

UNIVERSITY OF MANITOBA PROCEDURE

Procedure:	DISCLOSURES AND COMPLAINTS
Parent Policies:	Respectful Work and Learning Environment; Sexual Violence
Effective Date:	January 27, 2009
Revised Date:	September 29, 2020
Review Date:	September 29, 2023
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 that is free from all forms of Discrimination, Harassment, and Sexual Violence;
 - (b) Provide specific guidance to the University Community regarding expectations for appropriate conduct and behaviour;
 - (c) Set out a fair and consistent process for responding to Disclosures or Formal Complaints of Harassment, Discrimination, Sexual Violence or Reprisal that ensures that all University Community Members will be treated with compassion, dignity, and respect; and

- (d) Ensure compliance with relevant legislation, including *The Human Rights Code* (Manitoba), *The Advanced Education Administration Act* (Manitoba) and *The Workplace Health and Safety Regulation* (Manitoba), *The Personal Health Information Act*, and *The Freedom of Information and Protection of Privacy Act*.
- 1.2 Nothing in this Procedure is intended to detract from the 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 department head, 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 that is prohibited under the Respectful Work and Learning Environment Policy, the Sexual Violence Policy, or this Procedure, including but not limited to Discrimination, Harassment, Sexual Violence, 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 2.44 of this Procedure to hear appeals from Preliminary Assessment decisions.

- (e) **"Complainant"** means the individual or individuals bringing forward a Formal Complaint of a Breach.
- (f) **"Consent"** means the voluntary agreement to engage in physical contact or sexual activity and to continue to engage in the contact or activity. Consent means that all persons involved demonstrate, through words or actions, that they freely and mutually agree to participate in a contact or an activity. More specifically:
 - (i) consent must be given at the outset and at all stages of physical contact or sexual activity;
 - (ii) it is the responsibility of the initiator to obtain ongoing consent;
 - (iii) consent can be withdrawn at any time by any participant;
 - (iv) someone who is incapacitated cannot consent;
 - (v) there is no consent where one person abuses a position of trust, power, or authority over another person;
 - (vi) past consent does not imply future consent;
 - (vii) a person cannot give consent on behalf of another person;
 - (viii) silence or the absence of "no" is not consent;
 - (ix) the absence of perceived resistance is not consent; and
 - (x) there is no consent when there is coercion, force, threats, or intimidation towards any person, or where there is fraud or withholding of critical information that could affect a person's decision to consent.
- (g) **"Designated Officer"** means the Vice-President (Administration), or designate.
- (h) **"Disclosure"** means telling someone about an instance of Discrimination, Harassment, or Sexual Violence. For the purpose of this Procedure, Disclosure means telling the Office of Human Rights and Conflict Management. Disclosure does not initiate an Investigation unless a Formal Complaint is made or the University initiates an Investigation in accordance with this Procedure.
- (i) **"Discrimination"** has the same meaning as defined in section 2.5 of this Procedure.

- (j) **"Faculty"** means a Faculty as defined under the Definitions of Academic Units policy.
- (k) **"Formal Complaint"** means a complaint to the Office of Human Rights and Conflict Management under the Respectful Work and Learning Environment Policy or the Sexual Violence 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;
 - (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;
- (l) **"Harassment"** refers to Personal Harassment or Human Rights Based Harassment, as defined in section 2.10 of this Procedure.
- (m) **"Informal Resolution"** means the resolution of a Disclosure or Formal Complaint to the satisfaction of the Complainant and the Respondent, without an Investigation being completed, as per sections 2.23 to 2.32 of this Procedure.
- (n) **"Interim Measures"** means changes to a University Member's living, working, or learning environment as per sections 2.49 to 2.55 of this Procedure. Interim Measures are non-disciplinary measures that may be imposed where there is reasonable cause to believe that such measures are necessary in order to protect the safety of the learning, working and living environment, discourage Reprisal, prevent further incidents, or preserve the University's ability to conduct a fair investigation. Where circumstances are urgent or immediate safety measures are required. Interim Measures may be imposed prior to the submission of a Formal Complaint.
- (o) **"Intersectionality"** means a framework that promotes an understanding that individuals are shaped by interacting social locations and identities (e.g. race, sexuality, gender etc.).
- (p) **"Investigation"** means a formal investigation of an alleged Breach conducted in accordance with this Procedure.

