

## Sexual Misconduct Policy

International students are particularly vulnerable to sexual assault, both on and off-campus. They also are more likely to be targeted because they may have limited knowledge of Canadian criminal laws, less confidence in their English language skills, trouble identifying sexual violence and limited local support systems, especially at the start of the academic year.

Arbutus College (AC) will not tolerate any form of Sexual Misconduct.

AC is committed to the prevention of and appropriate response to sexual misconduct. We are committed to educating students, staff, and faculty about sexual misconduct and prevention and providing support through appropriate referral agencies.

### Assistance

AC encourages anyone impacted by Sexual Misconduct to seek assistance. An individual who has experienced Sexual Misconduct may contact law enforcement to explore criminal reporting options in addition to, or instead of, engaging AC processes. Local community-based victim services programs and RCMP are also available to help.

### Definitions

“*Sexual Misconduct*” refers to a wide range of unwanted acts – physical, verbal, or psychological – carried out through sexual means or by targeting sexuality, gender identity or gender expression that is attempted, threatened, or committed against an individual without their consent.

Sexual misconduct includes but is not limited to the following:

- **coercion:** persistent pressure for sexual activity. Coercion is the use of a position of power, emotional manipulation, peer pressure, blackmail, threats to family, friends or pets, or the promise of rewards or special treatment to persuade someone to do something they do not wish to do, such as engaging sexually or performing sexual acts. It may also involve pressuring someone to engage in sexual activity
- **cyber sexual harassment:** sexual harassment (defined below) conducted in whole or in part through electronic means, such as email, web postings, text messages and other forms of electronic communication, transmission, or publication.
- **cyber sexual violence:** knowingly publishing, distributing, transmitting, selling, making available or advertising an intimate image of a person knowing that the person depicted in the image did not give their consent to that dissemination or being reckless as to whether that person gave their consent to that dissemination. An intimate image includes, but is not limited to, a visual or audio recording made by any means, including a photographic, digital, or video recording, in which a person is nude, partially nude, and/or engaged in sexual activity or making sexual utterances.
- **indecent exposure:** deliberately exposing one's body causing another person to be alarmed, frightened or offended.

- **sexual assault:** any form of sexual touching or the threat of sexual touching without the individual's consent.
- **sexual exploitation:** sexual abuse of children and youth under 18 years of age through the exchange of sex or sexual acts for drugs, food, shelter, protection, other basics of life, and/or money. Sexual exploitation includes involving children and youth in creating pornography, capturing images and sexually explicit websites.
- **sexual harassment:** vexatious comments and/or conduct that is sexual in nature, offensive, intimidating, or humiliating, and is known or ought to be known to be unwelcome. Sexual harassment also includes a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance
- **sexual violence:** any unwanted sexual act that is forced, manipulated, or coerced. Sexual violence is characterized by a broad range of behaviours that may involve the use of force, threats or control towards a person that makes that person feel distressed, unsafe, frightened or threatened and is carried out in circumstances in which the person has not freely consented or is incapable of consenting.
- **stalking:** behaviours that occur on more than one occasion, which collectively instill fear in the person who has been victimized or threaten a person's safety or mental health. These behaviours include non-consensual communications (face to face, phone, email, social media); threatening harm to the person being stalked and/or to family, friends, or pets; vandalizing property; showing up uninvited to the person's home or workplace or place of study; surveillance; and, sending unsolicited gifts.
- **voyeurism:** Secretly observing, in person or by mechanical or electronic means, a person in a context in which they have a reasonable expectation of privacy.

## Jurisdiction

The Policy on Sexual Misconduct applies to all students regardless of gender identity, gender expression or sexual orientation.

The policy applies to sexual misconduct on campus, in or near the campus's building, at any campus-sponsored event and occurs in online environments, including all forms of digital, electronic, or social media.

## Confidentiality and Privacy

- AC will protect the confidentiality and privacy of the Complainant who lodges an informal or formal sexual assault and sexual harassment complaint.
- The College Director will be responsible for disclosing relevant information to key personnel to ensure the Complainant's safety, the safety of the AC community and provide adequate support to the Complainant.
- The College Director will also keep the Complainant informed of such disclosures, and the Complainant may object to the disclosure at any time.

