

<b>SUBJECT</b>	PROPOSED NEW POLICY – SAFE DISCLOSURE AND REPORTING OF RETALIATION POLICY SC18 (“RETALIATION POLICY”)	
<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	<input checked="" type="checkbox"/> BOARD DISCUSSION REQUIRED
<b>ACTION REQUESTED</b>	No decision required: for information	
<b>REPORT DATE</b>	November 5, 2019	
<b>EXECUTIVE PROPONENT</b>	Hubert Lai, Q.C., University Counsel	
<b>PRESENTED BY</b>	Hubert Lai, Q.C., University Counsel	
<b>SUPPORTED BY</b>	Barbara Meens Thistle, Vice-President Human Resources Ainsley Carry, Vice-President Students	

#### PRIOR SUBMISSIONS

There have been no prior submissions to the People, Community & International Committee regarding the subject matter of this Report.

#### EXECUTIVE SUMMARY

There are a number of UBC Board of Governors’ policies that have provisions regarding retaliation, including the: Discrimination Policy (SC7), Health and Safety Policy (SC1), Scholarly Integrity Policy (SC6), Research Policy (LR2), Human Research Policy (LR9), COI Policy (SC3), Information Systems Policy (SC14), Financial Investigations Policy (SC15), and Sexual Misconduct Policy (SC17). The retaliation provisions in these policies are simple provisions that for the most part only state that UBC does not tolerate retaliation, directly or indirectly, against anyone who, in good faith, makes a complaint or raises a concern pursuant to the applicable policy or gives evidence or otherwise participates in a process under the applicable policy. However, the term “retaliation” is not clearly defined, nor is a mechanism set out to address any occurrences of retaliation.

The proposal to create a university-wide Retaliation Policy reflects UBC’s appreciation that Disclosers take personal risks when reporting Improper Conduct or participating in related investigations and that UBC wishes to create an environment where impediments to Disclosers engaging in such activities in good faith are minimized. The proposed Retaliation Policy provides a mechanism for Disclosers who wish to report concerns that they may be subject to, or have experienced, Retaliation, thereby providing security and a level of comfort to such individuals that UBC will seek to provide protective measures for the Discloser and to discipline those who engage in Retaliation within reasonable means. Further, the Retaliation Policy clearly sets out what prohibited behaviour falls under the meaning of “Retaliation”, which ensures that UBC Members have clarity as to what will not be tolerated by UBC. As there may be specific consequences for engaging in Retaliation, this proposed policy may assist in reducing the number of instances where a UBC Member engages in Retaliation. The proposed Retaliation Policy creates a consistent approach to be used in addressing Retaliation allegations and also provides a wayfinding map in connection with the reporting of Improper Conduct.

Under the proposed Retaliation Policy, “UBC Member”, “Improper Conduct”, and “Retaliation” have the following definitions:

- “**UBC Member**” is any person who was at the time of the alleged Retaliation and is at the time the Retaliation is reported a student, employee, or appointee of UBC, including, without limitation, a full-time or part-time student, staff member, or faculty member, temporary or sessional instructors, and adjunct professors; an emeritus; a volunteer engaged in a UBC activity; or any other individual acting on behalf of UBC.
- “**Improper Conduct**” means any of the following:
  - a) breaching any UBC rules, regulations, or policies, including any procedures or rules issued in connection with such policies;
  - b) breaching any local, provincial, or federal laws, or any professional standards which are relevant or apply to the UBC Member’s role at UBC; or
  - c) knowingly directing or counseling an individual to commit any Improper Conduct as set out in (a) or (b) above;
- “**Retaliation**” means actions recommended, taken, or threatened by a Respondent (being a UBC Member who is alleged to have engaged in Improper Conduct or Retaliation) where those actions are motivated in whole or in part by the desire to make reprisal against a Discloser, being a UBC Member who reports Improper Conduct or Retaliation or who participates in investigations of Improper Conduct, for the Discloser having engaged in such activity, and, for greater certainty, includes counselling another person to engage in conduct that would constitute Retaliation if it was undertaken by the Respondent. The key consideration in determining whether an action constitutes Retaliation will be the motivation for taking such action.
- For greater certainty, the Retaliation Policy states that the following items do not constitute Retaliation:
  - a) discharge by a UBC Member of the UBC Member’s responsibilities to UBC, including making appropriate decisions in connection with matters related to discipline, work assignments, scheduling, and performance reviews;
  - b) engagement in good faith in any legal proceedings;
  - c) responsible exercise of academic freedom, freedom of expression, and freedom of inquiry;
  - d) reporting Improper Conduct or participating in investigations regarding Improper Conduct in good faith; or
  - e) taking of any corrective or disciplinary action in good faith respect of a UBC Member pursuant to recommendations made in the course of an investigation.

