SUBJECT  Proposed Policy Amendment
Investigations Policy (SC8)

SUBMITTED TO  Audit Committee
MEETING DATE  June 20, 2022

SESSION
CLASSIFICATION  Recommended session criteria from Board Meetings Policy:
OPEN

REQUEST  For input only - No action requested

LEAD EXECUTIVE  Hubert Lai, Q.C., University Counsel
SUPPORTED BY  Marcia Buchholz, Vice-President, Human Resources
Lorena Vlad, Legal Counsel

PRIOR SUBMISSIONS

The subject matter of this submission has not previously been considered by the Audit Committee.

EXECUTIVE SUMMARY

The Investigations Policy has been in place since February 1997. The responsible Board Committee is the Audit Committee and the Responsible Executives are the University Counsel and the Vice-President, Human Resources. The Investigations Policy was updated in 2017 to clarify its scope and outline the key principles and requirements that must be followed when conducting investigations under this Policy. Currently, the Investigations Policy applies to investigations for which an investigation process has not already been set out in another UBC policy or procedure (such as the Discrimination Policy, the Scholarly Integrity Policy, or the Student Code of Conduct).

In recent years, there have been an increasing number of cases where a single individual is alleged to have breached multiple UBC rules. Under the current framework, these cases result in multiple investigations being undertaken, with each investigation having separate procedures. While informal mechanisms to improve coordination have been utilized, a formal framework for the potential consolidation of investigations is desirable and necessary to ensure that consistent principles are followed when determining whether and how to consolidate investigations.

As requested by the Audit Committee, the Office of the University Counsel has convened a Policy Development Committee consisting of subject matter experts and key stakeholder representatives (the “Policy Development Committee”) to review the current Investigations Policy and make recommendations to the Board of Governors regarding amendments to this Policy to expand its scope and to create a framework for the potential consolidation of investigations in such circumstances. The objectives of such a framework are to:

a) limit multiplicity of proceedings;
b) reduce the need for witnesses and other participants to provide potentially traumatic testimonies multiple times;
c) reduce the risk of inconsistent findings between multiple investigations;
d) address findings of misconduct in an appropriate manner (for example, breach of one UBC policy may warrant lesser discipline compared to breaches of multiple policies);
e) provide the decision-maker with a complete set of findings, thereby facilitating the ability to impose consistent and appropriate discipline where multiple instances of misconduct are found to have occurred; and
f) use UBC resources effectively and efficiently.

The Policy Development Committee proposes a set of amendments that is intended to provide flexibility to consolidate formal processes where feasible and appropriate. The proposal enables consolidation but does not mandate it. Agreement from all applicable Designated Persons is required for consolidation, and if there are special requirements (for example, the composition of the committee or the use of a committee for the formal process), those factors would be discussed and considered when determining whether to utilize a Consolidated Investigation. The existing requirement that Investigations be conducted in accordance with the principles of procedural fairness in the university context would also apply to Consolidated Investigations, and, for greater certainty, the proposed amendments to the Investigations Policy also include the requirement that, where the Respondent is a UBC employee, Investigations be conducted in accordance with employment law and any applicable agreements with unions and employee associations.

More specifically, the proposed amendments to the Investigations Policy are:

