



SUBJECT	Proposed New Policy SC18 – Retaliation, Safe Disclosure, and Reporting Policy (“Retaliation Policy”)
SUBMITTED TO	BOARD OF GOVERNORS
MEETING DATE	April 16, 2020
SESSION CLASSIFICATION	Recommended session criteria from Board Meetings Policy: OPEN
ACTION REQUESTED	Decision requested: approval of proposed resolution IT IS HEREBY REQUESTED that the Board of Governors approve (i) Retaliation Policy SC18 in the form set out in Supplemental Materials #1, effective April 20, 2020; and (ii) assign oversight responsibility for Retaliation Policy SC18 to the People, Community & International Committee.
SUBMISSION DATE	March 20, 2020
LEAD EXECUTIVE	University Counsel
PRESENTED BY	Hubert Lai, Q.C., University Counsel
SUPPORTED BY	Marcia Buchholz, Interim Vice-President Human Resources Ainsley Carry, Vice-President Students Lorena Vlad, Legal Counsel

PRIOR SUBMISSIONS

The subject matter of this submission has been considered previously by the People, Community & International Committee on the following occasion:

1. [November 26, 2019](#) (OPEN SESSION)
Action: The People, Community & International Committee considered the proposed Retaliation Policy, following which the Office of the University Counsel (“**OUC**”) published the policy proposal for community consultation.

The following Executive Summary assumes familiarity with the prior submission and provides a status update from the date of the most recent submission.

EXECUTIVE SUMMARY

The OUC published the proposed Retaliation Policy for community consultation from November 28, 2019 until January 31, 2020. Notice was given to the UBC community via email newsletter on November 28, 2019 and a call for comments was published in the December 10, 2019 and January 7, 2020 versions of UBC Today. This resulted in feedback from the Alma Mater Society, the Graduate Student Society, and CUPE Local 116. The Policy Development Committee that was constituted to develop the Retaliation Policy proposal was reconvened to consider the feedback and to make adjustments to the Retaliation Policy proposal as appropriate. A table setting out the community input that was received and the Policy Development Committee’s response to each comment can be found in Supplemental Materials #3. The full text of the Retaliation Policy proposal, highlighted to show the changes from the version that was published, is attached as Supplemental Materials #2.

The key changes that have been made to the proposed policy in response to community feedback are as follows:

1. The long title of the Retaliation Policy has been revised to more clearly indicate what the Policy intends to address, being retaliation, safe disclosure, and reporting. In addition, the term “Responsible Officer” has been replaced with “Designated Recipient” to reduce the risk of confusion between the role of the person who is responsible for receiving and considering reports of Retaliation and the members of the UBC Executive who have been designated as the Responsible Executives for the Retaliation Policy.
2. The definition of “UBC Member” has been modified to clarify that the Retaliation Policy applies to students, as such term is defined in the *University Act*, and to non-student-learners. This distinction ensures clarity in the UBC community regarding disciplinary measures and appeal rights that apply to the two categories of learners.
3. The Retaliation Policy is intended to address retaliation that occurs within the UBC community. Recognizing that some members of the UBC community may not feel sufficiently safe to report misconduct until after they leave UBC, the Retaliation Policy proposal has been amended to permit reports of Retaliation to be made by individuals who are no longer current UBC Members, as long as they were UBC Members at the time that the alleged improper conduct occurred.
4. Language has been added to explicitly state that, if any portion of the Retaliation Policy is inconsistent with a binding collective or employment agreement entered into by UBC that applies to a Discloser or Respondent, the agreement will prevail.
5. Recognizing the inherent difficulty in proving an individual’s state of mind, language has been added to explicitly allow reasonable inferences to be drawn by decision-makers regarding the motivation of Respondents (which is a component of the definition of “Retaliation”).
6. The amendments clarify that if the Designated Recipient has a conflict of interest, Disclosers may report allegations of Retaliation to the Responsible Executives who will determine who will take the role of the Designated Recipient.
7. Language has been added providing that third parties who are aware that a Discloser is experiencing Retaliation may bring the matter to the Designated Recipient, who will then discuss with the Discloser whether the Discloser wishes to make a Retaliation report. This facilitates a process where a Discloser that experiences Retaliation has the right to determine whether to proceed with reporting Retaliation.
8. The language that sets out the process for dealing with findings of Retaliation has been simplified to identify who is to receive reports regarding findings of Retaliation and to state that the appropriate UBC authorities will then follow a process that is consistent with applicable agreements and other legal requirements in determining the disciplinary measures to be imposed.

