

SEXUAL ASSAULT AND SEXUAL VIOLENCE POLICY - Fall 2019

PURPOSE AND INTENT OF THE POLICY

All members of the George Brown College community have a right to work and study in an environment that is free from any form of sexual violence.

This policy and protocol sets out the way in which we address sexual violence. It encourages action to prevent sexual violence, ensures that those affected by sexual violence are believed in seeking support from the College and are appropriately accommodated by the College and establishes a fair process for complaint resolution that protects the rights of individuals and holds individuals who have committed an act of sexual violence accountable.

APPLICATION AND SCOPE

This policy applies to all members of the George Brown College community engaged in college-related study, work, travel, social interaction or other contact subject to the limitations set out below.

DEFINITIONS

Consent	<p>Consent means the voluntary and explicit agreement to engage in the sexual conduct 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 and no. This means that there must be an understandable exchange of words or actions that indicate a willingness to participate in mutually agreed upon sexual activity.</p> <p>Furthermore:</p> <ul style="list-style-type: none">• Silence or non-communication will not be interpreted as consent under this policy.• Consent cannot be given on behalf of another person.• Consent given in the past to sexual activity does not mean that consent exists for future sexual activity.• A person who has been threatened or coerced into engaging in the sexual activity is not consenting to it.
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	<ul style="list-style-type: none"> • A person who is “incapacitated” due to the ingestion of drugs or alcohol or due to some other reason cannot give consent. • Consent cannot be obtained by a person in a position of trust, power or authority (e.g., a faculty member who teaches a student or a manager who supervises an employee). • A person can withdraw consent at any time during the course of a sexual encounter.
(To) Report	To share information about an incident of sexual violence with the College for the purpose of receiving support, counselling, or other services or to obtain information about how to make a complaint.
Complaint	Sharing information about an incident of sexual violence with the College to initiate a formal process by which one or more respondents can be held accountable.
Complainant	An individual affected by sexual violence who has filed a complaint.
Incapacity	<p>A person is incapable of consenting if they cannot understand the sexual nature of the activity or cannot understand that they may choose to decline to participate in the activity.</p> <p>Under this policy, a person who is significantly impaired (and not merely disinhibited) by alcohol or drugs is deemed to be incapable of consenting as is a person who is asleep, unconscious or otherwise unable to communicate.</p>
Respondent	An individual who is the subject of a complaint made under this policy.
Sexual assault	Any form of sexual contact without consent. Sexual assault includes unwanted kissing, fondling, touching, oral or anal sex, vaginal intercourse or other forms of penetration, or any unwanted act of a sexual nature.
Sexual harassment	Engaging in a course of vexatious comment or conduct against a person because of sex, sexual orientation, gender identity or gender

	<p>expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome.</p> <p>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 and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.</p>
Sexual violence	<p>Any sexual act or act targeting a person's sexuality, 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 assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation.</p>

POLICY

1. Prohibition

Sexual violence in all its forms is unacceptable and will not be tolerated at George Brown College.

2. Our commitments

The College is committed to:

- preventing sexual violence and fostering a community in which members are able to work, learn and express themselves free of sexual violence, including by engaging in public education about sexual violence and this policy and protocol
- supporting community members who have been affected by sexual violence by providing supports, services and options and by recognizing that such individuals are the final decision-makers about their own best interests
- appropriately accommodating the needs of community members who have been affected by sexual violence
- responding to (and investigating) reports and complaints of sexual violence appropriately and in accordance with the law

- addressing complaints of sexual violence fairly, expeditiously and in a manner that minimizes re-traumatization of individuals who have experienced sexual violence
- collecting data about sexual violence reports and complaints as required by law

Although all complaints will be processed fairly, the College acknowledges that student respondents have a “right to be heard” that requires a procedure with unique elements. This policy therefore establishes a different procedure for complaints involving student respondents.

