

Policy Name:	Sexual Violence		
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Volume:	5. Office of Human Resources	Responsible Executive:	Director, Human Resources
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Policy Statement

The purpose of this policy is to outline NSCAD University’s commitment to creating and sustaining a safe community, where sexual violence is addressed through recognition of its severity, as well as providing supports, education, training, and resources. This policy outlines the procedures for reporting incidents of sexual violence, initial points of contact and the appropriate measures for handling complaints of sexual violence. Further, it outlines the institutional approach, resources, and campus prevention strategies.

Reason for Policy

To ensure that NSCAD University develops and supports a safe environment that values and promotes principles of diversity and inclusion as well as denounces sexual violence. Further, it is used to define sexual violence and its related terms and clarify institutional accountabilities.

Policy Applies to

This Policy and the related procedures apply to all members of the University Community and all visitors; therefore, anyone who is an employee or student of the University engaged in duties, programs, operations or activities having a substantial connection to the University, on or off campus at the time of the act.

Third parties, including but not limited to, contractors, volunteers and visitors to the University are expected to conduct themselves in a manner consistent with this Policy. Compliance with this Policy shall be a term of all contracts and agreements with the University and is a condition of access to the University.

This Policy is not intended to discourage or prevent individuals from exercising any other legal rights they may have pursuant to any other law, including the right to file a complaint with the Nova Scotia Human Rights Commission. This policy is intended to support and clarify the protection provided by Provincial law, other university policies and regulations or legal documents of the University.

Who Should Read this Policy

- All members of the university community
- All regular staff members
- All students
- Senior Administration, Directors, and Division Chairs
- University Board of Governors
- Human Resources representatives

Contacts

Approval authority: Board of Governors, Governance & Human Resources Committee c/o Governance Office, 902-494-8114, governance@nscad.ca

Director of Opportunity & Belonging or designate, Office of Student Experience, 2nd floor, Fountain Campus, NSCAD University, 902 450 4307, belong@nscad.ca

Definitions

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

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

Disclosure: refers to a Survivor or a witness sharing information about an incident of sexual violence. Survivors and others are encouraged to Disclose to the Director of Opportunity & Belonging or designate, who provides information on options following a Disclosure, and coordinates accommodations and supports. A Disclosure is different than a Report and does not automatically initiate a formal investigation by NSCAD except in circumstances where a duty to report exists.

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

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

Member of the University Community: This Policy and the related procedures apply to all members of the University Community and all visitors; therefore, anyone who is an employee or student of the University engaged in duties, programs, operations or activities having a substantial connection to the University, on or off campus. Third parties, including but not limited to, contractors, volunteers and visitors to the University are expected to conduct themselves in a manner consistent with this Policy. Compliance with this Policy shall be a term of all contracts and agreements with the University and is a condition of access to the University.

Procedural Fairness: means a process:

- That is based on impartiality and absence of bias.
- Where the Respondent is informed of the allegations.
- Where the Reporting Party is informed of the Respondent’s response.
- Which includes a meaningful opportunity for each party to know the evidence against them and respond.
- In which both parties are given sufficient notice of interviews or meetings where they are expected to present or respond to evidence gathered as part of the process.
- Leading to a written decision that includes a sufficiently detailed explanation of the facts and analysis to enable the parties and any reviewing body to understand the decision and the basis for the decision.

Reporting Party: means a person who has initiated a formal Report under this Policy alleging that a Member of the NSCAD Community has committed sexual violence in breach of this Policy or a person who has Disclosed and requested an Immediate Measure under this Policy.

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

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

- For Students: Vice-President (Academic & Research) and Provost or designate
- For Non-Academic Employees: Director of Human Resources or designate
- For Faculty, Librarians, Academic Employees: Academic Dean or Vice-President (Academic & Research) and Provost, or designate
- For Vice Presidents: President or designate

- For President and Board of Governors: Chair of Governance & Human Resources Committee or designate
- For Chair of Governance & Human Resources Committee: Chair of Board of Governors or designate
- For Chair of Board of Governors: Chair of Governance & Human Resources Committee or designate

Sexual Activity: refers to physical sexual activity including but not limited to kissing, sexual touching, oral or anal sexual acts, intercourse or other forms of penetration.

Sexual Relations: refers to a behaviour that involves sexual intimacy, including but not limited to, physical sexual activity, or online/digital/social media sexual communication, or relating in ways that could be misconstrued as sexual in nature (for example, complimenting someone on their appearance and/or singling them out).

Sexual Violence: means any act targeting a person’s sexuality, gender or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without that person’s consent, and includes the Criminal Code Offences of sexual assault, indecent exposure, voyeurism and non- consensual distribution of sexual/intimate images. Sexual violence also includes sexual harassment and stalking, cyber harassment, and cyber stalking of a sexual nature. Sexual violence can take place through any form or means of communication (e.g. online, social media, verbal, written, visual, “hazing”, or through a third party).

