

## **SEXUAL VIOLENCE POLICY**

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**Effective Date:** September 2018

**Responsibility:** VP Student Services

**Amends Policy dated:**

**Policy Number:**

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**SCOPE:** All members of the Burman community including: all employees, board members, students, contractors, suppliers of services, individuals who are directly connected to any University initiatives, volunteers, and visitors.

### **INTRODUCTION**

Burman University is committed to providing all individuals with a safe, positive learning and living environment free of sexual violence. Burman University prohibits all forms of sexual violence including, but not limited to, sex-based intimidation and harassment, sexual harassment, domestic violence, dating violence, stalking. Instances of sexual violence, in any form, will not be tolerated. Should such issues arise, this policy outlines procedures designed to effectively address these issues in a timely manner, prevent recurrence, and support individuals affected. This policy is not and should not be construed to be an alternative or replacement for the criminal justice system. Rather it provides avenues through which the campus community may work to create a healthy learning environment.

### **THE UNIVERSITY WILL**

- Respond to and investigate every reported complaint within a timely manner.
- Provide involved parties with appropriate resources such as mental and physical health care providers as well as campus policies on sexual violence.
- Provide remedies when misconduct is discovered.
- Impose appropriate sanctions on a case-by-case manner.
- Protect the privacy of all those involved to the extent it is possible and where protecting that privacy does not put the individual or others at risk.

Burman University is committed to addressing all forms of sexual violence through enacting preventative measures, educating the campus community, and implementing our institutional disciplinary process. Burman University employees

are responsible for taking reasonable and necessary action to prevent, address, and respond to sexual violence as permissible by their professional guidelines, which are based on the capacity in which they were hired by the University. For example, those hired as mental health counselors may be exempt from disclosing instances of sexual assault they are dealing with if the individual does not pose a threat to themselves or the campus community. However, a faculty member who may also hold a degree in counseling would still be required to report since they were hired by the University in the capacity of faculty rather than mental health counselor.

**1.0 PURPOSE:**

- 1.1 Sexual Violence is a serious problem in society and on university campuses. Burman University is responsible to take immediate steps to eliminate all manner of sexual violence, remedy its effect and prevent its recurrence. Through this policy, Burman University is committed to addressing Sexual Violence in the university community through support, awareness, education, training and prevention programs, and through appropriate handling of incident Disclosures and Reports.
- 1.2 This policy is intended to set out a consistent process for responding to Sexual Violence that ensures that:
  - 1.2.1 Those who experience Sexual Violence are treated with dignity and respect and that their rights are respected.
  - 1.2.2 Members of the Burman Community understand their respective rights and obligations when reporting or responding to a Sexual Violence.
  - 1.2.3 Those who are accused of committing Sexual Violence are treated fairly and in a manner that ensures due process.

**2.0 SCOPE:**

- 2.1 This policy applies to any form of sexual violence that is sufficiently severe, pervasive, or persistent to deny or limit an individual's ability to participate in or benefit from any program or educational opportunity provided by Burman University. This policy applies to actions, interactions and behaviours of Members of the Burman Community that take place:
  - 2.1.1 on University premises; or

- 2.1.2 off University premises where a Member of the Burman Community is involved in the business of the University or activities related to the University, or is representing the University; or
  - 2.1.3 off University premises where such actions, interactions or behaviour have a negative impact on a Member of the Burman Community such that it materially interferes with their University learning, working or living environment;
- 2.2** This policy operates alongside other applicable University policies and procedures such as the Harassment Policy. Where there is a conflict or inconsistency between the provisions of this policy and another University policy or procedure, this policy governs to the extent necessary to resolve the conflict or inconsistency. The University recognizes that sexual violence is a unique area which requires a unique set of policies and procedures.
- 2.2.1 it should be noted that harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum. The policy does not limit classroom teaching concerning sexual topics legitimately related to the content or purposes of a course, even though such topics may elicit discomfort in a class member. Nor is this policy intended to limit scholarly research, publication, or public speaking on gender-related topics.
  - 2.2.2 all members of the Burman Community are required to comply with the policy and procedures outlined to address complaints. Any complaint of sexual violence filed under the University's policy shall be processed even if the reporting party also files a complaint or suit with an outside agency. Retaliation against anyone who files a report or participates in the investigative process will not be tolerated.

