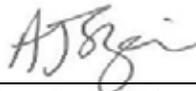


SUBJECT	POLICY 3 (DISCRIMINATION AND HARASSMENT)
MEETING DATE	APRIL 18, 2019

Forwarded on the Recommendation of the President

APPROVED FOR SUBMISSION



for Santa J. Ono, President and Vice-Chancellor

DECISION REQUESTED	IT IS HEREBY REQUESTED that <i>approval be granted to amend Policy 3 (Discrimination and Harassment) as set out in Attachment 2.</i>
Report Date	March 12, 2019

Presented By Hubert Lai, Q.C., University Counsel
 Andrew Szeri, Provost and Vice-President Academic (UBC Vancouver)
 Deborah Buszard, Deputy Vice-Chancellor and Principal (UBC Okanagan)

<i>If this item was previously presented to the Board, please provide a brief description of any major changes since that time.</i>	<p>Policy #3 was approved in January 1995 and last amended in December 2016.</p> <p>The proposed amendments to Policy #3 were presented to the Board of Governors for information and input at its meeting in December 2018, and then published for community consultation.</p>
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EXECUTIVE SUMMARY

The proposed amendments are intended to bring the policy into alignment with current practices relating to addressing matters of discrimination. This includes changing the names of certain positions and offices, as well as clarifying the responsibilities of the officials involved in addressing concerns relating to discrimination at both the informal, pre-complaint stage and formal complaint stage. Certain amendments are also proposed to bring consistency with other policies.

Attachments

1. A clean copy of proposed Policy #3.
2. A blacklined copy of Policy #3 showing the differences between the proposed version presented to the Board for information on December 4, 2018 and the version now being presented for approval.
3. A summary the feedback received from the public consultation period, along with a description of the Policy Review Committee’s response (“**Community Consultation Summary**”).

A copy of the current policy is available at <https://universitycounsel.ubc.ca/policies/policy3.pdf>.

STRATEGIC CORE AREAS SUPPORTED

- People and Places** **Research Excellence** **Transformative Learning** **Local / Global Engagement**

DESCRIPTION & RATIONALE Policy #3, Discrimination and Harassment, addresses the process by which concerns relating to matters of discrimination on the grounds protected by the BC *Human Rights Code* (“Code”) are addressed by the University. Policy #3 was created in January 1995. Revisions to the Policy were made in 2011 to reflect the practical experience of the (then) Equity Office and to simplify the process, with additional revisions made in 2013 to reflect organizational changes.

Revisions were last made in 2016 to include “gender identity or expression” to reflect amendments to the Code that explicitly included those grounds among the protected grounds covered by the Code.

The proposed amendments will bring the Policy into alignment with the University’s current practices for addressing discrimination, and update the privacy and confidentiality language to create consistency with other policies. The roles of those involved in receiving and responding to discrimination concerns are more clearly identified and clarified, particularly the key role of the Equity & Inclusion Office in addressing discrimination generally and assisting administrative heads of unit as needed, and the Director of Investigations with respect to receiving and managing formal complaints. Responsibility for investigation and resolution of formal complaints is centralized under the auspices of the Director of Investigations to ensure complaints are investigated in a fair, consistent and appropriate manner. The amendments also clarify the scope of the Policy as relating to discrimination under the *Human Rights Code*.

BENEFITS Learning, Research, Financial, Sustainability & Reputational	The amendments update the Policy and bring it into alignment with the University’s current practices for addressing discrimination. The amendments bring more clarity as to the roles of those persons who receive and respond to concerns as to discrimination, including the handling of formal complaints. The amendments also clarify the scope of the Policy.																												
SCHEDULE Implementation Timeline	Upon approval by the Board of Governors, the proposed Policy, including its Procedures, will take immediate effect and the current Policy and its Procedures will be repealed.																												
CONSULTATION Relevant Units, Internal & External Constituencies	<p>The University Counsel constituted a Policy Review Committee comprised of the following members to consider and advise on proposed amendments to the Policy:</p> <table border="0"> <tr> <td data-bbox="391 1199 651 1230">Paul Hancock (Chair)</td> <td data-bbox="777 1199 1240 1230">Legal Counsel, Information and Privacy</td> </tr> <tr> <td data-bbox="391 1251 711 1283">Mark Hulstein (Secretary)</td> <td data-bbox="777 1251 943 1283">Legal Counsel</td> </tr> <tr> <td data-bbox="391 1304 570 1335">Gillian Creese</td> <td data-bbox="777 1304 1352 1335">Associate Dean, Faculty & Equity, Faculty of Arts</td> </tr> <tr> <td data-bbox="391 1356 597 1388">Sara-Jane Finlay</td> <td data-bbox="777 1356 1377 1388">Associate Vice-President, Equity & Inclusion Office</td> </tr> <tr> <td data-bbox="391 1409 532 1440">Lindi Frost</td> <td data-bbox="777 1409 1484 1440">Director, Human Resources – Employee & Labour Relations</td> </tr> <tr> <td data-bbox="391 1461 613 1493">Kennedy Gagnon</td> <td data-bbox="777 1461 1230 1493">Vice-President University Affairs, AMS</td> </tr> <tr> <td data-bbox="391 1514 621 1545">Gillian Henderson</td> <td data-bbox="777 1514 1308 1545">Director, Human Resources – UBC Okanagan</td> </tr> <tr> <td data-bbox="391 1566 557 1598">Max Holmes</td> <td data-bbox="777 1566 1406 1598">Vice-President Academic and University Affairs, AMS</td> </tr> <tr> <td data-bbox="391 1619 646 1650">Allison Matacheskie</td> <td data-bbox="777 1619 1092 1650">Director, Faculty Relations</td> </tr> <tr> <td data-bbox="391 1671 613 1703">Myrna McCallum</td> <td data-bbox="777 1671 1495 1766">Director of Investigations, Independent Investigations Office (succeeded in February 2019 by Shelley Ball, Acting Co-Director of Investigations, Independent Investigations Office)</td> </tr> <tr> <td data-bbox="391 1787 532 1818">Janet Mee</td> <td data-bbox="777 1787 1495 1818">Director, Access & Diversity (now the Centre for Accessibility)</td> </tr> <tr> <td data-bbox="391 1839 581 1871">Shirley Nakata</td> <td data-bbox="777 1839 1170 1871">UBC Ombudsperson for Students</td> </tr> <tr> <td data-bbox="391 1892 573 1923">Roshni Narain</td> <td data-bbox="777 1892 1344 1923">Human Rights Advisor, Equity & Inclusion Office</td> </tr> <tr> <td data-bbox="391 1944 573 1976">Bryce Traister</td> <td data-bbox="777 1944 1495 1976">Dean, Faculty of Creative and Critical Studies, UBC Okanagan</td> </tr> </table>	Paul Hancock (Chair)	Legal Counsel, Information and Privacy	Mark Hulstein (Secretary)	Legal Counsel	Gillian Creese	Associate Dean, Faculty & Equity, Faculty of Arts	Sara-Jane Finlay	Associate Vice-President, Equity & Inclusion Office	Lindi Frost	Director, Human Resources – Employee & Labour Relations	Kennedy Gagnon	Vice-President University Affairs, AMS	Gillian Henderson	Director, Human Resources – UBC Okanagan	Max Holmes	Vice-President Academic and University Affairs, AMS	Allison Matacheskie	Director, Faculty Relations	Myrna McCallum	Director of Investigations, Independent Investigations Office (succeeded in February 2019 by Shelley Ball, Acting Co-Director of Investigations, Independent Investigations Office)	Janet Mee	Director, Access & Diversity (now the Centre for Accessibility)	Shirley Nakata	UBC Ombudsperson for Students	Roshni Narain	Human Rights Advisor, Equity & Inclusion Office	Bryce Traister	Dean, Faculty of Creative and Critical Studies, UBC Okanagan
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The Policy Review Committee met six times in September and October 2018 and developed the proposed amendments to Policy #3. The proposed amendments were presented to the Board of Governors at its meeting on December 4, 2018 for information and input. The proposal was then published for community consultation for a period of eight weeks (December 7, 2018 – February 1, 2019).

The Committee received comments from the University community, primarily from the UBC Faculty Association and the Alma Mater Society. The Committee held three further meetings to consider the comments received. The attached Community Consultation Summary sets forth the comments received, the Committee's unanimous response, and the further changes it is recommending to the proposed Policy.

The following is a summary of the notable revisions the Committee has made to address the comments it has received from the University community:

- i.* A requirement for the Equity & Inclusion Office to annually report on consultations and formal complaints of Discrimination. This requirement is modeled on a similar provision in Policy #131, Sexual Assault and Other Sexual Misconduct.
- ii.* A requirement that persons consult with the Equity & Inclusion Office prior to making a formal complaint to the Director of Investigations. The purpose of this requirement is so the Equity & Inclusion Office can assist the individual to properly frame and present their allegation of discrimination, and also canvass whether the matter can be resolved without the need to proceed to a formal investigation.
- iii.* Clarification of the grounds upon which the Director of Investigations may exercise her discretion to refuse to proceed with a formal complaint, including the ground that proceeding with the complaint would give rise to substantial prejudice due to the amount of time that has elapsed since the alleged misconduct. While the Committee does not believe that it is appropriate to impose a fixed limitation period for making a formal complaint, it also wants to make clear that a long delay in making the complaint is a relevant factor that may result in a decision not to proceed with an investigation.
- iv.* Additional guidance as to the process to be followed by the Director of Investigations when considering and proposing the option of alternative dispute resolution as part of managing a formal complaint. In essence, both the complainant and respondent must voluntarily agree to participate in such alternative dispute resolution process. The revision is modeled on the equivalent provisions contained in Policy #131, Sexual Assault and Other Sexual Misconduct.
- v.* Various amendments to sections 5 and 6 of the Procedures to clarify the role of the Director of Investigations in the management and resolution of the investigation process.

