Unions, Collective Agreements, and Institutional Responses to Campus Sexual Violence

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Land Acknowledgement

This work is taking place on and across the traditional territories of many Indigenous nations. We recognize that gender-based violence is one form of violence caused by colonization that is still used today to marginalize and dispossess Indigenous Peoples from their lands and waters. We must centre this truth in our work to address gender-based violence on campuses and in our communities. We commit to continuing to learn and take an anti-colonial inclusive approach in all our work. One way we are honouring this responsibility is by actively incorporating the Calls for Justice within Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

About Possibility Seeds

Courage to Act is a national initiative to address and prevent gender-based violence at Canadian post-secondary institutions. It is led by Possibility Seeds, a social change consultancy dedicated to gender justice, equity, and inclusion. We believe safe, equitable workplaces, organizations and institutions are possible. Learn more about our work at www.possibilityseeds.ca.

We hope this document will be a valuable resource to those seeking to address and prevent campus gender-based violence. As this is an evolving document, it may not capture the full complexity of the subject matter. The information provided does not constitute legal advice, and is not intended to be prescriptive. It should be considered a supplement to existing expertise, experience, and credentials; not a replacement for them.

We encourage readers to seek out training, education, and professional development opportunities in relevant areas to enhance their knowledge and sustained engagement with this work.

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Part 1: Framing the Conversation

In this section, we cover the fundamentals of unions. Here you will find descriptions of union basics such as collective bargaining and collective agreements. This background is important for understanding not only the landscape of work on post-secondary campuses, but also the part unions have played in on-going struggles for social justice. Unions have access to tools and processes unorganized workers do not, and can use those to respond to and prevent sexual violence in post-secondary institutions (PSIs). We also look at the options that exist for workers who have experienced sexual violence or harassment on campus.

Unions and unionization

The role of a union is to act as a bargaining agent for a group of workers, to represent and support union members in workplace disputes with the employer and to ensure that employers respect the rights of workers as outlined by collective agreements and legislation. Unions strive to improve working conditions for their members through collective bargaining, through the grievance process, and through their influence on institutional and public policy. Unions are formed by workers who use their union dues to fund the union's operations and activities. In return the union acts on behalf of its members. All unions are governed by federal and provincial legislation, and all register with their provincial labour board. Labour Boards issue what are called certificates that recognize the legal standing of the union to represent its members in all matters. Unions are member-driven and democratic organizations, and must be responsive to the concerns and needs of their members. Importantly, the gains they make for their members often become the foundation of improvements to wages, benefits and rights for workers who are not part of a union.

Determined labour activism has achieved much for workers in Canada. In 1872, unions were first protected by federal legislation. Agitation to reduce hours of work from ten to nine a day, and from seven to five days a week followed, making unions responsible for the creation of the weekend. In 1940, Unemployment Insurance (called Employment Insurance today) resulted from tumultuous worker demonstrations and a long strike. After a terrible workplace accident near Toronto caused the deaths of five immigrant workers in 1960, unions pressured the Ontario government to pass the Industrial Safety Act, which was the

basis for the occupational health and safety (OHS) legislation in provinces and territories across Canada which regulates worker safety on the job to this day.

Unions also pushed for improvements to federal maternity leave in the 1970s and bargained for the first paid paternity leave as well as leave for adoptive parents. While many unions have been far from perfect in some of their own equity practices, every collective agreement in the country now contains enforceable provisions to protect members from discriminatory practices. Using these tools, Canadian unions have made a significant contribution to advances in equity and human rights.

Unions continue to struggle for more and better rights for workers including in areas such as anti-discrimination and anti-racism, and protection from sexual and gender-based harassment and violence. Achieving these rights involves repeated rounds of negotiations over the terms and conditions of employment, time consuming, complex, and expensive legal cases, and organized campaigns to change attitudes and implement progressive policies. Unions, through the dues checkoff, collective bargaining, grievance arbitration, and membership engagement systems they have established, are among the few groups with the financial and institutional resources necessary to engage in such action. This ability places a special responsibility on unions to play a leadership role in the struggle for equity, human rights, and social justice. And because unions have access to the grievance and arbitration process, the cases and issues they pursue using these legal mechanisms can help secure improved rights for everyone. Some recent examples of such cases include the following:

- 1999 Supreme Court of Canada Meiorin decision – British Columbia Government Employees Union creates the gold standard test for human rights in hiring practices.
- 2004 enactment of same-sex marriage laws – achieved after a series of union victories before labour arbitration boards and human rights tribunals in the 1990s.
- 2014 Federal Court of Appeal Johnstone decision – Public Service Alliance of Canada establishes that human rights family status protection has expansive meaning, including the requirement to implement flexible work shift policies for new parents.
- 2015 Laurentian University and LUFA (Dr. X) arbitration decision – Laurentian University Faculty Association expands the employer's accommodation responsibilities: the employer cannot require an absolute standard of successful

performance as a pre-condition to implementing an accommodation proposal. (CAUT, 2019)

What is a collective agreement?

A collective agreement is a written contract that outlines the terms of the relationship between the employer and the union and spells out in detail the terms and conditions of work for a group of unionized employees. Collective agreements apply for a defined period of time and cover things like salaries and benefits, leaves and time off, hiring, promotion, disciplinary procedures, grievance and arbitration processes, and other workplace rights and responsibilities. A collective agreement is a public document, and each member should receive or have access to a copy of the contract. Collective agreements are filed with the local Ministry of Labour or Labour Board. All collective agreements for workers in the public sector in Canada are available to the public, and most are posted online.

The benefit of a collective agreement over other kinds of contracts is that it is negotiated by a union acting on behalf of all employees who make up its membership, which helps to address the power imbalance that typically exists between an employer and each individual employee. Individual employees do not have to face the employer on their own to ask for improvements to working conditions; instead, unions can use their collective power to negotiate with the employer.

Collective agreements are legal documents and take precedence over other employer policies, including institutional policies adopted by the Board of Governors at a PSI. The relationship between collective agreements and legislation is more complex, as some legislated standards (such as hours of work) can be replaced with a negotiated agreement, but in other cases, such as health and safety law and anti-discrimination laws, legislation takes precedence and unions and employers cannot bargain away workers' legislated rights.

Collective agreements are reached through a process of collective bargaining, also known as contract negotiations or contract talks. Contract negotiations take place between a team of people on the union's side and a team on the employer's side, meeting and presenting what they each believe are the changes that should be made to the existing contract to make it better from their very different and often conflicting perspectives. Collective bargaining is a power relationship. Union negotiators concentrate on shifting power in the

employees' favour through group action, including by potentially exercising their right to take collective action in the form of a strike. The ability of workers to withdraw their labour legally, without being fired for doing so, is the most significant way that unionized workers challenge the power of the employer. If workers cannot be fired for striking, then the value of their labour is immediately visible to all when the work stops, and pressure increases on the employer as well as on the employees to resolve the workplace conflict or bargaining impasse that resulted in the strike.

To accomplish this, the association must represent all constituencies effectively and give the membership ownership of the process. This requires a strategy based on equity, inclusion, and democratic participation. Unions typically have open elections for executive members and for other positions on the organization's various committees. A union can form a committee on any issue of significance to its members, from an Anti-Black Racism Committee to a Pension Committee to a Social Justice Action Committee. Many unions also have a flexible caucus structure or may involve members based on their interest in topics and issues (e.g. Climate Action Committee; Divestment Committee; Equity Committee). The bargaining team for a union may be elected from the general membership or from a smaller group of members already involved in researching and developing bargaining proposals. Bargaining proposals themselves are typically drafted based on issues of importance to the membership, as expressed in General Membership Meetings, and in constituency meetings held to seek advice and input from members facing workplace matters that require improvement or redress through contract language. The goal is as much member involvement in the union as possible, so that the actions taken by the union reflect the will of a broadly and deeply engaged workforce.

Contract talks can take a long time but the result is a new collective agreement which is signed by representatives from both sides of the bargaining table: the union side and the employer side. For the duration of that new agreement (commonly two to four years) both the employer and the union agree to abide by the terms negotiated in the most recent round of talks and added to the existing document. Over several decades a collective agreement can become hundreds of pages long and very complex, with several new sections, called "Articles" added to reflect changes to work, to the workplace, and to society in general. Union members see regular contract talks as a critical opportunity to bring about important improvements to the language in the contract to address problems and

issues that the current agreement does not. Deficiencies in a collective agreement may also come to light as a result of several grievances filed by the union that reveal dangers or difficulties in the workplace that need attention and improvement.

