

# Essential Elements for Non-Punitive Accountability:

A Workbook for Understanding  
Alternative Responses to  
Gender-Based Violence

POSSIBILITY  
SEEDS

COURAGETOACT.CA  
#IHaveTheCourageToAct

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## Land Acknowledgement

We would like to begin by acknowledging that this work is taking place on and across the traditional territories of many Indigenous nations. We recognize that gender-based violence is one form of violence caused by colonialism that is used to marginalize and dispossess Indigenous peoples from their lands and waters. Our work on campuses and in our communities must centre this truth as we strive to end gender-based violence. We commit to continuing to learn and grow and to take an anti-colonial and inclusive approach to the work we engage with. It is our intention to honour this responsibility.

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## Authors

Deborah Eerkes, Jessica Ketwaroo-Green, Sam Pearson, Bailey Reid, Chris Hackett, Imre Juurlink, Leah Martin, Sarah Scanlon, and Samantha Bokma.

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## Towards a Justice that Heals Community of Practice

Sam Pearson, Bailey Reid, Chris Hackett, Imre Juurlink, Leah Martin, Sarah Scanlon, and Samantha Bokma.

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## Peer Reviewers

Farrah Khan, Jesmen Mendoza, Britney De Costa, Zanab Jafry, Hilary Swan, Chris Avelar, Sarah Wolgemuth, Kelly Rico, Lindsay Robertson, Lyndsay Anderson, and Erin Hagen.

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## About Possibility Seeds

We are a leading project management and policy development social purpose enterprise that works alongside communities, organizations, and institutions to cultivate gender equity. Courage to Act, a national initiative to address and prevent gender-based violence at Canadian post-secondary institutions, is led by Possibility Seeds, a social purpose enterprise that works alongside clients to create, connect and cultivate gender justice. Learn more about our work at [www.possibilityseeds.ca](http://www.possibilityseeds.ca).

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## Phase 2 Courage to Act Project Team

Farrah Khan (Co-Director), CJ Rowe (Co-Director), Anoodth Naushan (Project Manager), Carina Gabriele (Communities of Practice Coordinator), Andréanne St-Gelais (Francophone Community of Practice Coordinator), Emily Allan (Communications Coordinator), Darshana Patel (Research Assistant), Kelly Prevett (Administrative Coordinator) and Bilqis Meer (Graphic Designer) with design elements by Michelle Campos Castillo.

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Women and Gender  
Equality Canada

Femmes et Égalité  
des genres Canada



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# Purpose

Sexual violence is a significant issue at post-secondary institutions (PSIs) across what is now known as Canada. In recognition of this fact, Possibility Seeds undertook a multi-year initiative to address and prevent gender-based violence on post-secondary campuses called, *Courage to Act*. This workbook builds on key recommendations from the Possibility Seeds vital report *Courage to Act: Developing a National Framework to Prevent and Address Gender-Based Violence at Post-Secondary Institutions*. In particular, it addresses the call to incorporate “alternative resolutions,” such as restorative practices and transformative justice, in response to gender-based violence (GBV) within policy and procedure frameworks at post-secondary institutions. Throughout this workbook, we will refer to these interventions collectively as non-punitive accountability, or NPA.

First and foremost, we aim to clearly define what NPA is and what it is not, and to outline the foundational principles for PSIs seeking to use these processes to support those affected by GBV. Over the last few years, interest in exploring or implementing restorative, transformative, or community justice within PSIs has skyrocketed. Despite this interest, there is currently no unified understanding of NPA, leading to misconceptions about its nature and misapplications of the related terminology. Furthermore, community dialogue has uncovered a general lack of awareness of the foundational principles necessary to guide the appropriate use of NPA -- particularly in cases that involve GBV. Providing NPA without regard for these principles has the potential to inflict significant additional harm to survivors<sup>1</sup>.

Having set out the essential requirements and promising practices for the use of NPA, we provide case studies, reflection questions and exercises to help PSIs work toward incorporating this important work into their response to campus GBV.

“The intention is to use ideas as the ‘bones’ for non punitive-based accountability processes. We want to empower participants to ‘identify their own unique goals, values, and actions that add flesh to their distinct safety/accountability models.” (CARA, 2014)

The Towards a Justice that Heals Community of Practice is excited to offer this workbook because:

- Survivors deserve more than one pathway to access accountability, justice, and healing from GBV;
- Punitive models do not necessarily offer the kind of justice survivors seek, are inaccessible to many people, reproduce systemic inequalities, and often cause further violence in

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<sup>1</sup> For the purposes of this workbook, we use the term survivor to refer to any individual who has experienced sexual or gender-based violence on or off-campus, whether or not a disclosure, informal complaint or formal complaint has been made. The term survivor is often interchanged with victim, which is often used as a legal term in the criminal justice system. An individual may use the term survivor as a way to reclaim power and/or to highlight the strength it took to survive such violence.

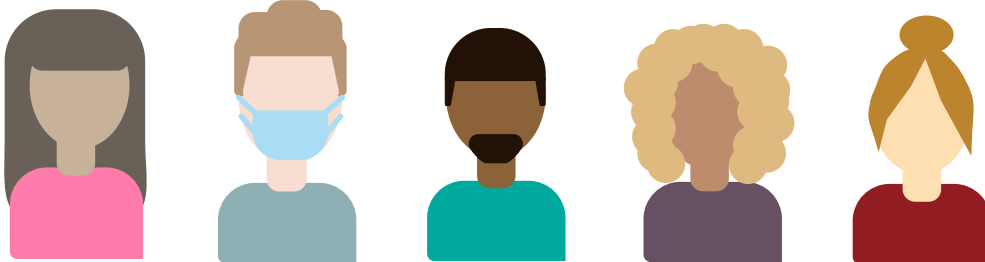


communities;

- NPA recognizes the humanity of all involved, and allows those who have caused harm the opportunity to transform their behaviour while focusing on accountability instead of punishment.

### **This workbook is intended for:**

- Staff, faculty, administrators and labour unions at PSIs;
- People who have experienced GBV;
- People who have engaged in GBV;
- Front-line workers supporting those impacted by GBV;
- Others who may find this document useful to support their work, such as policymakers tasked with the development of misconduct protocols and those who administer other workplace violence prevention programs, for example.



## **IMPORTANT TERMS**

### **Gender-Based Violence (GBV)**

An umbrella term that includes sexual violence and other forms of “use and abuse and control over another person” that are “perpetrated against someone based on their gender expression, gender identity, or perceived gender” (BCFED, 2018, as cited in Khan & Rowe, 2019, p. 10). Forms of gender-based violence include: physical violence; online violence/technology-facilitated violence; sexual violence including sexual abuse, sexual harassment, sexual assault and sexual exploitation; spiritual abuse; financial abuse; harassment including stalking; and emotional and psychological violence including put-downs, bullying, threats and intimidation.

### **Sexual Violence**

A subset of GBV, sexual violence, is: Any sexual act or act targeting a person’s

sexuality, gender identity, or gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against a person without that person's consent. This includes but is not limited to sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, sexual exploitation, degrading sexual imagery, distribution of sexual images or video of a community member without their consent, and cyber-harassment or cyberstalking of a sexual nature (Ryerson University, 2020).

### **Accountability**

Accountability invites those who have caused harm to participate in the process of understanding how their actions caused harm, to take responsibility without blaming others, and to work to repair that harm, all with the goal of refraining from causing similar harm in the future (Zehr, 2015).



### **RECOMMENDED ENGAGEMENT**

Perrault-Laird, J., Rajabi Paak, M., & Godderis, R. (2020, July 20). Remote teaching and technology-facilitated gender-based and sexual violence. *Academic Matters*. <https://academicmatters.ca/remote-teaching-and-technology-facilitated-gender-based-and-sexual-violence/>

The background is a solid pink color with several large, overlapping, wavy shapes made of yellow dots. These shapes are positioned in the top right, bottom left, and bottom right corners, creating a decorative, textured effect.

# What is Non-Punitive Accountability?

The goal of NPA is to identify and address the underlying needs that have emerged as a result of the harm that was caused. This is fundamentally different from punishing a behaviour through a disciplinary or criminal process, or seeking to resolve a dispute through mediation or other forms of alternative dispute resolution. We chose the generic term non-punitive accountability rather than any one method in recognition that it is important to turn to different accountability models as a way of being responsive to specific situations, different communities, and different contexts.

Instead, NPA serves to respond to the emergent needs of the parties involved, whether or not a specific outcome results. This means that the approach is focused on the needs of those who have been harmed, and involves the acceptance, validation, and correction of that harm on behalf of the individual who caused it or the community more generally. Ultimately, NPA methodologies need to be aligned more with repairing the harm experienced by the survivor and the community, and less with a specific procedure or outcome.

Why focus on accountability? As explained in the essential text, Fumbling Towards Repair, retribution (or punishing past behaviour) does little to encourage the transformation of actions, attitudes or beliefs, or to deter others from acting in a way that causes harm. Accountability, on the other hand, requires those who have committed harm to actively engage in transformative behaviour and directly face the impacts of harm they caused

(Kaba & Hassan, 2019).

In their Comprehensive Guide to Campus Gender-Based Violence Complaints, Eerkes, daCosta & Jafry (forthcoming) identify commonalities between what they call collaborative accountability processes, including:

**They** are forward-facing – they look to what needs to be done in the future rather than trying to establish what happened in the past.

**They** recognize and try to address harm by upholding meaningful accountability.

**They** focus on relationships [individual, communal or systemic] rather than processes or policies.

**They** involve friends, family and/or community in the resolution process.

**They** are driven by the needs of those who experienced harm.

Decisions about how to resolve the problem at hand – whether it be changing norms and attitudes, addressing the harms resulting from an incident of GBV, or supporting accountability – are made collaboratively by the group and not imposed by a higher authority.

While it can take many forms, for the purpose of this workbook we use the term Non-Punitive Accountability (NPA) as a generic short-hand to include three basic methodologies: restorative justice, transformative justice and community accountability. Rather than acting as discrete methods, they exist, in practice, on what is more like a spectrum. They share

the foundational principles above, but differ based on their specific values, commitments, and origins. The practices below share the foundational principles, but depending on their specific values, commitments and origins, they may be considered RJ, TJ and/or Community Justice:

### **CONFERCING**

A structured meeting between the person/people who caused harm, the individual/people who experienced the harm, and both parties' immediate community, in which they deal with the impact of the harm and determine how to repair it.

### **VICTIMLESS CONFERCING**

A structured meeting between the person/people who caused harm and a surrogate for the individual who experienced the harm (typically someone who experienced a similar type of harm in another incident) in which they deal with the impact of the harm and determine how to repair it.

### **CIRCLES**

An opportunity for community members to come together to address harmful behaviour in a process that builds community members' skills to implement interventions, explores harms and needs, obligations for harm they were complicit in, and necessary engagement.

### **EDUCATION/CURRICULUM**

Efforts to build community members' skills to prevent violence from occurring and to interrupt it when it's happening.

### **CIRCLES OF SUPPORT AND ACCOUNTABILITY**

Community-based solution to support individuals who have caused harm to transition and reintegrate back into the community with the goal of preventing further violence. Survivors are typically not directly involved in this kind of work.

## Understanding the Differences between Frameworks

While they have common features, each NPA carries distinguished differences. For example, restorative justice has a history of existing both within, and outside of, state-supported punitive models such as court proceedings and the probation system. However, transformative justice and community accountability work has always existed as explicitly separate from the criminal justice system. Furthermore, restorative justice principles focus on restoring relationship(s) through healing and accountability, whereas transformative justice and community accountability prioritize transforming systems and relationships by uprooting and dismantling oppressive structures, attitudes, and beliefs that have historically shaped our social interactions.

Although these frameworks are described discretely below, in reality, each mode of practice often bears trademarks of multiple frameworks, and it can be difficult to decisively differentiate between them in practice. Our intention in including this differentiation is to acknowledge and highlight the unique contributions of the frameworks and provide an understanding of the grounding ethics and aspirations of each.



