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| <b>SUBJECT</b>             | PROPOSED AMENDMENT OF SEXUAL MISCONDUCT POLICY SC17  |                                    |
| <b>REPORT TO</b>           | PEOPLE, COMMUNITY & INTERNATIONAL COMMITTEE  |                                    |
| <b>MEETING DATE</b>        | NOVEMBER 26, 2019  |                                    |
| <b>MATTER TYPE</b>         | <input type="checkbox"/> BOARD DISCUSSION NOT REQUIRED   | <b>a</b> BOARD DISCUSSION REQUIRED |
| <b>ACTION REQUESTED</b>    | For the People, Community & International Committee's information and input  |                                    |
| <b>REPORT DATE</b>         | November 5, 2019   |                                    |
| <b>EXECUTIVE PROPONENT</b> | Hubert Lai, Q.C., University Counsel   |                                    |
| <b>PRESENTED BY</b>        | Sara-Jane Finlay, AVP Equity & Inclusion (Co-Chair Policy Review Committee)<br>Roslyn Goldner, Roslyn Goldner Law Corporation (Co-Chair Policy Review Committee) |                                    |
| <b>SUPPORTED BY</b>        | Ainsley Carry, Vice-President Students<br>Barbara Meens Thistle, Vice-President Human Resources  |                                    |

**PRIOR SUBMISSIONS** Not applicable

#### EXECUTIVE SUMMARY

The *Sexual Violence and Misconduct Policy Act* came into force on May 19, 2017. The *Act* required all post-secondary institutions to establish and implement sexual misconduct policies. The Board of Governors approved Policy SC17 (then numbered Policy 131) (Sexual Assault and Other Sexual Misconduct) ("**Policy SC17**" or the "**Policy**") which came into effect on May 18, 2017 and met the requirements of the legislation. A great deal of work has been done to implement the Policy over its first 2 ½ years, with regular reports on progress being provided to the Board by the Vice-President Human Resources, and the Vice-President Students. In April 2018, the Vice-President Human Resources and Vice-President Students undertook a very robust retrospective assessment of the implementation of the Policy to identify implementation issues or gaps that might require mitigation, as well as capturing successes and learnings to guide the Policy's ongoing implementation.

The *Sexual Violence and Misconduct Policy Act* further requires that post-secondary institutions review their sexual misconduct policies at least once every three years. If the post-secondary institution determines from this review that amendments to its sexual misconduct policy are required, the post-secondary institution must then make those amendments. The Office of the University Counsel constituted a Policy Review Committee (the "**Committee**"). The Committee met six times during September and October 2019 and proposed amendments to the Policy. The proposed amendments are intended to address particular areas identified during the initial implementation of the Policy, to provide some additional guidance and information to the UBC community, and to make various drafting improvements (including consistency with other relevant policies).

Notable proposed amendments to Policy SC17 include:

1. Creation of an "immunity" provision (policy, s. 1.10). This provision states that, in recognition that individuals may be hesitant to Disclose or Report to UBC an incident of Sexual Misconduct where the individual was consuming alcohol while underage or in excess, or using drugs, an individual who, acting in good faith, makes a Disclosure or Report of Sexual Misconduct will not be subject to actions by UBC for any violation of applicable UBC policy, rules or regulations related to drug or alcohol use. Similar provisions are found in many other post-secondary institution's sexual misconduct policies to encourage individuals to disclose incidents of sexual violence so that they can be addressed by the institution.

2. Creation of a category of “Prohibited Relationships” that recognizes the heightened vulnerability and trust inherent in certain relationships involving students (policy, ss. 1.11-1.13). A Prohibited Relationship is a sexual or romantic relationship between certain Members of the UBC Community and students, where the Member of the UBC Community has a supervisory role over the student, or otherwise has influence over the student’s current or future academic, working, or career advancement. This extends to faculty and their students, and coaches and their student athletes. Such sexual relationships are prohibited and constitute a violation of Policy SC17. Pre-existing sexual relationships that exist prior to the development of the supervisory or other influential aspect, are to be disclosed and managed, if possible, under UBC’s conflict of interest policy (COI Policy (SC3)). Existing Prohibited Relationships that are being managed under the COI Policy (SC3) are not a violation of Policy SC17.
3. Clarification and further guidance as to what constitutes Consent to sexual activity for the purposes of the Policy. To supplement the Policy’s definition of “Consent”, a standalone section addressing Consent has been created that provides further guidance and information (policy, section 4). As examples of the amendments:
  - a. express reference has been added that neither the parties’ relationship status or consent to past sexual activity implies future or ongoing consent;
  - b. stating that the onus is on the initiator of sexual activity to obtain consent;
  - c. stating that if consent is withdrawn at any time during sexual activity, the sexual activity must stop;
  - d. clarifying when an individual is incapable of granting consent (e.g., asleep or unconscious, intoxicated by drugs or alcohol, under the legal age of consent);
  - e. stating that a person’s reputation or sexual history cannot be relied on to conclude that it was more likely that consent had been given; and
  - f. identifying the inherent risk of establishing consent to sexual activity where there is an imbalance of power, or a relationship of trust or authority, and thus such relationship factors are relevant considerations when determining if there was consent.
4. Specifically referencing the creation and role of the Independent Investigations Office (“**IIO**”). This includes adding a new, standalone section for the IIO in the Policy (policy, section 6) similar to the approach already taken for the Sexual Violence Prevention and Response Office (“**SVPRO**”), along with other revisions. The IIO’s role as a neutral and impartial office that investigates Reports utilizing trauma-informed investigators is clearly stated, with the Director of Investigations of the IIO identified as the person who determines if UBC has jurisdiction to investigate an alleged incident of Sexual Misconduct, and who has the discretion to decline to investigate in certain prescribed circumstances (this is consistent with the Director’s discretion under the Discrimination Policy (SC7), with the amendment’s language taken from the equivalent provision in the Discrimination Policy). These amendments clarify that the IIO is distinct from the SVPRO and has a different role under the Policy. An amendment to the procedures also provides clarity for Respondents and Complainants that the IIO does not determine the discipline or outcome should an investigation find that Sexual Misconduct contrary to the Policy occurred.
5. Clarifying the appropriate use of anonymous and 3<sup>rd</sup> party reporting by Members of the UBC Community (policy, s. 10.2). A foundational principle of the Policy is to respect the rights of those who Disclose to make their own decisions about accessing supports, making a Report or pursuing other external processes. The amendments state that anonymous and 3<sup>rd</sup> party reporting is not intended to be used by Members of the UBC Community who receive a Disclosure where the disclosing individual has chosen not to make a Report

- to the IIO. In that circumstance, the Member of the UBC Community who received the Disclosure is expected to honour the wishes and autonomy of the disclosing individual. The UBC member is encouraged to contact the SVPRO if they have questions or wish assistance in how to support the disclosing individual.
6. Adding a new section to give the Director of the SVPRO the discretion to make an “institutional” Report to the IIO where the SVPRO has received multiple Disclosures but the disclosing individuals have decided not to make a Report to the IIO (policy, s. 8.6). This would allow the IIO to investigate alleged Sexual Misconduct that may, for example, involve the same alleged wrongdoer in the absence of a named complainant. Those who disclosed have the right not to participate in the IIO’s investigation but may, in their sole discretion, participate as a witness. This amendment reflects UBC’s desire to deal with these exceptional circumstances, while respecting the disclosing individuals’ decision not to make a Report or to participate in any investigation. The Director of Investigations would assess whether, in the particular circumstances, a formal investigation could proceed given the evidence available and procedural fairness requirements.
  7. Amending the alternative dispute resolution provisions to use more appropriate language and provide further guidance as to this alternative to a formal investigation (procedures, ss. 3.5-3.7). This includes:
    - a. changing the language from “alternative dispute resolution” to “alternative resolution process”;
    - b. emphasizing that engaging in an alternative resolution process be at the request of the Complainant so that the Complainant does not in any way feel pressured to engage in an alternative resolution process rather than the IIO proceeding with an investigation;
    - c. giving examples of what alternative resolution processes are available; and
    - d. making confidential what transpires and is disclosed during the alternative resolution processes. This means that should either party withdraw from the process, that information is not to be disclosed or relied upon in the IIO’s subsequent investigation unless that information is independently obtained by the investigator.
  8. Adding a new section to provide that, where an investigation has determined that the Policy has been breached, a decision by the applicable decision maker as to the discipline and outcome will normally be made within 30 days upon receipt of the investigator’s written findings or to be notified if that timeline cannot be met (procedures, s. 4.2). This provides Respondents and Complainants with an anticipated timeline for completion of the next stage in the process where the investigator finds that there was a breach of the Policy, and imposes accountability on the applicable decision maker to deal expeditiously with the findings.
  9. Amending the annual statistical reporting provision, in particular, as it relates to the statistics from the SVPRO (policy, s. 7.1). The amendment requires reporting the number of times SVPRO support services were requested as opposed to the number of Disclosures received. This more accurately reflects usage of the SVPRO’s support services by those who have suffered trauma from sexual violence, and reflects that the SVPRO’s support services are provided to any Member of the UBC Community irrespective of when and where any incident of sexual violence occurred. It also reduces the risk that the SVPRO’s statistics are misunderstood to indicate the number of incidents of Sexual Misconduct at UBC. This was a requested amendment by the People, Community & International Committee.
  10. Changing the long title of the Policy to “Sexual Misconduct Policy” from “Sexual Assault and Other Sexual Misconduct Policy”. This reflects that under the Policy UBC investigates allegations of Sexual Misconduct where UBC has Jurisdiction to Investigate, with the Policy’s definition of Sexual Misconduct including sexual assault as also defined for the purpose of the Policy. “Sexual misconduct” is also the term used in the

legislation that requires post-secondary institutions to establish and implement “a sexual misconduct policy”.

11. Miscellaneous formatting and other revisions to make the structure of the Policy more consistent with other Board policies and best drafting practices.

A significant issue discussed by the Committee are the privacy obligations imposed on UBC (and other BC post-secondary institutions) under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The Privacy Commissioner’s position is that post-secondary institutions may not disclose to a complainant or the public the disciplinary measures imposed on a Respondent in response to a finding of Sexual Misconduct, other than in the limited situation where it is necessary to do so for health or safety concerns. UBC and the other BC post-secondary institutions have been unsuccessful in persuading the Privacy Commissioner away from that position. The Committee’s recommendation is that UBC take a leadership role in seeking change in FIPPA to provide disclosure exceptions for discipline imposed by post-secondary institutions pursuant to their applicable sexual misconduct policies.

The Committee recognizes that supports available for Respondents are limited. The Committee recommends that UBC Vancouver consider establishing a support office for Respondents that would be separate from the SVPRO and SVPRO’s provision of services. UBC Okanagan is currently searching for a Human Rights/Respondent Support Advisor, situated in the Equity & Inclusion Office.

The Committee also recommends that UBC commit such resources as may be required to assist with updating the websites of the SVPRO and IIO to develop information bulletins or FAQs that could be read in conjunction with the Policy.

The Committee also recommends consideration of a standing implementation committee to oversee the continued implementation of the Policy.

