Preventing and Responding to Sexual 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 institutional 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 Framework

On April 27, 2016, the Government of British Columbia introduced the *Sexual Violence and Misconduct Policy Act* (the Act), to make campuses safer and more responsive to the needs of victims/survivors; it 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, a sexual misconduct policy that:

- Addresses sexual misconduct, including sexual misconduct prevention and responses to sexual misconduct.
- Sets out procedures for:
  - Making a complaint of sexual misconduct involving a student.
  - Making a report of sexual misconduct involving a student.
  - Responding to a complaint of sexual misconduct involving a student.
  - Responding to a report of sexual misconduct involving a student.¹

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.

Institutions have to establish a sexual misconduct policy – consistent with the requirements set out in the Act, regulations and/or EQA policy – by May 19, 2017.

The Act requires institutions to consult with students in the establishment of its first policy.² 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 For the purposes of this document, a complaint is when the victim/survivor provides notification to someone at the post-secondary institution of an incident of sexual misconduct. This could be accompanied by a request for action (actionable complaint), or it could be when a student chooses to tell someone about their experience of sexual misconduct, but does not necessarily want to move forward with any formal process at that time (disclosure). A report is when someone other than the victim/survivor provides notification to someone at the post-secondary institution of an incident of sexual misconduct.

² 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:

(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 violence.**

(i) **The threat to commit an act of sexual violence.**

In this document, the term “sexual misconduct” is used in a broad sense, and can include any unwanted act – physical, verbal or psychological – carried out through sexual means or by targeting sexuality. It recognizes that there are many different forms of sexual misconduct, that gender exists along a continuum and people of all genders may experience sexual misconduct. Institutions may wish to create their own definitions, in line with both legal definitions and the definition set out in the Act.

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

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.
PART 2: Context

Sexual misconduct is a serious and complex issue; 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 and supports and services, as well as a range of policies and programs in place that deal with issues of sexual misconduct.

However, institutions are at different stages in their work and have varied capacity and approaches for responding. This document is intended to help institutions that are at the beginning stages of developing the policies and procedures required by the legislation, as well as those that are further advanced.

Research shows that sexual assault is the most under-reported of all violent crimes in Canada, with less than 10 percent of incidents reported to police. 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.

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 generally deal with complaints and reports of sexual harassment through administrative law or human rights complaints. These processes are not subject to the same burden of proof or standards of evidence as a criminal process, but are subject to the requirements of procedural fairness and all applicable laws and institution by-laws.

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

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

3 Campus Sexual Violence: Guidelines for a Comprehensive Response, Ending Violence Association of British Columbia, April 2016
UNDERSTANDING SEXUAL MISCONDUCT
AND THE CAMPUS COMMUNITY

British Columbia post-secondary institutions are diverse, and individuals experience sexual misconduct differently, including the risks they face and their abilities and inclinations to seek out support.

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

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 recover.

Campus life can contribute to an environment of sexual misconduct

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 that may perpetuate non-consensual behaviour, one that can be exacerbated by alcohol, drugs and social media.

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, their family and friends, service providers and the broader public.

DISCLOSURE, COMPLAINTS AND REPORTING

As noted earlier, the vast majority of people who have experienced sexual misconduct do not make a formal 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 complaint helps to ensure that those who have experienced sexual misconduct receive the assistance and information they need to make the decisions best for them, and allows the post-secondary institution to identify and deal with threats to the safety of their community.
Fear and apprehension about the reactions of others can be significant barriers to making a complaint or report, including:

- Concerns about not being believed or being blamed.
- Feeling ashamed or guilty for what happened.
- Fear of institutional sanctions 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 complaint or report, especially if the alleged perpetrator has significant status on campus or in their community (e.g., religious, cultural, ethnic community).

Concerns about the formal 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 open up 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.

They may also be concerned that their parent(s) will be notified and that they will be pulled out of school or have their living arrangements changed. Some victims/survivors may not report sexual misconduct because they believe that nothing will happen to the alleged perpetrator.

Cultural beliefs and values and previous experiences can also influence decisions to tell someone or formally complain or report. Victims/survivors may fear that contacting services will result in other community members finding out. They may also fear being ostracized by family or friends.

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.

Institutional policies and protocols can play a valuable role in creating campus environments where victims/survivors feel safe coming forward and getting the help they need. More information on disclosure, actionable complaints and reporting is contained in the Institutional 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. Institutional Sexual Misconduct Policies.
C. Response Procedures and Protocols.

