



Policy	#3-34
Approved By:	Board of Governors
Approval Date:	April 20, 2017
Revision Date:	
Effective Date:	April 20, 2017
Date to be Reviewed:	April 2020
Administrator Responsible:	President

SEXUAL VIOLENCE AND MISCONDUCT

POLICY STATEMENT

North Island College is committed to providing all members of the college community with a safe and secure environment free from all forms of sexual violence and misconduct. The college will ensure that complainants are supported when addressing any allegations and violations of this policy.

PURPOSE STATEMENT

The purpose of this policy is to articulate how the college will create an environment free from sexual violence and misconduct by:

- offering education and training programs to the college community that are pertinent to this policy, including programs aimed at awareness and prevention of sexual violence and misconduct;
- creating a safe environment in which reporting by complainants is facilitated;
- providing supports to complainants; and
- responding to and addressing complaints of sexual violence and/or misconduct.

SCOPE AND APPLICATION

1. This policy applies to all members of the college community.
2. Events that occur on or off campus, or outside of normal college business hours, and/or through social media and other digital mediums may be investigated if the parties are currently connected to each other through the college and if the alleged misconduct creates an environment for the participants that is not safe, secure and free from all forms of sexual violence and misconduct.
3. This policy will not limit or conflict with the rights as provided for in the college's Collective Agreements and Common Agreements or any person's rights under the NIC Policy #2-08 Human Rights.

4. This policy will comply with the Canadian Charter of Rights and Freedoms, BC Human Rights Code, BC Freedom of Information and Protection of Privacy Act, Criminal Code of Canada, BC's Workers Compensation Act, and the BC Sexual Violence and Misconduct Policy Act, as well as any other applicable legislation.

PRINCIPLES

1. The college will not tolerate sexual violence and/or misconduct, nor the condoning of rape culture.
2. The college will promote a culture that supports and facilitates the reporting of violations under this policy, while understanding and acknowledging that those who have experienced sexual violence and/or misconduct may be traumatized by their experience.
3. The college will investigate matters from a complainant-centred approach providing support as necessary, including support should they wish to bring their complaint forward to law enforcement.
4. To assure administrative and procedural fairness, the principles of natural justice will be the foundation for all investigations, decisions and outcomes under this policy.
5. The college acknowledges that individuals experiencing sexual violence and/or misconduct will have different needs which may be based on factors such as ancestry, race, ethnicity, language, faith, age, socioeconomic status, sex, gender identity, sexual orientation and previous trauma.
6. The college has the obligation to pursue an investigation and/or bring the matter to the attention of law enforcement should there be deemed a significant risk to the health or safety of one or more persons in the college community. The BC Freedom of Information and Protection of Privacy Act states disclosure of personal information is allowed if "compelling circumstances exist that affect anyone's health or safety". This includes threats of violence.
7. Except in cases where the college has an obligation to investigate, as described in the principle above, the complainant will have the right to determine if they wish to have their complaint investigated by the college; the complainant may change their mind and decide to either initiate or withdraw their actionable complaint.
8. Complainants are encouraged, but not required, to make a complaint as soon as possible after an incident of sexual violence and/or misconduct and normally no later than six (6) months after the incident, unless there are extenuating circumstances preventing them from doing so.
9. The college will provide education for and promote a culture of consent.

10. The college will act on the premise that all complaints are made in good faith. However if it is determined during the course of the investigation based on evidence that a complaint is in bad faith or vexatious, it may result in remedial or disciplinary action for the complainant. Inconclusive findings based on evidence or determinations that conduct did not breach this policy will not in itself constitute bad faith or vexatious complaints.

DEFINITIONS

Accommodation

A reasonable and temporary or long term modification to the teaching, learning or work environment as needed by the complainant/respondent and supported by the situation and college policies.

College Community

Employees and students of NIC including contractors and others who have committed to an agreement with the college to provide services or become learners.

College Authorities

For the purpose of this policy, college authorities are members of the senior leadership and senior education teams, the assistant director of student affairs, assistant registrars, human resources personnel and counsellors.

Complainant

A person making a report of wrongdoing.

Complainant Centred Approach

This approach is premised on providing supports and accommodations for the person reporting to have experienced an incident of sexual violence and/or misconduct in an effort to reduce trauma. It also involves using terminology and language that does not trivialize the experience.

Complaint (actionable) of Sexual Violence and/or Misconduct

A complaint of an incident of sexual violence and/or misconduct with a request for an investigation.

Complaint (non-actionable) of Sexual Violence and/or Misconduct

A complaint of an incident of sexual violence and/or misconduct without a request for an investigation at the time of disclosure.

Consent

An active, direct, voluntary and conscious choice and agreement to engage in sexual activity. This includes the taking, providing and sharing of intimate photos. It is the responsibility of the participants of sexual activity to obtain consent at all stages of sexual engagement. More specifically, consent:

- is enthusiastic, freely given and can be revoked at any time;
- must be given before and during all sexual activity, even if consent has been given before;
- cannot be given by an individual incapacitated by alcohol, drugs or some other reason and/or who is unconscious, or otherwise incapable of providing consent;
- cannot be given in response to coercion or when a position of power or authority is used; and
- cannot be implied or assumed.

Emergency Disclosure Contact (EDC)

Any employee who is a member of the risk assessment prevention team. Normally the EDC for the counsellors is the assistant director of student affairs or the director of student services.

Investigation

An information gathering and assessment process used to determine the nature and circumstances of alleged wrongdoing, matters of credibility and whether it is more probable than not, that a breach of this policy 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.