Subject to any feedback from the Board’s People, Community & International Committee, the next step will be to post the proposed amendments to Policy SC17 on the website of the Office of the University Counsel for public comment by the University community, accompanied by notifications to student groups, union leadership, and UBC unit heads. There will be an extended consultation period of approximately two months to the end of January 2020 to give members of the UBC community an opportunity to provide their feedback, as well as to enable broader community engagement. This will include the Committee holding a meeting at the First Nations Longhouse to engage with Indigenous faculty, staff and students to ameliorate the lack of Indigenous representation on the policy committee. The Co-Chairs are discussing holding meetings with delegations from representative groups of faculty and staff, and students, or other forms of outreach and community consultation. The Committee will reconvene after the consultation period and meet in February and into March 2020 to consider the comments received. After reviewing the community’s input, the Committee will submit a final recommendation to the Board of Governors for approval in June 2020.

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## SUPPLEMENTAL MATERIALS

1. Proposed amendments to Policy #SC17 – Sexual Misconduct Policy (without blacklining)
2. Blackline showing the proposed amendments to Policy #SC17 – Sexual Misconduct Policy
3. List of Members of the Policy Development Committee
4. The current Policy #SC17 – Sexual Misconduct Policy, is available at:  
[https://universitycounsel.ubc.ca/files/2019/08/Sexual-Misconduct-Policy\\_SC17.pdf](https://universitycounsel.ubc.ca/files/2019/08/Sexual-Misconduct-Policy_SC17.pdf)

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|  <b>The University of British Columbia<br/>Board of Governors</b> | <b>Policy No.:</b><br><b>SC17</b> |
| <b>Long Title:</b><br>Sexual Misconduct  |                                   |
| <b>Short Title:</b><br><b>Sexual Misconduct Policy</b>   |                                   |

### Background & Purposes:

UBC's goal is to maintain a respectful environment where its members can study, work, and live free from sexual misconduct. This policy articulates UBC's commitment to support members of the UBC community who are affected by sexual misconduct, to provide a central site for information regarding the resources and options available to those affected by sexual misconduct, to create and make available programs and resources to educate its community on the prevention of sexual misconduct, and to provide a process to respond to and investigate allegations of sexual misconduct.

### 1. Principles and Commitments

- 1.1 UBC will not tolerate any form of Sexual Misconduct.
- 1.2 UBC recognizes that people's experiences will be affected by factors such as their access to power and privilege, their sex, sexual identity, gender identity or expression, racialization, age, family status, religion, faith, ability, disability, national or ethnic origin, Indigeneity, immigration status, socio-economic status, class, and language. UBC also recognizes that the university is a unique environment, in which power imbalances are inherent. These factors, along with an individual's personal history, affect individual experiences of Sexual Misconduct, the ability to access supports, and choices with regard to recourse. UBC will take this into account when carrying out its responsibilities under this Policy.
- 1.3 UBC is committed to providing comprehensive and inclusive Sexual Misconduct education, prevention, and response initiatives. Through these initiatives, UBC is committed to countering rape culture, a term that describes broader social attitudes about gender, sex and sexuality that normalize Sexual Misconduct and undermine equality.
- 1.4 UBC is committed to reducing barriers to Disclosing and Reporting, and to taking a trauma-informed approach when responding to and addressing Disclosures and Reports, and when conducting Investigations.
- 1.5 UBC will provide support services and assistance to Members of the UBC Community who Disclose or Report Sexual Misconduct.

- 1.6 UBC is committed to respecting the rights of those who Disclose to make their own decisions about accessing support services and assistance, making a Report, or pursuing external processes such as criminal or civil action.
- 1.7 UBC will provide support to Members of the UBC Community who have had Reports of Sexual Misconduct made against them.
- 1.8 UBC is committed to procedural fairness and will respond to and address Disclosures and Reports, and will conduct Investigations, in a timely manner.
- 1.9 UBC will not tolerate any retaliation as defined in the Retaliation Policy (SC18), direct or indirect, against anyone making, or involved in, a Disclosure, a Report, or an Investigation. Allegations of retaliation will be addressed pursuant to the Retaliation Policy (SC18).
- 1.10 UBC recognizes that some individuals may be hesitant to Disclose or Report Sexual Misconduct in cases where they have been consuming alcohol underage or in excess, or using drugs. An individual acting in good faith who makes a Disclosure or Report will not be subject to actions for violation of any applicable UBC policy, rules or regulations related to drug or alcohol use at the time the alleged Sexual Misconduct occurred.
- 1.11 UBC recognizes that certain relationships between students and other Members of the UBC Community are relationships of trust and vulnerability, particularly where there is a supervisory role or where the individual has influence over a student's current or future academic activities, working conditions, or career advancement. Sexual or romantic relationships involving individuals in the following classes of Members of the UBC Community where there is a supervisory role or where the individual has influence over a student's current or future academic activities, working conditions, or career advancement are Prohibited Relationships:
  - 1.11.1 faculty, or Teaching Staff Members, or emeriti, and Students;
  - 1.11.2 staff and Students;
  - 1.11.3 Coaching Staff Members and Student athletes; and
  - 1.11.4 Faculty, or Teaching Staff Members, or emeriti, and Medical Residents, Clinical Fellows, or Postgraduate trainees in the Faculty of Medicine.
- 1.12 In circumstances where there is an existing sexual or romantic relationship that pre-dates the Prohibited Relationship, the relationship must be disclosed to the Administrative Head of Unit who will take appropriate steps pursuant to the University's conflict of interest and conflict of commitment policy (the COI Policy (SC3)).
- 1.13 If a sexual or romantic relationship between certain members of the UBC Community is not restricted under this Policy, there may nonetheless be restrictions imposed in connection with such a relationship under the COI Policy (SC3).
  - 1.13.1 Where an existing Prohibited Relationship has been managed under the COI Policy (SC3), engagement in the Prohibited Relationship will not constitute a breach of this Policy.

## 2. Definitions

2.1 **“Sexual Misconduct”** is any sexual act or act targeting an individual’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against an individual without that individual’s Consent. The following list sets out examples of Sexual Misconduct. The list is intended to help Members of the UBC Community understand the kinds of acts that will be considered Sexual Misconduct. The list is not exhaustive and other acts can still be considered Sexual Misconduct under this Policy even if they do not appear in the list below. Sexual Misconduct includes, but is not limited to, the following:

2.1.1 sexual assault, which is any form of sexual touching or the threat of sexual touching without the individual’s Consent;

2.1.2 sexual harassment, which is unwelcome conduct of a sexual nature that detrimentally affects the working, learning, or living environment, or leads to adverse consequences for the one directly subjected to the harassment;

2.1.3 stalking and cyberstalking (through the use of the internet or other electronic means), is engaging in conduct that causes an individual to fear for their physical or psychological safety, such as repeatedly following or communicating through any means with someone, engaging in threatening conduct, or keeping watch over the place where the individual happens to be;

2.1.4 indecent exposure, which is exposing one’s body to another individual for a sexual purpose or coercing another individual to remove their clothing in order to expose their body, without Consent;

2.1.5 voyeurism, which is non-consensual viewing, photographing, or otherwise recording another individual in a location where there is an expectation of privacy and where the viewing, photographing or recording is done for a sexual purpose; and

2.1.6 the distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording.

2.2 **“Consent”** is the active, voluntary agreement to engage, and to continue to engage, in the sexual activity in question. Further information about Consent is provided in section 4 of this Policy.

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

2.3.1 students, defined as any person enrolled in any component of an academic or training program or course at UBC whether or not the program or course is for credit, including co-op and exchange students, or classes of learners who are designated by resolution of the senate as a student;

2.3.2 employees, including faculty and staff members;

- 2.3.3 emeriti, a volunteer engaged in a UBC activity, or any other individual acting on behalf of UBC;
  - 2.3.4 Teaching Staff Members;
  - 2.3.5 any individual active on any UBC committee or review panel;
  - 2.3.6 post-doctoral fellows; and
  - 2.3.7 anyone contractually obligated to comply with this Policy.
- 2.4 **“Teaching Staff Member”** means any individual who provides or teaches any component of an academic program or course at UBC, including, but not limited to, professors, including part-time and full-time professors, associate professors, assistant professors, adjunct professors, clinical professors, clinical associate professors, clinical assistance professors, clinical instructors, instructors I, instructors II, senior instructors, twelve-month lecturers, visiting and emeritus faculty, teaching assistants, supervisors of graduate students, supervisors of researchers, program directors, librarians, or any other person employed by UBC in an equivalent position to the above designated by the UBC Vancouver Senate, the UBC Okanagan Senate, or the Council of Senates.
- 2.5 **“Prohibited Relationship”** is any romantic, dating, or sexual relationship prohibited by this Policy.
- 2.6 **“Coaching Staff Member”** is any employee, or volunteer, who is a coach, or assistant coach, of a UBC varsity athletic team.
- 2.7 **“Disclose”** or **“Disclosure”** is the sharing of information with UBC regarding any incident of Sexual Misconduct. Further information about Disclosures is provided in section 8 of this Policy.
- 2.8 **“Report”** or **“Reporting”** is providing a statement of allegations to the Director of Investigations about a Sexual Misconduct. Further information about Reporting is provided in section 9 of this Policy.
- 2.9 **“Jurisdiction to Investigate”** is the legal authority to investigate under this Policy.
- 2.10 **“Investigation”** is an investigation carried out by UBC, pursuant to its Jurisdiction to Investigate under this Policy, on the basis of a Report, as set out in the Procedures to this Policy.
- 2.11 **“Investigator”** is the individual appointed to Investigate a Report under the Procedures to this Policy.
- 2.12 **“Investigation Findings”** is the written report submitted by the Investigator to the Director of Investigations of the Independent Investigations Office.

### 3. Jurisdiction to Investigate

- 3.1 UBC’s Jurisdiction to Investigate is determined by the Director of Investigations and is limited by the following:

- 3.1.1 the allegations must be made against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct and at the time the Report was submitted;
  - 3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct; and
  - 3.1.3 the alleged conduct must have a real and substantial connection to UBC. Each incident and its connection to UBC will be considered on its particular factual circumstances.
- 3.2 The Director of Investigations may exercise discretion to decline to investigate under this Policy on the grounds that:
- 3.2.1 due to the amount of time that has elapsed since the alleged misconduct occurred, proceeding now would result in substantial prejudice to any person; or
  - 3.2.2 it is unfair or otherwise inappropriate to proceed with the complaint.

#### **4. Consent**

- 4.1 Voluntary agreement to engage, or continue to engage, in sexual activity must be affirmatively communicated through words or actively expressed through conduct. An individual who is incapacitated cannot give voluntary consent. Also, consent obtained through the abuse of a position of trust, power or authority, or through fraud or coercion, or due to fear of consequences, violence, or retaliation is not voluntary consent. For clarity:
- 4.1.1 Consent cannot be implied, which means it must be affirmatively given and cannot be assumed by a person's actions, silence or inaction.
  - 4.1.2 Consent can be withdrawn at any time during the sexual activity which means that if consent is withdrawn the sexual activity must stop.
  - 4.1.3 Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent only applies to each specific instance of sexual activity. Neither the relationship status of the parties nor past consent to sexual activity implies future or ongoing consent.
  - 4.1.4 The initiator of the sexual activity is responsible for obtaining consent.
  - 4.1.5 Individuals are incapable of consenting if they are not able to appreciate the nature of the sexual activity, or to appreciate the risks and consequences of the sexual activity, or are otherwise unable to choose whether to engage in the sexual activity. An individual is incapable of consenting if the individual is:
    - (a) asleep or unconscious;
    - (b) intoxicated due to ingestion of drugs or alcohol; or
    - (c) under the legal age of consent as defined in the Canadian Criminal Code.

