



**SUBJECT** Proposed Policy Amendment  
Sexual Misconduct Policy (SC17)

**SUBMITTED TO** Board of Governors

**MEETING DATE** June 16, 2020

**SESSION CLASSIFICATION** Recommended session criteria from Board Meetings Policy:  
OPEN

**REQUEST** Action requested - Final approval  
  
IT IS HEREBY RESOLVED that the Board of Governors approves the amendment of the Sexual Misconduct Policy (SC17) in the form set out in Appendix 1, effective July 1, 2020.

**LEAD EXECUTIVE** Hubert Lai, Q.C., University Counsel

**SUPPORTED BY** Ainsley Carry, Vice-President Students  
Marcia Buchholz, Vice President Human Resources  
Sara-Jane Finlay, Associate Vice-President, Equity & Inclusion (Co-Chair of the Policy Development Committee)  
Roslyn Goldner, Roslyn Goldner Law Corporation (Co-Chair of the Policy Development Committee)  
Mark Hulstein, Legal Counsel (Secretary to the Policy Development Committee)

**PRIOR SUBMISSIONS**

The subject matter of this submission has been considered previously by the People, Community & International Committee at its November 26, 2019 meeting and then on the following occasions:

1. [December 5, 2019](#) (OPEN SESSION)  
Action/Follow up: The People, Community & International Committee (“**PCI**”) considered the proposed amendments to the Sexual Misconduct Policy, following which the Office of the University Counsel (“**OUC**”) published the policy proposal for community consultation.
2. [June 1, 2020](#) (OPEN SESSION)  
Action/Follow up: The PCI considered the proposed amendments to the Sexual Misconduct Policy made in response to the community feedback, and suggested that the definition of “Teaching Staff Member” in policy, section 2.4 be revised to include recent updated titles for certain positions. Those revisions have been made and are included in the clean and blacklined copies of the proposed Sexual Misconduct Policy that are attached as Appendix #1 and Supplemental Material #1, respectively.

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

**EXECUTIVE SUMMARY**

The OUC published the proposed amendments for community consultation for an extended consultation period, from November 29, 2019 until January 31, 2020. The University engaged in robust consultation beyond that normally employed for policy reviews, as is further detailed in the Supplemental Material #2. Over 200 submissions were received, all of which were provided to the Policy Development Committee (“**Committee**”) that was constituted for the review of the Sexual Misconduct Policy. The Committee reconvened to consider the feedback

received, and recommends various amendments to the Sexual Misconduct Policy proposal as appropriate. A table setting out the community input that was received and the Committee's response to each comment can be found in Supplemental Materials #3. The full text of the Sexual Misconduct Policy proposal, highlighted to show the changes from the version that was published, is attached as Supplemental Materials #1 (which, as noted, includes revisions to the definition of "Teaching Staff Member" in policy, section 2.4 to include recently updated titles for certain positions, as suggested by the PCI at its June 1, 2020 meeting).

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

1. Revise the long title of the Sexual Misconduct Policy to "Sexual Misconduct and Sexualized Violence Policy", and include express reference within the policy that it addresses sexualized violence. The continued use of "Sexual Misconduct" in the policy is consistent with its use in the provincial legislation that requires all post-secondary institutions to have a "sexual misconduct policy" and UBC's regulation of misconduct under other policies and procedures, while also acknowledging that sexual misconduct and sexual violence are umbrella terms that encompasses the behaviours prohibited under the policy.
2. Adding language to clarify and set out for the purposes of this policy, the "trauma informed approach" that UBC takes under the policy, including by the Sexual Violence Prevention and Response Office ("SVPRO") and the Investigations Office ("IO") in carrying out their responsibilities. The language will provide a better understanding for individuals engaging with UBC under the policy as well as those administering the policy.
3. Adding language relating to UBC's commitment towards those against whom a Report of Sexual Misconduct have been made so that it now states that UBC will provide appropriate support services to those individuals (Respondents) at UBC Okanagan and UBC Vancouver. These services would not be offered through the SVPROs, which only provide support services to individuals who make Disclosures or Reports. Support for Respondents at UBC Okanagan will be provided through the portfolio of the Associate Vice-President, Equity and Inclusion. Such a position already exists at UBC Okanagan. The configuration of support for Respondents at UBC Vancouver is expected to mirror that at UBC Okanagan and will be finalized following discussions between the Associate Vice-President, Equity and Inclusion, the Vice-President, Students, and the Vice-President, Human Resources.
4. Adding language with respect to the proposed category of Prohibited Relationships to clarify that:
  - a. engaging in a Prohibited Relationship constitutes a breach of the policy, notwithstanding that the relationship is claimed to be consensual; and
  - b. it is the UBC individual in the supervisory role or position of influence who faces potential disciplinary action, and not the student.

The revisions reflect a key basis for the prohibition of such relationships, i.e., it is the heightened vulnerability and trust inherent in certain relationships with students that gives rise to risk for abuse by the stronger party in their supervisory role or position of influence.

5. Revising the language relating to SVPRO and the provision of support services to individuals who have Disclosed to delete reference to SVPRO being the "single" point of contact, and add language to recognize that individuals may also seek assistance from third party agencies external to UBC, such as the AMS Sexual Assault Support Centre, who may also make representations to UBC on behalf of the individual in seeking academic concessions and liaise with SVPRO in obtaining other forms of assistance. This aligns with recent amendments to the Vancouver Senate Policy and Procedures on Academic Concessions.

6. Adding language to clarify with regard to the proposed Institutional Reports by the Director of SVPRO that before making an Institutional Report, the Director will seek the consent of the individual making the Disclosure and will only include that individual's name in the report with their express consent. This recognizes the importance of the Disclosing individual's ability to choose how their information is shared and whether or not to make a Report, as well as maintaining the trust reposed in the SVPRO by Disclosing individuals surrounding confidentiality and respecting their wishes to the greatest extent possible.
7. Adding language in the opening Background & Purposes section to acknowledge UBC's location on unceded, ancestral and traditional territories of Indigenous nations and UBC's commitment to reconciliation. While this has not been included in other policies and the Co-Chairs and Secretary wrestled to find the most appropriate way to fit it into the Policy, its inclusion is responsive to feedback to include additional recognition of Indigeneity and to acknowledge UBC's response to the call to move towards reconciliation.
8. The definition of "UBC Member" has been modified to clarify that the Sexual Misconduct Policy applies to students, as that term is defined in the *University Act*, and to non-student "registrants", being individuals registered at UBC in non-credit educational activities. This distinction ensures that there is clarity in the UBC community regarding disciplinary measures and appeal rights that apply to the two categories of learners and better reflects the language used in UBC's academic regulations.
9. Revising the language regarding Disclosure and Disclosures to clarify it is the sharing of information with UBC by an individual that they have been subjected to Sexual Misconduct. This addresses feedback that it was unclear who makes a Disclosure.
10. The language relating to Consent has been revised for clarity, including that:
  - a. consent may be given by conduct but consent cannot be implied or assumed by an individual's silence or inaction. This addresses a potential conflict between different provisions;
  - b. the responsibility to obtain consent, and the withdrawal of consent, relates to each sexual activity. This recognizes that individuals may take different roles during a sexual encounter and there is not always one individual that is the "initiator" who bears sole responsibility for obtaining consent for the entire sexual encounter; and
  - c. a person's sexual history or reputation cannot be submitted as evidence to prove that it was likely consent had been given.
11. Adding clarity around the Director of Investigation's discretion to decline to investigate a Report, along with codifying the Director's existing practice of providing written reasons when that discretion is exercised, and to add a requirement that UBC's annual reporting include the number of times the Director exercises that discretion.
12. Creating a new standalone section in the Procedures specifically for Alternative Resolution Processes ("ARP"), adding language to emphasize that proceeding to an Investigation following an ARP is the choice of the Complainant, and adding a requirement that UBC's annual reporting include the number of Reports addressed through an ARP.
13. The language that sets out the process for dealing with findings of Sexual Misconduct has been simplified to identify who is to receive the Investigation Findings and to state that the appropriate UBC authority or authorities will then follow a process that is consistent with applicable agreements and other legal

requirements in determining the disciplinary measures to be imposed. This is consistent with the approach taken in the new Retaliation Policy (SC18).

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

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**APPENDICES (required reading for Governors)**

1. Proposed Sexual Misconduct Policy – clean copy of the proposed amendments to the Policy.

**SUPPLEMENTAL MATERIALS (optional reading for Governors)**

1. Blackline of proposed amendments to the Sexual Misconduct Policy compared against the version previously presented to the People, Community & International Committee on November 26, 2019.
2. Summary of community consultation.
3. Summary table of community feedback and Policy Development Committee’s responses.

 <b>The University of British Columbia Board of Governors</b>	<b>Policy No.:</b> <b>SC17</b> <b>APPROVAL DRAFT</b>
<b>Long Title:</b> Sexual Misconduct and Sexualized Violence Policy	
<b>Short Title:</b> <b>Sexual Misconduct Policy</b>	

### Background & Purposes:

UBC recognizes its location on the unceded, ancestral, and traditional territories of Indigenous nations, its commitment to reconciliation and its responsibility to maintain a respectful environment where its members can study, work, and live free from sexual misconduct and sexualized violence<sup>1</sup>. This policy articulates UBC's commitment to support all members of the UBC community who are affected by sexual misconduct, to provide a central site for information regarding the resources and options available to those affected by sexual misconduct, to create and make available programs and resources to educate its community on the prevention of sexual misconduct, and to provide a process to respond to and investigate allegations of sexual misconduct.

### 1. Principles and Commitments

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

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<sup>1</sup> The terms sexual misconduct and sexualized violence are umbrella terms that encompass the behaviours prohibited under this policy. The term sexual misconduct will be used throughout the policy when referring to the impugned conduct.

- 1.4 UBC is committed to reducing barriers to Disclosing and Reporting, and to taking a Trauma-informed Approach when responding to and addressing Disclosures and Reports, and when conducting Investigations. UBC will offer training on a Trauma-informed Approach to persons, including administrative and academic decision makers, responsible for addressing Sexual Misconduct.
- 1.5 UBC is committed to respecting the rights of those who Disclose to make their own decisions about accessing support services and assistance, making a Report, or pursuing external processes such as criminal or civil action.
- 1.6 UBC will provide support services and assistance to Members of the UBC Community who Disclose or Report Sexual Misconduct.
- 1.7 UBC will establish dedicated positions to provide services to Members of the UBC Community who have had Reports of Sexual Misconduct made against them.
- 1.8 UBC is committed to procedural fairness and will respond to Reports, and will conduct Investigations, in a timely manner.
- 1.9 UBC will not tolerate any retaliation as defined in the Retaliation Policy (SC18), direct or indirect, against anyone making, or involved in, a Disclosure, a Report, or an Investigation. Allegations of retaliation will be addressed pursuant to the Retaliation Policy (SC18).
- 1.10 UBC recognizes that some individuals may be hesitant to Disclose or Report Sexual Misconduct in cases where they have been consuming alcohol underage, or in excess, or using drugs. An individual who makes a Disclosure or Report will not be subject to actions for violation of any applicable UBC policy, rules or regulations related to drug or alcohol use at the time the alleged Sexual Misconduct occurred.
- 1.11 UBC recognizes that certain relationships between students and other Members of the UBC Community are relationships of heightened trust and vulnerability. Sexual or intimate relationships between individuals in the following classes of Members of the UBC Community where there is a supervisory role or where an individual has influence over a student's current or future academic activities, working conditions, or career advancement are Prohibited Relationships:
  - 1.11.1 faculty, or Teaching Staff Members, or emeriti and Students;
  - 1.11.2 staff and Students;
  - 1.11.3 Coaching Staff Members and Student athletes; and
  - 1.11.4 Faculty, or Teaching Staff Members, or emeriti and Medical Residents, Clinical Fellows, or Postgraduate trainees in the Faculty of Medicine.
- 1.12 An individual in a supervisory role or position of influence as described in 1.11 who engages in a Prohibited Relationship, except as provided in this Policy, breaches this Policy and will be subject to disciplinary action notwithstanding that the relationship is claimed to be consensual.

- 1.13 In circumstances where there is an existing consensual sexual or intimate relationship that pre-dates a Prohibited Relationship as described above, the relationship must be disclosed to the Administrative Head of Unit who will take appropriate steps pursuant to the University's conflict of interest and conflict of commitment policy (the COI Policy (SC3)).
- 1.14 Even if a consensual sexual or intimate relationship between certain members of the UBC Community is not prohibited under this Policy, there may be restrictions imposed in connection with the relationship under the COI Policy (SC3).
  - 1.14.1 Where an existing Prohibited Relationship has been managed under the COI Policy (SC3), engagement in the Prohibited Relationship will not constitute a breach of this Policy.

## 2. Definitions

- 2.1 **"Sexual Misconduct"** includes sexualized violence and refers to any sexual act or act targeting an individual's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against an individual without that individual's Consent. The following list sets out examples of Sexual Misconduct. The list is intended to help Members of the UBC Community understand the kinds of acts that will be considered Sexual Misconduct. The list is not exhaustive and other acts may constitute Sexual Misconduct under this Policy even if they do not appear in the list below. Sexual Misconduct includes, but is not limited to, the following:
  - 2.1.1 sexual assault, which is any form of sexual touching or the threat, express or implied, of sexual touching without the individual's Consent;
  - 2.1.2 sexual harassment, which is unwelcome conduct, by comment or gesture, of a sexual nature that detrimentally affects the working, learning, or living environment, or leads to adverse consequences for the individual directly subjected to the harassment;
  - 2.1.3 stalking and cyberstalking (stalking through the use of the internet or other electronic means), which is engaging in unwelcome conduct expressed or implied, that causes an individual to fear for their physical or psychological safety, and includes repeatedly following the individual, repeatedly communicating with the individual through any means, engaging in threatening conduct, or keeping watch over the place where the individual happens to be;
  - 2.1.4 indecent exposure which is exposing one's body to another individual either physically or electronically, or through any other means, for a sexual purpose without the individual's consent, or coercing another individual to remove their clothing in order to expose their body;
  - 2.1.5 voyeurism, which is non-consensual viewing, photographing, or otherwise recording another individual in a location where there is an expectation of privacy and where the viewing, photographing, or recording is done for a sexual purpose; and

- 2.1.6 the distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording.
- 2.2 **“Consent”** is the active, voluntary agreement to engage, and to continue to engage, in the sexual activity in question. Further information about Consent is provided in section 4 of this Policy.
- 2.3 **“Members of the UBC Community”** are individuals who fall under one or more of the following categories:
  - 2.3.1 student, defined as any person, including co-op and exchange students, registered or enrolled in any component of a for-credit academic or training program or course at UBC, or any class of learners designated by resolution of the Senate as students;
  - 2.3.2 registrant, defined as any person registered in non-credit educational activities at UBC;
  - 2.3.3 employees, defined as individuals employed by UBC, including faculty and staff members;
  - 2.3.4 emeriti, volunteers engaged in a UBC activity, or other individuals acting on behalf of UBC;
  - 2.3.5 Teaching Staff Members;
  - 2.3.6 any individual active on any UBC committee or review panel;
  - 2.3.7 post-doctoral fellows; and
  - 2.3.8 anyone contractually obligated to comply with this Policy.
- 2.4 **“Teaching Staff Member”** means any individual who provides or teaches any component of an academic program or course at UBC, including, but not limited to, professors, including part-time and full-time professors, associate professors, assistant professors, adjunct professors, clinical professors, clinical associate professors, clinical assistant professors, clinical instructors, assistant professors of teaching, associate professors of teaching, professors of teaching, acting assistant professors, lecturers, sessional lecturers, visiting and emeritus faculty, teaching assistants, supervisors of graduate students, supervisors of researchers, program directors, librarians, or any other person employed by UBC in an equivalent position to the above designated by the UBC Vancouver Senate, the UBC Okanagan Senate, or the Council of Senates.
- 2.5 **“Prohibited Relationship”** is any sexual or intimate relationship prohibited by section 1.11 of this Policy.
- 2.6 **“Coaching Staff Member”** is any employee, or volunteer, who is a coach, or assistant coach, of a UBC varsity athletic team.

- 2.7 **“Disclose” or “Disclosure”** is where an individual shares information with UBC about an incident or incidents in which the individual was subject to Sexual Misconduct. Further information about Disclosures is provided in section 8 of this Policy.
- 2.8 **“Report” or “Reporting”** is providing a statement of allegations to the Director of Investigations about an incident or incidents of Sexual Misconduct. Further information about Reporting is provided in section 9 of this Policy.
- 2.9 **“Jurisdiction to Investigate”** is the scope of UBC’s authority to investigate Reports under this Policy.
- 2.10 **“Investigation”** is an investigation of allegations set out in a Report and carried out by UBC, pursuant to its Jurisdiction to Investigate under this Policy as set out in the Procedures to this Policy.
- 2.11 **“Investigator”** is the individual appointed to Investigate a Report under the Procedures to this Policy.
- 2.12 **“Investigation Findings”** is the written report submitted by the Investigator to the Director of Investigations of the Investigations Office.
- 2.13 **“Trauma-informed Approach”** means understanding the impacts of sexual misconduct and sexualized violence on individuals and responding in a manner that promotes empowerment and recovery, and minimizes re-traumatization.
- 2.14 **“Alternative Resolution Processes”** are alternatives to an Investigation and may include, but are not limited to, facilitated dialogue or a restorative justice process.

### 3. Jurisdiction to Investigate

- 3.1 UBC’s Jurisdiction to Investigate is determined by the Director of Investigations and is limited by the following:
- 3.1.1 the allegations must be against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct and at the time the Report is submitted;
  - 3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct; and
  - 3.1.3 the alleged conduct must have occurred in a context that has a real and substantial connection to UBC. Whether a real and substantial connection to UBC exists will be considered on the particular circumstances of each Report.
- 3.2 The Director of Investigations may exercise discretion to decline to investigate a Report under this Policy on the grounds that:
- 3.2.1 proceeding with the complaint would be unfair and result in substantial prejudice to any person such as when the passage of time affects access to witnesses or other evidence; or

3.2.2 proceeding with the complaint is otherwise not practicable.

#### 4. Consent

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

4.1.1 Consent cannot be implied, which means it must be affirmatively given and cannot be assumed by an individual's silence or inaction.

4.1.2 The initiator of a sexual activity is responsible for obtaining consent for that sexual activity.

4.1.3 Consent can be withdrawn by any party at any time during the sexual activity through words or actions, and if consent is withdrawn the sexual activity must stop.

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

4.1.5 Individuals cannot give consent if they are not able to appreciate the nature of the sexual activity, or to appreciate the risks and consequences of the sexual activity, or are otherwise unable to choose whether to engage in the sexual activity. For example, an individual is incapable of consenting if the individual is:

(a) asleep or unconscious;

(b) unable to consent due to ingestion of drugs or alcohol; or

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

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

4.1.7 A Respondent's mistaken belief, formed due to intoxication or impairment from drugs or alcohol, that there was consent is not a defense to the allegation of Sexual Misconduct.

4.1.8 A person's sexual reputation or history of sexual activity cannot be submitted as evidence to prove that it was likely that consent had been given.

4.1.9 Even if sexual activity occurs outside of the class of Prohibited Relationships, there is an inherent risk that consent is not voluntary whenever there is a relationship of trust or authority in which there is an imbalance, or perceived imbalance of power. Where there

is an allegation of Sexual Misconduct in these relationships the nature of the relationship will be a significant factor in determining whether there was consent.

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

- 5.1 The Sexual Violence Prevention and Response Office receives disclosures under this Policy and is a point of contact and liaison on each campus for Members of the UBC Community who are affected by Sexual Misconduct, regardless of who committed the Sexual Misconduct, or where or when it took place.
- 5.2 Individuals do not need to make a Report under this Policy or to any third-party investigating body to access support and assistance from this office. The office will provide support, information, options, and assistance described in section 8.3 of this Policy based on the expressed needs of the individual.
- 5.3 The Sexual Violence Prevention and Response Office coordinates and oversees all UBC sexual misconduct prevention and response protocols and processes, communications, resource materials and training.
- 5.4 Whether or not they wish to Disclose under the Policy, Members of the UBC Community who are affected by Sexual Misconduct may choose to seek assistance from third-party agencies such as the Sexual Assault Support Centre of the AMS. At the request of the Member of the UBC Community, the Sexual Violence Prevention and Response Office will liaise with third-party agencies to provide support, information, options, and assistance described in section 8.3. Third-party agencies may make representations to UBC on behalf of the Member of the UBC Community in support of a request for academic concessions.

## **6. The Investigations Office**

- 6.1 Reports of Sexual Misconduct under this Policy are received and managed by the Investigations Office which is a separate office from the Sexual Violence and Prevention Office at UBC.
- 6.2 The Investigations Office is an impartial, neutral office that employs a Trauma-informed Approach to investigate Reports.

## **7. Annual Reporting**

- 7.1 Annually, UBC will publicly report, in the aggregate and without identifying personal information, the number of:
  - 7.1.1 requests for services received by the Sexual Violence Prevention and Response Offices; and
  - 7.1.2 Reports received by the Investigations Office; and
  - 7.1.3 Reports investigated, addressed through an Alternative Resolution Process, or referred to an alternative internal UBC process; and

- 7.1.4 Reports with respect to which the Director of Investigations exercised discretion to decline to investigate.

## 8. Disclosures

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

- 8.5.1 refer the matter to the Investigations Office as a Report under section 9, in which case the individual who Disclosed has the right not to participate in any subsequent Investigation; or
- 8.5.2 notify third parties, such as the police or child protection authorities.
- 8.6 If the Sexual Violence Prevention and Response Office has received more than one Disclosure from different individuals involving a Member of the UBC Community, the Director of the relevant Sexual Violence Prevention and Response Office may seek the consent of the individuals making the Disclosures to make an Institutional Report to the Director of Investigations based on the allegations in the Disclosures but without providing the names of the individuals making the Disclosures unless express consent is given.
- 8.7 If the Director of Investigations takes any action under section 8.6, the Director of the relevant Sexual Violence Prevention and Response Office will notify the individuals who made the Disclosures and will ensure that appropriate support services are made available to those individuals. The Investigations Office will not receive or disclose the names of the individuals making the Disclosures without the consent of those individuals, who have the right not to participate as witnesses in any subsequent investigation.
- 8.8 Subject to sections 8.5 and 8.6, records of Disclosures made to a Sexual Violence Prevention and Response Office will be kept strictly confidential, and access to those records will be limited to the Director and staff members of the relevant Sexual Violence Prevention and Response Office unless UBC is ordered to produce the records in a court proceeding or otherwise required by law.

## 9. Reports

- 9.1 Anyone directly subjected to Sexual Misconduct, including an individual who is not a Member of the UBC Community, can make a Report against a Member of the UBC Community under this Policy.
- 9.2 Reports must be submitted to the Investigations Office, where they will be addressed in accordance with the Procedures to this Policy, which include an initial review as set out under section 3 of the Procedures to determine whether the allegations contained in the Report fall within UBC's Jurisdiction to Investigate.
- 9.3 Sexual harassment may fall within the scope of both the Discrimination Policy (SC7) and this Policy. Reports that contain allegations of Sexual Misconduct other than sexual harassment will be addressed under this Policy. Reports that contain only allegations of sexual harassment will be reviewed by the Director of Investigations who will determine, based on the particular facts of the case and in consultation with the individual making the Report, which policy is better suited to address the allegations.
- 9.4 An individual can submit a Report to the Investigation Office and also pursue other processes external to UBC against the individual alleged to have committed the Sexual Misconduct. These external processes may include reporting to the police or initiating a civil action (including a complaint under the *BC Human Rights Code*). These are separate processes and submitting a Report to the Investigations Office does not result in a report to the police or the initiation of a

civil action except as provided in section 8.5.2 of this Policy, where UBC may notify third parties, such as the police or child protection authorities.

- 9.5 If an Investigation, or Alternative Resolution Process, is initiated under the Procedures to this Policy, and an external process is also being pursued, the Director of Investigations may elect, after consultation with the Complainant, to continue with the UBC process or to suspend the UBC process as appropriate. Suspension of a UBC process does not prevent further action to be taken under the UBC process at a later date as appropriate.
- 9.6 Where a Report, made to the Investigations Office and found by the Director of Investigations to fall within UBC's Jurisdiction to Investigate, includes At-Risk Behaviour, as defined under the At-Risk Behaviour Policy (SC13), the Director of Investigations can refer the At-Risk Behaviour to the appropriate decision maker under the At-Risk Behaviour Policy (SC13).

