
Consultation regarding proposed amendment to O. Reg. 131/16 (Sexual Violence at Colleges and Universities)

Proposal Number: 21-MCU001

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Postsecondary Education Division
Postsecondary Accountability Branch
315 Front Street, 16th Floor
Toronto ON M5V 3A4



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(Sexual Violence at Colleges and Universities)**

About

The **Sexual Harassment in the Workplace (SHIW)** project develops and delivers legal information, advice and public legal education on sexual harassment in the workplace. The project started in 2019 with 8 community legal clinics, and in 2020 it grew to 20 legal clinics in Central, Eastern, Southwestern and Northern Ontario. Funded by Justice Canada, the project aims to provide legal information to all workers who may need it. It also tries to increase knowledge regarding these issues among precarious workers, young workers, newcomers, women working in non-traditional fields, vulnerable employees and low-income workers.

The **Northumberland Community Legal Centre (NCLC)** is a Community Legal Clinic funded by Legal Aid Ontario. As a general services clinic, NCLC provides free, confidential, legal advice, brief services and representation to low-income residents of Northumberland County. NCLC engages in various projects to identify and serve unmet legal needs that exist in the community through partnerships and innovation in service delivery.

The **Durham Community Legal Clinic (DCLC)** is a Community Legal Clinic that provides legal services, information, education, and representation for historically marginalized and low-income residents of Durham Region. DCLC also engages in advocacy and law reform activities, in particular to ensure that our laws properly consider the perspectives of historically marginalized and low-income Ontarians. The main areas of services DCLC provides includes employment law and related services, housing and tenancy issues, and social benefits.

The **Durham Access to Justice Hub**[®] (the “Hub”) was established by the clinic in 2019 with the assistance of LAO. This inter-agency and inter-disciplinary initiative intended to provide legal services beyond the income thresholds and subject matter of LAO, and other social, financial, and psychological services. These cooperative relationships seek to foster better client-centered services, reduce administrative barriers and silos, and improve efficiency of services that are funded or subsidized by taxpayer dollars. Some techniques used to achieve these goals include recruitment of volunteers to contribute towards improving access to justice, and by embedding students into workflows and innovative projects through experiential education. Through the Hub, DCLC provides even broader services to focus on the root causes of poverty, and engages in deeper forms of poverty alleviation.

Lois Cromarty is a lawyer and the founding Executive Director at NCLC. She is a Law Society of Ontario specialist in the area of workers’ compensation. She founded and chaired the Northumberland Poverty Reduction Action Coalition, and she has served as president of the Northumberland County Law Association. She has made significant contributions to the Five County Network, the Justice and Health Project and the Holistic Legal Services project. She currently serves as the Co-Chair of the Eastern Region Learning Task Force. Ms. Cromarty developed the proposal for the SHIW project which she continues to lead.

Marisa Conlin is a paralegal at NCLC and an educator. She served as the Vice Chair of the Northumberland Domestic Abuse Monitoring Committee. She is currently pursuing her JD at Ryerson University.

Omar Ha-Redeye is a lawyer and the Executive Director of DCLC. He holds a JD from Western University, and an LLM from Osgoode Hall. He has received numerous awards for his efforts in law reform and

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

advocacy on behalf of historically marginalized and low-income populations, including the Queen Elizabeth II Diamond Jubilee Medal, and the OBA Foundation Award.

Reid Jackson is a Community Legal Worker and Paralegal with the Durham Community Legal Clinic. He focuses primarily on human rights law, employment law, and workers' compensation law at the clinic. He was previously a Human Resources Specialist within the construction industry, with a focus in labour relations and workers' compensation.

Kelsey Henderson is a Paralegal student at Durham College completing placement at the Durham Community Legal Clinic Access to Justice HUB.

