A. Background and Definitions

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

**Sexual Assault:** A criminal offense under the Criminal Code of Canada. Sexual assault is any type of unwanted sexual act done by one person to another that violates the sexual integrity of the survivor 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 in which the person has not freely agreed or consented to, or to which the person is incapable of consenting.

**Sexual Violence:** 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.

**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 and no. This means that there must be an understandable exchange of affirmative words which indicate a willingness to participate in mutually agreed upon sexual activity. It is also imperative that everyone understands the following:

a) Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgement cannot consent

b) A person is incapable of giving consent if they are asleep, unconscious or otherwise unable to communicate

c) A person who has been threatened or coerced (e.g., is not agreeing voluntarily) into engaging in the sexual activity is not consenting to it

d) A person who is drugged is unable to consent
e) A person is usually unable to give consent when under the influence of alcohol and/or drugs

f) If a person has a mental disability that prevents them from fully understanding the sexual acts, they may be unable to give consent

g) 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

h) A person can withdraw consent at any time during the course of a sexual encounter

i) A person is incapable of giving consent to a person in a position of trust, power or authority, such as a faculty member initiating a relationship with a student who they teach or an administrator in a relationship with anyone who reports to that position; and

j) Consent cannot be given on behalf of another person.

It is the responsibility of the initiator of sexual activity to ensure clear and affirmative responses are communicated at all stages of sexual engagement. It is also the initiator’s responsibility to know if the person with whom they are sexually engaging is a minor.

Note: For information purposes only, the Criminal Code defines “consent” as follows: Consent is the voluntary agreement to engage in the sexual activity in question. No consent is obtained where:

a) The agreement is expressed by the words or conduct of a person other than the complainant

b) The complainant is incapable of consenting to the activity

c) The accused induces the complainant to engage in the activity by abusing a position of trust, power or authority

d) The complainant expresses by words or conduct, a lack of agreement to engage in the activity; or

e) 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.
Other Related Terms:

**Acquaintance sexual assault:** Sexual contact that is forced, manipulated, or coerced by a partner, friend, or acquaintance.

**Age of consent for sexual activity:** The age at which a person can legally consent to sexual activity. In Canada, children under 12 years of age can never legally consent to sexual acts. Sixteen (16) years is the legal age of consent for sexual acts. There are variations on the age of consents for adolescents who are close in age between the ages of 12 and 16 years. Twelve (12) and 13-year-olds can consent to have sex with other youth who are less than two (2) year older than themselves. Youth who are 14 and 15 years old may consent to sexual involvement that is mutual with a person who is less than five (5) years older. Youths 16 and 17 years old may legally consent to sexual acts with someone who is not in a position of trust or authority.

**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.

**Drug-facilitated sexual activity:** The use of alcohol and/or drugs (prescription or non-prescription) by a perpetrator to control, overpower or subdue a survivor for purposes of sexual assault.

**Indecent exposure:** The exposure of the private or intimate parts of the body in a lewd manner, when the perpetrator may be readily observed.

**Sexual Exploitation:** Occurs when a perpetrator takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.

**Sexual Harassment:** Engaging in a course of conduct of a gender-related or sexual nature that is known or might reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile, or inappropriate. Depending on its severity, one action may constitute sexual
harassment. This may include, but is not limited to: demeaning gestures, remarks and jokes; slurs, taunting, innuendo based on gender or sexual orientation; unwanted physical contact; leering; inappropriate comments about clothing, physical characteristics or activities; unwanted questions or comments about one's private life, sexual orientation, marital or family status; the display of sexually offensive material; solicitation; unwanted attention; implied or expressed promise of reward or benefit in return for sexual favours; implied or expressed threat or act of reprisal if sexual favours are not given; or sexual assault (Criminal Code offense).

**Stalking:** A form of criminal harassment prohibited by the Criminal Code of Canada. It involves behaviours that occur on more than one occasion, and which collectively instill fear in the survivor or threaten the survivor/target’s safety or mental health. Stalking can also include threats of harm to the target’s friends and/or family. These behaviours include, but are not limited to non-consensual communications (face-to-face, phone, email, social media); threatening or obscene gestures; surveillance; sending unsolicited gifts; “creeping” via social media/cyber-stalking; and uttering threats.

**Survivor:** Some who have experienced sexual violence may choose to identify as a survivor. Individuals might be more familiar with the term “victim”. We use the term “survivor” throughout this procedure where relevant, because some who have experienced sexual assault 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.

**Voyeurism:** Observing a person, including by mechanical or electronic means, or making a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy.

**B. Purpose**

All members of the College community have a right to work and study in an environment that is free from any form of sexual violence. This procedure sets out the way in which Niagara College addresses sexual violence and ensures that those affected by sexual violence are believed and
appropriately accommodated and ensures that the College has a process of investigation that protects the rights of individuals and holds accountable, individuals who have committed an act of sexual violence.

