

## DRAFT POLICY

Policy No:

Approval Date:

Approving Authority: Board of Governors

Responsible Executive: President

Title: **Sexual Violence and Misconduct Policy**

*If you are reading this Policy and are in need of support or need assistance, please go to [www.unbc.ca/sexual-violence](http://www.unbc.ca/sexual-violence) for a list of UNBC support contacts and local community resources.*

### **PURPOSE**

*This document sets out the University of Northern British Columbia's Policy and Response Procedures for allegations of Sexual Violence or Misconduct.*

*The Policy and Response Procedures will help ensure that those who choose to Disclose or Report an incident of Sexual Violence or Misconduct have the opportunity to be heard and to have their rights and needs respected. The Policy and Response Procedures are intended to protect and support the rights of Survivors/persons affected by Sexual Violence or Misconduct and hold persons accountable who have been proven to have committed an act of Sexual Violence or Misconduct.*

*UNBC is committed to educating the University Community on this Policy and Response Procedures.*

*The Policy and Response Procedures will be strengthened by a Prevention and Response Plan that will help ensure a swift, coordinated, consistent, fair, and transparent response to Disclosures and Reports of allegations of Sexual Violence and Misconduct.*

## **POLICY**

### **1. POLICY STATEMENT**

The University of Northern British Columbia (UNBC) is committed to providing a safe and positive work and learning environment where Members of the University Community feel safe to work, teach, live, learn, and express themselves in a space free from all forms of Sexual Violence and Misconduct. UNBC recognizes that all persons have an inherent right to exercise control over their own bodies and to engage only in consensual sexual activity.

UNBC does not tolerate behaviour that contributes to a hostile, inequitable and/or unsafe learning, teaching, living, and working environment. UNBC expects that all Members of the University Community will abide by the provisions of the *Criminal Code of Canada* and all of the laws of Canada, and of the Province of British Columbia, including those regarding Sexual Violence and Misconduct.

UNBC recognizes that Sexual Violence and Misconduct can occur between individuals regardless of sexual orientation, gender and gender identity or relationship status. It is also recognized that individuals who have experienced Sexual Violence and Misconduct may experience physical, emotional, academic or other difficulties.

As such, all incidents of Sexual Violence or Sexual Misconduct that are reported, as per the definition of “Report” provided below, will be investigated to the best of the University’s ability, and in a manner that ensures due process and natural justice.

UNBC will strive to create an environment in which making a Report of Sexual Violence and Misconduct is as safe and as comfortable as possible. While making a Report of Sexual Violence or Misconduct may be difficult for an individual, the University aims to foster an environment in which no one feels uncomfortable or unsafe about making a Report in good faith about Sexual Violence or Misconduct that they have experienced or witnessed.

*The Board delegates authority to the President to enact Procedures to give effect to this Policy.*

## **2. DEFINITIONS**

**Accommodations** – academic and non-academic interventions intended to support individuals who have experienced Sexual Violence or Misconduct.

**Complainant** – a person who makes a Report alleging a violation of this Policy.

**Confidentiality** – the ethical duty of a person not to affirmatively disclose information related to the representation of a person.

**Consent** – active, direct, voluntary, unimpaired, and conscious choice and agreement between adults to engage in sexual activity. The use of drugs or alcohol does not provide any relief from these required elements of consent. If any person involved in sexual activity is under the influence of drugs or alcohol, consent is not valid. Any impaired judgment that leads an individual to think or believe there was agreed upon consent is not an excuse. Further explanation regarding consent is found in the following points:

- i. Consent cannot be obtained if an individual abuses a position of trust, power, or authority.
- ii. Consent is never assumed or implied.
- iii. Consent can never be obtained through coercion or threats.

- iv. Consent cannot be given if the persons involved are impaired by alcohol or drugs, are unconscious, or incapable of consenting to the activity.
- v. Consent is not silence or the absence of the word “No.”
- vi. Consent must be given at the outset and at all stages of physical contact or sexual activity.
- vii. The person involved expresses, by words or conduct, a lack of agreement to engage in the activity.
- viii. An individual, having initially consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the sexual activity.
- ix. The *Canadian Criminal Code* age of consent is 16 years of age. A child under the age of 12 is never able to give consent.

