

Procedure Information	
Related to Policy No.:	E-1.41
Approved By:	Executive Committee
Approval Date:	November 29, 2023
Executive Responsible:	VP Student Affairs
Administrator Responsible:	Director, Student Services
Date of Next Review:	November 2026

## STUDENT SEXUAL MISCONDUCT PROCEDURES

Terms in these procedures are as defined in the Student Sexual Misconduct policy (referred to below as the “Sexual Misconduct policy”).

### Definitions:

#### Complainant

A Complainant is a person alleging that someone has engaged in sexual misconduct against them in violation of the Sexual Misconduct policy.

#### Respondent

A Respondent is a person who is accused and is responding to the allegation that they engaged in sexual misconduct as defined by the Sexual Misconduct policy.

#### Investigation

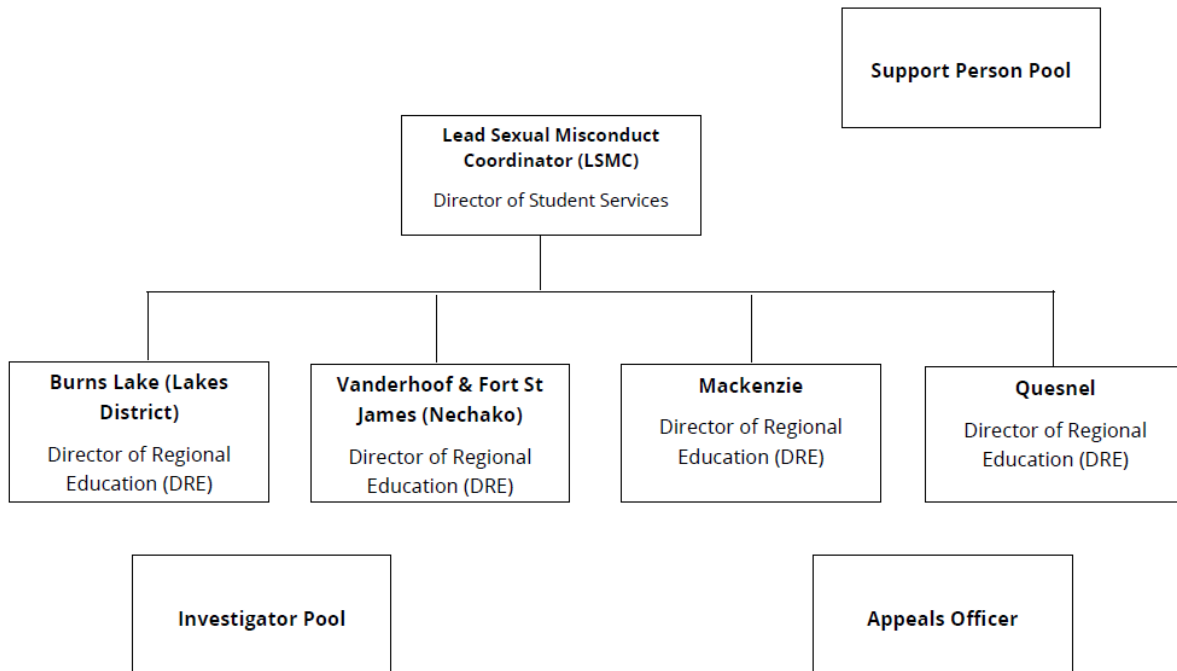
An investigation into an allegation of Sexual Misconduct is an administrative process and not to be confused with an investigation that the police conduct. Investigations for purposes of the Sexual Misconduct policy are fair, impartial, and equitable considerations of evidence to determine if, on the balance of probabilities, it is more likely than not that a Respondent violated the Sexual Misconduct policy.