- 4.1.6 Evidence that an individual's judgment was impaired by alcohol or drugs is a relevant consideration for determining whether the individual consented to the sexual activity in question.
- 4.1.7 It is not acceptable for a Respondent to respond to an allegation of Sexual Misconduct by claiming that intoxication or impairment from drugs or alcohol resulted in a mistaken belief that there was consent.
- 4.1.8 A person's sexual reputation or history of sexual activity cannot be relied on to conclude it was more likely that consent had been given.
- 4.1.9 Even if sexual activity occurs outside of the class of Prohibited Relationships, there is an inherent risk that consent will not be truly voluntary whenever there is an imbalance of power, or a relationship of trust or authority. In the event a Report is filed about that sexual activity it will be difficult for a Respondent to rebut an allegation that the sexual activity was not consensual.

## **5. The Sexual Violence Prevention and Response Office**

- 5.1 The Sexual Violence Prevention and Response Office receives disclosures under this Policy. This office is a single point of contact and liaison on each campus for Members of the UBC Community who are affected by Sexual Misconduct, regardless of who committed the sexual misconduct, or where or when it took place. Individuals do not need to make a Report to access support and assistance from this office. The office will provide support, information, options, and assistance described in section 8.3 of this Policy based on the needs of the individual.
- 5.2 The Sexual Violence Prevention and Response Office coordinates and oversees sexual misconduct prevention and response protocols and processes, communications, resource materials and training.
- 5.3 Reports of Sexual Misconduct under this Policy are received and managed by the Independent Investigations Office which is a separate office at UBC.

## **6. The Independent Investigations Office**

- 6.1 The Independent Investigations Office is a neutral and impartial office with trauma informed investigators who will investigate Reports with respect to which UBC has the Jurisdiction to Investigate as determined by the Director of Investigations.

## **7. Annual Reporting**

- 7.1 Annually, UBC will publicly report the number of:
  - 7.1.1 requests for services received by the Sexual Violence Prevention and Response Offices;
  - 7.1.2 Reports received by the Independent Investigations Office; and
  - 7.1.3 Reports investigated or referred to an alternative process.

## 8. Disclosures

- 8.1 The decision to Disclose and the decision to Report are separate decisions. An individual may choose to Disclose Sexual Misconduct without making a Report. Consequently, Disclosure does not result in a Report being made, and does not initiate an Investigation or other action by UBC, subject only to section 8.5 and 8.6.
- 8.2 UBC will make appropriate support services and assistance available to Members of the UBC Community on the basis of a Disclosure, regardless of whether they decide to make a Report or whether UBC has the Jurisdiction to Investigate.
- 8.3 Assistance may be available to Members of the UBC Community who have Disclosed or Reported Sexual Misconduct including:
  - 8.3.1 student residence re-location or short term emergency student housing;
  - 8.3.2 class schedule changes;
  - 8.3.3 provision of academic concessions;
  - 8.3.4 emergency funding for students;
  - 8.3.5 safety planning;
  - 8.3.6 temporary work reassignment, location reassignment, or scheduling changes; and
  - 8.3.7 the implementation of safety measures which may include temporary interim restrictions pursuant to the At-Risk Behaviour Policy (SC13).
- 8.4 UBC recognizes that Disclosures are most often made to someone the individual making the Disclosure already knows. If a Disclosure is made to a Member of the UBC Community who is not trained to receive Disclosures, that Member is encouraged to contact the Sexual Violence Prevention and Response Office for support and information on how best to respond to the Disclosure and to support the individual making the Disclosure. Members of the UBC Community who receive a Disclosure are not expected to file a Report related to the Disclosure under section 9 of this Policy although, at the request of the individual making the Disclosure, they may file a Report under section 9 of the Policy on behalf of the individual making the Disclosure.
- 8.5 Except as provided in this Policy, UBC will respect an individual's choice not to make a Report and where possible will keep the Disclosure confidential. In exceptional circumstances, where required by law or where, in the discretion of the Director of the relevant Sexual Violence Prevention and Response Office, there is a risk of significant harm to anyone's health or safety, the Director of the relevant Sexual Violence Prevention and Response Office may do one or both of the following:
  - 8.5.1 refer the matter to the Independent Investigations Office as a Report under section 9, in which case the individual who Disclosed has the right not to participate in any subsequent Investigation; and

8.5.2 notify third parties, such as the police or child protection authorities.

- 8.6 In appropriate circumstances, where the Sexual Violence Prevention and Response Office has received more than one Disclosure from different individuals involving a Member of the UBC Community, the Director of the relevant Sexual Violence Prevention and Response Office may exercise discretion to make an Institutional Report to the Director of Investigations based on the allegations in the Disclosures. The Independent Investigations Office will not disclose the names of the individuals making the Disclosures without the consent of those individuals, who have the right not to participate in any subsequent investigation as a Complainant but may, in their sole discretion, participate as witnesses.
- 8.7 If the Director of Investigations takes any action under section 8.6, the Director of the relevant Sexual Violence Prevention and Response Office will notify the individuals who made the Disclosures and will ensure that appropriate support services are made available to those individuals.
- 8.8 Subject to sections 8.5 and 8.6, records of Disclosures made to a Sexual Violence Prevention and Response Office will be kept strictly confidential, and access to those records will be limited to the Director and staff members of the relevant Sexual Violence Prevention and Response Office unless UBC is ordered to produce the records in a court proceeding.

## 9. Reports

- 9.1 Anyone directly subjected to Sexual Misconduct, including an individual who is not a Member of the UBC Community, can make a Report against a Member of the UBC Community under this Policy.
- 9.2 Reports must be submitted to the Independent Investigations Office, where they will be addressed in accordance with the Procedures to this Policy, which include an initial review as set out under section 3 of the Procedures to determine whether the allegations contained in the Report fall within UBC's Jurisdiction to Investigate.
- 9.3 Sexual harassment may fall within the scope of both the Discrimination Policy (SC7) and this Policy. Reports that contain allegations of Sexual Misconduct other than sexual harassment will be addressed under this Policy. Reports that contain allegations of sexual harassment alone 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 Report, which policy is better suited to address the allegations.
- 9.4 An individual can submit a Report to the Independent Investigation Office and pursue other processes external to UBC against the individual alleged to have committed the Sexual Misconduct. These external processes may include reporting to the police or initiating a civil action (including a complaint under the BC *Human Rights Code*). These are separate processes and Reporting to the Independent Investigations Office does not result in a report to the police or the initiation of a civil action except as provided in section 8.5.2 of this Policy, where UBC may notify third parties, such as the police or child protection authorities.
- 9.5 If an Investigation, or alternative resolution process, is initiated under the Procedures to this Policy, and an external process is also being pursued, the Director of Investigations may elect,

after consultation with the Complainant, to continue with the UBC process or to suspend the UBC process as appropriate. Suspension of a UBC process allows for further action to be taken at a later date as appropriate.

- 9.6 Where a Report has been made to the Independent Investigations Office and the Director of Investigations has determined that the allegations fall within UBC's Jurisdiction to Investigate and may include At-Risk Behaviour as defined under the At-Risk Behaviour Policy (SC13), the Director of Investigations can refer the At-Risk Behaviour to be addressed pursuant to that Policy by the appropriate decision maker.

## **10. Anonymous and Third Party Allegations**

- 10.1 Individuals, other than the individual who was directly subjected to the Sexual Misconduct, may anonymously advise the Independent Investigations Office of the Sexual Misconduct or may submit a Report to the Independent Investigations Office.
- 10.2 Members of the UBC Community who receive a Disclosure should follow the processes set out in section 8.4 of this Policy. Members of the UBC Community who receive a Disclosure are expected to honour the choices of the person making the Disclosure and should not submit a Report that could interfere with the decision of the person making the Disclosure.
- 10.3 UBC may be unable to proceed with an Investigation involving anonymous or third party allegations due to a lack of evidence or where proceeding would otherwise violate procedural fairness. In such cases, the Director of Investigations will consider whether any other steps can and should be taken.
- 10.4 In appropriate circumstances, where other evidence exists and where proceeding with an investigation would not violate procedural fairness, the Director of Investigations may exercise discretion to proceed with an Investigation. In such cases, the individual who experienced the alleged Sexual Misconduct has the right to not participate in the Investigation.
- 10.5 In determining whether to proceed with an Investigation involving anonymous or third party allegations the Director of Investigations will consult with the Director of the appropriate Sexual Violence and Prevention Office. The individual identified as having experienced the alleged Sexual Misconduct will be notified of the allegations and available support and options for response will be made available to the individual.
- 10.6 If UBC is unable to proceed with an Investigation involving anonymous or third party allegations, the allegations will be retained by the Sexual Violence Prevention and Response Office on the relevant campus. These allegations will be kept strictly confidential, and access to them will be limited to the Director of Investigations and the Director of the Sexual Violence Prevention and Response Office.

## **11. Conflicts of Interest**

- 11.1 If a Director or staff member of the Sexual Violence Prevention and Response Office, the Director of Investigations, an Investigator, or a UBC authority empowered to impose discipline has a real or apparent conflict of interest in a particular matter, or where there is a reasonable

apprehension of bias, then that individual will not continue to be involved in the matter and UBC will appoint an appropriate individual to act in that role for the purposes of that matter.

## **12. Policy Review**

- 12.1 UBC is committed to reviewing this Policy at least once every three years, in consultation with students and other Members of the UBC Community.

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## PROCEDURES ASSOCIATED WITH THE SEXUAL MISCONDUCT POLICY

*Pursuant to the Regulatory Framework Policy, the President may approve Procedures or the amendment or repeal of Procedures. Such approvals must be reported at the next meeting of the UBC Board of Governors or as soon thereafter as practicable.*

*Capitalized terms used in these Procedures that are not otherwise defined herein shall have the meanings given to such terms in the accompanying Policy, being the Sexual Misconduct Policy.*

### **1. General**

- 1.1 The Director of Investigations and the Investigators are impartial and neutral and will exercise their authority and discretion under these Procedures in conformity with the principles of procedural fairness in the university context.
- 1.2 The Independent Investigations Office will liaise with the Sexual Violence Prevention and Response Office where appropriate to ensure that support services and accommodations remain in place, or are established, for the duration of the Initial Review and the Investigation.

### **2. Reports**

- 2.1 Reports must be submitted in writing, and should set out the relevant details with regards to the alleged Sexual Misconduct. Reports should include a list of any potential witnesses, along with a description of the information those witnesses are expected to provide. Any relevant documents, including any social media communications, should also be included in the Report.

### **3. Initial Review**

- 3.1 Upon receipt of a Report, the Director of Investigations will conduct an initial review to determine if UBC has the Jurisdiction to Investigate. This review will occur within 14 calendar days of receiving a Report unless exceptional circumstances exist that prevent the Director from meeting this timeline, in which case the Director of Investigations will contact the individual making the Report as soon as possible to inform them of the revised timeline.
- 3.2 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, the individual directly subjected to the Sexual Misconduct will be referred to as the Complainant in any subsequent process, and the individual against whom the allegations have been made will be referred to as the Respondent.
- 3.3 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, and the Respondent has an employment relationship to UBC, the Director will notify the appropriate UBC authority who may make any appropriate workplace arrangements required to ensure a fair investigation process.