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

- 10.1 Members of the UBC Community who receive a Disclosure should follow the processes set out in section 8.4 of this Policy. Members of the UBC Community who receive a Disclosure are expected to honour the choices of the person making the Disclosure and should not submit a Report that could interfere with the decision of the person making the Disclosure.
- 10.2 Individuals, other than the individual who was directly subjected to Sexual Misconduct or a Member of the UBC Community who have received a Disclosure, may submit a Report to the Investigations Office or may anonymously advise the Investigations Office of their allegations of Sexual Misconduct.
- 10.3 UBC may be unable to proceed with an Investigation based on anonymous or third-party allegations due to a lack of evidence or when proceeding would violate procedural fairness. In such cases, the Director of Investigations will consider whether any other steps can and should be taken, including referring the matter to the At-Risk Behaviour Policy (SC13).
- 10.4 In appropriate circumstances, where other evidence exists and where proceeding with an investigation based on anonymous or third party allegations would not violate procedural fairness, the Director of Investigations may exercise discretion to proceed with an Investigation. In such cases, the individual who experienced the alleged Sexual Misconduct has the right to refuse to participate in the Investigation.
- 10.5 Before determining whether to proceed with an Investigation based on anonymous or third-party allegations, the Director of Investigations will consult with the Director of the appropriate Sexual Violence Prevention and Response Office. The individual identified as having experienced the alleged Sexual Misconduct will be notified of the allegations and available support and options for response will be made available to the individual.
- 10.6 If UBC is unable to proceed with an Investigation based on anonymous or third-party allegations, the allegations will be retained by the Sexual Violence Prevention and Response Office on the relevant campus. These allegations will be kept strictly confidential, and access to them will be limited to the Director of Investigations and the Director of the Sexual Violence Prevention and Response Office.

## **11. Conflicts of Interest**

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

## **12. Policy Review**

- 12.1 UBC is committed to reviewing this Policy at least once every three years, in consultation with students and such other Members of the UBC Community as UBC deems appropriate in accordance with the Regulatory Framework Policy (GA2). Policy development committee members will be made aware of the principles of a Trauma-informed Approach and their applicability to this Policy.



## PROCEDURES ASSOCIATED WITH THE SEXUAL MISCONDUCT POLICY

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

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

### **1. General**

- 1.1 The Director of Investigations, Investigators and individuals involved in Alternative Resolution Processes are impartial and neutral, and will exercise their authority and discretion under these Procedures in conformity with the principles of procedural fairness in the university context.
- 1.2 The Investigations Office will liaise with the applicable Sexual Violence Prevention and Response Office or with any third-party entity that is providing support to an individual making a Report, where appropriate, to ensure that support services and assistance remain in place, or are established, for the duration of the Initial Review and the Investigation, or any Alternative Resolution Process.

### **2. Reports**

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

### **3. Initial Review**

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

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

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

3.4.1 appoint an Investigator to Investigate the Report under section 5 of these Procedures;  
or

3.4.2 subject to sections 4.1 and 4.2 of these Procedures, refer the matter to an Alternative Resolution Process.

3.5 Upon initiating an Investigation, the Director of Investigations will:

3.5.1 notify the Complainant that the Report has been referred to an Investigator, and provide information about the resources available and the investigation process, including the Complainant's right to have an advisor, support person, or union representative present during meetings with the Investigator; and

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

3.6 If the Director of Investigations determines that UBC does not have the Jurisdiction to Investigate, the Director of Investigations will advise the individual making the Report and will provide reasons for the decision.

3.7 When the Director of Investigations exercises discretion to decline to investigate a Report under section 3.2 of the Policy the Director will:

3.7.1 provide written reasons to the individual making the Report; and

3.7.2 report the decision to decline to investigate in the Investigation Office annual reporting.

3.8 If the Director of Investigations determines that the Report discloses other kinds of misconduct or information that requires action by UBC under another UBC policy or process, the Director will refer the Report, or the relevant portions of the Report, to the appropriate UBC authority. The Director will discuss with the person making the Report before referring the matter elsewhere.

#### **4. Alternative Resolution Processes**

4.1 A Complainant may request an Alternative Resolution Process instead of a formal investigation. Alternative Resolution Processes may not be appropriate or available in all circumstances. If the Director of Investigations is satisfied that an Alternative Resolution Process may be appropriate, options will be discussed with the Complainant and, if the Complainant agrees, with the

Respondent. If the Complainant and the Respondent agree to participate in the Alternative Resolution Process, the Director will refer the matter to that process for resolution.

- 4.2 Participation in an Alternative Resolution Process will be considered by the Director only at the Complainant's request and must be consented to by the Complainant and the Respondent. If at any time during the Alternative Resolution Process either the Complainant or the Respondent no longer wishes to participate in the Alternative Resolution Process, then with the consent of the Complainant, the Director of Investigations will appoint an Investigator to investigate the Report under section 5 of these Procedures.
- 4.3 Alternative Resolution Processes are confidential processes and participants are encouraged to maintain confidentiality until the process is completed. Information obtained during an Alternative Resolution Process where either the Complainant or Respondent withdrew participation will not be shared with the Investigator in any subsequent Investigation and cannot be relied upon in the Investigation unless that information is independently obtained by the Investigator in the course of the Investigation.

## 5. Investigations

- 5.1 Investigations (including the preparation of a written report of the Investigation Findings) will be completed within 60 calendar days of the Investigator's receipt of the Report from the Director of Investigations. If during the course of the Investigation the Investigator believes that this timeline cannot be met, the Investigator will contact the Complainant, the Respondent, and the Director of Investigations as soon as possible to inform them.
- 5.2 The appropriate UBC authority will normally render a decision under section 6 of these Procedures with respect to the allegations in the Report within 30 days following receipt of the Investigation Findings. If this timeline cannot be met, the UBC authority will contact the Director of Investigations who will notify the Complainant and the Respondent as soon as possible and provide a revised timeline.
- 5.3 Investigations are not adversarial processes, and hearings will not be held as part of the investigatory process. Formal rules of evidence commonly associated with a civil or criminal trial will not be applied.
- 5.4 In all Investigations, the Respondent will be fully informed of the allegations in the Report, and will be given the opportunity to respond. Both parties will be informed of information gathered and will be provided copies of any documents obtained, upon which the Investigator might rely in making findings of fact in the Investigation.
- 5.5 Subject to sections 5.3 and 5.4, the Investigator may investigate in any manner deemed appropriate in order to obtain the information required to make the necessary findings of fact. This may include, but is not limited to, the following:
  - 5.5.1 requesting a written response to the Report from the Respondent, that includes a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;

- 5.5.2 meeting with or requesting further information from the Complainant;
  - 5.5.3 meeting with or requesting further information from the Respondent;
  - 5.5.4 meeting with or requesting further information from any other individuals who may have information relevant to the Investigation, including any witnesses identified by the Complainant or the Respondent; and
  - 5.5.5 obtaining any other evidence, including evidence of mitigating and aggravating circumstances, that may be relevant to the Investigation.
- 5.6 At the completion of the Investigation, the Investigator will provide a copy of the Investigation Findings to the Director of Investigations. The Investigation Findings will normally include the following information:
- 5.6.1 a synopsis of the evidence considered;
  - 5.6.2 any assessment of credibility that is required to make findings of fact or render a determination as to whether Sexual Misconduct has occurred;
  - 5.6.3 a description of any mitigating or aggravating factors; and
  - 5.6.4 the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct has occurred.

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

- 6.1 The Investigations Office does not determine the outcome or disciplinary measures to be imposed in response to the Investigation Findings.
- 6.2 If the Investigation Findings includes a determination that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to the appropriate UBC authority, or authorities if the Respondent has more than one relationship to UBC, responsible for making a final decision on outcome or disciplinary measures as follows:
  - 6.2.1 in the case of a student Respondent, to the President;
  - 6.2.2 in the case of a registrant Respondent, to the Administrative Head of Unit in whose educational activity the Respondent is registered;
  - 6.2.3 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;
  - 6.2.4 in the case of a staff member Respondent, to the staff member's administrative head of unit;
  - 6.2.5 in the case of an emeritus Respondent, to the appropriate Dean who will make a recommendation to the relevant Senate or member of the Senate Tributes

Committee. A final decision with respect to the emeritus appointment will be made by Senate;

- 6.2.6 in the case of a Respondent who is serving on a UBC committee, to the chair of the committee.
- 6.3 Where there is a determination that a student Respondent has engaged in Sexual Misconduct, the President, in accordance with the *University Act*, will determine what disciplinary or other measures are appropriate.
- 6.4 Where there is a determination that any other Respondent has engaged in Sexual Misconduct, the process that will be followed by the appropriate UBC authorities to determine disciplinary or other measures to be imposed will be consistent with applicable collective or employment agreements, the *University Act*, and any other applicable legal requirements.
- 6.5 Once the appropriate UBC authority has made a decision regarding the disciplinary or other measures to be imposed, that decision will be communicated in writing to the Respondent. A copy of the decision will also be provided to the Director of Investigations. The Director of Investigations will inform the Complainant of any disciplinary outcomes that the University Counsel has authorized the Director to disclose in accordance with section 7.5 of these Procedures.
- 6.6 If the appropriate UBC authority determines that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to:
  - 6.6.1 UBC Student Housing and Hospitality Services, if the Respondent is subject to a UBC residence contract or agreement;
  - 6.6.2 the UBC authority charged with addressing concerns under a Faculty or school's standards of professional conduct, if the Respondent is a student subject to those standards; and
  - 6.6.3 UBC Athletics and Recreation, if the Respondent is subject to a Varsity student athlete agreement.
- 6.7 Whether or not the Investigation Findings includes a determination that Sexual Misconduct has occurred, if the Director of Investigations is satisfied that the Investigation Findings disclose other misconduct, or information, that UBC may need to act on under another UBC policy or process, the Director may refer the Investigation Findings, or the relevant portions of the Investigation Findings, to the appropriate UBC authority. The Director will notify the Respondent and, when appropriate, the person making the Report before referring it elsewhere.
- 6.8 The Director of Investigations will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and assistance, providing education, or conducting administrative transactions.

## 7. Confidentiality and Privacy

- 7.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”), all participants in an Investigation must act in accordance with the requirements set out below.
- 7.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual (“**Personal Information**”) through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:
  - 7.2.1 any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;
  - 7.2.2 UBC representatives from disclosing Investigation-related information as authorized under section 7.3; or
  - 7.2.3 Complainants and Respondents from disclosing the information that they have received under sections 7.4 and 7.5.
- 7.3 UBC will not disclose any Personal Information related to an Investigation except:
  - 7.3.1 when expressly authorized by the affected individual;
  - 7.3.2 to a UBC representative and disclosure is necessary for the performance of that individual’s duties;
  - 7.3.3 to a Complainant, Respondent, witness, or other participant in the Investigation, if necessary for the conduct of the Investigation;
  - 7.3.4 to a Complainant or Respondent in accordance with sections 7.4 and 7.5;
  - 7.3.5 when authorized by the University Counsel for compelling health or safety reasons;
  - 7.3.6 when authorized by the University Counsel to correct misleading or inaccurate information where disclosure is necessary to protect the integrity of the Investigation or UBC’s investigatory processes; or
  - 7.3.7 when authorized or required under law.
- 7.4 To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation findings and the evidence upon which these findings are based. Complainants and Respondents will be provided with a copy of the Investigation Findings. The FIPPA may require UBC to remove Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, each will only receive the portions of the Investigation Findings that are relevant to them.

- 7.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons including informing the Complainant of any restrictions that may have been imposed upon the Respondent's movements, activities, or contact with the Complainant.
- 7.6 Section 7.2 does not prevent Complainants and Respondents from disclosing the information received under sections 7.4 and 7.5. However, Complainants or Respondents who choose to disclose such information should keep in mind that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim), and may wish to seek advice before doing so.

## **8. Appeal Processes**

- 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 Staff or faculty may appeal any decision or discipline that is made or imposed on them under these Procedures in accordance with the provisions of their collective agreements or their terms and conditions of employment.

 <p><b>The University of British Columbia Board of Governors</b></p>	<p><b>Policy No.:</b> SC17 <b><u>APPROVAL DRAFT</u></b></p>
<p><b>Long Title:</b> Sexual Misconduct <u>and Sexualized Violence Policy</u></p>	
<p><b>Short Title:</b> <b>Sexual Misconduct Policy</b></p>	

### Background & Purposes:

UBC's goal is recognizes its location on the unceded, ancestral, and traditional territories of Indigenous nations, its commitment to reconciliation and its responsibility to maintain a respectful environment where its members can study, work, and live free from sexual misconduct and sexualized violence<sup>1</sup>. This policy articulates UBC's commitment to support all members of the UBC community who are affected by sexual misconduct, to provide a central site for information regarding the resources and options available to those affected by sexual misconduct, to create and make available programs and resources to educate its community on the prevention of sexual misconduct, and to provide a process to respond to and investigate allegations of sexual misconduct.

## 1. Principles and Commitments

1.1 UBC will not tolerate any form of Sexual Misconduct.

1.2 UBC recognizes that people's experiences will be affected by factors such as their access to power and privilege, including their sex, sexual identity, gender identity or expression, racialization, age, family status, religion, faith, ability, disability, national or ethnic origin, Indigeneity, immigration status, socio-economic status, class, and language that may intersect and overlap. UBC also recognizes that the university is a unique environment, in which power imbalances are inherent and systemic. These factors, along with an individual's personal history, affect individual experiences of Sexual Misconduct, the ability to access supports, and choices with regard to recourse. UBC will take this into account when carrying out its responsibilities under this Policy.

1.3 UBC is committed to providing comprehensive and inclusive ~~Sexual Misconduct~~ education, prevention, and response initiatives to address Sexual Misconduct. Through these initiatives, UBC is committed to creating a culture of consent and countering rape culture, a term that describes broader social attitudes about gender, sex, and sexuality that normalize Sexual Misconduct and undermine equality.

<sup>1</sup> The terms sexual misconduct and sexualized violence are umbrella terms that encompass the behaviours prohibited under this policy. The term sexual misconduct will be used throughout the policy when referring to the impugned conduct.

- 1.4 UBC is committed to reducing barriers to Disclosing and Reporting, and to taking a ~~trauma~~-Trauma-informed ~~approach~~Approach when responding to and addressing Disclosures and Reports, and when conducting Investigations. ~~1.5~~ UBC will ~~provide support services and assistance to Members of the UBC Community who Disclose or Report~~offer training on a Trauma-informed Approach to persons, including administrative and academic decision makers, responsible for addressing Sexual Misconduct.
- 1.5 ~~1.6~~ UBC is committed to respecting the rights of those who Disclose to make their own decisions about accessing support services and assistance, making a Report, or pursuing external processes such as criminal or civil action.
- 1.6 ~~1.7~~ UBC will ~~provide support services and assistance to Members of the UBC Community who Disclose or Report~~ Sexual Misconduct.
- 1.7 UBC will establish dedicated positions to provide ~~support~~services to Members of the UBC Community who have had Reports of Sexual Misconduct made against them.
- 1.8 UBC is committed to procedural fairness and will respond to ~~and address Disclosures and~~ Reports, and will conduct Investigations, in a timely manner.
- 1.9 UBC will not tolerate any retaliation as defined in the Retaliation Policy (SC18), direct or indirect, against anyone making, or involved in, a Disclosure, a Report, or an Investigation. Allegations of retaliation will be addressed pursuant to the Retaliation Policy (SC18).
- 1.10 UBC recognizes that some individuals may be hesitant to Disclose or Report Sexual Misconduct in cases where they have been consuming alcohol underage, or in excess, or using drugs. An individual ~~acting in good faith~~ who makes a Disclosure or Report will not be subject to actions for violation of any applicable UBC policy, rules or regulations related to drug or alcohol use at the time the alleged Sexual Misconduct occurred.
- 1.11 UBC recognizes that certain relationships between students and other Members of the UBC Community are relationships of heightened trust and vulnerability, ~~particularly where there is a supervisory role or where the individual has influence over a student's current or future academic activities, working conditions, or career advancement.~~ Sexual or ~~romantic~~intimate relationships ~~involving~~between individuals in the following classes of Members of the UBC Community where there is a supervisory role or where ~~the~~an individual has influence over a student's current or future academic activities, working conditions, or career advancement are Prohibited Relationships:
- 1.11.1 faculty, or Teaching Staff Members, or emeriti, and Students;
  - 1.11.2 staff and Students;
  - 1.11.3 Coaching Staff Members and Student athletes; and
  - 1.11.4 Faculty, or Teaching Staff Members, or emeriti, and Medical Residents, Clinical Fellows, or Postgraduate trainees in the Faculty of Medicine.

1.12 ~~An individual in a supervisory role or position of influence as described in 1.11 who engages in a Prohibited Relationship, except as provided in this Policy, breaches this Policy and will be subject to disciplinary action notwithstanding that the relationship is claimed to be consensual.~~

1.13 ~~1.12~~—In circumstances where there is an existing consensual sexual or ~~romantic~~intimate relationship that pre-dates ~~the~~a Prohibited Relationship as described above, the relationship must be disclosed to the Administrative Head of Unit who will take appropriate steps pursuant to the University's conflict of interest and conflict of commitment policy (the COI Policy (SC3)).

1.14 ~~1.13~~ ~~If~~Even if a consensual sexual or ~~romantic~~intimate relationship between certain members of the UBC Community is not ~~restricted~~prohibited under this Policy, there may ~~nonetheless~~ be restrictions imposed in connection with ~~such a~~the relationship under the COI Policy (SC3).

1.14.1 ~~1.13.1~~—Where an existing Prohibited Relationship has been managed under the COI Policy (SC3), engagement in the Prohibited Relationship will not constitute a breach of this Policy.

## 2. Definitions

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

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

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

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

2.1.4 indecent exposure, which is exposing one's body to another individual either physically or electronically, or through any other means, for a sexual purpose without the individual's consent, or coercing another individual to remove their clothing in order to expose their body, ~~without Consent~~;

- 2.1.5 voyeurism, which is non-consensual viewing, photographing, or otherwise recording another individual in a location where there is an expectation of privacy and where the viewing, photographing, or recording is done for a sexual purpose; and
- 2.1.6 the distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording.
- 2.2 **“Consent”** is the active, voluntary agreement to engage, and to continue to engage, in the sexual activity in question. Further information about Consent is provided in section 4 of this Policy.
- 2.3 **“Members of the UBC Community”** are individuals who fall under one or more of the following categories:
- 2.3.1 ~~students~~student, defined as any person, including co-op and exchange students, registered or enrolled in any component of ~~an~~ for-credit academic or training program or course at UBC ~~whether, or not the program or course is for credit, including co-op and exchange students, or classes~~any class of learners ~~who are~~ designated by resolution of the ~~senate~~Senate as ~~a student~~students;
- 2.3.2 registrant, defined as any person registered in non-credit educational activities at UBC;
- 2.3.3 ~~2.3.2~~ employees, defined as individuals employed by UBC, including faculty and staff members;
- 2.3.4 ~~2.3.3~~ emeriti, ~~a volunteer~~volunteers engaged in a UBC activity, or ~~any~~ other ~~individual~~individuals acting on behalf of UBC;
- 2.3.5 ~~2.3.4~~ Teaching Staff Members;
- 2.3.6 ~~2.3.5~~ any individual active on any UBC committee or review panel;
- 2.3.7 ~~2.3.6~~ post-doctoral fellows; and
- 2.3.8 ~~2.3.7~~ anyone contractually obligated to comply with this Policy.
- 2.4 **“Teaching Staff Member”** means any individual who provides or teaches any component of an academic program or course at UBC, including, but not limited to, professors, including part-time and full-time professors, associate professors, assistant professors, adjunct professors, clinical professors, clinical associate professors, clinical ~~assistance~~assistant professors, clinical instructors, ~~instructors I, instructors II, senior instructors, twelve-month~~assistant professors of teaching, associate professors of teaching, professors of teaching, acting assistant professors, lecturers, sessional lecturers, visiting and emeritus faculty, teaching assistants, supervisors of graduate students, supervisors of researchers, program directors, librarians, or any other person employed by UBC in an equivalent position to the above designated by the UBC Vancouver Senate, the UBC Okanagan Senate, or the Council of Senates.

- 2.5 “**Prohibited Relationship**” is any ~~romantic, dating, or~~ sexual or intimate relationship prohibited by section 1.11 of this Policy.
- 2.6 “**Coaching Staff Member**” is any employee, or volunteer, who is a coach, or assistant coach, of a UBC varsity athletic team.
- 2.7 “**Disclose**” or “**Disclosure**” is ~~the sharing of~~ where an individual shares information with UBC ~~regarding any~~ about an incident ~~or~~ for incidents in which the individual was subject to Sexual Misconduct. Further information about Disclosures is provided in section 8 of this Policy.
- 2.8 “**Report**” or “**Reporting**” is providing a statement of allegations to the Director of Investigations about ~~a~~ an incident or incidents of Sexual Misconduct. Further information about Reporting is provided in section 9 of this Policy.
- 2.9 “**Jurisdiction to Investigate**” is the ~~legal~~ scope of UBC’s authority to investigate Reports under this Policy.
- 2.10 “**Investigation**” is an investigation of allegations set out in a Report and carried out by UBC, pursuant to its Jurisdiction to Investigate under this Policy, ~~on the basis of a Report,~~ as set out in the Procedures to this Policy.
- 2.11 “**Investigator**” is the individual appointed to Investigate a Report under the Procedures to this Policy.
- 2.12 “**Investigation Findings**” is the written report submitted by the Investigator to the Director of Investigations of the ~~Independent~~ Investigations Office.
- 2.13 “**Trauma-informed Approach**” means understanding the impacts of sexual misconduct and sexualized violence on individuals and responding in a manner that promotes empowerment and recovery, and minimizes re-traumatization.
- 2.14 “**Alternative Resolution Processes**” are alternatives to an Investigation and may include, but are not limited to, facilitated dialogue or a restorative justice process.

### 3. Jurisdiction to Investigate

- 3.1 UBC’s Jurisdiction to Investigate is determined by the Director of Investigations and is limited by the following:
- 3.1.1 the allegations must be ~~made~~ against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct and at the time the Report ~~was~~ is submitted;
- 3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct; and
- 3.1.3 the alleged conduct must have occurred in a context that has a real and substantial connection to UBC. ~~Each incident~~ Whether a real and ~~its~~ substantial connection to UBC exists will be considered on ~~its~~ the particular ~~factual~~ circumstances of each Report.

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

3.2.1 ~~due to the amount of time that has elapsed since the alleged misconduct occurred,~~ proceeding ~~now~~with the complaint would be unfair and result in substantial prejudice to any person such as when the passage of time affects access to witnesses or other evidence; or

3.2.2 ~~it is unfair or otherwise inappropriate to proceed~~proceeding with the complaint is otherwise not practicable.

#### 4. Consent

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

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

4.1.2 The initiator of a sexual activity is responsible for obtaining consent for that sexual activity.

4.1.3 ~~4.1.2~~ Consent can be withdrawn by any party at any time during the sexual activity ~~which means that~~through words or actions, and if consent is withdrawn the sexual activity must stop.

4.1.4 ~~4.1.3~~ Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent given only applies to each specific instance of sexual activity. Neither the relationship status of the parties nor past consent to sexual activity gives or implies future or ongoing consent.

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

4.1.5 Individuals ~~are incapable of consenting~~cannot give consent if they are not able to appreciate the nature of the sexual activity, or to appreciate the risks and consequences of the sexual activity, or are otherwise unable to choose whether to engage in the sexual activity. ~~An~~For example, an individual is incapable of consenting if the individual is:

- (a) asleep or unconscious;
- (b) ~~intoxicated~~unable to consent due to ingestion of drugs or alcohol; or
- (c) under the legal age of consent as defined in the Canadian *Criminal Code*.

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

## 5. The Sexual Violence Prevention and Response Office

- 5.1 The Sexual Violence Prevention and Response Office receives disclosures under this Policy. ~~This office and~~ is a ~~single~~ point of contact and liaison on each campus for Members of the UBC Community who are affected by Sexual Misconduct, regardless of who committed the ~~sexual misconduct~~ Sexual Misconduct, or where or when it took place.
- 5.2 Individuals do not need to make a Report under this Policy or to any third-party investigating body to access support and assistance from this office. The office will provide support, information, options, and assistance described in section 8.3 of this Policy based on the expressed needs of the individual.
- 5.3 ~~5.2~~ The Sexual Violence Prevention and Response Office coordinates and oversees all UBC sexual misconduct prevention and response protocols and processes, communications, resource materials and training.
- ~~5.3~~ ~~Reports of Sexual Misconduct under this Policy are received and managed by the Independent Investigations Office which is a separate office at UBC.~~
- 5.4 Whether or not they wish to Disclose under the Policy, Members of the UBC Community who are affected by Sexual Misconduct may choose to seek assistance from third-party agencies such as the Sexual Assault Support Centre of the AMS. At the request of the Member of the UBC Community, the Sexual Violence Prevention and Response Office will liaise with third-party agencies to provide support, information, options, and assistance described in section 8.3. Third-party agencies may make representations to UBC on behalf of the Member of the UBC Community in support of a request for academic concessions.

## 6. The ~~Independent~~ Investigations Office

6.1 Reports of Sexual Misconduct under this Policy are received and managed by the Investigations Office which is a separate office from the Sexual Violence and Prevention Office at UBC.