3. Protection from reprisals and threats

No member of the College community shall retaliate or threaten to retaliate against a person for reporting an incident of sexual violence, for filing a complaint under this policy, for cooperating with or participating in a sexual violence investigation or adjudication or for otherwise pursuing their rights under this policy.

The College will take reasonable steps to protect complainants, witnesses and others from retaliation, including by directing individuals in writing to refrain from retaliation and threatening retaliation and sanctioning individuals for breach of this duty.

SUPPORTS, SERVICES AND ACCOMODATION

4. Contact for supports, services and accommodations

Individuals who are affected by sexual violence may contact the Sexual Violence Response Advisor to obtain supports, services and accommodation. The Sexual Violence Response Advisor will explain options, and facilitate contact with the police if requested. If there are safety concerns, the Sexual Violence Response Advisor will connect the complainant to the Public Safety and Security office, who will develop a safety plan.

Individuals affected by sexual violence are not required to complain to receive supports, services and accommodations from the College.

5. Information about supports and services

The appendices to this policy include more information about supports and services available to those who are affected by sexual violence:

- Appendix I – Key College Contacts
- Appendix II – Community Supports and Services

INCIDENT RESPONSE AND SEXUAL VIOLENCE REPORTS

6. Intervention by bystanders

All College employees and other representatives shall take reasonable action to prevent sexual violence from occurring, including by contacting the Sexual Violence Response Advisor or the Public Safety and Security office. Students and others are strongly encouraged to do the same.

7. Witnesses to report incidents

All College employees and other representatives who witness an incident of sexual violence shall report it to the Sexual Violence Response Advisor. Students and others are strongly encouraged to do the same.

8. Reports by affected individuals encouraged

Individuals who have been affected by sexual violence are encouraged to obtain information and support. The best person at the College to speak with is the Sexual Violence Response Advisor.

9. Employees should listen and refer

College employees and representatives to whom an individual reports an incident of sexual violence should listen, show support and should refer the individual to the Sexual Violence Response Advisor for support.

College employees and representatives should refrain from judging the individual and, unless trained in providing support to those who have experienced sexual violence, refrain from providing advice.

10. Employees must report

All employees and representatives who are not health care providers shall immediately convey any report of sexual violence to the Sexual Violence Response Advisor.

College health care providers shall convey any report of sexual violence to the Public Safety and Security department, the police or other persons as they deem

necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm.

Public Safety and Security shall share information about all reports with the Sexual Violence Response Advisor to obtain the Advisor's input on next steps and for record-keeping purposes.

11. College will assess and respond to all reports

Those thinking about making a report should understand that the College has a duty to assess and respond appropriately to every report given its duty to maintain a working and learning environment free of sexual violence. Given this duty, College employees and representatives (other than College health care providers) who receive reports cannot keep them completely confidential. Reports are communicated within the College under this policy, and may lead to an investigation and other interventions that the College initiates on its own.

The College is committed to confidentiality, but in this context, the College's commitment to confidentiality means disclosing information only to those who need to know and limiting the disclosure of information to what needs to be disclosed. It also means keeping information reasonably secure in light of its sensitivity.

SEXUAL VIOLENCE COMPLAINTS

12. Community members have a right to file a complaint

Any member of the College community may file a sexual violence complaint.

A complainant may withdraw a complaint at any time, though the College may continue to investigate as appropriate in light of its duty to maintain a working and learning environment free of sexual violence.

Complainants may report sexual violence to the police before or after filing a complaint with the College. In some situations, it may be necessary for the College to suspend its complaint process while the police or investigating or after charges are laid.

13. There are limitations to the College's power to deal with a complaint

The complaint resolution protocol in this policy applies to all incidents of sexual violence in which both the complainant and the respondent are members of the College community. It applies to incidents that occur off College premises if the incident has the potential to adversely affect an individual's study or work

performance at the College or create a negative study or work environment within the College.

If a respondent's relationship with the College ends and that person is no longer a member of the College community, the College may choose to suspend the processes under this policy. If the respondent becomes a member of the College community again, the College may reinstate the process after notifying the complainant and respondent.