Investigator

A person specifically trained to lead investigations as they pertain to this policy. The investigator may be internal or external to the college, depending on the circumstances of the complaint and will not be the same person who provides support to the complainant or respondent nor will they determine sanctions.

Principles of Natural Justice include:

- i. audi alteram partem “listen to both sides”
Any person who is being accused of something has the right to know the allegation and must be given a reasonable opportunity to respond to the accusation, to offer rebuttals and to provide counter evidence.
- ii. nemo iudex rule – no person shall be a judge in their own case, and every person has the right to an unbiased and independent decision maker.

Rape Culture

A term used to describe a set of beliefs, responses and behaviours to situations that normalizes sexualized violence, assault, abuse and degradation against persons. Rape culture sets out to trivialize and blame victims of sexual aggression.

Respondent

Person responding to allegations of wrongdoings.

Restorative Justice Forum

An approach to justice designed to identify and address harm; it involves those responsible for the harm and the individuals and community impacted by it.

Risk Assessment and Prevention Team

A team comprised of trained individuals who meet as required to investigate possible threats to the campus community.

Sexual Activity

Any kind of sexual contact which can include: kissing, touching or fondling, oral or anal sex, intercourse or other forms of penetration or any other wanted or unwanted acts of a sexual nature.

Sexual Violence and Misconduct

Sexual Violence and misconduct includes any sexual act or act targeting a person's sexuality whether the act is physical, or psychological in nature, threatened or attempted against a person without the persons consent, and can also be defined as:

- sexual assault - the legal term used in Canada to refer to any form of sexual contact without voluntary consent. Sexual assault can impact people of any gender and can be committed by people of any gender;
- sexual exploitation;
- sexual harassment - behaviour of a sexual nature by a person who knows, or ought reasonably to know, that the behaviour is unwanted or unwelcome and that leads to or implies job- or academically-related consequences for the person harassed;
- stalking;
- indecent exposure;
- voyeurism;
- promoting or inciting activities and behaviours consistent with rape culture;
- 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 consent of the person in the photograph or video and with the intent to distress the person in the photograph or video, or reckless distribution of a photograph or video without the intent to distress;
- the attempt to commit an act of sexual violence and/or misconduct;
- the threat to commit an act of sexual violence and/or misconduct;
- sexual act committed against someone without that person's freely given consent;
- offensive remarks, jokes, innuendos or taunts that pertain to a person's gender, sexual orientation, sexual actions or relationships;
- unwelcome physical contact such as touching, patting, punching or pinching; and
- leering, badgering or intimidating actions of a sexual nature.

Suspension

The removal of a student or employee from the college for a period of time in accordance with the BC College and Institute Act.

Visitor

Persons outside of the college community who interact directly or indirectly with college members on campus or at college sanctioned events.

GUIDELINES:

1.0 Expectations and Responsibilities

All members of the college community have the responsibility of creating a safe and inclusive environment free from sexual violence and misconduct.

- 1.1 While this policy applies to all members of the college community, responses to violations and reparations of harm must comply with applicable collective agreements, NIC policies and current legislation.
- 1.2 Violations will be addressed through the processes outlined in the appendix of this policy with the intention of providing a safe, compassionate and supportive environment for the complainant and an opportunity for education and reparation of harm as appropriate.

2.0 Education and Communication

The college is committed to providing information and education that supports a culture free from sexual violence and misconduct, with the intent of:

- preventing incidents of sexual violence and misconduct within the college community;
- ensuring that all complainants know where and how to report an incident;
- ensuring that bystanders know how to provide support;
- creating education for respondents and opportunities for reparation of harm if appropriate; and
- changing attitudes that perpetuate sexual violence and/or misconduct and rape culture by fostering change at a number of levels including social norms, organizational practices and behaviours of bystanders and potential perpetrators.

3.0 Disclosure and Support

The college supports the rights of complainants with choosing to make an actionable or non-actionable complaint upon disclosing an event of sexual violence and/or misconduct.

Support will be available regardless of which course of action the complainant chooses and steps will then be taken in accordance with the procedures described in Appendix A. When there is a risk of significant harm to the health and safety of one or more persons, the college has the obligation to contact law enforcement and to take necessary precautions. Counsellors may seek support from the Emergency Disclosure Contact in determining the level of risk.

4.0 Appeals Regarding Process

Individuals who wish to appeal a decision made within the scope of this policy shall follow procedural guidelines and timelines as outlined in the appropriate policies and/or collective agreements.

- 4.1 Student appeals arising from processes administered as a result of violating this policy will be addressed directly under the appeals policy 3-30 (i.e. will not proceed first through the complaint policy (3-31).
- 4.2 Employees may file complaints and grievances in compliance with applicable collective agreements, Human Resource Policies and College Board Policies.