1. adding a framework to determine if a Consolidated Investigation should be undertaken, as further described below;
2. new defined terms for “Consolidated Investigation” and “Existing Formal Process”, as follows:
   a. “Consolidated Investigation” means a process consolidating Investigations or Existing Formal Processes with respect to multiple allegations of Misconduct against the same individual(s);
   b. “Existing Formal Process” means an investigation or hearing process established under another UBC policy or procedure, such as the Discrimination Policy, the Sexual Misconduct Policy, the Scholarly Integrity Policy, the Financial Investigations Policy, or the Student Code of Conduct;
3. an updated definition for “Investigation” to expand and clarify its scope, as follows: “Investigations” include Consolidated Investigations and are the formal processes, whether by investigation or hearing, undertaken by Designated Persons for the purposes of ascertaining whether a Respondent has engaged in Misconduct and informing a decision as to whether discipline, restrictions on movements and activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations should be imposed; (For the purposes of the Investigations Policy, “Investigations” do not include informal or preliminary inquiries or fact-finding that are intended to determine whether to commence an Investigation);
4. a simplified and broader definition of “Misconduct” stating that Misconduct is any conduct that, in the view of UBC, breaches acceptable standards of conduct, including, but not limited to, UBC rules, regulations, or policies, and additional language clarifying that normally Investigations will not be undertaken where the alleged Misconduct individually or in combination with other conduct is not of a sufficiently substantive or material nature as to warrant discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, right, or obligations;
5. a more detailed definition of “Respondent” clarifying that Respondents must be members of UBC (i.e., students, registrants, employees, or appointees of UBC);
6. a list of Designated Persons who normally determine if an Investigation or Existing Formal Process is to be undertaken with respect to an allegation of Misconduct and who would, under the proposed framework, be required to provide an Investigation Notice (as defined below) to the Privacy Counsel (as defined below) if they determine that they will proceed with an Investigation or Existing Formal Process;
7. language confirming the continuing importance of supervisors engaging in normal dispute resolution and management of the work environment without necessarily undertaking formal processes;
8. a revised scope such that the Investigations Policy will be triggered when (i) a Designated Person determines that an Investigation is to be undertaken and there is no Existing Formal Process, or (ii) an individual is alleged to have engaged in multiple instances of Misconduct that would normally engage
Proposed Amendment of Investigations Policy

separate Investigations or separate Existing Formal Processes and the applicable Designated Persons determine that a Consolidated Investigation should be undertaken; and

9. language setting out that where an Investigation results in a finding of Misconduct and when an Investigation report is prepared, the disciplinary action will normally be made in reliance upon such report and the report should therefore be prepared in a manner that meets any applicable requirements under employment law, agreements with unions and employee associations, and/or administrative law.

The proposed amendments provide that, where an individual is alleged to have engaged in two or more instances of Misconduct that would otherwise engage separate Investigations or separate Existing Formal Processes, UBC may conduct a Consolidated Investigation and that the determination of whether a Consolidated Investigation is to be utilized will be made in accordance with the Procedures associated with the Policy. The proposed Procedures set out the following steps: (1) each Designated Person must provide notice to the Legal Counsel, Information and Privacy, or such other person as may be designated by the University Counsel (the “Privacy Counsel”) prior to undertaking an Investigation or Existing Formal Process; (2) if any other Designated Person is dealing with an allegation of Misconduct involving the same Respondent, the Privacy Counsel will advise the applicable Designated Persons; (3) the applicable Designated Persons must seek advice from the Office of the University Counsel; and (4) the applicable Designated Persons must jointly determine whether to undertake a Consolidated Investigation and determine the procedure for the Consolidated Investigation. When determining whether to utilize a Consolidated Investigation and what the Consolidated Investigation process should entail, the Designated Persons will share such information with each other as is reasonably necessary for each of them to understand the totality of the allegations being made against the Respondent and that the Designated Persons should consider the procedural requirements that would apply if separate Existing Formal Processes were to be utilized. If the applicable Designated Persons do not unanimously agree to undertake a Consolidated Investigation, the Investigations or Existing Formal Processes, as applicable, will not be consolidated.

NEXT STEPS

Subject to any feedback from the Audit Committee, the next step will be to post the proposed amendments to the Investigations Policy and the proposed Procedures associated with the Investigations Policy on the website of the Office of the University Counsel and in UBC Today for public comments by the UBC community. There will be an extended consultation period of approximately two and a half months until mid-September 2022 to give members of the UBC community an opportunity to provide their feedback. The Policy Development Committee will reconvene after the consultation period to consider the comments received. After reviewing the community’s input, the Policy Development Committee will submit a final recommendation to the Audit Committee for targeted approval by the Board of Governors in November 2022.

APPENDICES

1. Proposed Amended Investigations Policy

SUPPLEMENTAL MATERIALS (optional reading for Governors)

1. Blackline showing proposed amendments to the current Investigations Policy
2. List of members of the Policy Development Committee
3. Current version of the Investigations Policy
Background & Purposes:

This Policy provides direction to UBC officials who commission or conduct Investigations of allegations of Misconduct at UBC when (i) a formal investigation or hearing process does not exist under another UBC policy or procedure, or (ii) a Consolidated Investigation may be appropriate. This Policy is not intended to prevent the use of alternative dispute resolution processes or to replace discussions undertaken in the normal course to resolve issues between employees and their supervisors or within the norms of UBC. Regular management or academic supervisory discussions provide an opportunity for mentorship and resolution of concerns and should be used in preference to commissioning or conducting an Investigation.

