



SUBJECT	Proposed Policy Amendment Sexual Misconduct Policy (SC17)
SUBMITTED TO	People, Community & International Committee
MEETING DATE	March 13, 2024
SESSION CLASSIFICATION	Recommended session criteria from Board Meetings Policy: OPEN
REQUEST	For input only - No action requested
LEAD EXECUTIVE	Hubert Lai, K.C., University Counsel
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PRIOR SUBMISSIONS

The subject matter of this submission has not previously been considered.

EXECUTIVE SUMMARY

The *Sexual Violence and Misconduct Policy Act* came into force on May 19, 2017. The *Act* required all post-secondary institutions to establish and implement sexual misconduct policies and to review their policies every three years. In response to the legislation, the Sexual Misconduct and Sexualized Violence Policy, Policy No. SC17 (the “**Policy**”), came into effect on May 18, 2017. The Policy was subsequently reviewed and amended in 2020.

In 2023, the Office of the University Counsel convened a Policy Development Review Committee (the “**PDC**”) to undertake the next 3-year review. The PDC met four times in October and November 2023. During its meetings, the PDC discussed how various actors (such as complainants, respondents, the Investigations Office, the Sexual Violence Prevention and Response Office, and the Respondent Resource Specialist) are experiencing and interacting with the Policy. Overall, the PDC’s view is that the Policy, having benefited from a tremendous amount of community engagement and input since 2016 (when work on the Policy first started), is now relatively mature. Thus, the proposed amendments fine-tune the Policy rather than significantly overhaul it. Based on what the PDC discussed, the PDC is now proposing amendments to the Policy which are intended to: 1) make the Policy easier to understand and follow; and 2) increase the efficiency and transparency of the Policy and the processes outlined in it.

The PDC’s most notable proposed amendments to the Policy are:

1. A statement that UBC is committed to creating a non-judgmental and supportive environment for disclosing and reporting sexual misconduct as well as a statement recognizing that individuals may be hesitant to disclose or report sexual misconduct in various circumstances (Policy, s. 1.10). The current version of the Policy recognizes that an individual may be hesitant to disclose or report if the individual was consuming alcohol or drugs when the alleged sexual misconduct occurred. The purpose of the amendments is to recognize that various other circumstances may also result in an individual being hesitant to disclose or report. The changes are meant to help individuals feel comfortable and able to make disclosures and reports in all circumstances.


2. Clarification of when UBC will have jurisdiction to investigate under the Policy (Policy, ss. 3.1-3.3). The amendments clarify that: an investigation under the Policy is dependent on UBC having jurisdiction to investigate; UBC will not lose jurisdiction to investigate if the respondent stops being a member of the UBC Community; and UBC's jurisdiction to investigate extends to allegations of prohibited relationships (and is not limited to allegations of "sexual misconduct").
3. Changes to the provisions on third party and anonymous reporting (Policy, ss. 8, 10). Under the current version of the Policy, third parties are permitted to make reports of sexual misconduct (that is, a person other than the person who experienced sexual misconduct may make a report) (Policy, s. 10). Anonymous reports are also permitted (that is, a person can submit a report without revealing their identity). Both types of reports create issues for the Investigations Office as it can be difficult, and even impossible, to conduct an investigation when the person who experienced the alleged sexual misconduct is not involved in the investigation (as is often the case for third party and anonymous reports). The Investigations Office's decreased ability to investigate third party and anonymous reports can in turn lead to uncertainty and frustration for those who made the reports in the first place. The amendments to sections 8 and 10 are designed to encourage third parties and those wishing to remain anonymous to consult with the Sexual Violence Prevention and Response Office before actually making an anonymous or third-party report to the Investigations Office. The Sexual Violence Prevention and Response Office can then provide information about the limitations in the ability of the Investigations Office to investigate a report that has been submitted on an anonymous or third-party basis. The Sexual Violence Prevention and Response Office will continue to retain the ability to decide whether to make its own report to the Investigations Office.
4. A provision setting out the default timelines for investigations (Procedures, s. 2). The current version of the Procedures includes some provisions on timelines, however, the timelines are spread out in different sections. To make the information about timelines more accessible to the reader, the amendments consolidate all of the timelines in a single provision. The amendments also highlight that, for a variety of reasons, it may be necessary and appropriate to adjust those timelines. The provision on timelines includes a slightly longer default timeline for investigations (the timeline has been increased from 60 days to 90 days) that is consistent with the timeline for investigations under other policies, such as the Discrimination Policy. The increased timeline is also more realistic in light of the fact that investigations under the Sexual Misconduct Policy tend to be some of the most complex investigations undertaken by UBC.
5. A provision to explicitly recognize an investigator's power to set deadlines for completion of individual steps in the investigation (Procedures, s. 6.3.6). During investigations, complainants, respondents, and other witnesses regularly make requests to delay interviews or other parts of the process. While most requests are legitimate, some are excessive or without reason. The purpose of this amendment is to empower investigators to set deadlines as needed in order to keep their investigations moving along.
6. A provision to explicitly recognize that, if the complainant, the respondent, or both the complainant and the respondent decline to participate in an investigation, the investigator may nonetheless complete their investigation or the Director of Investigations may terminate the investigation if it is not practical for the investigation to continue (Procedures, s. 6.5). If the Director of Investigations terminates the investigation, they are required to provide written reasons and report the termination of the investigation in the annual reporting. There is currently a lack of clarity about what an investigator and the Director of Investigations can do in the situation referred to above. To prevent the situation where an investigation remains open indefinitely, the proposed amendments empower the investigator and the Director of Investigations to resolve investigations.

