



Memorandum

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TO: Senate

FROM: Professor Angela Campbell, Associate Provost (Equity & Academic Policies)

SUBJECT: Proposed Revisions to the *Policy against Sexual Violence*

DATE: February 20, 2019

DOCUMENT #: D18-42

ACTION REQUIRED: INFORMATION APPROVAL/DECISION

ISSUE	Proposed revisions to the <i>Policy against Sexual Violence</i> are presented for information and discussion.
BACKGROUND & RATIONALE	The <i>Policy against Sexual Violence</i> (“the Policy”) is being reviewed to ensure that it meets the needs of the McGill community and all requirements of <i>An Act to prevent and fight sexual violence in higher education institutions</i> (“Bill 151”).
PRIOR CONSULTATION	Policy revisions have been developed through a broad and extensive consultation process led by a Working Group that represents: all faculty/staff associations and unions, student associations (including the Sexual Assault Centre of the McGill Students' Society), and the Office for Sexual Violence Response, Support and Education. The Working Group has met biweekly or weekly since October 2018. An online consultation process is presently underway.
SUSTAINABILITY CONSIDERATIONS	N/A
IMPACT OF DECISION AND NEXT STEPS	Senate discussion will inform further revisions to the Policy that will be presented to Senate for approval at the March 27, 2019 meeting. The revisions will then be presented to the Board for approval in the Spring. Following the adoption of the revised Policy, the University commits to an ongoing review of the Policy, its associated Procedures, and resources that aim to prevent and respond to sexual violence, so that these meet the needs of our campuses.
MOTION OR RESOLUTION FOR APPROVAL	N/A
APPENDICES	Appendix A: Policy against Sexual Violence (revised) Appendix B: Procedures for the Investigation of Reports of Sexual Violence



NOTE regarding the draft:

All text in red font: is **new** and would be added to the Policy
All text in barred font: is in the current version of the Policy but would be **deleted** by revisions

Policy against Sexual Violence

Approved:

Senate	XXX, 2016	Minute XXX
Board of Governors	XXX, 2016	Minute XXX

Effective Date:

Full history appears at the end of this document.

Preamble:

McGill University is committed to creating and sustaining a safe environment through proactive, visible, accessible and effective approaches that seek to prevent and respond to Sexual Violence. The University further recognizes the singular importance of striving toward an equitable environment in which all Members of the University Community feel respected, safe and free from violence, especially Sexual Violence.

This Policy fulfills the interests and needs of the McGill community and the requirements set by law with respect to Sexual Violence prevention and response in university settings.

The University does not tolerate Sexual Violence in any form. It acknowledges that attention to Sexual Violence is particularly important in university campus settings, and that the University has a role to play in preventing and responding to Sexual Violence. It further acknowledges that, while Sexual Violence impacts all members of society, Sexual Violence and its consequences may disproportionately affect members of social groups who experience intersecting forms of systemic discrimination or barriers (on grounds, for example, of gender, sexual orientation, gender identity and expression, race, religion, Indigenous identity, ethnicity, disability or class).

The University recognizes that Sexual Violence often involves power imbalances and is under-reported on account of a range of reasons, which include stigmatization, the risk of further trauma and difficulties associated with investigating and imposing sanctions for Sexual Violence. This Policy focuses on ensuring support for Survivors, ~~as opposed to attributing fault or responsibility.~~ The University commits to support Survivors based on their personal experiences, whether or not a criminal offence has been proven, and whether or not the Survivor chooses to make a Report through University or external law enforcement processes.

Members of the University Community are prohibited from engaging in any form of Sexual Violence. Understanding that Sexual Violence is an act of misconduct, this Policy is accompanied

by Procedures by which Reports of Sexual Violence are investigated and may lead to disciplinary sanctions.

The central objectives of this policy include:

- Sexual Violence prevention through education and other systemic and proactive efforts to promote awareness about the nature and effects of Sexual Violence;
- establishing and maintaining a climate and culture in which all members of the University Community enjoy a safe and respectful working and learning environment;
- support for Survivors; and
- effective and timely response to Disclosures and Reports.

These objectives are pursued through a commitment to the values of Trauma-Informed investigations and Procedural Fairness.

