

UNIVERSITY OF MANITOBA PROCEDURE

Procedure:	RWLE AND SEXUAL ASSAULT
Parent Policies:	Respectful Work and Learning Environment; Sexual Assault
Effective Date:	January 27, 2009
Revised Date:	September 1, 2016
Review Date:	September 1, 2019
Approving Body:	Board of Governors
Authority:	<i>The University of Manitoba Act, s.4(t), s.16(1), s.18</i>
Responsible Executive Officer:	President
Delegate:	Vice-President (Administration)
Contact:	General Counsel
Application:	Board of Governors members, Senate members, Faculty/College/School Councils, employees, anyone holding an appointment at the University, students, volunteers, external parties, contractors and suppliers

Part I Reason for Procedure

- 1.1 The reason for this Procedure is to:
- (a) Promote and support a respectful work and learning environment at the University;
 - (b) Provide specific guidance for the University Community regarding expectations for respectful conduct;
 - (c) Provide a mechanism for the consideration of complaints of Harassment, Discrimination, Sexual Assault, or Reprisal, for Informal Resolution of concerns regarding the work and learning environment, and for the Investigation of an alleged Breach; and

- (d) Ensure compliance with relevant legislation, including *The Human Rights Code* (Manitoba), and *The Workplace Health and Safety Regulation* (Manitoba).
- 1.2 Nothing in this Procedure is intended to detract from academic freedom of the University's Academic Staff.
- 1.3 Nothing in this Procedure is intended to detract from the rights and duties of those with supervisory authority to manage, and if necessary to discipline faculty, employees and students, in accordance with applicable legislation or common law, collective agreements or University policies, procedures or bylaws.
- 1.4 This Procedure is not intended to be an exhaustive list of all issues of conduct which may arise in the University Community.

Part II Procedural Content

Definitions

- 2.1 The following terms are defined for the purpose of this Procedure:
 - (a) "**Academic Staff**" refers to all individuals whose primary assignment is instruction, research, and/or service/academic administration. This includes employees who hold an academic rank such as professor, associate professor, assistant professor, instructor, lecturer, librarian, or the equivalent of any of those academic ranks. The category also includes a dean, director, associate dean, assistant dean, chair or head of department, visiting scholars, senior scholars, and those holding unpaid academic appointments, insofar as they perform instructional, research, and/or service/academic administrative duties.
 - (b) "**Breach**" means any conduct, behaviour, action or omission which is prohibited under the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure, including but not limited to Discrimination, Harassment, Sexual Assault, and Reprisals.
 - (c) "**College**" means a Professional College as defined under the Definitions of Academic Units Policy.
 - (d) "**Committee**" means the Human Rights Advisory Committee established pursuant to section 2.13 of the Respectful Work and Learning Environment Policy or pursuant to section 2.20 of the Sexual Assault Policy to:
 - (i) Hear appeals from Preliminary Assessment decisions, in accordance with this Procedure;

- (ii) Receive and review the HRCMO's annual report under section 2.18 of the Respectful Work and Learning Environment Policy and under section 2.25 of the Sexual Assault Policy; and
 - (iii) Provide advice and guidance on potential amendments or revisions to the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, and/or this Procedure.
- (e) **"Complainant"** means the individual or individuals bringing forward a complaint of a Breach.
- (f) **"Consent"** has the same meaning as defined in section 2.14 of this Procedure.
- (g) **"Designated Officer"** means the Vice-President (Administration), or designate.
- (h) **"Discrimination"** has the same meaning as defined in section 2.5 of this Procedure.
- (i) **"Faculty"** means a Faculty as defined under the Definitions of Academic Units Policy.
- (j) **"Formal Complaint"** means a complaint to the Human Rights and Conflict Management Officer under the Respectful Work and Learning Environment Policy or the Sexual Assault Policy that is in writing and contains, at minimum, the following information:
 - (i) The name of the Complainant and contact information for the Complainant;
 - (ii) A description of the alleged Breach;
 - (iii) The approximate date of the alleged Breach, being within 1 year from the date of the most recent alleged incident unless, in the discretion of the Human Rights and Conflict Management Officer, extenuating circumstances would warrant an extension of time;
 - (iv) The name of the Respondent;
 - (v) Contact information for the Respondent, if known;
 - (vi) An indication that the Complainant desires the complaint to be the subject of an Investigation; and
 - (vii) The Complainant's signature.