**3.0     *Guiding Principles***

- 3.1 All persons who Disclose or Report an incident of Sexual Violence can expect to be treated with compassion, dignity, and respect.
- 3.2 All persons who Disclose or Report an incident of Sexual violence will be:
  - provided non judgmental support;
  - provided with timely safety planning assistance; and,
  - informed about on and off campus support services and resources available to them.
- 3.3 The University recognizes that individuals affected by Sexual Violence are integral decision-makers in situations pertaining to themselves and should be

allowed to determine whether and to whom they wish to Disclose or Report, including:

- whether or not to pursue formal criminal and/or internal University avenues of redress; and,
  - whether or not to disclose to a support person and seek out support services.
- 3.4 The University will put academic, housing and other accommodations in place for persons who disclose or report an incident of sexual violence, as appropriate to individual circumstances.
- 3.5 The University will implement appropriate measures to prevent further unwanted contact with alleged perpetrators to protect the safety and security of the Burman Community.
- 3.6 The University will make available to every Respondent appropriate support and advice related to all University procedures under this policy.
- 3.7 Burman University is committed to the provision of a fair process and will adhere to the principles of fairness in all processes under this policy.
- 3.8 Burman University is committed to reducing barriers to and increasing awareness of policies, procedures and supports available to students in responding to and addressing sexual violence.
- 3.9 This policy was developed to create a system of reporting, investigation and decision making in response to Reports of Sexual Violence; to avoid conflicts of interest or reasonable apprehension of bias; to minimize risk of reprisal; and, to ensure coordination and consistency across the University.

#### **4.0    *DEFINITIONS:***

No policy document can give a full description and definition of behaviours that fall within the meaning of sexual violence. [Appendix I](#) lists examples of behaviours that can fall within these definitions, however, the list is not exhaustive.

**Balance of Probabilities:** Saying something is proven on a balance of probabilities means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happens is more than 50%.

**Burman Community:** Includes all students, employees, volunteers, administrators, contractors and the board of directors.

**Consent:** Consent is the ongoing voluntary agreement to engage in the sexual activity in question. Consent is clear, knowing, and voluntary. For an expanded definition, see 5.3.2.

**Complainant:** A person who makes a Formal Report under this policy.

**Dating Violence/Domestic Violence:** When controlling, abusive, or aggressive behaviors are used by one person to gain power over the other. It can happen in all types of romantic relationships. Controlling, abusive, or aggressive behaviors can include physical violence, threat of physical violence, emotional, mental, or sexual abuse or a combination of these.

**Disclosure:** When an individual shares information about a personal experience of sexual violence to someone who did not previously know. An individual who makes a Disclosure is entitled to access the supports, accommodations and other resources outlined in this policy without making a formal report.

**Force:** The use of physical violence and/or imposing on someone physically to gain sexual access. Force includes threats, intimidation, and coercion that overcome resistance or produce consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Formal Report:** means a formal allegation by an individual affected by Sexual Violence, which invokes the investigatory and adjudicative procedures set out in this policy. Students affected by Sexual Violence are not required to Report an incident of Sexual Violence to access the supports, accommodations or other resources outlined in this policy.

**Incapacitation:** A state where an individual cannot make a rational or reasonable decision because they lack the ability or information to understand the sexual interaction to the fullest extent. Incapacitation can result from mental or physical disabilities, drug or alcohol use, physical restraints, ‘date-rape’ drugs, or anything that affects the individual’s ability to make a clear and informed decision. Incapacitation occurs anytime sexual activity takes place where the alleged victim does not understand the ‘who, what, when, where, why and how.’ Even if a person gives consent while incapacitated, the consent is invalid.

**Intimidation:** The act of using coercion, instilling fear, or making threats to induce submission, compliance, or acquiescence from another.

**Non-Consensual Sexual Contact:** Any intentional sexual touching, however slight with any object, by an individual or group or upon another individual or group that is without consent and/or by force.

**Members of the Burman Community:** Those persons involved in conducting University affairs including all students, employees, volunteers, administrators, contractors and the board of directors.

**Procedures:** Procedures adopted to carry out this policy, adopted in accordance with Section 10.2. Click to read the [Sexual Violence Reporting Procedures](#)

**Respondent:** The person alleged in a Formal Report to have violated this policy.

**Retaliation:** Any adverse action taken against a Member of the Burman Community because that person has, in good faith, made a Disclosure, filed a Formal Report, supported the filing of a Formal Report, disclosed information to the University about a Formal Report, and/or participated in an investigation of such Formal Report, and includes threats of Retaliation.

**Senior Officer:** Senior Officer means the most senior officer in student services, if an incident involves a student Member of the Burman Community and it means the most senior officer in human resources, if a non-student Member is involved. In the event that an individual who may be a Senior Officer pursuant to the foregoing is directly involved (or alleged to be involved) in an incident, the other Senior Officer shall handle the investigation.

**Sexual Assault:** Sexual assault is non-consensual sexual actions done by an individual to another. It includes any unwanted sexual acts and can involve a range of behaviours from unwanted touching to penetration, including through the use of force, threats, or control of another person that makes someone feel fearful, distressed, or threatened or is carried out in a way that an individual is not able to freely consent to such actions. Sexual assault is determined by lack of consent, and not by the act itself. Sexual assault is a criminal offense under the Criminal Code of Canada.

