

Policy Number: SS 612	Policy Title: Sexual Assault and Sexualized Violence
Supersedes Existing Policy? Y	Policy Owner: Vice-President, Student Life and Leadership
Associated Procedure: Y	Date Last Approved by Board of Governors, December 16, 2020

1. Introduction and Purpose

All members of the Loyalist College community have a right to work and study in an environment that is free from any form of sexualized violence. This policy and its related procedure and documentation set out how the College addresses sexualized violence. It ensures that those affected by sexualized 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 sexualized violence accountable.

2. Application

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.

The College will respond to all incidents of sexualized violence involving members of the College Community when the conduct has a substantial link to the College, and/or direct implications for students or staff or the educational mission of the College. This includes behaviour that occurs on or off-campus and behaviour observed or carried out through an electronic, online or social media platform, or by using text, audio, video or images.

3. Definitions

Sexualized violence: any unwanted sexual acts and/or acts that are committed, threatened or attempted against a person without a person’s consent. Sexualized violence includes **sexual assault, sexual exploitation, sexual harassment, stalking, and voyeurism**. Sexualized violence may be committed by individuals acting alone or in groups. *Such acts commonly target a person’s sexuality, gender identity, gender expression or are directed at individuals who do not confirm to traditional male or female gender stereotypes.*

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 Exploitation: Taking advantage of another person through non-consensual or abusive sexual control. *This may include but is not limited to the digital or electronic broadcasting, distributing, recording and or photographing of people involved in sexual acts without their consent.*

Sexual Harassment: a form of sexualized violence prohibited by the *Ontario Human Rights Code*. This term is used to describe behaviour or comments of a sexual nature or related to sex, sexual orientation, gender identity or gender expression that either is known or ought to be known to be unwelcome. Sexual harassment includes making unwelcomed sexual solicitations, attentions, or advances; the implied or expressed promise of benefits or advancement in return for sexual favours; threats of reprisals for rejecting unwelcomed solicitations or advances; engaging in comment or conduct that creates a hostile or poisoned environment to persons of a specific sex, sexual orientation, gender identity, or gender expression; and incidents that occur through electronic means.

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.

Voyeurism: The concealed observation of a person without their consent and in circumstances where they could reasonably expect privacy. Voyeurism may include direct observation, the observation by mechanical or electronic means, or visual recordings.

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.
- 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 cognitive 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 or staff member 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.

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.¹

Coercion: In the context of sexualized 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.

Survivor: Someone who has been affected by sexualized 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 someone who has been affected by sexual assault believes 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 Statement

Loyalist College is dedicated to being a safe and positive space where members of the College community feel able to work, learn and express themselves. Sexual assault and sexualized violence are unacceptable and will not be tolerated. The College is committed to reducing and preventing sexualized violence and creating a supportive environment for anyone in our College community who has been affected by sexualized violence.

Loyalist College is committed to addressing harmful attitudes and behaviours (e.g., adhering to myths of sexualized violence) that reinforce that the person who experienced sexualized violence is somehow to blame for what happened. As such, Loyalist College will continue to provide information to the College community about our sexualized violence policies and protocols; provide appropriate education and training to the College

¹ <https://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html>

community about responding to the disclosure of sexualized violence; monitor and update our policies and protocols to ensure that they remain effective and in line with other existing policies and best practices.

We recognize that sexualized 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 sexualized violence may experience emotional, academic or other difficulties. The College's intention is that individuals feel comfortable about making a report in good faith about sexualized violence that they have experienced or witnessed.

As a measure of accountability, Loyalist College will report annually to its Board of Governors on a number of measures related to the experiences of and support for students who have experienced sexual violence. These measures include:

- Number of times supports, services and accommodation relating to sexual violence are requested and obtained by students and information about the supports, services and accommodations
- Number of incidents and complaints of sexual violence reported by students and information about incidents and complaints
- Any initiatives or programs by the college or university to promote awareness of the supports and services available to students
- Implementation and effectiveness of the institution's policy

While this policy sets out the College's principles pertaining to reporting and investigating incidents; protecting victims and whistleblowers from reprisals and safeguarding the confidentiality of those involved; additional details may be found in the *Sexual Assault and Sexualized Violence Procedure*.

5. Reporting Incidents of Sexualized Violence

5.1 Reporting an Incident

All members of the College community who have been affected by sexualized violence are encouraged to disclose their experience to a trusted member of the College community as soon as they are able to do so. Individuals are not required to report in order to receive supports, services or accommodations.

- **Amnesty from College Sanctions:** The College recognizes that some individuals may be hesitant to disclose or report sexualized violence that occurred in situations where they were drinking while underage or using illegal drugs. A survivor or other members of the College community who discloses or reports sexualized violence will not be subject to College sanctions for violations of College policies related to their use of alcohol and/or illegal drugs at the time of the incident.
- **Anonymous and Third Party Reporting:** Individuals who experience sexualized violence may choose to disclose to College staff anonymously (i.e. without providing their name or personal information). The College will provide individuals who make anonymous disclosures with information on supports, services, accommodations, interim safety measures, and other available options. While the College will make every effort to maintain the confidentiality of all persons involved in disclosing an incident, there are limits to confidentiality (see Limits to Confidentiality section below).

