

The Revised Pilot Process
November 23, 2018

1. Filing a Formal Complaint of Sexual Assault to UNB

1.1. Filing a Formal Internal Complaint

- 1.1.1. A Disclosure or Confidential Disclosure is not a Formal Internal Complaint and will not trigger an investigation.
- 1.1.2. Any UNB student on the Fredericton, Saint John or any other UNB campus who has experienced a sexual assault has the right to file a Formal Internal Complaint. The complaint will be in writing and filed with the Office of the University Secretary. The Judicial and Policy Officer (JPO) shall have carriage of the Complaint once filed. Where the JPO is absent or for any reason unavailable to carry out any or all of the duties assigned to them under this Process, the University Secretary may designate another person to act in the JPO's place.
- 1.1.3. The Complainant may receive support in filing the complaint from the Campus Sexual Assault Support Advocate (CSASA) or any support person of their choice. A Complainant may choose to use a lawyer as a support person; however, in all circumstances the role of the support person is to remain in a supporting role and they are not to speak on behalf of the student, including at any hearing under this process.
- 1.1.4. The complaint will be evaluated by the JPO to determine whether an investigation will be opened. The decision of the JPO shall be based, except in exceptional circumstances, on whether or not the complaint document puts forward sufficient information on its own to support a claim of sexual assault (i.e. establishes a *prima facie* case of sexual assault).
- 1.1.5. If the JPO finds that a complaint warrants an investigation, the JPO will decide if the complaint will be investigated by Security or an External Investigator. Upon consultation with appropriate resources, the JPO may implement relevant interim measures under s. 1.4).
- 1.1.6. The JPO will make a decision as to whether the complaint warrants an investigation within 5 business days of receiving the complaint. Both the Respondent and the Complainant will be advised in writing of the JPO's decision.

1.2. Right to Withdraw a Formal Internal Complaint

- 1.2.1. A Complainant has the right to withdraw a Formal Internal Complaint at any stage of the process. However, UNB may continue to act on the issue identified in the Formal Internal Complaint in order to comply with its obligations under this Policy and/or its legal obligations. For instance, if others in the UNB community were perceived to be at risk or a pattern of assaults was identified, UNB could continue to investigate. Nothing in this Clause requires any person, including the Complainant who has withdrawn a Formal Internal Complaint, to participate in or cooperate with the investigation.

1.3. Right of Appeal

- 1.3.1. If the JPO determines that the complaint does not warrant an investigation, the Complainant may appeal this decision:
 - 1.3.1.1. to the Associate Vice President Academic Learning Environment (AVP LE) or their designate, for complaints originating on the Fredericton campus; or
 - 1.3.1.2. to the Associate Vice President (Saint John) (AVP SJ) or their designate, for complaints originating on the Saint John campus.

- 1.3.2. The Complainant has 10 business days to file an appeal after the decision is issued. The appeal will be decided within 5 business days of its receipt.
- 1.3.3. The decision of the AVP LE/AVP SJ is final. Written notice of the decision will be provided to both the Complainant and Respondent.

1.4. Interim Measures

- 1.4.1. Non-punitive measures, including but are not limited to, taking steps such as separating the parties involved, requiring the parties not to communicate directly with each other, non-disciplinary suspension, limited trespass notice, may be implemented by the JPO.
- 1.4.2. These measures do not presume guilt and exist only until the conclusion of the conduct process. Interim measures may be imposed immediately upon receipt of the complaint or at any time during the investigation process.

1.5. Protection from Retaliation or Threats

It is contrary to this Policy for anyone to directly or indirectly retaliate, threaten to retaliate, or actively intimidate any individual:

- 1.5.1. Pursuing rights under this Policy;
- 1.5.2. Participating or co-operating in an investigation under this Policy; or
- 1.5.3. Being associated with someone who has pursued rights under this Policy

The JPO may invoke interim measures, including petitioning the President of the University to suspend the offender on an interim basis, against any person who engages in retaliatory behavior during the complaint process.

1.6. Amnesty

- 1.6.1. This policy offers immunity (Amnesty) to Complainants and witnesses who may have violated the UNB Student Discipline Code at the same time as the incident of sexual assault occurred.
- 1.6.2. The purpose of this clause is to encourage reporting. When conducting the investigation, the University's primary focus will be on addressing the sexual violence violation and not on infringements of the UNB Student Discipline Code that may be discovered or disclosed. However, the University may provide referrals to counselling and may require educational options, rather than disciplinary sanctions, in such cases. Where Amnesty is offered, notice of such Amnesty and the infringement(s) to which it applies shall be delivered to the Office of the University Secretary so as to ensure that no disciplinary process is pursued with respect to such infringements.

