



**SUBJECT** NEW POLICY #131 - SEXUAL ASSAULT

**MEETING DATE** JUNE 14, 2016

Forwarded to the Board of Governors on the Recommendation of the President

**APPROVED FOR  
SUBMISSION**

Martha C. Piper, Interim President and Vice-Chancellor

**DECISION  
REQUESTED** For Information

**Report Date** May 21, 2016

**Presented By** Hubert Lai, Q.C., University Counsel  
Louise Cowin, Vice President, Students  
Lisa Castle, Vice President, Human Resources

**EXECUTIVE SUMMARY**

The proposed policy is intended to articulate the commitments and principles the University will adhere to and the expectations the University has for the members of its community with regard to sexual assault, including its commitment to supporting those who have been sexually assaulted. The proposed policy is also intended to create a central source of information for members of the UBC community regarding the University resources and options available to them.

**INSTITUTIONAL STRATEGIC PRIORITIES SUPPORTED**

- Learning       Research       Innovation       Engagement       International  
(Internal / External)
- or  Operational

**DESCRIPTION &  
RATIONALE**

In the wake of sexual assault allegations by students in 2015, the President directed that a sexual assault policy be developed.

The Policy Development Committee conducted an extensive survey and review of the sexual assault policies and protocols instituted at other universities and colleges across Canada and the US. The policy being proposed has similar content to the policies in place at other Canadian universities.

The Policy Development Committee also consulted with key stakeholders including the AMS Sexual Assault Support Centre, Student Development and Services, and the Equity & Inclusion Office, and considered the Butler Review (commissioned by the President to review UBC’s handling of the aforementioned sexual assault allegations), and the Graduate Student Society’s Sexual Assault Policy. In addition, an extensive review of the literature on the topic of sexual assault at educational institutions was conducted.

The University Sexual Assault Panel, appointed by the President and asked to gather information about sexual assault at UBC and other universities and to provide advice to UBC regarding the features of an ideal response by UBC to the problem of sexual assaults involving members of the UBC community and what would be required for members of the UBC community to have confidence in UBC's institutional accountability on the issue of sexual assault, was unable to complete its report prior to the submission of the policy but did provide comments on a draft of the policy. For the most part, the Panel's comments were incorporated into the proposed policy. Any comments that the Policy Development Committee were unable to address in time will be addressed during the policy consultation period.

The proposed policy applies to all members of the UBC community, meaning that members of the UBC community have access to all of the rights, resources and processes set out in the policy.

The proposed policy does the following:

- a. defines the terms "sexual assault" and "consent";
- b. sets out the commitments and principles the University will adhere to with regard to sexual assault;
- c. defines the terms "disclosure" and "report", and clearly sets out the implications and effect of taking each of these separate steps;
- d. sets out information regarding the support services, including accommodations, available to those who have been sexually assaulted;
- d. sets out the reporting options available to those who have been sexually assaulted, if they wish to initiate a university process that could result in disciplinary action being taken against the member of the UBC community alleged to have committed the sexual assault;
- e. sets out the University's commitment to its members' confidentiality and privacy, and the circumstances under which the University may be legally obligated to disclose personal information; and
- f. sets out the related University policies and processes, to clarify and reduce confusion where there may appear to be overlap in those policies and processes.

Learning, Research,  
Financial,  
Sustainability &  
Reputational

The proposed policy provides a clear articulation of the commitments and principles the University will adhere to and the expectations the University has for its members with regard to sexual assault, which will assure all members of the UBC community that the University takes seriously its responsibility to ensure their safety and security. The proposed policy also creates a central source of information for members of the UBC community regarding the University resources and options available to them. This ensures that every member of the UBC community has swift access to the information they need if they have been sexually assaulted, or if someone has disclosed a sexual assault to them. Having this information in one central location will reduce confusion and will improve the University's ability to respond to disclosures or reports of sexual assault in a timely manner.

**CONSULTATION** At the request of the President, the Office of the University Counsel constituted a Policy Development Committee to consider and advise on the proposed new policy. The Committee is comprised of the following members:

Relevant Units,  
Internal & External  
Constituencies

Kimberley Beck, Legal Counsel (Co-Chair)

Sara-Jane Finlay, AVP Equity and Inclusion (Co-Chair)

Susan Frohlick (Professor, Anthropology and Gender and Women's Studies, UBCO)

Isabel Grant (Professor, Allard School of Law, UBCV)

Daniel Justice (Professor, English, and Chair First Nations and Indigenous Studies, UBCV)

Shannon Dunn (Director, Business Operations, UBCO)

Linda McKnight (Director, HR Advisory Services, UBCV)

Patricia Mirwaldt (Director, Health Services, UBCV)

Janice Robinson (Director, Residence Life, UBCV)

Kimberly Rutledge (UBCSUO, VP External)

Jenna Omassi (AMS, VP Academic)

Tobias Friedel (GSS, President)

The proposed policy is unanimously recommended by the Policy Development Committee.