The key elements of the Retaliation Policy are the inclusion of a clear definition of what Retaliation means and what it does and does not include, the ability for UBC to implement preventive measures to reduce the risk or impact of Retaliation where possible, and a process to carry out investigations regarding alleged Retaliation and to address findings of Retaliation in a manner that is consistent with other UBC Board Policies.

The Retaliation Policy clarifies that if an individual has a concern about Improper Conduct, UBC already has a number of policies setting out how to disclose or report Improper Conduct and that if an individual has a concern about Improper Conduct, the concern should be addressed in accordance with those other policies. Section 1.1 of

the Procedures to the Retaliation Policy (the “**Procedures**”) provides guidance on which document to consult to determine the process to report various kinds of Improper Conduct. For example, if a Discloser wishes to report an incident of Discrimination and Harassment, section 1.1 of the Procedures points the Discloser to the Discrimination Policy (SC7).

The Retaliation Policy provides the process through which a Discloser is to report concerns about Retaliation. Section 1.2 of the Procedures sets out the various individuals who are responsible for considering reports of Retaliation (each, a “**Responsible Officer**”). In general, the person who received the underlying report of Improper Conduct would also receive the report of Retaliation. The Procedures also contemplate that authorized UBC representatives may discuss and collaborate regarding reports of Retaliation to address the matter in the most efficient manner.

The Retaliation Policy provides that if a Discloser has a concern about potential or actual Retaliation, the Discloser can come forward with the concern or allegation pursuant to the process set out in the Retaliation Policy. Upon receipt of a report alleging Retaliation, the Responsible Officer will review and determine whether further action (such as, for example, interim protective measures and/or Retaliation Investigation) is warranted; the Responsible Officer will consider relevant factors including, for example, the credibility of the report and the seriousness of the alleged Retaliation.

Where concerns about potential Retaliation are reported, the Responsible Officer may implement protective measures on an anticipatory basis to avoid or minimize the risk of Retaliation, provided that such measures are reasonable, appropriate, feasible, and consistent with the law and the rights of the Discloser and the Respondent.

The Retaliation Policy recognizes that there are limits to what UBC can do to mitigate the risk or impact of Retaliation.

Under the Retaliation Policy, Disclosers may make anonymous reports of Retaliation. In such instances, only those UBC persons who have a need to know the information to address the matter will have access to the identity of the Discloser. Reporting on anonymous basis may limit UBC’s ability to respond to, and investigate, the report.

The Retaliation Policy also requires the Vice-President, Students and the Vice-President, Human Resources to consolidate, organize, and anonymize information received from the Responsible Officers and to make an annual report available on a publicly available website which provides the community with the following information:

- a) the number of reports of Retaliation received;
- b) the number of instances where anticipatory protective measures were undertaken in connection with reports of alleged Retaliation;
- c) the number of Investigations of alleged Retaliation that were undertaken; and
- d) in the case of an Investigation that results in a finding of Retaliation having occurred, a description of the Retaliation and any recommendations or corrective actions taken in relation to the Retaliation or the reasons why no corrective action was taken.

Subject to any feedback from the Board’s People, Community & International Committee, the next step will be to post the proposed Retaliation Policy on the website of the Office of the University Counsel for public comment by the UBC community, accompanied by notifications to various 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. The Policy Development Committee will reconvene after the consultation period to consider the comments received. After reviewing the community’s input, the Policy Development Committee will submit a final recommendation to the Board of Governors for

targeted approval in April 2020. At the time of Board approval of the Retaliation Policy, the Office of the University Counsel will also seek approval to make consequential amendments to existing Board policies that have retaliation provisions. The consequential amendments will be simple in nature and will provide that retaliation will be addressed in accordance with the Retaliation Policy.