A. EDUCATION, AWARENESS AND PREVENTION

Public education can increase awareness and understanding of sexual misconduct, which supports behavioural change. Effective public education contributes to changes in attitudes that perpetuate sexual misconduct. It also fosters change at a number of levels: social norms, community attitudes, organizational practices and behaviours of bystanders and potential perpetrators.

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

It is beneficial to educate widely, but specific or specialized training may also be optimal for particular roles and responsibilities, for example, training for those who are most likely to receive disclosures. Education, training and orientation 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 also be used to educate the public 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 institutions can consider include, but are not limited to:

- **Education and training for students, staff and faculty on:**
  - Institutional policies, complaint and reporting procedures and support services available.
  - How to respond to disclosures, actionable complaints and reports of sexual violence.
  - Importance of the role of the first person to whom the victim/survivor discloses.
- **Bystander intervention training and bystander intervention strategies** in order to promote a culture of bystander intervention. This could include training student leaders.4
- **Targeted information, materials and activities for new students** as part of student orientation/welcome week to communicate expectations of the campus community and to introduce relevant policies, complaint and reporting procedures and available supports/services.
- **Awareness campaigns and/or events** such as consent campaigns to promote culture change.
- **Taking reasonable steps to mitigate safety risks** to those within the institutional community such as undertaking safety audits, increasing the physical safety of campuses and issuing safety alerts as required.

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B. INSTITUTIONAL SEXUAL MISCONDUCT POLICY

Together with education, awareness and prevention programs, formal institutional policy can advance further understanding and, through this, improve campus culture and safety. In developing a sexual misconduct policy, institutions should consider:

- **Consultation and engagement:**
  - The Act requires institutions to consult with students in the establishment of its first policy and in subsequent policy reviews.
  - In addition to students, other key stakeholders that institutions may wish to consult/engage include specific student groups (e.g., international students, students with disabilities, LGBTTQQ2 students, Pride groups and fraternities/sororities); members of the campus community including faculty, staff and administration; and those 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 of the policy:**
  - Must be in accordance with the requirements set out in the Act.
  - Must address sexual misconduct involving students, but may have application beyond students to the full institutional community including faculty, staff, administration, members of the Board, members of the Senate/Education Council/Academic Council, as well as broader institutional community such as contractors, volunteers, visitors and others identified by the institution.
  - Application of the policy beyond the physical campus (including residences) to the virtual

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4 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*
campus, institution-sanctioned events off-campus, and online/cyber-harassment. Institutions may also want to consider if and/or how its policy and procedures deal with non-institution sanctioned events off-campus.

Alignment with:

- Other institutional policies such as Student Code of Conduct (Non-Academic), and Bullying, Harassment and Discrimination policies.
- Laws of general application.
- Collective agreements and other policies/procedures governing the conduct of employees.
- Consider the application of Human Rights legislation, as well as the possible applicability of the Canadian Charter of Rights and Freedoms (the Charter).

Some other key elements include:

- **Purpose and Intent** – Outline the position, intentions and objectives of the institution with respect to this policy.

- **Terminology and Definitions** – Use definitions consistent with the Act, and that align with legal definitions such as those set out in the *Criminal Code of Canada*, other legislation and/or with terminology/definitions in other institutional policies, practices and requirements. Terminology such as consent, disclosure, complaint, report, victim/survivor, perpetrator, alleged perpetrator, substance-facilitated sexual assault and online/cyber harassment may be clarified and used appropriately according to the context.

- **Responding to Sexual Misconduct** – Outline the general policy approach for complaints, reports and responses to issues of sexual misconduct. This might include such things as:
  - Encouraging immediate reporting by those who have knowledge of or who have witnessed incidents of sexual violence and misconduct.
  - Outlining the general approach and high level policy statements for dealing with complaints. More detailed processes could be addressed through a companion procedures document.
  - Committing to immediate action by those with authority to act.
  - Committing to taking reasonable steps to ensure the safety of the institutional community when the institution has been made aware of an incident.

Institutions may also wish to include a supportive response statement, i.e., what an individual who has experienced sexual violence or misconduct can expect in the way of a compassionate and caring response. More detailed processes could be addressed through a companion procedures document.