Subject to any input from the Board of Governors, the proposed policy will be published by the Office of the University with a call for comments from the UBC community. The comment period will remain open through the summer and into the autumn to provide abundant opportunity for the community to provide its input. The opportunity to comment will be publicized through e-mail broadcasts to the HEADS-UP mailing list, which includes student leadership, union leadership, and UBC's academic and administrative leadership.

The Policy Development Committee will consider the input received from this community consultation process and amend the policy proposal as appropriate. It anticipates that it will be in a position to submit a final proposal to the Board of Governors for approval in January of 2017.

Shortly after the Policy Development Committee submitted the attached policy proposal, the provincial government passed the *Sexual Violence and Sexual Misconduct Policy Act*, which will come into effect in one year. This should not affect the foregoing timetable. The Policy Development Committee can consider the new statute at the same time that it is considering the input received from the community consultation process. The final proposal that will be presented to the Board in January will incorporate all amendments that the Policy Development Committee considers appropriate in light of both the new statute and the community's input.

#### **Additional Materials**

A copy of the proposed policy is attached.

 <b>The University of British Columbia Board of Governors</b>	<b>Policy No.:</b>  <b>131</b>	<b>Approval Date:</b>
	<b>Responsible Executive:</b> Vice-President, Students Vice-President, Human Resources	
<b>Title:</b>  <p style="text-align: center;"><b>Sexual Assault</b></p>		
<b>Background &amp; Purposes:</b>  <p>The purpose of this policy is to articulate UBC’s commitment to the safety and security of all its members, recognizing that this is essential to the functioning of the institution. UBC has a responsibility to maintain a respectful environment where its members can study, work and live free from concerns of sexual assault. It takes seriously its duty to support members of the UBC community who experience sexual assault, to create and make available programs and resources to educate its community on the prevention of sexual assault, and to provide a policy which is a central source of information for its members regarding the resources and options available to those affected by sexual assault.</p>		

## 1. Definitions

- 1.1 “**Sexual Assault**” means any form of sexual contact without a person’s consent, including the threat of sexual contact without Consent. Sexual Assault can range from unwanted sexual touching to forced sexual intercourse. It can involve situations where sexual activity is obtained by someone abusing a position of trust, power, or authority.
- 1.2 “**Consent**” means the voluntary agreement to engage in the sexual activity in question and to continue to engage in the activity. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct and can be revoked at any point. Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent only applies to each specific instance of sexual activity. No consent is obtained where a person is incapable of consenting, for example by intoxication, or where a person is induced to engage in the activity by someone abusing a position of trust, power or authority.
- 1.3 “**Members of the UBC Community**” means UBC students (as defined in the *University Act*), faculty, and staff.
- 1.4 “**Disclose**” or “**Disclosure**” means the sharing of information regarding an incident of Sexual Assault with a Member of the UBC Community.
- 1.5 “**Report**” or “**Reporting**” means providing a statement of allegations about a Sexual Assault to UBC with the intention of initiating one of the processes set out in section 4.2, which could result in disciplinary action being taken against the Member of the UBC Community alleged to have committed the Sexual Assault.

## **2. Commitments and General Principles**

- 2.1 UBC is committed to providing and maintaining a positive learning, working and living environment where Sexual Assault will not be tolerated, and where Sexual Assault is treated with the seriousness it deserves.
- 2.2 This Policy applies to all Members of the UBC Community.
- 2.3 UBC recognizes that individuals of all gender identities, gender expressions, and sexual orientations may experience Sexual Assault. UBC is committed to ensuring that this Policy and all UBC processes addressing Sexual Assault respect all Members of the UBC Community regardless of gender identity, gender expression, or sexual orientation.
- 2.4 UBC further recognizes that Sexual Assault is overwhelmingly committed against women, particularly younger women and women who experience multiple intersections of disadvantage such as, but not limited to, Indigenous women, women with disabilities, and racialized women.
- 2.5 Additionally, UBC recognizes that those whose gender identity or gender expression does not conform to accepted gender norms, such as gender-variant, Trans or Two-Spirited people are also at heightened risk of Sexual Assault.
- 2.6 UBC is committed to providing comprehensive and inclusive Sexual Assault prevention initiatives to Members of the UBC Community, including education and awareness programs, safety measures and campus communications.
- 2.7 UBC is committed to working to reduce barriers to Disclosing and Reporting.
- 2.8 UBC is committed to providing support to Members of the UBC Community who Disclose or Report a Sexual Assault to UBC.
- 2.9 UBC is committed to supporting Members of the UBC Community who receive a Disclosure, and to training Members of the UBC Community who are likely to receive Disclosures to ensure that those who Disclose are treated with compassion, dignity and respect in a non-judgmental and sympathetic manner.
- 2.10 UBC is committed to providing support to Members of the UBC Community who have had allegations of Sexual Assault made against them.
- 2.11 UBC is committed to ensuring the personal agency of those who have been Sexually Assaulted by respecting their right to make their own decisions. Personal agency means that those who Disclose or Report will be the decision-makers in situations which pertain to themselves, including whether and to whom to Disclose, whether or not to pursue criminal action or a Report under one of the UBC processes set out in section 4.2, and whether to access support services, including accommodations.
- 2.12 UBC is committed to addressing allegations of Sexual Assault made against Members of the UBC Community and, if found to have committed Sexual Assault, imposing discipline against those Members.
- 2.13 UBC is committed to fulfilling its duty to be fair when carrying out a process that addresses allegations of Sexual Assault against Members of the UBC Community. As part of this duty,

