

Policy History
<b>Policy No.</b> SR14
<b>Approving Jurisdiction:</b> Board of Governors
<b>Administrative Responsibility:</b> President
<b>Effective Date:</b> April 22, 2017

## Procedures for Dealing with Sexual Violence and Misconduct

### A. DEFINITIONS\*

1. **Collective Agreement:** Any collective agreement signed by the University.
2. **Complainant:** A person who is identified in a Complaint as a person who has experienced Sexual Violence and Misconduct.
3. **Complaint:** A complaint that a person has committed an act of Sexual Violence and Misconduct contrary to the Policy.
4. **Consent:** Voluntary agreement to engage in sexual activity. The individual must actively and willingly give consent to the sexual activity in question.  
Consent:
  - a. is never assumed or implied,
  - b. is not silence or the absence of “no”,
  - c. cannot be given if the individual is incapacitated by alcohol or drugs, or is unconscious,
  - d. can never be obtained through threats or coercion,
  - e. can be withdrawn at any time,
  - f. cannot be obtained if a party induces another to engage in sexual activity by abusing a position of trust, power or authority,
  - g. given for one kind or instance of sexual activity does not mean that consent is given for any other sexual activity or instance,
  - h. cannot be expressed by the words of conduct of a third party.
5. **Disclosure:** A report of Sexual Violence and Misconduct by a Victim/Survivor, that does not constitute a Complaint.
6. **Employee:** A person who is employed by the University.
7. **Indecent Exposure:** Deliberate exposure by a person of a portion or portions of his/her body, in circumstances where such exposure is contrary to generally accepted standards of decency or is likely to cause another person to be alarmed, frightened, or offended.
8. **Investigation:** An investigation conducted by, or at the direction of, the University in accordance with one or more of its policies, procedures, and/or Collective Agreements. An Investigation may be conducted by a University employee or an external investigator.
9. **Policy:** The University’s Sexual Violence and Misconduct Policy.
10. **Procedures:** The University’s Procedures for Dealing with Sexual Violence and Misconduct.

- 11. Report:** A report of Sexual Violence and Misconduct by someone other than the Victim/Survivor, that does not constitute a Complaint.
- 12. Respondent:** A person who is alleged to have committed an act of Sexual Violence and Misconduct contrary to the Policy.
- 13. Sexual Assault:** Any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim. Sexual assault includes a broad range of non-consensual behaviours, from unwanted touching to penetration.
- 14. Sexual Exploitation:** A sexual act done to a person who is under age 18 or who has a physical or mental disability, by a person who is in a position of trust and authority over that individual, or who is in a relationship of dependency with that individual. Sexual Exploitation includes sexual abuse of a young person or a person with a disability, through the exchange of sex or sexual acts for drugs, food, shelter, protection, other basics of life, money, academic gains, and/or any other goods.
- 15. Sexual Harassment:** Comment or conduct of a sexual nature that an individual knew or should have known would cause humiliation, intimidation, or threat. Examples of sexual harassment include, but are not limited to, the following behaviours:
- a. Unwanted touching or physical contact,
  - b. Unwelcome sexual flirtations, advances or propositions,
  - c. Sexually suggestive, obscene or degrading comments or gestures,
  - d. Offensive jokes or remarks of a sexual nature,
  - e. Leering or staring,
  - f. Displaying or circulating pictures or other material of a sexual nature which are not part of the legitimate study, display, use or distribution of topics, material or art forms falling within appropriate academic or work-related norms,
  - g. Unwelcome questions or remarks about a person's sex life, gender, appearance, clothing, sexual orientation,
  - h. Express or implied promise of reward in return for complying with a sexually oriented request,
  - i. Reprisal, or express or implied threat of reprisal, for refusing to comply with a sexually oriented request.
- 16. Sexual Violence and Misconduct:** Any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against a person without the person's consent, and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, sexual exploitation, and 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.

- 17. Stalking:** Harassing a person by repeatedly following them, repeatedly communicating with them, watching over a place where they reside, work, learn, carry on business, or engaging in threatening conduct directed at them or any member of their family. These behaviours include, but are not limited to: repeated non-consensual communications (face to face, phone, email, social media); threatening harm to the person being stalked and/or to family, friends, or pets; vandalizing property; showing up uninvited to the person's home, workplace or learning environment; surveillance; and sending unsolicited gifts.
- 18. Student:** A person who is registered in credit courses at the University or has commenced studies in non-credit courses at the University and has maintained his/her eligibility to register.
- 19. University:** Kwantlen Polytechnic University (KPU).
- 20. Victim/Survivor:** A person who indicates that he/she has experienced, or who is reported by another person to have experienced, Sexual Violence and Misconduct.
- 21. Voyeurism:** The act of intentionally spying, including by mechanical or electronic means, on a person who is in circumstances that give rise to a reasonable expectation of privacy, such as undressing, sexual activity, or other activities usually considered to be of a private nature.

