

APPENDIX C

University-Wide Procedures for Sexual Harassment and Sexual Assault Concerns and Complaints

Approval Date: 2017-06-01

Effective Date: 2017-11-01

Responsible Unit: Office of the General Counsel

These Procedures are designed to deal with consultations as well as Concerns and Complaints of Sexual Harassment and Sexual Assault. They apply University-wide. The President has the authority to relieve against any time limits outlined in these procedures where an extension is needed in good faith and where it is believed not to substantially prejudice either party. Records are handled in accordance with the Procedure for Record Keeping.

1. PROCEDURE FOR CONSULTATIONS

Members of the University community are encouraged to consult with the Advisor regarding any issues, Concerns or Complaints relating to Sexual Harassment. Members may do so through an in-person meeting, email or phone calls, which may be collect calls. The nature of a Concern or Complaint may necessitate that the Advisor travel to a respective campus. Members of the University community and Non-University Persons who think they have been the target of Sexual Harassment, including Sexual Assault, should contact the Advisor.

Anyone may anonymously seek the advice of the Advisor. The Advisor shall provide information about the Sexual Harassment Policy and its related procedures to persons seeking advice, particularly the Procedure for Informal Resolution, the Procedure for Mediation and the Procedure for Formal Resolution. The Advisor shall also provide information about other available University and community services and resources.

All consultations with the Advisor are confidential and are handled in accordance with Section 5.0 of the Policy. (The Consent for a Support Person to Attend Consultation Form (Form 7) may be used).

2. PROCEDURE FOR INFORMAL RESOLUTION

A person may choose to resolve a matter, with the assistance of the Advisor, through Informal Resolution and by completing the Sexual Harassment Complaint Form (FORM 1), the Request for an Informal Resolution Form (FORM 2) and the Release of Information Form (FORM 4).

The goal of Informal Resolution is to achieve a resolution that is acceptable to the Complainant and Respondent. Pursuing Informal Resolution does not limit the Complainant or Respondent from invoking other options. In addition, an Informal Resolution is not a pre-requisite to pursuing other options.

The Informal Resolution process is confidential and is handled in accordance with Section 5.0 of the Policy.

The Advisor shall provide advice to the Complainant to identify appropriate ways to resolve the Concern, which may include but are not limited to:

(a) that the Complainant speak to the Respondent, making it clear why the behavior is viewed as unacceptable and gives rise to Concern.

(b) that the Complainant write the Respondent. The Respondent has the right to reply.

(c) that the Advisor contact the Respondent to advise them of the Complaint, and of the Complainant's request that the matter be resolved informally. The Respondent has the right to decide whether or not to participate in the proposed informal process. Normally, the Respondent has ten (10) Days to respond. The Advisor may, in their discretion, and where circumstances warrant, extend this time line. The Advisor may seek the assistance of a third party to facilitate an Informal Resolution and where appropriate, advise the Complainant and Respondent. The Advisor makes no attempt to determine whether Sexual Harassment has occurred.

(d) that the Advisor recommend, where appropriate, the provision of sexual harassment awareness education. So as not to adversely impact the academic or non-academic interests of the Complainant or Respondent, their identities, as well as the nature of the Concern, would remain confidential.

(e) any other processes that meet the goals of Informal Resolution.

In the event of a refusal by the Respondent to participate in the Informal Resolution process, the Advisor shall inform the Complainant and discuss options with the Complainant.

Normally, the Informal Resolution process will not exceed one (1) month. Outcomes of an Informal Resolution process, which may be negotiated between the Complainant and Respondent, may include but are not limited to:

- Attend advising session(s)
- Participation in educational session
- Verbal apology
- Written apology
- Written assignment
- Unit education session
- Service to the University or community
- Attend counselling session(s)
- Loss of privileges/access to services
- Loss of privileges/access to campus
- Restriction from University activities
- Exclusion from University activities
- Restricting access to University residence
- Modification to residence accommodation
- Modification of responsibilities

If the goal of resolution acceptable to the Complainant and Respondent is not achieved, the Advisor will discuss options with the Complainant.

