

Department/Policy #	
Policy Title:	Sexual Violence and Misconduct Policy
Approved by:	Executive Committee
Review date:	-
Next review date:	By March 31, 2022

PURPOSE

The Prince George Nechako Aboriginal Employment and Training Association (the “PGNAETA”) is committed to providing a safe working and learning environment that allows for full and free participation of all members of the PGNAETA Community. Sexual Violence and Misconduct undermines these objectives and violates the fundamental rights, personal dignity and integrity of individuals.

This Sexual Violence and Misconduct Policy (“Policy”) articulates the PGNAETA’s duty and commitment to support members of the PGNAETA Community who are impacted by Sexual Violence and Misconduct, to create and make available programs and resources to educate its community on the prevention of Sexual Violence and Misconduct, and to provide a fair and effective process for responding to and investigating allegations of Sexual Violence and Misconduct.

SCOPE

This Policy applies where:

- an incident of Sexual Violence and Misconduct is alleged to have occurred on PGNAETA property, or off PGNAETA property in connection with an event or activity sponsored by or under the auspices of the PGNAETA, and
- the alleged Sexual Violence and Misconduct involves a member of the PGNAETA Community, or a person who was a member of the PGNAETA Community at the time of the incident.

If an incident of Sexual Violence and Misconduct does not meet the above criteria, the PGNAETA may still take steps to mitigate the impact of the incident on the learning or working environment.

The PGNAETA does not have jurisdiction to take disciplinary action against a person who is not a member of the PGNAETA Community or who is not currently affiliated with the PGNAETA. However, under certain circumstances the PGNAETA may be able to take other action, such as revoking a person’s access to PGNAETA property or a PGNAETA event.

This Policy is separate from any criminal or civil proceedings. The PGNAETA is not responsible for determining violations of criminal or civil law.

DEFINITIONS

“PGNAETA Community” means all PGNAETA employees and students, and any other person who is contractually obligated to comply with this Policy.

“Complainant” means a person who files a Complaint. In some instances, the PGNAETA may act as a Complainant where it becomes aware of allegations of Sexual Violence and Misconduct that, if true, would violate this Policy but no person comes forward with a Complaint, or where an investigation is required by law.

“Complaint” means a formal written complaint containing allegations of Sexual Violence and Misconduct or other violation(s) of this Policy.

“Consent” means freely given voluntary agreement to engage in the sexual activity in question. For the purposes of this Policy, Consent:

- is never assumed or implied,
- is not silence or the absence of “no”,
- cannot be given if the individual is incapacitated by alcohol or drugs, or is unconscious,
- can never be obtained through threats or coercion,
- can be withdrawn at any time,
- cannot be obtained if a party induces another to engage in sexual activity by abusing a position of trust, power or authority,
- given for one kind or instance of sexual activity does not mean that consent is given for any other sexual activity or instance, and
- cannot be expressed by the words or conduct of a third party.

“Disclosure” means the communication to a PGNAETA employee of an experience of Sexual Violence and Misconduct. Disclosure on its own does not initiate an investigation, except where required by this Policy.

“Investigator” means a person appointed by the PGNAETA to investigate a Complaint.

“Respondent(s)” means a person or persons alleged to have engaged in conduct that violates this Policy.

“Adjudication Panel” means a three person team of administrators from the PGNAETA.

“Retaliatory Action” means any adverse action taken against a person because that person seeks advice on making a Disclosure or Complaint, makes a Disclosure or Complaint, or cooperates in an investigation of a Complaint.

“Sexual Violence and Misconduct” means any sexual act, or act targeting a person’s sexuality, gender identity, or gender expression, whether the act is physical or psychological in nature, which is committed, threatened or attempted against a person without the person’s Consent, including but not limited to

- 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 Violence and Misconduct; or
- the threat to commit an act of Sexual Violence and Misconduct.

“Student” means a person who is enrolled as a student at the PGNAETA.

“Young Person” means a person who is under the age of 19 years.

POLICY STATEMENTS

The PGNAETA is committed to providing a safe working and learning environment that allows for full and free participation of all members of the PGNAETA Community. Sexual Violence and Misconduct undermines these objectives and violates the fundamental rights, personal dignity and integrity of individuals.

Sexual Violence and Misconduct is strictly prohibited under this Policy.

A breach of this Policy by a member of the PGNAETA Community represents serious misconduct and may be cause for disciplinary sanctions including, where appropriate, suspension, dismissal or expulsion.

The PGNAETA recognizes its responsibility to increase awareness of Sexual Violence and Misconduct, to prevent its occurrence within the PGNAETA Community, to support persons impacted by Sexual Violence and Misconduct, to provide procedures to handle Disclosures and Complaints, and to remedy situations where Sexual Violence and Misconduct has been found to have occurred.