### Procedures:

#### Roles and Responsibilities

1. The College has designated the Director of Student Services as the Lead Sexual Misconduct Coordinator (LSMC) who is responsible for the oversight of the Sexual Misconduct policy. The Director of Safety & Security will be the alternate LSMC when the Director of Student Services is unavailable or may have a conflict of interest. Those responsibilities include:

- 1.1. overseeing all Sexual Misconduct Complaints;
  - 1.2. identifying and addressing any patterns or systemic problems that they become aware of in the course of reviewing Complaints;
  - 1.3. overseeing these procedures, and
  - 1.4. if and where appropriate, making recommendations for campus-wide training and education programs relating to Sexual Misconduct.
2. Director of Regional Education (DRE) is responsible for assisting the LSMC in managing complaints under the Sexual Misconduct policy, receiving disclosures from students on their respective campuses, aiding in coordinating investigations, as needed, and providing training and education.
  3. Regional Principals (RP) and or their designate may provide supports, resources, guidance to both a Complainant and or a Respondent.



## **Disclosures, Complaints, and Reports of Sexual Misconduct**

4. If a person witnesses or experiences Sexual Misconduct, or there is reason to believe Sexual Misconduct has occurred or may occur, the person may pursue one or more of the following options:

- 4.1. Disclosure:

- 4.1.1. A disclosure is an informal notification to the College that Sexual Misconduct has reportedly occurred. A disclosure will not be treated as a complaint and will not be formally investigated by the College unless the College believes there is an imminent risk of harm to a person or there is a legal requirement for the College to do so.

- 4.2. Complaint:

- 4.2.1. A complaint is a formal notification to the College about Sexual Misconduct, made by the person who experienced Sexual Misconduct. A complaint should be made via the College's Sexual Misconduct Reporting form available on the College website (see forms below) or alternatively could be made in-person to the LSMC (or their designate) or the DRE at any campus (or their designate).

- 4.3. Report:

- 4.3.1. A report is a notification to the RCMP of an allegation of criminal Sexual Misconduct.
    - 4.3.2. Individuals who experience or witness Sexual Misconduct that constitutes criminal conduct are strongly encouraged to file a report.
    - 4.3.3. If a person advises the College that they intend to make a report, the LSMC or DRE can assist them in contacting the RCMP and advocate for the RCMP to meet the reporting party in a location of their choosing (on or off campus).
    - 4.3.4. The College will cooperate with any criminal investigation arising from a report to the extent that it is reasonable to do so and as permitted by law.
    - 4.3.5. Whether an individual decides to file or not file a report does not in any way impact their ability to file a complaint or make a disclosure.

## Control Over Process

5. The College recognizes that individuals who experience Sexual Misconduct may wish to control whether, and how the College will respond to their experience. Which of the above option(s) the individual chooses to pursue will affect the level of that control as explained below.

- 5.1. When a Complainant chooses to make a **Disclosure**:

- 5.1.1. The Complainant who has experienced Sexual Misconduct will retain substantial control over how their experience is responded to by the College;
- 5.1.2. The College will not notify the Respondent, nor will it carry out a formal investigation;
- 5.1.3. The Complainant will not have access to remedies they could have from a substantiated complaint;
- 5.1.4. The Complainant may not have access to all possible accommodations available from filing a complaint, like a no contact directive, and
- 5.1.5. The Respondent will not be subject to sanctions or discipline.

- 5.2. When the College receives a **Complaint**, the College will:

- 5.2.1. Review the complaint and subject to that review, initiate a thorough and impartial investigation, which will include giving notice of the complaint to the Respondent and giving both parties the opportunity to provide their information;
- 5.2.2. Notify the parties about major steps in the investigation process;
- 5.2.3. Inform the parties if there is a delay in the process;
- 5.2.4. Inform the parties when the investigation has concluded; and
- 5.2.5. To the extent reasonably possible within the framework of the process for addressing complaints, consider the wishes of the Complainant while ensuring procedural fairness.

6. The College may be required to initiate an investigation and/or report Sexual Misconduct to the RCMP, even without the consent of the individual who has experienced the Sexual Misconduct, if:

- 6.1. the allegation involves Sexual Misconduct involving a minor;
- 6.2. applicable legislation requires the College to carry out an investigation, or

- 6.3. the College has a reasonable belief that there is a risk to the health or safety of a member of the College community (e.g., the complaint or Disclosure reveals a broader pattern involving the same Respondent, a weapon was used, or other circumstances exist which cause the College to reasonably believe there exists a risk to the health or safety of a member of the College community).
7. Should the College deem it necessary to initiate an investigation or inform the RCMP about the reported Sexual Misconduct without the consent of the individual who has experienced the Sexual Misconduct, the College will notify that individual of their requirement to do so.

