
Sexual Violence

Policy Number:	1308
Key Process Area:	Student Development
Owner:	VP AR
Current Approved Date:	July 6, 2020

POLICY STATEMENT

Sexual violence is unacceptable and will not be tolerated by New Brunswick Community College (NBCC). Everyone at NBCC should be able to work, teach and learn in an environment free from harassment, discrimination, and violence. The College recognizes that all persons have an inherent right to exercise full control over their own bodies, and to engage only in sexual activity in which they consent to engage.

NBCC is committed to fostering an environment free from sexual violence and misconduct and will respond promptly and effectively when incidents occur.

PURPOSE

The purpose of this policy is to address sexual violence in our community through education to promote awareness and prevent sexual violence; appropriate handling of incident reports and complaints; and ensuring support is given to student(s) involved in incidents of sexual violence.

SCOPE AND LIMITATIONS

This policy applies to all members of the College community including employees, governors, students, contractors, suppliers of services, volunteers, visitors, and individuals who are directly connected to any College initiatives.

This policy applies to actions, interactions and behaviours that take place:

- on College premises
- off College premises but involved in the business of the College or activities sanctioned by or representing the College (including but not limited to work integrated learning, academic or professional conferences, volunteer activities, academic or research field work)
- off College premises where such actions, interactions or behaviours have an impact on another member of the College community or have the potential to have an impact on the reputation of the College.

NBCC recognizes that students, and employees are entitled to decide whether they wish to access available resources on site and/or in the community concerning their own incidents of sexual violence, and whether or not to report the incident to police or College authorities.

1.0 DEFINITIONS

Coercion

- in the context of sexual violence, coercion is unreasonable and persistent pressure for sexual activity. Coercion is the use of emotional manipulation, blackmail, threats to family or friends, or the promise of rewards or special treatment to persuade someone to do something they do not wish to do, such as being sexual or performing particular sexual acts.

Complainant

- someone who has experienced sexual violence. The individual **may choose** to identify as a survivor although individuals might be more familiar with the term “victim”. NBCC uses the term complainant, as it is the prerogative of the person who has experienced these circumstances to determine how they wish to identify.

Complaint

- a formal report that is made to authorities either within NBCC and/or externally, such as with the police. Within NBCC, complaints will be sent to the campus Manager, Student Development who will work with others as necessary to ensure the complaint is dealt with properly.

Confidential Disclosure

- the provision of information by an individual who has experienced, or is witness to, an alleged sexual assault to a Career & Wellbeing Counsellor. NBCC recognizes that such communications originate in confidence, and that the complainant has an expectation that such communications will remain confidential. NBCC recognizes that the confidentiality is essential in order for complainants to come forward and discuss incidents of sexual assault. Such information will be held in strict confidence by these individuals except as directed by the complainant or within the limits of confidentiality.

Consent

- voluntary agreement to engage in the sexual activity in question (defined according to the *Criminal Code* of Canada and as such will change with changes in legislation and interpretation by the courts).

Confidentiality

- refraining from disclosing personal information to others. Every effort will be made to respect the wishes of persons experiencing sexual violence and to protect the privacy and anonymity of any person who discloses any incident of sexual violence. Prior to disclosure of any information reported relating to incident(s) of sexual violence, the expressed consent of the individual who made the report of sexual violence will be required, except certain circumstances. See limits to confidentiality in this policy.

Disclosure

- for the purposes of this document, a disclosure involves a student or employee choosing to tell anyone about their experience of sexual violence (different from complaint).

Respondent

- an individual against whom a written complaint of sexual violence has been made.

Sexual Abuse

- unwanted sexual activity, with perpetrators using force, making threats, or taking advantage of victims not able to give consent. Most victims and perpetrators know each other.

Sexual Assault

- any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim and involves a range of behaviours from any unwanted touching to penetration. Sexual assault is characterized by a broad range of behaviours that involve the use of force, threats, or control towards a person, which makes that person feel uncomfortable, distressed, frightened, threatened, or that is carried out in circumstances to which the person has not freely agreed, consented, or is incapable of consenting. Sexual assault is a criminal offence under the Criminal Code of Canada.

Sexual Harassment

- conduct of a sexual nature such as, but not limited to, verbal abuse or threats of a sexual nature, unwelcome sexual invitations or requests, demands for sexual favours, or repeated innuendos or taunting about a person's body, appearance, sexual orientation or gender identity. Behaviour conducted

in whole or in part through electronic means (such as e-mail, web postings, text messaging and other forms of electronic behaviour) shall be included in this definition.

Sexual Violence

- a broad term that describes any violence, physical or psychological, carried out through sexual means or by targeting sexuality. This violence takes different forms including but not limited to sexual assault, sexual harassment, sexual abuse, stalking, indecent or sexualized exposure, degrading sexual imagery, voyeurism, cyber-harassment, and sexual exploitation.