- (k) **"Harassment"** refers to Personal Harassment, Human Rights Based Harassment, and/or Sexual Harassment as defined in section 2.10 of this Procedure.
- (l) **"Human Rights and Conflict Management Officer"** or **"HRCMO"** means an individual appointed by the University of Manitoba as someone possessing the appropriate training and skills to fulfill the role outlined in section 2.17 of the Respectful Work and Learning Environment Policy and section 2.24 of the Sexual Assault Policy.
- (m) **"Informal Resolution"** means the resolution of an alleged Breach to the satisfaction of the Complainant and the Respondent, without an Investigation being completed.
- (n) **"Investigation"** means a formal investigation of an alleged Breach conducted in accordance with this Procedure.
- (o) **"Investigator"** means one or more persons appointed as the investigator of an alleged Breach, pursuant to section 2.36 of this Procedure.
- (p) **"Preliminary Assessment"** means the initial review of a Formal Complaint, in accordance with sections 2.23 to 2.28 of this Procedure.
- (q) **"Procedure"** refers to this RWLE and Sexual Assault Procedure.
- (r) **"Protected Characteristic"** has the same meaning as defined in section 2.6 of this Procedure.
- (s) **"Reasonable Accommodation"** means an accommodation of the special needs of any individual or group, if those special needs are based upon any Protected Characteristic, that is reasonable but not necessarily perfect in the circumstances, that does not cause undue hardship to the University, and does not compromise bona fide and reasonable requirements of the University.
- (t) **"Report"** has the same meaning as defined in section 2.46 of this Procedure.
- (u) **"Reprisal"** has the same meaning as defined in section 2.57 of this Procedure.
- (v) **"Representative"** means:
 - (i) in the case of a student, a Student Advocate, a representative from the University of Manitoba Students' Union, a representative from the Graduate Students' Association, a member of the University Community not receiving payment for appearing, a member of the

student's immediate family or other support person as may be appropriate;

- (ii) in the case of an employee, a union representative, lawyer, or support person as may be appropriate; and
 - (iii) in the case of another member of the University Community, a lawyer or support person as may be appropriate.
- (w) **"Respondent"** means an individual or individuals accused of having caused or contributed to a Breach.
- (x) **"School"** means a "School of the University" or a "School of the Faculty", as those terms are defined under the Definitions of Academic Units Policy.
- (y) **"Sexual Assault"** has the same meaning as defined in section 2.13 of this Procedure.
- (z) **"STATIS"** means the Student/Staff Threat Assessment Triage Intervention Support team comprised of the following representatives:
- (i) Vice-Provost (Students);
 - (ii) Associate Vice-President (Human Resources);
 - (iii) Director, Security Services;
 - (iv) Executive Director, Student Support;
 - (v) Student Support Case Manager; and
 - (vi) Legal Counsel.
- (aa) **"Student Advocate"** is a member of the University's Student Advocacy Office who provides students with information on their rights and responsibilities, as well as assistance with resolving problems or concerns resulting from actions or decisions taken by the University.
- (bb) **"Unit"** means a Faculty, College, School, institute, centre, academic support unit (for example, libraries) or administrative unit whose Unit Head reports to the President or a Vice-President, Associate Vice-President or Vice-Provost. An academic department within a Faculty or School is not a Unit as the term is used within this Procedure.
- (cc) **"Unit Head"** refers to the individual with direct supervisory authority over a Unit, including Deans, Directors, the University Librarian, the President, Vice-Presidents, Associate Vice-Presidents, and Vice-Provosts with respect to their Units.

- (dd) **"University"** means The University of Manitoba.
- (ee) **"University Community"** means all Board of Governors members, Senate members, Faculty/College/School Councils, employees, anyone holding an appointment with the University, students, volunteers, external parties, contractors and suppliers.
- (ff) **"University Instituted Investigation"** means an Investigation initiated by the Designated Officer in consultation with the HRCMO, pursuant to section 2.34 of this Procedure.
- (gg) **"University Matter"** has the same meaning as defined in section 2.3 of this Procedure.

SCOPE

- 2.2 This Procedure applies to members of the University Community in relation to any University Matter.
- 2.3 **"University Matter"** means any activity, event, or undertaking in which a member of the University Community participates, which has a substantial connection to the University, such as:
 - (a) University-related activities or events, including but not limited to:
 - (i) Any activity or event on property owned or controlled by the University;
 - (ii) The leasing of space, including student residence rooms, on property owned or controlled by the University;
 - (iii) The offering of any service by the University, including educational services;
 - (iv) Student placements, practica, or clinical training;
 - (v) University research activities, whether on or off campus;
 - (vi) Student and/or employee exchanges arranged in connection with the University;
 - (vii) Social events or networking, where matters regarding the University or members of the University Community are a significant focus of the activity;
 - (viii) University field trips, travel-study tours, service-learning activities, and similar activities;

- (b) Activities or events involving members of the University Community, where the actions of those members of the University Community may reasonably reflect upon or affect the University, including but not limited to:
 - (i) Any aspect of the employment or engagement of employees and contractors for roles and projects substantially connected to the University;
 - (ii) Participation on a committee or board as a representative of the University;
 - (iii) Writings, photographs, artwork, audio or video recordings, and/or electronic communications, including communications through social media, where matters regarding the University or members of the University Community are a significant focus of the communication;
 - (iv) Matters related to The University of Manitoba Students' Union, the Graduate Students' Association, and their affiliated student groups to the extent that it affects the proper functioning of the University or the rights of a member of the University Community to use and enjoy the University's learning and working environments; or
 - (v) Matters of off-campus conduct that have, or might reasonably be seen to have an adverse effect on the proper functioning of the University or the rights of a member of the University Community to use and enjoy the University's learning and working environments.

