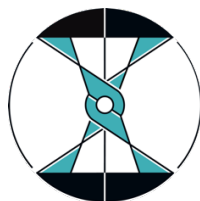


Independent Review of Saint Francis Xavier University's Policies Responding to Sexualized Violence

*Prepared for Saint Francis Xavier University
June 28, 2019*



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By Email to kwamsley@stfx.ca

Friday, June 28, 2019

Interim President Professor Kevin Wamsley
St. Francis Xavier University
P.O. Box 5000
Antigonish, NS B2G 2W5

Dear Interim President Professor Kevin Wamsley,

Re: Independent Review Panel (“IRP”) – Sexual Violence Response Policy for StFX

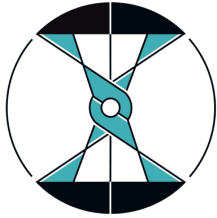
We are pleased to enclose a Sexual Violence Response Policy for consideration and adoption by StFX. Enclosed also are the Terms of Reference for CCLISAR’s review of StFX’s policies responding to sexualized violence.

The development of this Policy was informed by three full days of consultations at StFX with representation from the StFX community, including students, faculty, unionized and non-unionized employees and representatives from the Antigonish Women’s Resource Centre. The IRP also received input by email and over the phone. The IRP was impressed with the open, transparent, and genuine manner in which everyone we consulted with engaged in the process.

Our task was to develop and recommend a Sexual Violence Response Policy that responds to the particular needs, location, structure and circumstances of StFX, and supports the rights of complainants and respondents. The Policy is also meant to ensure that the University has effective and defensible practices and procedures that are: responsive to those who report experiences of sexual harm; trauma-informed; and procedurally fair. Although aspects of this Policy reflect what we believe is a model for all universities, other aspects of this Policy are responsive to unique issues that were raised in the consultations or are otherwise specific to StFX.

This cover letter will not provide a complete summary of the consultations nor a detailed explanation of the various provisions of the Policy.

We do, however, wish to address a few of the recommendations included in the Policy, as follows:



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Investigation Model

The enclosed Policy recommends that StFX adopt an investigative, rather than adjudicative, model for determining sexual violence reports for all StFX community members, students and staff alike.

In our view, a trained and expert investigator, who may interview witnesses in an in-depth and iterative fashion, produces a process and outcome that is procedurally fair and rigorous, trauma-informed, and respectful of the rights of all persons involved. This proposed process is more fair and respectful than an adjudicative model overseen by students or staff who have no or effectively no expertise in sexual assault law or practice, intersectionality, trauma, or adjudication.

The IRP's recommendation of an investigative model is consistent with the evolving practice at many universities across Canada, including other universities where the student appeal of the investigator's findings and penalty do not involve a fresh hearing on the evidence and are limited to certain grounds of review (related to procedural fairness and whether the findings and penalty are supportable on the basis of the findings).

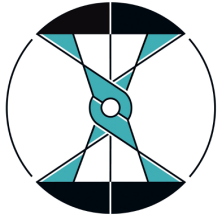
As discussed below, with a view to ensuring that the investigations are conducted by persons with the appropriate expertise, and to build trust in the Policy within the StFX community, we recommend that for the first three years of this Policy, all reports of sexual assault be investigated by an external and qualified investigator.

Plain Language Manual to Accompany the Policy

In our consultations we heard competing goals. On the one hand, understandably, we were told that the policy should be plain language, short, and accessible. On the other hand, we heard that students in particular want the policy to explain the details of what to expect and the steps of the various processes under the policy. The policy also needs to be a defensible legal document that provides a rationale for the procedures chosen. It is difficult to meet these various goals in a single document.

While a short high-level policy would have been easier for the IRP to draft, we did not believe that it would meet the needs of StFX.

The enclosed Policy is a detailed legal document. It is intended to be written in as simple and step by step fashion as possible, but it is not in plain language.



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We recommend that over the summer and prior to the IRP's recommended policy being introduced to the StFX community, a draft plain language manual be developed by StFX to accompany the release of the enclosed policy.

We further recommend that when the new sexual violence policy is ultimately adopted by StFX, that StFX retains a plain language specialist to prepare a plain language manual to accompany the policy.

The Sexual Violence Safe Disclosure Office: A Single Point of Contact for Persons who Have Experienced Sexual Violence

This Policy recommends the creation and new staffing of a Sexual Violence Safe Disclosure Office.

An emerging best practice across Canada is the creation of a specialized office, staffed by persons who are experienced in sexual violence and trauma-informed practice, to receive disclosures and support Survivors. A centralized office for disclosing minimizes the risks to survivors of being asked to discuss their experiences on multiple occasions. It also helps to ensure that information regarding accommodations, immediate measures and the complaint process provided to survivors is accurate and consistent. Accommodations and supports are co-ordinated through a single point of contact. Another benefit of a single specialized office is it would enable StFX to better track issues and trends related to sexual violence on campus, and to collect and annually publish aggregate data on sexual violence disclosures and reports at StFX.

In our consultations, we repeatedly heard that there was confusion on campus between “disclosing” and “reporting” sexual violence. The name of the Office is intended to help overcome that confusion, and to convey that the Office is a safe place, where persons who have experienced sexual violence can get support, request accommodations, and learn about available procedures under the Policy, without immediately and automatically triggering a formal investigation.

We also heard in our consultations that the success of the Office will depend in part on its physical location. Certain locations (such as in or near the health and counseling centre or the offices of the student advisors) would present a significant barrier to faculty and staff accessing the office. Other locations, such as in or near human resources, would be a significant barrier to students accessing the office. We therefore recommend that careful attention be paid to the location of the Safe Disclosure Office and that it be situated somewhere that is neutral, safe,



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confidential and accessible to all. We recommend that StFX carefully consult with the various student, staff and faculty constituencies within StFX to identify the most appropriate location.

The Policy Applies to All StFX Community Members: Students, Staff and Faculty

Persons who have experienced sexual violence, and those who are responding to reports, should not be forced to read multiple documents when they are in crisis. This Policy, to the extent possible, is intended to provide information to anyone who has experienced sexual violence, regardless of whether they are an employee or student or whether the respondent is an employee or student.

Many universities have such policies that apply to staff, faculty and students, including Dalhousie University, University of British Columbia, York University, University of Manitoba, University of Toronto and Ryerson University.

As discussed above, in our consultations, we heard that StFX community members, and particularly students, want a detailed understanding of what happens when a disclosure or report is made. The enclosed Policy provides what is intended to be a step by step delineation of StFX's procedure in response to reports, particularly involving students.

On the other hand, the complex environment in which universities operate, including under multiple collective agreements that may have different provisions that apply to responses to sexual violence, makes it difficult for a single policy to be both detailed and equally applicable to students, unionized staff, non-unionized staff and others. Accordingly, where a respondent is a unionized staff member, the Policy must be read in conjunction with the relevant collective agreement.

The more prescriptive the policy, the greater the risk of conflict between its provisions and applicable collective agreements. Some university policies address this issue by containing a blanket clause that the sexual violence policy is intended to complement applicable collective agreements, but in the event of conflict, the collective agreement governs.

The final draft of the enclosed Policy was reviewed by a selected group of persons in accordance with the terms of reference (a faculty member, a student, two administrators, two independent expert academics external to StFX, and legal counsel for StFX). The only change of substance which the IRP made to the Policy as a result of this feedback on the final draft of the Policy, and at the request of StFX representatives, was to indicate that, for employees of StFX, the procedure for imposing Immediate Measures and Investigating Formal Reports shall follow the applicable collective agreements and StFX management policies and procedures (rather



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than language that indicates that the enclosed Policy applies to employees in all respects, except in the event of conflict with a collective agreement).

Since collective agreements generally require an investigation of a sexual violence report, and the approach to such investigation will in many cases be generally consistent with the Policy, the IRP viewed this request as a reasonable approach to avoid conflict between the Policy and the collective agreements. This change, however, does not impact three essential recommendations applicable to StFX's response to all reports of sexual violence (discussed further below), that:

- For the first three years of this Policy, all Reports of sexual assault will be investigated by a qualified external investigator;
- The complainant (Reporting Party under the Policy) as well as the respondent will always receive a copy of the Investigation Report (redacted of irrelevant personal information and/or personal information of third parties); and
- The complainant (Reporting Party) as well as the respondent, will be informed of the outcome of the Investigation, including any discipline or remedial measures imposed.

It is hoped that the plain language manual that will be developed and disseminated following the adoption of the Policy, will include summary flowcharts that will explain the procedural steps under the Policy, including where the complainant and/or respondent are unionized employees. It is also hoped that the Safe Disclosure Office and the StFX staff with the responsibility to support respondents, will be trained on both the Policy and the related provisions of the collective agreements and other relevant StFX policies, and will be able to provide clear information and explanations to StFX community members.

The Complainant (Reporting Party) is Entitled to a Copy of the Investigation Report and Information about the Discipline and Remedial Measures

Two legal regimes that apply to university responses to disclosures and reports of sexual violence are privacy law and human rights law. These two areas of law have generally evolved independent of each other, and there is little caselaw that attempts to harmonize the two regimes where they may be seen to be in conflict.

It is accepted that, as the person who may face discipline consequences, the respondent to a report of sexual violence is entitled to a copy of the investigation report and any decision on discipline or remedial measures.



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In the past, however, universities have been reluctant to provide copies of the investigation report to complainants or to inform complainants about the outcome of the investigation in terms of

discipline or other measures imposed on the respondent, based on interpretations of the relevant privacy legislation.

This approach is changing and differs across institutions.

From the perspective of the human rights of complainants, it makes no sense that a complainant can be prevented from knowing the outcome of their complaint and the basis for any findings. Refusing to provide complainants with this information would present an enormous barrier to reporting. A process in which the complainant is not entitled to know the outcome of their report of sexual violence is not consistent with the complainant's human rights. Complainants require information about the findings and discipline ordered in order to exercise their legal rights to challenge institutional responses, whether under an internal appeal process or under human rights law (or possibly also common law, such as claims of institutional negligence).

The Policy recommends that complainants be provided a copy of the investigation report as well as information about the discipline and remedial measures ordered, if a finding of breach is made.

Many universities now explicitly include a term in their policies that the complainant is entitled to a copy of the Investigation Report. A few examples include the policies of Mount Saint Vincent University [a copy of the investigation report shall be shared with the complainant]¹, the University of British Columbia ("UBC") [the complainant is provided a copy of the report subject to redaction of personal information irrelevant to the findings or of third parties]², Carleton University [the investigation report is provided to the complainant and the respondent with a reminder of the need to keep confidential the personal information of those involved]³

¹ Mount Saint Vincent University. [February 28 2019]. Policy Against Sexual Assault [section 10.08]. Retrieved from Sexual Assault Policy & Resources:

<http://www2.msvu.ca/DocumentCentral/Documents/Sexual%20Assault%20%28Policy%20Against%29.pdf>

² University of British Columbia. [May 18 2017]. Sexual Assault and Other Sexual Misconduct, Policy No. 131 [section 5.2]. Retrieved from the University Counsel:

https://universitycounsel.ubc.ca/files/2017/05/policy131_final.pdf

³ Carleton University. [December 1 2016]. Sexual Violence Policy [section 9.5]. Retrieved from the Office of the Vice-President (Students and Enrolment): <https://carleton.ca/studentsupport/>



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and York University [a complete copy of the investigation report will be provided to the complainant and respondent]⁴.