**Disclosure** – a person chooses to share information with another person about an instance of Sexual Violence or Misconduct. A Disclosure does not initiate an investigation unless a Report is made or any of the following conditions exist:

- I. An individual is deemed to be at imminent risk of self-harm.
- II. An individual is deemed to be at imminent risk of harming others.
- III. Reporting is required by Law.

**Incapacitated** – a person who does not have the capacity to give consent due to that person being impaired by alcohol or drugs, asleep or unconscious, experiencing a traumatic response, or being otherwise incapacitated.

**Members of the University Community include the following:**

- I. Students
- II. Staff
- III. Academic Services (Postdoctoral Fellows, Research Associates, Research Managers)
- IV. Faculty
- V. Volunteers
- VI. Administrators
- VII. Members of the Board of Governors or of the Senate
- VIII. Visitors of the University
- IX. Contractors to the University
- X. Employees of organizations representing University employees when on University property

**Report** –making a formal Report to the police or to a Member of the University Community of an allegation of Sexual Violence and/or Misconduct with the intention of initiating an investigation process.

**Respondent** – a person who is alleged to have violated this Policy.

**Response and Support Team** – a small team of highly trained Members of the University Community who have been selected based on their experience. The Response and Support team will respond to Reports of violations of this Policy. This team would not necessarily be involved if the Survivor/person affected by Sexual Violence or Misconduct is only Disclosing.

**Retaliation** – an adverse action or threatened action taken or made through any means, including through social or other electronic media, against a person who is seeking redress or who is otherwise engaged in a process under this Policy, or who is associated with such a person. Retaliation includes threatening, intimidating, or harassing conduct that could discourage a person from seeking support or other services, Disclosing or Reporting Sexual Violence and Misconduct, participating in an investigation, or otherwise engaging with this Policy.

**Sexual Misconduct** – includes sexual assault; sexual exploitation; sexual harassment; stalking; coercion; 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; or the threat to commit an act of Sexual Misconduct.

**Sexual Violence** - includes any form of unwanted sexual contact or activity performed on a person with any object or body part without consent, or by force. Any sexual activity that is without consent is sexual assault and includes sexual contact such as nonconsensual kissing, grabbing, caressing, fondling, and oral, anal, or vaginal penetration.

**Student** – as per the *University Act of BC*, a student is a person presently enrolled in a credit course or who is designated by a resolution of the Senate as a student.

**Survivor/person affected by Sexual Violence or Misconduct** – Survivors, witnesses, family and friends of survivors, those who have experienced Sexual Violence or Misconduct, and those who have received Disclosures. The University recognizes that some people impacted by Sexual Violence or Misconduct may not identify with the term Survivor, and have the right to determine how they will be referred to.

**Trauma Informed** – an organizational structure and systems approach that involves understanding, recognizing, and responding to the effects of all types of trauma. Trauma-informed practice does not require the specific disclosure of trauma; rather, it is a systems-wide lens focusing on safe practices and collaborative relationships to assist with healing from adverse life events.

### **3. UNBC IS COMMITTED TO**

a. Treating individuals who Disclose and Report Sexual Violence or Misconduct, with compassion, dignity, and respect, and acknowledging there is no single approach to handling Sexual Violence and Misconduct. This means that Survivors/persons affected by Sexual Violence and Misconduct

need to be supported in sometimes different manners, and require different services, resources, and supports at different stages in their recovery.

b. Providing Survivors/persons affected by Sexual Violence and Misconduct with timely safety planning assistance.

c. Providing Survivors/persons affected by Sexual Violence and Misconduct with non-judgmental and empathic support.

d. Providing Survivors/persons affected by Sexual Violence and Misconduct with academic and work accommodations as appropriate.

e. Providing Survivors/persons affected by Sexual Violence and Misconduct with information to help them decide whether, and to whom, they wish to Report an incident of Sexual Violence or Misconduct, and whether to pursue criminal or non-criminal reporting options.

f. Allowing Survivors/persons affected by Sexual Violence and Misconduct to be the final decision-makers about their own best interests.

g. Ensuring that on-campus (internal) investigation processes are available for those Survivors/persons affected by Sexual Violence and Misconduct who choose not to make a Report to the police.

h. Engaging in appropriate procedures for the investigation and adjudication of an alleged Sexual Violence and Misconduct which respect University Policies, procedures, and employee agreements in a fair manner and with due process that ensures natural justice.

