

Policy Information	
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Executive Responsible:	VP Student Affairs
Administrators Responsible:	Director Student Services
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## STUDENT SEXUAL MISCONDUCT POLICY

### Policy Statement

The College of New Caledonia (“the College”) strictly prohibits acts of sexual misconduct as defined by this policy and is committed to maintaining a respectful academic and working environment for students. This includes having a living and learning environment free from sexual misconduct and interpersonal violence.

### Purpose / Rationale

This policy and associated procedures are to assist Students who experience Sexual Misconduct to: a. understand the options available to them; b. facilitate a meeting if they wish to talk to someone privately and/or in confidence; and c. support them if they wish to talk with police.

This policy includes direction and guidance identified in the Sexual Violence & Misconduct Act.

The purpose of this policy is to clearly set out the College’s commitment to addressing Sexual Misconduct (as defined in this policy) involving a student of the College (a “Student”) by:

- a. Prohibiting acts of Sexual Misconduct (as defined in this Policy);
- b. Outlining clear procedures for responding to acts of Sexual Misconduct reported to the College;
- c. Delivering education campaigns to Students and employees to help them:
  - i. identify what behavior constitutes Sexual Misconduct
  - ii. understand how to report Sexual Misconduct;
  - iii. recognize warning signs of potentially abusive behavior and ways to reduce risks; and
  - iv. learn about safe and positive options for bystander intervention to prevent harm or intervene in situations where another person is at risk of Sexual Misconduct.
- d. Engaging in intake, investigative inquiry and resolution of complaints (through the associated Sexual Misconduct Procedures) that are prompt, fair, equitable and independent of other investigations that may occur;
- e. Supporting complainants and respondents and to hold persons accountable for violations of this policy; and
- f. Providing a written explanation of the rights and options available to every student who files a complaint of Sexual Misconduct.

## **Scope / Limits**

This policy applies to all circumstances involving Sexual Misconduct where a Student is involved and there is a reasonable connection to the College. It includes all incidents of Sexual Misconduct involving a Student that are reported to have occurred:

- on College property;
- in/at College Housing facilities;
- at a College sponsored activity or event; and
- at any other location or event where there is a reasonable connection between the circumstances and the College.

Where a Student experiences Sexual Misconduct in a circumstance not included above, the College will, where appropriate, provide support and reasonable academic accommodations to the Student and will support the Student in reporting to the RCMP if desired. However, in those circumstances, the College will not carry out its own investigation under this Policy but will consider whether any other action may be necessary or required.

Nothing in this Policy is intended to restrict the College's ability or rights to appropriately respond to or address Sexual Misconduct by members of the College community that does not fall within the scope of this Policy.

Any Student who has experienced Sexual Misconduct has the right to pursue criminal or civil legal avenues whether they choose to proceed with taking any steps under this Policy.

## **Principles / Guidelines**

### **Sexual Misconduct Prohibited**

Sexual Misconduct is prohibited by all members of the College, including students.

### **Sexual Misconduct Defined**

#### ***Sexual Misconduct***

For the purposes and scope of this Policy, the term "Sexual Misconduct" includes the following, each of which is described further below:

- Sexual Assault;
- Sexual Exploitation;
- Sexual Harassment;
- Domestic Violence;
- Dating Violence;
- Stalking;
- Sexual Cyber Harassment / Cyber Stalking;
- Indecent Exposure;
- Voyeurism;

- the distribution of a sexually explicit photograph or video of a person to one or more people, 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; and
- the threat to commit an act of Sexual Misconduct.

### **Consent**

For the purposes of this policy, Consent means communication of mutually understandable words or actions, freely, actively, and affirmatively given that indicate a willingness to participate in mutually agreed upon sexual activities or actions. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties involved to do the same thing, in the same way, at the same time. Consent cannot be given by an individual if the individual:

- a. has a reasonable fear he or she will be injured if the individual does not give consent;
- b. is incapable of giving consent or is prevented from resisting due to physical or mental incapacity, which may include but is not limited to the influence of drugs or alcohol;
- c. if the individual has a mental or physical disability that would prohibit their ability to provide consent or
- d. someone in a position of trust, authority or dependency.

Persons under the statutory age of consent (see below) may never be taken as having consented to any form of sexual contact or activity. In the absence of mutually understandable words or actions, it is the responsibility of the initiator of the sexual activity to make sure they have consent from their partner. Consent can also be withdrawn at any time.

