

Sexual Assault Disclosure Information for Educators

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PBSC at the Faculty of Law, University of Victoria, cannot provide legal advice. This document contains general discussion of certain legal and related issues only. It is not legal advice. Please consult a lawyer if you require legal advice.

By: Kate Korte, Aivrey Mckinley, and Akum Sidhu (Volunteers with the UVic Chapter of Pro Bono Students Canada)



Land Acknowledgement

“We acknowledge and respect the lək̓ʷəŋən peoples on whose traditional territory the Victoria Sexual Assault Centre stands and the Songhees, Esquimalt and W̱SÁNEĆ peoples whose historical relationships with the land continue to this day.”¹

Pre-existing and historic trauma can influence how someone will experience and respond to trauma. Historic trauma is intergenerational – it is felt across generations. Many Black, Indigenous, and people of colour across Canada experience historic trauma often due to the historic and ongoing impacts of colonization, genocide, slavery, racism, and forced displacement.²

Acknowledging the colonial injustices that have taken place on these lands is especially important in understanding sexualized violence from a trauma-informed perspective. For Indigenous children and families, the residential school system and the present child welfare system have perpetuated cycles of separation and displacement. This reality may impact how children respond to trauma.³



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Chapter 1 - Listen, Respect, Respond

What is Sexualized Violence?

Sexualized violence is non-consensual acts or behaviour that are sexual in nature. An act or behavior is non-consensual where it is unwanted. It does not have to involve physical contact.⁴ The ability for someone to give consent is impacted by their age and whether or not they are in a position of power.⁵

Different legal bodies define sexualized violence differently. We've included some relevant definitions used by the Ministry of Child and Family Services, the Criminal Code, and the BC Teacher's Council.

Responding to a Disclosure: Listen, Respect, Respond

Each survivor will have needs that are specific to their experiences.⁶ Disclosure can take multiple forms, some survivors may be visibly upset, while others may be calm.⁷ The way that each survivor may express themselves is specific to how each individual processes trauma and it is important to listen, respect, and respond to what the survivor discloses.⁸

Listen

- Focus on being present through active listening.⁹
- Be comfortable with silence.¹⁰
- Let the survivor tell their story at their own pace.¹¹
- Invite the survivor to express their thoughts and emotions freely in a non-judgement environment.¹²

Respect

- Do not make assumptions based on how the survivor discloses, every person responds to trauma based on their own unique set of experiences.¹³

- Reassure the survivor that you believe them, they are not alone, what they are feeling is valid, and that their experience with sexual violence is not their fault.¹⁴
- Respect the language they choose to use in telling their story.¹⁵
- Learn about the impacts of sexual violence here: <https://www.vsac.ca/impact/>
- Learn about how systemic oppression impacts survivors. Understand that sexual violence impacts survivors intersectionally.¹⁶ Learn about what intersectionality means here:
 - <https://time.com/5786710/kimberle-crenshaw-intersectionality/>
 - <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>
- Respect the survivor's gender identity and pronouns. In some situations, sexual violence is used to enforce gender roles. For example, a transgender man may have been assaulted by someone who refuses to accept his gender identity. Misgendering the survivor can be harmful to the survivor.¹⁷
 - Read more about supporting trans, two-spirit, and gender diverse survivors here:
<https://www.vsac.ca/wp-content/uploads/2017/07/Supporting-Trans-Two-Spirit-and-GenderDiverse-Survivors.pdf>

Respond

- Create an environment for the survivor where they can feel safe.¹⁸
 - An example of a question to ask them is: “What can we do to help you feel safer?”¹⁹
 - Understand that certain voices, locations, sights, sounds, smells, or names can be triggering to make the survivor feel like they are back in a painful situation.²⁰ The survivor might not be able to identify exactly what is triggering them immediately, so be patient and do what you can to help them feel safe.²¹
- Provide information and support to empower the survivor in the next steps they take.²² See Chapter 3 for more.

Important Note on Confidentiality

- When the survivor is under the age of 19 in BC, educators cannot promise the survivor confidentiality.²³
- Educators have a legal duty to report through the *Child, Family and Community Service Act*.²⁴
- See Chapter 2 for more information on the legal duty to report.

Chapter 2 - An Educator's Duty to Report

When teachers receive a disclosure of sexual assault, exploitation, or other sexual conduct, they have significant legal and other responsibilities.

Generally, a teacher has a duty to report to the Minister of Child and Family Services where there is a “reason to believe” a “child or youth needs protection” per s.13 of the *Child, Family and Community Service Act*.²⁵ For an incident of sexual misconduct involving a teacher, the Commissioner for Teacher Regulation can address and investigate allegations.

