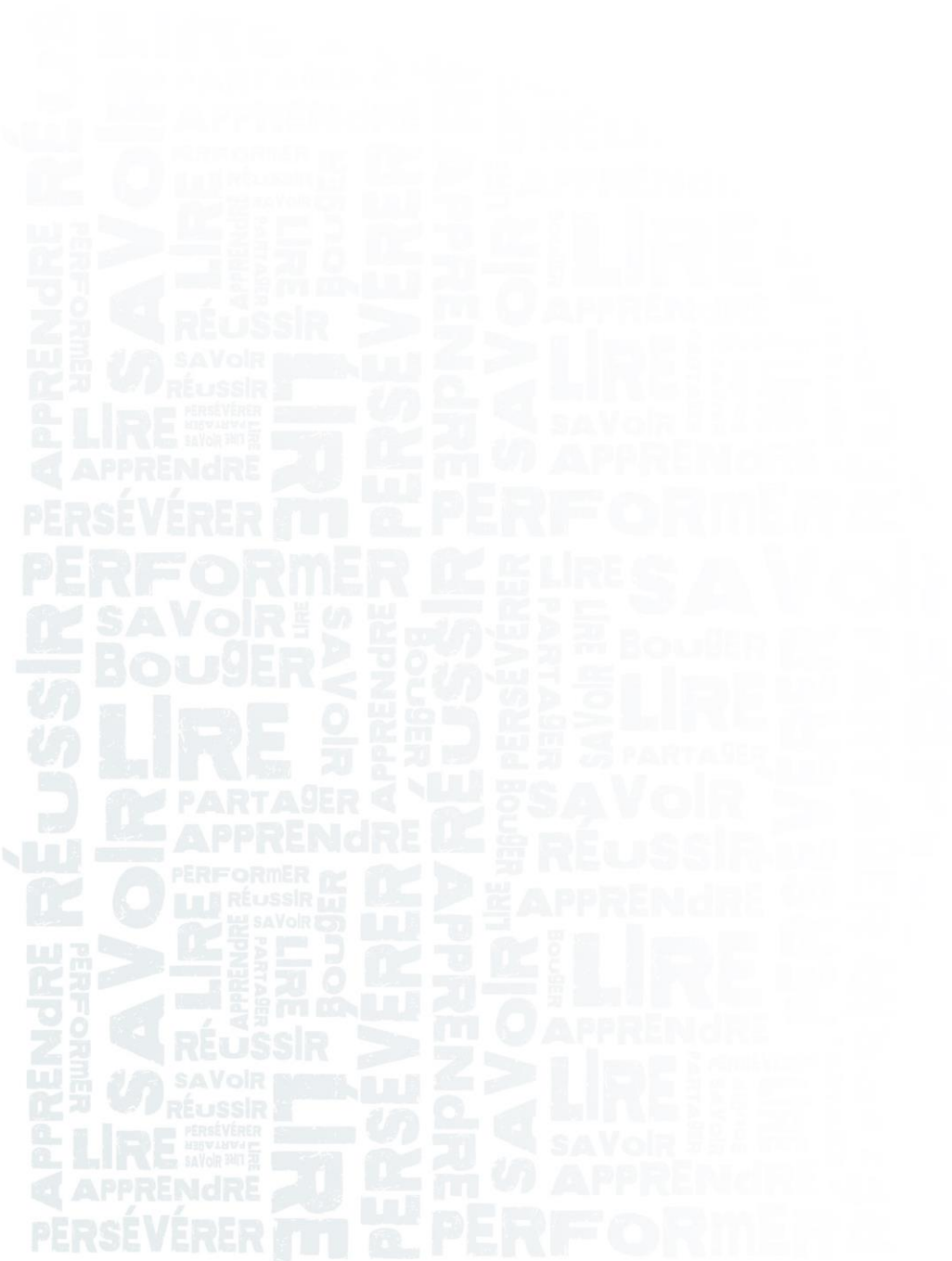


# Guide for higher education institutions

Development of the policy prescribed by the *Act to prevent and fight sexual violence in higher education institutions*



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## 1. Background

Within the framework of the [2016-2021 Government Strategy to Prevent and Counteract Sexual Violence](#), the Ministère de l'Éducation et de l'Enseignement supérieur is committed to adopting a policy framework or framework law ensuring that colleges and universities take the necessary measures to prevent and counter sexual violence.

During the winter of 2017, five days of consultation were held by the Minister responsible for Higher Education, Hélène David, bringing together all higher education stakeholders around a common vision for the action required to prevent and counter sexual violence. This consultation resulted in the development of the [2017-2022 Intervention Strategy for Preventing and Countering Sexual Violence in Higher Education](#), which was presented on August 21, 2017.

The strong adherence to the actions of the Ministère in its fight against sexual violence, particularly by teaching institutions, unions, student associations, the community and victims' groups, was reinforced by consultations that led to the passage of the [Act to prevent and fight sexual violence in higher education institutions](#) (CQLR, chapter P-22.1) (hereinafter "the Act"), which was unanimously adopted by the National Assembly on December 8, 2017. This law aims to strengthen actions for preventing and countering sexual violence in institutions of higher education in order to ensure healthy, safe and respectful study and work environments.

