A. Background and Definitions

This policy 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:

- Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgement cannot consent
- 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 (e.g., is not agreeing voluntarily) into engaging in the sexual activity is not consenting to it
- 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 policy 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 who 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 document 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. Policy Statements

1. Sexual assault and sexual violence are unacceptable and will not be tolerated. Niagara College is committed to challenging and preventing sexual violence and creating a safe place for anyone in our College community who has been affected by sexual violence. The College is expected to be a safe and positive space where members of the College community feel able to work, learn and express themselves in an environment free from sexual violence.

2. All reported incidents of sexual violence will be investigated to the best of administration’s ability and in a manner that ensures due process. It is the intention of this policy to make individuals feel comfortable about making a report in good faith about sexual violence that they have experienced or witnessed.

3. Niagara College recognizes that sexual violence can occur between individuals regardless of sexual orientation, gender, and gender identity or relationship status as articulated in the Ontario Human Rights Code. Niagara College also recognizes that individuals who have experienced sexual violence may experience emotional, academic, or other difficulties.

4. Niagara College is committed to:
   a) Assisting those who have been affected by sexual violence by providing choices, including detailed information and support, such as provision of and/or referral to counselling and medical care, information regarding legal options, and appropriate academic and other accommodations
   b) Ensuring that those who disclose that they have been sexually assaulted are believed, and that their right to dignity and respect is protected throughout the process of disclosure, investigation, and institutional response
c) Addressing harmful attitudes and behaviours (e.g., adhering to myths of sexual violence) that reinforce that the person who experienced sexual violence is somehow to blame for what happened

d) Treating individuals who disclose sexual violence with compassion, recognizing that they are the final decision-makers about their own best interests

e) Ensuring that on-campus (internal) investigation procedures are available in the case of sexual violence, even when the individual chooses not to make a report to the police

f) Engaging in appropriate procedures for investigation and adjudication of a complaint which are in accordance with College policies, standards, and applicable collective agreements, and that ensure fairness and due process

g) Ensuring coordination and communication among the various departments who are most likely to be involved in the response to sexual violence on campus

h) Engaging in public education and prevention activities

i) Providing information to the College community about the College’s sexual violence policies and protocols

j) Providing appropriate education and training to the College community about responding to the disclosure of sexual violence

k) Contributing to the creation of a campus atmosphere in which sexual violence is not tolerated; and

l) Monitoring and updating our policies and protocols to ensure that they remain effective and in line with other existing and best practices.

5. Reporting and Responding to Sexual Violence:

a) Members of the College community should immediately report incidents of sexual violence they witness or have knowledge of, or where they have reason to believe that sexual violence has occurred or may occur. Members of the College community affected by sexual violence are encouraged to come forward to report incidents as soon as they are able to do so.

b) Persons in a position of authority, including persons directing the activities of others, shall take immediate action to respond to or to prevent sexual violence from occurring.

c) Where the College becomes aware of incidents of sexual violence by a member of the College community or against a member of the College community, which occur on or
off College property and that pose a risk to the safety of members of the College community, the College shall take all reasonable steps to ensure the safety of the College community.

6. **Complaint Process and Investigations:** A complaint of sexual assault or any other kind of sexual violence can be filed under this Procedure by any member of the College community.

7. Students who disclose their experience of sexual violence through reporting an incident of, making a complaint about, or accessing supports and services for sexual violence, will not be asked irrelevant questions during the investigation process by college employees or investigators. This includes irrelevant questions relating to the student’s sexual expression or past history.

8. **Right to Withdraw a Complaint:** A complainant has the right to withdraw a complaint at any stage of the process. However, the College may continue to act on the issue identified in the complaint in order to comply with its obligation under this policy and/or its legal obligations.

9. **Protection from Reprisals, Retaliation or Threats:** It is contrary to this policy for anyone to retaliate, engage in reprisals, or threaten to retaliate against a complainant or other individual for:
   a) Having pursued rights under this policy or the Ontario Human Rights Code
   b) Having participated or cooperated in an investigation under this policy or the Ontario Human Rights Code; or
   c) Having been associated with someone who has pursued rights under this policy or the Ontario Human Rights Code.

The College takes reasonable steps to protect persons from reprisals, retaliation, and threats. This may entail for example, advising individuals in writing of their duty to refrain from committing a reprisal and sanctioning individuals for a breach of this duty. The College may also address the potential for reprisals by providing an accommodation e.g., by changing the academic schedule of student so they are no longer subject to the authority of a professor or other academic administrator who they allege to have committed an act of sexual violence.
10. Students who, in good faith, report an incident of, or make a complaint about, sexual
violence, will not be subject to discipline or sanctions for violations of the College’s policies
related to drug or alcohol use at the time the alleged sexual violence occurred.

11. Unsubstantiated or Vexatious Complaints: If a person, in good faith, discloses or files a
sexual violence complaint that is not supported by evidence gathered during an
investigation, that complaint will be dismissed.

Disclosures or complaints that are found following investigation to be frivolous, vexatious or
in bad faith, that is, made purposely to annoy, embarrass, or harm the respondent, may
result in sanctions and/or discipline against the complainant.

12. Confidentiality: Confidentiality is particularly important to those who have disclosed sexual
violence. The confidentiality of all persons involved in a report of sexual violence must be
strictly observed, and the College does its best to respect the confidentiality of all persons
by restricting routine access to information to individuals with a need for such access and by
providing education and training to those who are regularly involved in the administration
of reports and complaints.

Confidentiality cannot be assured in the following circumstances:
   a) An individual is at imminent risk or self-harm
   b) An individual is at imminent risk of harming another; and/or
   c) There are reasonable grounds to believe that others in the College or wider
      community may be at risk of harm.

In such circumstances, information would only be shared with necessary services to prevent
harm, and the name of the survivor would not be released to the public.

Where the College becomes aware of an allegation of sexual violence by a member of the
College community against another member of the College community, the College may
also have an obligation to take steps to ensure that the matter is dealt with in order to
comply with the College’s legal obligation and/or its policies to investigate such allegations.
In such cases, certain College administrators will be informed about the reported incident
POLICY GROUP: NC500 – Health, Safety & Security

POLICY TITLE: Sexual Violence

on a “need to know” and confidential basis, but not necessarily of the identities of the persons involved.

D. Related Documents

Procedure: NC500 Sexual Violence

Resources: Sexual Violence Myths & Misconceptions
Sexual Violence Supports and Services

E. Document History

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