- **Legal Processes** – Ensure institutional processes undertaken pursuant to a sexual misconduct policy will be fair and based on the principles of fundamental justice and all parties involved will be treated with dignity and respect. In this regard, institutions may want to consider enumerating the rights of the alleged perpetrator and should consider the elements of procedural fairness.

- **Confidentiality and Information Sharing** – Stress the importance of privacy for both the victim/survivor and the alleged perpetrator. Confidentiality can be managed within the context of any investigation the institution may conduct in order to meet its legal obligations. The policy may also clarify the limits including:
  - If an individual is at imminent risk of severe or life-threatening self-harm.
  - If an individual is at imminent risk of harming another.
Sexual misconduct policies must undergo regular review, in accordance with the requirements of the Child, Family and Community Services Act.

- There are reasonable grounds to believe that others in the institutional community may be at significant risk of harm based on the information provided.
- Reporting is required by law, e.g., in the case of a minor under the Child, Family and Community Services Act.
- Disclosure is necessary to ensure procedural fairness in an investigation or other response to a complaint or report.

**Review** – Sexual misconduct policies must undergo regular review, in accordance with the requirements of the Act. Students must be consulted in those reviews.

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

### C. INSTITUTIONAL PROCEDURES AND PROTOCOLS

Institutional procedures are required for implementation of sexual misconduct policies, offering guidance on how to properly respond to complaints and reports. Clear and transparent procedures will help build understanding for individuals across all campus groups and will also help individuals understand their options should they choose to make a complaint or report about an incident.

Institutional procedures may include the following elements:

- **Roles and Responsibilities** – Identify and define roles and responsibilities of individuals in implementing and carrying out programs and practices in the prevention of and response to sexual violence. Institutions may wish to consider establishing a response team to coordinate advice and expertise.

- **Disclosure, Actionable Complaints and Reporting** – 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 services they feel are most appropriate and to independently determine and decide whether to contact police and/or make a complaint to the institution.
  - Respects the choice of the individual as to what and how much to disclose about their 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, and then ongoing safety).
- Providing emergency numbers for on and off campus safety/security, law enforcement, medical assistance, mental health services and others as required/appropriate.
- Describing institution-specific processes and resources.
- Discussing seeking medical treatment/assistance for injuries, preventative treatment for sexually transmitted diseases, other health services and to preserve evidence.
- Identifying and providing contact information for trained on and/or off-campus counsellors or victim services supports who can provide an immediate confidential response.
- Outlining who is responsible at each level and stage of response.

**Role of Criminal Justice System and Police** – Outline the full range of complaint and reporting options available including making a complaint to the institution, reporting to police, neither or both. The procedures could also address the role and capacity of the institution in conducting investigations versus the role of law enforcement and the justice system.

**Ongoing Protection of Health and Safety** – Provide a description of the possible accommodation options for the victim/survivor once an allegation of sexual misconduct has been disclosed. This may include working with the victim/survivor to consider what accommodations – both academic and non-academic – are appropriate to ensure their ongoing safety and academic success.
- Accommodations may range from extensions on assignments or deferrals of exams, to assisting with 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 applicable laws are respected.

Appendix 2 includes a sample procedures guide that may be helpful to institutions in the development of sexual misconduct procedures.
PART 4: Resources

Below is a listing (with electronic links) of resources that may be helpful in developing a comprehensive response to prevent and respond to sexual violence at BC post-secondary institutions. It includes links to 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

- *Checklist for Conducting Student Sexual Assault Investigations, United Educators, Title IX*.

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6 DISCLAIMER: This Checklist is from the United States and, therefore, deals with a different legal environment than exists in Canada. This example 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 GUIDE

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

PURPOSE STATEMENT

- Sets out policy and corresponding procedures for preventing and responding to issues of sexual misconduct.
- Outlines the position, intentions and objectives of the institution and responsibility to provide a safe and secure learning environment.
- Outlines institutional 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:
  - Post-secondary institutions in British Columbia do not tolerate any form of sexual misconduct.
  - Post-secondary institutions strive to prevent sexual misconduct and to respond effectively in a timely manner when incidents do occur.
  - Post-secondary institutions have a responsibility to create safe and respectful campus environments.
  - Regardless of whether or not victims/survivors choose to complain or report, they should be supported and treated with compassion. Victims/survivors should have access to safety planning, academic, work-related and other accommodations as well as access to on and off-campus confidential support services.
  - Victims/survivors and alleged perpetrators have privacy and other rights that must be respected.
SCOPE AND APPLICATION