7. A provision to clarify what the possible disciplinary outcomes for students are (Procedures, s. 7.4). This provision cross-references the UBC Academic Calendar and the provisions on Disciplinary Measures set out there.
8. A provision to clarify that the disciplinary outcomes for employees may include termination of employment or appointment (Procedures, s. 7.5)
9. A provision to clarify what information a complainant is entitled to if a respondent is successful in an appeal (Procedures, s. 9.2). The current Policy explains what information a complainant is entitled to following an investigation and the imposition of discipline by the President. However, it does not speak to what information a complainant is entitled to following a successful appeal. The proposed amendments clarify this.
10. Miscellaneous formatting and other revisions to make the structure of the Policy more consistent with other Board policies and best drafting practices.

Subject to any feedback from the Board's People, Community & International Committee, the next step will be to post the proposed amendments to the Policy on the website of the OUC and in UBC Today for public comments by the UBC community. The consultation period is expected to be from March 15, 2024, until April 26, 2024. The PDC will reconvene after the consultation period to consider the comments received. After reviewing the comments from the UBC community, the PDC will submit a final recommendation to the People, Community & International Committee for approval by the Board of Governors, with a target date of June 2024.

SUPPLEMENTAL MATERIALS

1. Proposed Sexual Misconduct Policy – clean copy of the proposed amendments to the Policy.
2. Blackline of proposed amendments to the Sexual Misconduct Policy compared against the current version of the Sexual Misconduct Policy.
3. List of Members of the Policy Development Committee.
4. The current Sexual Misconduct Policy is available at: <https://universitycounsel.ubc.ca/policies/sexual-misconduct-policy/>

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

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 violence¹. 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.

¹ 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 is committed to creating a non-judgmental and supportive environment for Reporting and Disclosing. UBC recognizes that an individual may be hesitant to Disclose or Report if the individual feels vulnerable about the circumstances surrounding the alleged Sexual Misconduct. An individual who makes a Disclosure or Report will not be subject to actions for violating any applicable UBC policy, rules, or regulations related to alcohol or drug use at the time the alleged Sexual Misconduct occurred.
- 1.11 UBC recognizes that many relationships in our community have inherent power imbalances and that certain relationships between students and other Members of the UBC Community are relationships of heightened trust and vulnerability. These dynamics present risks for students. To minimize the risks, 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 a claim that the relationship is 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 sex, 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, including comments or gestures, related to an individual's sex, sexuality, gender identity, or gender expression, 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, twelve-month lecturers, visiting and emeritus faculty, teaching assistants, supervisors of graduate students, supervisors of researchers, program directors, librarians, or any other person employed by UBC in an equivalent position to the above designated by the UBC Vancouver Senate, the UBC Okanagan Senate, or the Council of Senates.
- 2.5 **“Prohibited Relationship”** is any 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 can only investigate allegations of Sexual Misconduct if it has Jurisdiction to Investigate. 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 or Prohibited Relationship and at the time the Report is submitted;
 - 3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct or Prohibited Relationship; 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 Once the Director of Investigations determines that Jurisdiction to Investigate exists, UBC will maintain Jurisdiction to Investigate even if the Respondent stops being a Member of the UBC Community, including but not limited to where the Respondent resigns from their employment or withdraws from studies.

3.3 Even if the Director of Investigations determines that Jurisdiction to Investigate exists, the Director may exercise discretion to decline to investigate a Report on the grounds that:

3.3.1 proceeding with an Investigation 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

3.3.2 proceeding with an Investigation 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 Consent. Also, agreement 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 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) incapacitated due to ingestion of alcohol or drugs; or

(c) under the legal age of consent as provided 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 belief that there was Consent, if formed due to the Respondent's intoxication or impairment from alcohol or drugs, is not a defence to the allegation of Sexual Misconduct even if the belief was honestly held.

- 4.1.8 An individual's sexual reputation or history of sexual activity cannot be submitted as evidence to prove that it was likely that the individual provided Consent.
- 4.1.9 Even if a relationship is not a Prohibited Relationship, there is an inherent risk that Consent cannot be given in any relationship of trust or authority that includes an imbalance, or perceived imbalance, of power. Where there is an allegation of Sexual Misconduct in such a relationship, 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 An individual who has experienced Sexual Misconduct may make a Disclosure to the Sexual Violence Prevention and Response Office which 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 An individual may access support and assistance from, or make a Disclosure to, the Sexual Violence Prevention and Response Office regardless of whether they have made or intend to make a Report under this Policy or to any third-party investigating body. The Sexual Violence Prevention and Response 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 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 of this Policy. 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 and an individual may choose to Disclose but not Report. UBC will respect an individual's choice and a Disclosure will not result in a Report or an Investigation or any other action by UBC subject only to sections 8.4 and 8.5 of this Policy.
- 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 shared in order to allow the Member to access support services and assistance, the information shared 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 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 that a failure to investigate would result in significant harm to the community or anyone's health or safety, the Director of the relevant Sexual Violence Prevention and Response Office may do one or both of the following:
 - 8.4.1 refer the matter to the Investigations Office as a Report under section 9; or
 - 8.4.2 notify third parties, such as the police or child protection authorities.