The Act states that institutions of higher education must adopt, before January 1, 2019, a policy aimed at preventing and fighting sexual violence. The policy must specify minimum elements such as safety measures, mandatory training activities, a process for filing complaints, reception, referral, psychosocial and support services, and a code of conduct.

This guide is a tool for institutions of higher education concerned by the Act and aims to support them in fulfilling their legal obligations. It describes the general elements and the mandatory content elements to be outlined in the policy of each higher education institution.

The elements covered in this guide correspond to the requirements of the *Act to prevent and fight sexual violence in higher education institutions*.

If, when developing or reviewing its policy, an educational institution wishes to provide for measures beyond those presented in this guide, the Ministère suggests that the institution validate such additions with its legal services.

## 2. Mandatory general elements

The Act aims to ensure that each institution adopts a policy for preventing and fighting sexual violence, as well as a code of conduct that provides a framework for intimate relationships between students and those who are in a teaching relationship with them or who have a relationship of authority over them.

In accordance with the Act, “. . . the concept of sexual violence refers to any form of violence committed through sexual practices or by targeting sexuality, including sexual assault.

It also refers to any other misconduct, including that relating to sexual and gender diversity, in such forms as unwanted direct or indirect gestures, comments, behaviours or attitudes with sexual connotations, including by a technological means.” (s. 1 of the Act).

### a) Separate nature of the policy

The policy must be separate from the institution’s other policies (s. 3 of the Act), that is, it must focus solely on preventing and countering sexual violence. It must, however, be closely aligned with the applicable legal framework, in particular with that related to labour law and to regulations and directives adopted by the institution.

### b) Standing committee

Each educational institution must establish a standing committee whose role is to develop and review the policy and make sure it is followed (s. 7 of the Act).

This committee must be made up of students, officers and staff members, who should be selected on the basis of specific criteria such as profile and expertise. Training on the issues, concepts and other aspects associated with sexual violence should also be offered to committee members.

The committee must implement a process for ensuring that all groups in the institution’s community (student body, officers, staff members and their respective associations and unions) are consulted during the policy development or review process.

#### Remember

Under section 32 of the [Act respecting the accreditation and financing of students’ associations](#), “an accredited students’ association or alliance may, alone, appoint students who, under an act, regulation, by-law, charter or agreement, are called upon to sit or participate as student representatives on various councils, committees or other bodies in the institution.”

### c) Adoption of the policy

The policy must be adopted by the board of governors or, if the educational institution does not have such a board, by the institution’s most senior officer (s. 8 of the Act).

The policy must be reviewed at least once every five years (s. 11 of the Act) and, as soon as it is adopted or amended, be sent to the Minister (s. 9 of the Act).

#### **d) Accessibility**

The policy must be written in clear, simple language and must be readily available, for example on the home page of the institution's website. It must be mentioned in the documents given to all members of the community at key moments (admission, registration, etc.).

The policy must be brought to the attention of each student (s. 10 of the Act):

- at the time of the student's admission: for example, as part of the welcoming package provided by the institution
- at the beginning of each term: for example, in each syllabus, with the contact details of the available specialized resource and the website address where the full policy can be consulted

Staff members could also be informed of the policy, for example, when being hired or acquiring tenure.

#### **Remember**

All the available sexual violence-related services and resources must be grouped together in a single place, which must be known and readily accessible (s. 5 of the Act). These resources include the contact details of the institution's designated specialized resource as well as outside specialized resources in the area.

#### **e) Scope of the policy**

Each institution must establish the scope of its policy, that is, provide for situations where the policy applies (on campus, off campus, online, social activities, professional and academic activities, etc.) and specify the people concerned (personnel, subcontractors, student body, officers, etc.). The scope of the policy must be aligned with the requirements of the Act as well as the orientations and regulations adopted by the institution.

The Act presents a list of mandatory elements to be outlined in the policy of each institution. However, the institution is free to add any other element that it considers to be necessary for preventing and countering sexual violence.

The policy must take into account persons at greater risk of experiencing sexual violence, such as members of sexual or gender minorities, cultural communities or Indigenous communities, foreign students and persons with disabilities; for example, it can recognize that these groups are more vulnerable and ensure that intervention professionals are fully aware of such challenges.

The institution is responsible for offering a safe and healthy environment for work and study and must take certain measures to fulfill this obligation. For example, the institution should forward its policy to all approved practicum resources and subcontractors. If a person from one of these places fails to comply with the policy or the Act, that place will then be removed from the list of approved resources and subcontractors.

### 3. Mandatory content elements

Subsections 1) to 15) of this section describe the minimum elements that the institution's policy must stipulate under section 3 of the Act.

- 1) Roles and responsibilities of officers, personnel members, student association representatives and students with regard to sexual violence (s. 3, subpar. 1 of the Act)

All persons frequenting the institution are likely, at one time or another to be affected by sexual violence, either as a victim, witness or resource person. The roles and responsibilities of all stakeholders in the institution, depending on their position, must be clearly defined.