The Retaliation Policy proposal is supported and recommended by the Policy Development Committee, the Vice-President Human Resources, the Vice-President Students, and the University Counsel.

SUPPLEMENTAL MATERIALS

1. Clean copy of the proposed Retaliation Policy being presented for Board of Governors’ approval
2. Blackline of proposed amendments to the Retaliation Policy showing changes against version previously presented to the People, Community & International Committee for information in November 2019
3. Summary of community feedback and Policy Development Committee recommendations

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

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 Disclosers 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 Disclosers to report known or suspected instances of Improper Conduct and to set out UBC's policy regarding Retaliation for any Discloser 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 "**Designated Recipient**" is the individual who is responsible for receiving and considering reports of Retaliation, as more particularly set out in Section 1.2 of the Procedures.
 - 1.1.2 "**Discloser**" means an individual who engages in Informing Activity or who reports Retaliation and who was a UBC Member when the alleged Improper Conduct occurred.
 - 1.1.3 "**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 1.1.3(a) or Section 1.1.3(b).

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

- 1.1.4 “**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.
- 1.1.5 “**Investigation**” means an investigation or proceeding undertaken by UBC in connection with an allegation of Improper Conduct or Retaliation.
- 1.1.6 “**Investigator**” means the individual appointed to conduct an Investigation, whether under this Policy and its Procedures or another UBC policy, procedure, rule, or agreement.
- 1.1.7 “**Respondent**” means an individual who is a UBC Member and who is alleged to have engaged in Improper Conduct or Retaliation, as applicable.
- 1.1.8 “**Retaliation**” means any 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 is a student (as defined under the *University Act*), registrant (being an individual registered in non-credit educational activities), 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, (i) 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; and (ii) in the event that any portion of this Policy is inconsistent with a binding collective or employment agreement entered into by UBC and which applies to a Discloser or Respondent, that portion and only that portion of the Policy will have no application to the extent of that inconsistency.
- 2.2 Disclosers may disclose or report Improper Conduct in accordance with the procedures and requirements set out in the applicable UBC policies, procedures, rules, or agreements, and such disclosures and reports 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 or a registrant, 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 faculty member.
- 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 Designated Recipient 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, the Designated Recipient will recommend such measures to the Vice-President, Human Resources where the Respondent is a UBC employee, appointee, volunteer, or emeritus faculty member and to the Vice-President, Students where the Respondent is a student or registrant.

- 3.4 If a Discloser believes that Retaliation has occurred, the Discloser may report the Retaliation to the Designated Recipient in accordance with the Procedures. If a Designated Recipient receives a report of Retaliation, the Designated Recipient 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;
 - 3.4.2 communicate the Designated Recipient'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 Designated Recipient and any Investigators will exercise their authority and discretion under this Policy and its associated Procedures in conformity with the principles of procedural fairness in the university context and with the law and the rights of the Discloser and the Respondent. They will consider such information as they deem to be relevant and appropriate, including, without limitation: the credibility of the allegations, the seriousness of the alleged Retaliation, the amount of time that has lapsed since the alleged Retaliation occurred, and the relative vulnerability of the Discloser. Without limiting the generality of the foregoing, the Designated Recipients and Investigators may draw reasonable inferences as to the motivation of Respondents in respect of alleged Retaliation.
- 3.6 If there is a finding that the Respondent has engaged in Retaliation, the Designated Recipient will report the finding to the appropriate authority for consideration of disciplinary measures as more particularly described in the Procedures and, where the Designated Recipient 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 Designated Recipient will recommend such measures to the Vice-President, Human Resources where the Respondent is a UBC employee, appointee, volunteer, or emeritus faculty member, and to the Vice-President, Students where the Respondent is a student or registrant.
- 3.7 While UBC's powers are not unlimited, UBC will implement protective measures for Disclosers to the extent reasonable, appropriate, and feasible in the circumstances.

