



Policy	E-2.9
Approved by:	Board of Governors
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Review date:	3 years
Amendment date:	
Policy Holder:	VP Student Experience

SEXUAL VIOLENCE & MISCONDUCT

Purpose

- 1.1 The purpose of this policy is to clearly communicate Camosun College's commitment to prevent and respond to sexual violence and sexual misconduct through:
- a) Establishing an environment where sexual violence and misconduct are not tolerated
 - b) Building and nurturing a culture of consent
 - c) Identifying clear and consistent support for people who have experienced or witnessed sexual violence or misconduct
 - d) Using clear, appropriate and fair processes for handling complaints of sexual violence and misconduct
 - e) Providing education, training and awareness to the College Community about prevention and response to sexual violence and misconduct

Application and Scope

- 2.1 This policy applies to any/all sexual misconduct involving a student of Camosun College. The College may accept reports or complaints about sexual misconduct from individuals who are applicants for admission to the College, in circumstances where the alleged sexual misconduct arose directly from the application process and from former students in circumstances where the alleged misconduct occurred at a time where they were enrolled as a student at the College.
- 2.2 For the purposes of this policy sexual misconduct will refer to sexual violence and sexual misconduct.
- 2.3 This policy applies to sexual misconduct that is alleged to have been conducted at any Camosun location, having a real or substantial connection to the College, College activities or College-related functions, whether or not the conduct occurred on College property.
- 2.4 This policy is not intended to supersede or interfere with collective agreements or prevailing laws.

2.5 This policy is separate from any criminal or civil proceedings. The College is responsible for determining whether a member of the College Community has violated this policy, and is not responsible for determining violations of criminal or civil law. The processes under this policy may be suspended when criminal proceedings are underway; however, the College will continue to provide support to members of the College Community as described in this policy.

2.6 Employees who have experienced sexual misconduct in the workplace or who require support regarding sexual misconduct without student involvement, should refer to the Executive Director of Human Resources and the Respectful Workplace policy and procedures and/or applicable collective agreement provisions. Students who are also employees of the College may proceed under this policy, unless it is determined by the College that it is inappropriate to do so in the circumstances.

Principles

3.1 Camosun College is committed to providing an environment where sexual misconduct is not tolerated and a culture of consent and respect is expected and demonstrated by all members of the College Community.

3.2 Camosun College will continue to build strong, consultative and collaborative relationships with students in supporting and implementing the College's prevention of and response to sexual misconduct.

3.3 Camosun College will provide educational and training opportunities regarding sexual misconduct and will communicate related procedures and supports with the intent to build awareness and encourage the reporting of any such incidents, prevent incidents of sexual misconduct and build a culture of consent across the College Community.

3.4 The College will support disclosures with compassion, dignity and respect. This will include a focus on individuals' (complainant and respondent) and the College Community's right to safety and privacy; access to information about all available reporting options within and outside of the College; and the right to be informed of the decisions and processes that affect them, except where precluded by law.

3.5 Camosun College will make available timely services for those who have been affected by sexual misconduct, and will provide prompt and equitable methods of investigation and resolution to stop discrimination and remedy any harm.

3.6 The College expects that all responses, formal and informal, to a disclosure of sexual misconduct will uphold the College's responsibility for natural justice and adherence to the principles of procedural fairness.

3.7 The College acknowledges that sexual misconduct is an act of violence wherein power and control are enacted in a sexualized manner. An individual who has experienced sexual misconduct is never to blame.

3.8 Camosun College acknowledges the systemic, gender-based nature of sexual misconduct. The College understands the critical requirement for policy and process to ensure supports for individuals and groups facing intersecting forms of oppression (e.g. colonization, racism, classism, sexism, homophobia, transphobia, ableism, etc.), as they are at greater risk for sexual misconduct. The College commits to ongoing reflection and capacity building to ensure our policies, processes and practices support *all students* who have experienced sexual misconduct.

3.9 The Board of Governors will receive an annual report from the President on the College's implementation of the Sexual Violence and Misconduct Policy.

3.10 The College will provide clear policy and guidelines associated with options for filing a complaint, responding to a complaint, filing a report and responding to a report at the College.

