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## 3.6 SEXUAL AND GENDER-BASED VIOLENCE AND MISCONDUCT POLICY

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### ENABLING LEGISLATION + LINKED POLICIES

- See also:
  - [3.6.1 Sexual and Gender-based Violence and Misconduct Procedures for Students](#)
  - [3.6.2 Sexual and Gender-based Violence and Misconduct Procedures for Employees and Non-Students](#)
- Sexual Violence and Misconduct Policy Act
- University Act
- Criminal Code of Canada
- Canadian Charter of Rights and Freedoms
- Canadian Human Rights Act
- BC Victims of Crime Act and Canadian Victims Bill of Rights
- Freedom of Information and Protection of Privacy Act
- Provincial Privacy Laws, Labour Laws and Human Rights Legislation
- Collective agreements (all)
- All related University Policies including
  - 1.1 Board Bylaws
  - 4.6 Student Conduct
  - 6.10 Dealing with Threatening Behaviour
  - 8.6 Harassment, Bullying and Discrimination
  - 8.12 Safe Disclosure
  - 8.11 Conflict of Interest
  - 8.13 Confidentiality
  - 9.3 Code of Conduct for Appropriate Use of Information Technology
- Facilities + Services

## **OBJECTIVE**

Emily Carr University of Art + Design (the “University”) is committed to providing a safe, respectful, and inclusive environment where members of our community are free from violence or threat of violence; including Sexual Violence or Misconduct, Sexual Assault, and Gender-based Violence. The University recognizes that it has a responsibility to foster such an environment through the implementation of effective policy, prevention, education programming and resources, supported by the implementation of appropriate systems to support Survivors/Victims, ensure accountability and appropriately respond to reports of incidences of violence. The University will ensure access to key resources, and provide support for safe Disclosure, Reporting, and investigation.

## **SCOPE + APPLICATION**

This Policy applies to all Members of the University Community (all current ECUAD students, employees, contractors, members of the Board of Governors, volunteers, and guests).

This Policy may be applied where an act of Sexual/Gender-based Violence and Misconduct is alleged to have occurred (in both academic and non-academic settings, and to incidents occurring on campus, off campus or online) in the course of a University-related Activity.

Where an incident that comes within the scope of this Policy impacts the University environment, the University also reserves the right to enforce this Policy regardless of whether any legal proceedings are undertaken in any other forum or by any other party.

## **POLICY PRINCIPLES**

1. The University is committed to fostering an environment of dignity and respect. This includes the expectation that all Members of the University Community are free from Sexual/Gender-based Violence and Misconduct or the threat thereof.
2. The University acknowledges that Sexual/Gender-based Violence and Misconduct is complex and underreported, with women, Indigenous women, transgender, and gender variant individuals suffering disproportionate incidents of violence compared to the rest of the University Community. We are committed to supporting individuals by raising awareness through education, accountability, prevention, and by providing proactive responses and supports for Survivors/Victims that are considerate of the distinct differences

within our Community and that encourage all individuals to come forward to disclose Sexual/Gender-based Violence and Misconduct.

3. The University recognizes the possible traumatic effects of Sexual/Gender-based Violence and Misconduct and will assist individuals seeking support and healing. Any individual experiencing (or who has experienced) Sexual/Gender-based Violence and Misconduct can expect to:
  - determine what processes and actions the University pursues (except in circumstances listed in 3a);
  - be treated with compassion, dignity, and respect;
  - be provided with timely safety planning assistance;
  - be informed about on and off-campus support services, accommodations and resources available to them.
  - 3a. The University reserves the right to initiate or continue an investigation or to report the incident to the appropriate authorities in the following circumstances:
    - where the safety of a Survivor/Victim or the greater University Community is at risk;
    - where the University has a legal obligation to act, including where the Survivor/Victim is a minor.
4. The University commits to taking reasonable steps to ensure the safety of the University Community when an allegation of Sexual/Gender-based Violence and Misconduct is disclosed to the University.
5. Retaliation against any person who is involved in a complaint of Sexual/Gender-based Violence and Misconduct under this Policy will not be tolerated by the University and may result in disciplinary action.
6. All Members of the University Community will be treated equitably under this Policy. All matters arising under this Policy will be dealt with in a fair, unbiased and timely manner.
7. This Policy will be applied in conformity with the Principles of Procedural Fairness. Those responsible for interpreting, administering and applying this Policy will apply the Policy in an unbiased, non-arbitrary manner.