- (q) **"Investigation Report"** means a report that is issued by the Investigator at the end of an Investigation, as defined at section 2.71 of this Procedure.
- (r) **"Investigator"** means one or more persons appointed as the investigator of an alleged Breach, pursuant to section 2.59 of this Procedure.
- (s) **"Office of Human Rights and Conflict Management"** or **"OHRCM"** means the unit appointed by the University of Manitoba to implement this Procedure and its related Policies.
- (t) **"Preliminary Assessment"** means the initial review of a Formal Complaint, in accordance with sections 2.36 to 2.41 of this Procedure.
- (u) **"Procedure"** refers to this Disclosures and Complaints Procedure.
- (v) **"Protected Characteristic"** has the same meaning as defined in section 2.6 of this Procedure.
- (w) **"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.
- (x) **"Reprisal"** means any of the following measures taken against a Complainant, Respondent, or any other person because they have asked for advice regarding the Respectful Work and Learning Environment Policy or the Sexual Violence Policy, brought forward allegations of a Breach or made a Formal Complaint, cooperated with an Investigation, or rejected a sexual solicitation or advance. Reprisal measures include, but are not limited to:
 - (i) Discipline;
 - (ii) Academic penalties (in the case of students);
 - (iii) Demotion;
 - (iv) Termination of employment;
 - (v) Termination of an academic appointment;
 - (vi) Any other measure which significantly adversely affects their working conditions or educational experience; and
 - (vii) A threat to take any of the measures referred to above.

- (y) **"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 student's immediate family, a lawyer, or 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.
- (z) **"Respondent"** means an individual or individuals accused of having caused or contributed to a Breach.
- (aa) **"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.
- (bb) **"Sexual Assault"** has the same meaning as defined in section 2.14 of this Procedure.
- (cc) **"Sexual Harassment"** has the same meaning as defined in section 2.15 of this Procedure.
- (dd) **"Sexual Violence"** has the same meaning as defined in section 2.13 of this Procedure.
- (ee) **"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.
- (ff) **"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.
- (gg) **"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.
- (hh) **"University"** means The University of Manitoba.
- (ii) **"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.

- (jj) **"University Instituted Investigation"** means an Investigation initiated by the Designated Officer in consultation with the OHRCM as per section 2.56 to 2.58 of this Procedure.
- (kk) **"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 are not Discrimination and are permitted under this Procedure where:
- (a) There is a bona fide and reasonable cause for the acts or omission.
 - (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 would have the effect of impacting the mental or physical health of another person;
 - (b) "**Human Rights Based Harassment**", which means offensive behaviour 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 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 would have the effect of impacting the mental or physical health of another person;
- (iv) Sexual Harassment as per section 2.15 of this Procedure.

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 to be conducted;
- (d) A legitimate peer review or other critique of research or academic work to be conducted;
- (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 Violence

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

2.13 "**Sexual Violence**" means any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes, but is not limited to, Sexual Assault, Sexual Harassment, stalking, indecent exposure, voyeurism and sexual exploitation. Sexual Violence can occur in many contexts, including in person, in writing, online, on social media, through digital communications, or via other technology.

2.14 "**Sexual Assault**" means any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim. Sexual Assault is characterized by a broad range of behaviours that involve the use of force, threats or control towards a person, which makes that person feel uncomfortable,

distressed, frightened, threatened, and is carried out in circumstances in which the person has not freely provided Consent, or is incapable of providing Consent.

2.15 **"Sexual Harassment"** refers to one serious incident or a course of objectionable and unwelcome sexual conduct or comments directed at an individual that includes, but is not limited to:

- (a) 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;
- (b) 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;
- (c) Sexist jokes or remarks, including comments regarding a person's appearance or clothing;
- (d) Leering, ogling, or other sexually oriented gestures;
- (e) 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;
- (f) Offensive physical contact by a person who knows or ought reasonably to know that the contact is unwanted or unwelcome;
- (g) 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
- (h) A Reprisal for rejecting a sexual solicitation or advance.

