

Guide to Internal Investigations at Brandon University

Purpose

This guide is designed to assist anyone responsible for conducting workplace investigations at Brandon University to:

- decide when an investigation is warranted.
- decide who should conduct the investigation.
- determine what policy/policies are relevant to the incident giving rise to the investigation.
- use a fair, thorough and transparent process to gather facts in an investigation.
- protect against bias in investigations.

Guiding Principles

Investigations involve the gathering of evidence, and it is the right of members of the University Community for decisions that affect them to be based on evidence. Each party may produce evidence to try to prove any relevant facts or to disprove facts.

Both investigators and decision makers must be free of personal interest or bias in the case, and should also guard against the perception of bias.

There must be a separation of duties between the investigator and the decision maker. The investigator gathers and presents the evidence to determine the facts, while the decision maker determines what follow up actions are required, if any.

Members of the University Community have the right to adequate notice prior to participation in an investigation. Not receiving adequate notice may deprive them of the right to be heard.

Any person affected by a decision has the right to be heard before the decision is made and has the right to present their own case or to challenge the case against them.

Procedural fairness dictates that people must be provided with reasons for decisions that affect them.

Initial Inquiry

Whether information is presented to you in a formal complaint, in a casual conversation, or indirectly through the rumour mill, you may decide it is necessary to look into the matter to determine if an investigation is warranted. In making this decision, you should consider the following.

Do you want to require a written complaint before proceeding?

Are you required to act under workplace safety and health regulations or other legislation or policies, even in the absence of a complaint?

What policies, Collective Agreements or laws need to be consulted?

Are there any restrictions on filing complaints? Do the events fall within the prescribed timeline for filing a complaint? If the events fall outside the timeline, are there circumstances that would support proceeding anyway?

Is there any reason that you may be, or may be seen to be, biased or partial towards any of the parties? Should you consider asking someone else to look into the matter to avoid a conflict of interest?

At this stage you do not need to alert the subject of the complaint/concern to your inquiries. You must carefully guard the identity of the complainant(s) unless they have given you express written consent to disclose their name. Ensure that you are discreet in gathering information at this stage, and remind anyone you speak to about the need for confidentiality. Wherever possible speak to people who can give a first-hand account of events. It may be useful to keep notes in order to remember key events and statements.

Deciding Whether to Investigate

Based on the information gathered in this initial inquiry you may decide that an investigation is warranted. An investigation is launched in cases where there is an alleged breach of a University policy or an article of a Collective Agreement and/or there is suspicion of a criminal act by a member of the University Community.

Be sure that you are clear about what you understand the potential breach to be and which policy it falls under. Some examples of policies which may give rise to an investigation are:

- Discrimination and Harassment Prevention Policy
- Sexualized Violence Policy
- Policy on Academic Dishonesty and Misconduct
- Policy on Academic Integrity & the Responsible Conduct of Research
- Scholarship & Creative Work Policy
- Safety and Health Policy

It is CRITICAL that investigations into allegations of Sexualized Violence, Sexual Harassment, or other situations that may have caused trauma be conducted by an appropriately trained individual. Investigations have the potential to re-traumatize people and must be conducted in a way that minimizes further harm.

Grievances under the various collective agreements in force at Brandon University may also give rise to the need for an investigation.

Some of these policies or other documents may provide timelines or requirements for investigators. Where these are absent this guide will provide information on reasonable processes.

Purpose of an Investigation

The purpose of an investigation is to gather information and evidence in order to make a decision. Most frequently, investigations are undertaken to determine if a policy was breached or if an article of a collective agreement has been contravened. Because the result of an investigation may lead to disciplinary action, it is critical that investigations be fair and transparent to anyone who may be affected by the outcome.

Roles and Responsibilities of the Investigator

Investigators are finders of facts. The role of the investigator is to gather and document information by interviewing the complainant, respondent, and witnesses, and gathering evidence. The investigator decides who to interview, what questions to ask, and what evidence they need to collect. The investigator must ensure that the respondent is aware of and has the chance to respond to all allegations against them. If new allegations come up during the course of the investigation, the respondent must be given this information and allowed to respond.

