

# Canadian Framework for Collaborative Police Response on Sexual Violence



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This framework was developed as a collaborative effort of police services from across the Province of Ontario.

**This working group was led by;**

Chief Kimberley Greenwood,  
Barrie Police Service

Inspector Monique Rollin,  
Sault Ste. Marie Police Service

Staff Sergeant Valarie Gates,  
Barrie Police Service

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Karen Arney  
Alison Cookson  
Margaret Devine  
Peter Dewsnap  
Dave Dunbar  
Jamie Dunlop  
Valarie Gates  
Tom Gill  
Kimberley Greenwood  
Terry Haight  
Paul Hess  
Barb Hough  
Cindy Laidlaw  
Antje McNeely  
Andrea Ninacs  
Meghan O'Malley  
Barry Petahtegoose  
Caroline Poulin  
Kevin Reeder  
Brad Reynolds  
Carolann Rock  
Monique Rollin  
Wendy Smith

Ontario Provincial Police, Detective Inspector  
Ottawa Police Service, Staff Sergeant  
Niagara Police Service, Detective Sergeant  
Barrie Police Service, Inspector  
Hamilton Police Service, Detective Sergeant  
Ottawa Police Service, Inspector  
Barrie Police Service, Staff Sergeant  
Guelph Police Service, Staff Sergeant  
Barrie Police Service, Chief  
Durham Regional Police Service, Detective Sergeant  
Woodstock Police Service, Inspector  
Kingston Police Service, Detective Sergeant  
York Regional Police, Detective Sergeant  
Kingston Police Service, Chief  
Guelph Police Service, Inspector  
Greater Sudbury Police Service, Constable  
Anishinabek Police Service, Inspector  
RCMP, Staff Sergeant  
Brantford Police Service, Sergeant  
South Simcoe Police Service, Sergeant  
Toronto Police Service, Detective  
Sault Ste. Marie Police Service, Ret. Inspector  
RCMP, Sergeant

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Edited by:  
Human Services and Community Safety Georgian College  
Stephanie Dimech  
Dr. Eleanor Gittens  
Gisele Beausoleil

Graphic Design:  
Julie Bateman  
Bateman Design Group

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# Canadian Framework For Collaborative Police Response On Sexual Violence

## Purpose Of This Document

The purpose of this document is to provide police services across Canada with a framework of leading practices to address Sexual Violence. This work will continue to evolve and as a result, will inform the ongoing development of best and appropriate practices. This response encourages evidence-based trauma informed investigations while improving on our support for victims/survivors of sexual violence.

Also included in this document will be shared language and understanding of sexual violence that can be used among police agencies and community partners. The writers recognize the importance of language and that those that find themselves as part of the judicial process related to sexual violence could define as victim and/or survivor or neither, and this self identification could change through the judicial process. In recognition of this journey and for the purposes of this document, both victim/survivors will be used to reflect and honour that journey.

This national response model is the result of collective efforts involving subject matter experts from policing, academia, and community organizations. Rooted in leading evidence-based research and practices, the intent is for the document to serve as

a foundational guide on which municipal, regional, provincial and national police organizations can build their own policies; inclusive of sexual violence reviews. While police services understand the importance and impact of their first responses as emergency services, this document marks a commitment that police services make to work in partnership. This document holds that a core tenet of sexual violence response often begins with police but requires the collective, coordinated and consistent efforts of police and community working in partnership; we are simply, stronger together.

This work is endorsed by the Ontario Association of Chiefs of Police and the Canadian Association of Chiefs of Police. It includes an approach to sexual violence case review and the governance of case review programs that has been developed in close consultation with provincial advocates and the Information and Privacy Commissioner of Ontario.

The Office of the Privacy Commissioner of Canada also supports this framework, while noting the need for each police agency to adapt it to their respective legislative context. This includes consideration and reference to the specific laws, including privacy laws, which will govern the case review process.

## Statement Of Principles

- |   |   |
|---|---|
| 1. Sexual violence case review is an advocate-based, victim/survivor-centered approach towards improving police response to sexual violence.  | 5. The model will focus on investigative integrity and incorporate/ advocate to meet the needs of the diversity within the community.   |
| 2. Responding to sexual violence is a shared responsibility across police, justice partners, public health, community and sexual violence support organizations.  | 6. Policies and programs will be evidence-based and supported by sound and effective research and practices.  |
| 3. The model is a community approach to improving all Human Services providers' response to sexual violence.  | 7. Responses to sexual violence will acknowledge and mitigate the trauma and other impacts of violence on victims/survivors and their families, offenders, responders and communities.  |
| 4. The model will represent best practices and evidenced-based, trauma-informed investigations with a focus on victim/survivor support, investigative excellence and advocate expertise to achieve the best possible outcomes for victims/survivors of sexual violence. | 8. Effective case management includes collaboration among service providers to respond to both victims/survivors and offenders by addressing the risk factors, to prevent further harm. |



**Advocacy Centre:** is a centre in which multidisciplinary professionals provide services to victims/survivors who have experienced abuse.

**Advocate Review Team (External Review Team):** the group of representatives selected by the Parties to carry out the mandate of the Sexual Violence Review Model. Review teams are composed of community advocates from agencies engaged in delivering direct services to victims/survivors of sexual violence.

Criteria include:

- Participating partners engage in direct service/ frontline service provision in sexual violence in the home community (i.e. rape crisis/sexual assault centres, domestic violence shelters) and are representative of the community’s diversity and vulnerable populations.
- Participating partners are independent from police services
- Participating partners have agency accountability mechanisms to victims/survivors of sexual violence
- Participating partners are bound by agency confidentiality oaths that meet or exceed Police Services Act confidentiality commitments

**Child Sexual Abuse:** An assault or touching, directly or indirectly, or invitation to touching of a sexual nature which violates the sexual integrity of the child. Authority and power enable the perpetrator, implicitly or directly, to impose sexual acts on the child or coerce the child into sexualized compliance.

**Confidentiality:** Maintaining the privacy of Confidential Information within the limits of the law.

**Consent:** The voluntary agreement of a person to engage in the sexual activity in question. There is no consent when:

- the agreement is expressed by words, gestures, or conduct or any other means by a person other than the victim/survivor,
- the victim/survivor is incapable of consenting to the activity,
- the perpetrator induces the victim/survivor to engage in the activity by abusing a position of trust, power, or authority,

- the victim/ survivor expresses, by words, gestures, conduct or any other means, a lack of agreement; or
- the victim/survivor having consented to engage in consensual activity, expressed by words, gestures, conduct or by any other means, indicates a lack of agreement to continue in the activity.
- an honest but mistaken belief on the part of the accused that the complainant consented to the sexual activity may not be considered a defensible position if the accused’s belief arose from self-induced intoxication, or recklessness or willful blindness, or where the accused did not take reasonable steps to ascertain that the complainant was consenting.

**NOTE:** in respect of a complainant who is twelve years of age or more but under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge unless the accused (a) is twelve years of age or more but under the age of sixteen years; (b) is less than two years older than the complainant; and (c) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant. (refer to s. 150.1 CC)

**Confidential Information:** all information contained in or derived from Police Records provided to an Advocate Review Team by the Police Service during the course of the approved advocate review program, including any related personal information, regardless of whether it is identified as confidential or personal or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into knowledge or possession of any advocate, service provider or other Advocate Review Team member in connection with the review. Confidential Information shall include: (i) new information derived at any time from such information whether created by the Police Service, advocate, service provider or Review Team member, or any other third party; and (ii) all information (including personal information) that the Police Service is obliged, or has the discretion, not to disclose under municipal, provincial or federal legislation or otherwise at law.

**Informed Consent:** consent given based on a clear appreciation and understanding of the

facts, implications, and consequences of an action. To give informed consent the individual concerned must have adequate reasoning faculties and be in possession of all relevant facts. Impairments to reasoning and judgement that may prevent informed consent may include, but are not limited to, high levels of stress such as post-traumatic stress disorder, intoxication, severe sleep deprivation, or severe intellectual disabilities or mental disorders.

**Internal Review Team (Internal Review Committee) :** the group of/or individual Police Service representative(s) formed to facilitate the review process and the implementation of the Advocate Review Team’s recommendations and is comprised of senior officers that have the supervisory authority to implement or advise command on such recommendations.

**Intimate Partner Violence:** refers to behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse, and controlling behaviours.

**MOU:** The memorandum of understanding or agreement between the individual police service and advocate agencies participating on the Advocate Review Team for the purposes of performing sexual violence case review.

**Police Liaison:** The police liaison is a senior member of the police service who is a subject matter expert on sexual assault investigations. This member is responsible for compiling all the evidence pertaining to the files to be reviewed by the Advocate Review Team and would be available to address any questions that arise, stemming from the review of each investigation.

**Police Records:** for the purpose of the Sexual Violence Case Review Model includes, but is not limited to, any or all of the following records, including any personal information contained therein:

- Occurrence/incident reports, including CAD calls
- Attachments to occurrence/incident reports,
- Officer notes,
- Victim/survivor and witness statements,

- Audio/Video records of victim/survivor, witness and alleged offender interviews,
- Arrest report with list of criminal charges,
- Medical information,
- Any documentary, physical, photo, video or electronic evidence yielded from police investigation,
- Disposition reports, and
- Any other records pertaining to steps taken in and after the investigation.

**Rape Culture:** used to describe a society or environment whose prevailing social attitudes have the effect of normalizing or trivializing sexual assault and abuse. Common behaviours associated with rape culture include victim-blaming, sexual objectification, trivializing sexual violence, denial of widespread sexual violence or refusal to acknowledge its harms, or combinations thereof.

**Section 278.1 Records:** as defined in the Criminal Code section 278.1 “any form of record that contains personal information for which there is a reasonable expectation of privacy and includes, without limiting the generality of the foregoing, medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.” 1997 c. 30, s.1. “Record” includes a computer file, computer database, photographic or graphical representation, sound recording, film and videotape.

**Third Party Records:** Refers to records created or held by third parties that are non-disclosable where it relates to a sexual offence unless ordered by a judge under s. 278.3 where the grounds permit. Laws protecting complainant or witness records for which there was a reasonable expectation of privacy are broadly termed “Rape Shield Laws”. Accused persons are required to file specific motions to argue for the necessity of access to these records, often referred to as “O’Connor Applications”.