#### *To fulfill the obligations stated in the Act*

The policy is expected to:

- define the roles and responsibilities:
  - of the institution's personnel, including officers and outsourced personnel, if the institution wishes outsourced personnel to be subject to the policy
  - of the representatives of student associations
  - of the student community
- clearly state the obligation of all community members to comply with the requirements and obligations of the institution's policy

#### *Examples of measures that meet the requirements of the Act*

- All members of the community: become familiar with the policy and its content, respect its requirements, obligations and the code of conduct; be aware of the importance of taking action when witnessing a potential situation of sexual violence; participate in the training activities offered; provide a victim who has confided in them with the contact details of available resources
- Officers: ensure the policy is applied; carry out the accountability activities provided for by the Act; support staff members responsible for interventions and ensure that administrative complaints are handled diligently and within the given time frame
- Specialized resources: meet with victims, witnesses or perpetrators of sexual violence, inform them of their options and offer them the support they need
- Representatives of student associations: follow the rules providing a framework for social or welcoming activities; participate in selecting and publicizing training and awareness-raising activities; participate in mandatory annual training activities

2) Implementation of prevention and awareness-raising measures to counter sexual violence, including legal information and mandatory training activities for the student community (s. 3, subpar. 2 of the Act)

All stakeholders are unanimous that prevention and awareness-raising are important vehicles for change and provide a powerful lever in countering sexual violence.

To this end, the institution is obliged to organize prevention and awareness-raising activities as well as mandatory training activities for staff members and the student community. Training for the student community can be integrated into existing mandatory activities. For example, it could be offered during a welcoming activity, a first-year core course or through the web portal when students register for the following term's courses. The requirements for training activities to be offered to staff members are described in section 3.

*To fulfill the obligations provided for by the Act*

The policy is expected to:

- provide for prevention and awareness-raising measures that must include:
  - distributing information of a legal nature, for example, an explanation of the difference between an administrative complaint and a formal complaint regarding a criminal matter, as well as the steps associated with filing and following through with the complaint<sup>1</sup>
- provide for mandatory training activities intended for the student community

*Examples of measures that meet the requirements of the Act*

- Prevention and awareness-raising measures:
  - training activities such as those that can help participants to understand sexual violence and recognize its signs; to intervene as a witness; to be accountable when participating in integration activities
  - activities such as those aimed at identifying and demystifying the different forms of sexual violence (attitudes, behaviours, etc.), raising awareness of sexual violence and its concepts and providing information about available resources
  - an information booth with a specialized resource set up at the beginning of each term
  - an annual campaign for raising awareness among members of the community about all forms of sexual and sexist violence

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1. See Appendices 1 to 4.

- information bulletins presented by a specialized resource during annual general meetings of the institution's student associations, on the institution's website or on other suitable occasions
- the showing of documentaries or videos dealing with sexual violence<sup>2</sup>
- emails containing information bulletins sent to all members of the institution's community
- distribution of checklists referring to the best practices when acting as a confidant or witnessing a potential situation of sexual violence

An ongoing evaluation of the impact, effectiveness and relevance of the measures should be carried out, for example, by the standing committee responsible for monitoring the policy.

- Mandatory training activities for the student community
  - These training activities should focus on subjects such as:
    - the policy adopted by the institution to prevent and fight sexual violence
    - the resources that are offered by on-campus or off-campus services (specialized organizations, police forces, etc.)
    - the concept of rape culture
    - the myths and stereotypes associated with sexual violence
    - the issues surrounding the concept of consent
    - recognizing situations and contexts in which a person may be at greater risk of experiencing sexual violence (integration and welcoming activities, work context, activities permitting alcohol consumption, first weeks of classes, etc.)
    - the most effective reactions as a witness to a potential situation of sexual violence
    - the code of conduct and the framework for an intimate relationship between a staff member and a member of the student community

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2. The concerted action kit for the CONSENSUS campaign provides a list of documentaries and videos dealing with sexual violence, in English and French at: <http://www.sansouicestnon.ca/consensus>. [Click on "Pour accéder aux outils à l'effigie de la campagne CONSENSUS."]

- helpful attitudes such as those suggested by the Regroupement québécois des centres d'aide et de lutte contre les agressions à caractère sexuel [Quebec coalition of sexual assault centres]<sup>3</sup>
- Participation in these training activities can take different forms: in pairs, in workshops, online at the time of admission or during the term, with the specialized resource during first-year required courses, etc. The length of the activity and the topics covered will vary according to needs and can be determined by the standing committee responsible for developing, reviewing and monitoring the policy.

**Remember**

Training activities can be conducted by specialized resources within the institution as well as by external organizations.

For this purpose, budgetary rules related to the *2017-2022 Intervention Strategy for Preventing and Countering Sexual Violence in Higher Education* provide for funds to be allocated to each institution for hiring specialized resources or reaching agreements with external specialized resources.

