



# PROCEDURES

**Motion No.**  
N/A

**Approval Date:**  
May 16, 2017

**Approving Authority:** President

**Responsible Senior Administrator:**  
Associate Vice-President People,  
Organizational Design and Risk

**Title: Sexual Violence and Misconduct – Response Procedures**

*These Response Procedures are enacted under the authority granted in UNBC’s Sexual Violence and Misconduct Policy (2017BP05.16.01). If you are reading these Response Procedures and are in need of support or need assistance, please go to [www.unbc.ca/sexual-violence](http://www.unbc.ca/sexual-violence) for a list of UNBC support contacts and local community resources.*

## 1. Disclaimer

An investigation under the Sexual Violence and Misconduct Policy and under these Procedures will neither replace nor impede a criminal investigation of Sexual Violence or Misconduct. All persons have the right to pursue legal avenues whether or not they choose to proceed under the Policy. All persons also have the right to forgo criminal and University reporting avenues in opting to choose confidential Disclosure to a counselor or other support person. Criminal processes and findings with respect to Sexual Violence and Misconduct do not limit or prohibit the ability of UNBC to act under the Policy and its associated processes as well as other Policies and Procedures of the non-academic disciplinary system.

## 2. Statement on Concurrent Process

The University may proceed with an investigation into a Report of Sexual Violence or Misconduct while the incident is also being investigated by the police. The investigation process under the Sexual Violence and Misconduct Policy may occur simultaneously to, prior to, or following any criminal, employment, or other proceeding. The University may suspend its investigation pending the outcome of another process, or based on a participant’s health or ability to participate.

### 3. Scope

*If an individual is unsure as to whether an incident is within the scope of the Policy, that individual is encouraged to contact any member of the [Response and Support Team](#).*

- a. The University may, at its discretion, accept Disclosures or Reports from individuals who are not Members of the University Community if the person who is alleged to have violated the Sexual Violence and Misconduct Policy (Respondent) is a Member of the University Community, or if the incident occurred on University property or in connection with a University activity.
- b. The University does not have jurisdiction to investigate allegations against a person who is not a Member of the University Community or who is not currently affiliated with the University. However, under certain circumstances, the University can revoke a visitor's access to University property.
- c. The Sexual Violence and Misconduct Policy and Response Procedures are separate from any criminal or civil proceedings. The University is responsible for determining whether a Member of the University Community has violated the Policy, and is not responsible for determining violations of criminal or civil law. University processes under the Policy or associated Response Procedures may be suspended when criminal proceedings are underway; the University will continue to provide support to Members of the University Community as described in the Policy and Response Procedures.

### 4. Disclosures and Reports

The University encourages, but does not require, a Survivor/person affected by Sexual Violence or Misconduct to seek immediate assistance. Seeking assistance promptly may be important to ensure physical safety, obtain medical care and/or emotional support, or to preserve evidence. Full information on accessing immediate assistance and external and internal resources is available at: [www.unbc.ca/sexual-violence](http://www.unbc.ca/sexual-violence).

### 5. Choice of Process

- a. A Survivor/person affected by Sexual Violence or Misconduct is entitled to choose the process that is best for them. Members of the [Response and Support Team](#) are available to assist a Survivor/person affected by Sexual Violence or Misconduct in understanding their options.
- b. A Survivor/person affected by Sexual Violence or Misconduct may choose to proceed with any, all, or none of the following:
  - i. Disclose their experience to a Member of the University Community.

- ii. Make a Report to the University.
- iii. Report to the University through a Third Party or Anonymously.
- iv. File a grievance under an applicable collective agreement.
- v. Make a Report to the police.
- vi. Make a human rights complaint with the BC Human Rights Tribunal and/or file a civil suit.

c. The University will make a mechanism available online to a Survivor/person affected by Sexual Violence or Misconduct to anonymously disclose their experiences to the University, so that the University has a record of what happened but not the identity of the person making the Disclosure. The University response to an anonymous Disclosure may be limited if the University cannot follow up with the person making the Disclosure.

d. The University recognizes that a Survivor/person affected by Sexual Violence or Misconduct may not be ready to disclose or Report immediately after an incident. There is no time limit to an individual disclosing or reporting their experiences and accessing support under the Policy. University support systems will be designed to be flexible and open to a diversity of experiences and needs. However, the University may not have jurisdiction to investigate an incident, or provide support under the Policy, if the persons involved are no longer affiliated with the University, or the lapse of time makes it impossible to investigate.

## **6. Disclosures**

a. Individuals may disclose for a variety of reasons, including the need to access support. Individuals who disclose will be taken seriously. A Disclosure is not a Report and will not initiate an investigation.

b. A Member of the University Community may be required to share information disclosed if any of the following circumstances apply:

- I. An individual is deemed to be at imminent risk of self-harm.
- II. An individual is deemed to be at imminent risk of harming others.
- III. If Disclosure is otherwise required by law.

