

Preventing and Responding to Sexual Violence and Misconduct at British Columbia Post-Secondary Institutions

A GUIDE FOR DEVELOPING POLICIES AND ACTIONS





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Purpose and Scope

The purpose of this document is to assist post-secondary institutions in the development of policies and procedures to support their ongoing efforts to prevent sexual misconduct and to respond to incidents when they occur.

This document is complementary to the *Sexual Violence and Misconduct Policy Act*. It has been developed by the Ministry of Advanced Education in consultation with post-secondary institutions, and draws on related work done by the Ending Violence Association of British Columbia as well as resources in British Columbia and other jurisdictions.

Disclaimer: This document is provided for reference only. It is not intended to be a prescriptive or mandatory one-size-fits-all approach. It is recognized that post-secondary institutions will need to develop a policy that reflects their unique circumstances. Institutions are responsible for their own legal advice, interpretation of and compliance with all applicable laws, regulations and their own rules and bylaws for governance.

Part 1: Legislative and Policy Frameworks

On April 27, 2016, the Government of British Columbia introduced the *Sexual Violence and Misconduct Policy Act* (the Act) with the aim of making campuses safer and more responsive to the needs of victims/survivors. The Act received Royal Assent on May 19, 2016. The Act requires every public post-secondary university, college and institute in B.C. to develop, implement and make publicly available on the institution's website by May 19, 2017, a sexual misconduct policy that:

- ▶ **Addresses sexual misconduct, including sexual misconduct prevention and responses to sexual misconduct.**
- ▶ **Sets out procedures for:**
 - » *Making a disclosure/complaint or report of sexual misconduct involving a student.*
 - » *Responding to a disclosure/complaint or report of sexual misconduct involving a student.*
- ▶ **For the purposes of this document, a disclosure/complaint is when the victim/survivor discloses/chooses to tell someone at the post-secondary institution of an incident of sexual misconduct in order to seek support but may not want to make a report to police or campus authorities. A report is a formal notification of an incident of sexual misconduct to someone at the post-secondary institution accompanied by a request for action. A report can be made by anyone including, but not limited to, the victim/survivor.**

Private post-secondary institutions with residences are also required to have a policy. These requirements are set out in the degree approval criteria for private degree-granting institutions, in the Private Training Regulations for private career training institutions and in the EQA (Education Quality Assurance) criteria for theological schools.

The Act requires a public institution to consult with students in the establishment of its first policy¹. Once established, sexual misconduct policies will need to be reviewed, again in consultation with students and potentially others, at least once every three years, or as directed by the Minister. Additionally, each year the President of a public post-secondary institution must report to the Board on the implementation of the policy.

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1 In accordance with section 8 of the Act, if an institution has a policy in place that complies with the Act on the date the Act came into force, that policy is deemed to be a sexual violence and prevention response policy for the purposes of the Act. In this situation, the first 3-year period for review begins on the date the Act came into force.

The Act defines sexual misconduct to include a wide range of acts of a sexual nature, specifically:

SEXUAL ASSAULT.

SEXUAL EXPLOITATION.

SEXUAL HARASSMENT.

STALKING.

INDECENT EXPOSURE.

VOYEURISM.

THE DISTRIBUTION OF A SEXUALLY EXPLICIT PHOTOGRAPH OR VIDEO OF A PERSON TO ONE OR MORE PERSONS other than the person in the photograph or video without the consent of the person in the photograph or video and with the intent to distress the person in the photograph or video.

THE ATTEMPT TO COMMIT AN ACT OF SEXUAL MISCONDUCT.

THE THREAT TO COMMIT AN ACT OF SEXUAL MISCONDUCT.

In this document, the term “sexual misconduct” is used in a broad sense, and includes any unwanted act – physical, verbal or psychological – carried out through sexual means or by targeting sexuality. There are many different forms of sexual misconduct and people of all genders may experience sexual misconduct. Institutions may wish to create their own definitions, in line with the definition set out in the Act and other legal sources.

Language matters. For some, the use of “victim” terminology implies passivity, whereas, the use of “survivor” language suggests action. For many individuals either term may be appropriate at different times. This document primarily uses the term “victim/survivor”.

This document mainly focuses on the student population; however, it recognizes that anyone can experience sexual misconduct and that everyone on campus has a role to play in its prevention. It also recognizes that students may have different roles in the post-secondary setting, including both learner and employee.

It is important to understand that an institution's **misconduct processes are very different from the criminal process** and these two should not be confused.

Post-secondary institutions **cannot** take the place of the criminal system.

Part 2: Context

Sexual misconduct is a serious and complex issue that can include both criminal and non-criminal acts. Preventing and responding effectively requires a comprehensive approach that engages all members of the campus community.

British Columbia colleges, institutes and universities have a variety of education and awareness initiatives, training and safety programs, supports and services, and a range of policies and programs in place that deal with issues of sexual misconduct. Institutions are at different stages in their work and have varied capacity and approaches for responding.

Research shows that sexual assault is the most under-reported of all violent crimes in Canada, with less than 10 per cent of incidents reported to police². This is true for society in general as well as for post-secondary campuses specifically. Effective education, awareness and prevention programming, as well as supportive response procedures can begin to change this and encourage victims/survivors to come forward and get support.

Post-secondary institutions generally deal with disclosures/complaints and reports of sexual harassment through internal investigation and adjudication processes that are subject to the principles of procedural fairness. These processes are not subject to the same burden of proof or standards of evidence as a criminal process, but must be consistent with other applicable legislation (e.g. privacy, human rights) and other institution by-laws.

Sexual misconduct degrades our working and learning environment. Post-secondary institutions have a unique role to play in addressing sexual misconduct in society.

