

## 4-4-28

## Sexual Assault and Sexual Violence Policy

Classification:

Responsible Authority:	President's Office
Approval Authority:	Board of Governors
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### PURPOSE

All members of Confederation College's community have a right to work and study in an environment that is free from any form of sexual violence. This Policy and its related protocol sets out the way in which we address sexual violence. It ensures that those affected by sexual violence are believed and appropriately accommodated and ensures that the College has a process of investigation that protects the rights of individuals and holds individuals who have committed an act of sexual violence accountable.

### SCOPE

This Policy applies to all members of the College community including: governors, employees, students, student associations, contractors, suppliers of services and their employees, lessees/renters of space, individuals who are directly connected to any College initiatives, volunteers, and visitors.

### DEFINITIONS

Word/Term	Definition
Sexual Assault	A criminal offence under the <i>Criminal Code</i> of Canada. Sexual assault is any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim and involves a range of behaviours from any unwanted touching to penetration. Sexual assault is a behaviour that involves the use of force, threats, or control of a person, which makes that person feel uncomfortable, distressed, frightened, or threatened; or, that is carried out in circumstances when the person has not freely agreed to, consented to, or been capable of consenting to the behaviour.
Sexual Violence	A broad term that describes any violence, physical or psychological, carried out through sexual means or by targeting sexuality. Sexual violence takes different forms including sexual abuse, sexual assault, sexual harassment, stalking, indecent or sexualized exposure, degrading sexual imagery, voyeurism and cyber harassment.
Workplace Sexual	Is a type of sexual violence in which a worker is harassed (subjected to a

Harassment	course of vexatious comment or conduct) on the basis of sex, sexual orientation, gender identity or gender expression, where the harassment is known or ought reasonably to be known to be unwelcome. Workplace sexual harassment also includes making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker, and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.
Consent	<p>In the context of sexual activity, consent is the voluntary and explicit agreement to engage in the sexual activity in question. It is the act of willingly agreeing to engage in specific sexual behaviour, and requires that a person is able to freely choose between two options: yes and no. This means that there must be an understandable exchange of affirmative words which indicates a willingness to participate in mutually agreed upon sexual activity. It is also imperative that everyone understands the following:</p> <ul style="list-style-type: none"> <li>• Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgment cannot consent.</li> <li>• A person is incapable of giving consent if they are asleep, unconscious or otherwise unable to communicate.</li> <li>• A person who has been threatened or coerced (i.e. is not agreeing voluntarily) into engaging in the sexual activity is not consenting to it.</li> <li>• A person who is drugged is unable to consent.</li> <li>• A person is usually unable to give consent when under the influence of alcohol and/or drugs.</li> <li>• A person may be unable to give consent if they have a mental disability preventing them from fully understanding the sexual acts.</li> <li>• The fact that consent was given in the past to a sexual or dating relationship does not mean that consent is deemed to exist for all future sexual activity.</li> <li>• A person can withdraw consent at any time during the course of a sexual encounter.</li> <li>• A person is incapable of giving consent to a person in a position of trust, power or authority, such as a faculty member initiating a relationship with a student who they teach, an administrator in a relationship with anyone who reports to that position.</li> <li>• Consent cannot be given on behalf of another person.</li> <li>• A person under the age of eighteen (18) is incapable of consenting to being in pornographic images, such as pictures and videos.</li> </ul> <p>It is the responsibility of the initiator of sexual activity to obtain clear and affirmative responses at all stages of sexual engagement. It is also the initiator's responsibility to know if the person they are engaging with is a minor.</p> <p>For information purposes only, the <i>Criminal Code</i> defines "consent" as follows:</p>

	<p><b>Consent:</b> The voluntary agreement to engage in the sexual activity in question. No consent is obtained, where:</p> <ol style="list-style-type: none"> <li>1. the agreement is expressed by the words or conduct of a person other than the complainant;</li> <li>2. the complainant is incapable of consenting to the activity;</li> <li>3. the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;</li> <li>4. the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or</li> <li>5. the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.</li> </ol>
Acquaintance Sexual Assault	Sexual contact that is forced, manipulated, or coerced by a partner, friend or acquaintance.
Age of Consent for Sexual Activity	The age at which a person can legally consent to sexual activity. In Canada, children under 12 can never legally consent to sexual acts. Sixteen is the legal age of consent for sexual acts. There are variations on the age of consent for adolescents who are close in age between the ages of 12 and 16. Twelve and 13 year-olds can consent to have sex with other youth who are less than 2 years older than themselves. Youth who are 14 and 15 years old may consent to sexual involvement that is mutual with a person who is less than 5 years older. Youths 16 and 17 years old may legally consent to sexual acts with someone who is not in a position of trust or authority.
Coersion	In the context of sexual violence, coercion is unreasonable and persistent pressure for sexual activity. Coercion is the use of emotional manipulation, blackmail, threats to family or friends, or the promise of rewards or special treatment, to persuade someone to do something they do not wish to do, such as being sexual or performing particular sexual acts.
Drug Facilitated Sexual Assault	The use of alcohol and/or drugs (prescription or non-prescription) by a perpetrator to control, overpower or subdue a victim for purposes of sexual assault.
Stalking	A form of criminal harassment prohibited by the <i>Criminal Code</i> of Canada. It involves behaviours that occur on more than one occasion and which collectively instil fear in the victim or threaten the victim/target's safety or mental health. Stalking can also include threats of harm to the target'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.

