

SUBJECT	SEXUAL MISCONDUCT PROCEDURE (Bill 26 – Strengthening Post-Secondary Institutions and Students Act)
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These procedures have been developed to comply with the **SEXUAL MISCONDUCT POLICY (Bill 26 – Strengthening Post-Secondary Institutions and Students Act)** requirements and to provide guidance and support to students and employees regarding this amendment. This procedure is specific to the scope of this policy. If a College Community Member experiences sexual misconduct that is not within the scope of this policy and procedure the matter will be addressed within the appropriate policy and procedure. Where a Student experiences Sexual Misconduct in any circumstance, the College will, where appropriate, provide support and reasonable academic accommodations to the Student and will support the Student in reporting to the Police if desired. However, in those circumstances that are outside the scope of this policy or any other College policy, the College will not carry out its own investigation but will consider whether any other action may be necessary or required.

Nothing in this Policy and Procedure is intended to restrict the College's ability or rights to appropriately respond to or address Sexual Misconduct by members of the College community that does not fall within the scope of this Policy. Any Student who has experienced Sexual Misconduct has the right to pursue criminal or civil legal avenues whether they choose to proceed with taking any steps under this Policy.

The College will provide appropriate education and training of this policy to staff and students.

PROCEDURE

Supervisors of employees have a legal duty to address sexual harassment and sexual misconduct that they witness or of which they have been informed. (Refer to [Occupational Health and Safety Act](#) and [Human Rights Code](#)). The College may have a duty to investigate complaints of sexual misconduct to address its civil, criminal, and human rights obligations.

Experiencing Sexual Misconduct

Students who experience Sexual Misconduct are encouraged to take some or all of the following steps immediately after the incident:

- Go to a safe place which may be on or off campus, such as a shelter, your home if safe, a hospital, a police station or a trusted friend's house and seek out help.
- As soon as possible, get medical attention, ideally, at a hospital.
- Seek support from a trusted friend or family member.

- Contact a community agency for additional, confidential support (see attached addendum 'Community and Campus Resources' for support resources specific to your area and campus).

Individuals who experience or witness Sexual Misconduct

Individuals are encouraged as soon as possible after the incident, to take notes of it including details such as location, time of day, descriptions of people or vehicles, and what took place. In addition to the immediate steps noted, individuals who have experienced Sexual Misconduct are encouraged to make a Disclosure, file a Complaint and/or file a Report as provided for in the procedures below or on the College's reporting system, REES, in a timely manner. Such reporting system is not limited to this policy and procedure and is available for all student reporting of sexual misconduct.

The College recognizes that experiencing Sexual Misconduct may have serious negative impacts on an individual's physical, mental, emotional, and spiritual health and wellness. All those who experience Sexual Misconduct can expect to be:

- treated with compassion, dignity, and respect;
- allowed to decide whether they want to tell someone about their experience and, if so, who;
- in a position to control the decision of how their experience will be reported to the College, i.e. a Disclosure or Complaint;
- provided with timely safety planning assistance;
- informed about on- and off- campus support services and resources; and
- where appropriate, provided with reasonable academic accommodations.

There are three different "reporting" options available, which are known as disclosures, reports, and complaints.

HOW TO REPORT SEXUAL MISCONDUCT

Individuals who, in good faith, report an incident of, or make a complaint about sexual misconduct, they will not be subject to discipline or sanctions for violation of the College's policies relating to drug or alcohol use at the time the alleged sexual misconduct occurred.