~~6.2 6.1~~—The ~~Independent~~ Investigations Office is ~~a neutral and~~an impartial, neutral office ~~with trauma that employs a Trauma~~-informed ~~investigators who will~~Approach to investigate Reports ~~with respect to which UBC has the Jurisdiction to Investigate as determined by the Director of Investigations.~~

## 7. Annual Reporting

7.1 Annually, UBC will publicly report, in the aggregate and without identifying personal information, the number of:

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

7.1.2 Reports received by the ~~Independent~~ Investigations Office; and

7.1.3 Reports investigated, addressed through an Alternative Resolution Process, or referred to an alternative internal UBC process; and

7.1.4 Reports with respect to which the Director of Investigations exercised discretion to decline to investigate.

## 8. Disclosures

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

8.2 UBC will make appropriate support services and assistance available to Members of the UBC Community on the basis of a Disclosure, regardless of whether they decide to make a Report or whether UBC has the Jurisdiction to Investigate. If information about the Member or the Disclosure must be disclosed to allow the Member to access support services and assistance the information disclosed will be limited to the information required to provide the services or support.

8.3 Assistance ~~may~~will be available to Members of the UBC Community who have Disclosed or Reported Sexual Misconduct ~~including~~and may include:

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

8.3.2 class schedule changes;

8.3.3 provision of academic concessions;

8.3.4 emergency funding for students;

- 8.3.5 safety planning;
- 8.3.6 temporary work reassignment, location reassignment, or scheduling changes; and
- 8.3.7 the implementation of safety measures which may include temporary interim restrictions pursuant to the At-Risk Behaviour Policy (SC13).
- 8.4 ~~UBC recognizes that Disclosures are most often made to someone the individual making the Disclosure already knows.~~ If a Disclosure is made to a Member of the UBC Community ~~who is not trained to receive Disclosures~~, that Member is encouraged to contact the Sexual Violence Prevention and Response Office for support and information on how best to respond to the Disclosure and to support the individual making the Disclosure. Members of the UBC Community who receive a Disclosure are not expected to file a Report related to the Disclosure under section 9 of this Policy although, at the request of the individual making the Disclosure, they may file a Report under section 9 of the Policy on behalf of the individual making the Disclosure.
- 8.5 Except as provided in this Policy, UBC will respect an individual's choice not to make a Report and where possible will keep the Disclosure confidential. In exceptional circumstances, where required by law or where, in the discretion of the Director of the relevant Sexual Violence Prevention and Response Office, there is a risk of significant harm to anyone's health or safety, the Director of the relevant Sexual Violence Prevention and Response Office may do one or both of the following:
- 8.5.1 refer the matter to the ~~Independent~~ Investigations Office as a Report under section 9, in which case the individual who Disclosed has the right not to participate in any subsequent Investigation; ~~and/or~~
- 8.5.2 notify third parties, such as the police or child protection authorities.
- 8.6 ~~In appropriate circumstances, where~~ if the Sexual Violence Prevention and Response Office has received more than one Disclosure from different individuals involving a Member of the UBC Community, the Director of the relevant Sexual Violence Prevention and Response Office may ~~exercise discretion~~ seek the consent of the individuals making the Disclosures to make an Institutional Report to the Director of Investigations based on the allegations in the Disclosures. ~~The Independent Investigations Office will not disclose but without providing~~ the names of the individuals making the Disclosures ~~without the~~ unless express consent ~~of those individuals, who have the right not to participate in any subsequent investigation as a Complainant but may, in their sole discretion, participate as witnesses~~ is given.
- 8.7 If the Director of Investigations takes any action under section 8.6, the Director of the relevant Sexual Violence Prevention and Response Office will notify the individuals who made the Disclosures and will ensure that appropriate support services are made available to those individuals. The Investigations Office will not receive or disclose the names of the individuals making the Disclosures without the consent of those individuals, who have the right not to participate as witnesses in any subsequent investigation.
- 8.8 Subject to sections 8.5 and 8.6, records of Disclosures made to a Sexual Violence Prevention and Response Office will be kept strictly confidential, and access to those records will be limited to

the Director and staff members of the relevant Sexual Violence Prevention and Response Office unless UBC is ordered to produce the records in a court proceeding or otherwise required by law.

## 9. Reports

- 9.1 Anyone directly subjected to Sexual Misconduct, including an individual who is not a Member of the UBC Community, can make a Report against a Member of the UBC Community under this Policy.
- 9.2 Reports must be submitted to the ~~Independent~~ Investigations Office, where they will be addressed in accordance with the Procedures to this Policy, which include an initial review as set out under section 3 of the Procedures to determine whether the allegations contained in the Report fall within UBC's Jurisdiction to Investigate.
- 9.3 Sexual harassment may fall within the scope of both the Discrimination Policy (SC7) and this Policy. Reports that contain allegations of Sexual Misconduct other than sexual harassment will be addressed under this Policy. Reports that contain only allegations of sexual harassment ~~alone~~ will be reviewed by the Director of Investigations who will determine, based on the particular facts of the case and in consultation with the individual making the Report, which policy is better suited to address the allegations.
- 9.4 An individual can submit a Report to the ~~Independent~~ Investigation Office and also pursue other processes external to UBC against the individual alleged to have committed the Sexual Misconduct. These external processes may include reporting to the police or initiating a civil action (including a complaint under the BC *Human Rights Code*). These are separate processes and Reporting/submitting a Report to the ~~Independent~~ Investigations Office does not result in a report to the police or the initiation of a civil action except as provided in section 8.5.2 of this Policy, where UBC may notify third parties, such as the police or child protection authorities.
- 9.5 If an Investigation, or ~~alternative resolution process~~ Alternative Resolution Process, is initiated under the Procedures to this Policy, and an external process is also being pursued, the Director of Investigations may elect, after consultation with the Complainant, to continue with the UBC process or to suspend the UBC process as appropriate. Suspension of a UBC process ~~allows for~~ does not prevent further action to be taken under the UBC process at a later date as appropriate.
- 9.6 Where a Report ~~has been~~, made to the ~~Independent~~ Investigations Office and found by the Director of Investigations ~~has determined that the allegations~~ to fall within UBC's Jurisdiction to Investigate ~~and may include~~, includes At-Risk Behaviour, as defined under the At-Risk Behaviour Policy (SC13), the Director of Investigations can refer the At-Risk Behaviour ~~to be addressed pursuant to that Policy by~~ the appropriate decision maker under the At-Risk Behaviour Policy (SC13).

## 10. Anonymous and Third Party Allegations

- 10.1 Members of the UBC Community who receive a Disclosure should follow the processes set out in section 8.4 of this Policy. Members of the UBC Community who receive a Disclosure are

expected to honour the choices of the person making the Disclosure and should not submit a Report that could interfere with the decision of the person making the Disclosure.

~~10.1~~ ~~Individuals, other than the individual who was directly subjected to the Sexual Misconduct, may anonymously advise the Independent Investigations Office of the Sexual Misconduct or~~ or a Member of the UBC Community who have received a Disclosure, may submit a Report to the ~~Independent~~ Investigations Office or may anonymously advise the Investigations Office of their allegations of Sexual Misconduct.

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

10.3 UBC may be unable to proceed with an Investigation ~~involving~~based on anonymous or third ~~party~~ allegations due to a lack of evidence or ~~where~~when proceeding would ~~otherwise~~ violate procedural fairness. In such cases, the Director of Investigations will consider whether any other steps can and should be taken, including referring the matter to the At-Risk Behaviour Policy (SC13).

10.4 In appropriate circumstances, where other evidence exists and where proceeding with an investigation based on anonymous or third party allegations would not violate procedural fairness, the Director of Investigations may exercise discretion to proceed with an Investigation. In such cases, the individual who experienced the alleged Sexual Misconduct has the right to ~~not~~refuse to participate in the Investigation.

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

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

## 11. Conflicts of Interest

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

## 12. Policy Review

- 12.1 UBC is committed to reviewing this Policy at least once every three years, in consultation with students and such other Members of the UBC Community as UBC deems appropriate in accordance with the Regulatory Framework Policy (GA2). Policy development committee members will be made aware of the principles of a Trauma-informed Approach and their applicability to this Policy.



## PROCEDURES ASSOCIATED WITH THE SEXUAL MISCONDUCT POLICY

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

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

### 1. General

- 1.1 The Director of Investigations ~~and the~~ Investigators and individuals involved in Alternative Resolution Processes are impartial and neutral, and will exercise their authority and discretion under these Procedures in conformity with the principles of procedural fairness in the university context.
- 1.2 The ~~Independent~~ Investigations Office will liaise with the applicable Sexual Violence Prevention and Response Office or with any third-party entity that is providing support to an individual making a Report, where appropriate, to ensure that support services and ~~accommodations~~ assistance remain in place, or are established, for the duration of the Initial Review and the Investigation, or any Alternative Resolution Process.

### 2. Reports

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

### 3. Initial Review

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

- 3.3 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, and the Respondent has an employment relationship to UBC, the Director will notify the appropriate UBC authority who may make any appropriate workplace arrangements required to ensure a fair investigation process.
- 3.4 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, the Director ~~of Investigations~~ will do one of the following:
- 3.4.1 appoint an Investigator to Investigate the Report under section [45](#) of these Procedures;  
or
- 3.4.2 subject to sections [3.54.1](#) and [3.64.2](#) of these Procedures, refer the matter to an ~~alternative resolution process~~ [Alternative Resolution Process](#).
- 3.5 ~~A Complainant may request an alternative resolution process instead of a formal investigation. Alternative resolution processes may not be appropriate or available in all circumstances. If the Director of Investigations is satisfied that an alternative resolution process may be appropriate, options will be discussed with the Complainant and the Respondent. If the Complainant and the Respondent agree to participate in the alternative resolution process, the Director will refer the matter to that process for resolution. Upon initiating an Investigation, the Director of Investigations will:~~
- ~~3.6 Alternative resolution processes may include, but are not limited to, facilitated dialogue or a restorative justice process. Participation in an alternative resolution process is entirely voluntary. If at any time during the alternative resolution process either the Complainant or the Respondent no longer wishes to participate in the alternative resolution process, then the Director of Investigations will appoint an Investigator to Investigate the Report under section 4 of these Procedures.~~
- ~~3.7 Alternative resolution processes are confidential processes and participants are encouraged to maintain confidentiality until the process is completed. Information obtained during an alternative resolution process where either the Complainant or Respondent withdrew participation will not be disclosed to the Investigator and cannot be relied upon in the subsequent investigation unless that information is independently obtained by the Investigator in the course of the investigation.~~
- [3.5.1 notify the Complainant that the Report has been referred to an Investigator, and provide information about the resources available and the investigation process, including the Complainant's right to have an advisor, support person, or union representative present during meetings with the Investigator; and](#)
- [3.5.2 notify the Respondent that a Report has been made and has been referred to an Investigator, and provide a copy of the Report along with information about the resources available and the investigation process, including the Respondent's right to have an advisor, support person, or union/association representative present during meetings with the Investigator.](#)

~~3.6 3.8~~ If the Director of Investigations determines that UBC does not have the Jurisdiction to Investigate, the Director of Investigations will advise the individual making the Report and will provide reasons for the decision.

3.7 When the Director of Investigations exercises discretion to decline to investigate a Report under section 3.2 of the Policy the Director will:

3.7.1 provide written reasons to the individual making the Report; and

3.7.2 report the decision to decline to investigate in the Investigation Office annual reporting.

3.8 If the Director of Investigations determines that the Report discloses other kinds of misconduct or information that requires action by UBC under another UBC policy or process, the Director will refer the Report, or the relevant portions of the Report, to the appropriate UBC authority. The Director will discuss with the person making the Report before referring ~~it~~ the matter elsewhere.

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

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

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

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

#### 4. Alternative Resolution Processes

4.1 A Complainant may request an Alternative Resolution Process instead of a formal investigation. Alternative Resolution Processes may not be appropriate or available in all circumstances. If the Director of Investigations is satisfied that an Alternative Resolution Process may be appropriate, options will be discussed with the Complainant and, if the Complainant agrees, with the Respondent. If the Complainant and the Respondent agree to participate in the Alternative Resolution Process, the Director will refer the matter to that process for resolution.

4.2 Participation in an Alternative Resolution Process will be considered by the Director only at the Complainant's request and must be consented to by the Complainant and the Respondent. If at any time during the Alternative Resolution Process either the Complainant or the Respondent no longer wishes to participate in the Alternative Resolution Process, then with the consent of the Complainant, the Director of Investigations will appoint an Investigator to investigate the Report under section 5 of these Procedures.

4.3 Alternative Resolution Processes are confidential processes and participants are encouraged to maintain confidentiality until the process is completed. Information obtained during an Alternative Resolution Process where either the Complainant or Respondent withdrew participation will not be shared with the Investigator in any subsequent Investigation and cannot be relied upon in the Investigation unless that information is independently obtained by the Investigator in the course of the Investigation.

## **5. ~~4~~-Investigations**

5.1 ~~4.1~~-Investigations (including the preparation of a written report of the Investigation Findings) will be completed within 60 calendar days of the Investigator's receipt of the Report from the Director of Investigations. If during the course of the Investigation the Investigator believes that this timeline cannot be met, the Investigator will contact the Complainant, the Respondent, and the Director of Investigations as soon as possible to inform them ~~and to establish a revised timeline.~~

5.2 ~~4.2~~-The appropriate UBC authority will normally render a decision under section 56 of these Procedures with respect to the allegations in the Report within 30 days following receipt of the Investigation Findings. If this timeline cannot be met, the UBC authority will contact the Director of Investigations who will ~~advise~~notify the Complainant and the Respondent as soon as possible ~~to inform them and to~~ provide a revised timeline.

5.3 ~~4.3~~-Investigations are not adversarial processes, and hearings will not be held as part of the investigatory process. Formal rules of evidence commonly associated with a civil or criminal trial will not be applied.

5.4 ~~4.4~~-In all Investigations, the Respondent will be fully informed of the allegations in the Report, and will be given the opportunity to respond. Both parties will be informed of ~~the~~ information gathered and will be provided copies of any documents obtained, upon which the Investigator might rely in making findings of fact in the Investigation.

5.5 ~~4.5~~-Subject to sections ~~4.3~~5.3 and ~~4.4~~5.4, the Investigator may investigate in any manner deemed appropriate in order to obtain the information required to make the necessary findings of fact. This may include, but is not limited to, the following:

5.5.1 ~~4.5.1~~-requesting a written response to the Report from the Respondent, that includes a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;

5.5.2 ~~4.5.2~~-meeting with or requesting further information from the Complainant;

5.5.3 ~~4.5.3~~-meeting with or requesting further information from the Respondent;

5.5.4 ~~4.5.4~~-meeting with or requesting further information from any other individuals who may have information relevant to the Investigation, including any witnesses identified by the Complainant or the Respondent;

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

5.5.5 ~~4.5.6~~ obtaining any other evidence, including evidence of mitigating and aggravating circumstances, that may be relevant to the Investigation.

5.6 ~~4.6~~—At the completion of the Investigation, the Investigator will provide a copy of the Investigation Findings to the Director of Investigations. The Investigation Findings will normally include the following information:

5.6.1 ~~4.6.1~~ a synopsis of the evidence considered;

5.6.2 ~~4.6.2~~ any assessment of credibility that is required to make findings of fact or render a determination as to whether Sexual Misconduct has occurred;

5.6.3 ~~4.6.3~~ a description of any mitigating or aggravating factors; and

5.6.4 ~~4.6.4~~ the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct has occurred.

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

6.1 ~~5.1~~—The ~~Independent~~ Investigations Office does not determine the ~~appropriate~~ outcome or disciplinary measures ~~arising from~~ to be imposed in response to the Investigation Findings.

6.2 ~~5.2~~—If the Investigation Findings includes a determination that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to the appropriate UBC authority, or authorities if the Respondent has more than one relationship to UBC, responsible for making a final decision on outcome or disciplinary measures as follows:

6.2.1 ~~5.2.1~~ in the case of a student Respondent, to the ~~Vice-President, Students, as Executive responsible for the Policy, who will present the Investigation Findings to the President. The President will decide whether to adopt the Investigator's findings of fact and conclusions. The President may summarily determine what disciplinary or other measures, up to and including suspension or expulsion, are appropriate based on the findings of fact.~~ President;

6.2.2 ~~5.2.2~~ in the case of a registrant Respondent, to the Administrative Head of Unit in whose educational activity the Respondent is registered;

6.2.3 ~~5.2.2~~ in the case of a faculty member Respondent, ~~to the Vice-President, Human Resources, as Executive responsible for the Policy, who will present the Investigation Findings to the faculty member's Dean or, in the case of a librarian, to the University Librarian. The Dean or University Librarian will meet with the Respondent and provide the Respondent with a copy of the Investigation Findings in accordance with section 6.4 of these Procedures. The Dean or University Librarian will decide whether to adopt~~

~~the Investigator's findings of fact and conclusions and determine what disciplinary or other measures, including restrictions on UBC activities, are appropriate as follows:~~

~~(a) If suspension or termination of a faculty member or librarian's appointment for cause is considered appropriate by the Dean or University Librarian, a recommendation will be made to the President who has the statutory authority to suspend or recommend termination.~~

~~(b) If the President decides that suspension for cause is the appropriate discipline, the President will inform the Board of Governors.~~

~~(c) If the President decides that termination is the appropriate discipline, the President will make a recommendation to the Board of Governors who will make the final decision.~~

~~5.2.3 in the case of a staff member Respondent, to the Vice President, Human Resources, as Executive responsible for the Policy, who will present the Investigation Findings to the staff member's Administrative Head of Unit. The Administrative Head of Unit will decide whether to adopt the Investigator's findings and conclusion and will determine what disciplinary or other measures, up to and including suspension, are appropriate. If the Administrative Head of Unit determines that termination of a staff member is appropriate the Administrative Head of Unit will consult with the applicable Vice President, or Deputy Vice-Chancellor and Principal (UBC Okanagan), who will make the final decision.~~

6.2.4 in the case of a staff member Respondent, to the staff member's administrative head of unit;

6.2.5 ~~5.2.4~~ in the case of an emeritus Respondent, to the appropriate Dean who will make a recommendation to the relevant Senate or member of the Senate Tributes Committee. A final decision with respect to the emeritus appointment will be made by ~~senate.~~Senate;

6.2.6 ~~5.2.5~~ in the case of a Respondent who is serving on a UBC committee, to the chair of the committee.

6.3 Where there is a determination that a student Respondent has engaged in Sexual Misconduct, the President, in accordance with the *University Act*, will determine what disciplinary or other measures are appropriate.

6.4 Where there is a determination that any other Respondent has engaged in Sexual Misconduct, the process that will be followed by the appropriate UBC authorities to determine disciplinary or other measures to be imposed will be consistent with applicable collective or employment agreements, the *University Act*, and any other applicable legal requirements.

6.5 ~~5.3~~ Once the appropriate UBC authority has made a decision regarding the disciplinary or other measures to be imposed ~~under section 5.2 above~~, that decision will be communicated in writing to the Respondent. A copy of the decision will also be provided to the Director of Investigations. The Director of Investigations ~~will provide a copy of the Investigation Findings~~

~~to the Complainant and~~ will inform the Complainant of any disciplinary outcomes that the University Counsel has authorized the Director to disclose in accordance with section ~~6.5~~7.5 of these Procedures.

~~6.6~~ ~~5.4~~ If the appropriate UBC authority determines that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to:

~~6.6.1~~ ~~5.4.1~~ UBC Student Housing and Hospitality Services, if the Respondent is subject to a UBC residence contract or agreement;

~~6.6.2~~ ~~5.4.2~~ the UBC authority charged with addressing concerns under a Faculty or school's standards of professional conduct, if the Respondent is a student subject to those standards; and

~~6.6.3~~ ~~5.4.3~~ UBC Athletics and Recreation, if the Respondent is subject to a ~~varsity~~Varsity student athlete agreement.

~~6.7~~ ~~5.5~~ Whether or not the Investigation Findings includes a determination that Sexual Misconduct has occurred, if the Director of Investigations is satisfied that the Investigation Findings ~~discloses~~disclose other misconduct, or information, that UBC may need to act on under another UBC policy or process, the Director may refer the Investigation Findings, or the relevant portions of the Investigation Findings, to the appropriate UBC authority. ~~When appropriate, the~~The Director will ~~consult with~~notify the Respondent and, when appropriate, the person making the Report before referring it elsewhere.

~~6.8~~ ~~5.6~~ The Director of Investigations will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and assistance, providing education, or conducting administrative transactions.

## 7. ~~6.~~ Confidentiality and Privacy

~~7.1~~ ~~6.1~~ In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), all participants in an Investigation must act in accordance with the requirements set out below.

~~7.2~~ ~~6.2~~ Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual ("**Personal Information**") through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:

~~7.2.1~~ ~~6.2.1~~ any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;

~~7.2.2~~ ~~6.2.2~~ UBC representatives from disclosing Investigation-related information as authorized under section ~~6.3~~7.3; or

~~7.2.3~~ ~~6.2.3~~ Complainants and Respondents from disclosing the information that they have received under sections ~~6.4~~7.4 and ~~6.5~~7.5.

7.3 ~~6.3~~ UBC will not disclose any Personal Information related to an Investigation except ~~to the extent such disclosure is:~~

7.3.1 ~~6.3.1~~ when expressly authorized by the affected individual;

7.3.2 ~~6.3.2~~ to a UBC representative, ~~where~~ and disclosure is necessary for the performance of that individual's duties;

7.3.3 ~~6.3.3~~ to a Complainant, Respondent, witness, or other participant in the Investigation, if necessary for the conduct of the Investigation;

7.3.4 ~~6.3.4~~ to a Complainant or Respondent in accordance with sections ~~6.4~~7.4 and ~~6.5~~7.5;

7.3.5 ~~6.3.5~~ when authorized by the University Counsel for compelling health or safety reasons;

7.3.6 ~~6.3.6~~ when authorized by the University Counsel to correct misleading or inaccurate information where disclosure is necessary to protect the integrity of the Investigation or UBC's investigatory processes; or

7.3.7 ~~6.3.7~~ when authorized or required under law.

7.4 ~~6.4~~—To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation findings and the evidence upon which these findings are based. Complainants and Respondents will be provided with a copy of the Investigation Findings. The FIPPA may require UBC to remove Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, each will only receive the portions of the Investigation Findings that are relevant to them.

7.5 ~~6.5~~—Under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons including informing the Complainant of any restrictions that may have been imposed upon the Respondent's movements, activities, or contact with the Complainant.

7.6 ~~6.6~~—Section ~~6.2~~7.2 does not prevent Complainants and Respondents from disclosing the information received under sections ~~6.4~~7.4 and ~~6.5~~7.5. However, Complainants or Respondents who choose to disclose such information should keep in mind that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim), and may wish to seek advice before doing so.

## **8. ~~7-~~Appeal Processes**

8.1 ~~7.1~~—Student Respondents may appeal any discipline that is imposed on them under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee if they are a UBC Vancouver student, or the UBC Okanagan Senate Appeals of Standing and Discipline Committee if they are a UBC Okanagan student.

8.2 ~~7.2~~ Staff or faculty may appeal any decision or discipline that is made or imposed on them under these Procedures in accordance with the provisions of their collective agreements or their terms and conditions of employment.

## SUMMARY OF COMMUNITY CONSULTATION

The People, Community & International Committee considered the proposed amendments to the Sexual Misconduct Policy at its November 26, 2019 meeting. The Office of the University Counsel (“**OUC**”) then published the proposed amendments for community consultation. In recognition of the importance of the policy to the UBC community as well as the intervening holiday period, the consultation was for an extended period of time, from November 29, 2019 until January 31, 2020.

The University engaged in robust consultation. In addition to the standard publication of the proposed amendments and invitation for comments by the OUC via RSS feed email and on its website, notice was also published in the December 10, 2019 and January 7, 2020 editions of UBC Today, as well as on the websites of the Sexual Violence Prevention & Response (“**SVPRO**”) and Equity & Inclusion Office (“**EIO**”). A confidential online survey was also created for individuals to submit comments anonymously.

During the consultation period the Co-Chairs of the Policy Development Committee (“**Committee**”) also held a series of information sessions to engage with the general UBC community on the proposed amendments. Town hall meetings on each campus were publicized via broadcast emails, UBC Today, digital signage, newsletters, website, and communication channels by the SVPRO and EIO. Additionally, stakeholder groups were invited to meet with the Committee Co-Chairs to discuss the proposed amendments.

The information sessions held were:

- UBC Vancouver Town Hall;
- UBC Okanagan Town Hall, and in relation to which the UBC Students’ Union Okanagan (“**UBCSUO**”), UBC heads of unit and Deans, and the BCGEU Okanagan were specifically invited to attend and participate;
- Alma Mater Society (“**AMS**”);
- The UBC AMS Sexual Assault Support Centre (“**SASC**”);
- Graduate Student Society (“**GSS**”);
- First Nations House of Learning; and
- Union and employee groups (BCGEU, IUOE Local 115, Association of Administrative & Professional Staff, CUPE 116, CUPE 2950. CUPE 2278 was invited but declined), along with UBC Human Resources (Employee Relations).