This Policy and its Procedures also provide a framework to determine if a Consolidated Investigation should be undertaken. The objectives of Consolidated Investigations are to limit multiplicity of proceedings, use UBC resources efficiently and effectively, minimize the need for participants to provide multiple testimonies and thereby reduce potential trauma, and facilitate consistent fact-finding outcomes.

1. General

1.1 This Policy applies when:

1.1.1 a Designated Person determines that an Investigation is to be undertaken and there is no Existing Formal Process; or

1.1.2 an individual is alleged to have engaged in multiple instances of Misconduct that would normally engage separate Investigations or Existing Formal Processes and the applicable Designated Persons determine that a Consolidated Investigation should be undertaken.

1.2 For greater clarity, this Policy:

1.2.1 does not create an entitlement to an Investigation or an obligation for UBC to conduct an Investigation; and

1.2.2 does not apply to Existing Formal Processes, except if a Consolidated Investigation is utilized.

1.3 Notwithstanding the terms of any other UBC policy, procedure, rule, or agreement, where an individual is alleged to have engaged in two or more instances of Misconduct that would
otherwise engage separate Investigations or separate Existing Formal Processes, UBC may conduct a Consolidated Investigation. The determination of whether a Consolidated Investigation will be utilized instead of separate Investigations or separate Existing Formal Processes will be made in accordance with the Procedures associated with this Policy.

1.4 Investigations undertaken pursuant to this Policy must be conducted in accordance with the principles and confidentiality requirements set out in this Policy and associated Procedures. In addition, Designated Persons should refer to the non-binding Guidelines for Responding to and Investigating Complaints issued by the University Counsel and the Vice-President, Human Resources. They may seek additional advice from the Office of the University Counsel (where the Respondent is a student) or the Department of Human Resources (where the Respondent is a faculty or staff member).

2. Principles

2.1 Nature of Conduct: Normally, Investigations will not be undertaken where the alleged Misconduct individually or in combination with other conduct is not of a sufficiently substantive or material nature as to warrant discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations.

2.2 Fairness: Investigations must be conducted in accordance with the principles of procedural fairness in the university context and, where the Respondent is a UBC employee, in accordance with employment law and any applicable agreements with unions and employee associations. For example, Respondents have a right to:

2.2.1 know the nature of the allegations against them;

2.2.2 have an opportunity to respond to those allegations;

2.2.3 have those allegations investigated in an unbiased manner; and

2.2.4 receive reasons for any decision that impacts their privileges, entitlements, rights, or obligations.

2.3 Timeliness: Investigations must be concluded in a timely manner.

2.4 Confidentiality: Investigations are confidential, and Personal Information must only be disclosed as set out in section 3 of this Policy.

2.5 Reports: Where an Investigation results in a finding of Misconduct, discipline may be warranted. When an Investigation report is prepared, the disciplinary action will normally be made in reliance upon such report and the report should therefore be prepared in a manner that meets any applicable requirements under employment law, agreements with unions and employee associations, and/or administrative law.

3. Confidentiality and Privacy

3.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure
compliance with FIPPA, all participants in an Investigation must act in accordance with the requirements set out below.

3.2 Individuals, including the Complainant and Respondent, who have obtained 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:

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

3.2.2 UBC employees, contractors, or volunteers from disclosing Investigation-related information as authorized under section 3.3; or

3.2.3 Complainants and Respondents from disclosing the information they have received under sections 3.4 and 3.5.

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

3.3.1 expressly authorized by the affected individual;

3.3.2 to a UBC employee, contractor, or volunteer, if necessary for the performance of that individual’s duties;

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

3.3.4 to a Complainant or Respondent in accordance with sections 3.4 and 3.5;

3.3.5 authorized by the University Counsel for compelling health or safety reasons;

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

3.3.7 authorized or required under law.

3.4 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. FIPPA may require UBC to withhold Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, they will only receive the information that is relevant to them.