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

1. Post-secondary institutions play a crucial role within Ontario, promoting the free flow of information and ideas, educating the next generation of leaders, and preparing students for a productive life in society. For many, these formative years are an essential part of shaping who they become as a person and the roles they will assume. College and university are also the time when behaviours and attitudes are learned and reinforced, and often stay with a person for the rest of their lives. As these years constitute such a crucial stage in the development of a person's identity and self-image, it is essential that students are afforded an environment which is free from sexual harassment and misconduct, and one that reinforces healthy attitudes towards sexuality and consent.

2. We are largely supportive of the proposal to amend Ontario Regulation 131/16,¹ to add two additional requirements to publicly assisted college and university sexual violence policies ensuring that a complainant acting in good faith, who reports sexual violence would not be subject to any actions for drug and alcohol policies and would not be asked irrelevant questions such as those relating to past sexual history or sexual expression. We anticipate that these additions will encourage individuals who have experienced or been witness to a sexual violence incident on campus to report these incidents to their institutions. Additionally, we are hopeful that these changes will reduce the number of students who are reluctant to report, out of fear of being subject to judgement from their peers or faculty or out of concern for facing formal consequences regarding the circumstances in which the violence takes place. The increased awareness of the importance of reporting and the protections for those who report will benefit students and faculty of post-secondary institutions and will ultimately benefit all individuals in Ontario. It is our hope

¹ O. Reg. 131/16: SEXUAL VIOLENCE AT COLLEGES AND UNIVERSITIES. Available at: <https://www.ontario.ca/laws/regulation/160131>

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

that this will contribute to producing a generation which is more engaged and ready to report sexual assaults in the workplace and in society at large. These changes will also reinforce to institutions that they are both empowered and expected to do more to protect students from sexual misconduct, while signalling to them that their obligations to students extend beyond offering a bowl of free contraceptives.

3. This amendment is especially important in light of the fact that the majority of sexual assaults are not reported. For example, in 2014 in Canada 83% of sexual assaults that occurred were not reported to the police.² We are optimistic that this change will encourage victims or witnesses of sexual violence to report these incidents secure in the knowledge that they will not receive scrutiny or be penalized for any violations of the institution's drug and alcohol policies that may have occurred before or during the incident. An increase in reporting could assist institutions in creating strategies to prevent sexual violence on campus by allowing them to gauge the full extent of sexual assault and misconduct on campus and the circumstances in which it occurs. As a result, they will be better placed to respond appropriately and to deter such behaviour in the future.

4. Additionally, the requirement to ensure that students who share their experience of sexual violence through disclosing, accessing support, and/or reporting to the institution are not asked irrelevant questions by the institution's staff or investigators will increase the number of individuals who feel empowered to report. Questions such as these can deter victims of sexual violence to come forward and also undermine the credibility of complainants by focusing "attention on the complainant's lifestyle and character, rather than on the defendant's actions at

² Department of Justice: "JustFacts Sexual Assault." April 2019. Available at: <https://www.justice.gc.ca/eng/rp-pr/jr/if-pf/2019/apr01.html>.

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

the time of the alleged offence.”³ This has already been recognised in other common law jurisdictions such as in *R v A (No 2)* [2001] UKHL 25, where Lord Steyn of the House of Lords stated, “Questioning and evidence about the complainant’s sexual experience with other men are almost always irrelevant to the issue whether the complainant consented to sexual intercourse on the occasion alleged in the indictment or to her credibility”.⁴ This damaging line of questioning is irrelevant in determining whether or not the complainant consented at the time the assault took place and only discourages individuals from reporting incidents of sexual misconduct.

5. The addition of these two requirements will provide confidence that reports of sexual violence to institutions will be taken seriously and will reinforce to individuals that they will not face any consequences for doing so. According to a Statistics Canada survey conducted in 2018, 63.2% of university student respondents report experiencing sexual harassment one or more times, and 23.7% of survey respondents reported experiencing stalking at least once,⁵ a large number of which were not formally reported. When students were asked why they were reluctant to report incidents they had number of compelling explanations, including: not feeling like what happened to them was serious enough; lack of knowledge of what to do; or mistrust in how the school would handle the situation.⁶ By removing these barriers to reporting, this proposal is taking the first steps towards identifying and addressing this behaviour.