- Policy must be in accordance with the requirements set out in the *Sexual Violence and Misconduct Policy Act*.
- Articulate who policy applies to:
  - Must address sexual misconduct involving students, as per the Act.
  - May include the full institutional community including faculty, staff, administration, members of the Board and members of the Senate/Education Council/Academic Council, as well as broader institutional community such as contractors, volunteers, visitors and others identified by the institution.
- Articulate where the policy is applicable, for example:
  - On campus.
  - Residences.
  - Virtual campus.
  - Off-campus – institution-sanctioned events off-campus.
  - Online/cyber-harassment.
- Articulate what behaviours are prohibited (as per the Act).
- It is recognized that other institutional policies may also address elements of sexual misconduct. This is intended to complement those policies. It is not intended to interfere with other institutional policies, collective agreements, or prevailing law.

DEFINITIONS

*Sexual misconduct is defined in the Sexual Violence and Misconduct Policy Act as:*

- 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.
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 institutional policy definitions. Institutions may also choose to define additional terms not referenced in this guide.

The following provides some example definitions that institutions could consider adopting or adapting (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 (Ending Violence Association of BC).

- 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 (St. Thomas University).

- 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 (Ontario Draft Sexual Assault and Sexual Violence Policy and Protocol Template – Colleges).

**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.\(^7\)

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\(^7\) Campus Sexual Violence: Guidelines for a Comprehensive Response, April 2016, Ending Violence Association of BC
**Examples of definitions of sexual assault include:**

- A form of sexual contact that occurs without ongoing and freely given consent. Sexual assault includes any form for sexual contact where consent has not been given (e.g., non-consensual touching that is sexual in nature, forced vaginal or anal penetration). A sexual assault that is carried out with threats or a weapon, or that causes serious bodily injuries to the victim/survivor is called “aggravated sexual assault.” 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 (Ending Violence Association of BC).

- 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 (St. Thomas 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. Sexual assault 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). (BCIT sexual assault policy).

**Sexual Harassment**

- 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. (Ending Violence Association of BC).

- 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. Reference is made to the term sexual harassment being defined under the *New Brunswick Human Rights Act.* (St. Thomas University).
**Consent**

- The voluntary agreement of a complainant to engage in sexual activity. No consent is obtained where:
  - a. The agreement is expressed by the words or conduct of a person other than the complainant.
  - b. The complainant is incapable of consenting to the activity.
  - c. The accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority.
  - d. The complainant expresses, by words or conduct, a lack of agreement to engage in the activity.
  - e. The complainant having consented to engage in the sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity (Criminal Code of Canada).

- 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 (Ending Violence Association of BC).

- The voluntary agreement to engage in the sexual activity in question and to continue to engage in the activity. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct and can be revoked at any point. 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 a person is incapable of consenting, for example, by intoxication, or where a person is induced to engage in the activity by someone abusing a position of trust, power or authority (UBC).

- The **Criminal Code of Canada** defines consent as the voluntary agreement to engage in sexual activity. An individual must actively, willingly and continuously give consent to all sexual activity. Simply stated, sexual activity without consent is sexual assault. Consent is never assumed or implied; it is not silence or the absence of “no”. Consent cannot be given by a person who is impaired by alcohol or drugs, or is unconscious. Consent can never be obtained through threats or coercion, and it can be revoked at any time. Consent cannot be obtained if the perpetrator has a position of trust, power, or authority (St. Thomas University).

**Other Terms**

Other terms that institutions may wish to clarify in the context of the sexual misconduct policy include:

- Members of the [institutional] community.
- Victim/survivor.
- Perpetrator/alleged perpetrator.
- Disclosure, complaint, report.
- Substance-facilitated sexual assault.
- Online/cyber harassment.

**RESPONDING TO COMPLAINTS AND REPORTS OF SEXUAL MISCONDUCT**

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

- **Institutional 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 institutional 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, i.e., what an individual who has experienced sexual misconduct can expect in the way of a compassionate and caring response.

Disclosures of Sexual Misconduct

A disclosure is different than an actionable complaint or a report. Institutions should consider outlining the general policy approach for disclosures of sexual misconduct, e.g.:

- A person may choose to disclose sexual misconduct without making a formal/actionable complaint or report.
- In these circumstances, a disclosure may not result in an actionable complaint or 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.