Previous Report Date	November 5, 2018
Decision	The proposed Policy #3, Discrimination was presented for information and input, following which community consultation would be undertaken.
Action / Follow Up	The proposed Policy #3 was sent out for eight weeks of community consultation.

 <p>The University of British Columbia Board of Governors</p>	<p>Policy No.:</p> <p style="text-align: center;">3</p>	<p>Approval Date: January 1995</p> <p>Last Revision: [*2019]</p>
	<p>Responsible Executive: Provost and Vice-President Academic (UBC Vancouver) Deputy Vice Chancellor and Principal (UBC Okanagan)</p>	
<p>Title:</p> <p style="text-align: center;">Discrimination</p>		
<p>Background & Purposes:</p> <p>The University of British Columbia has responsibility for and is committed to providing its students, staff and faculty with an environment dedicated to excellence, equity and mutual respect; one that is free of Discrimination; and one in which the ability to freely work, live, examine, question, teach, learn, comment and criticize is protected. Academic Freedom and freedom of thought, belief, opinion and expression carries with it the expectation that all Members of the UBC Community will conduct themselves in a responsible manner so as not to cause, condone or participate in the Discrimination of another person or group of persons. UBC's commitment to maintaining and respecting human rights at every level of the institution is central to this Policy.</p> <p>The fundamental objectives of this Policy are to prevent Discrimination on grounds protected by the BC <i>Human Rights Code</i>, and to provide procedures for handling complaints, remedying situations, and imposing discipline when such Discrimination does occur. Concerns regarding discrimination or harassment that do not involve any of the grounds prohibited by the BC <i>Human Rights Code</i> are not covered by this Policy. Such concerns may be addressed by other UBC policies or procedures, or the UBC Statement on Respectful Environment for Students, Faculty and Staff, and collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.</p>		

1. General

- 1.1 UBC and all Members of the UBC Community share responsibility for ensuring and maintaining an environment that is free from Discrimination. UBC regards Discrimination as a serious offence that is subject to a wide range of remedial or disciplinary measures, including dismissal or expulsion from UBC.
- 1.2 The Equity & Inclusion Office is responsible for:
 - 1.2.1 providing information, advice and assistance in a fair and impartial manner to Complainants, Respondents, or anyone else who has a concern about Discrimination related to UBC;
 - 1.2.2 working with the relevant Administrative Head of Unit to address or resolve concerns of Discrimination in an informal manner, where possible;

- 1.2.3 initiating formal complaints of Discrimination, where appropriate; and
 - 1.2.4 providing education to Members of the UBC Community and other UBC offices on the prevention and remediation of Discrimination, issuing guidance on the implementation and interpretation of this Policy and its Procedures, and publicly reporting in accordance with section 1.3.
- 1.3 Annually, the Equity & Inclusion Office will publicly report on the number of:
- 1.3.1 consultations with the Equity & Inclusion Office about matters of Discrimination;
 - 1.3.2 formal complaints of Discrimination received by the Director of Investigations; and
 - 1.3.3 formal complaints of Discrimination investigated or referred to an alternative dispute resolution process.
- 1.4 The Director of Investigations is responsible for investigating formal complaints of Discrimination that are filed under the Procedures.
- 1.5 UBC will not tolerate any retaliation, directly or indirectly, against anyone who, in good faith, complains, gives evidence or otherwise participates in a process under this Policy. UBC considers retaliation to be a serious matter because it prevents potential complainants, witnesses, and administrators from acting on their concerns.
- 1.6 This Policy should not be interpreted, administered or applied to infringe on Academic Freedom. Academic Freedom is a fundamental tenet of UBC. Academic Freedom includes the right to engage in free and full discussion, not only of ideas that are safe and accepted, but of those which may be unpopular and even abhorrent, and to make statements, assign readings or use instructional techniques that challenge and may even offend the sensibilities, ideas and beliefs of others. Members of the UBC Community, in exercising Academic Freedom, shall comply with the *BC Human Rights Code*.

2. Scope

- 2.1 This Policy addresses Discrimination on grounds protected by the *BC Human Rights Code* and to the individual areas to which the particular grounds relate. Under the *BC Human Rights Code* everyone has the right to be free from Discrimination based on the following personal characteristics (current as of the date of approval of this Policy): age (actual or perceived), ancestry, colour, family status, marital status, physical or mental disability, place of origin, political belief, race, religion, sex, sexual orientation, gender identity or expression, and criminal conviction unrelated to employment. In the UBC context, this right applies in the areas of publications, public services, tenancy, employment advertisements, wages, and employment.
- 2.2 The prohibited grounds under this Policy will be interpreted in the same manner as they are interpreted by the BC Human Rights Tribunal.
- 2.3 Allegations of sexual assault are to be addressed under UBC Policy #131, Sexual Assault and Other Sexual Misconduct, and not this Policy. Allegations of sexual harassment will be reviewed by the Director of Investigations who will determine, based on the particular facts of the case and in consultation with the individual making the allegations, which policy is better suited to address the allegations.

- 2.4 Concerns that do not involve any of the grounds prohibited by the *BC Human Rights Code* are not covered by this Policy. Such concerns may be addressed by other UBC policies or procedures, or the UBC Statement on Respectful Environment for Students, Faculty and Staff, and collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.
- 2.5 Systemic discrimination is a form of Discrimination and, as such, a complaint of systemic Discrimination is to be made in the manner set out in the Procedures to this Policy.
- 2.6 Neither this Policy in general, nor its definitions in particular, are to be applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students.

3. Access to Other Processes and Multiple Complaints

- 3.1 The fact that a complaint is being pursued under this Policy does not preclude the Complainant from pursuing another UBC process, such as requesting an accommodation under Policy #73, Accommodation for Students with Disabilities, or a process outside of UBC, such as filing a complaint with the BC Human Rights Tribunal. If a complaint is being pursued under another process, the party conducting the process under this Policy may elect to continue with the process under this Policy or may elect to suspend the process until the outcome of the other process is determined.
- 3.2 Complainants who are members of faculty or staff unions may choose to proceed with a complaint under the provisions of their collective agreement rather than under this Policy. The Complainant may not concurrently pursue a complaint under both their collective agreement and this Policy.

4. Definitions

- 4.1 **Academic Freedom** is defined in the UBC Vancouver and UBC Okanagan calendars.
- 4.2 **Administrative Head of Unit** is any of the following: Director of a service 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.
- 4.3 **Complainant** is an individual who has made a formal complaint of Discrimination under the Procedures.
- 4.4 **Discrimination** is intentional or unintentional conduct, which can be individual or systemic, that imposes burdens, obligations, or disadvantages on or limits access to opportunities, benefits and advantages to specific individuals or groups as defined by the *BC Human Rights Code* and for which there is no bona fide and reasonable justification. Harassment that is related to one or more of the prohibited grounds of discrimination set out in the *Human Rights Code* is Discrimination under this Policy. Discrimination can involve individuals or groups, and it can occur during one incident or over a series of incidents including single incidents, which, in isolation, would not necessarily constitute discrimination. It is the impact on the Complainant, subject to the reasonable person test, and not the intent of the Respondent that defines the treatment as

Discrimination. The reasonable person test refers to an assessment of responsibility that takes into account not only what the Complainant and Respondent actually experienced, knew, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.

4.5 **Members of the UBC Community** are individuals who fall under one or more of the following categories:

4.5.1 students, defined as individuals enrolled at UBC, including co-op and exchange students;

4.5.2 employees, including faculty and staff members;

4.5.3 holders of teaching appointments;

4.5.4 post-doctoral fellows; and

4.5.5 anyone contractually obligated to comply with this Policy.

4.6 **Respondent** is the person against whom an allegation of Discrimination has been made.

PROCEDURES

Approved: January 1995

Revised: [*2019]

Pursuant to Policy #1: Administration of Policies, "Procedures may be amended by the President, provided the new procedures conform to the approved policy. Such amendments are reported at the next meeting of the Board of Governors." Note: the most recent procedures may be reviewed at <http://universitycounsel.ubc.ca/policies/index/>.

1. General

- 1.1 Individuals exercising their authority and discretion under these Procedures will do so in conformity with the principles of procedural fairness in the university context.
- 1.2 If an individual exercising authority and discretion under these Procedures has a real or apparent conflict of interest in a particular matter, or there is a reasonable apprehension of bias, then that individual will not continue their involvement in the matter and UBC will appoint an appropriate individual to act in that role for the purposes of that matter. For certainty, participation of the individual in any informal or consultation process does not, of itself, constitute a conflict of interest or a reasonable apprehension of bias.
- 1.3 The Complainant and the Respondent may have a representative or support person present at any time during the process outlined under these Procedures. Members of unions and employee associations have all rights to representation that their collective agreements confer.

2. Confidentiality and Privacy

- 2.1 In order to protect the integrity, fairness, and effectiveness of the process under the Policy and this Procedure and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), all participants in the process must act in accordance with the requirements set out below.
- 2.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual ("Personal Information") through their participation in the process must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:
 - 2.2.1 any participants in the process from disclosing information about themselves, or information that they have obtained outside the process;
 - 2.2.2 UBC representatives from disclosing process-related information as authorized under section 2.3; or
 - 2.2.3 Complainants and Respondents from disclosing the information that they have received under sections 2.4 and 2.5.
- 2.3 UBC will not disclose any Personal Information related to the process except to the extent such disclosure is:
 - 2.3.1 expressly authorized by the affected individual;

- 2.3.2 to a UBC representative, if necessary for the performance of that individual's duties;
 - 2.3.3 to a Complainant, Respondent, witness, or other participant in the process, if necessary for the conduct of the process;
 - 2.3.4 to a Complainant or Respondent in accordance with sections 2.4 and 2.5;
 - 2.3.5 authorized by the University Counsel for compelling health or safety reasons;
 - 2.3.6 authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the process or UBC's investigatory processes; or
 - 2.3.7 authorized or required under law, which for certainty shall include directions received from external agencies such as the BC Human Rights Tribunal.
- 2.4 To maintain the integrity of the process under this Policy, UBC must ensure that both Complainants and Respondents know the process findings and the evidence upon which these findings are based. The FIPPA may require UBC to remove Personal Information that is irrelevant to the process findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, they will only receive information that is relevant to them.
- 2.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons. For example, UBC will normally inform Complainants of any restrictions that may have been imposed upon the Respondent's movements or activities.
- 2.6 Section 2.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 2.4 and 2.5. However, Complainants or Respondents who choose to disclose such information should keep in mind that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim), and may wish to seek advice before doing so.

