Policy 6.4 - Sexual Violence Policy

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1. Policy

The Sexual Violence Policy (“Policy”) is composed of two documents: this Policy Document and the applicable procedures documents.

The purpose of this Policy is to set out the principles that apply when allegations of Sexual Violence are brought forward in the University community. The procedures which support this Policy rely on the University having jurisdiction and are determined by the respondent group. The applicable procedures document when a student is affected by Sexual Violence is the Sexual Violence Procedures Document – Students. The applicable procedures document when an employee is affected by Sexual Violence are found in applicable University policies such as Violence Prevention in the Workplace, Workplace Harassment Prevention Program, and employee collective agreements.

2. Definitions

a. “Alternate Resolution” or “AR” is a form of early resolution and may include facilitation, mediation, coaching or any other AR method, if appropriate.

b. “Consent” is the active ongoing, informed and voluntary agreement to engage in sexual activity. Consent cannot be given by someone whose judgment is materially impaired (such as by drugs or alcohol), unconscious, or otherwise unable to understand and voluntarily give consent. Consent can never be obtained through threats, trickery, coercion, pressure or other forms of control or intimidation and may be withdrawn at any time. Consent may be compromised where individuals are in a position of power, trust or authority over the person whose consent is required. The consumption of alcohol or drugs does not provide any excuse from obtaining consent.

c. “Disclosure”: means a disclosure of information about Sexual Violence under section 6 of this Policy.

d. “Formal Complaint”: means a written complaint which sets out the facts which the Survivor believes are sufficient to support an allegation under the Policy.

e. “Formal Complaint Process”: the process initiated by submission of a Formal Complaint. The determination of the appropriate process relies on the University having jurisdiction and is determined according to the stakeholders involved.

f. “Interim Measures”: measures imposed by the University on a temporary basis normally during a Formal Complaint Process.

g. “Person Accused”: for the purpose of this Policy means any person against whom an allegation or Formal Complaint of Sexual Violence is made. Under the applicable procedures or collective agreements, the Person Accused may also be referred to by other terms such as “Respondent”.

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h. “Resolution Processes”: include both AR and Formal Complaint Processes.

i. “Sexual Harassment” is included in the definition of Sexual Violence and means engaging in a course of vexatious comment or conduct based on sex, sexual orientation, gender identity or gender expression that is known or ought reasonably to be known to be unwelcome. This can include: implied or expressed rewards or benefits for sexual favours; non-consensual taking or posting of a sexual picture; aggressive or intolerant comment or slur (including cyberbullying or through social media); or uttering any sexual threat.

j. “Sexual Violence” means any sexual act or act targeting a person’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person’s consent, and includes sexual assault, Sexual Harassment, stalking, indecent exposure, voyeurism and sexual exploitation.¹

k. “Supports”: has the meaning provided in Section 8 of this Policy.

l. “Survivor”: for the purpose of this Policy means an individual who identifies their experience as Sexual Violence. Under the applicable procedures or collective agreements, a Survivor may also be referred to by other terms such as “Complainant”.

m. “University Community Member” includes University of Guelph students, employees, members of the Board of Governors or Senate, volunteers and other individuals who are acting in a capacity defined by their relationship to the University.

n. “University Support Services”: means University services or programs provided to individuals based on the individual’s relationship to the University.

3. Scope

a. Unless otherwise specified in this Policy, this Policy applies to all University Community Members regardless of where the alleged behaviour took place, if the alleged behaviour materially affects the safety of a University Community Member and is related to:

   i. the University’s living and learning environment; or

   ii. the University as a workplace.

b. Incidents of Sexual Violence affecting University of Guelph-Humber students and allegations of Sexual Violence against Humber College employees are covered by

¹ Definition taken from Bill 132, Sexual Violence and Harassment Plan
policies at Humber College. Allegations of Sexual Violence against University of Guelph employees working at University of Guelph-Humber are covered by this Policy.

4. Policy Goals
The goals of this Policy are to:

   a. support Survivors as defined under this Policy. The University believes and respects that Survivors are the final decision-makers about their own best interests;
   b. ensure procedural fairness and due process for all parties in the Resolution Processes;
   c. hold those who have committed Sexual Violence accountable; and
   d. safeguard the safety of University Community Members.

5. Information on University and Community Resources
Information related to Sexual Violence including who to contact, FAQs, related policies and procedures, University Support Services as well as resources available in the wider community, is available on the University’s Sexual Violence Support and Information website.

6. Disclosure
   a. Anyone can make a Disclosure.
   b. Subject to the University’s legal obligations, a Disclosure does not normally trigger any Resolution Process, but may result in the provision of Supports, as appropriate.
   c. Except where the University has an obligation to act as determined under Section 8 of this Policy, no actions will be taken against a Person Accused by the University solely on the basis of a Disclosure.
   d. Disclosures which raise a reasonable concern regarding broader public safety may result in information being shared with police services.