2.16 The University recognizes that those impacted by Discrimination, Harassment, or Sexual Violence may be reluctant to come forward for fear of being sanctioned for alcohol or other substance use. The University will not subject any individual who makes a Disclosure or files a Formal Complaint to disciplinary action for alcohol or substance use occurring at or near the time of the incident(s), save for remedial measures to assist a University Community Member struggling with responsible alcohol or substance use.

Disclosures

2.17 University Community members impacted by Discrimination, Harassment, or Sexual Violence are encouraged to Disclose their experiences to the Office of Human Rights and Conflict Management. There is no time limit or limitation period for making a Disclosure. University Community members may choose to make

Disclosures for a variety of reasons, including to access supports and resources. University Community members who make Disclosures will have access to supports and resources whether or not they choose to make a Formal Complaint. A Disclosure is not a Formal Complaint and will not ordinarily initiate an Investigation. However, the University may initiate an investigation in response to a Disclosure in accordance with section 2.56 of this Procedure.

- 2.18 When responding to Disclosures, the Office of Human Rights and Conflict Management will refrain from questions or comments that imply judgment or blaming of the person making the Disclosure (such as questions or comments about the dress, conduct, language, emotional disposition, past sexual history, consumption of alcohol or drugs, or about the timing of the Disclosure).
- 2.19 A person receiving a Disclosure may be required to share the information they receive if:
- (a) A person is at risk of self-harm or of harming others;
 - (b) There is imminent risk of harm to the University Community and/or the broader community;
 - (c) A minor or vulnerable person is endangered; or
 - (d) Disclosing the information is otherwise required by law.

Immediate Response to Disclosures

- 2.20 For students affected by Discrimination, Harassment or Sexual Violence, the University will:
- (a) Provide reasonable academic accommodations (such as extensions on assignments, deferrals of exams, leaves of absences, authorized withdrawals, etc.); and
 - (b) Create a safety plan in consultation with the University's Student Support Case Manager, UMSS, and other offices as appropriate.
- 2.21 For employees affected by Discrimination, Harassment or Sexual Violence, the University will:
- (a) Provide reasonable work accommodations, in consultation with Human Resources; and
 - (b) Create a safety plan in consultation with the Unit Head, UMSS, and other offices as appropriate.
- 2.22 The University will maintain online resources to support those affected by Discrimination, Harassment or Sexual Violence, with links to on-campus and off-

campus supports and resources that may be accessed by members of the University Community.

INFORMAL RESOLUTION

- 2.23 Subject to section 2.32 of this Procedure, the OHRCM will provide information to both the Complainant and Respondent regarding the opportunities and resources available to facilitate Informal Resolution of an alleged Breach.
- 2.24 After the OHRCM has received a Disclosure or Formal Complaint, the University may, on its own initiative or at the request of the Complainant and/or the Respondent, explore proceeding by Informal Resolution. This process may occur before or during an Investigation.
- 2.25 In order to engage in Informal Resolution, the Complainant(s) and Respondent(s) must all voluntarily agree to the process.
- 2.26 The University retains the ability to conduct an Investigation even if a Complainant and/or Respondent requests Informal Resolution.
- 2.27 Informal Resolution may include but is not limited to: a restorative justice process, mediation or facilitated conversation between the participants, conflict coaching, an apology, a recognition of impact statement or letter, or an expectation letter or agreement.
- 2.28 Information disclosed by participants during the Informal Resolution process will not be made available to Investigators.
- 2.29 If the Informal Resolution process results in a resolution that the Complainant(s), the Respondent(s), and the University agree to, the terms of resolution will be put in writing. A copy of the terms of resolution will be confidentially retained by the University and will not be placed in official student or employment files except where necessary to enforce the terms of resolution.
- 2.30 Where an Informal Resolution is conducted during an Investigation and results in terms of resolution, the University will inform the Investigator and terminate the Investigation.
- 2.31 Where an Informal Resolution is conducted, but does not result in a resolution, a Complainant or the University may continue or pursue a Formal Complaint under this Procedure.
- 2.32 The OHRCM may decide not to facilitate an Informal Resolution process where:
 - (a) Successful resolution is unlikely; or

- (b) A full Investigation would better serve the University and the purposes of the Respectful Work and Learning Environment Policy and/or the Sexual Violence Policy.

