

# Preventing sexual exploitation and abuse:

## A GUIDE FOR CANADIAN ORGANIZATIONS ON BASIC LEGAL CONCEPTS

Understanding the liability and duty of care of Canadian organizations working in international cooperation and humanitarian action

DIGNA'S LAWYER'S WORKING GROUP - JUNE 2021



# FOREWORD

To aid the reader, the Lawyer's Working Group provides some context to demystify legal language and empower a common-sense approach to the prevention of sexual exploitation and abuse in Canadian organizations. The law generally operates to give structure and process to people who are at risk (prevention) or who have been harmed (restitution). In our view, the key component to be considered is the power inherent in organizations, the mindfulness about that power, and the organization's own empowerment to do the right thing in the face of an abuse or misuse of power.

This document was created to help organizations balance the power between program participants and those who make decisions about providing aid and services; between those who are employed by organizations and those who make employment decisions; and between those who are marginalized and those who hold systemic privilege. We hope it will raise deep and meaningful conversations within organizations about the ways in which organizations can affirm what they are doing well, and can improve the ways in which they work to prevent harm. We hope that this document will assist with a recognition of where organizations' policies and procedures work to prevent sexual exploitation, abuse, and misconduct. We also hope that this document will empower organizations' staff to speak up within their structures to develop better policies and procedures that create appropriate checks and balances to the power inherent in organizational decision-making.

## ***Disclaimer***

*The information provided by the Lawyer's Working Group is for information only based on case law available to the Lawyer's Working Group at the time of writing. This memo is intended to provide overall information that informs the broader work of Digna, not to inform any one specific case or incident. This memo does not contain legal advice. Specific issues, complaints, or requests should be addressed on a case-by-case basis with legal counsel for legal advice.*

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# 1.BACKGROUND

Digna’s overall objective is to support Canadian organizations in the international development and humanitarian sector to improve their ability to prevent and address sexual exploitation and abuse within their organizations. This is done in coordination with organizations and their institutional partners and program participants, particularly women and girls.<sup>1</sup> Through Cooperation Canada, Digna provides guidance for Canadian organizations to uphold and live out their Leaders Pledge for the prevention and elimination of sexual misconduct.<sup>2</sup>

The following underlying objectives are key to fulfilling this mandate and pledge:

- Improving the sector’s ability to prevent and address sexual exploitation and abuse;
- Increasing use of improved gender-responsive practices and policies; and
- Increasing awareness of gender-responsive good practices and modalities.

To further understand its role to provide expertise in the

prevention of sexual exploitation and abuse, Digna requested its Lawyers’ Working Group to provide a memorandum containing general information intended for Canadian organizations in the international development and humanitarian sectors committed to preventing and eliminating sexual exploitation and abuse. This memo addresses legal frameworks regulating prevention of and responses to sexual misconduct. In particular, the Lawyers’ Working Group provides information about: the duty of care required by organizations to ensure that their volunteers, employees, and program participants are protected from sexual abuse, harassment, and exploitation; basic principles organizations should consider when developing policy and conducting internal investigations; and criminal law responses in Canada and abroad.<sup>3</sup> Finally, the Lawyers’ Working Group provides a brief overview of intentional consideration to protect traditionally equity-seeking groups who are LGBTQ2I, Indigenous, ethnic and religious minorities, and disabled persons, among others.

# 2.ROAD MAP

Many organizations acknowledge their duty of care – both legal and moral – to provide safe workplaces for their staff and the program participants. Yet, what this means in both practice and theory is still unclear. This memorandum aims to answer some of these questions. This memorandum also discusses how Canadian organizations and their partners understand the necessary steps in litigat-

ing a complaint of sexual exploitation and abuse, and in some circumstances, also sexual harassment. Finally, this memorandum briefly canvasses additional vulnerabilities experienced by LGBTQ2I, Indigenous, ethnic and religious minorities, and disabled people of all genders, but particularly women and girls.

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1. Digna, *Preventing Sexual Exploitation and Abuse* [online] <https://www.digna.ca/about-us/>.  
2. Cooperation Canada, *Cooperation Canada Leaders’ Pledge on Preventing and Addressing Sexual Misconduct* [online] [https://cooperation.ca/wp-content/uploads/2021/02/Leaders\\_Pledge.pdf](https://cooperation.ca/wp-content/uploads/2021/02/Leaders_Pledge.pdf).  
3. *A subsequent guide for organizations in situations of investigating reported misconduct is forthcoming.*



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## 3. DEFINING SEXUAL EXPLOITATION AND ABUSE (SEA)

Having a common definition of sexual exploitation and abuse (SEA) is critical to identifying, monitoring, and implementing effective multi-agency responses.

