

SEXUAL VIOLENCE POLICY

University Policy No.: AD1235

Classification: Administration

Approval Authority: Board of Governors

Effective Date: November 27, 2015

Supersedes:

Last Editorial Change: August 2017

Mandated Review: November 2022

Associated Procedures:

Procedures Relating to the Sexual Violence Policy

POLICY PURPOSE

Concordia University of Edmonton recognizes that gender equality and a culture of Consent are the best tools for eliminating Sexual Violence. This policy communicates the University's commitment to such an environment and establishes the principles and procedures that support this commitment. Further, this policy informs Members of the University Community about behavioural expectations so that incidents of Sexual Violence are dealt with quickly, effectively, and fairly.

DEFINITIONS

- Alberta Human Rights Act - Legislation that aims to protect individuals from discrimination by establishing grounds on which individuals cannot be discriminated against and setting out a complaint process for individuals experiencing discrimination based on those grounds.
- Complainant - a person who files a Complaint against a Respondent.
- Complaint - an allegation of Sexual Violence submitted to the University in accordance with this policy and the Responding to Sexual Violence Procedure.
- Consent - the voluntary agreement to engage in specific sexual activity or behaviour requiring that a person is able to freely articulate a choice, which includes the possibility of refusal. This means that there must be an understandable and ongoing exchange of affirmative words or conduct which indicates a willingness to participate in mutually agreed upon sexual activity. For the purposes of this definition, Consent shall not include sexual activity in the following circumstances:
 - A person is silent, not communicative or unable to communicate;
 - A person is asleep, unconscious or incapacitated;

- A person has been threatened or coerced (i.e. is not agreeing voluntarily) into engaging in the sexual activity;
- A person is under the influence of alcohol and/or drugs;
- A person withdraws Consent at any time before or during the course of a sexual encounter.

The fact that Consent was given in the past does not mean that Consent is deemed to exist for present and future sexual activity.

- Members of the University Community - those persons involved in conducting University affairs including all students, employees, volunteers, contractors and members of the Board of Governors of the University while they are either on or using University property or participating in University programs and activities, on or off University premises.
- Modification - making reasonable changes to certain rules, standards, policies, workplace cultures and physical environments to ensure that they do not have a negative effect on a person.
- Reporter - an individual who files a Complaint, but who is neither a Complainant, Survivor, nor Respondent.
- Respondent - a Member of the University Community against whom a Complaint has been filed in accordance with this policy and associated procedures.
- Retaliation - any adverse action taken against a Member of the University Community because that person has, in good faith, filed a Complaint, supported the filing of a Complaint, disclosed information to the University about a Complaint, and/or participated in an investigation of such Complaint, and includes threats of Retaliation.
- Sexual Assault - any sexual contact without Consent, which can include but is not limited to forced oral contact, fondling, forced vaginal or anal penetration, and forced oral to genitalia contact. The behaviour need not be intentional in order to be considered sexual assault.
- Sexual Discrimination - discrimination based on sex, gender, sexual orientation, and gender identity as set out and defined in the *Alberta Human Rights Act*.
- Sexual Harassment - unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature. Incidents of sexual harassment include, but are not limited to, situations when:
 - Such conduct has the purpose or effect of interfering with an employee's work performance or a student's academic performance, or creating an intimidating, hostile, or offensive working or learning environment;
 - Submission to such conduct is made either explicitly or implicitly a term or condition of employment, or of the teaching and learning process; or

- Submission to or rejection of such conduct is used in employment or academic decisions affecting that employee or student.

Examples of sexual harassment include but are not limited to comments or conduct of a sexual nature such as leering, “dirty” jokes, gestures, pictures or pornographic materials, comments, suggestions, innuendos, requests or demands of a sexual nature.

The behaviour need not be intentional in order to be considered sexual harassment.

The harassment does not have to occur between members of the opposite sex or opposite sexual orientation for the conduct to be considered an illegal form of sexual discrimination.

- Sexual Violence - any action carried out without Consent, whether physical or psychological, through sexual means or by targeting sexuality, and including all forms of sexual contact, sexual humiliation, sexual exploitation, degrading sexual imagery, sexting, cyber harassment, indecent or sexualized exposure via electronic or social media or otherwise, Sexual Harassment, Sexual Discrimination, Stalking, and Sexual Assault.
- Sexual Violence Response Team - the group of University employees responsible for overseeing the University’s response to Complaints.
- Stalking - a form of criminal harassment prohibited by the *Criminal Code of Canada* involving persistent, unwanted behaviours that collectively instill fear for the victim/target’s safety or mental health.
- Survivor - a Member of the University Community who has experienced Sexual Violence and who may or may not file a Complaint.