General

1. This Policy applies to all Members of the University Community.
2. This Policy extends to all Sexual Violence.
3. This Policy complements and does not derogate from or supersede other University policies, regulations or applicable collective agreements, including those that establish disciplinary and administrative processes, such as McGill's [Code of Student Conduct and Disciplinary Procedures](#), [Regulations Relating to the Employment of Tenure Track and Tenured Academic Staff](#), [Policy on Harassment and Discrimination Prohibited by Law](#), [Regulation on Conflict of Interest](#) and Labour Relations policies applying to non-academic and non-unionized staff.
4. No Member of the University Community who makes a Disclosure or a Report or who is named as a Respondent under this Policy may be subject to harassment or retaliation.
5. No one shall be subject to a disciplinary investigation or sanction for revealing, in the course of making a Disclosure or a Report, that they breached a University regulation or policy by consuming alcohol or cannabis.
6. Any Member of the University Community who is of the view that the University has not adhered to the requirements set by this Policy may pursue a recourse through the grievance process established by the applicable University regulation and/or collective agreement.

Definitions

7. For the purposes of this Policy, the following definitions apply:
 - a. "Conduct of a Sexual Nature" means any conduct which, in whole or in part:
 - i) seeks the sexual attention or sexual favour of the person to whom it is directed;
or
 - ii) treats the other person as an object of sexual desire;
or
 - iii) is discriminatory or hostile to a person because of the person's sex or gender identity;

and that is known or ought reasonably to be known to create for such a person an intimidating, hostile, or offensive working, learning, extracurricular or, in the residences, living environment.

- b. "Consent" means free, informed, expressed and ongoing agreement to engage in sexual activity and cannot occur when a person is incapable of consenting to the activity, for example, when a person is rendered incapacitated by alcohol or drugs, is unconscious, or where the sexual activity has been induced by conduct that constitutes an abuse of a relationship of trust, power, or authority.
- c. "Days" means calendar days.
- d. "Disclosure" means the act of informing the Office for Sexual Violence, Response, Support, and Education about an incident of Sexual Violence for the purpose of seeking support.
- e. "Member of the University Community" means the following:
 - i) anyone holding office under the University Charter and Statutes;
 - ii) an appointee or employee of the University; or
 - iii) a student as defined in Section 1 of the *Code of Student Conduct and Disciplinary Procedures*.
- f. "Office for Sexual Violence Response, Support and Education" or "OSVRSE" means the University office that establishes and coordinates processes for supporting Survivors who make Disclosures or Reports and for education initiatives that seek to raise awareness about and prevent Sexual Violence on campus.
- g. "Procedural Fairness" means a process: (i) based on impartiality and absence of bias; (ii) where the parties are informed of the allegations made against them; (iii) that includes a meaningful opportunity to defend against such allegations, including the right to be given sufficient notice of interviews or meetings where they are expected to present evidence or their perspective on the facts or on evidence gathered as part of the process; and (iv) leading to a decision that includes a sufficiently detailed explanation of the grounds on which it is based in such a way that the parties can understand the basis on which it is made.
- h. "Report" means the act of informing ~~the Special Investigator~~ ~~an individual having authority to discipline an alleged perpetrator (for example, the Dean of Students, the Dean of Graduate and Postdoctoral Studies, a Faculty Dean)~~ about an incident of Sexual Violence ~~in accordance with this Policy for the purpose of investigation. for the purpose of initiating disciplinary or administrative processes.~~
- i. "Respondent" means an individual who is alleged to have committed an act of Sexual Violence in a Report made by a Survivor.
- j. "Sexual Violence" means sexual act or acts targeting a person's sexuality, gender identity, or gender expression that is committed, threatened, or attempted against a person without the person's Consent and may occur in person, in writing, by phone, or by any means of communication, including online and social media. Sexual Violence includes:
 - i) *sexual assault*, meaning intentional sexual contact with another person without that person's Consent;