	Restorative Justice	Transformative Justice	Community Accountability
Operation within punitive models (example: court processes)	✓	✗	✗
Operation as a stand-alone model, from punitive processes	✓	✓	✓
Restoration of relationships	✓	✗	✗
Transforming existing relationships	✓	✓	✓
Transforming and building new relationships	✓	✓	✓
Requires the participation of the person harmed, the person who caused harm or both to reach its goals	✓	✗	✓

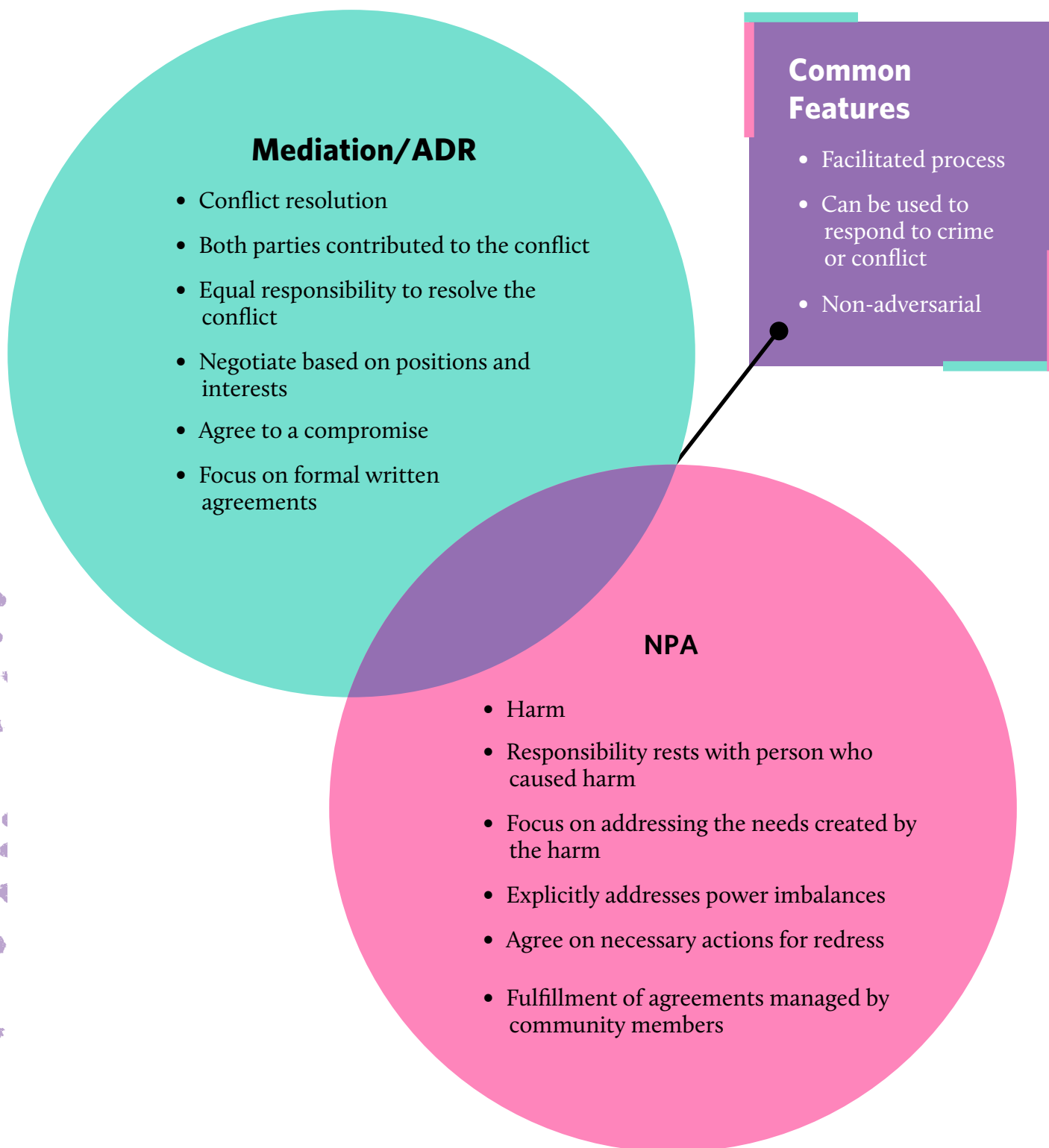


**PAUSE AND REFLECT**

- Have you heard of these frameworks operating within your campus or wider community?
- How might each of these frameworks fit into your institution?
  - Restorative justice:
  - Transformative justice:
  - Community accountability:

## What Non-Punitive Accountability Is Not

Although the two are often associated with each other (and sometimes the terms are used interchangeably), it is crucial to differentiate between NPA on the one hand, and mediation or other forms of conflict resolution (including alternative dispute resolution) on the other, particularly in the context of GBV:





## PAUSE AND REFLECT

After reviewing the above infographic:

- What are some of the negative effects if the PSI were to ask a survivor to participate in a mediation in response to having experienced GBV on your campus?
- How would it make the survivor feel?
- What kinds of power imbalances could it create and/or perpetuate?

Because the practice of NPA is so broad and wide-ranging, there is significant room for misunderstanding or misapplication of the terms restorative, transformative, and community justice. Flexibility is one of the key characteristics of NPA; however, in order to correct some common misperceptions, it must be clearly stated that NPA is not:

- Meant to enable or motivate revenge;
- Disciplinary counselling or psychoeducation,
- A quick fix,
- Getting away with violent or harmful behaviours, an easy way out, or a soft response
- A way to avoid taking responsibility for behaviours,
- Forgiveness or absolution,
- Guaranteed protection against legal action, or
- A minimization of the impact on survivors.



## RECOMMENDED ENGAGEMENT

Anderson, D. (2018). The Use of Campus Based Restorative Justice Practices to The Use of Campus Based Restorative Justice Practices to Address Incidents of Bias: Facilitators' Experiences Address Incidents of Bias: Facilitators' Experiences (Publication No. 2442) [Doctoral dissertation, University of New Orleans]. University of New Orleans Theses and Dissertations. <https://scholarworks.uno.edu/cgi/viewcontent.cgi?article=3638&context=td>

Irvine, M. (1993). Mediation: Is it Appropriate for Sexual Harassment Grievances? *Ohio State Journal on Dispute Resolution*, 9,(1), 27-53. [https://kb.osu.edu/bitstream/handle/1811/79867/1/OSJDR\\_V9NI\\_027.pdf](https://kb.osu.edu/bitstream/handle/1811/79867/1/OSJDR_V9NI_027.pdf)

Tran, K. (2018). Transformative Justice, Explained. *Teen Vogue*. <https://www.teenvogue.com/story/transformative-justice-explained>

Transformative Justice Kollektiv Berlin. (2020). What are Community Accountability & Transformative Justice?. <https://www.transformativejustice.eu/en/what-are-ca-and-tj/>

Zehr, H. (2015). *The Little Book of Restorative Justice: Revised and Updated*. Good Books.



## IMPORTANT TERMS

### Harm

In the context of addressing sexual violence on campus, harm refers to negative consequences of GBV, the PSI complaints process as a whole, or specific elements of the process, experienced by the involved parties. The institution can introduce measures to reduce or mitigate harm throughout its complaints process or offer non-adjudicative options specifically designed to address the harm resulting from gender-based violence.

### Healing

A nuanced continuum that is defined only by the individual who has experienced harm. In NPA, the person who was harmed should be supported in defining what actions are necessary to help them feel a restored sense of safety and agency in the world. It is important to note that healing precedes and continues after the NPA is complete. In the context of a community, this is a collective process of removing barriers and capacity building for people and communities to address the determinants of health (Buller, 2005).

### Repair

The actions and commitments identified and agreed to through an NPA that address the harms incurred as a result of sexual or gender-based violence. A repair could involve a single action or an ongoing, life-long commitment.

## History, Inspiration and Evolution of Non-Punitive Accountability

Canadian NPA is rooted in Indigenous processes and teachings, Christian communities, prison abolition<sup>1</sup> advocacy, and alternative dispute resolution work. It is crucial to recognize the histories of NPA as being rooted in Indigenous methods and cultures from around the world (Government of Alberta, 2020), and particularly from Cree/Métis<sup>2</sup> and Ojibway first nations in northwestern Ontario (Leung, 2001). Commonly-practiced NPA in settler society has borrowed heavily from Indigenous knowledge, often without recognition or respect for relevant cultural protocols. Historically, traditional justice practices were outlawed and systemically undermined through colonization. Despite concerted efforts to the contrary, Indigenous culture has persisted, and many nations continue to assert sovereignty through the practice of traditional justice. As PSIs look to incorporate NPA to address campus GBV, they should begin by grounding themselves in the traditional justice practices and values of the First Nations, Métis, or Inuit communities from the land on which the institution sits.

Around the world, there are many other cultural and religious systems

of NPA that predate colonization, and are still practiced widely in the global south and in non-Western societies, including family group or community conferencing processes stemming from historical Maori traditions. NPA has also emerged from Black, racialized queer and trans communities, in response to the inaccessibility of, and interpersonal harm often found within, the Canadian criminal justice system. Many marginalized people historically practiced transformative justice and community accountability as a means of centring their needs and creating safe pathways to reducing harm within their communities without dependence on the state to deliver “justice” (Mingus, 2020). Unfortunately, state-sanctioned violence often made it unsafe to openly practice or advocate on behalf of these processes within racialized and otherwise marginalized communities out of fear of reprisal.

More recently, mainstream child protection and other social service agencies in Canada and elsewhere have adapted (and in some cases co-opted) these practices. Sociologists and other scholars, as well as practitioners around the world, are exploring NPA as a way to reimagine the dominant European punitive lens, frequently relying on

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<sup>1</sup> A critical grounding point for transformative justice which holds that incarceration is not the appropriate way to respond to social harm as it is the site of extensive violence and oppression, and that alternatives must be pursued.

<sup>2</sup> For example, the Cree and Métis concept of *wahkohtowin*, which holds that all entities in the world are connected in spirit and, as a result, are obliged to honour and respect good relationships with one another. (Wildcat, 2018).

the models and concepts preserved by Indigenous and community groups. North American Christian faith communities, particularly Mennonites from Kitchener Ontario, have practiced a modernized method of NPA which has had a deep and lasting impact on many contemporary restorative justice practices. In fact, the Mennonite community has often been recognized as having initiated victim-offender reconciliation programs (Leung, 2001).

## ! IMPORTANT TERMS

### Indigenous Justice

Indigenous justice provides ways to prevent or minimize conflicts in the Indigenous community and includes ways to react to conflict and pain after an incident occurs. In some systems, outcomes are focused on healing, reconciliation, and reintegration, but punishment is also an option if necessary. Chartrand and Horn (2016) noted many Indigenous legal traditions expressly condemn sexual and gendered violence, and provide specific roles for those harmed in determining outcomes due to the need to restore balance to the individual as well as the community.

## → RECOMMENDED ENGAGEMENT

Chartrand, L., & Horn, K. (2016). A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada. Department of Justice Canada. <https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/index.html>

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Nocella, A.J. (2011). An overview of the history and theory of transformative justice. *Peace and Conflict Review* 6(1), 1-9. <http://www.review.upeace.org/pdf.cfm?articulo=124&ejemplar=23>

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## PAUSE AND REFLECT

- How can you connect with Indigenous, Black and other communities within your PSI to inform the development of NPA processes?
- What student populations should you consider?
- What community or cultural organizations in your area should you reach out to as you pursue NPA on your campus?
- Are there community or cultural organizations in your area that have practices of responding to and repairing harm whose perspectives could be incorporated in the development of culturally responsive NPA?
- What are some immediate ways you can acknowledge the origins of and inspirations for the NPA you choose to offer?

## The Case for Using Non-Punitive Accountability in PSIs

Post-secondary institutions occupy a special and unique place in society. They are diverse communities of intersecting communities, dedicated to teaching, learning and service. Academic freedom and freedom of expression interact with the responsibility to be inclusive, the legal obligation to be non-discriminatory, to respect human rights, and the academic tradition of considering other viewpoints. Diverse populations contribute to the strength, creativity and resiliency of the PSI community; however, there is also a potential for miscommunication, implicit assumptions and differing interpretations.

Post-secondary institutions exist within federal, provincial and municipal legislative frameworks which define prohibited conduct for

its members and the method(s) by which alleged policy breaches are addressed. Although this presents a unique opportunity for PSIs to define justice on their own terms and to construct ways of achieving justice that are tailored to the needs of their demographics (e.g. urban, rural, research/technical, CÉGEP, in-person, remote delivery, etc.), many have, by and large, simply opted to replicate a criminal justice, or punitive, approach (Coker, 2016), which, in turn, can perpetuate systems of power that reinforce inequality and violence.

For example, currently, the preferred mechanism through which post-secondary institutions seek to hold people who have engaged in sexually violent behaviour accountable for their actions involves a formal complaint, investigation, and some

form of discipline and/or no-contact orders. While the purpose of this may, in part, be to ensure campus safety, sanctions are also largely understood as a punishment for the harmful

behaviour. Crucially, any framework that involves imposing consequences for undesirable behaviour is punitive, even when the sanctions are labelled as educational or restorative.

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## PSIs as part of the Prison Industrial Complex (PIC)

When considering the use of NPA, it is important to recognize the elements of your own academic environment that sit on the PIC continuum, and to consider how to mitigate some of the ways that may undermine your efforts at providing NPA.



### IMPORTANT TERMS

#### Prison Industrial Complex

The prison industrial complex (PIC) is a term used to describe the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems.

The PIC represents mutually reinforcing intersecting relationships between systems, processes, and organizations that hold up punitive responses to harm. Notably, many of our campus disciplinary and investigation processes mirror these complex systems of punishment (Critical Resistance, 2020).