- 8.5 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 make an Institutional Report to the Director of Investigations based on the allegations in the Disclosures.
- 8.6 If the Director of the relevant Sexual Violence Prevention and Response Office makes a Report to the Director of Investigations under section 8.4 or 8.5 of this Policy, the name or names of the individuals making the Disclosures will not be included in the Report unless the Director of the relevant Sexual Violence Prevention and Response Office believes it is necessary to do so or the individuals provide express consent for their names to be included.
- 8.7 If the Director of Investigations decides to investigate a Report made to them under section 8.4 or 8.5 of this Policy, the Director of the relevant Sexual Violence Prevention and Response Office will notify the individuals who made the Disclosures that an Investigation is taking place and ensure that appropriate support services are made available to the individuals.
- 8.8 If the names of the individuals who made the Disclosures are shared with the Investigations Office, the Investigations Office will not share the names of the individuals who made the Disclosures with anyone unless the Director of Investigations believes it is necessary under section 8.4.2 to do so or the individuals provide express consent for their names to be shared. The individuals who made the Disclosures have the right not to participate as witnesses in any Investigation. In such cases, the Director of Investigations may consider whether any other steps can and should be taken, including referring the matter to the At-Risk Behaviour Policy (SC13). However, an individual's decision not to share their name or participate as a witness may impact the ability to proceed with an Investigation or impose measures under the At-Risk behaviour Policy (SC13).
- 8.9 In appropriate circumstances, where other evidence exists and where proceeding with an Investigation would not violate procedural fairness, the Director of Investigations may exercise discretion to proceed with an Investigation into a Report made under section 8.4 or 8.5 of this Policy.
- 8.10 Subject to sections 8.4 and 8.5 of this Policy, 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 about 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 4 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 8.4.2 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 UBC from resuming its process or taking further action under its process at a later date as the Director of Investigations deems appropriate.
- 9.6 Where a Report found 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 may refer the At-Risk Behaviour to the appropriate decision maker under the At-Risk Behaviour Policy (SC13).

10. Third Party Disclosures

- 10.1 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.
- 10.2 Members of the UBC Community who receive a Disclosure are expected to honour the choices of the person making the Disclosure.
- 10.3 If a Member of the UBC Community who receives a Disclosure believes that there is a risk that a failure to investigate would result in significant harm to the community or anyone's health or safety, then the Member of the UBC Community may forward the Disclosure to the Sexual Violence Prevention and Response Office.
- 10.4 The Sexual Violence Prevention and Response Office will handle Disclosures made by third parties in accordance with sections 8.4 and 8.5 of this Policy.

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. Timelines

- 2.1 UBC endeavours to complete Investigations in a timely way. The Director of Investigations will set the timelines for each Investigation and may adjust the timelines in an Investigation at any time. Reasons for adjusting the timelines may include but are not limited to the complexity of the issues, the number of witnesses, and the availability of the parties to the Investigation. In adjusting the timelines, the Director of Investigations may take into account the Complainant's and Respondent's requests, and will notify the Complainant and the Respondent as soon as possible of any revised timelines.
- 2.2 Unless the Director of Investigations sets other timelines or adjusts the timelines:
 - 2.2.1 the Director of Investigations will determine if there is Jurisdiction to Investigate within 14 days from the date they receive a Report;
 - 2.2.2 the Investigator will complete their Investigation (including preparing a written report of the Investigation Findings) within 90 days from when the Director of Investigations determines that Jurisdiction to Investigate exists; and
 - 2.2.3 the appropriate UBC authority will render a decision under section 7 of these Procedures within 30 days from the date they receive the Investigation Findings.

- 2.3 UBC will provide the Complainant and the Respondent with regular progress updates throughout the process, including:
 - 2.3.1 informing the individual making the Report if the Director of Investigations determines that they do not have Jurisdiction to Investigate. In this case the Director of Investigations will also provide the individual making the Report with written reasons;
 - 2.3.2 informing the Complainant and the Respondent if the Director of Investigations determines that they have Jurisdiction to Investigate; and
 - 2.3.3 informing the Complainant and the Respondent when the Investigator completes their written report of the Investigation Findings.

3. Reports

- 3.1 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.

4. Initial Review

- 4.1 Upon receipt of a Report, the Director of Investigations will conduct an initial review to determine if UBC has Jurisdiction to Investigate.
- 4.2 If the Director of Investigations determines that UBC has Jurisdiction to Investigate allegations of Sexual Misconduct, 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. If the Director of Investigations determines that UBC has Jurisdiction to Investigate allegations of a Prohibited Relationship, the student will be referred to as the Complainant in any subsequent process, and the individual in the supervisory role or position of influence will be referred to as the Respondent.
- 4.3 If the Respondent has an employment relationship to UBC, the Director of Investigations will notify the appropriate UBC authority who may make any appropriate workplace arrangements required to ensure a fair investigation process.
- 4.4 Unless the Director of Investigations declines to investigate a Report pursuant to section 3.3 of the Policy, the Director of Investigations will do one of the following:
 - 4.4.1 appoint an Investigator to Investigate the allegations in the Report under section 6 of these Procedures; or
 - 4.4.2 subject to sections 5.1 and 5.2 of these Procedures, refer the matter to an Alternative Resolution Process.
- 4.5 Upon initiating an Investigation, the Director of Investigations will:

- 4.5.1 notify the Complainant that the matter 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
- 4.5.2 notify the Respondent that a Report has been made and the matter has been referred to an Investigator, and provide the Respondent with:
 - (a) a summary of the Report, including the allegations of Sexual Misconduct or a Prohibited Relationship contained in the Report and any other information the Respondent needs to know in order to respond to the allegations against them; and
 - (b) information about the resources available, including the Respondent Resource Specialist, 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.
- 4.6 When the Director of Investigations exercises discretion to decline to investigate under section 3.23 of the Policy, the Director will:
 - 4.6.1 provide written reasons to the individual making the Report; and
 - 4.6.2 report the decision to decline to investigate in the Investigation Office annual reporting.
- 4.7 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 individual making the Report before referring the matter elsewhere.