## DEFINITIONS

**Sexual Assault:** A criminal offence under the Criminal Code of Canada. Sexual assault is any type of unwanted act done by one person to another that violates the sexual integrity of the individual to whom it is directed. 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, and/or threatened. It is carried out in circumstances in which the person has not freely agreed, consented, or is incapable of consenting to the act.

**Sexual Violence and Misconduct:** Describes any unwanted act, physical, sexual, verbal or psychological, carried out by targeting an individual's sexuality. This violence takes different forms including sexual assault, sexual exploitation, sexual abuse, sexual harassment, stalking, indecent or sexualized exposure, voyeurism, cyber harassment, trafficking, sexual exploitation and degrading sexual imagery, limited to the distribution of a sexually explicit photograph or video of a person to one or more persons other than the person in the photograph or video without the consent of the person in the photograph or video and with the intent to distress the person in the photograph or video. It includes the attempt or threat to commit any of the foregoing acts. It includes displaying or circulating pictures or other degrading material of a sexual nature which are not part of the legitimate study, display, use or distribution of topics, material or art forms falling within appropriate academic, contemporary art/design/media discourse within the context of an art and design university.

**Gender-based Violence:** Describes any unwanted act, physical, sexual, verbal or psychological, carried out by targeting an individual's gender or perceived gender identity. This violence takes different forms, including sexual assault; sexual abuse; sexual harassment; stalking; indecent or sexualized exposure; degrading sexual imagery, as defined above; voyeurism; cyber harassment; trafficking; and sexual exploitation.

**Survivor/Victim:** Someone who has experienced Sexual/Gender-based Violence or Misconduct. While not everyone may choose this term to apply to their experience, this term is broadly used within anti-violence movements today to recognize the strength and resilience of those who live every day with the impact of having been sexually assaulted. Individuals have the right to self-identify as a Survivor/Victim or any other word that they feel identifies their experience. Where a Survivor/Victim chooses to make a Report to the University whereby an investigation is initiated, the Survivor/Victim will be described as a "Complainant" and Principles of Procedural Fairness will be applied.

**Consent:** The Criminal Code of Canada defines consent as the voluntary agreement to engage in sexual activity. An individual must actively, willingly, and continuously, give Consent to all sexual activity. Sexual activity without Consent is Sexual Assault. Consent is never assumed or implied; it is not silence or the absence of “no.” A person who is impaired by alcohol or drugs may be incapable of giving Consent. Consent can never be obtained through threats, fraud or coercion, and it can be revoked at any time. A person who is unconscious can never give Consent.

**Member of the University Community:** Means all employees of the University, including administration, faculty and staff; students currently enrolled in any University course or program; members of the University’s Board of Governors; and persons providing services to the University under a contract for services or as a volunteer.

**First Responders:** Any person who receives a Disclosure of Sexual/Gender-based Violence or Misconduct. The University understands that Survivors/Victims of Sexual/Gender-based Violence or Misconduct will most often tell someone they know. In this way, the University acknowledges that all Members of the University Community are potential First Responders. Any First Responder can contact Counselling Services who are trained to receive Disclosures and are a resource to First Responders for next steps, including help in receiving support and information regarding Reporting.

**Disclosure:** When a Survivor/Victim of Sexual/Gender-based Violence or Misconduct chooses to tell someone they trust about their experience in order to receive emotional or medical support. Not to be mistaken for a Report, and a Disclosure does not initiate an investigation or any action other than the provision of support services and/or accommodations from the University. The choice regarding Disclosure and/or Reporting is with the Survivor/Victim.

**Report to the University:** Where an individual has chosen to formalize their Disclosure with the University to seek specific supports or actions based on their individual wishes/needs/circumstances. A Report to the University may result in a request or recommendation for investigation.

**Criminal Report:** An official report of Sexual/Gender-based Violence and Misconduct filed with a local law enforcement authority.

**Third Party Report:** An anonymous report to a local law enforcement agency without making an official statement. A Third Party Report must be submitted through a community-based support worker. This type of Report does not launch an official police investigation but it can help in

identifying repeat Respondents. The University may be unable to initiate an investigation into anonymous or Third Party Reports, due to a lack of evidence from the individual complainant.