#### Systems of power

Individual and institutional beliefs, practices and norms, embedded in social constructions of race and gender. They are both rooted in history and apparent in contemporary policies and practices. They define the relationships between marginalized communities and the dominant culture, including infusing and reinforcing white supremacy, patriarchy and heteronormativity in social norms and experiences in marginalized communities, and create structural barriers to access and equality. (West-Bey & Bunts, 2018). Unquestioned paradigms around the roles of victims, offenders, gatekeepers, and facilitators may contribute to inequitable access and procedures within NPA as well (Lyubansky & Shpungin, n.d.).

## White supremacy culture

The systemic, institutionalized centring of whiteness, which implicitly and explicitly benefits whiteness and discriminates against non-Western, non-White standards (Gray, 2019). It has been defined by a list of characteristics, such as perfectionism, defensiveness, paternalism, individualism, and others (Jones & Okun, 2001).



## PAUSE AND REFLECT

### Identifying elements of PIC on your campus

#### Surveillance

- Are particular community members watched more closely (for example, after a policy breach or other form of undesirable behaviour)?

#### Rights of accused

- Does your conduct/discipline system privilege the procedural fairness rights of the respondent over those of the complainant?

#### Role of the Victim-survivor

- Is the complainant involved in the process, kept fully informed, and able to make decisions about the process used, or do they occupy the role as witness in a set procedure?
- How many times does a survivor need to repeat their story once they disclose an experience to a PSI official?

#### Procedural elements

- Does your process involve an investigation?
- Are decision-makers permitted to

consider previous behaviour of the survivor?

- Is direct cross-examination allowed?
- Are investigators and hearing officers/panels trained in understanding trauma?

#### Based in white supremacy and oppressive systems of power

- What mechanisms are in place to actively discredit and abandon stereotypes, such as those defining the perfect victim or the typical perpetrator?
- To what extent are your reporting mechanisms safe/accessible for those in your community who are racialized, immigrants, queer, (dis)abled, and/or experiencing poverty?
- What measures are in place to increase survivors' feeling of safety in your response to GBV?

#### Victim-blaming

- Do your investigators, decision-makers, and appeal panel members or other staff involved in a GBV response query survivors about what they were wearing, how

much they had to drink, or why they did or neglected to do certain things?

### Closely aligned with police and criminal interventions

- Does your campus have on-campus police or peace officers, and/or MOUs with local law enforcement?
- Are you subject to provincial policing legislation?

- Do you offer academic programs that contribute to or educate for careers within the criminal system?

### Addresses isolated incidents of misconduct in order to prevent GBV

- Do you have education and prevention mechanisms in place to investigate and mitigate the root causes of GBV on your campus?



## RECOMMENDED ENGAGEMENT

Coker, D. (2016). Crime Logic, Campus Sexual Assault, and Restorative Justice. *Texas Tech Law Review*, 49(1), 147–210.

Durazo, A. C. R. (2010). In Our Hands: Community Accountability as Pedagogical Strategy. *Social Justice* 37(4), 76-100. <https://www.jstor.org/stable/41478936?seq=1>

Jones, K. & Okun, T. (2001). The Characteristics of White Supremacy Culture. *Showing up for Racial Justice*. <https://www.showingupforracialjustice.org/white-supremacy-culture-characteristics.html>

### NPA as the Antidote to the PIC

**The Prison Industrial Complex is not working to create justice and healing for sexual violence survivors. In fact, it often causes more harm. If we do not commit resources to putting alternative systems in place, then the pathways for justice will**

**never adequately respond to the complexities of harm, nor the nuances of the lived experiences of people seeking it (Tambe, 2018).**

In contrast to the PIC, NPA does not rely on punishment to address and change behaviour, and recognizes this as a logical fallacy. It includes a range of processes that offer opportunities to understand, take responsibility for, and repair harms with the goal of preventing future inappropriate, harmful, or violent behaviour. NPA

can additionally be used to transform the nature of the circumstances in which the harm was able to occur in the first place as a means of changing the culture. By seeking to dismantle structural inequality and oppression, NPA offers an antidote to the PIC, which requires conditions conducive to violence to persist in order to function.

Given their unique place in society, some PSIs are especially well-equipped to address the problem of GBV. As Cahill wrote, “Universities are privileged sites within democratic societies, sites where new ideas are tested, and where new knowledge and insight is generated. In short, what universities do matters, and in developing practices and policies regarding sexual violence, universities have the opportunity to develop innovative, progressive, and potentially effective approaches to a systemic cultural problem.” (Cahill, 2017) Additionally, some colleges, CÉGEPs, small and rural institutions may have an advantage over large institutions if they have close-knit communities who already espouse shared values that align with NPA.

Given this emphasis on learning, growth, and community, it is notable, as Kaplan (2017) writes, that the goals of a post-secondary institution more closely align with the goals of NPA models than they do with a criminal court of law. PSIs have tended to embrace the idea of educating the whole person (that is, not just academically), applying research on brain development, student development and learning theories. NPA goes a step further by

holding those who have caused harm accountable and moving the focus from that individual to the survivor and community who were harmed.

NPA approaches to addressing GBV are better suited to an inclusive academic community than the top-down quasi-judicial processes often used by Canadian PSIs, in that they:

- Are concerned with harm rather than rules;
- Focus on developing shared values without forcing conformity;
- Concentrate on the future rather than the past;
- Acknowledge and seek to balance power, wherever possible;
- Attend to the impact of the generated agreements on all parties as much as the issues that caused the harm in the first place;
- Can address systemic issues in ways that focusing on individual transgressions alone cannot; and
- Reduce harm by recognizing that survivors may need to explore multiple pathways as part of their healing process.

NPA provides the potential for preventative intervention to bridge these gaps. Incorporating circles and other community processes can reinforce core academic values while addressing concerns raised about GBV, sexual violence, sexism, racism, and other barriers to inclusion.





## SAMPLE CASES

Lou (they/them) is a first-year student living in residence. They had a great first semester, forming a close-knit social group with the others on the floor. Then one night at a party, a floormate and close friend of Lou's tried to put his hand in their pants while the two of them were dancing. Lou reacted strongly, pushing the person away and yelling at them to "get away." The rest of the group witnessed the incident, and over the next few weeks, many formed conflicting opinions about who did what, whose fault it was, and what should be done about it.

1. Lou became more and more uncomfortable living in that environment. They didn't necessarily want the other student to be punished for what they did, but also wanted them to acknowledge that it was wrong and understand why it was so hurtful. Lou believed that making a complaint under the code of conduct would only make things worse and would do nothing to address the rumours continuing on the floor. They also did not want to move to another residence, but felt responsible for the rift that was forming among their formerly tight group of friends and felt harmed by the rumours as well as the initial incident.

### Reflection Questions

- How would the complaints process in your PSI handle this situation? Would it be able to address Lou's concerns?
  - How might NPA be used in this situation?
  - Who could be involved?
2. Arianna and Jason are in the same small program and have been friends for several years. Arianna tells her classmates that Jason assumed their friendship would develop into a romantic relationship after she and her boyfriend broke up, and he sexually assaulted her when she invited him over to watch a movie together. Some of them confront Jason, who says there was consensual sex but now that Arianna is back with her boyfriend, she is lying about what happened to spare her boyfriend's feelings. Arianna files a formal complaint against Jason. The PSI imposes conditions not to come to campus and arranges for him to complete his academic work remotely. One faculty member refuses to teach him. The investigation concludes that both parties appear credible, and there is not enough evidence to find Jason in violation of the policy. Consequently, Jason has returned to class, and some students feel he got away with something, while others believe Arianna was lying and blame her for putting Jason through this process. Arianna drops out of school.



### Reflection Questions:

- How might NPA change this dynamic?
- At what point would NPA be an option both parties might want to pursue?
- How many other people were impacted by what happened? Who should be invited to participate in an NPA process?



### RECOMMENDED ENGAGEMENT

- Daly, K. (2014). Reconceptualizing sexual victimization and justice. In Vangraechem, I., Pemberton, A. & Ndahinda, F.M. (Eds.), *Justice for Victims*. Routledge.
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- Incite-National.org. (n.d.). Rape, sexual assault & sexual harassment. <https://incite-national.org/wp-content/uploads/2018/08/toolkitrev-sexualassault.pdf>
- McGlynn, C., Downes, J., & Westmarland, N. (2017). Seeking justice for survivors of sexual violence: recognition, voice and consequences. In Zinsstag, E & Keenan, M. (Eds.), *Restorative Responses to Sexual Violence: Legal, social, and therapeutic dimensions*. Routledge.
- McMahon, S. M., Karp, D. & Mulhern, H. (2018). Addressing individual and community needs in the aftermath of campus sexual misconduct: Restorative justice as a way forward in the re-entry process. *Journal of Sexual Aggression*, 25(701), 1-11. <https://www.researchgate.net/publication/327182078> Addressing individual and community needs in the aftermath of campus sexual misconduct restorative justice as a way forward in the re-entry process
- Mensah, C. (2020). Without police, what do we do about the rapists and abusers? Here's the answer. *Teen Vogue*. <https://www.teenvogue.com/story/what-happens-to-rapists-if-abolish-police>
- Smith, A. (2005). Looking to the Future: Domestic Violence, Women of Color, the State, and Social Change. In Sokoloff, NJ, Pratt, C. (Eds.), *Domestic violence at the margins: Readings on race, class, gender, and culture* (416-434). Rutgers University Press.
- Tambe, A. (2018). Reckoning with the silences of #metoo. *Feminist Studies*, 44(1), 197-203.

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## Critiques and Concerns

Although we believe that NPA should be accessible as one potential path for individuals who have experienced harm, it is also important to acknowledge that there are real and valid criticisms of this approach when responding to harm.

### REVERTING TO THE PRIVATE REALM

One such concern is that the private nature of NPA removes the role of the public in the recognition and condemnation of sexualized violence. Simply put, many anti-sexual violence advocates fear that the decades of work to move sexual violence out of the realm of the domestic and into that of public concern and policy will be lost if we move back to a more community-based response.

This is a valid concern that can be approached in a number of ways:

- A commitment to being survivor-

driven, offering a variety of possible options rather than steering them in the direction of a single type of response

- A recognition that the public responses have to date been more harmful than effective in addressing GBV
- A renewed commitment to open and honest discussion about sex positivity and consent as a means of preventing GBV

### TOO MUCH FOCUS ON THE PERSON WHO CAUSED HARM

Additionally, there are concerns that NPA focuses too heavily on the rights and rehabilitation of the person who caused harm, effectively de-centring the needs of the survivor or neglecting them altogether. This concern is particularly relevant in jurisdictions where certain NPA models (primarily restorative justice) are used in conjunction with, or have been co-opted by, the criminal justice system.

To address this concern, it is important

for PSIs to keep NPA separate and distinct from their formal disciplinary processes, and maintain the centrality of the needs created by the harm (see Foundational Principles: Needs-Based, Survivor-Centred and Survivor-Driven, and Institutional Commitments: Interaction with other PSI Processes).

### CO-OPTING NPA INTO DISCIPLINARY PROCESSES

Similarly, there is a concern that NPAs will be co-opted by the

conduct processes at post-secondary institutions, essentially functioning as

a procedural arm of that system. This leads to further concerns that potential disclosures of wrong-doing will then be used in conduct processes, or even criminal proceedings. Embedding NPA within conduct systems at post-secondary institutions also runs the risk of NPA becoming bound to the same procedural issues and structures built into formal disciplinary responses. It is important to guard against “elite capture,” or reinforcing the very structures that disadvantage certain groups (Wojkowska, 2006). This has prompted proponents to encourage the separation of NPA from other

institutional accountability responses, such as student conduct and employee union processes (Eerkes & Hackett, 2017).

Likewise, co-opting parts of, or elements from, Indigenous and Black work and wisdom without being grounded in the principles and ethics that underpin them is worthy of criticism. For more on this, see Institutional Commitments - Community Partnerships/ Relationships.

### **NPA AS AN EASY FIX**

Related to the impression that NPA is informal is the assumption that it is an easy solution, and that facilitators can be sent into a complex situation with longstanding or entrenched issues and simply fix it. NPA of all kinds requires extensive preparation, education, suitability assessment, and follow up. It may not be suitable for some situations; others may bring challenges in terms of those who caused harm taking responsibility, or parties to the matter not willing to participate. While the payoffs can be enormous, they require investment in terms of time, energy and funding.

Ultimately, while we recognize that these tensions and possible

risks are legitimate, these critiques must be levelled against NPA with the understanding that the Prison Industrial Complex -- and, in this case, the current disciplinary systems in post-secondary institutions -- do not currently meet the needs of most survivors. In our Community of Practice, we believe that we cannot allow the potential shortcomings of a promising practice to stifle further exploration and development of the field. Instead, we urge PSIs and practitioners to take existing and emerging critiques seriously and to work to address them wherever possible, thus strengthening the already considerable potential for NPA to be a path to healing and justice.