Making a Formal Complaint

- 2.33 Any person, whether or not a member of the University Community, may contact the OHRCM to make a Formal Complaint regarding Discrimination, Harassment, Sexual Violence, or Reprisal. 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 section 2.6 of the Respectful Work and Learning Environment Policy.
- 2.34 If a Complainant wishes a Disclosure to be the subject of an Investigation, the Complainant will file a Formal Complaint with the Office of Human Rights and Conflict Management. Complainants are encouraged to file Formal Complaints as soon after the reported incident(s) as possible. Early disclosure can help the University provide Complainants with supports, preserve evidence, better ensure the integrity of an Investigation, and address community safety issues in a timely manner.
- 2.35 Where the Complainant is not the person against whom the Breach is alleged to have occurred, the OHRCM will have discretion:
 - (a) Not to accept the Formal Complaint unless the person against whom the Breach is alleged to have occurred consents to the filing of the Formal Complaint; or
 - (b) To conduct a Preliminary Assessment and/or recommend a University-Instituted Investigation.

Preliminary Assessment of Formal Complaints

- 2.36 The OHRCM or their delegate 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 OHRCM or their delegate will complete a Preliminary Assessment of a Formal Complaint within 30 working days of receiving the Formal Complaint. The person conducting a Preliminary Assessment may not be appointed as an Investigator in that same matter.
- 2.37 A Formal Complaint will not proceed to Investigation, and no further action is required by the OHRCM or the University, if the Formal Complaint does not meet the requirements of section 2.1(k) of this Procedure.
- 2.38 Notwithstanding section 2.37 of this Procedure, the OHRCM may exercise its discretion to accept a non-compliant Formal Complaint in extenuating

circumstances or to bring a non-compliant Formal Complaint to the attention of the Designated Officer for consideration of a University Instituted Investigation.

2.39 In making their Preliminary Assessment, the OHRCM will consider whether:

- (a) The Formal Complaint deals with a Breach to which the Respectful Work and Learning Environment Policy, the Sexual Violence Policy, or this Procedure applies;
- (b) The Formal Complaint appears credible and to have been made in good faith;
- (c) The issues disclosed by the Formal Complaint have not been or are not in the process of being addressed 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) An Investigation would support the principles under the Respectful Work and Learning Environment Policy and/or the Sexual Violence Policy;
- (f) Proceeding to an Investigation would create any issues regarding prejudice or fairness.

2.40 The OHRCM will advise the Complainant in writing of the decision on the Preliminary Assessment. Where the Formal Complaint will not proceed to an Investigation, the OHRCM will include brief reasons for the 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.

2.41 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 OHRCM or by the University.

Appeal of Preliminary Assessment

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

- (a) An explanation of the reasons for the appeal, with specific reference to section 2.43 of this Procedure;
- (b) A copy of the letter of decision; and

- (c) A copy of all of the documentation submitted with the Formal Complaint (no new documentation can be submitted at this time).
- 2.43 The reasons for an appeal of a Preliminary Assessment include:
- (a) Failure to follow the Respectful Work and Learning Environment Policy, the Sexual Violence Policy, or this Procedure;
 - (b) Failure to reasonably consider all factors relevant to the decision being appealed;
 - (c) Failure to comply with applicable legislation.
- 2.44 In the event of an appeal of a Preliminary Assessment, the University will establish the Human Rights Advisory Committee, with a membership consisting of:
- (a) The Associate Vice-President (Human Resources) or designate;
 - (b) The Vice-Provost (Students) or designate; and
 - (c) The Vice-Provost (Academic Affairs) or designate, provided that the designate holds an academic appointment with the University.
- 2.45 Members of the Human Rights Advisory Committee will have training in the diverse ways in which trauma and Intersectionality affect individuals.
- 2.46 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) Decide that the Formal Complaint proceed to Investigation; or
 - (b) Confirm the decision not to proceed to Investigation.
- 2.47 The Committee will provide brief written reasons for its decision to the OHRCM and the Complainant. The decision of the Committee will be final.
- 2.48 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 Violence Policy and this Procedure for the process of appeal of a Preliminary Assessment.

Interim Measures

- 2.49 Interim measures involve the University making changes to a University Member's living, working, and/or learning environment before an investigation is concluded in order to protect the health and safety of all University Community members.

