

4.8.8 Sexual Violence and Misconduct Prevention and Response

POLICY

College of the Rockies (the College) is committed to creating and maintaining a safe learning and working environment characterized by mutual respect and civility. Safety at the College is a priority and any form of sexual violence and misconduct will not be tolerated. The College will address sexual violence and misconduct in the College community through providing support to survivors, increasing awareness of sexual violence and misconduct, providing training and prevention programs to students and College employees, and by the appropriate handling of disclosures or reports of sexual violence and misconduct. Those who have experienced sexual violence and misconduct will be treated with compassion, dignity, and respect.

PURPOSE

The purpose of this policy is to clearly articulate the College's commitment to addressing sexual violence and misconduct through:

- Creating an atmosphere in which sexual violence and misconduct is not tolerated;
- Providing education to the College Community about prevention of sexual violence and misconduct;
- Assisting those who have experienced sexual violence and misconduct by providing information and support, including provision of and/or referral to counseling and medical care, and appropriate academic and/or other accommodation; and
- Using clear, appropriate, and just processes for handling disclosures and/or reports of sexual violence and misconduct.

Note: A report of sexual violence and misconduct does not have to be filed for a person to receive accommodation and support.

See the following link for internal and external resources to assist those who have experienced sexual violence and misconduct: <http://www.cotr.bc.ca/sexual-assault/>

This policy is developed as per the *College and Institute Act* and Bill 23-2016 *Sexual Violence and Misconduct Policy Act*

SCOPE

- This policy applies to students and employees in a College-related activity (as defined below).
- This policy is not intended to supersede or interfere with collective agreements or with prevailing laws.
- Anyone who has experienced sexual violence and misconduct has the right to pursue criminal or civil legal avenues whether or not they choose to proceed under this policy.

- All processes must follow the principles of natural justice and must appropriately protect the rights of both the person making a disclosure and/or report, and the person accused.

DEFINITIONS

College-related activity includes an activity conducted under the authority of the College at any location. The activity in question must have a real and substantial connection to the College, College activities or College-related functions, whether or not the conduct occurred on College property.

College Community means students and employees (as defined below).

Consent means an active, direct, voluntary, un-coerced, ongoing, unimpaired and conscious choice and agreement between individuals to engage in sexual activity. Consent can be withdrawn at any point.

Disclose or Disclosure means the sharing of information regarding an incident of sexual violence and misconduct with a member of the College Community.

Employee means any person employed by the College, contractors, and sub-contractors engaged by the College, and members of the Board of Governors of the College.

No-Contact Direction is an order from either the Director of Student Affairs, the Manager, Human Resources, or the Executive Director Human Resources that two individuals may not have any contact with each other.

No-Contact Undertaking means an agreement, mutually undertaken by two or more people, to refrain from contacting one another based on specified conditions.

Report is a written statement of facts including a record of the dates, times, and nature of any incidents, and names of witnesses, if applicable. The report must contain sufficient detail to allow the College to assess the incident and conduct an investigation, if required. A report can be made by a person who has experienced sexual violence and misconduct or who has been a witness to sexual violence and misconduct.

Sexual Violence and Misconduct refers to any sexual act or act targeting a person's sexuality, whether the act is physical, verbal, or psychological in nature, which is committed, threatened or attempted against a person without the person's consent.

Note: Reference to a person applies regardless of gender, sexual orientation or gender identity.

Sexual Violence and Misconduct can include but is not limited to:

- 1) **Sexual Assault** means any form of sexual contact without consent from all parties, and can include:
 - a) acquaintance sexual assault: sexual contact that is forced, manipulated, or coerced by a partner, friend or acquaintance; and