**Sexual Contact:** Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

**Sexual Exploitation:** When a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include:

- Invasion of sexual privacy
- Non-consensual video or audio-taping of a sexual nature

- Going beyond the boundaries of consent (such as letting friends view you having consensual sex without the other party knowing)
- Sexually-based stalking and/or bullying
- Engaging in voyeurism
- Knowingly transmitting an STI or HIV to another person

**Sexual Harassment:** Unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature. Incidents of sexual harassment include, but are not limited to:

- Conduct has the purpose or effect of interfering with an employee's work performance or a student's academic performance, or creating an intimidating, hostile, or offensive working or learning environment;
- Any implied or expressed threat of reprisal for refusing to comply with an implied or expressed sexually-oriented request or advance;
- Non-consensual posting of pictures, aggressive comments and slurs on any form of social media;
- Physical contact of a sexual nature (including Sexual Assault under the *Criminal Code of Canada*);
- Sexual conduct that interferes with an individual's dignity or privacy such as voyeurism and exhibitionism.

**Sexual Violence:** Sexual violence is any violence, physical or psychological, carried out without consent through a sexual means or by targeting sexuality. This includes, but is not limited to all sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, degrading sexual imagery, or the taking or distribution of sexual images or video of a Member of the Burman Community without their consent.

**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 individual or threaten their 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.

**Trained Responders to Sexual Violence:** The group of Members of the Burman Community with specialized training to support victims and survivors of sexual violence. Trained Responders will include, but is not limited to, the following:

- Vice President of Student Services
- Director of Sakala Success Centre
- Counselor - Sakala Success Centre
- Dean of Residence
- Campus Chaplain
- Director of Campus Security
- Human Resources Director

### **Examples of Inappropriate Sexual Conduct**

Some examples of conduct prohibited by this policy include, but are not limited to:

- **Direct or implied threats** that submission to sexual advances or rejection of sexual advances will be a condition of employment, work status or assignments, promotion, grades, letters of recommendation, salary, academic standing, or receipt of financial aid;
- **Persistent or unwelcome flirtation, advances, and/or propositions** of a sexual nature, intimidating conduct which exerts pressure for sexual favors, including inappropriate behaviour or offensive advances (e.g., sexual propositions when the other person has made it clear that they are not interested) without threat of punishment for noncompliance and without promise of reward for compliance;
- **Repeated insults, humor, jokes, and/or stories** that belittle or demean an individual's or group's gender or orientation, and physical conduct or verbal innuendo which, because of one's gender or orientation, creates an intimidating, hostile, or offensive environment;
- **Repeated unwelcome comments** of a sexual nature about an individual's body or clothing;
- **A pattern of conduct** in class, in the workplace, or in the general campus environment that a reasonable person would identify as creating a sexist atmosphere; that is, an atmosphere that demeans or oppresses people simply by virtue of their gender. Examples of such patterns of conduct might include persistent denigration of individuals through sexist humor or remarks, assignment according to gender of tasks that are not gender-specific, or other activities that, by alienation or discouraging members of one sex, tend to impair their academic or professional performance or their ability to function within the community (e.g., hanging of signs which depict individuals in a sexually derogatory manner, yelling sexist remarks from windows as an individual walks by); and/or;
- **Behaviour that would cause discomfort or humiliate** a reasonable person through one or more of the following:

- Inappropriate touching, patting, pinching, unwanted hugging, or brushing against a person's body;
- Remarks of a sexual nature about a person's clothing or body;
- Remarks about sexual activity or speculation about previous sexual experiences of sexual orientation, or other sexually suggestive remarks or insults.

## **5.0 GENERAL RESPONSIBILITIES:**

### **5.1 General Prohibitions and responsibilities**

- 5.1.1 The University will take measures aimed at promoting a University environment free from Sexual Violence.
- 5.1.2 The University will take reasonable action to prevent Sexual Violence through education and communications and will promote the safety of all Members of the Burman Community.
- 5.1.3 No Member of the Burman Community, or non-member while on University premises or participating in a University related event (on or off University premises), may engage in any form of Sexual Violence against another person.

### **5.2 Education, Training and Prevention**

- 5.2.1 The University is committed to supporting ongoing education and awareness initiatives for Members of the Burman Community about Sexual Violence and Sexual Violence prevention and about responding to the reporting of incidents of Sexual Violence. The University will implement preventative strategies with respect to all forms of Sexual Violence.
- 5.2.2 The University will work with on and off campus partners to develop an annual education strategy that includes campaigns, training sessions, workshops, print and online resources, programs and events on a breadth of topics related to sexual violence on campus – topics that include but are not limited to rape culture, sexual violence awareness, how to seek support, resources for survivors, pornography, advice and resources for first responders, etc. The audience for these efforts would include staff, faculty, students and visitors to our campus. A particular emphasis will be placed on educating new Members of the Burman Community about this issue through student, staff, and faculty orientation activities.