The United Nations defines “sexual exploitation” as *any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.*<sup>4</sup> *Sexual exploitation is a “violation of universally recognized international legal norms and standards.”*<sup>5</sup>

“Sexual abuse” refers to an *actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.*<sup>6</sup>

The Canadian Government has adopted both definitions in its response to sexual exploitation and abuse in the delivery of international assistance.<sup>7</sup>

### 3.1. WHAT IS THE DIFFERENCE BETWEEN SEXUAL EXPLOITATION AND SEXUAL HARASSMENT?

The UN provides the following definition to explain the how “sexual harassment” differs from sexual exploitation and abuse (SEA):

4. United Nations, Glossary on Sexual Exploitation and Abuse: Thematic Glossary of current terminology related to Sexual Exploitation and Abuse (SEA) in the context of the United Nations, Second Edition, 24 July 2017 [online] <[https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf)>.
5. “Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority” [2008] *UN Women* [online] <<https://www.un.org/womenwatch/uncoordinated/antiharassment.html#:~:text=Sexual%20harassment%20is%20any%20unwelcome,interferes%20with%20work%2C%20is%20made>>.
6. United Nations, Glossary on Sexual Exploitation and Abuse: Thematic Glossary of current terminology related to Sexual Exploitation and Abuse (SEA) in the context of the United Nations, Second Edition, 24 July 2017. [online]: <[https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf)>.
7. Government of Canada, Sexual Exploitation and Abuse in International Assistance. Online: <[https://www.international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/sexual\\_exploitation-exploitation\\_sexuels/index.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/sexual_exploitation-exploitation_sexuels/index.aspx?lang=eng)>.

[Sexual harassment is:] *Any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or to be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive work environment.*<sup>8</sup>

It is important to distinguish “sexual exploitation and abuse” (SEA) from “sexual harassment”. It is also important to note that the definition of sexual harassment is broad. Some examples of what can be included in the definition of sexual harassment are:

- When a person (such as a staff member of a service-providing NGO) uses a position of power to sex-

ually abuse or exploit (verbally, through touch, use of inappropriate images, etc.) **a program participant or vulnerable member of the community.**

- When differences in power are abused **between staff members** (verbally, through touch, use of inappropriate images, etc.).

It is important to note that the UN definition of sexual harassment explicitly refers to sexual harassment in the workplace (not sexual harassment that occurs in the community more generally). While the definition of SEA is commonly accepted across the sector, the definition of sexual harassment in the workplace may differ from one jurisdiction to another. It is also important to note that SEA includes sexual relations with a child, in any context, defined as a human being below the age of 18 years.<sup>9</sup>

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8. UN Women, “Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority” (2008) [online]: <<https://www.un.org/womenwatch/uncoordinated/antiharassment.html#:~:text=Sexual%20harassment%20is%20any%20unwelcome,interferes%20with%20work%2C%20is%20made>>.

9. Sexual Exploitation and Abuse, Prevent and Protect, *World Health organization*, [online]: <[https://www.who.int/docs/default-source/documents/ethics/sexual-exploitation-and-abuse-pamphlet-en.pdf?sfvrsn=409b4d89\\_2](https://www.who.int/docs/default-source/documents/ethics/sexual-exploitation-and-abuse-pamphlet-en.pdf?sfvrsn=409b4d89_2)>.

# 4. DUTY OF CARE OF CANADIAN ORGANISATIONS

## 4.1. WHAT IS THE DUTY OF CARE IN THE CONTEXT OF INTERNATIONAL COOPERATION AND HUMANITARIAN ACTION?

Where an organization fails to act as a reasonable (legal) person would have, and as a result causes harm to a foreseeable person, they would be held liable if they had a duty of care.<sup>10</sup> A duty of care will be found when an individual or an organization must adhere to a standard of reasonable care while performing acts that could foreseeably harm others.<sup>11</sup>

The duty of care, in the context of international cooperation and humanitarian action, can perhaps be best framed as the organization's obligation to manage and address foreseeable risks. These risks will be context specific.<sup>12</sup> Organizations committed to the prevention of sexual exploitation and abuse will want to understand this process, and will include this as part of their mitigation and intervention strategies. This is known as the "duty of care".

