



CONFIDENTIAL

Report to:

FASKEN MARTINEAU DUMOULIN LLP

Per: **Erin Porter, Partner**

Date: June 6, 2023

RE: University of Prince Edward Island Review

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1. Introduction and Mandate

Founded in 1969, the University of Prince Edward Island (“UPEI” or the “University”) is the only university on PEI, and it is currently home to 5500 students from over 92 countries and 853 full-time employees.¹ The University has two campuses, and it offers a wide range of undergraduate and graduate programs over many disciplines. It is a publicly funded institution.

The University has committed to operating with reference to four key values: 1) academic freedom and rigour, 2) accountability and integrity, 3) excellence, and 4) inclusion, equity, and reconciliation. This last value states as follows:

We are dedicated to making UPEI an open, accessible, and welcoming community, and to the fair treatment of all persons. We are committed to continually re-examining and growing our understanding of the role UPEI must play in promoting a better understanding of cultures and identities, and the needs of community members with disabilities in a manner that supports education and respectful relationships.²

These sentiments are echoed in a number of key University policies, among them the Fair Treatment Policy, which states that:

The University of Prince Edward Island is committed to providing an environment that affirms and promotes the dignity of human beings of diverse backgrounds and needs. This Policy prohibits harassment and discrimination and affirms that all members of the University community – its students, faculty, staff, and visitors – have the right to

¹ “By the Numbers 2022,” UPEI website: https://files.upei.ca/publications/upei_by_the_numbers_2022.pdf.
² “About UPEI,” UPEI website: <https://www.upei.ca/about-upei>.

participate in activities at the University without fear of discrimination or harassment.³

Similarly, the University's Sexual Violence Policy, while containing a robust definition of "sexual violence" also makes broad commitments to the University community that include (among other things) that:

This Policy affirms the University of Prince Edward Island's ongoing commitment to foster a culture where attitudes and behaviors that perpetuate sexual violence are rejected, survivors are supported, and those who commit incidents of sexual violence are held accountable.⁴

These values, policies and commitments operate within a legal framework, which includes the provincial *Human Rights Act*⁵ and the *Occupational Health and Safety Act*.⁶

On December 6, 2021, a disclosure was made to the University involving an allegation of workplace misconduct against the President and Vice-Chancellor of the University at the time, Dr. Alaa Abd-El-Aziz. He was informed of that disclosure that same day, by counsel to the University, and on December 7, 2021, he retired, citing issues with his health.⁷ This was in advance of the end of the term of his appointment, in 2023.

³ Section 4.1 (under Policy) of UPEI's "Fair Treatment Policy," available on the University's website, [here](#).

⁴ Section 1.1 (under Purpose) of UPEI's "Sexual Violence Policy," available on the University's website, [here](#).

⁵ RSPEI 1988, c H-12.

⁶ RSPEI 1988, c O-1.01.

⁷ We understand that the disclosure was only described to Dr. Abd-El-Aziz in general terms.

Prompted by this event, on December 8, 2021, the University's Board of Governors announced that it would conduct a third-party review to investigate these new allegations. It issued the following statement:

The University of Prince Edward Island (UPEI) Board of Governors received notice of retirement from President Alaa Abd-El-Aziz on Tuesday, December 7. It was effective immediately.

The Board has begun the process of determining appropriate next steps. This includes identifying an Interim President. Updates regarding this process will be shared in the coming days.

Allegations of workplace misconduct involving the former President were brought to the attention of the Chair of Board on Monday December 6. Taking these matters seriously, the Chair and the University's legal counsel brought the allegations to the attention of the former President that day.

The University's comprehensive [Fair Treatment Policy](#) has been invoked and, in addition, the Board will undertake an independent, third-party review to determine the facts surrounding these allegations. Upon completion of that review, the Board will respond in a manner consistent with expectations of privacy and transparency.

The University of Prince Edward Island is committed to providing a safe, respectful, and positive environment for all members of the UPEI community. The steps that are being taken represent that commitment and will ensure UPEI's values are reflected in all that we do.

In the meantime, and understanding that the review process will take some time, the Board remains focused on supporting students, faculty, and staff of UPEI and continuing our work to advance the University's strategic priorities. We are grateful for the ongoing support we

continue to receive from our community, donors, and alumni.

On December 9, 2021, we received an inquiry from Fasken Martineau DuMoulin LLP (“Fasken”), counsel to the University, as to our availability to take on this review. What followed was a discussion between the University, their counsel, and us, about the terms of our engagement. We were formally retained on January 13, 2022. We were asked to conduct an independent third-party review of the University’s practices and processes with respect to harassment, discrimination, and fair treatment,⁸ as well as the allegations against the University’s former President (the “Review”).

Our mandate for this Review was set out in a Terms of Reference document that was approved by the UPEI Board of Governors on January 28, 2022, and is posted on the University’s [website](#).⁹ In addition to reviewing the allegations made against the former President, our mandate included the following:

1. Conduct a review of the University’s workplace policies, practices, and procedures concerning harassment, discrimination, and fair treatment, and the processes in relation to making disclosures and complaints regarding same.
2. Survey members of the UPEI community (defined as current and former students, faculty, and staff, and referred to in this report as “community members”) to determine their views as to whether the

⁸ This extends to sexual violence.

⁹ “Independent Third-Party Review,” UPEI website: <https://www.upei.ca/about-upei/independent-third-party-review>.

University has created a safe, respectful, and positive environment for community members.

3. Solicit information and input from community members who have complaints, concerns, or experiences they wish to share regarding harassment, discrimination, or fair treatment that they may have experienced at the University.
4. If community members had a specific complaint that they wish to have investigated, investigate that complaint as appropriate and in accordance with applicable University policies, legislation, and/ or best practice.
5. Examine the University's use of non-disclosure agreements ("NDAs") to determine the rationale behind their use.
6. Make recommendations as to how the University should ensure a safe, respectful, and positive environment for all those in the University community and the steps the University must or should take to ensure that it provides a safe environment for all members of its community in accordance with the commitments it has made in the Fair Treatment and Sexual Violence policies.

In making recommendations under paragraph 6 above, we were asked to consider the following:

7. Whether the mandate and activities of the Fair Treatment Advisory Committee and the Fair Treatment Advocate, can effectively deal with complaints under the Fair Treatment Policy.

8. Whether the mandate and activities of the Sexual Violence Prevention and Response Officer can effectively deal with complaints under the Sexual Violence Policy.
9. What amendments, if any, should be made to the Fair Treatment Policy and Sexual Violence Policy.
10. If desired by individual complainants, whether the University can and should take steps to have individual complainants released from their obligations under NDAs entered in respective allegations of harassment or discrimination.
11. Any other matter or consideration determined by the Reviewer to be of relevance to making recommendations under paragraph 6 above.

In addition, as part of the Review, we were also asked to make findings and recommendations, as applicable to the University:

12. On the steps the University must or should take to ensure that it provides a safe environment for all members of its community in accordance with the commitments it has made in its Fair Treatment and Sexual Violence Policies; and
13. On any other matter arising from the Review on which the Reviewer decides to make findings, recommendations or findings and recommendations.

This report presents the results of our survey and interviews, our review of UPEI's policies, practices, and use of NDAs, and provides recommendations. It does not, however, contain any findings regarding the allegations of misconduct against the former President, for reasons outlined immediately below.

2. Allegations Regarding the Former President

As noted above, the Terms of Reference contemplated that we would review the allegations of workplace misconduct against the former President. When we were retained, we became aware of not only the current allegations, but that there had been two complaints against the former President dating back to 2013. The University did not tell us the nature of these complaints, other than they involved allegations of what they characterized as inappropriate comments having been made by the former President.¹⁰ We were told that these complaints were settled, and that all parties to the settlement agreement – the complainants, the former President and the University – had signed an NDA that (we assume as we never saw it) set out the terms of the agreement, and the circumstances that gave rise to it.

We also became aware that the former President's term was extended in 2015, after these allegations were made, and then again in 2018.

As part of this process, we wished to explore all three sets of allegations, to determine their credibility [REDACTED]

[REDACTED] We also wished to examine why the former President's term was extended twice notwithstanding these allegations. Unfortunately, we were met by obstacles that we could not overcome, so that we cannot, at this time, provide the

¹⁰ We note that in 2013, there were reports in the media that there were two sexual harassment complaints that had been filed with the P.E.I. Human Rights Commission, and the basis of these complaints was that the former President had made inappropriate comments. See for example: <https://www.cbc.ca/news/canada/prince-edward-island/upei-settles-sexual-harassment-complaints-1.1323425>.

University with a clear picture of the former President's behaviour or its response to it.

To begin, we communicated with the 2013 complainants and their counsel. We were initially told that the two women involved wished to participate in this process. However, we were advised by their counsel that in order to speak with us, they needed to be released from their NDAs. We considered this to be a legitimate and prudent concern on the complainants' part. What followed was a months long negotiation [REDACTED]

[REDACTED] – to determine if such an agreement could be reached. We were not party to these negotiations, but we were made aware that they were going on, and that they ultimately failed. [REDACTED]

[REDACTED]

[REDACTED]

We also understand that a parallel negotiation occurred between the University and the 2013 complainants, in which the two complainants sought an indemnity from the University to protect them should they participate in this process, notwithstanding the existence of the NDAs. We were not privy to these negotiations either, but we were advised that they too had failed.

We further understand that an attempt was made to bring the matter before an arbitrator to determine if the NDAs could be set aside for the purpose of the review. We were not party to this either, but we did review communication between the 2013 complainants, their counsel, and counsel to the University, in which the complainants advised they did not consent to this approach. In a subsequent email to us, the complainants advised that they had “always been willing to participate in the review, if (they)

were permanently released from our NDAs,” something which they viewed the University as having the ability to do.



That issue being closed to us, we then turned our minds to the question of the former President’s reappointment in 2015, which came shortly after the 2013 complaints were made, and we believe, resolved. We wanted to understand why the University chose to maintain him in his position despite these allegations, and more specifically, why they did not disqualify him from reappointment. We learned that the University had engaged in a formal review process under its Presidential Search Committee and Procedure Policy, that involved an appointment of an independent Search Committee that sought out comments from both the University community

¹¹ We note that in an interview with the Executive Committee to the Board, in answer to the question whether the University investigated the allegations, counsel to the University, citing the existence of the NDA, said only that the University had followed its policies that required an investigation.

and the community at large to make a recommendation whether or not to reappoint the former President.

We were provided with the letters that this Committee reviewed as part of its process.¹² Suffice it to say that there were letters in support of the former President, and there were letters that were not. Of the letters that were unsupportive, written by those within the University, and outside of it, concerns about the 2013 complaints (often characterized by the writers as “sexual harassment complaints”) were cited as a reason not to reappoint the former President.

We sought meeting minutes and other documentation from the Board of Governors and its Human Resources (“HR”) Committee from the time of the former President’s reappointments. In response, we were provided with the minutes and documents for the review process related to the former President’s reappointment in 2015; however, there were no details captured in these documents of any discussion regarding his reappointment. We were told by counsel to the University that the HR Committee provided a verbal report to the Board regarding the former President’s conduct upon his first reappointment; but, because this was an “in camera” meeting, no notes were taken, which was its usual process.

We also interviewed the current Executive Committee of the University’s Board of Governors to see what they were prepared to tell us on this issue. Apart from two members, none of the current members were part of the Board at the time, and they lacked firsthand knowledge of what occurred, and to the extent that they had second hand information, they cited the NDA for not providing us with information about the allegations against the

¹² We were advised that this material was confidential, and so we cannot be more exact about what it contained.

former President, and the renewal of his employment. One former member of the Board who was directly involved in the renewal process, and who we also interviewed, could also not be more forthcoming because of the NDA. From these interviews, we were able to establish that at a minimum, members of the Board who were charged with reviewing the former President's performance in advance of the 2015 renewal of his appointment, were aware of the allegations, and of the settlement of them.¹³

We were told by the University that the Search Committee unanimously recommended the former President for renewal and that the Board accepted this recommendation.

As for the 2018 reappointment, we were told by the University that it did not conduct a review of the former President at that time, and that that was a common practice among universities. They noted that there had been no further complaints made against the former President after his term was extended in 2015.

That left us to consider only the more recent allegations against the former President (those made in 2021). In the early part of this process, we interviewed the woman who made this disclosure immediately prior to the former President's resignation, in the presence of her counsel. She advised us that she wished to have her allegations investigated. We thought it best to wait to continue the investigation of her allegations until the question of the other women's participation (the 2013 complainants) was resolved. In the late fall of 2022, when it became clear that an agreement that would

¹³ We asked for documentation involving both the 2015 and 2018 renewals of the former President's appointment. The only documents we received related to the 2015 process.

have allowed the 2013 complainants to participate could not be reached, we continued our investigation of her allegations.

We advised counsel to the former President of our intention to investigate on December 19, 2022, [REDACTED]

[REDACTED] We provided a detailed list of the allegations and our questions to him on February 24, 2023, as well as some supporting documentation on March 9, 2023. We did receive a written response on March 27, 2023, which we reviewed. We wrote to the former President's counsel again, on April 17, 2023, with a number of follow up questions, as well as providing him with additional documents to review. We received a response on April 27, 2023.

We were advised by Fasken that the University did not want to receive this report until the investigation regarding allegations against the former President was finalized. As they explained, this was because the University anticipated that the public would understandably have questions concerning the outcome of that investigation. That report was finalized on April 28, 2023, and has been submitted the University.¹⁴ Given the amount of personal and identifying information contained within it, it would not be appropriate to include it as an appendix to this report, particularly because we have recommended that this report be made public in the recommendation section of the report. [REDACTED]

¹⁴ A second version, with minor modifications, was sent to counsel to the University on June 5, 2023.

[REDACTED]

Notwithstanding our ability to investigate this matter, it is regrettable that given the presence of the NDAs, we are unable to answer a key question that arises as part of our mandate: Did the former President engage in repeated sexual misconduct?

3. Conclusion

[REDACTED]

[REDACTED] In summary, we found that the University has failed to create a safe, respectful, and positive environment for working and learning for all members of its community, and, assuming that what we were told is true, the University has not lived up to its stated values of “inclusion, equity, and reconciliation,” and more specifically, its commitment to “fair treatment” and “respectful relationships.” Additionally, we found significant evidence that a concerning number of people within the University community have experienced behaviour that is at odds with the Fair Treatment and Sexual Violence policies. This state of affairs has been worsened by a number of factors, including: related policies, which we generally found to be out of date and in need of revision; the offices dedicated to administering these policies are either understaffed, under-resourced, or have an almost non-existent presence on campus; and a lack of education and awareness initiatives regarding these policies and the issues of harassment and discrimination more generally.

How and why we reached our conclusion, the specifics of what we found, and our recommendations for remediation are set out below.

4. Conduct of the Review

a) Survey

Further to the Terms of Reference, our review included gathering (through surveys, interviews, and a confidential email address) the views of members of the UPEI community on whether the University had created a safe, respectful, and positive environment.

Between January 28, 2022 (when the review's Terms of Reference were approved by the Board of Governors) and March 2022, we consulted with the University regarding the logistics of the distribution of the survey to the University's community members.¹⁵

Our survey was launched on March 29, 2022. Community members were advised that participation in the survey process was voluntary, confidential, and anonymous, should they wish not to identify themselves. In line with our mandate, our survey asked questions about the working and learning environment at UPEI, participants' familiarity with the University's policies and procedures for addressing harassment, discrimination and sexual violence, their experiences with these issues, whether they felt the University adequately addressed their concerns, and their suggestions for how the University could improve its practices in relation to these issues and support its community members.

¹⁵ The University sent the communication with the survey link to most community members via email. The communication was also sent via letter to community members for whom the University did not have a current email address on file.

Initially the deadline to complete the survey was April 14, 2022, but this deadline was extended to April 29, 2022, following requests from community members.

A summary of the quantitative data we received from the survey is attached as “Appendix A.”

In total, 14,294 members of the UPEI community (including current and former students, current and former faculty, and current and former staff, referenced throughout this report as “community members”) were invited to participate in the survey. Of those, we received 1,295 survey responses (9.06% of those who were contacted). The breakdown in participation was as follows:

Current students	420
Former students and alumni	208
Current faculty	185
Former faculty	54
Current staff	281
Former staff	102
“Other” ¹⁶	45

We wish to contextualize these numbers. According to UPEI’s website, there were 301 faculty, 527 staff and 5,419 students at UPEI in 2021.¹⁷ Based on

¹⁶ For instance, those who have a combination of statuses, i.e., former student and current staff or faculty.

