

# Moving Beyond Potential: Building Justice for Students in British Columbia

*A Call for Action on Campus Sexual Violence*



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“STUDENTS FOR  
CONSENT CULTURE

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CONSENTEMENT

Written by:  
Chantelle Spicer  
Connor Spencer

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## About SFCC

Students for Consent Culture Canada is an organization dedicated to supporting anti-sexual violence advocacy and activism at post-secondary campuses across the settler-colonial state known as Canada by serving as a hub of resources, tools, community, and institutional memory for student engagement. SFCC also engages in advocacy at the provincial, and federal levels, as well as the “justice” system to create better policies, practices, and accountability measures to protect students. Our overall goal is to build relationships of solidarity across social justice movements and organizations to support cultures of consent on campuses and in our communities across the whole of Turtle Island.

# Introduction for Government Representatives

Campus sexualized violence legislation is a crucial mechanism for providing new and meaningful ways for survivors of sexualized violence to find justice, especially given the ongoing and alarming rates at which we see sexualized violence and harassment continuing to go on our campuses. **This legislation and its policies have the potential to be significant in shifting pervasive rape culture on post-secondary campuses into one of consent.**

However, these policies cannot do their job if they do not provide a minimum standard of care and support for those using the policy, as well as being profoundly accountable to those who access it. Nor can we, as student advocates, ethically encourage survivors of sexualized violence to use policies we ourselves do not believe encapsulate a minimum standard of care. Due to many discrepancies between institutional policies and capacity across BC under the current legislation, **we recommend the Ministry of Advanced Education, Skills, and Training conduct a critical analysis of the goals and implementation of the Act and determine whether the policies and initiatives under this legislation currently reflect the standard of care the BC government wishes to guarantee for student survivors.**

Currently, compared to similar legislation across the country (ie Act 151 in Quebec, Act 132 in Ontario, Act 15 in Manitoba, and Act 41 in PEI), Act 23 looks very similar, setting out good grounds for the scope that the policies are to have. It even goes beyond some legislation by outlining the need to consult with students when creating these policies. However, it is still behind some legislation, such as Act 151 in Quebec, which has a clause that outlines the possibility of Ministry oversight into whether an institution is following its own policy. Importantly, most of these pieces of legislation were created before the #MeToo movement swept through our campuses and greatly shifted our idea of standards of care surrounding the treatment of both formal and informal complaints of sexual violence in our institutions and communities, which is why it is imperative that we look back on these documents and see if they match with the shift of societal values and standards we have seen since 2016.

The Sexual Violence and Misconduct Policy Act is an incredibly important step that the Legislature took, and by incorporating the recommendations in this document, BC has the ability to create the best anti-violence legislation for campuses in Canada - an example for other provinces to look towards and a standard for other provinces to need to meet.

This is more than a policy document - **it is a call to action and a raising up of the experiences and expertise of student survivors and anti-violence advocates.** To create a culture of consent and change, we put forward these recommendations to you in hopes of continuing to work together to realize a safer campus community.

# Minimum Standards

When the legislation to mandate these policies was originally brought forward in 2014, good intentions were laid to entrench protection for student survivors and shift narratives of acceptable violence on our campuses. Members of the BC Legislature have since said that this was never meant to be the conclusion of that conversation, but instead a starting point. Since then, we recognize that the Ministry of Advanced Education, Skills and Training has undertaken several initiatives to carry on this work.

**One of the most immediate and drastic ways that those in government can improve the Act's ability to support student survivors is to clearly outline minimum standards the mandated policies must have.** It is recommended that these minimum standards be entrenched within the Act or adjacent Regulations to guide the Act to ensure a standard of care is created across the province. This is crucial as studies are emerging that show institutional betrayal (the mishandling of cases by institutions) can often be more harmful than the original violence experienced by the complainant.<sup>1</sup>

Of the 45 criteria we have for policies (outlined in the [OurTurn National Action Plan and Scorecard](#)), we have narrowed this down to a set of **11 essential minimum standards** based on the needs of student survivors across the country that we believe must be mandated in provincial legislation. This is in order to ensure that the legislation creates robust and effective policies rather than policies that are treated as checkboxes and are ultimately harmful to the survivors who try to access them.