Policy Holder & Operational Unit

This policy is the responsibility of the Vice President, Student Experience and will be administered by Student Services.

Key Definitions

Balance of Probabilities: Is the standard of proof in which the probability of an event occurring is greater than fifty percent.

College Community: Students (including current, applicants and alumni) and employees (including faculty, staff and administration) of the College.

College-Related Activity: An activity conducted at any Camosun location that has a real or substantial connection to the College, College activities or College-related functions, whether or not the conduct occurred on College property.

Complaint: A statement of facts including a record of times, dates, nature of any incidents and names of witnesses relating to sexual misconduct as defined in this policy. A complaint can be made by an individual who has experienced sexual misconduct or can be reported by a third party. A complaint may result in an investigation process as set out in section 4.3 of this policy.

Complaint to College: For the purposes of this policy, a formal complaint to the College may be filed by an individual who has experienced sexual misconduct or by a third party. This complaint process is non-criminal in nature and may initiate an investigation that will be overseen by the College, as set out in section 4.3 of this policy.

Complainant: An individual who has disclosed that sexual misconduct has occurred and chooses to submit a formal complaint or report based on the options outlined in this policy.

Consent: An active, direct, voluntary, unimpaired and conscious choice and agreement to engage in sexual/sexualized activity.

It is the responsibility of the initiator of sexual activity to obtain consent at all stages of sexual engagement.

Consent is an act of willingly agreeing to engage in specific sexual behaviour, and requires that an individual is able to freely choose between two options: yes and no. There must be an understandable exchange of affirmative words and/or actions that indicates willingness to participate in mutually agreed upon sexual/sexualized activity. It is also imperative that everyone involved understands the following:

- Silence or non-communication must never be interpreted as consent;
- An individual is incapable of giving consent if they are asleep, unconscious or otherwise unable to communicate;
- An individual in a state of diminished judgement cannot consent;
- An individual who has been threatened or coerced, and therefore is not agreeing voluntarily, is not consenting to engaging in sexual / sexualized activity;
- An individual who is drugged is unable to consent;
- An individual is unable to give consent when they are impaired from alcohol and/or drugs;
- The fact that consent was given in the past to a sexual relationship does not mean that consent is deemed to exist for all future sexual activity; and
- An individual can withdraw consent at any time during the course of a sexual encounter.

Disclosure: The act of making something known. For the purposes of this policy, the information being made known pertains to sexual misconduct as defined in this policy. A disclosure will not result in an investigation by the College, unless required by law or pursuant to a collective agreement or other College policy.

Investigation: An information gathering and assessment process in response to a complaint, as described in section 4.3 of this policy. An investigation is undertaken to determine the nature and circumstances of alleged wrongdoing, matters of credibility, to make findings of fact, and to determine whether a breach of this policy has occurred. The investigation process may include, but is not limited to: witness interviews, collection and review of written statements, notes, logs, papers, digital and print records, and any other relevant material.

Natural Justice: Is a principle that underpins the processes, practices and outcomes of a response to a complaint. Key elements of a process grounded in natural justice include that the respondent is made aware of the allegations against them and is given a fair opportunity to respond. Whomever is adjudicating the evidence must not be biased on either the side of the respondent or the complainant. The outcomes from any process will be in balance with the nature of the misconduct and in keeping with the principles of procedural fairness.

No-Contact Undertaking: This is an agreement, mutually undertaken by two or more people, to refrain from contacting one another based on specific and transparent conditions.

No Report: When an individual who has experienced sexual misconduct and chooses not to report to the College or to proceed with any other reporting option. An individual who has experienced sexual misconduct and does not choose to formally submit a complaint or report within the scope of the options presented in this policy is still able to access counseling and accommodation supports.

Procedural Fairness: is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. It includes an absence of bias, providing a respondent with fair notice of the allegations and an investigation and giving them a reasonable opportunity to respond.

Report to College: When an individual who has experienced sexual misconduct or a third party individual makes a report to the College but does not file a formal complaint. The College will not commence an investigation when a report is made, unless required to do so by law or pursuant to a collective agreement or other College policy.

Report to Police: When an individual who has experienced sexual misconduct makes a police statement, which may be followed by a criminal investigation.

Respondent: An individual against whom an allegation of sexual misconduct has been made.