¹⁷ “By the Numbers 2021,” UPEI website:
https://files.upei.ca/publications/upei_by_the_numbers_2021.pdf.

these numbers, roughly 61% of current faculty participated in the review, 53% of current staff, and 7.7% of current students.

b) Interviews

Survey participants were also asked if they were willing to participate in one-on-one interviews. For this process to be as inclusive as possible, we interviewed everyone who wished to be interviewed. We also interviewed University community members who contacted us using a confidential email address (which we launched on January 31, 2022). These interviews were conducted from February 2022 to November 2022.

We also met with representatives from several of the collective bargaining agents at the University.

In total, we conducted 163 interviews, all of which were done virtually. As with our survey, we committed to interviewees that we would not disclose that they had been interviewed or present what they had told us in any identifiable way. Rather, we undertook to present their experiences thematically, so that their identities could be anonymized.

Many of the surveys included lengthy comments and interviewees often spoke at length about their experiences at UPEI. We considered all the information shared by participants when writing this report, and in making our recommendations.

c) Policies and Practices Review

At the outset of the review process, we conducted a preliminary review of the University's Fair Treatment Policy and Sexual Violence Policy, to help inform our survey questions and ensuing interviews with participants. After our interviews with participants were completed, we conducted a more in-

depth review of the policies. We then conducted interviews with the administrators of the policies and individuals with key roles under the policies to better understand how they worked in practice. In assessing these policies and practices, we also reviewed and relied upon secondary sources and the policies of other Canadian post-secondary institutions.

We note that we requested to review the investigation reports produced under the policies since 2018; however, we were advised that we could not review these, even in a redacted form, because of confidentiality obligations under the policies.

d) NDA Review

We requested the names of the individuals who had signed NDAs with the University in the past 10 years, so that we could interview them and obtain their insights as to the circumstances in which they departed the University and signed these agreements.¹⁸ We were provided with copies of 29 NDAs with redacted names. We were advised that, because of confidentiality obligations, the University could not release the names of the signatories to the agreements without the permission of those individuals. A process by which individuals who had signed NDAs could be released from them, so that they could participate in the review, had been set out in the Terms of Reference. Signatories could contact counsel at Fasken who could release them on behalf of the University. We understand from counsel that five people contacted her for this purpose.

We were interested in speaking with additional people, keeping in mind that there were 29 agreements. Counsel to the University offered to contact

¹⁸ We were advised that both Fasken and Stewart McKelvey LLP conducted a search of their files and provided us the totality of what they had in this regard.

the signatories and ask them if they were willing to have their names released to us. While we appreciated the offer, we did not think this was the most effective way to solicit additional participation in this process.

Therefore, based on the information we had gathered from the survey and our interviews, we compiled a list of individuals whom we believed had signed NDAs with the University (and who had not yet participated in the review), and, where we were able to find contact information for them, we contacted them to see if they would agree to be interviewed.

In total, we spoke with 13 individuals who said that they were signatories to NDAs with the University. We also spoke with a senior University administrator regarding the University's rationale for entering into these agreements.

e) Reply

We believed that in fairness to the University, it should be given an opportunity to reply to the results of our review, particularly because they were so troubling. Therefore, we provided a copy of this report to the Board of Governors, its counsel, and counsel to the University on May 3, 2023. We received a fulsome reply from counsel to the University on May 26, 2023, and a secondary letter on June 3, 2023. This updated version of the report incorporates some of the information given to us in reply. Our conclusion, as well as the substance of this report, remains unchanged.

5. Themes

The survey and our interviews were an opportunity for participants to share their "views as to whether the University has created a safe, respectful and

positive environment for members of its community,”¹⁹ in a confidential environment, facilitated by an independent third party, where their identities remained anonymous. This setting can enhance participation because individuals do not have to make a formal complaint and “go on the record.” Indeed, many participants told us that despite their experiences, they would never make a complaint.

A process like this one also benefits the University. It provides it with access to information that it otherwise might not be able to obtain. It can provide insights into views and experiences that have gone underground and can inform a path forward to create a safer and more positive environment.

In a review, though, there is a “trade off” between obtaining information based on the subjective views and experiences of the participants, which may be the only way it can be captured, and testing the veracity of it, as we would have in a workplace investigation, where our focus would have been on specific allegations and making findings of fact. Accordingly, we cannot take all experiences reported to us necessarily as having occurred or as being objectively true. Rather, we looked to the aggregate of what we heard, to see if there were overall themes, from which we could draw conclusions related to the Terms of Reference, and, to inform our recommendations.

To assist in understanding the frequency with which issues or concerns were identified to us, we use the following ranges to denote the frequency of response: “one” (1 person), “some” (2-5 people), “several” (6-10 people), “many” (11-50 people), and “numerous” (over 50 people).

We wish to preface this section by stating that not everything we heard about the working and learning environment at UPEI was negative. Indeed,

¹⁹ See section 2 of the Terms of Reference.

when asked, 524 out of 966 participants (54.24%) said that they had never witnessed nor been subjected to harassment, discrimination, or sexual violence at UPEI; and about the same percentage of survey respondents (542 out of 958 participants, or 56.58%) said that UPEI had created a safe, respectful, and positive environment for working and learning. We heard from numerous students that they felt professors and staff were generally friendly, respectful, and understanding. Numerous faculty and staff described positive work experiences, with many expressing that they had great colleagues, and that certain departments were supportive and comfortable. Some participants also commented positively on their experiences resolving an issue of harassment, discrimination, or sexual violence, noting the support of the Faculty Association, their supervisor, or colleagues. We also heard positive comments about the former President. We heard that he was the driving force for exciting initiatives, that he had good ideas, that he could be friendly and kind with staff, and some participants said that they had an overall good working relationship with him.

That being said, we also heard from numerous community members about negative experiences and/or negative impressions of UPEI's working and learning environment. To illustrate, 416 of 958 survey respondents (43.42%) answered that UPEI has not created a safe, respectful, and positive environment for working and learning, and many of them provided us with compelling examples of why they believed that to be the case (some of which are described below).

Assuming what we were told is true, the totality of what was described to us, in the surveys and in the interviews, suggests that the University has not lived up to its stated values of "inclusion, equity and reconciliation," and

more specifically, its commitment to “fair treatment” and “respectful relationships.” Indeed, even if this is not true for everyone in the community, for a concerning number of people who currently work and learn at UPEI, the University has failed to create a learning and working environment that fosters inclusion, equity, and fair treatment, and to maintain a healthy workplace for staff and faculty. Given the volume of information, and that we heard from many individuals occupying different positions within the University, as well as students, we do not believe these responses are from the “disgruntled few.” Indeed, we believe it would be an error for the University to discount the themes we have identified in this report, on that basis.

We have organized these observations of the University’s working and learning environment into the following themes: (a) environment of bullying and harassment, (b) issues with equity, diversity, and inclusion, (c) lack of accountability, and (d) fear of reprisal. To better understand participants’ perspectives, and to give them full voice, we have included various quotes from them in each section. As a caveat, and a reminder, we have not investigated the concerns shared; they are subjective views and experiences, and we do not present them as facts.²⁰

a) Environment of Bullying and Harassment

Comments from numerous participants painted a picture of an environment that is toxic, where bullying and harassment is widespread and condoned at an institutional level. Notably, in response to whether the University had created a safe, respectful, and positive environment for working or learning, 306 out of 958 survey responses included a comment

²⁰ In its reply, the University was aware of additional information regarding some of what is described in the quotations. We have included it here.

to the effect that UPEI has a toxic and/or bullying environment. This is an overwhelming amount. By way of example, we heard the following:

- A staff participant said, “It is a toxic work environment, where distrust is fostered and where managers point out the shortcomings of staff to their peers.”
- A faculty participant said, “I have had students disclose to me that they feel or have felt unsafe because of actions by faculty or other students in the classroom setting with them. I have observed the impact of this lack of psychological safety in one of the classes I taught.”
- A staff participant remarked that, “I was overworked, I didn’t feel supported, I was uncomfortable challenging decisions that I believed were deceitful.”
- Another staff participant noted that, “Sometimes it is not a positive environment. It’s hard to explain but I often feel like I am walking on eggshells. Most times I always hear negative feedback and not positive feedback or no feedback at all.”
- One staff member said that, “UPEI is the most miserable, soul sucking place of work I have ever experienced. Managers talk about other employees behind their backs to other staff members, harassment and bullying is acceptable. Human Resources policies are not there to help those who are being bullied, but to smooth and shush over situations to have everyone go back to work.”
- A former staff noted that, “I have never worked anywhere that was less welcoming, or more intimidating, then [sic] UPEI. All the

department [sic] seemed to be fighting with each other. It was hard to get anything done. Endless unanswered phone calls and emails to other departments. Lots of historical ego battles that seem to have been fought between everyone before I arrived that everyone was still licking their wounds from.”

- A faculty member stated that, “There is an institutional acceptance of bullying at UPEI – some awful things got ignored – the University is a childish, toxic place.”
- A staff participant explained that, [REDACTED]
[REDACTED]
[REDACTED] This is one of the most toxic working environments I have encountered, and I was in one of the ‘better’ departments.”

Troublingly, numerous participants referred to a “culture of fear” and “intimidation.” We heard of instances of screaming and yelling among staff, faculty, and students, belittling or overly critical managers and faculty, gossiping and backstabbing, favouritism, the targeting of students by faculty for mistreatment, and the use of intimidation tactics.

Most often, the participants who said that they had experienced or witnessed bullying and/or harassment identified someone in a position of authority as being the perpetrator. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²¹ Additionally, certain areas of the University were mentioned more than others, [REDACTED]

Numerous participants said that when concerns about bullying and harassment were raised with HR or to senior leaders who were responsible for addressing these behaviours, their concerns were ignored, or the conduct was excused. As one participant described:

It feels as though there is no protection from things such as bullying by people higher up in the hierarchy. [REDACTED]

We also heard from many who believed that UPEI's Board of Governors had failed to provide adequate oversight and had allowed senior administrators at the University to have "free reign" and "absolute power." [REDACTED]

b) Issues with Equity, Diversity, and Inclusion

In addition to bullying and harassment, we also heard concerns with how the University deals with issues of equity, diversity, and inclusion (“EDI”). Participants described an environment where racist, sexist, ableist, and heteronormative behaviour is systemic. We were told by some participants that training and current resources on EDI is inadequate, and that UPEI does not have the expertise required to address EDI issues effectively.

i. Issues with racism

We heard from numerous participants that racism is a serious problem at UPEI, taking the form of microaggressions, and conscious and unconscious bias. As with bullying and harassment, the issue of racism was seen as being ignored by the University, with an overall lack of cultural sensitivity within the University community. Participants told us:

- “A casual racism is prevalent at UPEI – student leaders would use [the] n-word... [it’s] not seen as a problem.”
- “I was called terrorist by a white guy in meal hall. I was shocked and left the meal hall promptly.”
- “A professor said to a friend of mine...she finished her essay, and he returned it and said, ‘You wrote very well for someone who speaks ESL,’ but she speaks English as a first language.”

- “There was a staff member, a clinical instructor[,] who asked me, ‘So what are you?’ [...] I remember a girl saying, ‘you look like the girl from the Mindy Project²².’”
- “It has been difficult for me as a person of colour and not born on the island to be accepted by the campus and island community.”
- “[A group of employees] were talking about a group of Black men saying, ‘They always come here [...] and I don’t even know if they’re paying [...].’ These guys come at [the] same time as me, ...they go right after or before me. You can’t get in if [you] don’t pay, and [the group of employees] suggested that the guys sneak in, but I know they come in the same entrance as I do. The boys were loud, laugh and joke, but never did anything wrong. [The group of employees] were gossiping and saying they didn’t want to serve them.”

- 

²² “Mindy” is played by Mindy Kaling, an American actress of South Asian descent.

²³ 

ii. Mistreatment of women

Numerous participants raised concerns about the treatment of women at UPEI. These concerns were expressed primarily by female participants, but we also heard similar sentiments from men.

A. Sexual or gender-based harassment

Many participants said that they had experienced sexual or gender-based harassment or witnessed the sexual harassment of women at UPEI in the form of sexist or sexualized comments from men. We heard the following examples:

- A male classmate “joked” to a female student that “women belong in the kitchen.” The remark was ignored by the instructor.
- A male staff “joked” to a female student about pornography.
- A faculty member remarked that sometimes inappropriate comments are made to female students who are minors.
- A male faculty told his colleague that she should take on certain service roles because “a lady would be better at that.”
- A female staff member said that she had been in meetings where she had to listen to jokes about how women can’t drive. This participant remarked that, “Individually it is all small, but it wears one down over time.”
- A student participant said, “I attended a student presentation, at the end of which a male faculty member told a student in front of the group, ‘I find it inappropriate what you’re wearing, I couldn’t hear

anything you said.’ The student was female and was wearing an above-knee skirt.”

- A student commented that, “In a class at a UPEI open house day before starting at UPEI, the prof put a picture of a female leader in the field on the screen and said ‘Boys! Isn’t she hot?!?!?’”
- A female faculty member said that, “Historically, female students have told me that they avoid our student lounge because they have had enough of the inappropriate conversations among male students that take place.”
- “I was sexually harassed by 2 different professors when I was a student. Unwanted comments and attention, requests to attend private office meetings, requests for meetings off campus. Nothing physical. Most profs were professional and respectful. At that time students quickly learned who to avoid.”
- A student commented, “Harassment often happens casually at places like the gym or in the student centre. It is largely men being ‘interested’ in women who are also studying or working out.”

We heard from one participant who said that she had witnessed verbal abuse as well as misogynistic comments from some graduate student supervisors. She was also aware of lewd comments and suggestions from certain professors directed towards students and coworkers, and that this carried on for years without being addressed in any meaningful way despite multiple complaints.

We also heard about concerning behaviour by male students towards female faculty. We heard from one participant that male students became

aggressive and confrontational during office hours with female faculty. Some participants described how the anonymous student opinion surveys have become a vehicle of gender-based violence against female faculty, where female professors have been called “cunt,” “bitch,” and “fucking bitch.”

B. Sexual or gender-based violence

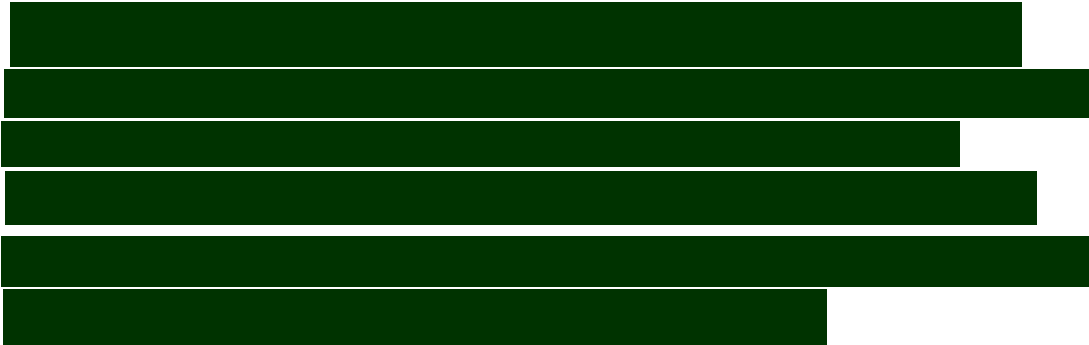
Numerous participants shared details of concerning experiences of sexual or gender-based violence²⁴ in residence, on campus, and during interactions with faculty. We heard primarily from female students, but several of the comments were from male students and members of faculty. We heard the following:

- “Residences are unsafe environments where sexual violence is common.”
- “A male professor touched my breasts in passing in the coffee area but it was not an accident. The same professor pushed up against me at the photo copier and he clearly had an erection.”
- “I was raped on campus. I had sexually explicit images taken of me without my consent and sent around campus.”
- “In first year I was sexually harassed as well as sexually assaulted on the UPEI campus (in residence) by another student. After being sexually assaulted this student continued to harass me, often at my place of work (right next to campus), for months.”