# Recommendations of Minimum Standards for Policies to be Mandated by the Sexual Violence and Misconduct Policy Act:

## 1. **A Defined Stand-Alone Sexual Violence Policy:**

The existence of a stand-alone sexualized violence policy that DOES NOT place the process through the Student Code of Conduct. The procedures must be stand-alone and must be clearly outlined in a step-by-step process for students, staff, and faculty. Per our definition, a policy is only stand-alone if it is a separate document from other policies **and** has its own set of procedures that **do not** refer to procedures of other policies. This is crucial as so many post-secondary institution policies refer to the disciplinary procedures outlined in the Student Code of Conduct or similar documents, but still consider them to be 'stand-alone'. This is incredibly inappropriate because:

- a. these processes were often made with discipline for academic infractions in mind and therefore are not trauma-informed, nor survivor-centric; and
- b. they often lead to confusion amongst survivors as they bounce from policy to policy unable to follow what a process would look like; therefore are unable to make a fully informed decision about whether or not they wish to go through a complaint process through a policy.

## 2. **Right to both Criminal and Institutional Processes:**

The ability to report experiences to both their institution and the police without risk of having a complaint suspended due to the other process.

## 3. **Mandatory Sexual Violence Training for Decision-Makers:**

A mandate of quality and expert-informed sexualized violence sensitivity training on trauma-informed approaches for those involved in hearing the sexualized violence complaint and deciding the outcomes.

## 4. **Rape Shield Protections:**

Explicit rape shield protections, whereby a complainant cannot be asked questions about their sexual history at any point of the informal or formal complaint process;

## 5. **Protections from Face to Face Encounters:**

The inclusion of protections from face to face encounters, a complainant should not be required to be present at the same time as a respondent. Similar to the criminal justice system these interests between survivor protections and procedural fairness can be balanced through the use of a screen and/or video technology;

**6. Timelines:**

Clearly defined and reasonable timelines for a complaint process that *DO NOT exceed 45 days for a complaint process and 48 hours for immediate accommodations*. Note - this is different from Time Limits, which restricts how long after an event the complainant can report it. You want timelines, you do **not** want time limits;

**7. Protections from Gag Orders:**

Protections from institutions imposing a gag order on complainants through a broadly defined confidentiality requirement;

**8. Broader Scope:**

Campus sexualized violence policies *must explicitly create a procedure for students to report sexualized violence and/or sexual harassment while participating in a work placement, internship or co-op* and require that the institution keep record of in which places sexualized violence has occurred to ensure that future students are not placed at risk of sexualized violence while pursuing co-op opportunities. This will require many institutions broadening the scope of their policies and support to ensure students have access to these accommodations and supports regardless of where violence occurs;

**9. Informing of Sanctions:**

A mandate that institutions must inform both the complainant and respondent of all sanctions ordered by the review committee. This includes making appropriate adjustments to provincial privacy and labour law in order to ensure that this can happen - especially when the respondent is an employee of the institution;

**10. Student Representation on Committees:**

A mandate for the creation of a Sexual Violence Prevention and Support taskforce, with meaningful student representation of at least 30%, at each institution; and

**11. Review Period of 2 Years:**

We recommend that institutions be required to review their policy every 2 years at most, with every year being ideal. This is due to the fact that our knowledge of best practices for these policies is constantly improving, and due to the fact that student communities are constantly shifting, almost completely changing every 4 years. Reviews of policy must include student participation and feedback opportunities to ensure relevance of the work.

