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Report on Policies, Procedures, and Support Programmes in Place to Address Sexual Assault Involving
Students

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EXECUTIVE SUMMARY

This report canvasses the policies, procedures, and support mechanisms currently in place at Queen's University (the "University" or "Queen's") to address the issue of sexual assault involving students. It also provides an overview of the legal history, both criminal and civil, involving incidents where sexual assault was alleged to have occurred Queen's.

Queen's is well positioned to address incidents of sexual assault¹. Proactive, preventative initiatives are integrated into Orientation events and remain active throughout the year. Strong, wide-reaching support mechanisms are in place to help student complainants navigate the disciplinary and/or criminal-justice systems and their own path to healing. Advisory support is also provided to students accused of sexual assault through internal procedures.

The history of legal action involving sexual assault at the University over the past 25 years is minimal. Queen's has never faced a claim in negligence related to sexual assault; the University has faced only two claims in defamation related to sexual assault.

Internal, non-academic disciplinary procedures for dealing with complaints of sexual assault are clearly defined and the authority to handle such matters rests solely with the University.

INTRODUCTION

This report has been framed according to the four issues identified by the Principal & Vice-Chancellor, namely:

- a) What happens when an allegation of sexual assault on campus is reported?
- b) What support(s) are in place for victims?
- c) What have been the legal results of past cases, including instances in which the University has been sued? And,
- d) Are there any jurisdictional issues related to the University's authority to respond to/address an allegation of sexual assault on campus?

In preparing this report, input was sought and obtained from a variety of stakeholders on campus including the Division of Student Affairs, Campus Security and Emergency Services, Residence Life, Health, Counselling & Disability Services, the Human Rights Office, the Pension & Insurance Office, and the University's previous legal counsel. The focus of the report is on instances of sexual assault where the complainant and/or the accused is a Queen's student.

Context

The issue of sexual assault has recently been the subject of heightened attention in both the American and Canadian media. In September of 2013, Saint Mary's University and the University of British Columbia made national and international headlines for orientation-week chants that glorified non-consensual sex.² More recently, the allegation that several members of the University of Ottawa men's hockey team were involved in a sexual assault while the team was in Thunder Bay, Ontario, has prompted that University to initially suspend the team, and now to extend that suspension through the 2014-2015 season and to terminate the coach's employment for failing to notify the University.³

This summer, concern over sexual assault on U.S. campuses prompted Yale University to institute a policy which clearly states that anyone under the influence of drugs or alcohol is not capable of consenting to sexual activity, making sexual

¹ While the term "rape" is often employed by the media in its coverage of the issue, it is important to bear in mind that the legal definition of "sexual assault," under section 271 of the *Criminal Code* encompasses a much broader spectrum of non-consensual sexual contact. Legally, non-consensual sexual contact may be dealt with through either the criminal-justice system or through Human Rights legislation, as sexual harassment. The ultimate destination of a sexually-related complaint is determined by the nature and severity of the incident *and* by the avenue chosen by the complainant - her or his cooperation is often determinative of the outcome in either arena. This report uses the phrase employed by the *Criminal Code* to encompass any form of non-consensual sexual touching.

² Taber, Jane, "Saint Mary's student president says rape chant was 'biggest mistake...probably in my life,'" *The Globe and Mail* (5 September 2013);

Hume, Mark, "In wake of rape chant, UBC wants to change campus culture," *The Globe and Mail* (18 September 2013).

³ Janus, Andrea, "uOttawa fires men's hockey coach, extends team's suspension," *CTVNews.ca* (25 June 2014).

contact with an impaired person an infraction of the University's rules.⁴ Yale's new policy was instituted after it, along with fifty-five other American universities, came under investigation for failing to meet its statutory obligations.⁵ While the legal environment in the United States differs dramatically from that in Canada—American universities have specific statutory obligations to address and report on-campus sexual assaults while Canadian universities do not—many of the factors that contribute to the incidence of sexual assault on university campuses are shared.

PART I: Support Programmes in Place for Complainants of Sexual Assault at Queen's

There are a variety of support programmes in place at Queen's to both help prevent incidents of sexual assault and to aid complainants in navigating the disciplinary and/or criminal-justice system. Dedicated counselling staff is also in place to help complainants process and heal from the associated trauma and stigma of an incident.