i. Coordinating a Response and Support Team that is responsible for responding to Reports of Sexual Violence and Misconduct on campus.

j. Supporting a safe environment where Members of the University Community can work, teach, live, learn, and express themselves in a space free from all forms of Sexual Violence and Misconduct.

k. Coordinating education and training programs pertaining to preventing and responding to incidents of Sexual Violence and Misconduct for the Members of the University Community.

l. Education and training that will ensure the following:

- i. A proactive and sustained prevention focus on consent and respect.
- ii. That intersectional barriers, power relationships, and other relevant factors are taken into account.
- iii. The dissemination of common definitions, principles, and shared values across the University Community.
- iv. That a regular review and assessment of education and training needs is conducted.

- m. Ensuring that all members of units and offices most likely to receive Sexual Violence or Misconduct Disclosures or Reports undergo training.
- n. Ensuring a trauma-informed response to Disclosure is available to all Members of the University Community.
- o. Implementing harm reduction education in relation to alcohol and other substance use.
- p. Providing information to the University Community about Sexual Violence and Misconduct on any of UNBC's campuses, through the appropriate and allowable collection of data.
- q. Ensuring appropriate steps are taken during and following an investigation to ensure the continued safety of the Respondent and Complainant involved in an investigation.

#### **4. PROHIBITED CONDUCT**

- a. All acts of Sexual Violence and Misconduct are prohibited under the Sexual Violence and Misconduct Policy and Response Procedures.
- b. Retaliation of any kind is prohibited, including through social or other electronic media. Any Member of the University Community found to have engaged in retaliation, or threatened or attempted retaliation, may be sanctioned under this Policy or other University Policies.
- c. Breaching the confidentiality of a Disclosure or Report from a Survivor/person affected by Sexual Violence and Misconduct is prohibited.

#### **5. SCOPE AND JURISDICTION**

- a. This Policy and the Response Procedures apply to all Members of the University Community.
- b. All Members of the University Community impacted by Sexual Violence and Misconduct may access support under this Policy. However, the University only has jurisdiction to investigate reports of actions, interactions, and behaviours that are alleged to have occurred in any of the following situations:
  - I. On any property that is controlled by the University and used for University purposes.
  - II. When the respondent is, or was, in a position of power or influence over the persons impacted by Sexual Violence and Misconduct.
  - III. At an event or during an activity sponsored or under the auspices of the University, including but not limited to the following:
    - a. Athletic events
    - b. Field schools
    - c. Distance and online courses
    - d. Co-op and practicum placements
    - e. Academic or professional conferences

- f. Volunteer activities
- g. Academic or research field work

c. If an incident does not meet the above criteria, the University may still take actions to mitigate the impact of the incident on the learning, living, or working environment.

## **6. SAFETY - THE OBLIGATION TO INVESTIGATE AND TO NOTIFY POLICE**

UNBC has an obligation to Members of the University Community to make all reasonable efforts to protect them from harm. As such, UNBC has the right and the obligation to initiate an internal investigation and/or inform the police of the need for a criminal investigation, even without the consent of the Survivor/person affected by Sexual Violence and Misconduct. Confidentiality cannot be assured if any of the following conditions exist:

- I. An individual is deemed to be at imminent risk of self-harm.
- II. An individual is deemed to be at imminent risk of harming others.
- III. Reporting is required by Law.

## **7. INTERPRETATION AND RELATED POLICIES AND PROCEDURES**

This Policy and these Procedures are to be read and interpreted in conjunction with the relevant provisions of related Policies and Procedures in effect at UNBC, including, but not limited to the following:

- I. Student Conduct Statement of Principles (Undergraduate and Graduate Regulations and Policies)
- II. Harassment and Discrimination Policy
- III. Respect in the Workplace Policy
- IV. Standards of Conduct (Employee Policy)
- V. Emergency Response to Inappropriate, Disruptive or Threatening Behaviour

To the extent that any of these Policies conflict with the provisions and subject matter in this Policy, this Policy shall prevail.

Notwithstanding the above, should any of the provisions of this Policy or of the Response Procedures under this Policy intersect or conflict with complaint or discipline procedures in any bargained employee agreement, it is the intention that the provisions of the bargained agreement will be followed with respect to the rights and involvement in the matter of the member of the bargaining unit.