- ii) *sexual harassment*, meaning Conduct of a Sexual Nature
 - (A) whereby sexual activity:
 - 1. is made an explicit or implicit term or condition of an individual's employment or status in a course, program, or activity; or
 - 2. is used as a basis for an employment or educational decision affecting an individual;
 - or
 - (B) the effect of which is to impair that person's work or educational performance where it is known or ought to be known that the conduct is unwelcome;
 - iii) *stalking*, meaning repeatedly watching or following another person, where the person making a Disclosure or Report feels that the stalking is connected with gender or sexual identity;
 - iv) *indecent exposure*, meaning exposing one's genitals in a public place or to another person with the intention to threaten or offend;
 - v) *voyeurism*, meaning the surreptitious observation or recording of a person by mechanical or electronic means;
 - vi) *distribution of sexual images*, meaning the distribution of an image, photo, or video of a person of a sexual nature, without that person's Consent; and
 - vii) *sexual exploitation*, meaning abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose.
- k.** "Survivor" means any person who has experienced Sexual Violence, including individuals who self-identify as a victim or victim/survivor. Use of the term "Survivor" throughout this Policy is not intended to suggest that the outcome of any investigation is predetermined, and this term will not prejudice or sway the outcome of an investigation into any Report.
- l.** "Teaching Staff" means every person delivering any component of an academic program, including, but not limited to: undergraduate and graduate courses, supervision of graduate students, supervision of post-doctoral researchers, and services delivered by University librarians and archivists. "Teaching Staff" in this Policy also means teaching assistants and coaches of University athletic teams.
- m.** "Trauma-Informed" means an approach that respects individual dignity and autonomy during processes associated with making a Disclosure or a Report, based on an understanding of: the impact that trauma can have on behaviour, decision-making, memory, and willingness to seek services or accommodations or in reporting incidents of Sexual Violence. A Trauma-Informed approach further rejects myths and stereotypes about Sexual Violence (for example, that a person can give Consent by the way they dress or by being intoxicated) and recognizes the impact that Sexual Violence may have not just on an individual, but on communities, as well as the disproportionate impact of Sexual Violence on women, gender minorities, and persons who are racialized, Indigenous, and/or disabled. All processes under this Policy shall be Trauma-Informed.
- n.** "University Context" means an occurrence:
- i) on University premises;

- ii) within the context of a University-sponsored program or event or activity whether on-campus or off-campus (e.g., University-sponsored competitions or field trips/studies): or
- iii) off-campus, including online or in social media, where the conduct has consequences that may be reasonably seen to adversely affect:
 - o the safety of students, faculty or staff while on campus or while participating in a University-sponsored program, event or activity; or
 - o the right of a Member of the University Community to use and enjoy the University's learning or working environment.

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:

- i) No member of the Teaching Staff may enter into or initiate a sexual or romantic relationship with a student over whom the member of Teaching Staff has academic authority, influence, or collaboration.
- 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) 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, the Teaching Staff member must disclose the relationship immediately 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](#).

Implementation Committee

9. This Policy's objectives shall be ~~pursued through an implementation plan, developed and guided~~ **pursued and monitored** by a **standing implementation** committee that includes representation of students, academic staff, and administrative and support staff. **This committee will evaluate and report on:** ~~This implementation plan will include:~~

- a. the allocation of resources for pursuing the Policy's objectives, including provision for appropriate and accessible physical space for the OSVRSE;
- b. the appointment of adequate and qualified staff within the ~~Office for Sexual Violence Response, Support and Education~~ OSVRSE with capacity to respond to, and develop awareness about, the impact that potentially intersecting factors, such as racial, religious, gender and sexual identity, may have on experiences of Sexual Violence;
- c. the establishment, within the ~~Office of Sexual Violence Response, Support and Education~~ OSVRSE, of services to inform and support and accompany Survivors, especially in connection with navigating Disclosure and Reporting processes;
- d. the development of a confidential monitoring framework, which includes recording the number of Disclosures and Reports, to ensure ongoing assessment of the effectiveness of the University's responses to Sexual Violence, and to inform Senate reporting and the triennial review of this Policy;
- e. the review and strengthening of existing support, education, communication, prevention, and training measures and resources, including those provided through existing orientation sessions for students, academic staff, and administrative and support staff;
- f. **educational strategies and initiatives, bearing in mind the University's obligation to ensure training** ~~assessment of the University's success the establishment of an obligation for the University to provide continuous education for all Members of the University Community, with the ultimate goal of mandatory education for all Members of the University community about Sexual Violence, its prevention, and University resources for responding to Disclosures and Reports;~~
- g. stakeholder engagement and consultation (for example: SSMU, PGSS, MACES, MCSS, SACOMSS, SEDE, **McGill Equity Education Advisors**, JBSCE, AGSEM, AMURE, AMUSE, MAUT, MUNACA, MUNASA, MCLIU, SEU);
- h. ~~the revision of responsibilities for responding to Reports, specifically to ensure that disciplinary officers assigned to Sexual Violence cases have appropriate training;~~
- i. **the review, through consultation with Security Services, of University infrastructure and safety measures to maintain the physical safety of the campus premises, notably in University residences.**

