



COLLEGE OPERATIONAL PROCEDURE

Procedure Number: ADMIN 125	Procedure Title: Procedure for Responding to Sexual Misconduct, Sexualized Assault, and Sexualized Violence — Employees
Supersedes Existing Procedure: No	Procedure Sponsor: Vice-President, People & Culture
Associated Policy: Yes	Procedure Owner: Director, Employee Relations
Next Review Date: June 2024	Date Last Approved by CET: June 21, 2023

1. Purpose

All members of the Loyalist College community have a right to work and study in an environment that is free from any form of sexual assault or sexualized violence. Loyalist College will not tolerate any form of sexual assault and sexualized violence.

This procedure provides guidelines to employees for reporting incidents of sexual assault and sexualized violence (Part A).

This procedure also outlines the actions the College if there is an incident of sexual misconduct toward a student by an employee (Part B).

These actions include ensuring that those affected by the incident are believed and appropriately accommodated and that the College has an investigation process that protects the rights of survivors and holds accountable those who have committed an act of sexual misconduct. It applies to all College locations.

2. Application

This procedure applies to all Loyalist College employees, regardless of employee group and/or status (i.e., includes both full- and part-time employees).

Loyalist College will respond to all incidents of sexual assault and sexualized violence involving members of the College community when the conduct has a substantial link to the College, and/or direct implications for students or employees or the educational mission of the College. This includes behaviour that occurs on or off campus and behaviour observed or carried out through an electronic, online, or social media platform, or by using text, audio, video, or images.

3. Loyalist Community Member Responsibilities

Community members will:

- listen holistically, put aside our tendency for bias and judgment, and always protect human rights with dignity.
- safeguard privacy and be transparent about our obligations to share information.
- serve in a way that is trauma aware, culturally sensitive, and rooted in consent.
- facilitate fair outcomes that redress harm, promote justice, and prevent victimization on

individual, community, and systemic levels.

- commit to improvement and welcome constructive feedback with respect and consideration.

If an employee discloses an incident of sexual assault or sexualized violence to another Loyalist College employee, the survivor should be encouraged to contact the department of People & Culture to ensure that they can receive support, accommodations, and advice on reporting options.

If a Loyalist College employee *witnesses* an incident of sexual misconduct, sexual assault, or sexualized violence on any campus, they are required to report it by calling Campus Security at 613-969-1913 extension 2222.

For sexual violence witnessed off campus, Loyalist community members are strongly encouraged to report by calling their local Police Services at 9-1-1.

All members of the College community who have witnessed sexual misconduct, sexual assault, or violence are required to cooperate with any College investigation.

Part A: Employees who Survive an Incident of Sexual Assault or Sexualized Violence

4. Disclosing an Incident of Sexual Assault or Sexualized Violence

Employees who are survivors of sexual assault or sexualized violence have the choice of whether to disclose the incident to obtain support and/or initiate a report. If an employee chooses to disclose the incident to People & Culture, they will be offered counselling, accommodation, and referral assistance. Additionally, the College will undertake a risk assessment in response to the disclosure.

Employee survivors may also choose to:

- Request a formal investigation.
- File a police report.
- Report the assault to police anonymously or to the Loyalist People & Culture department.
- Change their formal complaint to an informal complaint at any point during the reporting process.

If the person accused of sexual misconduct is not a member of the College community, Loyalist College can assist the employee survivor with obtaining support from the police.

5. Informal Reporting

A complainant may opt to informally report an incident of sexual assault or sexualized violence. This type of report may not result in a formal investigation unless the College's assessment identifies risk to the safety of employees or the College community. If so, People & Culture will investigate and may inform the police of the need for a criminal investigation.

The complainant has the right to choose not to participate in any investigation arising from an informal report.

6. Formal Report Process

6.1 Reporting

- All allegations of sexual assault or sexualized violence that relate to the College should be referred to People & Culture by completing the *ADMIN 125 Appendix A: Responding to Sexual Assault and Sexualized Violence Form*.
- The College will engage the services of a qualified external investigator for reports of sexual misconduct, sexual assault, and sexualized violence. The investigator will not ask questions related to the survivor's past sexual history or sexual expression.
- Formal reports are not anonymous. The respondent will be informed of the investigation.
- Where the respondent is an employee, People & Culture will work with the external investigator to facilitate the investigation. The respondent will be notified and will have a full and fair opportunity to respond during the investigation.
- Where the respondent is a contractor, supplier, volunteer, or visitor, the Vice-President, People & Culture will delegate a College employee to work with the external party to facilitate the investigation.

6.2 Review and Decision

- People & Culture will review the investigation information and determine whether or not the incident reported constitutes sexual assault or sexualized violence or another form of misconduct as defined by the policy, and the appropriate sanction(s).
- The College will inform the complainant and respondent of its decision in writing. The written decision summary will include a brief description of corrective action that the College has taken or will take as a result of its investigation.

7. Procedural Fairness

Incidents of sexual assault and sexualized violence will be handled as set out in this procedure, and in any applicable laws, regulations, collective agreements, and/or other College policies.

The College provides those whose rights, privileges, or interests may be affected by a decision with notice of the decision to be made, disclosure of facts relevant to the decision, and an opportunity to be heard.

The College may decide how it meets these obligations in different circumstances and will do so with a view to providing a fair process, making a sound decision, and preserving the dignity of survivors. The College has the right to withhold disclosure early on in its process to obtain a person's independent recollection of events.

7.1 Support and Representation

Complainants and respondents may attend meetings with a single (nonparticipating) support person. The College will consider requests to attend meetings with additional support persons and with legal or other representation such as union representative, on a case-by-case basis, with a view to promoting a fair and expeditious process. Support persons and union representatives cannot speak on behalf of complainants and respondents.