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#### **SUPPLEMENTAL MATERIALS**

1. Proposed Retaliation Policy
2. List of Members of the Policy Development Committee

 <b>The University of British Columbia Board of Governors</b>	<b>Policy No.:</b> <b>SC18</b>
<b>Long Title:</b> Safe Disclosure and Reporting of Retaliation Policy	
<b>Short Title:</b> <b>Retaliation Policy</b>	

### Background & Purposes:

UBC is committed to promoting and creating a culture of honesty, accountability, and adherence to the highest ethical standards, and recognizes that an environment in which UBC Members can report their concerns is important, necessary, and valuable in promoting and creating such a culture. UBC appreciates that Disclosers take personal risks when coming forward to report allegations of Improper Conduct, and wishes to create an environment where impediments to Disclosers reporting alleged Improper Conduct or participating in Investigations in good faith are minimized.

The purpose of this Policy is to encourage UBC Members to report known or suspected instances of Improper Conduct and to set out UBC's policy regarding Retaliation for any UBC Member who, in good faith, reports Improper Conduct or participates in an Investigation. While UBC cannot completely insulate Disclosers from such risks, UBC will take such measures as are reasonable, appropriate, and feasible to protect Disclosers from Retaliation.

This Policy is not intended to protect Disclosers who have themselves participated in Improper Conduct from the consequences of such participation, but engaging in Informing Activity may be a mitigating factor in certain circumstances.

### 1. Definitions

1.1 In this Policy and the associated procedures to this Policy (the "**Procedures**"), the following terms will have the meanings set out below.

1.1.1 "**Discloser**" means a UBC Member who engages in Informing Activity or who reports Retaliation.

1.1.2 "**Improper Conduct**" means any of the following:

- (a) breaching any UBC rules, regulations, or policies, including any procedures or rules issued in connection with such policies;
- (b) breaching any local, provincial, or federal laws, or any professional standards which are relevant or apply to the UBC Member's role at UBC; or

- (c) knowingly directing or counseling an individual to commit any Improper Conduct as set out in Section 1.1.2(a) or Section 1.1.2(b).

Acts of commission and omission are both included in the term “**Improper Conduct**”.

- 1.1.3 “**Informing Activity**” means any of the following activities undertaken in good faith:
  - (a) disclosing or reporting Improper Conduct pursuant to a UBC policy procedure, rule or agreement for the purposes of triggering or supporting an Investigation; or
  - (b) participating in an Investigation of alleged Improper Conduct.
- 1.1.4 “**Investigation**” means an investigation or proceeding undertaken by UBC in connection with an allegation of Improper Conduct or Retaliation.
- 1.1.5 “**Investigator**” means the individual appointed to conduct an Investigation, whether under this Policy and its Procedures or another UBC policy, procedure, rule, or agreement.
- 1.1.6 “**Respondent**” means a UBC Member who is alleged to have engaged in Improper Conduct or Retaliation, as applicable.
- 1.1.7 “**Responsible Officer**” is the individual who is responsible for considering reports of Retaliation, as more particularly set out in Section 1.2 of the Procedures.
- 1.1.8 “**Retaliation**” means actions recommended, taken, or threatened by a Respondent where those actions are motivated in whole or in part by the desire to make reprisal against a Discloser for the Discloser having engaged in an Informing Activity and, for greater certainty, includes counselling another person to engage in conduct that would constitute Retaliation if it was undertaken by the Respondent.

For greater certainty, the following will not constitute Retaliation:

  - (a) discharge by a UBC Member of the UBC Member’s responsibilities to UBC, including making appropriate decisions in connection with matters related to discipline, work assignments, scheduling, and performance reviews;
  - (b) engagement in good faith in any legal proceedings;
  - (c) responsible exercise of academic freedom, freedom of expression, and freedom of inquiry;
  - (d) engagement in Informing Activity; or
  - (e) taking of any corrective or disciplinary action in good faith in respect of a UBC Member pursuant to recommendations made in the course of an Investigation.
- 1.1.9 “**Retaliation Investigation**” has the meaning set out in Section 3.4.3 of this Policy.
- 1.1.10 “**UBC Member**” means a person who was at the time of the alleged Retaliation and is at the time the Retaliation is reported a student, employee, or appointee of UBC, including, without limitation, a full-time or part-time student, staff member, or faculty

member, temporary or sessional instructors, and adjunct professors; an emeritus; a volunteer engaged in a UBC activity; or any other individual acting on behalf of UBC.