**University-related Activity:** Means any activity at any location that is engaged in by the University or by persons acting under the University's control. All activities on the University's campuses are University-related unless they are conducted under the control of a person, organization, association or group that is separate from the University.

**Complainant:** An individual making a Report to the University or a Criminal Report.

**Respondent:** Someone against whom an allegation of Sexual/Gender-based Violence and Misconduct has been made.

**CARE Team:** The University CARE Team (Conduct-Assessment-Response-Effect) is responsible for conducting risk assessments for all reported incidents of abusive or threatening behavior or incidents of violence. The purpose of the CARE Team is to recommend management strategies that take into consideration the health and safety of all Community Members. The CARE Team is not involved in an investigative process that may be initiated following a Report. Individuals are encouraged to make a Disclosure and/or Report to a member of the CARE Team following Sexual/Gender-based Violence and Misconduct.

**Principles of Procedural Fairness:** When a Report advances to an investigation, the investigation shall be conducted in a manner that is unbiased and in a manner that ensures all of the parties have the right to a fair process. The right to a fair process requires that the Respondent is not penalized by decisions affecting their rights unless they have been given prior notice of the allegation(s), a fair opportunity to respond to the allegations, and the opportunity to present their own case during an investigation.

## **DISCLOSURE + REPORTING**

1. **Disclosure:** A Survivor/Victim may choose to tell someone they trust about their experience of Sexual/Gender-based Violence and Misconduct in order to receive emotional or medical support. The decision to Disclose is not the same as the decision to Report, and a Disclosure does not initiate an investigation. See Procedures for guidelines for responding to a Disclosure.

## 2. **Reporting:**

### a. **Report to the University:**

Where an individual has chosen to formalize their Disclosure with the University to seek specific supports or actions based on their individual wishes/needs/circumstances. A Report to the University may result in a request or recommendation for investigation. An individual making a Report to the University will be referred to as a Complainant.

### b. **Criminal Report:**

Where an individual has chosen to Report their experience of Sexual/Gender-based Violence and Misconduct to a law enforcement authority. The University will support the individual Complainant in facilitating criminal reporting and the CARE Team shall be available as a resource to them.

### c. **Third Party Report:**

Where the individual Complainant has chosen to make an anonymous Report to the police without making an official statement. This type of Report does not launch an official police investigation but it can help them identify repeat Respondents. A Third Party Report must be submitted through a community-based support worker. The University is available to support the individual in facilitating Third Party Reporting.

## **ROLES + RESPONSIBILITIES**

### **Employees:**

Employees of the University are integral to supporting a safe learning environment. Faculty and staff may be First Responders in receiving Disclosures and/or as witnesses to incidents of Sexual/Gender-based Violence and Misconduct.

### Receiving Disclosures from Students:

Faculty and staff must refer to this Policy and inform the Counselling office that they have received a Disclosure and may do so without sharing the identity of the Survivor/Victim making the Disclosure if they do not have the consent of the Survivor/Victim. Where faculty and staff directly witness acts of Sexual/Gender-based Violence and Misconduct, a Report must be made to the CARE Team. Any First Responder or witness must contact Counselling Services who are

trained to receive Disclosures and are a resource to First Responders for next steps, including help in receiving support and information regarding Reporting.

Counselling Services are available for Critical Incident Stress Debriefing, counselling, and any follow-up planning relating to any incidence of Sexual Violence or Misconduct involving students on campus, as per 4.14 Assessment and Treatment Care Plan Policy. Any follow-up care or safety planning with students may be done in consultation with external health care providers, law enforcement authorities, and the University may be required to relinquish control of the situation to the appropriate external authorities as required by law.

Where there are students involved (Survivors/Victims, Complainants or Respondents) in incidents of Sexual/Gender-based Violence and Misconduct, the CARE Team will be involved to provide support to the student(s) during any investigation as well as to address any incidents of student conduct.

#### Receiving Disclosures from Non-students:

Faculty and staff who receive Disclosures have a duty to refer to this Policy and consult with Human Resources. Where faculty and staff witness acts of Sexual/Gender-based Violence and Misconduct, a Report must be made to the CARE Team. Any First Responder or witness must contact Counselling Services who are trained to receive Disclosures and are a resource to First Responders for next steps including help in receiving support and information regarding Reporting.