### **Responding to Disclosures of Sexual Misconduct**

8. When an individual makes a disclosure to a college employee or support person on campus that they have experienced Sexual Misconduct, the employee or support person should:
  - 8.1. listen without judgement;
  - 8.2. communicate that Sexual Misconduct is not the fault of the person who has experienced it;
  - 8.3. help the individual identify and access available on or off campus services such as emergency medical care, victim services, or counselling;
  - 8.4. respect the individual's right to choose the services they feel are most appropriate for them and the individual's right to decide whether or not to make a complaint or a report;
  - 8.5. respect the individual's choice about how much they disclose about their experience, and
  - 8.6. make every effort to respect confidentiality and anonymity.
9. When a College employee receives a disclosure, the employee will inform either:
  - 9.1. the LSMC or designate; or
  - 9.2. the DRE the appropriate RP or designate, and
  - 9.3. in situations where security is immediately required, the Director of CNC Security.

10. The employee who receives a disclosure will not share identifying information such as the student's name and age, or the specific details of the Sexual Misconduct. The identities of the individuals involved will only be shared with LSMC and the DRE where required for the protection of the health and safety of any individual(s).
11. The LSMC, DRE and/or Director of CNC Security who receives the information will assess the information received to determine if there is a health or safety risk to anyone. If risk is identified, they will take steps to protect the health and safety of those at risk. If no risk is identified, and unless otherwise required by law, the College will not formally investigate a disclosure.
12. If a student requests academic accommodation while making a disclosure, the LSMC or DRE will work together with the student and the relevant Associate Dean to consider the request. The Associate Dean will collaborate with instructors, to ensure that, if appropriate, the student receives the necessary support and/or academic accommodations (while maintaining confidentiality), to the extent reasonably possible.

### **Making a Complaint of Sexual Misconduct**

13. Complaints should be submitted in writing to either the LSMC or the appropriate DRE if located at a Regional Campus. If the Complainant wishes to make the Complaint verbally, the LSMC or DRE will:
  - 13.1. capture the verbal statement of the Complainant;
  - 13.2. prepare a written statement on behalf of the Complainant using the information gathered;
  - 13.3. review the statement with the Complainant, and
  - 13.4. confirm with the Complainant that it accurately sets out the complaint and have the Complainant sign the written statement confirming that to be the case.
14. Complaints must include sufficient detail relevant to the Sexual Misconduct allegation to allow the College to investigate the complaint.
15. A person who is considering filing a complaint may consult with a Counsellor, Wellness Coach, or Regional Principal who can answer questions and assist the individual with the complaint process.

16. The College recognizes that individuals who have experienced Sexual Misconduct may need some time before they are physically and/or emotionally ready to file a complaint. While the College does not restrict the time for filing, a significant delay between the act of Sexual Misconduct and the filing of a complaint could affect the availability of evidence, witness recollection, and the outcome of an investigation.
17. An individual who has filed a complaint has the right to withdraw their complaint at any stage of the process. However, the College may still have a duty to act on the matter identified in the complaint in order to comply with legal and policy obligations.

### **Responding to Complaints of Sexual Misconduct**

#### **Initial Complaint Review**

18. When the LSMC or DRE receives a complaint, they will review the complaint and consider whether it falls within the scope of the Sexual Misconduct policy. If the LSMC or DRE determines that the complaint does not reflect a possible violation of the Sexual Misconduct policy, the LSMC or RP will:
  - 18.1. notify the Complainant that the complaint is dismissed, and no further investigation will take place, and
  - 18.2. create a record including the rationale for their decision.
19. Should the LSMC or DRE determine that a complaint reflects a possible violation of the Sexual Misconduct policy, they will assign the complaint for investigation. The Complainant will be provided with written notification of their rights and options under the CNC Sexual Misconduct policy and information relating to available supports.
20. Prior to or during an investigation, the College may take interim measures to address any concerns it may have about the wellbeing of any member of the College, while minimizing the impact on other individuals involved and recognizing the principle of the presumption of innocence.
21. Interim measures could include, but are not limited to:
  - 21.1. moving an individual into a different CNC housing room;
  - 21.2. temporarily limiting access to campus space, or
  - 21.3. temporarily restricting contact between parties.