²⁴ For the purposes of this section, when we refer to sexual or gender-based violence, we are referring to unwanted touching of a sexual nature.

- “My friend was raped in her room in first year and no one believed her.”
- “Residence advisors sign confidentiality contracts and are scared to report student complaints.”
- “Sexual assault happened in the residence community and was not taken seriously by senior staff.”
- “I witnessed men harassing women (both students) on several occasions—invading personal space, unwanted touching, etc., in on-campus extracurricular events and before/after classes. No one intervened because no one knew how.”
- “There was a known predatory male teacher working within my program that the female faculty advised students to not go into his office alone. This man would sniff girls’ hair and told my entire class that he wanted to spank all the girls for using the word ‘just’ in a presentation. Previous allegations against him were never pursued because he scared the girl so bad, she left the university.”
- “A friend of mine was given an extra 15% on a final after keeping silent when a professor groped her while answering a question about the exam. This professor made several advances towards her throughout the semester despite her being freshly 18 and him being old as fuck. Another friend was asked on a date by a different professor.”





*C. Differential treatment on the basis of sex
and/or gender*

Several of the examples that participants shared were blatantly and overtly sexist. We heard the following from participants:

- Several areas of the University were described as “Old Boys’ Clubs” where female members of staff and faculty are frequently passed over for leadership opportunities and interesting projects in favour of less experienced and less skilled male colleagues who are friends or close colleagues with other males. One participant said that when she asked a male decision-maker why she was passed over for a leadership opportunity in favour of a less qualified male, she was told, “I am a little bit sexist.” The male decision-maker then advised the participant that she should be “less efficient” and “less intimidating” if she wanted to appear appealing for leadership roles.
- Some female participants said that they had been excluded from “all-male” meetings in their department, and that during these “all-male” meetings, their male colleagues had discussed issues and made decisions related to their female colleague’s work without consulting with them. One woman said, “I complained to a male colleague after the men in my department had a meeting without me; he responded

that they didn't talk about me during the meeting, the suggestion being that I had no reason to be concerned about being excluded."

- Some female participants said that their male colleagues would go to their husbands instead of them to discuss controversial workplace issues that did not involve their husbands.
- Women were often assigned more menial and/or administrative tasks than male colleagues. One participant said, "I was never appointed to any 'substantive' faculty committees, even though I expressed interest. I was always appointed to committees dedicated to organizing certain events." Another told us that, "I am not doing what I was hired to do. I am the only women [sic] on the management team, and I was asked to take minutes. When I spoke up, I was called hysterical; I had to do things, but all the decisions were made elsewhere."
- Several female participants expressed that they were treated like support staff by male colleagues. One participant said, "I worked with a man who considered himself my supervisor, even though he wasn't. He constantly referred to me and other female staff as 'the gals.' He constantly treated us as if we were 'helpless little things' and when he needed someone to do special jobs he always went to the male staff and ignored us. He considered us unable to do those types of jobs." Another said, "A (male colleague) was hired at the same time as me and there was very little overlap in our job descriptions. At first, he treated me like his personal secretary; he then started taking over what I was hired to do. I complained, but the Chair (we presume of the Department) did nothing. Nothing happened. The (male colleague) then started to raise his voice with me. When I

complained, I was accused of ‘flipping out’ and told that these things happen.” Yet another participant said, “My colleague who is at the same level treated me like a personal secretary and then took over my job description.”

Women also described experiencing microaggressions. We heard the following:

- “I was told that I needed to smile more. No one smiles on Zoom meetings.”
- “My professor asked me, in front of the class, what I planned to do about my ‘situation’ (I was pregnant).”
- “The Dean and male colleagues commented on my pregnancy and post-pregnancy body.”
- “I was told that women don’t go into computer science as often as men because women don’t like keeping up with new technology.”

Some women shared concerns about differential treatment related to intersectional stereotypes based on their gender and their race, and/or place of origin. Given the relatively few racialized women on campus, we cannot provide even anonymized examples of what they have experienced because they will be identifiable. Suffice it to say, they described a state of affairs in which they were profoundly disrespected, “othered,” and subjected to unwelcome conduct.

In addition, we heard from some women about negative experiences related to their marital status, and being negatively impacted by a pregnancy and/or a maternity leave. One woman said that she lost her appointment to

a less experienced male after she separated from her husband who continued to work at the University. Another female said that when she learned that she was compensated less compared to her male counterparts, she was told that she did not “need” more money because her husband works at the University and made “good money.” Another male colleague told this same woman that “men need to make more money because they have families and responsibilities.”

We heard about the loss of opportunities, such as a promotion, or not being rehired into a position that was then filled by a less experienced male. One participant said, “Some people were discouraged from coming back after maternity leave or were given different, unsuitable positions.” Another described a lack of flexibility related to childcare obligations following maternity leave, particularly for women who reside outside of Charlottetown, PEI. We heard about discriminatory comments as well. One woman said that a male faculty member said to her that “maternity leave seems like a great deal, I’m going to go out and get pregnant.”

Several participants, both females and males, said that the recent appointment processes for the roles of [REDACTED] and [REDACTED] were examples of sexism at UPEI. These participants were not critical of the individuals who were appointed but described the appointment processes as “secretive” and “non-transparent” and said that more experienced women were excluded from consideration and/or “skipped over” in favour of men who were close friends and/or colleagues of the decision-makers. One participant described the appointment processes as “shocking” and another remarked that, “a generation of potential female leaders has been put-off by what transpired at great cost to the institution.” We also heard that the process

demonstrated that, “the University’s stated commitment to diversity and equity were empty words”; further, that it sent “a message to the community that if you want to get ahead at UPEI, you need to be friends with people in leadership.”²⁵

iii. Failure to address allegations of sexual and gender-based violence

According to UPEI’s Sexual Violence Policy (“SV Policy”), the University has an “ongoing commitment to foster a culture where attitudes and behaviors that perpetuate violence are rejected, survivors are supported, and those who commit incidents of sexual violence are held accountable.” Regrettably, if what we heard from many survey respondents and interviewees is true, UPEI has not adequately supported the survivors of sexual violence, nor has it held those who commit sexual violence accountable. Some participants expressed the view that sexual misconduct is condoned at the University.

[REDACTED]

²⁵

[REDACTED]

26

male student who was caught taking a surreptitious picture of a female student in a washroom in the library. We were told that the female student left the University.²⁷

Several participants expressed concerns about the University's inadequate response to complaints of sexual violence more generally. Others described incidents where sexual violence complainants, and those who publicly supported them, had experienced reprisal.

iv. Other EDI concerns

Many participants expressed significant concerns with how the following marginalized groups are treated at UPEI: international students, members of the LGBTQ2+ community or their allies, Indigenous peoples, and those with disabilities. Specifically,

- We heard concerns that international students are treated like “others” by some faculty, staff, and students, that international students experience racism while living in residence from other students and from resident staff, that very little is done to address racism when international students experience it, and they do not otherwise have the proper supports when they arrive at UPEI. Some expressed concern that UPEI was engaging in the “predatory recruitment” of international students and that many international students, some of whom were “very young,” arrived at UPEI unprepared academically, and sometimes without housing or proper outdoor clothing. One participant said that “UPEI is happy to take international student fees but not to provide a corresponding

²⁷ In its reply, the University noted that it became aware of this incident, and it was investigated. The student was expelled, and his actions were reported to the police. Charges were laid and the student was convicted.

number of resources to support international students once they arrive. UPEI markets itself as a diverse campus, [but] it does very little to support international students. UPEI needs an increase in supports for international students, including mental health supports and improved orientation and inclusion initiatives.” It is important to note that we heard from some participants that UPEI’s International Student Office is very engaged and provides “a lot” of support to students.

- Some participants expressed concern about the quality of UPEI’s efforts in relation to reconciliation and Indigenous issues, as well as the level of support that the University has provided to Indigenous faculty who were hired to provide input on Indigenous initiatives. We were told that many of the Indigenous faculty members hired to contribute ideas had left the University because they faced barriers and discrimination. As one participant described it, “The creation of the new Indigenous Faculty at UPEI feels like an insincere ploy to get federal funding because UPEI does not seem capable of keeping the few Indigenous faculty members that we have hired or of listening to them when we do have them.”²⁸
- Several participants described UPEI as a heteronormative environment. We heard that some professors misgender non-binary and transgender students despite requests not to, that male students and some professors have used slurs (including the f-word)²⁹ and made fun of the LGBTQ2+ community, and that there is a lack of safe spaces on campus for this community. One participant noted

²⁸ In its reply, the University noted that there is no federal funding that is received for the Indigenous Faculty.

²⁹ We understand that the “f” word is a reference to “fag,” which is a homophobic slur.

that, “there is no visibility of any kind of positive space beyond maybe raising the rainbow flag once a year.”

- Many participants described witnessing or personally experiencing discrimination related to a disability and/or a failure to accommodate disabilities in both the working and the learning environments. We heard about a lack of accessibility, a lack of processes to address the need for accommodations, and instances where individuals felt forced to resign because of a disability that the University had failed to accommodate. Troublingly, one participant told us that the use of the “r” word³⁰ is not seen as a problem at UPEI.

c) Lack of Accountability

We heard from participants who felt the University’s Board of Governors, senior administrators and its Human Resources department were more interested in protecting themselves and the University’s reputation, than taking accountability for and addressing concerns of sexual violence, harassment, and discrimination. Many of these comments referenced the Board of Governors’ reappointment of the former President despite the allegations of misconduct against him. We have excerpted some of these comments here:

-

[REDACTED]

³⁰ We understand that the “r” word is a reference to the word “retarded,” which is a slur against people with disabilities.

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED] numerous participants also expressed that when University community members spoke up about harassment, discrimination, or unfair treatment generally, no action was taken in response. They felt that their concerns were either dismissed, covered up, or otherwise inadequately addressed. [REDACTED]

[REDACTED]

[REDACTED] We heard the following:

- [REDACTED]

- “While I haven’t filed a complaint myself, the perception is certainly not one of seeing any resolution or transparency. There exists an overall mistrust of the process.”
- “I think UPEI has a habit of brushing misconduct under the rug, without providing support for victims or holding perpetrators responsible for their actions. This has not fostered a safe and respectful working or learning environment.”
- “UPEI emphasizes the privacy of perpetrators over safety and wellbeing of community members.”
- “UPEI cares more about public image then [sic] how things are actually affecting students/staff.”
- “I think when it comes down to it, UPEI will cover their asses to make more money.”
- “The Board of Governors is not committed to doing what a board should do – i.e., act in the best interests of the organization.”
- “I believed that universities should uphold the highest standards of society. Instead UPEI has turned a blind eye to bullying, harassment and unethical behaviour [REDACTED]
[REDACTED] UPEI and the Board of Governors of UPEI are primarily interested in protecting UPEI’s/their reputations and not the safety and wellbeing of community members.”
- “I don’t trust that the Board or senior leadership has any real interest in cultivating a more respectful workplace. They have purposely

fostered a culture that is authoritarian, rude, power-hungry, and disrespectful, through appointing heavy-handed leaders who consolidate power in a few offices, make non transparent decisions, issue edicts, and retaliate against those who challenge them.”

- [REDACTED]
[REDACTED]
[REDACTED]

We have previously described participants’ observations regarding the University’s perceived failure to address allegations of sexual violence, including the allegations against the former President. In terms of other examples of conduct that participants felt were ignored or inadequately addressed by the University when they were brought forward, we heard the following:

- One participant described their manager being aggressive, screaming, and swearing. They were told that Human Resources would talk to the manager. They were unsure what action, if any, was taken, and said that the conduct had not changed.
- A student said, “Some of the professors do not reflect a safe, respectful, and positive environment for learning. Attention was brought to the head [of the] department on multiple occasions, and nothing was done regarding the professor. The professor continued to mock the department, stating that they were invincible, and continued to harass and degrade students. I was absolutely appalled and disgusted at this behaviour.”
- Several participants mentioned that they had previously contributed to climate reviews conducted at the University, [REDACTED]

Some participants shared that these reviews were often retraumatizing because contributors were required to describe their experiences of bullying and harassment, but there was inadequate or no follow-up at the conclusion of the review process, and the climate did not improve. Some participants expressed the doubt that the current review would produce any positive outcomes based on their prior experience with climate reviews at UPEI.

With respect to the last bullet point, we were provided with the climate reviews previously conducted for [REDACTED]. According to the climate review for [REDACTED], “the vast majority of participants described the work environment in negative terms,” and “described [it] as stressful, negative, tense, disrespectful, toxic and unsafe.” Per this [REDACTED] review, 48% of the participants who were interviewed also expressed fear and concern about retaliation from the then Dean. [REDACTED]. [REDACTED] the consultants reported that overall, interviewees expressed extremely positive comments regarding [REDACTED] however, it also noted that some of the interviewees were concerned about favouritism, micromanagement, and lack of decision making both in hiring and budget allocation. Given the similar themes we heard in our review, it is not surprising then, that some participants felt that the climate had not improved and/or doubted that the current review would result in any positive change.

d) Fear of Reprisal

Relatedly, we heard that the University’s perceived lack of accountability and self-interest has contributed to a culture of silence and fear of reprisal.

University community members expressed fear of speaking up against harassment, discrimination, or unfair treatment, or otherwise questioning leadership decisions, in the event they would be retaliated against by management or leadership. In our survey, when participants were asked why they would not feel comfortable seeking support from the University, more than 200 hundred respondents indicated that they feared reprisal and/or did not trust that the University would respond effectively or at all to their complaints.

As one participant put it:

There is a palpable and openly admitted fear by faculty and staff of the University's administration. A fear of being penalized (fired, job made difficult, not receiving perks that others do, etc.) if you are perceived as not "falling in line" with the ever-changing requests and requirements of administration. People are afraid to speak up.

Others spoke of their own experiences with reprisal or of observing their colleagues being reprisal against when they voiced concerns. We heard the following about this culture of fear and reprisal:

- [REDACTED]
- "The current culture of fear that exists means that UPEI staff experiencing discrimination and harassment have nowhere to turn for support outside their own unit/department."
- "Most employees know about the 'firing at will' and it has created a culture of fear, silence, and mistrust."

- “UPEI has a culture where if you looked at somebody the wrong way one day, you could be gone the next.”
- “A lot of people were dismissed because they were asked to do things against their values. The University operates on fear, control, and people disappearing — making it miserable for people to go to work.”
- “None of my colleagues felt comfortable addressing issues/concerns as it was quietly known that those who do/did, were at risk of possible consequence, including that of demotion or termination.”
- “It was by no means a safe or respectful place to work. If you follow the trail of former VPs, Deans and Directors and how and why they were removed from/changed their roles, it would be obvious. As it became more common for people to be removed from positions, more and more staff learned not to challenge authority, share visions, or suggest alternative ways of doing things. Far from a desirable university workplace that should be a model of best practices.”
- “Unfortunately, given the perception of complete control by Senior Management[,], I think that any member of the UPEI community in a potentially difficult situation likely does not feel comfortable bringing issues to the attention of HR staff and/or the Fair Treatment Advocate’s offices for fear of repercussions. The attitude that senior leaders are always watching, unfortunately, exists.”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] We discuss the concerns regarding NDAs in more detail in our “NDA Review” section below.

Many participants raised the issue of reprisal in relation to issues of sexual violence specifically. One participant said, “If you complain, you are harmed by the University.” Another participant described a survivor who was called a “sexual deviant,” “a liar,” and “crazy” by members of the UPEI community. Some participants described a survivor who had experienced reprisal from the University that was “devastating.” Another participant described how a colleague who made a complaint was then afraid to walk alone on campus for fear of reprisal in the form of harassment from other members of the UPEI community. Other participants described situations where those who publicly supported complainants of sexual violence experienced reprisal, such as loss of funding, loss of office or research space, interference in the sabbatical and tenure processes, and/or they were forced to leave the University and/or Prince Edward Island entirely.³¹

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³¹ In its reply, the University noted that there is a rigorous process that is well-defined under the collective agreement for appointments and tenure so it is difficult to understand how such behaviour would go unchecked.