C. Procedure Statements

1. If You Have Been Sexually Assaulted:

   a) After an assault has occurred, go to a safe place. This might be the home or room of a friend or family member, residence staff, or any place where you can find physical safety and receive emotional support.

   b) If you feel unsafe, wish to report the assault, or want to discuss any aspect of your experience, individuals residing in the Niagara Region are strongly encouraged to immediately contact the Niagara Sexual Assault Centre using their 24-hour crisis line at 905-682-4584.

   c) If you have any immediate security/safety needs or believe there is an ongoing threat to others in our community, you are encouraged to immediately contact 911, and Campus Security Services for assistance at 905-735-2211 ext 6999.

   d) The Anonymous Third Party Report program is managed by the Investigative Analysis Unit of the Niagara Regional Police Service in partnership with the Sexual Assault/Domestic Violence Treatment Program – Niagara and the Niagara Sexual Assault Centre. This program gives survivors of sexual assault the opportunity to anonymously provide police with information relating to a sexual assault and receive counselling and support following a sexual assault. This option also gives the survivor the choice to decide whether or not they may want to be contacted at a later date, for example, in the event of a trial or investigation. If you would like to make an anonymous third-party report, you can contact the Niagara Sexual Assault Centre at 905-682-4584.

   e) A number of other community-based resources are available to you on a 24/7 basis, including:

      i. Niagara Sexual Assault Centre: 905-682-4584
      ii. Good2Talk: 1-866-925-5454
      iii. Distress Centre of Niagara: 905-688-3711
iv. Sexual Assault/Domestic Violence Treatment Program-Niagara: 905-378-4647

2. **How to Seek Support and Accommodation:** If you have experienced or have been affected by sexual violence and require support and accommodation, please email the Sexual Violence Prevention and Response Coordinator at svsupport@niagaracollege.ca or call 905-735-2211 ext. 4360. You do not need to file a formal complaint to obtain supports, services and accommodation from the College.

3. **Anyone who has experienced sexual violence has the right to:**
   a) Be treated with dignity and respect
   b) Be believed
   c) Be informed about on and off-campus services and resources
   d) Decide whether or not to access available services and to choose those services they feel will be most beneficial
   e) Decide whether to report to campus security and/or local police
   f) Have an on-campus investigation with the institution’s full cooperation
   g) Have a safety plan; and
   h) Have reasonable and necessary actions taken to prevent further unwanted contact with the respondent(s).

4. **If You Would Like to File a Formal Complaint:**
   a) The choice to report or not report the incident is entirely yours. We recognize that it is often difficult to disclose and report incidents of sexual violence, however we strongly encourage you to do so.
   b) If the respondent is another member of the College community, you may file a complaint under the Workplace Violence Prevention this procedure and its associated policy.
   c) If the incident involves a student, the Student Rights & Responsibilities Office can help.
   d) Individuals who have experienced sexual violence may also wish to press charges under the Criminal Code. The Student Rights & Responsibilities Office can also assist you with contacting the local Police.
5. **What to do if You Witness Sexual Violence:**

   a) If an act of sexual violence is occurring, first call 911 and notify Campus Security at 905-735-2211 ext. 6999.

   b) If you have witnessed sexual violence, please email the Sexual Violence Prevention & Response Coordinator at svsupport@niagaracollege.ca or call 905-735-2211 ext. 4360. The Sexual Violence Prevention & Response Coordinator will assist by providing resources and necessary support.

   c) Students are strongly encouraged to report incidents of sexual violence, but do not need to report incidents of sexual violence to obtain supports, services or accommodations.

   d) Off-campus reporting resources are also available to you 24/7, including:
      i. Niagara Regional Police Service at 905-688-4111
      ii. Crime Stoppers at 1-800-222-8477

6. **What to do if Someone Discloses Allegations of Sexual Violence:**

   a) A person may choose to confide in someone about an act of sexual violence, such as a student, instructor, teaching assistant, coach, or staff from housing, health, counselling, or security. An individual who has experienced sexual violence may also disclose to staff or faculty members when seeking support and/or academic accommodation. A supportive response involves:
      i. Listening without judgement and accepting the disclosure as true
      ii. Communicating that sexual violence is never the responsibility of the survivor
      iii. Helping the individual identify and/or access available on- or off-campus services, including emergency medical care and counselling
      iv. Respecting the individual’s right to choose the services they feel are most appropriate and to decide whether to report to the Police and/or the Student Rights & Responsibilities Office
      v. Recognizing that disclosing can be traumatic and an individual’s ability to recall the events may be limited
      vi. Respecting the individual’s choices as to what and how much is disclosed about the experience; and
vii. Making every effort to respect confidentiality and anonymity.

b) If disclosure is made to faculty or staff by a student seeking support or academic accommodation, the faculty or staff should refer the student to the Sexual Violence Prevention & Response Coordinator by e-mailing svsupport@niagaracollege.ca and/or calling 905-735-2211 ext. 4360.

c) If a member of Niagara College staff becomes aware of an allegation of sexual violence against another member of the College community, staff is required to immediately report the alleged incident to the Director, Human Resources (if survivor or respondent is staff or visitor), or the Director, Student Services (if survivor or respondent is a student).