- 2.50 The need for interim measures, and which measures are imposed, will be determined on a case-by-case basis. This determination will take into account the circumstances of each situation, and where practicable, may include separate consultations with the Respondent and the Complainant on whether Interim Measures are required and, if so, what Interim Measures would be just and appropriate. This consultation may be conducted by telephone or email, and must proceed expeditiously.
- 2.51 Interim measures will not be construed as a decision or discipline against the Complainant or Respondent. Interim measures will not be weighed against the Respondent in a disciplinary process.
- 2.52 A Respondent shall provide in a timely manner to the Designated Officer all documents and any other information on any civil protection orders or criminal charges and conditions, including changes in these orders, charges and conditions such as bail or conditions of release, related to the incidents giving rise to Interim Measures or a Formal Complaint.
- 2.53 When warranted, the Violent or Threatening Behaviour Policy may be invoked either alone or in conjunction with Interim Measures under this Policy.
- 2.54 Where Interim Measures are just and appropriate, the University will advise the Complainant and Respondent in writing of the decision to impose Interim Measures and brief reasons for this decision.
- 2.55 The Complainant or Respondent may apply to the Designated Officer requesting that the Interim Measures be revised or withdrawn if reasonable cause to believe that such measures, as originally imposed, are no longer just and appropriate. The Designated Officer may revise or withdraw Interim Measures and the Complainant and Respondent shall be advised by the Designated Officer of any changes to Interim Measures.

University Instituted Investigation

- 2.56 The Designated Officer may at their discretion initiate a University Instituted Investigation.
- 2.57 When initiating a University Instituted Investigation the Designated Officer will consider situations where:
- (a) A non-compliant Formal Complaint was received, but disclosed a risk to the safety and security of the University Community;
 - (b) Matters come to the attention of the Designated Officer that lead them to believe there is risk to the safety and security of the University Community;
- or

- (c) It would be more practical to conduct a single broad Investigation rather than addressing a series of Formal Complaints from two or more individuals.

2.58 The Designated Officer will be deemed to be the Complainant for the purpose of the University Instituted Investigation. The University Instituted Investigation will proceed in the same manner as an Investigation under this Procedure, with methods of Investigation adapted as necessary to meet the circumstances.

Appointment of Investigator

2.59 If a Formal Complaint proceeds to an Investigation, the OHRCM will arrange for the appointment of an Investigator. Having regard to the seriousness and nature of the Formal Complaint, the OHRCM may appoint either an employee of the University or an external party to act as the Investigator for a particular Formal Complaint, provided that the Investigator:

- (a) Has skills and/or experience desirable in the circumstances, including trauma-informed investigation training;
- (b) Would be able to conduct the Investigation in an unbiased manner; and
- (c) Would not be placed in a conflict of interest.

Investigation

2.60 The Investigator may conduct the Investigation in any manner they deem appropriate, having regard to the nature of the particular Formal Complaint, 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 Information Services and Technology (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 Access and Privacy Office to facilitate the request.

- 2.61 The Complainant and Respondent will cooperate fully with the Investigator and provide any information reasonably required by the Investigator upon request. The Investigator may set reasonable timelines within which individuals must respond to requests for cooperation with the Investigation
- 2.62 Where an individual does not provide reasonable cooperation with the Investigation due to refusal, retirement, severance of the work or student relationship with the University, or termination of their status as a University Community Member, the Investigator will continue the Investigation and make a determination on the information available.
- 2.63 The Investigator will conduct the Investigation in accordance with section 2.94 of this Procedure and in accordance with the principles of procedural fairness. The Investigator will ensure that:
- (a) The Complainant is provided an opportunity to explain and provide evidence in support of the Formal Complaint;
 - (b) The Respondent is informed of the alleged Breach and provided a copy of the Formal Complaint;
 - (c) Complainants and Respondents are provided with a copy of all written replies to their own response, subject to section 2.94 of this Procedure;
 - (d) The Respondent is provided a reasonable opportunity to respond to the allegations. The Respondent is provided access to documentary and other evidence as required to ensure procedural fairness, subject to section 2.94 of this Procedure;
 - (e) The Respondent is informed that subject to section 2.94 of this Procedure, the Complainant will be provided with a copy of the Respondent's written reply for response;
 - (f) While strict rules of evidence do not apply, appropriate weight is given to evidence based on its credibility and reliability;
 - (g) Witnesses (including Complainants and Respondents) may consult with and be accompanied by a Representative; and
 - (h) No cross-examination is conducted as part of the Investigation.
- 2.64 An Investigation must normally be completed within 90 working days of the Formal Complaint being assigned to the Investigator. The OHRCM will at all times strive to oversee the completion of an Investigation within a timeline of no more than 90 working days, however in the event of extenuating circumstances the Investigator may make a request to the OHRCM for an extension of time of up to 30 working days. An Investigator may make multiple requests 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 OHRCM will inform the Complainant and Respondent in writing of any extensions granted.

