

Professional Relationships between Faculty and Students

Implications of Bill 26 (2023) on YUFA Members Charged with Sexual Misconduct



Changing Norms and Expectations

- The rules, norms, expectations, and terrain of faculty socializing with students (undergraduate and graduate) are rapidly changing.
- Social media and technology doesn't just impact the way that courses are delivered and engaged with, it also impacts faculty-student interactions.
- Online interactions with students are largely unavoidable; however the informality of these modalities means that faculty must consider how communication on or through social media properly reflects a professional faculty - student relationship.

New Legislative and Policy Landscape

Greater public awareness and scrutiny surrounding gender and sexual violence in society at large and within the academy are now being codified within legislative and policy regimes.

For example:

- On September 8, 2016, the “Sexual Violence and Harassment Action Plan Act, 2016” (or Bill 132) came into force.
 - Bill 132 expanded the definition of workplace harassment to include workplace sexual harassment and mandated that post-secondary institutions must have both a policy and a process for dealing with sexual violence on campus.

New Legislative and Policy Landscape

More recently, the provincial Conservative government passed the “Strengthening Post-secondary Institutions and Students Act, 2022” (or Bill 26) which came into effect on July 1, 2023.

- Bill 26 introduces new requirements and rules for post-secondary institutions in handling sexual misconduct of students by employees

OCUFA, Student Unions and Labour Unions Raise Concerns about Bill 26

In December 2022, OCUFA, the Canadian Federation of Students Ontario (CFSO), CUPE and OPSEU issued a [statement](#) highlighting concerns with this Bill, including:

- No proactive measures are included to assist the postsecondary sector in preventing sexual violence on campuses; survivor-centric supports are ignored
- Narrow focus on sexual misconduct of faculty and staff towards students; misconduct among students and among postsecondary faculty and staff is ignored
- Bill significantly interferes with collective bargaining and arbitration rights of unionized employees

Bill 26: The Strengthening Post-secondary Institutions and Students Act, 2022

Under Bill 26, an act is classified as sexual misconduct if it meets the two following conditions:

- (1) Must involve either physical sexual relations with a student, touching of a sexual nature, or behaviour or remarks of a sexual nature toward the student by an employee of the institution,
- (2) Must be either:
 - A criminal offence,
 - A violation of s. 7(3)(a) of the *Human Rights Code*, which prohibits sexual solicitations or advances sexual solicitation or advances made by a person in a position to confer, grant or deny a benefit or advancement to a student, where the person knew or ought to reasonably to know that it is unwelcome,
 - An act that contravenes the university's sexual misconduct policy or any other policy, rule, or requirement of the university 'respecting sexual relations between employees and students'

Bill 26: New Measures Facing Employees Around Findings of Sexual Misconduct

Just Cause

- If there is a finding of “sexual misconduct” by an employee towards a student, the university may discipline or terminate the employee (there is “just cause” for such discipline)
- If discharged for sexual misconduct, the employee is not entitled to notice of termination, termination pay, or any other compensation as a result of the discharge, regardless of any provision in the collective agreement.

Bill 26: New Measures Facing Employees Around Findings of Sexual Misconduct

Penalty

- An arbitrator cannot substitute a penalty for sexual misconduct (i.e. discipline/discharge) for a lesser penalty, regardless of any provision in the collective agreement.
- YUFA can still file grievances to challenge whether sexual misconduct took place, or challenge due process in the investigation; however, YUFA will not be able to grieve the reasonableness of the discipline

Bill 26: New Measures Facing Employees Around Findings of Sexual Misconduct

No Re-Employment:

- If an employee is discharged for sexual misconduct, or resigns following a finding, the employee cannot be re-employed by the institution in any capacity or at any time in the future

Bill 26: New Measures Facing Employees Around Findings of Sexual Misconduct

Non-Disclosure Agreements (NDAs) or Confidential Settlements

- NDAs or confidential settlements that would conceal that an allegation or complaint of sexual misconduct has occurred, are prohibited unless requested by the student
- Even if requested by the student, NDAs are only permissible under certain conditions (the student was able to seek legal advice, the student was not coerced, the NDA is for set and specific term, and student can waive confidentiality later)

