

TITLE: Sexual Assault and Sexual Violence Policy

**Date of Approval: March 30, 2015;
April 26, 2016; November 23, 2016**

**Mandatory Review
Date:**

Approved By:

Board of Governors

President's Council

Senate

Effective Date: January 1, 2017

3 years

1. Purpose

All Members of Sheridan (as defined below) have a right to live, work, and study in an environment that is free from any form of Sexual Violence. This Policy and its related Protocol sets out the way in which Sheridan addresses Sexual Violence. It ensures that those affected by Sexual Violence are believed and appropriately accommodated and ensures that Sheridan has a process of investigation that protects the rights of individuals and holds individuals who have committed an act of Sexual Violence accountable.

2. Scope

This Policy and its related Protocol applies to all Members of Sheridan including but not limited to: all Students, employees, governors, contractors, suppliers of services, individuals who are directly connected to any Sheridan initiatives, volunteers, and visitors. This Policy and its related Protocol applies on campus and may also apply off-campus if the incident in question affects the safety, integrity and/or other interests of the Sheridan community and/or any Member of Sheridan.

3. Definitions

Sexual Assault and Sexual Violence

Sexual Assault: A criminal offence 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 victim 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, consented to, or is incapable of consenting to.

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 indicates a willingness to participate in mutually agreed upon sexual activity.

It is also imperative that everyone understands the following additional information:

- Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgment cannot consent.
- A person is incapable of giving consent if they are asleep, unconscious, incapacitated or otherwise unable to communicate.
- A person who has been threatened or coerced (i.e. is not agreeing voluntarily) into engaging in the sexual activity is not consenting to it.
- A person who is drugged is unable to consent.
- A person may be unable to give consent when she/he is impaired by and/or under the influence of alcohol and/or drugs.
- A person may be unable to give consent if they have a mental disability preventing them from fully understanding the sexual acts.
- 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.
- A person can withdraw consent at any time during the course of a sexual encounter.
- A person may be incapable of giving consent to a person in a position of trust, power or authority.
 - Any sexual relationship between an employee and a student, where the employee teaches or has professional contact with the student as part of their employment responsibilities, is prohibited.
 - Any sexual relationship between an employee with supervising responsibilities and an employee who reports to them, directly or indirectly, must be reported to their manager and Human Resources who will work with the parties to address any potential conflict of interest.
- 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 they are engaging with sexually is a minor.

Note: For information purposes only, the *Criminal Code* defines "Consent" as follows:

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.

Workplace Sexual Harassment: This means engaging in a course of vexatious comments or conduct against a worker in a workplace because of sex, sexual orientation, gender identity, or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcomed or 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 to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Other Relevant 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 can never legally consent to sexual acts. Sixteen is the legal age of consent for sexual acts. There are variations on the age of consent for adolescents who are close in age between the ages of 12 and 16. Twelve and 13 year-olds can consent to have sex with other youth who are less than 2 years 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 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 assault: The use of alcohol and/or drugs (prescription or non-prescription) by a perpetrator to control, overpower or subdue a victim for purposes of sexual assault.

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 victim or threaten the victim/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 affected by 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 and its related Protocol where relevant because some affected by 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 affected in these circumstances to determine how they wish to identify.

Sheridan Definitions

Centre for Equity and Inclusion (CEI): For the purposes of this Policy, CEI is a space where employees can disclose Sexual Assault and Sexual Violence and receive support. CEI promotes equity and inclusion on campus through education and awareness, provides advice and consultation on matters like accessibility, and helps resolve concerns of harassment and discrimination as defined by the *Ontario Human Rights Code*, and workplace harassment as

defined by the *Occupational Health and Safety Act*.

Complainant: An individual who brings forward a complaint that alleges Sexual Assault or any other kind of Sexual Violence has taken place.

Member of Sheridan: Employees, students, volunteers, consultants, contractors, visitors, and any other persons at Sheridan.

Respondent: An individual against whom a complaint has been made alleging the commission of Sexual Assault or any other kind of Sexual Violence.

Sheridan Official: An employee and/or representative of Sheridan acting in the course of their duties.

Student Rights and Responsibilities Office (SRRO): Responds to alleged violations of the Student Code of Conduct and assists students in understanding their rights and responsibilities which contribute to wellness and student success. SRRO contributes to the maintenance of safe and respectful campus environments to enhance the student experience and minimize impact on the greater Sheridan community.

4. Policy Statement

Sexual Assault and Sexual Violence are unacceptable and will not be tolerated. Sheridan is committed to challenging and preventing sexual violence and creating a safe space for anyone in the Sheridan community who has been affected by sexual violence. Sheridan is expected to be a safe and positive space where Members of Sheridan feel able to work, live, learn and express themselves in an environment free from sexual violence.

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

Sheridan 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. Sheridan also recognizes that individuals affected by sexual violence may experience emotional, academic or other difficulties.

