

## Sexual Misconduct Policy

### Implementation Date

1 September 2010

### Last Revision Date

15 Oct 2021

### Position(s) Responsible

All Members of the FEI Community

### Authorized by

Vice President, FEI

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### Policy

This policy applies to all staff members of Fraser Education Inc. and by extension, all students and staff of Western Maritime Institute.

All students and staff of Fraser Education Inc. are entitled to study and work in an environment that is free from Sexual Misconduct. Fraser Education Inc. considers Sexual Misconduct to be a serious violation of an individual's fundamental rights. Members of FEI's community who engage in Sexual Misconduct may be subject to a range of disciplinary measures, up to and including suspension, dismissal or expulsion. Members of Fraser Education Inc.'s community who experience and report Sexual Misconduct will be provided with support and assistance with accessing additional support services both on and off the Campus.

However, knowing what constitutes Sexual Misconduct is often difficult. Freedom from misconduct and harassment does not mean that you will be protected from exposure to controversial material and ideas, nor does it mean that every encounter you have at Western Maritime Institute will be agreeable. Western Maritime Institute is a place of learning in which the free exchange of information, ideas and perspectives are valued and encouraged. However, the use of sexually explicit material as training aid (e.g. demonstration videos) where other appropriate material is available and the sexually explicit material can be excluded from course content is strictly forbidden.

Students staying in on-campus residence are advised that there are no WMI staff members on site on weekends and between the hours of 4:30pm and 8:00am on weekdays and there is no campus security present at any time. A call out list of WMI contacts is provided in each residence room; students are to call the list for assistance in case any issues arise after hours. Students are advised to call 911 in case of emergencies that warrant the attention of police, ambulance, or fire services.

### Scope

This Policy applies to all members of the Fraser Education Inc. community, which includes students, administrative and instructional staff, guests and visitors. The Policy is intended to address and eliminate Sexual Misconduct which occurs within the context of Fraser Education Inc. activities and which interferes with an individual's employment or studies at FEI and Western Maritime Institute. Behaviour which occurs separate from any College-related activities and which is unrelated to an individual's employment or studies at Fraser Education Inc. and Western Maritime Institute is not covered by this Policy.

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This Policy is not intended to be used in situations where Sexual Misconduct is of a violent nature. In the event of violent incidents, law enforcement authorities will be contacted and support will be provided to the victim. Fraser Education Inc. does reserve the right to conduct an investigation and take appropriate steps in the event of violent situations, if necessary to protect the safety of Fraser Education Inc.'s community.

### Definitions

#### **Consent**

The voluntary agreement to engage in the sexual activity in question and to continue to engage in the activity. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct, and can be revoked at any time. No consent is obtained where a person is incapable of consenting, for example, by intoxication or where a person is induced to engage in the activity by someone abusing a position of trust, power or authority.

#### **Sexual Misconduct**

To constitute Sexual Misconduct, behaviour may be a single serious incident or may be repeated or persistent behaviour. Sexual Misconduct is any form of sexual contact without a person's consent, including the threat of sexual contact without consent. Sexual Misconduct may include one or more of the following:

- Sexual assault
- Sexual exploitation
- Sexual harassment
- Criminal 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
- The threat to commit an act of sexual misconduct

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### **Sexual Harassment**

Sexual harassment refers to unwanted communications or actions that are sexual in nature, and are offensive, intimidating or humiliating. It can take many forms including verbal, written or visual. Sexual harassment may include any of or all of the following conditions:

- Conduct or comment of a sexual nature made by a person who knows or ought to reasonably know that such conduct or comment is unwanted or unwelcome
- Expressed or implied promise or a reward for complying with a request of a sexual nature
- Actual reprisal or an expressed or implied threat of reprisal for refusal to comply with a request of a sexual nature
- Actual denial of an opportunity or an expressed or implied threat of denial of opportunity for refusal to comply with such a request
- The conduct or comment is intended to, or has the effect of, creating an intimidating or hostile environment
- Differential treatment of a former or current intimate partner where a power relationship exists
- Examples of sexual harassment include, but are not limited, to the following:
  - Remarks or innuendos regarding an individual's appearance, clothing or sexual life
  - Unwelcome questions or sharing of personal information regarding a person's marital status, sexuality, sexual activity, sexual orientation, or gender/transgender issues
  - Persistent, unwelcome sexual flirtations, advances, propositions, invitations or requests
  - Sexually suggestive, obscene or degrading comments or gestures
  - Displaying or circulating sexually graphic or derogatory pictures or written materials
  - Use of online activities such as email, text messaging or social networking to initiate or participate in any of the above behaviours
  - Leering, ogling or sexually oriented gestures
  - Inappropriate and unnecessary touching

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Sexual assault is any form of sexual contact that occurs without any freely given consent. Sexual assault includes any form sexual contact where consent has not been given (i.e. non-consensual touching that is sexual in nature, forced penetration). Sexual assault includes date rape or acquaintance rape, which happens between acquaintances, friends or between people who are dating. There are three levels of sexual assault in the Criminal Code of Canada.

