



UNB Sexual Assault Policy

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UNB SEXUAL ASSAULT POLICY

1. Introduction

All Members of the University of New Brunswick (UNB) community have the right to study, work and live in a campus environment free from any form of Sexual Violence including Sexual Assault. This Policy together with other University policies (e.g., Discrimination, Sexual Harassment, and Harassment; Student Discipline Code); regulations (e.g., General Regulations on Student Non-Academic Conduct; University Wide Academic Regulations) and collective agreements provide the framework for creating a positive learning and working environment as articulated in the UNB Declaration of Rights and Responsibilities:

<http://www.unb.ca/humanrights/resources/pdf/declaration.pdf>

UNB recognizes that, according to research on the issue, the majority of complainants in cases of Sexual Assault are female and the majority of respondents are male. The University further recognizes that Sexual Violence can occur between individuals regardless of sex, sexual orientation, gender, gender identity or expression, or relationship status as such concepts are articulated in the New Brunswick *Human Rights Act* and UNB collective agreements. UNB also recognizes that individuals who have experienced Sexual Assault experience a range of physical and psychological impacts that can profoundly affect their lives.

2. Purpose

This document sets out UNB's policy related to Sexual Assault and with its related procedures document establishes the processes by which UNB will respond to allegations of Sexual Assault and ensures that:

- those who make a Formal Complaint of Sexual Assault will be treated respectfully;
- UNB has a process of investigation that protects the rights of all individuals and holds accountable individuals who have committed an act of Sexual Assault; and
- UNB provides awareness, educational, and risk management programs that contribute to a safe environment.

3. Scope

This Policy applies to all Members of the University community including employees, governors, students, contractors, suppliers of services, volunteers, visitors, and individuals who are directly connected to any University initiatives. This Policy applies to actions, interactions and behaviours that take place on University premises or off University premises but involved in the business of the University or activities sanctioned by or representing the University(including, but not limited to athletic events, placements, academic or professional conferences, volunteer activities, academic or research field work), or off University Premises where such actions, interactions or behaviour have an impact on another member of the University Community or have the potential to have an impact on the reputation of the University.

4. Principles

UNB is committed to the following principles:

4.1 For the UNB Community (Prevention, Awareness Education, and Training):

- contributing to the creation of a campus atmosphere/space in which Sexual Violence is not tolerated;
- collaborating with relevant groups on campus;
- fostering coordination and communication among the various UNB departments that are most likely to be involved in the response to Sexual Assault on campus;
- providing awareness raising, education, and training programs for the UNB community about Sexual Assault and UNB's Sexual Assault policy and procedures;
- developing appropriate reporting procedures for allegations of Sexual Assault which are congruent with applicable reporting protocols;
- monitoring and updating UNB's policies and procedures to ensure that they remain effective and aligned with related policies and best practices;
- ensuring that everyone involved in conducting internal investigations is appropriately trained;
- addressing harmful attitudes and behaviours that reinforce unsupportable beliefs about Sexual Assault, such as rape myths or victim blaming;
- engaging in public education and prevention activities and creating environments (social and physical) that help reduce the risk of Sexual Assault;

- providing appropriate education and training to the UNB community about how to respond appropriately to the Disclosure of Sexual Assault.

4.2 For the Individuals: (Support and Fairness)

- treating those who disclose that they have been sexually assaulted with respect, and protecting their right to dignity and confidentiality, in accordance with the provisions of the Policy and related procedures, throughout the process of Disclosure, response and, where applicable, internal investigation and adjudication;
- treating individuals who disclose Sexual Assault with compassion and support, recognizing that they are the decision-makers about their own best interests;
- assisting those who disclose a Sexual Assault by providing choices, including detailed information and access to support, such as provision of and/or referral to counselling and medical care; information concerning options under UNB policies, procedures and collective agreements, and options under the criminal justice system; and support for appropriate academic and other necessary accommodations;
- providing information to those who disclose a sexual assault about their options to choose to file a Formal Complaint with the University and/or with the police which will initiate an investigation of the allegation;
- responding in an appropriate manner to all allegations of Sexual Assault brought to the attention of the University under this Policy;
- ensuring that on-campus (internal) investigation procedures are available, regardless of whether or not the individual chooses to file a Formal Criminal Complaint with the police;
- employing appropriate procedures for investigation and adjudication of a Formal Internal Complaint which are in accordance with UNB policies, standards and applicable collective agreements, and that provide fairness for all involved;
- protecting and respecting the rights of those who are accused of having perpetrated a sexual assault.

