



## **Sexual Assault and Other Sexual Misconduct**

**Effective Date: ASAP 2017**

*This policy applies to any and all employees, directors, officers, agents, volunteers, students, participants, contractors, and any authorized representatives of the Haven. This includes all students registered in the Certificate in Haven Counselling Skills (Cert HCS), Diploma in Haven Counselling Skills (Dip HCS), Diploma in Haven Group Facilitation (Dip HGF), and the Haven Youth Leadership Program, as well as participants in Haven programs, members of Faculty, Assistants and other program support, Haven employees, and Haven's Board of Directors.*

### **I. PRINCIPLES AND COMMITMENTS**

The Haven Foundation (the "Haven") encourages self-responsibility and respect for stated boundaries among all individuals and is committed to providing an environment free from harassment. The Haven does not tolerate harassment and/or abuse of authority in connection with its programs and services and is committed to a zero-tolerance approach to sexual assault or any other Sexual Misconduct.

The purpose of these policies and procedures is to affirm the Haven's commitment to the above stated values and to provide the means for the Haven to make all reasonable efforts to avoid harassment and abuse of authority in its programs and services.

The Haven encourages victims of Sexual Misconduct to talk to somebody about what happened so they can get the support they need. The Haven encourages individuals who believe they have been the victim of Sexual Misconduct to come forward so the Haven can respond appropriately. Individuals should not be discouraged from reporting such incidents because they fear discipline for their own violations of Haven policies. Therefore, the Haven has discretion not to pursue other policy violations that occurred in the context of the reported incident of Sexual Misconduct.

### **II. ROLE AND LIMITS OF COMPLAINT PROCESS**

Pursuing a complaint under this Policy is limited to the role of the Haven as the employer to protect the safety of its employees in the workplace or in connection with workplace activities, as an educational institution under the BC Private Training Institutions Branch to protect the safety of its program participants, students, assistants and faculty, and to fulfill its human rights and other statutory obligations.

This policy is limited to Sexual Misconduct that is committed against or by a participant, faculty member, assistant, employee or student when that Sexual Misconduct occurs:

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

To be clear, pursuing a complaint under this Policy does not preclude an individual from filing a complaint with the BC Human Rights Tribunal, WorkSafe BC, or from notifying the police or starting an action in a court of law.

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 allegations or complaint covered by this Policy. The Haven will honour 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 affect the Haven's ability to fully investigate or take certain actions to follow up on the complaint.

### **III. PROCEDURES FOR COMPLAINTS OF SEXUAL MISCONDUCT**

#### **A. GENERAL MATTERS**

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

#### **B. CONFLICTS OF INTEREST**

If the ED is the Respondent, Complainant, or otherwise implicated in the report or complaint, then the Complainant may notify the Chair of Haven's Board of Directors of the complaint and the Chair shall designate an individual other than the ED to fulfill the role normally filled by the ED in these procedures.

If a Director or staff member, Investigator, or an authority of Haven empowered to impose discipline has a real or apparent conflict of interest in a particular matter, or there is a reasonable apprehension of bias, then that individual will not continue in their involvement in the matter and the Chair of the Haven Board, or Vice-Chair if the Chair is identified as having a conflict, will appoint an appropriate individual to act in that role for the purposes of that matter.

### C. REPORT PROCEDURE

Individuals are encouraged to report any incident of Sexual Misconduct to the Haven. If a report is made verbally, then the ED will request a written statement by the reporting individual. Ideally, the report should be made as soon as possible following the incident and should include the location, date and time of the incident, the context and details of the incident, names of the parties involved in the incident and/or any witnesses to the incident (the "Report").

### D. RESPONSE PROCEDURE

Upon receipt of a Report as described above, the ED, or other individual designated by the Haven, the Reviewer (the "Reviewer"), will respond as follows:

#### 1. Initial Review

1.1 Upon receipt of a Report, the Reviewer will conduct an initial review to determine if the Haven has Jurisdiction to Investigate. This review will occur within 14 calendar days of receiving a Report unless exceptional circumstances exist that prevent the Reviewer from meeting this timeline, in which case the Reviewer will contact the person making the Report as soon as possible to inform them of the revised timeline.

1.2 If the Haven does not have jurisdiction to Investigate, the Reviewer will advise the person making the Report of this decision along with the reasons. If the Reviewer believes that the Report discloses other kinds of misconduct or information that the Haven may need to act on under another policy or process, the Reviewer may conduct an investigation under that policy or process. When appropriate, the Reviewer will consult with the person making the Report before referring it to anyone else.