3. Consultations and Informal Resolution

- 3.1 Members of the UBC Community who have concerns about matters of Discrimination that relate to a Member of the UBC Community or to a UBC-sanctioned program, event or activity are strongly encouraged to consult with the Equity & Inclusion Office. Administrative Heads of Unit who become aware of such concerns should forward them to the Equity & Inclusion Office.
- 3.2 Such individuals may consult with the Equity & Inclusion Office anonymously. However, any information provided to this office anonymously or in a consultation-only capacity will not be independently substantiated, further investigated, or acted upon by this office unless the AVP, Equity & Inclusion determines that it would be appropriate to do so and initiates a complaint under section 4.2.3 below.
- 3.3 As part of this consultation process, the Equity & Inclusion Office may work with the relevant Administrative Head of Unit to resolve the concern informally. In doing so, this office should take into considerations all relevant factors, such as risks to health or safety, financial or logistical challenges, disruption of any collective agreements, and impact upon ability to deliver or meet requirements of the relevant course, program, or activity.

4. Making Formal Complaints

- 4.1 Those with concerns relating to matters of Discrimination must consult with the Equity & Inclusion Office before making a formal complaint under these Procedures. If the person with the concern believes that it was not satisfactorily addressed through consultation, that person may submit a formal complaint to the Director of Investigations. The Director of Investigations will provide a copy or summary of the complaint to the Equity & Inclusion Office.
- 4.2 Discrimination complaints may be made
 - 4.2.1 by any Member of the UBC Community who is directly affected by the conduct that forms the basis of the complaint;
 - 4.2.2 at the discretion of the Director of Investigations, by a non-Member of the UBC Community who is directly affected by the conduct that forms the basis of the complaint; and
 - 4.2.3 by the AVP, Equity & Inclusion.
- 4.3 If the AVP, Equity & Inclusion initiates a complaint under section 4.2.3, they will act as the Complainant in the complaint proceedings under these Procedures. In such cases, the person directly affected by the conduct that forms the basis of the complaint, and/or the person who is the subject of the complaint, may be called upon as witnesses in the proceedings.
- 4.4 Complaints must be made in writing.
- 4.5 Complainants may withdraw from the complaint proceedings at any time. However, UBC's responsibility to provide an environment free from Discrimination may obligate UBC to proceed regardless of the Complainant's withdrawal.
- 4.6 The Director of Investigations has jurisdiction to investigate complaints in the following circumstances:
 - 4.6.1 the complaint must have been made by an individual described in section 4.2;
 - 4.6.2 the complaint must be either a complaint of systemic Discrimination by UBC or a complaint about Discrimination by a Respondent who was a Member of the UBC Community at the time the alleged Discrimination occurred and at the time the complaint was submitted;
 - 4.6.3 the alleged conduct must fall within the definition of Discrimination; and
 - 4.6.4 the complaint must have a real and substantial connection to UBC, as that term has been interpreted under BC law.
- 4.7 If the Director of Investigations determines that there is jurisdiction to investigate a complaint, the Director of Investigations may do any one or more of the following:
 - 4.7.1 address the complaint under section 5 below; or
 - 4.7.2 decline to proceed with the complaint on the grounds that

(a) the substance of the complaint has been appropriately dealt with in another proceeding;

(b) due to the amount of time that has elapsed since the alleged misconduct occurred, proceeding with the complaint now would result in substantial prejudice to any person; or

(c) for any reason it is unfair or otherwise inappropriate to proceed with the complaint.

4.8 If the Director of Investigations determines that there is no jurisdiction to investigate a complaint, the Director of Investigations will not accept the complaint and will take no further action under these Procedures, except as provided in section 4.9.

4.9 Where the Director of Investigations makes a decision under sections 4.7.2 or 4.8, the Director of Investigations will provide written reasons to the Complainant. The Director of Investigations will provide a copy of these reasons to the relevant Administrative Head of Unit and the Equity & Inclusion Office.

5. Managing Formal Complaints

5.1 If the Director of Investigations decides to address the complaint, the Complainant, relevant Administrative Head of Unit and the Equity & Inclusion Office will be notified and a copy or summary of the complaint will be provided to the Respondent, who will be invited to respond to the allegations contained in the complaint.

5.2 The Director of Investigations may manage the complaint using any means deemed appropriate in the circumstances, subject to the principles of procedural fairness in the university context. Such means may include, but are not limited to, the following:

5.2.1 suspending or discontinuing the proceedings;

5.2.2 consolidating multiple complaints so as to be addressed together;

5.2.3 recommending interim measures to preserve safety while a complaint is being investigated or resolved;

5.2.4 interviewing or requesting written submissions from the Complainant and/or the Respondent and/or any other individuals with information that may be useful;

5.2.5 consulting with other UBC offices or employees;

5.2.6 gathering documents relevant to the complaint;

5.2.7 referring the matter for mediation or other forms of alternative dispute resolution in accordance with sections 5.3 and 5.4; and/or

5.2.8 referring the matter for internal or external investigation.

5.3 If the Director of Investigations believes that an alternative dispute resolution process may be appropriate in the circumstances, they will discuss this option with the Complainant. If the Complainant agrees that an alternative resolution process may be appropriate, the Director of

Investigations will discuss this option with the Respondent. If the Respondent agrees to participate in an alternative resolution process and the Director is satisfied that an alternative resolution process is appropriate, then the Director will explore the options available and, with the agreement of both parties, will refer the matter to that process for resolution.

- 5.4 Participation in an alternative dispute resolution process is entirely voluntary. If either the Complainant or the Respondent decides they no longer wish to participate in the alternative resolution process at any time, then the Director of Investigations will refer the complaint for investigation under these Procedures.
- 5.5 Where an investigation of the complaint has been conducted, at the completion of the investigation the investigator will prepare a written report (“Investigative Report”) that will normally include the following information:
 - 5.5.1 a summary of the evidence considered;
 - 5.5.2 any assessment of credibility that is required to render a determination; and
 - 5.5.3 the findings of facts, and a determination as to whether, on a balance of probabilities, Discrimination has occurred.
- 5.6 Both the Complainant and the Respondent are expected to participate in the complaint management process outlined above in a timely manner. In cases where the Complainant and/or the Respondent fails to participate within a reasonable time without appropriate justification, the process may proceed without their participation and an adverse inference may be drawn as a result of their failure to participate.
- 5.7 The complaint management process outlined above will normally be completed within 90 calendar days of the provision of the complaint to the Respondent. In the event that this timeline cannot be met, the Director of Investigations will contact the Complainant and Respondent as soon as possible to inform them of the revised timeline.

6. Resolving Formal Complaints

- 6.1 After addressing the complaint under section 5 above, the Director of Investigations may resolve the complaint and/or make recommendations as deemed appropriate in the circumstances. Such resolutions or recommendations may include, but are not limited to, the following:
 - 6.1.1 resolving the complaint by consent of the Complainant and the Respondent, through mediation or any other means;
 - 6.1.2 recommending such measures as may be appropriate to remedy the effects of Discrimination and restore the Complainant’s and/or Respondent’s unit to effective functioning;
 - 6.1.3 recommending such measures as may be appropriate to remove systemic barriers and/or prevent Discrimination;
 - 6.1.4 recommending to the appropriate Administrative Head of Unit the imposition of discipline on the Respondent or, in cases where the investigator determines that the

complaint was made in bad faith or was frivolous, vexatious or malicious, on the Complainant;

- 6.1.5 recommending other remedies to the appropriate Administrative Head of Unit; and/or
- 6.1.6 dismissing the complaint.
- 6.2 No resolution of a complaint that may adversely affect the academic, employment, professional, or other interests of a party shall proceed without giving that party the opportunity to fully respond to the complaint.
- 6.3 The Director of Investigations will communicate the resolution and any recommendations, as well as a copy of any Investigative Report that has been prepared, to the appropriate Administrative Head of Unit and the AVP, Equity & Inclusion. In addition and subject to section 2 of these Procedures, the Director of Investigations may communicate any resolution and/or recommendations to the Complainant, Respondent and others whom the Director of Investigations determines ought to know under the circumstances.
- 6.4 The Administrative Head of Unit receiving the Investigative Report has the authority to determine the appropriate disciplinary and/or remedial measures needed to resolve or address the complaint, if any. The Administrative Head of Unit will provide a written report of the decision made and any measures taken to the Director of Investigations, the appropriate Dean and/or Head, and the Respondent. Disciplinary actions will not be disclosed to Complainants except in the limited circumstances set out in section 2.5 of these Procedures.
- 6.5 The Director of Investigations will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and accommodations, providing education, or conducting administrative transactions.

7. Appeals

- 7.1 Students may appeal any discipline that is imposed under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee or the UBC Okanagan Senate Appeals of Standing and Discipline Committee.
- 7.2 Staff or faculty may appeal any discipline that is made or imposed by the Administrative Head of Unit under these Procedures through the provisions of their collective agreements or their terms and conditions of employment.
- 7.3 The Complainant and/or the Respondent may also have recourse to processes outside of UBC, such as filing a complaint with the BC Human Rights Tribunal.