UNDERSTANDING SEXUAL MISCONDUCT AND THE CAMPUS COMMUNITY

Sexual misconduct has been and remains predominantly a gendered experience, with women, transgender and two-spirit people being disproportionately victimized. While the overwhelming majority of victims/survivors are women, individuals of all genders and sexual orientations may experience or perpetrate sexual misconduct, and there are victims/survivors of all genders and sexual orientations on campuses. Sexual misconduct is never justifiable.

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2 Campus Sexual Violence: Guidelines for a Comprehensive Response, Ending Violence Association of British Columbia, April 2016.

Sexual misconduct can have serious negative impacts on the physical, mental, emotional and spiritual health and wellness of an individual. It is important to recognize the possible traumatic effects and support the efforts of individuals to seek support and heal.

For students, their time at a college, institute or university may be the first time they are living away from home and away from parental influence. There are aspects to post-secondary campus life (e.g. orientation, frosh week, etc.) that can result in an environment where alcohol, drugs and social media can contribute to non-consensual behaviour.

Students, like many others, often have a limited understanding of what sexual misconduct is and how to prevent it. This is a complex area, and myths around sexual misconduct are pervasive and influence how it is understood by victims/survivors, alleged perpetrators, family and friends, service providers and the broader public.

DISCLOSURES/COMPLAINTS AND REPORTING

As noted earlier, the vast majority of people who have experienced sexual misconduct do not make a disclosure/complaint or report to authorities (either campus authorities or the police) and many do not even disclose such incidents to persons they trust. A campus environment in which individuals feel safe and supported in making a disclosure/complaint helps to ensure that those who have experienced sexual misconduct can access the assistance and information they need to make the decisions best for them, and help the post-secondary institution to identify and deal with threats to the safety of its community.

Fear and apprehension about the reactions of others can be significant barriers to making a disclosure/complaint or report. Specific reasons for avoidance include:

- ▶ **Concern about not being believed or being blamed.**
- ▶ **Feelings of shame or guilt.**
- ▶ **Fear of sanctions from the institution or a police investigation where underage drinking or the use of illegal drugs was involved.**
- ▶ **Fear of reprisal by the alleged perpetrator(s) or their friends.**
- ▶ **Peer pressure not to make a disclosure/complaint or report, especially if the alleged perpetrator has significant status on campus or in their community (e.g. religious, cultural, ethnic community).**

Campus life can **contribute** to an environment of sexual misconduct.

Some victims/survivors may not report sexual misconduct because they believe that the alleged perpetrator will not suffer any **consequences**.

Concerns about the disclosure/complaint or reporting process can also discourage people from coming forward. Victims/survivors may be worried about confidentiality and believe that reporting to authorities will expose their personal lives to public judgment and scrutiny. Some may feel a sense of vulnerability when thinking about the possible physical examinations and questions they may face. Some victims/survivors may not report sexual misconduct because they believe that the alleged perpetrator will not suffer any consequences.

Cultural beliefs and values and previous experience can also influence a victim/survivor's decision on whether or not to tell someone or report. Victims/survivors may fear that contacting services will result in parent(s) being notified or other community members finding out. They may also fear being ostracized by family or friends, being pulled out of school, or having their living arrangements changed.

When victims/survivors do choose to disclose, the first person they tell will likely be someone they trust, such as a friend, family member, roommate, classmate, coach, staff or faculty member. The nature of the response can have a significant effect on the wellbeing of victims/survivors, and their decisions about next steps.

Institution policies and protocols can play a valuable role in creating campus environments where victims/survivors feel safe and supported to come forward and get the help they need. There is more information on disclosures/complaints and reporting in the Institution Procedures and Protocols section of this document.

Part 3: Developing Policies and Actions to Prevent and Respond to Sexual Misconduct

Effectively preventing and responding to issues of sexual misconduct at British Columbia post-secondary institutions requires a robust, multi-faceted approach that includes:

A. EDUCATION, AWARENESS AND PREVENTION.

B. INSTITUTION SEXUAL MISCONDUCT POLICIES.

C. RESPONSE PROCEDURES AND PROTOCOLS.

A. EDUCATION, AWARENESS AND PREVENTION

Public education can increase awareness and understanding of sexual misconduct. Effective public education contributes to changes in attitudes that perpetuate sexual misconduct, social norms, community attitudes, organizational practices and behaviours of bystanders and potential perpetrators.

Institutions are encouraged to include education and awareness as part of their work to reduce sexual misconduct, and to ensure that information about services available on and off campus to support those affected by sexual misconduct is well-communicated.

While it is beneficial to educate widely, additional specialized training may also be necessary for persons with particular roles and responsibilities, such as those who are most likely to receive and respond to disclosures/complaints. Training and orientation sessions provide opportunities to bring the issue of sexual misconduct into the open and get people talking about it. Peer-led activities as well as print and social media campaigns can be used to educate the broader campus community about issues such as consent, as well as resources and supports available for those affected by sexual misconduct. While education is a key component of prevention, it is also important to take steps to ensure campuses are physically safe and secure.

Robust education, training, awareness and prevention programs promote safe and respectful campus environments. Specific activities may include, but are not limited to:

- ✔ **Education and training for students, staff and faculty on:**
 - » *Institution policies, how to make a disclosure/complaint or report, and support services available.*
 - » *Institution procedures for responding to a disclosure/complaint or report of sexual misconduct.*
 - » *Importance of the role of the first person to whom the victim/survivor discloses.*

- ✔ **Strategies and training that promote a culture of bystander intervention. This could include training student leaders³.**

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3 The Ending Violence Association of British Columbia has information and resources on bystander intervention and has a well-developed Bystander Intervention training program. [*Be More Than a Bystander - Ending Violence BC*](#)

...it is important for institutions to have formal sexual misconduct policies so they can **respond effectively** when an incident occurs.