The investigator must remain neutral throughout the investigation, and must refrain from drawing conclusions before it is complete. Investigators must be unbiased and independent from both the respondent and the complainant. The investigator must be clear on the matters under investigation, and must investigate thoroughly. Once the investigation is complete, the investigator provides a report detailing what factual findings they were able to establish from the information they gathered.

Preparing for an Investigation

Once you determine that an investigation is warranted consider the following:

Who should investigate? Understanding which policy has been breached will help to determine which office or department is responsible for investigating. Bias or perception of bias must also be considered. If the investigator indicated by the appropriate policy may have a conflict of interest or bias in the situation, consider having someone external to the area investigate. This could be a member of another department, or someone external to the University. An external investigator may also be necessary when the investigator indicated by the appropriate policy has time constraints which would preclude an investigation being completed within an appropriate timeline.

What administrators will decide the resolution? Who will receive the investigator's report and decide on the resolution of the situation depends on several factors. Typically the supervisor (for staff) or Dean (for students) of the person accused of breaching a policy will be involved in making decisions about resolving the situation. The Chief Human Resources Officer will be consulted before any disciplinary action is taken against an employee of the university. The Dean of Students will be consulted before any disciplinary action is taken against a student of the university.

What interim corrective actions might be needed? If the situation giving rise to the investigation poses a risk/threat to a member of the University community, what would be reasonable steps to control the risk until the investigation is complete? If the situation giving rise to the investigation is significantly impeding the work of the university, how can this be addressed? It is important that these interim corrective actions be effective, and also that they do not presume guilt prior to a full investigation.

For example, if there is a complaint that one office mate is harassing another, separating the two may be wise. If there is a health and safety complaint about a faulty piece of equipment, the equipment should be locked out, or taken out of use until repaired. If there is a complaint of sexual assault, consult with the complainant to determine what security measures might be appropriate.

What documentation needs to be reviewed?

It is vital for all investigators to carefully review not only the complaint itself, but also relevant policies, procedures, collective agreements, laws and other relevant documentation such as organizational charts prior to beginning an investigation. Some policies and procedures will outline specific timelines or processes for an investigation, so these warrant special attention.

The University cannot compel anyone to participate in an investigation. Should the respondent, a witness, or any other party to the investigation refuse to participate, the investigator will note their refusal and will continue the investigation without their input.

Investigative Steps

Step 1: Receive Complaint

A complaint must be documented prior to proceeding with an investigation. That means that the complainant must put their concerns in writing with as much detail as possible around events, times, dates, witnesses etc. There are rare circumstances where a complainant may remain anonymous (whistleblower, sexual assault), but for the most part a complainant must be prepared to be identified.

At times the University may initiate an investigation where the institution is the complainant. An example where this may be appropriate is where there is not one clear target of alleged workplace discrimination/harassment, but the apparent cumulative effect of the individual's actions requires the University to respond (poisoned work environment). In the case of a university initiated complaint, the office responsible for bringing it forward will document the concerns/allegations in as much detail as possible so that this may be shared with the respondent.

Step 2: Interview Complainant

Once the investigator has received a written complaint, it is usually necessary to interview the complainant in order to fill in details about the incident(s) such as dates, witnesses, information about documentation, or other evidence.

The complainant may be accompanied to the interview by a support person such as a union/association representative or student advocate. This support person is bound by the confidential nature of the process, and is there to support, not to provide evidence. An individual who is a witness to the events or situation leading to the complaint cannot act as a support person.

The information provided in the interview and in the written complaint should then be summarized in a statement which should be verified and signed by the complainant. This statement should be organized in chronological order, with as much relevant detail as possible about each incident. If the complainant's identity will be shared in the course of investigating their complaint they must be informed of this, and sign an acknowledgement of this fact.