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

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

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

1. POLICY

- 1.1. NSCAD does not tolerate any form of sexual violence.
- 1.2. NSCAD recognizes that sexual violence is a serious problem in society and on university campuses. This societal problem is perpetuated by a rape culture in which prevalent attitudes, norms, social practices, and media, tolerate, normalize, justify, trivialize or excuse or outright condone sexual violence. These attitudes and social responses normalize sexual coercion and shift blame onto those who have experienced sexual violence. NSCAD affirms its commitment to fostering a culture on campus where attitudes and behaviours that perpetuate sexual violence are discouraged and rejected, Survivors are supported, and Disclosures and Reports of sexual violence are responded to seriously and in a manner that is trauma informed, procedurally fair, and treats all persons involved with dignity and respect.
- 1.3 NSCAD does not tolerate any form of retaliation, or harmful conduct by Respondents or others directed at persons who have made a Disclosure or formal Report under this Policy, nor at persons who have been named as Respondents in such Reports. Such retaliation, or harmful conduct, is considered to be a serious offence and may constitute grounds for disciplinary action under the NSCAD's Charter of Student Rights and Responsibilities or the terms of the employment contracts and collective agreement, where possible.
- 1.4 NSCAD acknowledges that sexual violence is inherently connected to inequality and power imbalances on campus and in society; and that sexual violence and its harmful consequences are legacies of colonization and disproportionately impact members of social groups who experience the intersecting grounds of discrimination or marginalization, such as on the basis of sex, gender, gender identity or expression, sexual orientation, Indigeneity, race, age, religious beliefs, ability and class. NSCAD will strive to implement this policy with an intersectional understanding of Survivors/Victims, and all those impacted by sexual violence.
- 1.5 NSCAD is committed to providing supports to Survivors based on their personal experiences, whether or not the Survivor chooses to make a formal Report through the NSCAD internal reporting process or any external reporting process (such as reporting to police).
- 1.6 NSCAD recognizes that sexual violence is under-reported for a variety of reasons, including shame, stigmatization, self-blame, and fear of reprisals, isolation, ostracism being dismissed or disbelieved, or fear of experiencing racism or other forms of discrimination in the disclosing or reporting process.
- 1.7 NSCAD is committed to reducing the barriers to Disclosure and Reporting of sexual violence at NSCAD to the extent possible. This includes educational resources to address issues specific to international students and employees, accessibility supports for students and employees with disabilities, and a commitment to ensuring that Survivors are not judged or blamed for experiencing sexualized violence, for example because they were intoxicated, or how they were dressed.
- 1.8 NSCAD recognizes that a barrier to reporting sexual violence on campus is the risk to Survivors

of being subjected to a re-traumatizing reporting process. This Policy aims to protect the safety and respect the choices of Survivors.

- 1.9 NSCAD recognizes that specialized knowledge and training is required to investigate and determine allegations of sexual violence and, further, that investigations by qualified investigators are an effective and fair method for gathering information, testing the evidence and credibility of parties and witnesses, and determining whether a breach of this Policy occurred.
- 1.10 NSCAD acknowledges that its obligation to maintain a non-discriminatory university environment under the Nova Scotia Human Rights Act includes an obligation to establish a procedurally fair and non-discriminatory process for responding to reports of sexual violence.
- 1.11 In accordance with the above commitments, formal reports of sexual violence under this Policy will be investigated by a qualified and trauma-informed investigator, and require that the person who has reported experiencing sexual violence (the Reporting Party) and Respondent are parties to the investigation process. The Reporting Party and Respondent are accordingly both entitled to copies of the Investigation Report, to copies of the decisions made by the Responsible Authority, including relating to discipline and remedial measures, and to seek Review of any decisions made by the Responsible Authority under this Policy.
- 1.12 This Policy applies to all Reports of sexual harassment and other forms of sexual violence involving employees of NSCAD. If there is any inconsistency between this Policy and the NSCAD workplace policies, including the Respectful Workplace & Learning Environment Policy, this Policy governs.
- 1.13 Similarly, this Policy's terms on prohibiting Sexual Relations between University Employees and Students governs in the event of any conflict between it and any other relevant NSCAD policy.
- 1.14 Where there is any express conflict between this Policy and the terms of a collective agreement, the collective agreement governs.
- 1.15 In the event that a Report under this Policy engages issues under other policies, such as intersecting issues of discrimination under the Respectful Workplace & Learning Environment Policy, the Report will be investigated under this Policy, with the Investigator's terms of reference including consideration of all other relevant and appropriate intersecting issues and policies.
- 1.16 A person who has experienced sexual violence can access other legal processes at any time, including criminal (reporting to the police), civil, criminal injuries, professional regulatory or human rights processes.
- 1.17 NSCAD recognizes the importance of sexual violence prevention and education as well as ongoing training on this Policy at NSCAD, in order to achieve the purposes and goals of this Policy.

2 SCOPE

- 2.1 This Policy applies to Disclosures and formal Reports of sexual violence whether the incident(s) occurred on or off campus or through social or electronic media.
- 2.2 Any Member of the NSCAD Community who has experienced sexual violence may seek accommodations and supports under this Policy. A formal Report is not necessary to access support, accommodation or Immediate Measures.
- 2.3 A formal Report of sexual violence may be investigated in circumstances where the Respondent is a current Member of the NSCAD Community. Where a formal Report is made against a person who is not currently a Member of the NSCAD Community, NSCAD may suspend the investigation.
- 2.4 NSCAD is not required to engage the investigation procedure under this Policy if the Respondent is not a Member of the NSCAD Community, but may take other steps in response to a Disclosure or Report, for example by prohibiting guests or contractors or others who may provide services to NSCAD or its members, from entering on NSCAD property or by referring the matter to the Halifax Regional Police.

3 SEXUAL VIOLENCE PREVENTION AND RESPONSE TEAM

- 3.1 The Sexual Violence Prevention and Response Team will ensure that the needs of Members of the NSCAD Community who have experienced sexual violence are met. The Team will include the Director of Opportunity & Belonging or designate, NSCAD Support Person for the Respondent or designate, and any other individual appointed by the Vice President Academic & Research (Provost)

The Director of Opportunity & Belonging or designate is intended to be a single point of contact and support, and liaison for members of the NSCAD Community who have experienced sexual violence, and will provide individualized information, advice, and assistance. The Director of Opportunity & Belonging or designate will be trained and/or have experience in trauma-informed practice, gender-based violence, sexual assault law, and sexual violence investigations and procedures.