A student who has experienced Sexual Misconduct by another member of the College Community may choose to Report the Sexual Misconduct to the Senior Vice President Academic and Student Success, Student Advisor, Campus Manager or Human Resources or using the College's reporting system, REES. The student may make a Report alone or the with the assistance of a support person of their choice. The Senior Vice President Academic and Student Success or Human Resources will inform the student about their options, as outlined:

- To contact the relevant law enforcement agency and pursue criminal proceedings

- A student who makes a Report may choose one of the following options to initiate an internal process:
 - To file a complaint under this policy if applicable, or any other relevant College Community Policy such as the Respectful College Community Policy or the Sexual Violence/Sexual Harassment Policy. The applicable policy legislation will prevail regardless of which policy it is filed under.
 - To initiate, as a Complainant through the Senior Vice President Academic and Student Success or Human Resources or the College's reporting system, REES.
- The College reserves the right to initiate an external investigation and/or to inform the relevant law enforcement agency without the consent of the Student if it has a reasonable belief that the safety of one or more persons may be at risk. In these circumstances, the College will provide support throughout the process for individuals impacted by Sexual Misconduct. Circumstances where the College may proceed without a Complainant include:
 - Where there is a risk to the safety of the College Community
 - Where required by law, such as under the Occupational Health and Safety Regulations

Information regarding internal and external resources and processes that are in place to inform and support the College community will be available to staff and students on the College's website.

DISCLOSURE

A student who has experienced sexual violence may choose to confide in any member of the community. Members of the College community should be prepared to provide a compassionate and reassuring response. A supportive response involves:

- listening with acceptance and without judgment
- communicating to the individual that they are not responsible for the incident
- helping the individual to identify and access available on- or off-campus services, including emergency medical care if needed, and/or contacting policy or campus security if requested
- respecting the right of the individual to choose the services they feel are most appropriate
- respecting the right of the individual to independently decide whether to report the incident to police
- respecting the individual's choice as to what and how much to disclose about their experience
- making every effort to respect confidentiality and anonymity

Any person who makes a disclosure can choose to file a complaint later. Any College employee who receives a disclosure and is unsure about their responsibility in the event of a disclosure or complaint, should seek advice from the Senior Vice President Academic Success and/or Human Resources Services.

A disclosure is not the same as a complaint and does not normally serve to initiate an investigation or other process unless the College believes one of the following circumstances applies:

- a person is at risk of self-harm or of harming others
- there is an imminent risk of harm to the College Community and/or the broader community
- the Disclosure involves Sexual Violence or Sexual Misconduct by an employee or representative of the College
- a person under the age of 19 is endangered
- disclosure is otherwise required by law

FILING A COMPLAINT

Any person who experiences or witnesses sexual misconduct involving a student may file a complaint with the College. The College will provide support to Complainants who request assistance with this process.

The complaint should be in writing and include the following information when possible:

- date/time of the incident
- name and contact information for the Complainant
- a description of the incident
- name(s) of the alleged respondent(s)
- names of potential witnesses

ACCOMMODATIONS AND INTERIM MEASURES

Accommodations and interim measures are available to any member of the College community who has experienced or witnessed sexual violence, including the respondent, regardless of whether they wish to disclose or file a complaint.

Accommodations may include but are not limited to switching course sections, deferring exams, or other academic accommodations. Interim measures are put in place to protect the safety and wellbeing of staff, students and community members, and may include a ban from campus property or other necessary restrictions. Nothing in this policy prevents interim measures being imposed on a Respondent pursuant to a College policy or other agreement.

Interim measures:

- do not presume guilt

- may be imposed immediately upon receipt of a disclosure or complaint
- may be imposed or removed at any time during the resolution of the complaint
- may remain in effect until the conclusion of the process

REPORT TO POLICE

Students may report their allegations through the criminal justice or victim services system by contacting the local police detachment directly. Any individual who chooses this option may contact the Senior Vice President Academic and Student Success or Human Resource Services and/or the Campus Manager for assistance in making a report to the police. The College will cooperate with any criminal investigations.

INVESTIGATION

Anonymous complaints will not be investigated, but those wishing to make anonymous disclosures will be offered support services and information about all available options. At any time in the process, the Complainant may withdraw the complaint without consequence. However, the College may be required to act on the incident identified in the complaint to comply with legal obligations. If the College is required by law to report an incident of sexual misconduct to legal authorities or outside governing bodies, the Complainant will be notified. If a complaint is withdrawn, the Complainant will continue to have access to the College's support services and any accommodations or interim measures put in place.