4.1 Overarching Principles

Sheridan is committed to:

- 4.1.1 assisting those 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 about legal options and reporting to the police, and appropriate academic and other accommodation;

- 4.1.2 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;
- 4.1.3 addressing harmful attitudes and behaviours (e.g., adhering to myths of sexual violence) that reinforce that the person affected by sexual violence is somehow to blame for what happened;
- 4.1.4 treating individuals who disclose sexual violence with compassion recognizing that they are the final decision-makers about their own best interests;
- 4.1.5 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;
- 4.1.6 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;
- 4.1.7 ensuring coordination and communication among the various departments who are most likely to be involved in the response to sexual violence on campus;
- 4.1.8 engaging in public education and prevention activities;
- 4.1.9 providing information to the Sheridan community about our sexual violence policies and protocols;
- 4.1.10 providing appropriate education and training to the Sheridan community about responding to the disclosure of sexual violence;
- 4.1.11 contributing to the creation of a campus atmosphere in which sexual violence is not tolerated; and
- 4.1.12 monitoring and updating our policies and protocols to ensure that they remain effective and in line with other existing policies and best practices.

4.2 Reporting and Responding to Sexual Violence

- 4.2.1 Members of Sheridan should immediately report sexual violence incidents they witness or have knowledge of, or where they have reason to believe that sexual violence has occurred or may occur. Members of Sheridan affected by sexual violence are encouraged to come forward to report as soon as they are able to do so.
- 4.2.2 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.
- 4.2.3 Where Sheridan becomes aware of incidents of sexual violence by a Member of Sheridan or against a Member of Sheridan, which occur on or off Sheridan's property and that pose a risk to the safety of Members of Sheridan, Sheridan shall take all reasonable steps to ensure the safety of the Sheridan community.

4.3 Complaint Process and Investigations

- 4.3.1 A complaint of sexual assault or any other kind of sexual violence can be brought forward under this Policy by any Member of Sheridan. Please refer to the Sexual Assault and Sexual Violence Protocol for the steps to follow to bring forward a complaint and/or report of Sexual Violence Protocol.
- 4.3.2 Sheridan will seek to achieve procedural fairness in dealing with all complaints. As such, no sanction and/or disciplinary action will be taken against a person or group without their knowledge where there is an alleged breach of this Policy. Respondents will be given details of the allegations and an opportunity to answer the allegations.

4.4 Right to Withdraw a Complaint

A Complainant has the right to withdraw a complaint at any stage of the process. However, Sheridan 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.

4.5 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:

- having pursued rights under this Policy or the Ontario Human Rights Code;
- having participated or co-operated in an investigation under this Policy or the Ontario Human Rights Code; or
- having been associated with someone who has pursued rights under this Policy or the Ontario Human Rights Code.
- Sheridan 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. Sheridan may also address the potential for reprisals by providing an accommodation appropriate in the circumstances. Please see Paragraph 7.7 of the Protocol for examples of interim measures.

4.6 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 bad faith complaints, that is, made to purposely annoy, embarrass or harm the Respondent, may result in sanctions and/or discipline against the Complainant.

4.7 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 Sheridan respects the confidentiality of all persons, including the Complainant, Respondent, and witnesses 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. Information provided by Complainants is treated as confidential, but may be shared as is reasonably necessary to investigate the complaint and/or as may be required by Sheridan policy and/or applicable law.

Confidentiality cannot be assured in the following circumstances:

- an individual is at imminent risk of self-harm;
- an individual is at imminent risk of harming another; and/or
- there are reasonable grounds to believe that others in the Sheridan 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 Sheridan becomes aware of an allegation of sexual violence by a Member of Sheridan against another Member of Sheridan, Sheridan may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with Sheridan's legal obligation(s) and/or its policies to investigate such allegations. In such cases, certain Sheridan Officials may be informed about the reported incident on a "need to know" and confidential basis, but not necessarily the identities of the persons involved.

4.8 Appeals

- 4.8.1 As set out in the Student Code of Conduct Policy and the Student Code of Conduct – Adjudication Process and Appeals Procedure, appeals of student violations may be pursued based on limited grounds and the Dean of Students or designate shall decide whether an appeal shall be granted. If an appeal is granted, the Dean of Students or designate shall assemble an Appeals Tribunal.
- 4.8.2 As set out in the Workplace Harassment and Discrimination Policy and related procedure, requests for review of the investigation process by employees may be pursued based on limited grounds and the Associate Vice President Human Resources shall make a final decision on the disposition of the review.
- 4.8.3 There is no formal appeal process for supplier, contractor, volunteer, or visitor violations.

5. Related Documents

[Student Code of Conduct](#)

[Student Code of Conduct - Adjudication Process and Appeals Procedure](#)

[Threat Assessment Policy](#)

[Student at Risk and Intervention Policy](#)

[Student at Risk and Intervention Procedure](#)

[Acceptable Use Policy](#)

[Residence Community Living Standards](#)

[Harassment and Discrimination Policy](#)

[Workplace Violence Policy](#)

[Workplace Harassment and Discrimination Policy](#)

[Resolving Harassment & Discrimination and Workplace Harassment Issues Procedure](#)

[Occupational Health And Safety Policy](#)

[Code of Conduct](#)

[Records and Information Management Policy](#)

[Sexual Assault and Sexual Violence Response Protocol](#)