6. Policies and Practices Review

The Fair Treatment Office (also referred to as the Fair Treatment Advocate) and the Sexual Violence Prevention and Response Office (“SVPRO”) are the offices responsible for administering the Fair Treatment Policy and the Sexual Violence Policy, respectively.

Of note, relatively few survey respondents or interviewees commented on the Fair Treatment Advocate or the SVPRO. This is concerning and surprising given the percentage of survey participants who expressed having witnessed or been subject to harassment, discrimination, or sexual violence. Those who did comment expressed concern about the complexity of the processes, a lack of support for participants, and the University’s inadequate follow-up on outcomes. Some expressed mistrust in relation to the processes, and concerns about confidentiality based on their perception that both offices ultimately report into senior leadership at UPEI.³² We heard from some that the policies and processes are overly legalistic and focused on protecting the University’s reputation rather than the interests of participants in the process.

Our review of the University’s policies and practices revealed that: i) the policies are outdated and in need of revision, ii) the offices dedicated to administering these policies are either understaffed and under resourced (SVPRO) or have an almost non-existent presence on campus (Fair

³² We note that during the review, we were advised of a recent arbitration decision which addressed a breach of confidentiality by the Fair Treatment Advocate. In their reply, the University added that the complaint form used by HRA (the organization that conducted the investigation) originally had a place for the complainant to provide an address. In this case, the complainant provided their home address. The practice is that the complaint form is provided to the respondent, consistent with procedural fairness obligations. As a result, the respondent saw the complainant’s address, which is personal information. HRA changed the form to remove the address requirements. The grievance was resolved on that basis.

Treatment), and iii) there is a lack of education and awareness initiatives, particularly for staff and faculty, regarding these policies and issues of harassment and discrimination more generally. We explore each of these areas in further detail below.

a) The Policies

i. The Fair Treatment Policy

The Fair Treatment Policy in essence acts as the University's harassment and discrimination policy. It applies broadly, covering "Everyone who works, studies or visits the UPEI campus." Where the complaint involves sexual violence, the Sexual Violence Policy applies (but, per section 11.1 of the Sexual Violence Policy, complaints of sexual violence against faculty and staff respondents are to be processed in accordance with the applicable collective agreement and/or the Fair Treatment Policy).

The Fair Treatment Policy is outdated and sorely in need of revision. This should not come as a surprise given that the version of the Fair Treatment Policy currently in effect is dated November 21, 2005. Indeed, in the University's own Canada Research Chairs ("CRC") Equity, Diversity, and Inclusion Action Plan, dated October 1, 2021, the Fair Treatment Policy was described as failing "to appropriately acknowledge the importance of intersectionality or historical disadvantage," and it was noted it "does not employ gender-inclusive language, and is heavily focused on harassment."³³

Of further concern, and based on our review, the policy is not fully compliant with the *Workplace Harassment Regulations*, PEI Reg EC710/19, of the *Occupational Health and Safety Act*, RSPEI 1988, c O-

³³ <https://files.upei.ca/research/crc-action-plan.pdf>.

1.01. Again, this is not surprising given that the Regulations came into effect several years after the current version of the Fair Treatment Policy. The Fair Treatment Policy lacks, among other things: a definition of “harassment” that is consistent with the Regulations (section 4(1)(a) of the Regulations); a commitment that the employer shall take corrective action respecting any person under the employer’s direction who subjects a worker to harassment (section 4(1)(d) of the Regulations)³⁴; information or procedures on how to make a complaint to a person other than the employer or supervisor, if the employer or supervisor is a subject of the complaint (section 4(1)(e)(ii) of the Regulations)³⁵; and information or procedures about how the parties will be informed of any corrective action that has been or will be taken as a result of the outcome of the investigation (section 4(1)(e)(iv) of the Regulations). The Fair Treatment Policy also provides parties with the ability to informally resolve complaints. The University may wish to consider whether there are circumstances in which informal resolution should not be available to parties in light of the University’s duty as an employer to ensure an investigation “appropriate to the circumstances” is conducted into a complaint of workplace harassment (per section 6 of the Regulations).

We also note that the grounds of discrimination listed under the Fair Treatment Policy are out of date with the *Human Rights Act*, RSPEI 1988, c H-12. While the Fair Treatment Policy states that, “Any grounds of discrimination added in future to the *Human Rights Act* of PEI are

³⁴ Relatedly, the Fair Treatment Policy also does not contain a statement to the effect that the “employer will take such disciplinary measures as the employer considers appropriate against any person under the employer’s direction who subjects any employee to sexual harassment,” as required for policy statements concerning sexual harassment under section 27(2)(d) of the *Employment Standards Act*, RSPEI 1988, c E-6.2.

³⁵ The policy does recognize the potential for conflicts of interest in the resolution of complaints (see section 10.5.3, 10.5.4, and 11.2.1 of the Fair Treatment Policy), however, these processes could be more clearly delineated.

understood to be included” in the Policy’s definition of discrimination, we nonetheless recommend that a revised version of the policy list the updated grounds.

We understand that, per the language of the Collective Agreement between the University Faculty Association and the Board of Governors, the Fair Treatment Policy cannot be amended without the express written consent of the parties. We further understand that there have been attempts over the years to reach an agreement regarding revisions to the policy; however, these attempts have been to no avail and as such, the policy has been left without revisions for almost 20 years.

It is incumbent on the University to have a policy for addressing harassment and discrimination that is up to date and statutorily compliant. The inability to reach an agreement on revisions for a period of *years*, notwithstanding the widespread acknowledgement that the policy is sorely outdated, is highly problematic. As we heard from one participant, it sends the message that addressing matters of harassment and discrimination is not important to the University. We urge both parties to realize the urgency and primacy of this issue as it impacts the health and safety of the University at large. As we describe in our recommendations below, we suggest that the policy be rewritten in plain language and renamed as a harassment and discrimination policy, and that there be a revised, standalone Sexual Violence Policy covering students, staff, and faculty.

ii. The Sexual Violence Policy

The Sexual Violence Policy has some strengths. Among other things, it is easily accessible online, it acknowledges the existence of rape culture and the fact that individuals with intersecting identities may be more vulnerable

to sexual violence, and overall, it is compliant with the *Post-Secondary Institutions Sexual Violence Policies Act*, RSPEI 1988, c P-11.2. We also commend the policy for including an immunity clause for drug and alcohol use,³⁶ and the lack of any provision that threatens sanctions against complainants for bringing “frivolous or vexatious claims.”

While the Sexual Violence Policy is in better shape than the Fair Treatment Policy, it too requires an update to keep in line with best practices and a trauma-informed approach to sexual violence matters.

As noted in the previous section, the Sexual Violence Policy states that complaints of sexual violence against faculty and staff respondents are to be processed in accordance with the applicable collective agreement and/or the Fair Treatment Policy. It is not clear based on the language of the Sexual Violence Policy whether the other provisions of the Sexual Violence Policy (including those relating to scope, application, and definitions of key terms) continue to apply to complaints against faculty and staff.³⁷ Given the difference in the language of scope and application provisions between the two policies, this confusion is significant and could have a detrimental impact on a complainant. We note that if the definitions under the Sexual Violence Policy apply to University employees, then the policy should be updated to include the definition of sexual harassment provided for under the *Employment Standards Act*, RSPEI 1988, c E-6.2.³⁸

³⁶ The clause states that “A survivor or University community member acting in good faith who discloses or reports sexual violence will not be subject to actions for violations of the University’s policies related to drug and alcohol use at the time that the sexual violence took place.”

³⁷ We note that the Sexual Violence Policy provides that, “In the event of any conflict between this Policy and other University policies or procedures, this Policy prevails.”

³⁸ Section 27(2)(a) of the *Employment Standards Act* requires that a policy statement concerning sexual harassment must contain a definition of sexual harassment that is substantially the same as the definition in section 24 of the Act.

Despite language in the Sexual Violence Policy that requires it to be reviewed once every three years, we understand that the Policy has not been reviewed or revised since its inception in 2018; however, we understand that there is currently a committee in place tasked with suggesting revisions, which will then be reviewed by the Board of Governors. We were provided with a draft revised Sexual Violence Policy dated January 2023. We were told that the draft policy is subject to further changes before being finalized.

We are encouraged that the University has put its mind to revising the Sexual Violence Policy, as it has committed to doing under the current version of the policy. If not already incorporated, we encourage the University to consider our recommendations for revisions to the policy (set out in our “Recommendations” section below), when finalizing their draft.

iii. Other related policies

While we were primarily tasked with reviewing the Fair Treatment Policy and the Sexual Violence Policy, we noted that there were other University policies that reference workplace investigations into harassment and violence. For example:

- The Health, Safety and Environment Policy states that its purpose is to reflect the University’s “commitment to follow its obligations under the *Occupational Health and Safety Act*” and references how the Health and Safety Department and the Joint Occupational Health and Safety Committee will “conduct workplace investigations and safety audits and produce reports.”
- The Violence Prevention and Response Policy details a process for reporting instances of violence (as defined under the PEI

Occupational Health and Safety Act), with all complaints being evaluated by an assessment team (UPEI Security and appropriate administrative authority) regarding further actions.

- The Student Code of Conduct sets out a process for addressing complaints of student misconduct, which is defined under the Student Code of Conduct to include conduct that could constitute harassment or discrimination under the PEI *Human Rights Act*. The Student Code of Conduct provides that the Director of Student Affairs shall appoint and assign an investigator to investigate complaints.

We understand that in practice, neither the Health, Safety and Environment Policy, nor the Violence Prevention and Response Policy have a role in the monitoring or investigation of harassment or violence on campus. With respect to the Student Code of Conduct, we understand that complaints of harassment and discrimination against students are typically resolved informally. Should they proceed to an investigation, these investigations are initiated under either the Code of Conduct or the Fair Treatment Policy. We heard from some of the individuals who have a role in administering these policies that there is at times a lack of clarity around which policy has jurisdiction in any given case, and the process to be followed.

b) Practices

i. The Fair Treatment Advocate

The University has delegated its responsibility for responding to complaints of harassment and discrimination under the Fair Treatment Policy to a third-party consulting firm, HR Atlantic (“HRA”), who acts as the University’s “Fair Treatment Advocate.” HRA is responsible for responding

to inquiries and providing information on the policy, conducting the intake of complaints, as well as facilitating informal resolutions and mediations, and conducting investigations where required (including sexual violence investigations and investigations under the Student Code of Conduct). We recognize that there are some benefits to such an arrangement – in theory, it affords neutrality and impartiality to the process. We found it telling that when asked for suggestions on how to improve the University’s support of its community members when dealing with harassment, discrimination, and sexual violence, numerous survey participants suggested that the University retain an independent third party to deal with complaints. We are concerned that University community members either do not know who the Fair Treatment Advocate is, or they do not perceive the HRA as independent from the University. Either way, this is an issue that should be addressed.

Another consequence of the HRA-as-Fair Treatment Advocate arrangement is that it allows the University’s senior leadership to be “hand’s off” with respect to matters of harassment and discrimination – essentially contracting out of its statutory and policy commitments to create a harassment- and discrimination-free environment. By outsourcing almost all of the complaint process to a third party, leadership becomes removed from what is happening on campus. We were concerned to learn that in the past five years, the Fair Treatment Advocate has not provided annual reports to the President, despite a requirement to this effect under the Fair Treatment Policy. In practice, there is also no “Fair Treatment Advisory Committee” as laid out in the policy (meant to offer advice to the Fair Treatment Advocate on the administration of the policy).

The outsourcing to HRA also means that there is no dedicated, neutral, on-campus presence for individuals to go to with questions and to obtain information about their options under the policy, despite UPEI's website referencing a Fair Treatment "Office."³⁹ While in practice we understand that the Associate Vice-President, Human Resources & Legal, is the on-campus administrator of the policy and can receive complaints under the policy (which are then forwarded to HRA), as we noted above, survey participants felt that Human Resources' interests were aligned with protecting the University's reputation, rather than protecting the safety of its members. This perception may act as a deterrent to University community members reporting complaints.

We were advised by counsel to the University that since 2018, there have been 21 investigations completed under the Fair Treatment Policy, and six informal resolutions. Of the 21 investigations, 11 had "no findings," 7 had allegations substantiated (in whole or in part), and three were discontinued. Where the allegations were substantiated, we requested to know the nature of the sanctions issued against the respondent. We were only advised that, where there were findings of harassment or discrimination under the Fair Treatment Policy, all respondents "were disciplined by the University in response to such findings." As previously mentioned, the University would not provide us with any of these investigation reports, so we are unable to comment on the proportionality of any discipline to the infraction committed, the quality of the reports, and whether they would be viewed as sufficient, should an external legal body, such as a court, tribunal, or arbitrator, have occasion to review them.

³⁹ <https://www.upei.ca/office-vice-president-administration-and-finance/fair-treatment-office>.

ii. The EDI Office

In assessing the practices under the Fair Treatment Policy, we also sought to understand the role of the University's EDI Office, and the relationship, if any, between the EDI Office and the Fair Treatment Advocate.

The EDI Office is relatively new, created in 2019. It is made up of one EDI Officer (the EDI Officer also acts as the Chief Access to Information and Privacy Officer and as the supervisor of the SVPRO manager), and one EDI Employment Systems Advisor, who we understand is tasked with implementing the employment related action items under the CRC EDI Action Plan. Whereas the Fair Treatment Advocate is responsible for investigating individual complaints of harassment and discrimination, we understand that the EDI Office has been tasked with providing high level, strategic guidance to the University on EDI initiatives, and their first major project was to create UPEI's EDI Strategy. We note that many of the EDI "hot spot" areas we identified from our survey and interviews were also flagged in the EDI Strategy, including the challenges faced by international students, historically disadvantaged or marginalized groups, and gender-diverse people.

We were disappointed to learn that the EDI Office is essentially siloed from any Fair Treatment processes. This is perplexing to us given that the Fair Treatment Policy and its Advocate are tasked with investigating complaints of harassment and discrimination. The link between the two appears obvious, and for there to be little or no communication between them creates a disjointed, confusing, and ineffective response to addressing EDI issues on campus. We understand that the University's rationale for this is to protect the confidentiality of the Fair Treatment processes; however, we believe that the logic of this rationale breaks down given that the EDI

Officer also acts as the supervisor of the SVPRO and the Chief Access to Information and Privacy Officer (and therefore understands and respects the importance of confidentiality). While we recognize the importance of confidentiality in sensitive matters of harassment and discrimination issues, it should not be used as a means to frustrate more effective practices.

iii. SVPRO

The current SVPRO “office” is essentially a one-person operation, and there has been some turnover in the role in the past year. The SVPRO manager is currently tasked with:

- receiving disclosures of sexual violence and providing information to survivors on available options
- facilitating accommodations for survivors who have disclosed an incident of sexual violence, including academic accommodations
- conducting preliminary assessments of complaints of sexual violence
- assisting survivors in filling out a formal complaint form
- providing the formal complaint to the independent third-party investigator
- notifying the respondent of the investigation
- providing support to the survivor throughout the investigation, and connecting survivors to other supports on campus and within the community

- receiving the investigation report
- providing sexual violence training on campus

We are concerned that the multiple roles the SVPRO manager is expected to undertake is too much for one person. Some survey participants also echoed this sentiment. As one participant put it, “[...] Sexual harassment and violence have been deeply embedded in the UPEI working culture for quite some time and it was an uphill battle for the one-person SV-PRO to address this adequately and for any significant change to occur.” We understand that, in part to help address the lack of support for the SVPRO in their role, the SVPRO now reports into the EDI Officer (who in turn reports to both the VPAR and the VPAF).

We understand that all sexual violence investigations (regardless of whether the respondents are students, staff, or faculty) are conducted externally by HRA. We understand that HRA has approximately seven professional staff who conduct investigations, some of whom we understand are lawyers. Of those staff, we understand that some are trained in a trauma-informed approach to investigations.