 The University of British Columbia Board of Governors	Policy No.: 3	Approval Date: January 1995 Last Revision: [*2019]
	Responsible Executive: Provost and Vice-President Academic (UBC Vancouver) Deputy Vice Chancellor and Principal (UBC Okanagan)	
Title: <p style="text-align: center;">Discrimination</p>		
Background & Purposes: <p>The University of British Columbia has responsibility for and is committed to providing its students, staff and faculty with an environment dedicated to excellence, equity and mutual respect; one that is free of Discrimination; and one in which the ability to freely work, live, examine, question, teach, learn, comment and criticize is protected. Academic Freedom and freedom of thought, belief, opinion and expression carries with it the expectation that all Members of the UBC Community will conduct themselves in a responsible manner so as not to cause, condone or participate in the Discrimination of another person or group of persons. UBC's commitment to maintaining and respecting human rights at every level of the institution is central to this Policy.</p> <p>The fundamental objectives of this Policy are to prevent Discrimination on grounds protected by the BC <i>Human Rights Code</i>, and to provide procedures for handling complaints, remedying situations, and imposing discipline when such Discrimination does occur. Concerns regarding discrimination or harassment that do not involve any of the grounds prohibited by the BC <i>Human Rights Code</i> are not covered by this Policy. Such concerns may be addressed by other UBC policies or procedures, or the UBC Statement on Respectful Environment for Students, Faculty and Staff, and collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.</p>		

1. General

- 1.1 UBC and all Members of the UBC Community share responsibility for ensuring and maintaining an environment that is free from Discrimination. UBC regards Discrimination as a serious offence that is subject to a wide range of remedial or disciplinary measures, including dismissal or expulsion from UBC.
- 1.2 ~~The Equity & Inclusion Office~~ is responsible for:
 - 1.2.1 providing information, advice and assistance in a fair and impartial manner to Complainants, Respondents, or anyone else who has a concern about Discrimination related to UBC;
 - 1.2.2 working with the relevant Administrative Head of Unit to address or resolve concerns of Discrimination in an informal manner, where possible;

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- 1.2.3 initiating formal complaints of Discrimination, where appropriate; and
- 1.2.4 providing education to Members of the UBC Community and other UBC offices on the prevention and remediation of Discrimination, issuing guidance on the implementation and interpretation of this Policy and its Procedures, and publicly reporting in accordance with section 1.3.

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1.3 Annually, the Equity & Inclusion Office will publicly report on the number of:

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- 1.3.1 consultations with the Equity & Inclusion Office about matters of Discrimination;
- 1.3.2 formal complaints of Discrimination received by the Director of Investigations; and
- 1.3.3 formal complaints of Discrimination investigated or referred to an alternative dispute resolution process.

- 1.4 The Director of Investigations is responsible for investigating formal complaints of Discrimination that are filed under the Procedures.
- 1.5 UBC will not tolerate any retaliation, directly or indirectly, against anyone who, in good faith, complains, gives evidence or otherwise participates in a process under this Policy. UBC considers retaliation to be a serious matter because it prevents potential complainants, witnesses, and administrators from acting on their concerns.
- 1.6 This Policy should not be interpreted, administered or applied to infringe on Academic Freedom. Academic Freedom is a fundamental tenet of UBC. Academic Freedom includes the right to engage in free and full discussion, not only of ideas that are safe and accepted, but of those which may be unpopular and even abhorrent, and to make statements, assign readings or use instructional techniques that challenge and may even offend the sensibilities, ideas and beliefs of others. Members of the UBC Community, in exercising Academic Freedom, shall comply with the *BC Human Rights Code*.

2. Scope

- 2.1 This Policy addresses Discrimination on grounds protected by the *BC Human Rights Code* and to the individual areas to which the particular grounds relate. Under the *BC Human Rights Code* everyone has the right to be free from Discrimination based on the following personal characteristics (current as of the date of approval of this Policy): age (actual or perceived), ancestry, colour, family status, marital status, physical or mental disability, place of origin, political belief, race, religion, sex, sexual orientation, gender identity or expression, and criminal conviction unrelated to employment. In the UBC context, this right applies in the areas of publications, public services, tenancy, employment advertisements, wages, and employment.
- 2.2 The prohibited grounds under this Policy will be interpreted in the same manner as they are interpreted by the BC Human Rights Tribunal.
- 2.3 Allegations of sexual assault are to be addressed under UBC Policy #131, Sexual Assault and Other Sexual Misconduct, and not this Policy. Allegations of sexual harassment will be reviewed by the Director of Investigations who will determine, based on the particular facts of the case and in consultation with the individual making the allegations, which policy is better suited to address the allegations.

- 2.4 Concerns that do not involve any of the grounds prohibited by the BC *Human Rights Code* are not covered by this Policy. Such concerns may be addressed by other UBC policies or procedures, or the UBC Statement on Respectful Environment for Students, Faculty and Staff, and collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.
- 2.5 Systemic discrimination is a form of Discrimination and, as such, a complaint of systemic Discrimination is to be made in the manner set out in the Procedures to this Policy.
- 2.6 Neither this Policy in general, nor its definitions in particular, are to be applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students.

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3. Access to Other Processes and Multiple Complaints

- 3.1 The fact that a complaint is being pursued under this Policy does not preclude the Complainant from pursuing another UBC process, such as requesting an accommodation under Policy #73, Accommodation for Students with Disabilities, or a process outside of UBC, such as filing a complaint with the BC Human Rights Tribunal. If a complaint is being pursued under another process, the party conducting the process under this Policy may elect to continue with the process under this Policy or may elect to suspend the process until the outcome of the other process is determined.
- 3.2 Complainants who are members of faculty or staff unions may choose to proceed with a complaint under the provisions of their collective agreement rather than under this Policy. The Complainant may not concurrently pursue a complaint under both their collective agreement and this Policy.

4. Definitions

- 4.1 **Academic Freedom** is defined in the UBC Vancouver and UBC Okanagan calendars.
- 4.2 **Administrative Head of Unit** is any of the following: Director of a service 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.
- 4.3 **Complainant** is an individual who has made a formal complaint of Discrimination under the Procedures.
- 4.4 **Discrimination** is intentional or unintentional conduct, which can be individual or systemic, that imposes burdens, obligations, or disadvantages on or limits access to opportunities, benefits and advantages to specific individuals or groups as defined by the BC *Human Rights Code* and for which there is no bona fide and reasonable justification. Harassment that is related to one or more of the prohibited grounds of discrimination set out in the *Human Rights Code* is Discrimination under this Policy. Discrimination can involve individuals or groups, and it can occur during one incident or over a series of incidents including single incidents, which, in isolation, would not necessarily constitute discrimination. It is the impact on the Complainant, subject to the reasonable person test, and not the intent of the Respondent that defines the treatment as

Discrimination. The reasonable person test refers to an assessment of responsibility that takes into account not only what the Complainant and Respondent actually experienced, knew, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.

4.5 **Members of the UBC Community** are individuals who fall under one or more of the following categories:

4.5.1 students, defined as individuals enrolled at UBC, including co-op and exchange students;

4.5.2 employees, including faculty and staff members;

4.5.3 holders of teaching appointments;

4.5.4 post-doctoral fellows; and

4.5.5 anyone contractually obligated to comply with this Policy.

4.6 **Respondent** is the person against whom an allegation of Discrimination has been made.

PROCEDURES

Approved: January 1995

Revised: [*2019]

Pursuant to Policy #1: Administration of Policies, "Procedures may be amended by the President, provided the new procedures conform to the approved policy. Such amendments are reported at the next meeting of the Board of Governors." Note: the most recent procedures may be reviewed at <http://universitycounsel.ubc.ca/policies/index/>.

1. General

- 1.1 Individuals exercising their authority and discretion under these Procedures will do so in conformity with the principles of procedural fairness in the university context.
- 1.2 If an individual exercising authority and discretion under these Procedures has a real or apparent conflict of interest in a particular matter, or there is a reasonable apprehension of bias, then that individual will not continue their involvement in the matter and UBC will appoint an appropriate individual to act in that role for the purposes of that matter. For certainty, participation of the individual in any informal or consultation process does not, of itself, constitute a conflict of interest or a reasonable apprehension of bias.
- 1.3 The Complainant and the Respondent may have a representative or support person present at any time during the process outlined under these Procedures. Members of unions and employee associations have all rights to representation that their collective agreements confer.

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2. Confidentiality and Privacy

- 2.1 In order to protect the integrity, fairness, and effectiveness of the process under the Policy and this Procedure and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), all participants in the process must act in accordance with the requirements set out below.
- 2.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual ("Personal Information") through their participation in the process must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:
 - 2.2.1 any participants in the process from disclosing information about themselves, or information that they have obtained outside the process;
 - 2.2.2 UBC representatives from disclosing process-related information as authorized under section 2.2.3; or
 - 2.2.3 Complainants and Respondents from disclosing the information that they have received under sections 2.4 and 2.5.
- 2.3 UBC will not disclose any Personal Information related to the process except to the extent such disclosure is:
 - 2.3.1 expressly authorized by the affected individual;

- 2.3.2 to a UBC representative, if necessary for the performance of that individual's duties;
 - 2.3.3 to a Complainant, Respondent, witness, or other participant in the process, if necessary for the conduct of the process;
 - 2.3.4 to a Complainant or Respondent in accordance with sections 2.4 and 2.5;
 - 2.3.5 authorized by the University Counsel for compelling health or safety reasons;
 - 2.3.6 authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the process or UBC's investigatory processes; or
 - 2.3.7 authorized or required under law, which for certainty shall include directions received from external agencies such as the BC Human Rights Tribunal.
- 2.4 To maintain the integrity of the process under this Policy, UBC must ensure that both Complainants and Respondents know the process findings and the evidence upon which these findings are based. The FIPPA may require UBC to remove Personal Information that is irrelevant to the process findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, they will only receive information that is relevant to them.
- 2.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons. For example, UBC will normally inform Complainants of any restrictions that may have been imposed upon the Respondent's movements or activities.
- 2.6 Section 2.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 2.4 and 2.5. However, Complainants or Respondents who choose to disclose such information should keep in mind that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim), and may wish to seek advice before doing so.
3. **Consultations and Informal Resolution**

- 3.1 Members of the UBC Community who have concerns about matters of Discrimination that relate to a Member of the UBC Community or to a UBC-sanctioned program, event or activity are strongly encouraged to consult with the Equity & Inclusion Office. Administrative Heads of Unit who become aware of such concerns should forward them to the Equity & Inclusion Office.
- 3.2 Such individuals may consult with the Equity & Inclusion Office anonymously. However, any information provided to this office anonymously or in a consultation-only capacity will not be independently substantiated, further investigated, or acted upon by this office unless the AVP, Equity & Inclusion determines that it would be appropriate to do so and initiates a complaint under section 4.2.3 below.
- 3.3 As part of this consultation process, the Equity & Inclusion Office may work with the relevant Administrative Head of Unit to resolve the concern informally. In doing so, this office should take into considerations all relevant factors, such as risks to health or safety, financial or logistical challenges, disruption of any collective agreements, and impact upon ability to deliver or meet requirements of the relevant course, program, or activity.

