



## Sexual Misconduct

Effective Date: May 19 2017

*This policy is intended to cover students registered in the Certificate in Haven Counselling Skills (Cert HCS), Diploma in Haven Counselling Skills (Dip HCS) or Diploma in Haven Group Facilitation (Dip HGF).*

Students are expected to act professionally and appropriately at all times. Students behaving in an inappropriate manner will be subject to the Dismissal Policy. Likewise, students can expect to be treated respectfully at all times according to the Respectful and Fair Treatment of Students Policy.

The Haven prohibits sexual assault, sexual and gender-based harassment, stalking, and retaliation. These actions are expressly forbidden and will not be tolerated.

The Haven is committed to the prevention of and appropriate response to sexual misconduct.

Sexual misconduct includes the following:

- Sexual assault;
- Sexual exploitation;
- Sexual harassment;
- Stalking;
- Indecent exposure;
- Voyeurism;
- 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;
- The attempt to commit an act of sexual misconduct; and
- The threat to commit an act of sexual misconduct.

### **Procedures for Handling Sexual Misconduct Reports and Complaints**

The following procedures cover the processes for:

- Making a complaint about sexual misconduct involving a student.
- Responding to a complaint of sexual misconduct involving a student.
- Making a report of sexual misconduct involving a student.
- Responding to a report of sexual misconduct involving a student.

## 1. Preliminary Issues & Important Definitions

Sexual Misconduct can be committed by anyone, including third parties, and can occur between people of the same sex or different sexes and regardless of one's biological sex or transgendered sex.

This policy applies to Sexual Misconduct that is committed against a student when that Sexual Misconduct occurs:

- On Haven property.
- Off-property if in connection with a Haven-sponsored program or activity.

The Haven is not a court of law. We also do not engage in victim-blaming or rushes to judgment. Therefore, without judgment, we refer to anyone who reports that they have experienced Sexual Misconduct as a *Complainant* and to anyone who reportedly has engaged in Sexual Misconduct as a *Respondent*.

The Haven strongly encourages complainants to report to local law enforcement, however such a report is not a prerequisite to The Haven's review and investigation of any report or complaint covered by this Policy. The Haven will honor a Complainant's request not to report the matter to local law enforcement unless there is a reasonable basis to believe that the safety and security of the Haven community is at risk. In this event, The Haven will endeavor to notify a Complainant of The Haven's intent to report the matter to law enforcement in advance of any such report.

The Haven does not limit the time frame for reporting under this Policy, although a delay in reporting may impact The Haven's ability to take certain actions.

### Defining Consent

In many cases of Sexual Misconduct, the central issue is consent or the ability to give consent.

- Consent is a voluntary agreement to engage in sexual activity.
- Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity.
- Past Consent does not imply future Consent, and Consent to engage in one form of sexual activity does not imply Consent to engage in a different form of sexual activity.
- Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity.
- Consent must be knowing and voluntary.
- To give Consent, a person must be awake, of legal age, and have the capacity to reasonably understand the nature of their actions.
- Individuals who are physically or mentally incapacitated cannot give Consent.
- Silence, without actions evidencing permission, does not demonstrate Consent.

- Where force, threats, or coercion is alleged, the absence of resistance does not demonstrate Consent. Force, threats, or coercion invalidates Consent.
- The responsibility of obtaining Consent rests with the person initiating sexual activity.
- Use of alcohol or drugs does not diminish one's responsibility to obtain Consent or negate one's intent.
- Consent to engage in sexual activity may be withdrawn by either person at any time. Once withdrawal of Consent has been clearly expressed, the sexual activity must cease.
- Incapacitation is the inability, temporarily or permanently, to give Consent, because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, due to an intellectual or other disability that prevents the student from having the capacity to give Consent, or the individual is unconscious, asleep or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if he or she demonstrates that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual interaction.
- Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators that an individual is incapacitated may include, but are not limited to, vomiting, unresponsiveness, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, lack of awareness of circumstances or surroundings, or inability to perform other physical or cognitive tasks without assistance.