# Oversight and Accountability Mechanisms Within the Act

We cannot stress enough the importance of provincial governments creating an independent oversight body to hear complaints from individuals at post-secondary institutions who believe their safety has been compromised and/or that their rights have been violated by the institution.

**There must be an accessible process for individual student survivors of campus sexualized violence to file a complaint against their institution or inform the Minister that their rights under provincial legislation are being violated.**

The lack of meaningful and accessible oversight and accountability mechanisms creates a situation whereby institutions, regardless of intention, may violate the rights and/or compromise the safety of survivors, with no sanctions from the province or recourse available to the survivor. There must be a process in place that is referenced in each campus sexualized violence policy for someone to file a complaint if their school violates this.

The government should also seek to hear and respond to the input of students and student groups who recognize failures of the institution to meet the standards and responsibilities of the policies. In many instances, committees or working groups laid out in the policies have not been struck to guide the implementation of these policies nor have reports been presented to the Board of Governors regarding this implementation. This has resulted in the stagnation of the work as well as a lack of consultation that would help determine what is meaningful for that campus.

Accountability mechanisms in relation to the Act are not intended to impose upon the autonomy of post-secondary institutions, but rather to fill a gap made obvious by the fact that in the absence of legislative oversight mechanisms, students across the country have filed complaints with Human Rights tribunals over the mishandling of their sexual violence cases by their institutions, including in BC.<sup>2</sup>

## Recommendations for oversight and accountability mechanisms to be housed in the Act include:

- The creation of an independent, external monitoring agency be set up to monitor accountability and receive yearly institutional reports;
  - This could be located within BC Human Rights Commission, an office of the Ombudsperson, and/or an individual within the Ministry of Advanced Education, Skills, and Training office; and
- Working with universities to establish clear expectations and criteria for implementation of policies and education regarding policies and consent culture.

# Institutions Reporting on the Use of Sexual Violence Policies

Reporting of data regarding usage of the sexualized violence policies can be an accountability measure, as well as a tool in furthering an understanding of violence on campus. Using data to better understand how sexualized violence and misconduct policies at post-secondary institutions are impacting or changing student experience is a first step to addressing where the gaps are and how they can be addressed. It is recommended that this information be made available to not just institutional Board of Governors and the ministry, but also be made publicly, given that the majority of universities and colleges in the province are public institutions and that on-campus organisations, such as student survivor organizations or students unions, could utilize this information in their own planning.

Institutional reporting, as a measurement of goals of policies and their implementation, needs to be done in a way that both **protects the confidentiality of survivors and is meaningful to those who could utilize the data to guide education campaigns for their campus or region, among other uses**. Reporting also needs to be balanced with the survivor's right to own and share their information and story, so informed consent for the inclusion of their report as institutional and/or provincial data must be obtained.

## Recommendations for what institutions should be required to report as per the Act:

- Number of reports, complaints, recorded disclosures- mandatory
- How were these received? (third party or anonymous reporting, in person, online?) - mandatory
- Number of reports that reach a conclusion
- What are the outcomes of these completed reports
- Demographics of survivor (M/f/non-binary, Indigenous, LGBTQ+)
- Typology/theme of the report (digital harassment, alcohol or drug-related, etc.)
- Types of accommodations and supports utilized by survivors
- Activities and education undertaken by the campus during that year to raise awareness of the policy, rape culture, or issues of consent
  - Any information gathered from these, such as surveys completed by participants to gauge the quality and relevance of the activities

We also recommend that all students who become engaged in the policy, whether survivors or respondents, be offered an exit survey to provide feedback on the accessibility of the policy and procedure, procedural fairness, recognition of rights and needs, and satisfaction of supports received. The results of this would be thematically included in the institutional report to provide insight into required changes or to set new goals, strategies, and objectives.