- Level 1: any forced sexual contact without bodily harm
- Level 2: forced sexual contact causing or threatening to cause bodily harm or using a weapon (imitation or real)
- Level 3: forced sexual contact that causes aggravated bodily harm or endangers the life of the victim or others

**Criminal Harassment (Stalking)**

Criminal harassment, which includes stalking, is prohibited by the Criminal Code of Canada. Criminal harassment prohibits deliberate conduct that is psychologically harmful to others. For stalking to be criminal harassment, here's what's required:

- A person does one or more of the following things:
  - repeatedly follow you, or anyone you know
  - repeatedly communicate with you, or anyone you know, directly or indirectly
  - repeatedly watch you, or anyone you know, or lurk around your home, workplace, or any other place you happen to be
  - engage in any threatening conduct directed at you or a member of your family
- The person knows that their conduct is harassing you or they are reckless about whether their conduct is harassing you. Reckless means they know their conduct may harass you, but they don't care
- The person's conduct causes you to reasonably fear for your safety or the safety of someone you know. Your fear has to be reasonable. The person does not have to realize that their conduct is scaring you for it to be criminal harassment.

A person can be stalking even if they don't physically hurt anyone or damage any property. The law is designed to protect psychological, emotional, and physical safety. Stalking may start with conduct that seems more annoying than dangerous. Often, the conduct is legal and even socially acceptable, if it's just an isolated incident. But when it's repeated, it may scare the victim. Conduct such as following someone, or sending gifts or letters, may become intimidating if done continually and against the person's wishes.

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**Sexual Exploitation** Sexual exploitation is the sexual abuse of children and youth through the exchange of sex or sexual acts for drugs, food, shelter, protection, other basics of life, and/or money. Sexual exploitation includes involving children and youth in creating pornography and sexually explicit websites.

### Jurisdiction

The Fraser Education Inc. Sexual Violence and Misconduct Policy will be triggered if all of following criteria are met:

- Both of the parties (the Complainant and the Respondent) are students, administrative or instructional staff, guests or visitors
- The last incident of alleged misconduct occurred within the preceding six (6) months.
- The behaviour occurred in the context of a FEI or WMI related activity (e.g. on FEI/WMI property or at a FEI/WMI sponsored event)
- The behaviour, if true, would constitute a contravention of the Policy by meeting a definition of Sexual Misconduct as stated in the policy

### Procedural Fairness

Fraser Education Inc. will deal with allegations of Sexual Misconduct in a procedurally fair, unbiased and timely manner. Complainants and Respondents shall be advised of the procedures available to them and will be provided with a copy of this Policy.

The Parties shall be advised of the allegations and responses of both the Complainant and Respondent and shall be accorded reasonable opportunity to provide comments in support or defense of their own positions. Both the Complainant and Respondent have a reasonable right to respond to any information gathered during the investigation that will be utilized in determining a finding of Misconduct/Harassment or No- Misconduct/Harassment.

For a complaint to be considered under this Policy, it must be submitted within six (6) months of the date of the last alleged incident of Sexual Misconduct. The Campus Director may consider an extension to file a complaint past the six (6) month limit, if reasonable grounds for such an extension exist in extenuating circumstances.

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## Disclosure and Reporting Options

Complainants have the following disclosure and reporting options, available both on and off campus, and may choose any of these options or any combination of the available options.

