

COLLEGE POLICY

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| Policy No. & Title: | P-105 Sexual Harassment, Sexual Misconduct, & Sexual Violence Prevention |
| Policy Sponsor: | Head of People & Culture |
| Reference Cmtee: | Policy & Procedure Committee |
| Effective: | 2023-07-01 |
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Purpose

College members have a right to work and study in an environment that is free from any form of sexual harassment, misconduct, and/or violence. The College has **zero tolerance** for sexual harassment, sexual misconduct, and/or sexual violence in all its forms.

Sexual harassment, sexual misconduct, and/or sexual violence can occur between individuals regardless of sexual orientation, gender, and gender identity or relationship status as articulated in legislation. The College is committed to creating a safe and positive space where individuals feel able to work, learn and express themselves in an environment free from sexual and gender-based harassment and/or violence.

Against this background, this policy seeks to establish the expectations and response protocol guidelines for College members regarding sexual harassment, sexual misconduct, and/or sexual violence prevention and ensure those who experience sexual harassment, sexual misconduct, and/or sexual violence are taken seriously, and their rights are respected. The College will not tolerate sexual harassment (including sexual violence) as prohibited under applicable provincial health & safety legislation/regulation, human rights legislation, and College policy. Any College member that engages in objectionable conduct or violence is subject to discipline up to and including termination of employment, or expulsion.

Scope

This policy applies to all College students, employees (regardless of position and location of work), delivery partners, affiliates, volunteers, and contractors. This policy also applies to members of the public, and any other individual than College members that may come into contact within the workplace, on-campus, or off-campus.

This policy has been developed in accordance with the respective provincial health & safety legislation and any applicable regulations, and human rights legislation:

- New Brunswick: *Occupational Health and Safety, New Brunswick Regulation 91-191, New Brunswick Human Rights Act*
- Nova Scotia: *Occupational Health and Safety Act, and Violence in the Workplace Regulation, Nova Scotia Human Rights Act*
- Ontario: *Occupational Health & Safety Act (OHSA), Ontario Human Rights Code (Code)*

All legislated changes impacting this policy will be incorporated into the College's policy through updates on an ongoing basis. The policy will be reviewed annually in accordance with applicable legislation.

Provincial Definitions

The definitions in this Policy are applicable to all individuals as defined under the **Scope** section of this Policy. Refer to *P-103 Anti-Violence, Harassment & Discrimination Policy* for the definition of violence, harassment, and discrimination.

New Brunswick –

Sexual Harassment: The definition of harassment in the *New Brunswick Regulation 91-191* under the *Occupational Health and Safety Act* includes the prohibition of sexual harassment in the workplace.

“Harassment”, in a place of employment, means any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including bullying or any other conduct, comment or display made on either a one-time or repeated basis that threatens the health or safety of an employee, and includes sexual harassment, but does not include reasonable conduct of an employer in respect of the management and direction of employees at the place of employment.

Sexual harassment is also prohibited under Section 10, Subsections (1) and (2) of the *New Brunswick Human Rights Act*:

10. (1) “Sexually harass” means engage in vexatious comment or conduct of a sexual nature that is known or ought reasonably to be known to be unwelcome.

10. (2) No employer, representative of the employer or person employed by the employer shall sexually harass a person employed by the employer or a person seeking employment with the employer.

Nova Scotia –

Sexual Harassment: The definition of sexual harassment under Section 3 of the *Nova Scotia Human Rights Act* is as follows.

Section 3. (o) "sexual harassment" means,

- (i) vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome,

- (ii) a sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome, or
- (iii) a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance. 1991, c. 12, s. 1; 2007, c. 41, s. 1.

Ontario –

Sexual Harassment: The Ontario *Human Rights Code* prohibits sexual harassment in the workplace.

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

Sexual solicitation by a person in position to confer benefit, etc.

- (3) Every person has a right to be free from,
- a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
 - b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

Workplace Sexual Harassment: Under the OHS Act, workplace sexual harassment is defined as:

- a) Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b) 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.

Cross Provincial Definitions & Examples

Sexual Violence: Sexual violence can take many forms involving any sexual act or act targeting a person's sexual orientation, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against a person without the person's consent, and includes sexual harassment, stalking, indecent exposure, voyeurism, and sexual exploitation.