Two information sessions were scheduled with the Faculty Association but were cancelled at the last minute due to a lack of representatives from the Faculty Association.

The extensive consultation resulted in over 200 comments, including written submissions received from the UBCSUO, AMS, AMS SASC, GSS, CUPE 116, individual staff and faculty, and feedback via the confidential website. All of the comments received were provided to the Committee for its consideration.

In addition, the AMS SASC was invited to attend a post-consultation meeting with the Committee to discuss their feedback and recommendations. The AMS SASC Manager attended the meeting, and was joined by the AMS Senior Manager, Student Services.

The Committee held five meetings to consider and discuss the feedback (in-person as well as via video conference in response to the COVID-19 physical distancing restrictions), including proposing further amendments to the Policy in response to the feedback. Following those meetings, Committee members provided additional input as to proposed amendments via email.

**Feedback on Sexual Misconduct Policy (SC17) - Comment Table** (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
1.	Anonymous: How does this policy related to directly supporting the dismantling of rape culture and development of a culture of consent?		General – addressing rape culture and consent	No changes required.
2.	Anonymous: How does this policy relate to the WorkSafeBC expectation about reporting bullying or harassment "experienced or observed"?		General – question relating to WorkSafeBC bullying and harassment	No changes required.
3.	Anonymous: How is transparency part of the process?		General – transparency	No changes required.
4.	Anonymous: It seems to me that allegations of sexual misconduct are often likely to lead to lose-lose results.		General comment.	No response required.
5.	Anonymous: All of the amendments are fantastic. Please include them all!		General comment	No response required.
6.	Anonymous: I appreciate this.		General comment	No response required.
7.	From Clea Parfitt, Lawyer and her client (former student) (“Lawyer”): The effort to reach out to students to obtain feedback of these policies is not sufficient, given the University’s control of timing the review. The public comment period began after the presentation of the draft policies to the Board in late November 2019, and ended January 31, 2020, a time period when students are taking final exams, away from campus during break, and just returning from campus. Furthermore, the draft policies were posted on the website for the counsel of the University, and the University indicates it made some effort to reach out to an unknown number of handpicked students or student groups. To fully consult with the UBC community, the University should advertise the public comment period (via Broadcast emails, notices in the Ubyyssey, posters, and other digital communications) and should hold public comment periods for at least a full term, when students are on campus and not distracted.		General comment	No changes required. The Committee is satisfied that there was robust community consultation and participation in this review.
8.	From Students’ Union of UBC Okanagan (“UBCSUO”): Policy title – With respect to the policy title, it is our belief that the current title (i.e., Sexual Misconduct Policy) does not encompass student		Long Title and referencing sexualized violence	Agreed in part. Amendments have been made to include “Sexualized Violence” in the Policy’s title, the Background &

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	<p>experiences. As such we suggest:                      The inclusion of the term Sexualized Violence and would further suggest adding additional definitions to ground this;                      The inclusion of more terms in long title thus making it more descriptive as to what the policy covers; and                      Creating a preamble in a plain language document beforehand. We would further suggest that this language should be plain enough to have readability in a translation program (e.g., Google Translate).</p>			<p>Purposes, and definition of Sexual Misconduct, to make clear that the Policy encompasses sexualized violence.</p>
9.	<p>Lawyer: The University has adopted a policy structure that involves having a number of policies on separate issues, one or more of which might be relevant to any given set of facts. While we see that having shorter policies that deal specifically with one issue or set of issues at a time makes them more digestible and comprehensible, we also see the high risk of confusion that results from having so many different policies which may touch on an issue.</p> <p>In our submission, it would be helpful to have a section at the start of each policy listing other policies that may be relevant, including at least each policy that is referenced in the policy in question. Hyperlinks to the other policies should be provided, as well as hyperlinks to relevant staff, such as the Director of Investigations.</p>		Other – comment about University policies	<p>No changes required. Changes to the University’s policy structure is not within the mandate of the Committee.</p> <p>Policies include explanatory notes at the end of the Procedures to the policy that set out other relevant policies.</p>
10.	<p>From the Alma Mater Society (“AMS”):                      As elected representatives, the University must be including the AMS in student seats for all University policies. As subject matter experts who deal with the implementation of this policy daily, and receive more support interactions than SVPRO, it was a complete loss for the committee not to have a SASC employee present. The AMS hopes the Office of the University Counsel will reconsider adding a SASC seat in the next stage of the committee’s work.</p>		Other – constituting the Policy Development Committee	<p>Not part of the scope of the Policy. The new Regulatory Framework Policy (GA2) sets out how policy development committees will be determined.</p> <p>In this review the AMS and SASC each participated in consultation meetings with the Committee to discuss their feedback and recommendations.</p>
11.	<p>Student (identifying as a Complainant who filed a Report and went through the investigation process under Policy SC17):                      Lastly, I would like to request more coordination between Residence Life</p>		Other – Disclosures in the context of Residence Life	<p>Not for inclusion in the policy.</p>

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
	<p>and UBC with regards to how sexual misconduct is dealt with. Reslife's procedure that a staff member receiving a disclosure must tell their supervisor is absurd and puts an additional barrier to disclosure for those facing sexual violence. That may be allowed because it's buried in the residence contract somewhere, but I urge you to work with ResLife to remove barriers to disclosure and to help those residents of the UBC community in being supported. I've been avoiding specific details of my background, but this is something that directly ties in to the point that I'm making — I was the target of sexual violence from multiple people during my first year at UBC while I was staying on residence. ResLife's approach was a huge boundary to disclosure, as I knew my RLM well and didn't want them to know about what was happening to me. Yet there was no way around it — I waited months until I was about to move out when I filed a report. Please work with ResLife and listen to the community to create a way that those facing sexual violence are properly taken care of, and that they can at least trust in their residence advisor.</p>			
12.	<p>AMS: Many changes within the proposed amendments are reflective of the AMS's position and ongoing advocacy on this policy. This includes the provision of an immunity clause, a recommendation brought forth by the AMS. This clause protects survivors who disclose in good faith from consequences of violating UBC policy, rules or regulations related to drug or alcohol use at the time the misconduct occurred. Within the context of underage drinking and student residence policies, this clause is an important step forward in making this policy more explicit and accessible.</p>		Other – general comments	No response required.
13.	<p>AMS: While this document provides specific recommendations, the underlying theme of our analysis rests in the lack of clarity within the policy's stiff, legal language. It is of the utmost importance that Policy SC17 be written in a way that is accessible to the broader community. The use of specific examples and plain-language are paramount in achieving this goal.</p>		Other – general comments	No specific changes required. The Committee recognizes the desire for the Policy to be readily accessible and useable. The Committee has made several recommendations to have examples and clarifying commentary

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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				provided by the SVPRO and the IO through FAQs and education.
14.	<p>From the AMS Sexual Assault Support Centre (“SASC”): All staff or faculty who may receive disclosures, provide services offered by the policy, or who participate in investigation and disciplinary decisions should be required to complete trauma-informed approaches to training. The report <i>Courage to Act</i> similarly recommends mandatory training for staff and faculty, modelling Quebec’s Bill 151, Act to prevent and fight sexual violence in higher education institutions. Mandatory training will ensure that there is a shared understanding of the importance of confidentiality and providing survivors with agency and control over their stories and experiences.</p>		Other – mandatory training in trauma-informed approaches	Partially agreed. Amendment made to Policy, s. 1.4 to provide that UBC will offer training to UBC persons responsible for addressing Sexual Misconduct, including decision-makers. The SVPRO staff and the IO investigators, already receive training.
15.	<p>UBCSUO: Background and purpose – We would suggest: The first sentence ends with the wording, “as defined in section 2.1”; and - The final sentence should end with the wording, “investigate reports of sexual misconduct.”</p>	Background and Purposes	Request to add wording	Not recommended.
16.	<p>Faculty member: First, I am distressed at the apparent weakening of UBC’s commitment to supporting victims of sexual violence, and maintaining a safe environment. The introductory language (under “Background and Purpose”) to the 2017 policy acknowledged a “responsibility” on UBC’s part to maintain a respectful environment free from sexual misconduct, and a “duty and commitment” to support victims of sexual misconduct. The proposed amendment weakens the commitment from a “responsibility” to a “goal,” and drops talk of “duty,” turning “duty and commitment” into mere “commitment.”</p> <p>I oppose the weakening of the language expressing UBC’s commitment to creating a safe environment. I hope you will retain the original language in this section, which was stronger and better.</p>	Background & Purposes	Expression of Commitment	Agreed in part. The amendment was consistent with other post-secondary institutions’ sexual misconduct policies that speak of the institutions’ goals, commitments and objectives. The Committee has amended the language to state “UBC has a responsibility”.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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17.	<p>Staff: The change to the language is concerning — it indicates a walking away from UBC’s accountability to the prevention and response to sexual misconduct. In the first iteration of Policy SC17 (131), “UBC has a responsibility” maintains a different emphasis than ‘goal.’ ‘Goal’ suggests desire; responsibility is both about an internal accountability to ensuring that UBC takes sexual misconduct seriously, and meets legislative requirements to have such a policy. The same comments apply to the retraction of the word ‘duty.’</p> <p>The Minister of Advanced Education, Melanie Mark, stated in 2018 : “It’s critical that we send a strong message...We want students to feel safe, and to know that any type of sexualized violence or misconduct is unacceptable and will not be tolerated.” The Background &amp; Purpose seems to be walking away from the spirit and expression of the Minister’s statement.</p>	Background and Purposes	Expression of commitment	Addressed above.
18.	<p>SASC: The Principles and Commitments lack any mention of being accountable to a decolonial process of understanding and responding to sexualized violence. Given UBC’s presence on x<sup>w</sup>məθk<sup>w</sup>əyəm lands and the distinct impacts of sexualized violence and ongoing settler colonialism on Indigenous communities, this is a glaring gap in the policy. Trauma-informed approaches must be intersectional if they are to truly reduce barriers for those who are the least likely to disclose and report under the policy and to avoid reproducing the harms the policy is meant to address.</p> <p>The AMS SASC recommends including a commitment to acknowledging the intersectional barriers that members of the UBC community will face in disclosing and reporting under the policy and to working with Indigenous communities to implement existing self-determined, Indigenous-led and culturally safe services and responses to sexualized violence.</p>	Policy s.1	Principles and Commitments – decolonization and intersectional barriers	Partially agreed. Policy, s. 1.2 does address Indigeneity and intersectionality, with revisions to emphasize intersectionality. Additional revisions have been made to reference Indigeneity and reconciliation in the Background & Purposes. UBC is in the process of developing an Indigenous Strategic Plan to address broader issues that are beyond the scope of this Policy.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
19.	UBCSUO: 1.1 – While this policy is reactionary in nature it may be important for UBC to take a specific stance on consent culture in this document. For example, UBC could commit to creating a culture of consent on our campus	Policy s.1.1	Principles – suggestion to expand	Section 1.3 has been amended to expressly reference UBC’s commitment to creating a culture of consent through its education, prevention and response activities. Further changes are not required. The Policy addresses the requirement of consent.
20.	UBCSUO: 1.2 – In this section, it must be acknowledged that acts of sexual misconduct may be a result of systemic pressure and that the aforementioned factors listed earlier may make some more vulnerable to sexual misconduct and sexualized violence.	Policy s.1.2	Editorial suggestion	Agreed. Addressed as per item 21 below.
21.	Staff: add “and systemic” into second sentence: “UBC also recognizes that the university is a unique environment, in which power imbalances are inherent <u>and systemic</u> .”	Policy s.1.2	Editorial suggestion	Agreed. Suggested change made.
22.	<p>Lawyer: We accept that the understanding of what “trauma informed” practices and policies should be is evolving, but the University must set out the University’s current understanding of the standards it is proposing to meet when it says that its employees will be trauma informed, and will act in a trauma informed way. These statements should be referenced in the policies.</p> <p>These statements could be created or co-created by the SVPRO and/or IIO, or different bodies could be asked to develop their own statements of what trauma informed practice means for the work they are doing. Without some attempt to describe what this term means in practice, there is a significant danger that it will come to mean nothing, and there is no way to evaluate whether the University is meeting this important objective. Given the private nature of much of what the SVPRO and IIO do, having some accountability around this service objective is essential.</p> <p>“Trauma informed” responses must include not only considering a complainant’s emotional needs, but also taking effective action in</p>	Policy s.1.4	Editorial comment – set out current understanding of “trauma informed”	Addressed as per item 23 below.

**Feedback on Sexual Misconduct Policy (SC17) - Comment Table** (by applicable sections)

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	respect of the complaints that they are making.			
23.	<p>SASC: Provide a clear definition and guidelines for how a trauma-informed approach will be implemented. The policy overpromises a trauma-informed approach to investigations, often setting up survivors for re-traumatization and disappointment. Clearly defining trauma-informed approaches will better communicate to survivors what they can expect under the policy and provide an expected standard for staff implementing the policy.</p> <p>While there are many definitions of trauma-informed approaches, the AMS SASC recommends an approach that is in line with that of the Ending Violence Association of BC (EVA BC):  “Being trauma-informed within the campus context means understanding the impacts of sexual violence and sexualized trauma on victims/survivors (and others) and responding in a manner that promotes empowerment and recovery and minimizes re-traumatization.”</p> <p>Additionally, it is important to differentiate between trauma-informed and survivor-centric, where trauma informed requires that policies and procedures recognize the impacts of trauma and survivor-centric requires “placing the control and decision-making back into the harmed person’s hands....” This approach has been adopted by other university policies. For example, the University of Victoria includes the following definitions of trauma-informed and survivor-centric approaches:</p> <p>“trauma-informed” means incorporating an understanding of the impact that sexualized violence has on a person’s life, to minimize re-victimization, and facilitate recovery and empowerment.</p> <p>“survivor-centred” means prioritizing the safety and choices of survivors and those impacted by sexualized violence.</p>	Policy s.1.4	Principles and Commitments – request to set out UBC’s understanding of “trauma informed approach”	Partially agreed. Amendment made to provide a definition describing what a trauma-informed approach consists of for the purposes of this Policy.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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24.	AMS: Recommendation #5: Embedding and defining 'trauma-informed'. The AMS believes the University define and embed 'trauma-informed' throughout the policy, including articulating what specifically "trauma-informed" means to UBC and via mandated trauma-informed training for the policy review, disciplinary and appeals committee members.	Policy s.1.4	Trauma-informed definition and mandated trauma-informed training	Partially agreed. Trauma-informed approach addressed as per item 23 above. It is beyond the scope of this Policy to dictate to Senate how it conducts and manages appeals. The Committee amended Procedures, s. 12.1 to provide that in future policy development committee members will receive information regarding a trauma-informed approach and its application to this Policy.
25.	Staff: "Accommodation" has been changed to "assistance." While it may be that "accommodation" is weighted as a legal obligation, assistance waters down UBC's obligation to survivors.	Policy s.1.5	Comment – use of "assistance" in lieu of "accommodation"	No change necessary. "Assistance" is used to reflect that not all measures sought constitute accommodations, and to also avoid using a term ("accommodations") that has a particular legal meaning and which is also addressed in another Board policy, the Disability Accommodation Policy (LR7).
26.	UBCSUO: We believe that switching the ordering of 1.5 and 1.6 would be more survivor-centred as it first provides them with the autonomy in their choice of path to pursue before then offering options	Policy s.1.5 & 1.6	Editorial suggestion – ordering of Principles and Commitment	Agreed. The Committee made the requested change.
27.	Anonymous: There needs to be resources/processes regarding support for the respondents in such situations.	Policy s.1.7	Support Services for Respondents	Agreed. The Committee recognized that services and supports available for Respondents are limited and recommends the Vancouver campus consider a support office for Respondents that is separate from SVPRO. UBC Okanagan is currently searching for a Human Rights/Respondent Support Advisor situated within the Equity & Inclusion Office. The section has been

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	<p>When employee(s) are involved in a situation involving this policy, HR ought to be looped in on the results/conclusion of the investigation conducted by IIO.</p>		<p>Investigation Findings and Outcome and Disciplinary Measures – disclosure to HR</p>	<p>amended to provide that UBC will establish dedicated positions to provide services to Respondents.</p> <p>Already addressed by procedures s. 5.2.3 and the process to be followed upon a finding of Sexual Misconduct.</p>
28.	<p>From First Nations House of Learning session (“FNHL”):</p> <p>Address respondent support on the Vancouver campus, with a dedicated and ongoing role at the university to support respondents. Currently supporting student respondents is a burden falling on various members of staff and faculty, most of whom do not have expertise in this area.</p>	Policy s.1.7	Support Services for Respondents – request for dedicated respondent support service	Addressed above.
29.	<p>Anonymous: UBC needs to provide support for Respondents. The policy includes a section on this but it has not been implemented yet (although I am aware that a job posting has gone up for a Respondent Support/EIO position on the Okanagan campus) and is very much needed in Vancouver.</p> <p>Many people who are named as Respondents have experienced trauma themselves. Please consider this very important aspect when reviewing the policy, as Respondents should have access to support too, rather than having support services be only for Complainants/Survivors.</p>	Policy s.1.7	Support Services for Respondents	Addressed above.
30.	<p>AMS: Recommendation #3: Redefine respondent support</p> <p>The AMS encourages the University to consider renaming this section to ‘respondent services,’ as not to conflate this service with the institutional messaging of ‘supporting survivors.’</p>	Policy s.1.7	Support Services for Respondents – request amending language to “Respondent services”	Agreed. The Committee adopts “Respondent services” as the appropriate term.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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31.	<p>Lawyer: In keeping with the view that barriers to reporting formally should be removed to the greatest extent possible, the policy should contain a clause that states generally that no consequences can attach to complaining, giving evidence or otherwise participating in a complaint, and that retaliation of any kind is strictly prohibited and will be treated seriously by the University.</p> <p>This protection should not be limited to complaints made “in good faith”. The persistent implication that women might make false reports is a continuation of the pernicious view that women cannot be trusted to tell the truth about sexual misconduct. Further, the University has stated no definition or method to assess good faith. The civil law contains multiple remedies for deliberate untruths. Nothing further is required in this policy.</p>	Policy s.1.9	Retaliation	No changes required. This comment is properly addressed to the policy development committee for the proposed Retaliation Policy (SC18).
32.	UBCSUO: 1.10 Other rules that students may be violated during the reported incident must be considered. For example, residence rules. We suggest “in cases where... they have violated rules such as consuming alcohol underage or in excess, using drugs, and residence rules.	Policy s.1.10	Immunity Provision – residence rules	Not recommended. The Committee felt the proposed immunity provision is a significant addition to address the specific circumstances in which these concerns usually arise.
33.	Lawyer: The phrase “in good faith” should be removed from the statement that no consequences will flow from the making of a report where use of drugs or alcohol was at issue (1.10). The protection should also be expanded to any situation where a student may be reticent to report if other rules were broken.	Policy s.1.10	Immunity provision – “good faith”	Partially agreed. Deleted “in good faith”. The Committee was not prepared to recommend a blanket immunity from any breach of any rules.
34.	Anonymous: The new category of "prohibited relationships" is troublesome and in my view inappropriate. First, I object in principle to the idea that the university should regulate romantic relationships between consenting adults. Furthermore, in spite of this the university feels that it must prohibit some such relationships, it should do so in a much more targeted way. For example, what is the possible justification to prohibit a faculty member in one faculty from having a relationship with a graduate student in a different faculty where there is no direct	Policy s.1.11-1.13	Prohibited Relationships	No change required. The Committee has targeted relationships with specific characteristics and the Committee understand that prohibition of these relationships is a policy choice consistent with the expectations and values of the community. The defined Prohibited Relationships do not encompass the

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	supervisory role or influence? The current proposal is too sweeping and general.			relationships or situations set out in the comment.
35.	<p>Faculty member: I applaud the §1.11 creation of a category of “Prohibited Relationships,” but I am concerned that it is not clearly enough defined.</p> <p>I do not detect in this proposal an intention to set out an outright blanket ban on, for instance, all faculty–student relationships. Instead, the prohibition is limited to cases “where there is a supervisory role or where the individual has influence over a student’s current or future academic activities, working conditions, or career advancement.” Something like this restriction seems appropriate, and the supervisory role condition is clear enough, but the “influence” condition is excessively vague.</p> <p>In a weak sense, one has “influence” over someone’s activities any time one plays a causal role in determining what they will do. For example, if I tell you that a restaurant was nice and you decide to try it yourself, I have thereby demonstrated some “influence” over your culinary activities. (This is why advertising is a kind of influence.) On this weak understanding, almost everyone has influence over almost everyone’s future or current activities, and the prohibition will amount to a blanket ban. I suspect this is not what the policy language is intended to mean, but it’s not clear just how one is to interpret it.</p> <p>A stronger sense would limit “influence” to cases where one has a formal role to play in a students’ progression — if one is sitting on a student’s PhD exam committee, for example, or writing a letter of recommendation for them. This is a much narrower category. (These cases would presumably be covered by the Conflict of Interest policy anyway.) Certainly I support prohibiting relationships in cases like these, but it is important that UBC community members know where and how to draw the line</p>	Policy s.1.11	Prohibited Relationships – “influence”	No change required. The Committee recognizes that there is a degree of ambiguity inherent with “influence”. It will be a factual determination in individual cases whether that individual has the requisite ability to affect, or degree of influence over, the student’s academic, working or career advancement, for the purposes of the Policy.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	<p>For example, if someone is a PhD student within a faculty member’s department, with no formal assessment role, does the “influence” clause kick in? What if they work in a similar subfield? Or a different department in the same faculty? What if they are an undergraduate student taking one course in a faculty member’s department as an elective? I don’t think it’s obvious what the best way to draw these lines are, but if there is to be a genuine prohibition, as opposed to a category that needs to be managed as a possible conflict of interest, it’s important to be clear just what is and is not prohibited. The proposed language will allow for a great deal of uncertainty as to just what is and is not permitted.</p>			
36.	<p>Faculty member: I found the new language somewhat puzzling as to what the status of the prohibition on “prohibited relationships” is meant to be. It is part of the Sexual Misconduct policy, so one might expect that prohibited relationships constitute sexual misconduct. However, they will not always satisfy the definition of “Sexual Misconduct” given in §2.1, which requires that sexual misconduct be “committed, threatened, or attempted against an individual without that individual’s consent”.</p> <p>So what is the status of consensual prohibited relationships? The policy seems slightly incoherent on this point: are they sexual misconduct, or prohibited by this policy on other grounds? What procedures will be followed if someone engages in a prohibited relationship? (Perhaps relatedly: is a student who engages in a prohibited relationship with someone in a supervisory role in violation of the policy, or only the supervisor?) The policy should be clear on these questions.</p>	Policy s.1.11	Prohibited Relationships – request for clarification if constitutes Sexual Misconduct	A new provision (now policy, s. 1.12) has been added to clarify that engaging in a Prohibited Relationship contrary to the Policy is a breach of the Policy by the individual holding the supervisory or influential role.
37.	<p>SASC: Policy s. 1.11 – add an immunity clause on Prohibited Relationships for those who experience sexual misconduct within such relationships. Banning sexual relationships where there is a supervisory role will not entirely prevent such relationships from occurring. Due to the inherent vulnerability of these relationships, already recognized by SC17, survivors will face significant barriers disclosing and reporting and the policy should not add the additional barrier of fearing repercussions</p>	Policy s.1.11	Prohibited Relationships – request to add an immunity clause	No changes required (as addressed in item 36). An immunity clause implies that the student relying on the clause has engaged in some blameworthy conduct, which is not basis of the proposed category of Prohibited Relationships.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	for being in a prohibited relationship. Without an immunity clause, many survivors of relationship violence will choose not to disclose, significantly limiting their choice of support and reporting options.			
38.	<p>Staff: A few comments about the use of the term “romantic relationships”. First, romantic relationships are assumed to be consensual, or at the very least, assumed to be entered into through consent and as equal partners. The use of the term “romantic relationship” contradicts and negates the very core of sexualized violence: that is, the misuse of power, of control and coercion, and of non-consent. Underlying romantic relationships is agency and voice. The discursive shift of romantic relationships to Prohibitive Relationships can be a regressive move on UBC’s part.</p> <p>Relatedly, this section assumes power to be static and always already a binary proposition rather than responding to power as shifting and relational.</p> <p>Also, 4.1.9 covers relationships where power imbalance (and exploitation) is at play, as does the COI policy. Some of the intent of s. 1.11 can be incorporated into 4.1.9 (particularly 1.11.1-1.11.4).</p> <p>Fourth, do we want — as an institution — to say that this kind of Prohibited Relationship is ‘sexual misconduct’? What is to be gained by this, and what or who will pay the greater price for this (particularly if we think of this outside of the bounds of heteronormativity).</p> <p>While I understand and support the spirit and intention of 1.11, I remain uneasy of its placement in Policy SC17.</p>	Policy s.1.11 – 1.13	Definition - Prohibited Relationship	Agreed in part. The Committee agreed to replace “sexual or <i>romantic</i> relationship” with “sexual or <i>intimate</i> relationship” where that phrase appears in Policy sections.
39.	<p>From Ombudsperson for Students’ Office (“Ombudsperson”):</p> <p>While understanding and supporting the need for this statement, by including this in this particular policy on sexual misconduct, is UBC stating that those who participate in such "Prohibited Relationships" are</p>	Policy s.1.11	Prohibited Relationships	No change required. The COI Policy (SC3) has a different focus and outcomes than this Policy. The University does not have a general, standalone policy governing relationships among Members of the UBC