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- 5.2.3 All Members of the Burman Community are responsible for contributing to the prevention of, intervention in, and effective response to, Sexual Violence through compliance with this policy and associated procedures.
  - 5.2.4 All faculties and departments are encouraged to include education related to rape culture and sexual violence in course materials and other community programs where appropriate.
  - 5.2.5 For more information on training, see [Appendix II](#).

### 5.3 Consent

If you are interested in reading the Burman University Sexuality Statement, please click [here](#).

- 5.3.1 The University is committed to providing education on Consent and its relationship to Sexual Violence.
- 5.3.2 Consent means 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 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 understand the following:
  - Silence or non-communication must NEVER be interpreted as consent and a person in a state of diminished judgment cannot consent. Consent is active and not passive or silent.
  - A person is incapable of giving consent if they are incapacitated by drugs or alcohol, asleep, unconscious or otherwise lacking the capacity to Consent.
  - 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 may be unable to give consent if they have a mental disability preventing them from fully understanding the sexual acts.
  - Consent is required regardless of the parties' relationship status or sexual history together. The fact that consent was given in the past does not mean that consent is deemed to exist for all future sexual activity.

- Consent can be revoked at any time, whatever other sexual activities have taken place;
- Consent can never be obtained through an abuse of power, threats, intimidations, coercion, manipulation, misrepresentation or other pressure tactics; and
- Consent cannot be obtained if the individual abuses a position of trust or authority.
- Consent cannot be given on behalf of another person.

5.3.3 It is the responsibility of the initiator of sexual activity to obtain Consent 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* definition is in [Appendix III](#)

**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, expressed by words or conduct, a lack of agreement to continue to engage in the activity.

## **6.0 DISCLOSING AND RESPONDING TO SEXUAL VIOLENCE:**

Burman University encourages all members of the campus community to report instances of sexual violence. You may report if you are a victim or a third party who is aware of an issue of sexual violence. There are various avenues for reporting with varying levels of confidentiality and services available.

Certain Burman employees can maintain complete confidentiality and are not required to share the details of the incident with anyone else, unless there is a concern for your safety or the safety of others. Other Burman University employees may be required to share your report with Senior Officers so that Burman University may take steps to offer you support services, prevent the recurrence of the incident. In these cases, your information will be shared with as

few people as possible and every effort will be made to maintain your privacy. Regardless of the reporting avenue you choose, we will make every effort to keep the report as private as you want and let you determine the course of action whenever possible.

Burman employees are responsible for taking reasonable and necessary action to prevent, address and respond to incidents of sexual violence as permissible by their professional guidelines, which are based on the capacity in which they were hired by the University. For example, those hired as mental health counselors may be exempt from disclosing instances of sexual assault they are dealing with if the individual does not pose a threat to themselves or the campus community. However, a faculty member who may also hold a degree in counseling would still be required to report since they were hired by the University in the capacity of faculty rather than a mental health counselor.

If you are unsure of a staff or faculty member's reporting requirement, please ask. This policy is intended to make individuals aware of the various reporting and confidential disclosure options available so that individuals can make informed choices about where to turn should they become a victim of or aware of sexual violence.

To report sexual harassment or incidences of sexual violence where both the complainant and respondent are employees of Burman University, please refer to the Burman University [Harassment Policy](#) (insert link here).

For a distinction between a Disclosure and Reporting, see [Appendix IV](#).

## **6.1 Responding to Sexual Violence**

- 6.1.1 The University will maintain a section on their website providing resources that can assist individuals who are subjected to, have witnessed or have knowledge of an incident of Sexual Violence.
- 6.1.2 The University will ensure that those likely to receive Disclosures, namely Trained Responders to Sexual Violence, full-time faculty and student leaders, receive training on responding to Sexual Violence and carrying out this policy. The University will ensure persons likely to receive Disclosures will be provided appropriate training and will keep current on this policy and its procedures.
- 6.1.3 A Trained Responder to Sexual Violence is best suited as the first point of contact for anyone who has been subjected to Sexual Violence but Members of the Burman Community who become aware of a possible

incident of Sexual Violence involving a Member of the Burman Community, whether through a Disclosure or otherwise, should:

- Assist the Member of the Burman Community in accessing available support services including connecting them with a Trained Responder to Sexual Violence;
- Take appropriate action to prevent further Sexual Violence from occurring, including alerting campus security and calling 911 where there is imminent risk; and
- Report the incident to the applicable Senior Officer. *University staff, faculty and student leaders are required to report such incidents to the applicable Senior Officer.* Reporting may or may not need to include identifying information, depending on the circumstances and risk to other Members of the Burman Community. This should be discussed with the Senior Officer. A Trained Responder to Sexual Violence can help in this process but the number of people involved should be minimized.