7. Communicating with Individuals who have Experienced Sexual Violence:
   Sensitivity 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:

   a) Ensure that designated employees in the Student Services Division, Human Resources Division, Security Services, Residence Life Department, and Student Administrative Council who are knowledgeable about sexual violence, are responsible for advocacy on campus on behalf of employees, students and any other member of the College community who have experienced sexual violence

   b) Ensure designated employees respond in a prompt, compassionate, and personalized fashion; and

   c) Ensure that the person who has experienced sexual violence and the respondent are provided with reasonable updates about the status of the College’s investigation of the incident when such investigations are undertaken.

8. Roles and Responsibilities of the College Community:
   While everyone on campus has a role to play in responding to incidents of sexual violence, some campus members will have specific responsibilities which might include:
a) On-campus health supports to provide psychological and emotional support, assist with safety planning and make referrals to other services, including medical services
b) Faculty, staff and administrators to facilitate academic accommodations and other academic needs of those who have been affected by sexual violence or who have experienced sexual violence, e.g., extensions on assignments
c) Residence staff to facilitate safe living arrangements where applicable
d) Student operated sexual violence services to provide peer supports
e) Human Resources to assist with any incidents relating to employees; and
f) Security Services to assist with investigations and gathering evidence, to implement measures to reduce sexual violence on campus, and to collaborate with local police where appropriate.

9. **How Will the College Respond to a Report of Sexual Violence?**

Where a complaint of sexual violence has been reported to the College, the College will exercise care to protect and respect the rights of both the complainant and respondent. The College understands that individuals who have experienced sexual violence may wish to control whether and how their experience will be dealt with by the police and/or the College. In most circumstances, the person will retain this control. A person who has experienced sexual violence may choose not to request an investigation and has the right not to participate in any investigation that may occur.

In certain circumstances however, the College may be required to initiate an internal investigation and/or inform the police of the need for a criminal investigation, even without the person’s consent, if the College believes that the safety of other members of the College community is at risk. The confidentiality and anonymity of the person(s) affected will be prioritized in these circumstances.

A report of sexual violence may also be referred to the police at the complainant’s request, where the persons involved are not members of the College community or otherwise when appropriate. In some matters for example, the College may have limited access to witnesses and other evidence. The College will provide complainants with information about their choices to support informed decision-making.
The College adheres to the following in investigating and making decisions about formal complaints. If an entitlement set out below conflicts with something set out in another College policy, the entitlement set out below shall prevail:

Where the respondent is a student, the Student Rights and Responsibilities Office (SRRO) is responsible for addressing the need for interim measures, for deciding whether sexual violence or another form of misconduct has occurred and for determining the appropriate penalty and other remedial measures. Though the investigation is ordinarily conducted by the Student Rights and Responsibilities Office, the College may decide to use an external investigator when it deems it to be appropriate. It may, for example, retain an external investigator if necessary to complete an investigation in a timely manner or to avoid an apparent conflict of interest. The Director, Student Services will consult with the Director, Human Resources where the complainant is an employee. Student respondents may file an appeal under the Student Code of Conduct Appeals Procedure.

10. **Multiple Proceedings:**
Where criminal and/or civil proceedings are commenced in respect to allegations of sexual violence, the College may conduct its own independent investigation into such allegations and make its own determination subject to considerations about fairness that arise resulting from parallel proceedings. Where there is an ongoing criminal investigation, the College will cooperate with the local police.

11. **Procedural Fairness:**
Except as otherwise stated in this procedure, the College provides those whose rights, privileges or interests may be affected by a decision with notice of the decision to be made, disclosure of facts relevant to the decision and an opportunity to be heard. The College may decide how it meets these obligations in different circumstances and will do so with a view to providing a fair process and making a sound decision. The College has the right to withhold disclosure early on in its process to obtain a person’s independent recollection of events.
12. Support and Recognition:
Complainants and respondents may attend meetings with a single (non-participating) support person. The College considers requests to attend meetings with additional support persons and with legal or other representation on a case-by-case basis, with a view to promoting a fair and expeditious process. The College may still question and expect direct answers from an individual who is represented.

13. Interim Measures:
The rights and privileges of a respondent may be restricted by the College before it makes a final determination about the alleged misconduct. 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 on student respondents only as necessary to meet the needs of complainants and person who report incidents of sexual violence or otherwise under the College’s Student Code of Conduct Policy and Procedure. 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.

14. Outcomes:
The College will determine, on a balance of probabilities, what happened and whether it constitutes sexual violence or another form of misconduct. If the College finds there has been misconduct, it will determine the appropriate penalty. Students may face discipline, up to and including expulsion. Employees may face discipline, up to and including discharge. Contractors, suppliers, volunteers and/or visitors may face penalties, cancellation of contracts and other sanctions.
15. **Written Decision:**

The College will inform the complainant and respondent of the results of its investigation in writing. The written decision summary will include a brief description of any corrective action that the College has taken or will take as a result of its investigation.

**D. Related Documents**

Procedure: NC800 Student Code of Conduct Appeal

Sexual Violence Myths & Misconceptions

Sexual Violence Supports and Services

**E. Document History**

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