1.7. Support to the Complainant and Respondent

- 1.7.1. The University of New Brunswick will provide support to the Complainant and Respondent throughout the complaint process should they choose to access these supports.
- 1.7.2. Support to the Complainant will be provided by the Campus Sexual Assault Support Advocate (CSASA) and can take the form of personal counselling and/or help to navigate the complaint process. Support to the Respondent will be provided by an appropriate University employee as designated by the JPO and can take the form of advice and support throughout the complaint process.
- 1.7.3. If the Complainant and Respondent choose not to access these supports they may use an advisor of their choosing in the complaint process. However, the role of any advocate in the process is to be a support and not to speak for the student.

1.8. Investigation

1.8.1. The investigation will be conducted by an Investigator who has been specially trained or approved by the UNB Taskforce on Sexual Assault to conduct investigations related to sexual assault. The University of New Brunswick relies on Canadian Criminal Code guidelines under section 276 (Rape Shield Laws) as to what is and what is not appropriate evidence. An investigation usually includes some or all of the following:

- 1.8.1.1. Interview(s) with Complainant
- 1.8.1.2. Interview(s) with Respondent
- 1.8.1.3. Interview(s) with Witnesses or potential Witnesses
- 1.8.1.4. Collection of evidence such as video surveillance, communication records (e-mails, text messages, social media posts)

1.8.2. Upon completion of the investigation, the investigator will prepare a report based on interview statements and evidence collected.

1.8.3. The Complainant and Respondent have the right to read the report and have an opportunity to respond.

1.9. The responses from the parties, if any, will be added to the final report. The final report will be sent to the individual(s) responsible for disciplinary and non-disciplinary processes. The report will also include any potential Discipline Code offenses for which Amnesty was offered under 1.6 above.

1.10. It is expected that the investigation process will take no more than twenty (20) business days.

1.11. Hearing

1.11.1. The Hearing Committee shall consist of two individuals selected by the Judicial and Policy Officer from a list of trained, knowledgeable members of the UNB community, approved by the UNB Task Force on Sexual Assault. The Hearing Committee will receive and review the investigation report. The Respondent and the Complainant have a right to an in-person meeting with the Hearing Committee. Meetings with the Complainant and Respondent will be held separately. A note taker will be present during the meetings to record the proceedings.

1.11.2. The Complainant and the Respondent may each be accompanied by one advisor at the hearing. The role of the advisor is to support the Complainant or Respondent. The advisor shall not speak on the party's behalf and may not address the hearing panel unless specifically requested to do so by a member of the hearing panel. While providing support to the party in question at the hearing, the advisor must not in any way seek to influence the information being offered by the party to the Hearing Committee. For example, and without limiting the generality of the foregoing, the advisor must not attempt to remind the party of issues the party might have forgotten, suggest additional information the party may wish to give or attempt to interfere with the party's testimony in any way.

1.11.3. Upon conclusion of the hearing, the Hearing Committee shall, given the evidence found in the course of the investigation and the submissions at the hearing, make a determination on a balance of probabilities whether or not a violation has occurred.

1.11.4. The Hearing shall occur within 10 business days of the investigation report being submitted to the Hearing Committee. A decision will be made immediately following the completion of the hearing.

1.12. Sanctions

1.12.1. If a determination that a violation of this [Sexual Assault] policy has occurred, the Hearing Committee will then determine a sanction based on the following criteria:

- 1.12.1.1. seriousness of the offence and impact on members of the campus community,
- 1.12.1.2. whether the Respondent has a history of violations of the policy,
- 1.12.1.3. other mitigating or aggravating factors.

1.12.2. **One or more of the following sanctions may be imposed by the Hearing Committee:**

- 1.12.2.1. written warning;
- 1.12.2.2. written reprimand;
- 1.12.2.3. discretionary sanction – work assignments, educational assignments, restorative measures, service to the University or other discretionary assignments that are considered appropriate;
- 1.12.2.4. letter of behavioral expectations – an undertaking not to engage in certain behavior and setting out the consequences if the requirements set out in the letter are not followed;
- 1.12.2.5. monetary compensation for loss, damage or injury or replacement of damaged or destroyed property;
- 1.12.2.6. monetary fine which will be donated to a trust created to support Complainants in restoring safety in their lives (eg. Down payment on new living arrangement, food, temporary hotel stay);
- 1.12.2.7. trespass from campus;
- 1.12.2.8. loss of privileges – denial of specified privileges for a designated period of time;
- 1.12.2.9. withdrawal from one or more courses;
- 1.12.2.10. restrictions on participating in a University club or organization or in certain activities of a University club or organization;
- 1.12.2.11. suspension or expulsion;
- 1.12.2.12. Other appropriate sanction as determined by the Hearing Committee.
- 1.12.2.13. In the event that a student does not adhere to a sanction, the Hearing Committee may impose an additional sanction within its jurisdiction that it considers appropriate and may recommend to the University Secretary/the Commissioner of Student Discipline that appropriate steps be taken to put the University into a position to suspend or expel the student where circumstances warrant.