Complaints and Reports of Sexual Misconduct

Institutions are required by the legislation to set out procedures related to complaints and reports of sexual misconduct. For the purposes of this document, a complaint is when the victim/survivor provides notification to someone at the post-secondary institution of an incident of sexual misconduct. This could be accompanied by a request for action (actionable complaint), or it could be when a student chooses to tell someone about their experience of sexual misconduct but does not necessarily want to move forward with any formal process at that time (disclosure). A report is when someone other than the victim/survivor provides notification to someone at the post-secondary institution of an incident of sexual misconduct. The actual process/procedures may vary in relation to the nature of the complaint or report, e.g., criminal vs non-criminal. Some elements to consider include:

- The individual filing a complaint or report has the right to withdraw it at any stage of the process, although the institution may continue to act on the matter in order to comply with its obligations under the policy or legal obligations.
- A report of sexual misconduct may be filed under the policy by any member of the institutional community.
- It is contrary to the policy for anyone to retaliate, engage in reprisals or threaten to retaliate in relation to a complaint or report.
- How to deal with unsubstantiated complaints or reports, e.g., if a person, in good faith, discloses or files a complaint or report under the policy that is not supported by evidence gathered during an investigation.

Institutions may also want to consider enumerating the rights of the alleged perpetrator, e.g.:

- Any processes undertaken pursuant to a sexual misconduct policy will be fair and based on the principles of fundamental justice.
- All parties involved will be treated with dignity and respect.
- In accordance with the principles of procedural fairness, no sanction and/or disciplinary action will be taken against a person or group without their knowledge.
- Individuals accused will be given reasonable notice, with full detail of the allegations against them and provided with an opportunity to answer the allegations.
CONFIDENTIALITY AND INFORMATION SHARING

Institutional sexual misconduct policies should include a section on confidentiality and information sharing. It should recognize the importance of confidentiality both to those who have made a complaint or report of sexual misconduct as well to the alleged perpetrator, and it should commit the institution to doing its best to respect the confidentiality of all persons involved.

The policy may outline when information can be shared and when it cannot be shared, what information can 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 full 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 an individual is at imminent risk of severe or life-threatening self-harm.
- If an individual is at imminent risk of harming another.
- There are reasonable grounds to believe that others in the institutional 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 complaint or report.

REVIEW

- As per the Sexual Violence and Misconduct Policy Act, this policy must be reviewed at least once every three years 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 institutional policies and procedures, as well as applicable legislation such as the Sexual Violence and Misconduct Policy Act, Criminal Code of Canada, Human Rights law, etc.
APPENDIX 2: SEXUAL MISCONDUCT PROCEDURES – SAMPLE GUIDE

Procedures should outline how instances of sexual misconduct will be handled by the institution and should include clear and transparent actions that will be taken when there has been a complaint or report of sexual misconduct – recognizing that the response and actions may differ depending on the nature of the incident that has been disclosed or reported.

It should also clearly articulate roles and responsibilities of the various departments, staff and faculty, 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 OF SEXUAL MISCONDUCT

A person who has experienced sexual misconduct may choose to disclose this information to anyone in the institutional community including another student, faculty, coach, teaching assistant, staff, counsellor or security.

As sexual misconduct is defined broadly, the approach and response to a disclosure may vary depending on the situation.

What To Do If You Receive a Disclosure

Receiving disclosures of sexual misconduct can be distressing. If an individual receives a disclosure, they should be provided with information on resources that are available for them to speak with about any disclosures received. This may include campus response teams, sexual assault crisis lines, etc.

In receiving a disclosure, the most important thing is to be there for the individual in a supportive capacity. Members of the institutional community should have access to basic information on how to provide a compassionate and supportive response. This may include (not an exhaustive listing):

- Listening without judgment.
- Helping identify and/or access available on- or off-campus services including emergency medical care, if appropriate, and counselling.
- Respecting the right of the individual to choose the services they feel are most appropriate and to decide whether to formally make a complaint or report to the institution or police.
- Recognizing that disclosing can be traumatic and the ability of an individual to recall events may be limited.
- Respecting the choice of the individual about how much they disclose about their experience.
- Making every effort to respect confidentiality and anonymity.
RESPONDING TO DISCLOSURES/COMPLAINTS/REPORTS OF SEXUAL MISCONDUCT

When responding to a disclosure, actionable complaint or report of sexual misconduct, the individual should be provided with information about what they can expect about the processes and services that follow. This can be very helpful in supporting 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 incidents (see attached examples of sexual assault response flow charts from St. Thomas University and Dalhousie University).