All reported incidents of sexual misconduct will be reviewed to the best of the administration's ability and in a manner that ensures due process. It is this policy's intention to make individuals feel comfortable about making a report in good faith about sexual misconduct that they have experienced or witnessed.

Students who disclose their experience of sexual misconduct through reporting an incident of, making a complaint about, or accessing support services for sexual misconduct, will not be asked irrelevant questions during the investigation process by the College's staff or investigators, including irrelevant questions relation to the student's sexual expression or past sexual history.

The College will respond to all complaints of Sexual Misconduct by:

- Conducting an initial review of the allegation to determine whether the incident falls within the scope of this policy or any other relevant policy:
 - a) If yes, an external (third party) investigator will be hired to conduct the investigation
 - b) If no, the matter may be referred to a more relevant policy or process.
 - Advising the Complainant about relevant support services.
 - Informing the Complainant about the course of action and anticipated timelines for addressing the complaint.

- Establishing accommodations or interim measures if necessary.
- Third-party complaints, from witnesses to an event, may be accepted at the discretion of the Senior Vice President Academic and Student Success but consideration will be given to the desires of the student(s) directly harmed by the incident.

During the investigation process, all participants will be directed not to discuss the situation or process with others. This does not limit students from seeking support or sharing their story, but rather is intended to respect the dignity and rights of all individuals involved in the process, as well as the integrity of the process until it is concluded. The records of all complaints, decisions and outcomes will be maintained as confidential records.

Investigations may be completed by an external Investigator hired by the College as appropriate. The purpose of the investigation is to gather facts and statements relevant to the behaviour or incident in question. The Investigator will determine an appropriate process for the investigation, which must include:

- a review of relevant information and documents
- obtaining written submissions
- individual meetings with the complainant, the respondent, or any witnesses deemed relevant to the investigation. Individuals may choose to have a support person present at the meeting.

If the respondent fails to cooperate with the investigation or to be reasonably available for a meeting, the investigator will proceed without the input of the respondent.

The Investigator will issue a written report to the College which will include:

- an overview of the complaint, investigation process and the summary of findings
- the recommendation of whether or not, based on a balance of probabilities, a violation occurred

After reviewing the investigation report, the College will make a decision and will notify in writing both the complainant and the respondent of the outcome of the investigation including any decisions made and any disciplinary measures if applicable.

DISCHARGE OR DISCIPLINE

Disciplinary measures including discharge (termination of employment) may be imposed for the purpose of providing a safe environment for the Complainant and the College community at large. The Progressive Discipline and Corrective Action Policy & Procedure may be referenced; however, it should be noted that the severity of sexual misconduct reduces the likelihood of lesser measures being imposed in place of greater measures of discipline. Such measures may include but are not limited to:

- Warning or reprimand: A verbal or written warning or reprimand
- Employee Expectation Contract or Final Warning Letter: A formal written contract, signed by the Respondent to confirm agreement to its terms, specifying

conditions and standards of conduct the Respondent is required to abide by. Failure to meet the requirements of this contract may lead to further disciplinary or corrective measures up to and including termination of employment.

- Restriction or prohibition of access or use: Conditions that are imposed to limit or ban, either indefinitely or for a specified period of time, an employee's right to access or use the College's lands, equipment, facilities, services, or other activities held by, on, or in association with the College.
- Unpaid Suspension: Employee is provided a letter indicating a time frame that they are not to attend work activities. It may also include restricting access to College facilities.
- Discretionary Measure: Any other disciplinary or corrective measure that the College determines is warranted under the circumstances, such as taking the necessary action to immediately remove the person from the College.

Disciplinary measures will be enforced in accordance with the Sexual Misconduct Policy and accompanying act. Employees are reminded that despite subsection 48 (17) of the Labour Relations Act, 1995 and subsection 14 (17) of the Colleges Collective Bargaining Act, 2008, and despite any provision of a collective agreement or employment contract specifying a penalty for the infraction, no arbitrator, arbitration board or other adjudicator shall substitute any other penalty for the discharge or disciplinary measure imposed by Northern College.