5. Alternative Resolution Processes

- 5.1 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 of Investigations will refer the matter to that process for resolution.
- 5.2 Participation in an Alternative Resolution Process will be considered by the Director of Investigations 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 6 of these Procedures.

- 5.3 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.

6. Investigations

- 6.1 Investigations will be conducted by Investigators under the Director of Investigations' direction and authority and in accordance with the rules set out in the Policy and these Procedures. Investigations are not adversarial processes and hearings will not be held as part of the investigatory process.
- 6.2 In all Investigations, the Respondent will be fully informed of the allegations in the Report, and will be given the opportunity to respond. Both the Respondent and the Complainant will be informed of information that the Investigator gathered and will be provided copies of any documents obtained by the Investigator, upon which the Investigator might rely in making findings of fact in the Investigation.
- 6.3 Subject to sections 6.1 and 6.2, the Investigator may investigate in any manner that the Investigator deems appropriate in order to obtain the information required to make the necessary findings of fact. This may include, but is not limited to, the following:
- 6.3.1 requesting a written response to the Report from the Respondent, including a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;
 - 6.3.2 meeting with or requesting further information from the Complainant;
 - 6.3.3 meeting with or requesting further information from the Respondent;
 - 6.3.4 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;
 - 6.3.5 obtaining any other evidence, including evidence of mitigating and aggravating circumstances, that may be relevant to the Investigation; and
 - 6.3.6 setting dates or timelines for the completion of steps in the Investigation.
- 6.4 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:
- 6.4.1 a synopsis of the evidence considered;

- 6.4.2 any assessment of credibility that is required to make findings of fact or render a determination as to whether Sexual Misconduct has occurred;
 - 6.4.3 a description of any mitigating or aggravating factors; and
 - 6.4.4 the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct occurred.
- 6.5 If a Complainant or Respondent declines to participate in all or part of the Investigation:
- 6.5.1 the Investigator may complete the Investigation based on the available evidence; or
 - 6.5.2 the Director of Investigations may terminate the Investigation if the Director determines that it is not practicable to continue with the Investigation. If the Director of Investigations terminates the Investigation, the Director will provide written reasons to the Complainant and the Respondent and report the termination of the Investigation in the Investigation Office annual reporting.

7. Outcome and Disciplinary Measures

- 7.1 The Investigations Office does not determine the outcome or disciplinary measures to be imposed in response to the Investigation Findings.
- 7.2 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 responsible for making a final decision on outcome or disciplinary measures as follows:
 - 7.2.1 in the case of a student Respondent, to the President;
 - 7.2.2 in the case of a registrant Respondent, to the Administrative Head of Unit in whose educational activity the Respondent is registered;
 - 7.2.3 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;
 - 7.2.4 in the case of a staff member Respondent, to the staff member's administrative head of unit;
 - 7.2.5 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;
 - 7.2.6 in the case of a Respondent who is serving on a UBC committee, to the chair of the committee.
- 7.3 If the Respondent has more than one relationship to UBC, then the Director of Investigations will provide a copy of the Investigation Findings to all appropriate UBC authorities and each

authority will make a final decision on outcome or disciplinary measures as it relates to their relationship with the Respondent.

- 7.4 Where there is a determination that a student Respondent has engaged in Sexual Misconduct, the President will determine what disciplinary or other measures are appropriate in accordance with the *University Act*. For clarity and without limiting the President's discretion, the disciplinary measures that may be imposed are the same as the disciplinary measures that may be imposed for non-academic misconduct and are set out in the UBC Academic Calendar under the headings Discipline for Non-Academic Misconduct: Student Code of Conduct and Disciplinary Measures.
- 7.5 Where there is a determination that any other Respondent has engaged in Sexual Misconduct, the appropriate UBC authority or authorities will determine what disciplinary measures are appropriate in accordance with the applicable collective or employment agreements, the *University Act*, and any other applicable legal requirements. A Respondent found to have violated the Policy may be subject to disciplinary action up to and including termination of employment or appointment.
- 7.6 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 8.5 of these Procedures.
- 7.7 If the appropriate UBC authority determines that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to:
 - 7.7.1 UBC Student Housing and Hospitality Services, if the Respondent is subject to a UBC residence contract or agreement;
 - 7.7.2 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
 - 7.7.3 UBC Athletics and Recreation, if the Respondent is subject to a Varsity student athlete agreement.
- 7.8 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.
- 7.9 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 of Investigations will

notify the Respondent and, when appropriate, the individual who made the Report before referring it elsewhere.

8. Confidentiality and Privacy


- 8.1 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.
- 8.2 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:
 - 8.2.1 any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;
 - 8.2.2 UBC representatives from disclosing Investigation-related information as authorized under section 8.3 of these Procedures; or
 - 8.2.3 Complainants and Respondents from disclosing the information that they have received under sections 8.4 and 8.5 of these Procedures.
- 8.3 UBC will not disclose any Personal Information related to an Investigation except:
 - 8.3.1 when expressly authorized by the affected individual;
 - 8.3.2 to a UBC representative and disclosure is necessary for the performance of that individual’s duties;
 - 8.3.3 to a Complainant, Respondent, witness, or other participant in the Investigation, if necessary for the conduct of the Investigation;
 - 8.3.4 to a Complainant or Respondent in accordance with sections 8.4 and 8.5;
 - 8.3.5 when authorized by the University Counsel for compelling health or safety reasons;
 - 8.3.6 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
 - 8.3.7 when authorized or required under law.
- 8.4 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.