7.2 Interim Measures

The rights and privileges of a respondent may be restricted by the College before it makes a final

determination about the alleged misconduct. For example, a respondent might be placed on an administrative paid leave during the investigation. A respondent might also be restricted from entering the campus.

Such interim measures will be imposed only as necessary to meet the needs of complainants and persons who report incidents of sexual assault and/or sexualized violence. The College will also take steps to minimize the impact of interim measures on respondents.

Interim measures are not punishment and do not represent a finding of misconduct. The College may impose interim measures immediately. Respondents may ask the College to review a decision to impose interim measures, but only to address the impact of the imposed measure and the preference for other alternatives.

8. Enforcement

Acts of sexual misconduct are against the law and violations of the Loyalist College's *Responding to Sexual Assault and Sexualized Violence Policy*. Employees who have committed an act of sexual misconduct may face discipline up to and including discharge.

Contractors, suppliers, volunteers, and visitors may face penalties such as cancellation of contracts and other agreements. The College may also impose measures such as but not limited to:

- Behavioural contract;
- Restitution; and/or
- Location/space restrictions.

9. Appeals

- An employee may submit an appeal to the President in writing within 10 working days of the decision being communicated to the complainant and respondent. If either party appeals, a copy of the appeal will be given to the other party to allow an opportunity to respond in writing within five working days, and a copy of the response will be provided to the party who appealed.
- An appeal to the President is not allowed when an employee elects to proceed under a grievance procedure.
- The President or designate will review the investigation report, the decision, the appeal submission, and response. If the President or designate decides to hold a hearing, they will advise the parties of a date for an appeal hearing to take place. That hearing will be presided over by the President or designate. The procedure at this hearing is meant to be informal and the President or designate will determine the procedure to be followed at the hearing. Otherwise, the President or designate will make a final decision based on the investigator's report, the appeal submission, and the response.
- The President or designate will provide a written decision with reasons to the parties as soon as reasonably possible. The parties also will be informed of any remedial action that will be taken, if appropriate. This decision is final and cannot be appealed.

There is no formal appeal process for contractor, supplier, volunteer, or visitor violations.

10. Confidentiality

- 10.1 Confidentiality with respect to complaints is maintained to the extent possible, having regard to the circumstances giving rise to the complaint and subject to the College's obligation to conduct a thorough investigation.
- 10.2 Information obtained about an incident or complaint of sexual assault or sexualized violence, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law.
- 10.3 A complainant is not entitled to complete confidentiality or anonymity. In accordance with their responsibilities under this procedure, where an employee becomes aware of allegations of conduct contrary to this procedure, they must take immediate action. To permit the respondent to make a full and meaningful response to the complaint, the respondent is informed of the identity of the complainant and the particulars relating to the allegation.
- 10.4 Respondents and witnesses are expected to keep information discussed during the complaint process confidential (aside from discussing the information with their support person and close family members or partner). Unwarranted breach of confidentiality is subject to sanction.
- 10.5 The College maintains documentation of corrective or disciplinary action taken.
- 10.6 Documentation and records pertaining to a complaint are held securely in files maintained by People & Culture.

Part B: Employee Sexual Misconduct

11. Definition of Sexual Misconduct

Sexual misconduct in relation to a student of an institution: physical sexual relations with the student, touching of a sexual nature of the student or behaviour or remarks of a sexual nature toward the student by an employee of the institution where:

- the act constitutes an offence under the *Criminal Code* (Canada),
- the act infringes the right of the student under clause 7 (3) (a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or
- the act constitutes sexual misconduct as defined in the institution's employee sexual misconduct policy or contravenes the policy or any other policy, rule or other requirement of the institution respecting sexual relations between employees and students.
- any conduct by an employee of the institution that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

12. Sexual Misconduct Toward a Student by an Employee

Under the *Strengthening Post-secondary Institutions and Students Act* (the Act), Loyalist College may discharge or discipline an employee if they are found to be culpable of sexual misconduct. The Act also provides that in such circumstances:

- i. the discharge or disciplinary measure will be deemed to be for just cause for all purposes,
- ii. the employee will not be entitled to any notice of termination or termination pay or any other compensation or restitution as a result of the discharge or disciplinary measure, and
- iii. 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 the institution.

This effectively limits employees' right to appeal a discharge or other disciplinary measure imposed by the institution in response to sexual misconduct.

Consistent with the Act, employees who have committed an act of sexual misconduct toward a student and who have accordingly been discharged or resigned cannot subsequently be re-employed by the institution.

Furthermore, the Act specifies that if an institution determines that it has rehired an employee contrary to this prohibition on re-employment, it must discharge the employee and the amendments on discharge or discipline for sexual misconduct discussed above will apply to the discharge.

13. Sexual Misconduct and Confidentiality

Under the *Strengthening Post-secondary Institutions and Students Act, 2022*, the College and the complainant may disclose that an allegation or complaint was made that an employee committed an act of sexual misconduct toward a student unless the affected student requests and enters into an agreement in accordance with Schedule 1, sections 5 and 6 of the Act.

14. Related Documents or Links

- *ADMIN 125 Responding to Sexual Assault and Sexualized Violence Policy*
- *ADMIN 125 Appendix A: Responding to Sexual Assault and Sexualized Violence Form*
- *OHS 007 Workplace Violence Prevention*
- *OHS 007(A) Violence Protection Incident Report*
- *OHS 007(B) Response Guidelines*
- *OHS 008 Respectful College Community*

15. References

- *Ontario Human Rights Code*
- *Colleges Collective Bargaining Act, 2008*
- *Labour Relations Act, 1995*
- *Strengthening Post-secondary Institutions and Students Act, 2022*