What role can a collective agreement play in addressing sexual violence?

Addressing sexual violence and harassment also means contributing to its prevention. Everyone wants to work and learn on a safe campus. Doing whatever we can to stop sexual violence from occuring in the first place makes our campuses safe and healthy places for those who study, work, and visit. Unions can and should be partners in this prevention effort, even as we recognize and stress that the employer is ultimately responsible for workplace safety. Being partners in prevention means facing and addressing sexual violence and harassment everywhere it occurs, including inside the union.

The collective agreement is a powerful tool in both prevention of and response to sexual violence and harassment because the terms and conditions of the collective agreement take precedence over institutional policies, and cannot be altered simply through the PSI's development and posting of a new policy. The PSI's policy on sexual violence should state this very clearly in case there is a discrepancy between the policy and the collective agreement. If the employer wishes collective agreements to align with the PSI's policy, the employer will need to propose changes to each collective agreement with each local union it bargains with, which then need to be negotiated with the union. The resulting agreement may include the employer's original proposal, but in most cases the union will counter-propose in response, and a back and forth negotiation occurs until the parties agree to the tentative provisions that then need to be ratified by the membership and the Board of Governors, along with the other negotiated changes to the collective agreement.

The collective agreement is also a powerful tool because its articles can be legally enforced through grievance and arbitration, both of which are explained in more detail in this document. Key elements that can and should be negotiated into your collective agreement if they are not already there include recognition of the right to a safe workplace, the right to accommodations both for safety and for the traumatic aftermath of incidents of violence, and leaves—such as traumatic incident leave—for those involved in such incidents. These are discussed in more detail below.

CUPE has a useful checklist for unions seeking to improve their contract language on sexual violence and recommends the following be negotiated into collective agreements:

A strong statement clearly defining the language's purpose, objectives, responsibilities and scope:

- Strong statement of **commitment** to address violence and sexual violence in the workplace, including a commitment to support survivors of sexual violence.
- **Purpose** and objectives of the language.
- **Definition** of sexual violence in the workplace, including examples.
- Definition of **consent.**
- **Roles and responsibilities** of the employer, the union and the workers.
- **Scope** of the language and where it applies - e.g. one article for all worksites run by the employer or different articles specific to different work locations.
- Stated **commitment to survivors** as being active participants and taking up leadership in the process and a clear statement about any limits to this commitment.
- High-level commitment to **challenging the stigma** that surrounds workplace sexual violence.
- A zero-tolerance policy and **list of procedures** that helps to prevent incidents of workplace sexual violence. (CUPE, 2018)

CUPE also recommends that the union consider what elements of the workplace might contribute to situations where sexual violence and harassment could occur. For example, workers in temporary, part-time or casual positions may be too afraid of discipline or dismissal to report dangerous situations to management, or may find it difficult to rebuff unacceptable behaviour by others for similar reasons. Certain workers already more vulnerable to sexual violence are also more likely than others to be employed in these precarious jobs. They include women, transgender and gender diverse workers, racialized and Indigenous workers, young workers, workers with disabilities, migrant workers, and newcomers. Unions can help improve the conditions of precarious and vulnerable workers by bargaining contract language on minimum staffing levels, on conversion of temporary or

casual work to full-time, and against contracting out. Improving job security in these ways can assist in creating a safer workplace. Unions can also play a part in coalition campaigns against budget cuts and privatization, contracting out, and precarity at PSIs. Unions can also attempt to negotiate protections into collective agreements that prohibit reprisal against employees who come forward with complaints of sexual violence or harassment.

The landscape of unionization in the post-secondary education sector

Canadian PSI campuses are heavily unionized places. Many people associate unions with the manufacturing or health care sectors but do not realize how thoroughly the workers in our sector are represented by several different unions, whether they are academic faculty or staff across the university, such as food service, administration, groundskeeping and facilities.

Approximately 75% of educational workers in Canada are unionized. Most college and university campuses in Canada have at least three unions or union locals (these are different units of the same union) representing workers. There is generally an academic staff union or faculty association, a union representing academic support staff, and a union representing student workers on campus. But on many campuses there are more than three. There can be separate unions representing full-time and part-time (contract) academics, separate unions representing grad students and postdocs, and for various staff roles, such as clerical, trades, and maintenance. There may also be unions for those whose work is contracted out and provided by an external company such as food service workers, security staff or custodians. Finally, there may be senior management on campus who are represented by professional associations that are not the same as unions but fulfill some of the same functions as unions.

The University of Toronto campus provides a good example of the variety of unions present on PSI campuses. There are currently 11 different unions and employee associations with at least 27 different collective agreements on U of T campuses:

- Canadian Union of Public Employees (CUPE), 5 locals, with 10 agreements
- United Steelworkers, 1 local with 2 agreements
- Ontario Public Service Employees Union (OPSEU), 2 locals
- International Brotherhood of Electrical Workers (IBEW) 1 local, with 3 agreements

- Carpenters & Allied Workers
- International Alliance of Theatrical Stage Employees (IATSE)
- United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (UA)
- Sheet Metal Workers International Association (SMWIA)
- Faculty association – represents full-time faculty plus librarians
- Unifor, with one local representing U of T employees and one local representing Chartwell employees on the U of T-Mississauga campus
- UNITE HERE, representing Aramark employees on the U of T-Scarborough campus

One way to identify the various unions and professional associations on your campus is to visit the institution's website and look for this information on the Human Resources page. Collective agreements for the bargaining units that have the PSI as the employer should be available and accessible on or through that page. Collective agreements for those whose work has been contracted out to a third-party provider (most often food service and custodial workers) will not be available on the PSI's website but may be available through provincial collective agreement databases.

Most PSIs also have student unions on campus, and there may be more than one union representing different groups, such as undergraduate and graduate students. Student union leaders are elected by the student population and represent and advocate on behalf of the student body on various matters of PSI policy and other campus issues. They also receive dues from each student and may provide a variety of services to its members, such as health and dental insurance coverage, organization of student clubs and social events, or operation of student pubs/restaurants, newspapers, radio-stations, etc. Student unions may also provide individual advocacy support for student members who are going through university processes, such as academic appeals or disciplinary proceedings.

Power differences between workers in post-secondary institutional spaces

Not all workers have the same power or privileges on our campuses. Not all workers have the same protections. These power imbalances can both end up fostering sexual violence and harassment and preventing workers from reporting it when it takes place.

There is a pronounced hierarchy of worker power in the PSI. At the very top are members of Central Administration/Management (President, Vice-Presidents, Deans, Associate Deans). They are not unionized and are often referred to as "out of scope" because the collective agreement does not apply to them. Managers and administrators have the power to hire, discipline, and fire, whereas members of a unionized bargaining unit are peers and generally do not have the power to administer discipline, hire, or fire other members of the same union.

Tenured faculty are next in the power hierarchy, and are at the top of the list of organized workers. They have less power than management but much more power than faculty in pre-tenure, non-permanent or precarious positions. They are protected from dismissal without cause by tenure, which is also a mechanism for the defense of academic freedom. Some permanent faculty also move in and out of management roles, including as Deans and Association Deans, for example. During such periods they will be out of scope of union bargaining units, and will then return to the bargaining units after their temporary appointments as managers come to an end. When they return to their previous roles in the bargaining unit they are again covered by the collective agreement. Even among tenured or permanent faculty, however, there can be varying degrees of power and protection based on type of appointment, rank and seniority, funding, prestige, and reputation. Institutions may be more reluctant to investigate or discipline a faculty member who has external funding from industry or a wealthy donor, prestigious external appointments, or expertise in academic fields or programs that are highly in-demand.

In comparison to tenured faculty, precariously employed faculty – whether they are limited-term, continuing, contract, adjunct, or pre-tenure track – have limited power, very little job security, and are at much greater risk of having their rights violated. A precariously-employed instructor who does not have tenure is very vulnerable to any type of complaint, about sexual misconduct or otherwise. While they should technically have the same rights and be entitled to the same procedural fairness from the employer in

addressing complaints of sexual violence or harassment, this does not always happen in practice. For example, an individual accused of sexual violence may not receive due process to investigate the complaint; they simply may not be offered a new contract. If an individual lodges a complaint about experiences of violence, they may be painted as a troublemaker and similarly not have their contract renewed. Unfortunately, the ratio of precarious academics to tenure-track and tenured academics is growing rapidly, increasing the ranks of precariously employed workers at PSIs.