Student

- for the purposes of this policy, means an individual enrolled or registered in a course at NBCC at the time the incident of sexual violence is alleged to have occurred.

2.0 IMPLEMENTATION

The Sexual Violence policy is subject to all local, municipal, provincial and federal laws in addition to NBCC policies. Professional organizations and associations may have their own code of ethics, which students, and employee shall comply.

NBCC strongly discourages sexual relationships between individuals in positions of authority (such as employees, managers or supervisors), and students or employees whose performance they are responsible for grading, supervising or evaluating. NBCC urges timely disclosure of such relationships to their manager or Human Resources. See Policy 4129 Employee Code of Conduct.

2.1 CONSENT

No consent is obtained under, but not limited to, the following conditions:

- the complainant is incapable of consenting to the activity
- the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority
- the complainant expresses, by words or conduct, a lack of agreement to engage in the activity
- the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Criminal Code - R.S.C., 1985, c. C-46 (Section 153.1)

Currently, the age of consent for sexual activity in Canada is 16 years, except where the sexual activity exploits the young person, including relationships of authority and trust (e.g., teacher, coach) in which case the age is 18. The Department of Justice provides further explanation and interpretation at the following website. <http://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html>

It is imperative that everyone understands the following:

- Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgment cannot consent.
- Consent cannot be obtained if the respondent abuses a position of trust, power or authority.
- Consent cannot be assumed from previous consent to similar activities.
- A person is incapable of giving consent if they are asleep, unconscious or otherwise unable to communicate.

- A person who has been threatened or coerced (i.e. is not agreeing voluntarily) into engaging in the sexual activity is not consenting to it.
- A person who is drugged is unable to consent.
- A person is usually unable to give consent when they are under the influence of alcohol.
- A person may be unable to give consent if they have a mental disability.
- 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 the course of a sexual encounter.

It is the responsibility of the initiator of sexual activity to obtain clear and affirmative responses at all stages of sexual engagement.

2.2 DISCLOSURE/CONFIDENTIAL DISCLOSURE

Any person who has experienced a sexual assault is encouraged to seek help and support as soon as possible after the incident. NBCC recognizes that an individual who has experienced a sexual assault will often require time and reflection before making the decision as to whether or not they wish to make a Disclosure, Confidential Disclosure or Formal Complaint under this policy. Individuals who have experienced sexual assault are encouraged to come forward to disclose as soon as they are able to do so.

Members of the NBCC community are expected to inform the Manager, Student Development of any sexual assaults or allegations of sexual assault that are brought to their attention. Such information may be based on witnessing or having knowledge of a sexual assault or having reason to believe that sexual assault has occurred or may occur. If there is an immediate threat, they should contact Campus Security or call 911.

A person may choose to disclose an incident of sexual violence without making a report. Consequently, within the limits of confidentiality, disclosure does not result in a report being made, and does not initiate a process to address the sexual violence. The decisions to disclose and the decision to report are separate decisions, and NBCC will respect each person's decisions.

2.3 COLLEGE RESPONSE

Where NBCC becomes aware of an assault or allegation of sexual assault by a member of the NBCC community or against a member of the campus community, which occurs on or off NBCC property and that poses a risk to the safety of Members of the NBCC community, NBCC will take all reasonable steps to ensure the safety of the campus community.

NBCC may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with NBCC's legal obligation and/or its policies to investigate such allegations even if no Formal Complaint is filed. In doing so, NBCC will take steps to ensure that confidentiality is respected for both the complainant and the respondent except as indicated in the limitations to confidentiality.

Each Campus will compile an annual Statistical Report and other reports as requested by the Vice President, Employee & Student Development.

2.4 LIMITS OF CONFIDENTIALITY

The following circumstances may require the College to take immediate action in relation to a disclosure of Sexual Violence; including, but not limited to the College directly contacting law enforcement authorities:

- a student, or employee is at imminent risk of severe or life-threatening self-harm
- a student, or employee is at imminent risk of harming another person
- there are reasonable grounds to believe that others in the College community may be at significant risk of harm based on the information provided

2.5 FORMAL COMPLAINT PROCESS

2.5.1 Choice of Process

Individuals who disclose an experience of sexual assault are entitled to determine which process best meets their own situation and circumstance including, but not limited to, contacting the police, or filing a formal complaint under the College's policies or regulations. **Managers of Student Development will provide information to the complainant regarding the options available.**

2.5.2 Filing a Formal Internal Complaint

A disclosure or confidential disclosure is not a formal complaint and will not trigger an investigation. A formal complaint of sexual assault must be filed with the Manager, Student Development in order for an investigation to ensue. If disclosed by the local police, a formal criminal complaint may become a formal complaint. **The complainant may approach the Manager, Student Development for support and assistance in filing a formal complaint.** Alternatively, the College may file a formal complaint when required to comply with legal obligations and / or its policies or when presented with allegations that may put the College community at risk.