Organizations must consider some key questions in this context. For example:

- Are there prevention measures, policies, and procedures in place to address different forms of sexual violence?
- Are staff members in various roles appropriately trained? Are staff members who are expected to interact with survivors of sexual violence comfortable doing so?

- Does the organizational culture support staff to report incidents of sexual violence? Is the organization conducting transparent, professional, and impartial investigative or inquiry processes?
- What systems does it have in place to protect the vulnerable community from risks? It is vital that these systems account for sexually violent acts against community members, program participants, and staff members – including attacks that come both from outside the organization and partners as well as from within.
- Do staff members at all levels of the organization understand their rights and obligations to the creation and maintenance of safe and healthy workplaces and living environments?<sup>13</sup>

The legal framework can vary between countries, and standards may be different from location to location. Whatever the context, organizations are required to understand the risks and the measures they should put in place to mitigate them. Organizations must share this understanding and these measures with their staff and program participants. In addition to the legal duty of care, it is also important to consider the moral duty of care that organizations owe to their staff.<sup>14</sup>

The reasons for adhering to duty of care are clear. Not doing so can cause considerable harm to individuals and organizations. Ignoring or neglecting duty of care can place the organization, its staff, and its reputation at risk. Although implementing resilient duty of care measures requires resources – including multiple prevention measures, policies, procedures, training, competent staff, and the engagement of all key stakeholders and deci-

10. Edwin Durbin, "Torts — nature of tort law and liability", [online]: <<https://www.westlawnextcanada.com/academic/ced/torts>>.

11. *Ibid.*

12. Report the Abuse, Duty of Care: Protection of Humanitarian Aid Workers from Sexual Violence, August 2017 [online] <<https://gissf.ngo/wp-content/uploads/2017/08/2196-Report-the-Abuse-2017-Duty-of-Care-Protection-of-Humanitarian-Aid-Workers-from-Sexual-Violence.pdf>>.

13. *Ibid.*

14. Megan Nobert and Christine Williamson, *Duty of Care and Sexual Violence in the Humanitarian Community*, Published on March 22, 2018 [online] <<https://gissf.ngo/blogs/duty-of-care-and-sexual-violence-in-the-humanitarian-community/>>.

sion-makers – there is a strong argument that the cost of not doing so is higher than acting; this point can and should also be made clear to donors.<sup>15</sup>

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## 4.2. WHO IS OWED THIS DUTY OF CARE BY THE ORGANIZATION?

Organizations in Canada’s international cooperation and humanitarian sector have a duty of care to their program participants, employees, interns, and volunteers. It is important to understand that for the purposes of Canadian organizations, volunteers may be considered “employees”. This means that they may be owed a duty of care or may owe a duty of care to program participants, even though they may or may not be paid by the organization. Volunteer work can also be deemed “employment” for the purposes of human rights statutes and for obligations arising out of the law.<sup>16</sup>

While Digna’s work focuses on and emphasizes the utmost importance to safeguard program participants, it is equally vital that these organizations meet their duty of care to their own personnel. By tackling predatory behaviour and staff misconduct, these organizations will be able to properly address and eradicate the abuse of program participants, as well as sexual violence perpetrated, within the organization.<sup>17</sup> A policy paper issued by the Security Management Initiative based in Geneva says that international aid organizations’ concern with the well-being, safety, and security of their staff is mandatory, not voluntary or optional; they must conform to legal standards in relation to legal liability regarding their employees.<sup>18</sup> This paper highlights that “legal standards and dispositions as

to the duty of care owed to their staff by an enterprise or organization underline that safety and security are first and foremost a corporate, institutional issue” which includes governance, executive, human resources, finance, training, and operations components.<sup>19</sup>

It is important to note that prevention of all types of misconduct and abuse starts at the recruitment stage. Having a strong management and human resources team is vital in creating a respectful workplace culture. This may require management-level training on sexual violence and harassment generally. While recruitment will always carry a duty of care component, this is particularly essential in terms of sexual violence. If individuals known to have committed acts of sexual violence are being hired by an organization, the organization may be neglecting its duty to undertake thorough personnel checks, as it is entirely foreseeable that a previous perpetrator of sexual violence may commit future acts.<sup>20</sup>

The overarching theme for an organization to meet its duty of care regarding sexual violence is zero-tolerance. Organizations must have well-designed, well-managed, and trusted feedback systems and policies on: risk management, informed consent, bullying and harassment, grievances, disciplinary measures, health and wellbeing, as well as critical and post-incident procedures including redress measures. These measures are required to instil a culture of zero-tolerance.<sup>21</sup>