- ✓ Targeted information, materials and activities for new students as part of student orientation/welcome week to communicate behavioural expectations and to introduce relevant policies, disclosure/complaint and reporting procedures and available supports/services.
- ✓ Awareness campaigns and/or events such as consent campaigns to promote culture change.
- ✓ Mitigation of safety risks on campus such as undertaking safety audits, increasing the physical safety of campuses and issuing safety alerts as required.

B. INSTITUTION SEXUAL MISCONDUCT POLICY

In addition to education, awareness and prevention programs, it is important for institutions to have formal sexual misconduct policies so they can respond effectively when an incident occurs. In developing sexual misconduct policies, institutions should consider:

- ✓ **Consultation and engagement:**
 - » *The Act requires an institution to consult with students in the establishment of its first policy and in subsequent policy reviews.*
 - » *In addition to students generally, institutions may wish to consult/engage with specific student groups (e.g. international students, students with disabilities, LGBT2SQ students, Pride groups, fraternities/sororities); faculty, staff and administration; others involved in various aspects of campus life (e.g., housing, athletics, campus security, student government, student services, health and counselling); and members of the broader community including policing agencies, community support organizations and hospitals/health service providers.*
 - » *Institutions may want to establish a representative working group, task force or other body to develop the draft policy and procedures.*
- ✓ **Scope and application:**
 - » *The policy must comply with the requirements set out in the Act for public institutions, and in the Private Training Regulations and/or applicable policy for private institutions.*
 - » *The policy must address sexual misconduct involving students, but may have application beyond students to the broader campus community, including faculty, staff, administration, Board members, contractors, volunteers, visitors and others identified by the institution. Policies need to consider that students can also be employees of the institution.*
 - » *The policy should be clear about its application beyond the physical campus (e.g. off campus events and online spaces) as well as passive acts of sexual misconduct such as graffiti and signage.*
 - » *In developing its policy, an institution should consider:*
 - » *Other institution policies such as the Student Code of Conduct (Non-Academic), and bullying, harassment and discrimination policies.*

- » *Laws of general application, including but not limited to: Human Rights legislation, the Canadian Charter of Rights and Freedoms (the Charter), and the Freedom of Information and Protection of Privacy Act.*
- » *Collective agreements and policies/procedures governing the conduct of employees.*

- ✔ **The policy should include a statement of purpose and intent.**
- ✔ **Any definitions used in policy must be consistent with the Act in defining terms. Institutions should also consider definitions set out in other sources such as the *Criminal Code of Canada* (see section on definitions in *Sample Policy Guide*), other legislation, and/or with terminology/definitions in other institution policies, practices and requirements. Institutions should also consider defining terms such as consent, disclosure/complaint, report, victim/survivor, perpetrator, alleged perpetrator, substance-facilitated sexual assault and online/cyber harassment.**
- ✔ **The policy must outline the general policy approach for disclosures/complaints and reports relating to sexual misconduct. The general approach could:**
 - » *Ensure all parties involved are treated with dignity and respect.*
 - » *Encourage immediate reporting by those who have knowledge of or who have witnessed incidents of sexual violence and misconduct.*
 - » *Outline the general approach and high level policy statements for dealing with disclosures/complaints and reports.*
 - » *Commit to immediate action by those with authority to act.*
 - » *Commit to taking reasonable steps to ensure the safety of the campus community when the institution has been made aware of an incident.*
 - » *Institutions may also wish to include a supportive response statement, outlining what an individual who has experienced sexual violence or misconduct can expect in the way of a compassionate and caring response.*
- ✔ **Procedural Fairness – The institution must ensure that its sexual misconduct policy is consistent with the principles of procedural fairness and may want to consider enumerating the rights of the alleged perpetrator.**
- ✔ **Confidentiality and Information Sharing – Stress the importance of privacy for both the victim/survivor and the alleged perpetrator. The policy may also clarify the circumstances under which the institution will be unable to maintain confidentiality.**

For example where:

 - » *An individual is at imminent risk of severe or life-threatening self-harm.*
 - » *An individual is at imminent risk of harming another.*
 - » *There are reasonable grounds to believe that others in the campus community may be at significant risk of harm based on the information provided. Clear guidelines defining imminent risk may need to be identified and a protocol for disclosing to police may need to be put in place.*
 - » *Reporting is required by law, e.g. in the case of a minor (a person under 19 years of age and includes a youth) under the Child, Family and Community Services Act.*
 - » *Disclosure is necessary to ensure procedural fairness in an investigation or other response to a disclosure/complaint or report.*

Appendix 1 includes a sample policy guide that may help institutions as they develop their sexual misconduct policies.

Procedures are a critical part of sexual misconduct policies...

C. INSTITUTION PROCEDURES AND PROTOCOLS

Procedures are a critical part of sexual misconduct policies, and articulate how the institution will respond to disclosures/complaints and reports. Clear and transparent procedures will help individuals understand their options should they choose to make a disclosure/complaint or report about an incident and will also improve understanding across campus groups.

Institution procedures may include the following elements:

- ✓ **Roles and Responsibilities** – Identify and define roles and responsibilities of individuals involved in the implementation and operation of the policy. Institutions may wish to consider establishing a team to coordinate the institution response to incidents.
- ✓ **Disclosures/Complaints and Reporting** – Include basic information on how to provide a compassionate and reassuring response that:
 - » *Respects the right of the individual who has experienced sexual misconduct to choose the most appropriate services and to independently determine whether to contact police and/or make a formal report (with the understanding that if there is imminent risk to others the need to report to authorities may supersede the rights of the individual).*
 - » *Respects the choice of the individual as to what and how much to disclose about the experience.*
- ✓ **Response Procedures** – Include options for assistance immediately following an incident as well as ongoing assistance. Options will be different depending on the situation. Procedures could include:
 - » *Ensuring the safety of the victim/survivor (immediate safety first, followed by ongoing safety).*
 - » *Providing emergency numbers for on and off campus security, law enforcement, medical care, mental health services and other support services as required/appropriate.*
 - » *Describing institution-specific processes and resources.*
 - » *Discussing options for medical treatment/assistance to address injuries, preventative treatment for sexually transmitted diseases and for other health services, and to preserve evidence.*
 - » *Identifying and providing contact information for qualified on and/or off campus counsellors or other similar victim/survivor support service providers who can offer an immediate confidential response.*
 - » *Outlining the institution investigative process.*

✓ **Investigative Procedures** – Outline the full range of disclosure/complaint and reporting options available including making a disclosure/complaint or report to the institution, reporting to police, neither or both⁴. The procedures may also address the role and capacity of the institution to conduct investigations versus the role of law enforcement and the justice system. Institution investigative procedures should seek to ensure a prompt, fair and impartial investigation and resolution.