Preventative/Educational Initiatives

The university has a *Harassment/Discrimination Complaint Policy and Procedure* that references sexual harassment and sexual assault. The *Queen's University Student Code of Conduct (Student Code of Conduct)* references that *Policy*. Under the *Policy*, the Human Rights Office is responsible for "increasing awareness among the University community of the effects of harassment and discrimination, of providing educational programs to all segments of the community, including supervisory personnel..." (p. 3)

There are a variety of preventative programmes in place at Queen's addressing the issue of sexual assault on a proactive basis. The Division of Student Affairs has created a Sexual Assault Prevention and Response Working Group⁶, which is a network of students, faculty, and staff convened to mobilize efforts to prevent and respond to sexual assault on campus. The working group is advisory to the Vice-Provost and Dean of Student Affairs and works collaboratively to effect change at the individual and cultural levels, thereby contributing to a safer campus environment for Queen's students. The Working Group has a number of resources available on its webpage, including an information sheet "What to do if you are sexually assaulted"⁷, which provides contact information for the various campus and community resources available.

As students' primary point of entry to campus life, Orientation Week includes specific training sessions on "enthusiastic consent,"⁸ the dangers of "date-rape" drugs, healthy relationships, and information for on- and off-campus resources such as Queen's Health, Counselling & Disability Services (HCDS) and the Kingston Sexual Assault Centre. Residence Life also runs similar sessions for students entering residence.

The University maintains a network of emergency phones with associated emergency beacons (the "blue light" network) comprising 175 phones across campus, 74 of which are located out-of-doors. The emergency phone and beacon system is common on Ontario university campuses. Queen's Campus Security places the number of phones and beacons at Queen's among the highest in the province.

The Alma Mater Society (AMS) runs "Walkhome," an anonymous, non-judgemental and discrete on-campus escort service from dusk until past midnight, every night, free of charge to any member of the campus community.⁹ The AMS Walkhome programme is complemented by Campus Security's "Safe Walk" service, operated year round, which provides a similar escort service to any member of the campus community whenever the AMS Walkhome service is unavailable.¹⁰

⁴ Yale University, *Sexual Misconduct Response at Yale*, online: Yale University <<http://smr.yale.edu/yale-sexual-misconduct-policies-and-related-definitions>>; Macdonald, Neil, "Washington throws the book at 'campus rape culture,'" *CBC News* (19 June 2014).

⁵ Steinhauer, Jennifer, "U.S. Senate considers measure to curb campus sexual assaults" *The Globe and Mail* (30 July 2014).

⁶ <<http://www.queensu.ca/studentaffairs/health-and-wellness/sexual-assault-prevention-and-response-working-group>>

⁷ <<http://www.queensu.ca/studentaffairs/sites/webpublish.queensu.ca.vpsawww/files/files/Sexual%20Assault%20brochure%202014%20.pdf>>

⁸ A term of art that means genuine consent.

⁹ *Walkhome*, online: The Alma Mater Society <<http://www.myams.org/walkhome>>.

¹⁰ Campus Security, "Services and Programs," online: Queen's University <<http://www.queensu.ca/security/services.html>>.

The Sexual Health Resource Centre (SHRC) is a ratified AMS Club.¹¹ The SHRC offers completely confidential and non-judgmental assistance from individuals who are trained as first point of contact resources and who will accompany individuals for medical assistance or to Kingston Police as requested. The SHRC also maintains a free library of sexual-health resources.

The AMS also operates an anti-violence campaign, Sexy Queen's U (formerly the Queen's Sexual Violence on Campus Awareness Committee), which works to raise awareness about sexual violence, and to define provide education about "violence," "consent," "non-consent," "yes," and "no." Sexy Queen's U runs an annual Sexual Violence Awareness Week. Through education, peer-to-peer support networking, and activism, Sexy Queen's U aims to create safer spaces and positive experiences within (and around) campus environments; it aims to establish unified communities that understand sexual violence and how it affects every single individual in a community environment.

The AMS Peer Support Centre¹² is a group of dedicated student volunteers who provide welcoming, confidential, and empathetic peer-based support to students at Queen's University. Students are encouraged to speak with volunteers who will listen and offer support for any and all issues. Volunteers receive training about, and can provide information concerning, the host of resources available on campus and in the Kingston community.