Currently, universities, to varying degrees, also inform the complainant of the discipline decision made. For example:

- Ryerson University: “The decision maker will provide both the complainant and the respondent with a summary of the investigation results, their decision, reasons for the decision and any applicable sanctions.”⁵
- Mount Saint Vincent University: “the complainant shall receive notice in writing of the outcome of the Report, including any sanction or remedial action.”⁶
- Dalhousie University: “The Complainant will be informed whether the Senate Discipline Committee found there had been a breach of the Sexualized Violence Policy and if so, the disciplinary outcomes that have a direct impact on them.”⁷
- University of Ottawa: “The decisions of the review committee and the reasons in support of it must be in writing and be delivered to the Complainant and to the Respondent”⁸... “The Appropriate Authority will decide on consequences or measures and on the imposition of any disciplinary measure ...and will immediately notify the Complainant and the Respondent in writing of the following: the consequences or measures and any corrective action that has been taken or that will be taken as a result of the investigation and review committee report, subject to applicable collective agreement provisions and access to information and privacy legislation.”⁹

⁴ York University. [December 14 2016]. Sexual Violence, Policy on [section 11.4.5]. Retrieved from the Secretariat Policies: <https://secretariat-policies.info.yorku.ca/policies/sexual-violence-policy-on/>

⁵ Ryerson University. [2016]. Sexual Violence Policy [section 5b]. Retrieved from University Administrative Policies: <https://www.ryerson.ca/policies/policy-list/sexual-violence-policy/>

⁶ Mount Saint Vincent University. [February 28 2019]. Policy Against Sexual Assault [section 11.02]. Retrieved from Sexual Assault Policy & Resources:

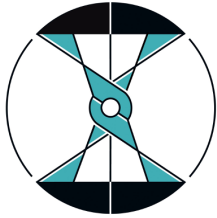
<http://www2.msvu.ca/DocumentCentral/Documents/Sexual%20Assault%20%28Policy%20Against%29.pdf>

⁷ Dalhousie University. [January 26 2018]. Sexualized Violence Policy [section 3f]. Retrieved from:

<https://cdn.dal.ca/content/dam/dalhousie/pdf/campuslife/studentervices/Sexual%20Violence%20Policy%20January%2025%20FINAL.pdf>

⁸ University of Ottawa. [2015-2016]. Policy 67b - Prevention of Sexual Violence [section 7.6.4]. Retrieved from Administration and Governance: <https://www.uottawa.ca/administration-and-governance/policy-67b-prevention-sexual-violence>.

⁹ University of Ottawa. [2015-2016]. Policy 67b - Prevention of Sexual Violence [section 7.6.7]. Retrieved from Administration and Governance: <https://www.uottawa.ca/administration-and-governance/policy-67b-prevention-sexual-violence>



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Other universities limit the information on sanction to information that relates to the complainant's health and safety:

- York University: “the complainant will be provided with sufficient information regarding the precise nature of the penalty or sanction so as to maintain the complainant’s ongoing safety and/or reduce the possibility of contact between the parties.”¹⁰
- Carleton University: “the Complainant has a right to know the outcome of the investigation but not the details of the discipline unless sharing that information is permitted by FIPPA for health and safety reasons.”¹¹
- UBC: the complainant is informed of discipline outcomes if released for “compelling health and safety reasons” (such as a no contact order).¹²

In some provinces, such as Ontario, amendments to the *Occupational Health and Safety Act* enacted to further a legislative mandate to address workplace sexual harassment and violence, requires employers to advise employee complainants in writing of: “the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation” (s.32.0.7(1)(b)).¹³ This legislative provision informs the approach taken by Ontario universities to providing information on discipline to both employee and student complainants.

In our view, policies that limit the provision of information to complainants on outcomes, including the discipline or corrective measures ordered, are incompatible with complainants’

human rights, and StFX’s obligations under human rights law, which in our view necessarily requires disclosure of outcomes. It is also incompatible with a complainant’s right to pursue an appeal or review of both or either of the breach finding and the outcome finding.

¹⁰ York University. [December 14 2016]. Sexual Violence, Policy on [section 11.4.11]. Retrieved from the Secretariat Policies: <https://secretariat-policies.info.yorku.ca/policies/sexual-violence-policy-on/>

¹¹ Carleton University. [December 1 2016]. Sexual Violence Policy [section 9.7b]. Retrieved from the Office of the Vice-President (Students and Enrolment): <https://carleton.ca/studentsupport/>

¹² University of British Columbia. [May 18 2017]. Sexual Assault and Other Sexual Misconduct, Policy No. 131 [section 5.2]. Retrieved from the University Counsel: https://universitycounsel.ubc.ca/files/2017/05/policy131_final.pdf

¹³ *Occupational Health and Safety Act*, RSO 1990, c. O.1, s32.0.7(1)(b) Retrieved from: <https://www.ontario.ca/laws/statute/90o01>



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Prohibition on Sexual Relations between Teaching Staff and Students

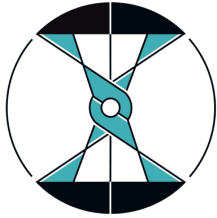
Major American universities, such as Harvard, Yale and Stanford, have long had various forms of explicit prohibitions on sexual relations between faculty and students. For example, Yale has prohibited sexual relations between faculty and students they supervise since 1997. In 2015, Harvard passed a blanket ban prohibiting faculty from having romantic or sexual relationships with any undergraduate student regardless of whether the faculty is in a supervisory role (as well as any graduate student over which they have a supervisory role).

More recently, Canadian universities have followed suit. Some universities, such as University of Manitoba, Carleton and Concordia, strongly discourage sexual relations between teaching staff and students over whom they have a supervisory role, and require staff to promptly disclose the relationships as a conflict of interest. McGill, Sheridan College and Mount St Vincent have gone further. Mount St Vincent provides that there is no consent to sexual touching where one party “occupies a position of trust or authority.” McGill prohibits teaching staff from engaging in sexual relations with a student over whom the staff has academic authority, may influence the student’s progress, or collaborates with the student.

Stanford’s Policy explains the conflict as follows:

Because of the potential for conflict of interest, exploitation, favoritism, and bias, such relationships may undermine the real or perceived integrity of the supervision and evaluation provided. Further, these relationships are often less consensual than the individual whose position confers power or authority believes....

Such relationships may also have unintended, adverse effects on the climate of an academic program or work unit, thereby impairing the learning or working environment for others – both during such a relationship and after any break-up. Relationships in which one party is in a position to evaluate the work or influence the career of the other may provide grounds for complaint by third parties when that relationship gives undue access or advantage, restricts opportunities, or simply creates a perception of these problems. Additionally, even when a relationship ends, there may be bias (even if unintentional) for or against the former partner, or there could be an ongoing impression of such bias; in other words, the effects of a romantic or sexual relationship can extend beyond the relationship itself.



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For all of these reasons, sexual or romantic relationships--whether regarded as consensual or otherwise--between individuals in inherently unequal positions should in general be avoided and in many circumstances are strictly prohibited by this policy.¹⁴

Our view is that there is a clear conflict of interest where an instructor engages in sexual relations with a student in circumstances where that instructor has, or may foreseeably have, an influence over the student's academic progress or career. We recommend that sexual relations that give rise to an inherent conflict of interest be clearly prohibited in the sexual violence policy, rather than left to be addressed indirectly in a conflict of interest policy that most students will never read. Further, in order to maintain the integrity and safety of the academic environment, particularly in a relatively small and tight-knit school like StFX, under the proposed policy all teaching staff have an immediate obligation to disclose any and all sexual contact with current StFX students. Such disclosure is necessary for StFX to address and manage any real or potential conflicts of interest.

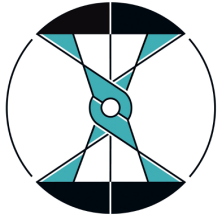
Immediate Measures

The enclosed Policy contains a detailed and rigorous procedure for imposing Immediate Measures (interim measures) on student respondents.

Immediate Measures, if imposed quickly and in consultation with the complainant, may play a critically important role in supporting the complainant student's ongoing access to education. Immediate Measures also minimize the disruptive and emotionally difficult period of uncertainty for both parties following a report, which can lead to escalating tensions and disruption for both parties.

Immediate Measures include a spectrum of non-disciplinary orders, from no contact orders up to and including a campus ban or suspension. Having regard to the importance of Immediate Measures for complainants, and the potential serious consequences for respondents, the process for imposing Immediate Measures needs to be rigorously procedurally fair. The IRP was asked to recommend a policy that is procedurally fair and defensible. Our view is that a Policy that will best permit StFX to defend serious Immediate Measures imposed on student respondents (such as a campus ban or suspension) needs to be much more detailed and rigorous than existed under past StFX policies. The level of detail recommended in this Policy is

¹⁴ Stanford University. [November 21 2017]. 1.7.2 Consensual Sexual or Romantic Relationships In the Workplace and Educational Setting [section 1]. Retrieved from the Administrative Guide: <https://adminguide.stanford.edu/chapter-1/subchapter-7/policy-1-7-2>



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consistent with the approach being adopted by some universities in their revised sexual violence policies, for example University of Alberta¹⁵.

We also note that the Policy contemplates that the Immediate Measures process can be used to achieve safety for the complainant and, where appropriate and on consent of all parties, avoid the necessity of a full investigation. It contemplates that the parties and StFX may agree to the ongoing or permanent imposition of Immediate Measures.

Transparency in Decision-Making

In our consultations, we heard about incidents in the past (in some cases from over a decade ago or more), including where male athletes were protected despite serious allegations (or convictions) involving sexual violence. Some who participated in the consultations were confident that these incidents are a thing of the past; others described more recent issues and suggested that this history has not yet been overcome. We also heard ongoing concerns about the behaviour of some varsity athletic team members (specifically men's basketball, football and hockey).

Most of this information was beyond the scope of the mandate of the IRP.

These concerns, however, informed the following terms of the enclosed Policy:

- The Vice President Students has exclusive jurisdiction to impose Immediate Measures on students (in consultation with the Risk Assessment team);
- The Vice President Students has exclusive jurisdiction to determine Discipline and Remedial Measures for a student following a finding that a student has breached the Sexual Violence Policy;
- The Policy does not require that, for example, the coach or athletics department, be consulted on any Immediate Measure or Discipline order; and
- Where the Vice President Students has consulted with, for example a coach or the athletics department in imposing Immediate Measures or Discipline, the fact of those consultations must be reflected in the VPS' decision, as well as the role played by those consultations.

¹⁵ University of Alberta. [July 18 2017]. Sexual Violence Policy. Retrieved from Sexual Violence Information and Resources: <https://policiesonline.ualberta.ca/PoliciesProcedures/Policies/Sexual-Violence-Policy.pdf>



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Further, the complainant has a right to request a Review of any Immediate Measures and the ultimate findings and outcome.

The above provisions of the Policy enhance transparency and accountability in decision-making and may assist in the process of building trust between student complainants and the StFX administration in relation to StFX's response to reports of sexual violence.

Conclusion

In preparing this Policy, we reviewed many other university policies and in some cases adopted or modified language for the purposes of StFX's context.