- 6.1.4 Alerting security or reporting an incident to the Senior Officer does not constitute a Formal Report.
- 6.1.5 Where the University becomes aware of incidents of Sexual Violence by a Member of the Burman Community or against a Member of the Burman Community, the University will take reasonable steps to ensure the safety of individuals involved and the safety of Members of the Burman Community.

## **7.0     *SUPPORT:***

### **7.1     *Support Services***

- 7.1.1 Supports are available to any Member of the Burman Community making a Disclosure, irrespective of whether that individual also chooses to pursue a Formal Report or a criminal complaint. Available supports include counselling, pastoral care, peer supports and referrals to off-campus services such as health services. An individual safety plan will be developed where necessary.
- 7.1.2 Students who feel they need of academic modifications due to Sexual Violence or involvement with a Formal Report (e.g., assignment extensions, exam deferral, class scheduling, or withdrawal from a class) can request assistance from the Senior Officer (or designee) in student

services with the help of a Trained Responder to Sexual Violence, if preferred.

- 7.1.3 University employees who feel they need of workplace modifications due to Sexual Violence or involvement with a Formal Report can request assistance from the Senior Officer in human resources (or designee), with the help of a Trained Responder to Sexual Violence, if preferred.

## **7.2 Interim Measures**

- 7.2.1 The University may impose or facilitate interim measures to support the Complainant and/or Respondent during an investigation or a proceeding.
- 7.2.2 Without limiting the generality of section 7.1.2 above, the University may determine that there is to be no contact between a Complainant and a Respondent, and/or that the Respondent may be suspended from classes, the work place or residence (as the case may be) pending the conclusion of an investigation.

## **8.0 FORMAL REPORTING AND INVESTIGATIONS:**

An additional document, titled Sexual Violence Reporting Procedures, outlines the process of responding to formal reports. You can view this document [here](#).

To report sexual harassment or incidences of sexual violence where both the complainant and respondent are employees of Burman University, please refer to the Burman University [Harassment Policy](#).

## **8.1 Formal Report Process**

- 8.1.1 A Disclosure is not a Formal Report and will not trigger an investigation unless the University becomes aware of a risk to other Members of the Burman Community or a Senior Officer or President of the University otherwise determines an investigation is warranted. In addition, if a person chooses to Disclose an incident of Sexual Violence but does not want to report the incident through the criminal justice system, or make a Formal Report under this policy, they remain entitled to access available personal supports and accommodations as appropriate to their circumstances.

- 8.1.2 The University recognizes its responsibility to respond to Formal Reports in a fair, effective, and timely manner and encourages the immediate reporting of all incidents of Sexual Violence.
- 8.1.3 Anyone who has witnessed or has been subject to Sexual Violence may but is not required to file a Formal Report and/or criminal complaint.
  - Criminal complaints can be made to the local police services. If an individual chooses this route, they can seek the support of the Senior Officer or his/her designate to facilitate making this report to the police.
  - Non-criminal, campus Formal Reports can be made to the applicable Senior Officer, pursuant to the procedures set out for this policy or in accordance with other applicable University policies and procedures. The University will provide those who have experienced Sexual Violence or those who wish to file a report of Sexual Violence with comprehensive information about Formal Report reporting options.
- 8.1.4 Formal Reports may be made anonymously but the Complainant should be aware that this may limit the ability of the University to respond and investigate.
- 8.1.5 See [Appendix V](#) for information on what to expect when you report.

## **8.2 Right to Forego or Withdraw a Formal Report and Limitations**

- 8.2.1 A Complainant has the right to forego filing a Formal Report, or to withdraw a Formal Report at any stage of the process; however, the University reserves the right to act or continue to act on a Formal Report in order to comply with its obligations under this policy and/or its legal obligations, to ensure fairness to other persons including the Respondent, and/or if the University believes that the safety of other Members of the Burman Community or the external community is at risk.
- 8.2.2 Reasonable efforts shall be made by the University to minimize further distress to the Complainant or others that have witnessed or been subject to Sexual Violence when the need to involve law enforcement authorities arises.

### **8.3 Formal Report Review, Investigations and Outcomes**

- 8.3.1 The University will handle Formal Reports and investigations in a fair and unbiased manner with due process in accordance with this policy and its Procedures.
- 8.3.2 The University will ensure that a Trained Responder to Sexual Violence is available to investigate Formal Reports and that appropriate training is provided. For clarity, the University may retain external investigators to investigate Formal Reports.
- 8.3.3 The University reserves the right to determine whether it will conduct an investigation into an allegation of Sexual Violence whether or not law enforcement is involved and whether or not charges have been laid.
- 8.3.4 The University and investigators appointed to investigate Formal Reports are authorized to collect and use personal information and any other information that is reasonably necessary to manage and investigate Formal Reports.
- 8.3.5 Investigations will be completed as expediently as possible, in most cases within thirty (30) calendar days of the date the Formal Report was filed.
- 8.3.6 The standard of proof for the finding of a breach of this policy is on a balance of probabilities.
- 8.3.7 Any Member or non-member of the Burman Community who is found to have committed Sexual Violence against another person will be held accountable and subject to sanctions and discipline as outlined within applicable University policy and laws.
- 8.3.8 Should the Respondent choose not to participate in the Formal Report investigation, the University reserves the right to take interim measures to ensure the safety of the Burman Community.