1.3 If the Haven has jurisdiction to Investigate, the individual directly subject to the Sexual Misconduct will be referred to as the Complainant in any subsequent process, and the individual against whom the allegations have been made will be referred to as the Respondent.

1.4 If the Haven has jurisdiction to Investigate, then the Haven will do one of the following:

(a) Conduct an investigation, or appoint an investigator, under section 3 of these Procedures;  
or

(b) Subject to 1.5 and 1.6, refer the matter to an alternative resolution process.

1.5 If the Reviewer believes that an alternative resolution process may be appropriate in the circumstances, they will discuss this option with the Complainant. If the Complainant agrees that an alternative dispute resolution process may be appropriate, the Reviewer will contact

the Respondent to advise them that the Report was made, and will discuss this option with the Respondent. If the Respondent agrees to participate in an alternative resolution process and the Reviewer is satisfied that an alternative resolution process is appropriate, then the Reviewer will explore the options available and, with the agreement of both parties, will refer the matter to that process for resolution.

1.6 Participation in the alternative resolution process is entirely voluntary. If either the Complainant or the Respondent decides they no longer wish to participate in the alternative resolution process at any time, then the Reviewer will appoint an Investigator or will commence investigation steps as the Reviewer under section 3 of these Procedures.

1.7 Once the Haven is put on notice of an incident of possible Sexual Misconduct, the Complainant is offered accommodations, appropriate arms-length confidential support and other resources, and is notified of applicable policies and procedures. For students, accommodations may include the ability to alter schedules or to withdraw from/retake a class without penalty. The Respondent is also offered appropriate resources and notified of applicable policies and procedures.

## 2. Investigations

2.1 If an investigation is initiated then the ED or another individual designated by the Haven (the "Investigator") will:

- (a) Contact the Complainant to advise them that the Report has been referred to Investigation and provide them with information about the resources available and the investigation process, including their right to have an advisor, support person present whenever they meet with the Investigator regarding the investigation;
- (b) Contact the Respondent to advise them that a Report has been made and has been referred to Investigation, and provide them with a copy of the Report along with information about the resources available and the investigation process, including their right to have an advisor or support person present whenever they meet with the Investigator regarding the investigation.

2.2 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.

2.3 Except in exceptional circumstances, investigations (including the preparation of the Investigation Report) will be completed within 60 calendar days of the Investigator's receipt of the Report from the Complainant.

- 2.4 An extension of time may be necessary if witnesses are unavailable or uncooperative, or due to other extenuating circumstances beyond the control of the Investigator. If the Investigator believes that this timeline cannot be met then the Investigator, after consultation with the ED, the Chair of the Haven Foundation Board or their designate, dependent on any conflict or perceived conflict of interest identified, will contact the Complainant and the Respondent as soon as possible to inform them of the revised timeline.
- 2.5 Haven is committed to conducting its investigations in accordance with the statutory and common law standards expected of it. To be clear, these standards can differ from standards applied in formal court-room or criminal law settings. In particular, formal rules of evidence commonly associated with a civil or criminal trial will often not be applicable to Haven's investigative process because these investigations are not being conducted within the formal adversarial processes of a court hearing.
- 2.6 In order to better promote and protect the rights of each individual to respond to a complaint made against him or her in all investigations, the Respondent will be fully informed of the allegations made against him or her, will be given the opportunity to respond, and Haven will consider his or her response prior to making a final decision regarding the complaint
- 2.7 In all cases, the Investigator must be appropriately trained regarding handling and considering sexual misconduct cases and must not be implicated in the Sexual Misconduct at issue.
- 2.8 If the Complainant asks that the Report of Sexual Misconduct not be pursued, the Investigator will consider the interests of the Complainant, the Haven community, law enforcement, and/or other appropriate interests under the circumstances. The Investigator in consultation with the ED, the Chair of the Haven Foundation Board or their designate, dependent on any conflict or perceived conflict of interest identified, makes a final decision on whether and to what extent it will conduct an investigation and/or to notify relevant authorities and notify the Complainant promptly.
- 2.9 Subject to section 2.5 and 2.6, the Investigator may investigate in any manner they deem appropriate in order to obtain the information required to make the necessary findings of fact.

This may include, but is not limited to, the following:

- (a) requesting a written response to the Report from the Respondent, including a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;
- (b) meeting with or requesting further information from the Complainant;
- (c) meeting with or requesting further information from the Respondent;

- (d) meeting with or requesting further information from any other individuals who may have information relevant to the Investigation, including any witnesses identified by the Complainant or the Respondent;
- (e) inviting the Complainant and the Respondent to submit questions they believe should be asked of the other party or any witness, though the decision as to whether such questions will actually be asked of the other party or a witness is entirely within the discretion of the Investigator; and
- (f) obtaining any other evidence that may be relevant to the Investigation.

