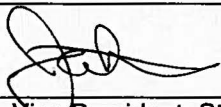


Policy #	GA 702
Approved by:	Jason Hunter
Approval Date:	December 6, 2016
Policy Holder Signature:	
Policy Holder:	Vice President, Student and Community Engagement
Administrative Contact:	Dean of Students
Replaces Policy Dated:	March 24, 2015
Review Date:	January 1, 2018

Sexual Assault and Sexual Violence Policy

Purpose/Rationale:

The Humber College Institute of Technology and Advanced Learning and the University of Guelph-Humber (hereafter referred to as “Humber” or “the College”) are committed to the elimination of sexual assault and sexual violence to all members of the diverse Humber community. In particular, Humber is committed to supporting those affected by sexual assault and sexual violence.

All members of the College community have a right to study, work and live in an environment that is free from any form of sexual assault and sexual violence. This policy and related procedures set out the manner in which the College addresses sexual assault and sexual violence. The College has a process of investigation that protects the rights of both the complainant and the respondent/s.

This document is available in alternate format upon request.

Scope:

This Policy applies to all members of the Humber and University of Guelph-Humber community including: all students, employees, governors, contractors, suppliers of services, individuals who are connected to any College initiatives, volunteers, and visitors.

Whereas, anyone can be the target or perpetrator of sexual assault and sexual violence, Humber College recognizes that:

- I. Women and girls, including Trans women and girls, indigenous women, racialized women, women with disabilities, young and senior women are much more likely to be the targets and survivors of sexual assault and sexual violence;
- II. The impact of sexual assault and sexual violence is experienced differently by different survivors based on their identities and lived experiences; and
- III. Males are also targets and survivors of sexual violence.

Definitions:

Sexual violence: Sexual violence means 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. Sexual violence is about power and control, not about sexual desire.

Anyone, regardless of race, age, disability, gender identity, gender expression, or sexual orientation can experience and be affected by sexual violence. Sexual violence impacts the well-being of individuals and communities.

Sexual assault: Sexual assault is a form of sexual violence and is 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 person that it is done to and involves a range of behaviours from any unwanted touching to penetration.

Sexual harassment: Sexual Harassment is a form of sexual violence prohibited by the *Ontario Human Rights Code* (Code). Sexual harassment is defined as a course of vexatious comment or conduct based on an individual's sex and/or gender that is known or ought to be known as unwelcome. Under *Ontario's Occupational Health and Safety Act* (OHSA), workplace harassment has been expanded to include sexual harassment:

- Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity (including transgender) or gender expression, where the course of comments or conduct is known or ought reasonably to be known to be unwelcome, 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.

Gender-based harassment is a subset of sexual harassment and prohibited by the Code. It refers to behaviours that regulate and reinforce traditional heterosexual gender norms.

Sexual harassment includes, but is not limited to the following:

- Any deliberate and unsolicited sexual comment, the use of overt sexual language, suggestion or physical contact that creates an uncomfortable learning/working environment for the recipient and is made by a person who knows or ought reasonably to know that such action is unwelcome;
- A sexual advance or solicitation made by a person to another, where the person making the advance or solicitation knows or ought reasonably to know that it is unwelcome;
- A reprisal or threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal or threat is made by a person in a position to confer, grant or deny a benefit or advancement to the other person;
- Unwelcome remarks, jokes, sexual innuendoes or taunting about a person's body, attire, sex, personal or social life;
- Practical jokes of a sexual nature which cause awkwardness or embarrassment;
- Display and/or distribution of pornographic pictures or other offensive material of a sexual nature, including audio or visual images of an individual through technological devices, equipment and services provided by Humber or other service providers;

- Unwanted and unnecessary physical contact such as touching, patting or pinching;
- Expressions of gender bias which may include remarks that are discriminatory, degrading or derogatory and create a poisoned work environment;
- Requests for sexual favours; and/or
- Sexual assault.

Please note that the behaviours and actions described above are not an exhaustive list of examples of sexual harassment.

Consent: Consent is the voluntary agreement of an individual 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 individual;
- b) the individual is incapable of consenting to the activity;
- c) the accused induces the individual to engage in the activity by abusing a position of trust, power or authority;
- d) the individual expresses, by words or conduct, a lack of agreement to engage in the activity; or
- e) the individual, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Considerations related to consent:

- should never be assumed or implied
- is not silence or the absence of “no”
- cannot be given when someone is incapable of consenting (by virtue of intoxication, being asleep or being unconscious, for example)
- can never be obtained through threats or coercion
- can be withdrawn at any time
- cannot be given if the perpetrator abuses a position of trust, power or authority
- cannot be given by anyone other than the person participating in the sexual activity.