York University's Employee Sexual Misconduct Policy

Within this new Sexual Misconduct Policy, York has set out an official position on romantic relationships between students and staff:

“The University discourages consensual sexual or romantic relationships between individuals in positions of authority (such as faculty, instructional staff, managers or supervisors, and athletic staff) and the students whose performance they are responsible for grading, supervising or evaluating. Even where the relationship appears to be consensual, for example, between supervisor and employee, faculty and student, or academic advisor and advisee. Regardless of the intentions of the individuals involved, such relationships in the workplace or educational setting that involve power differentials may lead to concerns of conflict of interest, questions regarding the validity of consent or sexual misconduct”

York University's Employee Sexual Misconduct Policy

The Policy defines a student as:

- A person who is registered and/or enrolled at York University and who is therefore bound by University policies and regulations; and,
- A person who is not officially enrolled for a particular term but who continues to have a relationship with the University or who has been notified of their acceptance for admission is considered a Student.

York University's Employee Sexual Misconduct Policy

The Policy defines Sexual Misconduct (in relation to a student of an institution) as:

- a. Physical sexual relations with the student, touching of a sexual nature of the student or behaviour or remarks of a sexual nature toward the student by an employee of the University where the action,
 - constitutes an offence under the *Criminal Code* (Canada),
 - infringes the right of the student under clause 7 (3) (a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or
- b. Any conduct by an employee of the University that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

New Times, New Considerations

- While many students are legal adults and responsible for their actions, this does not mean that faculty and students exist in a community of equals.
- This sentiment is echoed in York University's Sexual Misconduct Policy: "Regardless of the intentions of the individuals involved, such relationships in the workplace or educational setting that involve power differentials may lead to concerns of conflict of interest, questions regarding the validity of consent or sexual misconduct"
- The terrain of relationships between students and faculty is becoming more complicated and nuanced, and the consequences of missteps can be painful and even damaging. Thus renewed consideration ought to be given to your interactions with students outside the classroom.

Considering When, Where, and How Many

- When/Where

- Consider keeping things close to or on campus and during regular work hours (or early evening events)
- If you hold a social event at your home, this makes you responsible for the well-being of the students who attend (public venues take care of this responsibility for you)
- Public events allow you to leave at your own discretion
- What social activities are engaged in is a question of context (there is a significant difference between taking a group of students to a performance of a play being studied in class and attending a student-hosted party)

- How Many

- Always recommended that there be more than one student and additional faculty
- Larger numbers reduce opportunities for miscommunication or misunderstandings

Considering Who and What

- Multiple power relation vectors
 - Not only is the faculty-student power relation present, but there may be other potential power relations that could shape student experiences and perceptions of power and safety (for example, gender)
- Inhebrients
 - Many academic traditions include alcohol (for example, conference socials).
 - Exercising moderation and remaining alert is highly recommended
 - As is supplementing socializing activities involving alcohol with dry social events that are inclusive for those individuals who are not comfortable being around alcohol

Considering Social Media and Newer Communication Tools

- Tweeting, Instagraming, and Facebooking, can be a new channels to engage with students; however, there are risks around miscommunications and these newer communication models
- Slang, emoji's, informality, and after-hours communications can be subject to misinterpretation
- Thus, it is recommended that social media platforms should only be used for explicitly academic or public purposes, not as individual communication avenues
- Always consider your communications with students to be 'on the record'. It is not advised that you would write or share anything with a student that you would be uncomfortable being made public.

Relevant Documents

Additional Resources:

- [Possibility Seeds: Unions, Collective Agreements, and Institutional Responses to Campus Sexual Violence](#)

York Policies:

- [Sexual Violence \(Policy\)](#)
- [Healthy Workplace \(Policy\)](#)
- [Workplace Harassment Prevention \(Policy\)](#)
- [Workplace Violence Prevention \(Policy\)](#)
- [Human Rights Policy and Procedures](#)
- [Personal Relationships between Instructors and Students \(Policy\)](#)
- [Conflict of Interest for Faculty and Librarians \(Policy and Guidelines\)](#)