### **PAUSE AND REFLECT**

- What concerns or critiques have you heard from within your institution?
- What steps can you take to address or ease them?

- Does your PSI make space for the equity/human rights office, Indigenous services, legal counsel, and/or marginalized groups on campus to name their concerns?
- How do you ground your practice in other knowledges and work respectfully and ethically?

## → RECOMMENDED ENGAGEMENT

Anderson, D. (2020). Co-opting Restorative Justice in Higher Education. In Valandra, E.C., & Waphaha Hoksila, W. (Eds.), *Colorizing Restorative Justice* (pp. 143-157). Living Justice Press.

Department of Justice Canada. (n.d.). Restorative justice and sexual violence: An annotated bibliography. <https://www.justice.gc.ca/eng/rp-pr/jr/2019sd-rr2019/p32.html>

Lyubansky, M. (2019, March 7). Nine criticisms of school restorative justice. *Between the Lines Blog, Psychology Today*. <https://www.psychologytoday.com/us/blog/between-the-lines/201903/nine-criticisms-school-restorative-justice>

## + FURTHER RESEARCH NEEDED

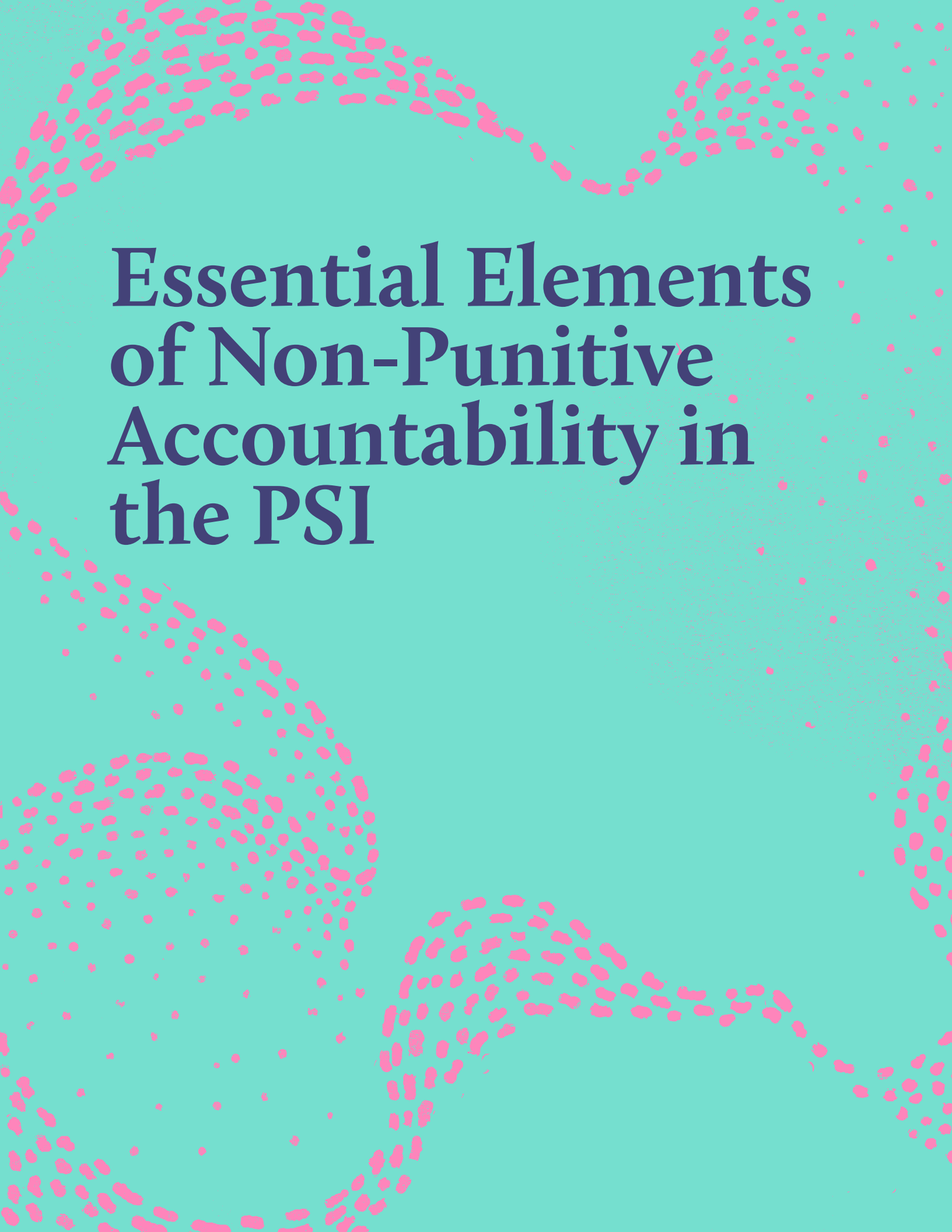
The use of NPA in PSIs to address sexualized and gender-based violence is in its infancy. Only a couple of years ago, the concept was unthinkable, and the practice was left to community groups and grassroots collectives. In these contexts, lack of funding and collaboration with community experts has systematically prevented the careful documentation of impacts, or robust evaluation that would satisfy those seeking an evidence base to support this work. As a result, the discussion of best practices is premature at best. There is currently not enough data to create formalized practices, nor is there enough evidence on which to adequately assess any current PSI NPA practices. However, the anecdotal evidence is compelling and optimistic, and provides a genuine opportunity to proceed with intentionality, using a principle-based approach such as the one we propose in this workbook.

Institutions that do use NPA should engage in continuous program evaluation and participant feedback to develop an evidence base from which to develop and improve 'wise' practice. Especially in research-intensive PSIs, the potential to leverage the research capacity within the institution could create a theory-practice feedback loop beneficial to PSIs across Canada. Finally, such internal

self-reflection allows the PSI to specifically evaluate how the process aligns with its guiding principles.

Future research to establish clear standards and promising practices will allow the movement to continually progress. The introduction this past year of the Restorative Research, Innovation & Education Lab at Dalhousie University, and the newly renamed Research Centre for Restorative Justice at Simon Fraser University, are cause for optimism that evidence-based practice will soon be within our reach.





# Essential Elements of Non-Punitive Accountability in the PSI



Drawing on the experience of professional practitioners across the country and existing literature, we have compiled a series of necessary elements, or minimum requirements, for the ethical implementation of NPA in PSI communities. We have divided them into four categories: Foundational Principles, Procedural Elements, Institutional Commitments and Facilitator/Practitioner Commitments.

## Foundational Principles

While punitive accountability processes rely on procedures to enact fairness, the practice of NPA must be responsive to the individuals and communities involved. Strict or rigid procedures often hamper the pursuit of resolution, justice or harm reduction through NPA mechanisms. Approaching the matter with openness, but with an uncompromising adherence to a series of principles, as outlined below, allows PSIs to offer NPA options responsibly and ethically. Rooted in the values of empathy, community care, equality and diversity, the following principles are necessary to the use of NPA. It must be:

- Focused on accountability;
  - Allowed to be flexible and creative;
  - Needs-based, survivor-centred and survivor-driven;
  - Trauma-informed;
  - Intersectional, feminist, anti-oppressive and anti-colonial;
  - Accessible;
  - Be given adequate time; and
  - Collaborative.
- We explore each of these principles in greater depth below.

### a. Focus on Accountability

NPA requires both *interpersonal* accountability, for example from the person who caused harm, and *institutional* accountability:

Those who caused harm:

- Take responsibility for causing harm

- Participate in good faith, with an aim to address the harm caused
- Work actively to repair that harm
- Consider short-, medium-, and long term commitments that might be required

#### Institutional

- Model accountability by acknowledging imperfection of the process
- Address issues and challenges as they arise
- Create opportunities for feedback within a process
- Be alert to unintended consequences, and take action to correct them or to reduce harm caused in the process

#### ✓ SAMPLE CASE

Fatima filed a formal sexual violence policy complaint against Cameron, a student who worked in the same lab. As part of the formal measures after the complaint was founded through investigation, Fatima wrote an impact statement, and requested as a remedy that Cameron read an impact statement back to her so that he could understand how the assault affected her.

The administration set it up as an online meeting. A member of the conduct office attended as a support person for Cameron, and a member of the sexual violence response team was a support for Fatima. When Cameron read the statement to her, he did so in a flat voice, finishing by pointing out a few typos in the statement. When finished, he asked, “Are we done here?” Fatima agreed to end the meeting, but she spent the next hour debriefing with her support person and stated that this resolution was not what she wanted.

#### Reflection Questions:

- Would you consider this NPA? Why or why not?
- What steps of a process were skipped in this case?
- Could this request have been handled differently to meet the needs of the survivor? How might that have affected the outcome?
- What power dynamics exist in this scenario?



## RECOMMENDED ENGAGEMENT

McMahon, S. M., Karp, D. R., & Mulhern, H. (2019). Addressing individual and community needs in the aftermath of campus sexual misconduct: restorative justice as a way forward in the re-entry process. *Journal of Sexual Aggression*, 25(1), 49–59. <https://doi.org/10.1080/13552600.2018.1507488>

## b. Flexibility and Creativity

The need for flexibility and creativity in NPA is both a considerable responsibility and a great opportunity.

For survivors, the nature of GBV, trauma and recovery means that:

- Each survivor will have specific, individualized needs as a result of the harm they experienced;
- A survivor's needs may shift over time;
- A survivor's capacity to engage in an NPA may also ebb and flow; and
- A wider “menu of options” (Daly, 2014) provides greater opportunity for healing and moving on from trauma.

Unlike processes premised on a predetermined outcome (incarceration, discipline for a policy breach) or a specified process (court proceedings or conduct hearings), NPA approaches, grounded in the Foundational Principles identified in this workbook, allow for justice to take whatever form the participants need. For example, while NPA processes are commonly understood to involve an in-person meeting between the participants, not all NPA will conclude in a face-to-face dialogue, encounter, or exchange; this does not mean that the process has been a failure.

Generally, NPA models are flexible in the level of contact between the direct-survivor(s) and those who caused harm, attachment to criminal justice or campus complaint processes, and how they are accessed or initiated (Martin, 2018).

**“[J]ustice is constantly refracted through new circumstances, experiences and understandings; [we can conceive of] justice as non-linear, with multiple**

**beginnings and possible endings; and justice as lived, on-going and ever-evolving experience without certain ending or result" (McGlynn et al., 2017).**

Restrictive policies and procedures that limit either the process used or available outcomes undermine NPA and may cause additional harm. Instead, it is integral that NPA is conceived as a flexible framework to be adapted to the needs and capacities of the participants.

### → RECOMMENDED ENGAGEMENT

McGlynn, C., Downes, J., & Westmarland, N. (2017). Seeking justice for survivors of sexual violence: recognition, voice and consequences. In Zinsstag, E & Keenan, M. (Eds.), *Restorative Responses to Sexual Violence: Legal, social, and therapeutic dimensions*. Routledge.

Martin, L. (2018). *A Shifting Position: Responding Restoratively to Sexualized Violence at Post-Secondary Institutions in Waterloo Region*. University of Victoria Libraries. <https://dspace.library.uvic.ca/handle/1828/10399>

## c. Needs-Based, Survivor-Centred and Survivor-Driven

Howard Zehr (2015) describes a just response as follows: harm to people and relationships creates needs, and those needs create obligations. The obligation is to “put right” the harms with an aim toward healing.

### Survivor-centred

When, as Zehr (2015) recommends, the focus remains firmly on addressing the needs that result from harm, NPA approaches are inherently survivor-centred in that they:

- Begin from a place of belief;
- Restore a sense of power and control to those from whom personal and body autonomy was taken away;

- Reduce the stigma, shame, self-blame, and fear of retaliation; and
- Account for emotional, safety and support needs.

### Survivor-driven

GBV is a pernicious and wide-reaching phenomenon that affects communities and creates needs in those who have caused harm as well. However, recognizing the nature of trauma and the many ways a survivor is continually made vulnerable after an experience of GBV, the needs of the survivor must be the primary focus, particularly when making decisions about the process to be followed, who should (and should not) be included in the process, and whether or not a face-to-face encounter is considered.

Because PSI processes exist at the nexus of a wide network of legislation, regulation, collective agreements, and policies, it will never be possible (nor desirable) for a survivor to control or lead accountability processes. However, being survivor-driven means that to the extent possible, the survivor has the first say in how the NPA process will unfold, what form it will take, and what needs it will work toward addressing.



### RECOMMENDED ENGAGEMENT

Eerkes, D. & Hackett, C. (2018). Report from the Working Group on Restorative Initiatives for Sexual Violence. University of Alberta. <https://doi.org/10.7939/r3-py96-9z90>

Oudshoorn, J., Stutzman Amstutz, L., & Jackett, M. (2015). The little book of restorative justice for sexual abuse: hope through trauma. Good Books.