Ensuring that messaging on the prohibition of sexual violence is clear, repeatedly mentioned, and backed up by action when incidents occur is obligatory – it should be the thread that runs through all the policies and practices that prevent and address this critical issue. Anything less

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15. *Ibid.*

16. Ontario Human Rights Commission, *Who is Protected at Work?* [online] < <http://www.ohrc.on.ca/en/iii-principles-and-concepts/5-who-protected-work>>. In the relevant part it states: “the Code does not define ‘employee.’ However, because the Code is to be interpreted broadly, the Commission takes the position that the Code’s protection extends to employees, temporary, casual and contract staff, and other persons in a work context, such as people who work to gain experience or for benefits. This broad interpretation is consistent with a number of Tribunal decisions from across Canada.”

17. Megan Nobert and Christine Williamson, *Duty of Care and Sexual Violence in the Humanitarian Community*, Published March 22, 2018 [online] <<https://gjsf.ngo/blogs/duty-of-care-and-sexual-violence-in-the-humanitarian-community>>. The article quotes: “It is important to note that the majority of data regarding violence and security incidents reported is limited to kidnapping, death, and assault. There’s actually very limited data specifically regarding sexual violence towards aid workers. However, Aid Worker Security Report has started looking at this issue more explicitly.”

18. Edward Kemp and Maarten Merkelbach, *Legal Liability of International Humanitarian Aid organizations Towards Their Staff*, Security Management Initiative, Geneva Centre for Security Policy (2011) at 1.

19. *Ibid.*

20. Megan Nobert and Christine Williamson, *Duty of Care and Sexual Violence in the Humanitarian Community*, Published March 22, 2018 [Online] <https://gjsf.ngo/blogs/duty-of-care-and-sexual-violence-in-the-humanitarian-community>. What becomes problematic is when perpetrators are suspected. This question arises: how does one organization share this information with another?

21. *Ibid.*



than zero-tolerance for sexual violence acts will likely fail in an analysis of organizational duty of care.<sup>22</sup>

Generally, organizations work to ensure that they maintain and exceed minimum legal expectations for the care of its employees, volunteers, and program participants

through appropriate screening, training, management, and oversight. However, it is important to also understand that, in certain circumstances, the employer or organization can be held partially, equally, or wholly liable for the negligence. This is legally referred to as “vicarious liability”.

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22. Megan Nobert and Christine Williamson, Duty of Care and Sexual Violence in the Humanitarian Community, Published March 22, 2018, online <<https://gisf.ngo/blogs/duty-of-care-and-sexual-violence-in-the-humanitarian-community>>.



Photo by Larm Rmah on Unsplash

## 5. VICARIOUS LIABILITY OF CANADIAN ORGANIZATIONS

In the case of sexual abuse by employees, employers may be held vicariously liable. Canadian jurisprudence follows the *Salmond* test, which holds employers vicariously liable for:

1. Acts of employees that were authorized by the employer; and
2. Unauthorized acts so connected with authorized acts that they may be regarded as modes of doing an authorized act.<sup>23</sup>

The guiding question to this formula or test is “whether the wrongful act is sufficiently related to conduct authorized by the employer.”<sup>24</sup> In cases of sexual abuse by employees specifically, “there must be a strong connection between risk created by employment and the wrongful act.”<sup>25</sup> Incidental connections to the employment enterprise, like time and place, will not suffice.<sup>26</sup>

The court may also consider factors such as:

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23. *Bazley v. Curry* [1999] 2 S.C.R. 534 at para 6.  
24. *Bazley v. Curry* [1999] 2 S.C.R. 534 at para 41.  
25. *Ibid* at para 42.  
26. *Ibid*.

- The employer’s policies promoting safety and prevention of sexual violence;
- The employer’s awareness or willful ignorance, if any, towards the sexual violence;
- The manner in which the victim came in contact with the assailant; and
- The location where the sexual violence took place.<sup>27</sup>

In the case of *Bazley v. Curry* [1999], a non-profit organization placed children into the care of the perpetrator, thereby creating and fostering the risk. The defendant organization was found vicariously liable for the sexual misconduct of the employee because the organization created and fostered the risk that led to the ultimate harm. In deciding this case, the Court noted that it is not easy to distinguish between an unauthorized mode of an authorized act that attracts vicarious liability and an entirely independent act that does not.<sup>28</sup>

The jurisprudence following *Curry* case broadens the scope of vicarious liability by imposing an obligation on employers to assess and subsequently limit the risks they introduce into society.<sup>29</sup> The case law also recognizes that, in analyzing this risk, context is key. Considering abuse, courts will closely examine the institutional framework and how it contributed to the wrongdoing. In practice, it calls for a measured case-by-case analysis to a finding of vicarious liability on the facts of each case.