14. College will resolve complaints fairly, though a trauma-informed process

The College will review and resolve all complaints by individuals who identify themselves and allege sexual violence. The College will ordinarily treat anonymous complaints as reports – *i.e.*, it will assess the information provided and take appropriate action in light of its duty to provide a work and learning environment free of sexual violence.

All complaints that allege sexual violence will be received and addressed under this policy and its complaint resolution protocol, which is meant to minimize the re-traumatization of individuals who have experienced sexual violence and to provide fairness to respondents.

The College may depart from its complaint resolution protocol as it deems appropriate, but will not make a misconduct finding without following a fair procedure. Respondents will always receive notice of the allegations and a meaningful opportunity to be heard.

All decision-making responsibilities under this policy may be delegated in a manner that is fair and appropriate.

15. Complainant participation in the investigation is optional

No person affected by sexual violence is required to participate in an investigation or the other aspects of the College's complaint resolution protocol. However, complainants should understand that the College may be unable to reach a misconduct finding without their input.

16. Information is shared to resolve complaints

Although the College treats the subject matter of complaints as confidential, those considering making a complaint should beware that:

- the College will disclose information to the respondent or respondents for the purpose of investigating and resolving a complaint; and

- the College may disclose information to others to meet its duty to provide a work and learning environment free of sexual violence (*e.g.*, to address a safety risk).

In this context, the College's commitment to confidentiality means disclosing information only to those who need to know and limiting the disclosure of information to what needs to be disclosed. It also means keeping information reasonably secure in light of its sensitivity.

17. The College may informally resolve complaints

The College may informally resolve a complaint at any time after receiving it. The College recognizes that complainants have a significant interest in the manner in which their complaints are resolved, but the College reserves the right to resolve a complaint without a complainant's agreement when resolution is agreeable to the respondent or respondents and appropriate in light of the purpose of this policy.

18. The College may impose protective measures before a finding is made

The rights and privileges of a respondent may be restricted by the College before it makes a finding about whether the alleged misconduct occurred. For example, a respondent may be moved from a complainant's residence, restricted from entering certain parts of campus and restricted from attending class.

Such "interim measures" will be imposed only as necessary to meet the needs of complainants. The College will also take steps to minimize the impact of interim measures on respondents.

Interim measures are not punishment and do not represent a finding of misconduct. The College may impose interim measures immediately, without a hearing. Respondents may ask the College to review a decision to impose interim measures, but only to address the impact of the imposed measure and the preference for other alternatives.

19. The College may punish sexual violence many different ways

A decision to affirm a complaint (in whole or in part) may result in a number of possible sanctions, including the imposition of education and training, corrective action such as relocation or change of duties or supervision, change of class or program, reprimand, suspension, termination or expulsion

20. Vexatious complaints are prohibited

No complaint shall be filed to purposely annoy, embarrass or harm a respondent. Individuals who file such complaints may be subject to discipline.

COMPLAINT RESOLUTION PROTOCOL

21. The College's process for resolving complaints involves five steps: (1) intake; (2) investigation; (3) post-investigation decision; (4) disciplinary proceedings (for student respondents only); and (5) appeals (for student respondents only).
22. Step 1 - Intake
 - (a) Sexual violence complaints are made by completing a form that sets out all allegations (with detailed facts) and by providing key documentation that supports the allegations.
 - (b) The Director, Anti-Racism, Equity & Human Rights Services (the "DAREHRS") will decide whether a complaint will be investigated, ordinarily within three days of receiving a complaint.
 - (c) Subject to applicable law, the DAREHRS may decide not to initiate an investigation (a) if the complaint does not name a respondent who is a current member of the College community or (b) the allegations, if proven to be true, would not constitute sexual violence.
23. Step 2 - Investigation
 - (a) After deciding to initiate an investigation, the DAREHRS will consult with the Academic or Division Head on the need for interim measures and decide what interim measures will be implemented.
 - (b) DAREHRS will then notify the complainant and respondent or respondents in writing of the investigation and any interim measures. The notice will include a summary of all the allegations made and will describe the interim measures to be implemented. The DAREHRS will attach all relevant documents provided to the College by the complainant. The notice will also advise complainants and respondents (a) of potential sources of support and (b) that any concerns about the appropriateness of the interim measures may be raised with the DAREHRS.
 - (c) The DAREHRS will then conduct an investigation or direct an internal or external investigator to conduct an investigation. An investigation will be

conducted by an individual capable of conducting an unbiased investigation who was not involved in the events in issue.