PROHIBITED CONDUCT

Discrimination

2.4 Subject to section 2.8 of this Procedure, any member of the University Community who commits Discrimination in relation to a University Matter will be subject to discipline.

2.5 "**Discrimination**" means an intentional or unintentional act or omission resulting in:

- (a) Differential treatment of:
 - (i) An individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit;
 - (ii) an individual or group on the basis of any Protected Characteristic;
 - (iii) an individual or group on the basis of the individual or group's actual or presumed association with another individual or group whose

identity or membership is determined by any Protected Characteristic;

- (b) Failure to make Reasonable Accommodation for the special needs of an individual or group, if those needs are based upon a Protected Characteristic.

2.6 **"Protected Characteristic"** means those characteristics listed in *The Human Rights Code* (Manitoba) (as amended from time to time) as being protected, which at the time of approval of this Procedure include:

- (a) Ancestry, including colour and perceived race;
- (b) Nationality or national origin;
- (c) Ethnic background or origin;
- (d) Religion or creed, or religious belief, religious association or religious activity;
- (e) Age;
- (f) Sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) Gender identity;
- (h) Sexual orientation;
- (i) Marital or family status;
- (j) Source of income;
- (k) Political belief, political association or political activity;
- (l) Physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device;
- (m) Social disadvantage.

2.7 Examples of Discrimination include, but are not limited to:

- (a) Systemic discrimination resulting from interrelated actions, policies, or rules which together have a discriminatory effect;
- (b) Evaluations of performance based on a Protected Characteristic;

- (c) Establishment of a scholarship, bursary, or other award which provides for differential treatment of a particular group, subject to 2.8 of this Procedure; or
 - (d) Failure to provide a Reasonable Accommodation.
- 2.8 Acts or omissions which would otherwise be Discrimination under this Procedure are permitted where:
- (a) There is a bona fide and reasonable cause for the Discrimination.
 - (b) The acts or omissions are intended and likely to:
 - (i) Make Reasonable Accommodation for the special needs of an individual or group; or
 - (ii) Ameliorate the conditions of disadvantaged individuals or groups, including those disadvantaged by a Protected Characteristic.
 - (c) The acts or omissions are in the context of a research project that has received all required research ethics approvals.

Harassment

- 2.9 Any member of the University Community who commits Harassment in relation to a University Matter will be subject to discipline.
- 2.10 "**Harassment**" refers to:
- (a) "**Personal Harassment**", which means offensive behaviour directed towards another person and not connected to a Protected Characteristic, including but not limited to:
 - (i) A severe single incident or a series of incidents of objectionable and unwelcome conduct or comments, directed toward a specific person or group, which does not serve a reasonable work or academic purpose, and objectively would have the effect of creating an intimidating, humiliating, hostile or offensive work or learning environment;
 - (ii) Verbal or written abuse, threats or intimidation that objectively is humiliating or demeaning;
 - (iii) Objectionable and unwelcome conduct or comments that objectively impacts the mental or physical health of another person;
 - (b) "**Human Rights Based Harassment**", which means offensive behaviour connected to a Protected Characteristic, including but is not limited to:

- (i) A severe single incident or a series of incidents of objectionable and unwelcome conduct or comments, directed toward a specific person or group, which objectively would have the effect of creating an intimidating, humiliating, hostile or offensive work or learning environment;
 - (ii) Verbal or written abuse, threats or intimidation that objectively is humiliating or demeaning;
 - (iii) Objectionable and unwelcome conduct or comments that objectively impacts the mental or physical health of another person;
 - (iv) Sexual Harassment.
- (c) **"Sexual Harassment"**, which is a form of Human Rights Based Harassment and refers to a course of objectionable and unwelcome conduct or comments undertaken or made on the basis of the Protected Characteristics 2.6(f), 2.6(g), or 2.6(h), including but not limited to:
- (i) Unwanted sexual attention, including persistent invitations for dates, by a person who knows or ought reasonably to know that such attention is unwanted or unwelcome;
 - (ii) Gender-based abusive or unwelcome conduct or comments that would objectively have the effect of creating an intimidating, humiliating, hostile or offensive work or learning environment;
 - (iii) Sexist jokes or remarks, including comments regarding a person's appearance or clothing;
 - (iv) Leering, ogling, or other sexually oriented gestures;
 - (v) Questions about a person's sexual history, sexuality, sexual orientation, or sexual identity by a person who knows or ought reasonably to know that the questions are unwanted or unwelcome;
 - (vi) Offensive physical contact by a person who knows or ought reasonably to know that the contact is unwanted or unwelcome;
 - (vii) A single sexual solicitation or advance or a series of solicitations or advances made by a person who is in a position to confer any benefit on or deny any benefit to the recipient, and who knows or ought reasonably to know that the solicitation or advance was unwanted or unwelcome; or
 - (viii) A Reprisal for rejecting a sexual solicitation or advance.