### **8.4 Appeal Process**

- 8.4.1 A Respondent may appeal decisions made pursuant to investigations under this policy to the Discipline Appeal Committee, in accordance with other applicable University policies and procedures.

### **8.5 Multiple Proceedings**

- 8.5.1 Where criminal and/or civil proceedings are commenced in respect of conduct that forms the basis of, or is related to the subject matter of, a

Formal Report, the University will conduct its own independent investigation into such Formal Report and will make its own findings in accordance with its policies and procedures. Where there is an ongoing criminal investigation into conduct that forms the basis of, or is related to the subject matter of, a Formal Report, the University will reasonably cooperate with the law enforcement authorities in conducting its investigations.

- 8.5.2 Notwithstanding, and in addition to section 8.5.1, the University retains the discretion to continue, suspend or terminate an investigation into a Formal Report where another proceeding concerning conduct that forms the basis of, or is related to the subject matter of, a Formal Report has been initiated.

## **8.6 Retaliation and False Accusations**

- 8.6.1 It is contrary to this policy for anyone to Retaliate, or threaten to Retaliate against a person making a Disclosure, a Complainant or anyone else for i) making, intending to make or supporting a Disclosure or Formal Report in good faith in accordance with this policy or the Procedures; ii) pursuing rights or cooperating with investigations under other University policies or laws in relation to incidents of Sexual Violence.
- 8.6.2 Any Member of the Burman Community who undertakes, participates in or directs a Retaliation or who makes a complaint of Retaliation in bad faith, may be subject to disciplinary action, up to and including termination of employment, expulsion or termination of contract.
- 8.6.3 Formal Reports that are made with an ulterior purpose, including to purposely annoy, embarrass or harm the Respondent are considered frivolous, vexatious or bad faith Formal Reports and may result in sanctions against the Complainant and/or disciplinary action, up to and including termination of employment, expulsion or termination of contract.

## **9.0 CONFIDENTIALITY AND INFORMATION TRACKING**

### **9.1 Confidentiality**

Confidentiality is an important principle in creating an environment where Students affected by Sexual Violence feel safe to Disclose, make a Formal Report and seek available supports and accommodations. The privacy and confidentiality

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of all members of the Burman Community involved in any Disclosure or Formal Report, will be protected to the extent possible, but cannot be maintained where disclosure is required to ensure the health and safety of Burman's Community Members.

9.1.1 All persons involved in a report and/or investigation of Sexual Violence are expected to maintain confidentiality where appropriate. The University treats Formal Reports as confidential, subject to the following:

- When an individual is judged to be at imminent risk of harming self and/or others;
- There are reasonable grounds to believe that Members of the Burman Community or wider community may be at risk of harm;
- Reporting is required by law (e.g. where a Disclosure or Report involves a minor);
- In order to promote fairness of process for all parties; and/or
- Reporting and/or conducting an investigation as required by law, by this policy, by the University's other policies, or by an external body with appropriate authority.

9.1.2 Confidentiality is subject to the provisions of applicable privacy legislation such as the *Freedom of Information and Protection of Privacy Act* (Alberta), other applicable legislation and law, and University policy.

9.1.3 Specific instances of limits of confidentiality are listed above; however, Students affected by Sexual Violence should be aware that there are other instances where information may be shared among staff and faculty in the university in order to facilitate request for accommodations, support, and/or reports. In instances where confidentiality cannot be maintained, Students affected by Sexual Violence will be notified as to who has been told and what information has been shared. All parties involved will be informed of possible limits of confidentiality.

9.1.4 Each member of Burman's Community who is involved in receiving a Formal Report of Sexual Violence must treat the matter as discreetly as possible and within the context of their role in the university. Beyond the circumstances referenced in this section (9.0) information about a Disclosure or Formal Report of Sexual Violence will be shared only to the extent necessary to fulfill responsibilities set out in this policy and as may be required to provide a fair process during an investigation or adjudication of a Formal Report.

9.1.5 All information collected as a result of a Disclosure or Formal Report made under the policy will be managed in accordance with the Freedom of Information and Protection of Privacy Act (FOIP) and the Personal Health Information Protection Act, as applicable.