The College is responsible for ensuring that provisions specific to Bill 26 regarding **No Re-employment, Agreements and Exceptions to Agreements** are adhered to. As such the language to cover these provisions must be considered and included in disciplinary communications and/or full and final settlements. For clarity, at no point can a full and final settlement agreement override the provisions of the Act or any applicable amendment specific to but not limited to Bill 26.

CONFIDENTIALITY

Confidentiality is particularly important to those who have disclosed sexual misconduct. Subject to the provisions of the Freedom of Information and Protection of Privacy Act, the confidentiality of all persons involved in a report of sexual misconduct must be strictly observed, and the College does its best to respect the confidentiality of all persons, including the complainant, respondent, and witnesses by restricting routine access to information to individuals with a need for such access and by providing education and training to those who are regularly involved in the administration of reports and complaints. However, confidentiality cannot be assured in the following circumstances:

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

In such circumstances, information would only be shared with necessary services to prevent harm, and the name of the survivor would not be released to the public. Where the College becomes aware of an allegation of sexual misconduct by a member of the College community against a College student, the College may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with the College's legal obligation and/or its policies to investigate such allegations. In such cases, certain College administrators will be informed about the reported incident on a "need to know" and confidential basis, but not necessarily of the identities of the persons involved.

RECORD KEEPING

All records involving matters covered by this policy, upon conclusion of the matter, shall be transmitted to and maintained by Human Resources (for employee matters) and/or the Senior Vice President Academic and Student Success (for student matters).

AWARENESS, EDUCATION AND TRAINING

The College will implement ongoing awareness, education and training programs relating to prohibiting sexual misconduct and fostering positive and healthy sexual interactions and relationships within and for the College Community.

The College recognizes that it has a diverse student body including, but not limited to, people of different sex, gender, sexual orientation, age, ability, culture and ethnicity. Some individuals are at a greater risk of being a victim of Sexual Misconduct and/or face various barriers to disclosing, reporting and seeking assistance where they have experienced or witnessed Sexual Misconduct based on these differences.

Acts/behaviours that constitute sexual misconduct for the purposes of the definition of "sexual misconduct" found in the Sexual Misconduct Policy may include but are not limited to:

Sexual assault: A criminal offence under the *Criminal Code* of Canada. Sexual assault is any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim and involves a range of behaviors from any unwanted touching to penetration. Sexual assault is characterized by a broad range of behaviors that involve the use of force, threats, or control towards a person, which makes that person feel uncomfortable, distressed, frightened, threatened, or that is carried out in circumstances in which the person has not freely agreed, consented to, or is incapable of consenting to.

Sexual violence: A broad term that describes any violence, physical or psychological, carried out through sexual means or by targeting sexuality, gender identity or gender expression. This violence takes different forms including sexual abuse and sexual assault.

Sexual Harassment: a) engaging in a course of vexatious comments or conduct

against a college Community Member in a college Setting because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known, or ought reasonably to be known, to be unwelcome; or

b) making a sexual solicitation or advance where the individual making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement and the individual knows, or ought reasonably to know, that the solicitation or advance is unwelcome.

Non-Consensual Sexual Touching where a person with any part of their body or object, touches (however slightly) the breast, buttocks, or groin* of another person, directly, or over clothing, without the other person's consent. It is also considered nonconsensual sexual touching if an individual is forced to touch the breast, buttocks, or groin of another individual. In cases where a person's body is touched in places other than the breast, buttocks and/or groin, the College will evaluate the context and circumstances of the touching to determine if it nevertheless constitutes non-consensual sexual touching prohibited by this policy. The College will consider the following when making the determination with regard to whether or not non-consensual touching was non-consensual sexual touching prohibited by this Policy:

- The part of the body touched
- The nature of the contact
- The situation in which the contact occurred
- The words and gestures accompanying the act
- All other circumstances surrounding the act
- Any threats made that may or may not have been accompanied by force

Sexual touching includes: contact with the mouth, breasts, buttocks, or groin, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Non-Consensual Sexual Penetration defined as sexual penetration (anal, oral, or vaginal), however slight, of an individual by another individual with any part of the other individual's body or other object, without consent.