We have prepared this Policy at a time when at least four Universities in 2019 have updated their sexual violence policies (Mount St Vincent, Queen's, Carleton and McGill) and many others are in the process of implementing revisions (such as Dalhousie). Policies are evolving documents, and should be adjusted to respond to what does and doesn't work on the ground. We recommend that this Policy be reviewed in three years.

We also note that StFX is revising other workplace policies while the IRP process has been underway. We recommend that the StFX *Harassment and Discrimination Policy* and the *Conflict of Interest Policy* incorporate and refer to this Policy. Where a complaint of sexual violence is a component of a report (in addition to, for example, racial discrimination or conflict of interest), the report should be addressed and investigated under this Policy, with the Investigator's terms of reference including consideration of all other intersecting issues and policies.

It has been a pleasure to work with StFX and support you in your important efforts to address the harms of sexual violence on campus.

Yours very truly,

Joanna Birenbaum
Chair

Elaine Craig

Maria Dugas

SEXUAL VIOLENCE RESPONSE POLICY

BACKGROUND AND PURPOSE OF POLICY

St. Francis Xavier University (StFX) does not tolerate sexual violence. StFX is committed to maintaining a positive and respectful learning, living and working environment that respects the rights of StFX community members to learn, study, live and work free from sexualized violence.

This Policy applies to all members of the StFX community, including students, staff, faculty and others as defined in this Policy, whether the incident occurred on or off campus or on-line.

StFX recognizes that sexual violence is a serious problem in society and on university and college campuses. This societal problem is perpetuated by a culture in which prevalent attitudes, norms, social practices, and media, tolerate, normalize, justify, trivialize or excuse or outright condone sexual violence. These attitudes and social responses normalize sexual coercion and shift blame onto those who have experienced sexual violence. StFX affirms its commitment to fostering a culture on campus where attitudes and behaviours that perpetuate sexual violence are discouraged and rejected, Survivors are supported, and Disclosures and Reports of sexual violence are responded to seriously and in a manner that is procedurally fair.

The purpose of this Policy is to:

- i. Prohibit all forms of sexual violence at StFX
- ii. Affirm and enforce an affirmative standard of consent
- iii. Establish and maintain a climate and culture at StFX in which all members of the StFX University Community enjoy a safe and respectful learning, living and working environment
- iv. Establish the **Sexual Violence Safe Disclosure Office** to ensure that a specialized office within StFX is available to provide information and support to persons who have experienced sexual violence, to co-ordinate accommodations and access to services and supports for Survivors, and to assist students, staff, faculty or others who make a formal Report against a Member of the StFX Community
- v. Establish a procedure to respond promptly and seriously to Disclosures and Reports of sexual violence in a manner that is trauma-informed, procedurally fair, and treats all persons involved with dignity and respect
- vi. Establish the role of a Student Support Officer in the Student Life Office to provide information and support students who are Respondents to Reports of sexual violence, and
- vii. Identify referrals and information about this Policy to StFX staff, faculty and others who are Respondents to a Report of sexual violence.

STATEMENT OF PRINCIPLES

1.1 StFX does not tolerate any form of sexual violence.

1.2 StFX does not tolerate any form of retaliation by Respondents or others directed at persons who have made a Disclosure or formal Report under this Policy, nor at persons who have been named as Respondents in such Reports.

1.3 StFX acknowledges that sexual violence is inherently connected to inequality and power imbalances on campus and in our society; and that sexual violence and its harmful consequences, disproportionately impact members of social groups who experience intersecting grounds of discrimination or marginalization, such as on the basis of sex, gender, gender identity or expression, sexual orientation, Indigeneity, race, age, ability and class.

1.4 StFX is committed to providing supports to Survivors based on their personal experiences, whether or not the Survivor chooses to make a formal Report through the StFX internal reporting process or any external reporting process (such as reporting to police).

1.5 StFX recognizes that sexual violence is under-reported for a variety of reasons, including shame, stigmatization, self-blame, and fear of reprisals, isolation, ostracism or of being dismissed or disbelieved.

1.6 StFX is committed to reducing the barriers to Disclosure and Reporting of sexual violence at StFX to the extent possible. This includes a commitment to ensuring that Survivors are not judged or blamed for experiencing sexualized violence, for example because of how they were dressed or because they were intoxicated.

1.7 StFX recognizes that a barrier to reporting sexual violence on campus is the risk to Survivors of being subjected to a re-traumatizing reporting process. This Policy aims to protect the safety and respect the choices of Survivors.

1.8 StFX recognizes that specialized knowledge and training is required to investigate and determine allegations of sexualized violence and, further, that investigations by qualified investigators are an effective and fair method for gathering information, testing the evidence and credibility of parties and witnesses, and determining whether a breach of this Policy occurred.

1.9 StFX acknowledges that its obligation to maintain a non-discriminatory university environment under the *Nova Scotia Human Rights Act* includes an obligation to establish a procedurally fair and non-discriminatory process for responding to Reports of sexual violence.

1.10 In accordance with the above commitments, formal Reports of sexual violence under this Policy will be investigated by a qualified and trauma-informed investigator, in which the person who has reported experiencing sexual violence (the Reporting Party) and Respondent are

parties to the investigation process. The Reporting Party and Respondent are accordingly both entitled to copies of the Investigation Report, to copies of the decisions made by the Responsible Authority, including relating to discipline and remedial measures, and to seek Review of any decisions made by the Responsible Authority under this Policy.

1.11 This Policy replaces the StFX Student Code of Community Conduct in cases involving sexual violence. This Policy also applies to all Reports of sexual harassment and other forms of sexual violence involving employees of StFX. If there is any inconsistency between this Policy and the StFX workplace policies, including the *Harassment and Discrimination Policy*, this Policy governs.

1.12 Similarly, this Policy's terms on *Prohibiting Sexual Relations Between Teaching Staff and Students*, governs in the event of any conflict between it and the *StFX Conflict of Interest Policy* or any other relevant policy.

1.13 This Policy otherwise complements and does not take away the requirements under (or derogate from) other StFX policies, standards, regulations and applicable collective agreements. Where there is any express conflict between this Policy and the terms of a collective agreement, the collective agreement governs.

1.14 In the event that a Report under this Policy engages issues under other policies, such as intersecting issues of discrimination under the *Harassment and Discrimination Policy*, the Report will be investigated under this Policy, with the Investigator's terms of reference including consideration of all other relevant and appropriate intersecting issues and policies.

1.15 A person who has experienced sexual violence can access other legal processes at any time, including criminal (reporting to the police), civil, criminal injuries, professional regulatory or human rights processes.

1.16 StFX recognizes the importance of sexual violence prevention and education as well as ongoing training on this Policy at StFX, in order to achieve the purposes and goals of this Policy.

DEFINITIONS

2.1 Consent to Sexual Activity: means the voluntary agreement to engage in sexual activity and to continue to engage in the sexual activity. Consent means that all persons involved demonstrate through words or actions, that they freely and mutually agree to participate in the sexual activity.

- i. Consent must be obtained at the outset and at all stages of sexual activity on an ongoing basis
- ii. Consent can be withdrawn at any time
- iii. Silence or the absence of "no" is not consent

- iv. Consent cannot be assumed from passivity, immobility or an absence of resistance or perceived resistance
- v. Someone who is Incapacitated cannot consent
- vi. Past consent earlier on the day or night in question or on previous occasions does not imply contemporary, ongoing or future consent
- vii. There is no consent where one person abuses a position of trust, power or authority over another person
- viii. There is no consent where there is coercion, force, threat, or intimidation towards any person or where there is fraud or withholding of critical information that could affect a person's decision to consent
- ix. An individual cannot rely only on their subjectively held (mistaken) belief that the other person is communicating consent, but must take active and ongoing reasonable steps to confirm that consent
- x. An individual's state of intoxication is not a defence to sexual contact without consent.

2.2 Disclosure: refers to a Survivor or a witness sharing information about an incident of sexual violence. Survivors and others are encouraged to Disclose to the Sexual Violence Safe Disclosure Office, which provides information on options following a Disclosure, and coordinates accommodations and supports. A Disclosure is different than a Report and does not automatically initiate a formal investigation by StFX.

2.3 Formal Report: a formal Report ("**Report**") is the sharing of information for the purpose of initiating an investigation that could result in disciplinary and/or remedial measures against a Member of the StFX Community who is alleged to have engaged in sexual violence.

2.4 Incapacitated: means a person who does not have the capacity to give consent because they are, for example, unconscious or asleep or their judgment is impaired (such as by alcohol and/or drugs), and as such cannot appreciate the risks or consequences of the sexual act. A person does not have the capacity to give consent when they cannot appreciate the who, what, when, where, why, or how of the sexual activity. It is the responsibility of the person initiating or continuing sexual contact with a person who is intoxicated or impaired to establish affirmative consent at all times.

2.5 Member of the StFX Community: includes, but is not limited to, students, staff, administrators, faculty, librarians, members of the Board of Governors, adjunct or visiting faculty, postdoctoral fellows and retired professors.

2.6 Procedural Fairness: means a process

- i. Based on impartiality and absence of bias
- ii. Where the Respondent is informed of the allegations
- iii. Where the Reporting Party is informed of the Respondent's response
- iv. Which includes a meaningful opportunity for each party to know the evidence against them and respond

- v. In which both parties are given sufficient notice of interviews or meetings where they are expected to present or respond to evidence gathered as part of the process
- vi. Leading to a written decision that includes a sufficiently detailed explanation of the facts and analysis to enable the parties and any reviewing body to understand the decision and the basis for the decision.

2.7 Reporting Party: means a person who has initiated a formal Report under this Policy alleging that a Member of the StFX Community has committed sexual violence in breach of this Policy.

2.8 Respondent: means a person who is alleged to have engaged in sexual violence in breach of this Policy.

2.9 Responsible Authority: refers to the individual(s) designated under this Policy with the authority and responsibility to assess and impose Immediate Measures, receive Reports of sexual violence, appoint the Investigator, review the Investigator’s Report, and determine and impose Discipline or Remedial Measures. The Responsible Authority is:

- For Students: VP Students
- For Non-Academic Staff: VP Finance & Admin
- For Faculty, Librarians and Academic Staff (Teaching Staff): Academic VP & Provost
- For Board of Governors: President or designate

2.10 Sexual Assault: Any kind of sexual contact without consent. It can include kissing, sexual touching, oral or anal sexual acts, intercourse or other forms of penetration. Condom stealthing (the removal of a condom without the express consent of the sexual partner), is a form of non-consensual sexual contact and is sexual assault.

2.11 Sexual Harassment: means unwelcome or unwanted sexual conduct or comment(s) directed at an individual when that person reasonably knows or ought to know that the attention is unwanted or unwelcome. Sexual harassment includes jokes or remarks of a sexual nature (such as comments on a person’s appearance, body or clothing, questions about their sexuality or sexual history); leering, ogling or sexual gestures; sexual attention (such as persistent invitations for dates); reprisal for rejecting a sexual advance; and a single solicitation or advance or a series of sexual solicitations made by a person who is in a position to confer or deny a benefit on the recipient and who knows or reasonably ought to know the solicitation is unwelcome. Sexual harassment may also consist of unwelcome remarks based on gender which are not of a sexual nature but which are demeaning, such as derogatory gender based jokes or comments.