- 3.2 The support services offered by the Director of Opportunity & Belonging or designate are:
 - Receiving confidential Disclosures
 - Assisting with safety planning
 - Identifying and co-ordinating appropriate academic, employment, or other accommodations in consultation with the Responsible Authorities, appropriate NSCAD departments.
 - Providing information about referrals to internal services, such as counselling, student advisors or those in a similar advising roles.
 - Providing information about external organizations, such the Sexual Assault Nurse

- Examiner (SANE), and Sexual Assault Centres.
- Providing information about confidentiality and privacy, and the limits on confidentiality
- Providing information about internal options under this policy, including
 - Immediate Measures
 - Formal Reporting and investigation
 - Review of decisions made under this policy
 - Alternative Resolution, where appropriate
- Assisting with making a formal Report, including supporting the individual in preparing any written statement, if and when the Survivor decides to take action
- Acting as a liaison with the investigator appointed to conduct an investigation
- Receiving allegations regarding acts of retaliation relating to a Disclosure or a Report
- Providing information about other reporting procedures (such as criminal or civil).
- Remaining current on provincial and national initiatives as it relates to Sexual Violence
- Developing, implementing and promoting sexual violence prevention and education activities at NSCAD
- Training on Intersectionality for staff and faculty
- Providing annual statistical report and summary of activities on Sexual Violence for the Vice-President (Academic & Research) and Provost, Director Human Resources,

NSCAD Support Person for the Respondent

- A university appointed support person will be provided to the Respondent.

3.4 Contact information for members of the Director of Opportunity & Belonging will be made publicly available on the NSCAD website, along with the policy, and educational resources for sexual violence prevention and responding to disclosures.

ACCOMMODATIONS AND SUPPORTS

4 Survivors:

4.1 When a Member of the NSCAD Community makes a confidential Disclosure or Report of sexual violence, they will be provided access to supports, resources and accommodations. Accommodations and supports that may be available to Members of the NSCAD Community who have disclosed or Reported sexual violence include, but are not limited to:

- For Students:
 - Safety planning
 - Academic accommodations:
 - i. class schedule changes
 - ii. assignment or exam extensions or deferrals
 - iii. late withdrawal from a course without penalty
- For Employees:
 - Safety planning

- Temporary work, location or scheduling changes

4.2 To avoid the Survivor being required to make multiple Disclosures, accommodations and supports should be co-ordinated through the Director of Opportunity & Belonging. Employees also have the option of requesting accommodation or support through Human Resources.

4.3 Emergency support is available 24/7 by:

- i. Seeing the Sexual Assault Nurse Examiner (SANE), 1-877-880-7263
 - The role of the SANE is to provide specialized medical care for sexual assault, as well as information and emotional support. They may also collect and preserve forensic evidence for the purposes of a criminal investigation if the Survivor wishes. Generally, DNA evidence can only be collected within 168 hours (7 days) of the sexual assault and should be collected as soon as possible.
- ii. Calling 911 (Police or Ambulance)
- iii. Calling NSCAD Campus Security at 902-877-0764
- iv. Calling or going to the emergency department at any local hospital.

4.4 For students, staff and faculty, NSCAD Counselling Services may also be accessed during business hours. Where possible, NSCAD will arrange for culturally relevant counselling for the Survivor, depending on availability.

4.5 For employees, the Employee and Family Assistance Program can also be accessed 24/7 at 1-800-387-4765 or workhealthlife.com.

Student Respondents:

4.6 A student who is alleged to have committed an act of sexual violence will be entitled to choose a support person and may request the NSCAD Support Person for the Respondent or designate to act in this capacity. The NSCAD Support Person for the Respondent or designate will:

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

Employee Respondents:

- 4.7 An employee alleged to have committed an act of sexual violence will be entitled to choose a support person to act in a confidential advisory capacity throughout the process and may request the NSCAD Support Person for the Respondent or designate to act in this capacity.

5 DISCLOSURE

First Disclosure Often to a Trusted Person

- 5.1 NSCAD recognizes that persons who have experienced sexual violence, frequently first disclose to a trusted person, such as a friend, colleague, faculty member, union representative, member of the students' union, community advisor or a university employee. Educational resources will be made accessible to students and employees on how to respond to a Disclosure on the NSCAD website.

Faculty/Staff Must Provide Information About the Sexual Violence Prevention and Response Team to the Survivor

- 5.2 All NSCAD employees who receive confidential Disclosures must provide information to the Survivor about the availability of the Sexual Violence Prevention and Response Team as the person(s) to receive confidential support and information about options. It is the choice of the Survivor whether to access this service.
- 5.3 NSCAD will offer annual training on this Policy, the Sexual Violence Prevention and Response Team, and best practices for Members of the NSCAD Community in responding to Disclosures of sexual violence. Such training shall be included in orientation training for all new staff and faculty.

Amnesty from Drug/Alcohol Misconduct by Survivors

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

Recording Names of Alleged Respondents

- 5.5 If a Survivor discloses sexual violence for the purposes of NSCAD knowing about, or having some record of the incident(s), but they do not want to take further steps, the disclosure goes to the Director of Opportunity and Belonging or designate, or Responsible Authority. The Vice-President (Academic & Research) and Provost and Director Human Resources are responsible for keeping track of this information. Initial disclosures to trusted persons, such as a faculty member or colleague, are not sufficient for the purposes of the NSCAD knowing about or having a record of the incident(s). While Survivors are encouraged to disclose directly to the Director of Opportunity and Belonging or designate, or Responsible Authority, they may give permission to the trusted person to provide information to the Director of

Opportunity and Belonging or designate, or Responsible Authority. The trusted person may also have an obligation to inform the Responsible Authority under Section 7.5 of this Policy.

Co-ordination of Information

5.6 When a member of the University community, other than a Responsible Authority, receives a Report of sexual violence, a copy of the Report or information on the incident and the persons involved, shall be provided to the Director of Opportunity and Belonging or designate (except to the extent this is inconsistent with the terms of a collective agreement).