UBC must test and weigh the evidence provided by all parties involved, in order to make its findings based on a balance of probabilities.

2.14 UBC will not tolerate any retaliation, directly or indirectly, against anyone who Discloses or Reports a Sexual Assault, or who participates in a UBC process that addresses allegations of Sexual Assault against a Member of the UBC Community.

2.15 UBC is committed to fulfilling its duty to respect the privacy of Members of the UBC Community, recognizing that unauthorized disclosures of personal information may cause substantial harm to those who have Disclosed or Reported a Sexual Assault, or those who participate in a UBC process that addresses allegations of Sexual Assault.

### **3. Disclosure**

3.1 A person may choose to Disclose a Sexual Assault without making a Report. Consequently, Disclosure does not result in a Report being made, and does not initiate a process to address the Sexual Assault. The decision to Disclose and the decision to Report are separate decisions, and UBC will respect each person's decisions.

3.2 UBC will make appropriate support services, including accommodations, available to any Member of the UBC Community on the basis of a Disclosure. A Report does not need to be made in order to access these services, and the person Disclosing the Sexual Assault does not need to prove that the Sexual Assault occurred in order to access these services.

3.3 UBC recognizes that first disclosures of Sexual Assault are most often made to someone the person already knows. As such, Disclosures can be made to any Member of the UBC Community. Any Members of the UBC Community who receive a Disclosure can contact the Equity and Inclusion Office, or any Member of the UBC Community trained to receive Disclosures, for support and information.

3.4 Certain Members of the UBC Community have been trained to receive Disclosures of Sexual Assault, including the Equity and Inclusion Office, Campus Security, Residence Life Managers, and Student Conduct Managers. These Members of the UBC Community can provide information and support, including assistance with accessing and coordinating support services, information about the Reporting options, and assistance with the Reporting process if the person chooses to Report.

3.5 On the basis of a Disclosure, UBC can provide appropriate support services and accommodations, which may include any of the following: information about and referrals to UBC Counselling Services, UBC Student Health Service, and the UBC Employee and Family Assistance Program; safety planning; student residence re-location; class schedule changes; academic accommodations; alternative work or activity scheduling; and safety measures.

### **4. Reporting Options**

4.1 UBC has the jurisdiction to address Reports made against a Member of the UBC Community, and can take action to the extent of its relationship to that Member. UBC does not have the jurisdiction to address allegations made against a person who is not a Member of the UBC Community, however, in certain circumstances, UBC may be able to restrict that person's access to campus under Policy #14 - Response to At-Risk Behaviour.

- 4.2 UBC will address Reports made against a Member of the UBC Community. If a person decides that they want UBC to address an allegation of Sexual Assault made against a Member of the UBC Community, the following reporting options are available to them depending on the status of the person against whom they are making the allegation:
- 4.2.1 If the person against whom the allegation is being made is a student, the Sexual Assault is Reported under the process set out in the Student Code of Conduct;
  - 4.2.2 If the person against whom the allegation is being made is a faculty or staff member, the Sexual Assault is Reported to that faculty or staff member's Administrative Head of Unit for investigation. If the allegation is being made against that Administrative Head of Unit, then the allegation is Reported to the person to whom they directly report.
- 4.3 For the purposes of section 4.2.2, "**Administrative Head of Unit**" means any of the following: Director of the administrative unit; Head of an academic department; Director of a centre, institute or school; Principal of a college; Dean; Associate Vice President; University Librarian; Registrar; Vice President; Deputy Vice Chancellor & Principal; or President.
- 4.4 In all cases, those Reporting under the processes identified above can obtain information and assistance, including assistance with identifying the appropriate Administrative Head of Unit under section 4.2.2, from Members of the UBC Community who have been trained to receive Disclosures of Sexual Assault, including the Equity and Inclusion Office, Campus Security, Residence Life Managers, and Student Conduct Managers.
- 4.5 If a person encounters At-Risk Behaviour, which includes behaviour exhibited by individuals who are not Members of the UBC Community, that person may report the behaviour in accordance with the Procedures set out in Policy #14. The definition of At-Risk Behaviour includes behaviour that leads to a reasonable belief that the safety or security of any person on UBC premises is threatened.
- 4.6 The UBC processes available to address allegations of Sexual Assault may have jurisdictional limitations, which means that UBC may not be able to address all allegations. The particular UBC process being contemplated should be consulted for more information on these limitations.
- 4.7 A person is not precluded from reporting to local law enforcement if they have Reported the Sexual Assault to UBC, nor are they precluded from Reporting to UBC if they have reported the Sexual Assault to local law enforcement. They may Report to one or the other, to neither, or to both.
- 4.8 Allegations of Sexual Assault made by someone other than the person who has been Sexually Assaulted can also be reported to local law enforcement, to UBC under the appropriate process identified above, or both. However, UBC's ability to address the allegation will be dependent on whether the evidence required to make findings of fact regarding the assault can be obtained. In many cases of Sexual Assault, only the person who has been Sexually Assaulted and the one accused of the assault can provide this evidence. In such cases, if the person who has been Sexually Assaulted does not wish to participate in UBC's process, then UBC may be unable to act.