2.11 It is not Harassment or otherwise a violation of this Procedure for:

- (a) A supervisor or manager to engage in the legitimate evaluation of the performance of an employee or contractor, or otherwise overseeing their work;
- (b) Academic Staff to engage in the academic evaluation of a student's work;
- (c) A good faith and formal evaluation of an Academic Staff member or supervisor;
- (d) A legitimate peer review or other critique of research or academic work;
- (e) A Unit Head to take actions intended to address or deter violent, threatening, or intimidating behaviour, or behaviour which significantly disrupts the University and members of the University Community.

Sexual Assault

2.12 Any member of the University Community who commits Sexual Assault in relation to a University Matter will be subject to discipline.

2.13 "**Sexual Assault**" means the intentional sexual touching of another person with any object or body part without Consent or by force.

2.14 "**Consent**" means the voluntary agreement of the person to engage in the sexual activity in question. Without limiting the foregoing, no Consent is obtained where:

- (a) the person submits or does not resist by reason of the application of force to the person or to someone other than the person;
- (b) the person submits or does not resist by reason of threats or fear of the application of force to the person or to someone other than the person;
- (c) the person submits or does not resist by reason of fraud or blackmail;
- (d) the person submits or does not resist by reason of the exercise of authority;
- (e) the agreement is expressed by the words or conduct of someone other than the person;
- (f) the person is incapable of consenting to the activity due to age, consumption of drugs or alcohol, or due to some other mental or physical incapacity;
- (g) the accused induces the person to engage in the activity by abusing a position of trust, power or authority;
- (h) the person expresses, by words or conduct, a lack of agreement to engage in the activity; or

- (i) the person, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

COMPLAINT PROCEDURE

Making a Complaint

- 2.15 Any person, whether or not a member of the University Community, may contact the HRCMO to raise a concern regarding Discrimination, Harassment, Sexual Assault, or Reprisal, or to make a Formal Complaint. Any other concerns regarding conduct or conflict that is not supportive of a respectful work and learning environment should be addressed with the appropriate manager, Academic Staff, or Unit Head responsible for the affected environment, in accordance with sections 2.5 of the Respectful Work and Learning Environment Policy.
- 2.16 Wherever practical, the HRCMO may encourage Informal Resolution of a complaint of a Breach.
- 2.17 If a Complainant wishes the complaint to be the subject of an Investigation, the Complainant must file a Formal Complaint no later than 1 year after the alleged Breach, or where a continuing contravention is alleged, no later than 1 year after the last alleged instance of the Breach.
- 2.18 Where the Complainant is not the person against whom the Breach is alleged to have occurred, the HRCMO will have discretion to:
 - (a) Refuse to accept the Complaint unless the person against whom the Breach is alleged to have occurred consents to the filing of the Formal Complaint; or
 - (b) Conduct a Preliminary Assessment and/or recommend a University-Instituted Investigation.
- 2.19 Where a Formal Complaint refers to an urgent allegation of Reprisal, the HRCMO will advise the Designated Officer and any such persons as believed necessary to discuss and implement interim measures. Interim measures may be implemented by the Designated Officer or the Unit Head.

Informal Resolution

- 2.20 Subject to section 2.22 of this Procedure, the HRCMO will provide information to both the Complainant and Respondent regarding the opportunities and resources available to facilitate Informal Resolution of an alleged Breach.
- 2.21 The HRCMO may develop and adopt guidelines and other documents secondary to and consistent with the Respectful Work and Learning Environment Policy and the Sexual Assault Policy and this Procedure, which outline Informal Resolution options and the processes related to each option.

- 2.22 The HRCMO may decide not to facilitate an Informal Resolution process where:
- (a) Successful resolution is unlikely;
 - (b) The concerns were not brought forward in a timely manner; or
 - (c) A full Investigation would better serve the University and the purposes of the Respectful Work and Learning Environment Policy and/or the Sexual Assault Policy.

Preliminary Assessment of Formal Complaints.

- 2.23 The HRCMO will conduct a Preliminary Assessment for each Formal Complaint to determine whether or not an Investigation should proceed in accordance with this Procedure. Except in extenuating circumstances, the HRCMO will complete a Preliminary Assessment of a Formal Complaint within 30 working days of receiving the Formal Complaint.
- 2.24 A Formal Complaint will not proceed to Investigation, and no further action is required by the HRCMO or the University, if the Formal Complaint does not strictly meet the requirements of section 2.1(j) of this Procedure, including but not limited to where the Formal Complaint is not in writing, is anonymous, is out of time, or does not contain all the required information.
- 2.25 Notwithstanding subsection 2.24 and subject to subsection 2.55 of this Procedure, the HRCMO may exercise his or her discretion to accept a non-compliant Formal Complaint or to bring a non-compliant Formal Complaint to the attention of the Designated Officer for consideration of a University Instituted Investigation.
- 2.26 In making his or her Preliminary Assessment, the HRCMO will consider whether:
- (a) The Formal Complaint deals with a Breach to which the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure applies;
 - (b) The Formal Complaint appears credible, to have been made in good faith, and not to be frivolous or vexatious;
 - (c) The issues disclosed by the Formal Complaint have not been or are not in the process of being addressed in another forum or pursuant to a collective agreement or University policy, procedure or bylaw, which would deal comprehensively with the alleged Breach;
 - (d) The issues disclosed by the Formal Complaint would more appropriately be dealt with in another forum or through another process;
 - (e) The matters included in the Formal Complaint are of sufficient seriousness to warrant an Investigation;