The PGNAETA is committed to addressing Sexual Violence and Misconduct by:

- implementing and actively promoting awareness and training programs to educate the PGNAETA Community regarding Sexual Violence and Misconduct and the issues addressed in this Policy;
- promoting working and learning conditions that seek to eliminate the potential for incidents of Sexual Violence and Misconduct to occur within the PGNAETA’s facilities or operations;
- reducing barriers to Disclosing and filing Complaints regarding Sexual Violence and Misconduct;
- responding to Disclosures and Complaints in a procedurally fair, efficient and consistent manner;
- supporting members of the PGNAETA Community who are impacted by Sexual Violence and Misconduct, through academic, non-academic, and other supports as required; and
- communicating the support services and the resources available to members of the PGNAETA Community who may be directly or indirectly impacted by Sexual Violence and Misconduct.

All persons who Disclose or file a Complaint regarding an experience of Sexual Violence and Misconduct can expect from the PGNAETA:

- to be treated with compassion, dignity, and respect;

- to be respected in their choice as to whether they wish to Disclose or file a Complaint regarding their experience;
- timely assistance with safety planning;
- timely information about available support services and resources;
- discussion of appropriate academic, workplace or other accommodations;
- to be advised of the options for addressing an incident of Sexual Violence and Misconduct, and the limits to confidentiality associated with each option; and
- if they do decide to file a Complaint, a clear explanation of the investigation and decision process, a procedurally fair and unbiased process, and regular updates on the status of the process.

All persons who are accused of violating this Policy can expect from the PGNAETA:

- to be treated with compassion, dignity, and respect;
- timely information about available support services and resources;
- to be advised of the options available to them; and
- if a Complaint is filed, a clear explanation of the investigation and decision process, a procedurally fair and unbiased process, and regular updates on the status of the process.

The PGNAETA strongly encourages all members of the PGNAETA Community to become knowledgeable about Sexual Violence and Misconduct and their rights and obligations under this Policy.

The PGNAETA reserves the right to initiate an investigation and/or to inform the relevant law enforcement agency without the consent of the person Disclosing or filing a Complaint regarding an incident of Sexual Violence and Misconduct, if the PGNAETA has a reasonable belief that the safety of a member of the PGNAETA Community is at risk.

The PGNAETA reserves the right to implement interim measures as it considers appropriate, to protect the safety of the PGNAETA Community or any of its members during an evaluation of a Disclosure or Complaint, or pending the completion of an investigation. Such measures may include, but are not limited to: directing the Complainant, Respondent, witnesses or other parties to cease and desist from engaging in a particular type of behaviour; restricting access to the PGNAETA campus or specific areas of the PGNAETA campus; alteration of the learning or work schedule of an individual; imposing a no-contact directive; and/or temporary, non-disciplinary leave of an individual.

A member of the PGNAETA Community has the right to pursue other processes external to the PGNAETA in connection with alleged Sexual Violence and Misconduct, such as reporting the matter to the police, initiating a civil action, or filing a complaint under the BC Human Rights Code. If an external course of action is pursued, the PGNAETA may elect to continue with the process under this Policy, or to suspend the process under this Policy pending the outcome of the external process.

PROCEDURES

Prevention and Response Program [NTD: We have included language about this program to help PGNAETA address its commitment to providing education about sexual violence prevention and to ensure it considers how to ensure this policy is regularly reviewed at least once every three years]

The PGNAETA will establish and maintain a Sexual Violence and Misconduct Prevention and Response Program, that will include but not be limited to the following elements:

- building capacity for risk assessment and management;
- providing appropriate education and training to the PGNAETA Community regarding this Policy;
- establishing procedures for reporting, investigating and documenting incidents of Sexual Violence and Misconduct in a prompt and sensitive manner and in accordance with WorkSafeBC regulations, where applicable;
- notifying members of the PGNAETA Community who may be exposed to a known risk of Sexual Violence and Misconduct, of the nature and extent of the risk;
- providing appropriate support or referrals to members of the PGNAETA Community who Disclose or file a Complaint under this Policy;
- ensuring that appropriate corrective actions are taken in response to incidents of Sexual Violence and Misconduct; and
- conducting regular reviews to evaluate the effectiveness of this Policy, with reviews occurring at least once every three years.

Accommodation and Safety Planning

A member of the PGNAETA Community who wishes to create a safety plan, or request academic, workplace, or other accommodations, arising from an incident of Sexual Violence and Misconduct may contact

- a. the Executive Director, if the member is a PGNAETA employee; or
- b. Team Lead/Manager, for all other members of the PGNAETA Community.

Disclosure of Sexual Violence or Misconduct

A member of the PGNAETA Community who has experienced Sexual Violence and Misconduct may choose to disclose the experience by confiding in another member of the PGNAETA Community.