JURISDICTION/SCOPE OF THE POLICY

1.1 This policy applies:

- i. to any Member of the University Community affected by Sexual Violence where a) the violence is alleged to have occurred on University property, or at a University related event, and b) where either the Respondent or both the Complainant and the Respondent are any of the following, while acting in a capacity defined by their relationship to the University:
 - registered University students;
 - employees;
 - volunteers;
 - members of the Board of Governors; or
 - employees of organizations representing the University when on University property;
- ii. where a Member of the University Community experiences Sexual Violence by a non-member that is alleged to have occurred either on University premises or at a University related event on or off University premises; and

- iii. to virtual environments such as any form of electronic or social media.
- 1.2 Notwithstanding section 1.1 above, the University may respond to a Complaint in accordance with this policy and associated procedures in any circumstance that the University determines may create a risk to the health or safety of any Member of the University Community or to public confidence in the University.
- 1.3 It is recognized that the University has other policies in place that pertain to sexual violence, such as the Student Code of Conduct, Harassment, (and others). This policy complements such other policies and shall be read in a manner which operates in conjunction with, and not as conflicting with, those policies. The University recognizes that sexual violence is a unique area which requires a unique set of principles and policy statements.

POLICY

Concordia University of Edmonton (the “University”) recognizes that Sexual Violence can occur between individuals regardless of sexual orientation, sex, gender identity, or relationship status. The University is committed to promoting and maintaining an educational and working environment free from all forms of Sexual Violence, supporting equitable relations, and fostering a community founded upon the fundamental dignity and worth of all its members. The University prohibits all acts of Sexual Violence; therefore, it is the responsibility of all Members of the University Community to promote an environment that is free of Sexual Violence and to be knowledgeable about this policy and associated procedures.

Roles and Responsibilities

General Prohibitions and Responsibilities

The University will take measures aimed at promoting a University environment free from Sexual Violence.

The University will take reasonable action to prevent Sexual Violence through education and communications and to promote the safety of all Members of the University Community.

No Member of the University Community, or non-member while on University premises or participating in a University related event (on or off University premises), may engage in any form of Sexual Violence against another Member of the University Community.

Complaint Process and Reporting

The University will provide those who have experienced Sexual Violence or those who wish to file a report of Sexual Violence with comprehensive information about Complaint reporting options.

A Complaint can be filed under this policy and associated procedures by any person.

Complaints must be filed with the Dean of Students in accordance with the procedures associated with this policy. The Complainant will be advised of the Complainant’s rights to forego the making of a Complaint or to withdraw a Complaint at any time.

Where the University receives a Complaint under this policy, the University retains the right to review

and assess Complaints and conduct investigations into Complaints under a regime different than that set out in this policy where required to do so by law.

Responding to Sexual Violence

The University will establish procedures to respond to incidents of Sexual Violence and to support Survivors, Complainants, Reporters, and Respondents.

The University recognizes its responsibility to respond to Complaints in a fair, effective, and timely manner and encourages the immediate reporting of all incidents of Sexual Violence.

It is the responsibility of all Members of the University Community who receive a report of Sexual Violence to:

- Refer the Member of the University Community to the Dean of Students who will work to ensure the individual receives the necessary information regarding reporting options, support services, Complaint processes and Modification;
- Assist the Member of the University Community in accessing available support services; and
- Take appropriate action to prevent further Sexual Violence from occurring.

Right to Forego or Withdraw a Complaint and Limitations

A Survivor has the right to forego filing criminal charges or a Complaint, or to withdraw a Complaint at any stage of the process; however, the University reserves the right to act or continue to act on a Complaint or criminal charges in order to comply with its obligations under this policy and/or its legal obligations, to ensure fairness to other persons including the Respondent, and/or if the University believes that the safety of other Members of the University Community or the external community is at risk. In these circumstances, the University has a duty to initiate an internal investigation and/or inform law enforcement authorities of the need for a criminal investigation, even without the permission of the Survivor. All reasonable efforts shall be made by the University and the Members of the University Community to minimize further distress to the Survivor when the need to involve law enforcement authorities arises.

Complaint Review, Investigations and Outcomes

The University will handle Complaints and investigations in a fair and unbiased manner.

When an investigation is held under the Responding to Sexual Violence Procedure, the University will investigate all reported incidents of Sexual Violence in accordance with the procedure and in a manner that ensures due process.

The University and investigators appointed to investigate Complaints are authorized to collect, directly or indirectly, use and disclose personal information, individually identifying information and any other information that is considered necessary to manage and investigate Complaints.

The University reserves the right to determine whether it will conduct an investigation into an allegation of Sexual Violence whether or not law enforcement is involved and whether or not charges have been laid.

The University may, in its sole discretion, choose not to pursue an investigation of a Complaint if the Complaint is reported to the University more than one calendar year after the occurrence of the action, behaviour or conduct which is the subject of the Complaint.

The standard of proof for the finding of a breach of this policy is on a balance of probabilities.

Any Member or non-member of the University Community who is found to have committed Sexual Violence against a Member of the University Community will be held accountable and subject to sanctions and discipline as outlined within applicable University policy, collective agreements and laws.