- (f) An Investigation would serve the University in furthering the objectives under the Respectful Work and Learning Environment Policy and/or the Sexual Assault Policy; and
- (g) The Complainant has attempted to address the matters included in the Formal Complaint through Informal Resolution, pursuant to the Respectful Work and Learning Environment Policy, the Sexual Assault Policy and this Procedure.

2.27 The HRCMO will advise the Complainant in writing of his or her decision on the Preliminary Assessment. Where the Formal Complaint is not accepted to proceed to an Investigation, the HRCMO will include brief reasons for his or her decision. Where the Preliminary Assessment was not completed within 30 working days, the Complainant will also be informed as to the reason for the delay.

2.28 A Formal Complaint that is not accepted to proceed to an Investigation after Preliminary Assessment and appeal of the Preliminary Assessment, if any, will require no further action by the HRCMO or by the University.

Appeal of Preliminary Assessment

2.29 If a Formal Complaint is dismissed by the HRCMO on Preliminary Assessment, the Complainant may appeal the HRCMO's decision by giving notice and submissions in writing to the Designated Officer within 10 working days from the date of the HRCMO's decision. The submissions must include:

- (a) A letter to the Designated Officer clearly explaining the grounds for the appeal, with specific reference to section 2.30 of this Procedure;
- (b) A copy of the letter of decision from the HRCMO; and
- (c) A copy of all of the documentation submitted to the HRCMO with the Formal Complaint (no new documentation can be submitted at this time).

2.30 The grounds for an appeal of a Preliminary Assessment include:

- (a) Failure of the HRCMO to follow the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure;
- (b) Failure of the HRCMO to reasonably consider all factors relevant to the decision being appealed;
- (c) Failure of the HRCMO to comply with applicable legislation.

2.31 The Designated Officer will immediately forward the Complainant's notice and submissions to the Committee, who will make a decision based on the written submissions within 10 working days. The Committee may:

- (a) Cause the HRCMO to appoint an Investigator; or
 - (b) Confirm the decision to dismiss the Formal Complaint.
- 2.32 The Committee will provide brief written reasons for its decision to the HRCMO and the Complainant. The decision of the Committee will be final.
- 2.33 The Committee may develop and adopt additional guidelines and other documents secondary to and consistent with the Respectful Work and Learning Environment Policy, the Sexual Assault Policy and this Procedure for the process of appeal of a Preliminary Assessment.

University Instituted Investigation

- 2.34 "**University Instituted Investigation**" means an Investigation initiated at the discretion of the Designated Officer, where:
- (a) A non-compliant Formal Complaint was received, but disclosed a credible issue of sufficient importance to warrant an Investigation;
 - (b) Matters come to the attention of the Designated Officer that lead him or her to believe there has been a Breach of sufficient importance to warrant an Investigation; or
 - (c) It would be more practical to conduct a single broad Investigation, than addressing a series of Formal Complaints from two or more individuals.
- 2.35 The Designated Officer shall be deemed to be the Complainant for the purpose of the University Instituted Investigation. The University Instituted Investigation shall proceed in the same manner as an Investigation under this Procedure, with methods of investigation adapted as necessary to meet the circumstances. Based on the results of the University Instituted Investigation, appropriate disciplinary action may be taken.

Appointment of Investigator

- 2.36 If an Investigation is found to be warranted, the HRCMO will arrange for the appointment of an Investigator. Having regard to the seriousness and nature of the Formal Complaint, the HRCMO may appoint either an employee of the University or an external consultant to act as the Investigator for a particular Complaint, provided that the Investigator:
- (a) Has skills and/or experience desirable in the circumstances;
 - (b) Would be able to conduct the Investigation in an unbiased manner; and
 - (c) Would not be placed in a conflict of interest.

Investigation

- 2.37 The Investigator may conduct the Investigation in any manner he or she deems appropriate, having regard to the nature of the particular Formal Complaint, the seriousness of the issues involved, and any admissions made during the Investigation. This may include some or all of:
- (a) Interviewing witnesses;
 - (b) Reviewing documents and records (both paper and electronic);
 - (c) Reviewing photographs, audio, and video recordings;
 - (d) Examining physical evidence;
 - (e) Arranging for testing of physical evidence;
 - (f) With the consent of participants, arranging for medical or psychological evaluations; and/or
 - (g) Submitting a Third Party Data Access Request Form to IST regarding accessing electronic systems in accordance with *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*. IST will consult with the Access and Privacy Office to facilitate the request.
- 2.38 The Complainant and Respondent shall cooperate fully with the Investigator and provide any information reasonably required by the Investigator upon request. The Investigator may set reasonable timelines for individuals to respond to requests for assistance with the Investigation.
- 2.39 Where an individual fails to provide reasonable cooperation with the Investigation, the Investigator may continue the Investigation and make a determination on the information available.
- 2.40 The Investigator will conduct the Investigation in accordance with the principles of procedural fairness and natural justice. In particular, the Investigator will ensure that:
- (a) The Complainant must be provided an opportunity to explain and provide evidence in support of the Complaint;
 - (b) The Respondent must be informed of the alleged Breach and provided a copy of the Formal Complaint.
 - (c) The Respondent must be provided a reasonable opportunity to respond to the allegations. The Respondent must be provided access to documentary