Acquaintance sexual assault: Acquaintance sexual assault is a form of sexual violence that includes forced, manipulated, or coerced sexual contact by a friend or acquaintance.

Intimate partner sexual violence: Intimate partner sexual violence is a form of sexual violence that includes sexual assault within an intimate relationship. It includes not only marital rape, but all other forms of sexual assault that take place within a current or former intimate relationship, whether the partners are married or not.

Age of consent for sexual activity: Age of consent for sexual activity in Canada indicates that a person can legally consent to sexual activity at the age of 16 years. Children under 12 can never legally consent to sexual acts. There are variations on the age of consent for adolescents who are close in age between the ages of 12 and 16. Children between 12 and 13 years of age can consent to non-exploitative sex with other youth who are less than 2 years older than themselves. Youth who are 14 and 15 years old may consent to non-exploitative sexual activity that is mutual with a person, who is less than 5 years older than them. Youths 16 and 17 years old may legally consent to sexual acts with someone who is not in a position of trust or authority.

Note: Non-exploitative activity is defined as sexual activity that does not involve prostitution, trafficking or pornography, and where there is no relationship of power, authority or dependency between the persons involved.

Coercion: Coercion is the use of emotional manipulation, pressure, blackmail, or threats, or the promise of rewards or special treatment, to persuade someone to engage in sexual acts.

Rape: This policy uses the term sexual assault to align with the current language used in the *Criminal Code*. The term “sexual assault” provides a much broader definition and criminalizes unwanted behaviours, such as touching and kissing, as well as, unwanted oral sex and vaginal and anal intercourse. Although the term rape no longer has legal meaning in Canada, it is still commonly used.

Stalking: Stalking is a form of sexual violence prohibited by the *Criminal Code* of Canada. It involves behaviours that occur on more than one occasion and which collectively instill fear or threaten one’s safety or mental health. Stalking can also include threats of harm to an individual’s friends and/or family. These behaviours include non-consensual communications (face to face, phone, email, social media); threatening or obscene gestures or language; surveillance; sending unsolicited gifts; cyber-stalking; and uttering threats.

Survivor: Some persons who have experienced sexual assault and sexual violence may choose to identify as a survivor. Individuals may be more familiar with the term “victim”. Humber uses 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 how they wish to identify.

Policy:

1. Policy Statement

All forms of sexual violence are unacceptable and will not be tolerated at Humber. Humber is committed to challenging and preventing sexual assault and sexual violence. The College is committed to creating a safe learning, working and living environment for everyone in the College community. This policy aims to encourage individuals who have been affected by or witnessed incidents of sexual assault and sexual violence to make a report to the College. All reported incidents of sexual assault and sexual violence will be investigated in a manner that ensures due process.

Humber recognizes that sexual assault and sexual violence can occur between individuals regardless of sex, sexual orientation, gender, and gender identity or relationship status as defined in the *Ontario Human Rights Code (Code)*¹ and the *Ontario Occupational Health and Safety Act (OHSA)*. The College also recognizes that individuals who are affected by sexual assault and sexual violence may experience emotional, academic, employment and/or other difficulties.

¹ Protected Relationships: Section 10(1) of the *Code* broadly defines the ground of “marital status” as the status of being married, single, widowed, divorced or separated and includes the status of living in a conjugal relationship with a person outside of marriage. This definition includes both same-sex and opposite-sex relationships. The ground of “family status” is more narrowly defined in section 10(1) as “the status of being in a parent and child relationship”. These two grounds intersect to cover a range of family forms, including lone-parent and blended families, and families where parents are in same-sex or “common-law” relationships.