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## 5.1. IMPORTANT POLICY CONSIDERATIONS FROM A LIABILITY STANDPOINT

When there is no clear precedent, courts are increasingly turning for guidance to the policy considerations that underlie vicarious liability.

In determining the sufficiency of the connection between the employer’s enterprise and the wrongful act, the following factors may be relevant:

- a. The opportunity afforded by the enterprise to the employee to abuse their power;
- b. The extent to which the wrongful act may have furthered the employer’s aims;
- c. The extent to which the act was related to friction, confrontation, or intimacy inherent in the employer’s enterprise;
- d. The extent of the power conferred on the employee in relation to the victim; and
- e. The vulnerability of potential victims to wrongful exercise of the employee’s power.<sup>30</sup>

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27. “Sexual Assault at Work”, Sexual Assault in Canada, online: <[sexassault.ca/work.htm](http://sexassault.ca/work.htm)>.

28. “A Risky Enterprise: Liability of Employers for the Wrongful Acts of the Employee,” Online: <<https://www.ehlaw.ca/oct99-vicaliab//>>.

29. Anthony Gray, *Vicarious Liability: Critique and Reform* (Oxford: Hart Publishing, 2018) at 85; See generally *Curley c Latreille* [1920], 60 SCR 131, 55 DLR 461 [Curley].

## 6. ACT OF INDEPENDENT CONTRACTORS (THIRD PARTY SERVICE PROVIDERS) AND LIABILITY OF CANADIAN ORGANIZATIONS

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The determination of whether someone is an independent contractor or the employee of the concerned organization can have important consequences in determining the employer's liability for the wrongs committed by such actors. A party or an organization hiring an independent contractor is generally not vicariously liable for the wrongful acts of the independent contractor.<sup>31</sup> However, it should be noted that engaging the services of external consultants does

not ensure that employers will be shielded from liability for wrongful acts committed by these individuals. Even if the employer does not itself know of or participate in the misconduct, it will still have to demonstrate that the consultant or contractor was not integrated into its organization in a manner that will attract vicarious liability.<sup>32</sup>

This does not apply to implementing partners *per se*.

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30. *Bazley v. Curry* [1999] 2 S.C.R. 534

31. Joseph Barta, "Employer Liability for the Wrongful Acts of its Employees", Published November 14, 2003[online] <[https://marcomm.mccarthy.ca/pubs/wrongful\\_acts.pdf](https://marcomm.mccarthy.ca/pubs/wrongful_acts.pdf)>.

# 7. MITIGATION STRATEGIES TO PREVENT SEXUAL EXPLOITATION AND ABUSE

Employers who want to prevent sexual exploitation and abuse, and mitigate against any accusations of negligence, vicarious liability, unlawful dismissal, or defamation, should be diligent in the following ways:

- Establish screening standards and safe recruitment practices for pre-employment process, by including:
  - Criminal and sexual offender list checks;
  - Reference checks;
  - Misconduct record checks;
  - Self-declaration that the candidate was not subject to previous sanction or disciplinary action relating to sexual misconduct. Also, self-declaration that they are not currently under investigation;
  - Verifying credentials for individuals working with vulnerable groups (example doctors, etc.);
  - Integrity and ethics-related questions during the interview process; and
  - Review of organization standards, core values, and Codes of Conduct prior to recruitment.
- Establish clear guidelines, policies, and Codes of Conduct for what is and is not appropriate behaviour while an employee or a volunteer.
- Establish clear guidelines, policies, and Codes of Conduct for managers and people with professional, financial, and/or political power in the organization.
- Establish clear guidelines and procedures for dealing with a complaint, including expressed procedures for situations in which there is a power imbalance.

Specifically, a power imbalance is understood to be (non-exhaustive list):<sup>34</sup>

**Beneficiary <> Organization Representative:** this is a situation in which the reportee (or complainant), a person who benefits from the aid or services of the organization, reports misconduct against someone who makes the decisions about who receives the aid or services from the organization.