- 8.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions taken against a Respondent if the disclosure is consented to in writing by the Respondent or authorized by the University Counsel or the University Counsel's designate (such as for compelling health or safety reasons or informing the Complainant of restrictions imposed upon the Respondent's movements, activities, or contact with the Complainant).
- 8.6 Section 8.2 of these Procedures does not prevent Complainants and Respondents from disclosing the information received under sections 8.4 and 8.5 of these Procedures. 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.

9. Appeal Processes

- 9.1 Student Respondents may appeal a disciplinary decision made by the President imposed on the basis of an Investigation under the Policy 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.
- 9.2 If an appeal under section 9.1 of these Procedures is successful, the Director of Investigations will inform the Complainant of:
 - 9.2.1 changes to the information that the Complainant was previously provided with from the Investigation Findings pursuant to section 8.4 of these Procedures; and
 - 9.2.2 changes to the disciplinary actions taken against the Respondent if the disclosure is consented to by the Respondent or authorized by the University Counsel or the University Counsel's designate (such as for compelling health or safety reasons or informing the Complainant of restrictions imposed upon the Respondent's contact with the Complainant).
- 9.3 Staff or faculty may appeal discipline imposed on the basis of an Investigation under the Policy in accordance with the provisions of their collective agreements or their terms and conditions of employment.

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

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 violence¹. 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

¹ 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.

broader social attitudes about gender, sex, and sexuality that normalize Sexual Misconduct and undermine equality.

- 1.4 UBC is committed to reducing barriers to Disclosing and Reporting, and to taking a Trauma-informed Approach when responding to and addressing Disclosures and Reports, and when conducting Investigations. 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 is committed to creating a non-judgmental and supportive environment for Reporting and Disclosing. UBC recognizes that ~~some individuals~~ an individual may be hesitant to Disclose or Report if the individual feels vulnerable about the circumstances surrounding the alleged 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~~ violating any applicable UBC policy, rules, or regulations related to alcohol or drug ~~or alcohol~~ use at the time the alleged Sexual Misconduct occurred.
- 1.11 UBC recognizes that many relationships in our community have inherent power imbalances and that certain relationships between students and other Members of the UBC Community are relationships of heightened trust and vulnerability. ~~Sexual~~ These dynamics present risks for students. To minimize the risks, 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 a claim 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 sex, 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~~ including comments or gestures, related to an individual's sex, sexuality, gender identity, or gender expression, 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, twelve-month lecturers, visiting and emeritus faculty, teaching assistants, supervisors of graduate students, supervisors of researchers, program directors, librarians, or

any other person employed by UBC in an equivalent position to the above designated by the UBC Vancouver Senate, the UBC Okanagan Senate, or the Council of Senates.

- 2.5 **“Prohibited Relationship”** is any 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 can only investigate allegations of Sexual Misconduct if it has Jurisdiction to Investigate.](#)
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 [or Prohibited Relationship](#) and at the time the Report is submitted;

3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct or Prohibited Relationship; 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 Once the Director of Investigations determines that Jurisdiction to Investigate exists, UBC will maintain Jurisdiction to Investigate even if the Respondent stops being a Member of the UBC Community, including but not limited to where the Respondent resigns from their employment or withdraws from studies.

3.3 ~~3.2-The~~ Even if the Director of Investigations determines that Jurisdiction to Investigate exists, the Director may exercise discretion to decline to investigate a Report ~~under this Policy~~ on the grounds that:

3.3.1 ~~3.2.1~~ proceeding with ~~the complaint~~ an Investigation 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

3.3.2 ~~3.2.2~~ proceeding with ~~the complaint~~ an Investigation 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~~ Consent. Also, ~~consent~~ agreement 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~~ 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~~ 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~~ Consent is given for another sexual activity, and ~~consent~~ 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~~ 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~~Consenting if the individual is:

- (a) asleep or unconscious;
- (b) ~~unable to consent~~incapacitated due to ingestion of ~~drugs or~~ alcohol or drugs; or
- (c) under the legal age of consent as ~~defined~~provided 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 that there was Consent, if formed due to the Respondent's intoxication or impairment from ~~drugs or~~ alcohol or drugs, ~~that there was consent~~ is not a ~~defense~~defence to the allegation of Sexual Misconduct even if the belief was honestly held.

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

4.1.9 Even if ~~sexual activity occurs outside of the class of a~~ relationship is not a Prohibited ~~Relationships~~Relationship, there is an inherent risk that ~~consent is not voluntary whenever there is a~~ Consent cannot be given in any relationship of trust or authority ~~in which there is~~that includes an imbalance, or perceived imbalance, of power. Where there is an allegation of Sexual Misconduct in ~~these relationships~~such a relationship, the nature of the relationship will be a significant factor in determining whether there was ~~consent~~Consent.

5. The Sexual Violence Prevention and Response Office

5.1 ~~The~~An individual who has experienced Sexual Misconduct may make a Disclosure to the Sexual Violence Prevention and Response Office ~~receives disclosures under this Policy and~~which 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~~An individual may access support and assistance from, or make a Disclosure to, the Sexual Violence Prevention and Response Office regardless of whether they have made or intend to make a Report under this Policy or to any third-party investigating body ~~to access support and assistance from this office. The office.~~ The Sexual Violence Prevention and Response 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 of this Policy. 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~~ an individual may choose to Disclose ~~Sexual Misconduct without making~~ but not Report. ~~Consequently, UBC will respect an individual's choice and a~~ Disclosure ~~does~~ will not result in a Report ~~being made, and does not initiate~~ or an Investigation or any other action by UBC; subject only to ~~section 8.5~~ sections 8.4 and 8.5 of this Policy.