³ Sexual Trauma and Recovery Services: “The problematic use of past sexual history as evidence in rape trials.” February 3, 2020. Available at: <https://www.starsdorset.org/blog/the-problematic-use-of-past-sexual-history-as-evidence-in-rape-trials>

⁴Braid, Vera. “We cannot allow the courts to judge rape by sexual history”. October 17, 2016. Available at: <https://www.theguardian.com/commentisfree/2016/oct/17/courts-judge-rape-sexual-history-ched-evans-case>

⁵ Ontario Tech University. “Student Voices on Sexual Violence Survey”. Available at: <https://ontariosuniversities.ca/student-voices-on-sexual-violence-survey>

⁶ Burczycka, Marta “Students’ experiences of unwanted sexualized behaviours and sexual assault at postsecondary schools in the Canadian provinces, 2019” Canadian Centre for Justice and Community Safety Statistics. Sept 14, 2020. Available at: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00005-eng.htm>

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

6. The reality is that archaic attitudes towards sexual assault are prevalent throughout society. They are not limited to our post-secondary intuitions. Some studies suggest that 19% of women and 13% of men reported that they had experienced harassment in their workplace in the past year.⁷ Workplace harassment includes verbal abuse, humiliating behaviour, threats to persons, physical violence, and unwanted sexual attention or sexual harassment.⁸ Evidence of this can even be found in the Canadian judiciary. Most Canadians are familiar with the remarks made by Judge Robin Camp during a 2014 trial, when he suggested that the alleged victim should have attempted to keep her knees together and chided her for failing to scream for help during the assault. Canadians may not be aware of the Alberta Court of Appeal panel ruling on Camp's conduct where it was found that "Camp seemed to not understand laws on consent and an alleged rape victim's sexual activity, and that his acquittal of the man may have been coloured by "sexual stereotypes and stereotypical myths, which have long since been discredited."⁹ If these archaic attitudes are to be rooted out of our organizations and intuitions, then it is crucial that this process begins within our education system.
7. While we are largely in favour of the proposed changes, there is still more work to be done to improve the safety of students, staff and faculty at these institutions. We would like to see the changes go further than what is currently proposed. We would recommend that it be made a requirement for all first-year students to complete a course on sexual violence and consent. This course could discuss the following: what constitutes sexual violence, what to do if an incident occurs, what consent is, and how consent can be taken away at any time throughout a sexual

⁷ Hango, Darcy and Moyser, Melissa "Harassment in Canadian Workplaces" Statistics Canada, December 17, 2018. Available at: <https://www150.statcan.gc.ca/n1/pub/75-006-x/2018001/article/54982-eng.htm>

⁸Hango, Darcy and Moyser, Melissa "Harassment in Canadian workplaces" Available at <https://www150.statcan.gc.ca/n1/pub/75-006-x/2018001/article/54982-eng.htm>

⁹Markusoff, Jason "What's at stake in the case of Justice Robin Camp" Macleans. September 6, 2016. Available at: <https://www.macleans.ca/news/canada/beyond-one-judge-whats-at-stake-in-the-case-of-justice-robin-camp/>

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

experience. Further, as part of this course, the students could be required to read the institution's Sexual Violence and Harassment Policy and sign off that they have read and understood the contents. Education is a crucial step in eliminating sexual violence, and the reality is that our current public education system falls short in this regard. The importance of a robust sexual education curriculum during elementary school has been recognised, and a new curriculum developed,¹⁰ but even this new program has been accused of falling short of key issues and prompted concern over the ability of parents to opt their children out.¹¹ By extending education related to consent and sexual assault to post-secondary institutions, these crucial conversations would be allowed to continue, and important lessons reinforced. In addition to reinforcing appropriate conduct, we ask that the government commit to expanding resources for complainants, primarily by increasing the number of counsellors who are available to students and establishing a hotline for students who have experienced sexual assault or misconduct.