3.5 Under FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons. For example, UBC will normally inform Complainants of any restrictions that may have been imposed upon the Respondent’s movements or activities.
3.6 Section 3.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 3.4 and 3.5. 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 independent legal advice before doing so.

4. Definitions

4.1 “Complainant” is an individual who has alleged that the individual has been directly subjected to Misconduct by a Respondent;

4.2 “Consolidated Investigation” means a process consolidating Investigations or Existing Formal Processes with respect to multiple allegations of Misconduct against the same individual(s);

4.3 “Designated Persons” are the individuals set out in section 1.1 of the Procedures associated with this Policy;

4.4 “Existing Formal Process” means an investigation or hearing process established under another UBC policy or procedure, such as the Discrimination Policy, the Sexual Misconduct Policy, the Scholarly Integrity Policy, the Financial Investigations Policy, or the Student Code of Conduct;

4.5 “FIPPA” means the Freedom of Information and Protection of Privacy Act [RSBC 1996] Chapter 165;

4.6 “Investigations” include Consolidated Investigations and are the formal processes, whether by investigation or hearing, undertaken by Designated Persons for the purposes of ascertaining whether a Respondent has engaged in Misconduct and informing a decision as to whether discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations should be imposed; (For the purposes of this Policy, “Investigations” do not include informal or preliminary inquiries or fact-finding that are intended to determine whether to commence an Investigation.);

4.7 “Misconduct” is any conduct that, in the view of UBC, breaches acceptable standards of conduct, including, but not limited to, UBC rules, regulations, or policies;

4.8 “Personal Information” is information about an identifiable individual; and

4.9 “Respondent” means an individual against whom an allegation of Misconduct has been made and who is a student (as defined under the University Act), registrant (being an individual registered in non-credit educational activities), employee, or appointee of UBC, including, without limitation, a full-time or part-time student, staff member, or faculty member, temporary or sessional instructors, and adjunct professors; an emeritus; a volunteer engaged in a UBC activity; or any other individual acting on behalf or under the auspices of UBC.
PROCEDURES ASSOCIATED WITH THE INVESTIGATIONS 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 Investigations Policy.

1. Subject Matter of Alleged Misconduct and Designated Persons

1.1 For the purposes of section 4.3 of the Investigations Policy, “Designated Person” means the following or their delegates:

<table>
<thead>
<tr>
<th>Subject Matter of Alleged Misconduct:</th>
<th>Designated Person:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Discrimination and Harassment (as defined in the Discrimination Policy (SC7))</td>
<td>Director of Investigations</td>
</tr>
<tr>
<td>2 Sexual Misconduct (as defined in the Sexual Misconduct Policy (SC17))</td>
<td>Director of Investigations</td>
</tr>
<tr>
<td>3 Scholarly Misconduct (as defined in the Scholarly Integrity Policy (SC6))</td>
<td>Vice-President, Research and Innovation</td>
</tr>
<tr>
<td>4 Non-compliance with Research Policy (LR2))</td>
<td>Vice-President, Research and Innovation</td>
</tr>
<tr>
<td>5 Breaches of the COI Policy (SC3)</td>
<td>University Counsel</td>
</tr>
<tr>
<td>6 Non-compliance with the Information Systems Policy (SC14)</td>
<td>Chief Information Officer</td>
</tr>
<tr>
<td>7 Improper Finance Activity (as defined in the Financial Investigations Policy (SC15))</td>
<td>Executive Director of UBC’s Internal Assurance Department</td>
</tr>
<tr>
<td>8 Student academic misconduct matters</td>
<td>The Chair or Co-Chairs of the President’s Advisory Committee on Student Discipline at UBC Okanagan or UBC Vancouver, as appropriate</td>
</tr>
<tr>
<td>9 Student non-academic misconduct matters other than Sexual Misconduct (as defined in the Sexual Misconduct Policy (SC17))</td>
<td>The Chair of the UBC Okanagan Non-Academic Misconduct Committee or the Chair of the UBC Vancouver Non-Academic Misconduct Committee, as appropriate</td>
</tr>
<tr>
<td>10 Misconduct matters involving a faculty member, other than those matters set out above</td>
<td>Dean of the relevant Faculty, with the advice of Faculty Relations</td>
</tr>
<tr>
<td>11 Misconduct matters involving a staff member, other than those matters set out above</td>
<td>Staff member’s supervisor, with the advice of Human Resources</td>
</tr>
</tbody>
</table>