The PGNAETA encourages, but does not require, members of the PGNAETA Community who have experienced Sexual Violence and Misconduct to seek immediate assistance. Seeking assistance promptly may be important to ensure physical safety, to obtain medical care or emotional support, or to preserve evidence.

A Disclosure is not the same as a Complaint under this Policy and does not normally serve to initiate an investigation or other process. To initiate an investigation, a Complaint must be filed with the Executive Director.

A member of the PGNAETA Community who receives a Disclosure of Sexual Violence and Misconduct must notify the Coordinator, or Team Lead/Manager and if not available then the Executive Director, if any of the following circumstances apply:

- a person is at risk of self-harm or of harming others;
- there is an imminent risk of harm to the PGNAETA Community and/or the broader community;

- the Disclosure involves sexual harassment in a PGNAETA workplace;
- a Young Person is involved or affected; or
- disclosure is otherwise required by law.

In these instances, the minimum amount of information needed to meet legal or other obligations will be disclosed, and every effort will be made to involve the person making the Disclosure in decision-making and to mitigate any associated risks. Any PGNAETA Community member who is unsure about their responsibility to disclose should seek advice from the Coordinator or Team Lead/Manager or if they are not available the Executive Director.

Complaints of Sexual Violence and Misconduct or Other Violations of this Policy

A member of the PGNAETA Community who has experienced Sexual Violence and Misconduct, or who is otherwise affected by a violation of this Policy, may file a Complaint under this Policy by submitting the Complaint in writing to the Coordinator or Team Lead/Manager.

The Complaint should set out the relevant details regarding the alleged Sexual Violence and Misconduct, or other alleged violation of this Policy. The Complaint should include a list of any potential witnesses, along with a description of the information those witnesses are expected to provide. Any relevant documents, including any social media communications, should also be included with the Complaint.

A Complainant has the right to withdraw a Complaint at any stage of the process. However, the PGNAETA may continue to act on the issue identified in the Complaint to comply with its obligations under law or this Policy.

Initial Review

Upon receipt of a Complaint, the Team Lead/Manager or a designate (Coordinator) will conduct an initial review to determine whether the allegations in the Complaint fall within the scope of this Policy. This review will occur within 14 calendar days of receiving a Complaint unless exceptional circumstances exist that prevent the Team Lead/manager from meeting this timeline, in which case they will contact the individual making the Complaint as soon as possible to inform them of the revised timeline.

If the Team Lead/Manager determines that the Complaint falls within the scope of this Policy, they will do one of the following:

- appoint an Investigator to investigate the Complaint; or
- refer the matter to the alternative resolution process described below.

If the Team Lead/ Manager determines that the allegations in the Complaint do not fall within the scope of this Policy, they will advise the individual making the Complaint of this decision along with reasons. If the Team Lead/Manager or their designate believes that the Complaint discloses other kinds of misconduct or information that PGNAETA may need to act on under another PGNAETA policy or process, they may refer the Complaint or the relevant portions of the Complaint to the appropriate PGNAETA authority. When appropriate, the Team Lead/Manager will consult with the person making the Complaint before referring it elsewhere.

Alternative Dispute Resolution/Restorative Processes

If the Team Lead/Manager believes that an alternative dispute resolution or restorative process may be appropriate in the circumstances, they will discuss this option with the Complainant. If the Complainant agrees that an alternative dispute resolution or restorative process may be appropriate, the Team Lead/manager will contact the Respondent to advise them that a Complaint has been made, and will discuss this option with the Respondent. If the Respondent agrees to participate in an alternative dispute resolution or restorative process and the Team Lead/Manager is satisfied that an alternative dispute resolution or restorative process is appropriate, then the Team Lead/Manager will explore the options available and, with the agreement of both parties, will refer the matter to that process for resolution.

Participation in an alternative dispute resolution or restorative process is entirely voluntary. If either the Complainant or the Respondent decides they no longer wish to participate in the alternative dispute resolution or restorative process at any time, then the Team Lead/Manager upon consultation with the Executive Director will appoint an Investigator to investigate the Complaint.

Investigation

When the PGNAETA appoints an Investigator to conduct an investigation into a Complaint, consideration will be given to the subject matter of the Complaint and the expertise and training of the Investigator.

The Investigator will advise participants in the investigation process of the option to have a support person present for interviews.

Except in exceptional circumstances, investigations (including the preparation of the Investigator's report) will be completed within 60 calendar days of the Investigator's receipt of the Complaint. If during the course of the investigation the Investigator believes that this timeline cannot be met, the Investigator will contact the Complainant, the Respondent, and the Executive Director as soon as possible to inform them of the revised timeline.

Investigations are not adversarial processes, and hearings will not be held as part of the investigatory process. Formal rules of evidence commonly associated with a civil or criminal trial will not be applied.

