



## Achieving Fairness: A Guide to Campus Sexual Violence Complaints

Anyone responsible for decisions about a campus sexual violence complaint faces a steep learning curve. A new book by **Karen Busby** and **Joanna Birenbaum** walks readers through the procedural, evidentiary, substantive, and discretionary legal issues that can arise when these complaints are made.

### CONTEXT

Campus climate surveys indicate that as many as one in four female undergraduates at Canadian post-secondary institutions (PSIs) will be sexually assaulted before they graduate. Complainants report, among other things, significant changes in their academic performance following an assault; some drop out. Administrators at PSIs are either permitted or compelled to take action if they receive a sexual violence complaint involving community members; the campus environment poses unique questions and challenges to these decision makers.

### OVERVIEW

Four strands of authority permit or compel administrators at PSIs to take action on a sexual violence complaint involving community members:

- the power under their constituting legislation to discipline students
- the power under labour and employment laws to take action against faculty and staff
- obligations under human rights legislation to provide and restore safe and respectful work and learning environments to students, staff, and faculty
- since 2015, provincial legislation or ministerial direction requiring PSIs to adopt stand-alone sexual violence processes.

### KEY FINDINGS

- A survey of 25 sexual violence policies from across the country reveals widely divergent approaches to issues such as the availability of interim measures (such as no-contact orders or campus bans); whether to suspend campus proceedings if a criminal charge is laid; complainants' right to participate in the process; the right to cross-examine; and privacy issues related to disclosure of the existence of a complaint, an investigation, and any reports or outcomes associated with the complaints process.
- The objectives animating complaint-based processes under sexual violence policies may be in conflict. Most would say that these policies should be about challenging gender-based violence, encouraging a

culture of response, restoring or creating safety, and ensuring that complainants' needs are met. These are human rights objectives. But especially where these policies are grafted onto student discipline policies and focus on individual wrongdoing, their focus becomes disciplinary. Disciplinary objectives may encourage a culture of denial and focus on the procedural rights of respondents.

### QUESTIONS AND IMPLICATIONS

Together these findings raise the question: what steps can we take to ensure that decision making under campus sexual violence policies is fair?

### AUTHOR

Karen Busby is a Professor of Law at the University of Manitoba. Joanna Birenbaum is a Toronto-based lawyer and the CCLISAR Director of Capacity Building.

### FOR MORE INFORMATION

The author and CCLISAR welcome enquiries about this research.

#### **Karen Busby**

Professor  
Karen\_Busby@umanitoba.ca  
(204) 896-4760

#### **Joanna Birenbaum**

CCLISAR Director of Capacity Building  
jbirenbaum@upfhlaw.ca  
(416) 969-3504

Karen Busby & Joanna Birenbaum, *Achieving Fairness: A Guide to Campus Sexual Violence Complaints* (Toronto: Thomson Reuters/Carswell, 2020). <https://store.thomsonreuters.ca/en-ca/pdp/achieving-fairness-a-guide-to-campus-sexual-violence-complaints/42756517>

### ABOUT CCLISAR

The Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR) is a non-profit, non-partisan organization working to realize law's potential to respond to sexualized violence. [www.cclisar.ca](http://www.cclisar.ca)