and other evidence as required to ensure procedural fairness and natural justice, subject to section 2.69 of this Procedure;

- (d) While strict rules of evidence do not apply, appropriate weight must be given to evidence based on its credibility and reliability; and
- (e) Witnesses (including Complainants and Respondents) may consult with and be accompanied by a Representative.

2.41 An Investigation must normally be completed within 90 working days of the Complaint being assigned to the Investigator. The Investigator may apply to the HRCMO for an extension of time of up to 30 working days. An Investigator may make multiple applications for extensions, but extensions may only be granted if reasonable in the circumstances and at a maximum of 30 working days at a time. The HRCMO will inform the Complainant and Respondent in writing of any extensions granted.

2.42 If, prior to or in the course of an Investigation:

- (a) The Investigator discovers that another Breach may have occurred, that others may have been involved in the Breach or there has been an allegation or act of Reprisal, the Investigator may apply to the HRCMO to expand the scope of the Investigation;
- (b) A subsequent complaint, cross-complaints, allegation or act of Reprisal, or other matters related to a violation of the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure is raised which would most efficiently be dealt with through the same Investigation, the HRCMO may expand the scope of the Investigation; or
- (c) It becomes clear that a Formal Complaint would be most efficiently and thoroughly investigated jointly with another organization or institutional partner, the HRCMO may make arrangements for a joint Investigation, so long as reasonable provisions are made to respect confidentiality.

2.43 Nothing in this Procedure is intended to prevent any Unit Head, or member of the University Community in an instructional, supervisory or managerial position, from taking reasonable and immediate steps to:

- (a) Address a situation dangerous to the health or safety of the University Community in accordance with University policy, procedure, bylaw, and/or applicable collective agreements;
- (b) Protect University funds or assets;
- (c) Take interim measures intended to facilitate a thorough Investigation, discourage Reprisal, or prevent future Breaches; or

- (d) Manage, and if necessary discipline, employees or students in accordance with University policy, procedure, bylaw, and/or applicable collective agreements.

2.44 At any time during an Investigation, and with the consent of the Complainant, Respondent and the HRCMO, the Investigation may be suspended in order to provide an opportunity for Informal Resolution.

Reports on Investigations

2.45 At the conclusion of the Investigation, the Investigator will issue a Report to the Designated Officer and the HRCMO.

2.46 "**Report**" means a report that is issued by the Investigator at the end of an Investigation and contains, at a minimum, the following information:

- (a) A summary of the Formal Complaint and the alleged Breach;
- (b) A summary of the process and key timelines in the Investigation;
- (c) A summary of the key evidence obtained through the Investigation, including a summary of the response of the Respondent;
- (d) An indication of which key evidence was considered credible and reliable;
- (e) A conclusion as to whether, on a balance of probabilities, a Breach has been committed, including identification of which individuals caused or contributed to the Breach;
- (f) A summary of the Investigator's reasons for the conclusion; and
- (g) A summary of any remedial measures taken in regard to a Breach to the date of the Report.

Finding of No Breach of Policy

2.47 If it is determined that no Breach has occurred, the Designated Officer will advise the Complainant and Respondent accordingly and may choose to provide them with a copy of the Report. No further action will be taken and no record of the complaint will be placed on the University's official employment file or student file for the Respondent.

2.48 No record of the complaint shall be kept in the Complainant's personnel file or student record unless it is determined that the complaint was frivolous or vexatious. The University may take disciplinary action against a complainant in cases where frivolous or vexatious complaints are submitted.

Finding of Breach of Policy

- 2.49 If it is determined that a Breach has occurred, or that discipline is warranted under section 2.61 of this Procedure, the Designated Officer may distribute the Report in accordance with section 2.54 of this Procedure to decide upon and implement discipline, mitigation steps or remedial measures.
- 2.50 The Designated Officer may request the Investigator to prepare a summary of the Report for the purposes of protecting confidentiality and protecting the identity of persons involved in the Investigation. The Investigator may consult with the Access & Privacy Office and/or the Office of Legal Counsel for assistance in preparing such summary.
- 2.51 The Designated Officer will provide a summary and/or the Report (either in original or redacted form), within 30 working days of receiving the Report, to:
- (a) The Complainant;
 - (b) The Respondent;
 - (c) All such individuals as the Designated Officer believes necessary to decide upon and implement discipline, mitigation steps, or remedial measures, in accordance with section 2.54;
 - (d) All such individuals as the Designated Officer believes necessary to implement due diligence to prevent similar or related Breaches in the future;
 - (e) All such individuals as the Designated Officer reasonably believes necessary to protect or restore the reputation of those wrongly accused of causing or contributing to a Breach; and
 - (f) Any other person required in order to comply with legal, regulatory, or contractual obligations.
- 2.52 In each case the summary or Report will include, at a minimum, a summary of any evidence provided by the recipient and enough information for the recipient to understand the essential nature of the Formal Complaint and whether or not a Breach was found to have occurred. Such information will be provided in accordance with *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*