Legislative and Collective Agreement References:

BC Bill 23 – 2016 Sexual Violence and Misconduct Policy Act
BC College and Institute Act
BC Freedom of Information and Protection of Privacy Act
BC Human Rights Code
BC Workers Compensation Act, WorkSafeBC, 2013
Canadian Charter of Rights and Freedoms
Criminal Code of Canada
CUPE Local 3479 Collective Agreement
North Island College Faculty Association Collective Agreement and Common Agreement

Links to Related Policies, Documents and Websites:

Ending Violence Association of BC
Femifesto
Risk Assessment and Prevention Team (RAPT)
Student Case Management Team (SCMT)
Training-on-line: Respect in the Workplace

Cross Reference:

NIC Policy #1-20 Code of Ethical Conduct
NIC Policy #2-08 Human Rights
NIC Policy #2-12 Progressive Discipline: Misconduct or Inappropriate Behaviour
NIC Policy #3-06 Community Code of Academic, Personal and Professional Conduct
NIC Policy #3-30 Student Appeals

Acknowledgements

North Island College acknowledges and expresses gratitude for the use of some of the language within this policy from the following institutions and organizations:

- Ending Violence Association of BC;
- Langara College;
- Preventing and Responding to Sexual Misconduct at British Columbia Post-Secondary Institutions: A guide for developing policies and actions, BC Ministry of Advanced Education;
- Ryerson University;
- Thompson Rivers University;
- UBC Alma Mater Society, Sexual Assault Support Centre;
- Use the Right Words: Media Reporting on Sexual Violence in Canada, by Femifesto 2015; and
- West Coast Legal Education and Action Fund.

APPENDIX A

SEXUAL VIOLENCE AND MISCONDUCT COMPLAINT PROCEDURES

The purpose of these procedures is to support NIC Policy #3-34 Sexual Violence and Misconduct. It is the responsibility and expectation of all members of the college community to act in accordance with good citizenship, institutional policies, respect towards each other and to be in compliance with applicable legislation. In the event that expected behaviours are not met and violations of this policy occur, appropriate supports and procedures will be implemented as follows. Interim measures to protect the complainant and the respondent may be implemented pending the conclusion of the investigation and if necessary the Risk Assessment and Prevention Team may be notified to facilitate campus safety measures. Anyone, including the respondent or witnesses, who discloses or receives a disclosure about a sexual violence and/or misconduct issue will be offered and provided support as appropriate and reasonable in the circumstances.

1. SEEKING SUPPORT FOLLOWING SEXUAL VIOLENCE AND/OR MISCONDUCT

Complainants may choose to disclose only to seek support *without necessarily a request for an investigation*. No investigation will occur unless there is a concern of harm to others, or unless the college is otherwise legally required to conduct an investigation into the allegations. The college recognizes that persons experiencing sexual violence and/or misconduct may require urgent, immediate and/or on-going care and support. Access to external and internal resources will be provided as needed.

- Employees who have experienced sexual violence and/or misconduct can contact NIC's Human Resources department for guidance; additional external resources may also be recommended if appropriate. The manager of human resources, trained in receiving disclosures of sexual violence and misconduct can work with the employees as they determine their options and next steps.
- Students who have experienced sexual violence and/or misconduct can contact college counsellors for support; external resources may also be recommended if appropriate. The counsellors are trained to receive disclosures of sexual violence and misconduct and can work with students as they determine options and next steps.
- Persons wishing to report to law enforcement may request assistance in doing so from the college through the supports as described above.

2. COMPLAINT OPTIONS

Below are options available for complainants to report sexual violence and/or misconduct against them. All reports will result in support for the complainant and will anonymously be recorded as an incident that is included in the annual report to the president who in turn, provides an annual report to the Board of Governors. Reports should where possible include the following information about an incident: the type of misconduct as per the definitions described within this policy, whether the incident occurred on or off campus, whether all participants are members of the college community, and if so, whether they are students or employees. No identifying information will be reported. In cases where the complainant is the student, the counsellor is responsible for logging complaints and

forwarding to the assistant director student affairs. In cases where the complainant is an employee, Human Resources is responsible for logging the complaint. The director of student services and the director of human resources is responsible for presenting the report to the president.

a) Non-Actionable Complaint reported to the college

Complainants may choose to disclose their complaint only to college authorities (human resources or counselling) or to a member of the college community without requesting action. Although no investigation is done, unless the college is legally required to conduct one, any member of the community receiving a disclosure is expected to report this disclosure to human resources or counselling as is appropriate normally, by the end of the next business day. When there is a risk of significant harm to the health and safety of one or more persons, the college has the obligation to contact law enforcement and to take necessary precautions. Counsellors may seek support from the Emergency Disclosure Contact in determining the level of risk. The complaint is logged anonymously as an incident in the annual report to the president who in turn, provides an annual report to the Board of Governors.

b) Actionable Complaint reported to the college

Complainants may choose to report an actionable complaint to college authorities (human resources or counselling). Actionable complaints initiate an investigation and may result in sanctions as described in these procedures. The college will normally begin the process by the end of the next business day after having received the complaint. The actionable complaint is logged anonymously as an incident that is included in the annual report to the president who in turn, provides an annual report to the Board of Governors.

c) Actionable complaint reported to law enforcement and the college

Complainants may choose to report a complaint directly with law enforcement and to college authorities (human resources and counselling); the college holds the right to conduct or suspend an investigation when actionable complaints are referred to law enforcement and a criminal proceeding has been initiated. The actionable complaint is logged anonymously as an incident that is included in the annual report to the president who in turn, provides an annual report to the Board of Governors.

d) Non-Actionable, anonymous complaints reported to law enforcement

Complainants may choose to report a complaint anonymously with law enforcement through a third party arrangement or personally. Unless such reports become known to the college, no incident is logged in the annual report to the president who in turn, provides an annual report to the Board of Governors.

3. INVESTIGATIVE PROCEDURES, FINDINGS AND SANCTIONS

An individual who has experienced sexual violence and/or misconduct falling within the scope of this policy, or a third party authorized to act on their behalf, may request an actionable complaint that results in the matter being investigated. Only individuals trained in sexual violence investigations will be authorized to conduct an investigations.