**SAC:** For the purposes of this guide, the acronym SAC may be used in lieu of the term Sexual Assault Centre.

**Sexual Assault:** Any unwanted act of touching or threat of touching, directly or indirectly that violates the sexual integrity of any person. It is sexual assault regardless of the relationship of the victim/survivor to the perpetrator.

**Sexual Assault Reports:** For the purpose of the Sexual Violence Case Review Model, sexual assault reports means, police records of sexual violence held by the Police Service for reports including but not limited to the following crime/incident classifications (Uniform Crime Reporting):

- 1310 Aggravated Sexual Assault
- 1320 Sexual Assault with a Weapon
- 1330 Sexual Assault
- Other Sexual Violations [1345 – 1385]

**Sexual Assault Centres/Rape Crisis Centres:** refers to independent community-based centres created to support all survivors of sexual abuse or violence, regardless of whether those survivors chose to engage with the criminal justice system. Sexual Assault Centres typically provide crisis and longer-term counselling supports, accompaniments and advocacy for survivors with social services, hospitals, police or others, and systemic policy and legal advocacy. Services are provided free of charge and are grounded in an understanding of gendered violence as an effect of societal inequality, particularly of women and girls.

**Sexual Assault Treatment Centres:** refers to hospital-based programs designed to provide medical treatment to sexual assault survivors, including HIV-prophylaxis, pregnancy prevention, and other medical services. Sexual Assault Evidence Kits may be performed by Sexual Assault Nurse Examiners for forensic evidence collection in a criminal proceeding. Some hospital-based programs also provide counselling options and/or connection to community referrals.

**Sexual Harassment:** Any behaviour, comment, gesture or contact of a sexual nature that could be considered objectionable or offensive. It

consists of a single or repeated incident(s) and unreciprocated action(s), comments or looks of a sexual nature which treat the recipient as a sexual object. It may threaten a person's safety and security or prejudice the recipient's job security or promotion prospects while creating a stressful working environment. It may also prejudice a user of services or housing needs. Sexual harassment is a form of sexual violence and is considered an offence under the Human Rights Code and may constitute sexual assault as defined.

**Sexual Violence Case Review:** the development of an advocate review program committed to providing the best possible victim/survivor-centred response to crimes of sexual violence by working collaboratively with community and justice partners to develop & employ investigative best practices and respond with evidenced-based, trauma-informed investigations with the following goals:

- To reduce case attrition of sexual assault reports at the policing level
- To provide an improved response for victim/survivors of sexual violence; ensuring 'best practices' in sexual assault investigations
- To improve the effectiveness of the investigative process,
- To provide excellence in service and respect to victims/ survivors of sexual violence and enhance their public trust in the investigative process
- To promote open communication and cooperation between the Police Service and advocate agencies and improve the transparency of sexual assault investigations.
- To enhance police service expertise in how specific experiences impact victim/survivor trauma, memory, reactions and behaviour; and how officer interpretation of this behaviour impacts sexual assault investigations.

**Sexual Violence:** includes Child Sexual Abuse, Sexual Assault, and Sexual Harassment

**Supported Reporting:** stigma reduction and removal of barriers to accessing justice participants and victim/survivor services through initiatives rooted in innovative approaches to

encourage and support sexual violence reporting; with changes to historical reporting options with enhanced comfort levels for victims/survivors.

**Trauma informed Lens:** refers to the importance of taking into consideration the physical and mental impacts of traumatic experiences on individuals and developing environments and approaches that are responsive to those impacts.

**Trauma- Informed Response to Sexual Violence:** a neurobiology science and evidence-based investigative approach that is cognizant about how specific experiences impact victim/ survivor trauma, memory, reactions and behavior.

**Victim Services:** refers to services, often co-located with police services, offered to survivors of sexual violence and other violent crimes, particularly those who report to police. Victim services may include crisis response, community referrals for counselling and other services, crime-scene clean-up, bail notification services, and high-risk safety programs.

**Vulnerable Populations:** means those individuals who are at a higher risk of being targeted for violence and/or exploitation. Investigations involving sexual assault on vulnerable populations must consider issues that may face certain populations (i.e. age, culture, abilities, gender(s), language) and how this might affect the way a victim/survivor makes decisions and responds to law enforcement. Examples of vulnerable populations include:

- Indigenous Canadians
- Individuals having experienced previous sexual violence or intimate partner violence (particularly those who have had long term exposure to violence)
- Persons with precarious, unstable, or no housing
- Immigrants
- Sex trade workers
- Victims/survivors of Human Trafficking
- Senior citizens
- Individuals with mental and /or physical disabilities

- Children & minors
- Individuals with substance addictions
- Individuals lacking language proficiency
- Lesbian, gay, bisexual, transgender or any diversity of sexuality and gender identity-based individuals

**Any unwanted act of touching or threat of touching, directly or indirectly that violates the sexual integrity of any person is sexual assault, regardless of the relationship of the victim/survivor to the perpetrator.**

*Investigations involving sexual assault on vulnerable populations must consider issues that may face certain populations and how this might affect the way a victim/survivor makes decisions and responds to law enforcement.*



# Investigation Guidelines For Canadian Police Services

Police Pro-action refers to a preventative, anticipatory approach to policing rather than strictly a reactive response. It presents an opportunity to prevent future harm and victimization by taking Initiatives improving police intervention. Pro-action should be considered for both short and long-term solutions. Current leading practices point to the following elements of an effective approach.

## 1. Developing And Implementing A Comprehensive And Collaborative Response

A multiagency response to sexual violence must be implemented by all services. This response must be co-ordinated and victim-centred to foster trusting relationships and increase the reporting of sexual violence. To address the needs of the victims/survivors within their communities’ police will work, where possible, with human service agencies which provide services to victims of sexual violence. These agencies should include but are not limited to; Sexual Assault/Rape Crisis Centres, Victim Services, Women Shelters, Indigenous support Centres and any other agencies that reflect each community.

## 2. Training/Education Of All Partners

Research shows that one of the main breakdowns within sexual violence investigations is at the initial contact with the victim/survivor. Sexual violence case attrition happens very early on in the criminal justice system; often in the first interactions with police. A lack of knowledge surrounding the neuroscience of the brain and the effects of trauma on the brain contribute to secondary victimization experienced by the victim/survivor upon disclosing to police. A comprehensive training program surrounding a trauma informed approach should be implemented and mandatory for all officers. Services should consider utilizing community partners (active in providing services and advocacy for victims/survivors) when developing and delivering training.

## 3. Special Resource Personnel During Sexual Violence Investigations

Ongoing support, mentoring, and supervision should be available to investigating police officers for all sexual violence cases. This resource may be one specially trained officer in a small police agency who can provide case-by-case assistance to investigators or it could be a specific police unit or multidisciplinary unit devoted to

sexual violence cases. This specific member or unit should act as a liaison officer to the Sexual Violence Case Review. Community partner agencies can also provide support and should be consulted when required.

## 4. Support For Victims/Survivors And Families

The immediate concern in sexual violence investigations must be the safety of the victim/survivor and all other individuals deemed at risk. Safety plans should be developed, inclusive of referrals to community agencies. Communities in which an independent sexual assault centre and/or child advocacy centre is present should make all efforts to utilize this multi-disciplinary approach to enhance supports available to the victim/survivor and their families. Crucial to this process is that victims/survivors are kept informed and provided information to make educated decisions about their next steps. This begins with informed consent. Where possible and appropriate, victims/survivors should have choice, guide the process and their participation in it. Upon completion of a sexual violence investigation, victims/survivors should be provided with contact information of investigating officers as well as an explanation of the outcome of the investigation.

## 5. Prevention And Public Education Of Sexual Violence

All comprehensive responses to sexual violence should also include a prevention strategy that focuses on at-risk populations as well as strategies to empower people to speak out about sexual violence. Raising awareness regarding the prevalence and impact of sexual violence should be accomplished through collaboration with partner agencies. Addressing the “rape culture” and dispelling rape myths must be a priority for communities when developing prevention strategies.

# SEXUAL ASSAULT INVESTIGATION GUIDELINES

Adequacy Standards Regulations requires a police services board to have a policy on investigations into sexual assaults. In addition, the Adequacy Standards Regulation requires the Chief of Police to develop and maintain procedures on and processes for undertaking and managing investigations of sexual assaults. The following guidelines are based upon national best practices regarding trauma informed sexual violence investigations and are meant to enhance adequacy standards.

## PURPOSE

The purpose of this guideline is to ensure that the police response to allegations of sexual violence is co-ordinated, effective, and victim/survivor-centred. A co-ordinated response is essential to facilitate the development of a network of inter-agency contacts, provide a mechanism for sharing information and expertise, and to provide for the needs of the victims/survivors. Where possible police will work, with medical care providers and human service agencies which provide services to victims/survivors of sexual violence and abuse. This includes Sexual Assault Treatment Centres, Sexual Assault/Rape Crisis Centres and Survivor Services, as well as the Crown Attorney. The purpose of this collaborative approach is to ensure a co-ordinated and effective response to victims/survivors of sexual violence. Police response will maintain compliance with the required legislation and procedures including those set out in the Ministry’s designated Ontario Major Case Management Manual and in accordance with each police services’ Criminal Investigation Management Plan.

## THE ROLE OF POLICE IN SEXUAL

## VIOLENCE INVESTIGATIONS

The role of the police in responding to allegations of sexual violence is critical. Police officers are the victim/survivor’s first point of contact with the criminal justice system. All further decisions and interventions of the criminal justice system are dependent upon this initial contact.

The primary role of the police in dealing with allegations of sexual violence is to ensure that a thorough, unbiased, and professional investigation is conducted. Perhaps more than any other crime, the evidence obtained from victim/survivor is vital as it is often the primary source of evidence for the prosecution. In this respect, police officers must first seek to understand the impact and trauma experienced by victims/survivors of sexual violence.

The nature of the police response to the initial complaint will directly impact three critical components: the victim/survivor’s ability to work towards healing and recovery, the overall investigation, and any court proceedings that result from the investigation.