Non-instructional academic staff and non-academic staff are next on the hierarchy of worker power. These workers often don't have the prestige of faculty and are seen as less important to the PSI's mission, even though the work that they perform is absolutely essential to research, instruction, and the continued functioning of the PSI. Some of these workers will have full-time and permanent positions with significant employment-related protections. However, universities and colleges are also increasingly turning to precarious forms of employment for these workers, including temporary, term, and casual contracts. These precarious workers are in a similar position to contract faculty – they may be denied justice or due process simply by not having their contract renewed.

At the bottom of the hierarchy of worker power are contracted out service workers who work on campus but for a different employer. These workers are often told by the PSI that they are not part of the campus community at all, and that the PSI's administration is not responsible for their terms and conditions of work. When the college or university moves the food or custodial services contract from one external provider to another every few years, the employer of these outsourced workers changes too. This may affect the certification of the union, which means these workers could suddenly lose their union, their wages, benefits, and seniority. It can be difficult to keep track of who the employer of these workers is when the contract for those services flips to another provider. Workers in this situation are more likely to be precarious: they often work less than full-time hours and have little to no job security. The question of who, finally, bears responsibility for the safety of those whose work has been contracted out by the PSI to a third-party provider is an issue that has not received sustained or satisfactory attention. This gap in the clear provision of rights for contracted out workers creates vulnerabilities that demand redress.

There are also many student workers on college and university campuses who are in bargaining units represented by unions, including those who may be working as teaching

or research assistants. Student workers can be disadvantaged because of the short-term, part-time nature of the work they usually perform. There can be unreasonable expectations placed on students because the work is seen as an academic or learning experience. There can be pressure on students to keep silent about harmful behaviours because the person committing the harm is in a position of power over their academic career or their future professional career. There can also be a high turnover of leadership in unions representing student workers due to their precarious and short-term employment, and they may not necessarily be in a position to provide the same support to members as bargaining units with more resources.

The following figures provide an example from York University of the distribution of various workers on that campus (York University, 2021):

- 3,132 full-time non-teaching staff
- 2,163 Teaching Assistants
- 1,917 contract faculty
- 1,707 full-time faculty

This does not include part-time staff, which often includes student workers. It may surprise many that somewhere between 30-40% of employees on most college and university campuses are students.

Overlapping roles

The densely organized character of PSIs in Canada means that many people are both students and workers at the same time. Other non-student workers may be members of two different unions if they work less than full-time but in more than one capacity on the campus. A person could be a part-time library technician and a part-time custodial or food service worker or physical plant worker. The important thing is to realize that there is a fluidity of roles, responsibilities, and power on our campuses, and that all of these are affected and implicated in cases of sexual violence.

For example, a part-time course instructor could also be a postdoc who has to report to one department supervisor for their teaching work, while a different department member oversees their academic postdoctoral research. Or, a student teaching assistant may have

an on-campus job in food services, or another service role in which their supervisor at one moment is one of their students at another moment.

We can't assume that faculty, staff and students will just figure out what processes they are entitled to or how the many relevant processes available to employees and students on our campuses work or don't work together. It may also be difficult for those responsible for administering the PSI's institutional policy. A best practice for institutions is to develop materials that cover how various policies apply to a variety of possible situations which can be shared with people who report incidents of sexual violence, with people who have received a disclosure or report of sexual violence, and with those who are responsible for providing services or representation to people involved in an institutional process. These materials should take into account the fluidity of roles, the intersecting work identities, and the uneven power dynamics of groups of union members mentioned above. For example, does the material provided by the employer explain the processes available in incidents of gender-based violence involving all of the following:

- A student complainant and a respondent who is a unionized worker?
- A complainant and a respondent who are both from the same union?
- A complainant and a respondent who are from different unions?
- A complainant and/or respondent who is a member of two different unions on campus?
- A unionized worker and a non-unionized worker, or a member of the public visiting campus?

It is also important for information on processes and support to be in accessible and plain language. Materials written in legalese present a barrier for many.

Part 2: Institutional Responses to Campus Sexual Violence

In this section, we look at the response of the post-secondary institution, or the employer, to sexual violence and harassment, what their legal obligations are, best practices when responding to incidents involving workers or in engaging with labour unions, and the role of the employer in education and prevention.

We will also look at the role that unions can play in addressing sexual violence in PSIs, including in the context of the different types of complaint processes available to their members, as well as in education and prevention efforts.

Employer obligations

It is the employer's legal responsibility to provide a safe workplace free of harassment and violence. This responsibility flows from OHS legislation. In practice this means that the employer must take "every reasonable precaution to ensure the workplace is safe" (Canadian Centre for Occupational Health and Safety, n.d.). Sexual violence and harassment on campus is a health and safety issue, and it falls upon the employer in the first instance to address this workplace hazard. The employer's legal responsibility also comes from human rights legislation, which includes prohibitions against sexual and gender-based discrimination and harassment in the context of employment. This means that PSIs have a responsibility to prevent sexual violence and harassment in the workplace and to respond to it quickly and appropriately when it occurs.

Sometimes an employer's response begins when a survivor or their union steward submits a report of sexual violence and harassment to a supervisor or to a Joint Health and Safety Committee. However, reports of harmful behaviour can also come from other workers, who have a duty under OHS legislation to report health and safety concerns, from a supervisor or manager, or even from indirect reports or workplace rumours. OHS legislation requires that employers take appropriate and proportionate action in response to issues of sexual violence or harassment, regardless of whether or not they have received a formal complaint. An employer can also potentially be held legally liable if they claim they were not aware of an issue, but it is determined that they reasonably ought to have known

about it in the circumstances, for example if they ignored or failed to follow up on warning signs.

While a trauma-informed response to sexual violence and harassment emphasizes putting as much decision-making power as possible in the hands of the person who has experienced harm, there are times when employers are required by law to take action, even where a survivor may not want them to proceed. This may occur, for example, where there are broader community safety risks.

In some provinces, OHS legislation requires the employer to conduct a workplace health and safety investigation. This does not mean that another alternative process cannot be followed at the request of the survivor, but the employer cannot dispense with the obligation to conduct a workplace investigation simply because another process is also taking place.

The employer's obligation to ensure the safety of workers and of the workplace can encompass situations where the person causing harm is not connected to the workplace if there is a risk that the worker may experience this harm within the workplace. For instance, employers have an obligation to protect workers against domestic violence in the workplace. Such measures could include locking doors, placing workers in a safer space, implementing a buddy system, conducting regular security check-ins, and providing escorts in and out of the building.

Depending on the identities of the survivor and the person causing harm, the employer may also have the obligation to inform police (particularly in cases where the survivor is a minor) or to notify a professional regulatory body.

Best practice

Even though employers may have legal obligations they must adhere to, they can still respond in a trauma-informed manner by ensuring that these obligations are clearly outlined in the institution's sexual violence and harassment policy, as well as in the workplace sexual violence and harassment policy or collective agreement, as applicable. Communicating clearly with survivors about the process, potential outcomes, timelines, and any changes or developments is also very important.

Union obligations

Labour unions also have a role to play in responding to and preventing sexual violence and harassment on campus. The legal responsibilities of a union local are spelled out by their collective agreement and generally include negotiating collective agreement provisions that protect and supports workers, helping workers to claim and defend the rights laid out in the collective agreement and in legislation, assisting workers who need workplace modifications, and providing representation to workers who are facing potential discipline, sanctions, or termination. However, unions can play a supportive role that goes far beyond their legal obligations.

One way that unions contribute to responding to and ending sexual violence and harassment is by bargaining in collective agreements to include supports for workers who have been affected by violence or harassment. Unions can also ensure employers abide by their legal obligation to provide a safe workplace under OHS and human rights legislation, and can file grievances where employers have failed to do so.

Unions can also ensure that all workers have the training that they need to prevent and respond to incidents of sexual violence and harassment by demanding that the employer live up to its obligations under the collective agreement, under legislation, and under institutional policies to equip and support workers who face these situations.