Employees

When an actionable complaint comes forward to the manager of human resources, involving only employees, the director of human resources or their designate will be advised and will authorize an investigation in compliance with any procedure set out in applicable collective agreements and college policies.

When an actionable complaint comes forward that involves an employee and a student, then a joint investigation will be conducted under the authority of the director of human resources and the assistant director of student affairs along with the director of facilities, or their designates, as required. Such investigation will be in compliance with applicable collective agreements, and college policies, however the process set out may be modified to protect privacy rights.

When an actionable complaint is filed and a finding is made that an employee has breached this policy, disciplinary or remedial action will occur in compliance with applicable collective agreements and human resource and college board policies. The college reserves the right to advise law enforcement of the incident if there is a risk of harm to self or others.

Students

When an actionable complaint comes forward involving only students, the assistant director of student affairs, or their designate will be advised and will authorise an investigation. The findings from the investigation will be provided to the director of student services or designate for the determination of sanctions as appropriate.

When an actionable complaint comes forward that involves an employee and a student, then a joint investigation will be conducted under the authority of the director of human resources, the assistant director of student affairs, the director of facilities or their designates as required. Such investigation will be in compliance with applicable collective agreements and college policies, however the process set out may be modified to protect privacy rights.

When a student complainant has filed an actionable complaint, and a finding is made regarding the respondent, the following sanctions may occur:

- verbal reprimand;
- behaviour contract;
- restorative justice;
- reporting to law enforcement;
- restricted access to campus;
- removal from a specific course or program;
- recommendation for suspension to the president;
- letter on student record.

Where sanctions have a direct impact to the complainant, the complainant will be consulted with and may be apprised of the sanctions.

Visitors

In the event that the principles and guidelines described within this policy are violated by a visitor, the incident will be referred to the appropriate authority for resolution (e.g. law enforcement, the director of student services, assistant director, student affairs, director of facilities or their designate). In some instances, the visitor may be immediately required to leave the campus as an interim measure, contracts may be cancelled and/or other steps taken to remediate the situation.

ACCOMMODATIONS

Complainants and respondents may receive temporary academic and/or employment accommodations as requested and as appropriate in the circumstances. Long-term accommodations may be granted in accordance with human resources policies, collective agreements and student policies.

INTERIM MEASURES

In order to protect complainants and respondents in the immediate aftermath of a disclosure of sexual violence and/or misconduct, interim measures that increase the safety of the complainant, the respondent and the broader college community may be implemented, pending the conclusion of investigative processes. Such interim measures may include the following: no-contact between the parties, leave provisions, adjustment of class or work schedules, temporary ban and/or restricted access to all or some college facilities.

PRIVACY, CONFIDENTIALITY AND USE OF INFORMATION

Privacy of the complainant and the respondent will be maintained to the extent possible, except in situations where one or more person's safety is at risk or where the college is required by law to disclose information. In such cases the college will disclose confidential or personal information only on an as needed basis and in compliance with the BC Freedom of Information and Protection of Privacy Act.

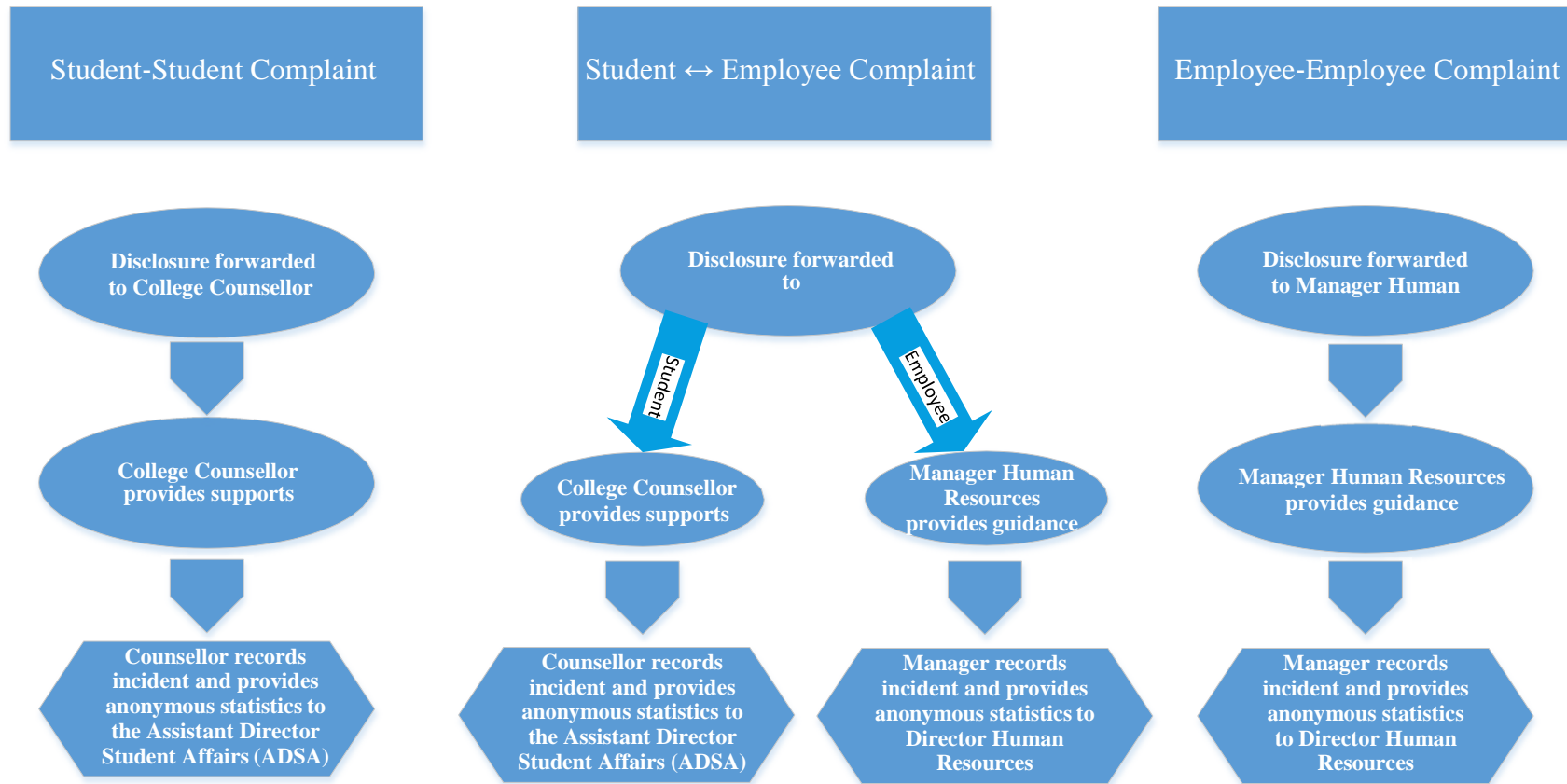
The legislation, Bill 23, requires that the president must report to the Board of Governors on the implementation of the college's Sexual Violence and Misconduct policy on an annual basis. This report may contain statistics of incidences, but will not disclose identities of any individuals.