*\* We wish to express our thanks to Durham College and Vancouver Island University for allowing us to draw from the definitions in their policies.*

## **B. UNIVERSITY'S RESPONSIBILITIES**

1. The University understands that individuals who have experienced Sexual Violence and Misconduct may wish to control whether and how their experience will be dealt with by the police and/or the University. In most circumstances, the person will retain this control. However, if the University believes the safety of other members of the University community are at risk, an Investigation may be commenced and/or the police may be informed, on the University's initiative.
2. The University will provide timely academic, non-academic and workplace supports or accommodations to Victims/Survivors, Complainants, Respondents, and witnesses, where necessary and appropriate, and after evaluation of the relevant circumstances. The University may require additional information to support certain types of requests. The individual will be offered guidance and access to support services in appropriate circumstances, whether or not an Investigation is initiated.
3. Individuals who have experienced sexual violence and misconduct may experience emotional, physical, behavioural, academic, financial, or other challenges. It is important to view these reactions as normal behaviour in response to an extraordinary event. Additionally, a Victim/Survivor may struggle with decisions such as medical care, police involvement, physical safety, and who to inform. As such, the University will offer support to Victims/Survivors, using a victim-centered/trauma-informed approach.

4. During an evaluation of a Disclosure, Report or Complaint, or during an Investigation, the University may impose interim measures as deemed appropriate for the safety of the individuals involved and/or the University community. Interim measures may include, but are not limited to:
  - a. alteration of the learning or work schedule of an individual,
  - b. imposing a no-contact directive,
  - c. temporary, non-disciplinary, leave of an individual, and/or
  - d. any other interim measures as may be determined by the University.

Where applicable, interim measures will be carried out in accordance with the provisions of the relevant Collective Agreement(s).

5. The University does not have the authority to conduct criminal investigations. If a Victim/Survivor wishes to explore criminal reporting options, the police can provide information relating to such matters as filing a report, the investigative process and criminal charges. At any time, an individual may seek recourse through criminal or civil proceedings. A report of Sexual Violence and Misconduct may also be referred to the police, or to other community resources at the Victim/Survivor's request, where the persons involved are not members of the University community or in circumstances where the University is unable to initiate an Investigation under this Policy. If the Victim/Survivor is a minor, the incident will be referred to the police. The University reserves the right to report incidents to the police if there is any perceived risk to other members of the University community.
6. Where criminal and/or civil proceedings are commenced in respect of an allegation of Sexual Violence and Misconduct, and the University has been informed, the University may conduct its own Investigation in accordance with its policies and procedures and make its own determination.

## **C. REPORTING INCIDENTS OF SEXUAL VIOLENCE AND MISCONDUCT**

### **1. Reporting Options**

The University encourages reporting of violations of the Policy. The University further encourages reporting as soon as possible following an alleged incident of Sexual Violence and Misconduct. Victims/Survivors have the right to change their decision about how they will respond. For example, they may initially choose to Disclose but may later opt to make a Complaint. However, delays in reporting may impact the University's ability to gather facts and protect the safety and security of members of the University community.

An individual who has experienced, witnessed, or has knowledge of Sexual Violence and Misconduct can report the incident in a number of ways:

- a. Disclosure – a person may tell someone about the incident in order to seek support, without wanting to make a Complaint or Report to police or campus authorities. See C2. Disclosure below.
- b. Complaint – to file a Complaint under this Procedure. See C3. Complaints below.
- c. Report – to file a Report with the University. See C4. Reports below.
- d. Campus Security – to inform Campus Security about an incident so that Campus Security is aware that an allegation has been made regarding Sexual Violence and Misconduct by a person who may be on campus or among the campus community.

- e. Student Rights and Responsibilities Office – a Student may wish to inform the Student Rights and Responsibilities Office about an incident so that the Office can work in collaboration with Campus Security as required.
- f. Human Resources Services – an Employee may wish to inform Human Resources Services about an incident so that Human Resources Services can work in collaboration with Campus Security as required.
- g. KPU Protected Disclosure Tool – to make an anonymous Disclosure or Complaint through the University’s protected disclosure system.
- h. Police – to report an incident of Sexual Violence and Misconduct to police.
- i. Third Party Report to Police – to make an anonymous Third Party Report through a community-based victim support worker. More information on Third Party Reporting is available at: <http://endingviolence.org/wp-content/uploads/2015/11/TPR-Guidebook-November-12-2015.pdf>.

## 2. Disclosure

- a. A person who has experienced Sexual Violence and Misconduct may choose to disclose this information to anyone at the University. A Disclosure may or may not result in a Complaint. Appropriate supports and/or reasonable accommodations will be made available to individuals who disclose.
- b. When responding to a Disclosure, the University will provide the Victim/Survivor with information about what they can expect about the processes and services that follow. This information can be very helpful in supporting the person to make decisions and actively take part in the response process. Campus Security, Human Resources Services, and KPU Counselling Services can provide this information.
- c. VictimLink BC is one recommended service for Victims/Survivors. VictimLink BC is a toll-free 24/7, confidential, multilingual (110 languages) telephone service that can provide information and referral services to all victims of crime as well as crisis support to victims of sexual and domestic violence.