DISCIPLINE

- 2.53 Individuals who are found in Breach of the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure will be subject to disciplinary action as follows:

- (a) Where the individual is an employee, the discipline will be implemented in accordance with applicable legislation, common law, collective agreements, and University policies, procedures or bylaws.
 - (b) Where the individual is a student, the discipline will be implemented in accordance with the Student Discipline Bylaw and the Student Non-Academic Misconduct and Concerning Behaviour procedure.
 - (c) Where the individual is neither an employee nor a student, the Vice-President (Administration) or designate may make any determination regarding the individual's continued access to the University in accordance with the Vice-President (Administration) Bylaw.
- 2.54 Before deciding on or implementing any discipline, mitigation steps or other remedial measures, the Designated Officer may seek advice and guidance from appropriate individuals, which may include: the HRCMO, the Associate Vice-President (Human Resources), the Director of Staff Relations, the Vice-Provost (Students), legal counsel, the supervisor or manager of an employee, and/or the Unit Head of the affected Unit.
- 2.55 Anonymous material may only be considered in a disciplinary decision where it would not violate the principles of procedural fairness and natural justice, and it would not conflict with an applicable collective agreement.

APPEAL OF DISCIPLINE

- 2.56 The Respondent may appeal a disciplinary decision made against him or her as follows:
- (a) If the Respondent is a unionized employee, in accordance with the appropriate grievance process defined by any applicable collective agreement;
 - (b) If the Respondent is a student, in accordance with the Student Discipline Bylaw and the Student Discipline Appeal Procedure.

PROTECTION FROM REPRISAL

- 2.57 Subject to section 2.61, "**Reprisal**" means any of the following measures taken against a Complainant or any other person because they have sought advice regarding the Respectful Work and Learning Environment Policy or the Sexual Assault Policy, brought forward allegations of a Breach or made a Formal Complaint, cooperated with an Investigation, or rejected a sexual solicitation or advance:
- (a) Discipline;
 - (b) Academic penalties (in the case of students);

- (c) Demotion;
 - (d) Termination of employment;
 - (e) Termination of an academic appointment;
 - (f) Any other measure which significantly adversely affects his or her working conditions or educational experience; and
 - (g) A threat to take any of the measures referred to above.
- 2.58 A Complainant, Respondent, witness, and/or any other person who has sought advice regarding the Respectful Work and Learning Environment Policy or the Sexual Assault Policy, who has brought forward allegations of a Breach, who has made a Formal Complaint, who has cooperated with an Investigation, or who has rejected a sexual solicitation or advance, is entitled to be protected from a Reprisal. An individual may complain about an alleged Reprisal to the Investigator or to the HRCMO.
- 2.59 Upon observing or being notified of an alleged Reprisal the Investigator may:
- (a) Investigate and include in his or her Report information relating to the alleged Reprisal; and
 - (b) If the matter is urgent, refer the information regarding alleged Reprisal to the HRCMO.
- 2.60 Where the Investigator refers an urgent allegation of Reprisal to the HRCMO, the HRCMO will advise the Designated Officer and any such persons as believed necessary to discuss and implement interim measures. Interim measures may be implemented by the Designated Officer or the Unit Head.
- 2.61 It is not a Reprisal for the University to implement discipline or take other measures against an individual if:
- (a) The individual has interfered or attempted to interfere with an Investigation;
 - (b) The person made a Formal Complaint or allegations in bad faith;
 - (c) The individual has materially breached the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure; or
 - (d) Discipline is otherwise warranted against the individual under applicable legislation or common law, or University policies, procedures or bylaws.
- 2.62 Even where an individual indicates that he or she wishes to withdraw a Formal Complaint (including for fear of Reprisal or being identified) during an Investigation,

the Designated Officer may determine that the issue is important enough that an Investigation must continue.

CONFIDENTIALITY

Obligations of Confidentiality by University with respect to Allegations of Breach

- 2.63 The University will not disclose the name of a Complainant or Respondent or the circumstances related to a complaint of alleged Breach except where disclosure is:
- (a) Necessary to investigate the complaint or take corrective action with respect to the complaint; or
 - (b) Required by law.