The police should work collaboratively with external agencies to minimize further trauma to the victim/survivor during the investigation and possible prosecution. A collaborative response to victim/survivor care ensures that their emotional, mental, and physical health concerns are addressed, while working towards creating a positive experience for all victims/survivors involved in the criminal justice system.

## THE IMPORTANCE OF COLLABORATION

In Ontario, there are multiple agencies that can assist during the investigation and prosecution of sexual assaults and respond to the needs of sexual violence victims/survivors. When these complementary agencies are combined with the work of prosecutors, the overall effect is to provide a coordinated and complete response to a victim/survivor of sexual violence. The goal of the process, via criminal complaint, will ensure that a victim/survivor will have broad access to experienced well-trained police officers, trained and responsive medical assistance, emotional and therapeutic support and an experienced, informed Crown prosecutor.



Collaboration amongst agencies has been proven to have many positive benefits to the pursuit of effective prosecutions. The relationship between Crown and police can create a more seamless transition between investigation and prosecution. Both police and the Crown benefit from having professional ties to sexual assault centres (SACs) when working with traumatized victims/survivors. The result of cross-agency collaboration is to improve the quality of investigations and prosecutions as well as increase the supports available to a victim/survivor throughout their involvement with the criminal justice system and afterwards.

REPORTING TO POLICE

Any attempt to reduce the incidence of sexual assault must first address the non-reporting problem of sexual violence in our communities, which constitutes a serious public safety issue for citizens. Victims/Survivor report the following reasons for not reporting incidents of sexual assault:

- Fear of not being believed
- Fear and shame associated with the assault
- Belief that the police can or will do nothing about it
- Concern about the attitude of both police and the courts towards sexual assault and the victim/survivor’s actions
- Fear of the offender

Victim/survivors who have experienced sexual violence often fear that if they report their assault, they will be re-traumatized and/or stigmatized by the justice system. For vulnerable victims/survivors (i.e.: indigenous, immigrant, and refugee survivors) this fear is compounded by concerns about racism. Similarly, the fear of a victim/survivor who identifies as LGBTQ2S, may be compounded by concerns about homophobia, trans-phobia or bi-phobia. The credibility of vulnerable victims/ survivors with disabilities has often been questioned when they report sexual violence, particularly in the case of individuals with developmental, psychiatric, and learning disabilities, or those who experience mental health issues. The increased incidence of male victim/survivors also requires special consideration.

THE DECISION TO REPORT

When deciding whether to report sexual violence to the police, a victim/survivor must be informed and fully appreciate and understand the criminal justice process. Victims/ survivors must be made aware that the role of the police is to conduct a thorough unbiased impartial investigation. When an assault has been reported to the police, officers are responsible for gathering, evaluating, and processing information or evidence.

It is imperative that victims/survivors be informed that if the police decide not to proceed with charges, it does not mean that they are not believed. The police may have several reasons for not being able to pursue a case, such as not having enough evidence to form reasonable grounds. Accordingly, despite a full and truthful disclosure by a victim/survivor, if the required evidence does not meet the standard set forth by the courts, the complaint may not result in criminal prosecution. If a victim/ survivor decides that they do not want to go through the court and legal process, they can still file a report with the police. Except in the case of a domestic incident, the victim/survivor has the right to decide not to proceed with sexual violence charges.

POLICE RESPONSE - GENERAL

Police will respond immediately to the report of a recent sexual violence. All attempts will be made to interview the victim/survivor, secure any evidence, and gather information as quickly as reasonably possible. The responding officer shall ascertain information about the incident from the victim/survivor in a professional and trauma informed manner including ensuring that all potential barriers are addressed (i.e.: interpreter services). The officer will also take steps to preserve the privacy of the victim/survivor, for example, by interviewing the victim/survivor in private and ensuring that complainants do not have to keep retelling their experiences to multiple investigative officers.

Reports of historical incidents of sexual violence will be treated with the same investigative standards and priority as recent sexual violence.

All complaints of sexual violence will be investigated thoroughly and expeditiously. Regardless of legislative changes that eliminated the necessity of providing corroboration, recent complaint, or

physical evidence of injury, investigators must be vigilant in ensuring that all available evidence is obtained including but not limited to the following:

- Incident history
- Clothing worn at the time of offence
- Statements of all witnesses
- Photographs of injuries and damages
- Medical reports and updates
- Emergency 911 recorded conversations
- Social media, text messages, recordings and any writings electronic or otherwise that may assist in the investigation and any subsequent prosecution

The investigating officer(s) will make every effort to ensure that the investigative process avoids re-traumatizing the victim/survivor and provides the most amount of assistance possible.

Initial contact will set the stage of the relationship between the individual and the police for the duration of the process. It is essential that all members of the Service and other service providers convey respect for the victim/survivor and suspend decisions regarding credibility at initial contact.

It is fundamental to recognize the right of the victim/survivor to make choices for themselves, whether these choices reflect the beliefs or biases of the officer. It is crucial to emphasize to the victim/survivor that they have choices in all matters informing them of their options throughout the process.

The following choices are available to all victims/survivors of sexual violence, except for domestic assault in which case the police are obligated to lay charges:

*They may choose to do nothing.*

**Medical Care** - it is important that individuals who have been sexually assaulted consider seeking medical care. There are options available regarding this care, including the complainant consulting their own physician or attending a hospital-based Sexual Assault Treatment Centre /

Partner Assault Clinic that may provide medical care such as an examination and treatment of possible injuries or an examination, treatment and collection of evidence.

**Legal Options** - the victim/survivor may request police involvement. A voluntary statement may be given, and an investigation will be conducted however it is at the discretion of the police to lay charges in consultation with the victim/survivor. Victims/survivors may contact or be referred to local Victim Services agencies or Victim Witness Assistance Program (Ministry of the Attorney General) and request information about the criminal justice process and their rights with respect to the process. They may also confidentially seek this information in community-based Sexual Assault Centres when making the decision whether to report. It is usually at the request of the victim/survivor that the police become involved however, there are situations where the police may become involved without their permission. If it is domestic assault the police have an obligation to lay charges. An investigation will also be conducted if a third party, other than the Sexual Assault Care Centre third party reporting mechanism, makes a report to the police about the assault or the victim/survivor is a child. Victims/survivors have the right to seek independent legal counsel to pursue civil action. Similarly, victims/survivors have the right to apply for Criminal Injuries Compensation.

**Support Options** – Survivors of sexual violence can access confidential, survivor-directed crisis or long-term support. This support may include accompaniment to police, hospital or courts; crisis intervention; advocacy or connection to legal advocacy supports; and various forms of short and long-term counselling. Confidential supports through independent Ontario sexual assault centres are free of charge. Studies show that survivors who are supported by an advocate from an independent sexual assault centre report better outcomes and less secondary victimization when accessing the criminal justice system.



# INTERVIEWS

Due to the particularly intimate and intrusive nature of sexual violence, the interview process may be difficult both for the victim/survivor and the officer. The victim/survivor’s trust in the criminal justice system will be based on the initial contact with first responders and investigators and any prior positive or negative experiences the victim/survivor may have had with law enforcement. The treatment the victim/survivor receives during the interview may impact the victim/survivor’s decision to continue. Victims/survivors of sexual violence, whenever possible, must be given the opportunity to be interviewed by members of the gender of the victim/survivor’s choice. The interviewer will have the requisite knowledge skills and abilities.

It is the officer’s responsibility to find a suitable and private place that provides for the safety and security of the victim/survivor to conduct an interview. Wherever and whenever possible, the investigating officer will take all steps to minimize re-traumatizing and repetition of facts by the victim/survivor to different police officers or service providers. Keeping detailed and accurate record of all disclosures and briefing subsequent officers or service providers prior to their contact with the victim/survivor will lesson this impact.

To gather information from the victim/survivor, it is important to:

- Respect the victim/survivor’s immediate needs.
- Attend to the victim/survivor’s immediate health and safety concerns and questions about reporting and the criminal justice process before beginning the interview.
- Understand that victim/survivors have a right to accept or decline all services.
- Ensure that a thorough and complete investigation is conducted with due diligence considering all available information.
- Help victims/survivors gain back a sense of control by involving them in the decision of when and where to hold the interview and with supported reporting provisions offered to them.

Victims/survivors may know little about the inves-

tigative process and may find the criminal justice system confusing, intimidating, or even frightening. Police should explain all processes during each step of the interview and investigation. This will help to create a trusting relationship and transparency for the victim/survivor while helping to restore the victim/survivor’s sense of control. It is important to reassure the victim/survivor that they will not be judged, and that the information reported is being taken seriously.

For instance, many victims/survivors of acquaintance sexual violence blame themselves for their assault(s). This is especially true when the perpetrator is someone who the victim/survivor trusted, leading the victim/survivor to question why they placed any trust in their perpetrator. In some cases, the victim/survivor was under the influence of alcohol or drugs at the time of the assault, causing the victim/survivor to feel that they are to blame as they chose to impair themselves by drugs or alcohol. Choosing to use alcohol or drugs is not choosing to be sexually assaulted. No consent is obtained, for the purposes of sections 271, 272, 273 of the Criminal Code, where the victim/survivor is incapable of consenting to the activity. Examples of a victim/survivor not being able to consent include when the complainant is significantly impaired by alcohol or narcotics, is unconscious, or in a sleeping state.

## Support in Interviews

Many independent sexual assault centres provide supportive accompaniment to police for interviews, statements and meetings. Where possible the victim/survivor should be able to request that their supports remain with them. Victim/survivors often find reporting to the police frightening, intimidating, or confusing, and report that they are aided by the presence of a support person. Many communities have developed sexual assault protocols between police, SACs and other service providers to ensure victim/survivors have access to supports throughout the reporting process.