Unions also support workers who have experienced sexual violence and harassment in the context of their employment, and those who have been accused of sexual violence and harassment. Under labour law unions have a legal "duty to represent" all union members. This is not about picking sides, or preventing offenders from being disciplined, or minimizing egregious behaviours. Rather, the union has a legal obligation to ensure that all members have fair representation, and that due process is respected. They can help to ensure that investigation and disciplinary processes are procedurally fair and proportionate in the circumstances.

In some cases, a union is called upon to represent both the complainant and the respondent in an investigation or grievance. In these cases, it is imperative that the union assign two separate representatives to these individuals in order to avoid any actual or perceived conflict of interest in their representation of both members. These two representatives must not communicate with each other for the duration of the process.

Unions should also have a process in place to ensure that any document storage or communication related to the complaint takes place in a way that maintains the separation of the two representatives and the confidentiality of each participant.

When a worker involved in a sexual violence or harassment matter needs workplace modifications to address their safety or other barriers to fully participation in their employment, the employer should include the union in the discussion about what arrangements or interim measures might be needed. The union should make sure that the survivor's wishes are taken into account to the extent possible so that interim measures are not experienced as a punishment by the survivor. For instance, if a survivor wants to avoid contact with the alleged perpetrator, the survivor should be given a choice as to whether it is the survivor or the perpetrator who is moved to a different location, shift, or assignment.

However, it is important to remember that if the alleged perpetrator is a worker, they will also have rights under the collective agreement and under legislation. The employer may need to balance these competing interests, in which case it is essential that the union assign separate representatives to the complainant and respondent while interim measures are being determined. The union should also check in regularly with members to ensure that the workplace modifications are effective and appropriate over time, as they may need to change as circumstances change.

Institutional and External Complaint Processes

Generally speaking, there are eight processes available to complainants in cases of sexual violence and harassment. These processes are:

Institutional Complaint Processes

- The process set out by the institutional policy of the PSI
- Non-adjudicative processes such as restorative justice or training
- Workplace health and safety investigation
- Grievance and arbitration

External Complaint Processes

- Complaint to a professional regulatory body
- Human rights complaint
- Internal union policies and procedures
- Criminal charges or civil sexual assault claim

With the exception of criminal charges or civil sexual assault claims, which are beyond the scope of this toolkit, we explore each of these internal and external processes in greater depth below.

The available avenues for a complaint depend on who the complainant and respondent are, and where the incident took place. The health and safety regulations of the jurisdiction, the human rights legislation of the province or territory, and the scope of the PSI's own policy also shape what options are available. The various processes are not all mutually exclusive, but a policy may require that one process conclude or be paused when another is initiated. Reasons for this include concerns about multiple proceedings creating risks for the parties, such as where a respondent's right to remain silent in a criminal matter may be undermined where they are required to participate in an institutional investigation interview, as well as the fact that parallel proceedings may result in inconsistent outcomes. So it is more likely that if parties wish to pursue multiple processes, they will do so sequentially rather than simultaneously. For example, a grievance could be filed if a complainant found the result of an institutional investigation unsatisfactory or a survivor may choose an alternate resolution strategy, discover that it is not suitable, and file a human rights complaint.

Institutional Complaint Processes

1. Institutional policy

Standalone policies on sexual violence and harassment are a legislative requirement for post-secondary institutions in five provinces. Universities and colleges in other provinces and territories have also begun to adopt and implement institutional policies. These policies generally outline the institution's response to complaints of sexual violence and

harassment through investigations, adjudications, and sanctions, as well as the PSI's approach to education and prevention.

Normally, an institutional process begins when a formal complaint of sexual violence or harassment is submitted. The next step is usually a safety assessment and the implementation of interim measures to ensure the safety of the parties and the university community, and to protect the integrity of the investigation. Interim measures could include sequestered or separated learning or work spaces, for example. Interim measures should be fair and proportionate, and subject to grievance should concerns arise that provisions of the collective agreement have been breached.

A formal investigation then takes place. The investigator, who may be internal or external to the PSI but is ideally trained in trauma-informed practice, collects evidence to determine, on balance of probabilities, whether a policy violation occurred. The results of the investigation are then used to determine if there has been a breach of the PSI's policy and if so, what sanctions are to be imposed. Sanctions may vary from being required to participate in education and training, to receiving a letter of warning, to suspension, expulsion from the PSI, or dismissal from a position of employment.

Policies also outline who can appeal a decision, on what grounds an appeal may take place, including whether the appeal may hear new evidence or can only re-consider the existing case, and what process the appeal will follow. In some cases, for unionized members of the PSI community, the policy explicitly requires that workers use the grievance and arbitration process to appeal an institutional policy decision.

Best practices for employers

The quality of existing institutional policies varies significantly when it comes to workers and their rights, with some excluding workers altogether. The following are areas related to the institutional policy in which universities and colleges can adopt best practices for protecting and supporting workers.

Scope

Institutional policies should apply to all members of the community, including workers, third party contractors, visitors, and alumni, rather than applying exclusively to students. Policies that apply only to students ignore the complex identities of members of the

post-secondary community, forcing individuals who are both students and workers to choose which identity they will use to pursue justice and making it more difficult for them to access workplace modifications, supports, and protective measures as both students and workers.

A trauma-informed response would also allow survivors to choose which process best meets their needs and addresses their experience, rather than forcing them down one path or another by restricting what options are available to them.

Similarly, policies should also apply to all places where work and learning takes place, rather than being restricted to incidents that occur on campus. Ideally, policies should apply to any incident that affects the work or learning of a community member who has experienced harm. While it can present complicated challenges, it is also important for policies to address whether or how they apply to online work and learning environments, particularly given the significant transition in recent years to online or hybrid work and educational opportunities.

Disclosure and reporting

Survivors often find it easier to disclose experiences of sexual violence or harassment to faculty or support staff because they know them well or interact with them daily. However, PSIs cannot merely assume that every worker will know how to respond appropriately and effectively to a disclosure of sexual violence and harassment. In order for "every door to be an open door" while simultaneously ensuring a trauma-informed response, universities and colleges must ensure that their policy clearly identifies to faculty, staff, and students how they should respond if someone discloses an experience of sexual violence to them. This should include guidance on where to refer the survivor, what information to offer about the survivor's options, expectations of confidentiality, and when the person receiving the disclosure has an obligation to report. The obligation to report is a complex one and legal advice is highly recommended.

Given the barriers to reporting faced by many survivors, some unions believe that anonymous and third party reports can be an important tool in keeping both survivors and campuses safe. They can lead to campus risk assessments, allow for structural changes to policies, practices or the campus environment, and they can help identify important patterns in behaviour. In some cases, multiple anonymous or third party reports may give a

survivor the confidence they need to come forward and file an official report. Importantly, some union policies and agreements do not allow investigations or actions based on anonymous or unattributed complaints or information.

However, third party and anonymous reports create barriers to procedural fairness for respondents. They cannot be dealt with in the same way as a first-person report or complaint. Procedural fairness requires that a respondent has the right to hear and respond to an accusation, which they cannot do if some of the information about the accusation is withheld. Procedural fairness is especially important in cases involving disciplinary measures, which should not be imposed in response to third party or anonymous complaints. Expectations regarding third party and anonymous complaints should be clearly laid out in the institutional policy.

Safety assessments and interim measures

Once a PSI receives a report or disclosure of sexual violence or harassment, they normally conduct a safety assessment to determine what steps, if any, need to be taken to ensure the safety of the campus community. It is essential that PSIs include workers and workplaces in this assessment. This is part of the institution's obligations as an employer, to provide a safe workplace and to take action on threats when they become aware of them, and will ensure the thoroughness of the assessment.

PSIs may need to implement interim measures to ensure the safety of the survivor and the campus community, while providing support to the survivor as a student and/or worker. Interim measures applied to the respondent should be as minimally restrictive as possible, proportionate to the severity of the alleged conduct, and, if the respondent is a union member, in accordance with the collective agreement. Interim measures are not disciplinary and this should be made clear to all parties.

PSIs should think about interim measures that may be needed to protect the survivor as a worker, and not just as a student. This could include no contact orders in the workplace, transferring either the respondent or complainant to a different shift or a different assignment, or in some cases, suspension of the respondent with pay.