Interim Measures

The University may, in accordance with processes outlined in a collective agreement, if applicable, impose or facilitate interim measures to support the Complainant, Reporter, and/or Respondent during a formal investigation process.

Without limiting the generality of section 5.6.1 above, the University may determine that there is to be no contact between a Complainant and a Respondent, and/or that the Respondent may be suspended from classes, the work place or residence (as the case may be) pending the conclusion of an investigation.

Multiple Proceedings

Where criminal and/or civil proceedings are commenced in respect of a Complaint, the University will conduct its own independent investigation into such Complaints and will make its own findings in accordance with its policies and procedures. Where there is an ongoing criminal investigation into the same Complaint, the University will reasonably cooperate with the law enforcement authorities in conducting its investigations but will not suspend or cease its internal investigation pending the criminal investigation and prosecution process.

The University retains the discretion to suspend or terminate an investigation into a Complaint where another proceeding concerning the Complaint has been initiated.

Education and Prevention

The University is committed to supporting ongoing education and awareness initiatives for Members of the University Community about Sexual Violence and Sexual Violence prevention and about responding to the reporting of incidents of Sexual Violence. The University will implement preventative strategies with respect to all forms of Sexual Violence.

All Members of the University Community are responsible for contributing to the prevention of, intervention in, and effective response to, Sexual Violence through compliance with this policy and associated procedures.

Support Services

In support of Survivors, Complainants, Reporters and Respondents, the University will ensure they are treated fairly, will assist in providing access to counselling and medical care and will provide appropriate work or academic Modification as required by law.

Confidentiality

All persons involved in a report and/or investigation of Sexual Violence are expected to maintain confidentiality where appropriate. The University treats Complaints as confidential subject to the following:

- When an individual is judged to be at imminent risk of harming self and/or others;
- There are reasonable grounds to believe that Members of the University Community or wider community may be at risk of harm;
- In order to promote fairness of process for all parties; and/or
- Reporting and/or conducting an investigation is required by law, by the University's policies, or by an external body with appropriate authority.

Confidentiality is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (Alberta), *Personal Information Protection Act*, other legislation, and University policy.

Retaliation and False Accusations

It is contrary to this policy for anyone to Retaliate, or threaten to Retaliate against a Complainant, Reporter, Respondent, bystander or any other person for:

- i. filing, intending to file, or supporting a Complaint in good faith in accordance with this policy or associated procedures;
- ii. pursuing rights under this policy or the *Alberta Human Rights Act*; and/or
- iii. participating or cooperating in an investigation under this policy, associated procedures or the *Alberta Human Rights Act*.

Any Member of the University Community who undertakes, participates in or directs a Retaliation or who makes a complaint of Retaliation in bad faith, may be subject to disciplinary action, up to and including termination of employment, expulsion or termination of contract.

Reports or Complaints that are made with an ulterior purpose, including to purposely annoy, embarrass or harm the Respondent are considered frivolous, vexatious or bad faith Complaints and may result in sanctions against the Complainant or Reporter, as the case may be, and/or disciplinary action, up to and including termination of employment, expulsion or termination of contract.

Information Tracking and Retention of Records

The University will maintain information on the number of Complaints, the number and results of investigations and the corrective actions taken in response to recommendations arising out of investigations.

The Dean of Students is responsible for maintaining records related to Complaints including, without limitation, investigation reports. Subject to any records retention obligations under University policy, collective agreements or applicable law, records related to discipline or sanctions arising out of

Complaints will be maintained by the Human Resources department for employees and the Dean of Students for students.

Records will be maintained in accordance with the University's Privacy Policy, Collective Agreement between Concordia University of Edmonton and Concordia University College of Alberta Faculty Association, Records Management Policy and the Records Retention and Disposition Schedule (to be developed).

All records involving a Complainant and subsequent investigation of Complaints will be kept in a file separate from student academic records and/or employee personnel files, however all such records may be used for purposes of future disciplinary processes.

CONSEQUENCES FOR NONCOMPLIANCE

Any Member or non-member of the University Community who is found to have committed Sexual Violence against a Member of the University Community will be held accountable and subject to sanctions and discipline as outlined within applicable University policy, collective agreements and laws.

AUTHORITIES AND OFFICERS

A list of authorities and officers for the policy:

- a. Approving Authority: Board of Governors
- b. Designated Executive Officer: President
- c. Procedural Authority: Vice-President Academic
- d. Procedural Officer: Dean of Students

RELATED LEGISLATION

Alberta Human Rights Act

Freedom of Information and Protection of Privacy Act (Alberta)

Personal Information Protection Act

RELATED POLICIES AND DOCUMENTS

Student Conduct (8.7.2 in the Calendar)

Collective Agreement between Concordia University of Edmonton and Concordia University College of Alberta Faculty Association