Education and Awareness

10. The University, guided by the OSVRSE, shall take proactive and visible measures to provide education, guidelines and dissemination of information relating to Sexual Violence and varied impacts of Sexual Violence through a variety of means, as appropriate, including the following:
 - a. **informational cross-campus campaigns at the outset of each academic term using multiple media formats about: the Policy, its associated resources, and the shared role of all Members of the University Community in preventing Sexual Violence;**
 - b. **ensuring that contractors offering services on campus are informed of, and abide by, the Policy;**
 - c. **onboarding, orientation**, training, and information sessions within various sites where faculty, staff, and students work, live and learn including in collaboration with various campus services;
 - d. a dedicated accessible website that includes information about the nature of Sexual Violence, resources within and outside the University relevant to Survivors and their supporters, and about the processes associated with making a Disclosure or a Report;
 - e. **mandatory** orientation and training sessions for all students, academic staff and administrative and support staff intended to raise awareness about Sexual Violence

and about the shared role of all Members of the University Community in preventing Sexual Violence;

- f. mandatory training about effective, Survivor-focused methods of responding to Disclosures and about the Procedures adopted under this Policy for making a Report delivered to:
 - i) academic, administrative, and support staff who provide front-line health and counseling student services;
 - ii) University Residences staff;
 - iii) Security Services staff;
 - iv) Human Resources advisors; and
 - v) Deans and academic unit heads (Chairs and Directors).
- ~~mandatory training for all academic, administrative and support staff who provide front-line health and counseling student services and those charged with investigation and disciplinary authority under University policies and regulations, about effective, Survivor-focused methods of responding to a Disclosure or Report;~~
- g. mandatory training for all persons who exercise disciplinary authority (e.g., Deans, disciplinary officers) about: Sexual Violence, its impact on individuals and communities, and Procedural Fairness;
- h. education initiatives that develop awareness about the impact that potentially intersecting factors, such as racial, religious, gender and sexual identity, may have on experiences of Sexual Violence; and
- i. information campaigns that communicate 24/7 contact information for McGill Security Services on the Downtown and Macdonald campuses.

Responding to Disclosures

- 11. The University shall offer support to Survivors who are Members of the University Community regardless of where or when the incident of Sexual Violence occurred.
- 12. The OSVRSE, when receiving a Disclosure, shall make all reasonable efforts to do the following, as applicable, with a view to informing and empowering Survivors:
 - a. listen compassionately;
 - b. refrain from questions or comments that imply judgment or blaming of the Survivor (such as questions or comments about the Survivor's dress, conduct, language, emotional disposition, past sexual history, consumption of alcohol or drugs, or about the timing of the Disclosure);
 - c. inform about and support access to appropriate University services, including health and counseling services;
 - d. inform about and support access to appropriate services beyond the University, such as law enforcement and legal, health and social services;
 - e. encourage the Survivor to seek support and care, while not directing the Survivor to use particular resources or take specific recourses, either within or outside of the University;
 - f. respect the Survivor's privacy, confidentiality, and decisions about whether to report to law enforcement authorities, except in cases where the University would have a legal obligation to act (e.g., cases involving minors or cases in which there are reasonable grounds to believe a party poses a serious and credible risk of self-harm to harm to another person);
 - g. respect the Survivor's wishes in regard to being accompanied by a person who provides support throughout the duration of processes associated with making Disclosures;

- h. inform about the process associated with making a Report, including the length of time that an investigation and disciplinary process may take;
 - i. respect the Survivor's decision to, at any time, discontinue involvement in any process associated with a Disclosure;
 - j. recognize and account for intersectional identities and experiences, as well as the disproportionate effect of Sexual Violence on women, gender minorities, and persons who are racialized, Indigenous, and/or disabled;
 - k. strive to ensure that a Survivor need not unnecessarily recount the details of an experience of Sexual Violence multiple times;
 - l. deliver services to the Survivor in the official language of the Survivor's choice.
13. Where a Disclosure raises concerns about a learning, living, or working environment within the University, OSVRSE will consult with the Survivor and with appropriate University authorities (e.g., Dean of Students, Faculty Dean, Student Housing & Hospitality, Security Services, Human Resources, Legal Services) to assess whether measures are needed to maintain a respectful environment for learning, living, or working. These measures may include: periodic meetings with the Survivor or working with the relevant area of the University that is a subject of concern to raise awareness about Sexual Violence, its prevention, and the responsibilities this Policy sets for Members of the University Community.
14. The University shall grant reasonable accommodations to a Survivor who makes a Disclosure where the need for accommodations results from an incident of Sexual Violence. Such accommodations may include: late withdrawal from a course without a transcript "W", allowing tuition reimbursement for courses from which the Survivor must withdraw, priority access to Counselling Services, or a change in University residence. The University shall make and communicate a decision about reasonable accommodations within 7 Days of a request.
15. Although the University responds to Disclosures principally through the OSVRSE, a Survivor may disclose an incident of Sexual Violence to other Members of the University Community, who shall endeavour to:
- a. listen compassionately;
 - b. refrain from questions or comments that imply judgment or blaming of the Survivor (such as questions or comments about the Survivor's dress, conduct, language, emotional disposition, past sexual history, consumption of alcohol or drugs, or about the timing of the Disclosure);
 - c. communicate with the OSVRSE with a view to providing the Survivor with necessary support and information, provided that the Survivor gives permission for such communication; and
 - d. respect the Survivor's privacy.
- ~~9. A Survivor who is of the view that the University has not adhered to the requirements set by Section 9-8 of this Policy may pursue a recourse through the grievance process established by the applicable University regulation and/or collective agreement.~~