8. Part of this mandatory course should focus on the stigma around male victims of sexual assault. Institutions should work to spread awareness of male victims in sexual assault incidents to remove the stigma that it is not possible for men to be sexually assaulted. By spreading awareness and creating a safe space more male victims of sexual assault will feel comfortable coming forward and reporting these incidents.
9. In jurisdictions such as the United States many institutions have prohibited relationships between faculty and students due to the inherent power dynamic.¹² In Canada, these relationships have

¹⁰ Human Development and Sexual Health education by grade. Ontario.ca. Available at: <https://www.ontario.ca/document/health-and-physical-education-grades-1-8/human-development-and-sexual-health-education-grade>

¹¹ Parents will be able to exempt children from some of Ontario's new sex-ed curriculum. Social Sharing. CBC News. Aug 21, 2019. Available at: <https://www.cbc.ca/news/canada/toronto/ontario-new-sex-ed-curriculum-1.5254327>

¹² Should Canadian universities ban relationships between profs and students? CBC News. Dec 11, 2016. Available at: <https://www.cbc.ca/news/canada/british-columbia/university-policy-professors-dating-students-1.3890684>

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

historically been dealt with as a conflict-of-interest scenario. However, it has recently been recognised that this fails to take into account the nuances and power imbalance in these relationships and does not do enough to protect students. Institutions should be required to address these relationships in their sexual violence policies and establish clear expectations which prohibit these relationships.

10. Further, increasing resources and protection for marginalized groups would decrease the number of sexual assaults incidents that occur. It has long been recognised by that students with disabilities sometimes require different supports to engage with and excel in the postsecondary environment. This often takes the form of assistance with day-to-day tasks such as notetaking, navigating to classes, etc. However, people with disabilities are also more likely to experience assault than those without disabilities. Studies have shown that women with disabilities are four times more likely to have experienced a sexual assault than women without disabilities.”¹³ While many post-secondary institutions provide students with disabilities adequate resources to succeed in their studies, there is more to be done to protect them from potential assaults and to address their unique vulnerabilities. Studies suggest that “Gay, lesbian, bisexual and other sexual minority people in Canada were almost three times more likely than heterosexual Canadians to report that they had been physically or sexually assaulted in the previous 12 months in 2018 and more than twice as likely to report having been violently victimized since the age of 15.”¹⁴ We recommend that the these regulations be amended to require institutions to take steps to protect

¹³ DAWN Canada. “Factsheet: Women with Disabilities and Violence”. Available at: <https://www.dawncanada.net/main/wp-content/uploads/2014/03/English-Violence-January-2014.pdf>

¹⁴ “Sexual minority people almost three times more likely to experience violent victimization than heterosexual people”. Statistics Canada. September 9, 2020. Available at: <https://www150.statcan.gc.ca/n1/daily-quotidien/200909/dq200909a-eng.htm>

**Consultation regarding proposed amendment to O. Reg. 131/16
(Sexual Violence at Colleges and Universities)**

those groups most vulnerable to sexual assault, and take concrete measures to mitigate these disparities.

11. When provided with the proper education on sexual violence in an institutional setting, individuals will learn the nature of and the requirement for consent. They will also learn how to address situations of sexual harassment or assault in workplace settings and in broader society. This should lead to a reduction in the number of sexual harassment incidents that occur to individuals at work and ensure that incidents which do occur are properly investigated. It is our hope that this proposed amendment signals a broader change in future policy, one which recognises the importance of post-secondary instructions, and the significance of these years in shaping individuals. By reinforcing healthy approaches to sexuality and consent during these formative years and empowering complainants to come forward without reservation when they have experienced sexual harassment, we will be building a generation for whom reporting is acceptable and admirable.
12. Assuring students during their formative years that Ontario is a province which takes sexual harassment seriously signals to our next generation of leaders that sexual misconduct will not be tolerated. In doing so, we can create a post-secondary landscape which promotes and values consent and sexual autonomy, and a society which holds these values paramount as well.