In addition to offering reception, referral, psychosocial and support services, these specialized resources can develop and conduct the mandatory training activities provided for by the Act.

3) **Mandatory annual training activities for officers, personnel members, representatives of their respective associations and unions, and student association representatives (s. 3, subpar. 3 of the Act)**

Training activities aim to ensure that all members of the community have the necessary knowledge and reflexes to apply preventive or proactive measures when faced with a situation of sexual violence, so that victims are assisted, supported and quickly referred to competent specialized resources or the police.

Mandatory training activities must be organized each year for the groups concerned.

**Remember**

In accordance with the *Act to promote workforce skills development and recognition*, every employer whose total payroll exceeds two million dollars is required to invest each year an amount representing at least 1% of this total payroll in training activities aimed at developing workforce skills.

Training activities related to sexual violence, conducted by internal or external resources, could be counted among those organized within this budget.

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3. <http://www.rqcalacs.qc.ca/helpful-attitudes.php>.

### *Examples of measures that meet the requirements of the Act*

- Mandatory annual training activities should focus on subjects such as:
  - the policy adopted by the institution to prevent and fight sexual violence
  - the resources that are offered by on-campus or off-campus services (specialized organizations, police forces, etc.)
  - the concept of rape culture
  - the myths and stereotypes associated with sexual violence
  - the issues surrounding the concept of consent
  - recognizing situations and contexts in which a person may be at greater risk of experiencing sexual violence (integration and welcoming activities, work context, activities permitting alcohol consumption, first weeks of classes, etc.)
  - the most effective reactions as a witness to a potential situation of sexual violence
  - the code of conduct and the framework for an intimate relationship between a staff member and a member of the student community
  - helpful attitudes such as those suggested by the Regroupement québécois des centres d'aide et de lutte contre les agressions à caractère sexuel [Quebec coalition of sexual assault centres]<sup>4</sup>
- Participation in these training activities can take different forms: in pairs, in workshops, online at the time of admission or during the term, etc. The length of the activity and the topics covered will vary according to needs and can be determined by the standing committee responsible for developing, reviewing and monitoring the policy. The training activities can be conducted by external organizations or specialized resources within the institution.

#### 4) **Safety measures to counter sexual violence, including infrastructure adjustments to secure premises (s. 3, subpar. 4 of the Act)**

Certain aspects of the layout of the institution's indoor and outdoor premises create at-risk areas for the perpetration of acts of sexual violence (for example, areas that are dimly lit, without cameras or with low traffic).

#### *To fulfill the obligations provided for by the Act*

The policy is expected to:

- outline security measures implemented by the institution to ensure the personal safety of the members of its community

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4. <http://www.rqcalacs.gc.ca/helpful-attitudes.php>.

- provide for measures aimed at improving security on campus and within the institution

#### *Examples of measures that meet the requirements of the Act*

- Implemented safety measures may include:
  - making known the contact details of security services
  - displaying an emergency number and having red telephones in various locations
  - offering an application for direct communication between a personal telephone and security services
  - installing security devices in student residences
  - organizing methods for improving security, for example, by means of:
    - a permanent channel of communication that enables all members of the institution's community to make comments, suggestions and requests for action with respect to a security issue; the institution's commitment to answer these messages in a timely manner, depending on the degree of urgency
    - a committee made up of representatives of student associations and staff members that is responsible for defining priority interventions with respect to the security of the infrastructures

#### 5) Rules for social or welcoming activities organized by the educational institution, a personnel member, an officer, a sports organization or a student association (s. 3, subpar. 5 of the Act)

Social activities take place during the whole year but are more frequent at the beginning and end of the term. They may present circumstances in which a person is at risk of experiencing acts of sexual violence, in particular because they often involve alcohol consumption. First-year students are especially vulnerable during welcoming and integration activities. Such activities must be managed in a way to prevent situations that may give rise to acts of sexual violence.

The rules outlined in the policy must stipulate that individuals in charge of these activities are obligated to implement the necessary framework to prevent a game, joke or activity from compromising the physical and psychological integrity of the participants.

#### *To fulfill the obligations provided for by the Act*

The policy is expected to:

- apply to all activities organized by the institution, a staff member, an officer, a sports organization or a student association, even if this activity takes place off campus
- indicate the rules to be followed by individuals in charge of these events

- refer to the scope of the sanctions applicable if these rules are not followed

*Examples of measures that meet the requirements of the Act*

- Rules for these activities may include:
  - the requirement that individuals in charge of organizing the events have participated in mandatory training activities related to sexual violence and excessive alcohol consumption
  - the obligation to hire an individual who has been trained to be an active witness and who will remain sober during the activities
  - the requirement for the individuals in charge of organizing the events to make mention of the institution's policy and the contact details of the specialized resource in their email invitations
  - a written agreement, to be signed by the individual or group of individuals in charge of organizing the events, outlining the rules to be followed and the scope of the sanctions applicable if these rules are not followed

**Remember**

The rules outlined in the policy relate to the social and welcoming activities organized by the institution, a staff member, an officer, a sports organization or a student association.