In all investigations, the Respondent will be informed of the allegations made against them, and will be given a full opportunity to respond.

The Investigator will conduct the investigation in a procedurally fair manner, using a process determined by the Investigator. The investigation process may include, but is not limited to, the following:

- requesting a written response to the Complaint 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;
- meeting with or requesting further information from the Complainant;
- meeting with or requesting further information from the Respondent;
- 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;

- inviting the Complainant and the Respondent to submit questions they believe should be asked of the other party or any witness, provided that 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
- obtaining any other evidence that may be relevant to the investigation.

At the completion of the investigation, the Investigator will submit a written Report to the Executive Director. The Report will normally include the following information:

- a summary of the evidence considered;
- any assessment of credibility that is required to render a determination; and
- the investigator's findings of fact, and a determination as to whether, on a balance of probabilities, this Policy has been violated.

Investigation Outcomes

If the Investigator's Report determines that Sexual Violence and Misconduct has occurred, or that this Policy has otherwise been violated, the following will occur:

- the Executive Director will provide a copy of the Investigator's Report to the Adjudication Panel;
- the Adjudication Panel will determine what disciplinary or other measures are appropriate based on the findings in the Report;
- if suspension of a student or employee is a potential outcome, the matter will be referred to the Executive Director for decision;
- the Complainant and the Respondent will be notified of the outcome;
- the Respondent will be notified of the option to appeal, as described below.

In addition to disciplinary outcomes, the PGNAETA may require workshops and/or mediation for the Parties or other members of the PGNAETA Community in the environment affected by the Complaint or Investigation.

If the Investigator's Report determines that that this Policy has not been violated, the Executive Director will dismiss the Complaint and so notify the Complainant and the Respondent. The Complainant will be notified of the option to appeal, as described below.

Whether or not the Investigator's Report determines that Sexual Violence and Misconduct has occurred, or that this Policy has otherwise been violated, if the Executive Director believes that the Investigator's Report discloses other kinds of misconduct or information that the PGNAETA may need to act on under another PGNAETA policy or process, they may refer the Investigator's Report, or the relevant portions of the Report, to the appropriate PGNAETA authority. When appropriate, the Executive Director will consult with the person making the Complaint before referring it elsewhere.

CONFIDENTIALITY

Confidentiality of all persons and information involved in a Disclosure or Complaint of Sexual Violence and Misconduct is expected.

To protect the integrity, fairness, and effectiveness of investigations and to ensure compliance with the BC *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”), all participants in an investigation must act in accordance with the requirements set out below.

Individuals, including the Complainant and the Respondent, who have obtained personal information about an identifiable individual 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:

- any participants in an investigation from disclosing information about themselves, or information that they have obtained outside the investigation; or
- PGNAETA representatives from disclosing investigation-related information as authorized under this Policy.

The PGNAETA will not disclose any personal information related to an investigation except to the extent such disclosure is:

- expressly authorized by the affected individual;
- to a PGNAETA representative, if necessary for the performance of that individual’s duties;
- to a Complainant, Respondent, witness, or other participant in the investigation, if necessary for the conduct of the investigation;
- authorized by this Policy; or
- authorized or required under law.

Information may also be shared where

- an individual is at imminent risk of self-harm;
- an individual is at imminent risk of harming another; or
- there are reasonable grounds to believe that others in the PGNAETA Community or wider community may be at risk of harm.

To maintain the integrity of the investigation process, the PGNAETA must ensure that both Complainants and Respondents know the investigation findings.

The PGNAETA will normally inform a Complainant of any relevant restrictions that have been imposed upon the Respondent’s movements or activities.

RETALIATORY ACTION, BREACHES OF CONFIDENTIALITY, AND FRIVOLOUS OR VEXATIOUS COMPLAINTS

Retaliatory Action of any kind is prohibited. This includes Retaliatory Action against a person who Discloses or files a Complaint regarding Sexual Violence and Misconduct, against witnesses, or against any other persons involved in the process.

Where a member of the PGNAETA Community is found to have engaged in Retaliatory Action, or to have breached the confidentiality requirements in this Policy, the PGNAETA may take appropriate disciplinary action.

Where an investigation determines that a Complaint was frivolous, vexatious or vindictive in nature, the PGNAETA may take appropriate disciplinary action.

REVIEW OF THIS POLICY

The PGNAETA will conduct regular reviews to evaluate the effectiveness of this Policy, with reviews occurring at least once every three (3) years, or as otherwise required by law.

AMENDMENTS TO THIS POLICY

The PGNAETA reserves the right to amend or update this Policy from time to time at its sole discretion. *This policy is under review to ensure consistency with the Declaration on the Rights of Indigenous Peoples and to allow time to undergo a de-colonization of the language and intent toward cultural and traditional values.*

If you have any questions regarding this Policy, please contact the Executive Director