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	engaged in "Sexual Misconduct" where it is not managed under the COI policy? Is there a more appropriate policy in which to include these provisions?			Community to which this Policy's proposed prohibition involving students can be added.
40.	<p>Faculty member: I am strongly supportive of the proposed additions related to prohibited relationships. In theory, the COI policy already covers this ground, but I do not consider it to be sufficient. While it may be useful after the fact, i.e., after there's already been a violation <i>if</i> a formerly undisclosed relationship comes to light, but there is too low a level of awareness that it applies in this context, as opposed to COI rules only serving to allocation of inappropriate benefits to a "related party." I think it's much better to create an explicit policy that makes clear the rationale and prohibits relationships where there is inherent vulnerability to sexual misconduct and exploitation.</p> <p>I also think this is workable as proposed. The proposed wording looks good to me. My only questions would be whether we need to be explicit about postdocs (unless they're already covered as staff, but even if so could make explicit), since they can also be in supervisory relationships with students, and visiting researchers and faculty. UBC doesn't always have an employment relationship with the latter, who may be visiting to engage in collaborative research for instance, but they can still have influence over a student's academic or professional future by virtue of their activities at UBC and use of UBC resources (e.g., labs), so it would be good if the same rules can apply to them.</p>	Policy s.1.11-1.13	<p>Prohibited Relationships – separate policy</p> <p>Prohibited Relationships – question re: postdocs</p>	<p>No change required.</p> <p>No change required. Post-doctoral fellows are listed as one of the included categories of Members of the UBC Community (Policy, s. 2.3) to whom the Policy, and category of Prohibited Relationships apply where they occupy a supervisory or position of influence over a student.</p>
41.	<p>From the Graduate Student Society ("GSS"):</p> <p>The fundamental aim of the policy is to prevent exploitation of: relationships of trust and vulnerability, particularly where there is a supervisory role or where the individual has influence over a student's current or future academic activities, working conditions, or career advancement.</p> <p>However, the policy assumes that these conditions are static. In the case</p>	Policy s.1.11-1.13	Prohibited Relationships – graduate students	No changes required. The intention of establishing the proposed category of Prohibited Relationship is to address the vulnerability and trust inherent in certain relationships involving students. It is the nature of the relationship with the student (and the inherent power imbalance arising from that relationship), rather than the identity of the individuals

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	<p>of faculty or administrative staff members this will normally be the case. They will be appointed in positions where supervision of students and staff is an implicit and consistent part of the job description. Graduate students, however, do not conform to this paradigm, as they move fluidly between being a Student and being a Teaching Staff Member.</p> <p>The responsibilities and expectations of being a graduate student typically include attending lectures and developing research, but graduate students will also teach their peers and may act in a supervisory capacity on projects relating to their research. Certain graduate programs, like Education, confer more responsibility of the “teaching” to the students, however, the distribution of Student versus Teacher time is largely unregulated. Depending on the program teaching may be optional, there may be mandatory, scheduled teaching, or there may only be only a short period of time where graduate students act in a teacher/supervisory role (i.e. on a short-term project).</p> <p>For example, a Biology graduate student may spend the majority of their time as a student, working with their supervisor to develop their research and attending courses. However, when this student lectures on their research to their peers, or leads a short-term project where they take on a supervisory-role, they become a teacher.</p> <p>Under the new policy we are concerned graduate student may be unfairly penalized per the Prohibited Relationship section as a result of these teaching commitments. We recognize the need for care around power imbalance in relationships, however due to the nature of graduate student responsibilities we believe it is unfair to characterize certain sexual and/or romantic relationships between graduate students in the teacher/student model. This model doesn’t accurately describe the scope or constitution of these relationships. The power dynamics in a relationship between two graduate students is more a relationship between two peers, not a teacher and a student.</p> <p>We should also consider that the relationship between graduate</p>			<p>involved, that is the basis for establishing the category of Prohibited Relationship.</p> <p>The intention underlying establishing the prohibition, and its contemplated protection for students, apply equally to Graduate students who may find themselves in a relative power imbalance with their supervisor or other individual having influence over their current or future academic, work life, or career.</p>

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	<p>students and their supervisors is itself a “relationship of trust and vulnerability”. Would graduate students feel comfortable disclosing a relationship to a supervisor who has a say over their academic future? We know from the survey results that many graduate students are not comfortable discussing topics that relate to closely to their work with their supervisor, let alone disclosing an intimate relationship. We would be greatly disappointed to see the introduction of a policy designed to protect vulnerable groups create a chilling effect on graduate students forming relationships or disclosing genuine conflicts of interest.</p> <p>Both the University of Toronto and McGill acknowledge the unusual position of graduate students and it might be appropriate to suggest that graduate students are either exempted from the policy or treated differently from other groups.</p> <p><b>Recommendation 1:</b> We recommend for section 1.12 that pre-existing relationships between graduate students (i.e. relationships that started before either student entered into a teacher/supervisory role) be entirely permissible with a letter of acknowledgement between the individuals submitted to the department. To the extent that the student is in the supervisory role and is responsible for academic or career advancement, alternate arrangements can be made via the department (i.e. marking/assignments can be delegated elsewhere).</p> <p><b>Recommendation 2:</b> We recommend for relationships that are started while one graduate student is in a student role and the other graduate student is in a teacher/supervisory role (section 1.11) that a report between the two individuals be submitted to the department. The individual faculty departments best understand the nature of the research and the environment graduate students work in, and we believe it is appropriate to first defer to the department regarding relationships between graduate students.</p> <p>The department head, upon receiving this report, can decide if the relationship should be treated as described in Recommendation 1, or if</p>			

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	<p>there is a sufficient cause for a report to be submitted to the C.O.I., which can investigate the relationships as they deem necessary. We believe it's necessary to be flexible and "fast-track" this process for graduate students, as the academic situation where one student is a teacher and the other is a student can last a matter of weeks or a matter of months, depending on the duration and type of work the students are engaged in.</p>			
42.	<p>UBCSUO: Proposed term Survivor defined as referring to someone who has recently been affected by sexual violence and has started the healing process.</p>	Policy s.2	Definitions – create definition for "Survivor"	Not recommended. Definition of "survivor" is not required for the policy.
43.	<p>SASC: incorporate the following list of trauma-informed principles into Policy s. 2 (Definitions), by definitions and operationalizing throughout the policy:</p> <ul style="list-style-type: none"> <li>- Acknowledging impact of trauma</li> <li>- Empowering victims/survivors</li> <li>- Maximizing choice related to disclosing, reporting, and accessing support</li> <li>- Restoring control to the victim/survivor</li> <li>- Recognizing the victim/survivor's need for (and right to) safety</li> <li>- Building on the victim/survivor's strengths</li> <li>- Treating the victim/survivor with dignity and respect</li> <li>- Moving forward at the victim/survivor's own pace, and</li> <li>- Respecting the victim/survivor's right to privacy</li> </ul> <p>SASC addresses maximizing choice, restoring control, recognizing need for and right to safety, and respecting the right to privacy in other specific comments/feedback.</p>	Policy s.2	Definitions – incorporate trauma-informed principles into the definitions, operationalize throughout policy	Already addressed above.
44.	<p>Faculty member: The §2.1 description of sexual misconduct, according to which it is <i>by definition</i> non-consensual, is too restrictive. Some cases of sexual misconduct involve consent. While there is controversy about the question in the literature, many theorists think, for example, that some cases in which one leverages one's authority over another to convince them to have sex with them, can involve consent, even though they are</p>	Policy s.2.1	Definitions - "Sexual Misconduct"	As addressed in item 36 above, a new provision (now policy, s. 1.12) has been added to clarify that the new proposed category of Prohibited Relationship constitutes a breach of the Policy and does not require a finding of Sexual

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	<p>misconduct. For example, if a young and impressionable student is flattered by her distinguished professor's inappropriate attention and freely decides to have a sexual relationship with him, this is arguably consent on her part, but very plausibly sexual misconduct on his. Another category of examples along these lines is quid pro quo arrangements, whereby sexual favours are traded for professional advantages. This can be done freely, soberly, and enthusiastically on all parties' parts; they still constitute misconduct.</p>			<p>Misconduct. The Policy proscribes that relationship even if the parties assert it is consensual.</p>
45.	<p>Faculty member: Another class of cases that should be categorized as sexual misconduct, but which do not fall under the definition in §2.1, are cases where one creates a hostile environment for people with a particular sexuality or gender identity, without behaviour targeting any particular individual. For example, a professor who showed gratuitous pornographic images in class, or a department head who loudly shares sexist jokes with a willing colleague where others can overhear them, would create a hostile working environment for women; this is sexual harassment, which is a kind of sexual misconduct. Despite appearing as an example in §2.1.2, this kind of behaviour is not captured by the general definition of sexual misconduct given in §2.1, which requires that the act in question "is committed, threatened or attempted against an individual without that Individual's Consent."</p> <p>These acts will sometimes occur without being directed against any individual; they should count as sexual misconduct regardless.</p>	Policy s.2.1	Definitions - "Sexual Misconduct" – creation of a hostile work environment and sexual harassment	<p>No changes required. The scenarios in the comment might be addressed under the Discrimination Policy (SC7) or perhaps could be addressed as a workplace management matter depending on the particular circumstances.</p>
46.	<p>UBCSUO: Proposed 2.1 The inclusion of the term Sexualized Violence and its definition.</p>	Policy s.2.1	Definitions – create definition for "Sexualized Violence"	<p>Already addressed.</p>
47.	<p>UBCSUO: Proposed 2.2 Sexual Misconduct; - 2.1.2 Sexual Harassment – should more closely follow labour laws definition and thus should read, "sexual harassment is any conduct, comment, gesture, or contact of an intimidating or sexual nature that is</p>	Policy s.2.1.2	Definition – Sexual Harassment	<p>Agreed in part. The current definition is sufficient and appropriate for the focus of this Policy, including that it is necessary to maintain that the harassment be sexual in nature, however, the provision</p>

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	<p>likely to cause offence or humiliation to the one directly subjected to the harassment; or that might, on reasonable grounds, be perceived by that individual as placing a condition of a sexual nature on employment, academic advancement, or on any opportunity for training and/or promotion”;</p> <p>- We also propose the addition of a second harassment clause – that is harassment that may or may not be sexual but intimidates</p>			<p>is amended to express that unwelcome conduct can be by gesture.</p>
48.	<p>UBCSUO: 2.1.3 Stalking and Cyberstalking, we think that stalking and cyberstalking should each be given their own definitions as they both encompass a wide variety of behaviours.</p> <p>Cyberstalking, we think the following definition is much more encompassing:</p> <ul style="list-style-type: none"> <li>• A person has experienced cyberstalking if they have been subject to repeated and unwanted online attention, within the past five years. Cyberstalking includes but is not limited to receiving unwanted messages via e-mail, text, or social media, or having someone post inappropriate, unwanted or personal information or pictures on a social media site. These behaviours can be very broad and include many behaviours</li> </ul> <p>Examples of cyberstalking can be included in the plain language document. Examples can include but are not limited to – Catfishing, pretending to get close to someone, monitoring locations, viewing private data and images, hacking online accounts, online identity theft, viewing geotags, etc.</p>	Policy s.2.1.3	Definitions – create definitions for stalking and cyberstalking	<p>The Committee made changes to the provision to more closely parallel the approach and language in the preceding paragraph 2.1.2 for sexual harassment. The suggested revisions were considered in part as overly broad for the purposes of this Policy, such as encompassing conduct that was not necessarily sexual in nature or that were addressed in the other, already listed examples of Sexual Misconduct.</p>
49.	UBCSUO: 2.1.4 Indecent Exposure should include online mediums	Policy s.2.1.4	Definition – indecent exposure	<p>The Committee amended the provision to expressly state indecent exposure may be via online mediums.</p>

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50.	UBCSUO: 2.1.5 Voyeurism, should include a statement regarding public bathrooms	Policy s.2.1.5	Definition – voyeurism	Not recommended. The Committee felt that the reference to “expectation of privacy” is sufficient and allows for necessary flexibility.
51.	<p>Lawyer: 2.3 Members of the University Community The language of this section presumes an ongoing relationship with the University, which does seem necessary under other provisions of the policy. A consequence of this is that individuals attending conferences being held by UBC, whether at UBC or elsewhere, are not covered by SC17 unless they have other attachments to UBC.</p> <p>Sexual misconduct can arise at conferences. UBC should have a policy that governs sexual misconduct by conference attendees who are not Members of the University Community.</p> <p>SC17 should state that SC17 applies to conduct at conferences which Members of the UBC Community attend because of their attachment to UBC, including conferences occurring outside the UBC campuses.</p> <p>3.1.3 Connection to UBC The policy should note expressly that conduct connected to student groups, fraternities and sororities is conduct which the University considers to be conduct with a real and substantial connection to UBC under this policy. The University could prohibit membership in fraternities and sororities. As it does not do so, it must take responsibility for conduct which occurs in connection with fraternities and sororities, which exist in relation to UBC.</p>	Policy s.2.3 & 3.1	Members of UBC Community and Jurisdiction to Investigate	<p>Not recommended. The criteria in the policy for Jurisdiction to Investigate provides appropriate flexibility for UBC to assume jurisdiction.</p> <p>UBC does not have control over non-UBC entities, including student societies, fraternities or sororities. UBC will, however, assume jurisdiction over incidents that occur outside of the UBC campuses, including at conferences and student social events, where the Director of Investigations, upon consideration of the particular facts, determines that the required elements for Jurisdiction to Investigate exist.</p>
52.	<p>From the Office of the Registrar:</p> <p>Dear Review Committee,</p> <p>Thank you for the opportunity to provide comments on Policy SC17. I would preface these remarks by stating that they are made by the Office of the Registrar of UBC and not on behalf of the Senates themselves.</p>	Policy s.2.3.1 and Procedures s.5.2.1	Definition of “student” and appeals for “student” Respondents – request to align with University Act definition	Recommended. The Committee amended the meaning of “student” to reflect the definition used in the University Act and to align with other UBC policies and regulations, and created a separate category of “registrant” to encompass individuals registered in non-credit

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	<p>We are largely supportive of the proposed changes with one substantive concern, the amendment to the definition of "student" in Section 8.3.1 of the revised policy (Section 2.3.1 of the current). This section currently reads: "students, defined as individuals enrolled at UBC, including co-op and exchange students;" and is proposed to read "students, defined as any person enrolled in any component of an academic or training program or course at UBC whether or not the program or course is for credit, including co-op and exchange students, or classes of learners who are designated by resolution of the senate as a student;"</p> <p>Our concern is with the phrase "whether or not the program is for credit" as this would extend it past the definition of Student provided by the University Act (S. 1 ""student" means a person who is presently enrolled at a university in a credit course or who is designated by resolution of the senate as a student;") or the resolutions of the Senate pursuant to the Act. While we recognize that the policy is not universally declaring persons to be students, we generally find it problematic to use a statutorily-defined term for the University in a non-statutory way. More specifically we are also concerned about the implications for jurisdiction. We would remind the Review committee that S. 61(1) of the Act grants the President disciplinary power over "students", and grants the Senate appellate jurisdiction over the discipline of "students" in S. 37. That is not to say that we would take the opinion that the University cannot nor should not take action against persons in non-credit programs or courses who are not students, but that using "students" to describe them will cause inevitable confusion and conflation with those laws, regulations, policies and procedures that do refer to students, and thus is problematic.</p> <p>In place, we would suggest that the University use its normal diction of "Learners" to refer to both students and those taking non-credit educational activities (Usually known as "registrants" in academic regulations), make clear what different policies and procedures apply to students and registrants, and devise what mechanisms are necessary to</p>			<p>educational activities.</p> <p>A corresponding amendment was made to procedures, s. 5.2 (now s. 6.2) to provide that for a respondent registrant, the Investigation Findings will be provided to the Administrative Head of Unit in whose unit the educational activity resides to determine the appropriate outcome or discipline.</p>

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	address non-student learner misconduct.			
53.	UBCSUO: 2.3.1 Students - specifically, the term “enrolled” as this brings about the gray area of incidents that occur between enrollment periods (e.g., summer)	Policy s.2.3.1	Definition – Students	The reference to “enrolled in a credit course” is based on the definition of student in the University Act. The definition has been amended to include “registered or enrolled”.
54.	UBCSUO: 2.3.2 Employees are research assistants included under staff members? If not, please explicitly state them: <ul style="list-style-type: none"> <li>• To that end, the inclusion of the term Affiliation defined as any individual having a public-facing and ongoing affiliation with the university in order to capture those who are members, for example, of the SUO, Coaches of UBC sanctioned sports or supplementary programs offered by the university.</li> </ul>	Policy s.2.3.2	Question if research assistants are employees	No changes required.
55.	Staff: Does this refer only to survivors, or also to third-party witnesses or those who may have overheard, or come by this information in some other form/forum?	Policy s.2.7	Question about “Disclosure”	Revisions have been made to clarify that Disclosure relates to the individual who has experienced the behaviour.
56.	Ombudsperson: Does this definition include anyone sharing information about Sexual Misconduct or is it intended to be limited to those who have been directly subjected to the behaviour? Wondering if we can use the word "disclosure" when the individual is a third party witnessing Sexual Misconduct or sharing a disclosure received from someone directly impacted. Later sections seem to use "disclosure" from only the perspective of the person who has experienced the sexual misconduct.	Policy s.2.7	Question about “Disclosure”	Addressed in item 55 above.
57.	AMS: Recommendation #1: Clarify ‘Jurisdiction to Investigate’ definition.  The AMS reiterates its previous submissions to the Board on the importance of redefining a ‘real and substantial connection to UBC’ with specificity and clarity.  Furthermore, the AMS argues that the Greek village should be explicitly	Policy s.2.9, 3.1	Definitions – Jurisdiction to Investigate	No changes required. The current definition provides sufficient discretion to the DOI to assert jurisdiction to investigate where the context of the conduct has a “real and substantial connection”. The jurisdiction of the university is robust and flexible and

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	included within the scope of this definition. As a space inhabited by UBC, with houses leased to them by UBC, this space is inherently connected to the UBC community, and this must be made clear.			allows the university to be appropriately responsive based on the facts.
58.	UBCSUO: 2.10 Investigation is poorly defined. We would suggest that the definition state something to the effect of “a formal inquiry and systematic study carried out by UBC...”	Policy s.2.10	Editorial suggestion – “Investigation” definition	Agreed in part. The definition has been amended to state that it relates to the investigation of allegations in a Report.
59.	UBCSUO: 2.11 Investigator is also poorly defined and should be reworded to reflect the changes proposed in 2.10	Policy s.2.11	Editorial suggestion – “Investigator” definition	Not recommended.
60.	Staff: Is it the context of the sexual misconduct that needs to have a real and substantial connection to UBC? Here, it says that the ‘alleged conduct must have RSC’ - sexual harassment, for example, doesn’t need to have a RSC, but that the sexual harassment happened at a conference in New York might be the RSC?	Policy s.3.1.3	Jurisdiction to Investigate – question as context for real and substantial connection	Addressed in item 61 below.
61.	Ombudsperson: The "alleged conduct" refers to Sexual Misconduct. In Policy SC 13, the real and substantial connection is to the "context" in which the behaviour occurred. I think it makes more sense if the RSC is not to the behaviour (stalking, voyeurism, etc.) but rather does the context in which this behaviour occurred (a off-campus seminar, a UBC-related conference v. a private social gathering, an unplanned meeting at a non-academic public event) have a RSC to UBC.	Policy s.3.1.3	Jurisdiction to Investigate – question as context for real and substantial connection	The Committee amends the section to state “the alleged conduct occurred in a context that must have a real and substantial connection to UBC”, consistent with the equivalent provision in the proposed amendments to the At-Risk Behaviour Policy (SC13).
62.	Lawyer: 3.2 Discretion to Decline to Investigate. The policy provides broad discretion to the Director of Investigations not to investigate. Given our view that the University is institutionally predisposed to avoiding concrete action, this is a significant concern. The Policy must provide that if the Director of Investigations declines to investigate, the Director must provide written reasons for that decision to the person whose complaint is not being investigated (Procedures 3.9), must report the Decision to the SVPRO, the SVPRO or the complainant must be able to ask the Director to reconsider the decision, and the IIO must report	Policy s.3.2 and Procedures s.3.9	DOI’s discretion to decline to investigate	Agreed in part. It is sufficient for the complainant to receive the reasons. The DOI’s existing practice is to reconsider the decision if there is new information. Amendments are made for the IO to include in its annual reporting the number of times the DOI exercised discretion to decline jurisdiction.

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	the decision in its annual reporting.			
63.	AMS: Recommendation #7: Specify the length of ‘time elapsed’ to decline to investigate. The AMS strongly believes that a period of time must be articulated, wherein the DOI has a right to decline to investigate “due to the time that has elapsed since the alleged misconduct occurred.”	Policy s.3.2.1	DOI’s discretion to decline to investigate – passage of time	Not recommended. The DOI’s discretion would be based upon an assessment of the particular circumstances of the matter. Specifying an arbitrary timeline would constitute a fettering of discretion and may also result in allegations not being investigated even where doing so would not give rise to prejudice.
64.	Staff: Is there any way to be a bit more clear about what constitutes ‘amount of time’. A survivor might believe that because its been three months since the incident of sexual misconduct that they can’t come forward to make a complaint.	Policy s.3.2.1	DOI’s discretion to decline to investigate – passage of time	Already addressed as above.
65.	UBCSUO: 3.2.1 – We firmly insist that this term be removed from the policy in line with the Limitations Act Section 3.1(i)(j), which broadly states that there is no statute of limitations pertaining to misconduct of a sexual nature. As an institution, we must uphold these same standards to protect survivors who, for whatever reason, were unable to come forward at or near the time of the misconduct/violence.	Policy s.3.2.1	DOI’s discretion to decline to investigate – passage of time	Not recommended. The University is obliged to carry out investigations in accordance with procedural fairness, with a related consideration being its ability to carry out an effective investigation. This provision is also found in the Discrimination Policy (SC7).
66.	Ombudsperson: Delay unfairness relates to the respondent. If this is not stated clearly here, could it give rise to an expectation for complainants to believe that they could argue that it would be unfair to them if the matter did not proceed despite the passage of time?  Also, "otherwise inappropriate" is very vague and very broad.	Policy s.3.2.2	DOI’s discretion to decline to investigate – unfair or otherwise inappropriate	No changes required. In the context of the section, that concern does not arise.  Revisions have been made, including replacing “unfair or otherwise inappropriate” with “proceeding with the complaint is impracticable”. The Committee notes that the DOI’s discretion is to be exercised judiciously

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				and is to be supported by written reasons as required by procedures, s. 3.9 (now 3.7).
67.	Staff: "otherwise inappropriate" seems very broad.	Policy s.3.2.2	Comment: DOI's discretion to decline to investigate – otherwise inappropriate	Addressed in item 66 above.
68.	Student: after conversation with a few members of UBC Fraternities, I found that the definition of Consent in section 4.1 seemingly contained a small error that raised doubts on their understanding of Consent. The sentence of concern is the first: "... must be affirmatively communicated through words or actively expressed through conduct." This raises the concern, in their minds, that perhaps it is possible to receive non-verbal consent, yet a conflict comes into place immediately afterwards when 4.1.1 states "consent cannot be implied ... cannot be assumed by a person's actions." This begs the question, what exactly is meant when 4.1 states "or actively expressed through conduct?" It seems as though it was meant to say consent must be affirmative in words <i>and</i> actions, but it instead suggests that actions are up to interpretation in the absence of verbal consent. This cannot be overlooked — a definition as important as consent should not have room for interpretation within the UBC community. Moreover, advocates for consent culture on campus (ex: SASC) should be able to use UBC's definition to accurately explain the concept. This could be solved simply by changing "or" to "and."	Policy s.4.1, 4.1.1	Consent – request for clarification as to consent by conduct	Agreed in part. As policy, s. 4.1 states, consent can be given by active conduct. The intention of policy, s. 4.1.1 is to reflect that consent may not be implied given the other individual's passivity or inaction. The provision is amended to remove the potential inconsistency or confusion.
69.	Faculty member: I have concerns about some of the new language in §4 on consent. I applaud many of the clarifications given; especially if consent is to play a central role in the definition of sexual misconduct, it is good to specify that e.g. consent should be affirmative, that it can be withdrawn at any time, that it cannot be given while unconscious, etc. Much of this is helpful. (The structure of §4 is a bit odd; things happen as subsections within §4.1, but there is no §4.2. I didn't see why most of these weren't up a level structurally, with §4.2 instead of §4.1.1, etc.)	Policy s.4	Comment – Consent	No response required.