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4. **Making Formal Complaints**

4.1 Those with concerns relating to matters of Discrimination must consult with the Equity & Inclusion Office before ~~making a formal complaint~~ under these Procedures. If the person with the concern believes that it was not satisfactorily addressed through consultation, that person may submit a formal complaint to the Director of Investigations. The Director of Investigations will provide a copy or summary of the complaint to the Equity & Inclusion Office.

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4.2 Discrimination complaints may be made

4.2.1 by any Member of the UBC Community who is directly affected by the conduct that forms the basis of the complaint;

4.2.2 at the discretion of the Director of Investigations, by a non-Member of the UBC Community who is directly affected by the conduct that forms the basis of the complaint; and

4.2.3 by the AVP, Equity & Inclusion.

4.3 If the AVP, Equity & Inclusion initiates a complaint under section 4.2.3, they will act as the Complainant in the complaint proceedings under these Procedures. In such cases, the person directly affected by the conduct that forms the basis of the complaint, and/or the person who is the subject of the complaint, may be called upon as witnesses in the proceedings.

4.4 Complaints must be made in writing.

4.5 Complainants may withdraw from the complaint proceedings at any time. However, UBC’s responsibility to provide an environment free from Discrimination may obligate UBC to proceed regardless of the Complainant’s withdrawal.

4.6 The Director of Investigations has jurisdiction to investigate complaints in the following circumstances:

4.6.1 the complaint must have been made by an individual described in section 4.2;

4.6.2 the complaint must be either a complaint of systemic Discrimination by UBC or a complaint about Discrimination by a Respondent who was a Member of the UBC Community at the time the alleged Discrimination occurred and at the time the complaint was submitted;

4.6.3 the alleged conduct must fall within the definition of Discrimination; and

4.6.4 the complaint must have a real and substantial connection to UBC, as that term has been interpreted under BC law.

4.7 If the Director of Investigations determines that there is jurisdiction to investigate a complaint, the Director of Investigations may do any one or more of the following:

4.7.1 address the complaint under section 5 below; or

4.7.2 ~~decline to proceed with the complaint on the grounds that~~

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(a) the substance of the complaint has been appropriately dealt with in another proceeding;

(b) due to the amount of time that has elapsed since the alleged misconduct occurred, proceeding with the complaint now would result in substantial prejudice to any person; or

(c) for any reason it is unfair or otherwise inappropriate to proceed with the complaint.

4.8 If the Director of Investigations determines that there is no jurisdiction to investigate a complaint, the Director of Investigations will not accept the complaint and will take no further action under these Procedures, except as provided in section 4.9.

4.9 Where the Director of Investigations makes a decision under sections 1.1.1 or 4.8, the Director of Investigations will provide written reasons to the Complainant. The Director of Investigations will provide a copy of these reasons to the relevant Administrative Head of Unit and the Equity & Inclusion Office.

5. Managing Formal Complaints

5.1 If the Director of Investigations decides to address the complaint, the Complainant, relevant Administrative Head of Unit and the Equity & Inclusion Office will be notified and a copy or summary of the complaint will be provided to the Respondent, who will be invited to respond to the allegations contained in the complaint.

5.2 The Director of Investigations may manage the complaint using any means deemed appropriate in the circumstances, subject to the principles of procedural fairness in the university context. Such means may include, but are not limited to, the following:

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5.2.1 suspending or discontinuing the proceedings;

5.2.2 consolidating multiple complaints so as to be addressed together;

5.2.3 recommending interim measures to preserve safety while a complaint is being investigated or resolved;

5.2.4 interviewing or requesting written submissions from the Complainant and/or the Respondent and/or any other individuals with information that may be useful;

5.2.5 consulting with other UBC offices or employees;

5.2.6 gathering documents relevant to the complaint;

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5.2.7 referring the matter for mediation or other forms of alternative dispute resolution in accordance with sections 5.3 and 5.4; and/or

5.2.8 referring the matter for internal or external investigation.

5.3 If the Director of Investigations believes that an alternative dispute resolution process may be appropriate in the circumstances, they will discuss this option with the Complainant. If the Complainant agrees that an alternative resolution process may be appropriate, the Director of

Investigations will discuss this option with the Respondent. If the Respondent agrees to participate in an alternative resolution process and the Director is satisfied that an alternative resolution process is appropriate, then the Director will explore the options available and, with the agreement of both parties, will refer the matter to that process for resolution.

5.4 Participation in an alternative dispute resolution process is entirely voluntary. If either the Complainant or the Respondent decides they no longer wish to participate in the alternative resolution process at any time, then the Director of Investigations will refer the complaint for investigation under these Procedures.

5.5 Where an investigation of the complaint has been conducted, at the completion of the investigation the investigator will prepare a written report ("Investigative Report") that will normally include the following information:

5.5.1 a summary of the evidence considered;

5.5.2 any assessment of credibility that is required to render a determination; and

5.5.3 the findings of facts, and a determination as to whether, on a balance of probabilities, Discrimination has occurred.

5.6 Both the Complainant and the Respondent are expected to participate in the complaint management process outlined above in a timely manner. In cases where the Complainant and/or the Respondent fails to participate within a reasonable time without appropriate justification, the process may proceed without their participation and an adverse inference may be drawn as a result of their failure to participate.

5.7 The complaint management process outlined above will normally be completed within 90 calendar days of the provision of the complaint to the Respondent. In the event that this timeline cannot be met, the Director of Investigations will contact the Complainant and Respondent as soon as possible to inform them of the revised timeline.

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6. Resolving Formal Complaints

6.1 After addressing the complaint under section 5 above, the Director of Investigations may resolve the complaint and/or make recommendations as deemed appropriate in the circumstances. Such resolutions or recommendations may include, but are not limited to, the following:

6.1.1 resolving the complaint by consent of the Complainant and the Respondent, through mediation or any other means;

6.1.2 recommending such measures as may be appropriate to remedy the effects of Discrimination and restore the Complainant's and/or Respondent's unit to effective functioning;

6.1.3 recommending such measures as may be appropriate to remove systemic barriers and/or prevent Discrimination;

6.1.4 recommending to the appropriate Administrative Head of Unit the imposition of discipline on the Respondent or, in cases where the investigator determines that the complaint was made in bad faith or was frivolous, vexatious or malicious, on the Complainant;

6.1.5 recommending other remedies to the appropriate Administrative Head of Unit; and/or

6.1.6 dismissing the complaint.

6.2 No resolution of a complaint that may adversely affect the academic, employment, professional, or other interests of a party shall proceed without giving that party the opportunity to fully respond to the complaint.

6.3 ~~The Director of Investigations will communicate the resolution and any recommendations, as well as a copy of any Investigative Report that has been prepared, to the appropriate Administrative Head of Unit and the AVP, Equity & Inclusion. In addition and subject to section 2 of these Procedures, the Director of Investigations may communicate any resolution and/or recommendations to the Complainant, Respondent and others whom the Director of Investigations determines ought to know under the circumstances.~~

6.4 The Administrative Head of Unit receiving the Investigative Report has the authority to determine the appropriate disciplinary and/or remedial measures needed to resolve or address the complaint, if any. The Administrative Head of Unit will provide a written report of the decision made and any measures taken to the Director of Investigations, the appropriate Dean and/or Head, and the Respondent. Disciplinary actions will not be disclosed to Complainants except in the limited circumstances set out in section 2.5 of these Procedures.

6.5 The Director of Investigations will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and accommodations, providing education, or conducting administrative transactions.

7. Appeals

7.1 Students may appeal any discipline that is imposed under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee or the UBC Okanagan Senate Appeals of Standing and Discipline Committee.

7.2 Staff or faculty may appeal any discipline that is made or imposed by the Administrative Head of Unit under these Procedures through the provisions of their collective agreements or their terms and conditions of employment.

7.3 The Complainant and/or the Respondent may also have recourse to processes outside of UBC, such as filing a complaint with the BC Human Rights Tribunal.