## **9.2 Information Tracking and Retention of Records**

- 9.2.1 The University will maintain information on the number of Complaints, the number and results of investigations and the corrective actions taken in response to recommendations arising out of investigations.
- 9.2.2 All records involving a Complainant and subsequent investigation of Formal Reports, but not including records related to results of investigations or corrective actions taken, will be kept in a file separate from student academic records and/or employee personnel files, however, all such records may be used for purposes of future disciplinary processes.
- 9.2.3 Notwithstanding section 9.2.2, results of investigations and corrective actions taken may be included on a Respondents' student academic records and/or in employee personnel files in accordance with the procedures.

## **10.0 OVERSIGHT & PROCEDURES**

### **10.1 Trained Responders to Sexual Violence (TRSV)**

- 10.1.1 The President of Burman University, in consultation with the Senior Officers in student development and human resources, will appoint and maintain a roster of Trained Responders to Sexual Violence which will be responsible for overseeing the implementation of this policy and its procedures.
- 10.1.2 The roster of Trained Responders to Sexual Violence will include the most senior officer in student services and the most senior officer in human resources.
- 10.1.3 The roster of Trained Responders to Sexual Violence will include at least: one university counselor, Director of Campus Security, a campus Chaplin, one dean of residence and one non-faculty staff member (in addition to the co-chairs). A similar number of male and female responders will be trained.

### **10.2 Procedures**

- 10.2.1 When a Trained Responder to Sexual Violence (TRSV) receives a Disclosure of an incident of Sexual Violence involving an individual and

if personal information has been provided with the individual's consent, the TRSV will contact the individual to offer support and information.

- 10.2.2 The TRSV will offer information, supports and options tailored to the person's needs, wishes and circumstances.
- 10.2.3 The TRSV may make referrals to both on and off campus resources, discuss and facilitate appropriate accommodations and safety planning, and provide information about informal resolution options, and Reporting under this policy.
- 10.2.4 The TRSV can, on a confidential basis, consult with and seek the assistance of other internal personnel or resources to facilitate the safety, follow-up and support of those who have Disclosed an incident of Sexual Violence.
- 10.2.5 The TRSV may approve Procedures for carrying out this policy, which are secondary to and comply with this policy. Such Procedures shall be reviewed on an annual basis.

### **10.3 Policy Review & Implementation**

- 10.3.1 This policy will be reviewed as needed, at minimum every three years.

- 10.3.2 The University will carry out all necessary actions in order to implement this policy across the University and among all of the groups of Members of the Burman Community.

Credits:

Ambrose University, Alberta

Walla Walla University, Washington

## **Appendix I**

### ***Other Relevant Terms***

**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.

**Burman Community:** means students, faculty members and staff of Burman University.

**Burman University Property:** means property owned, rented or otherwise used by the university.

**Coercion:** In the context of sexual 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.

**No-Contact Directive:** means a requirement that a person have no direct or indirect contact, including but not limited to in-person, phone, text, email, social media, or through a 3rd party, with a specified individual, individuals or group as outlined in a written communication from the university.

**Respondent:** is the person or group against whom a Report has been filed under this Policy.

- “Student-Respondent” and “Respondent” refers to a Respondent(s) who is a Student(s) at Burman University, as described below under “Student”.
- “Employee-Respondent” means a Respondent who is a member of Burman University faculty or staff. Cases involving an Employee-Respondent(s) are to be dealt with in accordance with the process outlined in the Faculty/Staff Handbook.

**Student:** means any person who is registered, in an academic program including a non-degree program, offered by Burman University, and includes anyone who was so registered when an incident of Sexual Violence is alleged to have occurred. “Student” also means persons registered at Burman on a letter of permission and persons on exchange at Burman.

**Student Group:** means a group affiliated with the university (including any club or organization sanctioned by the university) and constituted to promote such things as social, vocational, academic, cultural, and/or political interests of Students within its membership.

**Survivor:** Some who have experienced sexual violence may choose to identify as a survivor. Individuals might be more familiar with the term “victim”. The term survivor is used where relevant because some who have experienced sexual assault believe they have overcome the violent experience and so 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.

**Survivor/Victim:** means the person who discloses or reports having experienced Sexual Violence. It is the determination of the person who reports having experienced Sexual Violence to determine how they wish to identify.

## **Appendix II**

### ***Sexual Violence Awareness, Education & Training***

The Trained Responders to Sexual Violence will work with campus partners to develop and implement an annual education strategy to:

- promote a culture of Consent;
- address issues of Sexual Violence; and,
- facilitate access to support mechanisms for Students affected by Sexual Violence.

For a list of Trained Responders to Sexual Violence click [here](#).

The university will deliver appropriate information and education related to Sexual Violence to the Burman Community, including Students in all years, with a focus on incoming Students during orientation week. The university will work with campus partners to provide ongoing awareness, education and training opportunities throughout the academic year.

Subject matter experts will collaborate to adapt existing content, lead the development of new content and format design, in consultation with Students, to ensure information and educational material is tailored to the audience and context.