Survivor	Some who have experienced sexual violence may choose to identify as a survivor. Individuals might be more familiar with the term “victim”. We use the term survivor throughout this policy where relevant because some who have experienced sexual assault believe they have overcome the violent experience and do not wish to identify with the victimization. It is the prerogative of the person who has experienced these circumstances to determine how they wish to identify.
Person of Authority	A person in authority is any Confederation College employee in a position of authority over, or trusted by, an employee or a student, and can include such persons as managers, supervisors, lead hands, professors, instructors, coaches, trainers, medical or paramedical personnel, and volunteers.

## POLICY

Sexual assault and sexual violence are unacceptable and will not be tolerated. We are committed to challenging and preventing sexual violence and creating a safe space for anyone in our College community who has been affected by sexual violence. The College is expected to be a safe and positive space where members of the College community feel able to work, learn, live and express themselves in an environment free from sexual violence.

All reported incidents of sexual violence will be investigated to the best of the administration’s ability and in a manner that ensures due process. It is this policy’s intention to make individuals feel comfortable about making a report in good faith about sexual violence that they have experienced or witnessed.

We recognize that sexual violence can occur between individuals regardless of sexual orientation, gender, and gender identity or relationship status as articulated in the Ontario *Human Rights Code*. We also recognize that individuals who have experienced sexual violence may experience emotional, academic or other difficulties.

### **Confederation College is committed to:**

- assisting those who have been affected by sexual violence by providing choices, including detailed information and support, such as provision of and/or referral to counselling and medical care, information about legal options, and appropriate academic and other accommodation;
- ensuring that those who disclose that they have been sexually assaulted are believed, and that their right to dignity and respect is protected throughout the process of disclosure, investigation and institutional response;
- addressing harmful attitudes and behaviours (e.g. adhering to myths of sexual violence, etc.) that reinforce that a person who experienced sexual violence is somehow to blame for what happened;
- treating individuals who disclose sexual violence with compassion recognizing that they are the final decision-makers about their own best interests;
- ensuring that on-campus (internal) investigation procedures are available in the case of sexual violence, even when the individual chooses not to make a report to the police;

- engaging in appropriate procedures for investigation and adjudication of a complaint which are in accordance with College policies, standards and applicable collective agreements, and that ensure fairness and due process;
- ensuring coordination and communication among the various departments who are most likely to be involved in the response to sexual violence on campus;
- engaging in public education and prevention activities;
- providing information to the College community about our sexual violence policy and protocol;
- providing appropriate education and training to the College community about this policy and how to respond to the disclosure of sexual violence;
- contributing to the creation of a campus atmosphere in which sexual violence is not tolerated; monitoring and updating this policy and related protocols to ensure that they remain effective and in line with other existing policies and best practices;
- reviewing this policy and procedure with students as required by law; and
- consulting with the Joint Health and Safety Committee in the development and maintenance of a written program to implement this policy as it pertains to workplace sexual harassment.

## PROCEDURE

The steps below outline the responsibilities of the College community in response to allegations of sexual violence.