Examples of sexual violence that can be characterized as unwelcome sexual advances or misconduct, include but not limited to:

- Requests for sexual favors
- Verbal conduct of a sexual nature
- Physical conduct of a sexual nature
- Submission to sexual favours or conduct as being implied as a condition of an employee's employment or student's enrollment
- Implying that rejection of sexual advances will affect employment decisions regarding that individual
- Creating a sexually intimidating or offensive working environment
- Creating a sexually degrading, humiliating, or hostile work environment. (Generally, a single sexual joke, offensive epithet, or request for a date does not constitute a hostile environment of sexual harassment; however, being subjected to such jokes, epithets, or requests on more than one occasion may constitute a hostile environment of sexual harassment.)
- Behaviour that is hostile in nature, and/or intends to degrade an individual based on personal attributes, including age, race, nationality, disability, family status, religion, gender, sexual orientation, and/or any other Human Rights protected grounds.
- Sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.
- Reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.
- Unwelcome remarks, jokes, innuendoes, propositions, or taunting about a person's body, attire, sex, or sexual orientation and/or based on religion.
- Suggestive or offensive remarks.
- Bragging about sexual prowess.
- Offensive jokes or comments of a sexual nature about an individual.
- Unwelcome language related to gender.
- Displaying of pornographic or sexist pictures or materials.
- Leering (suggestive persistent staring);
- Physical contact such as touching, patting, or pinching, with an underlying sexual connotation.
- Sexual assault.

- Any actions that create a hostile, intimidating, or offensive environment. This may include physical, verbal, written, graphic, or electronic means.
- Any threats of physical violence that endangers the health and safety of the individual.

Consent: 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 or no. This means that there must be an understandable exchange or affirmative words, which indicates a willingness to participate in mutually agreed upon sexual activity.

The following is to be noted:

- Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgment cannot consent.
- A person is incapable of giving consent if they are asleep, unconscious, incapacitated or otherwise unable to communicate.
- A person who has been threatened or coerced (*e.g.*, is not agreeing voluntarily) into engaging in sexual activity is not consenting to it.
- A person who is drugged is unable to consent.
- A person may be unable to give consent when they are impaired by and/or under the influence of alcohol and/or drugs including medically prescribed cannabis or other prescription or over-the-counter medication that may cause impairment.
- A person may be unable to give consent if they have a mental disability preventing them from fully understanding the sexual acts.
- 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.
- A person can withdraw consent at any time during a sexual encounter.
- A person may be incapable of giving consent to a person in a position of trust, power, or authority.
 - Any sexual relationship between an employee and a student, where the employee teaches or has professional contact with the student as part of their employment responsibilities, is prohibited.
 - Any sexual relationship between an employee with supervising responsibilities and an employee who reports to them, directly or indirectly, must be reported to their manager (includes Campus Director/Remote Education Director/Remote Education Director) and People & Culture who will work with the parties to address any potential conflict of interest.
- Consent cannot be given on behalf of another person.

Survivor: Someone who has experienced sexual harassment, sexual misconduct, or sexual violence. The term is used throughout this policy where relevant to respect individuals who have experienced sexual harassment or sexual violence and 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.

Sexual Misconduct: means, in relation to faculty and employee actions towards students:

- a) physical sexual relations with the student, touching of a sexual nature of the student or behaviour or remarks of a sexual nature toward the student by an employee where,
 - i. the act constitutes an offence under the Criminal Code (Canada),
 - ii. the act infringes the right of the student under clause 7 (3) (a) of the Human Rights Code to be free from a sexual solicitation or advance, or
 - iii. the act constitutes sexual misconduct as defined in this policy and procedure, the College's Anti-Violence, Harassment & Discrimination policy, and procedure, or
- b) any conduct by an employee of the private career college that infringes the right of the student under clause 7 (3) (b) of the Human Rights Code to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

College members: All individuals included in the scope of this Policy. May include both students and employees.