2.12 Sexual Violence: means any act targeting a person’s sexuality, gender or gender expression, whether the act is physical or psychological in nature, that is committed,

threatened or attempted against a person without that person's consent, and includes the *Criminal Code Offences* of sexual assault, indecent exposure, voyeurism and non-consensual distribution of sexual/intimate images. Sexual violence also includes sexual harassment and stalking, cyber harassment, and cyber stalking of a sexual nature. Sexualized violence can take place through any form or means of communication (e.g. online, social media, verbal, written, visual, "hazing", or through a third party).

2.13 Survivor: An individual who has experienced sexual violence, has Disclosed an experience of sexual violence, or identifies as a Survivor. There is a lot of debate about the terms "victim" and "survivor". It is up to the individual to choose how they want to be referred to. The term "Reporting Party" is used when a person Discloses that they have experienced sexual violence and has requested an Immediate Measure or initiated a formal Report under this Policy.

2.14 Teaching Staff: means every person delivering any component of an academic program, including but not limited to: undergraduate and graduate courses, supervision of graduate or undergraduate students, lab instructors, nurse educators, skills instructors, and services delivered by StFX librarians and archivists. "Teaching Staff" in this Policy also means teaching assistants and coaches of University athletic teams.

2.15 Unionized employee: Includes all employees of StFX who are subject to a collective agreement between StFX and a union, including all members of the StFX Association of University Teachers.

PROHIBITION ON SEXUAL RELATIONS BETWEEN TEACHING STAFF AND STUDENTS

Prohibition on Sexual Relations

3.1 Sexual relations between a student and a member of the Teaching Staff are prohibited when the staff member:

- i. Is in a position of academic authority over the student
- ii. Might in the foreseeable future be in a position to exercise authority over a student
- iii. Has or may have an influence over the student's academic progress or
- iv. Collaborates academically with the student.

Other Sexual Relations Strongly Discouraged

3.2 Sexual relations between Teaching Staff and students, in circumstances other than those described and prohibited in s.3.1 above, are strongly discouraged.

Mandatory Disclosure

3.3 If a member of the Teaching Staff and a student engage in sexual relations, the Teaching Staff member must disclose this engagement within 48 hours of the occurrence.

3.4 A Disclosure pursuant to s.3.3 may be made to the Academic Vice President or to a union representative who will provide the information to the Academic Vice-President.

3.5 Upon the coming into effect of this Policy, all Teaching Staff must disclose past and current sexual relations with any current StFX students in a timely manner in accordance with s.3.4 above, whether or not the the sexual relations occurred or commenced prior to the coming into force of this Policy.

Application to Graduate Students

3.6 This Policy does not apply to sexual relations between graduate students who also hold teaching positions, so long as one of the graduate students is not in a position of authority over the other graduate student.

Managing the Conflict of Interest

3.7. Where a conflict of interest has been disclosed, administrative measures will be implemented to ensure that the Teaching Staff member has no academic authority or influence over the student concerned.

Presumption of Sexual Violence

3.8 Where a Teaching Staff member fails to disclose sexual relations with a student in accordance with this Policy, it is presumed that the relations are a breach of this Policy and may be investigated as sexual violence under this Policy.

SCOPE OF POLICY

4.1 This Policy applies to all Members of the StFX Community, including but not limited to students, staff, administrators, faculty, librarians, members of the Board of Governors, adjunct or visiting faculty, postdoctoral fellows and retired professors.

4.2 This Policy applies to Disclosures and formal Reports of sexual violence whether the incident(s) occurred on or off campus or through social or electronic media.

4.3 Any Member of the StFX Community who has experienced sexual violence may seek accommodations and supports under this Policy. A formal Report is not necessary to access support, accommodation or Immediate Measures.

4.4 A formal Report of sexual violence may be investigated in circumstances where the Respondent is a current Member of the StFX Community. A “current” Member of the StFX Community for the purposes of a formal investigation includes Respondents who may not presently be at StFX but have an ongoing relationship with the university. Where a formal Report is made against a person who is not currently a Member of the StFX Community, StFX may suspend the investigation.

4.5 StFX is not required to engage the investigation procedure under this Policy if the Respondent is not a Member of the StFX Community, but may take other steps in response to a

Disclosure or Report, for example by prohibiting guests or contractors or others who may provide services to StFX or its members, from entering on StFX property.

SEXUAL VIOLENCE SAFE DISCLOSURE OFFICE

5.1 The Sexual Violence Safe Disclosure Office (“Safe Disclosure Office” or the “Office”) is intended to be a single point of contact, support, and liaison for Members of the StFX Community who have experienced sexual violence. The Office will provide individualized information, advice and assistance. The Office will be staffed by persons who have training and/or experience in trauma-informed practice, gender-based violence, sexual assault law, and sexual violence investigations and procedures.

5.2 The support services offered by the Safe Disclosure Office include:

- Receiving confidential Disclosures
- Assisting with safety planning
- Identifying and co-ordinating appropriate academic, residence, employment or other accommodations in consultation with the appropriate StFX departments
- Providing information about referrals to internal services, such as StFX Health and Counselling, the Gender and Sexual Diversity Advisor, Indigenous Students Advisor, Students of African Descent Advisor, or International Students Advisor
- Providing information about referrals to external organizations, such as the Antigianish Women’s Resource Centre and the Sexual Assault Nurse Examiner (SANE)
- Providing information about confidentiality and privacy, and the limits on confidentiality
- Providing information about internal options under this policy, including
 - Immediate Measures
 - formal Reporting and investigation
 - Review of decisions made under this policy
 - Alternative Resolution, where appropriate
- Assisting with making a formal Report, including supporting the individual in preparing any written statement
- Acting as a liaison with the Investigator appointed to conduct an investigation
- Acting as a support person during the investigation
- Receiving allegations regarding acts of retaliation relating to a Disclosure or a Report
- Providing information about other reporting procedures (such as criminal or civil)
- Reminding Survivors of the importance of confidentiality at all stages of the reporting process, and assisting with balancing confidentiality with the need for support and avoiding isolation.

5.3 The Safe Disclosure Office will also develop, implement and promote the sexual violence prevention and education activities at StFX.

5.4 The Safe Disclosure Office may be reached by:

- In person at: [LOCATION]
- Email at:
- Telephone at:

SUPPORTS FOR RESPONDENTS

Student Respondents

6.1 Where the person alleged to have committed an act of sexual violence is a student, they will be supported by persons trained as Student Support Officers in the Student Life Office. The Student Support Officer will:

- Provide information to the Respondent on Immediate Measures, investigation, formal Reports and Review of decisions, under this Policy
- Act as a support person for the student throughout these processes
- Act as a liaison and provide support and co-ordination in academic or residence accommodations requested by the Respondent or arising from any Immediate Measures
- Assist the Respondent in providing information to StFX in any risk assessment or imposition of Immediate Measures, and/or to request a reconsideration of Immediate Measures
- Assist the Respondent in preparing the Respondent's statement(s) or responses(s) related to any Immediate Measure, investigation or Request for Review of a decision under this Policy
- Provide information about confidentiality and privacy and the limits of confidentiality
- Remind Respondents of the importance of confidentiality at all stages of the reporting process, and assist with balancing confidentiality with the need for support and avoiding isolation.

Faculty and Unionized Respondents

6.2 Where the person alleged to have committed an act of sexual violence is a faculty or unionized staff member, they may obtain information about the process and their rights under this Policy from the Human Resources office, and/or may be supported by the union representative pursuant to the terms of the relevant collective agreement.

Non-Unionized Staff and Other Respondents

6.3 Non-unionized staff and other Respondents (such as volunteers) may obtain information from Human Resources about this Policy and referrals to community supports.

URGENT OR EMERGENCY SUPPORT

7.1 Emergency support is available 24/7 by:

- Seeing the Sexual Assault Nurse Examiner (SANE), 1-877-880-7263
 - The role of the SANE is to provide specialized medical care for sexual assault, as well as information and emotional support. They may also collect and preserve forensic evidence for the purposes of a criminal investigation if the Survivor wishes. Generally, DNA evidence can only be collected **within 72 hours (3 days)** of the sexual assault, and should be collected as soon as possible. For more information on the SANE see: <https://www2.mystfx.ca/student-life/sexual-assault/sane>
- Calling 911 (Police/RCMP, Ambulance)
- Calling StFX campus security at 902-867-4444
- Calling or going to the emergency department at
 - St. Martha's Hospital, 25 Bay Street, Antigonish (902-867-4500, ext. 4229)

7.2 For students living in residence, immediate or emergency support can also be accessed by contacting a Resident Assistant or Hall Director.

7.3 StFX Health and Counselling Services may also be accessed during business hours.

DISCLOSURE

Accommodations and Supports

8.1 When a Member of the StFX Community makes a confidential Disclosure of sexual violence, they are entitled to access supports, resources and accommodations. Accommodations and supports that may be available to Members of the StFX Community who have Disclosed or Reported sexual violence include:

- Safety planning
- Academic accommodations:
 - class schedule changes
 - assignment or exam extensions or deferrals
 - late withdrawal from a course without penalty
- Employment accommodations:
 - temporary work reassignment
 - location reassignment
 - scheduling change
- Student residence re-location

8.2 To avoid the Survivor being required to make multiple Disclosures, accommodations and supports should be co-ordinated through the Safe Disclosure Office.

First Disclosure Often to a Person in Trust

8.3 StFX recognizes that persons who have experienced sexual violence, frequently first disclose to a trusted person, such as a friend, colleague, faculty member, union representative, Residence Assistant or custodial services staff.

Faculty/Staff Must Provide Information About the Safe Disclosure Office to the Survivor

8.4 All StFX employees who receive confidential Disclosures must provide information to the Survivor about the availability of the Safe Disclosure Office as the central site to receive confidential support and information about options. It is the choice of the Survivor whether to access this service.

8.5 StFX will offer annual training on this Policy, the Safe Disclosure Office, and best practices for Members of the StFX Community in responding to Disclosures of sexual violence. Such training shall be mandatory orientation training for all new staff and faculty. Each department and faculty of StFX is encouraged to develop training appropriate to their role within StFX.

Amnesty from Drug/Alcohol Misconduct by Survivors

8.6 StFX recognizes that some individuals may be reluctant to come forward to Disclose or Report sexual violence if they were drinking or using drugs at the time the sexual violence took place, particularly if to do so violated an employment, student, or athletic code of conduct. A Member of the StFX Community who makes a Report in good faith will not be subject to disciplinary actions by StFX for violations of StFX policies related to drugs or alcohol at the time the sexual violence took place.

The Role of the Safe Disclosure Office and Recording Names of Alleged Perpetrators

8.7 StFX acknowledges that sometimes Survivors Disclose sexual violence because they want StFX to 'know' or they want there to be some form of 'record', but don't want to take further steps. The Safe Disclosure Office is responsible for keeping track of this information. Initial Disclosures to trusted persons, such as to a faculty member or colleague, are not sufficient for this purpose. While the trusted person may have an obligation to inform the Responsible Authority or the Safe Disclosure Office (see s.9.3 of this Policy), Survivors are encouraged to Disclose to the Safe Disclosure Office directly or give permission to the trusted person to provide information to the Safe Disclosure Office if their goal is for there to be some "record" of their experience, but not take any further steps.

