

# Sexual Assault and Sexual Violence

## LOYALIST COLLEGE

Subject: Sexual Assault and Sexual Violence	Number: SS-612
Issued By: Student Success	Date Issued: January 1, 2017
Supersedes: March 31, 2015	Page(s): <b>1 of 13</b>

### 1. PURPOSE & INTENT OF POLICY

All members of the Loyalist College community have a right to work and study in an environment that is free from any form of sexual violence. The policy and its related protocol sets out the way in which we address sexual violence. It 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 individuals who have committed an act of sexual violence accountable.

### 2. SCOPE

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.

### 3. DEFINITIONS

#### **Sexual Assault and/or 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:** 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 Harassment:** Section 10 of the Ontario Human Rights Code defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome." Using this definition more than one event must take place for there to be a violation of the Code.

**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:

- 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 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.

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- A person is usually unable to give consent when 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 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, an administrator in a relationship with anyone who reports to that position.
- 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:

**Consent:** 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 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.

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**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 who has been 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 where relevant because some who has been 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 who has experienced these circumstances to determine how they wish to identify.

#### 4. POLICY

Sexual assault and sexual violence are unacceptable and will not be tolerated. We are committed to reducing and preventing sexual violence and creating a safe space 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.

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 or witnessed.

We recognize 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*. We also recognize that individuals who have experienced sexual violence may experience emotional, academic or other difficulties.

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### 4.1 We are committed to:

- 4.1.1. 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 internal and/or external counselling and medical care, information about legal options, 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 who experienced 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 College community about our sexual violence policies and protocols;
- 4.1.10. providing appropriate education and training to the College 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 Assault and/or Sexual Violence

- 4.2.1. Members of the College community should immediately report incidents where they are subject to, witness, or have knowledge of sexual violence or have reason to believe that sexual violence has occurred or may occur. Members who have experienced sexual assault and/or sexual violence are encouraged to come forward to report as soon as they are able to do so.

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- 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 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.

#### **4.3. Complaint Process and Investigation**

A complaint of sexual assault or any other kind of sexual violence can be filed under this Policy by any member of the College community. Please note that the survivor is not required to file a formal complaint to obtain supports, service or appropriate accommodation from the College.

The College 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. The responding individual(s) will be given reasonable notice, with full detail of the allegations and provided with an opportunity to answer to the allegations made against them.

##### **4.3.1. 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.

##### **4.3.2. 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 cooperated 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*.

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 appropriate to the circumstances.

##### **4.3.3. 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. Loyalist College will manage all records in accordance with College policy and privacy legislation.

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

#### 4.4. 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. The College does its best to respect the confidentiality of all persons, including the complainant, the accused, 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.

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 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, appropriate 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.

## 5. PROCEDURE AND PROTOCOLS

### 5.1. If You Have Experienced or Have Been Affected by Sexual Violence

**If you have experienced or have been affected by sexual violence and require support and accommodation, please call (Student Services) at (613.969.1913 ex.2657) during day time hours of 8:30-4:30. If you want to speak to someone directly call Sexual Assault Crisis center 24 hours X 7 days a week at 1-877-544-6424.**

It is often difficult to disclose and report incidents of sexual violence. It is entirely up to you if you choose to report the incident; however, we strongly encourage you to do so. There are a variety of services listed below; furthermore, you may wish to consider the following steps immediately after a sexual assault.

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### **Get to a safe place:**

- Go to a safe place and seek out help. If you need assistance getting to a safe place and you are on the campus, please contact Campus Security at 613-969-1913 ext. 2222 and they will assist you
- If you are in Residence, contact the Residence Manager at 969-1913 ext. 2102
- If you live off campus, contact a close friend or relative that you trust if you feel emotionally and/or physically unsafe

### **Get medical attention as soon as possible:**

- Go to or call the Domestic Violence Sexual Assault Response team at Belleville General Hospital 613-969-7400 ext. 2095 (this service is available 24 hours per day)
- Go directly to emergency services at Belleville General Hospital (the hospital is open 24 hours per day, 7 days per week) and ask for the Sexual Assault Nurse
- Go to the Loyalist College on-campus Health Centre during regular business hours 8:30 am until 4:30 pm (613-969-1913 ext. 2248).

