

Policy Information	
Policy No.:	E-1.41
Approved By:	Executive Committee
Approval Date:	November 29, 2023
Executive Responsible:	VP Student Affairs
Administrator Responsible:	Director, Student Services
Date of Next Review:	November 2026

## STUDENT SEXUAL MISCONDUCT POLICY

### Policy Statement

The College of New Caledonia (“CNC” or “the College”) strictly prohibits acts of Sexual Misconduct as defined by this policy (“Sexual Misconduct”) and is committed to maintaining a respectful academic and working environment for students. This includes taking reasonable steps to provide a living and learning environment free from Sexual Misconduct and interpersonal violence.

### Purpose

This policy and associated procedures are to assist students who experience Sexual Misconduct to:

1. understand the options available to them to respond to and/or address the Sexual Misconduct;
2. facilitate a meeting if they wish to talk to someone privately and/or in confidence; and
3. support them if they wish to talk with police.

This policy includes direction and guidance identified in the *Sexual Violence & Misconduct Policy Act*.

The purpose of this policy is to clearly set out the College’s expectations relating to Sexual Misconduct involving a student of the College by:

- A. Prohibiting acts of Sexual Misconduct;
- B. Outlining clear procedures for responding to acts of Sexual Misconduct reported to the College;
- C. Delivering education campaigns to students and employees to help them:
  - C.1. identify what behavior constitutes Sexual Misconduct;
  - C.2. understand how to report Sexual Misconduct;

- C.3. recognize warning signs of potentially abusive behavior and ways to reduce risks, and
- C.4. learn about safe and positive options for bystander intervention to prevent harm or intervene in situations where another person is at risk of Sexual Misconduct.
- D. Engaging in intake, investigative inquiry and resolution of complaints (through the associated *Sexual Misconduct procedures*) that are prompt, fair, equitable and independent of other investigations that may occur;
- E. Supporting Complainants and Respondents and to hold persons accountable for violations of this policy, and
- F. Providing a written explanation of the rights and options available to every student who files a complaint of Sexual Misconduct.

## Scope

This policy applies to all circumstances involving Sexual Misconduct where a student is involved and there is a reasonable connection to the College. This includes Sexual Misconduct that is reported to have taken place:

1. in or on College property, including in campus housing, and
2. at a College sponsored activity or event.

Where a student experiences Sexual Misconduct in a circumstance not included above, the College will, where appropriate, provide support and reasonable accommodations, including support in reporting to the RCMP if desired. In those circumstances, the College will consider whether any other action may be necessary or required.

Nothing in this policy is intended to restrict the College's ability or rights to appropriately respond to or address Sexual Misconduct by members of the College community that does not fall within the scope of this policy.

Any student who has experienced Sexual Misconduct has the right to pursue criminal or civil legal avenues whether they choose to take any steps under this policy.

## Sexual Misconduct Prohibited

Sexual Misconduct is strictly prohibited. All members of the College community must not engage in Sexual Misconduct.

## Sexual Misconduct Defined

For the purposes and scope of this policy, the term "Sexual Misconduct" includes the following:

### *Sexual Assault*

For the purposes of this policy, sexual assault is defined as an assault of a sexual nature that violates the sexual integrity of the Complainant and includes acts that constitute non-consensual sexual touching and non-consensual sexual penetration described below.

For the purposes of this policy, non-consensual sexual touching means where a person with any part of their body or object, touches (however slightly) the breast, buttocks, or groin of another person, directly, or over clothing, without the other person's consent. It is also considered non-consensual sexual touching if an individual is forced to touch the breast, buttocks, or groin of another individual.

In cases where a person's body is touched in places other than the breast, buttocks and/or groin, the College will evaluate the context and circumstances of the touching to determine if it nevertheless constitutes non-consensual sexual touching prohibited by this policy. Complaints of non-consensual touching that the College determines were not sexual will be reviewed under the Student (Non-Academic) Conduct policy. The College will consider the following when making the determination of whether touching was non-consensual sexual touching prohibited by this policy:

- the part of the body touched;
- the nature of the contact;
- the situation in which the contact occurred;
- the words and gestures accompanying the act;
- all other circumstances surrounding the act, and
- any threats made that may or may not have been accompanied by force.

For the purposes of this policy, non-consensual sexual penetration is defined as sexual penetration (anal, oral, or vaginal), however slight, of an individual by another individual with any part of the other individual's body or other object, without consent.