- 2.65 At the conclusion of an Investigation, the OHRCM will inform the Complainant, Respondent, and witnesses that the Investigation has concluded.
- 2.66 If, prior to or in the course of an Investigation:
- (a) The Complainant, the Respondent, and the University engage in Informal Resolution and agree to signed terms of resolution, the University will inform the Investigator and terminate the Investigation;
 - (b) 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 make a request to the OHRCM to expand the scope of the Investigation;
 - (c) A subsequent Formal Complaint, a cross-complaint, allegation or act of Reprisal, or other matters related to a violation of the Respectful Work and Learning Environment Policy, the Sexual Violence Policy, or this Procedure is raised that would most efficiently be dealt with through the same Investigation, the OHRCM may expand the scope of the Investigation; or
 - (d) It becomes clear that a Formal Complaint would be most efficiently and thoroughly investigated jointly with another organization or institutional partner, the OHRCM may make arrangements for a joint Investigation, so long as reasonable provisions are made to respect confidentiality.
- 2.67 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; and/or
 - (d) Manage, and if necessary discipline, employees or students in accordance with University policy, procedure, bylaw, and/or applicable collective agreements.

Confidentiality during an Investigation

2.68 Confidentiality allows for the protection of the integrity of an Investigation, ensuring that it is free of bias. Confidentiality also provides an environment that allows for candid participation, while ensuring the protection of privacy, including the names of the Complainants and Respondents. During an Investigation, the Complainant (except where the Complainant is the Designated Officer), the Respondent, and witnesses involved 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. The confidentiality obligations in this section will continue until the Designated Officer has provided to the Complainant and the Respondent a summary of the Investigator's findings and/or the Investigation Report. This section is not intended to limit the distribution of Investigation Reports as contemplated by this Procedure.

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

- (a) Obtain confidential advice and/or direction in relation to the Formal Complaint from a Representative;
- (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.

Investigation Reports

2.70 At the conclusion of the Investigation, the Investigator will issue an Investigation Report to the Designated Officer and the OHRCM.

2.71 "**Investigation 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.

Finding of No Breach of Policy

- 2.72 If it is determined that no Breach has occurred, the Designated Officer will provide a summary and/or the Investigation Report (either in original or redacted form), within 30 working days of receiving the Investigation Report, to the Complainant and the Respondent and all such other individuals as the Designated Officer reasonably believes necessary to protect or restore the reputation of the Respondent.
- 2.73 No further action will be taken and no record of the Formal Complaint will be placed on the University's official employment file or student file for the Respondent.
- 2.74 No record of the Formal Complaint shall be kept in the Complainant's official employment file or student file unless it is determined that the Formal Complaint was frivolous or vexatious. The University may take disciplinary action against a Complainant in cases where frivolous or vexatious Formal Complaints are submitted. A Formal Complaint made in good faith is not frivolous or vexatious because it did not result in a finding of Breach.

Finding of Breach of Policy

- 2.75 If it is determined that a Breach has occurred, the Designated Officer will provide a summary and/or the Investigation Report (either in original or redacted form), within 30 working days of receiving the Investigation 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 2.80;
 - (d) All such individuals as the Designated Officer believes necessary to implement due diligence to prevent similar or related Breaches in the future; and
 - (e) Any other person required in order to comply with legal, regulatory, or contractual obligations.