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. Designated Recipients

- 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 Discrimination Policy (SC7) , should be made in accordance with the Discrimination Policy (SC7)
2	Scholarly Misconduct, as defined in the Scholarly Integrity Policy (SC6) , should be made in accordance with the Scholarly Integrity Policy (SC6)
3	Non-compliance with the Research Policy (LR2) should be made in accordance with the Research Policy (LR2)
4	Concerns regarding Conflicts of Interest or Conflicts of Commitment, as defined in the COI Policy (SC3) , should be made in accordance with the COI Policy (SC3)
5	Non-compliance with the Information Systems Policy (SC14) should be made in accordance with the Information Systems Policy (SC14)
6	Improper Financial Activity, as defined in the Financial Investigations Policy (SC15) , should be made in accordance with the Financial Investigations Policy (SC15)
7	Sexual Misconduct, as defined in the Sexual Misconduct Policy (SC17) , should be made in accordance with the Sexual Misconduct Policy (SC17)
8	Reports of At-Risk Behaviour, as defined in the At-Risk Behaviour Policy (SC13) , should be made in accordance with the At-Risk Behaviour Policy (SC13)
9	Student academic misconduct should be made in accordance with the “Academic Regulations” section of the Academic Calendar for the relevant campus
10	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
11	Any other matter not listed in #1-10 above should be made to the Vice-President, Human Resources where the Respondent is an employee, appointee, volunteer, or emeritus faculty member, and to the Vice-President, Students where the Respondent is a student or registrant.

- 1.2 For the purposes of Section 1.1.1 of the Retaliation Policy and subject to Section 1.3 below, “Designated Recipient” means the following or their delegates:

	Where the alleged Retaliation arises from the Discloser engaging in Informing Activity related to:	Designated Recipient:
1	Discrimination and Harassment (as defined in the Discrimination Policy (SC7))	Director of Investigations
2	Scholarly Misconduct (as defined in the Scholarly Integrity Policy (SC6))	Vice-President, Research and Innovation
3	Non-compliance with the Research Policy (LR2)	Vice-President, Research and Innovation
4	Concerns regarding Conflicts of Interest or Conflicts of Commitment (as defined in the COI Policy (SC3))	Chair of the Conflict of Interest Committee, as established under the COI Policy (SC3)
5	At-Risk Behaviour (as defined in the At-Risk Behaviour Policy (SC13))	the applicable Decision Maker, as set out in the At-Risk Behaviour Policy (SC13)
6	Non-compliance with the Information Systems Policy (SC14)	Chief Information Officer
7	Improper Financial Activity (as defined in the Financial Investigations Policy (SC15))	Director of UBC’s Internal Audit Department
8	Sexual Misconduct (as defined in the Sexual Misconduct Policy (SC17))	Director of Investigations, as set out in the Sexual Misconduct Policy (SC17)
9	Student academic misconduct matters	Dean of relevant UBC faculty
10	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
11	Any other matter not listed in #1-10 above	In the case of a Respondent who is: (i) an employee, appointee, volunteer, or emeritus faculty member, to the Vice-President, Human Resources; and (ii) a student or registrant, to the Vice-President, Students

- 1.3 If (i) a report of Retaliation relates to the applicable Designated Recipient, or (ii) if the applicable Designated Recipient otherwise has a Conflict of Interest (as defined in the COI Policy (SC3)), the Discloser may report Retaliation to the Responsible Executives who will determine who will take the role of the Designated Recipient in respect of the particular Retaliation report.

2. Reports of Retaliation

- 2.1 A Discloser who wishes to report Retaliation must report the Retaliation to the Designated Recipient 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 Designated Recipient with any other information that is requested by the Designated Recipient in relation to the alleged Retaliation.

3. Advisory Role of Office of the University Counsel

- 3.1 A Designated Recipient 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 or Third Party Reports

- 4.1 A Discloser may report Retaliation to the Designated Recipient 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 alleged Retaliation, or where proceeding would violate procedural fairness. In such cases, the Designated Recipient will consider whether any other steps can and should be taken. If a third party is aware that a Discloser is experiencing Retaliation, the third party may bring the matter to the attention of the applicable Designated Recipient, who will then discuss with the Discloser as to whether the Discloser wishes to proceed with a Retaliation report.
- 4.3 Subject to Section 4.1 of these Procedures, the Designated Recipients will normally inform or collaborate with the applicable administrative heads of unit to address Retaliation allegations, and the Designated Recipients, 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 Designated Recipient 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 Designated Recipient will coordinate if necessary with the UBC person who is responsible for the Investigation of the