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	<p>However, one of the new conditions given there seems to me to be highly problematic [addressed below].</p>			
70.	<p>Faculty member: The new §4.1.4 says that “the initiator of the sexual activity is responsible for obtaining consent.” I don’t know what problem this new statement is trying to solve, but I doubt very much that it is appropriate language. I have several serious concerns.</p> <p>One concern is that this language only makes sense given the assumption that sexual activity always has one “initiator,” with any other participants playing passive, receptive roles.... The use of the definite article “the” demonstrates quite a strong presupposition along these lines; the policy doesn’t merely assume that sex is typically asymmetric in this way, it literally cannot be understood without the assumption that this is always so.</p> <p>A second concern is that it’s just a mistake to suppose, even if there is one “initiator,” that only that person has a responsibility to avoid sexual misconduct. This is perhaps most obvious in cases of group sex with one initiator — if A initiates a group sex scenario with B and C, B might sexually assault C by neglecting considerations about C’s consent; B should obviously be responsible for this, but the proposed §4.1.4 says that A, not B, is responsible.</p> <p>But the worry is more general. Even in cases of one-on-one sex that conforms to the stereotype of one initiator, where A initiates sex with B, it’s clearly wrong to suppose that B has no responsibility to attend to A’s consent. One can sexually assault someone who initiates sexual activities.</p> <p>In short, §4.1.4 makes “she started it” a completely legitimate defense against sexual misconduct. I can see no justification for this language; it creates very serious problems.</p>	Policy s.4.1.4	Consent – initiator	<p>The purpose of the provision is to counter the belief that there is consent to sexual activity until and unless the other person objects or resists. It is not based upon nor suggesting static roles. The provision has been amended to provide that anyone who initiates a sexual activity is responsible for obtaining consent for that sexual activity, recognizing as well that there may be more than two individuals involved.</p>

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71.	Staff: This assumes a static and didactic sexual encounter rather than the shifting roles between 'initiator' and their sexual partner(s).	Policy s.4.1.4	Consent - initiator	Addressed in item 70 above.
72.	<p>Anonymous: On the clarification that the intoxicated cannot give consent:</p> <p>Evidently, those not able to issue verbal response, or those who do not issue verbal consent while drunk should not be held as consenting.</p> <p>However,</p> <p>Given that anyone who is legally intoxicated has put themselves in that state of their own volition,</p> <p>And taken that we must be held accountable for decisions made on our own terms</p> <p>Whereas in every other instance the intoxicated are held as legally responsible for their actions,</p> <p>And furthermore seeing how under the terms provided a "mutual rape" can occur if both parties in a sexual encounter are intoxicated,</p> <p>And respecting the agency which each adult individual holds:</p> <p>Verbal agreement to sexual activities while intoxicated is a valid form of consent, which neither party involved should face persecution for.</p>	Policy s.4.1.5(b)	Consent – intoxication	No changes required. As indicated in Policy, s. 4.1.5, the individual's intoxication must render them unable to appreciate the nature of the sexual activity, or to appreciate the risk or consequences of the sexual activity, or otherwise unable to choose whether to engage in the sexual activity. The use of alcohol or drugs does not always indicate an inability to give consent.
73.	Staff: "It is inappropriate..." feels a bit paternalistic/judgmental (the 'not acceptable' part). It could be re-written as: The Respondent's belief that consent was given due to intoxication or impairment from drugs or alcohol cannot be used as a defense."	Policy s.4.1.7	Consent – intoxication and mistaken belief; editorial suggestion	The Committee agreed to make the suggested revision.
74.	Ombudsperson: Sounds a bit moralistic rather than stating that such a response will not constitute a defence. Something like: "A Respondent's mistaken belief that there was consent due to intoxication or impairment from ... will not be accepted as a defence"	Policy s.4.1.7	Consent – intoxication and mistaken belief; editorial suggestion	Addressed in item 73 above.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
75.	<p>CUPE 116: Additionally, it is CUPE 116's understanding that investigations under Policy SC17 are intended to be strictly fact finding in nature, and there is still an opportunity to present mitigating circumstances and other relevant labour relations factors to UBC Human Resources subsequent to an investigation. By way of example, Article 4.1.7 states that it is not acceptable for a Respondent to respond to an allegation of Sexual Misconduct by claiming that intoxication or impairment from drugs or alcohol resulted in a mistaken belief that there was consent. Although this is the University's position in terms of fact finding, intoxication or impairment is often a very relevant labour relations consideration in the context of determining the appropriate quantum of discipline to be imposed, for example in the case of a unionized employee who produces substantive medical documentation of a disability.</p>	<p>Policy s.4.1.7 and Procedures s.5.2.3</p>	<p>Consent – intoxication; and unionized Respondents' discipline (Outcomes and Disciplinary Measures)</p>	<p>No changes required. The provision addressed the potential impact of intoxication or impairment as to Consent (since revised as per item 73 above). It does not relate to discipline or the decision maker's consideration of any intoxication or impairment in determining the appropriate outcome or discipline based upon the Investigation Findings.</p>
76.	<p>Staff: "cannot be relied on ..." by whom?... the Respondent? This line suggests that it's okay to submit evidence of a person's sexual reputation or history of sexual activity, but that the Investigator might not use it to adjudicate consent.</p> <p>Can this be changed, instead, to: "A person's sexual reputation or history of sexual activity cannot be submitted as evidence to prove that consent was more likely that consent had been given."</p>	<p>Policy s.4.1.8</p>	<p>Editorial suggestion: Consent – sexual reputation or history</p>	<p>The Committee agreed to make the requested change.</p>
77.	<p>Ombudsperson: "cannot be relied on" by whom? Can this be changed to "cannot be admitted as evidence to prove that ...."?</p>	<p>Policy s.4.1.8</p>	<p>Editorial suggestion: Consent – sexual reputation or history</p>	<p>Already addressed in item 76.</p>
78.	<p>Ombudsperson: suggested change:            "Even if sexual activity occurs outside of the class of Prohibited Relationships, there is an inherent risk that consent <del>will is not be truly</del> voluntary whenever there is an imbalance of power, or a relationship of trust of authority. In <u>such circumstances, the nature of the relationship with the Respondent will be given weight in determining the existence of consent.</u> <del>The event a Report is filed about that sexual activity it will be</del></p>	<p>Policy s.4.1.9</p>	<p>Editorial suggestion: Consent – power imbalance</p>	<p>The Committee agreed with the first suggested editorial change and made further revisions to address the second suggested change.</p>

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
	<p>difficult for a Respondent to rebut an allegation that the sexual activity was not consensual.”</p>			
79.	<p>CUPE 116 also takes some issue with Article 4.1.9 of the Sexual Misconduct Policy, which states that in cases of a power imbalance, it will be difficult for a Respondent to rebut an allegation that the sexual activity was not consensual. In our view, this language seemingly attempts to shift the standard of proof from the complaint needing to be made out on the balance of probabilities to placing a reverse onus on respondents in these cases. In our view, there is only one legal standard of proof to be applied in all cases; complaints need to be proven on the balance of probabilities.</p>	Policy s.4.1.9	Consent – power imbalance	<p>The Committee amended the provision as noted in item 78 above. The Investigator, after hearing and assessing all the evidence, determines if there was a power imbalance and, if so, its impact on whether there was consent to the sexual activity.</p>
80.	<p>SASC: Adopt a summary of the SVPRO that more accurately reflects their role on campus and provides a more detailed description of their services to ensure survivors are aware of all options available to them, and more accurately reflects way in which SVPRO may need to release personal information to other UBC units to coordinate assistance for students.</p> <p>Example excerpted from SFU’s Sexual Misconduct Policy:</p> <p>5.2 The Sexual Violence Support and Prevention Office will:</p> <p>f. work closely with off-campus services as well as on-campus service units including Health &amp; Counselling and Campus Security to ensure timely and coordinated assistance, support and referrals for members of the University Community affected by Sexual Violence and Misconduct and to reduce the repetition of Disclosures and Reports by a Survivor;</p> <p>Emphasize survivor’s options and choices related to disclosures and reporting, for example from SFU’s Sexual Misconduct Policy:</p> <p>7.4 A member of the University Community who Discloses or Reports to the Sexual Violence Support and Prevention Office that they have</p>	Policy s.5	SVPRO – request more detailed description of services while emphasizing survivor’s choice	<p>No changes required. The Committee removed this level of detail from the Policy and retained a general description of the SVPRO’s services. More detailed information of SVPRO’s services is readily available on the SVPRO’s website.</p>

**Feedback on Sexual Misconduct Policy (SC17) - Comment Table** (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
	<p>experienced Sexual Violence and Misconduct can expect to:</p> <p>...</p> <p>c. learn about on- and off-campus services and resources;</p> <p>...</p> <p>e. learn about the options and procedures for initiating internal and external processes to address an incident of Sexual Violence and Misconduct, as outlined in section 8 of this policy, and the limits to confidentiality associated with each option;</p> <p>...</p> <p>g. be provided with information to allow them to make autonomous and informed decisions about which services they believe will be the most beneficial; and</p> <p>h. be provided with information to allow them to make autonomous and informed decisions about which of the options outlined in section 8 to pursue, if any.</p> <p>7.5 A Survivor who Discloses to the Sexual Violence Support and Prevention Office that they have experienced Sexual Violence and Misconduct is entitled to decide whether to:</p> <p>a. access available on- and off-campus services and to choose the services they feel will be the most beneficial;</p> <p>b. contact the relevant law enforcement agency and pursue criminal proceedings;</p> <p>c. file a complaint with the British Columbia Human Rights Tribunal, where the matter falls within its jurisdiction;</p> <p>d. initiate other legal proceedings;</p> <p>e. file a complaint of sexual harassment under the University’s Human Rights Policy (GP 18); or</p> <p>f. convert their Disclosure into a Report pursuant to section 8.5.b of this policy, with the intention of initiating an internal process as outlined in that section.</p>			

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
81.	Anonymous: The description too of SVPRO's services is quite brief, I wonder if it could be elaborated on, there is a portion that says that SVPRO deals with concerns outlined in section 8, but again- it's vague. Would be helpful if there was a list of services and things that SVPRO is responsible for doing in the UBC community.	Policy s.5	SVPRO – request for more detailed listing of services	No changes required; already addressed above.
82.	UBCSUO: We recommend writing this section 5 (SVPRO) in consultation with SVPRO. This would ensure the language reflects the goals and missions of SVPRO. Furthermore, a point about advocacy should be included. It should also be noted that claimants do not need to make a formal report in order to access resources and that students who are no longer at UBC can still access supports from SVPRO.	Policy s.5	SVPRO – Services	No changes required. The Committee included representation of SVPRO from both campuses. The Policy, s. 8.2 states that support services and assistance are available on the basis of a Disclosure regardless whether the individual makes a Report or whether UBC has Jurisdiction to Investigate.
83.	Student: I would like to request that either a “guide” version of the Policy is made, or that there be a section devoted to support services. Someone doing research while they are in crisis is unlikely to understand the Policy, so perhaps there could be a 1-2 page “what survivors need to know” document that is easily accessible and easier to understand. If not that, a section devoted to support services would be very helpful — I understand that Section 5 exists to detail the procedures of SVPRO, but the absence of the SASC in recommending these support services makes the research process more confusing. This would be as simple as “Members of the UBC community may also choose to seek support at the SASC, run by the Alma Mater Society ...”	Policy s.5, 8.3	SVPRO support services, and assistance – request for additional documents	No changes required; addressed above and also an operational matter for SVPRO. The comment’s reference to services provided by the AMS’s SASC is addressed further below.
84.	FNHL: Having indigenous support worker(s) at SVPRO and the IIO would increase the likelihood of Indigenous students/faculty/staff coming forward. It would be ideal if the SVPRO and IIO websites identified these individuals as point-of-contact, and if relationships could be built with others on campus who are supporting Indigenous students so that students can be referred based on relationships of trust.	Policy s.5, 6	SVPRO and IO – Indigenous staff and contact persons	No change required. Operational matter.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
85.	<p>AMS: Recommendation #9: Affirm UBC responsibility to liaise with community organizations and provide options to survivors. The AMS stresses the importance of affirming UBC’s responsibility to liaise with whichever support resources a survivor chooses to access, rather than the limiting language referring solely to SVPRO.</p> <p>Throughout the policy, the University uses language that frames SVPRO as the singular office that campus units must engage in all matters pertaining to survivors. The policy must reflect the multitude of options for support that survivors can choose from, and not require them to use SVPRO in order to liaise with campus units. This should also include a reflection of SVPRO to be responsible for working with off and on-campus services to ensure timely and coordinated assistance, support and referrals.</p> <p>It is of the utmost importance that survivors can make autonomous and informed decisions as a core component of trauma-informed care. These commitments must be made explicit in the policy. The recently amended Senate Academic Concessions policy is an example of a policy that reflects a students’ ability to consult different support services and have a representative communicate on their behalf with a UBC unit.</p>	Policy s.5.1	Request – reference other support services in addition SVPRO	The Committee amends policy, s. 5.1 to clarify that the SVPRO is the point of contact within UBC for supports but is not the exclusive support agency for those affected by Sexual Misconduct. To provide consistency with the Vancouver Senate’s Policy and Procedures on Academic Concessions, other support agencies may assist the individual in obtaining concessions or other assistance for those who’ve Disclosed or Reported Sexual Misconduct.
86.	Staff: Is ‘single point’ inferring that SVPRO is the only point? Or is it a primary point? This framing might lead one to believe that UBC expects all those affected by Sexual Misconduct to only go to SVPRO. Wording it to keep things open for survivors to choose where and how and when to choose their support services.	Policy s.5.1	SVPRO – other support services	Addressed in item 85 above.
87.	Ombudsperson: Not sure what “single point” means. Same meaning as "first point of contact"? If it means "only" point of contact, is this supportive of Survivor's ability to choose where and how to seek help?	Policy s.5.1	SVPRO – clarification regarding other support services	Addressed in item 85 above.
88.	SASC: Clarify survivors are not required to disclose to the SVPRO but may choose a representative from SASC or another community agency to communicate with UBC units and coordinate assistance, support services	Policy s.5.1-5.2, 8.3	SVPRO – request alternate non-UBC agencies and	Addressed in item 85 above.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
	<p>and accommodations. Survivors who have already disclosed to an organization other than SVPRO are otherwise under the impression that they must disclose again to SVPRO or that they have disclosed to the wrong organization.</p> <p>The recently amended Vancouver Senate Academic Concessions policy states that students may choose support from a UBC unit or outside agency, such as the AMS SASC, to have a “representative communicate with the academic advising office on their behalf”.</p> <p>Amend procedures 1.2 accordingly to refer to the IIO liaising with others than just SVPRO to ensure supports and assistance remain in place during the initial review and investigation.</p>	Procedures s.1.2	representatives to coordinate support and assistance	Agreed, revision made.
89.	Anonymous: I also think that describing SVPRO as the single point of contact is accurate [sic] given the fact that the SASC exists as well? I think that's an oversight.	Policy s.5.1	SVPRO – SASC as other support service	Addressed in item 85 above.
90.	Staff: should 5.3 be moved to s.6?	Policy s.5.3	Editorial suggestion – move section to IO article	Agreed, with a corresponding amendment to the section’s reference to the IO being a separate office from the SVPRO.
91.	Ombudsperson: move 5.3 under 6?	Policy s.5.3	Editorial suggestion – move section to IO article	Addressed in item 90 above.
92.	Anonymous: Positive - The policy is extremely detailed compared to the existing one on the Internal Investigations Office (IIO) home page. Clearly explains scope, Jurisdiction to Investigate, time lines and roles.	Policy s.6; and procedures	Comment – role of Investigations Office	No response required.
93.	SASC: Remove reference to “trauma-informed” from Policy s. 6.1 (IIO). While it is commendable that the IIO remains committed to hiring investigators trained in trauma-informed approaches, an investigation process cannot be entirely trauma-informed and it is misleading to survivors to promise trauma-informed investigators. Instead, the AMS	Policy s.6.1	Investigations Office – delete reference to “trauma-informed” and operationalize	Agreed in part and as addressed in item 23 above. The section is amended to state that the IO’s investigators employ a trauma-informed approach.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
	SASC recommends including a tangible list of what survivors can expect from the IIO, such as being provided with information to allow them to make autonomous and informed decisions about reporting options, the option to withdraw from the investigation at any time, and the possibility of interim safety measures to protect them from retaliation (e.g., s. 7.4 of SFU's s. 7.4 of SFU's Sexual Violence and Misconduct Prevention, Education and Support (GP44) Policy).			
94.	Staff: "Trauma-informed" is about approach and a set of understandings and skills, no? That trauma-informed is not an embodied space? That the IO provides trauma-informed investigators, not investigations? Perhaps I'm splitting hairs, though.	Policy s.6.1	Investigations Office – trauma-informed	Already addressed above.
95.	Ombudsperson: These terms are often used interchangeably - by including both here, how are they different in this context?  Are people trauma-informed or are practices and approaches trauma-informed? I understand that all staff, in addition to investigators at the IIO provide trauma-informed services and care.	Policy s.6.1	Investigations Office – "neutral and impartial"  Investigations Office – "trauma informed"	No changes required. The IO does not favour any person before it or take sides (neutral) and will treat them equally, fairly and justly (impartial)..  Already addressed above.
96.	Lawyer: While the proposed data reporting is welcome, we contend it is incomplete. The University needs to know at least the following: the prevalence of sexual misconduct at UBC, the rate of disclosure of sexual misconduct at UBC, the services provided in respect of those disclosures, the rate of formal reports of sexual misconduct, and the outcome of those complaints.  The University must continue to attempt to find out what women's experience of sexual misconduct at UBC actually is. To do this, it must conduct baseline surveys of the climate women experience at UBC, and the prevalence of their experiences of sexual misconduct. This was not done before Policy 131 was brought in, and should have been. These surveys should continue on an annual basis.	Policy s.7	Statistics	The Committee has made revisions to expand what must be reported on an annual basis

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	<p>Re SC17 7.0 Annual Reporting The University must collect meaningful data from the SVPRO and the IIO. While we fully agree that the SVPRO must provide services as requested irrespective of where people encounter sexual misconduct in their lives, and must track and report upon those services, it must also track disclosures of sexual misconduct at UBC of which it becomes aware, and the services provided to that group of SVPRO users in respect of their disclosures.</p> <p>The SVPRO must also track the proportion of those disclosing sexual misconduct at UBC who choose not to make a formal report, and why they are making that choice. Given how little action may be taken when a formal report is not made, barriers to making formal reports must be identified and remedied. UBC has made a commitment to reduce barriers to Reporting or Disclosing, and tracking and publicly reporting these barriers is a practical step to meeting this commitment.</p> <p>The IIO must not only report investigations and alternative processes commenced, but also their outcomes, including whether any action was taken as a consequence of the investigation or alternative process undertaken.</p>			
97.	<p>From a Student Senator:</p> <p>7.1: Can UBC also please report the number of disclosures as well?</p>	Policy s.7.1	Annual Reporting	Reporting the number of requests for SVPRO support services more accurately reflects usage and that SVPRO provides support services irrespective of when and where any incident of Sexual Misconduct occurred. This was also at the request of the Board’s People, Community & International Committee. SVPRO is not prevented from reporting the number of Disclosures.
98.	FNHL: better and more clear communication for individuals considering making a Disclosure or Report, such as clarifying how many times the survivor is expected to tell their story, to whom, and for how long.	Policy s.8 & 9	Disclosure and Reports – further detail as to process	No change required. SVPRO can provide information as to the process but each matter depends on its own

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

ID	Comment	Applicable Section(s)	Category	Committee Response
				circumstances.
99.	Student Senator: 8.1: Very much appreciate that it is specifically mentioned that “decision to Disclose and the decision to Report are separate decisions”.	Policy s.8.1	Comment – Disclosures and Reporting	No response required.
100.	<p>AMS: Recommendation #10: Clarify confidentiality and information sharing practices between UBC units. The AMS asserts that the policy must be transparent on when, with whom, and what information will be shared with campus units, so students are aware of how their confidential information is circulated within the university.</p> <p>Survivors must be made aware that in order to access different accommodations or processes, their confidential information will be circulated within the university. Survivors must know the specific individuals and units that will receive their information to mitigate any conflicts of interest or other concerns. At its core, the survivor must consent to all distributions of their information and be fully informed of its recipients.</p>	Policy s.8.2	Request – explicitly set out processes of information sharing within UBC in provision of supports services and assistance	Recommend in part; Policy s.8.2 has been amended to reflect that information necessarily shared on a limited and need-to-know basis to provide support services and assistance.
101.	FNHL: Issues relating to retaining funding and scholarships for survivors and other students in trauma needs to be addressed (similar to what is in place for students with disabilities), and align SC17 with the Senate’s Academic Concession policy. Funding and scholarship requirements should be on the agenda when speaking to the Province and/or Bands where a significant portion of funding for Indigenous students comes from.	Policy s.8.3	Assistance – maintaining funding and scholarship for survivors and others in trauma	No changes required. These matters are beyond the scope of this Committee. There are existing mechanisms for the provision of emergency funds and supports outside of this Policy.
102.	UBCSUO: iii) Academic/employment accommodations/concessions: Ensuring that survivors have immediate and ongoing access to academic/employment accommodations/concessions is instrumental in safety planning for the survivor. Acknowledging that those who have experienced an intuition-associated incident of sexual violence or misconduct are at an increased risk of a host of negative outcomes, it is paramount to safeguard their ongoing success through access to	Policy s.8.3	Assistance for survivors	No changes required.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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	accommodations/concessions as directed by SVPRO or, when applicable, the Policy sub-committee.			
103.	Anonymous: 8.3 needs to be clarified if this is from the appropriateness of the survivor.	Policy s.8.3	Assistance provided	Not recommended. Assistance is always subject to being reasonable based on the particular circumstances.
104.	SASC: Policy s.8.3 should require notifying students of how their personal information will be shared between units in order for them to acquire support services listed in the policy. Survivors report not having an opportunity to indicate if there were conflicts of interest or other concerns regarding how and with whom their information would be shared.  Section 8.3 should indicate that personal information will only be shared with student's consent and that the least amount of personal information as possible will be shared. Clarify how much information will be shared.	Policy s.8.3	Disclosures – specify who receives information for assistance and require consent	Addressed in part in item 100 above, and also is an operational matter.
105.	UBCSUO: 8.3 This list should also include a clause that states this list is not exhaustive	Policy s.8.3	Editorial suggestion	No change required.
106.	Lawyer: 8.3 This section relating to the SVPRO must indicate that support through the processes which are in place once a Report is made is available from the SVPRO, including both Alternate Resolution Processes, and the formal steps of an Investigation. This is a very serious deficiency in the present form of the Policy.  The policy should be more explicit that a person is entitled to be supported by an advocate or support person at any stage.	Policy s.8.3 & 5	SVPRO Supports	Not recommended. Already addressed in Procedures ss. 1.2 and 3.10 (now 3.5).
107.	Ombudsperson: Add "leaves"? (re: temporary work reassignment, location reassignment, or scheduling changes)	Policy s.8.3.6	Editorial suggestion	No change required.

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108.	SASC: the proposed amendments only provides for interim safety measures where the behaviour falls under the At-Risk Behaviour Policy (SC13), but that policy creates a definition of at-risk behaviour that will not protect survivors in all circumstances (e.g., interpreted as applying to physical safety and does not explicitly include risk to psychological safety); the SASC will be submitting a separate submission for that separate policy review of the At-Risk Behaviour policy. Recommend SC17 include interim safety measures without requiring a report to the IIO, as requiring a report creates additional bureaucratic steps and increases the number of offices and individuals with access to survivor’s personal information. (See policies from Concordia University, University of Toronto, and Memorial University for examples of incorporating interim safety measures directly into PSI Sexual violence policies.)	Policy s.8.3.7	Interim safety measures – in absence of a Report, implementing and monitoring, response coordination team	No changes required. An individual who makes a Disclosure can receive assistance that can include safety planning measures, without requiring the individual to file a Report. The At-Risk Behaviour Policy (SC13) also allows for the imposition of restrictions on a person alleged to have engaged in At-Risk Behaviour in the absence of a Report to the IO where there’s a reasonable belief that immediate action must be taken to protect the safety of any person.
109.	SASC: Clarify which UBC unit will ultimately hold responsibility for the implementation and monitoring of interim safety measures.  Specify that coordinating interim safety measures may require the creation of a response coordination team. Make clear to survivors that SVPRO will need to consult and coordinate with other UBC units and that a coordinating team may be assembled for some safety measures, thus providing transparency on who has access to the survivor’s personal information, how much information will be shared, and for what purpose.	Policy s.8.3.7	Interim safety measures – responsibility to implement and monitor; creation of response coordination team	No changes required. Interim safety measures are addressed under the At-Risk Behaviour Policy (SC13).
110.	Lawyer: We also note that the Sexual Misconduct policy appears to be written in such a way that it is “unaware” of the protections to the UBC community offered in the At-Risk-Behaviour policy. The Sexual Misconduct policy emphasizes that little or no formal action may be taken without a Report, while the At-Risk-Behaviour policy makes clear that a decision-maker finding a reasonable risk of harm may restrict the activities of a UBC community member for at least 21 days, after which UBC must take steps to investigate. This is an important protection, especially as persons who may be considering a Report have often already been subject to violent acts which certainly constitute harm. It	Policy s.8.3.7 & 8.5	At-Risk Behaviour	No changes required. Addressed above.