Interim measures are temporary measures and should be adapted according to circumstances. The complainant and respondent, with the support of their union, should both be able to request changes to the interim measures if circumstances have changed.

PSIs should ensure that interim measures are periodically reviewed to verify that they are still necessary and working as intended.

Supports

Sexual violence and harassment do not only affect the survivor and perpetrator, they can also affect those who witness harmful behaviour, those who are involved in responding, and those who provide supports or services to complainants and respondents. Every member of the community should be able to access support as needed, including trauma-informed counselling, medical and health support, academic and/or workplace modifications, and access to cultural supports such as an Indigenous Elder.

Receiving disclosures, conducting investigations, and providing support to people affected by sexual violence and harassment is not easy work and may result in vicarious or secondary trauma. PSIs should recognize the work and emotional burden of those who receive disclosures and those engaged in responding to disclosures and reports and ensure that appropriate supports are put in place for them. Ensuring that these are full-time, permanent positions and that enough people have been hired to adequately respond to the workload are also essential to protecting and supporting the health and well-being of the individuals who do this work.

As employers, PSIs should also be willing to bargain supports for workers with vicarious or secondary trauma, such as critical incident leave and access to counselling.

Privacy and confidentiality

Confidentiality at every stage of disclosing, responding to, and investigating an allegation of sexual violence and harassment is very important to both survivors and respondents. It is also essential to ensuring the integrity of an investigation and avoiding potential rumours, stigma or reprisal that may affect those participating in the process. Privacy, employment, and human rights legislation may also limit what information can be shared, even with the participants in an investigation.

However, some information must also be shared within the PSI in order to conduct appropriate safety assessments and allow for operational implementation of the complaint process. Information may also need to be shared in order to respect the obligations of a collective agreement or the rights of workers. For instance, complainants, respondents, and

their unions must receive enough information on the findings and outcome of an investigation to be able to determine whether or not to appeal or grieve the outcome, as well as to be able to fully participate in an appeal or grievance. An overemphasis on privacy and confidentiality might result in a judicial challenge or in a disciplinary outcome being overturned if the union is prevented from representing its members and defending the collective agreement.

It is also important for all parties to set out clear parameters from the outset about what information will be shared with whom, where records pertaining to the investigation and the decision will be stored, and for how long this information will be kept.

Policy reviews

Many policies include a regular review process to ensure that policies are effective, appropriate, and meeting the needs of community members, and that they are being implemented as expected.

This review process should include feedback from a variety of sources to ensure that the review is as meaningful and comprehensive as possible. Formal consultations should take place with each of the unions on campus who can provide feedback on many aspects of the policy's implementation and effectiveness, from many different perspectives, including complainants, respondents, and their representatives; people receiving disclosures and responding to sexual violence and harassment; bystanders and witnesses; and partners in prevention.

Accessibility

In order to be accessible, policies should be easy to find and easy to understand. Post-secondary institutions should consider making plain language materials available on the website or as a handout available through the institution's sexual violence prevention and response office that explain the rights and responsibilities of community members in various scenarios, including for workers who are unionized.

Best practices for unions

In order to ensure clarity for members about the status of the institutional policy and to provide certainty for the role of the union with regard to institutional policies on sexual

violence and harassment, unions may wish to negotiate acknowledgement of the institution's policy into the language of the collective agreement. The union should be aware that institutional policies are subject to change by the Board of Governors at any time, unlike the language of a collective agreement, which can be changed only during negotiations between the association and the employer. Collective agreements vary in their allowances for unions to be informed, consulted or actively involved in policy development. Where the opportunity exists, unions should educate themselves about best practice in trauma-informed procedural fairness, intersectionality and harm reduction opportunities in order to advocate for the inclusion of best and promising practices in the policy.

As well, the following are areas related to institutional policies in which labour unions can adopt best practices for protecting and supporting workers:

Scope

Institutional policies should ideally apply to all members of the community, including workers, third party contractors, visitors and alumni. Unions may need to explain to PSI administrators why this is important, even for workers who are covered by a collective agreement. Allowing survivors as much autonomy as possible in choosing the approach that is right for them is a trauma-informed response to sexual violence and harassment and prevents student-workers from needing to pick one aspect of their identity in pursuing justice.

Interim measures

Interim measures can be an important tool to protect the safety of workers, ensure a fair investigation, and support the healing of workers who have experienced harm. The union should support these short-term measures when they are needed. However, the union should ensure that any interim measures implemented are understood by all parties not to be disciplinary measures or evidence of guilt, that they are proportionate to the nature of the alleged incident(s), and that they are only as restrictive as required to ensure safety.

Representation

Unions have a role to play in the institutional process by representing their members as either complainants or respondents, ensuring that the process is fair, and that any outcomes from the adjudication process respect the collective agreement. Most collective

agreements will include explicit rights of members to have union representation when involved in institutional complaint processes, including in particular when disciplinary action could result.

When a member of a union is involved in an institutional investigation as the complainant or respondent, the union may have a legal duty to represent that member, depending on your collective agreement. The institution's policy cannot prevent the local from fulfilling this duty. Even if the union is not legally obligated to provide representation, the potential outcomes of such investigations means that it is likely in the local's best interest to provide representation to a member who requests it.

The union's role is to provide support to the individual and ensure the fairness of the investigation and adjudication. The union should also review any disciplinary measures that arise from the complaint process to ensure that they are proportionate and in line with the collective agreement, and if not appropriate they can file grievances on behalf of their members.

Reporting

Labour unions often don't like third party and anonymous reports because they feel that they subvert the rules of procedural fairness and can be abused to discipline workers without having the right to hear the case against them. However, some unions believe that in the right circumstances, third party and anonymous reporting can be powerful tools to identify potential campus and workplace risks and patterns of harmful behaviour and protect the community, including workers. In conjunction with Health and Safety assessments, these reports can also lead to policy or procedural changes – or even physical changes to campus – that can result in a safer workplace for all workers and a safer community for everyone, workers and students.

The key is in how these reports are used. The PSI's approach to anonymous and third party reports should be clearly spelled out in the institution's sexual violence and harassment policy, including outlawing the use of such reports for disciplinary purposes, and unions should monitor policy implementation carefully to ensure that the policy is followed. Other union policies and collective agreements do not permit any investigation or action based on anonymous or unattributed complaints or information. These reports must never be

used to justify disciplinary measures. Procedural fairness requires that workers have the right to defend themselves by hearing the full case against them.

2. Non-adjudicative processes

Sometimes the PSI's policy allows for alternative, non-adjudicative processes to be used in place of a formal investigation. These measures can include mediation, restorative justice practices, transformative justice practices, counselling, education or training for the person who caused harm, or an apology made by the offender to the survivor. They can be a powerful way for the survivor to claim a sense of healing and restoration and for the community to work towards accountability and transformation.

Non-adjudicative approaches should only be implemented with the fully-informed consent of both the survivor and the person who caused harm. This is essential to minimizing further harm or traumatization to the survivor. It also reflects the reality that most non-adjudicative practices will only be successful when the perpetrator can admit the harm that they have caused and be open to accountability for that harm.

For more information on non-adjudicative options, see the Courage to Act workbook Essential Elements for Non-Punitive Accountability.

Best practices for employers

While non-adjudicative processes must be voluntarily consented to by the participants, the PSI still has a responsibility as an employer to ensure that the process and any outcome respects the collective agreement when the person who is alleged to have caused harm is a unionized worker.

PSIs must also be careful that they are not promoting non-adjudicative processes as a way of avoiding alternative approaches such as a grievance or institutional investigation. Participants should be fully informed about the process and its potential outcomes before consenting.

Best practices for unions

The union may or may not have a role to play in a non-adjudicative process, even when the participants are union members. However, the union should monitor the process and any outcomes to ensure that they respect the collective agreement.

3. Workplace Health and Safety Investigations

Occupational health and safety legislation sets out standards for investigations that are conducted when an incident or series of incidents occur that affect the health and safety of workers. In some provinces, employers are required to carry out a workplace health and safety investigation when they become aware that sexual violence or harassment has occurred in the workplace. In other jurisdictions, an investigation would be conducted only if the survivor chose to file an official complaint with the employer or submitted a report to the Joint Health and Safety Committee.