- 3.4 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, the Director of Investigations will do one of the following:
  - 3.4.1 appoint an Investigator to Investigate the Report under section 4 of these Procedures; or
  - 3.4.2 subject to sections 3.5 and 3.6 of these Procedures, refer the matter to an alternative resolution process.
- 3.5 A Complainant may request an alternative resolution process instead of a formal investigation. Alternative resolution processes may not be appropriate or available in all circumstances. If the Director of Investigations is satisfied that an alternative resolution process may be appropriate, options will be discussed with the Complainant and the Respondent. If the Complainant and the Respondent agree to participate in the alternative resolution process, the Director will refer the matter to that process for resolution.
- 3.6 Alternative resolution processes may include, but are not limited to, facilitated dialogue or a restorative justice process. Participation in an alternative resolution process is entirely voluntary. If at any time during the alternative resolution process either the Complainant or the Respondent no longer wishes to participate in the alternative resolution process, then the Director of Investigations will appoint an Investigator to Investigate the Report under section 4 of these Procedures.
- 3.7 Alternative resolution processes are confidential processes and participants are encouraged to maintain confidentiality until the process is completed. Information obtained during an alternative resolution process where either the Complainant or Respondent withdrew participation will not be disclosed to the Investigator and cannot be relied upon in the subsequent investigation unless that information is independently obtained by the Investigator in the course of the Investigation.
- 3.8 If the Director of Investigations determines that UBC does not have the Jurisdiction to Investigate, the Director of Investigations will advise the individual making the Report and will provide reasons for the decision. If the Director of Investigations determines that the Report discloses other kinds of misconduct or information that requires action by UBC under another UBC policy or process, the Director will refer the Report or the relevant portions of the Report to the appropriate UBC authority. The Director will discuss with the person making the Report before referring it elsewhere.
- 3.9 If the Director of Investigations declines to investigate under section 3.2 of the Policy written reasons will be provided to the individual submitting the Report.
- 3.10 If an Investigation is initiated, the Director of Investigations will:
  - 3.10.1 contact the Complainant to advise that the Report has been referred to an Investigator, and provide information about the resources available and the investigation process, including the Complainant's right to have an advisor, support person, or union representative present during meetings with the Investigator;

- 3.10.2 contact the Respondent to advise that a Report has been made and has been referred to an Investigator, and provide a copy of the Report along with information about the resources available and the investigation process, including the Respondent's right to have an advisor, support person, or union/association representative present during meetings with the Investigator.

#### **4. Investigations**

- 4.1 Investigations (including the preparation of a written report of the Investigation Findings) will be completed within 60 calendar days of the Investigator's receipt of the Report from the Director of Investigations. If during the course of the Investigation the Investigator believes that this timeline cannot be met, the Investigator will contact the Complainant, the Respondent, and the Director of Investigations as soon as possible to inform them and to establish a revised timeline.
- 4.2 The appropriate UBC authority will normally render a decision under section 5 of these Procedures with respect to the allegations in the Report within 30 days following receipt of the Investigation Findings. If this timeline cannot be met, the UBC authority will contact the Director of Investigations who will advise the Complainant and the Respondent as soon as possible to inform them and to provide a revised timeline.
- 4.3 Investigations are not adversarial processes, and hearings will not be held as part of the investigatory process. Formal rules of evidence commonly associated with a civil or criminal trial will not be applied.
- 4.4 In all Investigations, the Respondent will be fully informed of the allegations in the Report, and will be given the opportunity to respond. Both parties will be informed of the information upon which the Investigator might rely in making findings of fact in the Investigation.
- 4.5 Subject to sections 4.3 and 4.4, the Investigator may investigate in any manner deemed appropriate in order to obtain the information required to make the necessary findings of fact. This may include, but is not limited to, the following:
  - 4.5.1 requesting a written response to the Report from the Respondent, that includes a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;
  - 4.5.2 meeting with or requesting further information from the Complainant;
  - 4.5.3 meeting with or requesting further information from the Respondent;
  - 4.5.4 meeting with or requesting further information from any other individuals who may have information relevant to the Investigation, including any witnesses identified by the Complainant or the Respondent;
  - 4.5.5 inviting the Complainant and the Respondent to submit questions they believe should be asked of the other party or any witness, though the decision as to whether such

questions will actually be asked of the other party or a witness is entirely within the discretion of the Investigator; and

- 4.5.6 obtaining any other evidence, including evidence of mitigating and aggravating circumstances, that may be relevant to the Investigation.
- 4.6 At the completion of the Investigation, the Investigator will provide a copy of the Investigation Findings to the Director of Investigations. The Investigation Findings will normally include the following information:
- 4.6.1 a synopsis of the evidence considered;
  - 4.6.2 any assessment of credibility that is required to render a determination;
  - 4.6.3 a description of any mitigating or aggravating factors; and
  - 4.6.4 the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct has occurred.

## **5. Outcome and Disciplinary Measures**

- 5.1 The Independent Investigations Office does not determine the appropriate outcome or disciplinary measures arising from the Investigation Findings.
- 5.2 If the Investigation Findings includes a determination that Sexual Misconduct has occurred, the Director of Investigations will provide a copy to the appropriate UBC authority, or authorities if the Respondent has more than one relationship to UBC, as follows:
  - 5.2.1 in the case of a student Respondent, to the Vice-President, Students, as Executive responsible for the Policy, who will present the Investigation Findings to the President. The President will decide whether to adopt the Investigator's findings of fact and conclusions. The President may summarily determine what disciplinary or other measures, up to and including suspension or expulsion, are appropriate based on the findings of fact.
  - 5.2.2 in the case of a faculty member Respondent, to the Vice-President, Human Resources, as Executive responsible for the Policy, who will present the Investigation Findings to the faculty member's Dean or, in the case of a librarian, to the University Librarian. The Dean or University Librarian will meet with the Respondent and provide the Respondent with a copy of the Investigation Findings in accordance with section 6.4 of these Procedures. The Dean or University Librarian will decide whether to adopt the Investigator's findings of fact and conclusions and determine what disciplinary or other measures, including restrictions on UBC activities, are appropriate as follows:
    - (a) If suspension or termination of a faculty member or librarian's appointment for cause is considered appropriate by the Dean or University Librarian, a recommendation will be made to the President who has the statutory authority to suspend or recommend termination.

- (b) If the President decides that suspension for cause is the appropriate discipline, the President will inform the Board of Governors.
  - (c) If the President decides that termination is the appropriate discipline, the President will make a recommendation to the Board of Governors who will make the final decision.
- 5.2.3 in the case of a staff member Respondent, to the Vice-President, Human Resources, as Executive responsible for the Policy, who will present the Investigation Findings to the staff member's Administrative Head of Unit. The Administrative Head of Unit will decide whether to adopt the Investigator's findings and conclusion and will determine what disciplinary or other measures, up to and including suspension, are appropriate. If the Administrative Head of Unit determines that termination of a staff member is appropriate the Administrative Head of Unit will consult with the applicable Vice-President, or Deputy Vice-Chancellor and Principal (UBC Okanagan), who will make the final decision.
- 5.2.4 in the case of an emeritus Respondent, to the appropriate Dean who will make a recommendation to the Senate Tributes Committee. A final decision with respect to the emeritus appointment will be made by senate.
- 5.2.5 in the case of a Respondent who is serving on a UBC committee, to the chair of the committee.
- 5.3 Once the appropriate UBC authority has made a decision regarding the disciplinary or other measures to be imposed under section 5.2 above, that decision will be communicated in writing to the Respondent. A copy of the decision will also be provided to the Director of Investigations. The Director of Investigations will provide a copy of the Investigation Findings to the Complainant and will inform the Complainant of any disciplinary outcomes that the University Counsel has authorized the Director to disclose in accordance with section 6.5 of these Procedures.
- 5.4 If the appropriate UBC authority determines that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to:
  - 5.4.1 UBC Student Housing and Hospitality Services, if the Respondent is subject to a UBC residence contract or agreement;
  - 5.4.2 the UBC authority charged with addressing concerns under a Faculty or school's standards of professional conduct, if the Respondent is a student subject to those standards; and
  - 5.4.3 UBC Athletics and Recreation, if the Respondent is subject to a varsity student athlete agreement.
- 5.5 Whether or not the Investigation Findings includes a determination that Sexual Misconduct has occurred, if the Director of Investigations is satisfied that the Investigation Findings discloses other misconduct, or information, that UBC may need to act on under another UBC policy or process, the Director may refer the Investigation Findings, or the relevant portions of the

Investigation Findings, to the appropriate UBC authority. When appropriate, the Director will consult with the person making the Report before referring it elsewhere.

- 5.6 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 assistance, providing education, or conducting administrative transactions.

## 6. Confidentiality and Privacy

- 6.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”), all participants in an Investigation must act in accordance with the requirements set out below.

- 6.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual (“**Personal Information**”) through their participation in an Investigation 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:

- 6.2.1 any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;
- 6.2.2 UBC representatives from disclosing Investigation-related information as authorized under section 6.3; or
- 6.2.3 Complainants and Respondents from disclosing the information that they have received under sections 6.4 and 6.5.

- 6.3 UBC will not disclose any Personal Information related to an Investigation except to the extent such disclosure is:

- 6.3.1 expressly authorized by the affected individual;
- 6.3.2 to a UBC representative, where disclosure is necessary for the performance of that individual’s duties;
- 6.3.3 to a Complainant, Respondent, witness, or other participant in the Investigation, if necessary for the conduct of the Investigation;
- 6.3.4 to a Complainant or Respondent in accordance with sections 6.4 and 6.5;
- 6.3.5 authorized by the University Counsel for compelling health or safety reasons;
- 6.3.6 authorized by the University Counsel to correct misleading or inaccurate information where disclosure is necessary to protect the integrity of the Investigation or UBC’s investigatory processes; or
- 6.3.7 authorized or required under law.

- 6.4 To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation findings and the evidence upon which these findings are based. Complainants and Respondents will be provided with a copy of the Investigation Findings. The FIPPA may require UBC to remove Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, each will only receive the portions of the Investigation Findings that are relevant to them.
- 6.5 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 including informing the Complainant of any restrictions that may have been imposed upon the Respondent's movements, activities or contact with the Complainant.
- 6.6 Section 6.2 does not prevent Complainants and Respondents from disclosing the information received under sections 6.4 and 6.5. 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.

## **7. Appeal Processes**

- 7.1 Student Respondents may appeal any discipline that is imposed on them under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee if they are a UBC Vancouver student, or the UBC Okanagan Senate Appeals of Standing and Discipline Committee if they are a UBC Okanagan student.
- 7.2 Staff or faculty may appeal any decision or discipline that is made or imposed on them under these Procedures in accordance with the provisions of their collective agreements or their terms and conditions of employment.

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|  <p><b>The University of British Columbia<br/>Board of Governors</b></p> | <p><b>Policy No.:</b><br/><b>SC17</b></p> |
| <p><b>Long Title:</b><br/><del>Sexual Assault and Other</del> Sexual Misconduct</p>   |   |
| <p><b>Short Title:</b><br/><b>Sexual Misconduct Policy</b></p>  |   |

### Background & Purposes:

UBC ~~has a responsibility's goal is~~ to maintain a respectful environment where its members can study, work, and live free from sexual misconduct. This policy articulates UBC's ~~duty and~~ commitment to support members of the UBC community who are ~~impacted~~ affected by sexual misconduct, to provide a central site for information regarding the resources and options available to those affected by sexual misconduct, to create and make available programs and resources to educate its community on the prevention of sexual misconduct, and to provide a process to respond to and ~~to~~ investigate allegations of sexual misconduct.