underlying alleged Improper Conduct. In such circumstances, 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 Designated Recipient 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 Designated Recipient 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 Designated Recipient'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 Designated Recipient as soon as possible to inform them of the revised timeline.
- 5.5 In all Retaliation Investigations, the Respondent will be 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; and
- 5.6.5 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 Designated Recipient. 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 Designated Recipient 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;
 - 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;
 - 6.1.3 in the case of a staff member Respondent, to the staff member’s administrative head of unit; 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 Designated Recipient.
- 6.2 Where there is a determination that a student Respondent has engaged in Retaliation, the President will determine what disciplinary or other measures are appropriate in accordance with the *University Act*. Where there is a determination that any other Respondent has engaged in Retaliation, the process that will be followed by the appropriate UBC authorities in respect of disciplinary actions will be consistent with applicable collective or employment agreements, the *University Act*, and any other applicable legal requirements. Once the appropriate UBC authority has decided the appropriate disciplinary or other measures, that decision will be communicated in writing to the Respondent and to the Designated Recipient.
- 6.3 A copy of the Investigative Report will be provided to the Respondent and Discloser in accordance with section 7.4 of these Procedures.
- 6.4 Whether or not the Investigative Report includes a determination that Retaliation has occurred, if the Designated Recipient 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 Designated Recipient may refer the Investigative Report or the relevant portion of the Investigative Report to the appropriate UBC authority. When appropriate, the Designated Recipient will consult with the Discloser who alleged the Retaliation before referring it elsewhere.

- 6.5 If the Investigative Report does not include a determination that Retaliation has occurred, the Designated Recipient will provide a copy of the Investigative Report to the Discloser and the Respondent in accordance with Section 7.4 of these Procedures.
- 6.6 The Designated Recipient 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 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.
- 8.3 Respondents other than students, employees, and appointees, do not have appeal rights, except as may be otherwise set out in their agreements with UBC or any applicable laws.

9. Annual Reports of Retaliation Allegations

- 9.1 On an annual basis, each Designated Recipient 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 or registrants, and to the Vice-President, Human Resources in respect of Retaliation reported by UBC employees, appointees, volunteers, , or previous UBC Members. 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 Designated Recipients 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: <http://www.hr.ubc.ca/>.

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

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~~Disclosers 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~~Disclosers to report known or suspected instances of Improper Conduct and to set out UBC's policy regarding Retaliation for any ~~UBC Member~~Discloser 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 "**Designated Recipient**" is the individual who is responsible for receiving and considering reports of Retaliation, as more particularly set out in Section 1.2 of the Procedures.

1.1.1.1.2 "**Discloser**" means ~~a UBC Member~~ an individual who engages in Informing Activity or who reports Retaliation and who was a UBC Member when the alleged Improper Conduct occurred.

1.1.2.1.3 "**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 1.1.3(a) or Section 1.1.3(b).

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

~~1.1.3~~1.1.4 **"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~~1.1.5 **"Investigation"** means an investigation or proceeding undertaken by UBC in connection with an allegation of Improper Conduct or Retaliation.

~~1.1.5~~1.1.6 **"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~~1.1.7 **"Respondent"** means an individual who is a UBC Member and 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 any 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, ~~(as defined under the *University Act*),~~ registrant (being an individual registered in non-credit educational activities), 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, (i) 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; and (ii) in the event that any portion of this Policy is inconsistent with a binding collective or employment agreement entered into by UBC and which applies to a Discloser or Respondent, that portion and only that portion of the Policy will have no application to the extent of that inconsistency.
- 2.2 Disclosers may disclose or report Improper Conduct in accordance with the procedures and requirements set out in the applicable UBC policies, procedures, rules, or agreements, and such disclosures and reports 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 or a registrant, 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: faculty member.
- 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~~ Designated Recipient 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, the Designated Recipient~~ will recommend such measures to the Vice-President, Human Resources where the Respondent is a UBC employee, appointee, ~~or~~ volunteer, or emeritus faculty member and to the Vice-President, Students where the Respondent is a UBC-student or registrant.
- 3.4 If a Discloser believes that Retaliation has occurred, the Discloser may report the Retaliation to the ~~Responsible Officer~~Designated Recipient in accordance with the Procedures. If a ~~Responsible Officer~~Designated Recipient receives a report of Retaliation, the ~~Responsible Officer~~Designated Recipient 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~~Designated Recipient'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~~Designated Recipient and any Investigators will exercise ~~the Responsible Officer's~~their authority and discretion under this Policy and its associated Procedures in conformity with the principles of procedural fairness in the university context ~~and with the law and the rights of the Discloser and the Respondent. They will consider such information as they deem to be relevant and appropriate, including, without limitation: the credibility of the allegations, the seriousness of the alleged Retaliation, the amount of time that has lapsed since the alleged Retaliation occurred, and the relative vulnerability of the Discloser. Without limiting the generality of the foregoing, the Designated Recipients and Investigators may draw reasonable inferences as to the motivation of Respondents in respect of alleged Retaliation.~~
- 3.6 If there is a finding that the Respondent has engaged in Retaliation, the ~~Responsible Officer~~Designated Recipient 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~~Designated Recipient 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~~Designated Recipient will recommend such measures to the Vice-President, Human Resources where the Respondent is a UBC employee, appointee, ~~or~~ volunteer, or emeritus faculty member, and to the Vice-President, Students where the Respondent is a UBC-student or registrant.
- 3.7 While UBC's powers are not unlimited, 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~~ Designated Recipients