Procedures may include:

- » *Collecting and reviewing documents that may contain relevant information.*
- » *Interviewing individuals, including witnesses, who may have relevant information.*
- » *Conducting additional interviews with the victim/survivor or the alleged perpetrator.*
- » *Consulting with other institution departments (e.g. Human Resources, Disability Services, International Programs, Security), police, community based victim services programs, or other experts as required.*

✓ **Accommodations** – Provide a description of the possible accommodation options for the victim/survivor. These may relate to the safety of the victim/survivor and/or academic success.

- » *Accommodations may range from assignment extensions or exam deferrals to withdrawal from a course without penalty or arranging different housing options.*
- » *Institutions must be prepared to implement processes by which the institution may remove an alleged perpetrator from classes, residence or from part or all of the campus, while ensuring procedural fairness and any other applicable laws are respected. These apply even in circumstances where the victim/survivor chooses not to file a report to the police.*

Appendix 2 includes a sample procedures guide that may help institutions with the development of sexual misconduct procedures.

Institution investigative procedures should seek

**to ensure a prompt,
fair and impartial
investigation and
resolution.**

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4 A link to a directory of police-based and community-based resources is contained in Part 4 of this document.

Part 4: Resources

Below is a listing (hyperlinks) of resources that may be helpful in developing a comprehensive process to prevent and respond to sexual misconduct at B.C. post-secondary institutions. It includes programs and services as well as policy resources.

SERVICE RESOURCES

- ▶ [*Directory of police-based and community-based victim services in British Columbia.*](#)
- ▶ [*Community-based victim services programs.*](#)

POLICY RESOURCES

- ▶ [*Campus Sexual Violence: Guidelines for a Comprehensive Response, Ending Violence Association of BC, May 2016.*](#)
- ▶ [*"A Vision for a Violence Free BC: Addressing Violence Against Women in British Columbia", February 2015.*](#)
- ▶ [*"Developing a Response to Sexual Violence: A Resource Guide for Ontario's Colleges and Universities", January 2013.*](#)
- ▶ [*"It's Never OK: An Action Plan to Stop Sexual Violence and Harassment", Ontario, March 2015.*](#)
- ▶ [*St. Thomas University Policy on Sexual Violence, September 2015.*](#)
- ▶ [*Checklist for Conducting Student Sexual Assault Investigations, United Educators, Title IX⁵.*](#)

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5 DISCLAIMER: This Checklist is from the United States and, therefore, reflects a different legal environment than exists in Canada. This content is not endorsed by the Ministry of Advanced Education; it is provided as an example of how a checklist could be structured. Any development of a similar resource at a British Columbia post-secondary institution would need to reflect the British Columbia legal environment.

PART 5: Appendices

APPENDIX 1: SEXUAL MISCONDUCT POLICY SAMPLE GUIDE

The following sections outline some elements that institutions can consider including in their sexual misconduct policies.

PURPOSE STATEMENT

- ▶ Outlines the intentions and objectives of the institution and confirms its responsibility to provide a safe and secure learning environment.
- ▶ Outlines institution commitment to follow up on all reported incidents.
- ▶ Defines roles and responsibilities of all parties in implementing programs and practices to prevent/respond to issues of sexual misconduct, including education, awareness and training programs.
- ▶ May include guiding principles such as:
 - » *The institution does not tolerate any form of sexual misconduct.*
 - » *The institution strives to prevent sexual misconduct and to respond effectively and in a timely manner when incidents do occur.*
 - » *The institution has a responsibility to create safe and respectful campus environments.*
 - » *The institution endeavors to ensure victims/survivors are supported and treated with compassion; have access to safety planning; academic, work-related and other accommodations; and on and off campus confidential support services.*
 - » *The institution respects the privacy and procedural fairness rights of victims/survivors and alleged perpetrators.*

SCOPE AND APPLICATION

- ▶ The policy must be consistent with the requirements set out in the *Sexual Violence and Misconduct Policy Act* for public institutions, and with the *Private Training Regulations* and/or applicable policy for private institutions.
- ▶ Articulate who policy applies to:
 - » *Must address sexual misconduct involving students, as required by the Act.*
 - » *May include the broader campus community including faculty, staff, administration, members of the Board, contractors, volunteers, visitors and others identified by the institution.*
- ▶ Articulate where the policy is applicable, for example: on campus, residences, off campus events and online spaces.
- ▶ Define sexual misconduct (align with the requirements of the Act).
- ▶ Address how the policy interacts with other institution policies, collective agreements and any relevant laws.

DEFINITIONS

Sexual misconduct is defined in the Sexual Violence and Misconduct Policy Act to include:

- (A) SEXUAL ASSAULT.
- (B) SEXUAL EXPLOITATION.
- (C) SEXUAL HARASSMENT.
- (D) STALKING.
- (E) INDECENT EXPOSURE.
- (F) VOYEURISM.
- (G) THE DISTRIBUTION OF A SEXUALLY EXPLICIT PHOTOGRAPH OR VIDEO OF A PERSON to one or more persons other than the person in the photograph or video without the consent of the person in the photograph or video and with the intent to distress the person in the photograph or video.
- (H) THE ATTEMPT TO COMMIT AN ACT OF SEXUAL MISCONDUCT.
- (I) THE THREAT TO COMMIT AN ACT OF SEXUAL MISCONDUCT.