- AC reiterates the rights of Complainants to pursue legal action or lodge a police report if they choose to do so.
- To safeguard the privacy and confidentiality of all parties involved in an investigation, AC will not impose or alter routines such as classes, study, and work arrangements unless requested and necessary.
- All information related to a Complaint or Report is confidential and will not be shared without the written consent of the parties, subject to the following exceptions:
  - If an individual is at imminent risk of severe or life-threatening self-harm
  - If an individual is at imminent risk of harming another
  - Based on the information provided, there are reasonable grounds to believe that others in the institutional community may be at significant risk of harm.
  - Where reporting is required by law
  - Where it is necessary to ensure procedural fairness in an investigation or other response to a Complaint or Report

## Procedure

### Step 1: Identifying signs of sexual assault and sexual harassment

- *Was the contact consensual?*
  1. For this procedure, 'contact' may be physical, verbal, written, or other contacts that cause apprehension, offence, humiliation, or intimidation.
  2. Where referred to above, "*consensual*" means involving consent relating to voluntary and explicitly stated agreement to engage in an activity or to continue to engage in an activity.  
For clarity:
    - consent cannot be implied
    - consenting to one kind of sexual activity does not mean that consent is given for another sexual activity
    - the consent applies only to each specific instance of sexual activity
    - it is the responsibility of the person initiating each sexual act to take positive steps to ensure consent before engaging in each sexual act
    - consent can be withdrawn by any participant at any point, regardless of prior consensual activity
    - there is no consent where a person is incapable of consenting; for example, if the person is not of legal age to consent or cannot consent, such as due to intoxication or impairment
    - there is no consent where a person abuses a position of trust, power, or authority over another person
    - there is no consent where a person uses coercion or threat of violence.
    - Intoxication of the person initiating sexual activity does not relieve the initiator of responsibility to ensure consent.

## Step 2: Reporting Procedures for Students

Under this procedure, an individual who has experienced Sexual Misconduct may choose to take two actions: make a Complaint and/or make a Report.

- “*Complaints*” are informal disclosures about incidents of sexual assault or sexual harassment from another person.
- “*Reports*” of sexual misconduct is a formal notification of an incident of sexual misconduct to someone at the institution accompanied by request for action.

### Complaint

All concerns relating to sexual misconduct by any member of AC shall be directed to the College Director or a Senior Educational Administrator (SEA) in his/her absence. In addition, concerns may be brought by staff, students, faculty, or the public.

An individual may make a Complaint (the Complainant) to the College Director or SEA without making a Report. Complaints can be made at any time. Complainants have the right to disclose as much information as they wish and pursue the matter to the extent they want. A person who makes a Complaint does not need to prove that the Sexual Misconduct occurred to access supports and/or receive Accommodations<sup>1</sup>. A Complaint does not initiate an investigation or other action by AC.

The Complainant will be provided with resolution options and, if appropriate, accommodation and will not be required or pressured to make a “Report.”

### Report

The making of a Report to AC is a request for action on AC that may include an investigation, safety measures, and/or disciplinary action involving the other party.

When a Complainant makes a Report, AC has a responsibility to investigate to the extent required to facilitate the AC community's safety and assess the need for disciplinary action.

AC has the authority to address a Report made against a Member of the AC Community and can act to the extent of its relationship to that member.

### Step One: Appointment of Investigator

The Investigation Manager will be the College Director or a SEA in his/her absence. If the Investigation Manager has a real or apparent conflict of interest in the investigation, or where there exists a reasonable

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<sup>1</sup> “*Accommodation*” means an academic or non-academic intervention. It may include, but is not limited to, a safety plan; “no contact” directives; workplace accommodations such as workload adjustments, job reassignment, and/or leave of absence; class scheduling or class re-assignment; other academic accommodations such as extensions on assignments, deferrals and/or relocation of exams, withdrawal of courses; and other appropriate and reasonable interventions

apprehension of bias, that individual will not continue to be involved in the investigation, and AC will appoint an appropriate individual to act in that role for that investigation.

### **Step Two: Conducting the Investigation**

An individual (Complainant, Respondent, witness) involved in an investigation may be accompanied by a support person whose role is to provide emotional support. A support person must agree in writing to maintain confidentiality in accordance with these Procedures.

If an individual intends to be represented by legal counsel, they are asked to advise the Investigation Manager as soon as possible.