For greater clarity, the matters referenced in rows 10 and 11 of the preceding table include any material departures from acceptable standards of conduct for employees. The UBC Statement on Respectful Environment for Students, Faculty and Staff sets out expectations for an environment in which respect, civility, diversity, opportunity and inclusion are valued.
2. Determining if Consolidated Investigation is to be Undertaken

2.1 Without limiting the notification obligations that may be set out in other UBC policies and procedures, prior to a Designated Person undertaking an Investigation or Existing Formal Process, the Designated Person must provide notice (the “Investigation Notice”) to the Legal Counsel, Information and Privacy, or such other person as may be designated by the University Counsel (the “Privacy Counsel”). The Privacy Counsel may specify the form and manner of Investigation Notice that is required, as well as the specific information that should be included in the Investigation Notice.

2.2 If any other Designated Person is dealing with an allegation of Misconduct involving the same Respondent, the Privacy Counsel will advise the Designated Persons who provided Investigation Notices regarding the applicable Respondent.

2.3 Where there is more than one Designated Person dealing with allegations of Misconduct involving the same Respondent, those Designated Persons will seek advice from the Office of the University Counsel. The Designated Persons will share such information with each other as is reasonably necessary for each of them to understand the totality of the allegations being made against the Respondent. They may then jointly determine to undertake a Consolidated Investigation instead of separate Investigations or separate Existing Formal Processes and determine the procedure that will apply to the Consolidated Investigation in place of the procedures that would otherwise apply if separate Investigations or separate Existing Formal Processes were to be undertaken. When determining whether to undertake a Consolidated Investigation and what the Consolidated Investigation procedure should entail, the Designated Persons should consider the procedural requirements that would apply if separate Existing Formal Processes were to be utilized.

2.4 In the absence of an agreement between those Designated Persons to undertake a Consolidated Investigation, the Investigations or Existing Formal Processes, as applicable, will not be consolidated.

2.5 All information that is shared between the Privacy Counsel and the Designated Persons pursuant to this section 2 is confidential and the Privacy Counsel and the Designated Persons will not disclose such information except as permitted by the Investigations Policy or under FIPPA.
Investigations Policy (SC8)

The University of British Columbia
Board of Governors

Policy No.: SC8

Long Title: Investigations

Short Title: Investigations Policy

Background & Purposes:

To provide direction to University officials who commission or conduct investigations of situations or incidents at UBC. This Policy only applies to formal processes that may result in discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations. This policy does not apply to informal inquiries or fact-finding that are intended to determine whether to commence an investigation.

This Policy provides direction to UBC officials who commission or conduct Investigations of allegations of Misconduct at UBC when (i) a formal investigation or hearing process does not exist under another UBC policy or procedure, or (ii) a Consolidated Investigation may be appropriate. This Policy is not intended to prevent the use of alternative dispute resolution processes or to replace discussions undertaken in the normal course to resolve issues between employees and their supervisors or within the norms of UBC. Regular management or academic supervisory discussions provide an opportunity for mentorship and resolution of concerns and should be used in preference to commissioning or conducting an Investigation.

This Policy and its Procedures also provide a framework to determine if a Consolidated Investigation should be undertaken. The objectives of Consolidated Investigations are to limit multiplicity of proceedings, use UBC resources efficiently and effectively, minimize the need for participants to provide multiple testimonies and thereby reduce potential trauma, and facilitate consistent fact-finding outcomes.

1. General

1.1 This Policy applies when:

1.1.1 a Designated Person determines that an Investigation is to be undertaken and there is no Existing Formal Process; or

1.1.2 an individual is alleged to have engaged in multiple instances of Misconduct that would normally engage separate Investigations or Existing Formal Processes and the applicable Designated Persons determine that a Consolidated Investigation should be undertaken.
1.2 For greater clarity, this Policy:

1.2.1 does not create an entitlement to an Investigation or an obligation for UBC to conduct an Investigation; and

1.2.2 does not apply to Investigations that are conducted in accordance with the processes established by UBC under policies such as the Discrimination Policy; the Scholarly Integrity Policy; the Financial Investigations Policy; or procedures such as the Student Code of Conduct Existing Formal Processes, except if a Consolidated Investigation is utilized.