For the purposes of this policy, examples of sexual assault include but are not limited to:

- having sexual contact with an unconscious or semi-conscious person;
- having sexual contact with someone who is asleep or passed out;
- having sexual contact with someone who has said or has otherwise indicated "no";
- having sexual contact with someone who is not reciprocating body movement;
- allowing another person to have sexual contact with your partner without his or her consent, and

- having someone perform sexual acts as a condition of acceptance into an organization affiliated with the College. This includes, but is not limited to:
  - penetration of the vagina, anus or mouth with any object;
  - being made to facilitate the sexual abuse of another;
  - assisting with physically assaulting another's private parts; and
  - purchasing or providing alcohol or drugs to another for the purposes of complicity facilitating a sexual assault.

### ***Sexual Exploitation***

For the purposes of this policy, sexual exploitation includes the misuse of power or trust by a person in a position of power or trust over the student for a sexual purpose or purposes. Sexual exploitation also occurs where a person or persons offer(s) drugs, food, shelter, protection, money, or the basics of life in exchange for sex or sexual acts from a student.

Examples of sexual exploitation include, but are not limited to, the following:

- seeking the exchange of sex or sexual acts from an individual in return for something, including but not limited to drugs, food, shelter, protection, money, the basics of life, or some other benefit;
- human trafficking - the recruiting, transporting, transferring, receiving, holding, concealing, harboring, or exercising control, direction or influence over the movements of a person for the purpose of exploiting them or facilitating their exploitation;
- allowing a third party to watch a consensual sexual contact without the permission of both parties involved in the sex act;
- knowingly giving another a sexually transmitted infection (STI) or HIV, and
- allowing others to have sex with an incapacitated person.

### ***Sexual Harassment***

For the purposes of this policy, sexual harassment means remarks, behaviors, or communications of a sexually oriented nature and/or targeting sex or gender identity where the person responsible for the remarks, behaviors or communications knows or ought reasonably to know that they are unwanted.

Examples of sexual harassment include, but are not limited to, the following:

- unwanted sexual invitations, advances, remarks, suggestive comments and gestures (including songs and chants);
- the inappropriate display of sexually suggestive pictures, posters, objects or graffiti;
- posting of sexually explicit pictures or video without consent;
- unwanted physical contact of a sexual nature, and
- sexual contact that interferes with a person's dignity or privacy.

### ***Stalking***

For the purposes of this policy, stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others or (b) suffer substantial emotional distress.

Examples of stalking include but are not limited to the following:

- surveilling/watching or walking/driving by the residence of a specific person on more than one occasion when a reasonable person would know the behavior causes fear or substantial emotional distress to the targeted party;
- repeatedly communicating with a person who does not wish to be communicated with;
- persistently following a person or lying in wait for them, and
- sending unwanted gifts.

### ***Technology-Facilitated Sexual Misconduct (TFSM)***

For the purposes of this policy, technology-facilitated Sexual Misconduct means the use of technology to engage in any behavior provided for under the definition of stalking. TFSM includes the use of technology to harass, blackmail, extort, intimidate, and/or frighten others through repeated, unsolicited, threatening behavior of a sexual nature and/or targeting sexual orientation or gender identity.

### ***Indecent Exposure***

Indecent exposure includes exposing one's body to another individual for a sexual purpose without their consent.

### ***Voyeurism***

Voyeurism includes the recording or observation (in-person, electronically, or otherwise) of another individual without their consent for a sexual purpose, in circumstances where there is a reasonable expectation of privacy.

### ***Intimate Partner Violence (IPV)***

Intimate partner violence (IPV) is a form of Sexual Misconduct by someone against a person who is, or has been involved in, a sexual, dating, spousal, familial/domestic, or other intimate relationship with that person. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and financial abuse. It may involve one act or an ongoing pattern of behavior.

IPV may take the form of threats, assault, property damage, or threat of harm to one's self, one's pets, or to the family members or friends of the partner. IPV affects individuals of all sexes, sexual orientations, gender identities, and gender expressions, races, religions, ethnicities, and social and economic backgrounds.

Examples of IPV include:

- physically assaulting a partner;
- threatening to harm a partner;
- threatening self-harm to get a partner to do something (like not go out with friends, spend time with family, or go to school or work);
- forcibly taking away or destroying a partner's cell phone;
- intentionally deleting a partner's social media accounts;
- physically assaulting a partner's child;
- repeatedly calling the partner demeaning names;
- screaming/yelling/throwing things at a partner;
- displaying a weapon in front of a partner in a threatening way, and
- forcing a partner to do things sexually without their consent.