### *Age to Consent to Sexual Activity*

The age of consent is the age at which a young person can legally agree to sexual activity. Age of consent laws apply to all forms of sexual activity, ranging from kissing and fondling to sexual intercourse.

The age of consent to sexual activity is 16 years although in some cases, the age of consent is higher (for example, when there is a relationship of trust, authority or dependency as described below).

In other words, subject to one of the exceptions below, a person must be at least 16 years old to be able to legally agree to sexual activity.

### *Close in age exceptions*

A 14 or 15-year-old can consent to sexual activity as long as the partner is less than five years older and there is no relationship of trust, authority or dependency or any other exploitation

of the young person. This means that if the partner is 5 years or older than the 14 or 15-year-old, any sexual activity is a criminal offence.

There is also a "close in age" exception for 12 and 13-year olds. A 12 or 13-year-old can consent to sexual activity with a partner as long as the partner is less than two years older and there is no relationship of trust, authority or dependency or any other exploitation of the young person. This means that if the partner is 2 years or older than the 12 or 13-year-old, any sexual activity is a criminal offence.

### *Sexual exploitation*

A 16 or 17-year-old cannot consent to sexual activity if any of the following apply:

- their sexual partner is in position of trust or authority over them, for example their teacher or coach;
- the young person is dependent on their sexual partner, for example for care or support; or
- the relationship between the young person and their sexual partner is exploitative.
- Telling someone you will "out" them (disclose their sexual orientation without their consent) if they do not engage in sexual activity.

The following factors may be taken into account when determining whether a relationship is exploitative of the young person:

- the young person's age
- the age difference between the young person and their partner
- how the relationship developed (for example, quickly, secretly, or over the internet); and
- whether the partner may have exerted control or influence over the young person.

### *Besides Age, What Constitutes Lack of Consent?*

Consent cannot be inferred through silence or lack of resistance. Consent to one activity does not constitute consent to other sexual acts. Past sexual activity does not constitute consent for future acts. If at any time consent is uncertain, the initiating party should stop and obtain verbal consent. The use of any force, display of force, coercion, or intimidation negates consent.

Individuals who are incapacitated may not legally give consent to sexual activity. Incapacitation includes, but is not limited to, being highly intoxicated, passed out, or asleep. A person who is incapacitated for purposes of this policy is one who is not legally able to give consent because they are mentally or physically compromised. Mentally helpless is when a person has a mental incapability of understanding the nature of their conduct. Physically helpless means a person has restriction of movement, either temporarily or permanently.

When incapacitation occurs due to alcohol or drug use, indicators of incapacitation may include the following:

- Slurred speech
- Bloodshot or unfocused eyes
- Unsteady gait; needing assistance to walk/stand
- Vomiting
- Outrageous or unusual behavior
- Concern expressed by others about the individual
- Expressed memory loss or disorientation

An individual may also be in a state known as a “blackout” where they are incapacitated and will likely have no memory of the sexual activity, but are up, and walking and talking. Therefore, it is of particular importance that any two people engaging in sexual activity know the other person’s level of intoxication prior to beginning sexual contact. For purposes of this policy, in assessing whether or not a person was incapacitated and not capable of consenting, the standard that shall be applied is whether or not a reasonable person in the position of the accused, would have known, based on the facts and circumstances presented at the time of the reported conduct, that the other person was incapacitated and therefore, not capable of consenting. As the accused party, being under the influence of alcohol or drugs is never a defense to this policy and does not excuse sexual misconduct.

### ***Sexual Assault***

For the purposes of this Policy, sexual assault is defined as an assault of a sexual nature that violates the sexual integrity of the victim and includes acts that constitute Non-Consensual Sexual Touching and Non-Consensual Sexual Penetration described below.

#### *Non-Consensual Sexual Touching*

For the purposes of this Policy, non-consensual touching means where a person with any part of their body or object, touches (however slightly) the breast, buttocks, or groin\* of another person, directly, or over clothing, without the other person’s consent. It is also considered non-consensual sexual touching if an individual is forced to touch the breast, buttocks, or groin\* of another individual.

