



The following Motions and Documents were considered by the GFC Campus Law Review Committee at its Thursday, April 23, 2015 meeting:

Agenda Title: **Changes to Section 30.5.2(6) of the Code of Student Behaviour: Appeal of Declining to Proceed with a Complaint**

CARRIED MOTION: THAT the GFC Campus Law Review Committee recommend to the GFC Executive Committee proposed changes to Section 30.5.2(6) of the Code of Student Behaviour: Appeal of Declining to Proceed with a Complaint, as submitted by the Office of Student Judicial Affairs (OSJA), and as contained within Attachment 1, as amended, to be effective upon final approval.

Final Recommended Amended Item: 4

OUTLINE OF ISSUE

Agenda Title: **Changes to Section 30.5.2(6) of the Code of Student Behaviour: Appeal of Declining to Proceed with a Complaint**

Motion: THAT the GFC Campus Law Review Committee recommend to the GFC Executive Committee proposed changes to Section 30.5.2(6) of the Code of Student Behaviour: Appeal of Declining to Proceed with a Complaint, as submitted by the Office of Student Judicial Affairs (OSJA), and as contained within Attachment 1, as amended, to be effective upon final approval.

Item

Action Requested	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Recommendation <input type="checkbox"/> Discussion/Advice <input type="checkbox"/> Information
Proposed by	Deborah Eerkes, Director, Office of Student Judicial Affairs (OSJA)
Presenter	Deborah Eerkes, Director, OSJA
Subject	Appeal of a decision not to proceed with a complaint.

Details

Responsibility	Provost and Vice-President (Academic)
The Purpose of the Proposal is (please be specific)	To simplify and make more efficient the current appeal of a decision not to proceed with a complaint under the Code of Student Behaviour (COSB) while maintaining the required fairness of the process.
The Impact of the Proposal is	A change to section 30.5.2(6) of the Code of Student Behaviour, saving both time and resources for the institution without compromising fairness.
Replaces/Revises (eg, policies, resolutions)	Section 30.5.2(6) of the Code of Student Behaviour
Timeline/Implementation Date	Upon final approval
Estimated Cost	None
Sources of Funding	N/A
Notes	N/A

Alignment/Compliance

Alignment with Guiding Documents	<i>Dare to Discover, Dare to Deliver</i>
Compliance with Legislation, Policy and/or Procedure Relevant to the Proposal (please <u>quote</u> legislation and include identifying section numbers)	<ol style="list-style-type: none"> Post Secondary Learning Act (PSLA): The <i>Post-Secondary Learning Act (PSLA)</i> gives GFC responsibility, subject to the authority of the Board of Governors, over academic affairs (Section 26(1)) and over academic affairs (Section 31), including authority concerning student discipline. GFC Campus Law Review Committee (CLRC) Terms of Reference–Section 1 (Authority): “GFC has thus established a Campus Law Review Committee (GFC CLRC) [...]” GFC Campus Law Review Committee (CLRC) Terms of Reference “Section 3 – Mandate of the Committee (A and B) states that GFC CLRC is “[t]o review, from time to time, the Code of Student Behaviour and student discipline procedures.”, and “[t]o review, from time to time, the Code of Applicant Behaviour.”

	3. Amendments to the Code of Applicant Behaviour deemed substantive by CLRC are forwarded to the GFC Executive Committee, which will decide whether or not it can act on behalf of GFC. (See Amendment of the Code of Applicant Behaviour, Section 11.8.9 of the GFC Policy Manual.)”
--	---

Routing (Include meeting dates)

Consultative Route (parties who have seen the proposal and in what capacity)	University of Alberta Protective Services (UAPS) Residence Services Elaine Geddes, Associate Dean, Alberta School of Business University Governance Student OmbudService General Counsel Robin Everall, Interim Vice-Provost and Dean of Students Vice Provosts Committee
Approval Route (Governance) (including meeting dates)	GFC Campus Law Review Committee (CLRC): For discussion (November 27, 2014) GFC Campus Law Review Committee (CLRC): For recommendation to the GFC Executive Committee (April 23, 2015) GFC Executive Committee: For final approval
Final Approver	GFC Executive Committee