MEDIA

Media contacts will be directed to the vice president responsible for media relations.

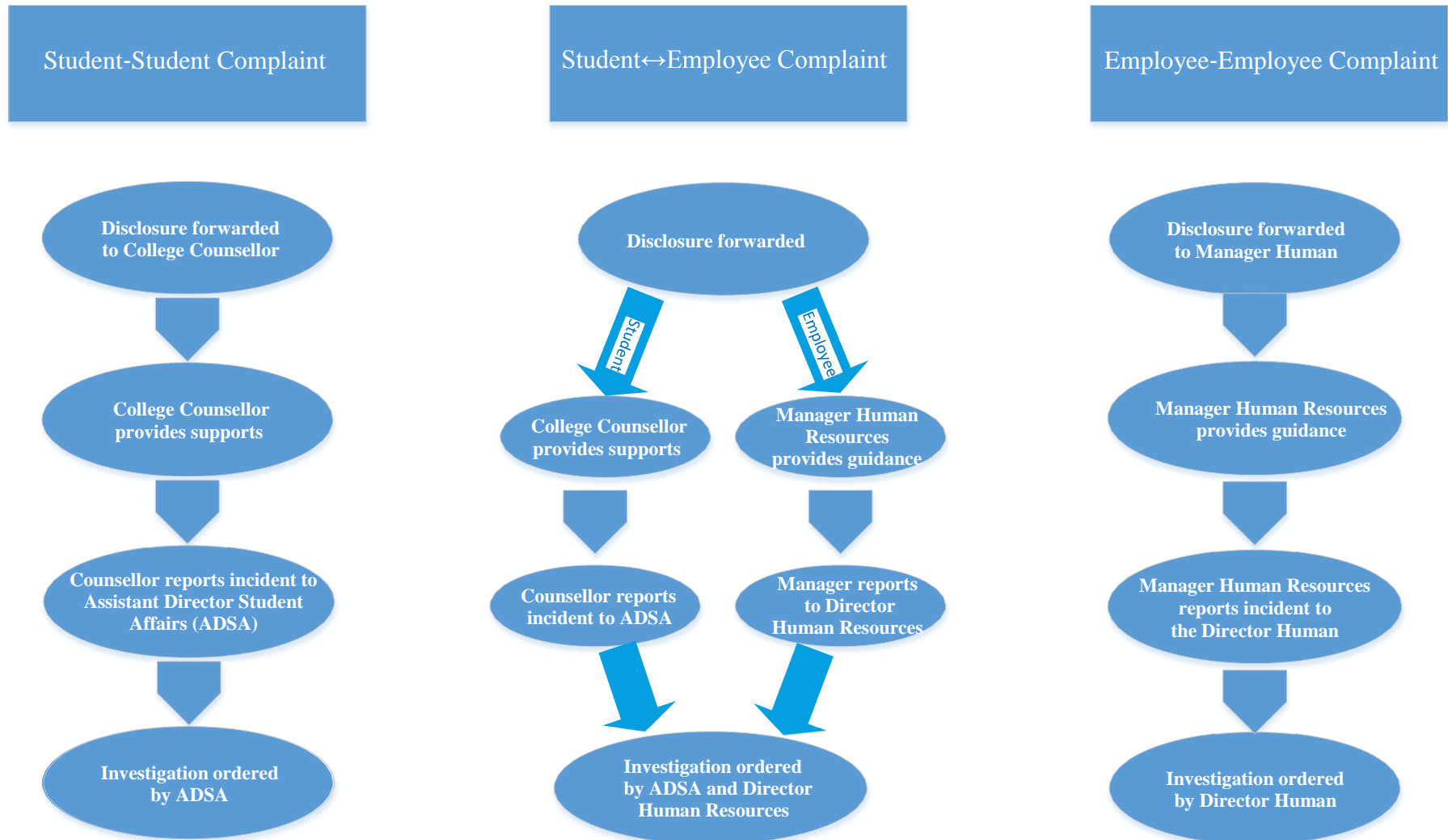
APPENDIX B

Figure 1. Sexual Violence and Misconduct Complaint Procedures; Non-Actionable Complaint



All incidences will be anonymously reported annually to the president who will share the statistics with the Board of Governors.