- **No Report:** the Complainant may wish to disclose sexual violence in order to seek emotional support, medical support, or advocacy, but may not want to report to police or other campus authorities. Subject to certain limited exceptions, this decision should be respected and the Complainant should still be offered support services.
- **Report to Police:** the Complainant may wish to make a police statement, which would generally be followed by a criminal investigation. An appointed campus employee can accompany the Complainant if requested or Fraser Education Inc. can contact a community-based victim support worker to support and accompany the Complainant.
- **Third Party Report to Police via Community Victim Service Agency:** the Complainant may wish to make an anonymous Third Party Report through a community-based victim support worker; reports are sent to police by an intermediary agency and provide detailed information about the incident and the Respondent, but do not include the name or contact information of the Complainant. A Third Party Report is not in and of itself a police investigation; it is an option of last resort for the Complainant who would not otherwise provide information to the police but who may want to access support and let the police know of a sexual predator in order to protect others.
- **Medical Assistance / Forensic Medical Exam:** it is advisable for anyone who has experienced a sexual assault to seek medical attention to address possible physical injury, pregnancy and/or sexually transmitted infections. The Complainant will be referred to the nearest hospital and to be connected with a sexual assault response worker or advocate who can provide support and can accompany her/him to the hospital. The Complainant will be informed of the need to collect any forensic samples while he/she decides whether or not to report the sexual assault to police. Forensic samples can be collected and stored for up to one year while the Complainant decides whether or not to speak with the police.
- **Formal Complaint to College:** the Complainant may wish to make a formal report to Fraser Education Inc., precipitating FEI's Sexual Misconduct process if either the Complainant or Respondent is a student, administrative or instructional staff, visitor or guest to Fraser Education Inc. or Western Maritime Institute. The Complaint Procedure process is outlined below.

## Interim Relief

Fraser Education Inc. may take whatever interim measures deemed necessary to protect its community, pending the completion of an investigation into a Sexual Misconduct complaint. Such measures may include, but are not limited to:

- No-contact between the Complainant, Respondent, Witnesses or other parties
- Ordering the Complainant, Respondent, Witnesses or other parties to cease and desist from engaging in a particular type of behaviour

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- Restricting access to a specific campus or specific areas of campus
- Suspending one or both of the Parties from Fraser Education Inc. pending investigation
- Reassignment of supervision/assessment duties in cases where the Respondent is an instructor or employee

Specific conditions to be included in the interim provisions will be dependent upon the circumstances of each case and the level of risk to the Complainant. All parties will be advised that the interim protection provisions, implemented by Fraser Education Inc., are not to be confused with a legal protection order obtained through the Criminal Justice System.

### Confidentiality and Anonymity

Allegations of Sexual Misconduct may require the disclosure of sensitive and personal information, which is protected from unauthorized disclosure by applicable privacy legislation. In order to encourage persons who have been subject to Sexual Misconduct to come forward, and to protect the rights and reputations of the Complainant and the Respondent throughout the investigation process, Fraser Education Inc. will attempt to ensure that confidentiality is maintained except where disclosure is necessary for the purposes of investigating and resolving the complaint or where required by law.

Confidentiality must, however, be distinguished from anonymity. If a Complainant wishes to proceed with a Formal Investigation by Fraser Education Inc., procedural fairness requires that the Respondent be made aware of the nature of the complaint, including the identity of the Complainant.

All parties and witnesses to a complaint will endeavour to maintain confidentiality throughout the Formal Investigation procedures. Investigators will stress the confidentiality of the investigation with all persons involved in the process, including the Complainant, Respondent and Witnesses. Individuals involved in the investigation process who are found to have breached confidentiality may be subject to discipline.

The limits to confidentiality will be outlined to the Complainant as soon as possible after disclosure. The Complainant will be advised that privacy rights are not absolute and Fraser Education Inc. may be required to take immediate action, such as contacting the police, in relation to a disclosure of Sexual Misconduct or violence in the following circumstances:

- There are reasonable grounds to believe that others in Fraser Education Inc. community may be at significant risk or harm based on the information provided
- An individual is at imminent risk of severe or life threatening self-harm
- An individual is at imminent risk of harming another person
- There is a legal requirement to report
- There is a requirement to comply with a court order for release of information



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Fraser Education Inc. has the authority to make the decision to release information without consent in the above circumstances. If a decision is made to release information without consent, only information relevant to the health or safety concern in question will be released. The Complainant will be informed of any decision to release personal information.