Sexual: An act of or relating to sex; for example: penetration, touching, etc.

Sexual Misconduct: Sexual Misconduct is a broad term used to encompass unwanted or unwelcomed conduct of a sexualized or sexual nature. This includes sexualized violence and any sexual act that is committed, threatened or attempted against an individual without their consent, regardless of whether the act is physical or psychological in nature. This includes, without limitation: sexual assault, sexual harassment, sexual exploitation, stalking, indecent exposure, voyeurism, and non-consensual posting of sexually explicit pictures or video.

Reference to an individual applies regardless of gender, sexual orientation or gender identity.

Sexual Misconduct can include, but is not limited to:

- **Sexual Assault** is any form of sexual or sexualized contact without consent from all parties.
- **Acquaintance sexual assault** is sexual or sexualized contact that is forced, manipulated, or coerced by a partner, friend or acquaintance.
- **Drug-facilitated sexual assault** is the intentional use of alcohol and/or drugs (prescription and non-prescription) by a respondent to control, over-power or subdue a complainant for the purposes of sexual assault
- **Sexual Harassment** is a course of unwanted remarks, behaviours, or communications of a sexual nature and/or a course of unwanted remarks, behaviours or communications based on gender – whether directed towards an individual or group – where an

individual responsible for the remarks, behaviours or communications knows, or ought to reasonably know, that these are unwanted. It includes, but is not limited to:

- Sexual/sexualized solicitations, advances, remarks, suggestive comments and gestures (including songs and chants);
 - the inappropriate display of sexually suggestive or sexualized pictures, posters, objects or graffiti;
 - non-consensual posting of explicit, sexual, or sexualized pictures or video the individual in the picture or video, aggressive comments and slurs on any form of social media;
 - expressions of gender bias which may include remarks that discriminate, denigrate and/or create a poisoned learning environment
 - physical contact of a sexual/sexualized nature; and
 - sexual or sexualized conduct that interferes with an individual's dignity or privacy such as voyeurism and exhibitionism.
- **Stalking** is a form of criminal harassment involving behaviours that occur on more than one occasion and which collectively instil fear in an individual/group or threaten an individual's/group's safety or mental health. Stalking can also include threats of harm to an individual's/group's friends and/or family. These behaviours include, but are not limited to: non-consensual communications (face to face, phone, email, social media); threatening or obscene gestures; surveillance; sending unsolicited gifts; "creeping" via social media/cyber stalking; and uttering threats

Sexualize: To make sexual; attribute sex or a sex role to.

Student Support Manager: In relation to this policy, a Student Support Manager is a designated individual within the College who will assess and triage all disclosures at the College, whether or not the individual who has experienced or witnessed sexual / sexualized misconduct chooses to formally submit a complaint or report. The Student Support Manager will be responsible for: coordinating immediate supports for the individual who disclosed, notifying the individual who disclosed of their reporting and complaint options, and liaising with additional community support services where appropriate.

Third Party Report: A report that can be made by someone who has witnessed sexual misconduct and reports this to the College or law enforcement agency, or by someone who receives written consent from an individual who has experienced sexual misconduct to provide details of the act to the College or a law enforcement agency.

Policy Statements

4.1 Sexual Misconduct

- Anyone who has experienced or witnessed sexual misconduct is encouraged to disclose their experience, seek support and become informed on formal and informal complaint and reporting options.
- Options for students who have experienced or witnessed sexual misconduct include but are not limited to:
 - seeking support and accommodation options;
 - making a report to the institution;
 - making a formal complaint to the institution;
 - making a report to the police.
- The College's Student Support Manager will support students navigating post-disclosure options and supports.
- Student Services will maintain up-to-date guidelines for all College employees to ensure this policy is implemented appropriately.
- If a decision is made by the individual who has experienced or witnessed sexual misconduct to make no report(s) or complaint(s), the individual is still able to access a wide range of support and accommodation services such as counselling, medical attention, and/or academic accommodation, where required and reasonably possible. See Section 4.2 for more information on the College's commitment to student support and accommodation.
- The above options for reporting and disclosure are not mutually exclusive, as an individual who has experienced or witnessed sexual misconduct may choose to pursue more than one option.