The SGPS has a Student Advisor program that offers advice and advocacy services to graduate and professional students on issues concerning their well-being while at Queen's. Advisors also provide a referral service for issues and needs that fall outside of their jurisdiction or expertise.

The Arts & Science Undergraduate Society ("ASUS")¹³ organizes Women's Worth Week, which is a series of events held on the Queen's University Campus to raise awareness about gender based violence/discrimination. Women's Worth Week holds a series of events each November to engage students in discussions on how narrow perceptions of femininity and masculinity perpetuate gendered violence, and gender based exclusion. Women's Worth Week also held a Maskulinites Summit in March 2013 aimed at re-thinking and re-focusing notions of masculinity. This summit is expected to run again in March 2014.

Campus Security facilitates a free self-defence course accredited by Rape Aggression Defence Systems Canada, open to all students, staff, and faculty.¹⁴ This comprehensive course combines training in awareness, prevention, risk reduction, and avoidance, with hands-on defence training. The programme offers a session specifically geared to students living in residence. Once they have completed the programme, participants may return to practice, as often as they like.

Customizable training covering issues such as sexual health, domestic violence, sexual assault, and sexual harassment are available through the Human Rights Office (HRO) and the Sexual Health Resource Centre. Educational resources on sexual harassment and assault have been developed by the HRO including brochures on *Guidelines for Consent in Intimate Relationships* and *Helping a Survivor of Sexual Assault*.

The HRO has developed two educational modules on sexual harassment and assault – the Online Sexual Harassment Training Module and the Dating BASICS training program which has content specifically geared to first year students in Residences. The HRO's *How To Be Human* poster campaign, which addresses sexual harassment and assault, was recently launched in Residences and the Office is currently developing another poster addressing domestic violence in the workplace, similar to the one developed for mental health in 2012-2013, to be distributed throughout the University.

A safety app developed by two Queen's alumni for use on camps is also available for smartphone users. The app features a campus map with emergency phones and beacon lights marked on it, emergency contact numbers for Campus Security,

¹¹ Human Rights Office, *Training*, online: Queen's University <<http://www.queensu.ca/humanrights/training.html>>; Sexual Health Resource Centre, *Services*, online: Sexual Health Resource Centre <<http://www.shrckingston.org>>.

¹² AMS Peer Support Centre: <<http://amspeersupport.com>>

¹³ <<http://queensasus.com/index.php>>

¹⁴ Campus Security, "RAD Systems," online: Queen's University <<http://www.queensu.ca/security/rad.html>>.

Kingston Police, and the Kingston General Hospital, as well as a safety toolbox that includes a flashlight and an alarm. The app, "SeQure," can be downloaded for free from iTunes.¹⁵

Throughout the year, Health Promotion in HCDS and the SHRC coordinate various poster campaigns ("Red Flag," "What Would You Do?," "Don't be That Guy," *etc.*). The University also brings expert speakers (e.g. Todd Minerson, the Executive Director of the White Ribbon Campaign, and Lisa Wade, a sociologist at Occidental College in Los Angeles whose research is focused on "hook-up" culture) to campus.

Support Programmes

In addition to preventative initiatives, Queen's has solid support programmes in place to help complainants navigate both the University-disciplinary and/or criminal-justice systems, as well as their own healing¹⁶.

In keeping with the unique trauma and stigma associated with sexual assault, advisory support is located across campus through an integrated network that includes the Human Rights Office, Residence Life, the AMS, the SGPS, the Four Directions Aboriginal Student Centre, the Queen's University International Centre, Campus Security, and the University Rector. The role of advisors is to provide complainants with information on resources that are available both on- and off-campus, internal options with respect to non-academic disciplinary procedures, and legal options outside of the University. Advisors act as a bridge to other resources available to complainants and, as such, are located strategically throughout the University so that complainants can choose to approach the service with which they feel most comfortable. Many on-campus advisors will provide accompaniment to the Kingston General Hospital for the administration of a Sexual Assault Evidence Kit, and to Kingston Police to report an incident of sexual assault.

Working in tandem with the University's network of advisors are counsellors. While advisors provide advice on resources as well as disciplinary and legal options, counsellors work to help complainants cope with the trauma and stigma associated with sexual assault. Counselling services at Queen's are run exclusively out of HCDS and include an outreach counsellor, based in the John Deutsch University Centre, who specializes in working with survivors of sexual assault and intimate partner violence. This counsellor offers 1:1 counselling, group psycho-educational support, facilitated liaison with community supports, and accompaniment to court, as required.