Subject to the exceptions listed above, consent from the Respondent would be required before this information could be disclosed further by the person receiving the disclosure or report. Provincial privacy laws allow such information to be shared without consent in the following circumstances:

- If there are compelling circumstances that affect anyone's health or safety
- To assist in an investigation or in making a decision to start an investigation
- If the disclosure is for the purposes for which the information was originally collected and the disclosure is necessary for these purposes

In some instances, Fraser Education Inc. may need to alert rest its community to incidents or potential threats by sexual predators. These alerts will be communicated in multiple formats and media to ensure accessibility by all members of the Fraser Education Inc. community. The alerts will not identify the Complainant but will include the following information:

- Date and time that the disclosure or report was made
- Fraser Education Inc. employee to whom the disclosure or report was made
- Date and time that the incident occurred
- Location where the incident occurred
- Information about the incident
- Non-identifying information about the perpetrator (i.e. gender, approximate age, ethnicity, height, weight, hair colour, eye colour, what the perpetrator was wearing, distinguishing marks)
- Information on how to access support services

## Complaint Procedure

### 1. Initial Consultation: Campus Director

A member of Western Maritime Institute's community who feels he or she has experienced or witnessed Sexual Misconduct and is considering a complaint process is encouraged to discuss the matter with the Campus Director. The Campus Director will engage in a confidential discussion regarding the Complainant's options, and provide the Complainant with information and guidance regarding:

- Whether the behaviour(s) in question may fall within the definition(s) of Sexual Misconduct under this Policy
- Possible procedures and options available to the Complainant under this Policy or under alternate Policy or process (as appropriate)



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- Where a Complainant wishes to pursue a formal complaint, he/she will be referred to the appropriate individual as provided in the Policy
- Available support for the Complainant both on and off campus

The Campus Director does not determine whether behaviours are Sexual Misconduct; the Campus Director only confirms that behaviours as described by the Complainant may constitute Sexual Misconduct. Only a Formal Investigation can determine whether Sexual Misconduct has taken place.

The Campus Director works with the Complainant, providing options for the Complainant to deal with presented behaviours.

The Campus Director will maintain confidentiality of this discussion. However, if the Complainant claims that the Sexual Misconduct involves violence, the Campus Director must report the situation to the Vice President of Fraser Education Inc. who will investigate and may encourage the Complainant to report the situation to the police, following one of the reporting options set out above. A Complainant is not precluded from reporting to police if they have reported the Complaint to Fraser Education Inc..

If the Complainant, after initial consultation, wishes to proceed to a formal complaint of Sexual Misconduct under the Policy, the Campus Director may provide advice on the necessary elements for a Request for Formal Investigation.

## 2. Informal Resolution

If a Complainant wishes to pursue further actions after an initial consultation with the Campus Director and the Misconduct and/or harassment behaviours are subject to process under this policy, he/she may first seek Informal Resolution. Informal Resolution is not mandatory and may not be appropriate for all manner of Sexual Misconduct. The Complainant may choose to proceed immediately to Formal Resolution.

If the behaviours are student-to-student and classroom based, the Complainant may request that the Instructor, Campus Director, or Chief Instructor intervene to address the Misconduct or harassment behaviours and take action as appropriate to the situation.

Where Misconduct or harassment behaviours are not student-to-student/classroom based or faculty intervention is not appropriate or possible, the Complainant may seek Informal Resolution through the Campus Director. When the Campus Director receives a verbal or written complaint of Sexual Misconduct, he/she will follow-up on such allegations in a timely manner including informing the Respondent of the Complaint and providing a copy of this Policy. Such follow-up may involve attempting to facilitate a mutually agreed-to resolution between the Complainant and Respondent, applying appropriate College Policy or procedures, and/or taking appropriate preventative, disciplinary or remedial measures. Disciplinary actions may include but are not limited to:

- Warning or reprimand
- Referral to educational or psychological services;

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- Restricted/no access to specific areas of Western Maritime Institute or to a specific campus
- Suspension/expulsion from specific classes and/or from Fraser Education Inc. and/or Western Maritime Institute

Where the complaint is against a Campus Director or Chief Instructor the request for Informal Resolution would be directed to the Vice President of FEI. Where the complaint is against the Vice President of FEI, the request for Informal Resolution would be directed to the CEO of FEI. Where such complaints involve a College employee, the Campus Director will consult with the Vice President.

Where the Vice President determines that the Investigation of the allegations of Sexual Misconduct may result in serious consequences for Fraser Education Inc., he/she will consult with the CEO to determine if the complaint resolution process should move directly to a Formal Investigation.

### 3. Formal Investigation

Where the Complainant wishes to pursue Formal Investigation and both Complainant and Respondent are students, the Complainant must submit a written and signed request for Formal Investigation, to the Campus Director. Where the complaint involves a College employee as Complainant or Respondent, a written and signed request for Formal Investigation must also be submitted to the Campus Director.