Specific attention will be given to issues of Consent, healthy relationships, bystander intervention strategies, and policies and procedures for responding to Sexual Violence. Awareness, education and training initiatives should take an intersectional approach to understanding Sexual Violence.

The university will make training related to the policy and procedure available for staff, faculty, Students, and members of the governing board and senior administration.

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## **Appendix III**

### ***A Definition of Consent to Sexual Activity***

The Criminal Code of Canada, Section 273.1 provides a definition of consent for the purposes of the sexual assault offences and for greater certainty, sets out specific situations that do not constitute consent at law.

Subsection 273.1(1) defines consent as the voluntary agreement of the complainant to engage in the sexual activity in question. Conduct short of a voluntary agreement to engage in sexual activity does not constitute consent as a matter of law.

For greater certainty, subsection 273.1(2) sets out specific situations where there is no consent in law; no consent is obtained:

- where the agreement is expressed by the words or conduct of a person other than the complainant
- where the complainant is incapable of consenting to the activity
- where the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority
- where the complainant expresses, by words or conduct, a lack of agreement to engage in the activity, or
- where 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.

<http://www.justice.gc.ca/eng/cj-jp/victims-victimes/def.html>

## **Appendix IV**

### ***Distinction between Disclosure and Reporting***

The decision to Disclose and the decision to Report are separate from one another and are each normally at the discretion of a Student affected by Sexual Violence.

The university recognizes that Disclosures are often made in confidence, and that the Student may have an expectation of confidentiality. The person to whom the Disclosure is made may consult with a Trained Responder to Sexual Violence (TRSV) for advice.

In addition to a TRSV, Campus Security (CS) staff are available on a 24/7 basis and can provide guidance and support to Students affected by Sexual Violence. Campus Security must advise a TRSV of all alleged incidents of Sexual Violence against Students of which it becomes aware.

If an incident of Sexual Violence is Disclosed to a member of the Burman Community, the person to whom the Disclosure is made should refer the person Disclosing to this policy and should inform the person that a TRSV can provide detailed information about the availability of supports and services, as well as information about Reporting options.

Members of the Burman Community who receive a Disclosure of an incident of Sexual Violence can, with the permission of the Student affected by Sexual Violence, provide a TRSV with the Student's name and contact information for the purpose of outreach.

A Disclosure is not the same as a Formal Report and does not initiate an investigation or adjudication process. A Student affected by Sexual Violence can make a Disclosure and choose to Report at a later date.

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## **Appendix V**

### ***What to expect when you Disclose or Report***

*If you contact a Trained Responder to Sexual Violence, member of the Student Services team, Campus Security, or faculty:*

- The employee will notify a Senior Officer of the incident.
- You may be contacted by the Senior Officer regarding the incident.
- An investigation may begin if the individual so chooses or if the incident suggests there is an ongoing threat to the campus community. An investigation does not mean that your personal identity will be revealed to the campus community nor does it mean that you would ever have to come face-to-face with the accused.
- You will be connected to the local police and mental and physical care providers if you so desire.
- If the responding party is a member of the Burman community, the University can order the responding party to cease and desist from any intentional contact, direct or indirect, with you. The University may also be able to offer housing and/or classroom accommodation so that the reporting party need not face the responding party.
- You will also be given the opportunity to contact the Burman University Counseling center or another agency in the community.
- The nature of your report may be included in the University's crime statistic log. The crime log does not include personally identifiable information, just a report of an issue such as sexual assault was taken. Likewise, should the nature of your report pose a threat to the campus community, general information may need to be shared.

*If you contact the counseling center:*

- A counselor will meet with you on campus and provide support.
- The counselor will not share any information of the incident with law enforcement or a member of the Burman community without the victim's consent unless there is a clear threat to others or the individual makes statements of a suicidal/homicidal nature.
- The counselor will explain reporting options and support you in whatever decision you make regarding whether or not to report.
- If you choose to file a Formal Report with the University or the RCMP, a counselor may accompany you and support you through the process if you so desire.

*If you contact the local police:*

- The police will meet with you to discuss the incident and create a report.
- The police will ask you for details of the incident and explain your legal rights.
- They may contact a victim advocacy service or the alleged perpetrator. Their actions will depend on what you report and how you want to proceed.
- The police may contact Campus Security to let them know that they are on campus.

*If you go to the hospital for an exam:*

- You may request that a sexual assault exam be completed.
- A police officer may be contacted and you may be asked to make a report. The officer is there to collect any evidence obtained during the exam.
- If you are 18 or older, your parents will not be notified by the hospital without your consent.
- Making a report and completing an exam preserves the option to prosecute, but does NOT commit an individual to pressing charges.
- You may request a Trained Responder to Sexual Violence, a member of the Burman community, or a support person of your choice to accompany you to the exam.