Zehr, H. (2015). The Little Book of Restorative Justice: Revised and Updated. Good Books.

## d. Trauma-Informed

A trauma-informed approach involves 1) recognizing how widespread experiences of trauma are, and 2) working in ways that limit the perpetuation of harm and trauma. It requires attention to the signs and symptoms of trauma – specifically acknowledging how it can impact behaviour, communication, and memory (Khan et al., 2019; American College Health Association, 2016).

Campus NPA implemented in the GBV context must be attuned to the impacts of trauma and work from a trauma-informed understanding.



**“Trauma-informed work demands that you have a basic understanding of the psychological, neurological, biological, social and spiritual impacts that trauma and violence can have on people. Being trauma-informed means that we are genuine, authentic, and foster compassionate relationships with survivors” (Kaba & Hassan, 2019).**

There is an increasing onus on PSIs to ensure that all aspects of responding to GBV on campus be trauma-informed. Crucially, while it is normally assumed that a trauma-informed approach is reserved for the person who experienced harm, there will be others in the process - the person who caused harm, community members, and even the facilitators - who may be triggered, or experience trauma responses. Being trauma-informed means being aware of and prepared for that eventuality.

## → RECOMMENDED ENGAGEMENT

Eerkes, D., De Costa, B. & Jafry, Z. (forthcoming). A Comprehensive Guide to Campus Gender-Based Violence Complaints: Strategies for Procedurally Fair, Trauma Informed Processes to Reduce Harm. *Courage to Act: Addressing and Preventing Gender-Based Violence at Post-Secondary Institutions in Canada* (Chapters 2 & 3). [URL Forthcoming]

Kaba, M., & Hassan, S. (June 18, 2019). *Fumbling towards repair: A Workbook for Community Accountability Facilitators*. Project NIA and Just Practice.

Randall, M., & Haskell, L. (2013). Trauma-informed approaches to law: Why restorative justice must understand trauma and psychological coping. *Dalhousie Law Journal*, 36(2), 501-533. [https://www.researchgate.net/publication/275032223\\_Trauma-Informed\\_Approaches\\_to\\_Law\\_Why\\_Restorative\\_Justice\\_Must\\_Understand\\_Trauma\\_and\\_Psychological\\_Coping](https://www.researchgate.net/publication/275032223_Trauma-Informed_Approaches_to_Law_Why_Restorative_Justice_Must_Understand_Trauma_and_Psychological_Coping)

## e. Intersectional, Feminist, Anti-Oppressive, and Anti-Colonial



## IMPORTANT TERMS

### Intersectional Feminism

While feminism is rooted in the belief in social, economic and political equality of the sexes, intersectional feminism is “a prism for seeing the way in which various forms of inequality often operate together and exacerbate each other.” (UN Women, 2020, quoting Kimberlé Crenshaw). It shines a light on the ways that an individual’s multiple, overlapping social and political identities create “compounding experiences of discrimination” (ibid).

### Anti-Oppression

Individual and institutional strategies, theories, actions and practices that seek to mitigate the effects of institutionalized power and privilege - particularly of white European experiences and structures - and ultimately to equalize power imbalances (Simmons University, 2020).

### Anti-Colonial

Recognizing and working to correct the privileging of white European culture over those Indigenous cultures that predated colonization.

In a world shaped by white supremacy, ableism, capitalism, colonialism, and heteronormativity, members of marginalized communities are more likely:

- to be subjected to experiences of GBV as a part of other ongoing acts of systemic oppression and discrimination, and
- to experience barriers to accessing support, healing, accountability and justice.

NPA methods are based in story-telling, allowing participants to express their experiences, thoughts, feelings and fears in a safe setting. Because of this orientation, they are perfectly placed to acknowledge how different intersecting social identities may play a role in both accountability and the healing process. Part of this work is ensuring the safety of marginalized groups by considering and validating how cultural, physical, psychological, emotional and other needs may appear differently in individuals, and by ensuring that we are responding with care towards these needs. Centring personal stories provides the ability to explore these often unspoken areas.

As part of an anti-racist, anti-oppressive commitment, PSIs have the responsibility to play an active role in decolonizing their processes. They can work toward this by

upholding the Indigenous and racialized expertise and values in developing their NPA practices. (See also Institutional Commitment: Community Partnerships and Relationships.)

### PAUSE AND REFLECT

Are the identities of the survivors who come forward at your PSI representative of those in your general demographics? What about the persons who have caused harm?

To what extent do you include the voice of marginalized folks and/or those most affected by GBV to determine the content of GBV policies and responses?

What role do lawyers occupy in your PSI policy-making?

### RECOMMENDED ENGAGEMENT

Daly, K., & Stubbs, J. (2006). Feminist engagement with restorative justice. *Theoretical Criminology*, 10(1), 9–28.

## f. Accessible

Accessibility can be understood in a number of ways:

- An option is accessible when the members of the PSI community are aware of and understand it - its implications, the commitment required, what it can and can't promise, and so on.
- In another sense, an option is accessible when barriers are removed to the extent that anyone can access that option regardless of their age, ability, culture, size, language proficiency, etc.

The option to use NPA in the PSI environment needs to be accessible in both ways. Clear, understandable information should be made available to survivors early and often. For NPA processes to be accessible and inclusive (that is, to actually respond to the needs of survivors), survivors need to be aware that they exist and have access to information about how they might explore or initiate an NPA process.

The same is true for those who cause harm and others who may not initiate a process but may be invited to participate in one. Clear information on the goals, requirements, commitments, and possible procedures will make the process more accessible.

## PAUSE AND REFLECT

- In what ways can you raise awareness about the option to use NPA on your campus?
- Where are existing communications channels you can tap into?
- How are members of the community made aware of their options, and at what point?
- Who are the decision-makers and gatekeepers?

In addition, PSIs are legally responsible to ensure their processes are non-discriminatory, and that reasonable accommodation is provided to those who have reduced access based on protected grounds (race, gender, disability, etc.). Anticipating and reducing barriers upfront through Universal Design is a good way to make all options more accessible.

## PAUSE AND REFLECT

- What are some of the existing barriers to accessing NPA options?
- What steps can you take to reduce, mitigate, or dismantle them?
- What elements of Universal Design can you put into use for those with differing abilities, first languages, cultural understandings, etc.

## RECOMMENDED ENGAGEMENT

National Disability Authority. (2020). What is Universal Design?.

<http://universaldesign.ie/What-is-Universal-Design/>

## g. Time

NPA in response to GBV cannot be understood as a shortcut or quick fix. It requires a substantial time commitment from all involved. The investment of time, however, pays off in many ways, including the significant potential for transformation - of trauma into healing, harmful behaviour into amends and human connection, of environments supporting rape culture to a culture of consent, and more.

Given the nature of GBV, healing and accountability are typically long processes that cannot be rushed. Some of the time-intensive elements include:

- The need to assess the wellness and capacity of all participants,
- Coordinating support for all involved to ensure that their participation is as safe as possible,
- Time spent planning and preparing the participants for the process, and
- Subsequent support, following up and mentoring.

The time commitment will also depend on the nature of the harm, the number of participants, and the related issues requiring attention.

In addition to the amount of time required, timing will be a factor. NPA participants are likely subject to the academic calendar: exam periods, marking/grading demands, research demands, community service learning, practicum or other work placements all need to be taken into account when designing and scheduling processes.

## → RECOMMENDED ENGAGEMENT

Llewellyn, J., Macisaac, J., & Mackay, M. . (2015). Report from the Restorative Justice Process at the Faculty of Dentistry. Dalhousie University. <https://www.dal.ca/cultureofrespect/background/report-from-the-restorative-justice-process.html>

Wemmers, J.A., & van Camp, T. (2011, June). The Offer of Restorative Justice to Victims of Violent Crime: Should it be Protective or Proactive. Victims of Violence and Restorative Justice Project. <https://www.researchgate.net/publication/342903398> The offer of Restorative Justice to Victims of Violent Crime Should it be Protective or Proactive

## h. Collaborative Decision-Making

A defining feature of NPA is that the participants work together to understand the harm and agree on what has to be done to address it, either through repair or by committing to specific actions in order to change future behaviour. Neither the PSI nor the facilitators can impose outcomes onto the participants in NPA. (See also Facilitator Commitments: Willingness to Relinquish Control.)

While survivor-driven, decisions about how the process will unfold, and who will participate in what ways, must also be collaborative and take into account



the participants' needs. There may be times when these decisions are constrained by institutional policy, collective agreements, or provincial or federal laws; however, making procedural decisions as collaboratively as possible under those constraints contributes to participant safety and agency, and is ultimately a trauma-informed measure to reduce harm within the process. (See also Foundational Principles: Flexibility and Creativity.)

In addition to the person harmed and the person who caused the harm, the community can be directly or indirectly affected when GBV occurs, or may have features that allowed GBV to occur. As a result, there may be a need for healing and/or accountability within the community as well, and therefore participation in the decision-making processes.

### → RECOMMENDED ENGAGEMENT

Eerkes, D., De Costa, B. & Jafry, Z. (forthcoming). A Comprehensive Guide to Campus Gender-Based Violence Complaints: Strategies for Procedurally Fair, Trauma Informed Processes to Reduce Harm. *Courage to Act: Addressing and Preventing Gender-Based Violence at Post-Secondary Institutions in Canada*. [URL Forthcoming]

Pranis, Kay (2005). *Little Book of Circle Processes: A New/Old Approach To Peacemaking*. Good Books.

Karp, D.R., Shackford-Bradley, J., Wison, R.J., & Williamsen, K. (2016, April). A report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses. Campus PRISM. [https://www.sandiego.edu/soles/documents/center-restorative-justice/Campus\\_PRISM\\_Report\\_2016.pdf](https://www.sandiego.edu/soles/documents/center-restorative-justice/Campus_PRISM_Report_2016.pdf)

WorldTrust TV. (2016, July 6). An Example of Restorative Justice with Sujatha Baliga [Video]. Youtube. [https://www.youtube.com/watch?v=6ih\\_1Q2MOpU](https://www.youtube.com/watch?v=6ih_1Q2MOpU)

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# Procedural Elements

While NPA is often considered an informal way to address GBV, there are certain procedural elements that must be followed as prerequisites for the NPA process. For example, those who caused harm must take responsibility for doing so; there must be adequate preparation with all parties; facilitators must pay intentionally engage those who caused harm; they must assess whether and what kind of NPA is appropriate (and assess risks associated with its use), and finally they must ensure a confidential process. We examine each of these below:

## a. Acceptance of Responsibility for Harm

*No NPA is possible if those who caused the harm have not taken responsibility for their actions.*

For many in our society, it is difficult to acknowledge that we cause harm while still holding onto our own humanity and worth. Those who have caused harm often refuse or are unable to examine their behaviours and be held accountable. In some cases where criminal charges are pending or possible, denying responsibility is a way to shield themselves from the harm of the criminal justice system. It is critical for those who have caused harm to work with staff who have been trained on this dynamic.

Taking responsibility for causing harm is not the same as admitting to a policy breach or a violation of the law. The focus is not on the details of what a person did, but on how those actions affected others and what harm needs to be addressed as a result. However, it is important to recognize that when a person who has caused harm faces actual or potential charges under a criminal process or investigation of a policy breach, there may be additional risks involved in admitting harm. See Institutional Commitments: Interaction with other processes and Procedural Elements: Confidentiality for more information.

### → RECOMMENDED ENGAGEMENT

Rico, K., Mendoza, J., Anderson, L., Robertson, L., Wolgemuth, S., Cook, A., Avelar, C., Hagen, E., Rentschler, C., & Mather, G. (2021). *Supporting the Whole Campus Community: Working with People Who Have Caused Harm*. Courage to Act: Addressing and Preventing Gender-Based Violence at Post-Secondary Institutions in Canada.

Chapter 13: Concurrent PSI and Criminal Processes, in Eerkes, D., De Costa, B. & Jafry, Z. A Comprehensive Guide to Campus Gender-Based Violence Complaints: Strategies for Procedurally Fair, Trauma Informed Processes to Reduce Harm. Courage to Act: Addressing and Preventing Gender-Based Violence at Post-Secondary Institutions in Canada.

## b. Voluntary Participation

Participation in NPA options can never be required, coerced, or expected. The nature of the engagement, the need for open and honest communication, and the vulnerabilities exposed require that all parties are there because they want to be there.

In order for a process to be fully voluntary, it must involve informed consent from all parties. While any NPA process should be flexible and adaptable, parties must be informed about:

- Guiding principles being followed
- Expectations for their participation
- Any risks they may face and how those may be mitigated
- How much time/energy the process may take
- Who else may be involved
- The requirement for and limitations of confidentiality

- The nature of, and their role in, collaborative decision-making

Parties must also be afforded the right to withdraw from the process at any time if they are no longer comfortable with it or able to participate.

