

<b>PROCEDURE TITLE</b>	<b>Procedures for the Investigation of Reports of Sexual Violence</b>
<b>Executive Sponsor</b>	Provost and Vice-Principal (Academic)
<b>Initial Approval Date</b>	March 27, 2019
<b>Date of Last Review</b>	May 5, 2021

<b>Related Documents</b>	Policy against Sexual Violence
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## **PART I – PURPOSE AND SCOPE**

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.

## **PART II – PROCEDURAL CONTENT**

### Rights of the Parties

5. 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.
6. 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 Respondents who are employees 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.
7. During any process associated with the Policy, the parties will not be asked to meet in each other’s presence and will not be addressed or visibly copied on the same communications.

8. All processes conducted under the Policy will use a Trauma-Informed approach.
9. All processes conducted under the Policy will adhere to the principles of Procedural Fairness.
10. All processes conducted under the Policy will protect the privacy rights of the parties. The University, the Special Investigator, and the parties and witnesses shall accordingly maintain the confidentiality of such processes and of the information provided or received in the course of such processes. The Survivor and the Respondent may, however, share information about the investigation with any person acting in a support or advisory capacity to them, provided that the person to whom the information is disclosed will commit to maintaining the confidentiality thereof.

#### Filing a Report

11. Any Survivor who wishes to Report an incident of Sexual Violence shall do so by contacting the University's Office for Mediation and Reporting (OMR). The OMR is a University office charged with oversight of the prevention and resolution of Reports of Sexual Violence and with independent and impartial oversight and resolution of all Reports filed under the Policy.
12. The OMR, 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 (related, for example, to: good faith, entitlement to support, respect for privacy and reputation, protection from retaliation, no contact with one another); and
  - c. inform all parties of available support resources for them both on- and off-campus.
13. A Survivor must make a Report setting out in sufficient detail: the act(s) in question that the Survivor experienced as Sexual Violence, the identity of the Respondent (if known), information about the incident (e.g., time(s), location(s)), and any additional relevant information. The Report is submitted in writing, by email or in a letter, to the OMR.

On an exceptional basis, where the Survivor declares they are unable to submit their Report in writing to the OMR, the Survivor may request to make a verbal Report to the OMR. Where the OMR determines the Survivor's request is appropriate (for example, if the Survivor's state of health precludes the filing of a written Report), the Survivor may provide their account verbally to the OMR. The OMR will document this information and the Survivor will be asked to review and sign that document as reflecting the Survivor's Report.

14. On receipt of a Report, the OMR shall retain a copy of the Report for University records in accordance with s. 49 and share a copy of the Report with the Special Investigator for investigation.

#### Anonymous and Third-Party Reports

15. The University accepts Reports that are anonymous or made by a third-party other than the Survivor. Such Reports must be submitted to the OMR.
16. Where sufficient evidence exists and where it would not violate Procedural Fairness, the Special Investigator may investigate an anonymous or third-party Report.

17. Where a Survivor is identified in an anonymous or third-party Report, the Survivor has the right to be informed about the Report. The Survivor also has right to choose whether to participate or not an investigation of such Report.
18. Where a Report is made anonymously or by a third-party, and where it is investigated, investigative processes shall be adapted to respect the rights of a Survivor who does not wish to participate in the investigation.

#### Initial Review of a Report

19. Upon receipt of a Report, the OMR will acknowledge receipt and conduct an initial review to determine:
  - a. whether there is jurisdiction to investigate, as determined by sections 25ff of the Policy;
  - b. whether mediation should be proposed to the parties, in which case the process for mediation set out in these Procedures shall be followed; and
  - c. whether immediate measures, as defined by the Policy, may be warranted.

#### *Timeline for Initial Review*

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

#### *Proceeding to an Investigation*

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

#### Investigation

22. On receipt of a Report, 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 response to the Report within the delay fixed by the Special Investigator, which generally shall not be more than 14 Days. The response is submitted in writing, by email or in a letter, to the Special Investigator.

On an exceptional basis, where the Respondent declares they are unable to submit their response in writing to the Special Investigator, the Respondent may request to make a verbal response to the Special Investigator. Where the Special Investigator determines the Respondent's request is appropriate, the Respondent may provide their account verbally to the Special Investigator. The Special Investigator will document this information and the Respondent will be asked to review and sign that document as reflecting the Respondent's response.

23. Upon receiving the Respondent's response, the Special Investigator shall send a copy to the Survivor.
24. The Special Investigator will work diligently to ensure timely processes for investigating reports of Sexual Violence without compromising Procedural Fairness.
25. An investigation 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 the time during which mediation was attempted, but not more than 30 Days.