HCDS provides regular training to its counsellors in recognizing and addressing sexual-assault trauma. Currently, the Director of HCDS is available to attend at all hours of the day, at the request of either Campus Security or Residence Life.

Among the responsibilities of the HRO enumerated in the Harassment/Discrimination Complaint Policy and Procedure is that of "providing support for individuals and groups who are the targets of harassment and discrimination". Thus, as an alternative to the criminal-justice system and/or the University non-academic disciplinary processes outlined below, complainants have the option of pursuing an informal resolution process through the Human Rights Office. Based on the nature and severity of the alleged incident, the Human Rights Office may help to facilitate a no-contact undertaking where the accused voluntarily undertakes not to contact the complainant whether in person, by phone, mail, or over the Internet.

Support for Accused

While the principle of "innocence until proven guilty" has its traditional home in the criminal-justice system, it is important to bear in mind that navigating the University disciplinary process as an accused is stressful and can be all-consuming, with its own stigma. Queen's provides advice and support to those accused of sexual assault through the University Ombudsperson.

¹⁵ "Brothers spearhead Queen's safety app initiative" *Queen's News Centre* (10 January 2013).

¹⁶ Although the focus of this report is "on-campus" incidents, the support programs for student complainants are equally available whether an incident occurred on or off-campus.

PART II: Procedures in Place for Addressing an Allegation of Sexual Assault at Queen's

At Queen's, the Senate has responsibility for non-academic discipline.¹⁷ The way in which the University responds to an allegation of sexual assault depends upon the nature and severity of the alleged incident and the identity of the accused. Campus Security is most often the first responder. The complainant is always given the option to make a report to Kingston Police with the assistance of Campus Security. In accordance with the Harassment/Discrimination Complaint Policy and Procedure, the complainant is also given the option of speaking with an Advisor in the Human Rights Office about their entitlement under the Policy to have the non-criminal, harassment related elements of their concerns addressed. If the complainant declines to make a report to Police and, in the judgement of the Director of Campus Security, there is a risk to the campus community, Campus Security will provide Kingston Police with an anonymized report of the incident. Where the accused is not a member of the Queen's community, a Notice of Prohibition (NOP) barring access to Queen's property will be served on the accused by Campus Security. Where the accused is a student at Queen's, he or she will be served with a conditional NOP, limiting his or her campus access to specific areas or times of the day. The NOP process is described further below.

If police lay a criminal charge, Campus Security will liaise closely with Crown prosecutors for the duration of the criminal-justice process. Criminal charges often result in the imposition of bail conditions that take into account the safety of the University community, such as a complete bar on the accused's access to campus.

Notices of Prohibition (NOPs)

The University's authority to issue an NOP derives from its inherent right to protect the members of its community while on University property and is further articulated in section 36 of the *Queen's University Senate Policy on Student Appeals, Rights & Discipline (SARD)*. The purpose of an NOP is to protect the immediate physical and psychological safety of a member, or members, of the Queen's community. As such, NOPs are issued without a hearing and take immediate effect.¹⁸ The primary issuing authority for NOPs is Campus Security. Campus Security issues both standard and conditional NOPs.¹⁹ Where a member of the public, who is not also a member of the Queen's community, is suspected of committing an indictable offence, he or she will be served with a standard NOP barring access to all University property.²⁰ Campus Security will not issue a standard NOP to students.²¹ Instead, depending on the nature and severity of the incident, Campus Security will issue a conditional NOP to a student suspected of committing a sexual assault, barring access to specific areas of campus (e.g. residence, other buildings, etc.) and/or times of day (e.g. dusk, dawn, during the complainant's class time, etc.). Once a conditional NOP has been issued, the situation is then escalated to the Threat Assessment Team where a decision is made on whether or not to extend the NOP's duration and/or scope.

NOPs barring access to all or part of Queen's residences may also be issued by Residence Life independently of Campus Security. The geographic scope of an NOP issued by Residence Life is restricted to residence properties. Where it is suspected that a sexual assault occurred in residence, which authority issues the NOP (either Campus Security or Residence Life) will depend upon the nature and severity of the alleged incident.