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~~ shared in order to allow the Member to access support services

and assistance, the information ~~disclosed~~shared 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.~~

8.4 ~~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~~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 that a failure to investigate would result in~~ significant harm to the community or anyone's health or safety, the Director of the relevant Sexual Violence Prevention and Response Office may do one or both of the following:

8.4.1 ~~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

8.4.2 ~~8.5.2~~ notify third parties, such as the police or child protection authorities.

8.5 ~~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~~

8.6 If the Director of the relevant Sexual Violence Prevention and Response Office makes a Report to the Director of Investigations under section 8.4 or 8.5 of this Policy, the name or names of the individuals making the Disclosures ~~unless~~ will not be included in the Report unless the Director of the relevant Sexual Violence Prevention and Response Office believes it is necessary to do so or the individuals provide express consent ~~is given~~ for their names to be included.

8.7 If the Director of Investigations ~~takes any action~~ decides to investigate a Report made to them under section ~~8.6~~ 8.4 or 8.5 of this Policy, the Director of the relevant Sexual Violence Prevention and Response Office will notify the individuals who made the Disclosures that an Investigation is taking place and ~~will~~ ensure that appropriate support services are made available to ~~those~~ the individuals.

8.8 If the names of the individuals ~~The who made the Disclosures are shared with the~~ Investigations Office, the Investigations Office will not ~~receive or disclose~~ share the names of the individuals ~~making~~ who made the Disclosures ~~without the~~ with anyone unless the Director of Investigations believes it is necessary under section 8.4.2 to do so or the individuals provide express consent ~~of those~~ for their names to be shared. The individuals, who made the Disclosures have the right not to participate as witnesses in any ~~subsequent investigation~~ Investigation. In such cases, the Director of Investigations may consider whether any other steps can and should be taken, including referring the matter to the At-Risk Behaviour Policy (SC13). However, an individual's decision not to share their name or participate as a witness may impact the ability to proceed with an Investigation or impose measures under the At-Risk behaviour Policy (SC13).

8.9 In appropriate circumstances, where other evidence exists and where proceeding with an Investigation would not violate procedural fairness, the Director of Investigations may exercise discretion to proceed with an Investigation into a Report made under section 8.4 or 8.5 of this Policy.

8.10 ~~8.8~~ Subject to sections ~~8.5~~ 8.4 and ~~8.6~~ 8.5 of this Policy, 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~~ about 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 34 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 ~~8.5.28.4.2~~ 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 UBC from resuming its process or taking further action ~~to be taken~~ under ~~the UBC's~~ process at a later date as the Director of Investigations deems appropriate.

9.6 Where a Report, ~~made to the Investigations Office and found by the Director of Investigations~~ found 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~~ may refer the At-Risk Behaviour to the appropriate decision maker under the At-Risk Behaviour Policy (SC13).

10. ~~Anonymous and~~ Third Party ~~Allegations~~ Disclosures

10.1 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.

10.2 ~~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.~~

10.3 ~~10.2 Individuals, other than the individual who was directly subjected to Sexual Misconduct or~~ If a Member of the UBC Community who ~~have received~~ receives 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~~ believes that there is a risk that a failure to investigate would result in significant harm to the community or anyone's health or safety, then ~~the Director~~ Member ~~of the appropriate~~ UBC Community may forward the Disclosure to the 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~~

10.4 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~~ will handle Disclosures made by third parties in accordance with sections 8.4 and 8.5 of this Policy.

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. Timelines

2.1 UBC endeavours to complete Investigations in a timely way. The Director of Investigations will set the timelines for each Investigation and may adjust the timelines in an Investigation at any time. Reasons for adjusting the timelines may include but are not limited to the complexity of the issues, the number of witnesses, and the availability of the parties to the Investigation. In adjusting the timelines, the Director of Investigations may take into account the Complainant's and Respondent's requests, and will notify the Complainant and the Respondent as soon as possible of any revised timelines.

2.2 Unless the Director of Investigations sets other timelines or adjusts the timelines:

- 2.2.1 the Director of Investigations will determine if there is Jurisdiction to Investigate within 14 days from the date they receive a Report;
- 2.2.2 the Investigator will complete their Investigation (including preparing a written report of the Investigation Findings) within 90 days from when the Director of Investigations determines that Jurisdiction to Investigate exists; and

2.2.3 the appropriate UBC authority will render a decision under section 7 of these Procedures within 30 days from the date they receive the Investigation Findings.

2.3 UBC will provide the Complainant and the Respondent with regular progress updates throughout the process, including:

2.3.1 informing the individual making the Report if the Director of Investigations determines that they do not have Jurisdiction to Investigate. In this case the Director of Investigations will also provide the individual making the Report with written reasons;

2.3.2 informing the Complainant and the Respondent if the Director of Investigations determines that they have Jurisdiction to Investigate; and

2.3.3 informing the Complainant and the Respondent when the Investigator completes their written report of the Investigation Findings.

3. ~~2-~~Reports

3.1 ~~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.

4. ~~3-~~Initial Review

4.1 ~~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.~~

4.2 ~~3-2~~ If the Director of Investigations determines that UBC has ~~the~~ Jurisdiction to Investigate allegations of Sexual Misconduct, 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. If the Director of Investigations determines that UBC has Jurisdiction to Investigate allegations of a Prohibited Relationship, the student will be referred to as the Complainant in any subsequent process, and the individual in the supervisory role or position of influence will be referred to as the Respondent.