- 25.1** The Special Investigator may also extend this 90-Day time delay where required to fully investigate the matter, for a period of time that the Special Investigator deems reasonable and appropriate, and usually for no longer than 30 Days. In such cases, the Special Investigator shall inform the parties and the University of the delay and of the reasons for it.
- 26.** 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.
- 27.** Subject to sections 15-18 of these Procedures, the parties, witnesses, and any University employees contacted by the Special Investigator because they may have information or material relevant to an investigation, have a duty to participate in, and cooperate with, the investigation.
- 28.** The Special Investigator shall not hold a hearing.
- 29.** The Special Investigator may record interviews with the parties and witnesses and will inform the parties and witnesses when this is the case. These recordings are solely for the Special Investigator's purposes during an investigation. These recordings will be destroyed immediately following the Special Investigator's submission of the investigative report to the Provost. Parties may listen to the recording of their own interviews if they so request before the Special Investigator's report is submitted, but not obtain a copy of it, and no other person shall be permitted access to such recording.
- 30.** Where the Special Investigator is informed that one of the parties has decided to pursue an internal or external recourse outside of the Policy, the Special Investigator shall inform the other party of that fact.
- 31.** When the investigation is complete, the Special Investigator will prepare a written report, which shall be submitted to the Provost with a copy to the Survivor and the Respondent, in accordance with ss. 30ff of the Policy. Exceptionally, the Special Investigator may redact information that compromises the dignity of a party or the identity of a witness from copies of the report shared with the parties, provided that this would not compromise Procedural Fairness. In such cases, the Special Investigator shall set out the reasons in the report for the redaction(s).

#### Process Following the Completion of an Investigation

- 32.** The process following the submission of the report by the Special Investigator to the Provost shall follow the terms established in the Policy.
- 33.** Where the Provost refers a matter to a disciplinary officer pursuant to the conclusion by a Special Investigator that Sexual Violence occurred, the disciplinary officer shall invite the Survivor to submit a statement describing the impact of the incident of Sexual Violence on the Survivor. This statement will

be treated as strictly confidential and will be shared with the Respondent if required to apply the principles of Procedural Fairness.

#### Withdrawing a Report

34. A Report may be withdrawn at any time by the Survivor. Where a Report is Withdrawn, the Special Investigator will notify the Respondent immediately.
35. 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 members 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. Where an investigation proceeds, the Special Investigator shall inform the Survivor.

#### Mediation

36. The OMR may recommend mediation as a voluntary 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.
37. 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 OMR 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.
38. Where both parties consent to mediation, the OMR will appoint a mediator and any investigation that is underway and associated time delays are suspended for a maximum of 30 Days.
39. Mediation will be conducted in a respectful manner.
40. Mediation is not conducted with the parties in the same room or in direct communication with one another unless the Survivor requests that the process occurs in the Respondent's presence and the Respondent agrees.
41. Mediation is intended to be without prejudice to the parties. Therefore, all statements and disclosures made, information furnished, and documents and material provided or presented during the mediation by one person cannot be used or referred to by the other person 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.
42. Either party may, at any time, withdraw from mediation, at which point the investigation shall resume. A party's refusal to attempt mediation or decision to withdraw from mediation will be without prejudice. In other words, no adverse inference can be drawn against a party who declines to attempt or continue with mediation.
43. 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 recourse based on the facts having given rise to the Report. A signed copy of the resolution shall be kept confidential in accordance with s. 49.

44. 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.
45. 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. In such cases, the mediation agreement shall be relevant evidence to consider in the disciplinary process.
46. 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. In such cases, the mediation agreement shall be relevant evidence to consider in the disciplinary process.
47. 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.
48. The working group identified in section 51 of the Policy shall meet annually with the mediator(s) appointed under these Procedures to review the cases that have resulted in mediated resolutions. This review will be anonymous, with the working group not having access to any nominative or identifying information regarding any party to a Report under the Policy.

#### **Record-Keeping**

49. Following the completion of an investigation or of a mediation that has resulted in a signed agreement, the University will retain, for a period of 10 years, the following documents:
  - a. final report of the Special Investigator, including appendices;
  - b. final decision of the Provost; and
  - c. signed agreement resulting from a mediation.These documents will be treated as strictly confidential and will be retained within the OMR.
50. Documents and materials pertaining to disciplinary files that might ensue from investigations under the Policy are managed according to University regulations and collective agreements that govern disciplinary processes.