After interviewing the complainant and preparing the statement, the investigator should reflect on whether, if proven to be true, the allegations would constitute a breach of the policy in question. If they would not constitute a breach, the investigator or an appropriate administrator will inform the complainant of this and will suggest alternate routes to address their concerns. In this case, the investigator would NOT move on to **Step 3**.

DO NOT draw conclusions about the “demeanor” of those you interview. How people you interview come across can be influenced by their state of mind, their culture, their comfort with people in authority or many other factors. This is especially important if the person is suffering the effects of trauma – they may not behave in ways you think are “typical”.

Step 3: Notify Respondent

The respondent has the right to know in detail the concerns/allegations against them, and to have a reasonable amount of time to prepare a response to the complaint. The respondent must be provided a copy of the statement produced in step 2, and will normally be given up to 10 working days to review the complaint and prepare a response. The respondent is bound by the confidential nature of the process and must not share the complaint except with those who might be supporting them in their response (e.g. union representative, student advocate).

Step 4: Interview respondent

The interview with the respondent should follow the timelines of the Complainant’s statement, allowing for the respondent to address each incident or allegation against them. In some instances the respondent may prepare a written statement in response to the complaint.

The respondent may be accompanied to the interview by a support person such as a union/association representative or student advocate. This support person is bound by the confidential nature of the process, and is there to support, not to provide evidence. An individual who is a witness to the events or situation leading to the complaint cannot act as a support person.

The information provided in the interview and in the written statement (where applicable) should then be summarized, verified and signed by the respondent. This will then be shared with the complainant.

Remain neutral, but warm, in your interviews. Guard against deciding the case before all of the facts are in or appearing overly sympathetic.

Step 5: Consult with appropriate committee/individual

It is usually necessary for the investigator to consult with a committee, an administrator or their supervisor prior to proceeding further. In this consultation, the complainant’s and respondent’s statement will be shared in confidence. Things to consider in this consultation include whether additional information is required to determine if there has been a breach, the scope of the investigation, and a reasonable timeline.

Where the complainant and respondent give different accounts of events, the investigator will proceed to Step 6 in order to make a determination about which account is more likely to be accurate. The investigator should carefully consider at this stage what witnesses should be interviewed, what questions to ask each witness, and what other evidence should be collected.

Where the complainant and respondent are in agreement on the facts the investigation need not go further. The investigator's responsibility is to establish what happened, and if facts are not in dispute, investigating further is counterproductive and violates confidentiality. At this point the investigator can proceed to Step 11.

Step 6: Develop questions

After reviewing the initial complaint and any background information, investigators should identify what they need to know and develop questions that will provide the information. Questions during witness interviews can provide information that is missing, or it can clarify conflicting information. For each witness it is important to only address incidents of which they are reasonably thought to have knowledge, and to try to avoid giving them more information than is necessary.

A few questions should be developed in order to establish the background or context for each witness: who they are, their relationship with the other parties, where they fit within the organization.

When developing questions about specific incidents

- be prepared and review your questions to ensure you are thorough.
- use open ended questions.
- start with broad questions and narrow them if you are not getting the information you need.
- let the interviewee give you the information – do not lead them.
- think about different answers to your questions and how they might lead to different lines of inquiry.
- provide an opportunity for the interviewee to provide additional information that you may not have asked about.

Witnesses who can corroborate either the complainant or respondent's account of events should be interviewed. In cases of Sexualized Violence or Sexual Harassment, there are often no witnesses. It is **not necessary** to have corroborating evidence in order to reach a finding of which account is more likely to have occurred.

Step 7: Coordinate the interviews

From the first contact with any party to an investigation, and at every subsequent contact, it is important to talk about the privacy and confidentiality of the process, and to go over what related policies say about confidentiality. Initial contact with witnesses may be in person, by phone, or by email.

Witness interviews may be in person or over the phone. Interviews should be held in a quiet and private space, providing for the safety of the investigator and interviewees. Interviews should not be scheduled back to back in the same location in order to protect the confidentiality of the process.