4.3 ~~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 of Investigations will notify the appropriate UBC authority who may make any appropriate workplace arrangements required to ensure a fair investigation process.

4.4 ~~3.4~~ If Unless the Director of Investigations ~~determines that UBC has the Jurisdiction to Investigate~~ declines to investigate a Report pursuant to section 3.3 of the Policy, the Director of Investigations will do one of the following:

4.4.1 ~~3.4.1~~ appoint an Investigator to Investigate the allegations in the Report under section ~~5~~6 of these Procedures; or

4.4.2 ~~3.4.2~~ subject to sections ~~4.15.1~~ and ~~4.25.2~~ of these Procedures, refer the matter to an Alternative Resolution Process.

4.5 ~~3.5~~ Upon initiating an Investigation, the Director of Investigations will:

4.5.1 ~~3.5.1~~ notify the Complainant that the ~~Report~~matter has been referred to an Investigator, and provide information about the resources available and the ~~investigation~~Investigation process, including the Complainant's right to have an advisor, support person, or union representative present during meetings with the Investigator; and

4.5.2 ~~3.5.2~~ notify the Respondent that a Report has been made and the matter has been referred to an Investigator, and provide the Respondent with:

(a) a ~~copy~~summary of the Report ~~along with~~, including the allegations of Sexual Misconduct or a Prohibited Relationship contained in the Report and any other information the Respondent needs to know in order to respond to the allegations against them; and

(b) information about the resources available, including the Respondent Resource Specialist, and the ~~investigation~~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.~~

4.6 ~~3.7~~ When the Director of Investigations exercises discretion to decline to investigate ~~a Report~~ under section ~~3.23.3~~ of the Policy, the Director will:

4.6.1 ~~3.7.1~~ provide written reasons to the individual making the Report; and

4.6.2 ~~3.7.2~~ report the decision to decline to investigate in the Investigation Office annual reporting.

4.7 ~~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~~individual making the Report before referring the matter elsewhere.

5. ~~4.~~ Alternative Resolution Processes

5.1 ~~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 of Investigations will refer the matter to that process for resolution.

5.2 ~~4.2~~—Participation in an Alternative Resolution Process will be considered by the Director of Investigations 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.

5.3 ~~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.

6. ~~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.~~

6.1 ~~5.3~~—Investigations will be conducted by Investigators under the Director of Investigations' direction and authority and in accordance with the rules set out in the Policy and these Procedures. 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.~~

6.2 ~~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~~ the Respondent and the Complainant will be informed of information that the Investigator gathered and will be

provided copies of any documents obtained by the Investigator, upon which the Investigator might rely in making findings of fact in the Investigation.

6.3 ~~5.5~~ Subject to sections ~~5.3~~6.1 and ~~5.4~~6.2, the Investigator may investigate in any manner ~~deemed~~that the Investigator deems appropriate in order to obtain the information required to make the necessary findings of fact. This may include, but is not limited to, the following:

6.3.1 ~~5.5.1~~ requesting a written response to the Report from the Respondent, ~~that includes~~including a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;

6.3.2 ~~5.5.2~~ meeting with or requesting further information from the Complainant;

6.3.3 ~~5.5.3~~ meeting with or requesting further information from the Respondent;

6.3.4 ~~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~~

6.3.5 ~~5.5.5~~ obtaining any other evidence, including evidence of mitigating and aggravating circumstances, that may be relevant to the Investigation; and

6.3.6 setting dates or timelines for the completion of steps in the Investigation.

6.4 ~~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:

6.4.1 ~~5.6.1~~ a synopsis of the evidence considered;

6.4.2 ~~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;

6.4.3 ~~5.6.3~~ a description of any mitigating or aggravating factors; and

6.4.4 ~~5.6.4~~ the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct ~~has~~ occurred.

6.5 If a Complainant or Respondent declines to participate in all or part of the Investigation:

6.5.1 the Investigator may complete the Investigation based on the available evidence; or

6.5.2 the Director of Investigations may terminate the Investigation if the Director determines that it is not practicable to continue with the Investigation. If the Director of Investigations terminates the Investigation, the Director will provide written reasons to the Complainant and the Respondent and report the termination of the Investigation in the Investigation Office annual reporting.

7. ~~6.~~ Outcome and Disciplinary Measures

7.1 ~~6.1~~ The Investigations Office does not determine the outcome or disciplinary measures to be imposed in response to the Investigation Findings.

7.2 ~~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:

7.2.1 ~~6.2.1~~ in the case of a student Respondent, to the President;

7.2.2 ~~6.2.2~~ in the case of a registrant Respondent, to the Administrative Head of Unit in whose educational activity the Respondent is registered;

7.2.3 ~~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;

7.2.4 ~~6.2.4~~ in the case of a staff member Respondent, to the staff member's administrative head of unit;

7.2.5 ~~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;

7.2.6 ~~6.2.6~~ in the case of a Respondent who is serving on a UBC committee, to the chair of the committee.

7.3 If the Respondent has more than one relationship to UBC, then the Director of Investigations will provide a copy of the Investigation Findings to all appropriate UBC authorities and each authority will make a final decision on outcome or disciplinary measures as it relates to their relationship with the Respondent.

7.4 ~~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 in accordance with the University Act. For clarity and without limiting the President's discretion, the disciplinary measures that may be imposed are the same as the disciplinary measures that may be imposed for non-academic misconduct and are set out in in the UBC Academic Calendar under the headings Discipline for Non-Academic Misconduct: Student Code of Conduct and Disciplinary Measures.