Humber College is committed to:

- 1.1. assisting those who have been affected by sexual assault and 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 appropriate academic, employment and other accommodation;
- 1.2. ensuring those who disclose that they have been sexually assaulted are treated with dignity and respect and are supported throughout the process of disclosure, investigation and institutional response;
- 1.3. addressing harmful attitudes and behaviours that blame the person who has experienced and/or is affected by sexual assault and sexual violence;
- 1.4. treating individuals who disclose sexual assault and sexual violence with compassion, recognizing that their sense of control over their physical and sexual integrity is compromised through no fault of their own;
- 1.5. ensuring that on-campus internal investigation procedures are available in the case of sexual assault and sexual violence;
- 1.6. engaging in appropriate procedures for investigation and adjudication of a complaint that are in accordance with College policies, standards and applicable collective agreements to ensure fairness and due process;
- 1.7. ensuring coordination and confidential communication among the various departments who are most likely to be involved in the response to sexual assault and sexual violence on campus;
- 1.8. engaging in education and prevention activities in the College community including on how to respond to the disclosure of sexual assault and sexual violence;
- 1.9. providing information to the College community about Humber's sexual assault and sexual violence policies and protocol;
- 1.10. enabling the creation of a campus environment in which sexual assault and sexual violence is not tolerated; and
- 1.11. monitoring and updating our policies and protocols to ensure that they remain effective and in line with other existing policies.

2. Disclosures and Incident Reporting of Sexual Assault and Sexual Violence

- 2.1. Responses to disclosures of sexual assault and sexual violence will be non-judgemental, supportive, empathetic and with unconditional regard and respect.
- 2.2. Individuals who have experienced or have been affected by sexual assault and sexual violence are encouraged to come forward to report as soon as they are able to do so and to the avenue that they feel most comfortable to report.

Students can report incidents of sexual assault and sexual violence to the Office of Student Conduct at 416-675-6622, extension 4357 and the Department of Public Safety at 416-675-6622, extension 4000 (or extension 8500 non-emergency line).

Employees and other members of the College community can report incidents of sexual assault and sexual violence to the Department of Public Safety, their respective manager/supervisor, Human Resources Business Partner or Human

Resources Client Services Manager, Centre for Human Rights, Equity & Diversity, Health and Safety Services, Union representative, Dean, or Associate Dean.

- 2.3. Members of the College community who are faculty, employees and contractors have a duty to immediately report all incidents and suspected incidents of sexual assault and sexual violence.
- 2.4. Students are strongly encouraged to report incidents of sexual assault and sexual violence, but do not need to report such incidents to obtain supports, services or accommodation from the College.
- 2.5. Persons in a position of authority, including persons directing the activities of others, shall take immediate action to respond to or to prevent sexual assault and sexual violence from occurring.

The College takes seriously the failure to report and/or to take action when it affects the safety of people.

Where the College becomes aware of incidents of sexual assault and sexual violence by a member of the College community or against a member of the College community, that occur on or off College property and 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.

3. Complaint Process and Investigations

3.1. Complaint Investigation

A complaint of sexual assault and sexual violence can be filed under this Policy by any member of the College.

The College has established procedures related to investigating and making decisions about formal complaints. For further information regarding responsibilities for intake, investigation and decision making regarding the students and employees' sexual assault and sexual violence procedures refer to the applicable procedure:

- Employee Sexual Assault and Sexual Violence Procedure
- Student Sexual Assault and Sexual Violence Procedure
- Appendix A: Reporting Procedure Flowchart

Where a complaint of sexual assault or sexual violence has been reported to the College, the College will exercise care to protect and respect the rights of both the complainant and the respondent. Except as otherwise stated in this Policy or the relevant 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, making a sound decision and preserving the dignity of survivors. The College has the right to withhold disclosure early on in its process to obtain a person's independent recollection of events.

Appropriate actions may be taken by the College to ensure the safety of the individuals involved in the complaint. No disciplinary action will be taken against a person or group without their knowledge where there is an alleged breach of this Policy.

A report of sexual assault and sexual violence may also be referred to the police, or to other community resources at the complainant's request, where the persons involved are not members of the College community or otherwise where appropriate.

In any case, the College may decide to use an external investigator when appropriate in the circumstances.

3.2 Right to Withdraw a Complaint

A complainant has the right to withdraw a complaint at any stage of the process. The College understands that individuals who have experienced or been affected by sexual assault and sexual violence may wish to control if 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 assault and 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, if the College believes that the safety of other members of the College community is at risk, the College may be required to initiate or continue an internal investigation and/or inform the police of the need for a criminal investigation, even when the survivor has exercised their right to withdraw a complaint. The confidentiality and anonymity of the person(s) affected will be prioritized in these circumstances.