Institutions may wish to further define some or all of the terms included in the definition of sexual misconduct. In doing so, attention should be paid to existing legal and institution policy definitions. Sections of the *Criminal Code of Canada* define and/or address some of the acts included in the definition, such as:

- ▶ Sexual exploitation (section 286).
- ▶ Stalking (defined within the criminal harassment section – section 264).
- ▶ Indecent exposure (section 173).
- ▶ Voyeurism (section 162).

Institutions may also choose to define additional terms not referenced in this guide. Examples provided below (sources cited for reference).

Sexual Violence

- ▶ Refers to a spectrum of non-consensual sexual contact and behaviour. There are many different types of sexual violence, including sexual harassment and sexual assault. Sexual violence can be perpetrated by anyone – an acquaintance, a classmate, a teacher, a family member, a colleague, a friend, a dating partner, an intimate partner, or a stranger.⁶
- ▶ Means any unwanted act, physical, verbal, or psychological, carried out through sexual means or by targeting sexuality. This violence takes different forms including sexual assault, sexual abuse, sexual harassment, stalking, indecent or sexualized exposure, degrading sexual imagery, voyeurism, cyber harassment, trafficking and sexual exploitation. Neither a formal criminal charge nor a human rights complaint is necessary for this definition to operate for the purposes of the Policy.⁷
- ▶ A broad term that describes any violence, physical or psychological, carried out through sexual means or by targeting sexuality. This violence takes different forms including sexual abuse and sexual assault.⁸

Sexual Assault

The *Criminal Code of Canada* does not specifically define sexual assault; rather, the broader category of assault is defined as the intentional application of force to another person, directly or indirectly, without the consent of that person and includes circumstances where consent has been withdrawn. Canadian courts have interpreted sexual assault to mean an assault committed in sexual circumstances, which violates the integrity of the victim/survivor. There are three distinct classifications or levels of sexual assault outlined in the Criminal Code – Level 1: Sexual Assault; Level 2: Sexual Assault with a Weapon, Threats to a Third Party, or Causing Bodily Harm; Level 3: Aggravated Sexual Assault.^{9,10}

...assault is defined as the intentional application of force to another person, directly or indirectly, **without** the **consent** of that person...

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6 Ending Violence Association of BC, [Campus Sexual Violence: Guidelines for a Comprehensive Response](#), May 2016.

7 St. Thomas University, [Policy on Sexual Violence](#), September 2015.

8 Colleges Ontario, [Draft Sexual Assault and Sexual Violence Policy and Protocol Template](#), January 2015.

9 Ending Violence Association of BC, [Campus Sexual Violence: Guidelines for a Comprehensive Response](#), May 2016.

10 Criminal Code of Canada, sections 271-273.

EXAMPLES OF DEFINITIONS OF SEXUAL ASSAULT INCLUDE:

Ending Violence Association of BC

- ▶ Any form of sexual contact that occurs without ongoing and freely given consent. Sexual assault includes any form of sexual contact where consent has not been given (e.g. non-consensual touching that is sexual in nature, forced vaginal or anal penetration). Sexual assault can be committed by an intimate partner, someone known to the victim/survivor (sometimes called “acquaintance rape” or “date rape”), or a stranger.¹¹

St. Thomas University

- ▶ Any type of unwanted sexual act committed by an individual against another that violates the sexual integrity of the individual to whom it is directed. Sexual assault is characterized by a broad range of behaviours that involve the use of force, threats, or control towards a person, which makes that person feel uncomfortable, distressed, frightened, and/or threatened. It is carried out in circumstances in which the person has not freely agreed, consented, or is incapable of consenting to the act.¹²

Thompson Rivers University

- ▶ Any form of unwanted activity of a sexual nature, including kissing, fondling, touching, oral or anal sex, vaginal intercourse or other forms of penetration, that is imposed by one person onto another without consent. Sexual assault can occur if the alleged assailant is a married spouse, an intimate or dating partner, a friend or acquaintance, a known person in a position of authority or a complete stranger.¹³

University of British Columbia

- ▶ Any form of sexual touching or the threat of sexual touching without the individual’s consent.¹⁴

British Columbia Institute of Technology

- ▶ Any form of unwelcome activity of a sexual nature imposed by one person on another without consent. More specifically, sexual assault:
 - » Includes a range of unwelcome sexual activities including oral contact (kissing), groping, touching, oral sex, vaginal or anal penetration, and/or other forms of penetration.
 - » Can occur if the person accused is the spouse, an intimate or dating partner, a friend or acquaintance, a known person in a position of authority or a complete stranger.
- ▶ Can occur when an individual engages in sexual activity with another person they know, or reasonably ought to have known, is mentally or physically incapacitated (i.e. by drug or alcohol use, unconsciousness, blackout, or as a result of a disability).¹⁵

SEXUAL HARASSMENT

Ending Violence Association of BC

- ▶ Refers to unwanted communications or actions that are sexual in nature, and are offensive, intimidating, or humiliating. It can take many forms, including verbal, written, or visual. Sexual harassment includes unwanted touching, offensive jokes, sexual requests, and verbal abuse. Sexual harassment is a type of sexual discrimination and falls under the Human Rights law.¹⁶

St. Thomas University

- ▶ Sexual harassment is defined in the *Human Rights Act* of New Brunswick and under this Policy as: to “engage in vexatious comment or conduct of a sexual nature that is known or ought to reasonably be known to be unwelcome.” Sexual harassment often occurs in environments in which sexist or homophobic jokes and materials have been allowed, and may involve the use of social media to bring about this unwanted attention.¹⁷