The policy also targets the individuals in charge of organizing and overseeing the events.

The policy is therefore applicable wherever the activity takes place, whether it is a happy-hour gathering organized in an off-campus bar by a student association or member of the teaching staff, or a match played in another city by one of the institution's sports teams.

These rules can be modelled on recommendations made in the report prepared by the "Sans oui, c'est non!" organization, [Les situations à risque et les meilleures pratiques de prévention et d'intervention dans le contexte des activités d'accueil en milieu universitaire](#), which were widely approved by the bodies consulted and are applicable to a variety of situations and activities, in both universities and colleges.

6) Measures the institution is to impose on third persons within the framework of its contractual relations (s. 3, subpar. 6 of the Act)

Institutions often have working relations with outside firms such as those offering restaurant services. Since the personnel of these firms also work on campus, they have a role to play in preventing and countering sexual violence.

The institution could also provide for measures applicable to sponsors benefiting from on-campus visibility.

*To fulfill the obligations provided for by the Act*

The policy is expected to:

- provide for the obligations it intends to impose on its co-contractors

*Examples of measures that meet the requirements of the Act*

- Contractual employees working on campus could participate in the same training activities as those planned for the institution's staff members.
- The institution could specify in contracts drawn up with subcontractors that all individuals performing on-campus work activities as part of this business agreement must be informed of the policy.
- The full policy could be made applicable to the contractual resources working on campus.

7) Procedures for reporting incidents of sexual violence to the educational institution or for filing complaints with or disclosing information to the institution in connection with such incidents, including the possibility of doing so at any time (s. 3, subpar. 7 of the Act)

One of the criticisms most frequently heard from victims concerning higher education institutions is the lack of clarity, follow-up, transparency and useful information about the procedure for reporting sexual violence, filing an administrative complaint or accessing available services and specialized resources. Victims often have to describe the act of sexual violence several times, forcing them to relive the event each time.

Moreover, since each person's life experience is different, it is essential that individuals have the opportunity to report a case<sup>5</sup> or file an administrative complaint at any time, if they wish to do so.

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5. Reporting a situation to the educational institution consists in disclosing information that does not represent an administrative complaint, but aims to report or expose a situation that is likely to lead to action by the educational institution.

### *To fulfill the obligations provided for by the Act*

The policy is expected to:

- specify that there is no time limit for reporting sexual violence or filing an administrative complaint, which can therefore be done at any time
- present the steps that an individual can take at any time to report an act of sexual violence or obtain support
- outline the reception and support services to which victims have access, regardless of whether or not they file an administrative complaint or a formal complaint regarding a criminal matter
- clarify the mechanisms in place for filing an administrative complaint and the intervention procedure for acts of sexual violence<sup>6</sup>
- indicate the contact details of the specialized resource available
- specify that the institution cannot carry out police work and that the victims can, at any time, file a complaint with the police, regardless of whether or not they have reported the situation to the institution's specialized resource or filed an administrative complaint

#### **Remember**

An act of sexual violence does not automatically represent a criminal offence. However, it is not up to the specialized resources or intervention professionals in the educational institution to qualify an act of sexual violence as criminal or not criminal; this decision is made as the result of the police investigation.

Likewise, the institution cannot replace the police force to which it must refer victims wishing to file a formal complaint regarding a criminal matter; the laying of criminal charges depends on the findings of the police investigation.

At all times, victims have the option of filing a complaint with the police with the support of the institution's specialized resource.

If the victim is a minor, every professional who provides care or any other form of assistance or every employee of the institution who has reasonable grounds to believe that the security or development of a minor is or may be considered to be in danger must bring the case to the attention of the Director of Youth Protection without delay under section 39 of the [Youth Protection Act](#).

#### Dealing with the person who is the subject of a complaint

Best practices for taking charge of the person who is the target of an administrative complaint or formal complaint regarding a criminal matter include offering reception, referral, psychosocial and support services, if the individual expresses the need for them.

If an individual represents a danger to themselves or another person, the police force must be promptly notified.

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6. See Appendices 1 to 4.

8) Follow-up that must be given to the complaints, reports and information received, and accommodation measures to protect the persons concerned and, if applicable, limit the impact on their studies (s. 3, subpar. 8 of the Act)

The institution must act quickly to ensure the safety of the victim or witness of an act of sexual violence who has reported an incident or filed an administrative complaint, in particular by taking measures to reduce the impact on the individual's personal and academic life.

The institution must also display transparency with respect to handling an administrative complaint by stating in its policy the steps of this process and specifying that requests for support can be made at any time.

The Act provides for response times for implementing accommodation measures and for handling complaints that must not exceed 7 and 90 calendar days, respectively. However, if the time limit expires on a legal holiday or a Sunday, it is extended to the next working day.