Step 8: Interview opening statement

Anyone interviewed in an investigation must be counselled on privacy and the confidential nature of the investigation and advised that breaking confidentiality may result in disciplinary action. It is important to ensure that they understand, so give the witness the opportunity to ask questions about this before asking for either verbal or written confirmation that they understand.

The witness should be given an introduction to the reason for the interview and the role of the investigator (collect information to determine the facts). You may want to produce witness statements after the interview/follow up questions, and allow the witness to review them for accuracy.

Nothing is off the record in an interview, and it is important to tell witnesses this up front. While it is a confidential process, their identity may need to be shared in the report or in further action such as arbitration or court proceedings. Let the witness know that they are free to take a break at any time, or consult with a support person if they have brought one.

Inform the witness how the information you are gathering will be handled during and after the investigation, and your responsibility to keep information confidential. Also inform them of when you might be required to share information (e.g. someone is at imminent risk of harm, subpoenas).

Ensure that every witness understands that there is to be no reprisals against anyone for their participation in the investigative process. Should they experience threats or actual reprisals as a result of participating they should report this to you or to the office that appointed you immediately.

Step 9: Interviewing witnesses

Be prepared for emotional reactions, and take steps to safeguard yourself and the witness. Be empathic, not sympathetic, and maintain your neutrality throughout the interview. The interviewer is there to gather facts, not form or share opinions.

Try to get at the facts rather than opinions. Explore statements fully, to ensure you understand. For example, if someone is described as angry, ask what that looked/sounded like, how was their anger apparent.

Ask for clarification and further information until you have the most complete picture possible.

Where the witness indicates there may be documentation or other physical evidence in their possession, request that they share this with you.

Ask your questions in a respectful way, and be aware of the effect you are having on the interviewee. The goal is not to intimidate the witness.

Be thorough, review your notes and go back over anything that is unclear before ending the interview.

As each person is interviewed, including the complainant and respondent, credibility should be assessed. **Credibility** can be assessed by looking at whether the person is being open, honest, and truthful during the interview, as well as how reliable their evidence is. Gaps in memory and uncertainty about timelines are common, especially in people who have experienced trauma. Assess credibility based on what they do remember and report.

Step 10: Interview closing statement

At the end of the interview, once you have given time for the witness to add any detail you have not asked about, remind them of the confidentiality of the process, and inform them about next steps. Let them know that you may need to follow up with them later in the process, and that they can contact you if they have additional information or have concerns about reprisals. Let them know when you anticipate completing your report.

Manage witness expectations about what information you or others might share with them on the conclusion of the investigation. For example, the nature of any disciplinary action taken as a result of the investigation will not be shared.

Step 11: Report

The investigator will produce a report that details each incident from the complaint, summarizes the evidence gathered on that incident, and presents their conclusion whether the incident constitutes a breach of the relevant policy or not.

In investigations carried out at the University, the standard of proof used is the “balance of probabilities” or “preponderance of evidence”. This means that the task of the investigator is to decide which account of events is more likely true. The investigator may come to a determination that there was a breach of policy as laid out in the complaint, that there was not a breach of policy as laid out in the complaint, or that there is not enough evidence to make a determination whether there was a breach or not.

Where an investigator who is external to the university is engaged, the report and collected evidence is the property of the university. The investigator shall submit all notes, statements, and other forms of evidence collected, to the university to be handled in accordance with the appropriate records management schedules.

Resolution

The investigator will provide their report to the appropriate administrators. Typically this will include both the respondent’s direct supervisor and the Chief Human Resources Officer in cases involving an employee. In cases involving a student, their Dean and the Dean of Students will receive the report. Where there is a real or perceived conflict of interest for any of these administrators, a neutral party of

similar position will be asked to act as alternate in deciding on the response to the investigator's findings.

This document is available in PDF and Microsoft Word format on the Brandon University website. A printed copy can be attained from the Diversity and Human Rights Office, Room 333 Clark Hall. Persons involved with the processes outlined in this policy (complainants, witnesses or respondents) may conduct their involvement verbally or with the assistance of an interpreter upon request.