# TRAUMA INFORMED RESPONSE

Police must recognize the impact of trauma and how this affects an individual’s behaviour. A trauma-informed response considers neurobiology science and an evidence-based investigative approach that

is cognizant of how specific experiences impact victim/survivor trauma, memory, reactions and behaviour. The following should be considered:

- People react differently to trauma. Lack of emotion or the presence of emotion is not an indicator of the legitimacy of the violence, and either is common.
- Research shows that most victims/survivors of sexual violence never make a report to police. Of the victims/survivors who report, the majority do so after some delay. A delay in reporting should never deter a thorough investigation. A trauma-informed approach to prosecutions by the Crown prosecutor may be able to overcome any disadvantage a delay in reporting might cause when making the case in court.
- Most victims/survivors experience continuing trauma throughout the investigation and legal process which may affect their physical, emotional, social, and economic state of being.
- Victims/survivors may have trouble remembering all the details of the sexual violence due to traumatic response. This does not mean they are lying or leaving out details intentionally. Often with time and as trauma lessens with healing, details will emerge, and the investigator must be cognizant that additional interviews may be necessary. Changes, addition or deletions within a victim/survivor’s statement may have to be articulated.

After sufficient time to conduct a thorough investigation, investigators should schedule a follow-up interview to gather any information the victim/survivor may have missed or not recalled earlier, to ask about or clarify additional information learned and to provide the proper level of service and respect to victims/survivors essentially enhancing their trust in the investigative process.

Unless there are exigent circumstances requiring an arrest or identification, allowing victim/survivors time to rest and process trauma by delaying video and follow-up interviews will generally enhance the investigation and the quality of information obtained.

The practice of submitting victims/survivors of sexual violence to a polygraph examination intimidates victims/survivors and destroys the trust victims/survivors and the community have with

police. Polygraph negatively affects the chance to successfully investigate sexual violence and should not be used at any time to assess credibility of victims/survivors.

Similarly, the practice of conducting statement analysis of victim/survivor statements is unreliable due to the neurobiological impacts of trauma, and thus the tool should not be used in sexual assault investigations.

# FORENSIC MEDICAL EXAMINATION

Police should ensure victims/survivors receive medical treatment and that they can undergo a forensic examination. Necessary medical care will always take precedence over a forensic medical examination. In the event that the assault is reported within seventy-two hours (as per requirements of the Centre of Forensic Sciences), the officer will explain to the victim/survivor the need to attend the hospital for the purposes of receiving medical treatment to identify and treat any disease or injury, or to provide reassurance that no physical harm was inflicted and/or for the purposes of retrieving medical/forensic evidence. The officer should document any complaints or observations and advise the Sexual Assault Treatment Centre medical team.

## Police should:

- Explain the medical benefits for the victim/survivor in easy to understand language, including pregnancy prevention, and testing for sexually transmitted infections and HIV.
- Explain the significance of a forensic examination to gather evidence of the assault in easy to understand language, while making it clear that the victim/survivor does not have to consent to a forensic examination to receive medical care at the hospital.
- Ensure that the victim/survivor be encouraged not to bathe, shower, nor eat or drink prior to attending at the hospital. The officer will also advise the victim/survivor to bring a change of clothing to the hospital as clothes may be held as evidence.
- Transport the victim/survivor to the SACC or hospital.

- Offer the victim/survivor the opportunity to bring a support person with them to the hospital/SACC
- Avoid criminalizing or pressuring the victim/survivor throughout this process

Should a victim/survivor initially decline a forensic medical examination, provide information as to where the victim/survivor may obtain an exam later and ensure their safety always.

Physical evidence can be collected several hours / days following a sexual assault. The victim/survivor should be advised, however, that critical forensic evidence and documentation of injuries may be lost with a delayed exam.

The investigating officer must ensure that the victim/survivor or substitute decision-maker/parent/guardian has given informed consent in writing to the release of Third-Party Records including medical information from the examining physician(s), sexual assault nurse examiner, hospital and / or Sexual Assault Care Centre.

**SEXUAL ASSAULT IN THE  
CONTEXT OF INTIMATE  
PARTNER VIOLENCE**

In Canada, research shows that women are more likely than men to experience sexual violence, threats and criminal harassment at the hands of an intimate partner. (Stats Canada 2015) These victims/survivors rarely report the sexual violence by that partner. Generally, intimate partner sexual violence (IPSV) involves deliberate intimidation, coercion, punishment and/or humiliation and may form part of long-term abuses by the partner. The victim/survivor may either be pressured to perform sexual acts that they are not comfortable with, or pressured to take part in acts that they do not wish to engage in. In a relationship in which IPSV is present, sexual violence is used to gain power and control over a partner and there are often higher incidences of multiple sexual assaults.

The consequences of IPSV are real and often severe. Compared to victims/survivors of non-partner sexual violence; victims/survivors of IPSV experience longer lasting trauma, higher levels

of physical injury, higher incidents of multiple sexual assaults and an increased likelihood of violence resulting in pregnancy. In addition, women who experience IPSV are also more likely to be murdered by their intimate partner. Victims/survivors are also frequently met with disbelief, denial, minimization and stigmatization, at least in part due to the many misconceptions surrounding sexual abuse by their partners. Investigators may find that victims/survivors are not able to name or label their experience as sexual violence. The relationship between the offender and victim/survivor can create additional difficulties for investigators as acts of sexual violence often are unreported in an IPV investigation. Investigators must take into consideration that the victim/survivor may return to or wish to remain in the abusive relationship. This may be for a variety of reasons; some of which could be rooted in cultural, financial, emotional, psychological reasons and should form part of the supported trauma-informed response to interviews in intimate partner violence investigations.

It is very common for victim/survivors of IPV to disclose only physical assault and withhold or deny information about sexual violence. Many victim/survivors do not disclose sexualized abuse in intimate partnerships for months or even years after physical abuse becomes known or even prosecuted. Accordingly, delayed reporting of IPSV should not be interpreted as a less credible report.

**VULNERABLE VICTIM/SURVIVORS**

Not all vulnerabilities are visible. Victims/survivors may have physical, sensory, or cognitive disabilities, or a combination of disabilities. Culture can influence how people view or understand sexual violence as well as how they respond to police. Police need to be cognizant that beliefs about things like gender, sexuality, sexual orientation, race, religion and consent may vary greatly between communities causing significant investigative and support barriers. Questions about sexual violence are very intimate and may be difficult to discuss often creating feelings of embarrassment and shame. Officers should be aware that behaviours may be intensified by individuals from communities such as those where such a violation of sexual integrity is socially devastating.

SEXUAL VIOLENCE CASE REVIEW:  
**A Collaborative Response  
Police and The Community**





COLLABORATIVE RESPONSE TO SEXUAL VIOLENCE – POLICE, ADVOCATE REVIEW TEAMS AND THE COMMUNITY

In efforts to improve the process by which police address sexual violence investigations, and to eradicate victim-blaming biases and discriminatory protocols and practices that prevent victims/survivors from obtaining, or seeking, what they perceive as justice while reporting sexual violence, police services should implement a formal independent external review of Sexual Violence reports. This Sexual Violence Case Review model should be the final stage of all “not cleared by charge” sexual violence investigations.; the final stage of the investigative chain (report, investigation, clearance, review).<sup>1</sup>

Effective review requires that reviewers have access to service records essentially equal to the access provided police officers. The thoroughness of such a review will ensure transparency and accountability of police to their communities while also improving their response. To address privacy and confidentiality requirements, the Advocate Review Team will be appointed agents of the police service under section 32(d) of MFIPPA or its provincial counterpart and the Team’s activities will be governed under a MOU and Confidentiality and Non-Disclosure Agreement signed by the respective parties and Advocate Review Team members.

METHODOLOGY

Quarterly reviews are recommended in order to ensure cases are reviewed no more than three months after clearance. More frequent reviews:

- 1. Preserve investigative potential cases may still have
- 2. Reduce the likelihood of complainant drop-out
- 3. Lower the number of cases to an achievable level for reviewers
- 4. Reduce the amount of time reviewers need to be away from their organizations

In advance of the scheduled review sessions, the involved Police Service will compile all police records pertaining to all Sexual Assault reports not cleared by charge. Review teams in large metropolitan areas with very high report rates may choose to use random representative sampling if case volume precludes a complete review.

Police Services should establish an Internal Review Team to be responsible for receiving final reports and recommendations from the Advocate Review Team. This team will also assist with any inquiries from the Advocate Review Team throughout the review process; including inquiries pertaining to coding, procedural steps, evidentiary issues, victim/survivor interview issues, and overall quality of the investigation.

On a file by file basis, the Advocate Review Team will first review the names of any complainants and suspects and, to the extent necessary, any other personal information contained in the Police Reports. This is to determine whether any member of the Advocate Review Team should consider recusing themselves from any further review of a specific file (i.e. where a complaint or suspect is known to them in a personal context).

The Advocate Review Team will examine the selected Sexual Violence Reports and perform the following steps:

- a. Identify any investigations for which the Advocate Review Team has follow-up questions or requiring clarification.
- b. Meet with the Internal Review Team to discuss all questions and concerns.
- c. Upon completion of the review, meet with the Internal Review Team to present the Advocate Review Team’s observations, conclusions, and any necessary recommendations or action items in relation to the investigations that were reviewed.
- d. Where necessary, continue to meet with the Internal Review Team to provide any necessary clarifications and discuss necessary action items.

Based on the observations and recommendations received from the Advocate Review Team, the Internal Review Team will prepare a list of all reviewed cases which monitors the police service’s response to each recommendation and/or action item.

Following the completion of the review process, the Internal Review Team shall present the Advocate Review Team’s observations, recommendations and any other relevant information to the office of the Chief and Deputy Chief to determine next steps. The Internal Review Team shall provide reasonable updates to the Advocate Review Team as necessary.

Upon the completion of the review process, the Internal Review Team and the Advocate Review Team will schedule as needed status meetings to discuss and/or refine the review process.

Any records created, received, reviewed, or used under the Sexual Violence Case Review shall be retained by the Police Service in accordance with their record retention schedules.