- b) drug-facilitated sexual assault: the use of alcohol and/or drugs by a person to control, overpower or subdue a person for sexual purposes.
- 2) **Sexual Exploitation** is the involvement of a young person (a person 16 years of age or more and under the age of 18) in the exchange of sex or sexual acts for drugs, food, shelter, protection, other basics of life, and/or money. Sexual exploitation includes involving a young person in creating pornography and sexually explicit websites.
- 3) **Sexual Harassment** means a course of unwanted remarks, behaviours, or communications of a sexual nature and/or a course of unwanted remarks, behaviours or communications based on sex, sexual orientation, gender identity, or gender expression where the person responsible for the remarks, behaviours, or communications knows or ought reasonably to know that these are unwanted. It includes, but is not limited to:
 - a) sexual solicitations, advances, remarks, suggestive comments and gestures (including songs and chants);
 - b) the inappropriate display of sexually suggestive images or objects;
 - c) non-consensual posting and/or distribution of sexually explicit pictures, video, aggressive comments, or slurs on any form of social media;
 - d) unwanted physical contact of a sexual nature; and
 - e) sexual conduct that interferes with an individual's dignity or privacy.
- 4) **Stalking** is a form of criminal harassment involving behaviours that occur on more than one occasion and which collectively instill fear in a person or threaten a person's safety or mental health. Stalking can also include threats of harm to a person's friends and/or family. These behaviours include, but are not limited to:
 - a) non-consensual communications (face-to-face, phone, email, social media);
 - b) threatening or obscene gestures;
 - c) surveillance; sending unsolicited gifts; "creeping" via social media/cyber- stalking; and
 - d) uttering threats.
- 5) **Indecent exposure** is the crime of intentionally showing one's sexual organs in public.
- 6) **Voyeurism** is the practice of gaining sexual gratification by secretly observing unsuspecting individuals who are partly undressed, naked, or engaged in a sexual act.
- 7) **Distribution of a sexually explicit image** of a person without the consent of the person in the image.
- 8) The attempt to commit an act of sexual violence and misconduct as defined above.
- 9) The threat to commit an act of sexual violence and misconduct as defined above.

Student means any person enrolled at the College.

GUIDELINES

A. MAKING A DISCLOSURE OR REPORT OF SEXUAL VIOLENCE AND MISCONDUCT

Anyone who experiences or witnesses sexual violence and misconduct, or has reason to believe that sexual violence and misconduct has occurred, or may occur, may pursue any of the following options (or pursue more than one option simultaneously):

A. 1 Disclosure Without a Report Option:

- 1) if a student has experienced sexual violence and misconduct at a College-related or non-College related activity, and does not want to report the experience

through the criminal justice system or the College's non-criminal report option, the student may disclose to any member of the College Community. The student has the option of disclosing their experience to a counsellor in Student Services or the Director of Student Affairs to receive support and academic accommodations that may be needed;

- 2) if an employee has experienced sexual violence and misconduct at a College-related or at a non-College related activity, and does not want to report the experience through the criminal justice system, or the College's non-criminal report option, the employee may disclose to any member of the College Community. The employee can seek assistance through the College's *Employee and Family Assistance Program* and may seek any necessary accommodations through the Manager, Human Resources; or
- 3) if a member of the College Community witnesses or receives a disclosure of sexual violence and misconduct, the member can seek guidance and support from the Director of Student Affairs, and/or the Manager, Human Resources, and/or the College counsellor.
- 4) disclosure will not initiate a process to investigate the sexual violence and misconduct or engage any resolution process.

A. 2 Non-Criminal Reporting Option:

A report should be directed as follows for an incident that occurred at a College-related activity:

- 1) for students – the Director of Student Affairs;
- 2) for employees – the Manager, Human Resources;
- 3) if the incident involves the Director of Student Affairs, the Manager, Human Resources or the President– the report should be directed to the Executive Director, Human Resources.

A report submitted for an incident that occurred at a College-related activity will initiate an investigation.

A. 3 Criminal Reporting Option:

Individuals may report their allegations through the criminal justice system by contacting the RCMP or local police detachment. The College will co-operate with any criminal investigation.

B. INTERIM MEASURES

B. 1 Prior to the commencement of an investigation or resolution process, the College may impose interim measures as may be appropriate for safety of the individuals involved, and the College Community, in any report of sexual violence and misconduct. Interim measures may include, but are not limited to:

- 1) alteration of the academic schedule of any student involved in a disclosure or report of sexual violence and misconduct;
- 2) no-contact undertakings or no-contact direction;
- 3) temporary, non-disciplinary leave of a person alleged to have committed sexual violence and misconduct; and

- 4) any other interim restrictions as may be determined by the College.

C. ACCOMMODATIONS

- C. 1 A student who has experienced sexual violence and misconduct at a College or non-College related activity, and who may require an accommodation (including but not limited to, exam deferral, an extension on an assignment, withdrawing from a class, changing location of studies – to another campus or online, assistance with a safe place to stay) will be referred to the Director of Student Affairs.
- C. 2 A student requesting an accommodation under this policy is not required to file a report of sexual violence and misconduct to receive an academic accommodation.
- C. 3 An employee who has experienced sexual violence and misconduct at a College or non-College related activity, and who may require accommodations, will be referred to the Manager, Human Resources.