6 IMMEDIATE MEASURES

- 6.1 Immediate Measures may be imposed on a Respondent at any time following a Disclosure or Report of Sexual Violence. A formal Report is not required for Immediate Measures to be requested or imposed. The person who Disclosed sexual violence will be referred to as the “Reporting Party” in this section.
- 6.2 Immediate Measures are non-disciplinary orders and the implementation of Immediate Measures does not have bearing on any investigative processes or outcomes outlined in this policy.
- 6.3 In most cases, an assessment of whether to impose Immediate Measures will be initiated at the request of the Reporting Party. Such requests will be processed through the Vice-President (Academic & Research) and Provost, or the Director Human Resources.
- 6.4 Where a Reporting Party requests Immediate Measures following a Disclosure, the Reporting Party must consent to the release of their name and the general nature of the allegations to the Respondent. The release of the name and some information about the allegations is necessary for the process to be procedurally fair.
- 6.5 Prior to the assessment and imposition of any Immediate Measures, the Reporting Party shall be consulted and their reasonable input and concerns taken into account.
- 6.6 Notwithstanding, NSCAD may impose Immediate Measures on its own initiative, where there is a risk of harm to the Reporting Party, the Respondent or to the NSCAD community or any Member of the NSCAD Community.
- 6.7 A breach of Immediate Measures is a breach of the NSCAD University’s Code of Conduct, NSCAD’s Charter of Student Rights and Responsibilities or the terms of the employment contracts and collective agreement, where applicable.

NSCAD Employee Respondents - Procedure for Imposing Immediate Measures

- 6.8 Where the Respondent to a Disclosure or Report of Sexual Violence is a NSCAD employee, Immediate Measures shall be imposed by the Director of Human Resources. Any Immediate Measures will comply with the terms of the collective agreement, if applicable.

6.9 Immediate Measures may include, but are not limited to:

- No contact/communication orders
- Arrangements to minimize encounters in working environments such as changes in work schedules or assignments
- Restricting access by the Respondent to part or all of the University campus
- Suspension of the Respondent.

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

Student Respondents - Procedure for Imposing Immediate Measures

6.11 Where the Respondent to a Disclosure or Report of Sexual Violence is a student, Immediate Measures shall be imposed by the Vice-President (Academic & Research) and Provost or designate.

6.12 Immediate Measures may include, but are not limited to:

- No contact/communication orders
- Arrangements to minimize encounters in learning or living such as changes in class schedules or sections.
- Restricting campus privileges of the Respondent
- Suspension from a membership in a club or society
- Loss of student privileges
- Restricting access to part or all the University campus on the part of the Respondent, up to and including a campus ban
- Suspension of the Respondent.

Test for Imposing Immediate Measures

6.13 Immediate Measures may be imposed where there is reasonable cause to believe that Immediate Measures are required:

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

6.14 In addition to the above factors, consideration shall be given to:

- The interests and expressed needs of the Reporting Party

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

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

6.16 Notice in writing of the Immediate Measures shall be provided to the Respondent through the Vice-President (Academic & Research) or Director of Human Resources, as applicable, as soon as possible normally within 24 hours of the decision being made.

6.17 Any party may request a reconsideration of the Immediate Measures through the Vice-President (Academic & Research) or Director of Human Resources, as applicable.

Student Respondents

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

6.19 Student Respondents may require academic accommodations arising from Immediate Measures (such as in the case of a campus ban) which may be requested through the Vice-President (Academic & Research) and Provost.

6.20 Immediate Measures imposed on a student Respondent may remain in place for up to six (6) months where a Disclosure but no formal Report has been made and no investigation initiated. Immediate Measures may continue beyond six (6) months, if they address the safety, remedial, and campus culture responsibilities of NSCAD.

7 CONFIDENTIALITY

Disclosures are Confidential

7.1 Ensuring confidentiality is a key principle in creating an environment and culture in which Survivors feel safe to Disclose and seek support and accommodation. NSCAD is committed to ensuring that such an environment and culture exists at the university. For people who receive disclosures, they can seek counsel from the Director of Opportunity and Belonging or designate, without disclosing identifying information.

Limits on Confidentiality

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

- 7.3 NSCAD cannot guarantee absolute confidentiality in all cases of a Disclosure. NSCAD may be required to disclose information and/or undertake its own investigation where:
- i. There is a serious risk of harm to self or others
 - ii. There is objective evidence of sexual violence, such as evidence of sexual violence in the public realm (e.g. a video posted on social media) or otherwise recorded or documented and available to NSCAD
 - iii. There is a risk to the safety of the university and/or broader community
 - iv. Where records are subpoenaed
Reporting or other action is required or authorized by law. For example, the Nova Scotia's *Children and Family Services Act* Duty to Report, Section 23 (1) which requires "Every person who has information, whether or not it is confidential or privileged, indicating that a child is in need of protective services shall forthwith report that information to an agency." The *Children and Family Services Act* defines a child in Section 3 (1.e) as "a person under nineteen years of age."
- 7.4 Examples of cases where NSCAD may have a duty to undertake its own investigation or take other steps without the consent of the Survivor include cases where there are multiple complainants or Respondents, multiple Disclosures have been made against the same person or the sexual violence is in the public realm (e.g. video-recorded evidence of sexual violence), or there is risk of harm to any Member of the NSCAD Community. In such cases, NSCAD will provide notice and support to the Survivor where the Survivor is known, and the Survivor has the right to decide whether to participate in any investigation.