\*In cases where a person’s body is touched in places other than the breast, buttocks and/or groin, the College will evaluate the context and circumstances of the touching to determine if it nevertheless constitutes non-consensual sexual touching prohibited by this policy. Complaints of non-consensual touching which the College determines was not sexual will be reviewed pursuant to the Student Code of Conduct. The College will consider the following when making the determination with regard to whether or not non-consensual touching was non-consensual sexual touching prohibited by this Policy:

- The part of the body touched
- The nature of the contact
- The situation in which the contact occurred

- The words and gestures accompanying the act
- All other circumstances surrounding the act
- Any threats made that may or may not have been accompanied by force

Sexual touching includes:

- contact with the mouth, breasts, buttocks, or groin, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

### *Non-Consensual Sexual Penetration*

For the purposes of this Policy, non-consensual sexual penetration is defined as sexual penetration (anal, oral, or vaginal), however slight, of an individual by another individual with any part of the other individual's body or other object, without consent.

### *Examples of Sexual Assault*

For the purposes of this policy, examples of sexual assault include but are not limited to:

- Having sexual contact with an unconscious or semi-conscious person.
- Having sexual contact with someone who is asleep or passed out.
- Having sexual contact with someone who has said or otherwise indicated "no."
- Having sexual contact with someone who is not reciprocating body movement.
- Allowing another person to have sexual contact with your partner without his or her consent.
- Having someone perform sexual acts as a condition of acceptance into an organization affiliated with the College. This includes penetration of the vagina, anus or mouth with any object; being made to facilitate the sexual abuse of another; assisting with physically assaulting another's private parts; or purchasing or providing alcohol or drugs to another for the purposes of facilitating a sexual assault (complicity).

### ***Intimate Partner Violence***

Intimate Partner Violence (also referred to as "IPV") is a form of sexual misconduct by someone against a person who is, or has been involved in, a sexual, dating, spousal, familial/domestic, or other intimate relationship with that person. The College will not tolerate intimate partner violence in any form. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and financial abuse. It may involve one act or an ongoing pattern of behavior.

Intimate partner violence may take the form of threats, assault, property damage, or threat of harm to one's self, one's sexual or romantic partner, one's pets, or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all sexes, sexual orientations, gender identities, and gender expressions, races, religions, ethnicities, and social and economic backgrounds. For purposes of this policy, IPV consists of

acts that could be considered **Dating Violence** or **Domestic Violence** as described below.

**Dating violence** is physical acts of assault or threats of assault, detainment, or unwanted touching (or other acts as described above under IPV) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence. Whether there was such a relationship will be determined based on, among other factors, the Complainant and Respondent's statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the Parties involved in the relationship.

**Domestic violence** is physical acts of assault or threats of assault, detainment, or unwanted touching (or other acts as described above under IPV) committed by: a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner; or an immediate family member.

#### **Examples of IPV:**

- Physically assaulting a dating or spousal partner.
- Threatening to harm a dating partner.
- Threatening self-harm in order to get an intimate partner to do something (like not go out with friends, spend time with family, or go to school or work.)
- Forcibly taking away or destroying an intimate partner's cell phone.
- Intentionally deleting an intimate partner's social media accounts.
- Physically assaulting your child.
- Repeatedly calling your intimate partner demeaning names, screaming/yelling/throwing things at your intimate partner, displaying a weapon in front of your intimate partner in a threatening way, and/or forcing your intimate partner to do things sexually without their consent.

#### **Stalking**

For the purposes of this policy, stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional distress.

Examples of Stalking include but are not limited to the following:

- Surveilling/watching or walking/driving by the residence of a specific person on more than one occasion when a reasonable person would know the behavior causes fear or substantial emotional distress to the targeted party.
- Repeatedly communicating with a person who does not wish to be communicated with.
- Persistently following a person or lying in wait for them.
- Sending unwanted gifts.

### ***Sexual Cyber Harassment / Cyber Stalking***

For the purposes of this policy, Sexual Cyber Harassment and Cyber Stalking means the use of technology to engage in any behavior provided for under the definition of stalking. Most often acts of cyber stalking include the use of technology to harass, intimidate, and/or frighten others through repeated, unsolicited, threatening behavior of a sexual nature and/or targeting sexual orientation or gender identity.

### ***Sexual Exploitation***

For the purposes of this policy, "Sexual exploitation of a student includes the misuse of power or trust by a person in a position of power or trust over the student for a sexual purpose or purposes. Sexual exploitation also occurs where a person or person's offers drugs, food, shelter, protection, money, or the basics of life in exchange for sex or sexual acts from a student.