ADVOCATE REVIEW TEAM (EXTERNAL REVIEW TEAM)

Review team composition is crucial. Under this Sexual Violence Review Case Model, reviewers are from independent community rape crisis/sexual assault Centre’s where possible. This is to ensure several things:

- i. Reviewing agencies are in daily, on-going communication with sexually assaulted persons in the community who may be accessing the police service
- ii. Reviewers are independent in funding from police services and thus are arms-length/no conflicts of interest
- iii. Reviewers work with sexual violence, its victim/survivors, and the behaviors of its perpetrators as the agencies core work (thus it’s fully their focus and expertise, as opposed to a diffused purpose)
- iv. Reviewers are duly bound by agency confidentiality oaths

- v. Reviewing agencies offer support and advocacy to victims/survivors free of charge and thus are accessible to the widest range of marginalized victims/survivors
- vi. Reviewers are not representing themselves in review but are instead accountable to a constituency in the community (victims/survivors) for their work. This is best accomplished through the charitable purposes of SACC’s (who have volunteer Boards of Directors, victim/survivor engagement mechanisms, regular interaction with and accountability to victims/survivors, etc.)
- vii. Reviewers – being based in services that deal directly with sexual assault trauma every day – are in an environment that accounts for vicarious trauma, provides peer and clinical supervision, has healthy workplace policies in place to support people working with trauma. Those who do not have daily exposure to sexual violence and/or do not have the appropriate workplace structures in place to support this type of review should not be reviewing cases.

The Advocate Review Team agencies will be selected according to the criteria and amended as necessary through collaboration between the involved Police Service and community agency partners. Specific members to participate in the review shall be selected by the agency themselves.

Prior to providing Advocate Review Team members with any Police Records, the Police Service shall ensure that each member of the Advocate Review Team has been subject to a police or criminal background check and has received or is provided with adequate privacy and confidentiality training. The Individual Police Services should also ensure that Advocate Review Team members receive ongoing training, as required.

REVIEW AND MONITOR EFFECTIVENESS OF THE SEXUAL VIOLENCE REVIEW CASE MODEL

The Sexual Violence Review Case Model must include reporting mechanisms that will allow the police service and the sexual violence

<sup>1</sup> This approach based on the VACR model led by Sunny Marriner, Project Lead Advocate Case Review

community to evaluate weaknesses and strengths of a police service's responses to sexual violence. Review teams should establish key performance indicators (e.g. collective impact, results-based accountability) and corresponding measurements reflective of their community needs. Examples may include an increase in the amount of reported sexual violence cases presented to the police, an increase in trust between victims/survivors and the police, improved collaboration between police and sexual violence agency partners, targeted education for vulnerable populations and/or an increase in officer awareness of trauma informed practices. Evaluations should be conducted annually to ensure identified issues are addressed in a timely manner, including by considering any complaints, comments or feedback received from members of the public.

In addition, police services should publish information about its Sexual Violence Case Review Program on its website, describing:

- the program
- its purposes
- the external agencies involved
- the types and number of investigative files reviewed and re-opened each year
- the nature of the information and evidence being reviewed
- the key lessons learned
- the privacy safeguards employed during the program, and contact information for individuals who would like to learn more

APPENDIX A:

# Training Manual



# TRAINING GUIDELINE FOR EXTERNAL REVIEW TEAMS

This section will list required topics and materials for external review team training. Police services should rely on sexual violence subject matter experts within their communities to ensure reviewers receive comprehensive advocate-led training. Advocate-led training and review team development has been designed and is and supported by the Department for Women and Gender Equality (formally Status of Women Canada).

## CORE TRAINING ELEMENTS INCLUDE:

- 1. Confidentiality Training
- 2. Review of the Information and Privacy Commissioner's Guidelines
- 3. Review of MOU and Confidentiality and Non-Disclosure Agreement
- 4. Review of Police Policies (Sexual Assault Investigations / Police Response to Sexual Assault Reports)
- 5. UCR Coding / clearance status
- 6. Sexual Assault Law/Consent/Rules of Evidence/ R & PG / Powers of Arrest
- 7. Expectations and outcomes – how the Advocate Review Team will access police records and to record team's observations, recommendations and any other relevant information

### 1. CONFIDENTIALITY TRAINING

The Advocate Review Team members must ensure the confidentiality of Confidential Information disclosed to them in connection with sexual violence case review. Training must re-enforce the receiving party's agreement to take precautions necessary and appropriate to guard the confidentiality of the disclosing party's Confidential Information. For example, training should emphasize the strict limitations on discussing or otherwise disclosing Confidential Information. The receiving party also should understand that such Confidential Information shall be handled with the same degree of care that the receiving party applies to its own Confidential Information (but in no event less than reasonable care).

Training must emphasize that all Confidential Information provided to the receiving party in records or other tangible form, and any copies thereof made by the receiving party shall be retained by the disclosing Police Service and no notes or any other recorded material shall be retained by the reviewers. No Confidential Information will be used for any other purpose than the case review. As indicated, no records leave police premises, and no notes are retained. Members agree to recuse themselves from reviewing any case where the principals are known to them in a personal rather than a professional context.

### Training must also address the following issues:

- What is Confidential Information? It is defined broadly and includes all personal information.
- What is non-Confidential Information? It is defined narrowly and may not include any personal information.
- What constitutes disclosure of Confidential Information? The sharing of any Confidential Information, including verbally, electronically or in writing, with anyone constitutes a disclosure of Confidential Information.
- Can reviewers disclose Confidential Information to anyone? Subject to two exceptions, reviewers may only disclose Confidential Information to other members of the Advocate Review Team and members of the police service. The only exceptions: (i) Reviewers may make a verbal disclosure to individuals at their home agency, but only where the disclosure is necessary to supervise the reviewer or assist in the fulfillment of the advocate review team's mandate and only to the extent necessary (e.g. re: significant related health & safety issue) and (ii) Reviewers may make disclosures required by law.
- How do external partners and reviewers prevent, recognize and respond to a privacy breach? Steps to prevent privacy breaches include having privacy protective policies and procedures in place (including a privacy breach protocol) and providing training on those policies and procedures. Elements of a privacy breach protocol include containment, notification, and review. The unauthorized disclosure of personal information is one example of a privacy breach. Reviewers should consult with police prior to sharing any information that is or may be confidential and immediately notify the police of any apparent breach of confidentiality.

### 2. REVIEW OF THE INFORMATION AND PRIVACY COMMISSIONER'S GUIDELINES

Training must include information that team members agree to act as agents of the police for the purposes of the review and that, as such, they are bound to comply with the privacy requirements under MFIPPA.

Training must address the Information & Privacy Commissioner's guidelines for complying with privacy legislation (see appendix C for the Commissioner's guidelines)

### 3. MOU AND CONFIDENTIALITY AGREEMENT REVIEW

Training must review the details and expectations of the MOU. Participating agencies must sign a memorandum of understanding covering all the parties who will have access to the case files. The MOU will outline all the agreed upon confidentiality and privacy protections in place for the review team. Every agency who has a staff member who has access to the files and every individual who has access to the files will be required to sign the Confidentiality and Non-Disclosure Agreement.

### 4. POLICE POLICY REVIEW ON THE INVESTIGATIONS OF SEXUAL VIOLENCE AND THE RESPONSE TO SEXUAL VIOLENCE

Training must include the legislative/regulatory requirements for the policy on investigations into sexual violence. Also included must be the police service's criminal investigation management plan and procedures set out in the Ministry's designated Major Case Management Manual. Also included should be the police response in conjunction with hospitals and agencies which provide services to victims of sexual assault; including Sexual Assault Treatment Centres, Sexual Assault/Rape Crisis Centres and Victim Services.

**Training should also include:**

- Police Service Guidelines
- Protocols
- Procedures
- Outline of training that officers have received
- Monitoring and Supervision
- Community Partnerships in response to Sexual Violence and any existing MOU's

**5. UCR CODING/ CLEARANCE STATUS**

Training should include the Police Information and Statistics Committee of the Canadian Association of Chiefs of Police developed recommendations addressing data collection and the need for consistent and standardized reporting of all founded and unfounded incidents, including sexual assault. Included in the training should be the changes to the Uniform Crime Reporting Survey (UCR) definitions for both founded and unfounded and the improvement to these definitions.

**6. SEXUAL ASSAULT LAW/ CONSENT/ RULES OF EVIDENCE/ REASONABLE AND PROBABLE GROUNDS/ POWERS OF ARREST**

**Sexual interference**

151 Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years

**Invitation to sexual touching**

152 Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years

**Sexual exploitation**

153 (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

**Sexual exploitation of person with disability**

153.1 (1) Every person who is in a position of trust or authority towards a person with a mental or physical disability or who is a person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object,

**Sexual assault**

271 An assault committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated.

**Sexual assault with a weapon**

272 Sexual assault with a weapon, threats, or causing bodily harm.

**Aggravated sexual assault**

273 Sexual assault that results in wounding, maiming, disfiguring or endangering the life of the victim

**Consent**

The voluntary agreement of the complainant to engage in the sexual activity in question.

**When no consent obtained**

No consent is obtained, for the purposes of this section, if

- a. the agreement is expressed by the words or conduct of a person other than the complainant;
- b. the complainant is incapable of consenting to the activity;

- c. the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;
- d. the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- e. the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

**Reasonable Grounds**

A set of facts or circumstances, which would satisfy an ordinary, cautious and prudent person that there is reason to believe and which goes beyond mere suspicion.

495 (1) A peace officer may arrest without warrant

- a. a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence
- b. a person whom he finds committing a criminal offence; or
- c. a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Each definition shall be explained in detail.

**7. EXPECTATION AND OUTCOMES- HOW THE ADVOCATE REVIEW TEAM WILL ACCESS POLICE RECORDS AND RECORD TEAM OBSERVATIONS AND RECOMMENDATIONS**

Advocate Review Teams can be provided access to police records in one of three ways;

- a. Provision of paper/ hardcopies - Reviewers are dependent upon the police service to deliver all of the records from each sexual violence investigation file. This requires resources from police and clerical personnel within the service.
- b. Provision of a compiled e-file - This method is similar to the above, however, police services will take the additional step of scanning all of the records into an e-file .

- c. Accessing case information directly in RMS - this is the most effective and is recognized as best practice when reviewing sexual violence investigations. Police services will not have any clerical requirements other than obtaining associated interviews to make available for reviewers. This method is proven to be fast and effective, allowing the teams to work independently.

