

York University

Sexual Assault Awareness, Prevention, and Response Policy Working Group

Meeting Notes

Date: Thursday, March 13, 2014

Time: 2:00 p.m. – 4:00 p.m.

Location: 921 Kaneff Tower

Attendance: Polly MacFarlane, Christine Silversides, Melissa Belisle, Noel Badiou, Elana Shugar, Elize Ceschia, Rob Castle, Prakash Amarasooriya, Deb Hansen, Nila Zamani

Regrets: Liisa Stephenson, Jessica Thyriar, Catherine Salole, Aldo Altomare, Maxine Bower, Donya Ziaee

Meeting Notes Review

- Meeting Notes approved

Continue Mapping Internal Landscape: Response

- Discussion in regards to representatives having the opportunity to verify the processes outlined while mapping the internal landscape.
 - The notes from the mapping process are intended to give a basic outline of what the landscape consists of in regards to responding to sexual assault on campus. The outlined processes will be verified with the corresponding office, department, and/or service as the process continues. The mapping process is not intended to be taken to be an expansive outline of procedures and there may be initial inaccuracies which will be corrected in the verification process.
- Mapping process continued with General Counsel
 - See Appendix A
- Action Items and points for further discussion are being compiled throughout the process.
 - See Appendix B

Next Meeting

- Wednesday, March 26 | 2:00-4:00pm | 109 Atkinson – Harry Crowe Room
- We will continue mapping out the landscape for responding to sexual assault on campus at the next meeting.

Appendix A

The notes from the mapping process are intended to give a basic outline of what the landscape consists of in regards to responding to sexual assault on campus. The outlined processes will be verified with the corresponding office, department, and/or service as the process continues. The mapping process is not intended to be taken to be an expansive outline of procedures and there may be initial inaccuracies which will be corrected in the verification process.

Internal Investigations

- University policies
 - Regarding this meeting the relevant policy is sexual harassment
 - Policy is broad
 - sexual assault is not specifically covered
 - Applies to students → OSCR | Faculty and staff → employees
- Employees
 - If police investigation is underway
 - May defer internal investigation to not affect criminal proceedings ie. possibly taint evidence
 - May decide to proceed anyway depending on the situation
- Complaints Procedure
 - Broad range of issues
 - Assessment done – go to formal investigations (Y/N)
 - Done by person in authority of the unit of the respondent
 - ex. If Professor is accused = Dean makes decision
- Formal Investigation = Yes
 - Investigators are internal and trained internally
 - Assess if there is a policy breach: Yes/No

- In sexual assault cases: b/c it is a criminal offence, university cannot make a determination whether or not a sexual assault took place
 - Therefore, it can make sense to wait for police investigation
 - Waiting until after criminal proceeding also provides information (transcript) which helps internal investigation
- Charge/ no charge – is it a breach of policy?
 - Different from finding of sexual assault which is a legal proceeding
- When are the Police brought in?
 - It is up to the survivor
 - York still proceeds with internal investigation.
 - Survivor chooses the extent they are willing to participate
 - They are encouraged to be part of the process
 - Try to be as sensitive as possible
 - (*)¹ Planning for training of investigators to include more training around Sexual Harassment / Sexual Assault.
- Sexual Harassment
 - Even if not a breach of OHRC, we would still proceed with investigation as per York's policy.
 - Policy mirrors OHRC (does not explicitly reference)
 - Internal policy gives clarity to how the university can address.
 - Even If issue goes external, we still need to address it internally
- If a harassment complaint goes to Tribunal (OHR) while internal, the Tribunal will ask if internal process was exhausted.
 - If not, Tribunal will defer until internal process is complete.
- Sanctions / Disciplinary Measures
 - Sanctions the university can impose (ex. Tribunal cannot fire the respondent)
 - Opposite from criminal proceedings
 - Stricter consequences
 - Tribunal cannot reinstate employment.
 - It can recommend but not enforce this goes for fines as well.
 - Internal process disciplinary sanctions imposed. No \$ to complainant
- Sexual Harassment Internal Process