Some jurisdictions require that investigations be conducted or overseen jointly, by both management and labour. In other cases, the employer alone is responsible for the investigation. However, the employer may consult with the Joint Health and Safety Committee to select an investigator, who could be a committee member, a supervisor, a health and safety representative, or an external investigator.

Joint health and safety committee

OHS legislation in most provinces and territories requires employers in workplaces over a certain size to establish a committee that brings management and labour representatives together regularly to address health and safety issues. The actual name of this committee may vary, based on the legislation in each jurisdiction. The responsibilities of the committee are set out in the relevant legislation and may include conducting regular safety assessments, responding to employee complaints and suggestions, conducting workplace investigations, making recommendations, monitoring follow-up to workplace safety incidents, and establishing programs to improve employee awareness and education.

OHS standards for an investigation generally require that the investigator(s) have experience in the type of incident being investigated, in addition to familiarity with OHS rules and practices.

Workplace health and safety investigations are generally focused on determining what factors in the workplace caused or contributed to the workplace hazard (in this case, sexual violence), not on determining whether or not a policy violation occurred and potential sanctions. Investigations also normally identify whether there were gaps in the policy or practices of the organization that allowed the harmful behaviour to take place and make recommendations to address those gaps. As such, there remains tension in some OHS legislation about the role of the committee in investigations of allegations of violence and harassment and questions of guilt or sanctioning. To ensure that everyone knows what is expected, the role of the joint health and safety committee should be clearly outlined in the PSI's institutional policy as well as in the terms of reference of the committee.

Best practices for employers

As with investigations under the institutional policy, it is important that employers or Joint Health and Safety Committees prioritize experience with sexual violence and harassment and knowledge of trauma-informed practice when selecting an investigator. This will reduce the risk of causing further harm while ensuring procedural fairness.

For more information on trauma-informed processes and trauma-informed workplace investigations, check out the following Courage to Act tools:

- *A Comprehensive Guide to Campus Gender-Based Violence Complaints: Strategies for Procedurally Fair, Trauma Informed Processes to Reduce Harm* (the Guide), created by Courage to Act's Reporting, Investigation and Adjudication Working Group (Eerkes, De Costa, & Jafry, 2021).
- *Key Principles of Gender-Based Violence Investigations at PSIs: A Guide for Workplace Investigations*, created by Courage to Act's Work Community of Practice.

4. Grievance and Arbitration

A grievance is a formal complaint asserting that the collective agreement or applicable legislation has been violated. A grievance can be filed by a union on behalf of an individual member, a group of workers, or the union itself. Each collective agreement sets out a process for how grievances will be addressed, usually following multiple escalating steps. The final stage is arbitration, in which an arbitrator (a neutral third party with training in

labour law) or a panel of arbitrators makes a binding decision on how to resolve the dispute.

Many collective agreements include a clause recognizing the right of workers to a safe workplace, including a workplace free of sexual violence and harassment. But even in cases where the collective agreement does not explicitly recognize this right, unions can file a grievance on behalf of members experiencing sexual violence and harassment because this constitutes a breach of the employer's legislated obligation to provide a safe workplace. The grievance is filed against the employer, alleging that the employer has failed in their duty to provide a safe workplace.

A union may also choose to file a group or policy grievance if many members have experienced sexual violence or harassment, or when the union believes that the employer hasn't done enough to protect employees from this form of workplace violence.

The grievance and arbitration process may also be used by either the complainant or respondent to appeal the outcome of an investigation under an institutional policy if they believe that the process was not fair or that the outcome violated the collective agreement. This includes that a union may grieve on behalf of a respondent in order to challenge the sanction or discipline imposed as a result of the investigation, and an arbitrator could overturn the sanction if institutional policies and processes were not properly followed or if the discipline is not proportionate in the circumstances.

However, this is not consistent across Canada. Ontario's new Bill 26, *Strengthening Post-secondary Institutions and Students Act*, (2022), is now in force and prohibits arbitrators, arbitration boards or any other adjudicator from making substitutions when a PSI has imposed discipline for sexual misconduct, no matter what the employment contracts, collective agreements, or relevant legislation might say on the matter. In other words, in the case of discipline or dismissal as a result of sexual misconduct by an employee, Bill 26 overrides all other applicable contracts, collective agreements and regulations. There may be other elements of a decision that a union could grieve in Ontario, but the severity of the discipline is no longer an accepted ground for a grievance.

Once filed, the grievance usually belongs to the union, not to the person who originally made the complaint (unless the collective agreement provides otherwise) and it is the union who bears the responsibility for pursuing the grievance at each escalating stage. The

union also has a legal duty to fairly represent a member who is alleged to have caused harm in an incident of sexual violence, if requested by the member.

Best practices for employers

Grievances can be a powerful tool for workers to achieve accountability in cases where harm has been experienced, in addition to changes to the workplace that will prevent future harm. However, many survivors find the adversarial process of a grievance and arbitration process to be re-traumatizing. While the collective agreement needs to be followed, employers should be willing to work with labour unions to find ways to provide safety and support for the survivor that still respect the process outlined by the collective agreement, as well as procedural fairness. This could include, for instance, requiring that the arbitrator have specialized training in sexual violence or in trauma-informed practice.

Best practices for unions

A grievance against the employer may be an effective way for a union to address sexual violence and harassment in the workplace and to achieve justice for an individual who has experienced harm. A grievance is normally filed by the union and belongs to the union, not the individual who initially reported harmful behaviour. The union can determine whether to continue to pursue a grievance or withdraw it at each escalating stage. It can also choose to accept a settlement with the employer. The union is bound by certain principles in deciding how to proceed, including the duty of fair representation, which means not showing bias, not making arbitrary decisions, and not acting in bad faith. The union also has a duty to balance the needs of the member who initiated the grievance with the needs of the membership as a whole.

In order to respond to sexual violence and harassment in a trauma-informed way, unions must understand the importance of consulting with the survivor and taking into account the wishes of the survivor to the extent possible throughout the grievance and arbitration process. Pursuing a grievance, dropping a grievance, or accepting a settlement that is against the express wishes of the survivor may cause further trauma to someone who is already suffering. Unions may also need to provide accommodations to a member who has experienced harm so that they can fully participate in the grievance process.

Many survivors also find the adversarial process of a grievance and arbitration process to be re-traumatizing. While the collective agreement needs to be followed, labour unions should be willing to work with employers to find ways to provide safety and support for the survivor that still respect the process outlined by the collective agreement, as well as procedural fairness. This could include, for instance, requiring that the arbitrator have specialized training in responding to sexual violence and in trauma-informed practice.

External Complaint Processes

5. Complaint to a professional regulatory body

There are cases in which someone on the PSI campus who is alleged to have caused harm may be subject to a process overseen by a professional regulating body. Examples are faculty who are medical or health professionals such as doctors or nurses, clinical faculty, faculty in professional areas such as engineering, law, dentistry, accounting, and social work, among others. A complainant may choose to register a complaint with an outside regulatory body regarding the behaviour of someone in a regulated profession. The PSI may also be obligated to report complaints (generally in situations where a minor or someone receiving medical care has been harmed). However, while PSIs and unions may play a role in supporting a complainant, they generally do not have a formal role to play in the investigation of complaints by the regulatory body.

6. Human rights complaint

Someone who has experienced harm may also be able to file a complaint with the relevant Human Rights Commission or Tribunal in their province because human rights legislation protects against discrimination and harassment on grounds that include sex, gender identity, and gender expression. Human rights tribunals can provide remedies for a survivor such as financial compensation for lost income and other damages based on injury to dignity or emotional suffering.

Sometimes, depending on the province or territory in question, a complainant must attempt to resolve the matter through another process such as a grievance or an institutional investigation before filing a human rights complaint. In other cases, the survivor can choose whether to use internal processes first, or move directly to a human rights complaint. A recent decision by the Supreme Court of Canada may change the way

union members seek workplace redress. In some jurisdictions, union members may be required to complete the grievance process before they can file a human rights complaint. In other jurisdictions, it may be possible for a union member to begin both processes concurrently. And in others, union members may be blocked from filing a human rights complaint on a workplace matter at all.