Advocate Review Teams should record observations and recommendations using criteria templates. A criteria template, developed by advocate-led teams in Ontario, is included below. Criteria should include notations such as;

- relevant witnesses were interviewed
- All indicated evidence collected, forensic testing requested, and results returned
- Complainant interviews/interactions conducted appropriately and without blame or interrogation techniques
  - No reliance on rape myths
  - Integration of knowledge about trauma, memory, etc.
- Victim polygraph tests and/or Statement Analysis were not threatened or performed
- Criminal charges/consequences not implied or threatened
- Ultimate determination as to whether a crime was committed was consistent with the evidence collected (RPG)
- Lack of response/choice not to proceed/recantations scrutinized for influence by police, family, friends, or someone else
- Complainant follow-up/contact with results of investigations and reasons for decisions
- Time elapsed between report (to) statement (to) determination is indicated by circumstances
- Coding Correct
- Relevant law accurately stated and applied
- Weight given to prior police interactions is supported by the case context
- File is Accurate and Complete



VACR Core Review Criteria

	Yes	No	N/A	CD	Notes
1. All relevant witnesses were interviewed					
2. All indicated evidence collected, forensic testing requested and results returned					
3. Complainant interviews/interactions conducted appropriately and without blame or interrogation techniques <ul style="list-style-type: none"><li>No reliance on rape myths</li><li>Integration of knowledge about trauma, memory, etc.</li></ul>					
4. Victim polygraph tests and/or Statement Analysis were not threatened or performed					
5. Criminal charges/consequences not implied or threatened					
6. Ultimate <b>determination</b> as to whether a crime was committed was <b>consistent with the evidence collected (RPG)</b>					
7. Lack of response/choice not to proceed/recantations scrutinized for influence by police, family, friends, or someone else*					
8. Complainant follow-up/contact with results of investigations and reasons for decisions.					
9. Time elapsed between report (to) statement (to) determination is indicated by circumstances					
10. Coding Correct					
11. Relevant law accurately stated and applied					
12. Weight given to prior police interactions is supported by the case context.					
13. File is Accurate and Complete					

Notes:

VACR Trends & Observations

	Yes	No	N/A	CD	Notes
1. Use inappropriate language/words					Downgrading language; inaccurate terminology
2. Relies on rape myths					
3. Disproportionate weight given to parent/partner/third party version of events					
4. Disproportionate weight given to the accused version of events					
5. Lack of consideration given to needs of special/vulnerable victims					
6. Special/vulnerable victims not interviewed and/or involved in case where appropriate					Non-verbal; disability; brain injury; mental health
7. RPG determined before victim & accused interviewed					
8. Unexplained delays in timing of interviews/investigative follow-up					
9. Protective actions/validating/supportive stance of the accused					Other than as investigative technique
10. Lack of integration of knowledge about trauma and memory					
11. Absence of referrals					
12. Disagree with overall case determination*					If substantiated by point of law
13. Culturally aware/Competent					
14.					
15.					

Demographic Markers	Yes	No	N/A	CD	Notes
Complainant is vulnerable person and/or identifiable group					Racialized, Indigenous, marginalized, substance/mental health, region/zone, etc.
Accused is vulnerable person and/or identifiable group					Racialized, Indigenous, marginalized, substance/mental health, region/zone, etc.
Young Complainant					

## APPENDIX B:

# MOU/Confidentiality

**MEMORANDUM OF UNDERSTANDING** respecting the Violence Against Women Advocate Case Review Program made this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date").

BETWEEN:

**[INSERT NAME OF VAW ORGANIZATION]**  
(Hereinafter referred to as "---")

-AND-

**[INSERT NAME OF VAW ORGANIZATION]**  
(Hereinafter referred to as "---")

-AND-

**[INSERT NAME OF VAW ORGANIZATION]**  
(Hereinafter referred to as "---")

COLLECTIVELY REFERRED TO AS THE "[CITY/COUNTY/TOWN]  
VIOLENCE AGAINST WOMEN (VAW) ADVOCACY GROUPS"

-AND-

**[INSERT NAME OF POLICE SERVICE]**  
(Hereinafter referred to as "---")

**COLLECTIVELY REFERRED TO AS THE "PARTIES"**

**WHEREAS** the --- is a municipal police service governed by the Police Services Act, R.S.O. 1990, c. P. 15 (PSA) and the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M. 56 (MFIPPA);

**WHEREAS**, under section 1 of the PSA, police services shall be provided in accordance with principles, including the need for co-operation between the providers of police services and the communities they serve; the importance of respect for victims of crime and understanding of their needs; the need for sensitivity to the pluralistic, multiracial and multicultural character of Canadian society; and the need to ensure that police forces are representative of the communities they serve;

**WHEREAS**, under section 4(2) of the PSA, core police services include crime prevention, law enforcement and providing assistance to victims of crime;

**WHEREAS**, under section 41(1) of the PSA, the duties of the Chief of the --- include ensuring that the --- provides community-oriented police services and that its members carry out their duties in a manner that reflects the needs of the community;

**WHEREAS** the ---'s duties and functions include investigating reports of sexual violence and supervising and monitoring those investigations, including for the purpose of identifying deficiencies, errors and anomalies in and improving the efficiency of individual sexual assault investigations and the sexual assault investigative process as a whole;



**WHEREAS** [Insert description of VAW Organization, particularly in terms of its mandate of providing services to victims of sexual assault];

**WHEREAS** [Insert description of VAW Organization, particularly in terms of its mandate of providing services to victims of sexual assault];

**WHEREAS** [Insert description of VAW Organization, particularly in terms of its mandate of providing services to victims of sexual assault];

**WHEREAS** the Parties have a mutual interest in working together to ensure effective police responses to sexual assault reports;

**WHEREAS**, under section 32(d) of MFIPPA, the --- may disclose personal information to an agent of the --- who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the ---' functions;

**WHEREAS** the --- has decided to establish the Violence Against Women Advocate Case Review Program (the "VAW Review Program") wherein [Insert names of VAW Organizations] will be appointed as agents of the --- for the purposes of section 32(d) of MFIPPA to conduct an independent review of sexual assault investigations conducted by the ---;

**WHEREAS** the Parties will agree to the creation of an VAW Review Team consisting of a representative or representatives from each of [Insert names of VAW Organizations] to conduct a review of selected sexual assault investigations by the ---;

**WHEREAS** in carrying out its mandate to review complaints of sexual assault received by the --- and assess the response of the ---, the VAW Review Team requires access to all of the police records related to reports of uncharged sexual assaults;

**NOW THEREFORE** the Parties agree that they will be bound by, and the VAW Review Program will be subject to, the terms and conditions set out herein:

PART 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions:

"Confidential Information" means all information contained in or derived from the Police Records provided to the VAW Review Team by the --- during the course of the VAW Review Program, including any related personal information, regardless of whether it is identified as confidential or personal or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into knowledge or possession of any VAW Organization or VAW Review Team member in connection with this Memorandum of Agreement ("MOU"). Confidential Information shall include: (i) new information derived at any time from such information whether created by the ---, the VAW Organization, the VAW Review Team member, or any other third party; and (ii) all information (including personal information) that the --- is obliged, or has the discretion, not to disclose under municipal, provincial or federal legislation or otherwise at law.

"VAW Review Team" means the group of representatives selected by the Parties to carry out the mandate of the VAW Review Program and includes at least one representative from each of [Insert names of VAW Organizations].

"[City/County/Town] Police Service Liaison Officer" means the group of/or individual --- representative(s) formed to facilitate the review process and the implementation of the VAW Review Team's recommendations and is comprised of at least 1 senior officers from the [City] Police Service.

"Police Records" for the purpose of this MOU, includes [but is not limited to] any or all of the following records, including any personal information contained therein:

- Occurrence/incident reports,
- Attachments to occurrence/incident reports,
- CAD Reports
- Memo book notes,
- Victim and witness statements,
- Audio/Video records of victim, witness and alleged offender interviews;
- Arrest report with list of criminal charges,
- Medical information,
- Any documentary, physical, photo, video or electronic evidence yielded from police investigation,
- Disposition reports, and
- Any other records pertaining to steps taken in and subsequent to the investigation.

"Sexual Assault Reports" for the purpose of this MOU means reports of sexual assault received by the [POLICE SERVICE] from complainants aged 16 and over, involving suspects over the age of 18, including but not limited to the following crime/incident classifications (Uniform Crime Reporting):

- 1310 Aggravated Sexual Assault
- 1320 Sexual Assault with a Weapon
- 1330 Sexual Assault
- 1340 Other Sexual Violations

- 1.2 This MOU, the Confidentiality and Non-Disclosure Agreements referred to in section 5.4 of this MOU and any written approvals issued by the --- under section 2 of those Agreements constitute the entire agreement and understanding of the Parties relating to the subject matter of this MOU and supersedes all prior understandings, discussions, negotiations, commitments, warranties and agreements, written or oral, express or implied, between them.

PART 2 – PURPOSE AND SCOPE

- 2.1

The purpose of the VAW Review Program is to ensure 'best practice' responses to sexual assault reports involving adult suspects; improve the effectiveness of the investigative process; assist with the apprehension of offenders; provide the proper level of service and respect to sexual assault complainants and enhance their trust in the investigative process; promote open communication and cooperation between the --- and advocate agencies; and improve the transparency of --- sexual assault investigations.
- 2.2

To achieve this mandate, this MOU appoints the [Insert VAW Organization names] as agents of the --- for the purposes of the VAW Review Program. This appointment is subject to the terms and conditions set out herein.
- 2.3

The VAW Review Program will involve an on-going review of sexual assault investigative files performed by the VAW Review Team in accordance with Part 3 herein.

PART 3 – OPERATING PROCEDURE

- 3.1

On a regular basis, with a minimum annual and maximum quarterly review period, the Parties will schedule review sessions wherein the VAW Advocate Review Team will meet to conduct its external case review. Dates will be selected with the agreement of all Parties, and at least 30 days in advance of the commencement of the review.
- 3.2

In advance of the scheduled review sessions, the --- will compile all Police Records pertaining to the following Sexual Assault Reports:

a)

All Sexual Assault Reports where charges were not laid, including where the --- investigators classified the report as UNFOUNDED.