Disclosures to Faculty or Staff

- 7.5 If a Disclosure is made to an employee of NSCAD and it involves an employee(s) of NSCAD as the Respondent, the trusted person is required to inform the Responsible Authority for follow-up and potential investigation under the applicable process.
- 7.6 If a Disclosure is made to a (University) Registered Counsellor, the Personal Health Information Act only permits release of information without an individual's consent in narrow circumstances, such as where the Registered Counsellor believes the Disclosure will avert or minimize an imminent and significant danger to the health or safety of any person.

Confidentiality to Maintain the Integrity of an Investigation

- 7.7 Following a Report, information about the investigation and Report will only be shared as is necessary for the purposes of the investigation or required by law.
- 7.8 NSCAD recognizes that requiring persons who have disclosed or Reported sexual violence not to talk about the experience because of an ongoing reporting process is a barrier both to reporting and to healing. NSCAD further recognizes that a Respondent may need to share some information in order to facilitate their response and identify witnesses; a Reporting Party may need to share some information in order to identify witnesses and assist the investigation; and both parties may need to confidentially rely on their respective circles of support, such as close friends, family, therapists or legal counsel.

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

Statements Compellable in Other Proceedings

- 7.10 Information or statements provided by a Reporting Party, Respondent, or witness to NSCAD following a Disclosure or Report may be subpoenaed as part of any related civil or criminal proceeding.

8 PUBLIC STATEMENTS

Statements by Survivors and Others

- 8.1 Survivors and those impacted by sexual violence are free to tell the story of their own experiences. During an ongoing investigation, however, confidentiality should be maintained, as set out in Section 7.9 above.
- 8.2 Survivors and others should be aware that if they choose to make public statements about their experiences, they may be putting themselves at risk of civil lawsuits by those who believe they have been defamed or had their privacy rights violated. Individuals should exercise care and judgment when deciding whether to make public statements, or what information to include in such public statements, and should seek legal or other advice if unsure.

Statements by NSCAD

- 8.3 The Responsible Authority shall determine whether a public bulletin or statement should be issued by NSCAD arising from a Disclosure or Report of sexual violence.
- 8.4 Decisions about whether to issue a public statement about a Disclosure or Report will be made consistent with the principles and commitments in this Policy, including the University's commitment to: equity; trauma-informed approaches; respecting the needs and agency of persons who Disclose sexual violence; encouraging Disclosures and Reporting of sexual violence; maintaining a campus free from sexualized violence; and establishing community trust and confidence in NSCAD that sexual violence is not tolerated.
- 8.5 Public statements by NSCAD will not disclose the personal information of the Respondent or the person who Disclosed or was impacted by sexualized violence without the consent of that person.
- 8.6 NSCAD reserves the right to correct misleading or inaccurate public information.
- 8.7 Public statements by NSCAD will comply with applicable privacy legislation and the terms of any collective agreement.
- 8.8 All statements regarding Sexual Violence will be officially approved by the President or designate prior to release on behalf of the University.

9 ALTERNATIVE RESOLUTION

- 9.1 In appropriate circumstances, a Survivor may wish to resolve the matter without a formal Report, or prior to the conclusion of the formal Reporting process. A Respondent may also seek to initiate an alternative resolution process. A Survivor or Respondent may request an alternative resolution process that reflects their cultural or community values, and NSCAD will explore this option if possible.
- 9.2 Alternative resolution will only be explored with the express and informed consent of the Survivor, Respondent and NSCAD.
- 9.3 Parties that engage in alternative resolution do so on a ‘without prejudice’ basis. In other words, either the Survivor or Respondent may withdraw from the process at any time and any information or admissions shared in the process cannot be used against either party in a formal Report and investigation under this Policy or in any other proceeding at NSCAD.
- 9.4 The goals of the process are acceptance of responsibility, mutual understanding, safety and education/remediation.
- 9.5 An alternative process may not require any face to face/in-person interaction between the Reporting Party and the Respondent.
- 9.6 The outcomes of a facilitated alternative resolution process may include a voluntary apology letter from the Respondent, a written agreement that includes behavioural expectations, and/or education or training, such as related to anti-violence, anti-oppression or consent, or a voluntary agreement by the Respondent to other measures.
- 9.7 Alternative resolution processes must be facilitated by a person with training appropriate to the seriousness and nature of the allegations and the context of the parties, and with training or experience in gender-based violence, trauma-informed practice, and mediation or counselling.
- 9.8 Alternative resolution is presumptively inappropriate where previous Reports have been made about the Respondent or where NSCAD has received multiple Disclosures about the Respondent.
- 9.9 A record of the alternative resolution shall be maintained by NSCAD in the student file for a period of four years or for as long as the students are part of the NSCAD community whichever is longer, and in the employee files of NSCAD employees in accordance with the terms of any collective agreement or applicable employee policies.

10 FORMAL REPORTS

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

NSCAD Community.

10.2 NSCAD process in response to a Report is guided by the following:

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

Initiation of Report

10.3 All Reports of sexual violence should be submitted through the Director of Opportunity & Belonging or designate. The Director of Opportunity & Belonging or designate will then forward the Report to the Responsible Authority. Where a formal Report is made to a member of the University community, other than the Responsible Authority, the University community member, shall forward the Report to the Director of Opportunity & Belonging or designate (except to the extent this is inconsistent with the terms of the collective agreement).

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

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

No Deadline for Making a Formal Report

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

10.6 The Reporting Party and Respondent shall be provided with notifications and updates on the progress of the Report, Investigation or Review.

Preliminary Screening by Responsible Authority

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

- i. The reported conduct falls within the scope of this Policy
- ii. The parties are members of the NSCAD community as defined by who the policy applies to, and
- iii. In accordance with Section 6, Immediate Measures are appropriate (if they have not already been imposed).

Appointment of Investigator

10.8 If the Report falls within the scope of the Policy, the Responsible Authority shall appoint a qualified internal or external Investigator, with training and/or experience in trauma informed practice and sexual violence investigations and procedures.