3.3 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(s) for:

- having pursued rights under this Policy, the *Ontario Human Rights Code*; the *Occupational Health and Safety Act*; and/or under the *Criminal Code of Canada*
- having participated or co-operated in an investigation under this Policy or the *Ontario Human Rights Code*; and/or the *Occupational Health and Safety Act*; and/or
- having been associated with someone who has pursued rights under this Policy; the *Ontario Human Rights Code*; and/or the *Occupational Health and Safety Act*.

Anyone engaged in such conduct may be subject to sanctions and/or discipline.

3.4 Vexatious Complaints

Following an investigation, complaints that are found to be frivolous, vexatious or made in bad faith, may result in sanctions and/or discipline against the complainant.

4. Confidentiality

Confidentiality is important to those who have disclosed sexual assault and sexual violence. The confidentiality of all persons involved in a report of sexual assault and sexual violence will be strictly observed, and the College will restrict routine access to information to individuals with a need for such access and will respect the confidentiality of all persons, including the complainant, respondent, and witnesses.

However, 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 College or wider community may be at risk of harm.

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

The nature of complaint investigation precludes anonymity, hence confidentiality has limitations in the investigation processes. However, due diligence shall be exercised to protect the rights of the complainant, respondents and witnesses.

Where the College becomes aware of an allegation of sexual assault and sexual violence by a member of the College community against another member of the College community, the College may also be obliged 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, specific College administrators will be informed about the reported incident on a "need to know" and confidential basis, but not necessarily of the identities of the persons involved.

All information collected as a result of a report made under the policy and procedure will be managed in accordance with the *Freedom of Information and Protection of Privacy Act* and *Personal Health Information Protection Act* as applicable.

5. Support and Representation

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.

6. 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 only as necessary to meet the needs of complainants and persons who report incidents of sexual assault and sexual violence. 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.

7. Outcomes

The College will determine, based on its investigation and hearing as appropriate, what happened and whether it constitutes sexual assault and sexual violence. 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 penalties, cancellation of contracts and other sanctions. The College may also impose non-punitive measures.

The College will inform the complainant and respondent of the results of its investigation as per the applicable procedure.

8. Appeals

Appeals of student violations may be pursued based on limited grounds as set out in the Code of Student Conduct Policy.

College employees who are members of a union may file a grievance as permitted by the applicable collective agreement.

There is no formal appeal process for supplier, volunteer or visitor violations.

9. Training

The College community shall participate in ongoing education and training on the interruption and prevention of sexual assault and sexual violence.

9.1 Humber College will provide regular trainings on the Sexual Assault and Sexual Violence policy and applicable procedures to all its constituents.

9.2 Training and information about the Policy is available at [insert link] or calling the Centre for Human Rights, Equity & Diversity at 416-675-6622 extension 4425.

10. Collection and Reporting of Sexual Assault and Sexual Violence Statistics

In accordance with Bill 132, *Sexual Violence and Harassment Action Plan Act*, 2016, Post-secondary institutions in Ontario are required to report aggregate data to the Ministry of Advanced Education and Skills Development on student disclosures of sexual assault and sexual violence.

11. Policy Review

This Sexual Assault and Sexual Violence policy shall be reviewed annually in consultation with the Humber community including Humber's Joint Occupational Health and Safety Committee.

References:

[Colleges Ontario, Sexual Assault and Sexual Violence Policy and Protocol Template](#)

[Criminal Code of Canada](#)

[Dispelling Myths and Misconceptions about Sexual Assault](#)

[Durham College](#)

[Freedom of Information and Protection of Privacy Act, 1990](#)

[Lakehead University](#)

[METRAC discussion paper on sexual assault policies on campuses](#)

[Personal Health and Information Protection Act, 2004](#)

[The Ontario Coalition of Rape Crisis Centres'](#)

[The Ontario Human Rights Code](#)

The Ontario Occupational Health and Safety Act – amendments to the definition of workplace violence and sexual harassment grounds

The Ontario Women's Directorate resource: "Developing a Response to Sexual Violence: A Resource Guide for Ontario's Colleges and Universities"

[University of Guelph](#)

Related Policies and Procedures:

[Code of Student Conduct](#)

[Gender Diversity Policy](#)

[Human Rights Policy & Procedure](#)

[Occupational Health and Safety Policy](#)

[Residence Code of Conduct](#)

[Workplace Violence Prevention Policy & Procedure](#)

Appendices:

Appendix A: Reporting Procedures: Sexual Assault and Sexual Violence Flowchart

Appendix A

Reporting Procedures: Sexual Assault and Sexual Violence Flowchart