Co-ordination of Information

8.8 Where StFX campus security, Residence Life, or Human Resources, receive a Disclosure or Report of sexual violence, a copy of the incident Report or information on the incident and the persons involved, shall be provided to the Safe Disclosure Office (except to the extent this is inconsistent with the terms of a collective agreement).

CONFIDENTIALITY

Disclosures are Confidential

9.1 Ensuring confidentiality is a key principle in creating an environment and culture in which Survivors feel safe to Disclose and seek support and accommodation. StFX is committed to ensuring that such an environment and culture exists at the university.

Limits on Confidentiality of Disclosures: Sharing Information for Access to Accommodations

9.2 In order to access various employment, residence or academic accommodations, it may be necessary for the Survivor to provide consent to share some information with persons responsible for those accommodations, for example in order to ensure no contact with the Respondent.

- Employment accommodations will be discussed with the Human Resources Director
- Residence accommodations will be discussed with the Director of Student Life or their delegate
- Academic accommodations will be discussed with the appropriate Dean(s) and faculty members as necessary.

Limits on Confidentiality of Disclosures: StFX Duty to Act

9.3 StFX cannot guarantee absolute confidentiality in all cases of a Disclosure. StFX may be required to disclose information and/or undertake its own investigation where:

- i. There is a serious risk of harm to self or others
- ii. There is objective evidence of sexual violence, such as evidence of sexual violence in the public realm (e.g. a video posted on social media) or otherwise recorded or documented and available to StFX
- iii. There is a risk to the safety of the university and/or broader community
- iv. Where records are subpoenaed
- v. Reporting or other action is required or authorized by law.

9.4 Examples of cases where StFX may have a duty to undertake its own investigation or take other steps without the consent of the Survivor include cases where there are multiple complainants or Respondents, multiple Disclosures have been made against the same person or the sexual violence is in the public realm (e.g. a video-recorded act against an intoxicated person). In such cases, StFX will provide notice and support to the Survivor where the Survivor is known, and the Survivor has the right to decide whether to participate in any investigation.

Disclosures to Trusted Faculty or Staff

9.5 If a Disclosure is made to a trusted person at StFX who is someone other than a staff member at the Safe Disclosure Office, the trusted person may have an obligation to inform the Responsible Authority or the Safe Disclosure Office, who will assess whether StFX has a legal duty to act as set out above.

9.6 If a Disclosure is made to a StFX health professional, the *Personal Health Information Act* only permits release of information without an individual's consent in narrow circumstances, such as where the health professional believes the Disclosure will avert or minimize an imminent and significant danger to the health or safety of any person.

Confidentiality to Maintain the Integrity of an Investigation

9.7 Following a Report, information about the investigation and Report will only be shared by the Investigator and/or StFX staff, as is necessary for the purposes of the investigation.

9.8 StFX recognizes that a Respondent may need to share some information in order to facilitate their response; a Reporting Party may need to share some information in order to identify witnesses and assist the investigation; and both parties may need to rely on their respective circles of support, such as close friends, family, therapists or legal counsel.

9.9 StFX further recognizes that silencing persons who have Disclosed or Reported sexual violence, by telling them that they cannot talk about the experience because of an ongoing reporting process, is a barrier both to reporting and to healing.

9.10 Having regard to the above, StFX encourages Reporting Parties and Respondents to ensure that any communications about an incident(s) of sexual violence during a reporting process do not taint or undermine the integrity or fairness of the process. If communications adversely impact the integrity of the investigation, the outcome of the process may be negatively impacted.

Confidentiality and Compliance with Law

9.11 StFX must comply with the requirements of Nova Scotia legislation, including the *Freedom of Information and Protection of Privacy Act* and *Personal Health Information Act*, as well as the *Human Rights Act* and the StFX privacy and records management policies.

9.12 Personal information is confidential, except as outlined in this Policy or where release of personal information is required by law, such as where records are subpoenaed or where a Disclosure or Report is made that impacts a child under the age of sixteen.

9.13 Information that a Respondent was found to have breached this Policy and any disciplinary or remedial measures ordered, are collected for the purposes of implementing and enforcing this Policy, including promoting the principles and purposes of this Policy and respecting the statutory human rights of the person who Reported sexual violence, and may accordingly be released to the Reporting Party in keeping with these purposes.

Statements Compellable in Other Proceedings

9.14 Information or statements provided by a Reporting Party or Respondent to StFX following a Disclosure or Report may be compellable in any related civil or criminal proceeding.

PUBLIC STATEMENTS BY SURVIVORS OR OTHERS

10.1 Survivors and those impacted by sexualized violence are free to tell the story of their own experiences. During an ongoing investigation, however, confidentiality should be maintained, as set out in s.9.10 above.

10.2 Survivors and others should be aware that if they choose to make public statements about their experiences, they may be putting themselves at risk of civil lawsuits by those who believe they have been defamed or had their privacy rights violated. Individuals should exercise care and judgment when deciding whether to make public statements, or what information to include in such public statements, and should seek legal or other advice if unsure.

THIRD PARTY OR ANONYMOUS REPORTING

11.1 Where a person witnesses or has reasonable concerns about an incident(s) of sexual violence, they may submit written or oral information to the Safe Disclosure Office.

11.2 A Third Party Report is where information about an incident of sexual violence is shared by an identifiable person who is not the Survivor/person who directly experienced the sexual violence. Where the information relates to an identifiable or identified Survivor, the consent of that Survivor should be sought before the information is provided to StFX.

11.3 An Anonymous Report is where information about an incident of sexual violence is shared in a form that is anonymous, for example when the Safe Disclosure Office receives a written submission with no name attached to it, or a person attends the Office but will not disclose their name. An Anonymous Report may be made by a Survivor or a Third Party.

11.4 StFX may be unable to investigate an Anonymous or Third Party Report due to lack of information or out of respect for the individual impacted by the sexual violence who has decided not to come forward.

11.5 Examples of where StFX may initiate its own investigation following one or more Third Party or Anonymous Reports includes where there is social media or other evidence documenting sexual violence and/or where persons witnessed sexual violence against a person who was incapacitated, unconscious or asleep. Where there are multiple Disclosures and one or more persons has made a formal Report but others have only made a confidential Disclosure, StFX may investigate the totality of the conduct by the Respondent, including by revealing the confidential Disclosures to an investigator in the course of the investigation or by asking those who made confidential Disclosures to participate in the investigation.

11.6 Where StFX receives multiple Third Party or Anonymous Reports, StFX may also explore what steps may be taken short of an investigation (which would require release of the identity

or identities of the Survivor(s)), such as targeted education and training, and/or increased campus security or monitoring of specified locations or events.

11.7 Where StFX proceeds with an investigation following a Third Party or Anonymous Report, the Survivor has the right to choose not to participate. StFX will consult with that person, if they are willing, on the risks or concerns to them in response to the investigation and how those risks can be minimized or addressed. A refusal by the Survivor to participate, however, may impede the ability of StFX to meaningfully investigate.

11.8 The Safe Disclosure Office shall maintain data on Anonymous or Third Party Reports.

11.9 Information provided by third party or anonymous sources may inform training or education to address systemic concerns or other policy changes at StFX.

IMMEDIATE MEASURES

12.1 Immediate Measures may be imposed on a Respondent at any time following a Disclosure of Sexual Violence. A formal Report is not required for Immediate Measures to be requested or imposed. The person who Disclosed sexual violence will be referred to as the “Reporting Party” in this section.

12.2 In most cases, an assessment of whether to impose Immediate Measures will be initiated at the request of the Reporting Party. Such requests will be processed through the Safe Disclosure Office.

12.3 StFX may impose Immediate Measures on its own initiative, where there is a risk of harm to the Reporting Party or to the StFX community or any Member of the StFX Community.

12.4 Where a Reporting Party requests Immediate Measures following a Disclosure, the Reporting Party must consent to the release of their name and the general nature of the allegations to the Respondent. The release of the name and some information about the allegations is necessary for the process to be procedurally fair.

12.5 Prior to the assessment and imposition of any Immediate Measures, the Reporting Party shall be consulted and their reasonable wishes and concerns taken into account.

12.6 A Risk Assessment team shall be established, comprised of a representative from the Safe Disclosure Office, the Director, Health, Counselling & Accessible Learning and, as appropriate and depending on the nature of the case and the parties involved, one or more of:

- The other Responsible Authorities
- Director, Student Life
- Director, Human Resources

- Representative from Residence Life
- Director, Risk Management

12.7 In all cases involving student Respondents, the Responsible Authority shall determine the imposition of Immediate Measures in consultation with the Risk Assessment team. In cases involving employee Respondents, the Risk Assessment team may be consulted consistent with the terms of any collective agreement and StFX management practices and policies.

Respondent Is Required to Disclose Any Criminal Charges and Conditions

12.8 A Respondent is required to provide to StFX information on any current criminal charges faced by the Respondent and criminal conditions, such as bail or conditions of release, relating to the incident(s) of sexual violence that is the subject matter of the Disclosure or Report.

Procedure for Imposing Immediate Measures on StFX Employees

12.9 Where the Respondent to a Disclosure or Report of sexual violence is a StFX employee, the procedure for imposing Immediate Measures shall follow the applicable collective agreement or StFX management practices and policies in addition to paragraphs 12.1-12.10 in this Policy.

12.10 Where Immediate Measures are imposed on a StFX employee, the Reporting Party shall be provided with information about the terms of the Immediate Measures as they impact the Reporting Party.

Procedure for Imposing Immediate Measures on StFX Students

12.11 The procedure for imposing Immediate Measures on StFX students is set out in paragraphs 12.-1 – 12.8 and 12.11 – 12.33 of this Policy.

12.12 Immediate Measures may be imposed on a StFX Student at any time following a Disclosure, including during the course of an investigation. Immediate Measures include, but are not limited to:

- No contact/communication orders
- Arrangements to minimize encounters in learning, living or working environments such as changes in class schedules or sections, residence location or work schedules or assignments
- Restricting campus privileges of the Respondent
- Restricting access to part or all of the University campus on the part of the Respondent, up to and including a campus ban
- Administrative suspension of the Respondent.

Test for Imposing Immediate Measures

12.13 Immediate Measures may be imposed on a student Respondent by the Responsible Authority where there is reasonable cause to believe that Immediate Measures are required:

- To protect the safety, security or academic or employment well-being of the Reporting Party or any other Member of the StFX Community
- To address any risk posed by the Respondent to the safety of the Reporting Party and/or to the StFX community
- To maintain confidentiality and/or the integrity of a StFX investigation or anticipated investigation
- To discourage or prevent retaliation
- To minimize disruption to the learning, residence or working environment at StFX
- To maintain and build community trust and confidence in StFX
- To maintain and promote a campus environment in which sexual violence is not tolerated.

12.14 In addition to the above factors, the Responsible Authority shall consider:

- The wishes and expressed needs of the Reporting Party
- The views of the Respondent, if available, including any consent to Immediate Measures
- The nature and seriousness of the alleged conduct
- The impact of the conduct on the Reporting Party and/or on the StFX community
- The impact of the proposed measures on the Respondent, and
- Whether the Respondent is in a position of trust or authority

12.15 Any Immediate Measures imposed shall be as minimally restrictive as possible in the circumstances, to meet the above goals.