We were concerned to hear that there have only been three completed investigations and one ongoing investigation into student respondents under the Sexual Violence Policy since its creation in 2018 – the number of completed investigations appears low given the number of disclosures of sexual violence to the SVPRO from 2018 to 2021 (59) and the number of reports of sexual violence in these years (13),⁴⁰ as well as what we know

⁴⁰ These numbers were obtained from the SVPRO’s annual reports. The annual reports did not distinguish as to the status of the respondent. Per the UPEI SVPRO website, a disclosure “occurs when a person who has experienced sexual violence confides in someone

generally about the prevalence of sexual violence among students on campus⁴¹ (indeed, as noted above, numerous participants shared details of concerning experiences of sexual or gender-based violence). While we recognize that it is the choice of the survivor whether to move from a disclosure to filing a report and requesting an investigation, we are nonetheless concerned that the limitations of the policy and/or how it is being applied has had a role in the low number of investigations. The comparatively high number of informal resolutions under the Sexual Violence Policy (seven) also raises questions as to whether these informal resolutions were being appropriately entered into given the subject matter.

c) Education and Awareness of Policies

We believe that the effectiveness of the University's policies is being thwarted by a lack of awareness and understanding of them among the broader University community. When asked, almost half of survey respondents to the question said that they were either "not at all familiar" with UPEI's procedures and policy for addressing harassment and discrimination (26%), or "slightly familiar" with them (22.19%). Slightly more than half of respondents to the question said that they were either "not at all familiar" with UPEI's procedures and policy for addressing sexual violence (35.5%), or "slightly familiar" with them (18.65%).

about the experience"; a report "involves an expectation that formal action will be taken against the respondent."

⁴¹ Per a Statistics Canada survey, 71% of students at Canadian post-secondary schools witnessed or experienced unwanted sexualized behaviour in a post-secondary setting in 2019. See *Students' experiences of unwanted sexualized behaviours and sexual assault at postsecondary schools in the Canadian provinces, 2019*, by Maria Burcycka, September 14, 2020, <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2020001/article/00005-eng.pdf?st=1rCLHAs7>>.

As previously mentioned, the SVPRO appears under resourced such that either of the “prevention” or “response” aspects of the role may take a backseat to the other. We were encouraged to see the number of training sessions reported to have been provided by the SVPRO between 2018 and 2021, and it appears that the office has a solid foundation of training material; however, we note that the majority of attendees to the SVRPO sessions and events were students, and not faculty or staff.

The education and awareness component under the Fair Treatment Policy also appears limited to an optional series of learning sessions directed at supervisors. While we understand that the EDI Office is also tasked with providing training and resources to faculty, students, and staff on EDI issues, and has a strong commitment and desire to do so, the office is currently under-resourced such that it cannot meet these demands. It is not surprising then for us to have heard from numerous survey participants that they had received no information or training on either policy. Without adequate education and awareness, University community members may not know what harassment, discrimination, fair treatment, and sexual violence is, or how to appropriately respond when it happens to them or others.

7. *NDA Review*

We were asked to examine the use of NDAs by the University to determine the rationale behind their use. This comes on the heels of PEI passing the *Non-Disclosure Agreements Act*, which restricts the use of NDAs in harassment and discrimination cases.

Our review of the University’s use of NDAs was challenging for a few reasons. First, as indicated at the outset of the report, we did not have

complete sight as to who had signed NDAs and under what circumstances. Second, several individuals whom we understood had an NDA with the University were either unresponsive, told us that they did not have an NDA, or were not willing to speak with us because of the very fact of their NDA. That said, we have some observations about their use based on the content of the agreements provided to us, the views of those individuals we interviewed who said that they were signatories to these types of agreements, the perceptions of the wider University community about their use, as well as what the University told us.

a) Content of the Agreements

We were advised by a senior administrator at the University that UPEI has used NDAs on the advice of their counsel, and that such agreements are drafted by that person. We were also told that these agreements are normally used when an employee is terminated. The senior administrator advised us that the NDAs are in the best interests of the parties. On the one hand, it protects the University, as the signatories to the agreement agree not to speak about the “situation that occurred.” On the other hand, the departing individual also is protected because the University is precluded from speaking about the issues that led to the departure. In its reply, the University also offered their view that these agreements are extremely common when an employer terminates an employee or settles a claim in exchange for money, and that the language in the NDAs used by the University was standard and what would be expected from agreements of this nature.

In response to our request for copies of all NDAs entered into by UPEI in the last 10 years, the University provided us with 29 redacted “Minutes of Settlement,” spanning from 2012 to 2021. Of the 29 agreements provided,

some of these included both the “Memorandum of Agreement” (sometimes referred to as the “Memorandum of Settlement”) and an accompanying “Release & Acknowledgment” form, while others either only had the Memorandum of Agreement or only the Release & Acknowledgment. Based on our review, it appears that most of the agreements were signed upon the termination or resignation of an employee, although in some instances they appear to have been in settlement of a grievance or a human rights complaint (with the employee appearing to continue as a member of the University community).

In its reply, the University noted that 10 of these agreements were signed with the involvement of the employee’s union, and two others indicate that the employee had engaged counsel and that all signatories had opportunities to be represented.

The Memorandums of Settlement that we reviewed often contained a clause requiring the parties to keep confidential the fact of and terms of the settlement. At times, but not always, this clause allowed for disclosure to the employee’s “immediate family, legal and financial advisors, or unless required by law.” There were only two instances in which the agreements (or the section of the agreement that we were provided) did not include some form of a confidentiality clause.

Where the signatory to the agreement appeared to have been terminated by the University, the Release and Acknowledgement forms we reviewed often also included a clause in which the employee agreed not to file a complaint under the provincial *Human Rights Act* or other applicable human rights legislation. This clause often included the following language: “I acknowledge and agree that the Terms of Severance include compensation

for any alleged discriminatory treatments or actions that I feel may have taken place during and upon termination of my employment.”

Additionally, where the signatory to the agreement appeared to have been terminated from employment, the Release and Acknowledgement forms included a broadly worded provision that the employee agreed not to disclose any confidential information relating to the University obtained during the course of their employment. An example of the language used is as follows:

I acknowledge that, during my employment, I had access to confidential information relating to all aspects of the business of the Releasees, the disclosure of any of which to the Releasees’ competitors, customers, or the general public would cause irreparable harm to the Releasees. For the consideration stated in this Release and Acknowledgement, I agree not to disclose to any person or corporation, at any time, any information relating to the Releasees, except as authorized in writing by the Releasees, or required by law. I agree to forthwith return to the Releasees all confidential information relating to the Releasees (including all notes, records and documents pertaining thereto) in my possession. I acknowledge that a breach of this provision is actionable by the Releasees, and that injunctive relief is an appropriate remedy for any such breach, because of the irreparable harm which would result from disclosure of confidential information.

Six of the 29 agreements include a reference to the resolution of a human rights complaint to the Human Rights Commission and/or a complaint under the Fair Treatment Policy as a term of the settlement agreement.

We noted the following with respect to the terms of some of these agreements:

- In one instance, the agreement included a provision that the complainant would withdraw their complaint to the Human Rights Commission, along with a provision not to “disclose, directly or indirectly, the fact or contents of this Memorandum of Settlement to any person,” unless required by law or in four enumerated circumstances, including disclosure to the HR Committee of the Board of Governors, and disclosure to the employee’s immediate family, legal and financial advisors.
- In another instance, the complainant agreed to withdraw their human rights complaint and acknowledge that the University’s Fair Treatment process was at an end. The parties agreed to “keep the fact and terms of this Memorandum of Settlement, including the documents made pursuant to it, confidential and shall not disclose same to anyone, with the exception of their respective advisors and immediate family, without the prior written consent of the other party or unless required by law.” The accompanying Release & Acknowledgment form contained similar language that the signatory “shall not disclose, directly or indirectly, the fact or contents of the Terms of Settlement, any documents related to the Terms of Settlement, or this Release & Acknowledgement to any person, with the exception of my immediate family, legal and financial advisors, or unless required by law.”
- In a third instance, relating to the settlement of a grievance regarding how the University addressed their complaints of harassment and discrimination, the agreement simply states that “the terms of this settlement shall be kept confidential.” One of the terms of settlement reads, “The University regrets the comments made to [redacted]

regarding the possibility that allegations could be brought against [them]. In making the comments, the University was attempting to reduce and address the workplace conflict that had been raised by [redacted].”

- In another instance where the parties settled a Human Rights Commission complaint and a Fair Treatment complaint (among other claims), the agreement included the following non-disclosure language: “The Parties shall keep this Memorandum of Settlement and all further assurances, and the terms thereof, strictly confidential. Except as provided herein, the Parties shall not communicate or disclose the particulars of the Complaint, this Memorandum of Settlement, any further assurances, and any of the terms thereof, with any other person, except as required by law.” The settlement contemplated a lump sum payment to the signatory.

[REDACTED]

b) Views of Signatories to NDAs

We were able to speak with 13 individuals who identified themselves as having been signatories to a settlement agreement with a confidentiality clause with the University, or with the Fair Treatment Office on the University’s behalf.

These individuals said that they signed their agreement upon their termination or resignation from the University and/or further to a settlement of a dispute or a complaint that they made. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Another individual shared that they and other colleagues in their department were the victims of “trumped up” Fair Treatment investigations, to force them out of their jobs. They said that they were told by senior administration that if they did not accept a severance package and sign a confidentiality settlement, more complaints about their conduct would follow.

Two of the signatories we spoke with said that they entered into settlement agreements with confidentiality clauses with the University, or with the University’s Fair Treatment Office on behalf of the University. We understand that one of their complaints was investigated by the Fair Treatment Office, and the other was informally resolved by the Fair Treatment Office with a settlement agreement. Both signatories named the same employee of the University as the respondent to their allegations (it was not the former President). Their allegations involved concerning behaviour of assault and threats by the respondent towards them. One of these individuals expressed concern that the terms of the settlement were confidential and would not appear in the respondent’s employee personnel file. This individual worried that there was a pattern of misconduct with this

respondent, and that separate settlement files meant that the respondent's conduct was hidden, and that other individuals continue to be at risk.

Some individuals used the language of feeling "forced" or required to sign their NDA with the University [REDACTED]

[REDACTED] One individual described how they sought legal advice in respect of the agreement but were told by their lawyer that it was "not worth fighting." Another individual described not having the stamina at the time to fight the NDA.

[REDACTED]

In terms of the impact of these NDAs, one individual spoke of feeling embarrassed, and the frustration of wanting to tell people what happened and not being able to. This individual said that it detrimentally impacted their reputation within the community. Some of the other individuals with whom we spoke told us that they were still concerned about the

42 [REDACTED]

confidentiality conditions of their agreements years later, and unfortunately, because of the terms of their NDAs, they still did not feel comfortable speaking with us in any further detail about what had occurred.

We also spoke with some former employees who were thought to have NDAs by others but who told us that they did not in fact have one. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Another individual told us that they were given a termination agreement with an NDA clause, but after receiving legal advice, refused to sign it.

c) Perceptions of Survey Participants

Some survey participants acknowledged that the use of NDAs, sometimes referred to as confidentiality agreements, were appropriate in certain circumstances, such as when there is a need to safeguard proprietary or confidential information related to a signatory's prior employment at UPEI.

That said, we heard from many individuals in this process that the University's use of NDAs has contributed to a climate of fear, and a loss of trust in senior leaders and/or the Board of Governors. We heard from many who believed that the University's use of NDAs may also have served to protect those who have engaged in wrongdoing, in particular, serial offenders. One participant noted that:

After hearing about UPEI using non-disclosure agreements to silence sexual harassment victims, I really don't think UPEI has created a safe, respectful, or positive environment. They created a safe haven for sexual

predators and bullies. It's terrible to think of people keeping their jobs after harassing another person in that way, and they could possibly do it again. Or do something worse.

[REDACTED]

d) Response from the University

The University rightly observes that it is difficult for it to respond to the views described above because it does not know who these individuals are, and it has not been presented with the particulars of their circumstances. Again, this is because of the confidentiality and anonymity provisions of this process. It did advise of the following in addition to what has been noted above:

[REDACTED]

It added that careful consideration goes into all terminations and many factors are weighed to ultimately make a determination about what is best for the organization.

It also denies that it used settlement agreements instead of conducting investigations into wrongdoing. It emphasizes that complaints are systematically investigated under its policies and in accordance with the *Occupational Health and Safety Act*.

Lastly, it notes that since 2011, there have been approximately 425 employees who have left the employ of the University, and the majority of those retired. Of those remaining, 18 were terminated, and 144 resigned. It says this is a turnover rate of 4.5% and that a turnover rate of 10% is considered healthy for an organization. It says that there is no indication that a disproportionate number of people left the University as a result of the former President.

e) Observations

As part of the Terms of Reference, we were asked to consider the “rationale” behind the University’s use of these agreements. The plain and obvious rationale, intrinsic to NDAs themselves, is to enforce silence from departing employees or survivors of abuse such as harassment and sexual violence.

Beyond that, we are limited in what we can say specifically, because we have the views of a number of signatories, the opinions of some participants, and only very general information from the University by way of response.

We can, however, make some observations about the typical use of NDAs by institutions. To begin, requesting that parties maintain confidentiality regarding certain terms of an agreement is not in itself always problematic. Indeed, there may be legitimate uses for confidentiality provisions where both parties are intent on keeping private certain aspects of their agreement, for example financial terms relating to the termination of employment. In addition, confidentiality provisions can be used to maintain the confidentiality of trade secrets or the proprietary information of an employer. Often these provisions appear in a written employment agreement between the parties, or in a policy to which employees agree.

Non-disclosure agreements are broader than confidentiality provisions and relate to the terms of an overall settlement agreement. Until recently, it was not uncommon for institutions (and their lawyers) to use “boilerplate” NDA language to include a provision that, for example, a departing employee was not to disclose *the fact of* or the terms of the settlement agreement. It is our observation that this “fact of” language is increasingly falling into disuse. As it is the institution that asks for this language, it can be viewed as being excessively controlling. Moreover, it can be detrimental to a departing employee, who may need to be able to disclose the fact of the settlement in order to gain new employment in many instances. In other circumstances, the “fact of” language can serve to help the employer “camouflage” that it has made a payment to a departing employee in circumstances where the employer may not want it known that there was a settlement or severance payment.

Additionally, it is our view that in 2023, it is entirely inappropriate for anyone, and in particular, an institution of higher learning, to insist upon the use of an NDA in relation to the facts underlying a claim of harassment, discrimination, or sexual violence. The events that happened to the survivor are their story, and it is part of their personal agency to be able to control when, or if, they disclose the facts of their abuse to anyone else. It is inappropriate to compel silence from survivors. The institution, in making a settlement, is compensating the individual for the harm they have suffered. It should not be buying survivors’ silence.

8. Recommendations

It is our view that the University must take immediate and decisive steps to ensure that the experiences of all its members, as well as its policies and practices, align with its stated values and its legal obligations to provide an

educational and work environment free of harassment and discrimination, and that is respectful, fair, and inclusive. The problems described in this report are dire, and the University will need a comprehensive plan to address the many issues that require remediation. That plan will need the input of many stakeholders within the University, such as the Faculty Association, as well as additional external expertise. We cannot, ourselves, provide a sufficiently broad and detailed roadmap of the kind that is needed here.

Nevertheless, there are recommendations that, in our view, naturally flow from the results of our review, that we can put forward as a starting point. These are aimed at ensuring that the University provides its community members with a safe environment for working and learning, and enhancing the University's response to harassment, discrimination, fair treatment, and sexual violence.

a) Accountability and Acknowledgement

i. Make the report the public

The Terms of Reference included the following provision about the final report:

(It) will be submitted to the Executive Committee of the Board. A high-level summary of the findings and recommendations of the Review, with appropriate redactions in accordance with applicable law to protect individual privacy will be released to the community. In preparing the report, the Reviewer should assume that part or all of the report will become public.

We recommend that the University make the report itself public. In circumstances such as these, where there is a high level of interest in PEI

about this process, a high-level summary will be insufficient. The University occupies an important and public role in delivering post-secondary education on the Island, and this public interest is legitimate in our view.⁴³ Moreover, as we have noted, numerous participants expressed that there is a lack of transparency and accountability for wrongdoing at the University. We are concerned that simply advising the public that the University has received the report or providing a high-level summary with nothing significantly more substantive, will only energize those concerns.

To satisfy our mandate, we have included information in this report that is personal, and/or renders an individual identifiable, or might present legal issues if disclosed publicly. Therefore, we anticipate that the University will need to redact sections of the report that fall into this category. On its part, we hope that the public and the media will accept and understand that in a report of this kind, some redactions are necessary and inevitable, to provide a balance between the protection of privacy on the one hand, and public disclosure on the other.

ii. Publicly acknowledge there is a serious problem and undertake to fix it

We recommend that the University, and in particular, the Board of Governors, publicly acknowledge that there is a serious problem at the University and undertake and set out its plan to fix it.