5. Definitions

5.1 Pertaining to actions related to Sexual Assault

5.1.1 Consent:

For the purposes of this policy, Consent is defined according to the *Criminal Code* of Canada and as such will change with changes in legislation and interpretation by the courts. Consent is currently defined as the voluntary agreement to engage in the sexual activity in question. Further, no consent is obtained under, but not limited to, the following conditions:

- the complainant is incapable of consenting to the activity;
- the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;
- the complainant expresses, by words or conduct, a lack of agreement to engage in the activity;
- the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Criminal Code - R.S.C., 1985, c. C-46 (Section 153.1)

Currently, the Age of Consent for sexual activity in Canada is 16 years, except where the sexual activity exploits the young person, including relationships of authority and trust (e.g., teacher, coach) in which case the age is 18. The Department of Justice provides further explanation and interpretation at the following website. <http://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html>

5.1.2 Sexual Violence:

A broad term that describes any violence, physical or psychological, carried out through sexual means or by targeting sexuality. This violence takes different forms including Sexual Assault, Sexual Harassment, sexual abuse, stalking, indecent or sexualized exposure, degrading sexual imagery, voyeurism, cyber-harassment, and sexual exploitation among other things.

5.1.3 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 behaviours from any unwanted touching to penetration. 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, or that is carried out in circumstances to which the person has not freely agreed, consented , or is incapable of consenting.

5.1.4 Sexual Harassment:

Conduct of a sexual nature such as, but not limited to, verbal abuse or threats of a sexual nature, unwelcome sexual invitations or requests, demands for sexual favours, or repeated innuendos or taunting about a person's body, appearance, sexual orientation or gender identity. Behaviour conducted in whole or in part through electronic means (such as e-mail, web postings, text messaging and other forms of electronic behaviour) shall be included in this definition.

5.1.5 Exhibitionism and Voyeurism:

Activities such as displaying genitalia to another person without his/her Consent, watching/recording a person while nude or in an undressed state without his/her knowledge or consent or while engaged in sexual activity.

5.2 Pertaining to individuals and groups identified in this Policy

5.2.1 Complainant:

Individual who is disclosing or has disclosed an experience of Sexual Assault

5.2.2 Respondent:

Individual who is accused of having perpetrated a Sexual Assault

5.2.3 Campus Sexual Assault Support Advocate (CSASA):

An appropriately trained individual who is designated by the University on one of the two main campuses of UNB (Fredericton and Saint John) who is the recommended first point of contact or referral for any Member of the University Community who has experienced a Sexual Assault. A CSASA will provide initial and ongoing support including confidential consultation, and assistance in accessing other services and resources both on campus and off campus. They will maintain confidential records of incidents of Sexual Assault. They will also assist in the creation of educational resources and in policy development.

5.2.4 UNB Task Force on Campus Sexual Assault (Bi-campus) :

A bi-campus unit that is responsible for the ongoing oversight and implementation of the Sexual Assault Policy to ensure the development, execution, maintenance, assessment, and record keeping of all prevention, intervention, awareness and education aspects of this Policy. They will prepare an annual Statistical Report for the President and the University Community. Members of the Task Force are the following:

Vice President Academic (Fredericton) or designate

Vice President Saint John or designate

Associate Vice President Human Resources and Organizational Development or designate

Assistant Vice President Student Services (Fredericton)

Director Student Services (Saint John)

Human Rights Officer

Campus Sexual Assault Support Advocates (1 from each campus) ex officio

5.2.5 Campus Sexual Assault Response Team (CSART) (Fredericton):

Consists of the Senior Director of Health and Wellness, the Assistant Vice-President (Student Services), the Senior Director of Student Life, a representative from Campus Security, and the Campus Sexual Assault Support Advocate. The purpose of CSART is to ensure a prompt and thorough response to individuals who experience a Sexual Assault that occurs within the campus community and to provide support to CSASAs.

5.2.6 Campus Sexual Assault Response Team (CSART) (Saint John):

Consists of the Director of Student Services, the Associate Vice-President (Saint John), a representative from Campus Security, and the Campus Sexual Assault Support Advocate. The purpose of CSART is to ensure a prompt and thorough response to individuals who experience a Sexual Assault that occurs within the campus community and to provide support to CSASAs.

5.2.7 Member of the University Community:

Includes, but is not limited to, all employees, governors, students, contractors, suppliers of services, volunteers, visitors, and individuals who are directly connected to any campus activities and initiatives as outlined in 3. Scope.

5.3 Pertaining to Disclosures and Filing a Formal Complaint of Sexual Assault

5.3.1 Disclosure:

Provision of information by an individual who has experienced, or witnessed, an alleged Sexual Assault to a University Employee not identified under Confidential Disclosure (see 5.3.2.). Individuals receiving a Disclosure are expected to provide only the name, date, and contact information, if available, of the person making a Disclosure to the Campus Sexual Assault Support Advocate.