The Investigator's Mandate

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

Procedure for Investigating Formal Reports

Written Notice to Respondent

10.10 Normally within ten (10) business days of receiving the Report, the University shall provide written notice to the Respondent which includes:

- i. A summary of the allegations and that an investigation will be initiated
- ii. Information about the investigation process
- iii. A copy of this Policy
- iv. A direction that any direct or indirect reprisal against the Reporting Party constitutes a disciplinable breach of this Policy and in the case of a student Respondent, NSCAD's Charter of Student Rights and Responsibilities
- v. A direction to keep the Report confidential in order to maintain the integrity of the process, and
- vi. Notification that the Respondent may choose the NSCAD Support Person for Respondent or designate to support them, along with their contact information.

Notice to Reporting Party

10.11 The Reporting Party and the Sexual Violence Prevention and Response Team shall receive a copy of the Notice sent to the Respondent.

10.12 The Reporting Party may elect or request to receive all communications from NSCAD and/or the Investigator, through the Director of Opportunity & Belonging or designate, rather than directly.

Role of Support Persons for Reporting Party and Respondents

10.13 In addition to any support offered by the Director of Opportunity & Belonging or designate (for the Reporting Party) and the NSCAD Support Person for Respondent or

designate (for Respondents), Reporting Parties and Respondents may be supported by a trusted person, including legal counsel, in the investigation.

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

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

- Emotional support for the Reporting Party or Respondent
- Supporting the Reporting Party or Respondent in preparing to tell their evidence to the Investigator
- Assisting the Reporting Party or Respondent in interview(s) with the Investigator, as permitted by the Investigator, for example by asking questions where the Reporting Party or Respondent forgets key information due to the stress of the process
- Observing the investigation interview(s), including with a view to issues of procedural fairness
- Asking questions of the Investigator relating to timing and next steps in the process, however, the Investigator may refuse to permit such process-type questions from a support person who unduly interrupts or is otherwise disruptive to the investigation.

Investigator Determines Investigation

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

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

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

10.19 Interviews with the Investigator may be held off campus if the Investigator determines it is necessary to maintain the confidentiality and integrity of the investigation after considering the views of the parties.

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

10.21 The Investigator may conduct multiple interviews with each party and witnesses.

Each Party has the Right to Know and Respond to Evidence

10.22 Each party has the right to know and respond to the evidence. The Respondent shall be provided with the Reporting Party's written Report, statement obtained in the interview, or summary of the interview, and an opportunity to respond. The Reporting Party shall be provided with the Respondent's written response, statement obtained in the interview, or summary of the interview, and an opportunity to respond. The Investigator will provide both

parties with a reasonable opportunity to respond to any new information obtained during the Investigation, including statements of witnesses and documentary evidence.

10.23 If the parties have copies of texts, emails, social media, video recordings or campus security or residence incident reports or other similar documents related to the allegations, these should be produced to the Investigator.

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

Opportunity to Pose Questions

10.25 The Investigation is a non-adversarial fact-finding process. In addition to the opportunity to know and respond to the evidence, each party will have the opportunity to pose questions to the Investigator, that the Investigator may consider asking of the other party or witness. The Investigator will determine whether those questions are relevant, appropriate and/or will assist in the investigation.

Process May be Iterative

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

Reporting Party May Withdraw from the Process

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

Respondent's Failure to Participate

10.28 If a Respondent refuses to participate in an Investigation, the Investigator may determine the findings on the basis of the information provided by the Reporting Party.

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

Investigation Timeline

10.30 The Investigation should be completed in as timely a way as possible, with the goal of completing the Investigation within 90 days following the appointment of an Investigator. NSCAD recognizes, however, that numerous factors that may impact the progress of an Investigation, including the health of the participants.

10.31 If the Investigation is not complete 90 days following the appointment of the Investigator, the Investigator shall update the Responsible Authority and the parties on the progress of the Investigation on the 90th day following the appointment, and every two weeks thereafter.

Investigator's Report

- 10.32 At the completion of the Investigation, the Investigator shall prepare a Report that contains:
- i. A description of the evidence of all witnesses and any other relevant evidence
 - ii. Findings of fact
 - iii. Explanation of findings of credibility, if applicable
 - iv. A determination as to whether, on a balance of probabilities, any act of sexual violence prohibited by this Policy occurred, and
 - v. The reasons for the findings of fact and any finding of breach of this Policy (and any related policy).
- 10.33 The Investigator's Report constitutes the findings and the reasons for the finding, on which any Review of the findings will be conducted. The Report accordingly must provide a sufficiently detailed explanation of the facts and analysis to enable the parties and any reviewing body to understand the decision and the basis for the decision.
- 10.34 A copy of the Investigation Report shall be provided to the Responsible Authority, the Reporting Party, and the Respondent. Copies of the Report provided to the parties shall be redacted of identifying information of any person other than the person receiving the Report.
- 10.35 In cases where there are multiple Reports, each Reporting Party will only receive the portion of the Investigator's Report that relates to their allegation(s).
- 10.36 The Responsible Authority may seek further information or clarification from the Investigator before accepting the Investigator's Report.
- 10.37 Any additional information or clarifications relevant to the Investigation provided to the Responsible Authority by the Investigator, or any additional findings, shall be communicated to the parties in writing by the Investigator and, where appropriate, the parties shall be given an opportunity to respond.

Decision by Responsible Authority: Discipline and Remedial Measures

- 10.38 Prior to issuing a decision, the Responsible Authority may request a review of the Investigator's Report by the Sexual Violence Review Panel (SVRP), see Section 11.5, on the following grounds:
- i. There was a serious procedural error that caused prejudice to one of the parties;
 - ii. The Investigator's findings of facts are clearly unsupported on the evidence; or
 - iii. The Investigator's decision as to whether a breach of the Policy occurred is clearly unsupported on the basis of the findings of facts in the Investigation Report.
- 10.39 The Responsible Authority will request a written review in accordance Section 11.7(i) to (iv). This request will suspend the timelines in Section 10.47.
- 10.40 The parties and the Responsible Authority may make written submissions to the SVRP on the grounds of review.