- 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 Discrimination Policy (SC7) , should be made in accordance with the Discrimination Policy (SC7)
2	Scholarly Misconduct, as defined in the Scholarly Integrity Policy (SC6) , should be made in accordance with the Scholarly Integrity Policy (SC6)
3	Non-compliance with the Research Policy (LR2) should be made in accordance with the Research Policy (LR2)
4	Concerns regarding Conflicts of Interest or Conflicts of Commitment, as defined in the COI Policy (SC3) , should be made in accordance with the COI Policy (SC3)
5	Non-compliance with the Information Systems Policy (SC14) should be made in accordance with the Information Systems Policy (SC14)
6	Improper Financial Activity, as defined in the Financial Investigations Policy (SC15) , should be made in accordance with the Financial Investigations Policy (SC15)
7	Sexual Misconduct, as defined in the Sexual Misconduct Policy (SC17) , should be made in accordance with the Sexual Misconduct Policy (SC17)
8	Reports of At-Risk Behaviour, as defined in the At-Risk Behaviour Policy (SC13), should be made in accordance with the At-Risk Behaviour Policy (SC13)
89	Student academic misconduct should be made in accordance with the “Academic Regulations” section of the Academic Calendar for the relevant campus
910	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
1011	Any other matter not listed in #1- 910 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/Respondent is an employee, appointee, -volunteer, or emeritus faculty member, and to the Vice-President, Students where the Respondent is a student or registrant.

- 1.2 For the purposes of Section 1.1.1 of the Retaliation Policy, ~~“Responsible Officer and subject to Section 1.3 below, “Designated Recipient”~~ means the following or their delegates:

	Where the alleged Retaliation arises from the Discloser engaging in Informing Activity related to:	Responsible Officer: <u>Designated Recipient:</u>
1	Discrimination and Harassment (as defined in the Discrimination Policy (SC7))	Director of Investigations
2	Scholarly Misconduct (as defined in the Scholarly Integrity Policy (SC6))	Vice-President, Research and Innovation
3	Non-compliance with the Research Policy (LR2)	Vice-President, Research and Innovation
4	Concerns regarding Conflicts of Interest or Conflicts of Commitment (as defined in the COI Policy (SC3))	Chair of the Conflict of Interest Committee, as established under the COI Policy (SC3)
5	At-Risk Behaviour (as defined in the At-Risk Behaviour Policy (SC13))	the applicable Decision Maker, as set out in the At-Risk Behaviour Policy (SC13)
56	Non-compliance with the Information Systems Policy (SC14)	Chief Information Officer
67	Improper Financial Activity (as defined in the Financial Investigations Policy (SC15))	Director of UBC’s Internal Audit Department
78	Sexual Misconduct (as defined in the Sexual Misconduct Policy (SC17))	Director of Investigations, as set out in the Sexual Misconduct Policy (SC17)
89	Student academic misconduct matters	Dean of relevant UBC faculty
91 0	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 11	Any other matter not listed in #1- 910 11 above	In the case of a Discloser <u>Respondent</u> who is a: (i) student, to the Vice-President, Students; and (ii) an <u>an</u> employee, appointee, volunteer, or emeritus <u>faculty member</u> , to the Vice-President, Human Resources; and (ii) <u>a student or registrant, to the Vice-President, Students</u>

- 1.3 If (i) a report of Retaliation relates to the applicable Designated Recipient, or (ii) if the applicable Designated Recipient otherwise has a Conflict of Interest (as defined in the COI Policy (SC3)), the Discloser may report Retaliation to the Responsible Executives who will determine who will take the role of the Designated Recipient in respect of the particular Retaliation report.