4.2 Commitments to Support and Accommodation

- Support and accommodation is available to any member of the College Community who has experienced or witnessed sexual misconduct as well as the respondent.
- The College will provide academic and non-academic supports or accommodation where required and reasonably possible. The College may require additional information to provide accommodation and/or support requests.
- In general, support and accommodation will be coordinated by the Student Support Manager.
- In some situations, support or accommodation may include no-contact undertaking requirements.
- Interim measures involving support and accommodation may be implemented, as described in section 4.4 of this policy.

4.3 Reporting and Complaints

- The College will provide formal and informal complaint and reporting options to an individual who discloses that they have experienced or witnessed sexual misconduct. They include but are not limited to:

4.3.1 Making a Report to the College

- A student who has experienced or witnessed sexual misconduct as defined by this policy, and does not want to report the experience through the criminal justice system or a make a formal complaint to the College, has the option of reporting the experience to the College with a request that Student Services be notified.
- In this case, the College may be required to take further action on reports received to ensure the safety of the individual and/or the College Community, which may result in disclosure of information received in the report. See Section 4.6 of this policy for more information.
- Guidelines will be maintained by Student Services outlining all processes associated with making a report to the College.

4.3.2 Making a Formal Complaint to the College

- An individual who has experienced or witnessed sexual misconduct, as defined within this policy, may at any time make a formal complaint to the College. However, the College encourages that formal complaints be made as soon as possible following the incident or as soon as possible following the latest incident in the case of more than one incident having occurred.
- Upon receipt of a complaint, the College will determine whether the subject matter of the complaint falls within this policy, and whether an investigation and/or resolution process is required.
- If an investigation is commenced by the College, the outcomes will be based on the standard of proof of a balance of probabilities, and the principles of natural justice and procedural fairness will be applied throughout any investigation process.
- The College may appoint an external investigator to conduct the investigation.
- The Student Support Manager will provide the complainant with information about what to expect, accommodation and supports available, privacy considerations and associated timelines for the formal complaint and investigation process.
- The College will assign support to the respondent and provide the respondent with information about what to expect, accommodation and supports available, privacy considerations and associated timelines for the formal complaint and investigation process.
- Management of the formal College complaint process
 - **Sexual Misconduct Between a Student and a Student**

- In the case where the complainant is a student and the respondent is a student, the complaint process will be managed through Student Services.
- Formal complaints in this situation can be filed with the Student Support Manager.
- **Sexual Misconduct between a Student and an Employee**
 - Complaints involving a student and an employee are filed simultaneously with the Student Support Manager and with the Executive Director, Human Resources.
 - In these instances, the Student Support Manager will facilitate coordination with Human Resources to ensure adherence to the appropriate procedures and contractual obligations contained in human resource policies and collective agreements, where applicable.
- **Note:** All complaints regarding misconduct between two employees will be managed solely by Human Resources, under the Respectful Workplace Policy, Standards of Conduct Policy and the respective collective agreements of the employees involved, where applicable.
- Following the completion of the investigation, the College will inform the complainant and the respondent of the outcomes. The College will determine whether remedial or disciplinary action is necessary in the event that a complaint is substantiated.
- The individual filing a complaint to the College has the right to withdraw the complaint, or decide not to participate in an investigation, at any time. However, the College may have a duty to investigate pursuant to law and applicable policies.

4.3.3 Making a Report to Police

- An individual may report sexual misconduct through the criminal justice system by contacting the RCMP or local police detachment.
- If an individual chooses this option, the Student Support Manager from the College can help facilitate a report to police.
- The College will cooperate with any criminal investigation. The College may suspend its own investigation pending the conclusion of a criminal investigation or process.
- The individual will still have access to immediate supports and academic/non-academic accommodations through the College, where required and reasonably possible.

4.4 Interim Measures

- With respect to any report and/or complaint of sexual misconduct, and prior to the conclusion of an investigation or resolution process, the College may impose interim measures as may be appropriate for the safety of the individuals involved and the College Community.
- Interim measures may include, but are not limited to:
 - Alteration of the academic schedule of any student involved in a report and/or complaint of sexual misconduct;

- No-contact undertaking or no-contact direction;
- Temporary, non-disciplinary leave of an individual alleged to have committed sexual misconduct; and/or
- Any other interim restrictions as may be determined by the College.
- Interim measures for employees may be assessed through Human Resources at the College.