2.6 SITE SUPPORTS

2.6.1 Communicating with Individuals who have Experienced Sexual Violence

Sensitive and timely communication with individuals who have experienced sexual violence and their family members (when an individual consents to this communication) is a central part of the College's first response to sexual violence. To facilitate communication the College will:

- ensure that designated staff members are knowledgeable about sexual violence
- ensure designated staff members respond in a prompt, compassionate, and personalized fashion
- ensure that the victim is provided with reasonable updates about the status of the College's investigation of the incident when such investigations are undertaken

Note: Appendix A provides guidelines concerning how to respond when a student or employee discloses an incident of sexual violence to a member of the College community. The guideline helps with how to respond in a way that supports individual dignity and demonstrates compassion and respect.

2.6.2 Fairness

NBCC will seek to achieve fairness in dealing with all formal complaints. The College's primary emphasis is to protect the safety of the complainant and the rights of both the complainant and the respondent. Respondents will be given reasonable notice, provided with sufficient information to enable them to answer the formal complaint, and provided with an opportunity to answer to the allegations made against them prior to disciplinary action being taken. As such, no sanction and / or disciplinary action will be taken by the College against a person or group without their knowledge that there is an alleged breach of this policy. Individuals accused of sexual assault under this policy should seek appropriate advice and assistance. Students may consult with the Career & Wellbeing Counsellor. Staff may wish to consult with union representatives or Human Resources personnel. Anyone involved in actions under this policy may seek legal counsel at any time.

Where a disclosure, confidential disclosure or formal complaint is brought forward in which the individual named as the respondent is a person in a position identified in this policy as being responsible for implementation of part or all of this policy or its related procedures, the College shall take all reasonable steps to ensure that the matter is addressed by qualified, appropriately resourced independent third parties acceptable to the complainant.

2.6.3 Career & Wellbeing Counsellor(s)

Each site has a Career & Wellbeing Counsellor(s) that has been trained to receive such disclosures of sexual violence. Additional employees and community resources may have received training to receive such disclosures of sexual violence and can be consulted with to provide information and support, accessing and coordinating support services, information about reporting options and assistance with the reporting process if the person chooses to make a formal complaint. It is each sites responsibility to identify site supporters.

2.7 RIGHT TO WITHDRAW A COMPLAINT

A complainant has the right to withdraw a complaint at any stage of the process. However, the College may pursue the issue identified in the complaint in order to comply with its obligation under this policy. Additionally, professional organizations and associations may have their own code of ethics, with which students and staff shall comply. The College may also track complaints for statistical purposes in a de-identified manner.

2.8 UNSUBSTANTIATED OR VEXATIOUS COMPLAINTS

If a person, in good faith, discloses or files a sexual violence complaint that is not supported by evidence gathered internally or externally, or combination thereof, that complaint will be dismissed and no record of it will be placed in the respondent or complainant's file.

However, if following an investigation of a complaint, it is found to have been made to purposely embarrass or harm the respondent or made in bad faith, sanctions may be made against the complainant and / or discipline may be given. See policy 1112 Student Code of Conduct, policy 4129 Employee Code of Conduct, and policy 4202 Maintaining a Respectful Workplace.

3.0 OTHER RELATED DOCUMENTS

Student Code of Conduct (1112)
Student Issues and Complaints (1313)
Formal Complaint Form (1313.4625)
Student Assessment (1115)
Access to Accessibility Services (1305)
Maintaining a Respectful Workplace (4202)
Emergency Management Planning (2605)
Public Relations and Media Communications (3115)
Employee Code of Conduct (4129)

APPENDIX A Response to Disclosure

When a person discloses an incident of sexual violence or misconduct to a member of the College community, respond in a way that supports individual dignity, and demonstrates compassion and respect.

- Listen empathically and without judgement or interruption.
- Validate the individual's experience or reactions.
- Help the person identify safe individuals within their existing support system.
- Reassure the individual that they are not responsible for the actions of the other person.
- Review the current safety of the individual.
- Provide information about on-campus and off-campus resources, including counselling and medical support services.
- Inform the individual of their complaint or reporting options, including contact information for on- campus reporting of the incident(s).
- Encourage the individual to seek medical attention and counselling support, while respecting the individual's right to choose the services they believe will be of most benefit, including any decision to notify the police.
- Avoid giving personal advice.
- Do not conduct an investigation.
- Do not call the police unless you are specifically asked to do so.
- Ask the individual what you can do to be supportive.

If an individual receiving the disclosure feels unable to assist the student, ask the student if they would like you to escort them to the Counselling Department for assistance.