2. Reports of Retaliation

- 2.1 A Discloser who wishes to report Retaliation must report the Retaliation to the ~~Responsible Officer~~Designated Recipient 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~~Designated Recipient with any other information that is requested by the ~~Responsible Officer~~Designated Recipient in relation to the alleged Retaliation.

3. Advisory Role of Office of the University Counsel

3.1 ~~A Responsible Officer~~A Designated Recipient 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 or Third Party Reports

4.1 A Discloser may report Retaliation to the ~~Responsible Officer~~Designated Recipient 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 alleged Retaliation, or where proceeding would violate procedural fairness. In such cases, the ~~Responsible Officer~~Designated Recipient will consider whether any other steps can and should be taken. If a third party is aware that a Discloser is experiencing Retaliation, the third party may bring the matter to the attention of the applicable Designated Recipient, who will then discuss with the Discloser as to whether the Discloser wishes to proceed with a Retaliation report.

4.3 Subject to Section 4.1 of these Procedures, the ~~Responsible Officers~~Designated Recipients will normally inform or collaborate with the applicable administrative heads of unit to address Retaliation allegations, and the ~~Responsible Officers~~Designated Recipients, 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~~Designated Recipient 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~~Designated Recipient will coordinate if necessary with the UBC person who is responsible for the Investigation of the underlying alleged Improper Conduct ~~and~~. In such circumstances, 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~~Designated Recipient 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~~Designated Recipient 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~~Designated Recipient'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~~Designated Recipient 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; and
- ~~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~~
- ~~5.6.5~~ 5.6.5 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 Designated Recipient. 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 Designated Recipient 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~~Designated Recipient.

~~6.2 Where there is a determination that a student Respondent has engaged in Retaliation, the President will determine what disciplinary or other measures are appropriate in accordance with the *University Act*. Where there is a determination that any other Respondent has engaged in Retaliation, the process that will be followed by the appropriate UBC authorities in respect of disciplinary actions will be consistent with applicable collective or employment agreements, the *University Act*, and any other applicable legal requirements. 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~~Designated Recipient.

~~6.26.3~~ 6.26.3 A copy of the Investigative Report will be provided to the Respondent and 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 in accordance with section 7.4~~ of these Procedures.

~~6.36.4~~ 6.36.4 Whether or not the Investigative Report includes a determination that Retaliation has occurred, if the ~~Responsible Officer~~Designated Recipient 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~~Designated Recipient may refer the Investigative Report or the relevant portion of the Investigative Report to the appropriate UBC authority. When appropriate, the ~~Responsible Officer~~Designated Recipient will consult with the Discloser who alleged the Retaliation before referring it elsewhere.

~~6.46.5~~ 6.46.5 If the Investigative Report does not include a determination that Retaliation has occurred, the ~~Responsible Officer~~Designated Recipient will provide a copy of the Investigative Report to the Discloser and the Respondent in accordance with Section 7.4 of these Procedures.

~~6.56.6~~ 6.56.6 The ~~Responsible Officer~~Designated Recipient 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~~agreements or their terms and conditions of employment or appointment.
- 8.3 Respondents other than students, employees, and appointees, do not have appeal rights, except as may be otherwise set out in their agreements with UBC or any applicable laws.

9. Annual Reports of Retaliation Allegations

- 9.1 On an annual basis, each ~~Responsible Officer~~Designated Recipient 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 or registrants, and to the Vice-President, Human Resources in respect of Retaliation reported by UBC employees, appointees, ~~or~~ volunteers, , or previous UBC Members. 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~~Designated Recipients 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]~~ <http://www.hr.ubc.ca/>.

Proposed Retaliation, Safe Disclosure, and Reporting Policy SC18 (“Retaliation Policy”)
Community Consultation Summary