Given the fact that a culture of reporting needs to be built following decades of distrust, low numbers of reports at this time necessitate extra measures to ensure the confidentiality of survivors. This is particularly true for those within marginalized communities or in rural areas where identities could be more easily determined. As recommendations for this policy and accountability include public and government reporting, how to protect individuals when reporting to institutional governing bodies or the government becomes increasingly important. It is recommended that organizations with the most experience in receiving reports of sexualized violence, such as the Ending Violence Association of BC or Haven Society, be consulted yearly to ensure best practices for the protection of survivors.

# Understanding the Implications of Provincial Privacy Legislation

British Columbia's Personal Information Protection Act (PIPA) works to protect the personal information of individuals by regulating who can request personal information, and for what reasons personal information can be disclosed. However, certain clauses within it inadvertently harm survivors of sexual violence by preventing them from knowing the outcomes of investigations into cases of sexual violence as well as any disciplinary action taken, especially when the complainant is a student and the respondent is an employee of the post-secondary institution. Experts in campus sexual violence policies and sexual violence legislation have long called for survivor-centred practices that allow survivors to have autonomy over their cases.<sup>3</sup> A key principle in survivor autonomy and survivor-centrism is the right to receive information about the outcome of investigations, as well as any disciplinary action that may be taken. While it is reasonable for this information to not be shared with the general public, there is no justifiable reason for survivors to not have access to decisions and disciplinary actions resulting from investigations into their cases, as it directly impacts their health and well-being and goes against survivor- and healing-centred practices. **PIPA must be revisited to ensure its survivor-centrism, and the implications between the Sexual Violence and Misconduct Policy Act and PIPA clarified.**

## Recommendations Around Implications of Provincial Privacy Law:

The BC government set up a taskforce or committee that looks into this issue. Such a taskforce should include:

- experts and key stakeholders such as the UBC Independent Investigations Office, students who have gone through complaint processes against professors (and/or students advocates who have supported these students if they wish to remain anonymous), and privacy law and administrative law experts who are not employed by post-secondary institutions; and
- Ensure those who oversee the Sexual Violence and Misconduct Policy Act find a proper balance between maintaining the confidentiality of those who report, and ensuring that complainants are given the information they need in order to assess whether or not they are safe from psychological and/or physical harm on campus.

# Conclusion

At Students for Consent Culture Canada, we have been involved in various steps of the creation and implementation of provincial campus sexualized violence legislation and post-secondary institutional policies across the country. Although we recognize that many within provincial governments are well-intentioned in the creation of legislation that mandates campus sexualized violence policies, we students and student survivors have seen a lack of understanding regarding the nuances that are present within discourses of anti-violence work in the country that these policies would greatly benefit from. Furthermore, we have both seen and experienced how the absence of meaningful clauses in these policies leads to a lack of rigorous protections and embedded mechanisms for justice for survivors. We appreciate that unless you are a student who has sought protection and justice through these policies, it is hard to know what minimum standards these policies need or the limitations inherent in these policies that limit survivors finding justice through procedures. We hope, with our contribution of this document, to present best practices seen by student survivors across the country in order to help guide the strengthening of the Sexual Violence and Misconduct Policy Act of BC and implementation of the policies that fall under it.

## Endnotes

1. Freyd, J. J. (2019). Institutional Betrayal and Institutional Courage. Retrieved from <https://dynamic.uoregon.edu/jjf/institutionalbetrayal>
2. Lazatin, E. (2018, February 12). B.C. Human Rights Tribunal to hear complaint against UBC's handling of sex assault reports. Retrieved October 21, 2019, from Global News website: <https://globalnews.ca/news/4021843/b-c-human-rights-tribunal-to-hear-complaint-against-ubcs-handling-of-sex-assault-reports>
3. Busby, K. (2018, June 23). Time to reconsider the prohibitions in university sexual violence policies on what complainants can say and know. Retrieved October 21, 2019, from Canadian Lawyer website: <https://www.canadianlawyermag.com/news/opinion/time-to-reconsider-the-prohibitions-in-university-sexual-violence-policies-on-what-complainants-can-say-and-know/275317>