## 2. Improper Conduct Allegations

- 2.1 This Policy is in addition to, but does not replace or amend other UBC policies, and does not limit or amend the provisions of any collective or employment agreements entered into by UBC. For greater certainty, nothing in this Policy is to be construed as affecting a UBC Member's obligations under any other UBC policies, procedures or other rules to disclose, report, or otherwise give notice of the matter, or participate in any investigations undertaken by UBC.
- 2.2 Disclosers may report Improper Conduct in accordance with the procedures and requirements set out in the applicable UBC policies, procedures, rules, or agreements, and will be addressed in accordance with those policies, procedures, rules, or agreements. For example, as at April 16, 2020, the following policies approved by the Board of Governors set out various forms of reporting and investigating mechanisms: the [Research Policy \(LR2\)](#), the [Human Research Policy \(LR9\)](#), the [COI Policy \(SC3\)](#), the [Scholarly Integrity Policy \(SC6\)](#), the [Discrimination Policy \(SC7\)](#), the [Financial Investigations Policy \(SC15\)](#), and the [Sexual Misconduct Policy \(SC17\)](#). The Procedures provide guidelines regarding the appropriate document or person to consult to determine how to report various kinds of Improper Conduct.

## 3. Retaliation Allegations

- 3.1 UBC does not tolerate Retaliation. If a UBC Member engages in Retaliation, such UBC Member may be subject to disciplinary action up to and including suspension or expulsion in the case of a student, termination of employment, appointment and/or volunteer position at UBC in the case of an employee, appointee, or volunteer, or suspension of emeriti privileges up to and including revocation of emeritus status in the case of an emeritus.
- 3.2 If a Discloser engages in Informing Activity and has a concern that it may result in Retaliation, the Discloser may bring that concern to the attention of the Responsible Officer even if no Retaliation has yet occurred. UBC may work with the Discloser on an anticipatory basis to implement measures designed to avoid or minimize the risk of Retaliation. Depending on the circumstances, the following are examples of anticipatory protective measures that may be taken:
  - 3.2.1 removal of the Discloser from the supervision of a specific supervisor or appointment of additional supervisors for the Discloser;
  - 3.2.2 transfer of the Discloser to another department; or
  - 3.2.3 change in the Discloser's performance evaluators.
- 3.3 If anticipatory protective measures are reasonable, appropriate, and feasible in the circumstances and consistent with the law and the rights of the Discloser and the Respondent, the Responsible Officer will recommend such measures to the Vice-President, Human Resources where the Respondent is a UBC employee, appointee, or volunteer, and to the Vice-President, Students where the Respondent is a UBC student.
- 3.4 If a Discloser believes that Retaliation has occurred, the Discloser may report the Retaliation to the Responsible Officer in accordance with the Procedures. If a Responsible Officer receives a report of Retaliation, the Responsible Officer will:

- 3.4.1 review and conduct a preliminary analysis of the report and determine whether further action (such as, for example, interim protective measures and/or Retaliation Investigation) is warranted; the Responsible Officer will consider such factors as the Responsible Officer deems relevant, including, for example: the credibility of the report and the seriousness of the alleged Retaliation;
  - 3.4.2 communicate the Responsible Officer's decision as to whether further action is warranted to the Discloser;
  - 3.4.3 if an Investigation regarding the alleged Retaliation ("**Retaliation Investigation**") is warranted, conduct the Retaliation Investigation in accordance with Section 5.2 of the Procedures.
- 3.5 The Responsible Officer will exercise the Responsible Officer's authority and discretion under this Policy and its associated Procedures in conformity with the principles of procedural fairness in the university context.
  - 3.6 If there is a finding that the Respondent has engaged in Retaliation, the Responsible Officer will report the finding to the appropriate authority for consideration of disciplinary measures as more particularly described in the Procedures and, where the Responsible Officer considers that protective measures are reasonable, appropriate, and feasible in the circumstances and consistent with the law and the rights of the Discloser and the Respondent, the Responsible Officer will recommend such measures to the Vice-President, Human Resources where the Respondent is a UBC employee, appointee, or volunteer, and to the Vice-President, Students where the Respondent is a UBC student.
  - 3.7 While UBC will seek to implement protective measures for Disclosers to the extent reasonable, appropriate, and feasible in the circumstances, there are limits to what UBC can do to mitigate the risk or impact of Retaliation.

#### **4. Annual Reports of Retaliation Allegations**

- 4.1 Annual reports regarding Retaliation will be published in the manner set out in the Procedures.