Attachments:

- Attachment 1 (pages 1 – 3): Declining to Proceed Proposal

Prepared by: Deborah Eerkes, Director, Office of Student Judicial Affairs, deerkes@ualberta.ca

Declining to Proceed with a Complaint under the COSB – proposal

The current process for a complainant to appeal a decision not to proceed with an investigation under the Code of Student Behaviour is resource-intensive and inefficient. A working group (comprised of the OSJA, General Counsel, Residence Services, an Associate Dean, the Student OmbudService and the Appeals and Compliance Officer) was struck to review this section of the Code and identified number of issues: the inclusion of Unit Director is redundant, a process to appeal a Dean's decision not to proceed should stay within the Faculty, and constituting a three-person panel is time-consuming and unnecessary. In addition, under the current model, if the three-person panel were to find that the matter should proceed, the Discipline Officer does not have the authority to act.

Current	Proposed	Rationale
<p>30.5 The Discipline Process</p> <p>30.5.1 The General Rules of Discipline and Appeal</p> <p>30.5.1(1) There are seven main disciplinary and appeal streams:</p> <p>30.5.1(1) a A complaint is initiated by a member of the University Community under 30.5.2. The Unit Director, Dean or Director of UAPS must first determine whether pursuing the charges is warranted (a decision not to proceed may be reviewed); if so, the investigation is undertaken and/or a decision is made by the Unit Director, Director of UAPS, Dean or Discipline Officer following the steps in 30.5.5, 30.5.6(3), 30.5.7 or 30.5.8. The decision of the Unit Director, Dean or Discipline Officer may be appealed under 30.6 to the UAB whose review decision is final and binding.</p>	<p>30.5 The Discipline Process</p> <p>30.5.1 The General Rules of Discipline and Appeal</p> <p>30.5.1(1) There are seven main disciplinary and appeal streams:</p> <p>30.5.1(1) a A complaint is initiated by a member of the University Community under 30.5.2. The Unit Director, Dean or Director of UAPS must first determine whether pursuing the charges is warranted; if so, the investigation is undertaken and/or a decision is made by the Unit Director, Director of UAPS, Dean or Discipline Officer following the steps in 30.5.5, 30.5.6(3), 30.5.7 or 30.5.8. The decision of the Unit Director, Dean or Discipline Officer may be appealed under 30.6 to the UAB whose review decision is final and binding.</p>	<ul style="list-style-type: none"> - Unit Directors have authority only to address complaints of "Unauthorized Use" in their own units. Acceptable use is determined by the Director, so a review of that decision is redundant. - Academic misconduct should be initially handled within a Faculty. Deans (or designates) need to be able to make the determination as to whether an offence has been committed. If a complainant is dissatisfied with the decision of a Dean's designate not to proceed, recourse should stay within the Faculty.
<p>30.5.2 Procedures for Any Member of the University Community who believes that a Student has committed a Violation of the Code of Student</p>	<p>30.5.2 Procedures for Any Member of the University Community who believes that a Student has committed a Violation of the Code of Student</p>	

Current	Proposed	Rationale
<p>Behaviour</p> <p>...</p> <p>30.5.2(6) The Director of UAPS and/or Dean may decline to proceed with a complaint under the following circumstances:</p> <p>30.5.2(6) a Where the complaint is primarily concerned with regulations of another official University organization, and the Director of UAPS and/or Dean believes that the complaint should be dealt with in accordance with procedures established by that organization;</p> <p>30.5.2(6) b Where the Director of UAPS and/or Dean believes that no University rule has been broken;</p> <p>30.5.2(6) c Where the Director of UAPS and/or Dean believes the complaint to be scandalous, frivolous or vexatious; or</p> <p>30.5.2(6) d Where one year or more has elapsed since the incident.</p>	<p>Behaviour</p> <p>...</p> <p>30.5.2(6) The Director of UAPS and/or Dean may decline to proceed with <u>and/or investigate</u> a complaint under the following circumstances:</p> <p>30.5.2(6) a Where the complaint is primarily concerned with regulations of another official University organization, and the Director of UAPS and/or Dean believes that the complaint should be dealt with in accordance with procedures established by that organization;</p> <p>30.5.2(6) b Where the Director of UAPS and/or Dean believes that no University rule has been broken;</p> <p>30.5.2(6) c Where the Director of UAPS and/or Dean believes the complaint to be scandalous, frivolous or vexatious; or</p> <p>30.5.2(6) d Where one year or more has elapsed since the incident.</p>	<p>Clarification</p>
<p>30.5.2(7) If the Director of UAPS and/or Dean has declined to proceed with a complaint, the Complainant must be notified in writing and the reasons given.</p>	<p>30.5.2(7) a <u>If the Dean has declined to proceed with and/or investigate a complaint then no further proceedings shall be taken respecting the complaint under this Code.</u></p> <p>30.5.2(7) b If the Director of UAPS has declined to proceed with <u>and/or investigate</u> a complaint, the Complainant must be</p>	<p>- Decision of a Dean not to proceed should not be subject to appeal outside of his/her Faculty.</p> <p>- Requirement for written reasons in every case in which charges are not being pursued is both onerous and unnecessary. Most</p>