Applying the principles of procedural fairness, the Investigation Manager will give the parties the opportunity to provide information relevant to the investigation. The Investigation Manager may interview witnesses at the Designated Investigator's discretion.

Should additional allegations be made during the investigation, such allegations are to be brought to the attention of the Investigation Manager to determine whether they should be included in the mandate for investigation. If these allegations become part of the investigation, they are to be presented in writing to the Respondent named in the new allegations.

Should the Complainant refuse to cooperate with the investigation, the investigator may either proceed with the investigation or recommend to the Investigation Manager that the complaint be dismissed. The Investigation Manager will decide to dismiss the complaint or may direct the investigator to continue the investigation.

### **Step Three: Exploring Options for Resolution**

The Investigation Manager may explore resolution through alternate dispute resolution. This process may occur before, during, or after an Investigation.

If the Investigation Manager believes that resolution at this stage may be appropriate, the Investigation Manager will identify suitable options for resolution. The Investigation Manager will then discuss with the Complainant. If the Complainant agrees that the options for resolution may be appropriate, the Investigation Manager will advise the Respondent of the resolution options. Suppose the Respondent agrees to participate in the proposed resolution process and the Investigation Manager continues to be satisfied that resolution at this stage is appropriate given the agreement of both parties. In that case, the Investigation Manager will facilitate the resolution process. Participation in the resolution process is entirely voluntary. The investigation will proceed if either the Complainant or the Respondent decides to withdraw from the resolution process. If the matter is resolved, the College Director will take appropriate steps to end the investigation and document the resolution for the file.

#### **Stage Four: Decision and Findings**

After the investigation, the Investigation Manager will decide whether the Sexual Misconduct Policy was violated concerning each allegation made. Findings will be based on a balance of probabilities, whether it is more likely than not that a policy violation occurred.

Within ten (10) working days of the deadline for the parties to respond to the preliminary summary of facts, the Investigation Manager will provide to the College Director a written report (“Investigative Report”) setting out:

- a) a description of the allegations;
- b) a description of the investigation process;
- c) a summary of the evidence considered;
- d) an analysis of the evidence, including assessment of credibility required to decide;
- e) the findings of fact and a determination as to whether, on a balance of probabilities, a violation of policy occurred responding to each allegation in the Report; and
- f) if the allegations are not founded, a statement as to whether the allegations may have been made vexatiously, maliciously, or in bad faith.

The Investigation Manager may also comment on any underlying factor(s) encountered during the investigation that may have contributed to the situation or negatively affected the learning and/or working environment.

If multiple people are named as Respondents, an individualized Investigative Report may be required for each Respondent when aspects of the allegations are specific to a certain Respondent.

#### **Stage Five: Closure of Investigation**

A copy of the Report shall be given to the person in question (the Respondent). The Respondent’s reaction may be provided in writing or verbally in a meeting with the Designated investigator. This response is to inform the Designated investigator’s determination about the next steps for the investigation.

If the Respondent is issued a warning or placed on probation, the College Director and the person involved shall sign the written warning or probationary conditions. A copy is given to the Respondent. The original document is placed in the appropriate college file.

If the recommendation is to dismiss the person in question, the College Director will meet with the person to dismiss him/her from AC.

An appeal of a discipline decision may be made as provided in the applicable Student Conduct Code policy, terms and conditions of employment or collective agreement. Where no such provision exists, there is no right to appeal.

#### **Third-Party or Anonymous Allegations**

A third party (someone other than the individual who experienced Sexual Misconduct) or an anonymous individual may submit an allegation of Sexual Misconduct. AC’s ability to address the statements made in

such circumstances will be dependent on whether the evidence required to make findings of fact is available. In many cases, only the person who has experienced Sexual Misconduct and the person accused of perpetrating the misconduct can provide this evidence. If the person who experienced Sexual Misconduct does not wish to participate in the investigation process, AC may be unable to act.

An anonymous Report conveyed to AC will be assessed to inform campus safety efforts and included in AC's data collection. While no investigation will be undertaken, the information will inform campus safety efforts.

## Related Documents

- Student Code of Conduct Policy
- Respectful and Fair Treatment of Students Policy
- Student Withdrawal
- Student Dismissal Policy
- Harassment and Assault Policy



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Authorized Signatory

August 17, 2021

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Date