## PROCEDURES ASSOCIATED WITH THE RETALIATION 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 Retaliation Policy.

### 1. Responsible Officers

- 1.1 For purposes of Section 2.2 of the Retaliation Policy, a Discloser may disclose or report Improper Conduct as follows:

Allegations of Improper Conduct related to:	
1	Discrimination and Harassment, as defined in the <a href="#">Discrimination Policy (SC7)</a> , should be made in accordance with the Discrimination Policy (SC7)
2	Scholarly Misconduct, as defined in the <a href="#">Scholarly Integrity Policy (SC6)</a> , should be made in accordance with the Scholarly Integrity Policy (SC6)
3	Non-compliance with the <a href="#">Research Policy (LR2)</a> should be made in accordance with the Research Policy (LR2)
4	Concerns regarding Conflicts of Interest or Conflicts of Commitment, as defined in the <a href="#">COI Policy (SC3)</a> , should be made in accordance with the COI Policy (SC3)
5	Non-compliance with the <a href="#">Information Systems Policy (SC14)</a> should be made in accordance with the Information Systems Policy (SC14)
6	Improper Financial Activity, as defined in the <a href="#">Financial Investigations Policy (SC15)</a> , should be made in accordance with the Financial Investigations Policy (SC15)
7	Sexual Misconduct, as defined in the <a href="#">Sexual Misconduct Policy (SC17)</a> , should be made in accordance with the Sexual Misconduct Policy (SC17)
8	Student academic misconduct should be made in accordance with the “Academic Regulations” section of the Academic Calendar for the relevant campus
9	Student non-academic misconduct matters other than sexual assault and other sexual misconduct matters should be made in accordance with the “Discipline for Non-Academic Misconduct: Student Code of Conduct” section of the Academic Calendar for the relevant campus
10	Any other matter not listed in #1-9 above should be made to the Vice-President, Students where the Discloser is a student, and to the Vice-President, Human Resources where the Discloser is an employee, appointee, volunteer, or emeritus

- 1.2 For the purposes of Section 1.1.7 of the Retaliation Policy, “**Responsible Officer**” means the following or their delegates:

	<b>Where the alleged Retaliation arises from the Discloser engaging in Informing Activity related to:</b>	<b>Responsible Officer:</b>
1	Discrimination and Harassment (as defined in the <a href="#">Discrimination Policy (SC7)</a> )	Director of Investigations
2	Scholarly Misconduct (as defined in the <a href="#">Scholarly Integrity Policy (SC6)</a> )	Vice-President, Research and Innovation
3	Non-compliance with the <a href="#">Research Policy (LR2)</a>	Vice-President, Research and Innovation
4	Concerns regarding Conflicts of Interest or Conflicts of Commitment (as defined in the <a href="#">COI Policy (SC3)</a> )	Chair of the Conflict of Interest Committee, as established under the <a href="#">COI Policy (SC3)</a>
5	Non-compliance with the <a href="#">Information Systems Policy (SC14)</a>	Chief Information Officer
6	Improper Financial Activity (as defined in the <a href="#">Financial Investigations Policy (SC15)</a> )	Director of UBC’s Internal Audit Department
7	Sexual Misconduct (as defined in the <a href="#">Sexual Misconduct Policy (SC17)</a> )	Director of Investigations, as set out in the <a href="#">Sexual Misconduct Policy (SC17)</a>
8	Student academic misconduct matters	Dean of relevant UBC faculty
9	Student non-academic misconduct matters other than sexual assault and other sexual misconduct matters	Director of Campus Security in respect of UBC Vancouver, and Associate Director, Campus Security in respect of UBC Okanagan
10	Any other matter not listed in #1-9 above	In the case of a Discloser who is a: (i) student, to the Vice-President, Students; and (ii) employee, appointee, volunteer, or emeritus, to the Vice-President, Human Resources

## 2. Reports of Retaliation

- 2.1 A Discloser who wishes to report Retaliation must report the Retaliation to the Responsible Officer in writing and must include the following information in the report:

- 2.1.1 the nature of the Retaliation being reported, including any relevant dates and timeframes;
- 2.1.2 names of the parties involved;
- 2.1.3 the name of the UBC person who is handling the underlying allegation of Improper Conduct; and
- 2.1.4 whether the Retaliation has already been reported to another UBC person and a response received.

- 2.2 In addition, the disclosure must provide the Responsible Officer with any other information that is requested by the Responsible Officer in relation to the Retaliation.