**Figure 2. Sexual Violence and Misconduct Complaint Procedures;
Actionable Complaint**



All incidences will be anonymously reported annually to the president who will share the statistics with the Board of Governors.

Investigations may be conducted by internal trained investigators or may be referred to external trained investigators, but will not be the same person who provides support.

APPENDIX C

Sexual Violence and Misconduct Investigation Procedures

1. Purpose

- 1.1 The purpose of this document is to outline guidelines for investigations conducted under NIC Policy #3-34 Sexual Violence and Misconduct and accompanies that document.
- 1.2 Investigations will determine whether or not sexual violence and misconduct occurred and produce findings.

2. Foundational Statements

- 2.1 The College is committed to supporting all those impacted by sexual violence and misconduct while instituting fair and unbiased investigation processes.
- 2.2 All college investigations will follow principles of fairness and natural justice¹ and will protect the rights of the complainant(s), respondent(s), and witness(es).
- 2.3 In keeping with its policy, the College will take a survivor-centred, trauma-informed approach to allegations of sexual violence and misconduct. It is committed to responding in a manner that promotes empowerment and recovery and that minimizes re-traumatization.
- 2.4 The College will support those impacted by sexual violence and misconduct, through academic, non-academic, and other supports as required.
- 2.5 Complainants will not be blamed for experiencing sexual violence and misconduct.

3. Scope

- 3.1 Investigations of sexual violence and misconduct may be conducted concurrently with investigations of other policy violations.
- 3.2 College investigations of sexual violence will be appropriate, consistent, fair, and transparent and will observe legislative, College policy and where appropriate, collective agreement provisions.
- 3.3 The College may not have jurisdiction to investigate an incident if parties involved are no longer affiliated with the College. Normally the College will not investigate more than six months after the incident unless there extenuating circumstances.
- 3.4 College investigations are separate from any external criminal or civil processes. The College is responsible for determining whether a college community member has violated the Sexual Violence and Misconduct policy, and is not responsible for determining

¹ These principles include the right to of the accused to know of the allegations against them, to have an opportunity to respond to the allegations, and to be judged by an independent and unbiased decision maker.

violations of criminal law or external civil proceedings.

- 3.5 The College may proceed with an investigation into sexual violence and misconduct while the incident is also being investigated by the police. The investigation process may occur simultaneously to, prior to, or following any criminal, employment, or other proceeding. The College may suspend its investigation pending the outcome of another process, or based on a participant's ability to participate.
- 3.6 When employees covered by a collective agreement are involved in an investigation, this policy and its associated procedures are designed to complement and not conflict with college collective agreements. Where a college collective agreement applies, such as in a disciplinary process, the processes in the collective agreement will be followed. Where applicable, the specifics of any collective agreement processes will be identified and explained.

4. Participants

- 4.1 The College recognizes that being involved in an investigation process can be difficult. The College is committed to treating all participants involved in a manner that is respectful, trauma-informed, and procedurally fair.
- 4.2 Complainants and respondents can expect:
- (a) be treated with compassion, dignity, and respect;
 - (b) a clear explanation of the investigation process;
 - (c) to regular updates on the status of the process;
 - (d) to be able to ask questions about the process;
 - (e) to timely information about referrals to available on- and off-campus support services and resources;
 - (f) to communicate their own experiences.
 - (g) to have their personal information kept confidential (except when there is a concern of imminent harm, and/or disclosure is required by law or College policy);
 - (h) to be informed that any information collected may be disclosed in criminal or civil proceedings;
 - (i) to present their side of the story on their own terms. However, complainants are encouraged to provide all relevant information and materials that will support their position.
 - (j) to respond to other participants' information;
 - (k) to be accompanied by a support person (see below for more information);
 - (l) to legal representation (at the participant's cost);
 - (m) to union representation when the respondent is a unionized employee;
 - (n) to decline to participate in aspects of the investigation. However, if the complainant decides not to participate, the College's ability to respond may be limited;
 - (o) to withdraw at any stage in the process. However, there are circumstances when the College will be compelled to proceed without the complainant's involvement, for reasons which may include but are not limited to those listed in Policy #3-34 Sexual Violence and Misconduct and where required by law to regular updates on the status

of the process;

(p) to written notice of any resolution that affects them; and

(q) to appeal or grieve the decision (within the appropriate timeframe) and to receive written notice of the outcome of any appeal.

4.3 Anonymous statements

In accordance with its policy, those impacted by sexual violence can make anonymous statements to the college. The College's response to an anonymous statement may be limited if that person is not prepared to participate in an investigation. The College may be unable to investigate an anonymous or third party statement due to a lack of information.

4.4 Complainant participation

Complainants may decide whether and how they would like to participate in a College investigation and/or with the police, or through a third party reporting agency. Complainants may choose whether or not to participate in these processes and may withdraw at any point, understanding that a decision not to participate may impact the investigation, interim measures, and final resolution. However, there may be circumstances in which the college is compelled to proceed without the complainant involvement for reasons which include, but are not limited to, those described in Policy 3-34 and where required by law.

4.5 Amnesty for complainants

The College recognizes that some of those impacted by sexual violence and misconduct may be reluctant to come forward or to be a complainant in an investigation. One of these factors may be a fear of being sanctioned for marginal behaviours, alcohol or other substance use. The College seeks to create an environment where participants feel comfortable disclosing and reporting incidents of sexual violence. Hence, the College will not subject any complainant who participates in sexual violence and misconduct investigations to disciplinary actions for marginal behaviours, alcohol or substance use occurring at or near the time of the incident(s).