- It is not like the Tribunal process (i.e. there is no cross examination)
- Faculty member example: has not been found 'guilty' rather has been terminated.
- Fact specific – hence investigation is key
- Complaints are taken very seriously
- No Reprisal
- Interim measures
 - May be suspended with pay
 - May not teach section / course
- Process is explained to both parties
 - Investigators are firm about following and controlling the process in order to achieve balance
 - If represented by union, union is briefed
 - (*) If student is complainant, allowed to bring who they choose – we offer suggestions
- Process
 - 1) Complainant interviewed first
 - 2) Complainant's witnesses interviewed
 - If claim not substantiated it does not go forward (unlike student process)
 - 3) Respondent interviewed
 - 4) Respondent's witnesses interviewed
 - 5) Repeat if necessary
 - 6) Investigator satisfied – writes report and sends to boss of respondent
 - 7) Determination of consequences (if any)
 - Investigator's role is fact finding only
 - The person that receives the report can seek advice about their determination
 - Decision is made by 1 person
 - (*) Although the individual may seek advice the determination on sexual harassment complaints are made by one person.
- Frivolous complaint / vexatious → no
 - Partly done to not discourage complaints from coming forward
- Can the decision be appealed?
 - If unionized – union can grieve the decision

- If not unionized – no
- (student who is unionized ex. Graduate who is a TA)
- No internal appeal process but can always exercise external options
- Ombuds could hear about a flaw in the process, not the case itself
- Time limit for appeal
 - The guideline suggests up to 6 months after the incident, however can be waived if reason for delay is in good faith.
 - OHRC Harassment: hard 1 year timeframe
- Sexual Assault
 - Under the criminal code
 - Timeline is much longer
- Procedures Posted: No
 - (*) Procedures for Sexual Harassment Complaints are not posted
 - If looking, modelled after Appendix Q in YUFA Agreement
- CHR is in the process of compiling information about the process in an accessible way.

¹ (*) denotes an item that requires further consideration and discussion

Appendix B: Action Items and Considerations

Meeting 2

- Small group discussions took place during the Working Group meeting. Please refer to Appendix A from the January 17, 2014 Meeting Notes for the group discussions.

Meeting 3

- YSS is not trained to deal with Sexual Assault investigations
 - Is there a disconnect between expectations and ability of YSS to act?
 - Need to review civil and criminal implications
- Is there a duty to report to TPS?
- How to determine if an investigation is needed?
 - YSS is responsible for determining if the suspect is involved in other incidents
- R. Castle will send the working group the Bulletin Protocol
- What is the institutional requirement to report to TPS?
- What is the legal requirement to report to TPS?
- Should there be special training for adjudication of Sexual Assault cases (tribunal members)?
- What is the status of OSCR staff re: Sexual Assault investigations and peace officer requirements?
- Does ResLife, OSCR, or Security provide accompaniments for survivors when accessing external resources?
- Concerns were raised around the consistency of the process when TPS are involved.
 - R. Castle will connect with TPS and arrange for them to attend a working group meeting.

Meeting 4

- Even if incident is not related to campus (occurred off campus or prior to coming to York) SOP is in play.
- People are entitled to privacy at the age of 16. Need to review exemptions under privacy act
 - When do we call parents generally?
- Is first responder training consistent across the board?
 - Current training Review
- What supports are available for the community impact following an incident?

- Informal reporting process would allow for essential information to be compiled and support to be provided to survivors without encountering potential concerns surrounding formal reporting.
 - Process should allow for reporting of the what / when / where – not the who
 - Get essential information.
 - Review Clery Act “Informal”
- Depending on who they go to, the landscape can be very different
 - i.e. CDS / CHR – no reporting
- What is in place for Staff in regards to response / support?
 - Review EAP – Crisis Response?
 - Connect with HR/FR
- If suspect is a faculty or staff member and survivor is a student, OSCR would not be able to support survivor through the process.
- Are students aware of the Internal Investigations Process prior to an incident?
- New training for Internal Investigations will include sensitivities around sexual harassment and sexual assault.
 - Open to input on the training
- C. Silversides will expand on the information regarding the Internal Investigation process and the roll of the General Counsel at the next meeting.

Meeting 5

- Planning for training of investigators to include more training around Sexual Harassment / Sexual Assault.
 - General Counsel is open to suggests on what to incorporate.
- If the complainant is a student they may not be as familiar with the process and not have the same support navigating through it as a unionized employee.
- Procedures for Sexual Harassment Complaints are not posted
 - If looking, modelled after Appendix Q in YUFA Agreement
- Although the individual may seek advice the determination on sexual harassment complaints are made by one person.