At the outset of this report, we noted that the University has stated that one of its key values is the “fair treatment of all persons” and that its policies

⁴³ We have received regular inquiries from the media as to the status of this report, and our anticipated findings.

contained commitments to protect members of its community from discrimination, harassment, and sexual violence, among other things.

Given the results of this review, it is crucial for the University to restate its commitment to these values and set out a concrete action plan to address the deficiencies identified in this report. This action plan should have specific objectives, milestones, and a timeline so that the University's progress can be measured, and the University held accountable. It is our view that this action plan, with regular updates from the University, be made public.

iii. Annual audits to measure progress

To enhance accountability, and to ensure that it is making sufficient progress on the issues identified in this review, we recommend that the University engage in audits to assess its execution of its action plan, and its progress (or lack of it) annually for the next five years. We further recommend that the results of these audits be made public.

We make this recommendation for two reasons: First, there is a disconnect between the views of many at the University about the current environment (as evidenced in the themes identified in this report) and the apparent confidence that the Board of Governors has regarding the current state of affairs. We note that as part of this process, we interviewed various members of the Executive Committee of the Board and asked them to “rate” the University's performance vis-à-vis creating a fair environment that is free from discrimination and harassment. Their own assessments were consistently 7 or 8 out of 10. This is clearly at odds with what we heard from many participants in this process.

Second, as we have reported in this review, there is evidence of low trust in University leadership, including the Board of Governors. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In these circumstances, and with due respect to the Board of Governors, we query whether they will be seen by members of the University community as being able to effectively monitor the University's progress on remedying the issues identified in this report. We believe that an auditor outside of the University is better positioned to execute this task.

Our preferred choice is for this to be done by a senior member of the Department of Education and Lifelong Learning, appointed by the Minister. However, we have not inquired of the Minister if this is possible. If it is not, as an alternative, the University may select its own auditor, or audit committee, that should be arm's length to the University.

b) Strengthen Leadership

i. Selection of the next President and review of their performance

We recommend that the criteria for selecting the next President include that the successful applicant have (among other things):

- A clear vision of how to address the issues contained in this report
- A demonstrated ability to manage change

- A deep understanding of workplace fairness, harassment, discrimination, diversity, equity, and inclusion as well as a demonstrated commitment to these issues

The cultural tone of an institution, as well as its values, is often set from the top. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, it is absolutely essential that the next President's credentials in this regard be impeccable.

We also recommend that applicants for the position – whether internal or external – be thoroughly vetted to ensure that they have conducted themselves, throughout their career, in a manner that is consistent with the University's aim of creating a respectful environment free of harassment and discrimination. While we believe that these are important qualities for anyone working at the University in 2023, including the next President, we believe that they are non-negotiable for anyone who will be working closely with the next President as part of their leadership team.

Moreover, when assessing the President's performance, it is critical that their ability to honour the University's commitments to equity, diversity, and inclusion be assessed as well as their ability to model respectful and collaborative behaviour. It is our view that any breach of the University's value of inclusion, equity, and reconciliation should disqualify the President for continued employment and/or renewal of their terms of appointment.

[REDACTED]

[REDACTED]

ii. Refresh membership of the Board of Governors and enhance oversight on key issues identified in this report

We recommend that as vacancies occur, the membership of the current Board of Governors be “refreshed” with new people.

As the University has pointed out, most current members of the Board of Governors were not members when the former President’s tenure was renewed in 2015 and 2018. Nevertheless, in our discussions with participants, there was little recognition that there was a distinction between the “old” Board membership and the current one, and as we have noted, there is evidence of low trust in the Board in general.

To renew its commitment to its underlying values and principles that we identified at the beginning of this report, we believe that the University would benefit by the addition of new voices and perspectives at the governance level.

While recognizing that the Board of Governors cannot run the University, and has an oversight function only, we do recommend that it engage in enhanced oversight of the University’s actions with respect to its EDI Strategy, the progress of the initiatives under this strategy, and be more probative regarding the nature and number of complaints regarding harassment, discrimination, and sexual violence being received by the University. As previously noted, we recommend that the Board be informed of the terminations and resignations of individuals to ensure that problematic behaviour is not being “swept under the rug.”

We also recommend that any Board member who has not had governance training, or harassment/discrimination/respect at work and EDI training at all, or within the last two years, obtain it to enhance the Board's overall skill and expertise. This would extend to any new Board member appointed.

iii. Leadership training

We recommend that those in leadership roles within the University, receive leadership training.

During this review, we were struck by how often participants told us that those in authority, such as managers administrators and senior leaders had not only failed to cultivate an environment of respect and inclusion, but had themselves, contributed to, or were aware of, toxic and problematic behaviour.

We see this as a failure of leadership, and again, inconsistent with the University's stated values.

Given the various leadership deficits we heard, we imagine this training to focus on the human aspect of leadership, and include how to respectfully manage professional relationships, including teams, how to build and maintain a positive working and educational culture, and developing emotional intelligence, among other things.

c) Other Cultural Initiatives

i. Create a culture of listening

We recommend that the University take steps to create a "culture of listening," in which it regularly solicits and listens to information from its employees and its students as to their experiences within the institution.

While the University has a mechanism to receive complaints, we do not believe this is enough. For reasons we heard throughout this report, employees and students are generally hesitant to make a complaint. We know from our experience, that bad behaviour such as harassment and discrimination often go underground and remain so. Indeed, if an institution is waiting for its employees or students to tell it when things go amiss, it will likely be waiting for complaints that rarely or never come.

We believe this to be the case in this review. Participants were prepared to share their experiences with us as we asked, and they were able to do so in a confidential environment, with a third-party neutral. We also believe that much of what is contained in this report, would have been otherwise unavailable to the University.

In our view, the University will need to set up systems that are geared towards *asking* employees and students about their experiences, not just reacting to information when it comes to it as a complaint. One organization we are aware of, the MaRS Discovery District, does this by striving to create a “culture of listening.”⁴⁴ It engages in an annual survey of its employees that measures their experiences in terms of leadership, connection, wellbeing, inclusion, and engagement. It also uses period “pulse surveys” to gage the wellbeing and climate of smaller groups.

Other aspects of creating a culture of listening that could be included are exit interviews to determine why employees are leaving and what their experiences at the University had been, and 360 reviews of managers and leaders, among other things.

⁴⁴ We have referenced this organization with their permission.

ii. Public awareness campaign

We recommend that the University commit to a public awareness campaign to ensure that all members of its community understand the expected behavioural standard (training on harassment, sexual violence, discrimination, respect at work, EDI and related issues), the various relevant policies and practices, where to complain in the event of a breach, and where to obtain support. Paired with the culture of listening we recommend above, a public awareness campaign actively works against the “code of silence” or “culture of silence” that we heard about from participants in this process. It would hopefully encourage dialogue and open discussion among the University community about issues of harassment, discrimination, and unfair treatment that may otherwise have been driven underground.

We were struck by the types of experiences employees and students described to us, that, assuming were true, consisted of serious acts of harassment and discrimination. We believe that it is time for the University to broadcast the behavioural standard expected across the institution, and, in so doing, clearly communicate what behaviour is expected to create a fair and inclusive environment consistent with its values.

d) Improve Policies and Practices

i. Restrict the use of NDAs

We recommend that the use and content of NDAs and confidentiality clauses in relation to allegations of harassment, discrimination, and sexual violence be restricted, unless a signatory wishes one to be used. We note that any use of such agreements must follow the parameters set out under PEI’s *Non-Disclosure Agreements Act*.

We further recommend that the form of agreements used by the University be reviewed, and any “fact of” language be removed. Given the views of signatories and participants contained in this report, we recommend that the University revisit whether it has used NDAs to informally resolve or mediate complaints about wrongdoing. Based on what we heard during this process, we are concerned that these agreements may have been used to sweep problematic issues “under the rug” without proper probing and investigation. We recommend that if they are not already doing so, the Board of Governors monitor all terminations and resignations for the foreseeable future, to satisfy themselves that NDAs are not being used in this way.

ii. Review of climate and management practices

We recommend that the University review the climate and management practices in those areas of the University where concerns of bullying and harassment were mentioned most often. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iii. Improve practices related to addressing harassment and discrimination

A. *Create an on-campus equity, diversity, and inclusion office*

We recommend that the University create an on-campus equity, diversity, and inclusion (“EDI”) office.

We understand that there is currently an EDI Officer at UPEI, who also acts as the Chief Access to Information & Privacy Officer, and one EDI team member tasked with implementing the employment-related action items of the CRC EDI Action Plan. While this is technically referred to as an “EDI Office,” these are very limited resources – especially where the EDI Officer is dividing their time alongside another function (and we note that the risk management function of the Information & Privacy role may be perceived as in conflict with an EDI role). Given the seriousness and scope of the EDI issues identified by numerous participants, additional resources must be dedicated to enhancing EDI awareness, support, and response at the University. To that end, we recommend a true EDI office on campus, with a full-time, dedicated EDI director and multiple staff members.

As we describe below, we envision that the EDI office would be responsible for administering a revised harassment and discrimination policy, which would replace the outdated Fair Treatment Policy. The role of the Fair Treatment Advocate/Office would also be replaced by the EDI office (with alternative dispute resolution processes and investigations outsourced as necessary).

The EDI office should:

- Be responsible for educational and awareness initiatives on campus. We recommend University-wide training on cultural sensitivity, gender bias, microaggressions, conscious and unconscious bias, and bystander intervention.
- Collect relevant data in relation to EDI issues so that the focus of any initiatives can be data driven. We specifically recommend that the EDI office be transparent regarding any progress made in relation to the University's EDI Strategy.
- Report directly to the President and the Board of Governors and make regularly scheduled reports to the Board of Governors.
- Address some of the “hot spot” areas identified in this report by:
 - Improving access to accommodations for individuals with disabilities and identifying and addressing accessibility issues.
 - Identifying and removing barriers faced by Indigenous members of the University community.
 - Working collaboratively with the International Student Office to ensure international students are adequately supported during their transition to UPEI and throughout their time at the University.
 - Helping improve supports for LGBTQ2+ community members, including the creation of “Positive Spaces” on campus and dedicated LGBTQ2+ on-campus resources.

We understand that many of the above areas have been recognized and identified in the EDI Strategy. We encourage the EDI Office to continue developing initiatives to address their commitments to these areas outlined in the EDI Strategy document.

- Have primary responsibility for the administration of a revised harassment and discrimination policy (described further in the next section). The EDI office should include a “Human Rights and Equity Advisor,” or a similarly named role, to act as intake and support for those making complaints under a revised harassment and discrimination policy (including both *Code*-based and personal harassment concerns).
- The EDI office should have some internal capacity for informal resolution and conflict management.

B. Create a new harassment and discrimination policy

We recommend that the University create a new harassment and discrimination policy.

As described above, the Fair Treatment Policy is very outdated. We recommend that it be rewritten in its entirety, and that it be replaced with a comprehensive harassment and discrimination policy that covers all University community members and which reflects the updated structure of an EDI office for addressing complaints detailed in subsection A) above. In addition, we recommend that:

- Any revised policy should be drafted in conformity with the Workplace Harassment Regulations to the provincial *Occupational*

Health and Safety Act and the *Employment Standards Act* (which prescribe mandatory elements of the content of policies on workplace harassment and sexual harassment, respectively).

- The policy should contain a carve-out for matters of sexual violence (to be addressed under a revised Sexual Violence Policy). The policy should recognize instances where the policies cannot be separated and should advise how to proceed in those cases.
- The scope of the policy should be written so as to capture conduct (including off-campus conduct) that has a nexus to the University and/or could have a material negative impact on the working and learning environment.
- The time limit for bringing forward a complaint should be extended beyond 6 months to at least one year.
- The policy should have one definition for each key term (including harassment, sexual harassment, and discrimination), and these definitions should be consistent with (and reference) the occupational health and safety legislation, the *Employment Standards Act*, and the human rights legislation of Prince Edward Island.

As is the process in other Canadian universities, we envision that a revised harassment and discrimination policy would also identify “decision-makers” who would hold responsibility for key procedural decisions under the policy, such as authorizing interim measures, and reviewing and responding to investigation reports. The policy should clearly identify who the appropriate decision-maker is, based on the status of the parties (for example, if the respondent is a student, the decision-maker is VPAR, etc.).

Given the distrust we heard from survey participants towards certain members of University leadership, there should be a mechanism in the policy that allows the complainant or the respondent to request an alternative decision-maker if they feel the applicable decision-maker has a conflict.

The new harassment and discrimination policy should also acknowledge that harassment and discrimination can be systemic in nature and provide a mechanism for the University to investigate or make inquiries into such issues either with or without a formal complaint.

C. Use a variety of external investigators

We recommend that the University use a variety of external investigators.

We agree with UPEI continuing to outsource the investigation of complaints of harassment and discrimination to external investigators, absent an internal capacity to do so.

Given that we were unable to review the investigation reports prepared by HRA, we are unable to comment on the quality of the investigations conducted. Based on the information provided to us by HRA regarding their process, we believe that they are likely conducting procedurally fair investigations; however, we would encourage the University's legal counsel to conduct their own audit of their reports to satisfy themselves that they are legally defensible.

██
██
██ UPEI should employ a variety of

external investigators to combat this perception or provide parties with an ability to request an alternative external investigator.

iv. Improve practices related to addressing sexual violence

We recommend that the University improve its practices relating to addressing sexual violence.

A. Additional resources

In addition to an EDI office, there should be a centralized office on campus responsible for administering the Sexual Violence Policy. While this currently exists to a degree, the SVPRO role is occupied by only one individual (who reports into the EDI Officer).

To function effectively, the SVPRO requires more resources than a one-person operation. Some of these resources must be dedicated to awareness and education initiatives regarding sexual violence on campus, the content of the policy, and how to appropriately respond when a disclosure of sexual violence is made. We recommend that the University consider separating out the two roles – such that there is someone (or a team) responsible for sexual violence prevention and someone (or a team) responsible for sexual violence response. Allocating dedicated resources and funding to the SVPRO will also send a strong message to the University community that the office was not created to just “check a box” or as a “PR move” (as it was described by some survey participants).

B. Education and awareness

We understand that the SVPRO is in the process of creating mandatory training on consent for its first-year students. We recommend that the

SVPRO make this a priority, and that the training include an explanation of how to make a disclosure or report of sexual violence.

We recommend that mandatory training on the Sexual Violence Policy be extended to staff and faculty, adapted to these specific roles. We also recommend that UPEI consider how this type of training can be incorporated into its onboarding process for new faculty and staff. To the extent that mandatory training to staff and faculty is not feasible, we recommend that the policy be revised to include language that strongly encourages all members of the University community to be knowledgeable about how to appropriately receive and respond to a disclosure of sexual violence, and provides clear guidance to faculty, staff and students on how to respond in a trauma-informed way if someone discloses an incident of sexual violence or harassment to them.

C. Coordinated response team approach

The Sexual Violence Policy should provide for a coordinated response team approach to support the SVPRO in making decisions related to disclosures and reports of sexual violence – including decisions regarding whether the complaint meets the jurisdiction of the policy, whether and what interim measures should be imposed, whether the University should initiate its own investigation absent a formal complaint, whether a University investigation should be paused pending a criminal investigation, and what sanctions, if any, to impose where the allegations are substantiated.

The response team can be comprised of members of the University community with the requisite expertise, including the SVPRO manager, a representative from Student Affairs or Human Resources as applicable, an EDI representative, the applicable VP, and outside legal counsel as

necessary. We feel that this approach will not only provide much needed support to the SVPRO, but it will also create accountability in decision-making, which survey participants felt was lacking.

D. Physical location of the SVPRO

We understand that the SVPRO office is currently located on the third floor of the Kelley Memorial Building, an administrative building. Although we understand that the location provides a confidential space, we heard feedback that it was difficult to find, isolated, and felt shameful or hidden. The University should consider whether there is a location on campus that would be more accessible and visible to students, while still ensuring confidentiality.