4.6 Support person

Participants have the right to and are welcome to involve a support person of their choice at any point in the process. College employees covered under a collective agreement may also be supported by a union representative in investigation processes.

The following guides the participation of support people in an investigation:

(a) A support person's role is to provide emotional support. They may accompany the complainant, respondent, or witness to interviews, meetings, or other proceedings.

(b) A support person may not act instead of a complainant, respondent, or witness.

Information must come directly from the complainant, respondent, or witness (unless the investigator decides otherwise).

- (c) A support person must agree in writing to maintain confidentiality in accordance with these procedures.
- (d) To ensure equitable access to the investigation process, participants who require additional accommodation in order to fully participate in the investigation may bring a person to meet those specific needs.
- (e) If a participant intends to be represented by legal counsel, they must provide the investigator with a minimum of three college business days' notice in advance of any interview or meeting.

5. Interim Measures

- 5.1 When requested by the complainant for safety reasons or where the College receives information that requires it to act to protect College community members' health or safety, or College property, the College may impose interim measures before an investigation is concluded. Interim measures will be imposed in accordance with College policies and any applicable collective agreement.
- 5.2 Interim measures seek to protect the safety of all participants involved and to protect the integrity of the ongoing investigation or disciplinary process. The need for interim measures, and which measures are imposed, will be determined on a case by case basis, taking into account the circumstances of each situation.
- 5.3 Any decision to impose interim measures will not be construed as a decision or discipline against the complainant or respondent and will not be weighed against the respondent in a discipline process. Interim measures will remain in effect for as long as is reasonably required pending the outcome of an investigation. Participants affected by interim measures may request, in writing, a review of such measures.

6. Confidentiality and Privacy

- 6.1 Confidentiality is an important part of fostering an environment where participants feel safe participating in investigations of alleged sexual violence and seeking support. The College respects the privacy of all members of the College community. Personal information received by the College will be kept confidential subject to limitations outlined in this section and in legislation.
- 6.2 The information and records created and received as part of an investigation are subject to the access to information and protection of privacy provisions of British Columbia's [FIPPA legislation](#)², and [NIC Policy #1-01 Freedom of Information and Protection of Privacy](#). The information and records will be treated as highly confidential, in compliance with FIPPA, with applicable College policies and with the applicable collective agreement.
- 6.3 Participants should be aware that there are limits to confidentiality and anonymity cannot always be assured. The College may use or disclose personal information, including where:
 - (a) it is authorized by the affected participant;

² Legislation that regulates the collection, use, disclosure, storage and retention of personal information.

- (b) the College determines compelling circumstances exist that there is an imminent risk of harm to self or others;
 - (c) it is authorized or required by a law or College policy; for example, an incident involving a minor, occupational health and safety legislation, and human rights legislation;
 - (d) it is for the purpose of preparing or obtaining legal advice for the College;
 - (e) it complies with a warrant or an order issued by a court, person, or body in Canada with jurisdiction to compel the production of information;
 - (f) the College uses or discloses the information for the purpose for which the information was obtained or compiled, or a consistent purpose (for example, where it is necessary to fulfill the College's duty of procedural fairness or where necessary for the conduct of the investigation);
 - (g) a college employee needs the information to perform their employment duties;
 - (h) the information is disclosed to a law enforcement agency in Canada to assist in a specific investigation;
- 6.4 Should the College be compelled to disclose confidential information, those impacted by sexual violence will be informed to the extent permitted or compatible with the purpose of the demand for information, and can choose to be supported at every step.
- 6.5 The College may disclose information in order to ensure that investigation processes are fairly conducted, in accordance with the following principles:
- (a) the respondent has the right to know the identity of the person who made the report (unless the College is acting as the complainant) and the material details of the allegations being made, unless there is an imminent risk of harm);
 - (b) the complainant has the right to know the outcome of the investigation, but not the details of any disciplinary actions that may have been taken against the respondent unless disclosing that information is necessary for health or safety reasons or because it affects those impacted by sexual violence and misconduct; and
 - (c) Other persons normally do not have the right to know any confidential information except to the extent required to give effect to this policy or where it is necessary for health or safety reasons.
- 6.6 Witnesses must keep in confidence any information that they learn solely as a result of the reporting or investigation process.
7. Public Statements
- 7.1 Subject to privacy requirements (Section #6) participants and those impacted by sexual violence are free to tell the story of their own experiences.
- 7.2 College community members must not disclose information that they learn solely as a result of an investigation or reporting process because under BC privacy law, this is personal information that must be kept confidential.
- 7.3 Participants are advised that, should they choose to make public statements about the

investigation (including on social or other electronic media), they may compromise the investigation or be putting themselves at risk of civil lawsuits by those who believe they have been defamed or have had their privacy rights violated. Participants should exercise care and judgment when deciding to make public statements, and should seek legal or other advice if unsure.

- 7.4 The College is committed to honouring our legal and moral obligation to protect the privacy and confidentiality of our students, faculty and staff so it does not comment publicly on any matter that may involve the privacy rights of employees or students. Any public statements made by the College about an investigation including campus safety bulletins and statements to the media, will be trauma-informed, survivor-centred, and otherwise consistent with the principles of this policy, and will not disclose the personal information of those impacted by sexual violence and misconduct without their consent.. The College reserves the right to correct misleading or inaccurate public information.