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	<p>should be stated in the Sexual Misconduct policy that persons who feel at risk are entitled to ask for protection under the At-Risk-Behaviour policy, rather than just a referral to it.</p> <p>The University must also meet its obligations under both the Human Rights Code and the Workers' Compensation Act to respond effectively when it becomes aware of instances of sexual misconduct. It must do this to protect others who may be subject to repeat instances of that conduct. In many instances, this will require the University to act, even if the complainant does not wish the University to do so.</p> <p>The University's sexual misconduct policy must be clear that the policy does not and cannot remove the University's obligations under these two statutes to act effectively to protect others and prevent ongoing harm when it becomes aware of sexual misconduct. The current language (8.5) errs on the side of describing the obligation to act as more of an exception than it should be. The phrase "in exceptional circumstances" should be removed. Some additional language about the duties of the University to act could be added here.</p> <p>Re "Background and Purposes", Page 1 For this reason we strongly oppose removal of the University's acknowledgement that it has a responsibility to maintain a respectful environment, and a duty to support members of the University community affected by sexual misconduct.</p>			<p>A key underlying principle of the Policy is to honour the choice of the individual making the Disclosure and provide them with assistance whether or not they wish to make a Report or whether the University has jurisdiction to investigate the incident. The University may act without regard to the individual's choice not to make a Report in limited circumstances.</p> <p>Addressed in item 16 above.</p>
111.	<p>Student Senator: 8.4: "...that Member is encouraged to contact the Sexual Violence Prevention and Response Office"... How will communications regarding how to reach out and who to reach out to be communicated to the general UBC population? Will you be able to share a communication plan with us?</p>	Policy s.8.4	Communications with SVPRO	Not for inclusion in the policy: operational decision for the SVPRO.
112.	<p>Lawyer: 8.4 Disclosures to other than the SVPRO We are very concerned about disclosures being handled by individuals with no relevant training, and by the University's inability to provide relevant training to all who</p>	Policy s.8.4	Disclosure	Already addressed in Policy s.8.4 by referring people to the SVPRO, with an additional amendment to provide that

**Feedback on Sexual Misconduct Policy (SC17) - Comment Table** (by applicable sections)

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	<p>might receive disclosures.</p> <p>In these circumstances, it is critical that the University express its preference that those receiving disclosures tell the complainant about the SVPRO, show the person how to contact the SVPRO, encourage the complainant to contact the SVPRO, and make that contact by email or telephone with the individual at the time of disclosure if the individual is willing.</p> <p>The current language errs too far on the side of an approach that will result in the University not having to act in any way.</p> <p>In the interests of determining the prevalence of sexual misconduct, the University should encourage those receiving disclosures to advise the SVPRO of the fact of the disclosure, at least. This should not require the permission of the complainant.</p>			<p>any Member of the UBC Community who receives a Disclosure is encouraged to contact the SVPRO for support and information as to how best to respond and support the disclosing individual.</p>
113.	<p>SASC: Section 8.4 provides inadequate guidance to UBC community members on the confidentiality of a disclosure. It should be explicitly clear that UBC Community Members must keep disclosures confidential, unless the survivor requests an individual to make a third-party report or circumstances related to section 8.5 arise. Since other UBC policies rely on a 'need to know' basis of information sharing, it is often inappropriately assumed that sexual violence disclosures follow the same policy. The current practice of 'need to know' permits university faculty and staff to use their - often untrained - discretion to share sensitive and personal information related to trauma, abuse and sexual violence. Without clear confidentiality guidelines to the contrary, the SASC often sees UBC community members circulate survivors' personal information without their consent or even consultation. The vagueness in the current policy obfuscates how privacy will be addressed at the expense of survivors, while maintaining UBC's power and control over information and liability.</p>	Policy s.8.4	Disclosures – emphasize confidentiality of Disclosures	Addressed above.

## Feedback on Sexual Misconduct Policy (SC17) - Comment Table (by applicable sections)

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114.	<p>Student Senator: 8.5: “In exceptional circumstances, where required by law or where, in the discretion of the Director of the relevant Sexual Violence Prevention and Response Office, there is a risk of significant harm to anyone’s health or safety, the Director of the relevant Sexual Violence Prevention and Response Office may do one or both...”</p> <p>- First of all, this is a super long sentence and very hard to follow. I would love if this could be rewritten so that individuals seeking information from this document don’t need a law background to clearly understand what this is talking about.</p> <p>- Secondly, please note where it is required by law. While someone who is familiar with the law will see that relevant scenarios are mentioned below, it is not clear for someone very unfamiliar with the processes of reporting/disclosing sexual misconduct.</p>	Policy s.8.5	Disclosures	No changes required.
115.	Anonymous: 8.5 why is SVPRO highlighted, does it mean that if someone reports at SASC it is handed to SVPRO?	Policy s.8.5	SVPRO	No changes required. The section addresses how UBC will handle receipt of a Disclosure and the exceptions to maintaining its confidentiality where the individual chooses not to make a Report. SVPRO is highlighted as it is part of UBC and is the designated office to receive Disclosures. SASC is not part of UBC and has its own policies and processes.
116.	<p>UBCSUO: 8.5 In this case, the survivor should be informed if the director intends to make a report.</p> <p>8.7 add in “under section 8.6 and 8.5 they will be notified.”</p>	Policy s.8.5 & 8.7	Disclosures	Amendments made to Policy, s. 8.7 to require consent.
117.	Lawyer: “Institutional Reports” should be a defined term in the section 2 Definitions.	Policy s.8.6	Definition for “Institutional Report”	No changes required. The Committee felt it is unnecessary.
118.	SASC: The possibility of an institutional report is an unnecessary intrusion on survivors’ choice, agency, and privacy. SASC has significant concerns about asking a confidential support office to report without survivors’ consent, even if any subsequent investigation does not require	Policy s.8.6	Disclosure / Institutional Reports	Agreed in part. It was not the intention that the SVPRO’s exercise of discretion to make an Institutional Report would be done without the consent of the

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	<p>their involvement. Where there is a risk of harm to self, harm to others or harm to a child, both legislation and jurisprudence establish legal reporting requirements, such as in the <i>Child, Family and Community Service Act</i>, and other reporting obligations for health and safety reasons. Outside of these limited situations, it is neither trauma-informed nor survivor-centric to report. Expectations of confidentiality are central to creating a safe environment where survivors can disclose and seek support. The harms associated with requiring a confidential advocate or support office to report without survivor’s consent have been well established in research throughout Canada and the United States. The safety of the UBC community can be assured without compromising confidentiality of the SVPRO. This can be achieved through the use of interim safety measures requested by survivors, or a third-party report, with the informed consent of the survivor (see submission for citations).</p>			<p>individuals. The ability to proceed on the basis of an Institutional Report is important even if rarely utilized. The section is amended to provide that the Director of SVPRO obtains the consent of the individuals who made the Disclosures about the Member of the UBC Community to include information about their situation, though not their name without consent, within the Institutional Report.</p>
119.	<p>Anonymous: 8.6 “right not to participate” does that mean the case details / whole record or just the name?</p>	Policy s.8.6	Disclosures / Institutional Report	No changes required.
120.	<p>UBCSUO: 8.6 We think it is important to inform survivors that while they will try to protect their anonymity, due to other information that would be shared, their identity may become apparent. Perhaps add “reporter will not disclose the names of the individuals however it may be impossible to keep them anonymous based on the dates and times of the anonymous reporter”</p>	Policy s.8.6	Disclosures / Institutional Report	No changes required; addressed in item 118 above.
121.	<p>AMS: Recommendation #2: Affirm survivors’ consent within institutional reporting.</p> <p>The AMS is concerned that the new institutional reporting section (8.6) will override a survivor’s agency and consent to have their disclosure utilized in this process.</p> <p>Additionally, the AMS is concerned by its implications with the confidentiality of UBC operated services.</p>	Policy s.8.6	Reporting – Institutional Reports	No changes required; addressed in item 118 above.

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	<p>The policy must be explicit that survivors' disclosures will not be used within an institutional report unless the survivor consents. Additionally, the AMS worries that, under this amendment, survivors would be uncomfortable accessing support services under SVPRO. As it stands, common misunderstandings of SVPRO as an investigative body already exhibit a level of distrust that survivors have in approaching UBC. To protect the invaluable support work that SVPRO offers, confidentiality and survivor-centric approaches must remain intact.</p> <p>While the AMS understands UBC's responsibility to protect its community from known perpetrators of sexual misconduct, the outlined approach is 'anti-sexual violence' rather than 'pro-survivor.' It is of critical importance that UBC centers survivors in its institutional responses, as a vital pillar of building trust in this policy and its processes.</p>			
122.	Student Senator: 8.6-8.8: Could you refer to section 10 at some point in this? It is repeating in 10.3-10.5	Policy s.8.6-8.8	Disclosures / Institutional Report	No changes required. The comment is unclear. The policy ss. 8.6-8.8 and s. 10 relate to two separate circumstances under which Reports may be made and which may involve the exercise of discretion.
123.	Ombudsperson: Add "or otherwise required by law" at the end? I'm thinking of a BC Ombudsperson's investigatory powers for example.	Policy s.8.8	Editorial suggestion – confidentiality of SVPRO records	Agreed, section is amended.
124.	<p>Lawyer: We are very concerned that purported concern for those making disclosures will in practice amount to practices which dissuade formal reports and suggest that formal reports are in some way unnecessary or overkill or too demanding or too stressful or not nice.</p> <p>The University must foster a culture that supports the making of formal reports, which acts respectfully and effectively in respect of such reports,</p>	Policy s.9.1	Reports – principles	No changes required. The Policy states UBC's commitment to reducing barriers to Disclosing and Reporting, providing comprehensive education, prevention and response initiatives. The Committee has proposed the Immunity Provision to

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	<p>and which supports taking as much action as possible in respect of disclosures that are received, even if a formal report is not made.</p> <p>At a minimum, establishing such a culture requires the policy to state expressly that formal reports are important to addressing the problem of sexual misconduct, that the University encourages people to make formal reports whenever possible, and that it is committed to providing support to those who make formal reports, both in terms of processing their reports, and in terms of assisting them through the process.</p>			further encourage Disclosures and Reporting.
125.	Anonymous: How an individual can submit a report is unclear in the policy. Not sure if this is a good idea to explicitly mention.	Policy s.9.2 and Procedures s.2	Reports	Level of detail not appropriate for inclusion in policy; information may be found on website of the IO.
126.	<p>Lawyer: 9.3 Jurisdiction over Allegations of Sexual Harassment In a policy that is set up to meet the needs of those making complaints, it is unclear why the decision about whether to deal with sexual harassment under SC17 or under the Discrimination Policy (SC7) should rest with the Director of Investigations, rather than with the complainant.</p> <p>The Policy must provide that if the Director of Investigations declines to take jurisdiction over a sexual harassment complaint, the Director must formally refer the complaint to the SC7 process, must provide written reasons for that decision to the person whose complaint is not being pursued by the IIO, must report the decision to the SVPRO, the SVPRO or the individual must be able to ask the Director to reconsider the decision, the IIO must report the decision in its annual reporting, and the IIO reporting must indicate what the outcome of the complaint was under SC7.</p>	Policy s.9.3	DOI's determination whether the Sexual Harassment allegation will be addressed under Sexual Misconduct or Discrimination Policy	No changes required. DOI is the UBC person with authority over investigation under both policies. The decision which policy will apply is made in consultation with the individual making the report.
127.	Ombudsperson: Add "in consultation with the Director, Human Rights as appropriate," after "Reports that contain allegations of sexual harassment alone will be reviewed by the Director of Investigation"?	Policy s.9.3	DOI's determination whether the Sexual Harassment allegation will be addressed under Sexual Misconduct or	Not recommended. Requiring the DOI to consult with another office may necessitate disclosing the individual's personal information unnecessarily and

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			Discrimination Policy - editorial suggestion	could also create confusion in the process.
128.	Staff: remove “Independent” from “Independent Investigation Office”	Policy s.9.4	Editorial suggestion – title of IIO	Agreed, to reflect the recent change to the office’s name that was effective as of February 1, 2020.
129.	CUPE 116 would ask that Policy SC 17 address investigations which involve concurrent criminal proceedings, so we can advise our members with greater certainty in these matters. CUPE 116 advises members facing criminal charges to consult with criminal counsel prior to making any statement to the University, and the advice of criminal counsel is often for the member to not participate in any investigation until such time as the criminal matter is resolved. We are seeking greater clarity as to how the University intends to proceed in these cases, particularly around whether or not the University’s intention would be to draw an adverse inference from a member’s lack of participation.	Policy s.9.4-9.5	Investigations – request expressly address concurrent criminal proceedings	No changes required. Policy, s. 9.5 reflects that the DOI has discretion whether to suspend UBC’s process where other external processes are underway, which may include the criminal process. There is no automatic suspension of UBC’s process. As in any UBC investigation where a Respondent elects not to participate, the process may proceed without the investigator having the benefit of the Respondent’s evidence.
130.	UBCSUO: 9.5 It states ‘may elect’ but it’s in consultation with the survivor.	Policy s.9.5	Comment on DOI’s discretion to suspend UBC process	The Complainant is consulted but the decision remains that of the DOI as the individual responsible for this stage of the process under the policy, which is a discretionary decision to be made upon consideration of the particular circumstances, including the wishes of the Complainant.
131.	Lawyer: 9.5 Decision to Suspend UBC Process In a policy that is set up to meet the needs of those making complaints, it is unclear why the decision about whether to suspend the processing of a Report should rest with the Director of Investigations, rather than with the complainant.  This section should say expressly that if a decision to suspend is made by	Policy s.9.5	DOI’s discretion to suspend UBC processes	UBC’s process is an inquisitorial process, with the DOI being the individual responsible for managing the Investigation process. As addressed above, the DOI will consult with the Complainant in making her determination whether to suspend UBC’s process.

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	<p>the Director, the ensuing passage of time will not count against the viability of the complaint.</p> <p>Consistent with our concern about the University’s tendency not to act, the Policy must provide that if the Director of Investigations suspends the UBC process, the Director must provide written reasons for that decision to the person whose complaint is not being pursued by the IIO, must report the decision to the SVPRO, the SVPRO or the individual must be able to ask the Director to reconsider the decision, and the IIO must report the decision in its annual reporting. The IIO must also track the alternate proceeding, and report annually on the number of matters that remain suspended.</p>			<p>Where a matter is suspended, it depends on the particular factual circumstances whether an Investigation will later proceed.</p> <p>The requirement to provide reasons is found in Procedures, ss. 3.8 and 3.9 (now 3.6 and 3.7) for jurisdictional decisions. The DOI’s practice is to also provide reasons where the DOI decides to suspend the DOI’s process.</p> <p>Revisions have been made to include as part of the IO’s annual reporting, the DOI’s aim to report on an annual basis the number of times jurisdiction is declined as well as resolution by alternative resolution processes.</p>
132.	<p>Lawyer: 9.6 Referrals to At-Risk-Behaviour Processes. The At-Risk-Behaviour process can be initiated without a formal report. The SVPRO and those receiving disclosures should be encouraged to consider whether there are steps that could be taken with respect to the respondent party that would be helpful to the complainant, even if the complainant is not wanting to make a formal report under SC17. The need to consider this and advise the complainant that this is an option should be set out in SC17 in relation to Disclosures. Currently the policy only describes this option in relation to Reports.</p>	Policy s.9.6	At-Risk Behaviour	No changes required. Already addressed above.
133.	<p>CUPE 116 disagrees with the University allowing individuals to submit anonymous or third party complaints in all three policies. It is our view that anonymous or third party complaints will always violate due process rights. Member respondents have a right to be provided with full particulars of the allegations. In our view, this includes the identity of the person making the complaint against them. Additionally, hearsay</p>	Policy s.10	Anonymous and Third Party Allegations	No changes required. As stated in policy, s. 1.8, UBC is committed to procedural fairness. With respect to anonymous and third party allegations, policy ss. 10.3-10.4 state that UBC may be unable to proceed with anonymous or third party

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	evidence is generally inadmissible in labour arbitration hearings and court proceedings, which makes the prospect of allowing complaints based entirely on this type of evidence (i.e. third party complaints) extremely problematic in our view.			allegations where doing so would violate procedural fairness, which would be a fact-specific assessment undertaken by the DOI.
134.	<p>Lawyer: We strongly welcome language supporting third party reporting, and pledging the University to act as far as possible in respect of it.</p> <p>10.3 In this section the University should articulate its obligation to act under the Human Rights Code and the Workers' Compensation Act, and its commitment to taking as much effective action as it can, before it describes why it might not be able to take action.</p> <p>This section should include reference to referring a matter to the At-Risk-Behaviour processes if there is conduct that may be harmful about which there is no Report.</p>	Policy s.10	Anonymous and Third Party Allegations	Agreed in part. Where an Investigation is not able to be undertaken due to a lack of evidence or procedural fairness concerns, it is unlikely restrictions would be imposed on another person under the At-Risk Behaviour Policy (SC13). However, the last sentence of s. 10.3 is amended to provide that "the DOI will consider whether any other steps can and should be taken, including referring the matter to the At-Risk Behaviour Policy (SC13)."
135.	Anonymous: Generally speaking, SC17 should be more transparent for students to access, as a policy that will inevitably deeply impact students and staff at UBC (many of whom do not have intimate experience with policy literacy) should be more transparent in its language, for example many students are unfamiliar with third party reporting (TPR), thus the policy should explain what TPR does and how it works. Section 10 outlines the circumstances through which TPR can be utilized, but does not do an adequate job explaining the potential outcomes of a third party report.	Policy s.10	Third Party Allegations	No changes required. This has been referred to the IO as an operational matter such as consideration of a FAQ on its website.
136.	Staff: A survivor (individual who was directly subjected to Sexual Misconduct or the individual "who has experienced" Sexual Misconduct) cannot make an anonymous disclosure?	Policy s.10.1	Anonymous Allegations – request clarification	No changes required. The Policy does not provide for survivors to make anonymous allegations. An Investigation can rarely proceed solely on the basis of an anonymous allegation and without the participation of the individual who was

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				directly subjected to the Sexual Misconduct.
137.	Ombudsperson: To clarify, individuals who are directly subjected (in other places this wording is "has experienced the ...") Sexual Misconduct cannot make anonymous reports?	Policy s.10.1	Anonymous Allegations – request clarification	Addressed in item 136 above.
138.	UBCSUO: move 10.2 so it is 10.1 instead	Policy s.10.1 & 10.2	Editorial suggestion	No change required.
139.	Ombudsperson: Would this provision be better placed after 8.4?	Policy s.10.2	Editorial suggestion	No change required. The intention for including the provision under Article 10 was to emphasize for Members of the UBC Community who receive a Disclosure that they should honour and not disregard the choice of the disclosing individual not to make a Report by making an anonymous or third party allegation or Report.
140.	Staff: Change sentence to “UBC may be unable to proceed with an Investigation <u>involving</u> on the basis of anonymous or third party allegations...”	Policy s.10.3	Anonymous and Third Party Allegations - editorial suggestion	Agreed; the provision is amended to replace “involving” with “based on”.
141.	Staff: Change sentence to “... the Director of Investigations may exercise discretion to proceed with an Investigation <u>based on anonymous or third party allegations.</u> ”	Policy s.10.4	Anonymous and Third Party Allegations - editorial suggestion	Agreed.
142.	Ombudsperson: Add "on the basis of anonymous or third party allegations". (that language appears in preceding and following paras) after “... the Director of Investigations may exercise discretion to proceed with an Investigation”	Policy s.10.4	Anonymous and Third Party Allegations - editorial suggestion	Agreed to add “based on anonymous or third party allegations” for additional clarity.
143.	Staff: How long will these be retained? Will it differ based on student or employee status? Will it be used (at some point) based on 10.3 and/or	Policy s.10.6	Question regarding retention of third party	No changes required; not for inclusion in the Policy.

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	10.4 and/or 10.5?		and anonymous allegations	
144.	Ombudsperson: For how long? For students until they graduate? For employees until they are no longer employed at UBC?	Policy s.10.6	Question regarding retention of third party and anonymous allegations	Addressed in item 143 above.
145.	Anonymous: The investigator is paid by UBC? Is that impartial? What measures to ensure?	Procedures s.1.1	Investigations Office - Investigators	No changes required.
146.	Staff: Will the alternative resolution staff also be impartial?	Procedures s.1.1	Question regarding alternative resolution staff	No changes required.
147.	Ombudsperson: This is almost the same as 6.1 in Policy - intentional repeat? Staff involved in ARP also impartial, TI?	Procedures s.1.1	Question regarding alternative resolution staff	No changes required; addressed in part in item 95 above.
148.	Staff: This is the first time 'accommodation' has been used — in all other instances, the Policy references 'assistance.' Is the term 'accommodation' being used deliberately to signify alternative measures of protection and safety?	Procedures s.1.2	Reference to "accommodation"	To correct the drafting oversight, the "accommodation" is changed to "assistance".
149.	Lawyer: The form for reports needs to clearly state that documents in support of the complaint should be attached to the complaint. The current wording suggests that it might be appropriate to wait to be asked for those documents. This will result in important information not being available to preliminary screening and later decisions.	Procedures s.2.1	Reports – form for Reports	Not to be included in the policy; Operational matter. Additionally, the IO's form to make a Report contains this information.
150.	UBCSUO: 2.1 Not given full report, witnesses are given to the investigators, then the investigator determines if they are needed. "You may be asked for potential witnesses once the report moves forward"	Procedures s.2.1	Editorial suggestion	No changes required.

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151.	Staff: I understand the need to have a report submitted in writing. In the previous iteration of this Policy, SVPRO had a role in supporting survivors with drafting their complaint. This proposed Policy does not list that as SVPRO's role. Can the first line be changed to "Reports should generally be submitted in writing"?	Procedures s.2.1	Reports – requirement to be in writing	Not recommended. Receipt of Reports in writing provide needed certainty as to the content of the allegations that will be considered on DOI's initial review to determine if there is jurisdiction to investigate and initiate the Investigation process.
152.	Ombudsperson: Requirement to be in writing - is this trauma-informed? Does it create a barrier to this process for individuals who may have language or other challenges? Give DOI discretion to receive reports in different forms.	Procedures s.2.1	Reports – requirement to be in writing	Addressed above.
153.	Anonymous: 2.1 in the investigation - is this standard work ding?	Procedures s.2.1	Reports	Comment unclear.
154.	UBCSUO: 3.1 While we understand that a maximum amount of time can not be given, we believe that updating the claimant every two weeks should be mandatory.	Procedures s.3.1	DOI's initial review to determine Jurisdiction to Investigate	No changes required. The DOI's determination is to be made within 14 days of receipt of the Report and most are determined before the 14 days.
155.	UBCSUO: Complainant - We believe that this term is not survivor focused and rather assumes the person making the report is complaining. We propose to refer to complainants as 'claimants'.	Procedures s.3.2	Request – change "complainant" to "claimant"	Not recommended. "Complainant" is the term used in the At-Risk Behaviour Policy (SC13), which ties into the Sexual Misconduct Policy. Each policy cross-references the other; consistency is desirable. "Complainant" is also the term used in the Discrimination Policy (SC7), which the IO also administers. "Claimant" may also be similarly critiqued as the survivor making a "claim".
156.	Anonymous: 3.3 so confidentially gets broken? Some would need to but this seems like a lot.	Procedures s.3.3	Investigation – process where employee Respondent	No changes required.