Educators may also have a duty of care at common law to protect the child.²⁶ For teachers, in carrying out their duties in supervising and protecting their students, they are expected to carry out their duties similar to that of a careful or prudent parent.²⁷ This duty is held in tort law and separate from the statutory duty to report. A failure to report could put the educator at risk for damages in negligence.

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If a teacher breaches their obligation to carry out their duties similar to a careful or prudent parent and it results in a student suffering harm, this could open up the schoolboard to liability for the damages to the student.²⁸

Teachers might be concerned about a false allegation by a child that prompts a report. However, if the person reporting the alleged incident is unaware the information is false, the teacher cannot be sued for damages as a result of their good faith reporting.²⁹

Ministry of Child and Family Development (MCFD)


Section 13 of the *Child, Family, and Community Service Act* requires anyone with a reason to believe a child needs protection because the child or youth “has been, or is likely to be, physically harmed, sexually abused or sexually exploited by a parent or another person and the parent is unwilling or unable to protect the child or youth.”³⁰

Anyone who has reason to believe this is happening to a child or youth, must report the suspected abuse or neglect to a child welfare worker.³¹ This also includes a child who is likely to or has been encouraged or helped to engage in prostitution or coerced or inveigled into engaging in prostitution.³²

Ministry of Child and Family Development (MCFD) examples of sexual abuse and sexual exploitation

Sexual Abuse Can Include

- Sexually touching a child or youth, or inviting a child or youth to touch;
- Intercourse (vaginal, oral or anal);
- Threatening sexual acts, obscene gestures or communications, or stalking;
- Sexual references (words or gestures) to the child’s or youth’s body or behaviour;
- Asking the child or youth to expose their body for sexual purposes;
- Exposing the child or youth to sexual activity or material; or
- Sexual aspects of organized or ritual abuse.”



Sexual Exploitation is “when a child or youth becomes involved in sexual activity, usually through manipulation or coercion, in exchange for things like money, drugs, food or shelter”.³³

Sexual activities can include:³⁴

1. Sexual acts;
2. Sex for the purpose of entertainment;
3. Escort or massage parlor services; and
4. Appearing in pornographic images.
5. Beginning: what happened at the beginning?
6. Middle: usually the highest point of action in the story.
7. Ending: how did everything finally work out?


Failure to Report

Failing to promptly report to the Ministry in the above circumstances is a serious offence under the Child, Family and Community Service Act and carries the maximum penalty of a \$10,000 fine, six months in jail, or both.³⁵

Reporting information under the CFCSA shields educators from legal liability unless they knowingly report false information, or make a report not made in good faith.³⁶ Therefore, an alleged perpetrator cannot sue an educator for reporting the matter.

How to Report

Your local MCFD office will respond to questions including questions with guidance on whether those particular situations should be reported. Consider contacting the Ministry for clarification if you have any questions about a particular situation.³⁷



To make a report, please call **1 800 663-9122** any time of the day or night.³⁸ The person who answers will make sure your concerns are directed to the right place.

The Duty to Report **Pamphlet** and **Poster** (page 9) provide information on reporting concerns about children and youth.³⁹

Learn more in the **Child Abuse Prevention Handbook** (page 9), which has been revised to clarify reporting requirements regarding children and youth living in situations where domestic violence exists.⁴⁰

For Teachers: Reporting to the Commissioner for Teacher Regulation

Teachers and school boards or independent schools have a duty to report misconduct or incompetence involving another teacher to the Commissioner for Teacher Regulation.⁴¹

The Commissioner for Teacher Regulation is an independent statutory decision maker that enforces standards for educators under the *Teachers Act*.⁴²

The BC Teacher’s Council sets the standards for certified educators. The standard relevant to sexual assault disclosures states that educators “do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage.”⁴³ The same standard is adopted for independent schools under their respective administrative body.⁴⁴ Note that the administrative standard is not synonymous with other legal standards or definitions of sexual conduct, such as the definitions of sexual offences in the Criminal Code.

The Commission has a series of disciplinary measures that they can impose for contraventions of the standards.⁴⁵ The Commissioner can decide to investigate, offer a consent resolution agreement, order a hearing, or close a matter.⁴⁶ Their annual report from 2020-2021 shows that most cases do not result in an investigation and only 8% of student-related complaints or investigations were sexual in nature.⁴⁷

If a teacher is unsure whether to report an incident or how to go about doing so, they may wish to seek legal advice. The BC Teachers Federation offers legal aid services that may assist.⁴⁸

More information on How to Report

Commissioner

<https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/commissioner-for-teacher-regulation/report-as-teacher-school>

MCFD

Duty to Report Pamphlet (click here)

- https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/public-safety/protecting-children/t15-0191_dutytoreport_pamphlet11x85in2folds.pdf

Duty to Report Poster (click here)

- https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/public-safety/protecting-children/t15-0191_dutytoreport_pamphlet11x85in2folds.pdf

Child Abuse Prevention Handbook (click here)

- https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/public-safety/protecting-children/child_abuse_prevention_handbook-general_public_booklet.pdf

Chapter 3 - Potential Next Steps for Survivors

Medical Attention and Forensic Nursing⁴⁹

A survivor of sexual violence may want to seek medical attention for: physical injuries, psychological injuries, treatment for pregnancy, treatment for the termination of pregnancy (abortion), testing and treatment of Sexually Transmitted Infections (STIs), and Sexually Transmitted Diseases (STDs).