E. Increased support for parties

The University should consider how respondents to sexual violence allegations will be adequately supported throughout the process, and whether this dedicated support resides within the SVPRO or another office, such as Student Services or Human Resources. The policy should then be updated to reflect this.

We also recommend that the University strengthen support for parties at the end of an investigation process. We understand that HRA notifies the University administrators one day in advance of sending their investigation report as to whether the allegations have been substantiated. We feel that it would be consistent with a trauma-informed approach for advance notice of the delivery of the investigation report be given to the parties as well. Alternatively, the reports could be shared with the SVPRO and the respondent's dedicated support, who can then share the reports with the

parties, so that the parties are not receiving a lengthy report out of nowhere, which, depending on outcome, could be quite upsetting.

v. Revise the Sexual Violence Policy⁴⁵

We recommend that the Sexual Violence Policy be revised. While there are strengths in the current Sexual Violence Policy, sections of it should be updated to keep in line with evolving practices related to post-secondary sexualized violence prevention, awareness, and response. We recommend the following:

A. Structure of policy

- There should be one standalone policy that applies to students, staff, and faculty (and the Sexual Violence Policy should no longer reference the Fair Treatment Policy for processes related to staff and faculty). The policy can map out separate processes and decision streams depending on the status of the respondent, similar to the sexual violence policies of McMaster University and Dalhousie University.

⁴⁵ We wish to acknowledge the following resources, which we relied upon in making these recommendations: Joanna Birenbaum and Karen Busby (2020), *Achieving Fairness: A Guide to Campus Sexual Violence*, Carswell Thomson Reuters; Khan, F., Rowe, C. J., and Bidgood, R. (2019). *Courage to Act: Developing a National Framework to Address and Prevent Gender-Based Violence at Post-Secondary Institutions in Canada*. Toronto, ON: Possibility Seeds; Students for Consent Culture Canada, Appendix C: How to Grade Your Own Policy (“Policy Score Card”) (https://static1.squarespace.com/static/5bc4e7bcf4755a6e42b00495/t/5cef3cc135897a0001dc3f2f/1559182530259/SFCC_appendixC_en_final.pdf), October 2017; CUPE, Guide for Post-Secondary Institutional Policies on Sexual Violence and Harassment (<https://cupe.ca/guide-post-secondary-institutional-policies-sexual-violence-and-harassment>), November 2021.

B. Definitions and scope

- The definition of “sexual harassment” should be reviewed to ensure compliance with the provincial *Employment Standards Act* and the Workplace Harassment Regulations under the *Occupational Health and Safety Act*.
- The policy’s definition of University “community members” should be more broadly defined; for example, by expanding the categories of individuals defined as “community members” and/or by more broadly defining the situations in which the policy’s jurisdiction applies.
- Further to the previous bullet point, the policy should clarify and strengthen its application to off-campus conduct, to address instances where the conduct has had a material negative impact on the living, learning, or working environment at the University.
- The policy should be more flexible vis-à-vis complaint processes when the respondent ceases to be a University member and permit the University to continue the process or take other steps as appropriate to safeguard the community.
- Keeping with current trends in this area, the University may wish to consider implementing a prohibition on consensual romantic and/or sexual relationships between faculty and students where there is some form of supervisory or reporting relationship between them.

C. Preliminary issues

- The policy should allow for interim measures absent a formal complaint, in a manner that is procedurally fair to the individual against whom the allegations are being made.
- The policy should be explicit that parties be given written notice of any interim measures, and that there will be practices in place to regularly review the interim measures.
- The policy should clearly state what factors to consider in conducting an initial assessment of the complaint.
- The policy should allow for third party reports and anonymous reporting.
- The policy should provide processes for addressing multiple disclosures about the same person. We heard from several participants about sexual violence committed by repeat offenders who remained part of the UPEI community despite multiple complaints against them.
- The policy should address conflicts of interest by acknowledging that there may be situations in which the person who normally has responsibility for some aspect of the policy should not be involved due to a conflict and provide for alternatives.
- The policy currently uses the terminology of complaint, report, and disclosure. While “report” is an umbrella term used to encompass formal complaints and other methods of reporting an incident to the SVPRO, to make the policy less confusing and more reader-friendly,

we suggest limiting the terminology throughout to “report” and “disclosure.”

D. Informal resolutions

- This section should be renamed as “alternative resolutions,” which contemplates restorative practices, healing or peacemaking circles, transformative justice, etc., but should not include mediation.
- The policy should include certain preconditions or criteria before a report of sexual violence is considered suitable for alternative resolution.

E. Investigations

- The policy should require that any investigator be culturally competent and trained in a trauma-informed approach to investigations.
- The policy should incorporate language that prevents investigators from asking complainants irrelevant questions about their sexual history.
- Where a University process is suspended pending a criminal investigation, the policy should require the respondent to update the University of any conditions of release or related orders, or disposition of charges.

F. Appeals

- The policy should allow parties to appeal findings on the ground of “new evidence that could not have been reasonably presented earlier.”
- The policy should provide that the appeal panel include an independent third-party member.
- The policy should require that the appeal panel provide written reasons for their decision.

G. Data and reporting

- The policy should provide for a fuller collection of data and statistics, specifically laying out what data is collected, how the data is collected, who it is shared with, and for what purpose.

9. Final Comments

What we heard during our review was troubling. While the information we gathered about participants’ experiences did have some positive elements, an overwhelming number of survey participants made comments to the effect that UPEI has a toxic and/or bullying environment. In addition, the environment was described as one in which there are frequent racist, sexist, ableist and heteronormative behaviours. The number of participants who expressed a negative view of the University or shared problematic experiences should raise alarm bells and spark urgent action.

Moreover, there was a sense from participants that the most senior levels of the University’s leadership were more interested in protecting themselves and the University’s reputation, than taking accountability for and



addressing these concerns. The perception that the University “brushed things under the rug” has led to a deep mistrust of leadership among University community members.

We also found that the University’s policies and practices are outdated and/or in need of revisions, that the offices dedicated to administering these policies are either understaffed and under resourced or have an almost non-existent presence on campus, and that there is a lack of awareness and education initiatives, particularly around EDI issues.

We hope the information we gathered throughout the review process will assist the University and members of its community to take the necessary steps to ensure that it can operate in accordance with its stated values, the dictates of its relevant policies, as well as the law.

Date: June 6, 2023

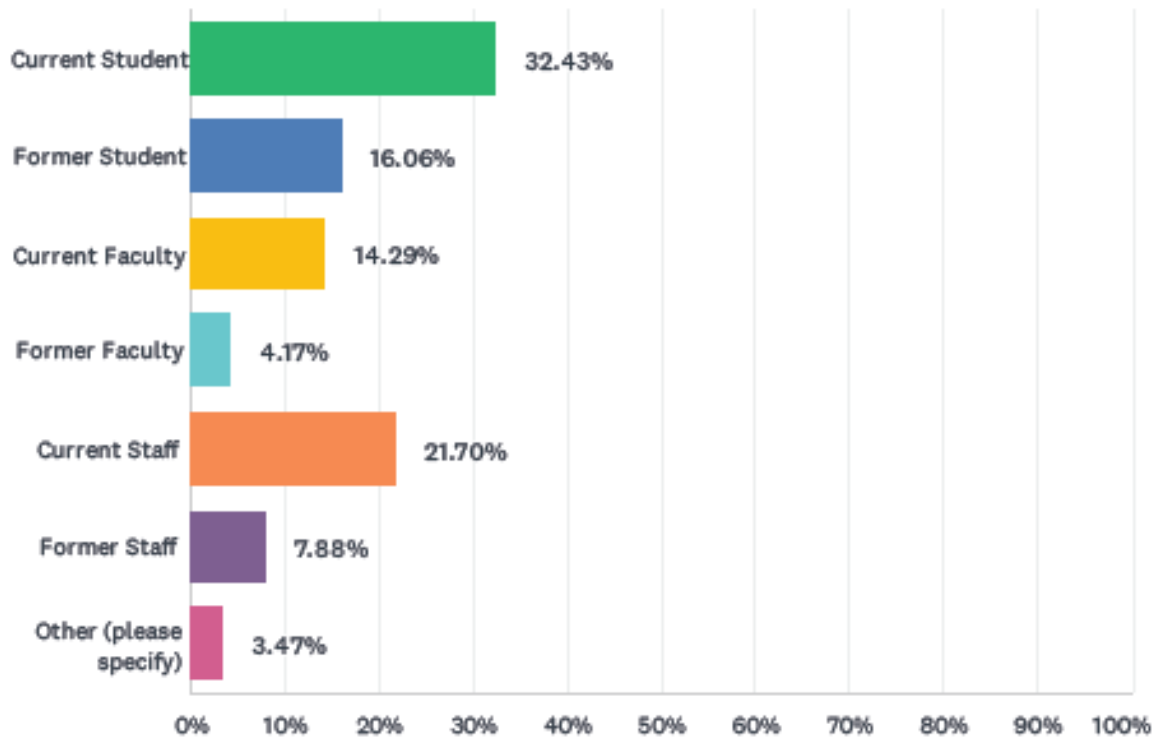
Three handwritten signatures in black ink are displayed side-by-side. The first signature is 'Janice Rubin', the second is 'Heather Shields', and the third is 'K. Montpetit'.

Per: Janice Rubin, Heather Shields, and Katharine Montpetit
RUBIN THOMLINSON LLP

Appendix A: Quantitative Distribution of Responses from UPEI Survey

Q1. Are you a current or former: student, faculty member, or staff member of UPEI?

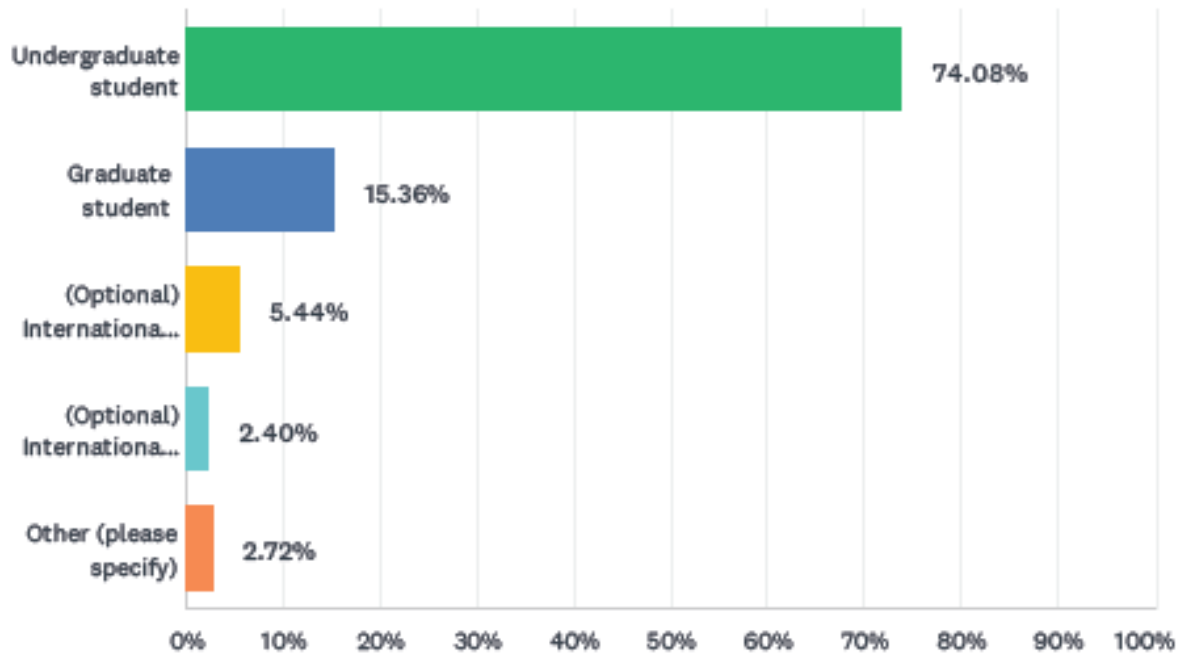
Answered: 1,295 Skipped: 0:



Q2. Please specify:

Answered: 625

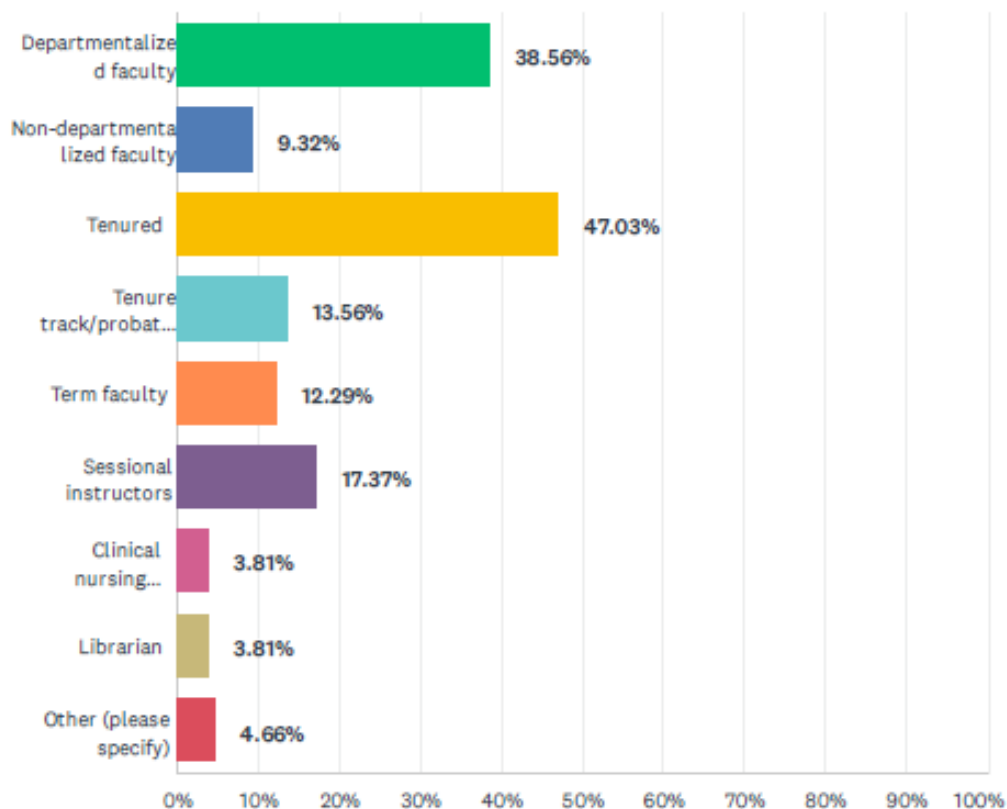
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Q3. Please specify which of the following applies to you as a faculty (or former) member (please check all that apply):

Answered: 236

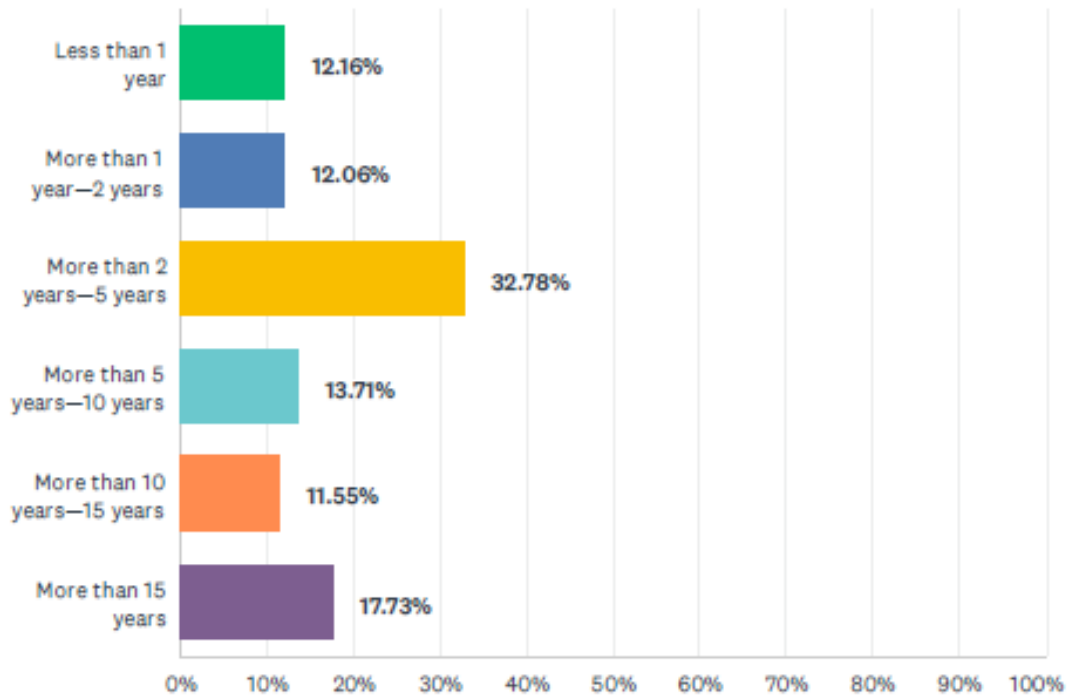
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Q4. How long have you studied/worked at UPEI?⁴⁶