### 1. Principles and Commitments

- 1.1 UBC will not tolerate ~~sexual assault or~~ any ~~other~~ form of Sexual Misconduct.
- 1.2 UBC recognizes that people's experiences will be affected by factors such as their access to power and privilege, their sex, sexual identity, gender identity or expression, racialization, age, family status, religion, faith, ability, disability, national or ethnic origin, Indigeneity, immigration status, socio-economic status, class, and language. UBC also recognizes that the university is a unique environment, in which power imbalances are inherent. These factors, along with an individual's personal history, ~~impact~~ affect individual experiences of Sexual Misconduct, the ability to access supports, and choices with regard to recourse. UBC will take this into account when carrying out its responsibilities under this Policy.
- 1.3 UBC is committed to providing comprehensive and inclusive Sexual Misconduct education, prevention, and response initiatives. Through these initiatives, UBC is committed to countering rape culture, a term that describes broader social attitudes about gender, sex and sexuality that normalize Sexual Misconduct and undermine equality.
- 1.4 UBC is committed to reducing barriers to Disclosing and Reporting, and to taking a trauma-informed approach when responding to and addressing Disclosures and Reports, and when conducting Investigations.

- 1.5 UBC will provide support services and ~~accommodations~~assistance to Members of the UBC Community who Disclose or Report Sexual Misconduct.
- 1.6 UBC is committed to respecting the rights of those who Disclose to make their own decisions about accessing support services and ~~accommodations~~assistance, making a Report, or pursuing external processes such as ~~a~~ criminal or civil action.
- 1.7 UBC will provide support to Members of the UBC Community who have had Reports of Sexual Misconduct made against them.
- 1.8 UBC is committed to procedural fairness and will respond to and address Disclosures and Reports, and will conduct Investigations, in a timely manner.
- 1.9 UBC will not tolerate any retaliation as defined in the Retaliation Policy (SC18), direct or indirect, against anyone making, or involved in, a Disclosure, a Report, or an Investigation. Allegations of retaliation will be addressed pursuant to the Retaliation Policy (SC18).
- 1.10 UBC recognizes that some individuals may be hesitant to Disclose or Report Sexual Misconduct in cases where they have been consuming alcohol underage or in excess, or using drugs. An individual acting in good faith who makes a Disclosure or Report will not be subject to actions for violation of any applicable UBC policy, rules or regulations related to drug or alcohol use at the time the alleged Sexual Misconduct occurred.
- 1.11 UBC recognizes that certain relationships between students and other Members of the UBC Community are relationships of trust and vulnerability, particularly where there is a supervisory role or where the individual has influence over a student's current or future academic activities, working conditions, or career advancement. Sexual or romantic relationships involving individuals in the following classes of Members of the UBC Community where there is a supervisory role or where the individual has influence over a student's current or future academic activities, working conditions, or career advancement are Prohibited Relationships:
- 1.11.1 faculty, or Teaching Staff Members, or emeriti, and Students;
- 1.11.2 staff and Students;
- 1.11.3 Coaching Staff Members and Student athletes; and
- 1.11.4 Faculty, or Teaching Staff Members, or emeriti, and Medical Residents, Clinical Fellows, or Postgraduate trainees in the Faculty of Medicine.
- 1.12 In circumstances where there is an existing sexual or romantic relationship that pre-dates the Prohibited Relationship, the relationship must be disclosed to the Administrative Head of Unit who will take appropriate steps pursuant to the University's conflict of interest and conflict of commitment policy (the COI Policy (SC3)).
- 1.13 If a sexual or romantic relationship between certain members of the UBC Community is not restricted under this Policy, there may nonetheless be restrictions imposed in connection with such a relationship under the COI Policy (SC3).

1.13.1 Where an existing Prohibited Relationship has been managed under the COI Policy (SC3), engagement in the Prohibited Relationship will not constitute a breach of this Policy.

## 2. Definitions

2.1 “Sexual Misconduct” is any sexual act or act targeting an individual’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against an individual without that individual’s Consent. The following list sets out examples of Sexual Misconduct. The list is intended to help Members of the UBC Community understand the kinds of acts that will be considered Sexual Misconduct. The list is not exhaustive and other acts can still be considered Sexual Misconduct under this Policy even if they do not appear in the list below. Sexual Misconduct includes, but is not limited to, the following:

2.1.1 sexual assault, which is any form of sexual touching or the threat of sexual touching without the individual’s Consent;

2.1.2 sexual harassment, which is unwelcome conduct of a sexual nature that detrimentally affects the working, learning, or living environment, or leads to adverse consequences for the one directly subjected to the harassment;

2.1.3 stalking and cyberstalking (through the use of the internet or other electronic means), is engaging in conduct that causes an individual to fear for their physical or psychological safety, such as repeatedly following or communicating through any means with someone, engaging in threatening conduct, or keeping watch over the place where the individual happens to be;

2.1.4 indecent exposure, which is exposing one’s body to another individual for a sexual purpose or coercing another individual to remove their clothing in order to expose their body, without Consent;

2.1.5 voyeurism, which is non-consensual viewing, photographing, or otherwise recording another individual in a location where there is an expectation of privacy and where the viewing, photographing or recording is done for a sexual purpose; and

2.1.6 the distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording.

2.2 “Consent” is the active, voluntary agreement to engage, and to continue to engage, in the sexual activity in question. Further information about Consent is provided in section 4 of this Policy.

2.3 “Members of the UBC Community” are individuals who fall under one or more of the following categories:

2.3.1 students, defined as any person enrolled in any component of an academic or training program or course at UBC whether or not the program or course is for credit,

including co-op and exchange students, or classes of learners who are designated by resolution of the senate as a student;

2.3.2 employees, including faculty and staff members;

2.3.3 emeriti, a volunteer engaged in a UBC activity, or any other individual acting on behalf of UBC;

2.3.4 Teaching Staff Members;

2.3.5 any individual active on any UBC committee or review panel;

2.3.6 post-doctoral fellows; and

2.3.7 anyone contractually obligated to comply with this Policy.

2.4 “Teaching Staff Member” means any individual who provides or teaches any component of an academic program or course at UBC, including, but not limited to, professors, including part-time and full-time professors, associate professors, assistant professors, adjunct professors, clinical professors, clinical associate professors, clinical assistance professors, clinical instructors, instructors I, instructors II, senior instructors, twelve-month lecturers, visiting and emeritus faculty, teaching assistants, supervisors of graduate students, supervisors of researchers, program directors, librarians, or any other person employed by UBC in an equivalent position to the above designated by the UBC Vancouver Senate, the UBC Okanagan Senate, or the Council of Senates.

2.5 “Prohibited Relationship” is any romantic, dating, or sexual relationship prohibited by this Policy.

2.6 “Coaching Staff Member” is any employee, or volunteer, who is a coach, or assistant coach, of a UBC varsity athletic team.

2.7 “Disclose” or “Disclosure” is the sharing of information with UBC regarding any incident of Sexual Misconduct. Further information about Disclosures is provided in section 8 of this Policy.

2.8 “Report” or “Reporting” is providing a statement of allegations to the Director of Investigations about a Sexual Misconduct. Further information about Reporting is provided in section 9 of this Policy.

2.9 “Jurisdiction to Investigate” is the legal authority to investigate under this Policy.

2.10 “Investigation” is an investigation carried out by UBC, pursuant to its Jurisdiction to Investigate under this Policy, on the basis of a Report, as set out in the Procedures to this Policy.

2.11 “Investigator” is the individual appointed to Investigate a Report under the Procedures to this Policy.

2.12 “Investigation Findings” is the written report submitted by the Investigator to the Director of Investigations of the Independent Investigations Office.

### 3. Jurisdiction to Investigate

3.1 UBC’s Jurisdiction to Investigate is determined by the Director of Investigations and is limited by the following:

3.1.1 the allegations must be made against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct and at the time the Report was submitted;

3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct; and

3.1.3 the alleged conduct must have a real and substantial connection to UBC. Each incident and its connection to UBC will be considered on its particular factual circumstances.

3.2 The Director of Investigations may exercise discretion to decline to investigate under this Policy on the grounds that:

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

3.2.2 it is unfair or otherwise inappropriate to proceed with the complaint.

### 4. Consent

4.1 Voluntary agreement to engage, or continue to engage, in sexual activity must be affirmatively communicated through words or actively expressed through conduct. An individual who is incapacitated cannot give voluntary consent. Also, consent obtained through the abuse of a position of trust, power or authority, or through fraud or coercion, or due to fear of consequences, violence, or retaliation is not voluntary consent. For clarity:

4.1.1 Consent cannot be implied, which means it must be affirmatively given and cannot be assumed by a person’s actions, silence or inaction.

4.1.2 Consent can be withdrawn at any time during the sexual activity which means that if consent is withdrawn the sexual activity must stop.

4.1.3 Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent only applies to each specific instance of sexual activity. Neither the relationship status of the parties nor past consent to sexual activity implies future or ongoing consent.

4.1.4 The initiator of the sexual activity is responsible for obtaining consent.

4.1.5 Individuals are incapable of consenting if they are not able to appreciate the nature of the sexual activity, or to appreciate the risks and consequences of the sexual activity,

or are otherwise unable to choose whether to engage in the sexual activity. An individual is incapable of consenting if the individual is:

(a) asleep or unconscious;

(b) intoxicated due to ingestion of drugs or alcohol; or

(c) under the legal age of consent as defined in the Canadian Criminal Code.

4.1.6 Evidence that an individual's judgment was impaired by alcohol or drugs is a relevant consideration for determining whether the individual consented to the sexual activity in question.

4.1.7 It is not acceptable for a Respondent to respond to an allegation of Sexual Misconduct by claiming that intoxication or impairment from drugs or alcohol resulted in a mistaken belief that there was consent.

4.1.8 A person's sexual reputation or history of sexual activity cannot be relied on to conclude it was more likely that consent had been given.

4.1.9 Even if sexual activity occurs outside of the class of Prohibited Relationships, there is an inherent risk that consent will not be truly voluntary whenever there is an imbalance of power, or a relationship of trust or authority. In the event a Report is filed about that sexual activity it will be difficult for a Respondent to rebut an allegation that the sexual activity was not consensual.

## **5. ~~2-~~The Sexual Violence Prevention and Response Office**

~~2.1— UBC has established a Sexual Violence Prevention and Response Office at each of the UBC Vancouver and UBC Okanagan campuses. Each office consists of a Director who oversees the office and staff or volunteers.~~

5.1 2.2—The Sexual Violence Prevention and Response Office acts as receives disclosures under this Policy. This office is a single point of contact and liaison on each campus for Members of the UBC Community who have experienced Sexual Misconduct. This Office will provide individualized information, advice, and assistance. The support services that can be provided by the Office include: are affected by Sexual Misconduct, regardless of who committed the sexual misconduct, or where or when it took place. Individuals do not need to make a Report to access support and assistance from this office. The office will provide support, information, options, and assistance described in section 8.3 of this Policy based on the needs of the individual.