### 3. Advisory Role of Office of the University Counsel

- 3.1 A Responsible Officer may at any time seek the advice of the Office of the University Counsel with respect to any matter pertaining to the Retaliation Policy or these Procedures, including without limitation, the appropriate processes to address reports of Retaliation and determination of who should conduct Retaliation Investigations.

### 4. Confidentiality and Anonymous Reports

- 4.1 A Discloser may report Retaliation to the Responsible Officer on an anonymous basis. If a report is made on an anonymous basis, the identity of the Discloser will be treated as confidential, meaning that, except as required by applicable laws, only those authorized UBC representatives who need to know the information to address the allegation of Retaliation will obtain access to such information.
- 4.2 A Discloser who wishes to report Retaliation on an anonymous basis should be aware that this may limit UBC's ability to respond to, and investigate, the report. For example, UBC may be unable to proceed with a Retaliation Investigation involving anonymous allegations due to a lack of evidence from the individual who was directly subjected to the Retaliation, or where proceeding would violate procedural fairness. In such cases, the Responsible Officer will consider whether any other steps can and should be taken.
- 4.3 Subject to Section 4.1 of these Procedures, the Responsible Officers will normally inform or collaborate with the applicable administrative heads of unit to address Retaliation allegations, and the Responsible Officers, administrative heads of unit, and other authorized UBC representatives may discuss reports of Retaliation with each other to facilitate the most efficient process possible in addressing Retaliation allegations.
- 4.4 For purposes of these Procedures, an **"administrative head of unit"** means a Director of a service unit, a Head of an academic department, a Director of a centre, institute or school, a Principal of a college, a Dean, an Associate Vice-President, the Registrar, the University Librarian, a Vice-President or the President.

### 5. Retaliation Investigations

- 5.1 The Responsible Officer will determine whether the Retaliation Investigation will be conducted as part of an ongoing Investigation of the underlying alleged Improper Conduct, or whether the Retaliation Investigation will be conducted separately. If the Retaliation Investigation is conducted as part of the ongoing Investigation, the Responsible Officer will coordinate if necessary with the UBC person who is responsible for the Investigation of the underlying alleged Improper Conduct and the Retaliation Investigation will be conducted in accordance with the procedures set for the Investigation of the underlying alleged Improper Conduct and the procedures set for addressing the outcome of such Investigation and Section 5.2 through 8.2 of these Procedures will not apply. For clarity, the coordination and sharing of information pursuant to this Section 5.1 is subject to the confidentiality provision in Section 4.1 of these Procedures.
- 5.2 If the Retaliation Investigation is conducted as a stand-alone, separate Investigation, the Responsible Officer will appoint themselves or another person as the Investigator and the Retaliation Investigation will be conducted in accordance with the procedures set out below.
- 5.3 The Responsible Officer will:

- 5.3.1 contact the Discloser to advise the Discloser that the alleged Retaliation will be investigated, and to provide the Discloser with information about the resources available and the investigation process, including the right of the Discloser to have an advisor, support person, or union representative present whenever the Discloser meets with the Investigator; and
- 5.3.2 contact the Respondent to advise the Respondent that a report of Retaliation has been made and has been referred to an Investigator, and to provide the Respondent with a copy of the report together with information about the resources available and the investigation process, including the right of the Respondent to have an advisor, support person, or union representative present whenever the Respondent meets with the Investigator.
- 5.4 It is intended that, except in exceptional circumstances, Retaliation Investigations will be completed within 90 calendar days following the Responsible Officer's receipt of the written report of Retaliation contemplated by Section 2.1 of these Procedures. If during the Retaliation Investigation the Investigator believes that this timeline cannot be met, the Investigator will contact the Discloser, the Respondent, and the Responsible Officer as soon as possible to inform them of the revised timeline.
- 5.5 In all Retaliation Investigations, the Respondent will be fully informed of the allegations made against the Respondent, and will be given the opportunity to respond.
- 5.6 Subject to the requirement to conduct the Retaliation Investigation in conformity with the principles of procedural fairness in the university context, the Investigator may investigate in any manner the Investigator deems 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:
  - 5.6.1 requesting a written response to the Retaliation allegation from the Respondent, including 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;
  - 5.6.2 meeting with or requesting further information from the Discloser;
  - 5.6.3 meeting with or requesting further information from the Respondent;
  - 5.6.4 meeting with or requesting further information from any other individuals who may have information relevant to the Retaliation Investigation, including any witnesses identified by the Discloser or the Respondent;
  - 5.6.5 inviting the Discloser 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
  - 5.6.6 obtaining any other evidence that may be relevant to the Retaliation Investigation.
- 5.7 At the completion of the Retaliation Investigation, the Investigator will prepare a written report (the "**Investigative Report**") for the Responsible Officer. The Investigative Report will normally include the following information:

- 5.7.1 a summary of the evidence considered;
- 5.7.2 any assessment of credibility that is required to render a determination; and
- 5.7.3 the findings of fact, and a determination as to whether, on a balance of probabilities, Retaliation has occurred.

