

Policy Title:	<b>Sexual Violence and Misconduct Procedure</b>
Policy Number:	<b>2604p</b>

## 1. Purpose

The procedures set out below are designed to support the Sexual Violence and Misconduct Policy (the “Policy”). Capitalized terms are defined in the Policy.

## 2. Procedures

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

- risk assessment and management;
- providing appropriate education and training to the University Community regarding this Policy;
- establishing procedures for reporting, investigating and documenting incidents of Sexual Violence and Misconduct in a prompt and sensitive manner and in accordance with Occupational Health and Safety Act regulations, where applicable;
- notifying members of the University Community who may be exposed to a known risk of Sexual Violence and Misconduct, of the nature and extent of the risk;
- providing appropriate support or referrals to members of the University Community who Disclose or file a Complaint under this Policy or who are the subject of a Disclosure or Complaint under this Policy;
- ensuring that appropriate corrective actions are taken in response to incidents of Sexual Violence and Misconduct; and,
- conducting regular reviews to evaluate the effectiveness of this Policy, with reviews occurring at least once every three (3) years.

## 3. Accommodation and Safety Planning

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

- the Manager, Human Resources, if the person seeking such support is an Employee; or
- the Manager, Student Affairs, if the person seeking such support is a Student.

## 4. Disclosure of Sexual Violence or Misconduct

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

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

## PROCEDURE

A Disclosure is not the same as a Complaint under this Policy and does not normally serve to initiate an investigation or other process except as may be required by law. To initiate an investigation, a Complaint must be filed with the Manager.

A member of the University Community who receives a Disclosure of Sexual Violence and Misconduct must notify the Manager, or Campus Security if the Manager is not available, if any of the following circumstances apply:

- a person is at risk of self-harm or of harming others;
- there is an imminent risk of harm to the University Community and/or the broader community;
- the Disclosure involves sexual harassment in a University workplace;
- a Young Person is involved or affected; or
- disclosure is otherwise required by law.

In these instances, the minimum amount of information needed to meet legal or other obligations will be disclosed, and every effort will be made to involve the person making the Disclosure in decision-making and to mitigate any associated risks. Any University Community member who is unsure about their responsibility to disclose should seek advice from the Manager.

### **5. Complaints of Sexual Violence and Misconduct or Other Violations of this Policy**

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

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

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

### **6. Initial Review**

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

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

- appoint an Investigator to investigate the Complaint; or



- refer the matter to the alternative resolution process described below.

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

### **7. Alternative Resolution**

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

Participation in an alternative dispute resolution process is entirely voluntary. If either the Complainant or the Respondent decides they no longer wish to participate in the alternative resolution process at any time, then the Manager will appoint an Investigator to investigate the Complaint.

### **8. Investigation**

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

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

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

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

In all investigations, the Respondent will be informed of the allegations made against them and will

be given a full opportunity to respond.

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

- requesting a written response to the Complaint from the Respondent, including a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;
- meeting with or requesting further information from the Complainant;
- meeting with or requesting further information from the Respondent;
- meeting with or requesting further information from any other individuals who may have information relevant to the investigation, including any witnesses identified by the Complainant or the Respondent;
- inviting the Complainant and the Respondent to submit questions they believe should be asked of the other party or any witness, provided that the decision as to whether such questions will actually be asked of the other party or a witness is entirely within the discretion of the Investigator; and,
- obtaining any other evidence that may be relevant to the investigation.

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

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

### **9. Investigation Outcomes**

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

- the Manager will provide a copy of the Investigator's Report to the Responsible Administrator;
- the Responsible Administrator will determine what disciplinary or other measures are appropriate based on the findings in the Report;
- if suspension or expulsion of a Student or suspension or termination of an Employee is a potential outcome, the matter will be referred to the President for decision;
- the Complainant and the Respondent will be notified of the outcome;
- the Respondent will be notified of the option to appeal, as described below.

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

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

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

### **10. Confidentiality**

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

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

Individuals, including the Complainant and the Respondent, who have obtained personal information about an identifiable individual through their participation in an investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:

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

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

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

Information may also be shared where:

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

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

Under FIPPA, the University is only authorized to disclose disciplinary actions it has taken against a Respondent if the disclosure is authorized by the University for compelling health or safety reasons.

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

### **11. Retaliatory Action, Breaches of Confidentiality, and Frivolous or Vexatious Complaints**

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

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

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

### **12. Appeal**

A Complainant or Respondent may appeal the decision of the Responsible Administrator to the person to whom the Responsible Administrator reports. A University Employee who has been suspended or terminated by the President has a right of appeal to the University's Board of Governors.

The appeal must be submitted in writing within ten (10) business days of the decision being received by the Complainant/Respondent, and must provide specific grounds for the appeal, describing how this Policy was incorrectly applied and/or due process was not followed.

The appeal will deal with appropriateness of process or disciplinary decisions and will not reconsider the original Complaint. However, the person or body deciding the appeal has the discretion to consider new evidence that could not reasonably have been available at the time of the investigation.

The appeal may be upheld or dismissed, in whole or in part, and/or referred back to the Responsible Administrator for reconsideration.

The person or body deciding the appeal will give reasons for their decision in writing.