Student Respondents – Procedure for Imposing Immediate Measures

12.16 The Respondent shall receive notice in writing from the Responsible Authority that it either intends to impose Immediate Measures, or in cases under 12.27, that the Responsible Authority has imposed Immediate Measures.

12.17 To maintain confidentiality, notice shall be provided to Respondent students through the the Student Life Office.

12.18 The Respondent may provide a response to the Responsible Authority within 48 hours following receipt of the notice.

12.19 The Respondent’s response may include consent to the Immediate Measure on an interim basis, with a request that they be reconsidered or reviewed based on additional information, within a specified period of time.

12.20 The Reporting Party will be provided a copy or summary of the Respondent’s response to the imposition of Immediate Measures, and 24 hours to respond. The timeline for the Reporting Party’s response may be extended in extenuating circumstances.

12.21 The Responsible Authority, in consultation with the Risk Assessment Team, shall consider the information provided by the parties in making the decision on Immediate Measures.

12.22 Within 48 hours of the imposition of Immediate Measures on a Respondent, the Responsible Authority shall deliver a letter to the Respondent setting out the decision made, the information relied on in making that decision, and the reasons for the decision. Where the Responsible Authority has relied on information from persons other than the Risk Assessment Team, such as a faculty member or coach, the Responsible Authority shall refer explicitly to that information and its impact, if any, on the decision made.

12.23 At any time either the Respondent or the Reporting Party may request that the Responsible Authority modify or remove the Immediate Measures. Such request should be made through the Safe Disclosure Office (for the Reporting Party) or the Student Life Office (for the Respondent).

12.24 A request for reconsideration of the Immediate Measures is appropriate in cases where there has been a change of circumstances. Where a request to reconsider the Immediate Measures is made, the other party shall be advised of the request and provided an opportunity to respond. The Responsible Authority may summarily deny repetitive requests for reconsideration.

12.25 Regardless of request by the parties, Immediate Measures shall be reviewed by the Responsible Authority once a term.

12.26 If Immediate Measures are amended or modified by the Responsible Authority, a decision letter confirming any changes, the measures remaining in place, and the reasons for the amendments, shall be provided to the Respondent and the Reporting Party.

Student Respondents – Immediate Measures Without Notice

12.27 In urgent circumstances, such as where delay may cause harm to the Reporting Party and/or to the StFX community or any Member of the StFX Community, the Responsible Authority may impose Immediate Measures immediately and prior to hearing from the Respondent.

12.28 In such cases, Notice in writing of the Immediate Measures shall be provided to the Respondent through the Student Life Office within 24 hours of the decision being made. The Respondent shall have an opportunity to respond within 7 days. The Responsible Authority shall consider any submissions or new information provided by the Respondent and may modify or reconfirm the Immediate Measures.

Student Respondents - Expedited Investigation

12.29 If the Immediate Measure is a suspension or campus ban, any formal investigation will be undertaken on an expedited basis.

Student Respondents - Accommodations

12.30 Student Respondents may be entitled to accommodations arising from Immediate Measures (such as in the case of a campus ban) which may be requested through the Student Life Office.

Student Respondents – Continuation of Immediate Measures

12.31 Immediate Measures imposed on a student Respondent may remain in place indefinitely where:

- A Disclosure but no formal Report has been made and no investigation initiated
- The Immediate Measures meet the needs of the Reporting Party and that person consents
- The Respondent consents to the continuation of the Immediate Measures, and
- The Immediate Measures address the safety, remedial, and campus culture responsibilities of StFX.

12.32 Despite any agreement by the parties to continue the Immediate Measures indefinitely, any party may subsequently request a reconsideration of the Immediate Measures, or the Reporting Party may elect to initiate a formal Report.

12.33 Where there is an agreement to continue the Immediate Measures indefinitely, they will not be subject to automatic review each term under paragraph 12.25.

PUBLIC STATEMENTS BY STFX

13.1 The Responsible Authority, in consultation with the Risk Assessment Team, shall determine whether a public bulletin or statement will be issued by StFX arising from a Disclosure or Report of sexual violence.

13.2 Decisions about whether to issue a public statement about a Disclosure or Report will be made consistent with the principles and commitments in this Policy, including the university's commitment to: trauma-informed approaches; respecting the needs and agency of persons who Disclose sexual violence; encouraging Disclosures and Reporting of sexual violence; maintaining a campus free from sexualized violence; and establishing community trust and confidence in StFX that sexual violence is not tolerated.

13.3 Public statements by StFX will not disclose the personal information of the person who Disclosed or was impacted by sexualized violence without the consent of that person.

13.4 StFX reserves the right to correct misleading or inaccurate public information.

13.5 Public statements by StFX will comply with applicable privacy legislation and the terms of any collective agreement.

ALTERNATIVE RESOLUTION

14.1 In appropriate circumstances, a Survivor may wish to resolve the matter without a formal Report, or prior to the conclusion of the formal Reporting process. A Respondent may also seek to initiate an alternative resolution process.

14.2 At no time should either a Survivor or Respondent be pressured to participate in an alternative resolution process. Alternative resolution will only be explored with the consent of the Survivor, Respondent and StFX.

14.3 Parties that engage in alternative resolution, do so on a 'without prejudice' basis. In other words, either the Survivor or Respondent may withdraw from the process at any time and any information or admissions shared in the process cannot be used against either party in a formal Report and investigation under this Policy or in any other proceeding.

14.4 The foundational principle and starting point of an alternative resolution is the Respondent's acceptance of responsibility for causing harm.

14.5 The goals of the process are acceptance of responsibility, mutual understanding, safety and education/remediation.

14.6 An alternative process does not require any face to face/in-person interaction between the Survivor and the Respondent.

14.7 The outcomes of a facilitated alternative resolution process may include an apology letter from the Respondent, a written agreement that includes behavioural expectations, an undertaking to engage in counselling, including drug and alcohol counselling, and/or education or training, such as related to anti-violence, anti-oppression or consent, or a voluntary agreement by the Respondent to measures such as permanent campus restrictions, withdrawal from StFX, or a year's leave of absence from StFX.

14.8 Alternative resolution processes must be facilitated by a person with training appropriate to the seriousness and nature of the allegations and the context of the parties, and with training or experience in gender-based violence, trauma-informed practice, and mediation or counselling.

14.9 Alternative resolution is presumptively inappropriate where previous Reports have been made about the Respondent or where StFX has received multiple Disclosures about the Respondent.

14.10 A record of the alternative resolution shall be maintained by StFX in the student file for a period of four years, and in the employee files of StFX employees in accordance with the terms of any collective agreement or applicable employee policies.

PARALLEL CRIMINAL PROCEEDINGS

15.1 Where a student Respondent has been charged criminally for a sexual violence related offence, StFX will suspend any ongoing investigation under this Policy until resolution of the criminal charge, unless:

- The investigation is complete (all interviews are finished) or the Report has been submitted to the Responsible Authority
- The police or Crown do not object to StFX commencing or continuing the investigation and the student Respondent consents, or
- Exceptional circumstances exist, such as relating to the health and safety of the Reporting Party or campus community that is not otherwise addressed by any criminal conditions or Immediate Measures imposed.

15.2 Where an employee of StFX has been charged criminally for a sexual violence related offence, StFX may choose, after consultation with the Survivor, to continue or suspend any investigation or alternative resolution process under this Policy, as determined appropriate by StFX.

15.3. A Respondent is required to provide to StFX information on any current criminal charges faced by the Respondent and criminal conditions, such as bail or conditions of release, relating to the incident(s) of sexual violence that is the subject matter of the Disclosure or Report (see also s. 12.8 of this Policy).

FORMAL REPORTS

16.1 A formal Report (“Report”) is the sharing of information by the person who is reporting sexual violence, (“the Reporting Party”) for the purpose of initiating an investigation that could result in Immediate Measures, disciplinary action or remedial measures being imposed on the Respondent Member of the StFX Community.

16.2 StFX’s process in response to a Report is guided by the following:

- i. Trauma-informed practice
- ii. Avoidance of discriminatory assumptions and stereotypes about persons who experience and/or report sexual violence
- iii. Non-adversarial approaches to permitting the parties to ask questions and test the evidence
- iv. Supports for the Reporting Party and the Respondent
- v. The rights of both the Reporting Party and Respondent as parties
- vi. Procedural Fairness
- vii. Timeliness, and
- viii. Maintaining confidentiality to the extent possible.

The Investigator's Mandate

16.3 The role of the Investigator is to make findings of fact and determine whether the Respondent engaged in sexual violence in breach of this Policy (and any related Policy that may be included in the scope of the investigation).

Initiation of Report

16.4 All Reports of sexual violence should be submitted through the Safe Disclosure Office. The Safe Disclosure Office will then forward the Report to the Responsible Authority. Where a formal Report is made to another office (such as Human Resources or Human Rights and Equity), the relevant office shall forward the Report to the Safe Disclosure Office.

16.5 A Report may be initiated in a variety of ways, depending on the needs and circumstances of the Reporting Party. It may be initiated by:

- i. A brief written or oral Report that contains the name of the Respondent, the date(s) and general nature of the allegations, and a request that the details of the Report be taken by the Investigator, so as to avoid the Reporting Party having to tell their story on multiple occasions
- ii. An oral Report to the Safe Disclosure Office, which is summarized by the Office and signed and approved by the Reporting Party, prior to submission to the Responsible Authority, or
- iii. A written statement by the Reporting Party providing details of the incident(s).

No Deadline for Making a formal Report

16.6 There is no deadline for making a Report under this Policy. StFX recognizes that Survivors may require time to Disclose and/or Report. Survivors are encouraged to report as soon as they have made the decision and are able to do so, so as to minimize any loss of evidence due to the passage of time. If the Respondent is no longer a Member of the StFX Community, StFX is not required to investigate under this Policy.

Preliminary Screening by Responsible Authority

16.7 On receipt of the Report, the Responsible Authority shall determine whether:

- i. The conduct, if found to have occurred, falls within the scope of this Policy
- ii. The Respondent is a Member of the StFX Community, and
- iii. Immediate Measures are appropriate (if they have not already been imposed).

Appointment of Investigator

16.8 If the Responsible Authority determines that the Report falls within the scope of the Policy, the Responsible Authority shall appoint an internal or external Investigator.

16.9 For the first three years of this Policy, all Reports of Sexual Assault shall be investigated by an external Investigator from a roster of external investigators selected by the Responsible Authorities and the Director of Human Rights and Equity. All investigators on the roster shall have experience and training in gender-based violence, sexual assault law, trauma informed practice, sexual violence investigations, procedural fairness and the manner in which persons of diverse identities might experience and respond to sexual violence.

16.10 All other Reports shall be investigated by the Director of Human Rights and Equity or another similarly trained internal investigator with experience in sexual violence investigations and knowledge or training in trauma-informed practice, gender-based violence, sexual harassment and sexual assault law, and procedural fairness.

Procedure for Investigating Formal Reports Where the Respondent is a StFX Employee

16.11 Where the Respondent to a Report is a StFX employee, the procedure for investigating the Report shall follow the applicable collective agreement or StFX management practices and policies in addition to paragraphs 16.1-16.15 in this Policy.