Obligations of Confidentiality by University with respect to Findings of Breach

- 2.64 The University will not disclose the name of a Complainant or the circumstances related to a finding of Breach except where disclosure is:
- (a) Necessary to address a risk to the health or safety of an individual or group;
 - (b) Necessary to comply with insurance requirements; or
 - (c) Required by law.
- 2.65 The University may disclose the name of the Respondent or the circumstances related to a finding of Breach for the following purposes:
- (a) In order to address a risk to the health or safety of an individual or group;
 - (b) In order to prevent further or continuing Breaches or other violations of the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure;
 - (c) In order to obtain confidential professional advice;
 - (d) In order to report a legal offense to appropriate authorities;
 - (e) In order to respond to legal or administrative proceedings;
 - (f) In order to comply with any legal or contractual requirement;
 - (g) In accordance with the Access and Privacy policy; or
 - (h) As otherwise permitted or as necessary to give effect to the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or this Procedure.

Information to be minimum amount necessary for purpose

2.66 Personal information that is disclosed under section 2.63 and 2.65 above in respect of an alleged Breach or a finding of Breach will be the minimum amount necessary for the purpose.

Obligations of Confidentiality by the Complainant, Respondent, and Witnesses

2.67 The Complainant, the Respondent, and witnesses involved in an Investigation must keep confidential:

- (a) The existence and nature of the Investigation; and
- (b) Any information or documentation obtained as a result of the Investigation;

which information may only be disclosed to those who reasonably need to know. Where an individual is unsure of whether they may disclose particular information, they may seek advice from the HRCMO or from the Access and Privacy Office. This section is not intended to limit the distribution of Reports as contemplated by this Procedure.

2.68 Notwithstanding section 2.67, the Complainant, the Respondent, and witnesses involved in the Investigation may:

- (a) Obtain confidential advice and/or direction in relation to the complaint from persons such as their supervisor, lawyer, union representative, Student Advocate, or support person, as may be appropriate);
- (b) Disclose information to others only to the extent reasonably necessary to gather evidence and, in the case of a Respondent, to make full answer and defense to the allegations; and
- (c) Use information obtained independent of the Investigation in any other forum.

Obligations of Confidentiality by the Investigator

2.69 The Investigator, in conducting the Investigation, will comply with *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* with respect to personal information and personal health information collected, used and disclosed in the course of the investigation. Where the Investigator is unsure of whether they may disclose particular information, they may seek advice from the University's Access and Privacy Office. The Investigator will further ensure that individuals participating in the Investigation are only provided with such information as they may reasonably need to know to be effective witnesses, or in the case of a Respondent, to address the allegations in accordance with the principles of procedural fairness and natural justice. Subject to section 2.40 of this Procedure, individuals participating in the Investigation may not necessarily be

provided with all information, documentation, the names of Complainants or other witnesses, or the full text of the Formal Complaint.

- 2.70 The Investigator will advise all persons involved with an Investigation as to their obligations regarding confidentiality, and the protections available to them under this Procedure.

Records Management

- 2.71 The University will maintain files with respect to each complaint in accordance with the Records Management Policy and Procedure. The Investigator will securely transfer his or her files to the HRCMO once the Investigation has concluded.

Part III Accountability

- 3.1 The Office of Legal Counsel is responsible for advising the President that a formal review of this Procedure is required.
- 3.2 The Vice-President (Administration) is responsible for the implementation, administration and review of this Procedure.
- 3.3 All members of the University Community are responsible for complying with this Procedure.

Part IV Review

- 4.1 Governing Document reviews shall be conducted every three (3) years. The next scheduled review date for this Procedure is September 1, 2019.
- 4.2 In the interim, this Procedure may be revised or repealed if:
- (a) the Approving Body deems it necessary or desirable to do so;
 - (b) this Procedure is no longer legislatively or statutorily compliant;
 - (c) this Procedure is now in conflict with another Governing Document; and/or
 - (d) the Parent Policy is revised or repealed.

Part V Effect on Previous Statements

- 5.1 This Procedure supersedes all of the following:

- (a) Respectful Work and Learning Environment Procedure, effective January 27, 2009, and revised March 15, 2010;
- (b) all previous Board of Governors/Senate Governing Documents on the subject matter contained herein; and
- (c) all previous Administration Governing Documents on the subject matter contained herein.

Part VI Cross References

6.1 This Procedure should be cross referenced to the following relevant Governing Documents, legislation and/or forms:

- (a) [Respectful Work and Learning Environment Policy](#);
- (b) [Sexual Assault Policy](#);
- (c) [Definitions of Academic Units Policy](#);
- (d) [Records Management Policy and Procedure](#);
- (e) [Access and Privacy Policy and Procedure](#);
- (f) [Third Party Data Access Request Form](#);
- (g) [Student Discipline Bylaw](#);
- (h) [Student Non-Academic Misconduct and Concerning Behaviour Procedure](#);
- (i) [Student Discipline – Appeal Procedure](#);
- (j) [Use of Computer Facilities Policy and Procedure](#);
- (k) [Violent or Threatening Behaviour Policy and Procedure](#);
- (l) [Vice-President \(Administration\) Bylaw](#);
- (m) [The Human Rights Code](#), C.C.S.M. c. H175;
- (n) [The Workplace Safety and Health Regulation](#) 217/2006.