NOPs are appealable to the University Student Appeals Board (USAB), but remain in effect for the duration of any appeal.²²

Emergency Powers

In addition to the NOP, the University also has the authority to exercise emergency powers with respect to students pursuant to section 36 of the *SARD*, pending the outcome of either a criminal or internal investigation, where the University is "satisfied that the interests or safety of other students or members of the public would be endangered by the student's continued presence at Queen's University or specific part thereof or by the student continuing in a course or program."²³

¹⁷ *Queen's University Student Code of Conduct* at 2 [Code of Conduct].

¹⁸ *Queen's University Senate Policy on Student Appeals, Rights & Discipline*, s 36(b) [SARD].

¹⁹ *Campus Security Policy on Notices of Prohibition* [NOP Policy].

²⁰ *Ibid.*

²¹ The Vice-Principal (Finance & Administration), or her designate, may, however, where the safety of other members of the Queen's community is believed to be at risk, issue a standard NOP to a student barring him or her completely from access to any part of Queen's property (*NOP Policy*, *supra* note 14).

²² *SARD*, *supra* note 13, ss 36(c)-(b).

²³ This is reaffirmed in the *Code of Conduct*, *supra* note 12 at 2.

Since incidents of sexual assault inherently endanger the safety of students, staff, faculty, or members of the public, the University can exercise its emergency powers to protect the physical and psychological safety and wellbeing of a complainant, pending the outcome of either an investigation by police or the criminal-justice system.

Like an NOP, emergency powers take immediate effect and do not require a hearing to be exercised.²⁴ The exercise of emergency powers is appealable to the USAB, but they remain in effect for the duration of any appeal.²⁵

Senate Harassment/Discrimination Complaint Policy and Procedure

In accordance with legal precedent, the Harassment/Discrimination Complaint Policy and Procedure defines sexual harassment as inclusive of “physical contact of a sexual nature” including sexual assault. Therefore, complainants may make use of the Policy and Procedure to address the non-criminal dimensions of an incident of assault. There are both informal and formal processes that a complainant may engage under the Policy and Procedure depending on the nature of the incident and the remedies/sanctions sought. The Harassment/Discrimination Complaint Board, accessible to complainants through the formal procedure, is able to make written recommendations regarding disciplinary sanctions to the University bodies authorized to impose such discipline.

Non-Academic Discipline

Although the University’s ability to conduct an internal investigation is limited during a police investigation, and even more once an alleged sexual assault is before the courts, the *Student Code of Conduct* explicitly recognizes that:

[t]he University’s system of non-academic discipline is a complementary system that may be derived naturally from [its] existence as a clearly distinguishable community of interests. [Non-academic discipline] should not be regarded as a substitute for the civil or criminal law. *Students may be subject to consequences for misconduct both under the University’s discipline system and under the criminal law concurrently.*²⁶ [emphasis added]

Where the nature and the severity of an alleged incident warrant sanctions beyond the issuance of an NOP and/or the exercise of emergency powers, the University may thus also pursue the issue through its own non-academic discipline process.

Student Government Authority over Non-Academic Discipline

Subject to exceptions described in the *Student Code of Conduct*, and unless the incident occurred in an academic context,²⁷ the authority over the non-academic discipline of students is held by the Judicial Committees of either the AMS or the SGPS, depending on students’ level of study, by delegation of the Senate.²⁸ However, in the case of an alleged sexual assault, the University retains exclusive authority for the non-academic discipline of a student.

The AMS

The AMS has consistently and unequivocally recognized that allegations of sexual assault lie outside of its authority. Section 10.02.02 of the AMS Constitution explicitly lists sexual assault as one of a number of cases outside its authority.²⁹ This is further affirmed by an agreement regarding “Improvements to the AMS non-academic discipline system,” signed by the Principal and the President of the AMS in the fall of 2012, which explicitly lists sexual assault as one of a number of circumstance over which the AMS Judicial Committee does not have authority.³⁰ Since the authority over non-academic

²⁴ *SARD*, *supra* note 13, s 36(b).

²⁵ *Ibid*.

²⁶ *Code of Conduct*, *supra* note 12 at 1.

²⁷ “Faculty boards may exercise jurisdiction over non-academic discipline of students when unacceptable behaviour occurs in the context of a specific component of the academic program in which the student is registered or in an academic or academic-related setting” (*Ibid* at 3).

²⁸ *Ibid*, at 2.