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No.	Summary of Comment	Applicable Section(s)	Committee's Response
1	<p>From a private individual</p> <p>In its docket memo, the Committee identified an inconsistency in the treatment of faculty, staff and students following the investigation.</p> <p>Members of the Committee who felt this is unfair are correct. This is something that should be addressed in the new policy. Why preferential treatment, as opposed to across-the-board consistency for faculty, staff and student Respondents is left to Administration seems very shaky. While it may be up to Administration to make the call on what actions are taken against a Respondent, the presentation of the findings of the case against them should be equal in its presentation to them before action is taken against them.</p> <p>I do not mean that actions towards creating safety for the victim of discrimination should be delayed. Not at all. They should be prioritized. But allowing time for faculty to review the case against them prior to being disciplined, but not to staff, and less so to students does not reflect well on UBC's sense of justice and fairness, and implies that UBC values its faculty well above the other people who make this campus run.</p>	General	<p>No change necessary.</p> <p>The Committee continues to believe that it is important to ensure that discipline is imposed on a student in a manner that is fair and that complies with its legal obligations. However, this Policy was never intended to address this issue and it is not appropriate for the Committee to address it as it has implications that go well beyond this Policy. The Committee understands that the University is addressing this issue in a separate process and that if changes need to be made, these changes will presumably be applied to all disciplinary processes.</p>
2	<p>From Faculty Association</p> <p>Removal of the word "harassment": The University has proposed removing the word "harassment" from the Policy as a means of avoiding potential confusion between conduct that would fall under the Human Rights Code and that which would not. As Code-based harassment is covered by the Policy, it makes little sense to remove this reference and simply subsume it under the more general term of "discrimination."</p> <p>This removal renders it more difficult for members of the UBC community to determine the appropriate venue for addressing their concerns. The Faculty Association recommends that the University maintain the current title and provide a more robust definition of harassment so as to clarify the distinction between different types of harassment.</p>	Title	<p>No change necessary.</p> <p>The title "Discrimination and Harassment" was misleading, because it implied that the Policy was intended to address matters that extended beyond discrimination on one of the protected grounds under the BC Human Rights Code. We are aware that some institutions have "Discrimination and Harassment" policies that cover all forms of harassment, not just discriminatory harassment. By contrast, UBC's Policy 3 is intended to be limited to discrimination under the Code, so the inclusion of the word "harassment" in the title to our Policy has caused confusion over the years. The Committee carefully considered this issue and concluded that the title should be changed to "Discrimination" to reflect the actual scope of the Policy. UBC has other processes to deal with harassment claims that fall outside the scope of Policy 3. It should also be pointed out that the definition of "Discrimination" makes clear that harassment based upon a protected ground is a type of discrimination.</p>

3	<p>From AMS</p> <p>Public Reporting: Policy 131, Sexual Assault and Other Sexual Misconduct, requires UBC to publicly report on the number of “disclosures received by the Sexual Violence Prevention and Response Offices [2.4.1], reports received by the Directors of Investigations [2.4.2], and reports investigated or referred to an alternative dispute resolution process [2.4.3]”.The AMS would like to see a similar annual report required on the state of discrimination at UBC included in Policy 3. The AMS also notes that SFU has such a requirement in its policy.</p>	1.2 (Policy)	<p>Agreed.</p> <p>The Committee agrees that public reporting is useful for stakeholders inside and outside UBC. The Equity and Inclusion Office (EIO) already provides certain statistics in its annual reports to the Board of Governors. Once the revised Policy is implemented, the EIO would be best placed to provide annual reporting. The Committee decided to add a new requirement (section 1.3 of the Policy), which requires the EIO to issue annual reports on the number of discrimination consultations and formal complaints.</p>
4	<p>From Faculty Association</p> <p>Lack of Clarity in the Investigations Process - a. Filing Complaints: The Association believes that as currently written, it is unclear whether there is an obligation on the part of Complainants to address their complaints through the Equity Office. Paragraph 1.2 requires concerns regarding Discrimination to be referred to the Equity & inclusion Office (EIO), whereas paragraph 3.1 of the Procedures allows Complainants to choose whether or not to consult with the EIO. The Procedures go on in paragraph 4.1 to “strongly encourage” Complainants to consult with the EIO. As a result, it is unclear what steps UBC members are required to take under the Policy when addressing potential concerns. Consistency in this regard should be of utmost importance given the University's stated goal to “more clearly identify and clarify the roles of those involved in receiving and responding to concerns.”</p>	1.2 (Policy); 3.1 & 4.1 (Procedures)	<p>Agreed.</p> <p>The Committee amended section 4.1 of the Procedures to <u>require</u> individuals to engage with the Equity & Inclusion Office (EIO) before making a formal complaint to the Director of Investigations (DOI). This requirement has two purposes. First, it ensures that there is a reasonable opportunity for the EIO to assist the individual to resolve the concern in an informal manner. Second, it ensures that the individual has the benefit of the EIO's expertise when making a formal complaint to the DOI. The EIO can explain the process under the Policy and assist the complainant to properly frame and present their allegations.</p>

5	<p>From Faculty Association</p> <p>Lack of Clarity in the Investigations Process - b. Bifurcating Authority: In assigning responsibility for addressing and resolving complaints to two separate offices, the proposed Policy appears poised to replicate, rather than reduce, confusion overjurisdiction and responsibility. While the Association assumes that the intent is for the Equity and Inclusion Office and the Director of Investigations' Office to work collaboratively, the line between their respective authorities is ill-defined as is the manner in which information flows between their offices. Therefore, we are seeking clarification as to why the University has again chosen to bifurcate responsibility for such matters rather than streamlining the complaints process. It is our experience that the FA members who file such complaints are, more often than not, frustrated and disillusioned by the absence of a clear, centralized and transparent means of addressing their concerns.</p>	1.2 (Policy); 3.1 & 4.1 (Procedures)	<p>Partially agreed.</p> <p>The Equity & Inclusion Office (EIO) provides an informal, collaborative support function, while the Director of Investigations (DOI) performs a formal investigation function. The Committee believes that it is important to separate these functions, as combining them would result in confusion and could, for some individuals, impact on the perceived fairness of DOI investigations. This is the same reason why Policy 131 divides responsibilities between the Sexual Violence Prevention and Resource Office and the Director of Investigations.</p> <p>However, the Committee has made changes - some of which are described at other places in this document - to clarify the role of the EIO and the extent of information flows between the EIO and DOI. These changes include:</p> <ul style="list-style-type: none"> - Simplification of the introductory wording of section 1.2 of the Policy. - Insertion of a new section 1.3 of the Policy that requires the EIO to publish information. - Amendments to section 4.1 of the Procedures to require complainants to consult with the EIO before filing a formal complaint - Amendments to section 4.9 of the Procedures to require the DOI to share information with the EIO about a decision not to proceed with a complaint.
6	<p>From AMS</p> <p>Retaliation Policy: Section 1.4 of Policy 3 states, "UBC will not tolerate any retaliation, directly or indirectly, against anyone who, in good faith, complains, gives evidence or otherwise participates in a process under this Policy. UBC considers retaliation to be a serious matter because it prevents potential complainants, witnesses, and administrators from acting on their concerns". The AMS feels that, while this is very important to include in this policy, the university should go a step further in their statement of intolerance by developing a Retaliation Policy. The Retaliation Policy would reference Policy 3, Policy 131, and any other related policies that may be related to the topic of retaliation.</p>	1.3 (Policy)	<p>Agreed.</p> <p>The Office of the University Counsel has been asked to coordinate the development of a stand-alone 'Whistleblower Protection' policy that will encompass retaliation across the university community. Notwithstanding the development of this separate policy, the Committee believes that it is still valuable to retain the 'no retaliation' language in Policy 3.</p>
7	<p>From a private individual</p> <p>Section 1.4, which states that retaliation is unacceptable, is highly necessary!</p>	1.4 (Policy)	<p>No change necessary.</p>

8	<p>From AMS</p> <p>Inclusion of Social Condition: The AMS would like the Policy to be amended to protect individuals from discrimination on the grounds of social condition, which refers to an individual's situation in society such as income, education level, family status, or pregnancy. The AMS understand that these protections would exceed those set out in the BC Human Rights Code, but it believes that it is important for the policy to provide this additional protection. The AMS observes that "social condition" is protected under the McGill University policy.</p>	2.1 (Policy)	<p>No change necessary.</p> <p>The purpose of this Policy is to cover grounds of discrimination under the BC Human Rights Code. "Social condition" is not such a ground. It is included in the McGill policy because it is one of the grounds of discrimination under the Quebec Charter of Human Rights and Freedoms. The Committee believes that the Policy should correspond to the BC legislation.</p>
9	<p>From Faculty Association</p> <p>Narrowing of procedural fairness: The Faculty Association seeks clarity on the intent of changing the context of procedural fairness from that of the University—sector writ large to UBC specifically (paragraphs 1.1 and 5.2 of the Procedures). We fail to understand what the University means by the term, "procedural fairness in the UBC-context," as it has only been introduced in this proposed Policy. Moreover, it is inconsistent with the manner in which these rights and responsibilities are set out in the Collective Agreement and other University policies.</p> <p>The Association previously disputed the change from a standard of natural justice to procedural fairness in the University context when this was done in the review of Policy 85. At that time, we asked that the University define its understanding of the terms. We do so again. Policy 95 includes a basic definition of the responsibility of the University to disclose information, and the rights of faculty members to comment on evidence, that may be used in decision-making. We assume that this definition continues to apply for all investigations at the University.</p>	1.1 & 5.2 (Procedures)	<p>Partially agreed.</p> <p>The Committee believes it is important to maintain the use of the standard phrase "procedural fairness in the university context", which is contained in the existing Policy 3 as well as the procedures for Policies 85 and 131. It serves to emphasize the important legal principle that procedural fairness is contextual, and expressly acknowledges that the relevant context is the university context. The Committee did, however, agree that it was not appropriate to use the phrase "in the UBC context" and will change it back to "in the university context" to ensure consistency with other policies.</p>