1.3 Notwithstanding the terms of any other UBC policy, procedure, rule, or agreement, where an individual is alleged to have engaged in two or more instances of Misconduct that would otherwise engage separate Investigations or separate Existing Formal Processes, UBC may conduct a Consolidated Investigation. The determination of whether a Consolidated Investigation will be utilized instead of separate Investigations or separate Existing Formal Processes will be made in accordance with the Procedures associated with this Policy.

1.4 When no such process exists, the authorized UBC representative must conduct Investigations undertaken pursuant to this Policy must be conducted in accordance with the principles and confidentiality requirements set out in this Policy and associated Procedures. In addition, they Designated Persons should refer to the non-binding Guidelines for Responding to and Investigating Complaints issued by the University Counsel and the Department of Vice-President, Human Resources. They may seek additional advice from the Office of the University Counsel (for situations/incidents involving students where the Respondent is a student) or the Department of Human Resources (for situations/incidents involving members of where the Respondent is a faculty or staff member).

2. Principles

2.1 Nature of Conduct: Normally, Investigations will not be undertaken where the alleged Misconduct individually or in combination with other conduct is not of a sufficiently substantive or material nature as to warrant discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations.

2.2 Fairness: Investigations must be conducted in accordance with the principles of procedural fairness in the university context and, where the Respondent is a UBC employee, in accordance with employment law and any applicable agreements with unions and employee associations. For example, Respondents have a right to:

2.2.1 know the nature of the allegations against them;

2.2.2 have an opportunity to respond to those allegations;

2.2.3 have those allegations investigated in an unbiased manner; and
2.2.4 receive reasons for any decision that impacts their privileges, entitlements, rights, or obligations.

2.3 2.2 Timeliness: Investigations must be concluded in a timely manner.

2.4 2.3 Confidentiality: Investigations are confidential, and Personal Information must only be disclosed as set out in section 3 of the this Policy.

2.5 Reports: Where an Investigation results in a finding of Misconduct, discipline may be warranted. When an Investigation report is prepared, the disciplinary action will normally be made in reliance upon such report and the report should therefore be prepared in a manner that meets any applicable requirements under employment law, agreements with unions and employee associations, and/or administrative law.

3. Confidentiality and Privacy

3.1 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.

3.2 Individuals, including the Complainant and Respondent, who have obtained 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:

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

3.2.2 UBC employees, contractors, or volunteers from disclosing Investigation-related information as authorized under section 3.3; or

3.2.3 Complainants and Respondents from disclosing the information they have received under sections 3.4 and 3.5.

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

3.3.1 expressly authorized by the affected individual;

3.3.2 to a UBC employee, contractor, or volunteer, if necessary for the performance of that individual’s duties;

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

3.3.4 to a Complainant or Respondent in accordance with sections 3.4 and 3.5;
3.3.5 authorized by the University Counsel for compelling health or safety reasons;

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

3.3.7 authorized or required under law.

3.4 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. The FIPPA may require UBC to withhold Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, they will only receive the information that is relevant to them.

3.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons. For example, UBC will normally inform Complainants of any restrictions that may have been imposed upon the Respondent’s movements or activities.

3.6 Section 3.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 3.4 and 3.5. 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 independent legal advice before doing so.

4. Definitions

4.1 “Complainant” is an individual who has alleged that they have been directly subjected to Misconduct by a Respondent;

4.2 “Consolidated Investigation” is the means a process undertaken by UBC to ascertain whether a Respondent has engaged in Consolidated Investigations or Existing Formal Processes with respect to multiple allegations of Misconduct against the same individual(s);

4.3 “Designated Persons” are the individuals set out in section 1.1 of the Procedures associated with this Policy;

4.4 “Existing Formal Process” means an investigation or hearing process established under another UBC policy or procedure, such as the Discrimination Policy, the Sexual Misconduct Policy, the Scholarly Integrity Policy, the Financial Investigations Policy, or the Student Code of Conduct;

4.5 “FIPPA” means the Freedom of Information and Protection of Privacy Act [RSBC 1996] Chapter 165;