7. Internal union policies and procedures

Many unions have internal union policies and procedures that can deal with incidents of sexual violence or harassment that occur between members of the same union while conducting union business, as unions themselves are employers and services providers with their own legal obligations to their staff and membership relation to such matters. Some unions have internal complaint and investigation procedures, some have trials, some engage mediators or turn to trauma-informed adjudication.

Unions that do not have an internal policy or procedure to address sexual violence and harassment in union spaces should make it a priority to develop one.

Unions should ensure that their own internal policies and procedures, regardless of method, are trauma-informed in addition to being fair and impartial. The adjudicator or panel tasked with making a decision should be familiar with sexual violence and harassment and trauma-informed practice. Unions must also be aware of their own potential obligations to offer accommodations to both complainants and respondents.

Education

Best practices for employers

Education and training are crucial to providing students, workers, and community members with the information they need to effectively respond to sexual violence and harassment when they witness it or when someone discloses an experience to them. It is also essential to preventing sexual violence and harassment from taking place.

Education and training provided to workers should cover:

- Identifying and changing attitudes and ideas about consent, gender roles, rape culture, and understanding the connections between gender-based violence and other systemic forms of discrimination.

- How to safely and effectively intervene or respond as a bystander.
- How to respond to disclosures and provide support in a trauma-informed manner.
- Informing workers of their rights and responsibilities under the institutional policy, collective agreement, and OHS legislation.

Research has shown that in order to change deeply entrenched ideas and behaviours, educational programs need to go beyond a single, brief session. Education needs to be both engaging and ongoing. Working with unions to plan, schedule, and deliver training will ensure that there is buy-in from workers.

Training should also not be one-size-fits-all for workers and students but should take into consideration the roles and responsibilities of different worker groups, as well as their unique needs and potential vulnerabilities. It should also consider what information they may already have and what information and resources they need to be able to effectively implement their obligations under the collective agreement, OHS and human rights legislation, and the institutional policy.

Best practices for unions

Education and training is essential to ensure that all workers have the information they need to prevent and respond to sexual violence and harassment. While it is the employer's responsibility to provide training, unions can play a role in advocating for training that is appropriate and effective, and assisting workers to participate in the training and implement what they have learned. Unions should lobby for and support institutional efforts to train students, faculty, and staff using proven curriculum or training programs that go beyond a single session.

Union locals may also wish to consider supplementing institutional training with training for members provided through their national union or by local gender-based violence organizations. This education should include the recognition of power imbalances in defining consent, with respect to the type of employees the union represents.

Prevention

Best practices for employers

The Joint Health and Safety committee, which brings together management and labour, should be conducting regular inspections to identify risks to workers' health and safety. Including the risk of sexual violence and harassment in these inspections can be an important way of identifying and addressing risk factors that may contribute to sexual violence and harassment in the workplace.

The Joint Health and Safety committee should also respond promptly to workers' suggestions that identify potential risk factors and options to address them. These could include problematic policies or practices, as well as elements of the physical or virtual landscape of campus, workplace, or classroom.

PSIs should also consider undertaking sexual violence safety audits, such as the one offered by METRAC in Toronto. Workers and their unions should be included as partners in these safety audits, particularly as staff and faculty often know the patterns of behaviour of students and workers and the potential risks better than senior administrators.

Engaging workers as partners in prevention is also important because they have regular, daily interactions with students and other workers and may be able to intervene quickly if they are equipped with the right tools and information.

Prevention also begins by cultivating a culture of respect and consent across the PSI. Administrators and senior leadership should lead by example, treating students and workers respectfully, demonstrating commitment to fighting discrimination and violence in all its forms, and taking swift action when inappropriate behaviour occurs. No one should be untouchable, and no one's behaviour should be excused as insignificant or not having intended to cause harm.

Additionally, leadership should consider what elements of workplace management might be contributing to situations where sexual violence and harassment are more likely to occur or in which workers might find it more difficult to report or resist harmful behaviours. Funding cuts, privatization and outsourcing, and use of precarious forms of employment increase stress levels for workers and management while making workers more vulnerable to discriminatory or violent behaviours because they fear losing their job. Valuing some

kinds of work more than others contributes to power imbalances that can foster or excuse harassing or predatory behaviours. PSIs that are truly committed to preventing sexual violence and harassment and creating a culture of respect should ensure that they are providing permanent, full-time positions as much as possible, and should not engage in outsourcing or privatization of work.

Best practices for unions

Providing a safe workplace is the employer's legal responsibility but that doesn't mean that workers and their unions can't play a significant role in preventing sexual violence and harassment from taking place.

Worker representatives on the Joint Health and Safety committee should ensure that the committee is considering the risk of sexual violence and harassment when conducting inspections. The committee should also respond promptly to any reports of harmful behaviour or to information about potential risks in the workplace.

Workers who see harmful behaviour or situations that put workers at risk of sexual violence or harassment should report this information to their Joint Health and Safety Committee or to their local union steward.

Unions should also ensure that in union spaces and in union events, there is a culture of respect and consent, with zero tolerance for sexual violence and harassment. Union locals should have an anti-harassment statement or code of conduct, which should be read out or referred to at the beginning of meetings and events.

Unions can also fight sexual violence and harassment by fighting for good jobs. Precarity, outsourcing, privatization, and funding cuts all contribute to situations where sexual violence and harassment are more likely to occur but workers are less likely to report it. Bargaining language on minimum staffing complements, restrictions on contracting out and converting temporary or casual positions to permanent positions can help to create a safer workplace and prevent violence.

Further reading

CUPE tools on sexual violence and harassment:

- CUPE Guide for post-secondary institutional policies on sexual violence and harassment
- Fact sheet: A trauma-informed response to sexual violence and harassment
- Fact sheet: Accommodations for workers impacted by sexual violence and harassment
- Fact sheet: Preventing sexual violence and harassment on campus: The role of the local union
- Fact sheet: Responding to sexual violence and harassment on campus and the duty to represent

Part 3: Student Workers

In this section we outline the situation of student workers on PSI campuses. Details of the processes student workers may have access to, depending on the nature of their work and the bargaining unit or units to which they belong as workers, are described in more detail in Part 1. As mentioned elsewhere in this document, many workers on PSI campuses are also students. At some PSIs, as many as 30-40% of workers are students, whether undergraduates working in food service or groundskeeping or graduate students working as teaching assistants, lab or library technicians, contract instructors, or in other paid positions represented by a union. Their overlapping and intersecting identities require recognition and support in all incidents of sexual violence.

Understanding your rights as a student complainant

All workers on a PSI campus have the same right to a safe workplace. This document has stressed this core employer responsibility, which is mandated by provincial legislation, repeatedly. We have also emphasized that students who are also employed on the PSI campus should not have to set aside one facet of their identity, but should retain all of their rights as students and as workers at every stage of the complaint process.

Depending on the bargaining unit to which the student worker belongs, and the collective agreement in place for that unit, different complaint processes may be available to students when they seek to file a complaint of sexual violence or harassment. These processes, which include investigations under the PSI's own policy, non-adjudicative processes, grievance/arbitration, a workplace health and safety investigation, a human rights complaint, and a criminal or civil complaint, or an internal union investigation may all be available to the student worker complainant.

A trauma-informed approach would uphold the student complainant's choice about which available process or processes are followed. It is important to recognize that while sometimes it may be impossible to combine processes, it may be possible to follow more than one in sequence. For example, a student worker could file a grievance if they are dissatisfied with the outcome of an investigation completed under the PSI's own policy.

Student workers who file a complaint of sexual violence or harassment have a right to ask for and receive support and appropriate workplace or academic modifications from the

employer. The employer should, for example, provide medical, counselling, and cultural supports where and when requested. In addition to interim measures that the employer may take (with or without the input of the union) in the name of campus safety, workplace or educational modifications can take a variety of forms. These include but are not limited to modification of work duties and schedules, academic leaves or amendments to program milestones (courses, exams, research, thesis submission or defence), progress deadlines, or any combination of these and other possible adjustments.

The point is that the student worker should be supported both as a student and as a worker and should not have to choose a fractional identity as the basis for support from the PSI. Employment modifications should be worked out with the student's bargaining agent, the union who represents the student in the workplace. Academic modifications should be made available in consultation with relevant counselling and academic advisors. In all cases, the student's wishes for certain forms of support should be respected as much as possible given the constraints of collective agreements or health and safety legislation.