Unless one of the exceptions listed above applies, Members of the University Community who receive a Disclosure must obtain the written consent of the person who disclosed to them before sharing any information about the person who disclosed. In the above instances, the minimum amount of information needed to meet legal or other obligations will be disclosed. Any Member of the University Community who is unsure about their responsibility to disclose should seek advice from the [Response and Support Team](#). Members of the University

Community who receive a Disclosure should ensure that the individual disclosing to them is aware of the Policy and Response Procedures in order to assist and support the needs of the Survivors/persons affected by Sexual Violence or Misconduct.

d. Members of the University Community who receive a Disclosure may contact a member of the [Response and Support Team](#), or the appropriate person in their unit, for advice and personal support.

## 7. Reports

a. Members of the University Community who wish to make a Sexual Violence or Misconduct Report should contact the [Response and Support Team](#). A Report may be made at any time.

b. Members of the [Response and Support Team](#) may make a Report on their own initiative when required to comply with the University's legal obligations listed under **Disclosures 6b**.

c. The University will promptly respond to Reports of Sexual Violence or Misconduct made under this or any other University Policy. All University investigations and adjudicative processes will follow principles of fairness and natural justice, and will protect the rights of the Complainant, the Respondent, and the witnesses involved. Investigators will apply the **balance of probabilities standard of proof** (i.e. whether the information shows that it is more likely than not that a violation of Policy has occurred).

d. Individuals have the right to involve a support person of their choice, a union representative, and/or legal counsel in any meetings or processes related to a Report of Sexual Violence or Misconduct.

e. If, after reviewing a Report of Sexual Violence or Misconduct, the University decides not to investigate, this should not be seen as a judgment against any person or a denial that the incident occurred. There are many reasons why the University may not investigate. In all cases, the University will support the Complainant even if the University does not investigate the Complainant's Report.

f. Complainants have the right to withdraw a Report at any stage in the process. However, there are circumstances when the University will be compelled to proceed without a Complainant's involvement, such as those listed in **Disclosures 6b**.

g. Complainants have the right to choose how they participate in the investigation, including the right not to participate; however, if the Complainant decides not to participate, the

University's investigation may be limited. Complainants may choose to be kept informed about the investigation whether or not they participate.

h. Formal University Reporting options include the following:

- I. Making a Report under the Sexual Violence and Misconduct Policy.
- II. Making an informal or formal complaint of Sexual Harassment under the Discrimination and Harassment Policies.
- III. For faculty and staff - reporting the incident to their supervisor.
- IV. For unionized faculty and staff - filing a grievance through their union.

i. The University recognizes that being involved in an investigation process can be difficult. The University is committed to treating all individuals involved in a manner that is respectful, Trauma-Informed, and procedurally fair.

j. All participants have the right to the following:

- i. To have the complaint process explained to them.
- ii. To ask questions about the process.
- iii. To receive information about available supports and accountability options.
- iv. To communicate their own experiences.

## **8. Anonymous/Third-Party Reports**

a. Information received anonymously or through a third party will be retained for the limited purposes of assessing whether the University should take action, and for compiling statistics. Personal information contained in anonymous or third-party reports that are not subject to an investigation will not be retained for longer than necessary to accomplish the above purposes.

b. Reports may be made anonymously or through third parties. Please note the following:

- I. Where sufficient information exists, the [Response and Support Team](#) may decide to proceed with an investigation. In such cases, the Survivors/persons affected by Sexual Violence or Misconduct have the right to not participate in the investigation. The University will act in a Survivor-centred manner. The University may be unable to investigate an anonymous or third-party report due to a lack of information from the Survivor/person affected by Sexual Violence or Misconduct.
- II. If the University does not investigate, a record of the anonymous or third-party report will be retained in the UNBC Human Resources Office under restricted access. Access will be restricted to the [Response and Support Team](#).

- III. The Response and Support Team will consider whether any other steps can and should be taken, which may include increased Campus Security presence at certain times or in certain places, or, in appropriate cases, contacting the third party who submitted a third-party report to find out if the Survivor/person affected by Sexual Violence or Misconduct would consider submitting a Report or participating in an investigation.
- IV. The procedure for submitting an anonymous or third party report is in the process of being determined.

## **9. Interim Measures**

- a. Where the University receives information that requires it to act to protect the health and safety of the Members of the University Community, or University property, the University may impose interim measures before an investigation is concluded.
- b. Interim measures seek to protect the safety of all parties 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 nature of the allegations and the circumstances of each situation.
- c. Any decision to impose interim measures will be made without prejudice to the rights of all parties, and will not be construed as being against the Complainant or Respondent. Interim measures will remain in effect for as long as is reasonably required pending the outcome of an investigation. Individuals affected by interim measures may request, in writing, a review of such measures.

## **10. Response and Support Team**

The University will form an on-campus [Response and Support Team](#) who will be trained to review risks, coordinate supports and services, conduct investigations, and consider recommendations for interim measures. The [Response and Support Team](#) will include appropriate individuals depending on the nature of the Report.