~~2.2.1— receiving Disclosures;~~

~~2.2.2— identifying, accessing, and coordinating appropriate accommodations;~~

~~2.2.3— providing information about and referrals to UBC Counselling Services and UBC Student Health Services at UBC Vancouver, the Health and Wellness Centre at UBC Okanagan, and the UBC Employee and Family Assistance Program;~~

- ~~2.2.4 — providing information about and referrals to external organizations such as the UBC Hospital, Kelowna General Hospital, the AMS Sexual Assault Support Centre (SASC), the Vancouver Rape Relief and Women’s Shelter, Women Against Violence Against Women, the BC Society for Male Survivors of Sexual Abuse, the Central Okanagan Elizabeth Fry Society, and the Family Centre Services Society;~~
- ~~2.2.5 — providing information about confidentiality and how confidentiality relates to the information provided through a Disclosure, a Report, or an Investigation;~~
- ~~2.2.6 — providing information about Reporting, Investigations, and alternative dispute resolution processes;~~
- ~~2.2.7 — providing information about any other relevant UBC policies, such as the Discrimination Policy, and the At-Risk Behaviour Policy;~~
- ~~2.2.8 — assisting with the creation of a Report or the submission of a Report to the Director of Investigations, or both;~~
- ~~2.2.9 — acting as a liaison with the Investigator appointed to conduct an Investigation;~~
- ~~2.2.10 — acting as a support person during an Investigation, as referenced in section 3.8.1 of the Procedures to this Policy;~~
- ~~2.2.11 — receiving allegations regarding acts of retaliation relating to a Disclosure or Report of Sexual Misconduct and assisting with referral of these allegations to the appropriate employment or student disciplinary process; and~~
- ~~2.2.12 — providing information about the differences between the criminal process and UBC’s investigatory process, and providing support in reporting to the police if requested.~~

5.2 ~~2.3~~ The Sexual Violence Prevention and Response Office will also:

- ~~2.3.1 — serve all Members of the UBC Community, including those who have received a Disclosure, those who are supporting someone who has experienced Sexual Misconduct, or those who may have witnessed Sexual Misconduct;~~2.3.2 — establish, oversee, and coordinate~~establish, oversee, and coordinate~~coordinates and oversees sexual misconduct prevention and response protocols and processes, communications, resource materials, and training;~~and.~~
- ~~2.3.3 — lead the education program to countering broader social attitudes regarding gender, sex and sexuality that normalize Sexual Misconduct and undermine equality.~~

5.3 Reports of Sexual Misconduct under this Policy are received and managed by the Independent Investigations Office which is a separate office at UBC.

**6. The Independent Investigations Office**

6.1 The Independent Investigations Office is a neutral and impartial office with trauma informed investigators who will investigate Reports with respect to which UBC has the Jurisdiction to Investigate as determined by the Director of Investigations.

## 7. Annual Reporting

7.1 ~~2.4~~ Annually, UBC will publicly report ~~on~~ the number of:

7.1.1 ~~2.4.1~~ ~~Disclosures~~ requests for services received by the Sexual Violence Prevention and Response Offices;

7.1.2 ~~2.4.2~~ Reports received by the ~~Directors of~~ Independent Investigations Office; and

7.1.3 ~~2.4.3~~ Reports investigated or referred to an alternative ~~dispute resolution~~ process.

## 8. ~~3~~-Disclosures

8.1 ~~3.1~~ The decision to Disclose and the decision to Report are separate decisions. An individual may choose to Disclose Sexual Misconduct without making a Report. Consequently, Disclosure does not result in a Report being made, and does not initiate an Investigation or other action by UBC, subject only to section ~~3.6~~ 8.5 and 8.6.

8.2 ~~3.2~~ UBC will make appropriate support services and ~~accommodations~~ assistance available to Members of the UBC Community on the basis of a Disclosure, regardless of whether they decide to make a Report or whether UBC has the Jurisdiction to Investigate.

8.3 ~~3.3~~ ~~Accommodations that~~ Assistance may be available to Members of the UBC Community who have Disclosed or Reported Sexual Misconduct including:

8.3.1 ~~3.3.1~~ student residence re-location or short term emergency student housing;

8.3.2 ~~3.3.2~~ class schedule changes;

8.3.3 ~~provision of 3.3.3~~ —academic ~~accommodations;~~ concessions;

8.3.4 emergency funding for students;

8.3.5 safety planning;

8.3.6 ~~3.3.4~~ temporary work reassignment, location reassignment, or scheduling changes;

~~3.3.5~~ emergency funding for students; ~~3.3.6~~ safety planning; and

8.3.7 ~~3.3.7~~ the implementation of safety measures which may include temporary interim restrictions pursuant to the At-Risk Behaviour Policy (SC13).

~~3.4~~ ~~Records of any Disclosures made to a Sexual Violence Prevention and Response Office will be kept strictly confidential, and access to those records will be limited to the Director and staff members of the relevant Sexual Violence Prevention and Response Office.~~

8.4 ~~3.5~~ UBC recognizes that ~~disclosures of Sexual Misconduct~~ Disclosures are most often made to someone the individual making the ~~d~~Disclosure already knows. If a Disclosure is made to a Member of the UBC Community who is not trained to receive Disclosures, that Member is encouraged to contact the Sexual Violence Prevention and Response Office for support and information on how best to respond to ~~a~~ the Disclosure and to support the individual making

the Disclosure. Members of the UBC Community who receive a Disclosure are not expected to file a Report related to the Disclosure under section 9 of this Policy although, at the request of the individual making the Disclosure, they may file a Report under section 9 of the Policy on behalf of the individual making the Disclosure.

~~8.5 3.6 To the greatest extent possible~~Except as provided in this Policy, UBC will respect an individual's choice ~~to not to~~ to make a Report and where possible will keep the Disclosure confidential. In exceptional circumstances, where required by law or where ~~there is a risk of significant harm to anyone's health or safety, and at the sole, in the~~ discretion of the Director of the relevant Sexual Violence Prevention and Response Office, ~~UBC~~there is a risk of significant harm to anyone's health or safety, the Director of the relevant Sexual Violence Prevention and Response Office may do one or both of the following:

~~8.5.1 3.6.1~~ refer the matter to the ~~relevant Director of~~Independent Investigations Office as a Report under section ~~4,9,~~ in which case the individual who Disclosed has the right not to participate in any subsequent Investigation; and

~~8.5.2 3.6.2~~ notify third parties, such as the police or child protection authorities.

8.6 In appropriate circumstances, where the Sexual Violence Prevention and Response Office has received more than one Disclosure from different individuals involving a Member of the UBC Community, the Director of the relevant Sexual Violence Prevention and Response Office may exercise discretion to make an Institutional Report to the Director of Investigations based on the allegations in the Disclosures. The Independent Investigations Office will not disclose the names of the individuals making the Disclosures without the consent of those individuals, who have the right not to participate in any subsequent investigation as a Complainant but may, in their sole discretion, participate as witnesses.

8.7 3.7 If ~~UBC~~the Director of Investigations takes any action under section ~~3.6,8.6,~~ the Director of the relevant Sexual Violence Prevention and Response Office will notify the individuals who made the Disclosures and will ensure that appropriate support services are made available to ~~that~~those individuals.

8.8 Subject to sections 8.5 and 8.6, records of Disclosures made to a Sexual Violence Prevention and Response Office will be kept strictly confidential, and access to those records will be limited to the Director and staff members of the relevant Sexual Violence Prevention and Response Office unless UBC is ordered to produce the records in a court proceeding.

## 9. 4-Reports

9.1 4.1 Anyone directly subjected to Sexual Misconduct, including an individual who is not a Member of the UBC Community, can make a Report against a Member of the UBC Community under this Policy.

9.2 4.2 Reports must be submitted to the ~~Director of~~Independent Investigations ~~on the relevant campus, who will address them~~Office, where they will be addressed in accordance with the Procedures to this Policy, which includes an initial review as set out under section 3 of the Procedures to determine whether the allegations contained in the Report fall within UBC's Jurisdiction to Investigate.

~~9.3 4.3~~ Sexual harassment may fall within the scope of both the Discrimination Policy ([SC7](#)) and this Policy. Reports that contain allegations of Sexual Misconduct other than sexual harassment will be addressed under this Policy. Reports that contain allegations of sexual harassment alone 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 Report, which policy is better suited to address the allegations.

~~9.4 4.4~~ An individual can ~~both~~ submit a Report to ~~UBC~~ [the Independent Investigation Office](#) and pursue other processes external to UBC against the individual alleged to have committed the Sexual Misconduct. These external processes may include reporting to the police or initiating a civil action (including a complaint under the BC *Human Rights Code*). These are separate processes and Reporting to ~~UBC~~ [the Independent Investigations Office](#) does not result in a report to the police or the initiation of a civil action, ~~although in exceptional circumstances, where required by law or where there is a risk of significant harm to anyone's health or safety, except as provided in section 8.5.2 of this Policy, where~~ UBC may notify third parties, such as the police or child protection authorities. ~~If such action is taken, the Director of Investigations will notify the individual who submitted the Report and will ensure that appropriate support services are made available to that individual.~~

~~9.5 4.5~~ If an Investigation, or alternative resolution process, is initiated under the Procedures to this Policy, and an external process is also being pursued, the Director of Investigations may elect, after consultation with the Complainant, to continue with the UBC process or to suspend the UBC process as appropriate. [Suspension of a UBC process allows for further action to be taken at a later date as appropriate.](#)

~~9.6~~ [Where a Report has been made to the Independent Investigations Office and the Director of Investigations has determined that the allegations fall within UBC's Jurisdiction to Investigate and may include At-Risk Behaviour as defined under the At-Risk Behaviour Policy \(SC13\), the Director of Investigations can refer the At-Risk Behaviour to be addressed pursuant to that Policy by the appropriate decision maker.](#)

## ~~10. 5-~~ **Anonymous and Third Party Allegations**

~~10.1 5.1~~ ~~Anonymous allegations, or allegations of Sexual Misconduct made by a third party (someone~~ [Individuals](#), other than the individual who was directly subjected to the Sexual Misconduct) ~~can also be submitted to the Director of Investigations on the relevant campus,~~ [may anonymously advise the Independent Investigations Office of the Sexual Misconduct or may submit a Report to the Independent Investigations Office.](#)

~~10.2~~ [Members of the UBC Community who receive a Disclosure should follow the processes set out in section 8.4 of this Policy. Members of the UBC Community who receive a Disclosure are expected to honour the choices of the person making the Disclosure and should not submit a Report that could interfere with the decision of the person making the Disclosure.](#)

~~10.3 5.2~~ UBC may be unable to proceed with an Investigation involving anonymous or third party allegations due to a lack of evidence ~~from the individual who was directly subjected to the Sexual Misconduct,~~ or where proceeding would [otherwise](#) violate procedural fairness. In such cases, the Director of Investigations will consider whether any other steps can and should be taken. ~~In appropriate cases, the Director may contact the third party who submitted the~~

~~allegations to find out if the individual who was directly subjected to the Sexual Misconduct would consider submitting a Report. However, where other sufficient~~

10.4 ~~In appropriate circumstances, where other~~ evidence exists and where ~~#proceeding with an investigation~~ would not violate procedural fairness, ~~at the sole discretion of~~ the Director of Investigations, ~~UBC~~ may ~~decide~~exercise discretion to proceed with an Investigation. In such cases, the individual who ~~was directly subjected to the~~experienced the alleged Sexual Misconduct has the right to not participate in the Investigation.