## **6. Outcome and Disciplinary Measures**

- 6.1 If the Investigative Report includes a determination that Retaliation has occurred, the Responsible Officer 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:
  - 6.1.1 in the case of a student Respondent, to the President, who will provide the Respondent with a copy of the Investigative Report, and will then determine what disciplinary or other measures are appropriate based on the findings of fact, up to and including suspension or expulsion;
  - 6.1.2 in the case of a faculty member Respondent, to the faculty member's Dean or, in the case of a librarian, to the University Librarian, who will meet with the Respondent and provide the Respondent with a copy of the Investigative Report, and will then determine what disciplinary measures are appropriate based on the findings of fact. If suspension or termination of a faculty member or librarian's appointment for cause is considered appropriate by the Dean or the University Librarian, a recommendation will be made to the President who will then, in turn, make a decision on appropriate discipline. If the President's decision is that suspension for cause is the appropriate discipline, then the President will inform the Board of Governors. If that decision is that termination for cause is the appropriate discipline, the President will make a recommendation to the Board of Governors which will then decide if termination for cause is appropriate;
  - 6.1.3 in the case of a staff member Respondent, to the staff member's administrative head of unit, who will provide the Respondent with a copy of the Investigative Report, and will then determine what disciplinary or other measures are appropriate based on the findings of fact, up to and including suspension. If 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; and
  - 6.1.4 in the case of a Respondent who is not a student, faculty member, or staff member, to the appropriate person within UBC, as determined by the Responsible Officer, for further action.
- 6.2 Once the appropriate UBC authority has decided the appropriate disciplinary or other measures under Section 6.1 above, that decision will be communicated in writing to the Respondent and to the Responsible Officer. The Responsible Officer will then provide a copy of the Investigative Report to the Discloser and will inform the Discloser of any disciplinary outcomes that the University Counsel has authorized the Responsible Officer to disclose for compelling health or safety reasons, in accordance with Section 7.5 of these Procedures.
- 6.3 Whether or not the Investigative Report includes a determination that Retaliation has occurred, if the Responsible Officer believes that the Investigative Report discloses other Improper

Misconduct or information that UBC may need to act on under another UBC policy, procedure, rule, or agreement, the Responsible Officer may refer the Investigative Report or the relevant portion of the Investigative Report to the appropriate UBC authority. When appropriate, the Responsible Officer will consult with the Discloser who alleged the Retaliation before referring it elsewhere.

- 6.4 If the Investigative Report does not include a determination that Retaliation has occurred, the Responsible Officer will provide a copy of the Investigative Report to the Discloser and the Respondent in accordance with Section 7.4 of these Procedures.
- 6.5 The Responsible Officer will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and accommodations, providing education, or conducting administrative transactions.

## 7. Confidentiality and Privacy in Retaliation Investigations

- 7.1 In order to protect the integrity, fairness, and effectiveness of Retaliation Investigations and ensure compliance with the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”), all participants in a Retaliation Investigation must act in accordance with the requirements set out below.
- 7.2 Individuals, including the Discloser and the Respondent, who have obtained information about an identifiable individual (“**Personal Information**”) through their participation in a Retaliation 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:
  - 7.2.1 any participants in the Retaliation Investigation from disclosing information about themselves, or information that they have obtained outside the Retaliation Investigation;
  - 7.2.2 UBC representatives from disclosing information related to the Retaliation Investigation as authorized under Section 4.3 of these Procedures; or
  - 7.2.3 Disclosers and Respondents from disclosing the information that they received under Sections 7.4 and 7.5 of these Procedures.
- 7.3 UBC will not disclose any Personal Information related to a Retaliation Investigation except to the extent such disclosure is:
  - 7.3.1 expressly authorized by the affected individual;
  - 7.3.2 to a UBC representative, if necessary for the performance of that individual’s duties;
  - 7.3.3 to a Discloser, Respondent, witness, or other participant in the Retaliation Investigation, if necessary for the conduct of the Retaliation Investigation;
  - 7.3.4 to a Discloser or Respondent in accordance with Sections 7.4 or 7.5;
  - 7.3.5 authorized by the University Counsel for compelling health or safety reasons;

7.3.6 authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the Retaliation Investigation or UBC's investigatory processes; or

7.3.7 authorized or required under law.