- 2.76 When determining whether to provide an Investigation Report, a redacted Investigation Report, or a summary of an Investigation Report, the Designated Officer will consider whether the Investigation Report contains private information, including but not limited to personal health information, or sensitive content, including but not limited to the details of an incident of Sexual Violence.
- 2.77 In each case the summary or Investigation 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

- 2.78 Individuals who are found in Breach of the Respectful Work and Learning Environment Policy, the Sexual Violence 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.
- 2.79 When an individual will be subject to discipline under this Procedure, the Designated Officer will deliver the Investigation Report to the appropriate disciplinary authority.
- 2.80 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 Provost and Vice-President (Academic), the OHRCM, the Associate Vice-President (Human Resources), the Vice-Provost (Academic Affairs), the Director of Staff Relations, the Vice-Provost (Students), and legal counsel.
- 2.81 Anonymous material may only be considered in a disciplinary decision where it would not violate the principles of procedural fairness, and it would not conflict with an applicable collective agreement.

APPEAL OF DISCIPLINE

- 2.82 The Respondent may appeal a disciplinary decision made against them as follows:
- (a) If the Respondent is an employee, either in accordance with the appropriate grievance process defined by any applicable collective agreement, or via the Appeals by Academic or Support Staff Excluded From Bargaining Units Policy and Procedures;
 - (b) If the Respondent is a student, in accordance with the Student Discipline Bylaw and the Student Discipline Appeal Procedure.

PROTECTION FROM REPRISAL, RETALIATION OR THREATS

- 2.83 A Complainant, Respondent, witness, and/or any other person who has sought advice regarding the Respectful Work and Learning Environment Policy, the Sexual Violence Policy or this Procedure, 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 OHRCM.
- 2.84 Upon observing or being notified of an alleged Reprisal the Investigator may:
- (a) Investigate and include in their Investigation Report information relating to the alleged Reprisal; and
 - (b) If the matter is urgent, refer the information regarding an alleged Reprisal to the OHRCM.
- 2.85 Where the Investigator refers an urgent allegation of Reprisal to the OHRCM, the OHRCM 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.
- 2.86 Notwithstanding the definition of Reprisal at section 2.1(x) of this Procedure, 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 Violence 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.

CONFIDENTIALITY

Obligations of Confidentiality by University with respect to Allegations of Breach

- 2.87 The University will not disclose the name of a Complainant, Respondent, or witness or the circumstances related to a Formal Complaint of alleged Breach except in compelling circumstances where disclosure would not be unreasonable, such as when disclosure is:
- (a) Necessary to investigate the Formal Complaint or take corrective or interim measures with respect to the Formal Complaint; or
 - (b) Required by law.
- 2.88 Notwithstanding section 2.87, in rare cases that involve groups or impact entire Faculties or Departments, the University may disclose limited information regarding the ongoing process to members of the impacted group, Faculty or Department.

Obligations of Confidentiality by University with respect to the Findings of an Investigation

- 2.89 The University will not disclose the name of a Complainant or the circumstances related to the findings of an Investigation except in compelling circumstances where disclosure would not be unreasonable, such as when 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.
- 2.90 The University may disclose the name of the Respondent or the circumstances related to the findings of an Investigation 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 Violence 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 Violence Policy, or this Procedure.

Information to be minimum amount necessary for purpose

2.91 Personal information that is disclosed 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

2.92 During an Investigation, the Complainant, Respondent, and witnesses have confidentiality obligations as per section 2.68 of this Procedure.

2.93 Once the Investigation has been concluded, the Complainant, the Respondent, and witnesses involved in the Investigation remain subject to any confidentiality obligations as required by *The Freedom of Information and Protection of Privacy Act*.

Obligations of Confidentiality by the Investigator

2.94 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 2.63 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.

2.95 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

2.96 The University will maintain files with respect to each Formal Complaint in accordance with the Records Management policy and procedure.

**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 29, 2023.
- 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) RWLE and Sexual Assault Procedure, effective January 27, 2009, and revised September 1, 2016;
 - (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 Violence 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](#)
 - (o) [The Freedom of Information and Protection of Privacy Act, C.C.S.M. c. F175](#)
 - (p) [The Personal Health Information Act, C.C.S.M. c. P33.5](#)
 - (q) [The Advanced Education Administration Act, C.C.S.M. c. A6.3](#)