10	<p>From Faculty Association</p> <p>Confidentiality and Privacy- a. Disclosure of Personal Information: The Faculty Association stated that paragraph 2.3.6 of the Procedures appears to grant the University leeway to disclose the personal information of individuals for reasons that have never been contemplated in any other policies and appears to serve only to protect the University's reputation against public claims. Specifically, the University proposes to permit University Counsel to authorize the disclosure of information pertaining to, or arising from, an investigation "to correct misleading or inaccurate information if necessary to protect the integrity of the process or UBC's investigatory processes." It is unclear how this corresponds to the responsibilities set out in the Freedom of Information and Protection of Privacy Act.</p> <p>The Association seeks clarification on the circumstances envisioned that would trigger the need for such a disclosure and the intent behind its inclusion in the Policy. It also seeks the removal of any notion that the University, and University Counsel, has the unilateral right to disclose the personal information of our members, except as permitted by law.</p>	2.3.6 (Procedures)	<p>No change necessary.</p> <p>The Association is mistaken when it asserts that the authority to disclose personal information "to correct misleading or inaccurate information if necessary to protect the integrity of the process or UBC's investigatory processes" does not appear in any other policies. In fact, this disclosure authority appears in Policy 131 and Policy 95, both of which were approved by the Board in recent years. The rationale for this provision is to allow the University to "correct the record" in exceptional circumstances where a participant in an investigation makes deceptive public statements that harm the investigation process - for example, by discouraging potential complainants from coming forward. The Office of the Information and Privacy Commissioner has confirmed that UBC has authority for such disclosure under the Freedom of Information and Protection of Privacy Act (FIPPA). Specifying that the University Counsel is the sole individual who can make the decision about the disclosure of the information underlines the high level of due diligence that the University must exercise before making such a disclosure.</p>
11	<p>From Faculty Association</p> <p>Confidentiality and Privacy- b. Informing Participants: Paragraph 2.4 requires UBC to inform Complainants of the outcome of the investigation. Based on the experience of the Faculty Association, the extent and type of disclosure varies depending on the investigation findings. Where complaints are upheld, Complainants do not have the same need for information to be assured they were handled appropriately. They do not need to know the findings in as much detail, nor do they have a need to know the evidence that was found to be compelling. Disclosure in such cases should be limited and measured against the potential harm caused to participants and the integrity of the process (and any appeal or grievance) should it be circulated widely through social media or other such venues.</p> <p>The Faculty Association recommends that paragraph 2.4 be amended to provide for the differential release of information depending on what is necessary to safeguard the privacy of the Respondent and assist in rendering the Complainant whole. In lieu of releasing unnecessary details, UBC should focus on improving supports to complainants to allow them to heal from such events.</p>	2.4 (Procedures)	<p>No change necessary.</p> <p>The requirement to disclose investigation findings to Complainants and Respondents also appears in Policy 131 and Policy 95. The right of every individual to gain access to information about themselves (i.e. their own personal information) is a core principle underlying the privacy legislation. Since the investigation findings are about the Complainant as much as they are about the Respondent, UBC cannot deny the Complainant access to this information. This right of access is subject only to the obligation to remove irrelevant or third party personal information, which are not "about" the Complainant. The legal authority for such disclosure has been confirmed by the Office of the Information and Privacy Commissioner.</p>

12	<p>From AMS</p> <p>Knowledge of Disciplinary Action: Section 2.5 states, “under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons.” The AMS recommends that the Policy be amended to give complainants an opportunity to make a case why they need to know the disciplinary actions that were taken against the respondent.</p>	2.5 (Procedures)	<p>No change necessary.</p> <p>The disclosure provisions in the Policy are consistent with those contained in other UBC investigatory policies in which discipline might arise. These provisions reflects the reality that information about the discipline imposed upon a Respondent is exclusively personal information of the Respondent (unlike the investigation findings, which generally constitutes the shared personal information of the Complainant and Respondent). Accordingly, FIPPA does not authorize UBC to disclose disciplinary action to Complainants absent compelling health or safety reasons. Generally, such disclosure would be limited to informing complainants about limitations on the respondent's movements or activities. Disclosure in other situations would be so rare that the Committee did not see a compelling reason to insert an explicit provision into the Policy allowing complainants to make a case in favour of disclosure.</p>
13	<p>From Faculty Association</p> <p>Rights to discipline under the Policy: The Association understands that one of the University's intents in revising this Policy is to help Heads, Deans and other members of the University Community better understand their legal obligations to prevent and address discrimination and harassment. The Association supports and encourages this intent. However, paragraph 2.6 of the proposed Policy is confusing and awkward as currently worded. We therefore recommend that this clause be amended to provide clear and concise language on its intent. It should be clear that disciplinary power remains in the hands of those individuals specified in the respective Collective Agreements and that no other individual, including the Director of Investigations, may recommend any such action during the course of an investigation.</p>	2.6 (Policy)	<p>No change necessary.</p> <p>Section 2.6 of the Policy is in effect a 'management rights' provision and does not address who imposes discipline; the imposition of discipline is addressed in s. 6.5 of the procedures.</p>
14	<p>From a private individual</p> <p>...How does this part of the policy provide that the people in supervisory roles are acting with fair discretion in their obligations and rights? What if they themselves are unfair, abusive or very biased people? What if they harbour favouritism towards one party over other, or choose not to take a particular claim seriously? Who oversees these managers and supervisors to insure they are acting with integrity and are trustworthy?</p> <p>I also note that 2.6 does not address the discipline of faculty, only staff and students. Who takes on the discipline of faculty is not mentioned in the new policy, nor does the old one. Once again, this comes across as inconsistent treatment for faculty, versus staff and students. I highly recommend adding a section regarding the discipline of faculty to 2.6.</p>	2.6 (Policy)	<p>No change necessary.</p> <p>Section 2.6 of the Policy is a 'management rights' provision. Persons in supervisory roles are always required to carry out their duties in a procedurally fair manner and as governed by applicable collective agreement, employment, or other policy and procedures. This fairness requirement underlies all policies and does not need to be expressly called out in this Policy.</p> <p>The Committee notes that the term "employee" includes both faculty and staff members. Therefore, there is no need to update section 2.6 to refer specifically to faculty members.</p>

15	<p>From AMS</p> <p>Informal Resolution: Section 3.1 of Policy 3, under Consultations and Informal Resolution, states that “members of the UBC Community who have concerns about matters of Discrimination that relate to a Member of the UBC Community or to a UBC-sanctioned program, event or activity may consult with the Equity & Inclusion Office”. While internally, the process of dealing with informal investigations is clear in this policy, the above is the only sentence that states how potential Complainants can come forward to the university with an informal complaint. From the standpoint of the complainant, the process of coming forward may be potentially confusing given how the policy is written now. Therefore the informal resolution process should be clarified in this policy.</p>	3.1 (Procedures)	<p>No change necessary.</p> <p>Sections 3.1-3.3 of the Procedures identify the Equity & Inclusion Office (EIO) as the intake office for concerns and informal resolution. The Policy is not explicit in how the office goes about informal resolution because, in the Committee's view, it is important for the EIO to have flexibility in addressing any particular matter.</p>
16	<p>From Faculty Association</p> <p>Failure to inform FA members of representational rights: The Policy is virtually silent on the role of Unions and Associations in the investigations process. The Faculty Association has representational rights under the Collective Agreement and our members have the right to assistance from the FA in any investigation of workplace conduct. We maintain, therefore, that it behooves the University, through the Equity & Inclusion Office and/or the Director of Investigations, to advise Complainants and Respondents who are members of the Faculty Association that they may seek advice and representation from their Union. Moreover, once a member has elected to be represented by the Association, the University, including the Director of Investigations and any Third Party Investigators, must follow the labour relations processes set out in the Collective Agreement and developed through practice. In particular, once represented by the Association, all communication regarding the investigation should be directed to our office. To be clear, nothing in this Policy supersedes the rights of the FA to be involved and represent our members.</p>	3.2 (Policy) & 1.3 (Procedures)	<p>No change necessary.</p> <p>The Committee observed that there are already two provisions, section 3.2 of the Policy and 1.3 of the Procedures, that refer to members' representational rights further to applicable collective agreements. The Committee does not believe that anything more is necessary in this regard.</p>

17	<p>From a private individual</p> <p>I must commend the Committee in removing the one-year limitation on submitting a complaint. There are many reasons that people, especially women, do not report physical, sexual, verbal or emotional abuse or assault. Sometimes a major factor is the difference in power levels or authority between the Complainant and the person being Discriminatory under the definitions of this policy. It's been proven in many studies that people receiving abuse, bullying or other inappropriate contact or treatment are often reluctant to come forth, whether due to fear of the person taking these actions, or because of shame, a sense that they deserved it somehow, or that it's not seen as worth "rocking the boat" and better to keep quiet. These are very common factors found throughout the world.</p>	4 (Procedures)	No change necessary.
18	<p>From Equity & Inclusion Office</p> <p>Change "Equity and Inclusion Office" to "Equity & Inclusion Office".</p>	4.1 (Procedures)	<p>Agreed.</p> <p>We have made the corrections.</p>
19	<p>From Director of Investigations</p> <p>A list of criteria similar to those set out in Section 27(1) of the BC Human Rights Code could be created, which would provide both the Director of Investigations, and complainants and respondents, with some guidance as to the circumstances in which a complaint will be referred for investigation.</p>	4.7.2 (Procedures)	<p>Agreed.</p> <p>We have amended section 4.7.2 of the Procedures to provide guidance as to the circumstances under which the Director of Investigations (DOI) will decline to proceed with an investigation.</p> <p>The Director of Investigations may also develop additional guidance if they believe it is warranted, and post it on their website.</p>
20	<p>From Faculty Association</p> <p>Omission of timelines for submitting complaints: The Faculty Association is concerned by the prospect of removing any time limit for bringing complaints, thereby leaving the submission process open for an indefinite period of time. The ability to accurately recall events diminishes greatly over time thereby affecting the likelihood that complaints will be correctly adjudicated. Moreover, policies, cultural norms, expected standards of conduct and laws change over time. Passing judgement on individuals' past actions under present contexts is potentially prejudicial in an employment setting.</p> <p>The Association appreciates that there may be exceptional circumstances in which members of the UBC community are unable to raise their concerns within a year, however, these should be the exceptions to the process and not the rule. The Association believes that instead of removing the limitation period, the University should continue to work to create an environment in which those who experience harassment and discrimination have the knowledge, tools and supports necessary to raise their concerns in a reasonable timeframe.</p>	4.7.2 (Procedures)	<p>Agreed in part.</p> <p>The Committee continues to believe that a strict limitation period may result in unfairness for vulnerable members of the university community, who (despite UBC's best efforts) may not be prepared to risk coming forward within a 12-month limitation period. However, the Committee also recognizes that the elimination of the limitation period may result in stale complaints coming forward many years after the fact, which could result in unfairness to the respondent. Section 4.7.2 already gives the Director of Investigations (DOI) broad discretion to refuse to investigate such complaints.</p> <p>Rather than reinsert the limitation period, the Committee decided to amend this section to provide further guidance as to the criteria for exercising the DOI's discretion. These criteria include: substance of the complaint already been appropriately dealt with; substantial prejudice will result given the passage of time since the alleged misconduct; for any other reason it would be unfair to proceed.</p>