11 Ending Violence Association of BC, Campus Sexual Violence: Guidelines for a Comprehensive Response, May 2016.

12 St. Thomas University, Policy on Sexual Violence, September 2015.

13 Thompson Rivers University, Interim Sexual Assault Support and Response Protocol, January 2014.

14 University of British Columbia, Draft Sexual Assault and Other Sexual Misconduct Policy, February 2017.

15 British Columbia Institute of Technology, Sexual Assault Policy, October 2015.

16 Ending Violence Association of BC, Campus Sexual Violence: Guidelines for a Comprehensive Response, May 2016.

17 St. Thomas University, Policy on Sexual Violence, September 2015.

CONSENT

Department of Justice

- ▶ Section 273.1 of the Criminal Code of Canada defines consent for the purposes of the sexual assault offences and for greater certainty, sets out specific situations that do not constitute consent at law.
- ▶ Subsection 273.1(1) defines consent as the voluntary agreement of the complainant to engage in the sexual activity in question. Conduct short of a voluntary agreement to engage in sexual activity does not constitute consent as a matter of law.
- ▶ For greater certainty, subsection 273.1(2) sets out specific situations where there is no consent in law; no consent is obtained:
 - » Where the agreement is expressed by the words or conduct of a person other than the complainant.
 - » Where the complainant is incapable of consenting to the activity.
 - » Where the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority.
 - » Where the complainant expresses, by words or conduct, a lack of agreement to engage in the activity.
 - » Where the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.¹⁸

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- ▶ An agreement to engage in a sexual activity. It must be fully voluntary, clearly communicated, and ongoing. All sexual activities that are engaged in must be consented to: if there is consent given for a particular sexual activity, this consent does not automatically extend to other sexual activities. Consent can be withdrawn at any time, including during a sexual activity that had previously been consented to.¹⁹

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- ▶ The voluntary agreement to the act or acts in question and to continue to engage in the act or acts. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct. For clarity:
 - » Consent cannot be implied, and it can be revoked at any time during the act or acts in question.
 - » Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent only applies to each specific instance of sexual activity.
 - » No consent is obtained where an individual is incapable of consenting. An individual may be incapable of consenting if they are intoxicated, or if they are induced to engage in the activity by fraud, by someone exercising a position of trust, power or authority, or through coercion or the threat of violence.
 - » Evidence that an individual was impaired by alcohol or drugs will always be a relevant consideration for determining whether they consented to the sexual activity in question.²⁰

OTHER TERMS

- ▶ Other terms that institutions may wish to clarify in the context of the sexual misconduct policy include but are not limited to:
 - » Members of the campus community.
 - » Victim/survivor.
 - » Perpetrator/alleged perpetrator.
 - » Disclosure/complaint and report.
 - » Substance-facilitated sexual assault.
 - » Online/cyber harassment.

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¹⁸ Department of Justice, A Definition of Consent to Sexual Activity: Policy Centre for Victims Issues, January 2015.

¹⁹ Ending Violence Association of BC, Campus Sexual Violence: Guidelines for a Comprehensive Response, May 2016.

²⁰ University of British Columbia, Draft Sexual Assault and Other Sexual Misconduct Policy, February 2017.

A person **may choose to disclose** sexual misconduct without making a formal report.

RESPONDING TO DISCLOSURES/COMPLAINTS AND REPORTS OF SEXUAL MISCONDUCT

Institutions should outline the general policy approach for receiving and responding to disclosures/complaints and reports of sexual misconduct. This may include:

Institution Response Statement

- ▶ A commitment that the institution will act in accordance with the principles of procedural fairness in dealing with allegations of sexual misconduct.
- ▶ A commitment that there will be immediate action by those with authority to act.
- ▶ A commitment to take reasonable steps to ensure the safety of the campus community when the institution has been made aware of an incident.
- ▶ A statement encouraging immediate reporting by those who have knowledge of or who have witnessed incidents of sexual misconduct.
- ▶ A supportive response statement outlining what an individual who has experienced sexual misconduct can expect in the way of a compassionate and caring response.

Disclosures/Complaints of Sexual Misconduct

Institutions are required by the Act²¹ to set out procedures related to disclosures/complaints and reports of sexual misconduct. A disclosure/complaint is different than a report²². Institutions should consider outlining the general policy approach for disclosures/complaints of sexual misconduct. For example:

A person may choose to disclose sexual misconduct without making a formal report.

- ▶ In these circumstances, a disclosure/complaint may not result in a report being made and, therefore, may not initiate a formal process.
- ▶ Institutions may wish to make appropriate supports, including accommodations, available on the basis of a disclosure/complaint.

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21 For private institutions requirements are set out in the Private Training Regulations and/or applicable policy.

22 For the purposes of this document, a disclosure/complaint is when the victim/survivor discloses/chooses to tell someone at the post-secondary institution of an incident of sexual misconduct. A report is a formal notification of an incident of sexual misconduct to someone at the post-secondary institution or the police, accompanied by a request for action. A report can be made by anyone including, but not limited to, the victim/survivor.