16.12 The Reporting Party shall be provided with a copy of the Investigation Report related to their Report, including any findings of breach of this Policy or of any other StFX policy. The Report provided to the Reporting Party shall be redacted of identifying information of any person other than the Reporting Party. In cases where there are multiple Reports, each Reporting Party will only receive the portion of the Investigator's Report that relates to their allegation.

16.13 In a circumstance in which an Investigation Report has not been prepared (for example, the employee quit or was terminated without the necessity of a full investigation), the Reporting Party shall be advised that no Investigation Report was prepared.

16.14 Where the Respondent is a non-unionized employee, the Reporting Party shall be promptly informed following submission of the Report, of the procedure under applicable StFX management policies that will be undertaken by StFX to respond to the Report.

16.15 Where the Responsible Authority imposes disciplinary or remedial measures on a Respondent employee, the Reporting Party shall be informed of the disciplinary and remedial measures imposed in response to their Report. The Reporting Party shall keep the decision confidential, except to the extent that it is necessary to share information to enforce the disciplinary/remedial measures.

Procedure for Investigating Formal Reports where the Respondent is a Student

Written Notice to Student Respondent

16.16 Within five (5) business days of receiving the Report, the Responsible Authority shall provide written notice to the Respondent which includes:

- i. A summary of the allegations and that an investigation will be initiated
- ii. A copy of the written statement of the Reporting Party, if one has been prepared
- iii. A copy of this Policy
- iv. A direction that any direct or indirect reprisal against the Reporting Party constitutes a disciplinable breach of this Policy
- v. A direction to keep the Report confidential in order to maintain the integrity of the process, and
- vi. Contact information for the Student Conduct Officer(s) in the Student Life Office.

Notice to Reporting Party

16.17 The Reporting Party and the Safe Disclosure Office shall receive a copy of the Notice sent to the Respondent.

16.18 The Reporting Party may elect or request to receive all communications from StFX and/or the Investigator, through the Safe Disclosure Office rather than directly.

Investigator May Summarily Dismiss Report

16.19 The Investigator may dismiss the allegations summarily, if the Investigator finds that the Report is frivolous, vexatious or made in bad faith. There is no appeal of this decision.

16.20 In cases where the Investigator dismisses the Report summarily, the Investigator's Report shall provide the factual basis and reasons for the summary dismissal.

Role of Support Persons for Reporting Party and Student Respondents

16.21 In addition to any support offered by the Safe Disclosure Office (for the Reporting Party) and the Student Life Office (for Respondents), Reporting Parties and Respondents may be supported by a support person, including legal counsel, in the investigation.

16.22 Support persons may not speak for the party. Evidence about what happened, whether in written or oral form, must be provided by the party directly. Letters or written submissions on behalf of a party will not be received as evidence in the investigation.

16.23 The role of legal counsel or a support person may include:

- Emotional support for the Reporting Party or Respondent
- Supporting the Reporting Party or Respondent in preparing to tell their evidence to the Investigator
- Assisting the Reporting Party or Respondent in interview(s) with the Investigator, as permitted by the Investigator, for example by asking questions where the witness forgets key information due to the stress of the process
- Observing the investigation interview(s), including with a view to issues of procedural fairness

- Asking questions of the Investigator relating to timing and next steps in the process, however, the Investigator may refuse to permit such process-type questions from a support person who unduly interrupts or is otherwise disruptive to the investigation.

Investigator Determines Investigation

16.24 The Investigator shall independently develop the approach to the investigation, which will include interviewing the parties and any witnesses as determined by the Investigator.

16.25 The Investigator may require production of relevant documents from the parties or witnesses, such as texts, emails, or other social media or recorded evidence.

16.26 The Investigator shall communicate with the Reporting Party, Respondent and witnesses, to schedule interviews and receive documents, if any.

16.27 Interviews with the Investigator may be held off campus at the request of either party or where necessary to maintain the confidentiality and integrity of the investigation.

16.28 Where a Reporting Party has submitted a written statement, the Investigator may require the Respondent to prepare a written response, prior to conducting interviews.

16.29 The Investigator may conduct multiple interviews with each party, in order to test the evidence and assess credibility.

Each Party has the Right to Know and Respond to Evidence

16.30 Each party has the right to know and respond to the evidence. The Respondent shall be provided with the Reporting Party's written Report, statement obtained in the interview, or summary of the interview, and an opportunity to respond. The Reporting Party shall be provided with the Respondent's written response, statement obtained in the interview, or summary of the interview, and an opportunity to respond. The Investigator will provide both parties with a reasonable opportunity to respond to any new information obtained during the investigation, including statements of witnesses and documentary evidence.

16.31 If the parties have copies of texts, emails, social media, video recordings or campus security or residence incidence reports or other similar documents related to the allegations, these should be produced to the Investigator and the other party, prior to any interviews being conducted.

16.32 If a party does not produce relevant documents prior to the interviews as described above, the Investigator may refuse to accept the evidence or may draw an adverse inference against the party in question.

Opportunity to Pose Questions

16.33 The investigation is a non-adversarial fact-finding process. In addition to the opportunity to know and respond to the evidence, each party will have the opportunity to pose questions to

the Investigator, that the Investigator may consider asking of the other party or witness. The Investigator will determine whether those questions are relevant, appropriate and/or will assist in the investigation.

Process May be Iterative

16.34 The Investigator may request follow-up meetings with and/or additional written responses from either or both of the Reporting Party and Respondent.

Reporting Party May Withdraw from the Process

16.35 The Reporting Party may withdraw from the formal Report process at any time. If a Reporting Party withdraws their participation in the formal Reporting process, StFX may continue with the Investigation or suspend, close or end the Investigation, depending on factors which include the health and safety of the Reporting Party, the nature of the allegations, and whether there is sufficient information available to the Investigator to proceed with the Investigation.

Adverse Inference from Respondent's Failure to Participate

16.36 If a Respondent refuses to participate in an Investigation, the Investigator may determine the Report on the basis of the information provided by the Reporting Party and/or may draw an adverse inference from the failure to participate.

16.37 Where an Investigator draws an adverse inference arising from a Respondent's failure to participate, the Investigator must make the impact of the adverse inference clear in the reasons contained in the Investigator's Report.

Timeline for Completion of Report

16.38 The Investigation should be completed in as timely a way as possible, with the goal of completing the Investigation within 30 days following the appointment of an Investigator. StFX recognizes, however, that timelines cannot be fixed due to numerous factors that may impact the progress of an Investigation, including the health of the participants.

16.39 If the Investigation is not complete 30 days following the appointment of the Investigator, the Investigator shall update the Responsible Authority and the parties on the progress of the Investigation on the 30th day following the appointment, and every two weeks thereafter.

Investigator's Report

16.40 At the completion of the Investigation, the Investigator shall prepare a Report that contains:

- i. A description of the evidence of all witnesses and any documentary evidenced relied on
- ii. A discussion of the findings of fact
- iii. A discussion of the findings of credibility with reference to the evidence

- iv. A determination as to whether, on a balance of probabilities, any act of sexual violence prohibited by this Policy occurred, and
- v. The reasons for the findings of fact and any finding of breach of this Policy (and any related policy).

16.41 The Investigator's Report constitutes the findings and the reasons for the finding, on which any Review of the findings will be conducted. The Report accordingly must provide a sufficiently detailed explanation of the facts and analysis to enable the parties and any reviewing body to understand the decision and the basis for the decision.

16.42 A copy of the Investigation Report shall be provided to the Responsible Authority, the Reporting Party, and the Respondent. Copies of the Report provided to the parties shall be redacted of identifying information of any person other than the person receiving the Report.

16.43 In cases where there are multiple Reports, each Reporting Party will only receive the portion of the Investigator's Report that relates to their allegation(s).

16.44 The Responsible Authority may seek further information or clarification from the Investigator before accepting the Investigator's Report.

16.45 Any additional information or clarifications relevant to the Investigation provided to the Responsible Authority by the Investigator, or any additional findings, shall be communicated to the parties in writing by the Investigator and, where appropriate, the parties shall be given an opportunity to respond.

Decision by Responsible Authority: Discipline and Remedial Measures

16.46 Within seven days of receipt of the Investigation Report, the parties may make written submissions to the Responsible Authority with respect to appropriate discipline and/or remedies, if a breach of this Policy was found to have occurred. A Reporting Party may include in the submission the impact of the sexual violence on the Reporting Party.

16.47 Upon receiving the Investigator's Report, and the written submissions of the parties, the Responsible Authority will review the Report and determine the appropriate discipline and/or remedial measures.

16.48 In making this determination, the Responsible Authority may consult with other persons as necessary, such as in the case of students, the Director of Student Life.

16.49 The Responsible Authority has the exclusive jurisdiction to impose discipline and remedial measures.

16.50 If the Responsible Authority consulted with others in determining discipline or remedial measures (such as a faculty member or a coach), the Responsible Authority shall include in their

reasons for decision the individual/s they consulted and the information relied on from that person (with the exception of consultations with legal counsel for StFX).

16.51 Disciplinary measures for a finding of a breach of the Policy may include, but are not limited to the following:

- Written warning or reprimand
- Probation
- Behavioural contract, the breach of which will result in discipline, including
 - no contact/no communication directives;
 - restricting access to all or parts of the StFX campus;
- Suspension or denial of university privileges, including suspension or removal of a student from a sports team
- Restrictions on accessing all or parts of the StFX campus
- Academic or employment suspension
- Termination from employment
- Expulsion

16.52 Remedial measures include:

- Written Apology
- Education or Training
- Counselling
- Residence relocation
- Eviction from residence
- Employment relocation or reassignment
- Restrictions on accessing all or parts of the StFX campus
- Removal from a course or section of a course
- Supervision or oversight of teaching/learning/work environment by StFX

16.53 In determining disciplinary or remedial measures, the Responsible Authority may consider:

- The sanction or remedy sought by the Reporting Party
- The principle of progressive discipline
- The university's role as an educational institution
- The nature and severity of the incident
- The impact of the conduct on the Reporting Party's continued education or employment at StFX
- The impact of the conduct on the StFX community
- The university's commitment to combating sexual violence on campus
- The university's commitment to reducing the barriers to reporting

16.54 Within ten (10) days of receipt of submissions from the parties, the Responsible Authority shall issue a written decision setting out the disciplinary and/or remedial measures ordered by StFX. The decision will include the reasons for the measures imposed and the information relied on in making that decision.

16.55 A copy of the decision on disciplinary and remedial measures shall be provided to the Respondent. A copy of the decision on disciplinary or remedial measures will also be provided to the Reporting Party. The Reporting Party shall keep the decision confidential, except to the extent that it is necessary to share information to enforce the disciplinary/remedial measures.

Student Respondents Not Permitted To Withdraw from StFX During an Investigation

16.56 A Respondent student will not be permitted to formally withdraw from StFX during an ongoing investigation and discipline process under this Policy. If a student is found to have breached the Policy, the appropriate notation to this effect will be made on the student's transcript.

Student Respondents not Provided Transcripts Directly During an Investigation

16.57 While under Investigation for a breach of this Policy, a student Respondent will not be issued transcripts directly, but, at the student's request, transcripts will be sent to institutions or potential employers. If the student is subsequently disciplined and this is reflected on the student's transcript, the recipients of the transcript will be issued a revised transcript. This restriction also applies in situations where the student is no longer enrolled at StFX during the investigation.