The following provides 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, and then ongoing safety).
- Provide emergency numbers for on- and off-campus safety/security, law enforcement, medical assistance, mental health services, and others as required/appropriate.
- Describe institution-specific processes and resources.
- Discuss seeking medical treatment/assistance for injuries, preventative treatment for sexually transmitted diseases, other health services and to preserve evidence.
- Identify and provide contact information for trained on- and/or off-campus counsellors/victim services support workers who can provide an immediate confidential response.
- Outline who is responsible at each level and stage of response.

The following provides an example of Response Procedures specific to sexual assault that has happened in the last 24 hours:

ANYONE WHO HAS EXPERIENCED SEXUAL ASSAULT IS ENCOURAGED TO CONSIDER THE FOLLOWING STEPS IMMEDIATELY AFTER THE ASSAULT:

1. **Go to a safe place and seek out help:**
   - Call 911 and/or go to a safe place such as a shelter or trusted friend’s house.
   - (If applicable) If you live in residences, contact the Residence Manager or Advisor.
   - (If applicable) Call campus security for assistance in getting to a safe place on campus.
   - Provide contact information – phone, location.

2. **Get medical attention as soon as possible:**
   - If possible, get medical treatment from a hospital emergency department or medical clinic.
   - Provide contact information (phone and location) on the medical centres nearest to the institution.
   - (If applicable) Provide information on community services available to provide confidential support including accompaniment and/or transportation to hospital or a medical centre.

3. **Get advice, personal support and/or counselling:**
   - Provide information on local, off-campus resources available to provide advice and support.
   - These could include sexual assault centres, community mental health services, victim services, women’s centres, police, HealthLinkBC, etc.
   - Provide information on relevant on-campus resources such as counselling services, security, health and wellness services, services for Aboriginal students or students with disabilities, etc.
REPORTING OPTIONS

An individual who discloses an allegation of sexual misconduct should be made aware that there are a range of complaint and 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 complaint or report to police or campus authorities.

- **Police** – a victim/survivor may wish to make a formal complaint of a sexual assault or other criminal incident of sexual misconduct to police. Victims/survivors should be offered the support of a campus based sexual assault response worker (where they exist) or a community-based support worker to support and/or accompany them and to assist with emotional preparation.

- **Campus Security, if applicable** – a victim/survivor may wish to inform campus security about what happened so that they are 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 an actionable complaint and, if appropriate, should be offered connection to a support worker or advocate to assist.

- **Third Party Report to Police** – a victim/survivor may wish to make an anonymous Third Party Report through a campus sexual assault response worker (where they exist) or community-based victim support worker. Third Party Reports are sent to police by an intermediary agency; the report provides detailed information about the crime and the alleged perpetrator but does not include the name or contact information of the victim/survivor. More information on Third Party Reporting is available through the Ending Violence Association of BC’s Third Party Reporting Guidebook.

- **Third Party Report to Post-Secondary Institution** – Third Party Reports provided to police provide law enforcement with information, but they are not shared with post-secondary institutions. Institutions could consider developing their own institutional Third Party Reporting systems to complement, not replace, Third Party Reporting to Police.

It is also important to note that the choice of the individual is not final – for example, they may initially choose not to make a complaint or report but may later opt to make a complaint or 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. Any member of the institutional community may pursue criminal charges under the Criminal Code of Canada.

**Non-Criminal Processes**

Under the Act, post-secondary institutions are not being given 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 complaint or report to the institution, the [designated institutional 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, 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.
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.

- The [designated institutional official] can arrange to have a police officer meet with the victim/survivor on campus to discuss the possibility of making a criminal report.
- The [designated institutional official] can also provide liaison with and accompaniment 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 the institution has a legal obligation to act, the victim/survivor will always be the one to determine what processes and actions the institution pursues.
- If a victim/survivor decides to make a criminal report, the [designated institutional official(s)] can accompany the victim/survivor to the police station or have police attend on campus. If criminal charges are laid, the [designated institutional official(s)] can act as a liaison with police 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 development and implementation of policies, programs and practices for the prevention of and 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 and Safety

Provide information on the range of institutional 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, but examples could include:

- “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 institutional 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 institutional policies and procedures, including web links.