D. CONFIDENTIALITY

- D. 1 Confidentiality is an important principle in creating an environment where those who have experienced sexual violence and misconduct feel safe to disclose and seek support. The privacy and confidentiality of all members of the College Community involved in any disclosure of sexual violence and misconduct will be protected to the extent possible; however, disclosure of information may be made if:
 - 1) the sharing of personal information is necessary for the protection of health or safety of individuals and/or the College Community;
 - 2) the sharing of personal information is required or authorized by law;
 - 3) it is necessary to ensure procedural fairness in an investigation or other response to a report; or
 - 4) the person the information is about has provided written consent to the release of the personal information.

E. PROTECTION FROM RETALIATION

- E. 1 It is contrary to this policy for anyone to retaliate, engage in reprisals, or threaten to retaliate against a person making a report, a witness, or other individual for:
 - 1) having pursued options/rights under this policy or any other relevant Provincial or Federal legislation;
 - 2) having participated or co-operated in a report under this policy; or
 - 3) having been associated with someone who has pursued rights under this policy.
- E. 2 Anyone engaged in such conduct may be subject to discipline according to College policies and agreements listed in G.

F. FALSE REPORTS

- F. 1 Disclosures or reports that are made to purposely annoy, embarrass, or harm the accused are considered frivolous and vexatious, and may result in discipline of the complainant according to the 2.4.4 *Student Conduct* policy and or 2.8.6 *Discrimination/Harassment*.

G. INVESTIGATION

- G.1 If it is decided that the matter will be investigated, the Director of Student Affairs or the Manager, Human Resources will work with the Executive Director, Human Resources or delegate, to arrange for the services of an external investigator.
- G.2 The external investigator will establish an investigation process based on expectations outlined by the College.
- G.3 The final investigation report will be provided to the Director of Student Affairs or the Manager, Human Resources.
- G.4 Once a decision is made, the parties in the report will be notified in writing of the outcome of the investigation.
- G.5 The survivor may withdraw from an investigation by making a written request to either the Director of Student Affairs or the Manager, Human Resources.
- G.6 Upon receipt of a request to withdraw, the investigation will cease and the parties will be notified except in situations where an investigation is required.
- G.7 When an investigation establishes that a student or an employee has violated the *Sexual Violence and Misconduct Prevention and Response* policy, discipline up to and including suspension or termination from the College will be imposed as follows:
 - 1) The Director of Student Affairs or the Executive Director Human Resources will impose discipline short of suspension or termination from the College.
 - 2) The President will impose discipline involving suspension and termination from the College.

H. DISPUTE PROCESS

Disputes regarding disciplinary actions for violations of the *Sexual Violence and Misconduct Prevention and Response* policy must be addressed as follows:

- H.1 Students wishing to file a dispute about the reporting or investigation process may do so through the 2.5.3 *Student Appeal* policy.
- H.2 Employees wishing to file a dispute may do so through the applicable provisions outlined in the applicable collective agreements, or through other terms and conditions of employment or contract.

I. REVIEW AND ACCOUNTABILITY

- I. 1 This policy will be reviewed in response to the changes in law or the needs of the College Community, and at least once every three years.
- I. 2 The President will report to the College Board of Governors on the implementation and review of this policy on an annual basis.
- I. 3 The Sexual Assault Prevention and Response Task Force will review, advise, and develop protocols and procedures for sexual violence and misconduct prevention and response. This involves creating awareness and understanding that establishes a College community that does not tolerate sexual violence and misconduct and has a clear and comprehensive awareness and education program, and prevention and response plans. Specific functions of this Task Force are to:
 - consider issues related to sexual violence and misconduct and make any necessary recommendations relating to College policy and procedure;

- maintain current knowledge of law related to sexual violence and misconduct as well as support services for survivors of sexual violence and misconduct;
- research and review best practices in sexual violence and misconduct prevention and response;
- review, develop, and maintain a sexual violence and misconduct policy and response protocol; and
- develop and deliver a sexual violence and misconduct awareness program.

I. 4 The Director of Student Affairs and the Manager, Human Resources are responsible for updating and implementing this policy.

J. RELATED POLICIES, HANDBOOKS, AND AGREEMENTS

- [4.8.2 Abuse and Violence in the Workplace](#)
- [4.8.6 Discrimination/ Harassment](#)
- [8.1 Use of Information Technology](#)
- [2.4.4 Student Conduct](#)
- [2.5.3 Student Appeal](#)
- Collective Agreements
- [1.1.5 Code of Ethics](#)
- Purcell House Student Handbook and License Agreement
- College of the Rockies – Homestay Program Agreement for Host Families

This policy is modeled after Okanagan College’s E.2.16 *Sexual Violence and Misconduct Policy – Students and Employees* and is used with their permission.