2.10 The Investigator in consultation with the ED, the Chair of the Haven Foundation Board or their designate, dependent on any conflict or perceived conflict of interest identified, reserves the right to convene an ad hoc Inquiry Committee (the "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 the Board of Directors of the Haven. The other two members will be appointed by the Chair of the Board. No one directly involved in the complaint or events related to the complaint or who has a conflict or perceived conflict that may interfere with their ability to consider the complaint in an unbiased manner may serve on the Inquiry Committee. In each case where an Inquiry Committee is convened, at least one of the members of the committee shall have had appropriate training in the handling and considering of sexual misconduct cases.

2.11 At the completion of the Investigation, the Investigator will prepare a written report (the "Investigation Report"). The Investigation Report will normally include the following information:

- (a) a summary of the evidence considered;
- (b) any assessment of credibility that is required to render a determination; and
- (c) the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct has occurred.

### 3. Interim Intervention

3.1 Pending an Investigation Report determination, the ED, the Chair of the Board or their designate, dependent on any conflict or perceived conflict of interest identified, in his or her sole discretion may take appropriate interim measures, which may include, but are not limited to, the following:

- (a) Modifications of working or volunteer schedules and/or training programs in order to avoid contact between the Respondent and the Complainant;

- (b) Requesting or granting a temporary leave of absence to a Respondent or Complainant;
- (c) Temporary reassignment of staff or volunteers; and
- (d) Interim suspensions.

#### 4. Outcome and Potential Disciplinary Measures

- 4.1 If the Investigative Report includes a determination that Sexual Misconduct has occurred, the Investigator will provide a copy of the Investigative Report to the ED and the Board of Directors.
- 4.2 If a violation of policy has been found, then the ED and the Board of Directors will impose appropriate sanctions, including but not limited to coaching, training, probation, suspension, dismissal, written warning, demotion, or termination.
- 4.3 Once the ED or the Directors of Haven have made a decision regarding the appropriate disciplinary or other measures to be taken, that decision will be communicated in writing to the Respondent and Complainant.
- 4.4 If the Investigative Report does not include a determination that Sexual Misconduct has occurred, the ED will provide a copy of the Investigative Report to the Complainant and the Respondent.

#### 5. Appeals

- 5.1 The Complainant or Respondent may appeal the outcome determination by written appeal to the Chair of the Board of Directors of the Haven within 14 days of notification of the outcome.

An appeal may be made based only on one or more of the following reasons:

- (a) New and significant evidence appeared that could not have been discovered by a properly diligent respondent, complainant or investigator before or during the original investigation and that could have changed the outcome;
- (b) The Investigative Report is arbitrary or capricious, meaning that the finding was not supported by reasonable grounds or adequate consideration of the circumstances; or
- (c) The sanctions imposed were disproportionate to the findings.

The Chair of the Haven Board shall appoint someone trained in handling Sexual Misconduct cases to conduct and decide the appeal. That person in deciding the appeal shall be allowed to make all logical inferences in benefit of the non-appealing party.

- 5.2 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 the Haven Board, or an appropriately trained 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 the Haven Board or designated representative will endeavor to make a determination of the appeal within 45 days of receipt.
- 5.3 The Chair of the Haven Board or designated representative reserves the right to convene an ad hoc Appeal Committee to review the evidence and make the determination in appropriate circumstances. At least one member of the Appeal Committee must be a member of the Haven Board. The other two members will be appointed by the Chair of the Haven Board. No one directly involved in the complaint or events related to the complaint, or who has a conflict or perceived conflict that may interfere with their ability to consider the complaint in an unbiased manner, may serve on the Appeal Committee.
- 5.4 If the Complainant or Respondent is dissatisfied with the determination of the appeal, they may choose to request in writing that the Haven Board 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 must include a short statement about why they are dissatisfied with the determination.
- 5.5 If the Complainant or Respondent is a student 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) they may file a complaint with the Private Training Institutions Branch ([privatetraininginstitutions.gov.bc.ca](http://privatetraininginstitutions.gov.bc.ca)).

## 6. Confidentiality

- 6.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the Personal Information Protection Act (PIPA), all participants in an Investigation must act in accordance with the requirements set out below.
- 6.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual ("Personal Information") through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:
- (a) Any participants in the Investigation from disclosing information about themselves, or information that they obtained outside the Investigation;

- (b) The ED, Chair of the Haven Board, or representative of Haven from disclosing Investigation-related information as authorized under section 6.3; or
- (c) Complainants and Respondents from disclosing the information that they have received under section 6.4 and 6.5.