4.6 “Investigations” include Consolidated Investigations and are the formal processes, whether by investigation or hearing, undertaken by Designated Persons for the purposes of ascertaining whether a Respondent has engaged in Misconduct and informing a decision as to whether
4.7 “Misconduct” is any conduct that warrants discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations should be imposed; (For the purposes of this Policy, “Investigations” do not include informal or preliminary inquiries or fact-finding that are intended to determine whether to commence an Investigation);

4.8 “Personal Information” is information about an identifiable individual; and

4.9 “Respondent” means an individual against whom an allegation of Misconduct has been made and who is a student (as defined under the University Act), registrant (being an individual registered in non-credit educational activities), employee, or appointee of UBC, including, without limitation, a full-time or part-time student, staff member, or faculty member, temporary or sessional instructors, and adjunct professors; an emeritus; a volunteer engaged in a UBC activity; or any other individual acting on behalf or under the auspices of UBC.
**PROCEDURES ASSOCIATED WITH THE INVESTIGATIONS 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 Investigations Policy.

1. **Subject Matter of Alleged Misconduct and Designated Persons**

   1.1 For the purposes of section 4.3 of the Investigations Policy, “Designated Person” means the following or their delegates:

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<td>7 Improper Finance Activity (as defined in the Financial Investigations Policy (SC15))</td>
<td>Executive Director of UBC’s Internal Assurance Department</td>
</tr>
<tr>
<td>8 Student academic misconduct matters</td>
<td>The Chair or Co-Chairs of the President’s Advisory Committee on Student Discipline at UBC Okanagan or UBC Vancouver, as appropriate</td>
</tr>
<tr>
<td>9 Student non-academic misconduct matters other than Sexual Misconduct (as defined in the Sexual Misconduct Policy (SC17))</td>
<td>The Chair of the UBC Okanagan Non-Academic Misconduct Committee or the Chair of the UBC Vancouver Non-Academic Misconduct Committee, as appropriate</td>
</tr>
<tr>
<td>10 Misconduct matters involving a faculty member, other than those matters set out above</td>
<td>Dean of the relevant Faculty, with the advice of Faculty Relations</td>
</tr>
<tr>
<td>11 Misconduct matters involving a staff member, other than those matters set out above</td>
<td>Staff member’s supervisor, with the advice of Human Resources</td>
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</table>

For greater clarity, the matters referenced in rows 10 and 11 of the preceding table include any material departures from acceptable standards of conduct for employees. The UBC
Statement on Respectful Environment for Students, Faculty and Staff sets out expectations for an environment in which respect, civility, diversity, opportunity and inclusion are valued.

2. Determining if Consolidated Investigation is to be Undertaken

2.1 Without limiting the notification obligations that may be set out in other UBC policies and procedures, prior to a Designated Person undertaking an Investigation or Existing Formal Process, the Designated Person must provide notice (the “Investigation Notice”) to the Legal Counsel, Information and Privacy, or such other person as may be designated by the University Counsel (the “Privacy Counsel”). The Privacy Counsel may specify the form and manner of Investigation Notice that is required, as well as the specific information that should be included in the Investigation Notice.

2.2 If any other Designated Person is dealing with an allegation of Misconduct involving the same Respondent, the Privacy Counsel will advise the Designated Persons who provided Investigation Notices regarding the applicable Respondent.

2.3 Where there is more than one Designated Person dealing with allegations of Misconduct involving the same Respondent, those Designated Persons will seek advice from the Office of the University Counsel. The Designated Persons will share such information with each other as is reasonably necessary for each of them to understand the totality of the allegations being made against the Respondent. They may then jointly determine to undertake a Consolidated Investigation instead of separate Investigations or separate Existing Formal Processes and determine the procedure that will apply to the Consolidated Investigation in place of the procedures that would otherwise apply if separate Investigations or separate Existing Formal Processes were to be undertaken. When determining whether to undertake a Consolidated Investigation and what the Consolidated Investigation procedure should entail, the Designated Persons should consider the procedural requirements that would apply if separate Existing Formal Processes were to be utilized.

2.4 In the absence of an agreement between those Designated Persons to undertake a Consolidated Investigation, the Investigations or Existing Formal Processes, as applicable, will not be consolidated.