Matters involving sexual misconduct are addressed by the Executive Director (ED) of The Haven. The ED is responsible for, among other things, coordinating The Haven's efforts to comply with and carry out the campus's responsibilities under provincial and Canadian law, including compliance with this policy.

If the ED is the Respondent or otherwise implicated in the report or complaint, a designate will be identified by the Chair of the Haven Foundation Board.

## 2. Reporting & Confidentiality

We encourage victims of Sexual Misconduct to talk to somebody about what happened – so they can get the support they need, and so The Haven can respond appropriately.

The Haven will seek to protect the privacy and confidentiality of the individuals involved in any report or complaint of alleged Sexual Misconduct to the extent possible and allowed by law. The ED evaluates any request for confidentiality in the context of The Haven's responsibility to provide a safe and nondiscriminatory environment to all members of its community.

The Haven will complete any publicly available record-keeping, without the inclusion of identifying information about the alleged victim. It also maintains as confidential any interim measures or remedies provided to the alleged victim to the extent that maintaining confidentiality does not impair its ability to provide the interim measures or remedies. In addition to internal reporting, The Haven

strongly encourages anyone who believes they have experienced a sexual assault (or any other crime) to make a report to local law enforcement. Collection and preservation of evidence relating to the reported sexual assault is essential for law enforcement investigations, so prompt reporting of the incident to law enforcement is especially critical. The ED will, upon request, assist an individual in making a report to law enforcement as necessary and appropriate.

The Haven encourages students who have been the victim of Sexual Misconduct to come forward. Students should not be discouraged from reporting such incidents because they fear discipline for their own violations of student policies. Therefore, The Haven has discretion not to pursue other policy violations that occurred in the context of the reported incident of Sexual Misconduct.

### 3. Response Procedure

Students are encouraged to report any incident of Sexual Misconduct to the ED. If a report is made verbally, the ED will request a written statement by the student.

Upon receipt of a report, The Haven will generally proceed as described below.

#### i. Investigation Commencement

The Haven will provide a timely and thorough investigation. Barring exigent circumstances, cases of Sexual Misconduct are generally resolved within a 60 day period once the incident has been reported. An extension of time may be necessary if witnesses are unavailable or uncooperative or due to other extenuating circumstances beyond the control of the ED.

#### ii. Initial Response

Once The Haven is put on notice of possible Sexual Misconduct, the Complainant is offered appropriate confidential support, accommodations, and other resources and is notified of applicable policies and procedures. Accommodations include the ability to alter schedules, to withdraw from/retake a class without penalty, and to access support. The Respondent is also offered appropriate resources and notified of applicable policies and procedures.

#### iii. Interim Intervention

Pending a final determination, the ED takes appropriate interim measures. These measures may include, but are not limited to, the imposition of a no-contact order and/or employment and training program modifications. The ED may limit a student's access to certain Haven facilities or activities pending resolution of the matter. The Haven may impose an Interim Suspension on the Respondent pending the resolution of an alleged violation when The Haven determines, in its sole discretion, that it is necessary in order to protect the safety and well-being of members of the campus community.

#### iv. Decision to Proceed to Investigation

If the Complainant is willing to participate in the review and investigation process, the School will proceed as described below.

If the Complainant requests a confidential investigation, The Haven will seek to protect the privacy and confidentiality of the Complainant to the extent possible and allowed by law. The ED evaluates any request for confidentiality in the context of The Haven's responsibility to provide a safe and non-discriminatory environment to all members of its community.

If a confidential investigation is requested and agreed to, the ED investigates without revealing the name of the Complainant in any interview or email and does not ask questions that inadvertently or reasonably could reveal the identity of the Complainant.