REVIEW OF THE INVESTIGATOR'S FINDINGS AND THE RESPONSIBLE AUTHORITY'S DECISION ON DISCIPLINE OR REMEDIAL MEASURES

17.1 For unionized employees, appeal of the decision of the Responsible Authority follows the grievance arbitration procedure under the relevant collective agreement.

17.2 For students, the process for Review of the Investigator's findings and/or the discipline/remedial measures order is as follows. Either a Reporting Party or Respondent may seek to Review the decision of the Responsible Authority. A Review is initiated by request in writing to the Responsible Authority.

17.3 Review under this Policy is not a hearing or re-hearing of the evidence and is limited to the grounds of review below. In most cases, the Review will be heard in writing only.

17.4 Any disciplinary or remedial measures ordered by the Responsible Authority will remain in force until the Review is decided.

17.5 A Reporting Party or Respondent may request a Review of a finding of breach of this Policy by the Investigator or the disciplinary or remedial measures ordered by the Responsible Authority, on the following grounds:

- i. There was a serious procedural error that caused prejudice to the party seeking the appeal
- ii. The investigator's decision as to whether a breach of the Policy occurred is clearly unsupported on the basis of the findings of fact contained in the Investigation Report
- iii. New facts relevant to the final determination are available, that were not available during the investigation, or
- iv. The discipline or remedial measures are unreasonable.

17.6 Requests for Review are to be made to the Sexual Violence Review Committee (SVRC), which shall be a panel selected by the President and comprised of three persons as follows:

- i. An external lawyer who has experience in administrative law, procedural fairness, gender-based violence and sexual harassment and sexual assault law, and
- ii. Two members of the SVRC roster of faculty and administrators established by the President, who have training or experience in this Policy, procedural fairness, gender-based violence and the law of sexual assault and sexual harassment.

17.7 Requests for Review must be made in writing and submitted to the SVRC within 10 days of the decision of the Responsible Authority.

17.8 The written request for Review must provide:

- i. A statement for the grounds of Review
- ii. A statement of the facts relevant to the grounds for Review
- iii. A statement of the remedy or relief sought
- iv. Copies of relevant documents that support the Review, and
- v. In the event of fresh evidence that was not available at the time of the investigation, copies of that evidence or witness statements.

17.9 The SVRC may summarily dismiss a Request for Review that it determines does not raise a valid ground of review.

17.10 If new evidence is provided to the SVRC, the responding party to the Review (whether the Reporting Party or the Respondent) shall be given notice of that new evidence and an opportunity to respond.

17.11 In circumstances where the discipline order is a suspension or expulsion, the SVRC shall convene an oral hearing at the request of the Respondent. In other cases, the SVRC has the discretion to hear oral submissions from the Reporting Party or Respondent on the grounds of review.

17.12 The Reporting Party will be provided notice of any SVRC hearing and will be entitled to attend and make submissions, should the Reporting Party wish to participate.

17.13 If the SVRC determines that any of the grounds of Review set out in 17.5 are made out in relation to the Investigator's findings, the SVRC may, depending on the reasons for decision and the circumstances of the case before it:

- i. Refer the matter back to the Investigator for reconsideration
- ii. Require that a fresh investigation be undertaken and direct the Responsible Authority to appoint a new Investigator
- iii. Order that any Immediate Measures in place during the investigation continue
- iv. Direct the Responsible Authority to determine whether any Immediate Measures should be imposed pending the re-investigation, and/or
- v. Suspend any discipline or remedial measures ordered as a result of the finding.

17.14 If the SVRC determines that any of the grounds of Review set out in 17.5 are made out in relation to the discipline or remedial measures, the SVRC may:

- i. Uphold the discipline or remedial measures ordered, or
- ii. Modify or reverse the discipline or remedial measure and substitute its own decision.

17.15 The SVRC shall issue its decision in writing. The decision shall include an explanation of the basis and reasons for the decision in relation to each ground of Review put before the SVRC.

17.16 The decision of the SVRC shall be final.

COLLECTION AND USE OF INFORMATION

18.1 StFX collects personal information under this Policy for the purposes of:

- i. Ensuring the safety of individuals and the university community
- ii. Respecting and protecting the rights of individuals at the university, including under the *Nova Scotia Human Rights Act* and *Occupational Health and Safety Act*
- iii. Respecting and enforcing the rights of persons who Disclose or Report sexual violence in accordance with the *Nova Scotia Human Rights Act*, including the right to an appropriate and fair procedure in response to a Report of sexual violence, the right to

know the outcome of that process and the right to challenge the procedure or outcome, whether internally or through other legal remedies

- iv. Respecting and enforcing the rights of persons who are Respondents to Disclosures or Reports sexual violence, including the right to an appropriate and fair procedure in response to a Report of sexual violence, the right to know the outcome of that process and the right to challenge the procedure or outcome, whether internally or through other legal remedies
- v. Ensuring the integrity and fairness of the processes under this Policy
- vi. Providing appropriate information to the Survivor or Reporting Party and Respondent
- vii. Receiving Disclosures and responding to Disclosures of sexual violence
- viii. Conducting an investigation or proceeding that could lead to a disciplinary or remedial measure, and
- ix. Collection of data on sexual violence that will be de-identified/aggregated.

AGGREGATE DATA COLLECTION

19.1 The Office of Safe Disclosure shall maintain aggregate data, which shall be published annually, on:

- i. The number of Disclosures received
- ii. The nature of the Disclosures in terms of whether they involved:
 - sexual assault
 - sexual harassment
 - social or electronic media
 - on or off campus incidents (or other/not known)
 - whether the identity of the Respondent was disclosed
 - alternative measures requested or accessed.
- iii. The number of Disclosures that involved allegations of student peer-on-peer sexual violence
- iv. The number of Anonymous and Third Party Reports
- v. The number of Disclosures that proceeded to a formal Report, and
- vi. The outcome of those Reports (finding/no finding) at the investigation stage and/or on Review.

19.2 Health and Counselling Services at StFX shall maintain aggregate data and report annually on:

- a. The total number of Disclosures of sexual violence received, regardless of whether the Disclosure related to historical or current sexual violence, and
- b. The number of Disclosures involving student peer-on-peer sexual violence (to the extent known).

19.3 Health and Counselling services shall provide this data annually to the Safe Disclosure Office and this information shall be included in the Safe Disclosure Office's annual Report.

19.4 The above aggregate data from Health and Counselling will assist to better understand the services provided by Health and Counselling, consider the needs for training or outreach, and assess the possible impacts of this Policy and any sexual violence prevention and education efforts at StFX on rates of sexual violence and/or reporting of sexual violence at StFX.

19.5 The Safe Disclosure Office should also Report annually on information on any observable trends.

19.6 The data published by the Safe Disclosure Office shall not disclose any personal identifying information.

Terms of Reference for Independent Review of Saint Francis Xavier University's Policies Responding to Sexualized Violence

Mandate:

Saint Francis Xavier University (StFX) will engage the Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR) to conduct a review of the University's policies responding to sexualized violence.

Scope of Review:

This review will assess the operation of StFX's Sexual Violence Policy, and other University policies and procedures with which it intersects, in order to ensure that the University has effective and defensible practices and procedures that are: responsive to those who report experiences of sexual harm; trauma-informed; and procedurally fair.

The review will result in a draft Sexual Violence Policy and a supplementary report highlighting further recommendations or follow-up issues. These documents will be public.

Description of the Review Process:

The review process will involve five stages.

Stage 1. An Independent Review Panel (IRP) will conduct a document review of the University's relevant policies and procedures as well as any other documentation and materials provided by the University or requested by the IRP. This stage of the review will also include a review of other university policies on sexualized violence and relevant secondary literature and reports.

Stage 2. The IRP will conduct in-person consultations with relevant stakeholders over the course of a three-day period in March, 2019 in Antigonish, Nova Scotia. The focus of these consultations will be on the operation of the University's Sexual Violence Policy and any policies with which it intersects. The consultations will include meetings with any individual members of the University community, as well any groups (e.g. departments, clubs, or other organizations) who express an interest in meeting with the IRP. The University will manage the scheduling and coordination of the in-person consultation meetings.

The opportunity to participate in this consultation will be advertised by the University and meeting times will be made available to any students, staff, or faculty who wish to participate.

The University community will also be invited, during the month of March, to provide confidential written input to the Panel. The IRP will use a CCLISAR email account (e.g. StFXreview@cclisar.ca) external to StFX, for the purpose of receiving comments and information regarding the operation of the University's Sexual Violence Policy and any policies

with which it intersects. This email account and its intended purpose will be advertised by the University in February and March, 2019.

Any comments, observations, or insights offered during these consultations or in writing will remain unattributed in CCLISAR's report. The IRP's notes, emails received through the IRP's designated email account, and internal correspondence between members of the IRP will not be produced to the University or made public.

Stage 3. A draft version of the policy and supplementary report will be circulated to the Expert Advisory Group. This group will meet in Halifax, NS for a one-day workshop to discuss and provide advice on these documents and to offer any suggestions for further consultation, if necessary, before the draft policy and supplementary report are finalized.

Stage 4. In May 2019, the IRP will conduct one day of follow-up meetings in Antigonish, NS and any further consultation determined to be necessary by the IRP.

Stage 5. The Chair of the IRP will present the draft policy and supplementary report to the University in June 2019.

Composition of the Independent Review Panel:

The Independent Review Panel will be comprised of three individuals external to the University. The Chair of the IRP will be a practicing lawyer with expertise in gender-based harm and university-related complaints processes. The second and third members of the IRP will include individuals with legal training and expertise in legal responses to sexualized violence. At least one of these members will be a legal academic. The other will be either an academic or practicing lawyer.

Composition of the Expert Advisory Group:

The Expert Advisory Group (EAG) will have up to nine members. Members of this group will have relevant experience in university complaints processes and/or legal processes for responding to sexualized violence (e.g. adjudication or investigation) and/or expertise regarding issues of gender-based harm. The Chair of the IRP will also chair the EAG and the other two members of the IRP will be a part of the EAG. Up to three members of the EAG will be selected by the University from among members of the University community (preferably a member of the University's senior administration team who is familiar with StFX policies; a faculty member; and a student). Up to three further members of the group will be selected by the Research Director of CCLISAR. Members selected by the Research Director of CCLISAR will be external to the University.

This group will provide advice to the IRP on the draft Sexual Violence Policy and supplementary report.

Timeline for the Review:

- January 2019: Finalize terms of reference/contract
Begin review of documents provided by University
Compile list of relevant stakeholders for consultations (in consultation with University)
Schedule first round of consultations (in collaboration with University)
- February 2019: Complete preliminary review of the University documents
Conduct review of background materials (reports from other university processes/review of policies at other universities/secondary literature)
- March 2019: IRP – First Visit to St FX to conduct consultations/Interviews
Draft policy and supplementary report
- April 2019: Circulate interim drafts to Expert Advisory Group
Hold Expert Advisory Group Workshop
- May 2019: Revise draft policy/report in light of EAG Workshop and follow-up meetings
Finalize draft policy and supplementary report
- June 2019: Chair to present draft policy and supplementary report to University