The voluntary nature of NPA, including that all participants have a voice in the decisions made around process and outcomes:

- Means that procedural fairness is inherent in the process;
- Features considerable latitude for creative processes and resolutions;
- Are less subject to external oversight and control, leaving the participants to determine what they need and how those needs will be met; and
- Builds capacity for more socially responsible citizenship both within and outside of the PSI.

## c. Preparation

Using NPA requires considerable preparation for all involved. The preparation process is integral to the methodology and is an important source of healing and accountability-taking for those involved. This stage is inherently valuable, even if a direct encounter does not result or no agreement is reached.

People who have caused harm may take time to develop an understanding of the impacts of their behaviours; working closely with facilitators is a path to fostering accountability. Addressing GBV is unique in that our society is steeped in rape culture; people who have caused harm often need to have their ideas around consent and GBV unpacked and challenged before entering an NPA process to ensure they don't cause additional harm.

In working with people who have experienced the GBV, facilitators need to address

and prepare for trauma reactions (from any of the participants, or in themselves), safety measures, coordinate appropriate support, schedule whatever meetings are necessary, and coordinate follow-up.

## → RECOMMENDED ENGAGEMENT

Llewellyn, J., Macisaac, J., & Mackay, M. (2015). Report from the Restorative Justice Process at the Faculty of Dentistry. Dalhousie University. <https://www.dal.ca/cultureofrespect/background/report-from-the-restorative-justice-process.html>

Fairbank, V. (2020). How One Woman Reimagined Justice for her Rapist. The Walrus. <https://thewalrus.ca/how-one-woman-reimagined-justice-for-her-rapist/>

### d. Engaging with those who have Caused Harm

NPA recognizes the humanity of a person who has caused harm. A critical element of NPA is to ensure that those who have caused harm are supported in being accountable in order to meet the foundational principle of focusing on accountability. It is helpful to acknowledge that all people have caused harm at some point, and that harm is often connected to systems of power.

Ensuring support for those who have caused harm is beneficial to survivors as a practical matter. When the PSI takes steps to engage, inform and provide resources to those who have caused harm, it takes on the responsibility for providing a safe process. Often those who have experienced harm feel responsible for ensuring the safety of the process, or for protecting the very people or institutions who have harmed them. Engaging those who caused harm

removes that burden. Additionally, it can interrupt the cycle of abuse by creating capacity to be accountable, and providing resources for those who have caused harm to make different decisions in the future - something that many survivors have expressed as a goal when seeking justice.

Accountability in NPA is an inclusive process in which those who have caused harm are not made to feel disposable. It is a way to call in those who have harmed others to be accountable, take responsibility and make amends in a supported way. It aims to preserve and repair relationships (where appropriate), make space for healing, strengthen the community, and support accountability in multiple ways.

When addressing issues of GBV outside of sexual violence, such as IPV or stalking, additional supports from those



with specialized expertise, or from within specific communities, will

likely be necessary. See Suitability Assessment section below.



## RECOMMENDED ENGAGEMENT

- Barrie, H. (2020). No One Is Disposable: Towards Feminist Models of Transformative Justice. *Journal of Law and Social Policy*, 33(4), 65-92. <https://digitalcommons.osgoode.yorku.ca/jlsp/vol33/iss1/4/>
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- Circles of Support and Accountability Canada. (2021). Home. <http://cosacanada.com/>
- Dickie, B. (Director). (2000). Hollow Water [Film]. National Film Board of Canada. [https://www.nfb.ca/film/hollow\\_water/](https://www.nfb.ca/film/hollow_water/)
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- Western University Centre for Research & Education on Violence Against Women and Children. (n.d.). Neighbours, Friends and Families: Talking to People who Use Abusive Behaviour. <http://www.neighboursfriendsandfamilies.ca/i-want-to-help/talking-to-abuser.html>
- Rice, J. (2011, October 27) Why engaging abusive men with histories of violence promotes the safety of women and children. Vera Institute of Justice, Think Justice Blog. <https://www.vera.org/blog/why-engaging-abusive-men-with-histories-of-violence-promotes-the-safety-of-women-and-children>
- Working with People who have Caused Harm Community of Practice: Community Accountability Framework. *Courage to Act*. [URL Forthcoming]



## FURTHER RESEARCH NEEDED

There is a dearth of research and resources on working with people who have caused harm in the PSI environment. Much of current practice continues to be based on the criminal justice model and assumptions and does not adequately address the unique circumstances and needs arising from GBV on campus.

## e. Suitability Assessment

NPA is an excellent accountability mechanism in some situations, and there are times when it is not appropriate. As a starting point, the Essential Elements outlined in this workbook can be used as an ‘appropriate use’ checklist:

- Has it been requested by the survivor?
- Do those who caused harm take responsibility?
- Are the parties participating voluntarily?
- Are there sufficient staff with appropriate training/experience, resources, supports, and time to plan, prepare, and follow through?
- Do the policy and legal frameworks of the PSI allow and support the use of NPA options?
- Can all of the foundational principles be applied?

At this point, it would be irresponsible not to point out that intimate partner violence (IPV), stalking, and some other forms of GBV entail elements that require an entirely different set of skills and assessments. Attempting NPA in these cases without specific training, skills, and mentoring by experts can cause extensive and lasting harm. While using NPA for sexual violence is complex and requires significant care, we urge extreme caution in applying it in the context of IPV.

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## Risk Assessment

Acknowledging, confronting and working through the harmful effects of sexual violence can bring significant risk for further harm. While all PSIs recognize the need for skilled and reliable risk assessment, there is currently no single widely available, validated tool specific to campus GBV in Canada.

Risk assessment tools tend to fall into two broad categories: on the one hand, actuarial tools, such as the STATIC-99 for sexual offenders, provide a numerical score for the risk of violence and are typically used in the criminal justice system. On the other, Structured Professional Judgment (SPJ) tools are qualitative assessments that consider the safety needs of the persons harmed, other potential targets, and what interventions are required to monitor, restrict, and support the person who has caused harm.

Many PSI's have formalized risk, threat, or behavioural assessment teams that rely on a variety of violence risk assessment tools, including those specific to sexual violence such as the Risk for Sexual Violence Protocol (RSVP), Stalking Assessment and Management (SAM), and the Spousal Assault Risk Assessment (SARA). These tools were adapted by forensic psychologists to be used by social workers, law enforcement, and other professionals and are commonly used in PSIs, sometimes supplemented by internally-developed checklists.

While considering the risk of future behaviour is important, the very broad

scope of most risk assessment tools lacks the nuance required for assessing risk within the NPA process. As a start, parties to a process must be assessed for mental health red flags, risk of self-harm or suicidality. People working with those who caused harm must pay specific attention to and address the potential for future harmful or abusive behaviour. An assessment of what lies behind the behaviour, for example ongoing or past violence, or psychosis, is also necessary.

Suitability assessment for NPA requires additional practices and tools. For example, one form of risk assessment involves listening carefully to abusers and others who have caused harm for risks that they reveal within their stories, but that they themselves might not recognize. Open-ended questions lead to a greater chance of uncovering indicators in their own narratives, offering a far more nuanced assessment than the typical risk checklist.

Finally, the PSI is responsible for assessing potential risks to the participants within the process itself, thinking through any potential unintended consequences that might arise.



## RECOMMENDED ENGAGEMENT

Canadian Centre for Threat Assessment Professionals. (2021). Home. <https://catap.ca/>

Canadian Domestic Homicide Prevention Initiative. (2020). Risk Assessment, Risk Management, Safety Planning. <http://cdhpi.ca/risk-assessment-risk-management-safety-planning>

Hart, S. D., Douglas, K. S., & Guy, L. S. (2017). The structured professional judgement approach to violence risk assessment: Origins, nature, and

advances. In D. P. Boer, A. R. Beech, T. Ward, L. A. Craig, M. Rettenberger, L. E. Marshall, & W. L. Marshall (Eds.), *The Wiley handbook on the theories, assessment, and treatment of sexual offending* (pp. 643–666). Wiley Blackwell. <https://psycnet.apa.org/record/2016-52259-030>

Kropp, P.R., & Hart, S.D. (2004). *The Development of the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER): a tool for criminal justice professionals*. Department of Justice Canada. [https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rro5\\_fvi-rro5\\_vfi/rro5\\_fvi.pdf](https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rro5_fvi-rro5_vfi/rro5_fvi.pdf)

Northcott, M. (n.d.). *Intimate Partner Violence Risk Assessment Tools: A Review*. Department of Justice Canada. [https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12\\_8/rr12\\_8.pdf](https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_8/rr12_8.pdf)

## FURTHER RESEARCH NEEDED

Risk assessment in the context of PSI processes, including NPA, is an area that requires significant further research. Currently, most risk assessment tools accessed by PSIs are through private, for-profit companies. Many PSIs have turned to these companies for training; however, they often apply a criminal legal lens to their work and can be prohibitively costly. A widely accessible, validated tool specific to campus GBV would be of enormous value.

## PROMISING PRACTICE

Dr. Robert Prentky (Fairleigh Dickinson University) and Dr. Mary Koss (University of Arizona) have co-developed the only federally-funded set of interventions specific to campus sexual violence in the United States. STARSSA (Science-Based Treatment, Accountability, and Risk Reduction for Sexual Assault) involves both Cognitive Behavioral Therapy (CBT) and Active Psychoeducation (AP) intervention programs. They are intended for use with those who have been found responsible for policy violations related to sexual violence, but it is worth watching closely as more PSIs in the USA move to alternative processes under Title IX and may be able to adapt these tools to the NPA context.

Center for Effective Response to Sexual Misconduct (CERSM), Fairleigh Dickinson University. <https://www.fdu.edu/academics/colleges-schools/psychology/center-for-effective-response-to-sexual-misconduct/>

Their STARSSA program manuals are provided free of charge here:

Prentky, R., & Koss, M. (2018). *STARRSA: Science-based Treatment, Accountability, and Risk Reduction for Sexual Assault: Cognitive behavioral treatment program (CBT) manual*. Fairleigh Dickinson

University. <https://www.dropbox.com/sh/cm5n7n38qn2ispl/AACIRS8VxaKwQswX6NqWSN2Wa?dl=o&preview=CBT+Manual+FV.pdf>

Prentky, R., & Koss, M. (2018). STARRSA: Science-based Treatment, Accountability, and Risk Reduction for Sexual Assault: Active psychoeducation (AP) manual. Fairleigh Dickinson University. <https://www.dropbox.com/sh/cm5n7n38qn2ispl/AACIRS8VxaKwQswX6NqWSN2Wa?dl=o&preview=AP+Manual+FV.pdf>

## f. Confidentiality

NPA demands open, honest, and sometimes difficult conversation (whether in-person or otherwise). It requires a person who experienced harm to discuss potentially traumatizing experiences and analyze how those experiences have (re)shaped their lives. It requires a person who caused harm to acknowledge how their actions did so, opening themselves up to admitting to feelings of shame and responsibility. Neither one of these things is possible without reassurances that the process is utterly confidential.

It seems straightforward enough to have all parties commit to and potentially sign a confidentiality agreement; however, confidentiality may be compromised by PSI processes external to the NPA (such as policy investigations) or concurrent or future criminal prosecution. It is crucial to ensure that parties have access to accurate information about the potential limits to confidentiality and advice as to how they may be affected. For example, the courts can issue production orders for any records produced in the NPA

process, or subpoena witnesses who can testify as to what was discussed. While the actual risk of this happening is very low, the fear that it could happen is real and will likely bear on decisions to participate, particularly for the person who caused harm. (See also Chapter 13, “Concurrent and Criminal Processes” in Eerkes, De Costa & Jafry [forthcoming]).

Careful attention to what records are generated within NPA is an important starting point. The more that is documented, the more risk there is that the information could be used in other venues. Documenting only the information crucial to the process, refraining from taking notes, and documenting the outcome with only the necessary details will help reduce this risk.

Finally, PSIs considering incorporating NPA should make it clear in both policy and practice that anything shared in the context of NPA will not be used in any other PSI (investigative, employment, disciplinary, or other) process.





## PAUSE AND REFLECT

- In terms of the procedural elements outlined in this section, what barriers can you identify in your PSI to implementing NPA?
- In what ways could you mitigate or eliminate them?
- Identify 3 steps you could take right now to get started
- What additional or new harm could your institution inflict by using NPA without the necessary procedural elements?
  - Acceptance of responsibility:
  - Preparation:
  - Support for all parties:
  - Assessment for Appropriateness:
  - Confidentiality:
- For those working in PSIs where NPA has been used, what mechanisms did/do you have in place?
  - Acceptance of responsibility:
  - Preparation:
  - Support for all parties:
  - Assessment for Appropriateness:
  - Confidentiality:

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# Institutional Commitments

While often left to the dedication and commitment of individual champions, NPA (particularly for use in and around GBV cases) requires institutional support, sufficient resources, dedicated and sustainable funding, intentional integration into the community and the existing structures for responding to GBV, and relationships with community organizations. These elements lay the groundwork for NPA to be a valid option for survivors and other participants, ensure that the community understands and is receptive to NPA, and provides a sustainable NPA option into the future.