3. PROCEDURE FOR MEDIATION

a. The Mediation Process

A Complainant may choose Mediation to resolve a Concern or Complaint of Sexual Harassment by indicating such on the Sexual Harassment Complaint Form(FORM 1) and the Request for Mediation Form (FORM 6) and submitting to the Advisor. When the Respondent is notified, by the Advisor, they will be informed of the Complainant's request that the matter be resolved through Mediation. The Respondent has the right to decide whether or not to participate in the proposed Mediation.

The Advisor shall advise the Complainant and the Respondent that during the Mediation process they may be accompanied by another person of their choice, which in the case of bargaining-unit members may be a union representative. The Complainant and the Respondent will be asked to formally acknowledge that they have been so advised by signing the Acknowledgement of Notification of Advice to Members of Bargaining Units (FORM 5) and returning it to the Advisor. If the Respondent or Complainant chooses to bring another person to Mediation, they must inform the Advisor of the identity of that person at least three (3) days before the first scheduled meeting. If either the Complainant or the Respondent object to the person identified to accompany the other party, the Advisor shall forward the objection to the other party and ask that party to choose another person to accompany them to the Mediation. Both the Complainant and the Respondent shall be advised that the persons they choose to accompany them to a Mediation shall not be persons who have been directly involved in the reported Sexual Harassment. If or when it is determined and agreed that the Complainant or Respondent will be accompanied by support person(s), the Advisor will inform the mediator of the identities of the person(s).

If both the Complainant and the Respondent consent to Mediation, the Advisor is responsible for identifying sexual harassment mediators, who have appropriate education, training, experience and suitability, and for helping the parties mutually agree upon a mediator and completing the Release of Information Form(FORM 4). The Advisor shall ensure that the mediator chosen is appropriately qualified and free of any real, perceived or potential conflict of interest; bias; or reasonable apprehension of bias.

Once a mediator is chosen:

- i. the Advisor shall provide to the mediator a copy of the Complaint and the written response, if any, of the Respondent, and
- ii. the mediator shall contact the parties to schedule in-person interviews within five (5) days, not including the day of receipt of their appointment, and advise the Advisor of the dates and times of those meetings.

The mediator shall conduct the Mediation in a fair and objective manner utilizing reasonable methods in an attempt to facilitate resolution by the parties. The mediator shall not impose a resolution.

b. Resolution Through Mediation

If, through the Mediation process, a resolution is achieved by the Complainant and Respondent, the mediator shall record the agreed-upon resolution in writing, which shall be signed by the Complainant, the Respondent and the mediator. Copies shall be presented to each of the parties and the Advisor.

c. Lack of Resolution Through Mediation

If Mediation proves not to be productive, either party or the mediator may conclude the process. The mediator notifies the Respondent, Complainant and Advisor, in writing, that the Mediation was unsuccessful. Because information obtained during Mediation is without prejudice to the parties, it normally shall not be introduced as evidence in any subsequent proceedings. Neither the mediator nor any other party involved in the Mediation process shall be compelled to give evidence in any future or concurrent University proceeding regarding any information disclosed during the Mediation process except where disclosure is required or permitted by law, or where the well-being, safety and security of a person or persons is a concern.

d. Request for Investigation When Mediation Has Not Resolved the Issue

Upon conclusion of Mediation without resolution, which occurs the day the Advisor receives written notification to that effect from the mediator, the Advisor informs the Complainant, in writing, that they have seven (7) days from the receipt of notice from the Advisor to request an investigation through the Procedure for Formal Resolution. If the Complainant does not request an investigation, the Mediation is considered closed.

4. PROCEDURE FOR FORMAL RESOLUTION

a. Requesting an Investigation

To request an investigation, the Complainant shall complete, sign and file the Sexual Harassment Complaint Form (FORM 1), the Request for an Investigation Form (FORM 3) and the Release of Information Form (FORM 4) with the Advisor, normally within twelve (12) months of the incident or within twelve (12) months of when the Complainant reasonably became aware of the incident. Events prior to the twelve (12) month period can be referenced if the incident(s) is relevant and part of a series of incidents. The Advisor has the discretion to extend the time limit beyond the twelve (12) calendar months of the incident.