10.5 ~~In determining whether to proceed with an Investigation involving anonymous or third party allegations the Director of Investigations will consult with the Director of the appropriate Sexual Violence and Prevention Office. The individual identified as having experienced the alleged Sexual Misconduct will be notified of the allegations and available support and options for response will be made available to the individual.~~

10.6 ~~5.3~~ If UBC is unable to proceed with an Investigation involving anonymous or third party allegations, the allegations will be retained by the Sexual Violence Prevention and Response Office on the relevant campus. These allegations will be kept strictly confidential, and access to them will be limited to the Director of Investigations and the Director of the Sexual Violence Prevention and Response Office.

## 11. ~~6.~~ Conflicts of Interest

11.1 ~~6.1~~ If a Director or staff member of the Sexual Violence Prevention and Response Office, ~~at the~~ Director of Investigations, an Investigator, or a UBC authority empowered to impose discipline has a real or apparent conflict of interest in a particular matter, or ~~where~~ there is a reasonable apprehension of bias, then that individual will not continue ~~their involvement~~to be involved in the matter and UBC will appoint an appropriate individual to act in that role for the purposes of that matter.

## 12. ~~7.~~ Policy Review

12.1 ~~7.1~~ UBC is committed to reviewing this Policy at least once every three years, in consultation with students and other Members of the UBC Community.

## ~~8.~~ Definitions

~~8.1~~ ~~“Sexual Misconduct” is any sexual act or act targeting an individual’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against an individual without that individual’s Consent. The following list sets out examples of Sexual Misconduct. The list is intended to help Members of the UBC Community understand the kinds of acts that will be considered Sexual Misconduct. The list is not exhaustive and other acts can still be considered Sexual Misconduct under this Policy even if they do not appear in the list below. Sexual Misconduct includes, but is not limited to, the following:~~

~~8.1.1~~ ~~sexual assault, which is any form of sexual touching or the threat of sexual touching without the individual’s Consent;~~

- ~~8.1.2~~ sexual harassment, which is unwelcome conduct of a sexual nature that detrimentally affects the working, learning, or living environment, or leads to adverse consequences for the one directly subjected to the harassment;
- ~~8.1.3~~ stalking, ~~which~~ is engaging in conduct that causes an individual to fear for their physical or psychological safety, such as repeatedly following or communicating through any means with someone, engaging in threatening conduct, or keeping watch over the place where the individual happens to be;
- ~~8.1.4~~ indecent exposure, which is exposing one's body to another individual for a sexual purpose or coercing another individual to remove their clothing in order to expose their body, ~~without their~~ Consent;
- ~~8.1.5~~ voyeurism, which is non-consensual viewing, photographing, or otherwise recording another individual in a location where there is an expectation of privacy and where the viewing, photographing or recording is done for a sexual purpose; and
- ~~8.1.6~~ the distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording.
- ~~8.2~~ **"Consent"** is the voluntary agreement to the act or acts in question and to continue to engage in the act or acts. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct. For clarity:
- ~~8.2.1~~ Consent cannot be implied, and it can be revoked at any time during the act or acts in question.
- ~~8.2.2~~ Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent only applies to each specific instance of sexual activity.
- ~~8.2.3~~ No consent is obtained where an individual is incapable of consenting. An individual may be incapable of consenting if they are intoxicated, or if they are induced to engage in the activity by fraud, by someone exercising a position of trust, power or authority, or through coercion or the threat of violence.
- ~~8.2.4~~ Evidence that an individual was impaired by alcohol or drugs is a relevant consideration for determining whether ~~they~~ consented to the sexual activity in question.
- ~~8.3~~ **"Members of the UBC Community"** are individuals who fall under one or more of the following categories:
- ~~8.3.1~~ students, defined as ~~individuals enrolled at UBC~~, including co-op and exchange students;
- ~~8.3.2~~ employees, including faculty and staff members;

~~8.3.3 holders of teaching appointments;~~

~~8.3.4 post-doctoral fellows; and~~

~~8.3.5 anyone contractually obligated to comply with this Policy.~~

~~8.4 “Disclose” or “Disclosure” is the sharing of information with UBC regarding any incident of Sexual Misconduct. Further information about Disclosures is provided in section 3 of this Policy.~~

~~8.5 “Report” or “Reporting” is providing a statement of allegations to the Director of Investigations on the relevant campus about a Sexual Misconduct. Further information about Reporting is provided in section 4 of this Policy.~~

~~8.6 “Jurisdiction to Investigate” is the legal authority to investigate under this Policy, which is limited by the following: the allegations must be made against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct and at the time the Report was submitted; the alleged conduct must fall within the definition of Sexual Misconduct; and the alleged conduct must have a real and substantial connection to UBC, as that term has been interpreted under BC law.~~

~~8.7 “Investigation” is an investigation carried out by UBC on the basis of a Report, as set out in the Procedures to this Policy.~~

~~8.8 “Investigator” is the individual appointed to Investigate a Report under the Procedures to this Policy.~~



## PROCEDURES ASSOCIATED WITH THE SEXUAL MISCONDUCT POLICY

*Pursuant to the Regulatory Framework Policy, the President may approve Procedures or the amendment or repeal of Procedures. Such approvals must be reported at the next meeting of the UBC Board of Governors or as soon thereafter as practicable.*

*Capitalized terms used in these Procedures that are not otherwise defined herein shall have the meanings given to such terms in the accompanying Policy, being the Sexual Misconduct Policy.*

### 1. General

- 1.1 The Director of Investigations and the Investigators are impartial and neutral and will exercise their authority and discretion under these Procedures in conformity with the principles of procedural fairness in the university context.
- 1.2 The ~~Director of~~ Independent Investigations Office will liaise with the Sexual Violence Prevention and Response Office where appropriate to ensure that ~~appropriate~~ support services and accommodations remain in place, or are established, for the duration of the Initial Review and the Investigation.

### 2. Reports

- 2.1 Reports must be ~~made~~ submitted in writing, and should set out the relevant details with regards to the alleged Sexual Misconduct. Reports should include a list of any potential witnesses, along with a description of the information those witnesses are expected to provide. Any relevant documents, including any social media communications, should also be included in the Report.

### 3. Initial Review

- 3.1 Upon receipt of a Report, the Director of Investigations will conduct an initial review to determine if UBC has the Jurisdiction to Investigate. This review will occur within 14 calendar days of receiving a Report unless exceptional circumstances exist that prevent the Director from meeting this timeline, in which case the Director of Investigations will contact the individual making the Report as soon as possible to inform them of the revised timeline.
- 3.2 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, the individual directly subjected to the Sexual Misconduct will be referred to as the Complainant in any subsequent process, and the individual against whom the allegations have been made will be referred to as the Respondent.
- 3.3 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, and the Respondent has an employment relationship to UBC, the Director will notify the appropriate

UBC authority who may make any appropriate workplace arrangements required to ensure ~~an~~ effective fair investigation process.

3.4 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, ~~they~~ the Director of Investigations will do one of the following:

3.4.1 appoint an Investigator to Investigate the Report under section 4 of these Procedures;  
or

3.4.2 subject to sections 3.5 and ~~3.6~~ 3.6 of these Procedures, refer the matter to an alternative resolution process.

3.5 ~~If the Director of Investigations believes that~~ A Complainant may request an alternative resolution process ~~may~~ instead of a formal investigation. Alternative resolution processes may not be appropriate or available in ~~the~~ all circumstances, ~~they will discuss this option with the Complainant. If the Complainant agrees that an alternative resolution process may be appropriate,~~ if the Director of Investigations ~~will contact the Respondent to advise them that a Report was made, and 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 may be appropriate, ~~then the Director of Investigation will explore the options available and, with the agreement of both parties,~~ options will be discussed with the Complainant and the Respondent. If the Complainant and the Respondent agree to participate in the alternative resolution process, the Director will refer the matter to that process for resolution.

3.6 Alternative resolution processes may include, but are not limited to, facilitated dialogue or a restorative justice process. Participation in an alternative ~~dispute~~ resolution process is entirely voluntary. If at any time during the alternative resolution process either the Complainant or the Respondent ~~decides they~~ no longer wishes es to participate in the alternative resolution process ~~at any time~~, then the Director of Investigations will appoint an Investigator to Investigate the Report under section 4 of these Procedures.

3.7 Alternative resolution processes are confidential processes and participants are encouraged to maintain confidentiality until the process is completed. Information obtained during an alternative resolution process where either the Complainant or Respondent withdrew participation will not be disclosed to the Investigator and cannot be relied upon in the subsequent investigation unless that information is independently obtained by the Investigator in the course of the Investigation.

3.8 ~~3.7~~ If the Director of Investigations determines that UBC does not have the Jurisdiction to Investigate, the Director of Investigations will advise the individual making the Report ~~of this~~ and will provide reasons for the decision ~~along with their reasons~~. If the Director of Investigations ~~believes~~ determines that the Report discloses other kinds of misconduct or information that requires action by UBC ~~may need to act on~~ under another UBC policy or process, the Director ~~may~~ will refer the Report or the relevant portions of the Report to the appropriate UBC authority. ~~When appropriate, the~~ The Director will ~~consult~~ discuss with the person making the Report before referring it elsewhere.

3.9 If the Director of Investigations declines to investigate under section 3.2 of the Policy written reasons will be provided to the individual submitting the Report.

3.10 ~~3.8~~ If an Investigation is initiated, the Director of Investigations will:

3.10.1 ~~3.8.1~~ contact the Complainant to advise ~~them~~ that the Report has been referred to an Investigator, and provide ~~them with~~ information about the resources available and the investigation process, including ~~their~~ the Complainant's right to have an advisor, support person, or union representative present ~~whenever they meet~~ during meetings with the Investigator;

3.10.2 ~~3.8.2~~ contact the Respondent to advise ~~them~~ that a Report has been made and has been referred to an Investigator, and provide ~~them with~~ a copy of the Report along with information about the resources available and the investigation process, including ~~their~~ the Respondent's right to have an advisor, support person, or union/association representative present ~~whenever they meet~~ during meetings with the Investigator.

#### 4. Investigations

4.1 ~~Except in exceptional circumstances,~~ Investigations (including the preparation of ~~the Investigative Report~~ a written report of the Investigation Findings) will be completed within 60 calendar days of the Investigator's receipt of the Report from the Director of Investigations. If during the course of the Investigation the Investigator believes that this timeline cannot be met, the Investigator will contact the Complainant, the Respondent, and the Director of Investigations as soon as possible to inform them ~~of the~~ and to establish a revised timeline.

4.2 The appropriate UBC authority will normally render a decision under section 5 of these Procedures with respect to the allegations in the Report within 30 days following receipt of the Investigation Findings. If this timeline cannot be met, the UBC authority will contact the Director of Investigations who will advise the Complainant and the Respondent as soon as possible to inform them and to provide a revised timeline.

4.3 ~~4.2~~ Investigations are not adversarial processes, and hearings will not be held as part of the investigatory process. Formal rules of evidence commonly associated with a civil or criminal trial will not be applied.

4.4 ~~4.3~~ In all Investigations, the Respondent will be fully informed of the allegations ~~made against them in the Report~~, and will be given the opportunity to respond. Both parties will be informed of the information upon which the Investigator might rely in making findings of fact in the Investigation.