## a. Institutional Support and Resources

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### i. Institutional commitment to NPA as a valid option

NPA starts and ends with communities: those affected by GBV, and those individuals within the communities who participate in the NPA process. However, it requires significant investment from the institution, starting with a recognition that punitive processes do not work for everyone and can even be harmful.

That acknowledgment opens up the opportunity and responsibility to find alternative ways to address GBV. Successfully integrating NPA options requires PSI senior leaders, in particular, to make clear, supportive statements about the availability of NPA, and its potential as an equally legitimate and valid choice for those seeking justice or a pathway to healing for an experience of GBV, addressing a toxic environment, or GBV prevention.

It is important to note that this commitment comes with certain responsibilities, including:

- Intentional and ongoing community engagement, identifying and upholding values supportive of NPA;
- A commitment to making NPA available to those who seek it, subject to the essential elements outlined in this workbook;
- On-going, vocal support from senior leadership, through every stage of a process;
- The capacity to respond to questions on NPA from the media, community members and government; and
- Trust in the facilitators to determine when NPA is possible or appropriate in any given situation, without pressure to work beyond their capacity or outside of the parameters of good practice.



## RECOMMENDED ENGAGEMENT

- Fairbank, V. (2020). How One Woman Reimagined Justice for her Rapist. The Walrus. <https://thewalrus.ca/how-one-woman-reimagined-justice-for-her-rapist/>
- Karp, D.R., Shackford-Bradley, J., Wilson, R.J., & Williamsen, K. (2016, April). A report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses. Campus PRISM. [https://www.sandiego.edu/soles/documents/center-restorative-justice/Campus PRISM Report 2016.pdf](https://www.sandiego.edu/soles/documents/center-restorative-justice/Campus_PRISM_Report_2016.pdf)
- McMahon, S. M., Karp, D. and Mulhern, H. (2018). Addressing individual and community needs in the aftermath of campus sexual misconduct: Restorative justice as a way forward in the re-entry process. Journal of Sexual Aggression, 25(701), 1-11. <https://www.researchgate.net/publication/327182078> Addressing individual and community needs in the aftermath of campus sexual misconduct restorative justice as a way forward in the re-entry process



## PAUSE AND REFLECT

- What policies, commitments, practices, and people exist in your institution to support the adoption of NPAs?
  - Has your PSI made a commitment under the TRC?
  - Do you have an anti-discrimination policy? How can NPA fit into or reinforce these?
  - Who are the potential champions?
- In what areas or ways do you already incorporate these essential elements into your practices?

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## ii. Dedicated Resources, Personnel, Appropriate Funding

### Resources

It is becoming increasingly clear that a meaningful process can require significant resources. The intensive nature of the work, and potential conflicts of interest, means it is not something that can simply be added on to already demanding roles. It requires staff who have been trained to facilitate the process, provide support for those affected, as well as potentially engaging external support from

experts. A PSI offering NPA options should be prepared to appropriately fund the initiative, ensure that there are dedicated and trained personnel, adequate space and other resources.

While this may seem an impossible goal, consider the potential for these skilled personnel to address persistent and destructive challenges besides GBV:

- Staff / HR conflicts, concerns and complaints
- Student group issues
- Residence issues
- Bullying, harassment
- Racism
- Workplace or learning environment assessments from a harm reduction perspective
- Preventative efforts, team and community building

The costs of handling GBV poorly can also be significant, including:

- Costly disciplinary and appeals processes
- Poor academic performance, withdrawing from academic program
- Reduction in job satisfaction
- Poor physical and mental health outcomes
- Loss of trust in institutional processes and responses

(Stermac et al., 2020; Hango & Moyser, 2018)



## RECOMMENDED ENGAGEMENT

Chapter 6, “Personnel, Roles and Training”. In Eerkes, D., De Costa, B. & Jafry, Z. A Comprehensive Guide to Campus Gender-Based Violence Complaints: Strategies for Procedurally Fair, Trauma Informed Processes to Reduce Harm. Courage to Act: Addressing and Preventing Gender-Based Violence at Post-Secondary Institutions in Canada.

## Skilled Co-Facilitation

Facilitating NPA processes is both time-consuming and energy-intensive. In other words, it is not something people can do off the sides of their desks. It requires time, specialized training, practice, and dedication to safely and effectively facilitate NPA (see Facilitator Commitments below).

Particularly in cases involving GBV, co-facilitation (that is, having two facilitators) is integral for several reasons:

- It provides a measure of accountability for the facilitators
- It increases opportunities for risk assessment
- It provides additional perspectives for an intersectional approach
- A more experienced co-facilitator can mentor newer practitioners
- It provides an opportunity to involve community organizations in situations where trust in the PSI has been eroded (see Institutional Commitments: Community Partnerships/Relationships below)

## b. Integration and Interaction

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### i. Integration into community for receptiveness

The common assumption that NPA is not appropriate for use around GBV is typically based in either a lack of awareness that it is available, or in a lack of understanding about what it is and what it can do. Incorporating NPA into the PSI environment starts with broad community engagement, including discussions of community values and expectations (we note that circles are a particularly effective way of holding these discussions). We believe, as Llewellyn and Morrison (2018) wrote, that it is imperative that institutions make an ongoing commitment to exploring the relationships between members of their community for restorative or transformative processes to be successful. Those relationships need to be seen in all their complexity, not as mechanisms for securing peace and conformity but as “a reality that must be taken into account.” (ibid).

This step is crucial to the use of NPA; an institution that simply tacks restorative justice, for example, onto its disciplinary policy without exploring the relationships that support GBV throughout the community runs the risk of creating yet another “ritual of comfort” (Burford, 2018, citing Braithwaite) which allows the institution to say that it takes the matter seriously without really addressing the problem.



Community circles designed to explore the relationships between members of communities throughout the institution -- in academic departments, labs, student groups, offices, or athletic teams -- accomplish three important things. They:

- Help communities to establish collective values and define acceptable and unacceptable behaviour;
- Help identify harmful relationships that interfere with individuals' participation in the community; and
- Create a foundation to understand the goals and utility of NPA long before it is required to address the harm caused by an individual to a survivor or the community.

A communication strategy may provide information about NPA, but is easily ignored or missed in the constant onslaught of messaging and advertising (internal and external) bombarding PSI community members. Leading by example and engaging in participatory transformation through the use of circles, for example, can build deep and broad understandings about how NPA works and what it is capable of.



### SAMPLE CASE

As part of a campus-wide NPA initiative, facilitators have arranged talking circles within various areas, including student residences, administrative units and research labs. Using a talking piece, they start with a discussion of the particular group's connection to the PSI's stated values and how they might be expressed within the group. They move to more specific questions around the group dynamic, issues that could potentially arise, ways the community could hold each other accountable to live up to those values, and mechanisms to address behaviour that conflicts with the values. The facilitators understand the impact of power imbalances within the group and have the skills to manage and offset them, while providing each participant with the kind of support and validation they need to speak.

### Reflection questions:

- What are the benefits of holding these NPA circles?
- How might they lay the foundation for addressing NPA in difficult situations, like GBV?

- Where are the potential pitfalls in facilitating these discussions?



## PAUSE AND REFLECT

- What discussions have happened/could happen in your PSI to identify and commit to the values supportive of NPA? Consider where you might start:
  - Residence
  - Staff/departmental meetings
  - Athletic teams
  - Labs
  - Student groups
  - Employee retreats and strategic planning exercises
  - Other \_\_\_\_\_
- Imagine an environment in which people can move from department to department, from student group to student group, from office to office, knowing that they will be able to study, teach, research, work, or engage in community activities regardless of race, gender, sexual orientation, or cultural origins. How can you treat this as a practical day-to-day challenge rather than an aspiration that will only be met in the abstract or when a crisis erupts?
- Consider the contexts in which you could move your PSI closer to adopting an NPA model simply by integrating the language of harm, repair, needs-based responses, accountability, collaborative resolution, etc. Where can you start using this language right now?

## ii. Integration into GBV/SV Response Framework

The viability of NPA rests on its integration into the institution's entire GBV response framework. In order to lay the foundation for the appropriate and safe use of NPA:

- Use restorative, transformative and community justice language to build

a culture of consent and in GBV prevention work;

- Anticipate and work through concerns and criticisms about NPA before a crisis occurs;
- Provide NPA as an option without

- requiring a complaint;
- Encode in policy the commitment to protect any information disclosed or discussed in an NPA from being used in any punitive or investigative PSI processes; and
  - Provide information about the availability of NPA options at critical touch-points, such as where a survivor seeks personal support and the complaint intake stage.

These general measures lay the

groundwork to use NPA in specific situations, including:

- Being able to respond to and/or resist public pressure regarding the use of NPA in a particular case;
- Mapping out whether and how other processes will interact with or affect the NPA in the preparation stage; and
- Clearly articulating a pathway for cases in which a NPA process is unsuccessful or abandoned.

harm  
 healing  
 care  
 process  
 mutuality  
 education  
 empathy  
 repair  
 collaborative  
 accountability  
 circles  
 community  
 restorative  
 justice  
 transformative  
 trust

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### iii. Interaction with other PSI processes

NPA processes have an additional advantage: they can be used instead of or in addition to other PSI processes. However, it is crucial to consider how these processes might interact or interrelate.

The norm for most post-secondary institutions is to rely on formal complaint processes to address GBV. However, punitive approaches rarely address the needs of the complainant, the immediate community, nor potential future victims (Ahmad, 2020). Furthermore, there are situations in which the PSI has no jurisdiction to act on a complaint, when a respondent is no longer a member of the PSI community, or when elapsed time means an investigation is no longer possible. These are the spaces where NPA can fill the gaps.

In the case of concurrent or future punitive responses, NPA should be kept separate from adjudicative processes. Doing so:

- Allows an NPA process to be initiated without a complaint,
- Removes a significant barrier to participation,
- Prevents the NPA process from becoming bound to procedural issues that define complaint processes,
- Uncoupling the NPA from discipline is one way to decolonize accountability measures, and
- Allows those who have caused harm to participate in candid conversations without fear of having their words used against them in a complaint process.



#### SAMPLE CASES

- I. After a very contentious and divisive investigation found a senior professor to have violated policy with a pattern of severe sexual harassment, the professor left the institution. The remaining staff and faculty were relieved that it was over, but the process was hard on them. Given the significant time that passed between the complaints and the outcome (which was not communicated to them), they believed the institution - and in particular their Chair - had not handled the situation well. There is lingering distrust of both the people involved and the procedures used. In particular, untenured female faculty members and administrative staff feel unable to raise their concerns because elements of their employment, such as performance evaluations or promotions, rely on the Chair.

### Reflection questions:

- How might NPA be used to address the harms incurred through the process?
  - How could the power imbalance in this situation be addressed to allow the staff and faculty to feel safe in raising their concerns?
2. A student, Pao, is facing a disciplinary hearing related to an allegation of sexual assault against another student, Ange. Ange is distrustful of the process in that it is unlikely to reassure her that Pao understands the impact of their actions. Pao wants to apologize to Ange but is afraid to say anything at all for fear that it might be used against him in his hearing. Facilitators are called in and arrange to engage in NPA in the form of a letter exchange. They work with the parties and PSI officials to agree that 1) Ange would write to Pao first so that she could articulate what she needed Pao to hear; 2) Pao could then reply in a letter, acknowledging the harm, and offering ways to repair the harm and rebuild trust; 3) Letters would continue to be exchanged until both Ange and Pao are satisfied, or until one of them withdraws; 4) nothing expressed in the letters would be admissible in the disciplinary hearing; and 5) if Ange believes NPA has addressed her needs, a submission could be made to the hearing panel indicating that Pao had participated in NPA in good-faith and the panel could choose to take that into account in the disciplinary process. No other information would be provided to the panel.

### Reflection questions:

- How might a situation like this be addressed at your institution?
- Who would be the right people to have ‘at the table’ to agree to a process like this?

## c. Community Partnerships/Relationships

Relationships with cultural groups, nonprofits and other community organizations are critical to the use of NPA in the PSI. These relationships provide access to deep expertise and allyship in striving for anti-racist, anti-oppression, feminist, intersectional, and decolonial approaches. Most importantly, these relationships hold the PSI accountable for respectful use of NPA methods without co-opting or appropriating them.

We recognize that appropriately using NPA, especially for small, rural, or remote institutions, may range from daunting to virtually impossible. In those cases,

community partnerships and relationships open up the opportunity for members of the PSI community to access NPA from outside of the institution.