It is also important to remember that employment and academic modification needs may change both in character and in duration in the wake of a traumatic event.

Support in filing a grievance or complaint about workplace safety

Student workers have the right to ask for representation from their union, depending on the language of the collective agreement. This representation can take many forms but should always be compassionate, respectful of the collective agreement, and trauma-informed. When the union is contacted by a student worker complainant, the union should support the student worker in the choice of process or processes mentioned above, even if the student decides against filing a grievance.

If the student worker decides to file a grievance against the employer, the union should provide support, information, and guidance about the grievance and arbitration process. Some survivors may find the grievance process technical, combative, and re-traumatizing. For these reasons the union should push for supports to be provided to the complainant even as the collective agreement is followed. An example of a trauma-informed support is requiring that the arbitrator (if the complaint reaches that stage) is trained in sexual violence intervention or is otherwise committed to a trauma-informed practice.

Support provided by the union should extend to calling for policy/workplace changes that will make student workers at the PSI safer. These calls for change can form the basis for new or better bargaining proposals for the next round of contract negotiations. They can also become part of a campus coalition campaign for improved safety for all PSI workers.

Understanding your rights as a respondent

Student workers who are alleged to have caused harm to others have a right to representation from the union that they belong to but may have to request that representation. The process being followed in response to the complaint should be clearly communicated to the respondent. Should alternative measures be contemplated, the informed consent of the respondent as well as the complainant is critical to the outcome. The PSI's institutional policy should provide for the respondent's support. The employer may apply interim measures for the safety of the complainant that may affect the work and/or the academic life of the student respondent. These measures should be temporary and proportionate to the situation. Both the respondent and the complainant, with the assistance of their separate union representatives, should be able to request a review of interim measures.

If the complainant and respondent belong to the same union, a representative will be assigned to each party as the process or processes unfold. During this unfolding, representatives of the two parties must not communicate or share any details at all about the case in order to respect procedural fairness. Procedural fairness also requires that a student worker respondent has the right to learn about and respond to an accusation of sexual violence or harassment.

It is worth noting that the employer's duty to accommodate may extend to the respondent as well as to the complainant and others involved in or witness to the incident of violence. A balance between the rights of the involved parties may need to be worked out by the employer.

How to ask your union for support

There are many student workers on PSI campuses balancing academic obligations with work tasks and requirements (among other concerns). For a variety of reasons student workers are less likely to realize that they are members of a union, and that they have

workplace rights articulated in a collective agreement. Students are less likely to understand the full import of those rights, or to realize what representational supports, as well as other forms of guidance, may be available to them from their union.

Unions need to communicate to their student members about their rights through education initiatives that include information about the structure of the union, its stewards network, its Equity and Diversity committee, and its Executive Committee. Working with other groups on campus as part of orientation week activities, for example, to educate and raise awareness about sexual violence, and about the union's role in preventing and addressing it, can assist in this effort of reaching out to student members and encouraging them to be in touch and become involved in the union. Student members should know how to contact the union by phone or email in order to ask for help.

Because student work on PSI campuses is likely to be part-time or casual, the unions that represent only these workers may have difficulty recruiting student members to take up leadership positions. Elements of precarity, and over-lapping commitments mean that leadership positions in unions that represent student workers can turn over rapidly, with a consequent loss of organizational and strategic knowledge. In these instances a provincial or national representative of the union may be the best point of contact for a student member seeking representation, advice, and support when dealing with sexual violence or harassment.

Glossary

Arbitration

A formal process for settling a disagreement that involves both sides presenting evidence and arguments to an informed and neutral third party who issues a decision in the case. Arbitration decisions may be subject to judicial review by a court at the request of one party who takes issue with the decision on the grounds of reasonableness or correctness of the decision.

Accommodations

Adjustments to the workplace or the normal conditions of work in order to make it possible for someone to do their job. Accommodations could include physical changes to the workplace, modified work schedules, or changes in duties.

Article

A section of a collective agreement. Articles (or clauses) of collective agreements are numbered and often refer in great detail to terms and conditions of work for those covered by that agreement.

Bargaining agent

The organization chosen by a group of employees to represent their interests in discussions and negotiations with an employer.

Bargaining unit

A group of employees who have the same collective agreement.

Collective agreement

A written agreement between the employer and the bargaining unit on the conditions of work and the rights and responsibilities of both union members and employer. Also called contracts, collective agreements cover wages, benefits, hours of work, and how disagreements will be handled. A collective agreement has legal status and cannot be amended without the consent of both parties.

Collective bargaining

The regular process of negotiations by which a bargaining unit and an employer reach a new collective agreement on behalf of a group of employees (the bargaining unit). Also called “negotiations” or “contract talks.”

Duty to accommodate

The employer has a legal responsibility to help an employee overcome discriminatory barriers to full employment in cases where discrimination is prohibited by the Canadian Human Rights Act, or relevant provincial or territorial human rights legislation, including discrimination on the basis of sex, gender identity, gender expression, or disability. These accommodations are worked out in consultation with the union.

Duty of fair representation

The union must represent all bargaining unit members fairly and in good faith, without bias or discrimination.

Faculty association

Academic associations are independent bargaining organizations. Some are trade unions with legal powers and responsibilities identical to other unions. Others are not certified as trade unions but carry out many of the same representational activities. Non-certified associations may be limited in the protections they can offer to their members.

Grievance

A formal claim filed in writing that either the union or the employer has violated one or more of the terms of the collective agreement. A grievance follows certain steps according to the collective agreement. The final stage is normally arbitration. The outcome is either a dismissal of the grievance or a form of redress.

Joint health and safety committee

A committee of management and labour representatives, established by legislation, which addresses health and safety issues in the workplace.

Labour board

A board which oversees labour relations in a province, territory, or at the federal level. The board interprets labour legislation in their jurisdiction and has the power to "certify" or recognize a union as the representative of a group of workers.

Local

A local union organized by a larger national union and identified by a number. A local elects its own executive but uses the constitution of the parent union. A local may also include more than one bargaining unit.

Occupational health and safety legislation

Legislation which outlines the rights and responsibilities of workers and employers with regard to health and safety in the workplace. There are fourteen jurisdictions in Canada for OHS legislation. Because post-secondary education is under provincial/territorial jurisdiction, it is the OHS of your province or territory that applies on a post-secondary campus.

Out of scope

A person or a duty that is not covered by the terms and conditions of the collective agreement is out of scope.

PSI

A post-secondary institution such as a college, polytechnic, university or CEGEP.

Procedural fairness

A legal principle that people have the right to be informed in advance of a decision that will affect them, the right to a fair and unbiased hearing before the decision is made, and the right to be informed of the reasons for a decision. What is required to meet this standard in the case of sexual violence complaints varies according to the severity of the accusation and the possible consequences, but generally in practice procedural fairness means that an individual has the right to know the case against them and to respond to that case before an unbiased decision maker.

Tenure

An indefinite academic appointment which can only be terminated in extraordinary circumstances. Tenure protects the academic freedom of faculty, ensuring that they can research and teach freely without fear of being fired.

Trauma-informed

Trauma-informed means acknowledging the harm endured by complainants and survivors along with having awareness of the impacts that trauma has on an individual's emotional, cognitive, physical and sexual wellbeing. Such acknowledgement and understanding should guide the creation of processes, procedures and support. Adopting such a lens should serve to not re-traumatize individuals further; it should maintain their dignity throughout the process, procedure or support they receive. In addition to processes, procedures or support that are infused with trauma-informed principles, trauma informed also implies that those individuals charged with creating processes, procedures or documents need specific training in trauma-informed practices as well.

Union

An organization certified by a provincial Labour Board as a legal entity that represents and acts on behalf of members of a bargaining unit in all discussions and dealings with their employer.

Works Cited

Canadian Association of University Teachers. (2019). Equity workshop. https://www.caut.ca/equity-toolkit

Canadian Centre for Occupational Health and Safety. (n.d.). *OH&S legislation in Canada – Basic responsibilities*. https://www.ccohs.ca/oshanswers/legisl/responsi.html

Canadian Union of Public Employees. (2018). *Stop workplace sexual violence: Contract language checklist.* https://cupe.ca/stop-workplace-sexual-violence-contract-language-checklist

York University. (2021). *Quick facts.* https://oipa.info.yorku.ca/data-hub/quick-facts/