Answered: 970

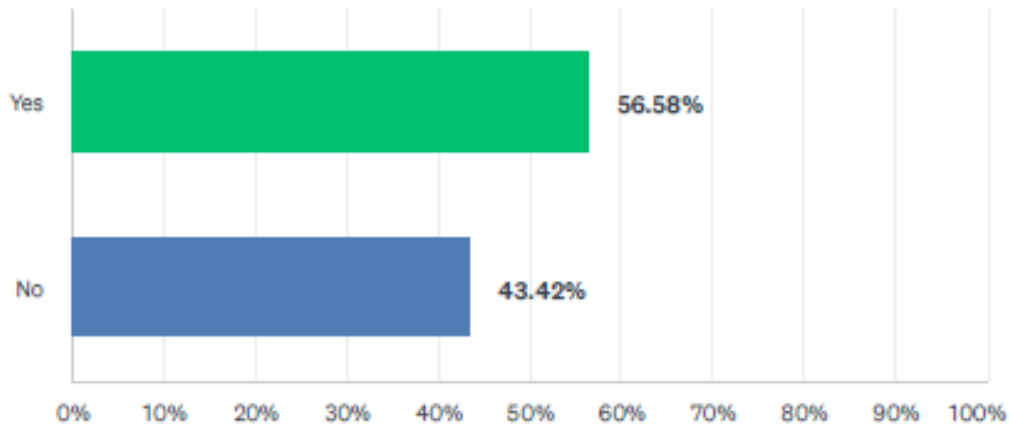
Skipped: 325



⁴⁶ Question 5 of the survey was non-quantitative. It asked participants, if they were a former student, faculty member, or staff member, to indicate which year(s) they were present at UPEI.

Q6. Do you think that UPEI has created a safe, respectful, and positive environment for working or learning?

Answered: 958 Skipped: 337

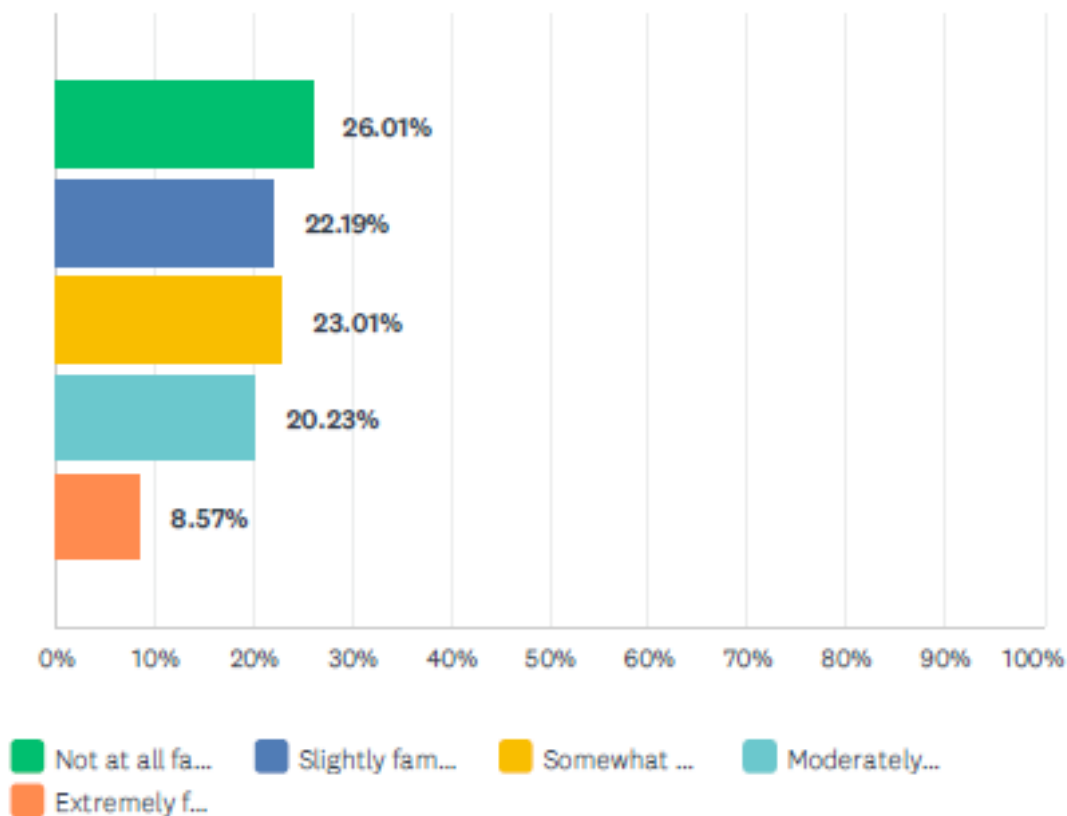


Q7. How familiar are you with UPEI’s procedures and policy for addressing harassment and discrimination?

For the purposes of this survey, harassment is defined as an incident or series of vexatious or disrespectful comments, displays or behaviours that demean, belittle, humiliate, embarrass, degrade, or attempt to exclude; that is known or ought reasonably to be known to be unwelcome and/or offensive; and which adversely affects the employment or academic status of the individual. Harassment includes both sexual harassment and personal harassment.

For the purposes of this survey, discrimination is defined as intentional or unintentional differential treatment based on a prohibited ground and for which there is no bona fide and reasonable justification. Prohibited grounds include Age, Association (with another ground of discrimination), Colour, Race and Ethnic or National Origin, Creed or Religion, Criminal Conviction (in employment only), Disability, Family Status, Marital Status, Political Belief, Sex or Gender (including Sexual Harassment and Pregnancy), Sexual Orientation, Source of Income, having filed a complaint or given evidence/assistance under the PEI *Human Rights Act*.

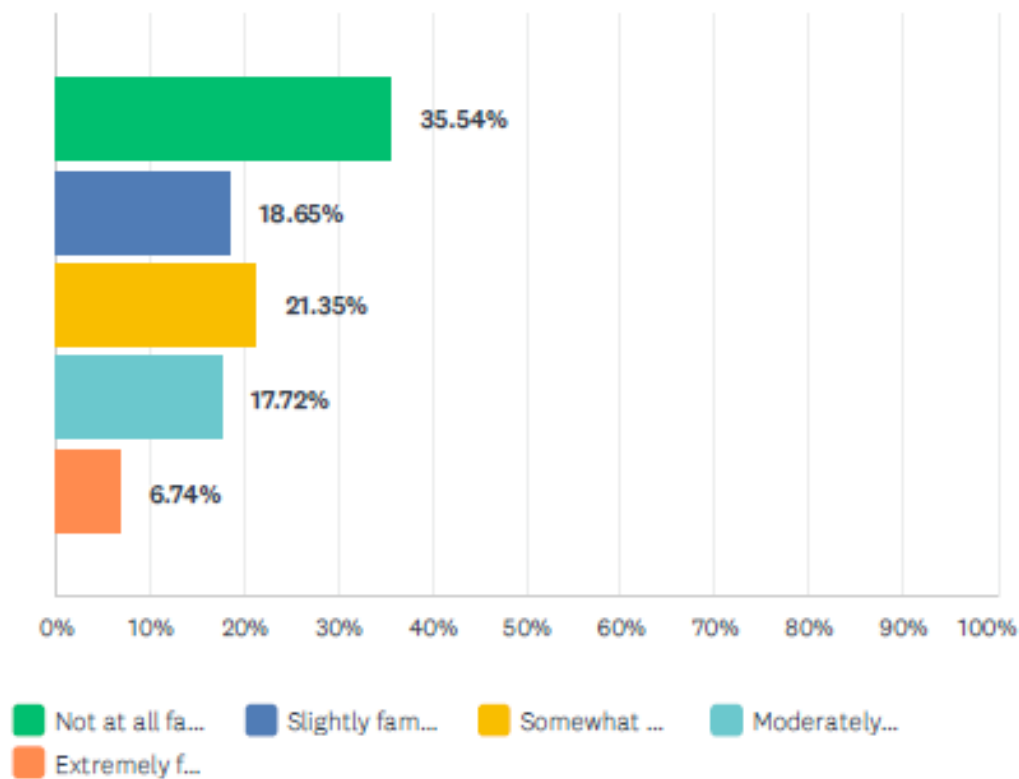
Answered: 969 Skipped: 326



Q8. How familiar are you with UPEI’s procedures and policy for addressing sexual violence?

For the purposes of this survey, sexual violence is defined as any sexual act, or an act targeting a person’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, which is committed, threatened, or attempted against a person without that person’s consent. Sexual violence includes sexual assault and sexual harassment.

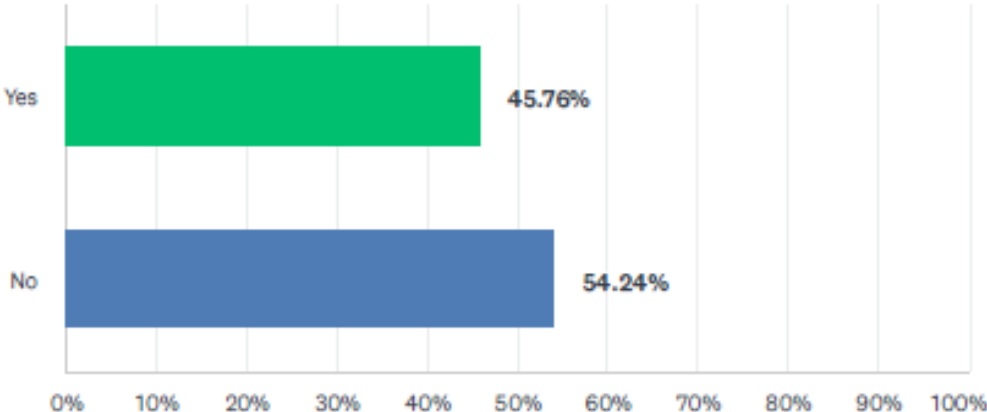
Answered: 965 Skipped: 330



Q9. During your time at UPEI, have you ever witnessed or been subjected to harassment, discrimination, or sexual violence occurring at UPEI?

Answered: 966

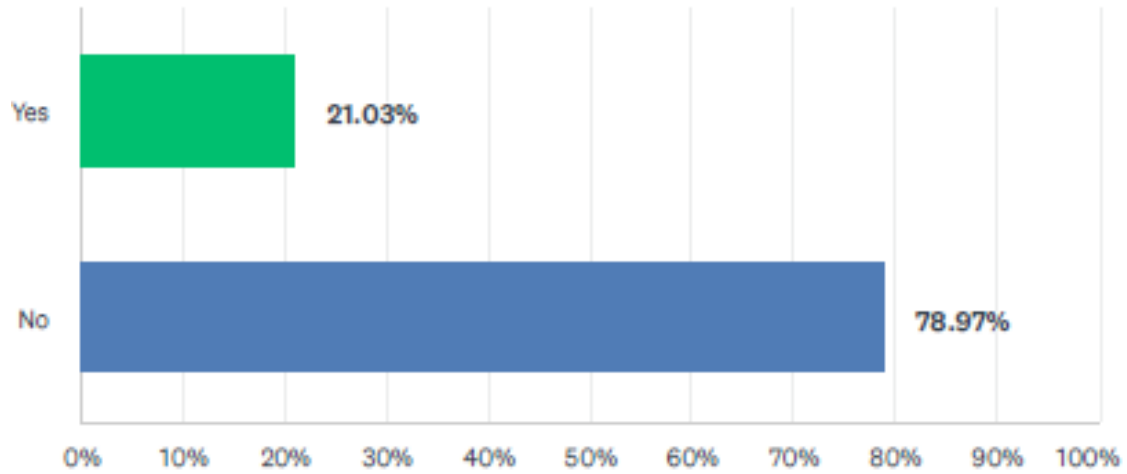
Skipped: 329



Q10. If you personally experienced harassment, discrimination, or sexual violence while at UPEI, do you feel that it was adequately addressed by UPEI?

Answered: 580

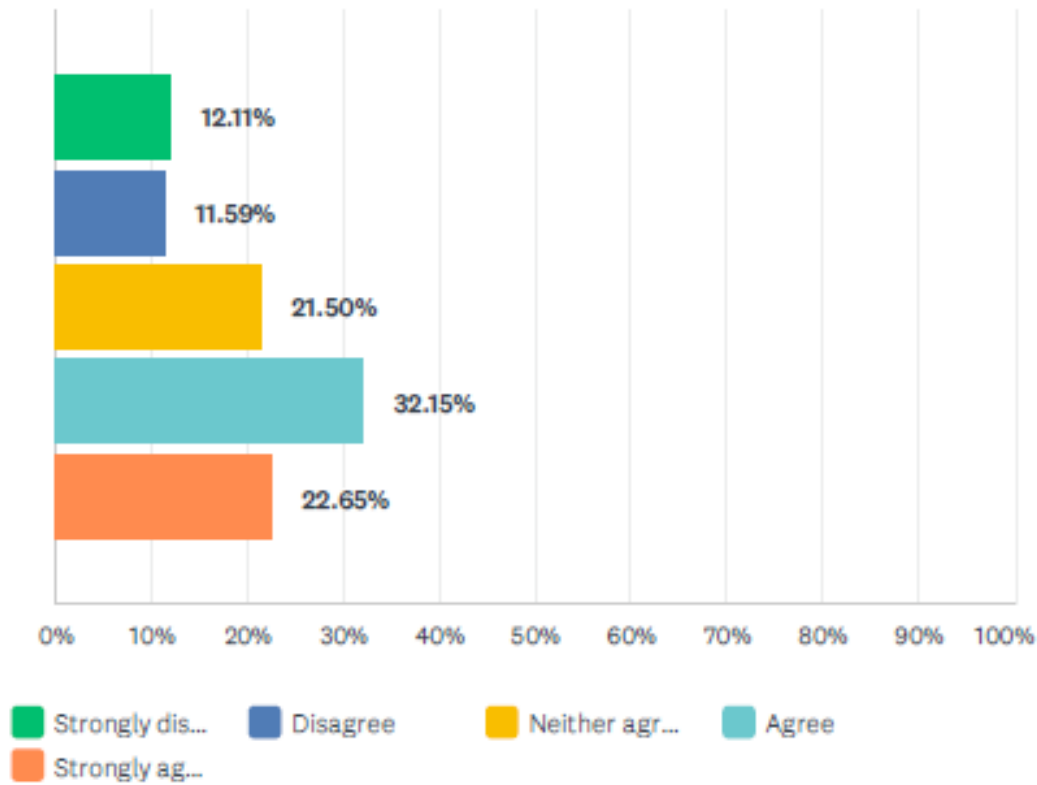
Skipped: 715



Q11. Please indicate your level of agreement with the following statement: If I experienced or witnessed harassment, discrimination, or sexual violence at UPEI, I would seek support from a UPEI staff member meant to receive such information.⁴⁷

Answered: 958

Skipped: 337



⁴⁷ Question 12 of the survey was non-quantitative. It asked students for their suggestions as to how UPEI can ensure it adequately supports students, faculty, and staff who have experienced harassment, discrimination, and sexual violence, and that it responds effectively and accountably to harassment, discrimination, and sexual violence.

Q13. (Optional) As part of the review process, we will be conducting several one-on-one and group interviews in order to gather additional information. Are you willing to participate in an interview?

Answered: 905

Skipped: 390