22. Any interim measures relating to a Complaint will not be disciplinary in nature and should not be perceived as the College prejudging the complaint or either party.

#### Where an Employee is Party to Complaint

23. The College will investigate all complaints that it determines are appropriate for investigation in accordance with the process set out in these Procedures except where a party to the complaint is an employee of the College. If an employee is a party to the complaint, the College will follow one of the following procedures in investigating the complaint:

- 23.1. Where a party to a complaint is a union employee whose employment is governed by a collective agreement that requires the College to investigate such complaints in accordance with procedures provided therein, the College will investigate the complaint in accordance with those procedures. In such circumstances, the College will provide the student Complainant and/or Respondent involved in the complaint with a copy of those procedures.

- 23.2. Where a party to a complaint is an employee who is not subject to a collective agreement that requires the College to investigate such complaints in accordance with procedures provided therein, the College will investigate the complaint in accordance with the procedures provided for in the College's Respectful Workplace Policy. In such circumstances, the College will provide the student involved in the complaint with a copy of those procedures.

#### **Investigation**

##### Principles Upon Investigation

##### *Balance of Probabilities*

24. Balance of Probabilities is the evidentiary standard that the College will use to adjudicate whether a Respondent has violated the Sexual Misconduct policy. This evidentiary standard requires that the evidence establish that it is more likely than not that the Respondent engaged in the acts reported in the complaint.
25. If the College determines it is more likely than not that, the Respondent engaged in Sexual Misconduct, the Respondent will be found to have violated the Sexual Misconduct policy and may be subject to sanctions (discipline).



26. If the College determines it is more likely than not that the Respondent did not engage in Sexual Misconduct, then the Respondent will be found not to have violated the Sexual Misconduct policy and the Respondent will not be subject to sanctions (discipline).
27. If in the course of investigating a complaint under the Sexual Misconduct policy, the College determines that any person engaged in conduct in violation of another College policy, the College may address that conduct pursuant to that policy. Regardless of whether it determines there was or was not a violation of the Sexual Misconduct policy, the College may, as the College sees fit, implement safety measures at any time during and after a Complaint is made or resolved, to protect the safety of the College community. This may include no contact directives between the parties or other measures the College determines are appropriate based on the facts of the matter.

#### *Procedural Fairness*

28. The College will follow principles of procedural fairness in its application of these Procedures. For the purposes of the Sexual Misconduct policy, procedural fairness requires that both the Complainant and Respondent in an investigation are afforded fairness in the process. Procedural fairness is essential to ensure that the process is transparent to the Complainant and the Respondent and that both parties' rights are respected.
29. In cases where the Complainant files a complaint, the College will give notice to the Respondent of their rights and access to participate in the process. If the Respondent chooses not to participate, the College will continue its investigation and resolution of the complaint without the benefit of the Respondent's participation. While a party to a complaint may choose not to participate in an investigation and no action will be taken against them due to their lack of participation, a party who chooses not to participate will waive the opportunity to submit evidence and make submissions and will still be subject to the result of the process and any sanctions or discipline flowing therefrom.

### *Principles of Natural Justice*

30. The College will respect principles of natural justice in its application of these Procedures. For these purposes, principles of natural justice include the right to be treated fairly and the right not to be subject to discipline without a fair, thorough and impartial investigation.