No.	Comment	Applicable Section(s)	Category	Committee Recommendation
1	Comment in support of proposal subject to clarification of union representation rights			<i>Changes Recommended in Part</i>
	<ul style="list-style-type: none"> CUPE Local 116 notes the paramountcy of collective agreement language and requests that the requirement that union representational rights must be respected be clearly referenced. 	2.1	Improper Conduct Allegations	<ul style="list-style-type: none"> Section 2.1 of the Retaliation Policy states that the Policy does not limit or amend the provisions of collective agreements. However, for greater certainty, the Committee has included supplemental language stating that in the event of inconsistencies between the Retaliation Policy or any applicable collective agreement, the collective agreement governs to the extent of the inconsistency.
	<ul style="list-style-type: none"> In addition, CUPE Local 116 requests that it be made very clear to those conducting investigations that unions must be informed immediately and involved throughout the process where the complainant or respondent is unionized. 	5.3 of Procedures	Retaliation Investigations	<ul style="list-style-type: none"> CUPE Local 116’s request regarding involving unions throughout the process of investigating claims of Retaliation where the Discloser or Respondent is unionized is not necessary. The proposed Retaliation Policy includes the requirement that, where an investigation of alleged Retaliation is undertaken in accordance with the Investigation process set out in the Retaliation Policy, the Designated Recipient inform the Discloser and the Respondent of their right to have an advisor, support person, or union representative present when the Discloser or Respondent meets with the Investigator. This provides the Disclosers and Respondents with the necessary information regarding their rights with respect to union representation. It also permits them to choose whether or not they wish to have union representation involved during the Investigation. Requiring that Investigators inform and involve unions in the Investigation removes the right of Disclosers and Respondents to determine whether they wish to have such union involvement. Unions can inform their members that members can reach out to their union representative in the event that they wish to report Retaliation or they are a Respondent to an allegation of Retaliation.

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1	Comment in support of proposal subject to clarification of union representation rights			<i>Changes Recommended in Part</i>
	<ul style="list-style-type: none"> CUPE Local 116 disagrees with UBC allowing individuals to submit anonymous or third party complaints because in its view such complaints will violate due process rights. Member respondents have a right to be provided with full particulars of the allegations, and in CUPE Local 116’s view, this includes the identity of the person making the complaint against them. Additionally, CUPE Local 116 states that hearsay evidence is generally inadmissible in labour arbitration hearings and court proceedings, which makes the prospect of allowing complaints based entirely on third party evidence extremely problematic. 	4.2 of Procedures	Confidentiality and Anonymous Reports	<ul style="list-style-type: none"> Permitting third party and anonymous reports of improper conduct is consistent with the policies of other institutions (for examples see McGill’s Policy on Safe Disclosure or SFU’s Protected Disclosure of Wrongdoing Policy). Given the unique nature of Retaliation, the Retaliation Policy permits anonymous reports of Retaliation but does not permit third party reports of Retaliation. This is because it is the individual experiencing Retaliation that should have the right to report such Retaliation or choose not to report it to UBC. However, the Committee recommends including, for greater clarity, that third parties may bring any concerns that a Discloser is experiencing Retaliation to the attention of the applicable Designated Recipients who will discuss the matter with the Discloser to determine if the Discloser wishes to make a Retaliation report. In response to the concerns raised by CUPE Local 116 regarding anonymous reports, Section 4.2 of the Procedures to the Retaliation Policy provides that 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 alleged Retaliation, or where proceeding would violate procedural fairness. In such cases, the Designated Recipient will consider whether any other steps can and should be taken.

Proposed Retaliation, Safe Disclosure, and Reporting Policy SC18 (“Retaliation Policy”)
Community Consultation Summary

No.	Comment	Applicable Section(s)	Category	Committee Recommendation
2	Comment in support of proposal with recommendations regarding the role of the Designated Recipients and the support to be provided to Disclosers			<i>Changes Recommended in Part</i>
	<ul style="list-style-type: none"> The Graduate Student Society (“GSS”) appreciates that the Retaliation Policy proposal clearly lays out which office to contact for specific misconduct but recommends clarifying the authority of the Designated Recipient because of the significant power placed in the hands of this individual. The GSS requests that the roles, responsibilities, and oversight of the Designated Recipient be clarified in the Retaliation Policy. 	1.1.1 3.3 3.4 3.5 3.6 1.2 of Procedures 3 of Procedures 6 of Procedures	Definitions, Retaliation Allegations, Designated Recipients, Advisory Role of Office of the University Counsel, Outcome and Disciplinary Measures	<ul style="list-style-type: none"> The role and responsibilities of the Designated Recipients are set out throughout the Retaliation Policy and its Procedures. Given the limited number of Designated Recipients, concerns regarding abuse of power and misconduct are limited. However, to ensure clarity as to the process where Designated Recipients may be in a conflict of interest, the Committee recommends including a new section 1.3 in the Procedures stating that, in such circumstances, Retaliation reports will be provided to the Responsible Executives, who will determine the individual that will take on the role of the Designated Recipient with respect to the particular Retaliation report.
	<ul style="list-style-type: none"> The GSS believes that it is important to clarify the kind of support that will be available to Disclosers for ongoing, long-term matters involving retaliation. The proposal discusses retaliation in relation to active retaliation but many of the issues of retaliation regarding academics are latent because supervisors and academics have substantial influence in impacting future career and academic decisions. 			<ul style="list-style-type: none"> The Retaliation Policy indicates that UBC will work with Disclosers to implement measures designed to avoid or minimize risk of Retaliation if feasible in the circumstances, and the retaliation Policy provides examples of such protective measures. In addition, the Retaliation Policy contemplates that where Disclosers are found to have engaged in Retaliation, disciplinary measures will be implemented. The Committee recommends broadening the scope of the Retaliation to permit previous UBC Members, including students who have graduated, to report Improper Conduct and Retaliation. This may give Disclosers more comfort in reporting Improper Conduct because they could be more removed from the community, by reporting, for example, once they have already graduated.