POLICY

Principles

- The College has zero tolerance for sexual harassment, sexual misconduct, and/or sexual violence in all its forms.
- The College commits to:
 - Being knowledgeable of all related legislation.
 - Training College employees on this policy.
 - Taking all reasonable precautions to prevent sexual harassment and sexual violence.
 - Providing a safe space where employees and students feel able to work, learn and express themselves in an environment free from sexual harassment, sexual misconduct, and sexual violence.
 - Acting immediately if incidents of sexual harassment and/or sexual violence, are observed. Acting immediately to investigate all reported incidents of sexual harassment, sexual misconduct and/or sexual violence to the best of the College's ability in a prompt, confidential and impartial manner.
 - Assisting those who have experienced sexual harassment, sexual misconduct, or sexual violence by providing choices, including detailed information and support, such as the provision of and/or referral to counselling and medical care, and appropriate academic and other accommodation.
 - Ensuring that those who disclose they have been sexually harassed or experienced sexual violence, or sexual misconduct are taken seriously, and that their right to dignity and respect is protected throughout the process of disclosure, investigation, and institutional response.
 - Addressing harmful attitudes and behaviours that reinforce that the person who experienced sexual harassment, sexual misconduct, or sexual violence is somehow to blame for what happened.

- Treating individuals who disclose sexual harassment, sexual misconduct, or sexual violence with compassion, recognizing that they are the final decision makers about their own best interests.
- Ensuring that internal investigation procedures are available in the case of sexual harassment, sexual misconduct, or sexual violence, even when the individual chooses not to make a report to the police.
- Engaging in an appropriate investigation process that ensures objective and due process.
- Contributing to the creation of a college atmosphere in which sexual harassment, sexual misconduct, and sexual violence are not tolerated.
- Administering any disciplinary actions that are required or expulsion.
- Informing College members that they have the right to file a complaint directly with the Human Rights Tribunal of Ontario, the Ministry of Labour or report it directly to the local police authorities or take any other course of action.

Application

- 1) The College will include a copy of the Sexual Harassment, Sexual Misconduct, and Sexual Violence Prevention Policy in the Student & Employee Handbooks and will include a statement in every student enrollment contract made between the College and our students indicating where the student can find the policy for review; and the College will provide a copy of the Sexual Harassment, Sexual Misconduct and Sexual Violence Prevention Policy to all managers (including corporate directors, owners, partners, other persons who manage or direct the College's affairs, and their agents), instructors, employees, and contractors, and will train them about the policy and its processes of reporting, investigating, and responding to complaints of sexual harassment and/or sexual violence involving our students.
- 2) Any company participating in offering student internships on their premises must provide an undertaking in writing that it is in compliance with all applicable legislation, including the respective provincial Human Rights Code and the Occupational Health and Safety Acts and will provide students access to those policies should they encounter issues relating to sexual harassment and/or sexual violence in the workplace.
- 3) The Sexual Harassment, Sexual Misconduct, and Sexual Violence Prevention Policy will be published on our website and the internal student website.
- 4) Any College member must immediately report incidents of sexual harassment, sexual misconduct, and/or sexual violence upon becoming aware of them.
- 5) Any College member that has experienced sexual harassment, sexual misconduct, and/or sexual violence are encouraged to come forward to report as soon as they are able to. Incidents should be reported to a manager (includes Campus Director/Remote Education Director/Remote Education Director), and/or the Head of People & Culture.
- 6) If reported to a manager (includes Campus Director/Remote Education Director/Remote Education Director), all incidents will be escalated to the Head of People & Culture. Where required, an outside 3rd party will be appointed to fully investigate all complaints.

- 7) Where the College becomes aware, or should be reasonably aware, of incidents of sexual harassment, sexual misconduct, and/or sexual violence by a College member or against a College member on or off College property, the College will take all reasonable steps to ensure the safety of all College members.
- 8) If College members, in good faith, report an incident of, or make a complaint about, sexual harassment/violence or sexual misconduct, they will not be subject to discipline or sanctions for violations of the College's policies relating to drug or alcohol use not be subject to discipline or sanctions for violations of the College's policies relating to drug or alcohol use at the time the alleged sexual harassment/violence/misconduct occurred.
- 9) The College recognizes the right of the complainant not to report an incident of or make a complaint about sexual harassment, sexual misconduct, and/or sexual violence or not request an investigation and not to participate in any investigation that may occur.
- 10) College members who disclose their experience of sexual violence or sexual misconduct through reporting an incident of, making a complaint about, or accessing supports and services for sexual violence, will not be asked irrelevant questions during the investigation process by the College's employees or investigators, including irrelevant questions relating to the student's sexual expression or past sexual history.
- 11) Notwithstanding the above, the College may be required by law or its internal policies to initiate an internal investigation and/or inform police without the complainant's consent if it believes the safety of members of its campus or the broader community is at risk.
- 12) In all cases, including the above, the College will appropriately accommodate the needs of its members who are affected by sexual harassment, sexual misconduct and/or sexual violence. College members seeking accommodation should contact the local Campus Director/Remote Education Director/Remote Education Director or Head of People & Culture. In this regard, the College will assist individuals who have experienced sexual harassment, sexual misconduct, and/or sexual violence in obtaining counselling and medical care and provide them with information about sexual harassment, sexual misconduct, and/or sexual violence supports and services available in the community as set out in **Appendix A** of the Procedure. Individuals are not required to file a formal complaint to access support and services.