Seeking medical attention can trigger complicated feelings for a survivor because they may feel vulnerable or triggered by medical exams.

If the survivor experienced violence within the past 7 days, they can access Forensic Nursing Services.

SAFE - Sexual Assault Forensic Examination

Forensic Nursing Services can provide the choice of three care options.⁵⁰

1. Medical Care, SAFE is not performed, no police report is filed.
2. Medical care, SAFE, this includes the documentation of physical injuries and forensic.
3. Medical care, SAFE, forensic samples are provided to RCMP immediately, with the survivors consent.

With the survivors consent, for people of all genders and ages, Forensic Nursing Services can:

- Perform forensic exams and collect forensic samples for evidence.
- Contact the police and parents only if the survivor wants them to.
- Provide referrals for follow-up-care.



For more information on Forensic Nursing Services on Vancouver Island, see:

<https://www.islandhealth.ca/our-services/forensic-nursing-services/forensic-nursing-services>

Reach Forensic Nursing Services immediately at → Vancouver Island Crisis line at **1-888-494-3888**

The Criminal Justice System

A survivor may wish to file a police report. Survivors can also ask the Court to make a no contact order, such as a restraining order or peace bond.⁵¹

The Criminal Code defines several offences related to sexual conduct involving minors. Some offences are specific to minors while others may treat the offence as more serious if it involves a minor and especially if the accused is in a position of power.⁵²

If a survivor is considering reporting to the police, they should be aware that their report may not lead to a charge or prosecution. For any offence in the Criminal Code, the prosecution of the offence will depend on the Crown deciding that they have a substantial likelihood of conviction and, then, if the public interest requires a prosecution.⁵³ An offence that fulfills all the factors listed above will not necessarily lead to a charge or prosecution.

[VictimLinkBC](#) can assist survivors in making a decision whether or not to report to the police. If the survivor is over the age of 19, they can report through a third-party to remain anonymous.⁵⁴

Distribution of intimate images

Section 162 of the *Criminal Code* elaborates on what publication of an intimate image without consent entails according to Canadian Law. See s.162 of the *Criminal Code* [here](#). (see civil liability note below to see how the law is expanding)

Definition of *intimate image* in the *Criminal Code* is: A visual recording of a person made by any means including a photographic, film or video recording,

- (a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;
- (b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and
- (c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

Consensual Intimate Image Sharing Between Minors, The Private Use

Exception Rule⁵⁵

- It is legal for two consenting teenagers to carry intimate images of one another.⁵⁶ However, it is illegal if either of the teenagers shared the images outside of their private conversation/relationship without consent.

Case Example

- In *R v Haines-Matthews (2018) ABPC*, an 18-year-old accused took nude photographs of a 17-year-old victim and recorded them doing sexual acts. While the victim initially consented to the accused taking nude photographs of her, she did not consent to him distributing the images. The accused then posted the video recording and the nude photographs on Facebook and Instagram. The accused was charged with a violation of section 162.1 (1) of the *Criminal Code* and sentenced to 5 months imprisonment followed by a 12-month probation period.⁵⁷

Important Note: New BC Legislation

Civil Liability: Monetary Damages for Harms Suffered

The new legislation in BC, among other aspects, will “create a new, expedited process resulting in legal decisions and orders designed specifically to stop the distribution of intimate images without consent; and a more traditional civil action for survivors to seek monetary damages for harms suffered”.⁵⁸

Read more about this expanding area of law here:

- https://news.gov.bc.ca/releases/2023AG0012-000271?fbclid=IwAR2NeOfyYf12iXbOIXghnK8FEFUrg6_OmwWVd1yv7KrzvRhn4VxhNN6I4E&mibextid=I066kq
- <https://www.law360.ca/articles/44913/b-c-legislation-on-non-consensual-distribution-of-intimate-images-long-overdue-lawyer-says>
- https://bcsth.ca/wp-content/uploads/2022/05/16.-BCSTH_-What-do-if-someone-threatens-or-shares-your-Intimate-Image-_March-2022.pdf
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Endnotes

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