Internal and external investigators will ordinarily be directed to:

- start the investigation by obtaining a written response and all documents upon which the respondent relies
- interview the complainant, respondent and witnesses
- record all interviews in writing (*i.e.*, produce witness statements)
- gather additional relevant documents and physical evidence
- produce a confidential written investigation report

The investigator will conduct the investigation fairly, and will give the complainant and respondent an opportunity to comment on all disputed facts before producing a report.

Throughout the investigation, complainants and respondents may invite a support person (including a union representative) to meetings with the investigator, though the investigator may exclude a support person from all or part of an interview if the investigator believes the presence of the support person will affect the quality of the interview. For example, an investigator may believe that a student is unlikely to be forthright about sexual matters in the presence of a parent.

The time required to commence and complete an investigation may vary, but investigations should ordinarily start and finish within 30 days.

- (d) An investigator's role is to conduct an investigation that supports decision-making by another college official under Step 3. When the respondent is an employee, the investigator's confidential written investigation report will summarize the evidence, draw conclusions about credibility, and make findings of fact. When the respondent is a student, the investigator's confidential written investigation report will only summarize the evidence and draw conclusions about credibility.

24. Step 3 - Post-investigation decision

25. The decision-making process that follows an investigation depends on whether the respondent is an employee or a student.

- (a) When the respondent is an employee, the respondent's supervisor decides how the complaint should be resolved.
- Shortly after the investigation is complete, the respondent's supervisor will consider the results of the investigation (and not new allegations and evidence), following which the respondent's supervisor will decide whether to affirm or deny the complaint (in whole or in part) and, if the complaint is affirmed, decide upon the appropriate sanction.
 - Before affirming a complaint, the respondent's supervisor will have a discussion with the respondent. The discussion will address the results of the investigation and the possible outcome of the investigation (and not new allegations and evidence).
 - The respondent's supervisor shall consult with human resources with a view to reaching a consensus and may also consult with DAREHRS, other administrators with responsibility for the respondent and legal counsel.
 - Union representation will be offered in accordance with any applicable collective agreement.
 - When the respondent is an employee, the respondent's supervisor decides how the complaint should be resolved with support from human resources.
 - The decision of the respondent's supervisor will be conveyed in writing to the respondent.
 - The respondent may ask the College manager who directly supervises the respondent's supervisor to reconsider the decision. Any such requests shall be made by writing the manager within two calendar days of receiving the decision. The manager shall consider the written request and decide whether to affirm the decision or remit the matter back to the respondent's supervisor with feedback. Any decision to affirm the decision is final (subject to a right of review arising out of a collective agreement or otherwise). This provision shall not preclude the manager from consulting with the respondent's superior before or after a decision is made.