10.41 If the SVRP determines that any of the grounds of review set out in Section 10.42 are proven, the SVRP may make a decision in accordance with Section 11.12 (i) to (iv).

10.42 Sections 12.8, 12.14 and 12.15 apply to a request for review by the Responsible Authority.

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

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

10.45 In making this determination, the Responsible Authority may confidentially consult with other persons as necessary.

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

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

- For Students:
 - Written warning or reprimand
 - Probation
 - Behavioural contract, the breach of which will result in discipline, including:
 - i. no contact/no communication directives;
 - ii. restricting access to all or parts of the NSCAD campus;
 - Suspension or denial of university privileges, including suspension or removal of a student from a sports team
 - Restrictions on accessing all or parts of the NSCAD campus
 - Suspension or Expulsion
- For Employees:
 - Written warning/reprimand
 - Suspension with or without pay
 - Termination from employment

10.48 Remedial measures may include, but are not limited to the following:

:

- For Students:
 - Education or Training
 - Voluntary written apology
 - Restrictions on accessing all or parts of the NSCAD campus
 - Removal from a course or section of a course

- For Employees:
 - Education and training
 - Voluntary written apology
 - Employment office/campus relocation or reassignment
 - Restrictions on accessing all or parts of the NSCAD campus
 - Supervision or oversight of teaching/learning/work environment by NSCAD

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

- The sanction or remedy sought by the Reporting Party
- The principle of progressive discipline
- The University's role as an educational institution
- The nature and severity of the incident
- The impact of the conduct on the Reporting Party's continued education or employment at NSCAD
- The impact of the conduct on the NSCAD community
- The university's commitment to zero tolerance of Sexual Violence
- The university's commitment to reducing the barriers to reporting

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

10.51 A copy of the decision on disciplinary and remedial measures shall be provided to the Respondent. In some circumstances, a copy of the decision on remedial measures may also be provided to the Reporting Party. However, disciplinary and remedial measures may include confidential information which may not be shared with the Reporting Party. The Reporting Party shall keep any measure shared confidential, except to the extent that it is necessary to share information to enforce the measures.

Student Respondent's Withdrawal from NSCAD During an Investigation

10.52 If a student Respondent chooses to formally withdraw from NSCAD during an ongoing investigation and discipline process under this Policy, the investigation and discipline process will continue per Section 10.32, and if the student is found to have breached the policy, any disciplinary measure will be noted on the student's transcript in accordance with the Academic Calendar.

Student Respondent's not Provided Academic Transcripts Directly During an Investigation

10.53 While under Investigation for a breach of this Policy, a student Respondent will not be issued academic transcripts directly, but, at the student's request, these transcripts will be sent to institutions or potential employers. If the student is subsequently disciplined and this is reflected on the student's transcript, the recipients of the transcript will be issued a revised transcript.

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

- 11.1 Either a Reporting Party or Respondent may seek to Review the decision of the Responsible Authority. A Review is initiated by a request in writing to the Responsible Authority.
- 11.2 Review under this Policy is not a hearing or re-hearing of the evidence and is limited to the grounds of review below. In most cases, the Review will be heard in writing only.
- 11.3 Any disciplinary or remedial measures ordered by the Responsible Authority will remain in force until the Review is decided.
- 11.4 A Reporting Party or Respondent may request a Review of a finding of breach of this Policy by the Investigator or the disciplinary or remedial measures ordered by the Responsible Authority, on the following grounds:
- i. There was a serious procedural error that caused prejudice to the party seeking the appeal
 - ii. The investigator's decision as to whether a breach of the Policy occurred is clearly unsupportable on the basis of the findings of fact contained in the Investigation Report
 - iii. New facts relevant to the final determination are available, that were not available during the investigation, or
 - iv. The discipline or remedial measures are unreasonable.
- 11.5 The Review will be carried out by the Sexual Violence Review Panel (SVRP), which shall be comprised of three persons appointed by the President as follows:
- i. An external party who has experience in sexual violence investigation, procedural fairness, gender-based violence and sexual harassment and sexual assault, and who may be a lawyer.
 - ii. Two members of the SVRP roster established by the President, who have training or experience in this Policy, procedural fairness, gender-based violence and the law of sexual assault and sexual harassment.
- 11.6 Requests for Review must be made in writing and submitted to the Responsible Authority within 10 days of the decision of the Responsible Authority.
- 11.7 The written request for Review must provide:
- i. A statement for the grounds of Review
 - ii. A statement of the facts relevant to the grounds for Review
 - iii. A statement of the remedy or relief sought
 - iv. Copies of relevant documents that support the Review, and
 - v. In the event of fresh evidence that was not available at the time of the investigation, copies of that evidence or witness statements.
- 11.8 The SVRP may summarily dismiss a Request for Review that it determines does not raise a valid ground of review.