5.3.2 Confidential Disclosure:

Provision of information by an individual who has experienced, or is witness to, an alleged Sexual Assault to a UNB counsellor, physician, nurse, Human Rights Officer, or Campus Sexual Assault Support Advocate. UNB recognizes that such communications originate in confidence and that the complainant has an expectation that such communications will remain confidential. UNB recognizes that the confidentiality is essential in order for complainants to come forward and discuss incidents of sexual assault. Such information will be held in strict confidence by these individuals except as directed by the Complainant or indicated in Section 8: Confidentiality.

5.3.3 Formal Complaint:

Written documentation of an alleged Sexual Assault filed by the Complainant. There are two types of Formal Complaints under this policy, a Formal Internal Complaint and a Formal Criminal Complaint. A Formal Internal Complaint is filed with UNB Campus Security and will trigger an investigation by specially trained staff in Campus Security. An investigation is necessary for the University to take action based on an allegation of Sexual Assault. In specific circumstances, the University may file such a Formal Internal Complaint. A Formal Criminal Complaint is a criminal complaint filed with the appropriate local police force under their processes (e.g., Fredericton Police Force, Saint John Police Force, RCMP).

5.3.4 Statistical Report:

A public document produced by a CSASA or other University official that contains non confidential information and data related to the incidence, prevalence and response to situations of Sexual Assault at UNB.

6. Disclosures, Confidential Disclosures, Formal Internal Complaints and the University's Response

Any person who has experienced a Sexual Assault is encouraged to seek help and support as soon as possible after the incident. UNB recognizes that an individual who has experienced a Sexual Assault will often require time and reflection before making the decision as to whether or not they wish to make a Disclosure, Confidential Disclosure or Formal Internal Complaint under this Policy. That being said, individuals who have experienced Sexual Assault are encouraged to come forward to disclose as soon as they are able to do so.

Members of the UNB community are expected to inform the Campus Sexual Assault Support Advocate of any Sexual Assaults or allegations of Sexual Assault that are brought to their attention. Such information may be based on witnessing or having knowledge of a Sexual Assault, or having reason to believe that Sexual Assault has occurred or may occur. If there is an immediate threat, they should contact Campus Security or call 911.

Where UNB becomes aware of an assault or allegation of Sexual Assault by a Member of the UNB community or against a Member of the campus community, which occurs on or off UNB property and that poses a risk to the safety of Members of the UNB community, UNB will take all reasonable steps to ensure the safety of the campus community.

UNB may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with UNB's legal obligation and/or its policies to investigate such allegations even if no Formal Internal Complaint is filed. In doing so, UNB will take steps to ensure that confidentiality is respected for both the Complainant and the Respondent except as indicated in Section 8: Confidentiality.

7. Formal Internal Complaint Process and Investigation

7.1 Choice of Process

Individuals who disclose an experience of Sexual Assault are entitled to determine which process best meets their own situation and circumstance including, but not limited to, contacting the police, or

filing a Formal Internal Complaint under the University's policies or regulations. CSASAs will provide information to the Complainant regarding the options available.

Any complaints of other forms of Sexual Violence can be filed under related University policies or regulations such as:

- Discrimination, Sexual Harassment, and Harassment
- Student Discipline Code
- General Regulations on Student Non- Academic Conduct
- Collective Agreements

Normally, once a Formal Internal Complaint is filed under a policy, regulation or procedure, the processes and procedures for that particular policy, regulation or procedure will be followed until the case is concluded. In exceptional circumstances, a Complainant may elect to pursue the matter under a different University policy, regulation or collective agreement, if it becomes evident that a different process would be more appropriate under the circumstances and if there are no restrictions in those policies, regulations or collective agreements that would prevent such election.

UNB retains the discretion to process a complaint under a certain policy regardless of whether the process was commenced under a different policy.

7.2 Filing a Formal Internal Complaint

A Disclosure or Confidential Disclosure is not a Formal Internal Complaint and will not trigger an investigation.

A Formal Internal Complaint of Sexual Assault must be filed with Campus Security in order for an investigation to ensue. If disclosed by the local police, a Formal Criminal Complaint may become a Formal Internal Complaint. The Complainant may approach the CSASA for support and assistance in filing a Formal Internal Complaint. Alternatively, the University may file a Formal Internal Complaint when required to comply with legal obligations and/or its policies or when presented with allegations that may put the University community at risk.