VictimLink BC  
1.800.563.0808

<http://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/victimlinkbc>

- d. If an individual is distressed after receiving a Disclosure and requires immediate support they should call:
  - i. KPU’s Counselling Services if a Student,
  - ii. Human Resources Services if an Employee,
  - iii. If neither a Student nor an Employee the individual can contact Human Resources Services, Counselling Services or Campus Security to be referred to community resources.

## 3. Complaints

- a. Complaints related to Sexual Violence and Misconduct will be made in conjunction with one of the following:
  - i. *SR8 Emergency Response to Inappropriate, Disruptive or Threatening Behavior,*
  - ii. *ST7 Student Conduct (Non-Academic),*
  - iii. *HR21 Respectful Workplace,*
  - iv. BCGEU Collective Agreement, or
  - v. KFA Collective Agreement.

- b. Students wishing to file a Complaint about an incident of Sexual Violence and Misconduct should seek advice about the appropriate policy through the Student Rights and Responsibilities Office.
- c. Employees wishing to file a Complaint about an incident of Sexual Violence and Misconduct should seek advice about the appropriate policy or Collective Agreement mechanism through Human Resources Services.
- d. A Complainant has the right to withdraw a Complaint at any stage of the process. However, the University may continue to act on the issue in order to comply with its legal or Policy obligations.
- e. If the Respondent is a Student, the Complaint will be processed under the Student Conduct policy. Please refer to that policy for details on the process.
- f. If the Respondent is an Employee, Human Resources Services will determine the policy and/or Collective Agreement that the Complaint will be processed under. Where Collective Agreement provisions are applicable, Human Resources Services will work in consultation with the appropriate union(s).
- g. If the Respondent is a person other than a Student or an Employee, the Chief Safety Officer or their Designate will investigate the Complaint.

#### 4. Reports

- a. Any member of the University community may file a Report about an incident of Sexual Violence and Misconduct, by contacting Campus Security. If the individual wishes to remain anonymous they may file a Report using the University's *Protected Disclosure Policy*.

## **D. CONFIDENTIALITY**

### 1. Complainant and Respondent Confidentiality

The University is committed to respecting the Confidentiality of all persons involved in Disclosures, Complaints and/or Reports of Sexual Violence and Misconduct. Confidentiality is required so that those who may have experienced Sexual Violence and Misconduct will come forward, and so that the reputations and interests of Complainants and Respondents are protected.

Confidentiality must be distinguished from anonymity. For a Complaint to proceed, the identity of the Complainant(s) and the details of the Complaint must be released to the Respondent(s) and to those involved in the investigation and disposition of the Complaint. The Complainant(s) must therefore be prepared to be identified.

### 2. Confidentiality of Information

Dealing with Complaints will require the collection, use, and disclosure of sensitive personal information. Except for disclosure which is required by law or is necessary in order to investigate and resolve a Complaint of Sexual Violence and Misconduct, the University will keep confidential any information pertaining to a Complaint.

### 3. The Responsibility to Maintain Confidentiality

All members of the University community are required to maintain the confidentiality of any information that they may receive during the course of the Complaint resolution process.

#### 4. Breach of Confidentiality

Any person involved in a Complaint process who breaches confidentiality may be subject to disciplinary measures.

#### 5. Confidentiality of Records

All recorded personal information gathered during the investigation and processing of a Complaint will be treated as information "supplied in confidence" for the purposes of the *Freedom of Information and Protection of Privacy Act*.

#### 6. Limits to Confidentiality

Although the University is committed to respecting the confidentiality of all persons involved in Disclosures, Complaints and/or Reports of Sexual Violence and Misconduct, there are limits to confidentiality which include but are not limited to circumstances involving:

- a. a material risk of harm to self or others,
- b. reporting that is required by law, e.g. in the case of a minor under the *Child, Family and Community Service Act* or a requirement to comply with a court order for release of information,
- c. the necessity to ensure procedural fairness in an Investigation or other response to a Complaint or Report.

### **E. PROTECTION FROM REPRISALS, RETALIATION OR THREATS**

1. Making a Complaint, Disclosure or Report, in good faith, is the right of every member of the University community and must be exercised without fear of reprisal.
2. Retaliation against any person who, in good faith, makes a Complaint, Disclosure or Report, or is otherwise involved in a Complaint of Sexual Violence and Misconduct will not be tolerated by the University. Individuals found responsible for retaliation may be sanctioned and/or disciplined according to the appropriate University policy and/or Collective Agreement.
3. Complaints that are found, following an Investigation, to be frivolous, vexatious or in bad faith, may result in sanctions and/or discipline against the Complainant using the appropriate policy and/or Collective Agreement.

### **F. PROCEDURES REVIEW**

1. The University is committed to ensuring these Procedures align with best practices. For the first three years after approval, the University will review these Procedures annually. Thereafter, reviews will take place in accordance with the *Act*.
2. The President's Advisory Committee on Sexual Violence and Misconduct will remain active to provide ongoing oversight of the Policy and Procedures for one year following approval.

## **G. ANNUAL REPORT**

1. As required by the *Act* the University President must report to the Board on the implementation of the Policy.

## **H. RELATED POLICY**

Refer to SR14 *Sexual Violence and Misconduct Policy*.