	<u>Action</u>	<u>Responsibility</u>
<b>1.</b>	<b>Reporting of and Responding to Sexual Violence</b>	
1.1	Members of the College community who have experienced sexual violence are encouraged to come forward to report as soon as they are able to do so.	Survivor
1.2	Members of the College community should immediately report incidents where they witness or have knowledge of sexual violence, or where they have reason to believe that sexual violence has occurred or may occur.	College Community
1.3	Persons of authority, including persons directing the activities of others, shall take immediate action to respond to or to prevent sexual violence from occurring.	Person of Authority
1.4	Where the College becomes aware of an incident of sexual violence by a member of the College community or against a member of the College community, that has occurred on or off College property and that poses a risk to the safety of members of the College community, the College shall take all reasonable steps to ensure the safety of the College community.	Investigation Team, College Management
<b>2.</b>	<b>Complaint Process and Investigations</b>	
2.1	A complaint of sexual assault or of sexual violence can be filed under this Policy by any member of the College community.	College Community
2.2	The College will seek to achieve procedural fairness in dealing with all complaints. As such, no sanction and/or disciplinary action will be taken against a person or group without their knowledge where there is an	Investigation Team, College Management

<b>Action</b>	<b>Responsibility</b>
alleged breach of this Policy.	
2.3 Respondents will be given reasonable notice, with full detail of the allegations and provided with an opportunity to answer to the allegations made against them.	Investigation Team, College Management
2.3 The College will utilize the established investigation protocol to investigate any complaint under this policy.	Investigation Team, College Management
<b>3. Right to Withdraw a Complaint</b>	
3.1 A survivor has the right to withdraw a complaint at any stage of the process.	Survivor
3.2 The College may continue to act on the issue identified in the complaint in order to comply with its obligation under this Policy and/or its legal obligations.	College Management
<b>4. Protection from Reprisals, Retaliation or Threats</b>	
4.1 It is contrary to this Policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a Survivor or any other individual for: <ul style="list-style-type: none"> <li>• having pursued rights under this Policy or the <i>Ontario Human Rights Code</i> or the <i>Occupational Health and Safety Act</i>;</li> <li>• having participated or co-operated in an investigation under this Policy or the <i>Ontario Human Rights Code</i> or the <i>Occupational Health and Safety Act</i>; or</li> <li>• having been associated with someone who has pursued rights under this Policy or the <i>Ontario Human Rights Code</i> or the <i>Occupational Health and Safety Act</i>.</li> </ul>	Respondent, College Community
4.2 Anyone engaged in such conduct may be subject to sanctions and/or discipline.	College Management
<b>5. Unsubstantiated Complaints</b>	
5.1 If a person, in good faith, discloses or files a sexual violence complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed and no record of it will be placed in the complainant's or respondent's file. A record will be maintained in the Human Resources Department or in the Learning Resources Division, in accordance with records' retention guidelines.	College Management
5.2 Disclosures or complaints that are found to be frivolous, vexatious, or bad faith complaints made to purposely annoy, embarrass or harm the respondent, may result in sanctions and/or discipline against the complainant.	College Management
<b>6. Confidentiality</b>	
6.1 Confidentiality is particularly important to those who have disclosed sexual violence. The confidentiality of all persons involved in a report of	Investigation Team, College

<b>Action</b>	<b>Responsibility</b>
<p>sexual violence must be strictly observed, and the College will do its best to respect the confidentiality of all persons, including the complainant, respondent, and witnesses.</p> <p>Confidentiality cannot be assured in the following circumstances:</p> <ul style="list-style-type: none"> <li>• an individual is at imminent risk of self-harm;</li> <li>• an individual is at imminent risk of harming another; and/or</li> <li>• there are reasonable grounds to believe that others in the College or wider community may be at risk of harm.</li> </ul>	<p>Community and College Management</p>
<p>6.2 In such circumstances, information would only be shared with necessary services to prevent harm, and the name of the survivor would not be released to the public.</p>	<p>Investigation Team, College Management</p>
<p>6.3 When the College becomes aware of an allegation of sexual violence by a member of the College community against another member of the College community, the College may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with the College’s legal obligation and/or its policies to investigate such allegations. In such cases, certain College administrators will be informed about the reported incident on a “need to know” and confidential basis, but not necessarily of the identities of the persons involved.</p>	<p>Investigation Team, College Management</p>

## SUPPORTING DOCUMENTATION

None

## RELATED POLICIES

Code of Conduct

Student Code of Conduct

Residence Community Living Standards

Health and Safety Policy

Respectful Work and Learning Environment

Violence-Free Work and Learning Environment

Acceptable Use Policy

Personal Relationships

Freedom of Information and Protection of Privacy

Investigation Protocol

## RELATED MATERIALS

Academic and Support Staff Collective Agreements

Administrative Terms and Conditions of Employment

Ministry of Training, Colleges and Universities Act (1990) <https://www.ontario.ca/laws/statute/90m19>

The Ontario Human Rights Commission: <http://www.ohrc.on.ca/>

The Ontario Human Rights Code (1990): <http://www.ontario.ca/laws/statute/90h19>

The Ontario Occupational Health & Safety Act (1990): <http://www.ontario.ca/laws/statute/90o01>