Within three (3) days of the date the investigation is requested, the Advisor shall hand-carry both forms and the Complainant's written and signed statement to the President. Any records which the Complainant attaches to the forms shall be copies. The Complainant should keep originals of all records.

In accordance with Section 7.0 of the Policy, the President may impose Interim Measures.

b. Contacting the Respondent of the Complaint

Where the Respondent is identified, the Advisor shall, within three (3) days of receipt of the

Complaint, send to the Respondent by Registered Mail with signature, or hand-delivery or by some other means through which proof of delivery can be obtained, the following:

- i. a copy of the Sexual Harassment Complaint Form (FORM 1),
- ii. a copy of the Request for Investigation Form (FORM 3),
- iii. a copy of the Acknowledgement of Notification of Advice to Members of Bargaining Units Form (FORM 5),
- iv. when necessary, a copy of the Release of Information Form signed by the complainant (FORM 4),
- v. a copy of both the Sexual Harassment and Sexual Assault Policy and the University-Wide Procedures for Sexual Harassment and Sexual Assault Concerns and Complaints,
- vi. written notice of the Complaint, including the Respondent's option to contact the Advisor for information and support with respect to the Policy and Procedures,
- vii. written notice that the Respondent may respond in writing to the Complaint and the direction necessary, as per c. and that a copy of any response will be provided to the Complainant by the Advisor, and
- viii. written notice of any interim measures imposed by the President, where applicable. The Advisor shall use their best efforts, where circumstances permit, to ensure that the Complainant and the Respondent are provided with notice in the same manner and at approximately the same time.

c. Respondent's Right to Respond

The Respondent may respond to the Complaint. Any such response must be in writing and delivered to the President, and copied to the Advisor, within five (5) days of the Respondent's receipt of the documentation noted in b. above. Where the Respondent chooses not to respond or does not respond within five (5) days, section g. shall apply.

d. Complaint-Related Correspondence

i. Correspondence by Letters and Written Notices

All correspondence and written notices generated by the President regarding Sexual Harassment Complaints that are addressed or copied to Complainants or Respondents shall be copied to the Advisor. Correspondence that is addressed to Complainants or Respondents must be sent through Registered Mail with signature, hand-delivered or by some other means through which proof of delivery can be obtained. Envelopes are to be sealed and stamped with: "Personal and Confidential" and "To Be Opened By Addressee Only". The Advisor shall retain a copy of all such correspondence in accordance with the Procedure for Record Keeping.

ii. Proof of Delivery

If the addressee is the Complainant or Respondent, a document shall be considered to have been received by the addressee:

- on the date of delivery, if delivered by hand to the person for whom it is intended, or
- within five (5) days of the date of mailing, if sent by Registered Mail with signature, to the last available address of the Complainant or the Respondent as recorded in the records of the University, or, where a Complainant or a Respondent provides the Advisor with an address for delivery of documents pursuant to these Procedures, at that address;

If the addressee is the Advisor, or the President, a document shall be considered to have been received by the addressee on the date of delivery, if delivered by hand to the person for whom it is intended, or within five (5) days of the date of mailing, if sent by Registered Mail with signature.

e. When the President Cannot Participate in the Investigative Process

If the President is unable to deal expeditiously with the Request for Investigation, or when they are unable to deal with a complaint due to conflict of interest, bias or reasonable apprehension of bias, they shall as soon as possible delegate the investigation process to a Vice-President.

If the President is the Respondent or Complainant, the matter shall be forwarded to the Chair of the Board of Regents to take the place of the President in respect of all things which the President is required to do under these Procedures with respect to the Complaint. The Chair may delegate this role to the Vice-Chair of the Board of Regents.

f. Determining Whether to Proceed with Investigation

Within fifteen (15) days of the President's receipt of the Complaint, the President shall review the Complaint and any written response from the Respondent and determine if the allegations of Sexual Harassment have enough substance to warrant an investigation.