### **Getting advice and support:**

- If the incident has occurred during regular business hours 8:30 am until 4:30 pm please contact Student Services at 969-1913 ext. 2657 or go directly to the student hub and ask to see a counsellor immediately.
- If the incident has occurred after hours please contact the Sexual Assault Centre of Quinte District at 1-877-544-6424 (this is a 24-hour crisis line).

The counsellors at the College or the advisors at the Sexual Assault Centre will guide and support you through the process of engaging the appropriate resources.

### **Anyone who has been affected by sexual violence has the right to:**

- be treated with dignity and respect,
- be believed,
- be informed about on- and off-campus services and resources,
- decide whether or not to access available services and to choose those services they feel will be most beneficial,
- decide whether to report to campus security and/or local police,
- have an on-campus investigation with the institution's full cooperation,
- have a safety plan, and,
- have reasonable actions taken to prevent further unwanted contact with the alleged perpetrator(s).

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### 5.2 If you would like to file a formal complaint:

The Director of Student Success or delegate can assist you with a formal complaint. If the alleged perpetrator is another member of the College community, you may file a complaint under this policy.

Individuals who have been affected by sexual violence may also wish to press charges under the Criminal Code. The Director of Student Success or delegate can also assist you with making contact with the local police.

Please note you are not required to file a formal complaint to obtain supports, services or appropriate accommodation from the College.

### 5.3. What to Do if You Witnessed or are Aware of a Sexual Assault and/or Sexual Violence

If you have witnessed sexual violence **on campus** call Security at 613-969-1913 extension 2222. This number is staffed 24 hours a day all year.

If you have witnessed sexual violence **off campus** call Belleville Police at 911.

Faculty, staff, other employees and contractors have a duty to immediately report all incidents and suspected incidents of sexual violence. Students are strongly encouraged to report incidents of sexual violence to obtain supports, services or accommodation from the College.

All members of the College community who have witnessed sexual violence have a duty to cooperate with a College investigation.

### 5.4. What to Do if Someone Discloses Allegations of Sexual Assault and/or Sexual Violence

A person may choose to confide in someone about an act of sexual violence. A supportive response involves:

- listening without judgement and accepting the disclosure as true;
- communicating that sexual violence is never the responsibility of the survivor;
- helping the individual identify and/or access available on- or off-campus services, including emergency medical care and counselling;
- respecting the individual's right to choose the services they feel are most appropriate and to decide whether to report to the police;
- recognizing that disclosing can be traumatic and an individual's ability to recall the events may be limited;
- respecting the individual's choices as to what and how much they disclose about their experience; and,
- making every effort to respect confidentiality and anonymity.

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If disclosure is made to faculty or staff by a student seeking support or academic accommodation, the faculty or staff should refer the student to the Manager of Accessibility in Student Services, and work with the manager to ensure that the student receives all necessary academic and other accommodations.

As indicated above, if an employee of the College becomes aware of an allegation of sexual violence against another member of the College community, the employee is required to report the alleged incident to Human Resources immediately.

### **5.5. Roles and Responsibilities of the College Community**

While everyone on campus has a role to play in responding to incidents of sexual violence, some campus members will have specific responsibilities which might include:

- On-campus health supports to provide psychological and emotional support, assist with safety planning and make referrals to other services, including medical services;
- Faculty, staff and administrators to facilitate academic accommodations and other needs of those who have been affected by or who have experienced sexual violence, e.g., extensions on assignments, continuing studies from home, and dropping courses;
- Residence staff to facilitate safe living arrangements to the best of their abilities;
- Human Resources to assist with any incidents relating to employees; and
- The College will conduct its own internal investigation in collaboration with or independent of any police investigation. Any such investigation will be coordinated by Loyalist College Risk Assessment Committee and informed by respective policy and protocol.