Where the complaint is against the Campus Director or Chief Instructor, the request for Formal Investigation would be directed to the Vice President of FEI. In all cases of Formal Investigation request, the Vice President of FEI will name a designate to fulfill the role of initiating an investigation as described below:

- The Vice President will review the merits of any complaint that falls under the provisions of this Policy and determine that it falls under the provisions of this Policy and make arrangements for Formal Investigation, including whether an Internal or External Investigator should be appointed.
- Where the complaint moves to Formal Investigation under College Policy, an Investigator will be appointed. Every effort will be made to do this within five (5) working days of the complaint being received by the Vice President.

The appointed Investigator will ensure that both the Complainant and the Respondent are aware that a Formal Investigation has commenced, and that each has a copy of the Sexual Misconduct Policy.

The Investigator will receive information from the Complainant, the Respondent, and any other individuals whom the Investigator believes may have information relevant to the complaint.

Information may be received through written documentation, and/or interviews. The Investigator will ensure that both the Complainant and the Respondent are aware of the positions of the other, and of any allegations made against them, and are given a reasonable opportunity to respond.

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Where an Investigator conducts interviews, the Complainant and the Respondent may request that a support person be present. This person will act as an observer/support and will not participate in the proceedings. An interpreter for either or both the Complainant and Respondent (where either or both parties have English as a second language) may be provided by the Investigator.

After completion of the investigation, and within ten working days, the Investigator will complete a written report, including a copy of the written complaint and findings of fact, and submit the report to Fraser Education Inc.'s Vice President. The report will state a positive or null Finding of Misconduct/Harassment based on the balance of probabilities and may include recommendations for resolution of the complaint and/or for remedial or disciplinary action.

Fraser Education Inc. reserves the right to initiate an independent investigation of Sexual Misconduct if sufficient cause has been demonstrated to warrant such action.

#### 4. Formal Decision

After reviewing the Report of the Investigator, Fraser Education Inc.'s Vice President will make decision(s) on findings of Sexual Misconduct and on appropriate actions in the circumstances.

The Vice President's decision will be rendered, in writing, to the Complainant and Respondent as soon as possible but in any case within ten (10) working days of the receipt of the report of the Investigation. The Vice President will provide a summary of the findings of the Investigator with his/her decision to the Complainant and the Respondent.

Where the Vice President finds that Sexual Misconduct has occurred, disciplinary decisions may include, but are not limited to:

- Warning or reprimand
- Referral to educational or psychological services
- Restricted/no access to specific areas of Western Maritime Institute or to a specific campus
- Suspension/expulsion from specific classes and/or from Fraser Education Inc. and/or Western Maritime Institute
- Disciplinary action up to, and including, termination of employment

Where the Vice President finds that Sexual Misconduct has occurred, Fraser Education Inc. will endeavour to protect the Complainant from any subsequent harassment, discrimination or reprisal, within Fraser Education Inc.'s jurisdiction.

Where the Vice President finds that the complaint was frivolous, vexatious or vindictive in nature, he/she may take appropriate disciplinary action against the Complainant.

A copy of the Investigative Report and the Vice President's decisions will be placed in a confidential file maintained by Fraser Education Inc. head office for a period of five years.

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College practices/procedures that may be deemed to be discriminatory, or other proactive steps to ameliorate existing conditions.

### 5. Appeal

If the Complainant or Respondent feels that appropriate process was not followed or that this Policy was incorrectly applied he/she may appeal the decisions of the Vice President of FEI to the CEO of FEI. The appeal must be submitted in writing within ten (10) days of the decision being received by the Complainant/Respondent and must provide specific grounds for the appeal, describing how the Policy was incorrectly applied and/or due process was not followed. The appeal will deal with appropriateness of process or disciplinary decisions and will not reconsider the original complaint.

If Fraser Education Inc.'s Vice President's decision results in disciplinary action against a College employee, that employee shall have access to appropriate College appeal processes.

### Training and Education

Fraser Education Inc. will ensure that Sexual Misconduct education and training, including prevention, responding to disclosures, bystander intervention and making effective referrals to local community-based response services, is provided to the Campus Director, Chief Instructor, Vice President of FEI, CEO of FEI, appointed Investigators and all potential first responders.

Fraser Education Inc. will initiate and maintain a program to ensure that members of Fraser Education Inc. community are made aware of this Policy, are educated on the scope of Sexual Misconduct and that information and materials regarding sexual health, safety and community-based resources are displayed and made readily available to members of the campus community.