If the Respondent admits to the allegation(s) of Sexual Harassment as outlined in Complaint as contained in the Sexual Harassment Complaint Form (FORM 1), the President may proceed immediately to consider and impose any discipline. See Procedure for Discipline. In such cases, the President shall consult with advisors, as appropriate.

If the President decides that the Complaint does not warrant an investigation, they shall inform the Complainant, the Respondent and the Advisor in writing of this decision within ten (10) days of receipt of the Request for Investigation. Further the President shall advise the Complainant and the Respondent that they have ten (10) days to avail of the Procedure for Informal Resolution or the Procedure for Mediation. The President shall return all Complaint-related records to the Advisor who shall retain these in accordance with the Procedure for Record Keeping.

If the President decides to proceed with an investigation, they shall notify the Respondent and the Complainant, in writing, that an investigation will proceed, including the following documents:

- i. copies of the relevant documentation
- ii. written notice that the Complainant and Respondent may contact the Advisor for information
- iii. written notice that during any interviews held throughout the investigation the Complainant and Respondent may be accompanied by another person of their choice, which in the case of bargaining-unit members may be a union representative, and that any accompanying persons must respect confidentiality, as per the Consent for a Support Person to Attend Consultation Form (FORM 7).

These notifications must be sent to the Complainant and Respondent through Registered Mail with signature, hand-delivery or by some other means through which proof of delivery can be obtained, and hand-delivered to the Advisor.

g. Respondent's Participation

The Respondent may decide whether or not to participate in any investigation. However, the process of investigation and disposition of a Complaint under these Procedures shall continue in the absence of such participation by the Respondent.

During the investigation process, the Complainant and the Respondent may be accompanied by another person of their choice, which in the case of bargaining-unit members may be a union representative. If the Respondent or Complainant chooses to bring another person to an interview(s), they must inform the Investigator of the identity of that person at least three (3) days before the first scheduled interview, complete the Consent for a Support Person to Attend Consultation Form (FORM 7) and return it to the Investigator. The Complainant and the Respondent shall be advised that the persons they choose to accompany them shall not be persons who have been directly involved in the reported Sexual Harassment or Sexual Assault.

h. Initiation of the Investigation

The investigation process commences when the Complainant and Respondent receive written notification from the President, and shall conform to the relevant clauses of the appropriate collective agreements, Guide for Non-Bargaining, Management and Professional, and Senior Administrative Management Employees or Student Code of Conduct.

The President shall appoint the Investigator. Investigators are appointed on the basis of their education and training, their awareness about issues pertaining to Sexual Harassment, and their experience. Investigators are external to the University and normally are appointed on a case-by-case basis. The Investigator shall not be an employee, member, or partner of a law firm that has been used as a solicitor by the University; however, they can have previously provided investigative services to the University. No person should be selected where there is a real, perceived or potential conflict of interest; bias, or reasonable apprehension of bias. Any mediator

previously involved in the case shall not be the Investigator. Only an Investigator who is able to submit their investigative report within forty-five (45) days of being appointed shall be selected.

i. Role of the Investigator

The Investigator shall conduct a thorough investigation into the allegations of sexual harassment and write an investigative report which shall be submitted to the President. The Investigator shall ascertain the facts surrounding the Complaint and conduct the investigation in an impartial, fair and objective manner. If the Complaint involves the last in a series of incidents, all named incidents that fall within the definition of Sexual Harassment shall be investigated without regard to time limits. Any persons whose evidence is referenced in the investigation shall be named. The investigator will consider and summarize the relevant facts based on a review of the interviews and documentation. The investigator shall ascertain whether the resulting facts meet the definition of Sexual Harassment and shall report whether, based on the balance of probabilities, the evidence supports or refutes the Complaint. Throughout the investigation, the Advisor will monitor its progress and will be the investigator's primary contact and resource, if matters arise during the course of an investigation.