1.13. Decision

1.13.1. Once a decision has been made and sanctions have been imposed, both the Complainant and the Respondent will be notified in writing within 5 business days. The notification will include:

- 1.13.2. An overview of the complaint, investigation, and Hearing;
- 1.13.3. The determination of whether or not a violation occurred;
- 1.13.4. Details of sanction(s) if applicable. The Complainant will be notified of any sanctions which directly relate to their health and safety.
- 1.13.5. Information on appeal procedures.

1.14. Application for Appeal

1.14.1. Either the Respondent or the Complainant may appeal within ten (10) business days of receiving the decision.

- 1.14.2. Grounds for an appeal of a decision of the Hearing Committee are limited to the following:
- 1.14.2.1. Relevant evidence has emerged that was not available at the time of the original decision;
 - 1.14.2.2. The Sexual Assault Policies and Procedures, including this process, were not followed and the outcome of the case might have been substantially affected by this failure;
 - 1.14.2.3. The severity of the sanction imposed exceeds the nature of the misconduct for reasons identified by the Respondent.
 - 1.14.2.4. A sanction of expulsion or suspension has been imposed by the Hearing Committee.

1.15. Filing an Appeal

- 1.15.1. To file an appeal, a Respondent shall be required to submit the following information, in writing, to the JPO:
- 1.15.1.1. A copy of the decision;
 - 1.15.1.2. A statement of the grounds for appeal;
 - 1.15.1.3. A statement of facts relevant to the basis of appeal;
 - 1.15.1.4. A statement of the remedy sought; and
 - 1.15.1.5. Any supporting documentation that the Respondent or Complainant intends to refer to at the appeal hearing.
- 1.15.2. If the appellant fails to provide proper documentation as noted above or the grounds for appeal are not consistent with the above, the Judicial and Policy Officer may reject the appeal without a hearing. Written notice of such decision would be provided.
- 1.15.3. An Appeal Hearing will be scheduled within ten (10) Business Days of the appellant filing the appeal. The Appeal Hearing will not be open to the public and will be kept confidential.

1.16. Appeal Hearing

- 1.16.1. The Appeal Hearing will be before a panel of the Board of Deans which consists of three selected Deans representing academic faculties.
- 1.16.2. The Appeal is not a de-novo hearing. It will be strictly limited to the grounds of Appeal for the case. Members of the Appeals Panel will have the ability to:
- 1.16.2.1. Uphold a finding or sanction
 - 1.16.2.2. Make an amendment to a finding or sanction
 - 1.16.2.3. Find in the appellant's favor and reverse the decision of the Hearing Committee
- 1.16.3. Faculty serving on the Board of Deans will be trained by the Fredericton Sexual Assault Center in adjudicating sexual assault cases. Additionally, a non-biased support person with expertise in this area, such as a member of counseling services will serve on the committee as a non-voting member to support the Appeals Panel in understanding trauma associated with sexual violence and how this might affect perceptions of credibility. The Appeals Panel will have an initial meeting prior to the hearing to review the case and any evidence, responses, or questions submitted by the party bringing the appeal or by the party responding to the appeal. The party responding to the appeal will have the opportunity to review the appeal and submit a response in writing prior to the hearing.
- 1.16.4. The party bringing the appeal may be accompanied by one advisor at the Appeal Hearing. The role of the advisor is to support the party bringing the appeal. The advisor shall not speak on behalf of the party bringing the appeal.

- 1.16.5. If the Respondent to the original complaint brings the appeal, the University may represent the Complainant at the appeals hearing and the Complainant does not need to be present.
- 1.16.6. In circumstances where the Complainant wishes to be present, or issues of credibility require both parties to speak to the Appeal Panel, accommodations will be made for either: 1) a separate meeting of the Appeals Panel with the Complainant and the Respondent or 2) an Appeal Hearing where questions are submitted by both parties to the Appeals Panel in advance and questions are vetted and asked by the Appeals Panel. In these circumstances, videoconferencing accommodations will be made so that parties do not need to be in the same room. If a hearing occurs where both parties are present, all questions will be asked by the Appeals Panel and there will be no cross examination by the Complainant or the Respondent. The University of New Brunswick relies on Canadian Criminal Code guidelines under section 276 (Rape Shield Laws) as to what is and what is not appropriate evidence.
- 1.16.7. The decision of the Appeals Panel will be made on the balance of probabilities.
- 1.16.8. If a decision is made to recommend suspension or expulsion, this decision must be approved by the President of the University and, for suspensions lasting longer than two years and for all expulsions, by the Board of Governors.
- 1.16.9. The parties to the appeal will be notified of the decision of the appeals panel within 10 business days of the hearing.