²⁹ *The Constitution of the Alma Mater Society of Queen’s University*, s 10.02.02 [*AMS Constitution*].

³⁰ At 1-2. The complete list of offences that the AMS Judicial Committee will not hear, as produced in both the AMS Constitution and the 2012 Agreement between the Principal and the AMS President, is: “blatant discrimination (sexual, racial or otherwise), harassment, sexual assault, serious assault of a non-sexual nature, or murder” (*AMS Constitution*, *supra* note 24, s 10.02.02; “Improvements to the AMS non-academic discipline system” (signed by the Principal and AMS President, 11 September 2012) at 2).

discipline as it pertains to sexual assault was never delegated to the AMS, it is clear that the University retains the authority to investigate, and in appropriate cases discipline, undergraduate students for incidents of sexual assault.

The SGPS

While no conspicuous parallel to the University's exclusive authority over sexual assault in connection with undergraduate students exists in the bylaw governing the SGPS Judicial Committee, the language of that bylaw does not oust the University's authority over the non-academic discipline of a student for sexual assault.³¹ The University thus also retains the authority to discipline graduate and professional students for incidents of sexual assault.

University Non-Academic Discipline Procedures for Allegations of Sexual Assault

Non-academic discipline, as it pertains to sexual assault, is handled through one of three avenues depending on the nature and severity of the incident and the identity of the accused:

- i. Where the accused is living in residence, the issue will be dealt with by Residence Life management, where necessary, in conjunction with Campus Security;
- ii. Where the accused is a varsity athlete, the issue will be dealt with through the department of Athletics & Recreation's Non-Academic Discipline Judicial Process; and
- iii. Where the accused is a student at Queen's, but neither living in residence nor a varsity athlete, the Provost & Vice-Principal (Academic) can refer the case as one of non-academic discipline to the USAB, as a tribunal of first instance.

Residence Life

Residence Life, with its associated Residence Conduct Board, is responsible for the administration of non-academic discipline for students living in residence, under the oversight of the Senate Residence Committee.³² An allegation of sexual assault is treated by Residence Life as a Level 3 incident and is handled by Residence Life management exclusively.³³ Level 3 incidents do not go to the Residence Conduct Board.³⁴

On an allegation of sexual assault, Residence Life management will conduct a hearing according to the dictates of natural justice and if, on a balance of probabilities, the evidence supports the allegation, management will deliver a proportionate sanction.³⁵ Sanctions range from termination of the accused's Residence Agreement and eviction from residence to localized prohibitions from entering certain residence buildings or locations within a given residence.³⁶ Decisions of the Residence Life management are appealable to the USAB.³⁷

Athletics & Recreation

Following an allegation of sexual assault, the Director of Athletics & Recreation will initiate an investigation into the incident.³⁸ If the evidence is found to support the allegation, the Director will establish a Discipline Panel which will hear both sides of the case in accordance with the principles of natural justice.³⁹ Sanctions that the Discipline Panel may impose range from a requirement that the accused make a written apology to permanent suspension from participation in a University team, club, or programme and termination of athletics-related funding.⁴⁰ Decisions of the Discipline Panel are appealable to an Athletics & Recreation Appeal Panel, and finally to the USAB.⁴¹

³¹ *Bylaws and Policies of the Society of Graduate and Professional Students*, s B.18.

³² *Code of Conduct*, *supra* note 12 at 2.

³³ Residence Life Discipline Policy.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *SARD*, *supra* note 13, s 17(a)(iii).

³⁸ *Athletics & Recreation Non-Academic Discipline Judicial Process (Discipline Policy)* at 5.

³⁹ *Ibid* at 5-6.

⁴⁰ *Ibid* at 8.

⁴¹ *Ibid* at 1.

University Student Appeals Board

Although the predominate function of the USAB is to act as a tribunal of appeal, pursuant to section 17(c) of the *SARD*, the Provost & Vice-Principal (Academic) has the discretion to refer a case of non-academic discipline to the USAB for a hearing and disposition, subject to the condition that the case has not already been heard by another tribunal at the University. In the event of a complaint of sexual assault where the accused is a Queen's student, but neither living in residence nor a varsity athlete, and the nature and severity of the incident call for sanctions above and beyond an NOP and the exercise of emergency powers, the Provost can refer the case to the USAB for a hearing of first instance and disposition. This situation would be very rare (indeed, has not to-date occurred) as the NOP process, alone or in conjunction with, emergency powers and/or court orders has historically proven sufficient to adequately protect the campus community.