- Complainants will be advised of the results of the investigation and of any corrective action that has been taken or will be taken as a result of the investigation.
- (b) When the respondent is a student, the DAREHRS decides if the complaint will be dismissed or if there will be a hearing.
- Shortly after the investigation is complete, the DAREHRS will consider the results of the investigation and decide whether or not to initiate a hearing.
 - The DAREHRS may consult with and involve a complainant's supervisor (for employee complainants), the Academic or Division Head with responsibility for the respondent and other administrators with relevant responsibility or expertise.
 - The decision whether or not to initiate a hearing is made at the sole discretion of the DAREHRS after consideration of all the circumstances, including the strength of the available evidence and whether the matter can be appropriately resolved without pursuing a penalty. A decision to initiate or not initiate a hearing will be conveyed in writing to the complainant and respondent and is final.
 - The DAREHRS may make confidential legal advice in making this decision.
26. Step 4 – Disciplinary proceedings (for student respondents only)
- (a) Appointment of decision-maker
- The DAREHRS will advise the Vice-President, Student Success (the “VPSS”) of any decision to pursue a sanction and provide the VPSS with the summary of allegations, written response and all relevant documents gathered and produced in the course of the investigation. The DAREHRS will provide a copy of this communication the respondent.
- The VPSS will conduct a proceeding and act as decision-maker or delegate this duty to an unbiased member of the College community who has received appropriate training (the “Adjudicator”). The VPSS shall receive appropriate training for this role and may seek confidential legal advice.
- (b) Scheduling and notice of meeting

The Adjudicator will schedule a meeting at which the respondent will be heard.

The Adjudicator will give at least 14 days written notice of the meeting to the respondent. The notice will explain the purpose of the meeting, explain that the respondent may be accompanied by a support person or legal counsel and describe the potential consequences of a failure to attend.

(c) Parties to the proceeding, and the role of complainants and witnesses

The respondent is a party to the proceeding as is the DAREHRS. The DAREHRS's role is to present the case in favour of discipline.

The complainant is not a party to the proceeding, but will attend the meeting to answer questions about the allegations and prior collected evidence unless excused by the Adjudicator. The Adjudicator will invite the complainant to attend the meeting, explain that the complainant has the option of participating via video link or similar technology, explain that the complainant may be accompanied by a support person or legal counsel and describe the potential consequences of a failure to attend.

Witnesses other than the complainant and respondent will only attend the meeting if invited by the Adjudicator. If either the DAREHRS or the Respondent believes that one or more other witnesses should attend they will ask the Adjudicator to invite the witness to attend in writing (explaining why the witness's attendance is necessary) at least seven days before the meeting.

(d) Purpose and conduct of the meeting

The purpose of the meeting is to allow the Adjudicator to understand the witness statements, other evidence gathered by the investigator and any investigation report and to decide whether to affirm or deny the complaint (in whole or in part) and, if the complaint is affirmed, decide upon the appropriate sanction.

In deciding whether to affirm or deny the complaint the Adjudicator will apply the "balance of probabilities" standard of proof - *i.e.*, the Adjudicator will affirm allegations if they are more likely than not to be true.

The Adjudicator controls how the meeting will be conducted, but ordinarily follows the following procedure.

- The DAREHRS and the respondent will give short (10 minute) statements to set out their positions.
- The DAREHRS and the respondent will provide any questions to the Adjudicator that they would like the Adjudicator to ask the complainant, respondent and any other witnesses who have been invited to attend.
- The Adjudicator will question the complainant, respondent and any other witnesses who have been invited to attend. The Adjudicator will ask all submitted questions that are proper and that elicit relevant evidence that is not already recorded in a witness statement or attempt to elicit such evidence.
- The DAREHRS and the respondent will give short (20 minute) statements to comment on what was said in the meeting and set out their positions.

(e) Written decision

The Adjudicator will issue a written decision to the respondent and the DAREHRS within seven days of the meeting and will provide a summary of the decision to the complainant at the complainant's request.

27. Step 5 – Appeal (for student respondents only)

A respondent may file a written appeal to the President of the College within ten days of receiving an Adjudicator's decision. The President is not required to discuss the written appeal with the respondent before making a decision.

An appeal is not a re-hearing. The President will affirm the Adjudicator's decision unless (a) the procedure employed the Adjudicator was unfair and a re-hearing by a new Adjudicator is warranted or (b) the Adjudicator's decision is unreasonable in light of the evidence put before the Adjudicator.

The President shall receive appropriate training for this role and may seek confidential legal advice. The President's decision is final.

REVIEW

This policy is subject to Board of Governors approval and will be reviewed and amended once every three years after due consideration of student input.