4.5 ~~4.4~~ Subject to sections 4.24.3 and 4.3,4.4, the Investigator may investigate in any manner ~~they deem~~ deemed appropriate in order to obtain the information required to make the necessary findings of fact. This may include, but is not limited to, the following:

4.5.1 ~~4.4.1~~ requesting a written response to the Report from the Respondent, ~~including that~~ includes a list of any potential witnesses along with a description of the information

those witnesses are expected to provide, and any relevant documents, including any social media communications;

4.5.2 ~~4.4.2~~ meeting with or requesting further information from the Complainant;

4.5.3 ~~4.4.3~~ meeting with or requesting further information from the Respondent;

4.5.4 ~~4.4.4~~ meeting with or requesting further information from any other individuals who may have information relevant to the Investigation, including any witnesses identified by the Complainant or the Respondent;

4.5.5 ~~4.4.5~~ inviting the Complainant and the Respondent to submit questions they believe should be asked of the other party or any witness, though the decision as to whether such questions will actually be asked of the other party or a witness is entirely within the discretion of the Investigator; and

4.5.6 ~~4.4.6~~ obtaining any other evidence, including evidence of mitigating and aggravating circumstances, that may be relevant to the Investigation.

4.6 ~~4.5~~ At the completion of the Investigation, the Investigator will ~~prepare a written Investigative Report for~~ provide a copy of the Investigation Findings to the Director of Investigations. The Investigative ~~Report Findings~~ will normally include the following information:

4.6.1 ~~4.5.1~~ a ~~summary~~ synopsis of the evidence considered;

4.6.2 ~~4.5.2~~ any assessment of credibility that is required to render a determination;

4.6.3 a description of any mitigating or aggravating factors; and

4.6.4 ~~4.5.3~~ the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct has occurred.

## 5. Outcome and Disciplinary Measures

5.1 The Independent Investigations Office does not determine the appropriate outcome or disciplinary measures arising from the Investigation Findings.

5.2 ~~5.1~~ If the Investigative ~~Report Findings~~ includes a determination that Sexual Misconduct has occurred, the Director of Investigations will provide a copy ~~of the Investigative Report~~ to the appropriate UBC authority, or authorities if the Respondent has more than one relationship to UBC, as follows:

5.2.1 ~~5.1.1~~ in the case of a student Respondent, to the Vice-President, ~~who will then~~ Students, as Executive responsible for the Policy, who will present the Investigation Findings to the President. The President will decide whether to adopt the Investigator's findings of fact and conclusions. The President may summarily determine what disciplinary or other measures ~~are appropriate based on the findings of fact, up to and including suspension or expulsion; up to and including suspension or expulsion, are appropriate based on the findings of fact.~~

5.2.2 ~~5.1.2~~ in the case of a faculty member Respondent, to the Vice-President, Human Resources, as Executive responsible for the Policy, who will present the Investigation Findings to the faculty member's Dean or, in the case of a librarian, to the University Librarian, ~~who. The Dean or University Librarian~~ will meet with ~~them~~ the Respondent and provide the Respondent with a copy of the Investigative Report Findings in accordance with section 6.4 of these Procedures, ~~and will then. The Dean or University Librarian will decide whether to adopt the Investigator's findings of fact and conclusions and~~ determine what disciplinary or other measures, including restrictions on UBC activities, are appropriate ~~based on the findings of fact. as follows:~~

- (a) If suspension or termination of a faculty member or librarian's appointment for cause is considered appropriate by the Dean or University Librarian, a recommendation will be made to the President who ~~will then, in turn, make a decision on appropriate discipline.~~ has the statutory authority to suspend or recommend termination.
- (b) If the President's ~~decision is~~ decides that suspension for cause is the appropriate discipline, ~~then~~ the President will inform the Board of Governors. ~~—If that decision is~~
- (c) If the President decides that termination ~~for cause~~ is the appropriate discipline, the President will make a recommendation to the Board of Governors who will ~~then decide if termination for cause is appropriate; and~~ make the final decision.

5.2.3 ~~5.1.3~~ in the case of a staff member Respondent, to the Vice-President, Human Resources, as Executive responsible for the Policy, who will present the Investigation Findings to the staff member's Administrative Head of Unit, ~~who will provide the Respondent with a copy of the Investigative Report in accordance with section 6.4 of these Procedures, and will then. The Administrative Head of Unit will decide whether to adopt the Investigator's findings and conclusion and will~~ determine what disciplinary or other measures ~~are appropriate based on the findings of fact,~~ up to and including suspension, are appropriate. If the Administrative Head of Unit determines that termination of a staff member is ~~considered~~ appropriate ~~by~~ the Administrative Head of Unit, ~~they~~ will consult with the applicable Vice-President, or Deputy Vice-Chancellor and Principal (UBC Okanagan), who will ~~then decide whether to authorize the termination.~~ make the final decision.

5.2.4 in the case of an emeritus Respondent, to the appropriate Dean who will make a recommendation to the Senate Tributes Committee. A final decision with respect to the emeritus appointment will be made by senate.

5.2.5 in the case of a Respondent who is serving on a UBC committee, to the chair of the committee.

5.3 ~~5.2~~ Once the appropriate UBC authority has made a decision regarding the ~~appropriate~~ disciplinary or other measures to be imposed under section ~~5.15.2~~ above, that decision will be communicated in writing to the Respondent, ~~and student Respondents will also be provided with a copy of the Investigative Report in accordance with section 6.4 of these Procedures.~~ A copy of the decision will also be provided to the Director of Investigations. The Director of

Investigations will ~~then~~ provide a copy of the ~~Investigative Report Findings~~ to the Complainant and will inform the Complainant of any disciplinary outcomes that the University Counsel has authorized the Director to disclose ~~for compelling health or safety reasons~~, in accordance with section 6.5 of these Procedures.

~~5.4~~ ~~5.3~~ If the ~~Investigation Report includes a determination~~ appropriate UBC authority determines that Sexual Misconduct has occurred, the Director of Investigations will ~~also~~ provide a copy of the ~~Investigative Report to the following~~ Investigation Findings to:

~~5.4.1~~ ~~5.3.1~~ UBC Student Housing and Hospitality Services, if the Respondent is subject to a UBC residence contract or agreement;

~~5.4.2~~ ~~5.3.2~~ the UBC authority charged with addressing concerns under a ~~f~~Faculty or school's standards of professional conduct, if the Respondent is a student subject to those standards; and

~~5.4.3~~ ~~5.3.3~~ UBC Athletics and Recreation, if the Respondent is subject to a varsity student athlete agreement.

~~5.5~~ ~~5.4~~ Whether or not the ~~Investigative Report Findings~~ includes a determination that Sexual Misconduct has occurred, if the Director of Investigations ~~believes~~ is satisfied that the ~~Investigative Report Findings~~ discloses other ~~kinds of~~ misconduct, or information, that UBC may need to act on under another UBC policy or process, the Director may refer the ~~Investigative Report~~ Investigation Findings, or the relevant portions of the ~~Investigative Report~~ Investigation Findings, to the appropriate UBC authority. When appropriate, the Director will consult with the person making the Report before referring it elsewhere.

~~5.5~~ ~~If the Investigative Report does not include a determination that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigative Report to the Complainant and the Respondent in accordance with section 6.4 of these Procedures.~~

5.6 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~~ assistance, providing education, or conducting administrative transactions.

## 6. Confidentiality and Privacy

6.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), all participants in an Investigation must act in accordance with the requirements set out below.

6.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual ("**Personal Information**") through their participation in an Investigation 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:

6.2.1 any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;

- 6.2.2 UBC representatives from disclosing Investigation-related information as authorized under section 6.3; or
- 6.2.3 Complainants and Respondents from disclosing the information that they have received under sections 6.4 and ~~6.5-6.5~~.
- 6.3 UBC will not disclose any Personal Information related to an Investigation except to the extent such disclosure is:
- 6.3.1 expressly authorized by the affected individual;
- 6.3.2 to a UBC representative, ~~if~~where disclosure is necessary for the performance of that individual's duties;
- 6.3.3 to a Complainant, Respondent, witness, or other participant in the Investigation, if necessary for the conduct of the Investigation;
- 6.3.4 to a Complainant or Respondent in accordance with sections 6.4 and 6.5;
- 6.3.5 authorized by the University Counsel for compelling health or safety reasons;
- 6.3.6 authorized by the University Counsel to correct misleading or inaccurate information ~~if~~where disclosure is necessary to protect the integrity of the Investigation or UBC's investigatory processes; or
- 6.3.7 authorized or required under law.
- 6.4 To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation findings and the evidence upon which these findings are based. ~~For this reason,~~ Complainants and Respondents will be provided with a copy of the Investigation ~~Report~~Findings. The FIPPA may require UBC to remove Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, ~~they~~each will only receive the portions of the Investigative ~~on-Report~~Findings that are relevant to them.
- 6.5 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~~ including informing the Complainant of any restrictions that may have been imposed upon the Respondent's movements ~~or~~activities or contact with the Complainant.
- 6.6 Section 6.2 does not prevent Complainants and Respondents from disclosing the information ~~they~~ received under sections 6.4 and ~~6.5-6.5~~. 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.

## 7. Appeal Processes

- 7.1 Student Respondents may appeal any discipline that is imposed on them under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee if they are a UBC Vancouver student, or the UBC Okanagan Senate Appeals of Standing and Discipline Committee if they are a UBC Okanagan student.
- 7.2 Staff or faculty may appeal any decision or discipline that is made or imposed on them under these Procedures in accordance with the provisions of their collective agreements or their terms and conditions of employment.

Document comparison by Workshare 9.5 on Tuesday, November 5, 2019 4:21:33 PM

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| Total changes  | 745   |

### List of Members of the Sexual Misconduct Policy Development Committee

The Office of the University Counsel constituted a Policy Review Committee comprised of the following members:

1. Sara-Jane Finlay (Co-Chair) Associate Vice-President, Equity & Inclusion
2. Roslyn Goldner (Co-Chair) Rosyln Goldner Law Corporation
3. Mark Hulstein (Secretary) Legal Counsel, Office of the University Counsel
4. Ogake Angwenyi Sexual Violence Response Specialist, Sexual Violence Prevention & Response Office (UBC Vancouver)
5. Shelley Ball Director of Investigations, Independent Investigations Office
6. Janine Benedet Professor of Law, Allard School of Law
7. Julia Burnham AMS Vice President & University Affairs (representing AMS Sexual Assault Support Centre)
8. Ainsley Carry Vice-President, Students
9. Jan D.D. Cioe Chair, Okanagan Senate Academic Policy Committee and Assoc. Professor of Psychology
10. Shilo St. Cyr Director, Sexual Violence Prevention & Response Office (UBC Okanagan)
11. Shannon Dunn Director, Business Operations (UBC Okanagan)
12. Lindi Frost Director, Human Resources – Employee & Labour Relations
13. Paul G. Harrison Chair, Vancouver Senate Academic Policy Committee
14. Nicole Michalewicz Student (3<sup>rd</sup> Year BA (Philosophy)) and Resident Advisor (UBC Okanagan)
15. Sila Rogan Student (3<sup>rd</sup> Year Science) and Loran scholar (UBC Vancouver) (stepped down from the Committee)
16. Bryce Traister Dean, Creative & Critical Studies