Proposed Retaliation, Safe Disclosure, and Reporting Policy SC18 (“Retaliation Policy”)
Community Consultation Summary

No.	Comment	Applicable Section(s)	Category	Committee Recommendation
3	<p>Comment in support of proposal with recommendations regarding limits to risk mitigation, consideration of retaliation through digital means, inclusion of At-Risk Behaviour Policy, and providing report findings to Disclosers</p>			<p><i>Changes Recommended in Part</i></p>
	<ul style="list-style-type: none"> The Retaliation Policy should mention and consider digital retaliation. The Alma Mater Society (“AMS”) recommends that UBC explicitly include in the definition of “Retaliation” actions taken both online and offline, occurring both inside and outside work, to capture all potential forms of retaliation. In addition, UBC should consider and include possible measures to protect individuals from digital retaliation. 	1.1.8	Definitions	<ul style="list-style-type: none"> The definition of “Retaliation” is broad as the term “actions” could include online, offline, inside, or outside work actions, and, accordingly, including the wording requested by the AMS would unnecessarily lengthen and complicate this definition. The Committee recommends clarifying that the definition includes all of these actions by inserting the word “any” before “actions” in the definition of Retaliation.
	<ul style="list-style-type: none"> The AMS requests clarification on a best process or standard to determine the limits to what UBC can do to mitigate the risk or impact of Retaliation in order to make sure UBC is adhering to fairness and is accountable for all UBC community. The AMS recommends that UBC provide both examples of limits and a similar process to the duty to accommodate, with a clear test to determine what those limits might be. 	3.7	Retaliation Allegations	<ul style="list-style-type: none"> The limitations on UBC’s ability to mitigate the risk or impact of Retaliation are case specific and accordingly it is not possible to set out a specific process to determine what limits apply in every circumstance. However, the Committee recommends revising this section to indicate to the UBC community that UBC’s powers are not unlimited, but that UBC will implement such measures that are reasonable, appropriate, and feasible in the circumstances.
	<ul style="list-style-type: none"> Reference to the At-Risk Behaviour Policy should be included in the list of guidelines regarding the appropriate document or person to consult to determine how to report various kinds of Improper Conduct. 	1.1 of Procedures	Designated Recipients	<ul style="list-style-type: none"> The revised Retaliation Policy includes reference to the At-Risk Behaviour Policy in section 1.1 and section 1.2 of the Procedures.

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3	<p>Comment in support of proposal with recommendations regarding limits to risk mitigation, consideration of retaliation through digital means, inclusion of At-Risk Behaviour Policy, and providing report findings to Disclosers</p>			<p><i>Changes Recommended in Part</i></p>
	<ul style="list-style-type: none"> The AMS recommends that, in addition to Respondents, Disclosers should receive some information with respect to the retaliation report findings, or updates on the findings and the process of investigation. The AMS recognizes that while sharing the complete report findings to both Disclosers and Respondents may breach confidentiality, UBC should try to keep both parties informed on the process at minimum in a way that does not breach privacy or confidentiality of the parties involved. 	7.4, 7.5 of Procedures	Confidentiality and Privacy in Retaliation Investigations	<ul style="list-style-type: none"> No changes are required in respect of the recommendation to provide Disclosers with information regarding retaliation report findings and investigation processes because section 7.4 requires UBC to ensure that both Disclosers and Respondents know the findings of the investigation and the evidence on which these findings are based. The information that is restricted from being shared with Disclosers is in respect to the disciplinary actions that UBC has taken against Respondents unless disclosing such information is required for compelling health or safety reasons. This is in compliance with FIPPA requirements.