Current	Proposed	Rationale
	<p>notified. <u>Written reasons will be provided on request. The decision shall include information regarding the Complainant's rights to appeal, the appeal deadlines, the appeal procedures, where to get access to the Code and where on-campus assistance is available.</u></p>	<p>complainants do not make reports for the sole purpose of laying Code charges.</p> <p>- Moved the requirements for information in the decision from the section below to here.</p>
<p>30.5.2(8) The Complainant may appeal a decision of the Dean and/or Director of UAPS not to proceed by delivery of a written letter to the Appeals Coordinator within 15 working days of the deemed receipt of the decision. The decision shall include information regarding the Complainant's rights to appeal, the appeal deadlines, the appeal procedures, where to get access to the Code and where on-campus assistance is available. The Office of the Provost and Vice-President (Academic) shall, in consultation with the Appeals Coordinator, authorize a three-person panel to review the Dean and/or UAPS Director's decision. None of the members of this panel shall be members of the UAB. At least one member of the three-person panel shall be a Student appointed by the Associate Provost and Dean of Students. (CLRC 30 MAY 2002)</p>	<p>30.5.2(8) The Complainant may appeal a decision of the Director of UAPS not to proceed <u>with and/or investigate the complaint</u> by delivery of a written letter to the <u>Discipline Officer</u> within 15 working days of the deemed receipt of the decision.</p>	<p>- three person panel difficult to convene</p> <p>- Appeals Coordinator must work with Provost's Office and Dean of Students' Office to appoint members – onerous and administratively heavy</p>
<p>30.5.2(8) a If the panel decides that the decision of the Director of UAPS and/or Dean was appropriate then no further proceedings shall be taken respecting the complaint under this Code.</p>	<p>30.5.2(8) a If the <u>Discipline Officer</u> decides that the decision of the Director of UAPS <u>not to proceed with and/or investigate a complaint</u> was appropriate, <u>a written decision with reasons will be provided and no further proceedings shall be</u></p>	<p>- Not subject to further UAB appeal</p>

Current	Proposed	Rationale
	taken respecting the complaint under this Code.	
<p>30.5.2(8) b If the panel decides that the decision of the Director of UAPS and/or Dean was not appropriate, the panel shall direct the Discipline Officer to proceed with the complaint in accordance with 30.5.6 or 30.5.7.</p>	<p>30.5.2(8) b If the <u>Discipline Officer</u> decides that the decision of the Director of UAPS <u>not to proceed with and/or investigate a complaint was inappropriate,</u> the Discipline Officer will <u>conduct any necessary investigation and determine, on a balance of probabilities, whether or not an offence has been committed and what, if any, sanctions will be imposed.</u></p>	
<p>30.5.2(8) c The Appeals Coordinator will forward the panel's decision to the Discipline Officer and the Complainant. The decision of the panel is final and binding.</p>	<p>30.5.2(8) c <u>The decision of the Discipline Officer may be appealed to the UAB under 30.6 by the Student who was charged and/or the Director of UAPS. The finding that an offence has been committed, the sanction imposed, or both may form the basis of an appeal.</u></p>	