Examples of Sexual Exploitation include but are not limited to the following:

- Seeking the exchange of sex or sexual acts from an individual in return for something, including but not limited to drugs, food, shelter, protection, money, the basics of life, or some other benefit.
- Trafficking an individual regardless of benefit.
- Allowing a third party to watch consensual sexual contact without the permission of both parties involved in the sex act.
- Enticing a child for sexual purposes.
- Knowingly giving another a sexually transmitted infection (STI) or HIV.
- Allowing others to have sex with an incapacitated person.
- Exchange for improved grades and /or power/trust dynamics.

### ***Sexual Harassment***

For the purposes of this policy, Sexual Harassment means remarks, behaviors, or communications of a sexually oriented nature and/or targeting sex or gender identity where the person responsible for the remarks, behaviors or communications knows or ought reasonably to know that they are unwanted.

Examples of Sexual Harassment include but are not limited to the following:

- unwanted sexual solicitations, advances, remarks, suggestive comments and gestures (including songs and chants);
- the inappropriate display of sexually suggestive pictures, posters, objects or graffiti;
- posting of sexually explicit pictures or video without consent;
- unwanted physical contact of a sexual nature; and
- sexual contact that interferes with a person's dignity or privacy.



### ***Indecent Exposure***

Indecent Exposure includes exposing one's body to another individual for a sexual purpose without their consent.

### ***Voyeurism***

Voyeurism includes the recording or observation (in-person, electronically, or otherwise) of another individual without their consent for a sexual purpose, in circumstances where there is a reasonable expectation of privacy.

### **Complainant**

A Complainant is a person alleging that someone has engaged in sexual misconduct against him or her in violation of this policy.

### **Respondent**

A Respondent is a person who is accused and is responding to the allegation that they engaged in sexual misconduct as defined by this policy.

### **Investigation**

An investigation into an allegation of sexual misconduct is an administrative process and not to be confused with an investigation that the police conduct. Investigations for purposes of this policy are fair, impartial, and equitable considerations of evidence to determine if, on the balance of probabilities, it is more likely than not that a Respondent violated this policy.

### **Adjudication**

An adjudication simply means determining if a policy violation occurred. Adjudication is what happens after the investigation is complete. An Adjudication Panel is the three- person team that convenes to determine if, based on the results of the investigation, a policy violation has occurred.

### **Balance of Probabilities**

Balance of Probabilities is the evidentiary standard that the College will use to adjudicate whether a Respondent has violated this policy. This evidentiary standard requires that the evidence establish that it is more likely than not that the Respondent engaged in the acts reported in the complaint (if you think of the tipping of scales, this evidentiary standard requires the scales tip only to one side or the other for a finding to be issued). If the College determines it is more likely than not that, the Respondent engaged in sexual misconduct, the Respondent will be found to have violated the policy and may be subject to sanctions (discipline). If the College determines it is more likely than not that the Respondent did not engage in sexual misconduct, then the Respondent will be found not to have violated the policy and the Respondent will not be subject to sanctions (discipline) pursuant to this policy. If in the course of investigating a complaint under this policy, the College determines the

Respondent engaged in misconduct contrary to another College policy, the College may address that misconduct as provided for under that policy. Regardless of whether it determines there was or was not a violation of this Policy, the College may, as the College sees fit, implement safety measures at any time during and after a complaint is made or resolved, to protect the safety of the College community. This may include no contact directives between the parties or other measures the College determines are appropriate based on the facts of the matter.

### **Procedural Fairness**

The College will follow principles of procedural fairness in its application of this policy. For the purposes of this policy, procedural fairness requires that both the Complainant and Respondent in an investigation and adjudication are afforded fairness in the process, including the opportunity to present evidence, to be interviewed, to offer witnesses, and have questions asked of the other party by the investigator. Procedural fairness is essential to ensure that the process is transparent to the Complainant and the Respondent and that both parties' rights are respected.

While a party to a complaint may choose not to participate in an investigation and adjudication and no action will be taken against them due to their lack of participation, a party who chooses not to participate will waive the opportunity to submit evidence and make submissions and will still be subject to the result of the process and any sanctions or discipline flowing therefrom. In cases where the Complainant files a complaint, the College will give notice to the Respondent of their rights and access to participate in the process. If the Respondent chooses not to participate, the College will continue its' investigation and resolution of the complaint without the benefit of the Respondent's participation.

### **Principles of Natural Justice**

The College will respect principles of natural justice in its application of this policy. For the purposes of this policy, principles of natural justice include the right to be treated fairly and the right not to be subject to discipline without a fair, thorough and impartial investigation and resolution.