7.4 To maintain the integrity of the Retaliation Investigation process, UBC must ensure that both Disclosers and Respondents know the Retaliation Investigation findings and the evidence upon which these findings are based. For this reason, Disclosers and Respondents will be provided with a copy of the Investigative Report. FIPPA may require UBC to remove Personal Information that is irrelevant to the Retaliation Investigation findings, or that identifies third parties. If there are multiple Disclosers or multiple Respondents, they will only receive the portions of the Investigative Reports that are relevant to them.

7.5 Under FIPPA, UBC is only authorized to disclose disciplinary actions that 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 Disclosers of any restrictions that may have been imposed upon the Respondent's movement or activities.

7.6 Section 7.2 does not prevent Disclosers and Respondents from disclosing the information they received under Sections 7.4 and 7.5. However, Disclosers 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.

## **8. Appeal Process**

8.1 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.

8.2 Employee or appointee Respondents may appeal any decisions 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 or appointment.

## **9. Annual Reports of Retaliation Allegations**

9.1 On an annual basis, each Responsible Officer will provide a report regarding allegations of Retaliation received during the applicable year to the Vice-President, Students in respect of Retaliation reported by UBC students and to the Vice-President, Human Resources in respect of Retaliation reported by UBC employees, appointees, or volunteers. Each report prepared pursuant to this Section 9.1 will contain a list of the reports of Retaliation received and for each such report of Retaliation, the following information:

9.1.1 the nature of the alleged Retaliation;

9.1.2 whether any anticipatory protective measures were undertaken, and if so a description of such measures;

9.1.3 whether an Investigation of the alleged Retaliation was undertaken;

- 9.1.4 if an Investigation of the alleged Retaliation was undertaken, whether there was a finding of Retaliation; and
- 9.1.5 if there was a finding of Retaliation, a description of any recommendations or corrective actions taken in relation to the Retaliation or the reasons why no corrective action was recommended or taken.
- 9.2 The Vice-President, Students and the Vice-President, Human Resources will consolidate, organize and anonymize the information received from the Responsible Officers pursuant to Section 9.1 above, and will make an annual report available on a publicly available website. The annual report will provide the community with the following information:
- 9.2.1 the number of reports of Retaliation received;
- 9.2.2 the number of instances where anticipatory protective measures were undertaken in connection with reports of alleged Retaliation;
- 9.2.3 the number of Investigations of alleged Retaliation that were undertaken; and
- 9.2.4 in the case of an Investigation (including a Retaliation Investigation) that results in a finding of Retaliation having occurred, a description of the Retaliation and any recommendations or corrective actions taken in relation to the Retaliation or the reasons why no corrective action was taken.
- 9.3 For the purposes of section 9.2 above, the annual reports will be published on the following website: [\[insert URL\]](#).

**List of Members of the Proposed Retaliation Policy Development Committee**

- 1 Hubert Lai, Q.C. University Counsel and Chair of Policy Development Committee
- 2 Lorena Vlad Legal Counsel and Secretary to the Policy Development Committee
- 3 Aaron Antifaeff Acting Associate Director, Internal Audit
- 4 Anne Murphy Associate Dean, Strategic Initiatives, Faculty of Graduate and Post Doctoral Studies (UBC Vancouver)
- 5 Cassidy Wallis Graduate Student (UBC Okanagan)
- 6 Gillian Henderson Director, Human Resources (UBC Okanagan)
- 7 Greg Martyn Director, Office of the Vice-President, Research and Innovation
- 8 Mayor Thibault Professor, Faculty of Medicine (UBC Vancouver)
- 9 Mina Hoorfar Director and Professor, School of Engineering (UBC Okanagan)
- 10 Sara-Jane Finlay Associate Vice-President, Equity and Inclusion
- 11 Shilong Pan Undergraduate Student (UBC Okanagan)
- 12 Shirley Nakata Ombudsperson for Students, Office of the Ombudsperson for Students
- 13 Sydney Dunn Undergraduate Student (UBC Vancouver)