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157.	<p>Ombudsperson: Re-organize paragraphs:            Move 3.10 to immediately after 3.4            Create a heading "Alternate Resolution Process" and put 3.5-3.7 under it, then 3.8 and 3.9</p>	Procedures s.3.4	Editorial suggestion to reorganize paragraphs and new article	Agreed, revisions made.
158.	<p>Lawyer: In keeping with our view that there is a strong institutional reluctance for UBC to act and take firm responsive steps when sexual misconduct happens, we are concerned that instead of being an option for the benefit of complainants, Alternate Resolution Processes will become a way of again saying to complainants that they should not be pursuing a Report and requiring action, and should instead be satisfied with some sort of alternative outcome. The fact that Alternative Resolution Processes are generally less costly and less resource-consuming than full investigations compounds the risk that the University will promote this route over a full investigation.</p> <p>Before Alternative Resolution Processes are discussed with a complainant, that complainant should be offered the support of someone from the SVPRO. Discussion about Alternative Resolution Processes must include the fact that pursuing this option will limit the University's ability to take effective action to actions that are acceptable to the Respondent. This should be noted in the policy (as other constraints on the University are noted, such as in 10.3).</p> <p>The Policy must provide that if the Director of Investigations refers the Report to an Alternative Resolution Process, that decision must be documented in writing with the Complainant's signature, the Director must report the decision to the SVPRO and the IIO must report the decision in its annual reporting. The IIO must also track the alternate proceeding and report on its outcome, including whether any action to prevent sexual misconduct resulted from this process.</p>	Procedures s.3.4 – 3.7	Alternate Resolution Processes	<p>No further changes required. The policy is already clear that alternative resolution processes are at the Complainant's initiation/request.</p> <p>Not for inclusion in the Policy; Operational Matters.</p>

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159.	Staff: On the one hand, I understand the reason for the Complainant to request ARP. On the other hand, it puts the onus on the Complainant to make the request, but it's then put in the DoI's control to make a determination. So this becomes both a choice and potentially not an option. Can the Policy address that the option of ARP will be discussed with the Complainant when the DoI believes it to be an appropriate option, and the choice is placed in the Complainant's hands. If the Complainant is agreeable, then it could be raised with the Respondent for them to make their own decision.	Procedures s.3.5	Alternative Resolution Process	Not recommended. The request must come from the Complainant not the institution. An ARP may not be available or appropriate in every circumstance due to considerations outside the scope of the policy. The DOI has to determine whether if requested such a process can be made available. An ARP requires the consent of the Respondent.
160.	Ombudsperson: Understanding TI reason for this, does this allow for IIO to raise and explore the possibility of ARP with the Complainant in the absence of a request in appropriate circumstances?	Procedures s.3.5	Alternative Resolution Process	Addressed above. The SVPRO or other support provider can advise the Complainant of the availability of the ARP option, which is listed on the IO website.
161.	Anonymous: Alternate Dispute Resolution (ADR) is referred to Alternate Resolution process in the policy. Someone looking for information about ADR may find it difficult to find it in the IIO page especially if they are navigating through it for the first time (would a consistent naming convention help).	Procedures s.3.5-3.7	Alternative Resolution Process	No changes required; operational matter for IO.
162.	SASC: Procedures 3.6: amend to explicitly state that complainants will not be required to pursue a formal investigation with the IIO if either the complainant or respondent opt out of an Alternative Resolution Process.	Procedures s.3.6	Alternative Resolution Process	Agreed; revisions made.
163.	FNHL: where the policy references restorative justice, a reference to following relevant Indigenous protocol or cultural contexts may make it more likely that Indigenous survivors would come forward and make use of an alternative resolution process.	Procedures s.3.6-3.6	Alternative Resolution Processes – restorative justice	Addressed by item 18 above.
164.	Ombudsperson: "shared with" instead of "disclosed"?	Procedures s.3.7	Editorial suggestion	Suggested revision made.
165.	Staff: can 3.10 be moved to just after 3.4 — might flow better?	Procedures s.3.10	Editorial suggestion	Addressed under item 157 above.

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166.	Ombudsperson: To enhance clarity about the "who", change to: "Upon initiating an Investigation, the DOI will ..."	Procedures s.3.10	Editorial suggestion	Suggested revision made.
167.	CUPE 116 obviously strongly supports UBC's goal of maintaining a respectful environment where everyone including our members can study, work, and live free from sexual misconduct and other forms of harassment. However, we would also note that the paramountcy of collective agreement language, and the requirement for ongoing Union involvement throughout University processes need to be much more prominently highlighted, particularly in Policy SC 17. Unions have representational rights and obligations that need to be respected, and this point needs to be clearly referenced in the policies. This is especially true with the Sexual Misconduct Policy, which is administered separately from UBC Human Resources. It should be very clear to the Director of Investigations and the Investigators who may not have the same training and experience in labour relations that unions need to be informed immediately and involved throughout the process in the case of a unionized complainant or respondent. Immediate and continued communication with unions, and our ongoing participation in the process is necessary to discharge our legal representation duties to our members, but also protects the University interests in terms of ensuring that any discipline ultimately imposed is not vulnerable to a legal argument that a unionized staff member was denied their right to Union representation.	Procedures s.3.10, 5.2.3, 7.2	General comment – unionized members' representation rights and union participation.	No changes required. Procedures ss. 3.10.1 and 3.10.2 (now ss. 3.5.1 and 3.5.2) expressly reference the right of the Complainant and Respondent to have union/association representative present during any Investigation. The amended procedures provide that, upon a finding of Sexual Misconduct, the process to be followed to determine disciplinary or other measures will be consistent with applicable the collective agreement.
168.	Ombudsperson: Replace "contact the Complainant/Respondent to advise" with "Notify the Complainant/Respondent that ..."	Procedures s.3.10.1	Editorial suggestion	Suggested revision made.
169.	Lawyer: Procedures 3.10.2 The Policy must provide that an advisor from the SVPRO is available to Complainants through all of the steps of the investigation process, including preparation for investigation interviews, assistance with reviewing any documents, and assistance with responding to any questions or opportunities to review investigation reports.	Procedures s.3.10.2	Complainant's support during Investigation	Already addressed by Procedures s. 3.10.1 (now 3.5.1).

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170.	Staff: Does this mean that, in addition to the 14 days to make a jurisdictional assessment, the Complainant will have waited a minimum of 74 days from when they made their Report? What is the timeline between the DoI's acceptance of the Report and the assignment of an Investigator?	Procedures s.4.1	Investigations – question as to timeline	No changes required. The time for the DOI to make a decision whether there is Jurisdiction to Investigate often is less than 14 days, depending upon the complexity of the particular Report.
171.	Ombudsperson: What about the timeline between the 14 days to determine jurisdiction and the appointment of an Investigator. Seems that the appointment date is critical - if there is delay there, then the 60 days is misleading.	Procedures s.4.1	Investigations – question as to timeline	No changes required.
172.	Ombudsperson: move 4.2 to right before 5.3	Procedures s.4.2	Editorial suggestion	Not recommended.
173.	Lawyer: Procedures 4.4 This section should say expressly that the Complainant will be provided with the details of the Respondent's response to the complaint and be given an opportunity to respond.  The Procedures should state that all Members of the University Community are required to co-operate with investigators, and that failure to do so will be taken seriously and have formal disciplinary consequences.	Procedures s.4.4	Investigators	No changes required. Level of detail unnecessary. Already addressed by s. 4.4 (now s. 5.4) and procedural fairness governing the investigation. The University cannot compel Members of the UBC Community to participate, nor does UBC have, for example, subpoena powers.
174.	Staff: propose changing "might rely" to "will rely on"	Procedures s.4.4	Investigations - editorial suggestion	Not recommended. Provision reflects the practice that information obtained during the course of an investigation will be provided to the parties for response before any findings are made related to that information, hence "might rely" is appropriate.
175.	Ombudsperson: How will this commitment to inform both parties of the information upon which the findings are made be fulfilled if the Investigation Report is not provided to the Respondent in particular until after the decision is made?	Procedures s.4.4	Investigations - editorial suggestion	Addressed above.

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	"might rely" is vague; for clarity for all, including the Investigator, replace with "has relied"			
176.	Staff: Despite the caveat in the second part of this sentence, inviting questions of Complainants and Respondents could get messy. If the Committee believes this to be important, then leave it in. I'm concerned that this could raise expectations and create extra set of queries for either the Investigator and/or the DoI.	Procedures s.4.5.5	Investigations – process	The Committee felt that this provision is not necessary and it is deleted.
177.	Ombudsperson: I would suggest that this could create more problems and could give rise to legitimate expectations on both parties that any questions they submit will be asked, despite the caution. Deleting this would not remove right of the Investigator to do this.	Procedures s.4.5.5	Investigations – process	Addressed as above.
178.	<p>Lawyer: The Procedures should provide that draft Findings will be provided to both parties for comment before they are finalized. This helps to avoid errors of fact.</p> <p>The Procedures should provide that the Findings will be provided to both parties.</p>	Procedures s.4.5-4.6	Investigation Findings – request draft provided to parties	<p>Not recommended. This step is not required for procedural fairness, and would likely lead to attempts to re-submit their case and raise arguments as to the Investigator's weighing of evidence.</p> <p>Already addressed in (now) Procedures s. 6.5 and explicitly in s. 7.4.</p>
179.	Staff: The Ombudsperson for Students has raised the point publicly several times that the Respondent should be provided a copy of the Investigation Report before the disciplinary decision is made. That having the IR prior to the discipline will allow the student Respondent to provide any response or clarification or correction, or have the opportunity to correct any errors in the Report. The Ombudsperson's comments are critical to capture within the Policy.	Procedures s.4.5-4.6, 5.2	Investigation Findings – request draft provided to parties	Addressed above.
180.	CUPE 116 submit that the policy should speak to the issue of vexatious complaints, and provide a mechanism for the Investigator to make such	Procedures s.4.6	Reports and Investigation Findings – vexatious allegations	No changes required. An Investigator may address a Respondent's position that a complaint is vexatious and brought for

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	a finding where appropriate.			improper purposes and may make findings on that issue. Expressly including provisions relating to vexatious complaints may have a chilling effect.
181.	FNHL: Those determining discipline should have an understanding of colonization when dealing with cases involving Indigenous complainants and/or respondents. The investigation report should describe the relevant context, and the Calls to Justice from the Missing and Murdered Indigenous Women and Girls report should be reflected.	Procedures s.5	Outcome and Disciplinary Measures – understanding colonization	No changes required. The determination of the appropriate outcome or discipline is outside the scope of the policy. It is a discretionary decision that will take into account a variety of factors which may be determined by other policies or the law applying to collective agreements or employment contracts.
182.	<p>AMS: Recommendation #6: Clarify UBC’s jurisdiction for disciplinary outcomes. The AMS notes the multitude of land and building owners on campus and asks the University to clarify the limitations of potential disciplinary outcomes (i.e. will campus bans also be relayed to the AMS to uphold in the Nest?).</p> <p>Would any banned persons be communicated to the AMS so the AMS may implement the ban within AMS buildings that are independently operated from UBC?</p>	Procedures s.5	Outcomes and Disciplinary Measures – question re: communication to the AMS of a UBC disciplinary decision to ban a respondent from campus	No changes required. The decision whether UBC would disclose disciplinary outcomes to the AMS, a non-UBC entity, will be determined on a case-by-case basis in accordance with UBC’s obligations under applicable privacy legislation.
183.	<p>Lawyer: It is a concern to us that appropriate outcomes or disciplinary measures are not determined by the person with the greatest familiarity with the case, the investigator. Investigators should be asked for their recommendations.</p> <p>The Complainant and Respondent should have an opportunity to make submissions to the ultimate decision-maker before outcomes or disciplinary measures are determined.</p> <p>5.2.2, 5.2.3 In the absence of an evident error, we do not agree that it should be open to a faculty member’s Dean or University Library or a</p>	Procedures s.5.2	Determination of Outcome and Disciplinary Measures	No changes required. Investigation Findings are provided to the decision maker with authority over the Respondent based upon applicable legislation, collective agreement or relationship. The Respondent and Complainant have the opportunity to present mitigating and aggravating evidence to the Investigator for inclusion in the Investigation Findings to be provided to the appropriate decision

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	staff member's Administrative Head of Unit to decide not to adopt the investigator's findings of fact and conclusions.			maker. Also further addressed in item 203 below.
184.	<p>AMS: Recommendation #4: Procedural fairness between students, staff and faculty.</p> <p>The AMS notes the differences in access to the investigation process and findings between students, staff and faculty. The AMS affirms the importance of fairness across all groups under this policy.</p> <p>Under current procedures, student, staff and faculty respondents are outlined with different rights as it pertains to the receipt of Investigation Findings that include a determination that sexual misconduct has occurred (section 5.2). In the instance of faculty respondents, faculty are afforded a meeting with the appropriate Dean or University Librarian and are provided with a copy of the Investigation Findings, ahead of the outcome decision. Comparatively, students will only receive a copy of the investigation findings after the President has made an outcome decision.</p> <p>In recognition of the pre-existing power dynamics between students and faculty, it is concerning that faculty are still provided with more influence throughout a 'fair' investigations process. While the AMS understands that these procedural differences exist as a result of the collective agreements between the University and its members, this policy must be exercised fairly across all member groups.</p>	Procedures s.5.2	Receipt of Investigation Findings and decision on disciplinary or other measures	No changes required. All Respondents are afforded procedural fairness. The difference in timing of providing the Investigation Findings reflect collective agreement or employment agreement provisions and are not requirements of procedural fairness.
185.	UBCSUO: ii) SC17 restorative justice sub-committee: Upon finalization of a report and before resolution (i.e., disciplinary actions), we believe that the convening of an independent sub-committee - whose sole purpose is to assess the findings of the report and make recommendations concerning consequences - would be beneficial.	Procedures s.5.2	Request creation of independent sub-committee to assess Investigations Findings and recommend outcome and disciplinary measures	Not recommended; would add further complexity and length to the process.

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	<p>The basis of this sub-committee would be a collective of trauma-informed individuals belonging to various classes of the university (e.g., undergraduate, graduate, faculty, administration) who can meet with the parties involved (if the parties so choose) as part of the resolution process. The sub-committee would then make recommendations to the person who will finalize and implement any disciplinary actions. The sub-committee would provide a means of ensuring equitable outcomes for those belonging to different classes at the university and aim to protect survivors who hold positions of diminished power/authority to their accused.</p>			
186.	<p>Anonymous: Also, kind of wack that Santa Ono has the final word for the disciplinary measures outcomes. I think it should go to somebody perhaps who has more knowledge in the area, or the survivor/person who experienced harm. This policy cannot possibly claim to be survivor-centric under these circumstances.</p>	Procedures s.5.2.1	Outcomes and Disciplinary Measures – student Respondents (President’s decision)	Not recommended. The University Act identifies the President as the person with jurisdiction to impose discipline on students.
187.	<p>Ombudsperson: Two points here:</p> <ol style="list-style-type: none"> <li>1. no disclosure of the IR to the Respondent as per my earlier and subsequent comments</li> <li>2. what does the act of the VPS "presenting" the Investigations Report to the President entail? If merely "presenting" then why include such a step? If it entails more - as in the continuation of a sub-committee that reviews the IR before it goes to the President, with advice/recommendations - then that step should be clearly laid out here.</li> </ol>	Procedures s.5.2.1	Outcome and Disciplinary Measures – student Respondents	<p>No changes required; addressed further under item 203 below.</p> <p>The Committee has adopted the approach in the new Retaliation Policy (SC18) to identify the relevant decision maker for the different Respondents and provide that each decision maker will follow their own applicable process for imposition of discipline.</p>
188.	<p>Student: I would like to start by saying that my Report, as well as the IIO, described my Report as being submitted to the “Disciplinary Decision Makers,” while the Policy states that disciplinary decisions are made by the President (Associated Procedures, 5.2.1). What I would like to know is which is it? If there is a disciplinary decision body, who are the members? And, regardless if there is a team of people or just the</p>	Procedures s.5.2.1, and 6.4-6.5	Outcomes and Disciplinary Measures – student Respondents; and FIPPA constraints	No changes required. For student Respondents, the President decides the appropriate discipline (if any) as the University Act identifies the President as the person with jurisdiction to impose discipline on students.

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	<p>President, do the people involved have the appropriate training to make the appropriate decisions to handle these sensitive situations? I expect that the answers to these questions would be at least given in the Report given to the complainant, if not in the Policy itself. It would bring some much-needed resolve surrounding the investigative process, especially considering the restrictions to disclosing disciplinary action under FIPPA. For these reasons, my experience with the investigative process was confusing, tiring, and disheartening. I urge UBC to push harder for changes to FIPPA for survivors to gain resolve and, in the meantime, to specify in all areas who is making the decisions and what standard is set to give them the power to make those decisions. Since the investigative process relies on re-traumatizing and finely-detailed, lengthy investigations, following these suggestions might make it more worthwhile from a survivor's perspective. What I would like to emphasize here is the question "What does a survivor get back from filing a report?" In my experience, I was re-traumatized through phone calls and emails to get a long document that's almost fully censored.</p>			<p>As already addressed, the Committee recommends that changes to FIPPA be pursued.</p>
189.	<p>Ombudsperson: Only faculty members are provided with the IR before a decision is made. If this is because this right is included in the collective agreement, does this mean that excluded faculty members (e.g. Assoc. Deans) will not be given this right? If they are given this right, despite not being covered under the collective agreement, then what is the rationale for only providing this right to faculty members and not to staff and students?</p>	Procedures s.5.2.2	Outcome and Disciplinary Measures – processes for different Respondents	<p>No changes required. Addressed in part in item 184 above; further changes to processes may have to take into account collective bargaining and other employment issues that are beyond the scope of this Committee's mandate or ability to address.</p>
190.	<p>Staff: Why is the staff member not provided the same rights/opportunity as a faculty member to be provided a copy of the Investigation Findings? The staff respondent is in the same category as the student respondent, where these two UBC members are not provided a copy of the Findings, and upon which their discipline will be determined.</p>	Procedures s.5.2.3	Outcome and Disciplinary Measures – processes for different Respondents	<p>No changes required. Already addressed.</p>
191.	<p>Office of the Registrar: We would also suggest one editorial change: The new section 5.2.4 would be correct for the Vancouver campus; however, its Okanagan counterpart committee has a different name. We would</p>	Procedures s.5.2.4	Editorial suggestion for Outcomes and	<p>Suggested change made.</p>

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	suggest this paragraph be changed to "In the case of an emeritus Respondent, to the appropriate Dean who will make a recommendation to the relevant Senate or a responsible committee of that Senate. A final decision with respect to the emeritus appointment will be made by senate."		Disciplinary Measures – emeritus Respondents	
192.	Ombudsperson: first sentence, add "with reasons" after "that decision":  "Once the appropriate authority has made a decision regarding the disciplinary or other measures to be imposed under section 5.2 above, that decision <u>with reasons</u> will be communicated in writing to the Respondent."	Procedures s.5.3	Editorial suggestion	Not recommended.
193.	Lawyer: 59. 5.3, 6.5 The University should commit to providing information about final outcomes and disciplinary measures to the complainant to the greatest extent possible given any limitations under the current interpretation of privacy legislation.  The proposed Retaliation policy states at Section 7.5 that "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." The Sexual Misconduct policy should also state that complainants will learn of any restrictions that may have been imposed upon the Respondent's movement or activities. If it is legally possible to do so for retaliation, it is also possible for sexual violence.	Procedures s.5.3 & 6.5	Disclosure of Outcomes and Disciplinary Measures	No changes required. Already addressed in Procedures s.6.5 (now s. 7.5).
194.	Ombudsperson: add "and notify the Respondent of such referral" after "UBC authority":  "... the Director may refer the Investigation Findings, or the relevant portions of the Investigation Findings, to the appropriate UBC authority, <u>and notify the Respondent of such referral.</u> When	Procedures s.5.5	Editorial suggestion	Agreed; revisions made.

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	appropriate, the Director will consult with the person making the Report before referring it elsewhere.”			
195.	<p>UBCSUO:</p> <p>i) Transparency of outcomes and decisions:                      UBC is a public institution and, as such, should report the outcomes of investigations arising from a report made under the Policy. The reporting of the findings falls in line with the BC Government’s mandate, which states that it is only through an open and public process that the population served can have trust in their justice system. This mandate, translated to UBC, would involve the public release of the findings and consequences (parallel to verdict and sentence) of all reports made under the Policy. Furthermore, said findings should be easily available to those who wish to examine them, rather than reported among committee meeting minutes. UBC should be accountable for what happens on its campuses, so it should be available at a location in which everyone would have more access. Likewise, we also propose to make resources available alongside annual reports. If resources are available at this site as well then it shows the university is helping to address this issue. In short, we propose they be more transparent with both the prevalence and resources, indicating to possible attendees that we are a responsible university.</p> <p>Further, acknowledging that UBC has various privacy concerns, we would recommend the timely release of findings and consequences using an anonymized platform that would balance the privacy interests with the critical need for the safety and wellbeing of the survivor.</p>	Procedures s.6	Request to make Investigation Findings and Disciplinary Outcomes publicly available	No changes required. UBC’s ability to disclose Investigation Findings and discipline imposed is limited by privacy legislation. UBC publishes the discipline imposed on respondent students as part of the Annual Summaries of Student Discipline Cases published on the OUC website.
196.	<p>AMS: Recommendation #8: Urge UBC to lobby the provincial government for exceptions to FIPPA restrictions. The AMS urges the University to lobby the provincial government for exceptions to FIPPA restrictions placed on sexual violence policies that negatively impact survivors’ wellbeing and prevent them from accessing full findings and outcomes.</p> <p>The AMS’s issues with the restrictions placed on a survivor’s access to</p>	Procedures s.6.1, 6.5	FIPPA	Not within the scope of the policy review. However, the Committee recommends that UBC take a leadership role to seek changes to FIPPA to provide disclosure exceptions for discipline imposed by post-secondary institutions pursuant to their applicable sexual misconduct policies.

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	their investigation and its outcomes fall under the control of the province, not UBC. While this is not within the scope of the policy review, we must note these issues and call for further work to enact provincial change. As the leading post-secondary institution in British Columbia, the University has a responsibility to become a leader in lobbying initiatives to create exceptions in interpretations of FIPPA in accordance with best practices under these provincially-mandated sexual violence policies.			
197.	Ombudsperson: Delete "where disclosure" because it is in stem	Procedures s.6.3.2	Editorial suggestion	Suggested revisions made.
198.	Ombudsperson: Delete "if" because "is" is in stem	Procedures s.6.3.3	Editorial suggestion	Addressed by revisions to procedures, s. 6.3 (now s. 7.3).
199.	Student Senator: Procedure 6.3.5 - What are those health and safety reasons?	Procedures s.6.3.5	Confidentiality and Privacy – question about disclosing Personal Information for compelling health and safety reasons	No changes required.
200.	Ombudsperson: Delete "where disclosure is" because of stem	Procedures s.6.3.6	Editorial suggestion	Addressed by revisions to procedures, s. 6.3 (now s. 7.3).
201.	Student Senator: Procedure 6.3.6 - I disagree; there should not be a time where personal info is disclosed.	Procedures s.6.3.6	Confidentiality and Privacy – disclosure of Personal Information	No change necessary. The authority to disclose personal information "to correct misleading or inaccurate information if necessary to protect the integrity of the process or UBC's investigatory processes" appears in all of the primary investigative policies of UBC, including Policy SC7 (Discrimination), SC8 (Investigations) and current SC17 (Sexual Misconduct). The Office of the Information and Privacy Commissioner has confirmed that UBC

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				has authority for such disclosure under the Freedom of Information and Protection of Privacy Act (FIPPA).
202.	Staff: Does this apply to ALL Respondents (student, staff, emeritus, etc.)? And at which point is the copy of the Investigation Findings provided to the Complainant and Respondent?	Procedures s.6.4	Question regarding timing of provision of the Investigation Findings	No changes required; addressed in items 183 and 203 above.
203.	Ombudsperson: This provision acknowledges parties' rights to know the findings and the evidence via sharing of the Report. Why then is such disclosure not occurring at the most critical time for the Respondent - before the disciplinary decision is made - so that the Respondent can exercise their right to know the case - not just the allegations, and respond to the information collected by the Investigator, add important information and correct any errors if such exist in the Report.	Procedures s.6.4	Question regarding timing of provision of the Investigation Findings	No changes required. The Respondent's right to know the case to meet is with respect to the allegations made against him or her. That right includes knowing the information gathered in the investigation but does not extend to knowing the investigator's findings in advance of tendering the report.
204.	Student Senator: Procedure 6.5 - Again, what are the health and safety reasons? Can this be put in the definitions section?	Procedures s.6.5	Confidentiality and Privacy – question about health and safety reasons	Request for clarification/more information not appropriate for inclusion in policy.
205.	Student Senator: Procedure s.7 - Why can't claimants appeal any decision? Can this be included too?	Procedures s.7	Appeal Process – request for right to appeal for Complainants	Not recommended; the University Act limits appeals to those who have been subject to discipline, and such a process would be inconsistent with UBC's other investigatory processes.
206.	SASC: Procedures s. 7 should allow appeals for both complainants and respondents, and include possible bases of appeal, such as new evidence, procedural errors or appropriateness of sanctions.	Procedures s.7	Appeal Process - request for right to appeal for complainants	Not recommended. University Act restricts appeals to students who have been subject to discipline. It is Senate's jurisdiction to establish grounds of appeal.

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207.	Staff: Is there any forum for a Complainant to file an appeal if the Complainant believes the Investigator's Findings were made or based in error or otherwise unfair? Does the Complainant have any recourse if the DoI decides not to proceed with an Investigation, and the Complainant wishes to appeal the DoI's decision?	Procedures s.7	Question regarding appeal for Complainants	Already addressed above.
208.	Ombudsperson: What is the source/reason of this limitation on students to appeal only the discipline (i.e. students cannot appeal the decision as staff and faculty can)? Or, does "discipline" in this section include the right for a student to appeal the fairness of the investigation, the correctness of the finding as well as the penalty imposed by the President?	Procedures s.7.1	Question regarding student Respondent appeals	The Senate establishes the grounds of appeal from the President's disciplinary decision for respondent students. Those grounds are set out in the Academic Calendar sections relating to student discipline. They include the items noted in the comment.