anonymous and Third-Party Reports

16. Reports that are anonymous or made by a third-party (that is, someone other than the Survivor) may be submitted to the Special Investigator. In such cases, however, the Special Investigator will often be unable to investigate due to a lack of evidence or where conducting an investigation would violate Procedural Fairness (for example, where the Respondent would be deprived of a fair opportunity to know the details of, and to respond to, the allegations made in the Report).
17. Where other sufficient evidence exists and where it would not violate Procedural Fairness, the Special Investigator may investigate an anonymous or third-party Report. In such cases, the Survivor has the right to not participate in the investigation.

Initial Review of a Report by the Special Investigator

18. Upon receipt of a Report from a Survivor, the Special Investigator will conduct an initial review to determine:
 - a. whether the Special Investigator has jurisdiction to investigate, as determined by sections 23ff of the Policy;

- b. whether mediation should be proposed to the parties, in which case the process set out in sections 29ff of these Procedures shall be followed; and
- c. whether immediate measures may be warranted.

Immediate Measures

19. If, on receiving a Report, the Special Investigator is of the view that there may be a risk of harm to any Member of the University Community, the Special Investigator shall consult with the appropriate University authorities (e.g., the relevant Faculty Dean or Dean of Students, Security Services, and/or Legal Services) about the implementation of immediate measures necessary to protect any Member of the University Community. The imposition of immediate measures shall follow the process established in the Policy.

Timeline for Initial Review

20. An initial review will occur within 7 Days, of receiving a Report unless exceptional circumstances exist that prevent the Special Investigator from meeting this deadline, in which case the Special Investigator will contact the Survivor as soon as possible to inform them of the revised timeline.

Proceeding to an Investigation

21. If, following the initial review, the Special Investigator finds there is jurisdiction to investigate and the matter does not proceed to mediation, the Special Investigator will initiate an investigation.

Investigations

22. Where the Special Investigator initiates an investigation, the Special Investigator notifies the Respondent within 10 Days of having received the Report and provides the Respondent with a copy of the Report. The Respondent will be invited to provide a written response to the Report within the delay fixed by the Special Investigator.
23. The Special Investigator will work diligently to ensure timely processes for investigating reports of Sexual Violence without compromising procedural fairness.
24. Investigations will not exceed 90 Days from the date that the Report is submitted to the Special Investigator. Nevertheless, this time period may be extended if the parties agreed to attempt mediation, which will suspend the delay by time during which mediation was attempted, but not more than 30 Days.
25. The Special Investigator may investigate in any manner required to obtain the information required to make the necessary findings of fact. This may include, but is not limited to, the following:
 - a. meeting with and requesting information from the Survivor;
 - b. meeting with and requesting information from the Respondent;
 - c. meeting with or requesting information from any other individuals who may have information relevant to the Investigation, including, but not limited to any witnesses identified by the Survivor or the Respondent;
 - d. obtaining any other evidence (e.g., documents, copies of correspondence, photos/images) that may be relevant to the investigation.

26. The Special Investigator shall not hold a hearing.
27. When the investigation is complete, the Special Investigator will prepare a written report that shall be submitted the Provost with a copy to the Survivor and the Respondent. This report will normally include the following information:
 - a. the identity of the parties;
 - b. a summary of the evidence gathered;
 - c. an analysis of the evidence gathered and the conclusions drawn from it, and an assessment of credibility of the Parties or witnesses, if relevant. and
 - d. a finding, on balance of probabilities, of whether or not Sexual Violence has occurred.
28. The process following the submission of the report by the Special Investigator to the Provost shall follow the terms established in the Policy.

Mediation

29. The Special Investigator may recommend mediation as an option that the Survivor may wish to pursue at the time a Report is filed. A Survivor may accept this option at that time. Where a Survivor initially decides against mediation and the matter proceeds to an investigation, the Survivor may later, during the investigation, request to refer the matter for mediation, provided that the Special Investigator has yet to complete the investigation and submit a report to the Provost.
30. Where a Survivor requests to refer the matter to mediation, whether at the outset of a process or when an investigation is already underway, the Special Investigator will determine whether the Respondent also consents to mediation. If the Respondent provides such consent, the matter shall be referred to a mediator with appropriate skills and training.
31. Where both parties consent to mediation, any investigation that is underway and associated time delays are suspended for a maximum of 30 Days.
32. Mediation will be conducted in a respectful manner.
33. Mediation is intended to be without prejudice to the parties. Therefore, all statements and disclosures made, information furnished, and documents and things provided or presented during the mediation cannot be used or referred to if a Report proceeds to formal investigation, unless consent to their use is provided in writing by the person who provided them. The mediator shall advise the Parties of their rights and duties under this clause.
34. In cases where a resolution acceptable to both parties is achieved, the resolution shall be acknowledged by the Survivor and the Respondent in writing, in sufficient detail to allow for its implementation, with the mediator signing as a witness. The mediated resolution shall be deemed to be final and both parties shall waive any further internal and external recourse based on the facts having given rise to the Report. A signed copy of the resolution shall be kept confidential and held for a minimum of ten years by the Provost.
35. Breach of a mediation agreement may result in disciplinary consequences. It will not, however, trigger an investigation of the initial Report or of a new Report based on the same events.
36. Mediation can yield a range of outcomes, for example:

- a. facilitated communication between the parties about the impact of the Respondent's behaviour;
 - b. a commitment by the parties to stop communications (direct or indirect, such as through friends on social media), and to avoid being in each other's presence;
 - c. a verbal or written commitment from the Respondent that the behaviour in question will stop;
 - d. a verbal or written apology from the Respondent;
 - e. an agreement from the Respondent not to be in specific areas on campus at specific times, so as to avoid crossing paths with the Survivor;
 - f. an agreement from the Respondent to participate in education or training related to sexual violence.
37. If, after a mediated resolution has been reached, there is a recurrence of the behaviour that led to the original Report, the Survivor has the right to make a subsequent Report, on the basis of the new events, or, if appropriate, through the filing of a grievance or complaint based on failure to respect the agreement reached at mediation. Such Report will be addressed by means of a formal investigation.
38. Where the mediator is of the opinion that a resolution cannot be reached within a reasonable time, the mediator shall so advise the parties in writing no later than 30 Days following the date on which the Respondent was informed of the Report, prior to proceeding to an investigation.
39. Either party may, at any time, withdraw from mediation, at which point the investigation shall resume.

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