

## 4. Consent

- 4.1 Voluntary agreement to engage, or continue to engage, in sexual activity must be affirmatively communicated through words or actively expressed through conduct. An individual who is incapacitated cannot give voluntary consent. Also, consent obtained through the abuse of a position of trust, power or authority, or through fraud or coercion, or due to fear of consequences, violence, or retaliation is not voluntary consent. For clarity:
- 4.1.1 Consent cannot be implied, which means it must be affirmatively given and cannot be assumed by an individual's silence or inaction.
  - 4.1.2 The initiator of a sexual activity is responsible for obtaining consent for that sexual activity.
  - 4.1.3 Consent can be withdrawn by any party at any time during the sexual activity through words or actions, and if consent is withdrawn the sexual activity must stop.
  - 4.1.4 Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent given only applies to each specific instance of sexual activity. Neither the relationship status of the parties nor past consent to sexual activity gives or implies future or ongoing consent.
  - 4.1.5 Individuals cannot give consent if they are not able to appreciate the nature of the sexual activity, or to appreciate the risks and consequences of the sexual activity, or are otherwise unable to choose whether to engage in the sexual activity. For example, an individual is incapable of consenting if the individual is:
    - (a) asleep or unconscious;
    - (b) unable to consent due to ingestion of drugs or alcohol; or
    - (c) under the legal age of consent as defined in the *Canadian Criminal Code*.
  - 4.1.6 Evidence that an individual's judgment was impaired by alcohol or drugs is a relevant consideration for determining whether the individual consented to the sexual activity in question.
  - 4.1.7 A Respondent's mistaken belief, formed due to intoxication or impairment from drugs or alcohol, that there was consent is not a defense to the allegation of Sexual Misconduct.
  - 4.1.8 A person's sexual reputation or history of sexual activity cannot be submitted as evidence to prove that it was likely that consent had been given.
  - 4.1.9 Even if sexual activity occurs outside of the class of Prohibited Relationships, there is an inherent risk that consent is not voluntary whenever there is a relationship of trust or authority in which there is an imbalance, or perceived imbalance of power. Where there is an allegation of Sexual Misconduct in these relationships the nature of the relationship will be a significant factor in determining whether there was consent.