### **Investigation Process**

31. Where the LSMC or RP determines the need for an investigation, the LSMC or DRE will assess the complaint and:
  - 31.1. delegate an internal individual with the necessary knowledge and expertise, to conduct the investigation, or
  - 31.2. engage an external investigator to conduct the investigation on behalf of the College.
32. While an investigation is being conducted, the LSMC or DRE may put in place interim measures to provide support and safety for the Complainant, the Respondent, and others associated with the complaint.
33. Prior to starting an investigation, the LSMC or DRE will provide written notice to the Complainant and Respondent that an investigation is being initiated under these Procedures which will include the following information:
  - 33.1. the name of the Investigator who will be contacting them; and
  - 33.2. details about how to seek support in relation to the Complainant and/or investigation.
34. The Investigator will contact the Complainant and Respondent and advise them of the process that they will be following in carrying out their investigation.
35. The investigation process will:
  - 35.1. consider the sensitive nature of the complaint as a complaint of Sexual Misconduct, and
  - 35.2. ensure procedural fairness for both the Complainant and Respondent.

36. The investigation process will include, but will not necessarily be limited to:
  - 36.1. allowing the Complainant and Respondent the opportunity to individually participate in the investigation and to provide further information as appropriate;
  - 36.2. meeting with, and notifying the Respondent, in writing, of the specific allegations in the complaint, including the part or parts of the Sexual Misconduct policy they are alleged to have violated, and
  - 36.3. providing the Respondent an opportunity to respond to the complaint.
37. If the Respondent chooses not to participate, the Investigator will notify them that without their participation, the College may be forced to conclude the investigation without their response and/or may draw a negative inference from their failure to participate.
38. Where requested by an investigator, all members of the College community (with the exception of the Respondent) are required to cooperate and fully participate in an investigation.
39. Upon completion of the investigation, the Investigator will provide the LSMC or DRE with an investigation report (the "Report") that will set out the investigator's findings of fact and their assessment, on the balance of probabilities, as to whether or not the complaint is substantiated.
40. The LSMC or RP will review the report and make a decision (the "Decision") as to whether or not the Complaint is substantiated.
  - 40.1. Where a complaint is substantiated against a student, the LSMC or DRE will determine the appropriate sanction in accordance with the corrective measures and related procedures in the Student (Non-Academic) Conduct Policy. Such sanctions include the potential for suspension or expulsion from the College.
  - 40.2. Where a complaint is substantiated against an employee, the sanctions will be implemented by Human Resources in accordance with the relevant policies and/or collective agreement.

- 40.3. Where the complaint is not substantiated, the Respondent will not be subject to sanctions. However, regardless of whether or not a Complaint is substantiated, the College may put protective measures in place, including ongoing no contact directives and other restrictions as the College deems appropriate, which shall not be punitive to the Respondent.
- 40.4. Additionally, where appropriate, the College may continue or implement accommodations to ensure the health, safety and well-being of the Complainant or other members of the College.
- 40.5. The LSMC or RP will notify the Complainant and Respondent in person of the Decision, with a follow up in writing (the "Letter of Outcome"). The Letter of Outcome will include instructions on how to appeal the Decision.

### **Appeal Procedures**

41. Both the Complainant and Respondent have the right to appeal the decision if the grounds for appeal set out below can be demonstrated. General dissatisfaction with the decision is not a ground for appeal.
42. All appeals must be submitted in writing to the Registrar within 48 hours of the delivery of the Letter of Outcome to the party (timestamp on email notification to the parties).
43. Appeals must specify grounds that would justify reconsideration. The grounds for appeal are that:
  - 43.1. These procedures were not followed, and this has resulted in the party not receiving a fair hearing; or
  - 43.2. Relevant evidence has become available that was not reasonably available at the time of the decision and there is a strong probability that the newly discovered evidence would have had a significant effect on the decision.
44. The non-appealing party will be notified when an appeal request has been made. The non-appealing party will have the right to respond, and if they do so, the appealing party will have the right to reply.
45. The Appeals Officer will evaluate and render a determination on the appeal which will be delivered to the Complainant and Respondent simultaneously and in writing within 5 business days of receipt of the reply that concludes that either:

45.1. the appeal does not meet either of the above grounds, and the appeal is dismissed, or

45.2. the appeal meets either of the above grounds, in which case the Appeals Officer will notify the LSMC or RP who will further consider the complaint in light of the Appeal decision.