j. Release of Investigative Report

The investigation shall be completed and the investigative report shall be submitted to the President within forty-five (45) days of the appointment of the Investigator. In accordance with Section 5.4 of the Policy, the Complainant and the Respondent have the right to full information concerning the allegations and supporting arguments and shall be given a copy of the investigative report. The President will send copies of the investigative report to the Complainant and the Respondent through Registered Mail with signature, hand-delivery or by some other means through which proof of delivery can be obtained and a copy of the investigative report will be hand carried to the Advisor. The Complainant and Respondent shall have the opportunity to respond to the evidence contained in the investigative report if they choose.

k. When Investigation Cannot Be Completed on Time

In the event that the Investigator is unable to complete an investigation within the specified time frames, the Investigator shall seek written authorization from the President for an extension. If the President agrees, the authorization will be copied to the Advisor, and to the Complainant and Respondent, through Registered Mail with signature, hand-delivery or by some other means through which proof of delivery can be obtained. One (1) such extension may be granted at the discretion of the President and normally shall not exceed twenty-five (25) days. Further extension(s) shall be made with the mutual consent of the parties and such consent shall not be unreasonably denied.

l. President's Response to Investigative Report

Upon receipt of the investigative report, the President shall provide the Complainant and the Respondent five (5) working days to respond to the investigative report. The President shall decide if Sexual Harassment has occurred, based upon the Investigator's report and the responses, if any, from the Complainant and the Respondent. Prior to making the decision, the President may consult the Advisor and the General Counsel for their specific expertise. Within ten (10) working days of receiving the investigative report, the President shall provide:

- the Complainant with the written decision.,
- the Respondent with the written decision, and of any action the President will take and whether or not discipline will be imposed.

The President shall notify the Complainant and Respondent by Registered Mail with signature, or hand-delivery or by some other means through which proof of delivery can be obtained by providing a copy of the decision. The Advisor shall be provided a copy of this documentation.

5. PROCEDURE FOR DISCIPLINE

The President shall consult with advisors, as appropriate, and may impose discipline. Following the principle of progressive discipline, the factors that will be discussed during the consultation will include but are not limited to:

1. the nature and severity of the harassment including the degree of aggressiveness and physical contact,
2. the effect(s) of the conduct or comments on the Complainant,
3. age disparity between the Complainant and the Respondent,
4. whether the offence was an isolated incident or involved repeated acts,
5. the frequency and duration of the harassment,
6. whether there was an imbalance in power between the parties,
7. any record of discipline for the Respondent in relation to Sexual Harassment,
8. sanctions applied in similar cases,
9. mitigating or aggravating circumstances affecting either party, and
10. the potential risk to the well-being, safety and security of Members of the University community.

The existence of proceedings or determinations of any kind in any other forum shall not diminish the President's authority and jurisdiction to impose discipline under these Procedures. For example, a person, whether convicted or not in a court of law, can still be subjected to discipline by the President under the applicable handbook or guide, collective agreement or code of conduct.

Any imposed discipline will be taken in accordance with the *Guide for Non-Bargaining, Management and Professional, and Senior Administrative Management Employees*, Student Code of Conduct, applicable collective agreements or, for persons not covered by one of the above, the applicable contractual provisions. Discipline may include:

- | Employees | Students |
|---|--|
| <ul style="list-style-type: none"> • Oral reprimand/warning • Written reprimand/warning • Exclusion from University activities • Loss of privileges/access • Modification of responsibilities • Suspension without loss of pay • Suspension with loss of pay • Termination/dismissal • | <ul style="list-style-type: none"> • Participation in educational session • Written reprimand/warning • Service to the University or community • Written assignment(s) • Non-Academic Probation • Loss of privileges/access • Exclusion from University activities • Eviction from University Residence • Suspension • Expulsion |

In the case of those employees who are members of the Memorial University of Newfoundland Faculty Association (MUNFA), the ONLY disciplinary measures that may be taken are: a letter of warning or reprimand, suspension without loss of pay, suspension with loss of pay, or dismissal.