5.2 Obligation to Report

College employees, governors, volunteers, appointees, suppliers, contractors, etc. who witness or have knowledge of sexualized violence have an obligation to make a Third Party Report immediately.

5.3 Right to Withdraw a Report

A survivor has the right to withdraw a report at any stage of an investigation process. Where the report has been withdrawn, the survivor may choose at any time to reactivate the report to continue with the investigation process. If the College determines that the incident about which a report has been withdrawn puts the safety of other members of the College community at risk, it will conduct an internal investigation and/or may inform the police. In the circumstances, the College will make every effort to protect the confidentiality and anonymity of person(s) affected.

6. Confidentiality

The College has a responsibility and obligation to ensure that any private and personal information provided in a disclosure, report and/or investigation of sexualized violence is collected, used, maintained and secured appropriately. The College will make every effort to maintain the confidentiality of all persons involved in disclosing or reporting an incident of sexualized violence including the survivor, respondent and witnesses. All persons involved in the disclosure, reporting, assessment and/or investigation of an incident of sexualized violence are required to keep this information confidential.

6.1 Limits to Confidentiality

The College will restrict access to all information provided in the disclosure and processes related to a report and investigation of an incident of sexualized violence to individuals with a legitimate need for such access and will provide education and training to those who are regularly involved in receiving disclosures and the administration of reports.

However, confidentiality cannot be assured in circumstances where:

- the College's Risk Assessment process determines risk to an individual or the College community exists;
- A report has been made and the respondent must be informed of the details of the report as part of the investigation and in keeping with Procedural Fairness; and/or
- reporting is required by law.

7. Support for Survivors who disclose or report Sexualized Violence

The College is committed to responding to all disclosures/reports of sexualized violence in a consistent, respectful and supportive manner, which includes the following:

- **Trust:** survivors who disclose or report their experience to a member of the College community can expect to be believed.
- **Compassion:** ensuring that the response to those who disclose that they have been affected by sexualized violence is compassionate and non-judgmental and that their right to dignity and respect is protected throughout the processes of disclosure, investigation and institutional response. Also ensuring coordination and communication among the various departments who are most likely to be involved in the response to sexualized violence on campus with sensitivity and compassion.
- **Safety:** the College will take every reasonable step to protect the safety and security of survivors and the College community.
- **Choices and options:** providing those who have been affected by sexualized violence with detailed information about their choices and options for support and reporting, including the roles of various areas of the College in providing services and supports and responding to incidents of sexualized violence.

- **Self-determination:** survivors of sexualized violence can expect the College to respect their right to make the final decisions about their own best interests in determining their next steps following a disclosing or reporting an incident.
- **Cultural competence:** ensuring that the response to sexualized violence is informed by an awareness that individuals may be targeted due to a number of factors (e.g. gender, non-binary gender identity or expression, race, ethnicity, religion, ability/disability, age) and providing culturally appropriate supports, services and resources.
- **Academic and Workplace Accommodations:** Survivors may need additional support and flexibility in order to continue their regular day-to-day work or curricular activities. The College will make/facilitate all reasonable accommodations.

7.1 Due Diligence

Loyalist College will ensure that there is a diligent investigation process including the following:

- ensuring that all reported incidents of sexualized violence will be investigated to the best of the administration's ability and in a manner that ensures due process;
- 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; and
- ensuring that on-campus investigation procedures are available in the case of sexualized violence, even when the individual chooses not to make a report to the police. These investigations are undertaken by an impartial, expertly trained third party representative.

8. **Protection from Reprisals, Retaliation or Threats**

It is a violation of this policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a survivor 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 will take reasonable steps to protect persons from reprisal, retaliation and threat; examples of such steps include advising individuals in writing of their duty to refrain from committing a reprisal, restricting an individual's access to areas of the campus, and restricting their communication.

9. **Investigation and Adjudication**

Both the survivor and the respondent have the right to procedural fairness, which must prevail in all investigations. In order to adhere to College policies, standards and applicable collective agreements, specific investigation and adjudication procedures will apply when the respondent is a college employee, and another set of procedures will apply when the respondent is a student. These procedures will include an appeal procedure.

10. **Related Documents**

SS 612 Sexual Assault Sexualized Violence Procedure

SS 612 Appendix A Sexual Assault Sexualized Violence Resource Document

OHS 007 Workplace Violence Prevention

OHS 007(A) Violence Protection Incident Report
OHS 007(B) Response Guidelines
OHS 008 Respectful College Community

11. Reference

Ontario Human Rights Code