Subject to section 5.2, at the outset of the review process, all of the Police Records compiled under this section will be provided to the VAW Review Team broken down into status categories by clearance.
- 3.3

The --- will appoint a VAW Advocate Review Committee Internal Review Liaison to be responsible for receiving observations and recommendations from the VAW Review Team, and for assisting with any inquiries from the VAW Team throughout the review process, including inquiries pertaining to coding, procedural steps, evidentiary issues, victim interview issues, and overall quality of the investigation.
- 3.4

The VAW Review Team will examine the selected Sexual Assault Reports and perform the following steps:

a)

Identify any investigations for which the VAW Review Team has follow-up questions or requires clarification.

b)

Meet with the Internal Review Committee to discuss all questions and concerns.

- c)

Upon completion of the review, submit observations and recommendations to the Internal Review Committee setting out the VAW Review Team's observations, conclusions, and any necessary recommendations or action items in relation to the investigations that were reviewed.
- d)

Upon completion of the review, meet with the Internal Review Committee to provide any necessary clarifications, and discuss observations, recommendations and necessary action items.
- 3.5

On the basis of the observations and recommendations of the VAW Review Team, the --- Liaison Officer will prepare a list of all reviewed cases which monitors the ---' response to each recommendation and/or action item.
- 3.6

Following the completion of the review process, the Internal Review Liaison shall present the VAW Review Team's final report and relevant information from the list referred to in section 3.5 to the office of the Chief or his or her designate to determine next steps. The Internal Review Committee shall provide reasonable updates to the VAW Advocate Case Review Team as necessary.
- 3.7

Upon the completion of the review process, the Internal Review Committee and the VAW Review Team will schedule a status meeting to discuss and critique the review process.
- 3.8

Records created, received, reviewed or used under the VAW Review Program shall be retained by the --- in accordance with its record retention schedules.

PART 4 –VAW ADVOCATE REVIEW TEAM

- 4.1

The VAW Review Team will be selected, and amended as necessary, by the VAW Review Team Organizations, after consulting with all Parties.
- 4.2

Prior to providing VAW Review Team members with any Police Records, the --- shall ensure that each member of the VAW Review Team has received or is provided with privacy and confidentiality training.
- 4.3

Prior to providing VAW Review Team members with any Police Records, the --- shall ensure that the members of the VAW Review Team have been or are subject to a criminal background check.
- 4.5

Members of the VAW Review Team shall recuse themselves from the review of any investigation where any complainant or suspect is known to the team member in a personal context. Recusal will not be required where complainants or suspects are known to members in their professional capacity.



PART 5 – SCOPE, MANNER AND CONDITIONS OF DISCLOSURE

- 5.1
- Section 32(d) of MFIPPA authorizes the disclosure of personal information by the --- to the VAW Advocate Case Review Team.
- 5.2
- At the outset of the review process, the --- shall make available to the VAW Review Team all Police Records compiled under section 3.2, including the personal information contained therein. Police Records will only be subject to those redactions which are required by law, including pursuant to the Youth Criminal Justice Act or by court order.
- 5.3
- Police Records shall be made available to the VAW Review Team exclusively within --- facilities. All external reviews will occur within --- facilities, and all records created, received, reviewed or used during the review process, including any notes, memos or reports created by members of the External Review Team, will remain within --- facilities at all times and shall not be copied, retained or removed by members of the VAW Review Team.
- 5.4
- Prior to viewing any Police Records, all members of the VAW Review Team shall be required to sign the Confidentiality and Non-Disclosure Agreement attached hereto as Appendix A. All members of the VAW Review Team shall strictly adhere to the terms of the Confidentiality and Non-Disclosure Agreement at all times.
- 5.4.1
- Within their own organizations, [City] VAW Advocacy Groups shall limit the sharing of **Confidential Information** to those individuals and to that information which is necessary to enable each VAW Advocacy Group to supervise its own representatives on the VAW Review Team or to assist in the fulfillment of the VAW Review Team’s mandate.
- 5.4.2
- It is the responsibility of the member organizations to ensure the health and well-being of their reviewing representatives on the committee.
- 5.5
- The Parties shall notify each other in writing pursuant to Part 7 set out below immediately upon becoming aware of a breach of any provision of this MOU, a Confidentiality and Non-Disclosure Agreement or any written approvals issued by the --- under section 2 of those Agreements.
- 5.6
- The terms of and conditions set out in the Confidentiality and Non-Disclosure Agreement shall survive the termination of this Memorandum of Understanding for any reason whatsoever.

PART 6 – TERM, TERMINATION AND AMENDMENTS

- 6.1
- This MOU shall become effective on the Effective Date and shall continue in force unless written notice is provided to the other Parties.
- 6.2
- This MOU may be terminated at any time by either party provided six months written notice is delivered to the other Party in accordance with Part 7.
- 6.3
- This MOU may be amended at any time by the mutual consent of all Parties. All amendments shall be made in writing and signed by both Parties.

PART 7 – NOTICE

- 7.1
- Notices under this MOU shall be made in writing and delivered personally, or by ordinary prepaid mail. Notices delivered by mail shall be deemed to have been received on the business day after the date of mailing.
- 7.2
- Where immediate transmission of notice is required, notices in writing may first be delivered by e-mail or fax, but must also be subsequently personally, or by ordinary prepaid mail.
- 7.3
- In the event of an interruption in postal service, notice shall be given by personal delivery, or by fax. Notices by fax shall be deemed to have been received at the time of delivery or transmission, provided a transmission is obtained.
- 7.4
- All correspondence and notices required under the terms of this MOU shall be delivered as follows:

[INSERT CONTACT NAME AND INFORMATION FOR ALL PARTIES]

PART 8 – RESOLUTION OF DIFFERENCES

- 8.1
- Any difference arising from the interpretation or application of this MOU will be resolved through friendly consultations between all Parties.

IN WITNESS WHEREOF, this Memorandum of Understanding has been signed on behalf of the --- and [Insert names of VAW organizations] by their duly authorized officers on the dates noted below:

[INSERT POLICE SERVICE]:

Per:

Signature

Witness

Name and Title

[Insert name of VAW Organization]:

Per:

Signature

Witness

Name and Title

[Insert name of VAW Organization]:

Per:

Signature

Witness

Name and Title

[Insert name of VAW Organization]:

Per:

Signature

Witness

Name and Title

CONFIDENTIALITY TEMPLATE

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (the "Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2020, is entered into by and between the [INSERT CITY] Police Service (the "[INSERT SERVICE INITIALS]") and \_\_\_\_\_[INCLUDE THE INDIVIDUAL'S NAME, POSITION OR TITLE AND NAME OF [INSERT CITY] Violence Against Women (VAW) ADVOCACY GROUP OR OTHER ORGANIZATION AS APPLICABLE]\_\_\_\_\_("Receiving Party") for the purpose of preventing the disclosure of **Confidential Information** that may compromise or otherwise adversely affect any sexual assault victim or the integrity of any sexual assault investigation.

**WHEREAS**, The [INSERT SERVICE INITIALS] and [Insert names of VAW organizations] ("[INSERT CITY] Violence Against Women (VAW) Advocacy Groups") [OR INSERT NAME OF OTHER ORGANIZATION WHERE APPLICABLE], committed to the proficient and effective investigations of all allegations of sexual assault in [INSERT CITY] have collaborated in an VAW Advocate Case Review Program allowing selected officers, employees or volunteers of certain [INSERT CITY] VAW Advocacy Groups regular access to designated [INSERT SERVICE INITIALS] investigative files pertaining to reports of sexual assault pursuant to the DATE, 2020 Memorandum of Understanding respecting the VAW Advocate Case Review Program.

**WHEREAS**, the purpose of the VAW Advocate Case Review Program is to ensure 'best practice' responses to sexual assault reports involving adult suspects; improve the effectiveness of the investigative process; assist with the apprehension of offenders; provide the proper level of service and respect to sexual assault complainants and enhance their trust in the investigative process; promote open communication and cooperation between the [INSERT SERVICE INITIALS] and advocate agencies; and improve the transparency of [INSERT SERVICE INITIALS] sexual assault investigations.

**WHEREAS**, To accomplish these goals, Confidential Information in the custody or control of the [INSERT SERVICE INITIALS] must be disclosed to members of the VAW Advocate Review Team from the specified [INSERT CITY] VAW Advocacy Groups and to other persons and organizations who have received written permission from the [INSERT SERVICE INITIALS] to participate in case review.

**NOW, THEREFORE**, the Parties agree that they will be bound by the terms and conditions set out herein:

- For the purposes of this Agreement, the following terms have the following meanings
  - "Confidential Information"** means all information contained in or derived from the Police Records provided to the VAW Advocate Review Team by the [INSERT SERVICE INITIALS] during the course of the VAW Advocate Case Review Program, including any related personal information, regardless of whether it is identified as confidential or personal or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into knowledge or possession of the Receiving Party in connection with this Agreement. Confidential Information shall include: (i) all new information derived at any time from such information whether created by the [INSERT SERVICE INITIALS], the Receiving Party, or any third party; and (ii) all information (including personal information) that the [INSERT SERVICE INITIALS] is obliged, or has the discretion, not to disclose under municipal, provincial or federal legislation or otherwise at law.