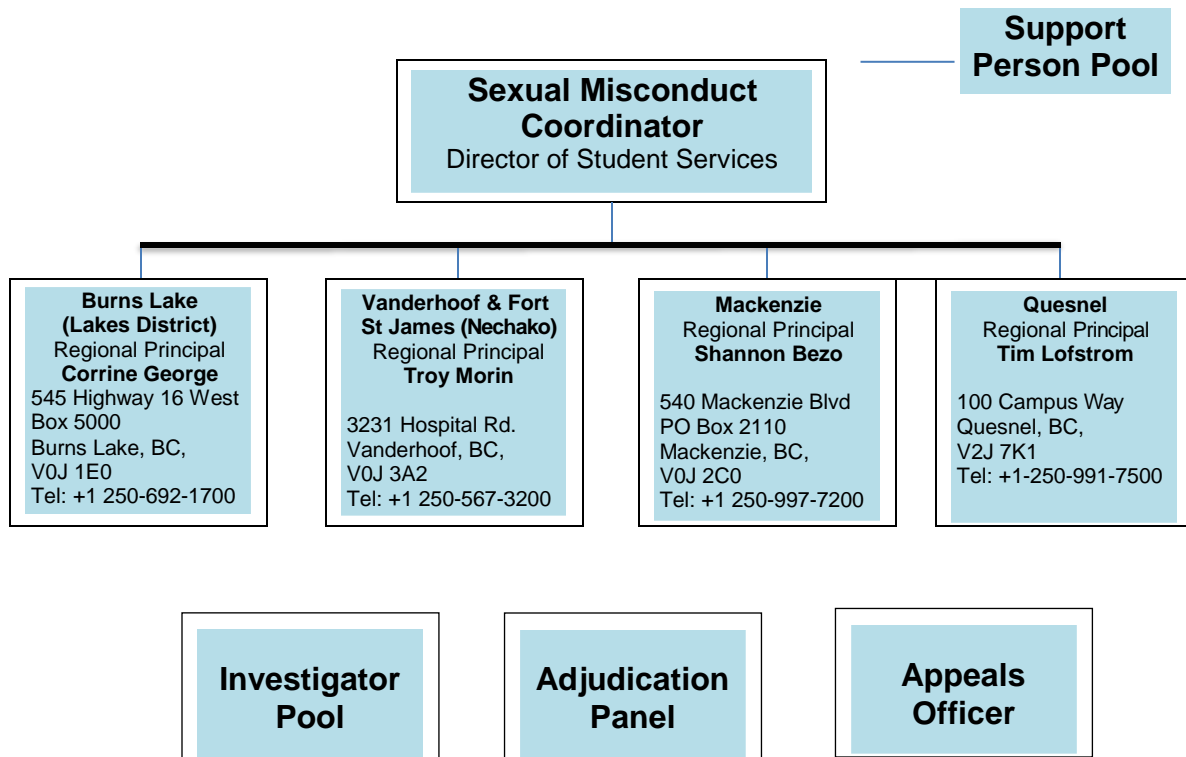
### **Lead Sexual Misconduct Coordinator (LSMC) and Regional Coordinators (RC)**

The College has designated the below listed individual as the Lead Sexual Misconduct Coordinator (LSMC) who is responsible for the oversight of this policy and any procedures related to it. Those responsibilities include:

- a. overseeing all sexual misconduct complaints;
- b. identifying and addressing any patterns or systemic problems that she or he becomes aware of in the course of reviewing complaints;
- c. overseeing the procedures, including a prompt, fair, equitable and independent investigation and resolution process for complaints of sexual misconduct;

- d. evaluating trends on campus by using information reported to her or him; and
- e. making recommendations for campus-wide training and education programs.

Regional Coordinators are responsible for assisting the LSMC in managing complaints under this policy, receiving disclosures from students on their respective campuses, aiding in coordinating investigations, as needed, providing training and education, and may serve in the place of the LSMC as required, including when a conflict of interest exists.



### Experiencing Sexual Misconduct

Individuals who experience Sexual Misconduct are encouraged to take some or all of the following steps immediately after the incident:

- Go to a safe place on campus, or, if off campus a shelter or a trusted friend’s house and seek out help.
- At the Prince George campus call 911 and contact CNC Security (available 24 hours a day, 7 days a week) at:
  - (250) 561-5827;
  - local 200;
  - by using one of the red phones to connect directly; or

- by going to security in Room 1-702.
- At the [CNC Regional Campuses](#) (Lakes District, Mackenzie, Quesnel, Vanderhoof, and Fort St. James) that do not have on-campus security services, call 911 (at the Mackenzie office Students may also use one of the red phones (2nd level) to connect directly to RCMP).
- As soon as possible, get medical attention, ideally, at a hospital.
- Seek support from a trusted friend or family member.
- Contact a community agency for additional, confidential support (see attached addendum 'Community and Campus [Resources](#)' for support resources specific to your area and campus).