2.5 All information that is shared between the Privacy Counsel and the Designated Persons pursuant to this section 2 is confidential and the Privacy Counsel and the Designated Persons will not disclose such information except as permitted by the Investigations Policy or under FIPPA.
**Legend:**

- **Insertion**
- **Deletion**
- **Moved from**
- **Moved to**
- **Style change**
- **Format change**
- **Moved deletion**
- **Inserted cell**
- **Deleted cell**
- **Moved cell**
- **Split/Merged cell**
- **Padding cell**

### Statistics:

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Investigations Policy (SC8)
Policy Development Committee Members

Lorena Vlad, Legal Counsel (Chair)
Meigan Aronson, Dean, Faculty of Science, UBC Vancouver
Doug Blakeney, Executive Director, Internal Assurance
Kristin Cacchioni, Interim Executive Director, Human Resources, UBC Okanagan
Adam Charania, Associate Vice-President, Strategic Advisory Partnerships and Support Services
Michael Feeley, Associate Professor, Computer Science and Co-Chair of the President’s Advisory Committee on Student Discipline (Vancouver)
Dana Lowton, Assistant Director, Go Global, Global Engagement Office and Chair of the President’s UBC Okanagan Non-Academic Misconduct Committee
Greg Martyn, Director, Vice-President Research and Innovation
Shirley Nakata, Ombudsperson for Students
Carly Stanhope, Director of Investigations
Marie Tarrant, Dean Pro Tem, Faculty of Health and Social Development, UBC Okanagan
Mike Viszolyi, Interim Executive Director, Employee & Labour Relations
Background & Purposes:

To provide direction to University officials who commission or conduct investigations of situations or incidents at UBC. This Policy only applies to formal processes that may result in discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations. This policy does not apply to informal inquiries or fact-finding that are intended to determine whether to commence an investigation.

1. General

1.1 This Policy does not apply to Investigations that are conducted in accordance with the processes established by UBC under policies such as the Discrimination Policy; the Scholarly Integrity Policy; the Financial Investigations Policy; or procedures such as the Student Code of Conduct.

1.2 When no such process exists, the authorized UBC representative must conduct Investigations in accordance with the principles and confidentiality requirements set out in this Policy. In addition, they should refer to the non-binding Guidelines for Responding to and Investigating Complaints issued by the University Counsel and the Department of Human Resources. They may seek additional advice from the Office of the University Counsel (for situations/incidents involving students) or the Department of Human Resources (for situations/incidents involving members of faculty or staff).

2. Principles

2.1 Fairness: Investigations must be conducted in accordance with the principles of procedural fairness. Respondents have a right to know the nature of the allegations against them, to have an opportunity to respond to those allegations, to have those allegations investigated in an unbiased manner, and to receive reasons for any decision that impacts their privileges, entitlements, rights, or obligations.

2.2 Timeliness: Investigations must be concluded in a timely manner.

2.3 Confidentiality: Investigations are confidential, and Personal Information must only be disclosed as set out in section 3 of the Policy.
3. **Confidentiality and Privacy**

3.1 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.

3.2 Individuals, including the Complainant and Respondent, who have obtained 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:

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

3.2.2 UBC employees, contractors, or volunteers from disclosing Investigation-related information as authorized under section 3.3; or

3.2.3 Complainants and Respondents from disclosing the information they have received under sections 3.4 and 3.5.

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

3.3.1 expressly authorized by the affected individual;

3.3.2 to a UBC employee, contractor, or volunteer, if necessary for the performance of that individual’s duties;

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

3.3.4 to a Complainant or Respondent in accordance with sections 3.4 and 3.5;

3.3.5 authorized by the University Counsel for compelling health or safety reasons;

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

3.3.7 authorized or required under law.

3.4 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. The FIPPA may require UBC to withhold Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, they will only receive the information that is relevant to them.
3.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons. For example, UBC will normally inform Complainants of any restrictions that may have been imposed upon the Respondent’s movements or activities.

3.6 Section 3.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 3.4 and 3.5. 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.

4. Definitions

4.1 “Complainant” is an individual who has alleged that they have been directly subjected to Misconduct by a Respondent;

4.2 “Investigation” is the process undertaken by UBC to ascertain whether a Respondent has engaged in Misconduct;

4.3 “Misconduct” is any conduct that warrants discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations;

4.4 “Personal Information” is information about an identifiable individual; and

4.5 “Respondent” is the person who is the subject of the Investigation.