With respect to the management of administrative complaints, the institution's policy should apply in the following cases:

- when a complaint is filed against a staff member who is linked by employment to the institution, whether or not the complainant belongs to the institution's community; the institution's actions must, at all times, be consistent with the normative framework in effect and particularly with the rules pertaining to labour laws
- when a complaint related to an on-campus incident between two members of the community is filed
- when a complaint is filed in relation to an off-campus activity organized by the institution, a staff member, an officer, a sports organization or a student association

It is for the standing committee responsible for developing, reviewing and monitoring the policy to determine the scope of the policy with respect to situations where an activity was not organized by the institution (convention, symposium, etc.) but attended by members of its community, and at which an incident involving sexual violence took place.

Moreover, best practices recommend that administrative complaints be submitted to an external investigator qualified in such matters, so there is no conflict of interest affecting the process.

*To fulfill the obligations provided for by the Act*

The policy is expected to:

- provide for accommodation measures for victims to limit the repercussions of sexual violence on their studies
- state the time limit, which must not exceed 7 days, for implementing possible accommodation measures

- refer to the steps involved in handling an administrative complaint, a report or the reception of information, so that the members of the institution's community have the necessary information about the process
- state the applicable time limit, which must not exceed 90 days, for handling the complaints

*Examples of measures that meet the requirements of the Act*

- The accommodation measures can take various forms, depending on the circumstances, the nature of the act and the academic level involved:
  - possibility of terminating the housing lease without penalty
  - possibility of postponing an examination without penalty
  - possibility of dropping a course without penalty
  - possibility of transferring to a different course section, etc.

The institution should also provide for measures for staff members in accordance with the *Act respecting labour standards*.

**Remember**

The implementation of accommodation measures must take into account the circumstances and, above all, the needs of the individuals involved.

If possible, after the seriousness of the accusations and the risks for personal safety have been evaluated, the accommodation measures can be discussed, by mutual agreement, between the specialized resource and, for example, a person who is the subject of an administrative complaint.

The specialized resource must ensure that this type of intervention in no way causes prejudice to a future police investigation or the preservation of criminal evidence.

9) Reception, referral, psychosocial and support services offered by specialized resources with sexual violence-related training (s. 3, subpar. 9 of the Act)

To ensure that victims or witnesses of sexual violence are received and quickly taken charge of in an appropriate manner, they must have access to information allowing them to communicate easily with the specialized resources available.

The offer of reception, referral, psychosocial and support services must come from specialized resources with training in the area of sexual violence.

It is important to note that the Act states that the response time for offering these services cannot exceed seven days.

*To fulfill the obligations provided for by the Act*

The policy is expected to:

- provide for reception, referral, psychosocial and support services
- specify that all members of the institution's community can use the services available if they wish to
- state that the time limit for offering reception, referral, psychosocial and support services must not exceed seven days

*Examples of measures that meet the requirements of the Act*

- Services can be offered in different forms and adapted to each institution depending on its specific characteristics (such as its small size or geographical location) (s. 6), for example:
  - on-site specialized resource offering support by appointment, available through a 24-hour telephone line, a website or a mobile application
  - agreement between several institutions in the same region for hiring a shared specialized resource (floating resource)
  - agreement between specialized organizations in the region on the matter of sexual violence

**Remember**

Certain principles should be applied to each action taken with a victim of sexual violence, including the disclosure of confidential information to a member of the community:

- listen to the victim without passing judgment
- keep an open mind and accept the victim's account of events as told and without questioning it
- respect the victim's choice of actions, particularly with respect to filing or not filing an administrative complaint or a formal complaint regarding a criminal matter
- do not minimize or make excuses for the gestures of the person who is the subject of the report or complaint, or insinuate that the victim has a share of responsibility in what happened to them
- refer the victim and the person who is the subject of the report or complaint to the specialized resources available

- 10) Actions that must be taken by the educational institution and by officers, personnel members, student association representatives and students when incidents of sexual violence are brought to their attention (s. 3, subpar. 10 and subpar. 11 of the Act)

The institution and all members of its community must take action when an act of sexual violence is brought to their notice and do so in the time frame provided for by the Act. The concerted effort of the entire community will be crucial in countering sexual violence.

The Act provides for a time limit of no more than seven days for taking the appropriate measures.

*To fulfill the obligations provided for by the Act*

The policy is expected to:

- refer to the measures planned by the institution when a situation of sexual violence is reported (develop and distribute the intervention protocol)
- inform each group of individuals within the institution's community of what is expected of them when they witness a situation of sexual violence or if it is reported to them
- state the response times for taking the measures outlined in the policy, which must not exceed seven days

*Examples of measures that meet the requirements of the Act*

- obligation for the institution's services to launch an administrative inquiry as soon as they receive an administrative complaint
- reference to the responsibilities of officers, staff members, representatives of student associations and the student community when a victim confides in them or they witness an act of sexual violence; an example of such a responsibility would be providing assistance

- 11) Measures to ensure the confidentiality of the complaints, reports and information received in connection with incidents of sexual violence (s. 3, subpar. 12 of the Act)

The steps taken by a victim or witness of an act of sexual violence must remain confidential. Confidentiality must also be offered to the person who is the subject of a complaint, except in a case involving a minor, which must always be reported to the Director of Youth Protection.