8. Supports for those Impacted by Sexual Violence and Misconduct

- 8.1 The college is committed to supporting all members of the community who experience or are impacted by sexual violence.
- 8.2 The immediate and longer-term needs of every person impacted by sexual violence and misconduct are unique and hence the pathway through their support options will also be personalized.
- 8.3 Supports for students who experience sexual violence and misconduct may include:
- (a) accessing on-campus counselling support;
 - (b) adjusting a student's work schedule when the student is also an employee of the College;
 - (c) assistance with connecting to resources to understand the implications and options regarding student visas;
 - (d) assistance with making connections to other campus and community resources including faith-based and cultural specific supports; and/or
 - (e) support in engaging with college units and external institutions when a student's post-secondary funding arrangements such as grants, scholarships, bursaries, band funding, student loans by impacted.

Possible academics support options may include, but are not limited to:

- (a) adjusting a student's academic schedule, course, exam dates, academic supervisor, or instructor;
- (b) withdrawal from a course without penalty;
- (c) academic concession requests (e.g., deferring a final exam, assignment, or other course work; backdated course drops or withdrawals; alternative form of assessment; etc.);
- (d) applications for leaves of absence; and/or

(e) referral to other academic resources and available supports

9. Investigation Processes

9.1 Information Gathering

- (a) The investigator may interview witnesses at the investigator's discretion, including witnesses suggested by a complainant or respondent.
- (b) There is no general right to cross-examination. However, respondents will be given an appropriate opportunity to test the relevant information keeping in mind the nature of the allegations, any conflicts in the information, and the importance of ensuring the safety and security of the complainant and witnesses.
- (c) An investigation under these procedures is not an adversarial process and the investigator must ensure that it is conducted in a manner that is not aggressive or confrontational. The investigator may disallow any question that is not necessary to ensure a fair process.

9.2 Interim Summary of Information

Once the investigator has concluded the initial information collection stage of the investigation, and has considered all statements and documents provided, the investigator will create an interim summary of information collected. This will include:

- (a) summaries of interview statements from parties and witnesses;
- (b) other information gathered during the investigation; and
- (c) the status of the investigation.

9.3 The interim summary of information will be provided to the complainant and the respondent.

9.4 Witnesses will receive their own statements only.

9.5 Recipients of this information will be advised of the confidential nature of the documents.

9.6 Upon receiving the interim summary, complainant(s) may submit comments to the investigator regarding the interim summary of information. Complainant(s) may also provide comments that address the impact of the harm of the sexual violence.

9.7 Upon receiving the interim summary, the respondent may provide submissions to the investigator, or seek an opportunity to test the information contained in the interim summary.

9.8 If the either party does not respond within five (5) business days of receiving the interim summary then, unless the investigator decides that it is reasonable to extend this timeline, the investigator may proceed to complete the investigation without the party's response

9.9 The complainant(s) and the respondent(s) will receive a copy of the finalized summary of information collected.

10. Decision and Investigator's Findings

- 10.1 After concluding their investigation, the investigator will determine whether the Sexual Violence and Misconduct Policy has been violated.
- 10.2 The investigator will make their findings using the balance of probabilities standard of proof. This means that the information must show that it is more likely than not (51%) that the respondent violated the policy in order for the investigator to find that a respondent is responsible.
- 10.3 Where it is the opinion of the designated College authority that a respondent may also have engaged in behaviour that violates another College policy, the investigator or another investigator may be asked to reach findings under that policy.
- 10.4 In making a finding, it is expected that the investigator will review and consider all relevant facts and information including but not limited to the complainant's report and any response to it, written submissions or information provided by a party, and notes from a meeting with a party.
- 10.5 The investigator will prepare the investigation findings in a report, which will include:
 - (a) Introduction
 - (b) Allegations
 - (c) Methodology
 - (d) Facts in agreement/in dispute
 - (e) Position statement from respondent
 - (f) Findings
- 10.6 The investigator may conclude that:
 - (a) the information does not show, on a balance of probabilities, that the respondent violated the Policy; or
 - (b) based on the information assessed, a determination that the Policy was violated could not be reached.
- 10.7 The investigator may make findings under other College policies as identified by the designated College authority at the outset of the investigation.
- 10.8 If the investigation finds one or more policy violations, the administrative authority will determine sanctions.

11. Sanctions

- 11.1 The administrative authority may impose sanctions up to, but not including, temporary or permanent suspension/termination from the College. If the administrative authority determines that suspension/termination may be an appropriate sanction, the administrative authority will refer the matter to the President to decide sanctions. If the President

subsequently decides that a lesser sanction is appropriate, the President may refer the matter back to the administrative authority with direction.

- 11.2 No aspect of these procedures can limit the President's authority to deal summarily with any matter of student discipline, or to suspend a student, or any employee of the College.
- 11.3 The President or administrative authority who makes the sanctioning decision (the "decision maker") will consider all relevant factors including but not limited to the nature of the harm; the complainant's statement regarding the impact of the harm; and the interests of the College community. A respondent's willingness to participate and take responsibility for their actions may have a mitigating effect on the sanction imposed.
- 11.4 The complainant will be informed of any restrictions that the College imposes on the respondent if there is a health or safety issue. However, complainants do not have a general right to know whether the College has disciplined the respondent, or which sanctions are imposed except in cases where safety and well-being is concerned. Information about the respondent that is given to the complainant, will also be provided to the respondents.
- 11.5 Personal information will be released in accordance with privacy legislation.
- 11.6 A decision regarding discipline, including any applicable sanctions, will be provided to the respondent in full.