For purposes of this policy, IPV consists of acts that could be considered dating violence or domestic violence as described below.

## **Consent**

For the purposes of this policy, consent means communication of mutually understandable words or actions, freely, actively, and affirmatively giving and indicating a willingness to participate in mutually agreed upon sexual activities or actions. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties involved to do the same thing, in the same way, at the same time. Consent can be withdrawn at any time.

Consent cannot be given:

- by an individual who is under the statutory age of consent (see below);
- by an individual who has a reasonable fear they will be injured if they do not give consent;
- by an individual who is incapable of giving consent or is prevented from resisting due to physical or mental incapacity, which may include but is not limited to the influence of drugs or alcohol, or
- to someone in a position of trust, authority or dependency.

In the absence of mutually understandable words or actions, it is the responsibility of the initiator of the sexual activity to make sure they have consent from their partner.

### *Age to Consent to Sexual Activity*

The age of consent is the age at which a young person can legally agree to sexual activity. Age of consent laws apply to all forms of sexual activity, ranging from kissing and fondling to sexual intercourse.

The age of consent to sexual activity is 16 years, although in some cases the age of consent is higher (for example, when there is a relationship of trust, authority or dependency as described below).

In other words, subject to one of the exceptions below, a person must be at least 16 years old to be able to legally agree to any form of sexual contact or activity.

A 16 or 17-year-old cannot consent to sexual activity if any of the following apply:

- their sexual partner is in position of trust or authority over them (for example, their teacher or coach);
- the young person is dependent on their sexual partner (for example, for care or support);
- the relationship between the young person and their sexual partner is exploitive, or
- they have been told that someone will “out” them (disclose their sexual orientation without their consent) if they do not engage in sexual activity.

The following factors may be considered when determining if a relationship is exploitive of the young person:

- the young person's age;
- the age difference between the young person and their partner;
- how the relationship developed (for example, quickly, secretly, or over the internet), and
- whether the partner may have exerted control or influence over the young person.

### *Besides Age, What Constitutes Lack of Consent?*

Consent cannot be given through silence or lack of resistance. Consent to one activity does not constitute consent to other sexual acts. Past sexual activity does not constitute consent for future acts. If at any time consent is uncertain, the initiating party should stop and obtain verbal consent. The use of any force, display of force, coercion, or intimidation negates consent.

Individuals who are incapacitated may not legally give consent to sexual activity, even if they indicate they are consenting because they are impaired mentally or physically. Incapacitation includes, but is not limited to, being highly intoxicated, passed out, or asleep. An individual is considered mentally incapacitated when they are mentally incapable of understanding the nature of their conduct.

When incapacitation occurs due to alcohol or drug use, indicators of incapacitation may include the following:

- slurred speech;
- bloodshot or unfocused eyes;
- unsteady gait or needing assistance to walk/stand;
- vomiting;
- outrageous or unusual behavior;
- concern expressed by others that the individual may be intoxicated, and
- expressed memory loss or disorientation.

An individual may also be in a state known as a “blackout” where they are incapacitated and will likely have no memory of the sexual activity, but are up, and walking and talking. Therefore, it is of particular importance that any two people engaging in sexual activity know the other person’s level of intoxication prior to beginning sexual contact.

For the purposes of this policy, in assessing if a person was incapacitated and unable to consent, the standard that shall be applied is whether or not a reasonable person in the position of the respondent would have known, based on the facts and circumstances presented at the time of the reported conduct, that the other person was incapacitated and therefore, not able to consent. The accused being under the influence of alcohol or drugs is never a defense to this policy and does not excuse Sexual Misconduct.

### **Legislative and Collective Agreement References**

- [Sexual Violence and Misconduct Policy Act](#)
- [Child Family & Community Services Act](#)

### **Links to Other Related Policies, Documents, and Websites**

- [Student Sexual Misconduct Procedures](#)
- [Respectful Workplace Policy](#)
- [Student \(Non-Academic\) Conduct](#)
- [Student Complaint Resolution](#)
- [CUPE Collective Agreement](#)

- [Faculty Association Common Collective Agreement](#)
- [Administrative Personnel Policy](#)
- [Standards of Ethical Conduct](#)

### Policy Amendment Log

Amendment Number:	Date:
0	April 2017
1	September 2020
2	November 29 2023