Individuals who experience or witness Sexual Misconduct are encouraged as soon as possible after the incident, to take notes of it including details such as location, time of day, descriptions of people or vehicles, and what took place.

In addition to the immediate steps noted above, individuals who have experienced Sexual Misconduct are encouraged to make a Disclosure, file a Complaint and/or file a Report as provided for in the Student Sexual Misconduct Procedures (the "Procedures"), in a timely manner.

### **Making a Complaint to the College Regarding Sexual Misconduct**

The College recognizes that experiencing Sexual Misconduct may have serious negative impacts on an individual's physical, mental, emotional, and spiritual health and wellness.

All those who experience Sexual Misconduct can expect to be:

- treated with compassion, dignity, and respect;
- allowed to decide whether they want to tell someone about their experience and, if so, who;
- in a position to control the decision of how their experience will be reported to the College, i.e. a Disclosure or Complaint;
- provided with timely safety planning assistance;
- informed about on- and off- campus support services and resources; and
- where appropriate, provided with reasonable academic accommodations.

**The process for reporting to the College and the procedures the College will follow are set out in the Procedures.**

### **Confidentiality**

Individuals wishing to make legally [confidential reports](#) have the option of reporting those matters to licensed professional counselors, health professionals, clergy, and attorneys to the extent the complainant engages them in a private capacity.

Anyone who experiences Sexual Misconduct may engage in private discussions with College officials. In such circumstances, College officials will endeavor to maintain the individual's privacy to the extent permitted. However, individuals should know that College officials may not legally be able to maintain confidentiality over the information disclosed and/or may have a duty to disclose some or all of it.

The College's ability to investigate and take action may be limited if a complainant insists his or her name not be disclosed to the respondent. The College will weigh such requests for privacy against its duty to provide a safe and nondiscriminatory environment and its obligation to ensure procedural fairness.

Investigators and those involved in an investigation are required to keep confidential any matter under investigation or that they learn through the investigation process. Parties and witnesses are also asked to maintain confidentiality with regard to these proceedings. Failure to do so constitutes a violation of this policy.

### **Retaliation**

Retaliation against anyone for participating in any matter pursuant to this policy including but not limited to filing a Complaint, making a Disclosure, or participating in an investigation is prohibited and constitutes a violation of this policy.

### **Violation of this Policy**

Anyone who is found to have violated this Policy may be subject to discipline or sanctions, up to and including termination and/or expulsion.

### **Recordkeeping**

All records involving matters covered by this policy, upon conclusion of the matter (including any appeals process), shall be transmitted to and maintained by Human Resources (for employee matters) and/or the VPSA (for student matters) and held for a period as noted in separate College policy.

### **Awareness, Education and Training**

1. The College will implement ongoing awareness, education and training programs relating to prohibiting sexual misconduct and fostering positive and healthy sexual interactions and relationships within and for the College Community.
2. The College recognizes that it has a diverse student body including, but not limited to, people of different sex, gender, sexual orientation, age, ability, culture and ethnicity. Some individuals are at a greater risk of being a victim of Sexual Misconduct and/or face various barriers to disclosing, reporting and seeking assistance where they have experienced or witnessed Sexual Misconduct based on these differences.

3. The College has campuses situated along the Highway of Tears, an area in which many women, many of them Aboriginal, have gone missing or been found murdered. The College is committed to supporting initiatives that address or build awareness of the unique risks to its students travelling this route relating to sexual violence and misconduct.

### **Review**

The College will review this Policy a minimum of once every three years. When it reviews the Policy, the College will consult with Students, and may consult with other members of the College Community, as the College deems appropriate.

### **Legislative and Collective Agreement References**

Sexual Violence and Misconduct Policy Act  
Child Family & Community Services Act

### **Links to Other Related Policies, Documents and Websites**

Student Sexual Misconduct Procedures Respectful Workplace Policy  
Standards of Conduct: Student Responsibility and Accountability Student Complaint Resolution  
Faculty Association Common Collective Agreement

### **Policy Amendment Log**

<b>Amendment Number:</b>	<b>Date:</b>
0	April 2017
1	September 2020
2	