The Employee and Family Assistance Program is available for Critical Incident Stress Debriefing and counselling relating to any incidents of Sexual/Gender-based Violence and Misconduct involving employees. Any follow-up care or safety planning with employees may be done in consultation with external health care providers, law enforcement authorities, and the University may be required to relinquish control of the situation to the appropriate external authorities as required by law.

Where there are faculty and staff involved (Survivors/Victims, Complainants or Respondents) in incidents of Sexual/Gender-based Violence and Misconduct, the Human Resources representative on the CARE Team will be involved to support any investigation as well as to address any issues of conduct pertaining to faculty and staff, including the applicability of any processes set out in their respective collective agreements. They will act as a resource to faculty and staff in facilitating any



follow-up requirements, including accommodations and referrals to the Employee and Family Assistance Program, and to other external resources.

**The CARE Team:**

The CARE Team shall be involved in all Disclosures and Reports of Sexual/Gender-based Violence and Misconduct that occur on the University Campus, and are available as a resource to all Members of the University Community. The team shall conduct itself in accordance with Policy 6.10.1, Threat Assessment Team Procedures.

The University will ensure supports and accommodations are available to any Member of the University Community. In the event of a Disclosure, the University will ensure that Survivors/Victims are made aware of services and supports and will make appropriate support services, including modifications to the learning environment or accommodations, available to any member of the community on the basis of a Disclosure. A Report does not need to be made in order to access these services, and individuals do not need to prove that an incident occurred in order to access support.

**Security:**

Security personnel are often the First Responders for any violent incident that occurs on campus, and may be required to administer first aid as needed. Security will follow the University's policy regarding a Survivor/Victim's wishes to either Disclose or file a Criminal Report, Report to the University, or Third Party Report; except where the safety of the Survivor/Victim or the greater University Community is at risk and where the University has an extraordinary legal obligation to act. In these circumstances, the University reserves the right to initiate an investigation or to Report the incident to the appropriate law enforcement authorities.

**Emily Carr Students' Union:**

While the staff of the Emily Carr Students' Union are external partners, they are considered Members of the University Community and are integral to the sustainment of a safe learning environment. As Members of the University Community who regularly interact with students, the Emily Carr Students' Union may act as a liaison to students who come to them to Disclose incidents of Sexual/Gender-based Violence and Misconduct. Staff of the Emily Carr Students' Union are encouraged to engage with the CARE Team in accordance with this Policy.

## **CONFIDENTIALITY**

With respect to Disclosures to Counselling, confidentiality is guaranteed unless the counsellor determines:

1. There is a likelihood of a person endangering themselves or others;
2. There is abuse of a minor indicated; and/or
3. There is a legal proceeding and the adjudicative body subpoenas the counsellor and/or their notes, or disclosure is otherwise required by law.

With respect to Disclosures to other Members of the University Community, confidentiality cannot be guaranteed; however, discretion will be exercised to the maximum degree possible to protect the anonymity of both parties involved in a Disclosure.

The University is committed to respecting the confidentiality of the Survivor/Victim's experience of Sexual/Gender-based Violence and Misconduct, as well as the confidentiality of the Respondent, unless the safety of a Survivor/Victim or the greater University Community is at risk and/or where the University has an extraordinary legal obligation to act. In these circumstances, the University reserves the right to initiate an investigation or to Report the incident to the appropriate authorities.

## **BAD FAITH COMPLAINTS**

A bad faith complaint is when an allegation was not prompted by an honest belief that an act of Sexual/Gender-based Violence and Misconduct occurred, but by some ulterior, deceitful, vindictive or improper motive.

Complaints that are found to have been made in bad faith may lead to remedial action for the Complainant. Where the Complainant is an employee of the University, remedial action may include discipline up to and including termination of employment. Where the Complainant is a student, sanctions will be considered in line with the Student Conduct policy. Investigations that result in inconclusive findings may not necessarily constitute bad faith complaints.

## **RETENTION AND DISPOSAL OF RECORDS**

Information and records created or received as part of this Policy are considered material to the University's response to Sexual and Gender-based Violence and Misconduct education, prevention, support and investigation. Information and records must be retained and disposed of

in accordance with a records retention schedule approved by the University and applicable freedom of information and protection of privacy legislation.

### **POLICY REVIEW**

This Policy will be reviewed every three years.