Responding to Reports

Special Investigator

16. Reports of Sexual Violence shall be filed with a Special Investigator.

17. The Special Investigator shall be an independent and impartial person with expertise in investigations who is trained in Trauma-Informed processes and in the manner in which persons of diverse identities might experience Sexual Violence. The Special Investigator is further trained in Procedural Fairness.
 18. The role of the Special Investigator is to investigate Reports.
 19. The Special Investigator does not advocate for any party or take sides on any Report.
 20. The Special Investigator's investigations shall:
 - a. be Trauma-Informed;
 - b. maintain Procedural Fairness;
 - c. recognize and account for intersectional identities and experiences, as well as the disproportionate effect of Sexual Violence on women, gender minorities, and persons who are racialized, Indigenous, and/or disabled; and
 - d. adhere to established Procedures associated with this Policy. These Procedures shall be established and reviewed at least every two years in consultation with the groups identified in section 51 and with Senate.
 21. The Special Investigator shall have an accessible space to meet with parties and witnesses both on and off the University campus, depending on the choice of the party or witness.
 22. The Special Investigator shall provide the option of mediation to the parties, in accordance with the Procedures associated with this Policy.
 23. The Special Investigator shall conduct and complete an investigation within 90 Days.
 24. In any case where a Survivor withdraws a Report or where a Report is made by someone other than the Survivor, and where the Special Investigator nevertheless investigates the Report, the Survivor shall have the right not to participate in the investigation.
- Jurisdiction
25. The University will investigate a Report where the alleged Sexual Violence occurred in a University Context and where the Respondent is, at the time the Report is made, a Member of the University Community.
 26. A Survivor who is not a Member of the University Community may make a Report and an investigation may proceed provided that the alleged Sexual Violence occurred in a University Context and the Respondent is, at the time of the Report, a Member of the University Community.
 27. There is no time limit for filing a Report.
 28. If the Special Investigator determines that the University does not have jurisdiction to investigate, the Special Investigator will advise the Survivor of this decision and provide reasons. If the Special Investigator believes that the Report discloses other kinds of misconduct or information on which the University may need to act under another University policy or process, the Special Investigator shall refer the Report or relevant portions thereof to the appropriate University authority. The Special Investigator will consult with the Survivor before referring the Report or information from the Report to another University authority.

Other Recourses

29. Nothing in this Policy precludes a party from exercising any external legal recourse available or from reporting an incident of Sexual Violence to law enforcement authorities.

Decisions and Measures Following an Investigation

30. Upon the completion of an investigation, the Special Investigator shall submit a report to the Provost with a copy to the Survivor and the Respondent.
31. The submission of the report by the Special Investigator concludes the investigation. This report shall contain the findings of relevant facts and a conclusion as to whether or not the evidence is sufficient to find that Sexual Violence occurred. The report shall also include a recommendation as to whether disciplinary or administrative measures should be taken.
32. The Provost may seek further information or clarification from the Special Investigator in regard to any issue or concern arising from the investigative report before making a final decision.
33. If, following an investigation, the Special Investigator's report determines that the evidence is insufficient to find that Sexual Violence has occurred, the Provost shall, within 14 Days of receipt of the investigative report, confirm to the parties in writing that the matter is closed.
34. If the investigative report determines that the evidence is sufficient to find that Sexual Violence has occurred, the Provost will, within 14 Days of receipt of the investigative report, refer the matter, with a copy of the investigative report, to the appropriate University disciplinary authority. The Provost shall copy the parties on this correspondence with the appropriate disciplinary authority.
35. The disciplinary authority shall not reinvestigate the facts of the case. The Special Investigator's report will be used as evidence in any disciplinary process instituted by the Provost.
36. The appropriate University disciplinary authority is:
 - a. in the case of a student, the disciplinary officer as defined in the [Code of Student Conduct and Disciplinary Procedures](#);
 - b. in the case of a member of academic staff, the Dean of the Faculty in which the staff member is appointed;
 - c. in the case of a member of the administrative or support staff, the staff member's immediate supervisor, who shall in all cases seek advice from the University's Labour Relations Group;
 - d. in the case of a Vice-Principal, the Principal; and
 - e. in the case of the Principal, the Chair of the Board of Governors.
24. ~~Decisions related to disciplinary or other measures shall be made in accordance with applicable University regulations (e.g., the [Code of Student Conduct and Disciplinary Procedures](#) and the [Regulations Relating to the Employment of Academic Staff](#) in the case of tenure track and tenured academic staff), collective agreements, and legal principles.~~