Intimate Partner Violence (IPV) against a person who is, or has been involved in, a sexual, dating, spousal, familial/domestic, or other intimate relationship with that person. Intimate partner violence can encompass a broad range of behaviour including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and financial abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, or threat of harm to one's self, one's sexual or romantic partner, one's pets, or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects

individuals of all sexes, sexual orientations, gender identities, and gender expressions, races, religions, ethnicities, and social and economic backgrounds.

Dating violence is physical acts of assault or threats of assault, detainment, or unwanted touching (or other acts as described above under IPV) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence. Whether there was such a relationship will be determined based on, among other factors, the Complainant and Respondent's statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the Parties involved in the relationship.

Domestic violence is physical acts of assault or threats of assault, detainment, or unwanted touching (or other acts as described above under IPV) committed by: a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner; or an immediate family member.

Examples of IPV:

- Physically assaulting a dating or spousal partner.
- Threatening to harm a dating partner.
- Threatening self-harm in order to get an intimate partner to do something (like not go out with friends, spend time with family, or go to school or work.)
- Forcibly taking away or destroying an intimate partner's cell phone.
- Intentionally deleting an intimate partner's social media accounts.
- Physically assaulting your child.
- Repeatedly calling your intimate partner demeaning names, screaming/yelling/throwing things at your intimate partner, displaying a weapon in front of your intimate partner in a threatening way, and/or forcing your intimate partner to do things sexually without their consent.

Stalking engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional distress. Examples of Stalking include but are not limited to the following:

- Surveilling/watching or walking/driving by the residence of a specific person on more than one occasion when a reasonable person would know the behavior causes fear or substantial emotional distress to the targeted party.
- Repeatedly communicating with a person who does not wish to be communicated with.
- Persistently following a person
- Sending unwanted gifts.

Sexual Cyber Harassment / Cyber Stalking means the use of technology to engage in any behavior provided for under the definition of stalking. Most often acts of cyber

stalking include the use of technology to harass, intimidate, and/or frighten others through repeated, unsolicited, threatening behavior of a sexual nature and/or targeting sexual orientation or gender identity.

Sexual Exploitation of a student includes the misuse of power or trust by a person in a position of power or trust over the student for a sexual purpose or purposes. Sexual exploitation also occurs where a person or person's offers drugs, food, shelter, protection, money, or the basics of life in exchange for sex or sexual acts from a student.

Examples of Sexual Exploitation include but are not limited to the following:

- Seeking the exchange of sex or sexual acts from an individual in return for something, including but not limited to drugs, food, shelter, protection, money, the basics of life, or some other benefit.
- Trafficking an individual regardless of benefit.
- Allowing a third party to watch consensual sexual contact without the permission of both parties involved in the sex act.
- Enticing a child for sexual purposes.
- Knowingly giving another a sexually transmitted infection (STI) or HIV.
- Allowing others to have sex with an incapacitated person.
- Exchange for improved grades and /or power/trust dynamics.

Indecent Exposure exposing one's body to another individual for a sexual purpose without their consent.

Voyeurism the recording or observation (in-person, electronically, or otherwise) of another individual without their consent for a sexual purpose, in circumstances where there is a reasonable expectation of privacy. The distribution of a sexually explicit photograph or video of a person to one or more people, without the Consent of the person in the photograph or video and with the intent to distress the person in the photograph or video.

Cross Reference to other Policies and/or Legal Requirements

Sexual Misconduct Policy

Student Code of conduct

Sexual Violence and Sexual Harassment Policy and Procedure

Employee Code of Conduct and Conflict of Interest Policy

Progressive Discipline and Corrective Action Policy & Procedure

Respectful College Community Policy

Occupational Health and Safety Policy

[Occupational Health and Safety Act](#)

[Human Rights Code](#)

[Bill 26, Strengthening Post-secondary Institutions and Students Act, 2022](#)

Criminal Code of Canada

Freedom of Information and Protection of Privacy Act