Reports of Sexual Misconduct

For the purposes of this document, a report is a formal notification of an incident of sexual misconduct to someone at the post-secondary institution accompanied by a request for action. The actual process/procedures may vary in relation to the nature of the disclosure/complaint or report (for example, whether or not there has also been a report to law enforcement). Institutions may wish to consider some of the following elements:

- ▶ **The individual filing a report to the institution may withdraw the report, although depending on the circumstances, the institution may continue to act on the matter.**
- ▶ **A report of sexual misconduct may be filed under the policy by any member of the campus community.**
- ▶ **It is contrary to the policy for anyone to retaliate, engage in reprisals, or threaten to retaliate in relation to a report.**
- ▶ **Process for dealing with unsubstantiated reports, e.g. if a person, in good faith, files a report under the policy that is not supported by evidence gathered during an investigation.**

Institutions may also want to consider enumerating the rights of an alleged perpetrator. For example:

- ▶ **Investigation and adjudicative processes will be fair and in accordance with procedural fairness. For example:**
- ▶ **Reasonable notice and full details of the allegations against them.**
- ▶ **The opportunity to respond to the allegations.**
- ▶ **All parties involved will be treated with dignity and respect.**
- ▶ **While the alleged perpetrator must be accorded procedural fairness, the institution must pay attention to the circumstances and safety of the victim/survivor where making the perpetrator aware of the disclosure/complaint or report could result in further harm – particularly when no police report is filed.**

CONFIDENTIALITY AND INFORMATION SHARING

Institution sexual misconduct policies should include a section on confidentiality and information sharing. They should recognize the importance of confidentiality both to those who have made a disclosure/complaint or report of sexual misconduct and to the alleged perpetrator. They should commit the institution to doing its best to respect the confidentiality of all persons involved and should also be consistent with the *Freedom of Information and Protection of Privacy Act* and/or the *Personal Information Protection Act* requirements relating to information management and public disclosure.

The policy may outline:

- ▶ **Circumstances in which information can and cannot be shared.**
- ▶ **What information can/will be shared and with whom.**
- ▶ **In what form and when written consent is required.**

Consideration should also be given to when, and under what circumstances, information should be shared with the broad campus community and/or media. These may be described in more detail in the procedures.

The policy may also clarify the limits to confidentiality, for example:

- ▶ If there is imminent risk that an individual will harm themselves or another.
- ▶ If there are reasonable grounds to believe that others in the campus community may be at significant risk of harm based on the information provided.
- ▶ Where reporting is required by law, e.g. in the case of a minor under the *Child, Family and Community Services Act*.
- ▶ Where it is necessary to ensure procedural fairness in an investigation or other response to a disclosure/complaint or report.

REVIEW

- ▶ For public post-secondary institutions, the *Sexual Violence and Misconduct Policy Act* requires that this policy must be reviewed at least once every three years²³ or as directed by the Minister of Advanced Education.
- ▶ Students must be consulted as part of the review.
- ▶ Institutions may also wish to consider consulting the broader campus community.

RELATED DOCUMENTS AND LEGISLATION

- ▶ Include a listing of related institution policies and procedures, and legislation such as the *Sexual Violence and Misconduct Policy Act*, *Criminal Code of Canada*, BC Human Rights Code, etc.

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23 The three year period begins on the date that a post-secondary institution establishes its first sexual misconduct policy.

APPENDIX 2: SEXUAL MISCONDUCT PROCEDURES – SAMPLE GUIDE

Procedures should outline how instances of sexual misconduct will be handled by the institution, including specific steps/actions that will be taken when there has been a disclosure/complaint or report. The procedures should have sufficient flexibility so that the response and actions can be tailored to the nature of the incident that has been disclosed or reported.

Procedures should also clearly articulate roles and responsibilities of the various departments, staff and faculty, and services, and should set out the resources and supports available. Institutions may want to develop response flow charts that outline the steps that should be taken to support a victim/survivor.

The following sections outline some elements that institutions can consider including in their sexual misconduct procedures.

RECEIVING A DISCLOSURE/COMPLAINT OF SEXUAL MISCONDUCT

A person who has experienced sexual misconduct may choose to disclose this information to anyone in the campus community including another student, faculty, coach, teaching assistant, staff member, counsellor or security guard. As sexual misconduct is defined broadly, the approach and response to a disclosure/complaint may vary depending on the situation.

What To Do If You Receive a Disclosure/Complaint

Receiving disclosures of sexual misconduct can be distressing. If an individual receives a disclosure/complaint, the victim/survivor should be provided with information on available resources and supports. This may include campus response teams, sexual assault crisis lines, etc.

In receiving a disclosure/complaint, the most important thing is to be there for the individual in a supportive capacity. Members of the campus community should have access to basic information on how to provide a compassionate and supportive response. For example:

- ▶ Listen without judgment.
- ▶ Help identify and/or access available on or off campus services including emergency medical care, if appropriate, and counselling.
- ▶ Respect the right of the individual to choose the services they feel are most appropriate and to decide whether to formally make a disclosure/complaint or report to the institution or police.
- ▶ Recognize that disclosing can be traumatic and the ability of an individual to recall events may be limited.
- ▶ Respect the choice of the individual about how much they disclose about their experience.
- ▶ Make every effort to respect confidentiality and anonymity.

In receiving a disclosure/complaint, **the most important thing is to be there for the individual** in a supportive capacity.

An individual who discloses an allegation of sexual misconduct should be made aware that **there are a range of reporting options** available to them...

RESPONDING TO DISCLOSURES/COMPLAINTS/REPORTS OF SEXUAL MISCONDUCT

When responding to a disclosure/complaint or report of sexual misconduct, the individual should be provided with information about what they can expect with respect to the processes and services that follow. This can help the person to make decisions and actively take part in the response process. As noted above, the response procedures will vary depending on the nature of the incident. Institutions may wish to develop response flow charts tailored to specific types of incidents (see attached examples of sexual assault response flow charts from St. Thomas University and Dalhousie University).