7.3 Right to Withdraw a Formal Internal Complaint

A Complainant has the right to withdraw a Formal Internal Complaint filed with UNB Campus Security 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 would continue to investigate.

7.4 Fairness

UNB will seek to achieve fairness in dealing with all Formal Internal Complaints. The University's primary emphasis is to protect the safety of the Complainant and the rights of both the Complainant and the Respondent. Respondents will be given reasonable notice, provided with sufficient information to enable them to answer the Formal Internal Complaint, and provided with an opportunity to answer to the allegations made against them prior to disciplinary action being taken. As such, no sanction and/or disciplinary action will be taken by the University against a person or group without their knowledge that there is an alleged breach of this Policy. Individuals accused of Sexual Assault under this Policy should seek appropriate advice and assistance. Students may consult with the Student Advocate as outlined in the Student Disciplinary Code. Faculty and staff may wish to consult with union representatives or Human Resources personnel. Anyone involved in actions under this Policy may seek legal counsel at any time.

Where a Disclosure, Confidential Disclosure or Formal Internal Complaint is brought forward in which the individual named as the Respondent is a person in a position identified in this Policy as being responsible for implementation of part or all of this Policy or its related Procedures (such as a CSASA, a member of Campus Security or the Police), the University shall take all reasonable steps to ensure that the matter is addressed by qualified, appropriately resourced independent third parties acceptable to the Complainant.

Nothing herein prevents UNB from taking immediate action where reasonable to do so. For example, in certain circumstances, including where an investigation is ongoing, UNB may take certain precautions such as issuing a Trespass Notice, or imposing a discretionary suspension or removal from residence, or take any other action permitted under UNB's statute, regulations, policies or procedures against the Respondent in an effort to ensure the safety of the Complainant or others.

8. Confidentiality

Confidentiality is particularly important to those who have disclosed Sexual Assault. UNB is committed to respecting the confidentiality of all persons, including the Complainant, Respondent, and witnesses. 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;
a child or other vulnerable person has been harmed or is at imminent risk of being harmed;
there are reasonable grounds to believe that others at UNB or wider community may be at risk of harm; and/or
disclosure is required under the law.

In such circumstances, information will only be shared with necessary services to prevent harm or as required by law, and the names of the Complainant and the Respondent will not be released to the public. The protection of privacy and confidentiality of individuals and the disclosure of information will be accomplished in accordance with the privacy and access provisions of the *Right to Information and Protection of Privacy Act* and the *UNB Policy for the Protection of Personal Information and Privacy POL-P.4.1 and the Policy for the Provision of Access to Information - POL P.4.3*.

9. Review and Revisions

This Policy shall undergo a full review by a Committee made up of representatives of university administration, employees and students, the Human Rights Officer, and the Associate Vice-President Academic (Learning Environment) or designate who will serve as chair. A full review will take place once every four years or upon request of the UNB Task Force on Campus Sexual Assault. It is recognized that appropriately addressing sexual assaults is an evolving issue (e.g., the role of anonymous reporting) and that UNB will need to revise this Policy in response to new information, approaches, legislation, technology, etc. No changes may be made to this Policy except upon recommendation by the Review Committee to the Board of Governors, and the Board's acceptance of such recommendation. However, in any given Formal Internal Complaint under this Policy, the parties may agree to amend the processes set out herein, with the consent of the Task Force and the appropriate Vice-President.

10. References to Other Policies and/or Legal Requirements

This Policy is applicable in the context of other University policies, regulations and collective agreements and Canadian law:

- Discrimination, Sexual Harassment, and Harassment
- Declaration on Rights and Responsibilities
http://www.unb.ca/humanrights/_resources/pdf/declaration.pdf

- Student Discipline Code http://www.unb.ca/fredericton/security/_resources/pdf/sdc.pdf
- General Regulations on Student Non-Academic Conduct
<http://www.unb.ca/academics/calendar/undergraduate/current/regulations/studentnonacademicconduct.html>
- University Wide Academic Regulations
<http://www.unb.ca/academics/calendar/undergraduate/current/regulations/universitywideacademicregulations/index.html>;
- Collective Agreements <http://www.unb.ca/hr/employeeagreements/index.html>.
Right to Information and Privacy at UNB <http://www.unb.ca/secretariat/rtippa/index.html>
- Criminal Code of Canada **Criminal Code - R.S.C., 1985, c. C-46 (Section 153.1)**
- Age of Consent - <http://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html>

Acknowledgment

This policy was drafted using the framework provided by the document, *Sexual Assault and Sexual Violence Policy and Protocol Template* developed by the Ontario Colleges/Collèges Ontario.

Where appropriate, similar wording was used, with permission.