37. Upon being referred a copy of the investigative report from the Provost, the appropriate disciplinary authority will determine what disciplinary and/or administrative measures are appropriate and will oversee the administration of such measures.
38. When making decisions as to appropriate disciplinary or administrative measures, the disciplinary authority must consider:
- a. the impact of Sexual Violence on the Survivor, as expressed through a written statement that the Survivor shall have the option to submit to the relevant disciplinary authority;
 - b. The impact that Sexual Violence can have on communities;
 - c. Procedural Fairness as applicable in the context;
 - d. The principle of progressive discipline or gradation in sanctions;
 - e. The nature and severity of the incident;
 - f. The University's role as an educational institution;
 - g. The requirements set by applicable University regulations (e.g., the *Code of Student Conduct and Disciplinary Procedures* and the *Regulations Relating to the Employment of Academic Staff* in the case of tenure-track and tenured academic staff), collective agreements; and
 - h. Any other relevant factors.
39. Disciplinary outcomes, in the case of a student, are described in the *Code of Student Conduct and Disciplinary Procedures* may include, but are not limited to:
- a. an admonishment
 - b. a reprimand
 - c. conduct probation and associated conditions (e.g., cease and desist communication)
 - d. suspension
 - e. expulsion
40. Disciplinary outcomes, in the case of an employee described in regulations and collective agreements of the university and may include, but are not limited to:
- a. letter of reprimand
 - b. suspension without pay
 - c. dismissal from the University
41. Disciplinary measures may be accompanied by other administrative measures that may include, but are not limited to:
- a. education and training
 - b. counselling
 - c. supervision/oversight of the teaching/learning/work environment concerned
 - d. limitation or elimination of supervisory privileges over undergraduate or graduate students, teaching assistants, or research assistants
 - e. no contact or communication directives
 - f. structural measures, such as the requirement that an academic unit (e.g., Department, School, Institute, or Centre) or administrative unit (i.e., office or area that does not deliver academic programs, e.g., Residences, Facilities, Human Resources, Athletics & Recreation) undergo a climate review organized and led by one or more persons with relevant expertise from outside the unit concerned, with a view to improving the working and/or learning environment.
42. Once the appropriate University authority has determined the disciplinary and/or administrative measures to be imposed, that authority will inform the Provost. If the

authority disagreed with a recommendation of the Special Investigator about disciplinary or administrative measures, reasons shall be provided in writing.

43. Once the appropriate University disciplinary authority has determined the disciplinary and/or other measures to be imposed or not, that disciplinary authority shall provide the Survivor with a written confirmation that the disciplinary process is complete and that the process abided by the requirements of this Policy and any other applicable regulation, policy or collective agreement.
- 43.1 Notwithstanding Section 43, as a result of the legislative framework in force at the time of this Policy's adoption,* information about any disciplinary or administrative measures imposed on a Respondent may not be disclosed to the Survivor without the Respondent's express permission. The University may, however, inform the Survivor of administrative measures imposed on the Respondent that pertain to the Survivor's safety on campus.
44. Nothing in this Policy derogates from the Provost's authority to take measures to address structural or systemic concerns raised by the findings set out in the Special Investigator's report.

Immediate Measures

45. Where the OSVRSE or the Special Investigator, or where a Department Chair, Director, or Senior Manager, is of the view, based on a Disclosure or a Report, that there may be a risk of harm to any Member of the University Community, they 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.
46. Before deciding whether to implement immediate measures, the University shall, through the OSVRSE or the Special Investigator, consult with the Survivor. Decisions concerning immediate measures rest with the appropriate University authority.
47. The implementation of immediate measures shall adhere to applicable University policies, regulations, and collective agreements, and Quebec law.