21	<p>From Faculty Association</p> <p>Lack of Clarity in the Investigations Process - c. Information Flows: Paragraph 4.1 of the Procedures compels the Director of Investigations to advise the Equity and Inclusion Office when they are in receipt of a formal complaint and provide a copy or summary of that complaint. However, if the Director of Investigations chooses not to proceed with an investigation under Paragraph 4.8, they are not similarly compelled to advise that Office of their decision and the reasons for it. In fact, it appears that they are prevented from informing the Equity & Inclusion Office and the Respondent of their determination as they "will take no further action under these Procedures" except as articulated in paragraph 4.9. The Association is concerned that the proposed Policy creates the conditions for reputational damage to Respondents who have been wrongly accused. We strongly recommend that the University include provisions for the Director of Investigations to advise the Equity & Inclusion Office and Respondent and other such individuals who need to know, of the outcome of their initial inquiry.</p>	4.9 (Procedures)	<p>Partially agreed.</p> <p>The Committee decided to amend section 4.9 to require the Director of Investigations (DOI) to inform the Equity & Inclusion Office when there has been a determination that there is no jurisdiction to accept the complaint or a decision made not to proceed with the complaint.</p> <p>The Committee did not agree that it is necessary to require the DOI to inform the Respondent of their decision not to proceed. The Respondent should only be informed of the complaint if the DOI decides to address it.</p>
22	<p>From Faculty Association</p> <p>Lack of Clarity in the Investigations Process - d. The role of the Director of Investigations is ambiguous: According to paragraph 5.2, the Director of Investigations is given wide berth to determine how best to manage a complaint, including the collection of documents and statements from Complainants, Respondents and other individuals, which is tantamount to conducting an investigation or at least the preliminary aspects of one. The Association recommends this section of the Policy clearly articulate that the Director of investigations shall advise participants and any engaged representatives when they are gathering information for the purposes of determining the bona fides of a complaint and when the request for documentation and any interviews are conducted as part of a formal investigation.</p> <p>Similarly, paragraph 6.1.4 appears to suggest that the Director of Investigations makes findings about whether the Respondent has violated the Policy. However, this determination is currently, and should be in future, the responsibility of the individual who investigates the complaint. It is unclear whether the University's intent is to alter this long-standing practice and deviate from the norms of workplace investigations. The Association seeks clarity in this regard.</p>	5.2 & 6.1.4 (Procedures)	<p>Partially agreed.</p> <p>In response to the first recommendation, no changes are required. The Committee believes that it is important to give the DOI flexibility to manage the process using any means appropriate (subject to the rules of procedural fairness) and it would not be practicable or desirable to require the DOI, having already provided notice that a complaint will proceed, to also provide updates as to the internal complaint management process that is not otherwise necessary for procedural fairness.</p> <p>In response to the second recommendation, the Committee agrees that the investigations process needs to be clarified. The Committee made the following amendments to sections 5 and 6:</p> <ul style="list-style-type: none"> - moved the section related to the required elements of the investigation report from section 6 (Resolving Complaints) into section 5 (Managing Complaints) - reverted to the original wording of section 6.1.4, which requires the DOI to recommend to the appropriate Administrative Head of Unit the imposition of discipline on the Respondent or, in cases where the investigator determines that the complaint was made in bad faith or was frivolous, vexatious or malicious, on the Complainant

23	<p>From Faculty Association</p> <p>Lack of Clarity in the Investigations Process - e. Limited transparency in decision making: The Association observed that the Policy gives the Director of Investigations discretion to decide whether a complaint should be investigated internally, sent to an external investigator for review, or managed through an alternative dispute resolution process. Unlike in Policy 131, there is no provision in the procedures that the Director advise the Complainant or provide any reasons for their decision. As the decision of how to address a complaint has significant impact on the participants, the Association maintains that the rationale for such decisions be clearly articulated to all parties.</p> <p>If the Director of investigations believes that an alternative dispute resolution process is desirable, the Faculty Association recommends that the University replicate the language in Section 3.5 of the procedures of Policy 131 to provide clear guidance on the steps involved in obtaining the consent of participant.</p>	5.2 (Procedures)	<p>Partially agreed.</p> <p>The Committee does not believe it is necessary or desirable for the Director of Investigations (DOI) to provide reasons for the DOI's decision about how to address or manage the complaint. Policy 131 does not require the DOI to provide such reasons.</p> <p>However, with regard to alternative dispute resolution, the Committee agreed that further clarification should be made around the option of mediation or alternative resolution processes. The Committee has inserted language into section 5.2.7, 5.3 and 5.4 of the Procedures that is similar to section 3.5 of the Policy 131 procedures.</p>
24	<p>From Faculty Association</p> <p>Unrealistic timelines (s. 5.4): Paragraph 5.4 of the Procedures maintains that the complaints management process be completed in 90 calendar days unless there are "exceptional circumstances". In our experience, this is a wholly unrealistic timeline for the vast majority of cases involving faculty members. Despite similar efforts by the University to place tighter schedules in Policy 131, these investigations have generally taken far longer than 90 days, with some lasting upwards of 8 months. Including timelines that are unlikely to be met creates unrealistic expectations on the part of Complainants and Respondents. This, in turn, has detrimental impacts on the mental health of participants and on our members' confidence in the University's processes.</p>	5.4 (Procedures)	<p>Partially agreed.</p> <p>While the Committee recognizes that it is not always possible to meet time limits, it still believes that such timelines are useful to promote accountability. The specified timeline can be later amended based on experience under the revised Policy. To provide more flexibility, the Committee decided to amend section 5.4 to provide that "normally" the complaint management process will be completed in 90 calendar days.</p>

25	<p>From a private individual</p> <p>... It seems the system is set up to give equal treatment to the Respondent, regardless of their role at UBC. Why then are Respondents in different roles (e.g. faculty or students) treated differently as to when disciplinary action is taken against them?</p> <p>If, for example, a faculty member was the subject of a legitimate complaint of a student in their class, how would the student's need for credit in that particular class be dealt with during the complaint process? The student may choose to leave the class due to discomfort or distress, but what if that simply allows the faculty member to make discriminatory actions against other students who don't report it? Even if the complaint was responded to by the faculty member, would they then be suspended from teaching that class? Would they immediately be replaced by another faculty member as a substitute in the service of safety and conscientious justice? Would a restraining order be given to them if the case merited it?</p>	6.2 (Procedures)	<p>No change necessary.</p> <p>The issue of differential treatment of students in the disciplinary stage has been addressed above.</p> <p>The issue of how a student would be accommodated during the investigation process is reflected by section 6.2 of the Procedures, and applicable employment and collective agreement processes. The Director of Investigations has authority to recommend measures during an investigation to preserve safety while a complaint is being investigated or resolved (section 5.2.3 of the Procedures). The measures that may be considered and taken in any particular matter is highly fact dependent. If there is a finding of misconduct, the appropriate decision-maker is authorized to impose discipline and take measures necessary to protect the complainant. Moreover, any form of retaliation is expressly prohibited under section 1.4 of the Policy.</p>
26	<p>From Faculty Association</p> <p>Lack of Clarity in the Investigations Process - f. Responsibility for investigation report: Paragraph 6.3 provides that the Investigation Report is prepared by the Director of Investigations, regardless of whether the Director is the investigator. The Associations questioned why the individual who is responsible for completing the investigation is not responsible for drafting the report. It is also unclear whether the Director of Investigations has to prepare a report if they conduct the investigation.</p>	6.3 (Procedures)	<p>No change necessary.</p> <p>Section 6.3 states that either the Director of Investigations "or their delegate" are responsible for preparing the investigation report.</p>

27	<p>From Faculty Association</p> <p>Administrative heads of unit: The Association supports the University's proposal to relieve the responsibility of Heads to investigate complaints under Policy 3. However, paragraph 6.5 of the procedures provides a broad scope of disciplinary responsibility that includes Department Heads of Academic Units. We maintain that, irrespective of the differential disciplinary powers vested in Heads, Deans and the President as set out in the Collective Agreement, in many cases it is preferable, owing to the circumstances, for Deans to address misconduct of this nature. We have heard from Department Heads and Directors that they often lack the training and expertise to render judgement in such circumstances. Our members have also expressed concern that their proximity to the collegial processes of the department, at times short tenure as Head/Director and ongoing need to maintain strong research and workplace relationships create barriers to effectively addressing challenging circumstances such Code-based discrimination and harassment.</p> <p>The Association recommends that the Policy specify that any discipline arising out of an investigation will be imposed in accordance with the provisions of the relevant Collective Agreement and in keeping with the University Act. We also recommend that the Policy clarify that the University is committed to providing training, support and resources to Administrative Heads of Unit so that they are better able to confidently address and remediate problems in their Units.</p>	6.5 (Procedures)	<p>No change necessary.</p> <p>The role of the Administrative Head of Unit (ADHOU) in imposing discipline (and/or other remedial measures, as per section 6.5) reflects the role given to ADHOU under the collective agreements. The Committee believes it is important for the Policy to be consistent with UBC's collective agreements. Moreover, the Policy, as amended, makes clear that the Equity & Inclusion Office is available to assist the ADHOU with advice and access to resources.</p>
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