- c. **"VAW Advocate Review Team"** means the group of representatives selected by the Parties to carry out the mandate of the VAW review program and includes at least one representative from each of [Insert names of VAW Organizations].
- d. **"Non-Confidential Information"** means information about the fact that the Receiving Party, other individual members of the VAW Advocate Review Team, specific [INSERT CITY] VAW Advocacy Groups or other organizations and the [INSERT SERVICE INITIALS] are participating in the VAW Advocate Case Review Program, how the program works, whether it is functioning as intended, and whether it appears to be accomplishing its purposes, as well as other classes of information that have been described in a written approval under section 2 of this Agreement, but does not include personal information.
- e. **"Police Records"** for the purpose of this MOU, includes but is not limited to any or all of the following records, including any personal information contained therein:
- Occurrence/incident reports,
  - Attachments to occurrence/incident reports,
  - Memo book notes,
  - Victim and witness statements,
  - Audio/Video records of victim, witness and alleged offender interviews;
  - Arrest report with list of criminal charges,
  - Medical information,
  - Any documentary, physical, photo, video or electronic evidence yielded from police investigation,
  - CAD reports,
  - Disposition reports, and
  - Any other records pertaining to steps taken in and subsequent to the investigation.
2. Receiving Party shall hold Confidential Information for the sole and exclusive purpose of reviewing the efficacy of the investigating process, identifying perceived case deficiencies, or other errors or anomalies that could impact the integrity of either individual [INSERT SERVICE INITIALS] sexual assault investigations or the systemic [INSERT SERVICE INITIALS] investigative processes. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy or otherwise disclose to any third party, including but not limited to, the media, academic institutions or other research entities any Confidential Information received pursuant to this Agreement, including any information derived from any notes, memos or reports created, received, reviewed or used during the review process. A written approval issued under this section may also define classes of information as Non-Confidential Information, which may be used, published, copied or disclosed to any third party at any time without further approval. Any written approval issued under this section must comply with the Municipal Freedom of Information and Protection of Privacy Act.
3. Receiving Party acknowledges and understands that by participating in the VAW Advocate Review Team there is a requirement to keep confidential all Confidential Information. Receiving Party acknowledges that the Confidential Information will only be provided to the Receiving Party on a confidential basis and, as a condition of being invited to review the material and participate in the VAW Advocate Review Team, the Receiving Party agrees to keep the information confidential. Receiving Party agrees to immediately report to the

[INSERT SERVICE INITIALS] should it suffer any breach of information that may result in the disclosure of Confidential Information received pursuant to this agreement.

4. Unless required by law, the Receiving Party agrees not to directly or indirectly disclose, outside its organization or to any third party (unless expressly permitted herein), destroy, exploit or copy the Confidential Information, and the Receiving Party will use the Confidential Information only for the purpose of serving on and functioning as an effective member of the VAW Advocate Review Team. Within its organization, the Receiving Party agrees to limit sharing of Confidential Information to those individuals and to that information which is necessary to supervise the Receiving Party or to assist in the fulfillment of the VAW Advocate Review Team's mandate.
5. The Receiving Party acknowledges that breach of any of the provisions of this Agreement may cause irreparable harm to the [INSERT SERVICE INITIALS] or to any third party whom the [INSERT SERVICE INITIALS] owes a duty of confidence, and that the injury to the [INSERT SERVICE INITIALS] or to any third-party may be difficult to calculate and adequately compensate in damages. The Receiving Party agrees that the [INSERT SERVICE INITIALS] is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of this Agreement.
6. The Receiving Party hereby agrees to indemnify and hold harmless the [INSERT SERVICE INITIALS], its officers, agents, appointees, employees, from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way based upon, occasioned or attributable to any breach of confidentiality by the Receiving Party.
7. The Receiving Party acknowledges having read, understood and agreed to abide by the terms and conditions of the MOU between [INSERT SERVICE INITIALS] and [INSERT SERVICE INITIALS]. The receiving party also acknowledges that the Police Services Act and the Municipal Freedom of Information and Protection of Privacy Act applies to and governs all the **Confidential Information** that will be reviewed.
8. Receiving Party shall not remove from the [INSERT SERVICE INITIALS] premises any investigative files, Police Records from those investigative files or any notes about investigative files or Police Records or any copies of the foregoing.



IN WITNESS OF THEIR AGREEMENT, the Parties, intending to be bound by the provisions set forth above, have caused this Agreement to be duly executed as of the day and year first above written.

[RECEIVING PARTY NAME]

By\_\_\_\_\_

Name:

Title:

[INSERT CITY] POLICE SERVICE

By\_\_\_\_\_

Name:

Title: Chief of Police

APPENDIX C:

# Ontario Information and Privacy Commissioner’s Guidelines

November 2019

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## Sexual Violence Case Review Guidelines

In 2017, my office engaged with the Kingston and Ottawa police, the Ottawa Rape Crisis Centre, and other policing and violence against women stakeholders on how to implement an Ontario-based version of the US-based Philadelphia model. This is a model where women's advocates regularly review cleared sexual violence files to identify any investigative shortcomings related to, for example, biases or stereotypes.

The centrepiece of our collaborative work was the development of a model memorandum of understanding (MOU) and confidentiality and non-disclosure agreement. The MOU and confidentiality agreement attached as Appendix B provide a privacy protective framework for the governance of a sexual violence case review program. Central to this governance framework is section 32(d) of the Municipal Freedom of Information and Protection of Privacy Act and its provincial counterpart. These sections permit an institution to disclose personal information "if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the institution's functions."

In my view, the attached MOU and confidentiality agreement provide the necessary governance framework that will assist police and their violence against women partners to establish and operate sexual violence case review programs in compliance with Ontario privacy legislation.

I strongly encourage police services across the province who adopt the use of an Ontario based Philadelphia model to ensure a privacy protective framework is in place by using this MOU and confidentiality agreement. These documents, which are designed to bind all the participating external organizational partners and individual external reviewers, provide strong privacy and confidentiality safeguards commensurate with the sensitive personal information at issue. Under this privacy protective framework, police services must:

- Describe the purposes of the program
- Identify the external organizational or professional partners with the necessary experience and expertise to assist with the review of sexual violence files and appoint them as agents of the service for the purposes of the program
- Ensure that, prior to the review of any police records, all individual review team members have been subject to a background check, received privacy and confidentiality training, and signed a confidentiality and non-disclosure agreement
- Require that review team members review the names of suspects and complainants and, to the extent necessary, other personal information such as an individual's age or address, on a file-by-file basis to ensure that review team members are able to recuse themselves from reviewing any case where the principals are known to them in a personal context
- Otherwise permit review team members to review complete police files, including the personal information they contain, subject only to any redactions or restrictions required by law (e.g. under Part VI of the Youth Criminal Justice Act or the terms of a court order)

- Ensure that the reviews will take place within police facilities and that no confidential information will be copied, retained or removed by agents
- Require reviewers to promptly notify police of a privacy breach, and
- Promote transparency and public confidence by permitting reviewers to share non-confidential information about the program with the community, including the fact that reviewers are participating in the program, information about how the program works, whether it is functioning as intended, whether it is accomplishing its purposes, and other classes of information as defined by the police in writing.

This privacy-protective framework permits review team members to have access to complete police files, including medical information, photographic evidence, or video recordings of interviews. Permitting reviewers to have access to complete police files is likely to be critical to the success of the program.

Under this framework, compliance with Ontario provincial privacy legislation is not dependent on police obtaining consent from complainants, suspects or witnesses for the use or disclosure of their personal information for the purpose of the conduct of a sexual violence case review, including where the personal information at issue was originally obtained on consent. Nor is it required that a police service provide individuals with a right to opt out of having their investigative files reviewed by the review team.

The framework also allows the review of cases where the complainant is a minor. Furthermore, the framework permits reviewers to share some confidential information within a reviewer's organization, but only to the extent necessary to supervise the reviewer and to assist in the fulfillment of the sexual violence case review program mandate.

In the IPC's view, as long as access to police records comes with the recommended privacy and confidentiality controls, a sexual violence case review program can make an important contribution to improving the investigation of sexual violence complaints and the treatment of complainants, while complying with privacy requirements.

Throughout, it is important that a police service be transparent about its handling of personal information. Police services are encouraged to issue annual public reports about the operation of their sexual violence case review programs, as well as publish general information about their programs on their website.



Brian Beamish  
Commissioner

NOV 07 2019

## APPENDIX D:

# Privacy Commissioner of Canada Letter of Support

Chief Kimberley Greenwood  
Vice President, Canadian Association of Chiefs of Police

Dear Chief Greenwood,

The Office of the Privacy Commissioner of Canada (OPC) is pleased to offer its support to the *Canadian Framework for a Collaborative Police Response to Sexual Violence*. The *Framework* provides a roadmap for the implementation of a Canadian version of the “Philadelphia Model” where sexual assault cases classified as unfounded are referred for secondary review to explore whether there may have been procedural errors, bias or other factors that could have resulted in erroneous findings. After reviewing the *Framework*, including the MOU and the Confidentiality and Non-Disclosure Agreement, I believe that it will serve as a valuable guide for police services from all jurisdictions across Canada to implement programs with strong privacy protective provisions. Furthermore, I believe the *Framework* will be a useful reference not only for the establishment of new programs but also for the refinement of existing review programs.

When institutions include privacy protective measures in the design of such programs, they reduce the risk of data breaches. Furthermore, employing a strong privacy framework helps to establish trust from individuals, including victims in such cases, whose sensitive personal information is involved. For example, an important privacy measure in such programs is transparency on the part of police services regarding how they handle personal information. They should inform the public about their review initiatives and the privacy safeguards they have implemented. In addition, institutions should periodically review their programs to assess effectiveness and identify areas for improvements, including concerning privacy.

Over the last two years, my office has engaged with the RCMP and the Canadian Armed Forces regarding their respective sexual assault review initiatives. They both reached out to my office early on, which helped them develop programs that include privacy protective measures such as those discussed above. I encourage them to consult with the *Framework* as they implement and refine their programs.

.../2



To implement the *Framework*, each police service will need to adapt it to their respective legislative context. This includes consideration and reference to the specific laws, including privacy laws, which will govern the case review. At the federal level, the *Privacy Act* governs how the federal government handles the personal information it collects, uses or discloses. The *Privacy Act* only allows government institutions to disclose personal information under their control without the consent of the person to which the information relates under specific circumstances.

In the context of the review of sexual violence cases pursuant to the *Framework*, I am of the view that the *Privacy Act* would not be a barrier to the disclosure of personal information needed to conduct the proposed reviews. In particular, section 8(2)(a) could apply, as it allows government institutions to disclose personal information for purposes that are consistent with the original purpose of collection. A main purpose of the initial collection of personal information would be to investigate allegations of sexual violence. Implementing a subsequent review of cases not cleared by charge using the *Framework* for the purpose of ensuring that these cases have been properly investigated would appear to be consistent with the original purpose of collection.

In closing, I wish to underline the leadership of the police services who were involved in creating the *Framework*. I also congratulate all the other individuals who contributed to the initiative, including violence against women experts and the Information and Privacy Commissioner of Ontario.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a series of loops and a horizontal line extending to the right.

Daniel Therrien  
Privacy Commissioner of Canada