Framework

- 13) A complainant has the right to withdraw a complaint at any stage of the process. However, 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.
- 14) If it is determined by the College that the respondent did engage in sexual harassment, sexual misconduct, and/or sexual violence, immediate disciplinary or corrective action will be taken. This may include:
 - a) Disciplinary action up to and including termination of employment for just cause; or
 - b) Expulsion of a student; and/or
 - c) The placement of certain restrictions on the respondent's ability to access certain premises or facilities; and/or
 - d) Any other actions that may be appropriate in the circumstances.

- 15) Should the complainant or the respondent not agree with the decision resulting from the investigation, they may appeal the decision within seven (7) business days by submitting a letter addressed to the Head of People & Culture advising of the person's intent to appeal the decision.
- 16) If a person, in good faith, discloses or files a sexual harassment, sexual misconduct, and/or sexual violence complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed, and no record will be placed in the complainant's or respondent's file.
- 17) Disclosures or complaints that are found following investigation to be frivolous, vexatious, or bad faith complaints, that is, made to purposely annoy, embarrass, or harm the respondent, may result in sanctions and/or discipline against the complainant.
- 18) Any threat or retaliation against individuals who engage in the administration of this policy and its procedures, including any investigation, shall not be tolerated. Any violation shall be subject to disciplinary and/or corrective action, up to and including termination of employment or expulsion of a student.
- 19) The confidentiality of all persons involved in a report of sexual harassment and/or sexual violence must be strictly observed. Information provided by complainants is treated as confidential but may be shared as is reasonably necessary to investigate the complaint and/or as may be required by Policy and/or applicable law.
Confidentiality cannot be assured in the following circumstances:
 - a) An individual is at imminent risk of self-harm; and/or
 - b) An individual is at imminent risk of harming another; and/or
 - c) There are reasonable grounds to believe that others in the College or greater community may be at risk of harm.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.
- 20) The College will not enter into an agreement that prohibits the College or any person related to the College from disclosing that an allegation or complaint has been made that an employee of the College committed an act of sexual misconduct toward a student of the College. The College may enter into an agreement that contains a term described above if the student requests that the College do so, provided that:
 - a) the student has had a reasonable opportunity to receive independent legal advice,
 - b) there have been no undue attempts to influence the student with respect to the request,
 - c) the agreement includes an opportunity for the student to decide to waive their own confidentiality in the future and the process for doing so, and
 - d) the agreement is of a set and limited duration.
- 21) If an employee of the College commits an act of sexual misconduct toward a student and that employee is discharged by the College for that act or the employee resigns from their employment, the College shall not subsequently re-employ the employee.
- 22) The College shall collect and be prepared to provide upon request by the respective provincial Ministry/Department such data and information as required according to the respective Act(s), as amended.

Related Policies

P-103 Anti-Violence, Harassment & Discrimination

Supporting Documents/Forms

Ontario Occupational Health & Safety Act-Part III.0.1

Ontario Human Rights Code

*New Brunswick Regulation 91-191 under the Occupational Health & Safety Act, Part XXII.I
Violence and Harassment Codes of Practice*

New Brunswick Human Rights Act, 2011

*The Nova Scotia Violence in the Workplace Regulations under Section 82 of the Occupational
Health & Safety Act*

Nova Scotia Human Rights Act, 1989

*Amendment to O. Reg. 415/06 (General) under the Private Career Colleges Act, 2005 related to
sexual violence policies*

Strengthening Postsecondary Institutions and Students Act, 2022

P-105p Sexual Harassment, Sexual Misconduct, & Sexual Violence Prevention Procedure