~~Once made aware of a Disclosure or Report, and before or during an investigation into a Report, the appropriate University authority will consult with the Survivor and undertake an initial risk assessment to identify and implement immediate reasonable measures necessary to protect and support the Survivor and the University Community in compliance with applicable McGill policies, regulations and collective agreements, and Quebec law. A Survivor will be informed about the length of time that may be required to institute an immediate measure and will be entitled to periodic updates according to the terms set by Section 13 of this Policy.~~

48. ~~Such~~ Immediate measures may be taken whether or not the Survivor makes a Report, **and may be implemented before or during the course of an investigation into a Report.**
49. Any immediate measures instituted shall comply with University regulations, policies, and collective agreements, and shall ensure that Procedural Fairness, as applicable in the context, is maintained. Such measures may include, **but are not limited to:**

* See Appendix 1.

- a. voluntary measures (i.e., those agreed to by the ~~alleged perpetrator~~ Respondent);
 - b. **an order that communications between parties cease and desist;**
 - c. devising and implementing alternate academic (e.g., course changes or reimbursement of fees associated with academic tuition), extra-curricular, residential, or work arrangements with respect to the Survivor and ~~alleged perpetrator~~ Respondent;
 - d. temporarily excluding the ~~alleged perpetrator~~ Respondent from campus or limiting that person's role, privileges, or duties, in accordance with applicable University policies, regulations, and collective agreements.
- ~~11. Where a Survivor wishes to make a Report, the matter will be referred to the appropriate University authority, who is the person with authority to investigate and discipline the alleged perpetrators (for example, the Dean of Students, the Dean of Graduate and Postdoctoral Studies, a Faculty Dean).~~
- ~~11.1 The Office for Sexual Violence Response, Support and Education and, where appropriate, McGill Campus Security may facilitate such referral.~~
- ~~12. In responding to a Report, the appropriate University authority will initiate an investigation or disciplinary process in accordance with procedural fairness, as established by applicable University regulations or policies (e.g., Code of Student Conduct and Disciplinary Procedures, Regulation Relating to the Employment of Tenure Track and Tenured Academic Staff). Pursuant to such regulations and policies, measures taken following an investigation and disciplinary hearing that establish cause for discipline range in severity, with the most severe being expulsion or termination of employment from the University. Disciplinary measures may be accompanied by mandatory education about sexual violence and its attendant harms.~~
- ~~13. During an investigation that follows a Report, the University authority charged with the investigation shall provide the Survivor with reasonable periodic updates about the status of the investigation. These updates must not include substantive information about the investigation, unless appropriate consents have been obtained from individuals whose personal information would be disclosed.~~
- ~~14. Where a Survivor wishes to make a Report to external law enforcement authorities, this process will, with the Survivor's consent, be facilitated by the Office for Sexual Violence Response, Support and Education and by Security Services.~~
- ~~15. The University will, insofar as possible taking into account its institutional obligations, notably its obligation to take reasonable measures to protect the safety of the University Community, respect the wishes of the Survivor in regard to internal measures and external recourses, including respecting the Survivor's decision to discontinue their involvement in any process associated with a Report.~~
- ~~16. The University shall communicate information about processes for Disclosures and Reports through multiple formats to promote the accessibility of this information to Members of the University Community.~~

Procedural Fairness

- ~~20. The University's commitment to supporting Survivors shall not deprive anyone of procedural fairness, or of access to appropriate University services to which they are entitled under applicable policies, regulations and collective agreements.~~

- ~~21. Any person who makes a Disclosure or Report, or who is involved in an investigation or other process that follows a Disclosure or Report, maintains entitlements afforded to them under applicable policies, regulations and collective agreements, including a right to be protected against harassment and vexatious conduct.~~

Campus Study of Sexual Violence

- ~~22. Within four months of this Policy coming into effect, the Provost shall initiate a study of Sexual Violence at the University. An *ad hoc* panel with relevant expertise, which will include student representation, will conduct this study. In carrying out this study, efforts will be made to engage with individuals who have had direct experiences with Disclosure or Report processes, and with individuals and groups with relevant expertise and knowledge. This study will also assess the present Policy's harmonization with current University policies and procedures and may make recommendations intended to enhance the present Policy and its implementation. The results of this study shall be reported to McGill Senate and shared with the Members of the University Community.~~