PART III: Criminal and Civil Legal History Involving Allegations of Sexual Assault at Queen's

While there has been legal action over the years related to allegations of sexual assault at Queen's, the number of cases that have gone to trial in either criminal or civil court is small.

Criminal-Justice System

Campus Security publishes annual incident statistics on its website dating back to 1998.⁴² The average for all alleged sexual assaults reported to Campus Security for the past sixteen years is less than two per year.⁴³ Each of those was referred to police. Except in 2009, when four incidents were referred to police, over the past five years the number of incidents referred to police as a sexual assault has generally been one per year.⁴⁴

Not all cases referred to police result in a criminal trial, but of those that have gone to trial involving allegations of sexual assault at Queen's, three stand out historically. In 1991, three female students alleged that one male student had non-consensual sex with each of them over a two-year period while all four were students at Queen's. During the trial process, the accused was barred from campus except during a specified period over the winter break when he was allowed to complete his laboratory work under supervision. The accused was found not guilty at trial and that finding was upheld on appeal.

More recently, in 2009 a male student was tried for an alleged sexual assault on a female student in residence. During the trial process, the accused was barred from campus through an NOP. He was allowed to write his exams at an off-campus location under the supervision of a member of Campus Security. The accused was found not guilty at trial.

Lastly, in 2012 it was alleged that a male student sexually assaulted a female student in her residence room after walking her home. The case is before the courts, with a trial date set for May 25, 2015. The accused is subject to a condition on his bail barring him from all contact with the complainant. An NOP barring the accused from all access to Victoria Hall Residence, the Lazy Scholar, and the surrounding areas up to ten metres also remains in effect.

Cases in which Queen's Has Been Sued

The two civil causes of action in which Queen's could face liability in connection with a sexual assault on campus would be defamation and negligence. A claim in defamation would typically be brought by an accused who felt that his or her reputation had been tarnished by an unsubstantiated or exaggerated allegation of sexual assault. Negligence, on the other hand, would typically be brought by a complainant who felt that the University had fallen below the standard of care expected to protect the safety and security of the campus community. In either case, such a lawsuit would be handled by the University's Insurer, CURIE.

In 2000, a letter alleging that a sexual assault had occurred in residence was received from a lawyer acting on behalf of a former student. The matter was investigated internally and no record of the assault could be found with Campus Security, HCDS, or Residence Life. No further correspondence was received from the student's lawyer; no claim was served nor

⁴² Campus Security, *Incident Statistics*, online: Queen's University <<http://www.queensu.ca/security/stats.html>>.

⁴³ Campus Security, *Incident Statistics Archive*, online: Queen's University <<http://www.queensu.ca/security/archive/stats/stats-history.html>>.

⁴⁴ *Ibid.*

settlement negotiated. This is the closest to a claim in negligence relating to sexual assault that the University has received to date.

The University has been named in two defamation suits related to an alleged sexual assault on campus. The first, in 1990, was brought by a candidate for student government, who claimed that statements made about him during the election linking him to an alleged sexual assault were defamatory. The University did not settle and the case never proceeded to trial. The second defamation suit was brought in 1994 by the male student in the 1991 criminal case discussed above. The student claimed that statements made in a student newsletter after the trial linking him to the Montreal Massacre were defamatory. The case was settled out of court by the University's Insurer.

CONCLUSIONS

The University is well positioned to address the phenomenon of sexual assault on campus. Educational awareness programmes are integrated into Orientation events to proactively address sexual assault on campus. Free self-defence training, campus escort services, the emergency phone and beacon system, and educational awareness programmes are active throughout the year. Strong, centralized and wide-reaching support mechanisms are in place to help complainants both navigate the disciplinary and criminal-justice systems and their own path to healing. The University also provides advisory support to accused.

The history of legal action involving sexual assault at the University over the past 25 years is minimal. Negligence claims are founded, in the abstract, on failures to act or inappropriate action. The fact that the University has been faced with no such suit is a metric for its appropriate handling of those incidents.

Lastly internal, non-academic disciplinary procedures for dealing with allegations of sexual assault are clearly defined. The authority to investigate, adjudicate, and impose sanctions in relation to an allegation of sexual assault is held solely by the University.