

FTR Now

Universities and Colleges Take Note: Sexual Violence and Harassment Legislation Passed

Date: March 14, 2016

On March 8, 2016, legislation addressing sexual violence and harassment was passed and received Royal Assent.

[As previously reported](#), the [Sexual Violence and Harassment Action Plan Act \(Supporting Survivors and Challenging Sexual Violence and Harassment\), 2015](#) (“Act”) requires publicly assisted colleges and universities and private career colleges to develop a sexual violence policy and creates specific duties for all employers to develop policies and procedures to prevent sexual harassment in the workplace, including a duty to investigate incidents and complaints.

In this *FTR Now*, we summarize the significant changes brought about by the Act that are of particular interest to community colleges, universities and private career colleges.

SPECIFIC OBLIGATIONS RELATING TO COMMUNITY COLLEGES, UNIVERSITIES AND PRIVATE CAREER COLLEGES

The Act amends the *Ministry of Training, Colleges and Universities Act* and the *Private Career Colleges Act, 2005* to require every college of applied arts and technology, every university that receives regular and ongoing operating funds from the government, and every private career college to create a sexual violence policy (which may be included within another policy) addressing sexual violence involving students enrolled at the educational institution. Sexual violence is defined in the Act. The educational institution must consider student input in the development and review of the policy, and must review the policy at least once every three years. The policy must set out the process for how the educational institution will respond to and address incidents and complaints of sexual violence involving students.

These institutions would also be required to collect and provide to the government (or in the case of private career colleges, the superintendent appointed by the government) information and data including:

- the number of times supports, services and accommodation relating to sexual violence are requested and obtained by students and information about such supports, services and accommodation;

- any initiatives and programs established by the institution to promote awareness of the supports and services available to students;
- the number of incidents and complaints of sexual violence reported by students, and information about such incidents and complaints; and
- the implementation and effectiveness of the policy.

The above information must be provided on an annual basis to the college or university's board of governors.

In addition, the Minister (or in the case of private career colleges, the superintendent) may conduct, or direct a college or university to conduct or participate in, a survey of students and other persons relating to the effectiveness of the college's or university's sexual violence policy.

These provisions come into force on January 1, 2017.

CHANGES TO THE OCCUPATIONAL HEALTH AND SAFETY ACT

The Act revises and expands the definition of "workplace harassment" in the *Occupational Health and Safety Act* ("OHSA") to include "workplace sexual harassment", which is defined in the Act.

An employer is now required to create a policy and program with respect to workplace harassment which includes workplace sexual harassment. The program must be developed and maintained in consultation with the joint health and safety committee or health and safety representative within the workplace. Among other things, the program must:

- include a reporting mechanism for incidents of workplace harassment, including a reporting mechanism for when the alleged harasser is the employer or supervisor;
- ensure that all complaints and allegations are investigated; and
- set out how the complainant and respondent will be informed of the results of the investigation and any corrective action taken (which information must now be communicated to the complainant and respondent in writing).

The Act also expands an inspector's powers to include the power to order that an employer conduct an investigation "by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector" and that a written report be prepared, at the employer's expense.

These provisions come into force on September 8, 2016.

OTHER CHANGES

The Act removes the limitation period for civil proceedings based on sexual assault so that

survivors can bring their civil claims forward whenever they choose to do so. Currently, the limitation period to commence a claim based on assault or sexual assault does not run during any time in which the person with the claim is incapable of commencing the proceeding because of his or her physical, mental or psychological condition. Incapability until the date the claim is filed is assumed unless the contrary is proven. The changes eliminate the limitation period completely.

The Act also eliminates the limitation period for survivors of sexual assault and domestic violence to make a compensation application to the Criminal Injuries Compensation Board and shortens the time it takes to end a tenancy agreement for people experiencing sexual or domestic violence.

NEXT STEPS REQUIRED BY EMPLOYERS

All publicly-funded colleges, universities and private career colleges should carefully review, and in many cases revise, their current policies and programs (including their workplace violence, workplace harassment and any applicable student policies) in advance of the date these provisions come into force. In particular, they must ensure that their policies address sexual violence against students.

The workplace harassment policies and programs, which must be developed in consultation with the joint health and safety committee or health and safety representative, if any, should include the following:

- A statement of the employer's commitment to maintaining a fair and equitable environment free of harassment.
- A definition of harassment that is consistent with the *Human Rights Code* and the *OHSA* (including the new revised and expanded definition which includes workplace sexual harassment).
- A statement regarding to whom the policy applies (e.g. employees, independent contractors, volunteers) and that employment-related incidents that occur beyond the normal workplace, on social media or outside of working hours may be captured by the policy.
- An explanation of employer obligations to investigate potential workplace harassment, even in the absence of a formal complaint.
- An outline of the complaint resolution process for a harassment complaint, including:
 - to whom the affected party should report;
 - how complaints will be investigated;
 - how confidentiality will be addressed (including a statement that information obtained during the investigation will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident, or is otherwise required by law);
 - what corrective action will be taken; and
 - how and to whom conclusions will be reported, including informing the complainant

and respondent of the results and corrective action taken. The requirement to disclose the results of the report and any corrective action taken arises under *OHSA* and therefore would not apply to non-workers (e.g. students).

- A prohibition on reprisal for good faith complaints.
- Preservation of employees' rights to pursue complaints under other processes available (e.g. under the *Human Rights Code* or *OHSA*).

Institutions should give extra consideration at the outset of a workplace harassment investigation as to whether an external investigator is required, given the new power of inspectors to order an external investigation be conducted.

The Ministry of Labour intends to establish a special enforcement team of inspectors trained to address complaints of workplace harassment, including sexual harassment, and enforce these new duties and obligations. In addition, it intends to create a new "Code of Practice" regarding employer obligations relating to sexual violence and harassment. Educational materials for employers regarding these issues are also being developed.

The sexual violence policy should include the following:

- A statement of the educational institution's commitment to maintaining a fair and equitable environment free of sexual violence.
- A definition of sexual violence that is consistent with the new definition found in the *Ministry of Training, Colleges and Universities Act* and the *Private Career Colleges Act, 2005*.
- A statement that the policy applies to sexual violence involving students and that incidents that occur off campus, on social media or outside of classroom hours may be captured by the policy.
- An explanation of the educational institution's obligations to investigate potential sexual violence, even in the absence of a formal complaint.
- An outline of the process for how the educational institution will respond to and address incidents and complaints of sexual violence involving students, including:
 - to whom the affected party should report;
 - how complaints will be investigated;
 - how confidentiality will be addressed;
 - what corrective action will be taken; and
 - how and to whom conclusions will be reported. There is no requirement to inform students of the results of the report and/or any corrective action taken.

When developing, reviewing or amending its sexual violence policy, the college or university is required under the Act to consider student input, in accordance with any regulations. Colleges and universities must also include within their policies any other requirements set out in the regulations, which have not yet been released. The Ministry of Training, Colleges and Universities is currently consulting on regulations that will establish numerous detailed requirements, including

requirements relating to the processes involved in developing sexual violence policies, the content of these policies, training requirements and the promotion of awareness of these policies.

We will continue to monitor this issue as these resources are developed and released, and will provide updates regarding any additional requirements which may be outlined.

Should you require more information about the Act or your workplace harassment policies, please contact [Nadine S. Zacks](#) at 416.864.7484, [Michael J. Kennedy](#) at 416.864.7305, [Daniel J. Michaluk](#) at 416.864.7253 or your regular [Hicks Morley lawyer](#).

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