Key procedural questions include, but are not limited to:

- “How does your organization protect a reportee from aid or service denial from the reported person?”;
- “How does your organization utilize confidentiality and discretion in a survivor-centered approach to dealing with a complaint?”; and
- “How does your organization ensure that the power to disburse aid or services is spread across multiple people?”

**Employee <> Employer:** this is a situation in which the reportee (or complainant) who is a person employed by the organization, or is a subordinate in the organization, reports misconduct against someone who is a superior in the organization and who makes decisions about the duties or continued employment of the reportee (or complainant). The terms employee/employer are used loosely and can also mean a volunteer within the organization.

32. *Ibid.*

33. Code of Conduct and PSEA Policy should be in line with sector-wide standards found in the Secretary General’s Bulletin/IASC 6 Core Principles of PSEA [online] <<https://interagencystandingcommittee.org/inter-agency-standing-committee/iasc-six-core-principles-relating-sexual-exploitation-and-abuse>>.

34. At the time of writing, the Lawyer’s Working Group has not concluded its document specific to investigations of misconduct. A subsequent guide for organizations in situations of reported misconduct is forthcoming.

- Key procedural questions include, but are not limited to:
- “How does your organization outline expected behaviour in a supervisory role?”;
  - “How does your organization utilize confidentiality and discretion in a survivor-centered approach to dealing with a complaint?”; and
  - “How does your organization ensure that oversight of staff (paid and volunteer) is spread across multiple people?”
- Ensure clear separation of power between investigators and decision-makers on investigation findings if the consequences of the investigation may result in dismissal or change in immigration status or living quarters.
  - Provide training on all policies, procedures, guidelines, and codes of conduct at the outset of employment and at regular intervals.
  - Explain clear consequences for management that does not follow procedures, guidelines, and codes of conduct.
  - Establish clear mechanisms to receive complaints accompanied with clear communication of how each volunteer, employee, or program participant can access those mechanisms.
  - Ensure procedures are in place to refer survivors to assistance and support services.
  - Adopting a survivor-centered approach<sup>35</sup> in investigations.<sup>36</sup>



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35. A survivor-centred approach is one that “empowers the survivor by prioritizing her rights, needs and wishes.” A “survivor-centred” approach prioritizes the rights, experiences, and wishes of a survivor. The rights of the suspected perpetrator mostly revolve around procedural fairness rights. “Survivor-centred Approach”, *UN Women: End Violence Against Women Now* (3 July 2013), online: <<https://www.endvawnow.org/en/articles/1499-survivor-centred-approach.html>>.

36. “Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims”, *Canadian Intergovernmental Conference Secretariat* (16 November 2018), online: <<https://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/#a310>>.

# 8. CANADIAN CHARTER OF RIGHTS AND FREEDOMS: PROTECTING THE VULNERABLE

It is important to note that the Constitution of Canada provides specific individual protections against government action or laws that violate fundamental guarantees of rights and freedoms. These are articulated under the *Charter of Rights and Freedoms (Charter)*.<sup>37</sup> This supreme law enshrines Canada's commitment to the protection of individuals regardless of their race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>38</sup>

Since its adoption into Canada's constitution, the Supreme Court of Canada has recognized that these protections extend to sexual orientation and gender.<sup>39</sup> These *Charter* requirements are also expressed in federal and provincial human rights legislation that require non-governmental actors to protect individuals from discrimination and harm.

These protections are intended to uphold values of freedom and equality for everyone, including Indigenous people, people of colour, those individuals who are married or in relationships with people of the same or other genders, and people with physical impairments, regardless of birth sex. It is important to keep these constitutional protections in mind. This can be particularly important when the program participant country or organization may uphold different values than those protected under the Canadian constitution and human rights law. Therefore, clear protections, policies and procedures are needed to ensure that sexual abuse, exploitation, and harassment is avoided for all individuals regardless of race, ethnicity, physical ability, gender identification, cultural background, sexual orientation, or religion.

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37. *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c-11, online at: <<https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/97548/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html>>.

38. Canadian Charter of Rights and Freedoms, s 15, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

39. *Vriend v Alberta*, 1998 CanLII 816 (SCC), [1998] 1 SCR 493, online at: <<https://www.canlii.org/en/ca/scc/doc/1998/1998canlii816/1998canlii816.html>>.



Digna, the Canadian Centre of Expertise on the Prevention of Sexual Exploitation and Abuse (PSEA), is a program of Cooperation Canada



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