### **5.6. How Will the College Respond to a Report of Sexual Violence?**

Where a complaint of 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. The College understands that individuals who have experienced sexual violence may wish to control whether and how their experience will be dealt with by the police and/or the College. A person who has experienced sexual violence may choose not to request an investigation and has the right to participate in any investigation that may occur.

In certain circumstances, the person will retain this control, however, the College may be required to initiate an internal evaluation and/or inform the police of the need for a criminal investigation, even without the person's consent, if the College believes that the safety of other members of the College community is at risk. The confidentiality and anonymity of the person(s) affected will be protected in these circumstances.

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A report of 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 in circumstances where the College is unable to initiate an internal investigation under this Policy.

### 5.6.1. **Where the Respondent is a Student**

Sexual violence is a violation of Loyalist College's Sexual Assault and Sexual Violence Policy. It is considered a serious offence and will be addressed in a manner which is consistent with other serious offences.

Student Services is responsible for intake, investigation and decision making. As set out in the Academic Operations Policy 209 – Student Code of Conduct, appeals of student violations may be pursued based on limited grounds and are heard by the Vice President of Academic.

### 5.6.2. **Where the Respondent is an Employee**

Sexual violence is a violation of Loyalist College's Sexual Assault and Sexual Violence Policy. Allegations against employees will be addressed in accordance with the procedures set out in this Policy, and in any applicable collective agreement, and/or other College policies. If the complaint is sustained following an investigation, the College will decide on the appropriate disciplinary actions consistent with any applicable collective agreement and/or policies regarding discipline.

The Human Resources Department is responsible for intake. When a potential violation by one of more employees is alleged, the College will conduct an investigation and make decisions with the support of Human Resources.

Appeals for full time employees can be made through their respective collective agreements or terms and conditions of employment. For part time employees, appeals can be made by writing to the Executive Director of Student Success and Human Resources.

### 5.6.3. **Where the Respondent is not a Student or Employee**

Contractors, suppliers, volunteers or visitors who attend on campus will be subject to complaints if they engage in prohibited conduct. Where a complaint against the accused is substantiated, the College will take appropriate action.

All contractual relationships entered into by the College will be governed by a standard contract compliance clause stating that contractors must comply with this Policy and the Ontario *Human Rights Code*, including cooperating in investigations. Breach of the clause may result in penalties, cancellation, or other sanctions.

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

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**5.7 Procedural Fairness**

Except as otherwise stated in this Protocol, 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.

**5.8 Support and Representation**

Complainants and respondents may attend meetings with a single (non-participating) support person. The College will consider 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.

**5.9 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 violence or otherwise under the College's AOP 209. 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.

**6.0 Outcomes**

The College will determine, based on its investigation, what happened and whether it constitutes sexual violence or another form of misconduct. 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 discipline, up to and including discharge. Contractors, suppliers, volunteers and visitors may face penalties, cancellation of contracts and other sanctions. The College may also impose non-punitive measures such as but not limited to:

- -Behavioural Contract
- -Restitution
- -Location/space restrictions

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**6.1 Written Decision**

The College will inform the complainant and respondent of the results of its investigation in writing. The written decision summary will include a brief description of any corrective action that the College has taken or will take as a result of its investigation.

**6.2 Annual Report**

Each year the college shall provide the Board of Governors with an annual report setting out the following information:

- The number of times supports, services and accommodations relating to sexual violence are requested and obtained by the students.
- the number of incidents and complaints of sexual violence reported by the students and information about such incidents and complaints including any statistics from outside organizations where possible on Loyalist students
- any initiatives and programs established by the college to promote awareness of the supports and services available to the students
- implementation and effectiveness of this policy

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**REVISION HISTORY**

November 2016 – Policy and Protocol amended to meet the requirements of Bill 132 including an annual report to the Board of Governors.

December 8, 2016 – Policy and Protocol approved by the Board of Governors.