

Sexual Violence and Sexual Harassment Complaints involving Faculty Members and Students of the University of Toronto arising in Independent Research Institutions, Health Care Institutions and Teaching Agencies

A. Introduction

The University of Toronto, independent Research Institutions, Health Care Institutions and Teaching Agencies in which University faculty members, students (including trainees) and staff may work and study, have their own separate policies and procedures covering sexual violence, including sexual harassment or assault. This protocol does not change or replace those policies. Instead, it provides a process for deciding, in a particular case involving members of the University community working in an independent Research Institution, Health Care Institution or Teaching Agency, which institution will take responsibility for the case and, therefore, which procedure should be followed. It also provides for the relevant institution to keep the other informed to the extent appropriate to enable each institution to meet its own obligations to faculty members, employees, and students or otherwise at law. In some cases the responsibility for dealing with a case will most appropriately be shared by the University and the relevant independent Research Institution, Health Care Institution or Teaching Agency.

Nothing in this protocol precludes an institution from taking independent action to safeguard its community members.

For the purposes of this protocol, independent Research Institutions, Health Care Institutions and Teaching Agencies shall be referred to collectively as “Non-University Institutions”. While many of these Non-University Institutions will be affiliated with the University of Toronto, they are not University institutions.

This protocol applies to any complaint made by a student (including trainee), employee, or faculty member appointee of the University hereafter, collectively referred to as “University member” about sexual violence, including sexual harassment that arises in the context of the University member’s work in a Non-University institution. The goal is to clarify jurisdiction in the interests of the complainant and of both involved institutions.

The protocol encompasses all faculty members (including clinical (MD), dentistry or health science faculty or scientists, including those with status-only appointments), employees on the University payroll, and all students who are registered at the University for full-time or part-time studies in a program that leads to a degree or post-secondary diploma or certificate of the University or in a program designated by the Governing Council as a program of post-secondary study at the University.

B. Notification of Complaints

i. Complaints made by University members

Where a University member situated in a Non-University Institution brings forward a complaint of sexual violence, including sexual harassment, to the Non-University Institution, the Non-University Institution shall notify the University of the complaint as soon as reasonably possible after its receipt. Notification shall be to the Vice-Provost, Relations with Health Care Institutions and the Executive Director, Sexual Violence Prevention and Support at the University of Toronto.

Where the Non-University Institution has sole jurisdiction over the complaint (e.g., where the respondent is directly employed by the Non-University Institution and has no relation to the University), the Non-University Institution will promptly provide the University (via the Vice-Provost, Relations with Health Care Institutions and the Executive Director, Sexual Violence Prevention and Support) with the name(s) of the complainant(s) and with access to the relevant policies and procedures. The relevant Non-University Institution shall also provide the complainant(s) with contact information for the University's Sexual Violence Prevention and Support Centre. Where there is, or may be, shared jurisdiction between the University and one of these other Institutions, the protocol in Section (ii), below, shall be followed.

ii. Complaints made against University Member(s)

This protocol provides guidelines for determining the jurisdiction of complaints of sexual violence, including sexual harassment made against University members who are working or studying in a Non-University Institution. The University and Non-University Institution will each have its own sexual violence/harassment complaint procedures, which are in no way modified by the provisions of this memorandum. Rather, the memorandum provides a protocol for determining, in each case, which institution shall take carriage of a complaint.

Where an allegation of sexual violence, including sexual harassment is made against a University member, in order to determine which Institution's process should be followed, in every case, the following questions will be addressed by the person receiving the initial complaint:

1. Which institution(s) have the authority, capacity and responsibility for supervision and management of the person(s) accused of sexual violence/harassment?
2. Which institution(s) have obligations to or liabilities in respect of the person(s) complaining of sexual violence/harassment?

In order to answer these questions, the jurisdictional analysis set out in Part D will be followed.

C. Persons to be notified

In every case, the person receiving the initial complaint of sexual violence/harassment shall notify the relevant other institution as to the nature of the complaint and invite the other institution to assert that it has jurisdiction over the matter. In the case of Non-University Institutions, the Office of the President & Chief Executive Officer, and the Vice-President, Human Resources & Equity, and/or another officer as designated by the institution, will be so notified. In the case of the University of Toronto, notification will be to the Vice-Provost,

Relations with Health Care Institutions, and to the Executive Director, Sexual Violence Prevention and Support.

These parties will initially only be provided with information about the complaints to the extent appropriate to make the decision as to jurisdiction.

D. Jurisdiction

Students

Where a complaint is made against a student (including a trainee), the University of Toronto will have carriage of the complaint.

Faculty members

Jurisdiction over complaints against faculty members will vary according to the circumstances of the particular complaint. In general, jurisdiction will be determined by reference to the following factors:

1. a. In the circumstances of the particular complaint of sexual violence/harassment, which institution had immediate authority over the respondent? For example, was the respondent engaged at the time in activities which were consequent on her or his University status, or on her or his status at the Non-University Institution? It is understood that at times the authority over the respondent will be conjoint. One criterion will be whether the respondent is, at the relevant time, primarily accountable for the performance of her or his activities to the University, or to the particular Non-University Institution.
 - b. Which institution has the primary general capacity to regulate the conduct of the respondent, or to impose restrictions on the respondent's access to persons or facilities?
 - c. Which institution is principally responsible for protecting the respondent's interest in fair and unbiased process?
 - d. Which institution has the principal responsibility for safeguarding the working and learning environment of the complainant?
2. Parts (3) and (4) below outline: the circumstances in which the University shall normally have carriage of a complaint (3) and the circumstances in which the Non-University Institution shall normally have carriage of a complaint (4).

In most cases both institutions will have an interest in the disposition of the complaint, irrespective of which institution has primary jurisdiction. Once the decision as to the jurisdiction has been made, the institution which does not have jurisdiction will be invited to assert its interests in the disposition of the complaint.

3. *University of Toronto jurisdiction and procedures:* Where the allegations refer to the conduct of a member of the University of Toronto faculty in the course of his or her work in a Non-University Institution, and where the allegations concern conduct which is related to or

consequent on the faculty member's status at the University of Toronto, the complaint will normally be dealt with under the University of Toronto's *Policy on Sexual Violence and Sexual Harassment*¹.

4. *Non-University Institutions jurisdiction and procedures:* Where the allegations refer to the conduct of a member of the University of Toronto faculty in the course of study or work in a Non-University Institution, where the faculty member is alleged to be in breach of a Non-University Institution's policy, and where the allegations concern conduct that is not related to or consequent on the faculty member's status in the University of Toronto, the allegations will normally be dealt with through the mechanisms available within the relevant Non-University Institution. However, the Vice-Provost, Relations with Health Care Institutions and the Executive Director, Sexual Violence Prevention and Support will be notified of the complaint and will have an opportunity to make representations in respect of the disposition of the complaint.

E. Confidentiality & Patient care

Where the allegations refer to the conduct of a member of a health science Faculty in the course of providing patient care, or where it is alleged that a public interest has been threatened, the public interest and / or the patient care concerns will take priority.

Confidentiality also cannot be maintained in circumstances where information must be disclosed in order to address a risk to the health and safety of patients or University members or where the Institution is obliged by law to disclose the information (for example, notification to applicable health professions regulatory bodies, as appropriate).

¹ <http://www.governingcouncil.lamp4.utoronto.ca/wp-content/uploads/2016/12/p1215-poshsv-2016-2017pol.pdf>