46. The decision on all appeals is final.

47. There is only one level of appeal, and no further appeals may be made.

### **Conditions of Return**

48. The College may determine and require specific conditions when the outcome of an appeal hearing results with either the Respondent and/or Complainant returning to their studies (face to face or on-line) if a party to a complaint has been limited to access campus space or attend their studies as interim measures or as part of disciplinary sanctions. The appropriate written conditions will be discussed with the Respondent and/or Complainant signing and agreeing. If the Respondent or Complainant does not agree to the conditions, they may not be allowed to return to their studies. Appropriate College employees may be advised of the conditions to ensure compliance with the conditions to be upheld.

### **Other Proceedings**

49. The commencement of other proceedings (including but not limited to criminal proceedings, civil proceedings, collective agreement grievances and arbitrations, and human rights complaints) related to allegations that form the basis of a Complaint, unless by operation of law, will not bar the College from taking steps to investigate the complaint and to make its own determination. Where such other proceedings are commenced, the College will, at its discretion, determine whether to proceed with its investigation into the complaint or hold its investigation in abeyance pending those proceedings.

### **No Retaliation**

50. No one may retaliate against any individual because that individual:

50.1. makes a disclosure, files a complaint, or files a report;

50.2. acts as a witness, participates in an investigation, or carries out any responsibility under the Sexual Misconduct policy or these procedures, or

50.3. otherwise pursues rights or takes action under this Sexual Misconduct policy or these procedures.

51. Any member of the College community engaging in retaliatory conduct will be subject to sanctions or discipline up to dismissal or expulsion. A complaint of retaliation is a complaint separate and apart from any complaint of Sexual Misconduct and can be adjudicated prior to a finding under the Sexual Misconduct policy for any other allegations.

### **Privacy and Information Sharing**

52. The College recognizes the impact that improper or inadvertent disclosure relating to allegations of Sexual Misconduct can have on those involved.

53. The College will keep all information it receives relating to a disclosure, complaint, report, or any associated investigation procedure, as private as possible and will only disclose such information in the following circumstances:

53.1. to address a situation where the College has reason to believe there may be a risk of harm to one or more persons;

53.2. principles of natural justice or procedural fairness require disclosure, and/or

53.3. disclosure is otherwise required by law.

54. Individuals should be aware that while the College appreciates the need for privacy relating to allegations of Sexual Misconduct, it is required to comply with the *Freedom of Information and Protection of Privacy Act* and may, in certain circumstances, be required to disclose information relating to complaints or disclosures pursuant to that legislation.

55. While the College recognizes that there may be circumstances where individuals involved in Sexual Misconduct may have a legitimate interest in disclosing information or circumstances relating to the Sexual Misconduct, the College strongly encourages individuals to maintain confidentiality over information relating to the allegations while they are being investigated by the College. Any such disclosure while an investigation is ongoing may affect the investigation.

56. Any disclosure of Sexual Misconduct done for an improper purpose may lead to sanctions or discipline up to dismissal or expulsion.

57. Any information disclosed by the College to an individual during the course of an investigation into Sexual Misconduct is done so on a strictly confidential basis and any disclosure of that information by the individual may lead to sanctions or discipline up to dismissal or expulsion.

### **Frivolous, Vexatious or Bad Faith Complaint**

58. Any individual who makes a frivolous, vexatious or bad faith complaint may be subject to sanctions or discipline up to dismissal or expulsion. A finding that a Complaint is not substantiated is not in and of itself evidence of a frivolous, vexatious, or bad faith complaint.

### **Links to Other Related Policies, Documents, and Websites**

- [Student Sexual Misconduct Policy E-1.41](#)
- [Community and Campus Support Resources](#)
- [Regional Campuses Contact Information](#)

### **Forms**

- Sexual Misconduct Reporting Form
- Appeals Form

### **Procedure Amendment Log**

<b>Amendment Number:</b>	<b>Date:</b>
0	May 2017
1	September 2020
2	November 29 2023