The President communicates the decision regarding discipline to the Respondent as well as to the appropriate senior official(s) of the University for action or follow-up. The Respondent and the Complainant have the right to appeal or grieve in accordance with this Policy or any applicable collective agreement. The President will notify the Secretary of the Board of Regents, the Director Faculty Relations or the Director of Human Resources, as appropriate, as well as the Advisor if the President's decision is grieved or appealed.

6. PROCEDURE FOR RECORD KEEPING

Record keeping is in accordance with the University's *Information Management* policy and as outlined below.

a. Records relating to consultations

The Advisor keeps consultation notes. If no resolution is sought, the records are destroyed, at the discretion of the Advisor. A non-Identifying account is retained for statistical purposes.

b. Records relating to the Informal Resolution Process

The Advisor keeps consultation notes. If the Informal Resolution is successful, a record of the agreement is kept for up to twelve (12) months after the Informal Resolution was requested or longer at the discretion of the Advisor. If the Informal Resolution is not successful, the associated records are destroyed, at that time. A non-identifying account of the Informal Resolution process is retained for statistical purposes.

c. Records relating to Mediation

If a resolution is achieved through Mediation, the mediator must return all documentation generated by the Mediation and the signed resolution to the Advisor within five (5) days of achieving a resolution. The Advisor destroys the mediator's notes and shall place the signed resolution in the Sexual Harassment Office confidential file from any period of time contemplated by the resolution, or for five (5) years, from the date of signing, whichever is longer.

If there has been a lack of resolution through Mediation, the mediator returns all records generated by the Mediation to the Advisor, with five (5) days. The Advisor immediately destroys all records related to the Mediation, except the applicable forms generated and Respondent's statement, if provided. If the Complainant does not ask for an investigation, these two records are maintained in the Sexual Harassment Office confidential file for five (5) years.

d. Records relating to the Formal Resolution Process

Upon the conclusion of any investigation, the President and the Investigator shall return to the Advisor all documentation including copies, pertaining to the Complaint and investigative process.

The documentation for the case is securely retained by the Advisor while the case is considered open, which occurs under the following conditions:

- Until all deadlines for appeal and grievances have elapsed
- An appeal or grievance is in progress
- The University has been made aware that an external process related to the matter is in progress

When the file is considered closed, the Advisor shall retain the documents pertaining to the Complaint and the investigation in the Sexual Harassment Office confidential file for that period provided in the applicable collective agreement or otherwise seven (7) years.

The Complainant or the Respondent may request that a copy of the investigative report be placed in their personal file in the Department of Human Resources, or if the Complainant or Respondent are students in the confidential file in the Sexual Harassment Office.

e. Access to records

During the period of retention, access to records shall be limited to the Advisor and, at the discretion of the Advisor, any party with a *bona fide* need to know.

f. Destruction of records

If within the prescribed retention period, there are no further Complaints against the same Respondent, the Advisor shall destroy, in a secure manner, all records associated with the case, at the end of the prescribed retention period. If, however, issues of a similar nature are brought to the attention of the Advisor prior to the expiry of the prescribed retention period, the records relating to the original matter shall be retained until the expiry of the prescribed retention period for the records related to the new issue.

When records and files are destroyed, a non-identifying account is retained for statistical purposes.

In the event there are discrepancies or inconsistencies between the above document and the University's Sexual Harassment and Sexual Assault Policy, the University's Sexual Harassment and Sexual Assault Policy shall prevail.

Sexual Harassment Forms:

Form #1 Sexual Harassment Complaint Form

Form #2 Request for an Informal Resolution

Form #3 Request for an Investigation

Form #4 Release of Information

Form #5 Acknowledgement of Notification of Advice to Members of Bargaining Units

Form #6 Request for Mediation

Form #7 Consent for a Support Person to Attend Consultation

Policies using this procedure:

- Sexual Harassment and Sexual Assault