7. Supports
   a. Survivor Supports
   
      Once a Disclosure is made and regardless of whether a formal complaint is submitted, the University will provide Supports, as appropriate which will be sensitive to the circumstances identified by the Survivor and will allow Survivors to:

      i. be treated with compassion, dignity and respect;
      ii. be informed about University Support Services and community resources;
      iii. be informed about disclosing and reporting options and the limits to confidentiality associated with each option;
iv. be provided with appropriate forms of academic consideration and other supports based on demonstrated need;
v. be provided with assistance in formulating a personal safety plan;
vi. decide whether to engage in Resolution Processes under this Policy; and
vii. decide whether to access University Support Services and/or community support services and to choose those services they feel will be the most beneficial.

b. Supports during Resolution Processes

All Parties to a Formal Complaint will be:

i. treated with dignity, compassion and respect;
ii. provided with information regarding relevant policies including limits to confidentiality; and
iii. informed about University Support Services and community support services.

8. Initial Assessment

a. The University recognizes that Survivors may wish to control whether their experience will be dealt with under the University’s Resolution Processes. Wherever possible, and subject to the University’s legal obligations, a Survivor will retain this control.

b. Notwithstanding subsection a, the University has the obligation to act on information that suggests an incident or a pattern of behaviour which poses a clear and ongoing threat to the Survivor or others. If the University has an obligation to act, these actions may include the imposition of Interim Measures or the initiation of investigations, and other interventions consistent with University policies. If the University chooses to act in these instances, attempts will be made to first notify with the Survivor.

9. Resolution Processes

University:

a. A Survivor can elect to pursue an allegation of Sexual Violence through Alternate Resolution (AR) and/or the Formal Complaint Process.

b. A Formal Complaint is filed in accordance with the appropriate University policies or procedures applicable to the Person Accused. (see section 1.0). If the Person Accused is no longer a University Community Member before a Formal Complaint Process has been completed, the process may be suspended.
c. Once a Formal Complaint Process is initiated, Survivors have the right to choose the extent of their involvement in the Formal Complaint Process.

d. Formal complaints which raise a reasonable concern regarding broader public safety may result in information being shared with the Campus Community or another police service.

Criminal:

e. Nothing in this Policy precludes a Survivor from filing a criminal complaint directly with a police service or through the Campus Community Police.

10. Interim Measures
If an AR process or a Formal Complaint Process is initiated, the University may impose Interim Measures. For employees such Interim Measures will be consistent with University policies or appropriate collective agreements. Interim Measures for students are outlined in the Sexual Violence Procedures Document – Students.

11. Right to Withdraw a Formal Complaint
A Survivor has the right to withdraw a Formal Complaint which the Survivor initiated at any stage of the process. However, the University may continue to act on the issue identified in the Formal Complaint to the extent necessary to comply with its legal obligations.

12. Protection from Reprisal, Retaliation or Threats
It is contrary to this Policy for anyone to retaliate, engage in reprisals or threaten to retaliate for:

   a. pursuing rights under this Policy;
   b. participating or co-operating in an investigation under this Policy; or
   c. being associated with someone who has pursued rights under this Policy.

Anyone found to have engaged in such conduct will be subject to sanctions or discipline in accordance with the relevant policy or procedures.

13. Vexatious Complaints
Formal Complaints that are found (following an investigation) to have been made in bad faith may result in sanctions or discipline against the individual who lodged the complaint.

14. Multiple Proceedings
Where criminal, civil or administrative proceedings (“External Proceedings”) are commenced in respect of allegations of Sexual Violence, the University reserves the right to conduct its own independent investigation into such allegations, or to defer some or all of its own processes
under this Policy. The University will make its own determination in accordance with its policies and procedures.

15. Confidentiality
The University strives to maintain confidentiality as an important factor in creating an environment in which Survivors feel safe to disclose and seek supports and both Parties have the opportunity to engage in a Resolution Process which is fair. Confidentiality should therefore be protected to the extent possible, but may be precluded where, for example:

   a. there are reasonable grounds to believe that one or more University Community Members or individuals in the wider community may be at risk of harm;
   b. reporting is required by law (e.g. mandatory reporting of a minor);
   c. an investigation is undertaken; or
   d. if accommodation or supports are needed, on a need-to-know basis; or
   e. the allegations are the subject of External Proceedings.

16. Reporting and Maintenance of Records
   a. Reporting and maintenance of records will be in accordance with provincial regulations.
   b. An annual report will be provided to the Board of Governors by the Office of the Vice-Provost (Student Affairs).

17. Related University Policies and Procedures
   a. Human Rights Policy
   b. Residence Community Standards (Student Housing)
   c. Athletic Code of Conduct Discipline Procedures
   d. Workplace Harassment Prevention Policy
   e. Workplace Violence Prevention Policy

18. Training
The University will provide or make available appropriate training regarding this Policy to University Community Members including individuals who will be involved in the investigation or decision-making process. The Director of the Sexual Violence Support Centre has the oversight for providing or making available training, as appropriate.

19. Sexual Violence Awareness and Education Programs
Working with staff in Student Housing Services, Campus Community Police and the Office of Diversity and Human Rights, the Wellness Education Centre has responsibility for ensuring ongoing Sexual Violence awareness and education programs for students.