## **11. Confidentiality and Privacy**

- a. Confidentiality is an important part of fostering an environment in which individuals feel safe Disclosing or Reporting incidents of Sexual Violence and Misconduct. UNBC respects the privacy of all Members of the University Community, and will honour requests for confidentiality to the extent possible.
- b. The information and records created and received to administer the Policy are subject to the access to information and protection of privacy provisions of British Columbia's *Freedom of Information and Protection of Privacy Act* (FIPPA), and the University Protection of Privacy

Policy (GV0235). Information and records will be treated as highly confidential, in compliance with FIPPA, with applicable University policies, and with the relevant collective agreement if applicable.

c. University faculty and staff who receive a Disclosure or a Report of Sexual Violence or Misconduct, or who are involved in addressing or investigating a Report, must do the following:

- i. Make every reasonable effort to protect personal information and maintain confidentiality.
- ii. Collect the minimum information about individuals that relates directly to and is necessary to respond to a Disclosure or Report, which is considered to be supplied in confidence.
- iii. Use the information about individuals only for the purposes of, or those consistent with, addressing the situation, investigating, or taking disciplinary action.
- iv. Limit use of information about individuals to those within the University who need to know to perform their duties.
- v. Disclose personal information in all other circumstances only as permitted under FIPPA.

d. The University may use or disclose personal information, including when any of the following conditions exist:

- I. The use or disclosure is authorized in writing by the affected individual.
- II. The University determines compelling circumstances exist that affect the health and safety of any Member of the University Community as authorized by the University.
- III. A law or University Policy authorizes or requires its use or disclosure; for example, an incident involving a minor, occupational health and safety legislation, and human rights legislation.
- IV. The University prepares or obtains legal advice for the University.
- V. The University complies with a subpoena, warrant, or order issued by a court, person, or body in Canada with jurisdiction to compel the production of information.
- VI. The University uses or discloses the information for the purpose for which the information was obtained or compiled or for a use or disclosure consistent with that purpose (for example, where it is necessary to fulfill its duty of procedural fairness or where necessary for the conduct of the investigation).
- VII. A faculty or staff member needs the information to perform their employment duties.
- VIII. The Disclosure is to a law enforcement agency in Canada to assist in a specific investigation.

e. Should the University be compelled to disclose confidential information, the Survivor/person affected by Sexual Violence or Misconduct 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.

f. Should the University be compelled to disclose confidential information, Respondents may be informed to the extent permitted or compatible with the purpose of the demand for information, and can choose to be supported.

g. Information may be used among University faculty and staff only if they have demonstrated a need to know the information, to respond to a Report, to implement the Policy, or to take corrective action resulting from these processes.

h. The University may disclose information in order to ensure that reporting processes are fairly conducted, in accordance with the following principles:

- I. The Respondent has the right to know the identity of the person who made the Report, the identity of any witnesses, and the material details of the allegations being made.
- II. 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 the Survivor/person affected by Sexual Violence or Misconduct.
- III. Other persons normally do not have the right to know any confidential information except to the extent required to give effect to the Policy or where it is necessary for health or safety reasons.

i. Witnesses must keep in confidence any information that they learn solely as a result of the Reporting or investigation process.

j. Where interim measures impose restrictions on the Respondent's movement or activities, if for health or safety reasons, or where restrictions otherwise affect the Complainant or others (e.g. witnesses), the University will inform them of the relevant restrictions.

## **12. Public Statements**

a. A Survivor/person affected by Sexual Violence or Misconduct is free to tell the story of their own experiences.

b. Individuals are advised that should they choose to make public statements about the investigation (including on social or other electronic media), they may be putting themselves at risk of civil lawsuits by those who believe they have been defamed or have had their privacy



rights violated. Individuals should exercise care and judgment when deciding to make public statements, and should seek legal or other advice if unsure.

d. Any public statements made by the University about a Disclosure or Report, including campus safety bulletins and statements to the media, will be Trauma-Informed, Survivor-centred, and will not disclose the personal information of the Survivors/persons affected by Sexual Violence or Misconduct. The University reserves the right to correct misleading or inaccurate public information.

### **13. Annual Report**

The President will provide information to the Board of Governors each year on the implementation of the Policy.

### **14. Policy Review**

The University will continue to monitor best practices and research, and will review and update the Policy whenever it is reasonable to do so. The University is committed to reviewing the Policy at least once every three years and/or when directed to do so by the Minister of Advanced Education.

### **15. Relevant Legislation**

- a. Sexual Violence and Misconduct Policy Act, SBC 2016, c 23;
- b. Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165;
- c. Human Rights Code, RSBC 1996, c 210;
- d. Workers Compensation Act, RSBC 1996, c 492;
- e. Criminal Code of Canada.

*This Policy and these Procedures were developed in consultation with UNBC students and the broader UNBC Community, and through the work of the UNBC Steering Committee on Sexual Violence. UNBC acknowledges that the Procedures were developed by drawing, in part, on the work done by many members of British Columbia's post-secondary institutions, and more specifically, members of the Research Universities' Council of British Columbia.*