These measures are necessary to protect the rights of the individuals involved. They aim to protect the victims or witnesses and to respect the presumed innocence of those accused.

However, depending on the serious and repetitive nature of the acts reportedly committed by an individual, even if an administrative complaint has not been filed, confidential and anonymized information can be forwarded to the appropriate authorities of the institution

so that action can be taken. This procedure must also remain confidential and involve solely the person whose behaviour is in question and the institution.

For example, a human resources officer could meet with the person whose behaviour is in question to inform the person of the inappropriate behaviour reported and ask that this behaviour be stopped. Sanctions could also be imposed on the person.

#### *To fulfill the obligations provided for by the Act*

The policy is expected to:

- specify the principles of confidentiality to which the institution adheres during the handling of the administrative complaint and that apply to all parties

#### **Remember**

Apart from exceptions provided for by the Act, personal information covered by the [\*Act respecting Access to documents held by public bodies and the Protection of personal information\*](#) is confidential and cannot be communicated by the institution to a person other than the one it concerns, including the complainant and another educational institution.

During the process for handling the complaint, the complainant and the person who is the subject of the complaint can be informed of the conclusions of the inquiry, namely, the institution's intention to follow up or not on the complaint. The institution must also inform the complainant of the next steps to be taken and receive confirmation that the complainant wishes to follow through with the complaint process.

When a decision has been rendered and sanctions have been imposed, where relevant, the complainant should be informed that the complaint process has been completed. If applicable, the decision to impose sanctions and the nature thereof cannot be revealed, since this information is personal.

The only circumstances in which the institution is not bound by confidentiality are the following:

- if a minor is involved and a report must be made to the Director of Youth Protection under section 39 of the *Youth Protection Act*
- if, under subparagraph 13 of section 3 and section 4 of the Act, the person in charge of access to information in the institution considers that it is necessary to communicate certain information to an individual to ensure the individual's safety (see section 12 of this document)
- if the victim or witness is in a situation comparable to those described in section 59.1 of the *Act respecting Access to documents held by public bodies and the Protection of personal information*, namely, when there is reasonable cause to believe that a significant risk of death or serious injury is threatening an identifiable person or group of persons and that the nature of the threat creates a sense of urgency

- 12) Measures governing the communication to a person of the information necessary to ensure his or her safety but which may not include any means to compel a person to keep silent for the sole purpose of not damaging the educational institution's reputation (s. 3, subpar. 13 of the Act)

Individuals should not be compelled to keep silent to safeguard the reputation of their place of work or study.

Under subparagraph 13 of section 3 and section 4 of the Act, educational institutions can provide for measures governing the communication of information necessary to ensure an individual's safety.

These measures must be consistent with the existing legal framework, especially the *Act respecting Access to documents held by public bodies and the Protection of personal information*. The person in charge of access to information in the institution is responsible for determining whether, given the factual background of the file, it is necessary to communicate certain information to ensure the individual's safety.

Remember: if an individual is considered to be in danger, it is important to promptly notify the police and the specialized resources (see information box in section 7).

#### *To fulfill the obligations provided for by the Act*

Based on previously stated principles, the policy is expected to:

- clarify the measures aimed at governing the communication of information necessary to ensure an individual's safety
- refer to the institution's commitment not to incite the victim or witness, under any circumstances, to keep silent for a reason such as safeguarding the institution's reputation

#### *Examples of measures that meet the requirements of the Act*

- The institution could make known its approach in deciding on exceptional cases in which it may be necessary to communicate information.
- The institution could include in its institutional values the commitment that reprisals of any form are not tolerated.

- 13) Measures to provide protection against reprisals to the person who filed a complaint, reported an incident or disclosed information (s. 3, subpar. 14 of the Act)

Protection against reprisals applies both to victims and other members of the community. Individuals must not be subjected to reprisals after reporting an act of sexual violence of which they were victims or for taking action to end inappropriate behaviour.

Reprisals could be of several types, such as academic, professional, financial and defamatory, and could include, for example, the suspension of a scholarship granted to a graduate student by the program supervisor, the loss of employment or a demotion. Such reprisals could occur at any time and not only after a complaint has been filed by the victim.

The threat of reprisals must also be prohibited, since it can contribute to discouraging or deterring an individual from reporting an act of sexual violence.

Moreover, the policy must take a clear position in its commitment to prohibit any form of reprisals against an individual wishing to disclose an incident related to sexual violence, provide information or file a complaint.

*To fulfill the obligations provided for by the Act*

The policy is expected to:

- outline the institution's commitment to do everything in its power to protect individuals against reprisals
- provide for concrete measures protecting individuals against reprisals
- specify the scope of the protective measures

*Examples of measures that meet the requirements of the Act*

- The measures to protect individuals against reprisals can take different forms and must be adapted to each situation, such as:
  - measures to limit contact between the victim and the person who is the subject of the administrative complaint
  - compensation for the loss of a scholarship

**Remember**

Certain principles should be applied in determining the protective measures to be implemented when an individual appears to be vulnerable to reprisals, namely:

- The case-by-case assessment of the risk of reprisals should be carried out with the individual who reported the problem or filed an administrative complaint.
- The person who is the subject of an administrative complaint should be advised that reprisals against the individual who reported a problem or filed a complaint will not be tolerated; if not respected, this element will be taken into consideration when the complaint is evaluated and sanctions imposed, if applicable.
- Although this element is not covered by the Act, administrative complaints involving a high risk of reprisals could be given priority treatment by the institution.