7.5 ~~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 ~~authority or~~ authorities ~~to will~~ determine what disciplinary ~~or other~~ measures ~~to be imposed will be consistent~~ are appropriate in accordance with the applicable collective or employment agreements, the *University Act*, and any other applicable legal requirements. A Respondent found to have violated the Policy may be subject to disciplinary action up to and including termination of employment or appointment.

7.6 ~~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.

7.7 ~~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:

7.7.1 ~~6.6.1~~ UBC Student Housing and Hospitality Services, if the Respondent is subject to a UBC residence contract or agreement;

7.7.2 ~~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

7.7.3 ~~6.6.3~~ UBC Athletics and Recreation, if the Respondent is subject to a Varsity student athlete agreement.

7.8 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.

7.9 ~~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 of Investigations will notify the Respondent and, when appropriate, the ~~person making~~ individual who made 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.~~

8. ~~7~~-Confidentiality and Privacy

8.1 ~~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.

8.2 ~~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:

8.2.1 ~~7.2.1~~ any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;

8.2.2 ~~7.2.2~~ UBC representatives from disclosing Investigation-related information as authorized under section ~~7.3~~8.3 of these Procedures; or

8.2.3 ~~7.2.3~~ Complainants and Respondents from disclosing the information that they have received under sections ~~7.4~~8.4 and ~~7.5~~8.5 of these Procedures.

8.3 ~~7.3~~ UBC will not disclose any Personal Information related to an Investigation except:

8.3.1 ~~7.3.1~~ when expressly authorized by the affected individual;

8.3.2 ~~7.3.2~~ to a UBC representative and disclosure is necessary for the performance of that individual's duties;

8.3.3 ~~7.3.3~~ to a Complainant, Respondent, witness, or other participant in the Investigation, if necessary for the conduct of the Investigation;

8.3.4 ~~7.3.4~~ to a Complainant or Respondent in accordance with sections 7.4 and 7.5;

8.3.5 ~~7.3.5~~ when authorized by the University Counsel for compelling health or safety reasons;

8.3.6 ~~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

8.3.7 ~~7.3.7~~ when authorized or required under law.

8.4 ~~7.4~~ To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation ~~findings~~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~~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.

8.5 ~~7.5~~ Under the FIPPA, UBC is only authorized to disclose disciplinary actions ~~it has~~ taken against ~~the~~a Respondent if the disclosure is consented to in writing by the Respondent or authorized by the University Counsel or the University Counsel's designate (such as for compelling health or safety reasons including or informing the Complainant of ~~any~~ restrictions ~~that may have been~~ imposed upon the Respondent's movements, activities, or contact with the Complainant).

8.6 ~~7.6~~ Section ~~7.2~~8.2 of these Procedures does not prevent Complainants and Respondents from disclosing the information received under sections ~~7.4~~8.4 and ~~7.5~~8.5 of these Procedures. 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.

9. ~~8.~~ Appeal Processes

9.1 ~~8.1~~ Student Respondents may appeal ~~any discipline that is~~ a disciplinary decision made by the President imposed on ~~them~~ the basis of an Investigation under ~~these Procedures~~ the Policy 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.

9.2 If an appeal under section 9.1 of these Procedures is successful, the Director of Investigations will inform the Complainant of:

9.2.1 changes to the information that the Complainant was previously provided with from the Investigation Findings pursuant to section 8.4 of these Procedures; and

9.2.2 changes to the disciplinary actions taken against the Respondent if the disclosure is consented to by the Respondent or authorized by the University Counsel or the University Counsel's designate (such as for compelling health or safety reasons or informing the Complainant of restrictions imposed upon the Respondent's contact with the Complainant).

9.3 ~~8.2~~ Staff or faculty may appeal ~~any decision or discipline that is made or~~ imposed on ~~them~~ the basis of an Investigation under ~~these Procedures~~ the Policy in accordance with the provisions of their collective agreements or their terms and conditions of employment.

List of Members of the Sexual Misconduct Policy Development Committee

The Office of the University Counsel constitute a Policy Development Committee comprised of the following members:

1.	Roslyn Goldner (Chair)	Executive Director of the Office of Respectful Environments, Equity, Diversity & Inclusion and Senior Advisor to the Dean on Professionalism
2.	Leanne Monsma (Secretary)	Legal Counsel, Office of the University Counsel
3.	Ainsley Carry	Vice-President, Students
4.	Anjali Desai	Student, UBCO - SUO Nominee
5.	Carly Stanhope	Director of Investigations, UBC Investigations Office
6.	Dale Mullings	AVP Students (UBC Okanagan)
7.	Habibatou Ba	Support Specialist, Sexual Violence Prevention & Response Office (UBC Vancouver)
8.	Hagar Prah	Respondent Resource Specialist, Respondent Resource Office
9.	Jan Cioe	Associate Professor, Chair, Okanagan Senate Academic Policy Committee
10.	Janine Benedet	Professor of Law, Allard School of Law
11.	Jessica Mukiri	Student, GSS Nominee
12.	Kamil Kanji	Student, AMS Nominee
13.	Kin Lo	Associate Professor, Accounting and Information Systems, Sauder School of Business
14.	Marcia Buchholz	Vice-President, Human Resources
15.	Mike Vizsolyi	Executive Director, Employee and Labour Relations, Human Resources
16.	Olusegun Oyedele	Associate Professor of Teaching, Department of Cellular & Physiological Sciences, Site Lead. Foundations of Medical Practice, FOMP/MEDD Southern Medical Program
17.	Shilo St. Cyr	Director, Sexual Violence Prevention & Response Office (UBC Okanagan)
18.	Steve Brodrick	Student Housing & Hospitality Services (UBC Okanagan)