4.5 Management of Information

- Student information will be maintained within the legislated privacy requirements of the Freedom of Information and Protection of Privacy Act.
- Students have the right to access their own personal information pursuant to the Freedom of Information and Protection of Privacy Act. If a student would like access to their personal information they can request this from the Student Support Manager at any time.

4.6 Confidentiality

- The privacy and confidentiality of all members of the College Community involved in any disclosure, report and/or complaint of sexual misconduct, including an investigation of a complaint, will be protected to the fullest extent possible.
- In alignment with the principles outlined herein, there may be limits to confidentiality.
- Circumstances that may require the College to breach confidentiality and disclose information received regarding a potential breach of this policy include but are not limited to:
 - When an individual is identified as being at imminent risk of harming self and/or others
 - When there are reasonable grounds to believe that members of the College Community or wider community may be at risk of harm
 - When necessary to ensure procedural fairness for all parties involved
 - When a disclosure involves a minor as required by law
 - When notification and/or action is required by law and/or other College policies
- Students will be notified by the Student Support Manager if their personal information will be disclosed in accordance with privacy legislation and applicable laws and policies.
- If confidentiality is an issue and an employee is involved, the Student Support Manager will facilitate appropriate notification to the employee in coordination with Human Resources.

4.7 Protected Disclosure

- It is a direct contradiction to College values and principles of this policy for anyone to retaliate, engage in reprisals or threaten to retaliate against an individual that has made a complaint, a witness or other individual for:
 - Having pursued options under this policy or relevant provincial or federal legislation;
 - Having participated or co-operated in a complaint, disclosure or investigation under this policy; or
 - Having been associated with someone who has pursued rights under this policy.

4.8 False Reports

- Any individual who is found to have knowingly made a false report or allegation in connection with this policy will be in violation of the Student Conduct Policy, Standard of Conduct or other relevant College policy, and may be subject to disciplinary action.

4.9 Student Consultation

- The College will consult with students every three years regarding the implementation, application and review of this policy.
- Students will be encouraged to participate in education, training and awareness for this policy, and will be involved in the development of these opportunities.

4.10 Education, Training and Awareness

- The College will establish education, training and awareness opportunities for the College Community regarding Sexual Misconduct policies and procedures, prevention and response.
- Communication materials will be accessible to the College Community in a variety of formats.

4.11 Annual President's Report to Board of Governors

- The President of Camosun College will provide an annual update to the Board of Governors pertaining to the implementation of this policy, including but not limited to:
 - Student engagement and consultation
 - Prevention, communication and awareness strategies
 - Response

4.12 Appeal Process

- **Students** wishing to file an appeal about the reporting, complaint, investigation process or outcomes may do so by notifying the Vice President, Student Experience in writing. Disputes regarding sanctions imposed for violations of the Sexual Violence and Misconduct policy must be addressed through the appeal procedure(s) associated with the Student Appeals Policy.
- **Employees** wishing to file an appeal may do so through the applicable provisions outlined in the applicable collective agreements, relevant policies or through other terms and conditions of employment or contract.

Related Camosun College Policies

- Student Conduct Policy <http://camosun.ca/about/policies/education-academic/e-2-student-services-and-support/e-2.5.pdf>
- Course Withdrawal <http://camosun.ca/about/policies/education-academic/e-2-student-services-and-support/e-2.2.pdf>
- Medical/Compassionate Withdrawals <http://camosun.ca/about/policies/education-academic/e-2-student-services-and-support/e-2.8.pdf>
- Records Management Policy <http://camosun.ca/about/policies/operations/o-6-information-management/o-6.2.pdf>
- Standard of Conduct <http://camosun.ca/about/policies/operations/o-5-human-resources/o-5.11.pdf>
- Respectful Workplace <http://camosun.ca/about/policies/operations/o-5-human-resources/o-5.10.pdf>

Related Legislation

- Sexual Violence and Misconduct Policy Act
- Criminal Code of Canada
- Freedom of Information and Protection of Privacy Act
- Workers Compensation Act
- Human Rights Code

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