## 5. Confidentiality and Privacy

- 5.1 UBC faculty or staff must keep confidential all information provided in a Disclosure or Report (“**Confidential Information**”), except as set out below in sections 5.2, 5.3 and 5.4. Unauthorized release of Confidential Information may violate the *Freedom of Information and Protection of Privacy Act*, may deter others from coming forward if they have been Sexually Assaulted, and may also prevent UBC from conducting a fair process if a Report is made.
- 5.2 UBC will share Confidential Information with its faculty and staff if the information is necessary for the performance of their duties.
- 5.3 UBC will share Confidential Information in order to ensure that the Reporting processes listed in section 4.2 are fairly conducted, in accordance with the following principles:
  - 5.3.1 the respondent has the right to know the identity of the person who made the Report and the pertinent details of the allegations made against them;
  - 5.3.2 the person who alleges that they were Sexually Assaulted has the right to know the outcome of the investigation, but not the details of any disciplinary actions that may have been taken against the respondent unless sharing that information is necessary for the protection of their health or safety; and
  - 5.3.3 other persons do not have the right to know any Confidential Information except to the extent required to conduct the investigation.
- 5.4 UBC Counsel may also authorize the sharing of Confidential Information in any of the following circumstances:
  - 5.4.1 the person the information is about has consented in writing;
  - 5.4.2 sharing the information is necessary for the protection of health or safety; and
  - 5.4.3 sharing the information is otherwise authorized or required by law.

## 6. Related UBC Policies and Processes

- 6.1 Policy #3 – Discrimination and Harassment addresses discrimination and harassment on grounds protected by the BC *Human Rights Code*. The protected grounds include the ground of “sex”, which has been interpreted to include sexual harassment and Sexual Assault. However, only allegations that consist solely of sexual harassment will be addressed under Policy #3. Allegations of Sexual Assault, or allegations that include allegations of both sexual harassment and Sexual Assault, will be dealt with under the appropriate UBC process identified in this Policy, and not under Policy #3.
- 6.2 The Student Code of Conduct addresses the general standard of conduct expected of students, provides examples of conduct that may be subject to disciplinary action by UBC, provides examples of disciplinary measures that may be imposed, and sets out the process and procedures that UBC will follow when an allegation is made under the Code. Prohibited conduct under the Code includes Misconduct Against Persons, which includes Sexual Assault.

- 6.3 UBC Administrative Heads of Unit address allegations of Sexual Assault made against a faculty or staff member in their faculty or administrative unit. Human Resources staff provide support on how to conduct investigations utilizing procedural fair process and, where appropriate, facilitate the use of third party investigators.
- 6.4 Policy #14 - Response to At-Risk Behaviour addresses behaviour that threatens personal safety or property, or disrupts lawful or legitimate activities, including the behaviour of those who are not Members of the UBC Community. Under that Policy, restrictions can be placed on a person's ability to enter upon or to carry out activities upon UBC premises, or their ability to use UBC facilities.
- 6.5 The UBC Statement on Respectful Environment for Students, Faculty and Staff addresses concerns about activities harmful to a respectful environment, including bullying and harassment. However, allegations of Sexual Assault will be dealt with under the appropriate UBC process identified in this Policy, and not under the UBC Statement on Respectful Environment for Students, Faculty and Staff.
- 6.6 Under the terms of their particular contracts with UBC, Members of the UBC Community living in UBC Student Housing and UBC Varsity Athletes may be subject to further action if a finding of Sexual Assault is made against them under a UBC process.