The following are some general steps an institution can take in responding to disclosures/complaints or reports of sexual misconduct:

- ▶ **Ensure the safety of the victim/survivor (immediate safety first, followed by ongoing safety).**
- ▶ **Provide emergency numbers for on and off campus security, law enforcement, medical assistance, mental health services, and other services as required/appropriate.**
- ▶ **Describe institution-specific processes and resources.**
- ▶ **Discuss seeking medical treatment/assistance for injuries, preventative treatment for sexually transmitted diseases, and other health services to preserve evidence.**
- ▶ **Identify and provide contact information for qualified on and/or off campus counsellors/victim services support providers who can offer an immediate confidential response.**
- ▶ **Outline who is responsible at each stage of response.**

REPORTING OPTIONS

An individual who discloses an allegation of sexual misconduct should be made aware that there are a range of reporting options available to them and that they may choose any of the options or any combination of the options, including:

- ▶ **Disclosure Only** – a victim/survivor may wish to tell someone about the incident in order to seek support but may not want to make a report to police or campus authorities.
- ▶ **Police** – a victim/survivor may wish to make a formal report of a sexual assault or other criminal incident of sexual misconduct to police. Victims/survivors should be offered the services of a campus based sexual assault response worker (where they exist) or a community-based support worker to accompany them and to provide emotional support.

- ▶ **Campus Security, if applicable** – a victim/survivor may wish to inform campus security about what happened so that campus security is aware that an alleged perpetrator may be on campus or among the campus community. The victim/survivor may or may not then decide to make a report and, if appropriate, should be offered contact information for a support worker or advocate to assist.
- ▶ **Third Party Report to Police via Community Victim Service Agency** – the victim/survivor may wish to make an anonymous report through a community-based victim support worker; reports are sent to police by an intermediary agency and provide detailed information about the incident and the alleged perpetrator, but do not include the name or contact information of the victim/survivor.
- ▶ **Anonymous Report to Post-Secondary Institution via Victim/Survivor Support Service** – an anonymous report made through a victim/survivor support worker would result in reports being sent to campus security by an intermediary agency, providing detailed information about the incident and the alleged perpetrator, but would not include the name or contact information of the victim/survivor.

It is also important to note that the individual may change their mind. For example, they may initially choose not to make a report but may later opt to make a report to police or campus security.

As noted above, victims/survivors of sexual misconduct may choose one or more of the criminal and non-criminal reporting options, depending on the incident that occurred and their own personal circumstances. Any member of the campus community may make a report to police.

Non-Criminal Processes

Post-secondary institutions do not have a mandate to conduct criminal investigations. However, they do have a responsibility to provide a safe environment for their students, regardless of whether a particular incident results in a criminal investigation and/or charges. The institution may need to conduct some kind of fact-finding investigation before it acts, but this would not be a criminal investigation.

If an individual – student or non-student – wants to make a non-criminal report to the institution, a *designated institution official* can explain the process. Depending on the individuals involved (students, administrators/staff or faculty), relevant investigative and/or disciplinary processes may already be set out in Student (Non-Academic) Codes of Conduct; Respectful Workplace/ Bullying, Harassment, or Discrimination Policies; or collective agreements.

Any non-criminal processes undertaken pursuant to the sexual misconduct policy must be fair and based on the principles of fundamental justice, and all parties involved must be treated with dignity and respect. These processes must be in compliance with Human Rights legislation, by-laws and the Charter, where applicable.

Institutions may wish to consider **establishing a response team** to coordinate advice and expertise.

Criminal Processes

If a victim/survivor wishes to explore criminal reporting options, law enforcement can provide information relating to filing a report, the investigative process and criminal charges.

- ▶ A *designated institution official* can arrange to have a police officer meet with the victim/survivor on campus to discuss the possibility of making a criminal report.
- ▶ A designated institution official can also liaise with and accompany the victim/survivor to the local sexual assault centre, police and/or other justice system partners as appropriate.
- ▶ Except in circumstances where there is a serious safety risk to others and/or the institution has a legal obligation to act, the victim/survivor will be the one to determine what, if any, police reporting actions will be pursued.
- ▶ If a victim/survivor decides to make a criminal report, the designated institution official(s) can accompany the victim/survivor to the police station or have police attend on campus. If criminal charges are laid, a *designated institution official(s)* can act as a liaison with police, with the consent of the victim/survivor, and inform the victim/survivor of progress in the criminal case – unless reporting restrictions, such as sealing orders, have been imposed.

ROLES AND RESPONSIBILITIES

Identify and define roles and responsibilities of those within the institution who will be responsible for the implementation of policies, programs and practices for the prevention of and the response to sexual misconduct.

This may include staff within health/wellness and/or counselling centres, senior staff in campus security offices, Vice Presidents or other senior administrators responsible for student services, residence managers, etc. It may also include sexual assault support centres (where applicable), or student association-administered supports or services.

Institutions may wish to consider establishing a response team to coordinate advice and expertise.

RESOURCES AND SUPPORTS AVAILABLE FOR THE ONGOING PROTECTION OF HEALTH, SAFETY AND SUCCESS

Provide information on the range of institution supports and services, including academic and non-academic accommodations, available to the victim/survivor to ensure their ongoing safety and success. These will vary by institution. For example:

- ▶ “No contact” undertakings.
- ▶ On- or off-campus safety planning.
- ▶ Class scheduling and other academic accommodations such as extensions on assignments, deferrals of exams and assistance in withdrawing from a course without penalty.
- ▶ Workplace accommodations.
- ▶ If the victim/survivor or alleged perpetrator live in residence, alternative housing arrangements may be made during an investigation if it is deemed necessary to protect the victim/survivor or others.
- ▶ Restrictions on access to some institution facilities by the alleged perpetrator if the institution determines there to be a safety risk, including removal from classes, residence or from part or all of the campus.
- ▶ If the victim/survivor or alleged perpetrator is an employee of the institution, reassignment, administrative leave of absence or other interim measures may be taken during an investigation.

Provide information on education, training, awareness and prevention programs.

Provide a listing of internal and external (community-based) resources available to provide information and support.

RELATED POLICIES AND PROCEDURES

List all relevant institution policies and procedures, including web links.





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