6.3 The Haven will not disclose Personal Information related to an Investigation except to the extent such disclosure is:

- (a) Expressly authorized by the affected individual;
- (b) To a representative of the Haven, if necessary for the performance of that individual's duties;
- (c) To a Complainant, Respondent, witness or other participant in the Investigation, if necessary for the conduct of the Investigation;
- (d) To the Complainant or Respondent in accordance with section 6.4 and 6.5;
- (e) Authorized by the Haven's ED or Board for compelling health or safety reasons;
- (f) Authorized by the Haven's ED or Board to correct misleading or inaccurate information if necessary to protect the integrity of the Investigation or investigatory processes; or
- (g) Authorized or required under law.

6.4 To maintain the integrity of the Investigation process, the Haven's ED, Chair of Haven's Board or an individual or group designated by the ED or Chair must ensure that both Complainants and Respondents know the Investigation findings and evidence upon which these findings are based. For this reason, Complainants and Respondents will be provided with a copy of the Investigation Report. Personal Information that is irrelevant to the Investigation findings or that identifies third parties as required under the PIPA shall be removed from the Investigation Report. If there are multiple Complainants or multiple Respondents, they will only receive portions of the Investigative Report that are relevant to them.

6.5 Under the PIPA, the Haven is authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the Chair of the Haven's Board for compelling health or safety reasons. For example, the Haven will normally inform Complainants of any restrictions that may have been imposed upon the Respondent's movements or activities.

6.6 Section 6.2 does not prevent Complainants and Respondents from disclosing the information they received under section 6.4 and 6.5. However, Complainants and Respondents who choose to disclose such information should keep in mind that disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including for

example, a defamation or breach of privacy claim), and may wish to seek legal advice prior to doing so.

#### IV. DEFINITIONS

(a) “**Consent**” is the voluntary agreement to the act or acts in question and to continue to engage in the act or acts. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words and conduct. For clarity:

- Consent cannot be implied;
- Consent can be revoked at any time during the act or actions in question;
- No consent is obtained when an individual is incapable of consenting. An individual may be incapable of consenting if they are intoxicated, or if they are induced to engage in the activity by fraud, by someone exercising a position of trust, power or authority, or through coercion or the threat of violence;
- Consent to engage in sexual activity must exist from the beginning to the end of each instance of sexual activity;
- Past Consent does not imply future Consent, and Consent to engage in one form of activity does not imply Consent to engage in a different form of activity;
- Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific 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 take place, the absence of resistance does not demonstrate Consent;
- The responsibility for obtaining Consent rests with the person initiating the activity;

- Use of alcohol or drugs does not diminish one’s responsibility to obtain Consent or negate one’s intent;
- Consent to engage in an activity may be withdrawn by either person at any time. Once withdrawal of Consent has been clearly expressed, the 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 person 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 the activity;
- 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; and
- Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and Consent only applies to each specific instance of sexual activity.

(b) **“ED”** means the Executive Director of the Haven;

(c) **“Harassment”** may be present in the form of words, gestures, electronic communication forms, or other actions that annoy, alarm, abuse, demean, intimidate, belittle, or cause personal humiliation or embarrassment to another, or cause an intimidating, hostile or offensive work environment. It includes harassment based on any grounds such as race, religion, color, creed, ethnic origin, physical attributes, gender or sexual orientation. Harassment may be deliberate, unsolicited, and coercive. It will often consist of a series of incidents, but it may be brought about by a single incident only.

(d) **“Haven”** means the Haven Foundation.

(e) **“Sexual Harassment”** is an unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behavior of a sexual nature (including pornography and/or sexually colored remarks) that has or that might reasonably be expected or be perceived to cause offense or humiliation to another

(f) **“Sexual Misconduct”** is any sexual act or act targeting an individual’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed,

threatened or attempted against an individual without that individual's Consent. Sexual Misconduct includes, but is not limited to, the following:

- Sexual assault, which is any form of sexual touching or the threat of sexual touching without the individual's Consent;
- Sexual exploitation;
- Sexual harassment, as defined above;
- Stalking, which is engaging in conduct that causes an individual fear for their physical or psychological safety, such as repeatedly following or communicating through any means with someone, engaging in threatening conduct, or keeping watch over the place where the individual happens to be;
- Indecent exposure, which is exposing one's body to another individual for a sexual purpose or coercing another individual to remove their clothing in order to expose their body, without their Consent;
- Voyeurism, which is non-consensual viewing, photographing, or otherwise recording another individual in a location whether there is an expectation of privacy and where the viewing, photographing or recording is done for a sexual purpose;
- 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, with or without the intent to distress the person in the photograph or video.

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