Relationships with communities outside of the PSI guard against inappropriate use; they allow PSIs to relate to, honour, and see the power of NPA without engaging in cultural appropriation. They further hold the institution accountable for avoiding what Wojkowska (2006) terms “elite capture” or using NPA to “reinforce existing power hierarchies and social structures.”

Working together is one way of enacting the mentorship that is critical to NPA work by creating opportunities for consultation around risk, debriefing, skill-building and supervision. Working in partnership proactively allows for the development of a strong working relationship, building a shared foundation of understanding and values, and agreements around fair compensation, all prior to being faced with a crisis.

Because these partnerships and relationships are so critical, they should not be considered a free resource to be tapped without reciprocity. Community groups tend to rely on grants or donations and are chronically underfunded. PSIs should be prepared to pay for their services and/or offer some form of in-kind support, such as space on campus.



## PROMISING PRACTICE

Community Justice Initiatives (CJI) is a restorative justice non-profit organization that is working alongside the Office of Dispute Resolution and Sexual Violence Support at Wilfrid Laurier University to develop and implement non-punitive accountability responses to sexualized harm. The partnership is mutually beneficial:

- For Laurier, the partnership builds capacity within the PSI to understand and engage with the complexity of NPA responses to sexualized violence, and provides support from a community agency with expertise in restorative justice responses to sexualized violence and harm.
- For CJI, partnership provides opportunities to help increase understanding and support for restorative justice-based responses to sexualized harm. In addition, it provides opportunities for fee-for-service work, which supports the delivery of typically unfunded community-based programming.

As partners, CJI and the Office of Dispute Resolution and Sexual Violence Support

- Co-convene and support the PSI-wide community of practice (facilitating training, meetings, identifying goals, project planning, supporting evaluation efforts);
- Establish referral pathways, agreement for co-facilitation and consultation



before there is a crisis situation, and access to a roster of trained & skilled co-facilitators;

- Co-develop and deliver contextually relevant and informed training for the PSI (informed by a strong understanding of institutional dynamics and policies and procedures); and
- Identify other ways to incorporate NPA throughout the institution, including key decision-makers, opportunities and barriers.

### **PAUSE AND REFLECT**

Identify community members or organizations in your community who already engage in NPA work.

- How could you partner with them?
- What can you learn from them?
- How will you support them?

### **RECOMMENDED ENGAGEMENT**

Amplify RJ. (2020). Home. <https://www.amplifyrj.com/>



# Facilitator Commitments

Facilitators, too, must commit to appropriate training and continual learning, be invested in the work, and approach each case with openness and humility, acknowledging their own personal and professional limitations. These commitments ensure a safe, open and accessible process for survivors, those who have caused harm, and participating community members.

## a. Appropriate Training

NPA uses various methods, each of which has its own conventions and practices. Facilitators should seek training in as many of these methods as possible to broaden their expertise and allow them to offer the practice most suited to the situation at hand. They can begin by reaching out to organizations within their own communities to receive training, mentoring and education. In addition to understanding the broad range of possible practices available to those seeking accountability in the context of GBV, appropriate training also helps facilitators to differentiate mediation, or conflict resolution, from NPA.

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### Formal facilitation training

We recognize the following trainers as experts in providing formal training in the use of NPA for GBV. This list is non-exhaustive and subject to change as NPA practice continues to expand.

- David Karp, restorative justice for PSIs
- Kaaren Williamsen and David Karp - Promoting Restorative Initiatives for Sexual Misconduct (PRISM)
- Mimi Kim, transformative justice
- Just Practice (Shira Hassan and Mariame Kaba), community accountability
- Jasmyn Elise Story, restorative justice for GBV

When working in the area of GBV, additional training in understanding the dynamics of GBV, trauma-informed practice, and inclusion (that is, anti-oppression, anti-racism, and decolonization) are equally important. Local or online trainers may provide B-SAFER training for IPV - a critical addition should you offer NPA options in this area. Finally, peacemaking circle training is an important complement to RJ in order to be able to facilitate the most appropriate NPA for any specific situation.

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## Informal training

Continuous engagement with informal training opportunities provides perspectives, insights and inspiration outside of the formal venues. For example, Carleton University brought in Turtle Moons from the Kitigan Zibi Anishinabeg First Nation to help staff understand land-based practices. Local, provincial and national conferences are another source for both information and connections.

Finally, we believe it is important to complete the minimum recommended reading from our list below in order to build a broad sense of what NPA is, how it can work, and who the experts are. While those people may be from around the world, you can also find expertise in your own backyard. Make a commitment to maintain a relationship and to work with community organizations who hold expertise in the subject matter, and who you can turn to for mentoring and advice (see Institutional Commitments: Community Partnerships/Relationships).

## b. Incorporate continual learning

Upfront training is, of course, critical to skilled practice. However, the field of NPA is in many ways still evolving and adapting to the modern world. We do not have best practices yet - although we know enough to incorporate smart practices - and research for evidence-based practice is relatively thin. Mary Koss (2014) published one of the only empirical studies available and, although outside of the PSI context. It provides valuable information about the efficacy of restorative justice in cases of sexual violence. That said, the field is growing significantly and being studied, implemented, and assessed around the world, in schools, non-profit organizations, governments, and in tribal, municipal, provincial/state and federal level projects. A strong facilitator commits to keeping up with the latest research and taking up training in new or less familiar techniques. The key is to remain aware that the practice of NPA will never be perfect and to seek out places to learn from others.



### PAUSE AND REFLECT

Some ways to keep learning:

- Work or volunteer with marginalized students or communities outside of the PSI
- Set your search engines to alert you when new research is released
- Join listservs and communities of practice

- Google Groups: Campus RJ and Campus-PRISM
- Get to know a librarian who can help you research
- Find community, national, and international mentors from different areas, with a diversity of experiences and knowledge; seek out the unfamiliar
- List any others you can think of:

## c. Multipartial Facilitation

While NPA is survivor-driven (where applicable, initiated and moved along with regard to a survivor's expressed preferences) and centred on the survivor's needs, a skilled facilitator in NPA attends to the needs of all parties involved, making space for them to participate, giving them a voice in both procedural and outcome decisions, and equalizing, to the extent possible, power imbalances.

Multipartial facilitation stands in contrast to the neutral, or impartial, facilitation required for mediation and other forms of ADR. Rather than being detached and separate, the facilitator works to ensure all parties are equally supported and heard.

The demanding nature of multipartial facilitation is eased by the co-facilitator model, in which two facilitators work together to share the load, and bring a diversity of perspectives and strengths to the table (see Institutional Commitments: Skilled Co-facilitation). This is also a necessary commitment from those practicing NPA around GBV.

## d. Investment in the Work

Facilitating NPA is not for everyone. It is important to be drawn to the work, both personally and professionally. It can be intense, tedious, exceptionally challenging and rewarding, sometimes all in the same day. A facilitator has to hold space for each person in the process, while maintaining a view of the big picture and any applicable institutional, legal or regulatory frameworks. One description of the alchemy of RJ describes “the point where knowledge, practice, and presence of mind ... brings about the ‘magic’ of people coming together in mutual understanding” (Restorative Justice Center, UC Berkeley, 2018).

Personal and professional investment is required to maintain both motivation and skills necessary for this work, including the following:

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## ii. Willingness to tackle difficult subjects

Topics can range from deeply personal to controversial, taboo, or incendiary. A facilitator must commit to confronting these difficult topics, recognizing that addressing them early and often can head off much more difficult or entrenched situations. Toxic workplaces, high-profile cases, and the ‘whisper network’ all have in common a lack of action or appropriate response when information about them first came to light. The sooner the issue is resolved, the less damage it does to all of the parties, including the institution.

Controversy is only one challenge a facilitator faces; they must not shy away from the complexity of the situation, or the intensity of emotional expression. They must be resilient and flexible, able to anticipate, listen to, and/or manage the range of human experiences and emotions in the moment, including their own.

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## ii. Acknowledging and respecting personal and professional limits

A strong facilitator knows their limits and seeks assistance or refers to other experts in those cases in which they are not comfortable, either with their skill level or their personal ability to be fully present in a particular case. Seeking co-facilitators with complementary strengths, perspectives, and skills increases capacity significantly, but there may be times when it is better not to take on a case, for example when the necessary resources, supports and skills are unavailable. Failing to acknowledge these limits risks causing significant harm to participants.

This level of self-awareness and reflection is not simply intuitive; it must be sought out. Co-facilitators can help each other through mentorship, building evaluation into the process, and incorporating sufficient debrief time into each process to explore what worked well and what could have been better. Self-assessment tools from a wide range of professions can be instructive for NPA facilitators as well. However, resources such as the Restorative Justice Center at UC Berkeley, and workbooks such as *Fumbling Towards Repair*, are a great place to start.

### RECOMMENDED ENGAGEMENT

Kaba, M., & Hassan, S. (2019). *Fumbling towards repair: A Workbook for Community Accountability Facilitators*. Project NIA and Just Practice.

Restorative Justice Center, UC Berkeley. (2018). *What is good facilitation for*



restorative justice? <http://rjcenterberkeley.org/what-is-good-facilitation-for-restorative-justice/>

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### iii. Willingness to Relinquish Control

The collaborative nature of the process is a trauma-informed measure in that it puts control for key decisions back into the hands of those who have been the most affected. Knowing this, a facilitator must not be inclined to make decisions for participants, or even to urge them in a particular direction.

This willingness to relinquish control stems from the recognition that individuals and communities have the capacity for coping, healing, and growth, especially within a supportive facilitative environment. Facilitators (and the institutions in which they operate) must resist the tendency to be paternalistic and inflexible in working toward healing. Instead, the facilitator commits to guiding the participants through the process to identify and repair harm, and transform interpersonal and/or social relations.

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### iv. Approach Each Case with Humility and Openness

It is common to assume that one's own experiences and understandings of the world can be universalized; however, a strong facilitator understands that the social and personal identities of the participants, their lived experiences, their histories, their intersecting privileges and challenges, and their cultural contexts all shape how an individual will understand, react to, and make meaning of an experience of GBV.

A strong facilitator allows the NPA participants to guide both process and outcomes. By listening to the stories and experiences of those involved in an NPA, and by challenging their own biases and assumptions, facilitators actively work towards a trauma-informed, anti-oppressive and intersectional approach to methods of facilitation. Incorporating these approaches is fundamental to NPA practice; it is not about identity politics, but about the ability to make and facilitate authentic human connections.

Individuals who are facilitating or supporting NPA must be educated in and aware of the histories and current realities of the ways in which GBV impacts individuals and communities. Facilitators are responsible for preventing harm within the process. Doing so requires them to engage in (un)learning and becoming aware of their own participation in these forms of systemic violence and discrimination.

Finally, a strong facilitator is able to work with Elders, community leaders, and

others whose practice is rooted in specific Indigenous or other cultural practices. Doing so creates meeting places for real discussions of ongoing concerns despite cultural differences.



### SAMPLE CASE

Rayne is a Black, trans woman who has disclosed to a PSI employee that many members of the undergraduate students' gaming club she belongs to have commented on her body, using language that fetishizes her on the basis of race and gender. When she complained to the club president, the members were told to stop, and that if there was any further harassment, they would be removed from the club.

Many members of the club feel that Rayne overreacted and have started to exclude her from club activities, group chats, and events. The club president has told Rayne that nothing can be done about how the group is reacting, and if Rayne is unhappy in the club, maybe she should "join something else."

Rayne comes to your office looking for a way to educate the members about gender and race-based sexual violence, and bring the club to a new space of understanding and inclusion. She does not want to file a formal complaint about the club or its members, as she enjoyed being in the club and the people in it until the violence occurred. She wants to remain a member of the club, and continue to be part of its activities.

#### Reflection questions:

- How could NPA processes be used in this case?
- What are the critical power dynamics and intersectional lenses to apply in this case?
- How might you prepare the club and Rayne for an NPA process in this case?
- How might you make sure Rayne's intersectional experience is brought out into the open?
- Who should be involved in the process for it to be most effective?



## PAUSE AND REFLECT

- Who is your team? Are they all in one department or spread throughout the PSI and/or the community?
- How will you and your team work together to hold each other accountable to these principles?
- What supports do you have in place to do so?
- What's missing?

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## Further Reading

The NPA field is growing and changing as we write this workbook, and there will be new research, resources and developments in the future. We have recommended the following list of resources for further engagement, and marked those that we believe to be a minimum requirement with an asterisk (★); however, it is crucial to remain connected with the NPA community of practitioners, administrators, activists, and authors to continue the conversation and keep up to date with new research.

### Courage to Act

- ★ Working with People who have Caused Harm Community of Practice. (2021). Community Accountability Framework. *Courage to Act: Addressing and Preventing Gender-Based Violence at Post-Secondary Institutions in Canada*. [URL Forthcoming]
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