14) *The penalties applicable for policy breaches taking into account their nature, seriousness and repetitive pattern (s. 3, subpar. 15 of the Act)*

The policy must state the administrative sanctions that will be applied in the case of sexual violence and for which the educational institution has sole responsibility, in keeping with the applicable legal framework.

For example, sanctions imposed on staff members must take into account regulations in work contracts or collective agreements. Likewise, sanctions imposed on students must take into account the rules of conduct applied by the institution.

The policy must also provide for sanctions to be imposed on the person who has an intimate relationship, such as an amorous or sexual relationship, with a student while in a teaching relationship with or in a relationship of authority over the same student, but who did not report the coexistence of these relationships beforehand (see section 15).

*To fulfill the obligations provided for by the Act*

The policy is expected to:

- provide for the sanctions to be imposed for policy breaches (including those related to the code of conduct), taking into account the group to which the person who is the subject of an administrative complaint belongs (student or member of staff)
- provide for a gradation of sanctions depending on the nature, seriousness and repetitive pattern of the acts
- outline the scope of possible sanctions

*Examples of measures that meet the requirements of the Act*

- The policy can provide for multiple sanctions, such as:
  - a warning on file, suspension, exclusion, etc.
  - obligation to participate in extra training activities related to sexual violence
  - ban on entering the institution or its premises

**Remember**

The sanctions determined by the institution must be of an administrative and disciplinary nature. Under no circumstances can they replace those resulting from possible judicial proceedings. They must also take into account the nature, seriousness and repetitive pattern of the acts.

The following principles should also be respected when choosing the sanction to be imposed on the person who is the subject of by an administrative complaint:

- The sanction reflects the circumstances, the repetitive pattern and the seriousness of the acts.
- The sanction complies with the principle of the gradation of sanctions.
- Each file is assessed on a case-by-case basis.

Moreover, institutions should provide for an alternative solution for the support mechanism and handling of administrative complaints when the incident places the resource who usually determines the sanction to be applied in a position of conflict of interest.

## 15) Code of conduct (s. 3, para. 4 and 5 of the Act)

The policy must also include a code of conduct specifying the rules that a person who is in a teaching relationship with or a relationship of authority over a student must comply with if the person has an intimate relationship, such as an amorous or sexual relationship, with the student.

The code of conduct must include a framework aimed at avoiding any situation where such relationships could coexist if such a situation might affect the objectivity and impartiality required in the teaching relationship or relationship of authority or might encourage an abuse of power or sexual violence.

In other words, the policy must provide for a regulatory framework with respect to intimate relationships between a student and a person having influence over the progress of the student's studies.

It is for the institution to identify the type of cases likely to arise in its community and, if need be, the course of action it intends to take. It is also the institution's responsibility to determine the scope of this framework.

The institution is responsible for specifying the measures to ensure that its code of conduct is followed and the sanctions in case of failure to do so.

Moreover, since social media create a false sense of intimacy and can become vehicles of sexual violence, the institution's code of conduct could also require persons in a teaching relationship with or a relationship of authority over members of the student community to communicate with them through official means.

There are multiple situations that might affect the objectivity and impartiality required in the teaching relationship. They include, among others, intimate relationships between:

- a member of the teaching staff and a student in the same department
- a member of the teaching staff and a graduate student under the staff member's supervision
- an officer of the institution and a member of the student community
- a lecturer, research assistant or a teaching assistant and a student in the same department
- a security services employee and a member of the student community
- a sports coach and a member of the coach's team

### *To fulfill the obligations provided for by the Act*

The policy is expected to:

- outline the measures aimed at governing the coexistence of an intimate relationship, such as an amorous or sexual relationship, and a teaching relationship or a relationship of authority between two members of the institution's community
- provide for a mechanism allowing individuals to disclose this situation when the intimate relationship was developed before the teaching relationship or

relationship of authority, thus allowing for measures to be implemented that will preserve the objectivity and impartiality required in the relationship

*Examples of measures that meet the requirements of the Act*

- The policy can provide for:
  - a mechanism allowing an individual who is in a teaching relationship with or a relationship of authority over a member of the student community while in an intimate relationship, such as an amorous or sexual relationship, with that student, to report the situation
  - measures ensuring the objectivity and impartiality of the relationship, such as:
    - assigning another thesis supervisor to the student concerned
    - transferring the student to another course section
    - assigning the marking of examinations, etc. to another member of the teaching staff

**Remember**

In Canada, the age of consent to sexual activity is 16. In some cases, the age is increased to 18, such as when a person's sexual partner is in a position of trust or authority with respect to that person. In other words, the concept of consent is not valid in these situations.

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