- 11.9 If new evidence is provided to the SVRP, the responding party to the Review (whether the Reporting Party or the Respondent) shall be given notice of that new evidence and an opportunity to respond.
- 11.10 In circumstances where the discipline order is a suspension or expulsion, the SVRP shall convene a review with oral submissions at the request of the Respondent. In other cases, the SVRP has the discretion to hear oral or written submissions from the Reporting Party or Respondent on the grounds of review.
- 11.11 The Reporting Party will be provided notice of any SVRP meeting and will be entitled to make submissions, should the Reporting Party wish to participate.
- 11.12 If the SVRP determines that any of the grounds of Review set out in Section 11.4 are proven in relation to the Investigator's findings, the SVRP may, depending on the reasons for decision and the circumstances of the case before it:
- i. Refer the matter back to the Investigator for reconsideration
 - ii. Refer the matter back to the Responsible Authority for review of the disciplinary or remedial measures imposed
 - iii. Require that a fresh investigation be undertaken and direct the Responsible Authority to appoint a new Investigator
 - iv. Order that any Immediate Measures in place during the investigation continue
 - v. Direct the Responsible Authority to determine whether any Immediate Measures should be imposed pending the re-investigation, and/or
 - vi. Suspend any discipline or remedial measures ordered as a result of the finding.
- 11.13 If the SVRP determines that any of the grounds of Review set out in Section 11.4 are proven in relation to the discipline or remedial measures, the SVRP may:
- i. Uphold the discipline or remedial measures ordered, or
 - ii. Modify or reverse the discipline or remedial measure and substitute its own decision.
- 11.14 The SVRP shall issue its decision in writing. The decision shall include an explanation of the basis and reasons for the decision in relation to each ground of Review put before the SVRP.
- 11.15 The decision of the SVRP shall be final.

12 PARALLEL CRIMINAL PROCEEDINGS

- 12.1 Where a student Respondent has been charged criminally for a sexual violence related offence, NSCAD will suspend any ongoing investigation under this Policy until resolution of the criminal charge, unless:
- The investigation is complete (all interviews are finished)
 - The police or Crown do not object to NSCAD commencing or continuing the investigation and the student Respondent consents, or
 - Exceptional circumstances exist, such as relating to the health and safety of the Reporting Party or campus community that is not otherwise addressed by any criminal conditions or Immediate Measures imposed.

- 12.2 Where an employee of NSCAD has been charged criminally for a sexual violence related offence, NSCAD may choose, after consultation with the Survivor, to continue or suspend any investigation or alternative resolution process under this Policy, as determined appropriate by NSCAD.
- 12.3 A Respondent is required to provide to NSCAD information on any current criminal charges faced by the Respondent and criminal conditions, such as bail or conditions of release, relating to the incident(s) of sexual violence that is the subject matter of the Disclosure or Report. For student respondents this information is to be submitted to the Vice-President (Academic & Research) and Provost, for Employee respondents this information is to be submitted to the Director of Human Resources.

13 THIRD PARTY OR ANONYMOUS REPORTING

- 13.1 Where a person witnesses or has reasonable concerns about an incident(s) of sexual violence, they may submit written or oral information to the Director of Opportunity and Belonging or designate.
- 13.2 A Third Party Report is where information about an incident of sexual violence is shared by an identifiable person who is not the Survivor/person who directly experienced the sexual violence. Where the information relates to an identifiable or identified Survivor, the consent of that Survivor should be sought before the information is provided to NSCAD.
- 13.3 An Anonymous Report is where information about an incident of sexual violence is shared in a form that is anonymous, for example when the Director of Opportunity and Belonging or designate, receives a written submission with no name attached to it, or a person discloses to another staff member but will not disclose their name. An Anonymous Report may be made by a Survivor or a Third Party.
- 13.4 NSCAD may be unable to investigate an Anonymous or Third Party Report due to lack of information or out of respect for the individual impacted by the sexual violence who has decided not to come forward.
- 13.5 Examples of where NSCAD may initiate its own investigation following one or more Third Party or Anonymous Reports include where there is social media or other evidence documenting sexual violence and/or where persons witnessed sexual violence against a person who was incapacitated, unconscious or asleep. Where there are multiple Disclosures and one or more persons has made a formal Report but others have only made a confidential Disclosure, NSCAD may investigate the totality of the conduct by the Respondent, including by revealing the confidential Disclosures to an investigator in the course of the investigation or by asking those who made confidential Disclosures to participate in the investigation.
- 13.6 Where NSCAD receives multiple Third Party or Anonymous Reports, NSCAD may also explore what steps may be taken short of an investigation (which would require release of the identity or identities of the Survivor(s)), such as targeted education and training, and/or increased campus security or monitoring of specified locations or events.

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

13.8 The Director of Opportunity & Belonging or designate shall maintain data on Anonymous or Third Party Reports.

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

14 PROHIBITION ON SEXUAL RELATIONS BETWEEN UNIVERSITY EMPLOYEES AND STUDENTS

Prohibition on Sexual Relations

14.1 Since consent is not possible where there is a power imbalance, Sexual Relations between a student and an employee (faculty or staff) is prohibited when the staff member:

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

Other Sexual Relations Strongly Discouraged

14.2 Sexual Relations between a student and an employee (faculty or staff), in circumstances other than those described and prohibited above, are strongly discouraged.

14.3 An Employee may disclose to the university, via human resources, when they have engaged in consensual (which does not include those prohibited above) Sexual Relations with a student.

Application to Graduate Students

14.8 This Section does not apply to Sexual Relations between graduate students who also hold teaching positions, so long as one of the graduate students is not in a position of authority over the other graduate student.

Presumption of Policy Breach

14.9 Where an employee (faculty or staff) fails to disclose Sexual Relations with a student in accordance with this Policy, it is presumed that the relations are a breach of this Policy.

15 COLLECTION AND USE OF INFORMATION

15.1 NSCAD collects personal information under this Policy for the purposes of:

- i. Ensuring the safety of individuals and the university community
- ii. Respecting and protecting the rights of individuals at the university, including under the

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

15.2 The Director of Opportunity & Belonging or designate shall maintain aggregate data, which shall be published annually, on:

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

15.3 The Director of Opportunity & Belonging or designate should also report annually on information on any observable trends.

15.4 The data published by the Director of Opportunity & Belonging or designate shall not disclose any personal identifying information.

Resources Available On-Campus and Off-Campus:

Link to web resource coming January 2023