If the Complainant asks that the report of sexual misconduct not be pursued, the ED will consider the interests of the Complainant, the Haven community, law enforcement, and/or other appropriate interests under the circumstances. The ED makes a final decision on whether and to what extent it will conduct an investigation, and notify the Complainant promptly.

v. Investigation Procedure

The ED does not function as an advocate for either Complainants or Respondents. The ED can, however, identify advocacy and support resources for either Complainants or Respondents.

The Respondent receives written notice of the report and the nature of the alleged misconduct. They are advised in writing of the investigation process and opportunity to provide any relevant evidence.

The investigation is generally conducted by the ED (or any other individual appointed by the ED). In all cases, the ED or the designated investigator is appropriately trained regarding handling and considering sexual misconduct cases.

The investigator separately interviews both Complainant and Respondent. Both parties are able to provide evidence and suggest other witnesses to be interviewed. The investigator interviews other relevant witnesses and reviews any other available relevant evidence. Both the Complainant and Respondent can have another individual present during their own respective interviews. If the Complainant or Respondent elects, they may have an attorney present during their own interview, but the attorney may not advocate during the interview.

vi. Determinations

The ED weighs the evidence and decides whether additional evidence is necessary for consideration. Ultimately, the ED makes a determination of whether a violation of the Sexual Misconduct Policy or any other policy has occurred.

The ED reserves the right to convene an ad hoc Inquiry Committee to review the evidence and make the determination in appropriate circumstances. The Inquiry Committee is made up of three

individuals. At least one member of the Inquiry Committee must be a member of Haven Foundation Board the other two members will be appointed by the Board. No one directly involved in the complaint or who has a conflict that interferes with their ability to consider the complaint in an unbiased manner may serve on the Inquiry Committee

vii. Standard of Proof

In all cases under the Sexual Misconduct policy, the ED will determine if a violation of policy has occurred by the preponderance of evidence standard. Thus, they will determine whether it is more likely than not that a violation has occurred.

viii. Potential Sanctions

If a violation of policy has been found, the ED will impose appropriate sanctions, including but not limited to coaching, training, probation, suspension, dismissal from the training program, written warning, demotion, or termination.

ix. Outcome Notifications

Both the Complainant and Respondent will be notified in writing of the outcome of the investigation and of the sanctions imposed, if any.

x. Appeals

The Complainant or Respondent may appeal the outcome determination by written appeal to the Chair of Haven Foundation Board within 14 days of notification of the outcome. An appeal may be made based only on one or more of the following reasons:

- New and significant evidence appeared that could not have been discovered by a properly diligent charged student or complainant before or during the original investigation and that could have changed the outcome.
- The Finding is Arbitrary and Capricious: Reading all evidence in the favor of the non-appealing party, the finding was not supported by reasonable grounds or adequate consideration of the circumstances. In deciding appeals, the Chair of Haven Foundation is allowed to make all logical inferences in benefit of the non-appealing party.
- Disproportionate Sanctions: The sanctions were disproportionate to the findings.

The appeal shall consist of a written statement requesting review of the conduct decision or sanction and explaining in detail the basis for the appeal. The Chair of Haven Foundation, or designated representative, will notify the non-appealing party of the request for an appeal. Within seven business days of receipt of the notice, the non-appealing party may submit a written statement to be included in the case file. The appeal may proceed without the non-appealing party's written statement if it is not submitted within the designated time limit. The Chair of Haven Foundation Board will endeavor to make a determination of the appeal within 45 days of receipt.

If the student is dissatisfied with the determination of the appeal, they may choose to:

- Request in writing that The Haven appoint an external mediator to review the complaint process, meet with the parties in person, and mediate a satisfactory resolution. For a mediation to proceed, both the complainant and respondent must agree to participate in the mediation process. The mediator must have professional experience in mediation and be acceptable to all parties to the complaint. The written request includes a short statement about why they are dissatisfied with the determination.

OR

- File a complaint with the Private Training Institutions Branch ([privatetraininginstitutions.gov.bc.ca](http://privatetraininginstitutions.gov.bc.ca)).