Reporting to Senate and Policy Review

- ~~50. The Provost shall report biennially annually to Senate and the Board of Governors on the implementation and application of this Policy. This report will include information about the number of Disclosures and Reports received during the reporting period, and about measures taken to pursue the prevention and education objectives of this Policy. Subject to the University's obligations to respect the privacy rights of Members of the University Community, annual reports to Senate and the Board will include aggregated information on the number of Reports of Sexual Violence submitted during the reference period by or against students, faculty and staff, the number of Reports where the evidence was sufficient to find that Sexual Violence had occurred, and the types of disciplinary and administrative measures imposed.~~
- ~~51. A triennial review of this Policy shall be conducted by a working group chaired by the Provost (or delegate) and comprised of one representative each of: OSVRSE, Human Resources, University Residences/Student Housing, SSMU, PGSS, MACES, MCSS, SACOMSS, SEDE, the Senior Equity & Inclusion Advisor, JBSCE, AGSEM, AMURE, AMUSE, MAUT, MUNACA, MUNASA, MCLIU, SEU. This review shall include an assessment of the effectiveness of the educational measures established in this Policy, as well as recommendations aimed at their enhancement.~~

Appendix 1: Relevant Legislation and Government Documents

- Quebec Charter of Human Rights and Freedoms
- Civil Code of Québec
- Act to Prevent and Fight Sexual Violence in Higher Education Institutions
- Act Respecting Labour Standards
- Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information
- Guide d'accompagnement destiné aux établissements d'enseignement supérieur
Élaboration de la politique prescrite par la Loi visant à prévenir et à combattre les violences à caractère sexuel dans les établissements d'enseignement supérieur, which states (at 22):

À la suite du processus de traitement de la plainte administrative, c'est-à-dire lorsqu'une décision a été rendue et que des sanctions ont été imposées, le cas échéant, la personne plaignante devrait être informée de la fin du processus. L'imposition de sanctions et leur nature, le cas échéant, ne peuvent cependant être révélées, car ces informations constituent des renseignements personnels.

DRAFT

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 (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 (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.

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 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.
11. During an investigation, the Special Investigator will not communicate with or meet the Survivor and Respondent together.

Filing a Report

12. 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, information about the incident (e.g., time(s), location(s)), and any additional relevant information. The Report may be in writing by email or letter submitted to the Special Investigator or the Report may be recounted verbally to the Special Investigator. In the case of a verbal Report, the Special Investigator will document this information and the Survivor will be asked to review and sign that document as reflecting the Survivor's Report.
13. On receipt of a Report, the Special Investigator shall also share a copy of the Report with the Senior Equity and Inclusion Advisor for University records.

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 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.

Anonymous and Third-Party Reports

16. Reports that are anonymous or made by a third-party other than the Survivor may be submitted to the Special Investigator.
17. Where sufficient evidence exists and where it would not violate Procedural Fairness, the Special Investigator may investigate an anonymous or third-party Report.
18. 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.
19. 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 by the Special Investigator

20. 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 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

21. 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 the Survivor of the revised timeline.

Proceeding to an Investigation

22. 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.

Investigation

23. 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 response to the Report within the delay fixed by the Special Investigator, which generally shall not be more than 14 Days. The response may be in writing by email or letter submitted to the Special Investigator or the response may be recounted verbally to the Special Investigator. In the case of a verbal response, 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 to the Report.
24. Upon receiving the Respondent's response, the Special Investigator shall send a copy to the Survivor.
25. The Special Investigator will work diligently to ensure timely processes for investigating reports of Sexual Violence without compromising Procedural Fairness.
26. 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.
27. 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.
- 28. Subject to sections 16-19 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.
- 29. The Special Investigator shall not hold a hearing.
- 30. 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).
- 31. The process following the submission of the report by the Special Investigator to the Provost shall follow the terms established in the Policy.

Mediation

- 34. The Special Investigator 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.
- 35. 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.
- 36. Where both parties consent to mediation, the Special Investigator will appoint a mediator and any investigation that is underway and associated time delays are suspended for a maximum of 30 Days.
- 37. Mediation will be conducted in a respectful manner.
- 38. 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.
- 39. 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.

40. Either party may, at any time, withdraw from mediation, at which point the investigation shall resume. A party's refusal to attempt mediation or 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.
41. 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 and held for a minimum of ten years by the Senior Equity and Inclusion Advisor.
42. 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.
43. 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.
44. 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.
45. 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.
46. 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.