

 The University of British Columbia Board of Governors	Policy No.: 131	Approval Date:
	Responsible Executive: Vice-President, Students Vice-President, Human Resources	
Title: Sexual Assault and Other Sexual Misconduct		
Background & Purposes: <p>UBC has a responsibility to maintain a respectful environment where its members can study, work, and live free from concerns of sexual misconduct. This policy articulates UBC’s duty and commitment to support 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.</p>		

1. Principles and Commitments

- 1.1 UBC will not tolerate sexual assault or any other Sexual Misconduct.
- 1.2 UBC recognizes that people’s experiences will be affected by factors such as their access to power and privilege, 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. These factors impact individuals’ experience of Sexual Misconduct, their ability to access supports, and their choices with regard to recourse. UBC will take these factors into account when carrying out any of its responsibilities under this Policy.
- 1.3 UBC is committed to providing comprehensive and inclusive Sexual Misconduct education and prevention initiatives. Through these initiatives, it is committed to combatting rape culture, a term that describes 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.
- 1.5 UBC will provide support services and accommodations to Members of the UBC Community who Disclose or Report Sexual Misconduct.
- 1.6 UBC is committed to respecting the rights of those who Disclose to make their own decisions about accessing support services and accommodations, making a Report, or pursuing external processes such as criminal or civil action.

- 1.7 UBC will provide support to Members of the UBC Community who have had Reports of Sexual Misconduct made against them.
- 1.8 UBC will respond to and address Disclosures and Reports, and conduct Investigations, in a timely manner.
- 1.9 UBC is committed to procedural fairness and to UBC's legal obligation to protect privacy when responding to Disclosures and Reports, and conducting Investigations.
- 1.10 UBC will not tolerate any retaliation, direct or indirect, against anyone involved in a Disclosure, a Report, or an Investigation.

2. The Sexual Violence Prevention and Response Office

- 2.1 UBC has established a Sexual Violence Prevention and Response Office.
- 2.2 The Sexual Violence Prevention and Response Office acts as a single point of contact and liaison for Members of the University Community who have experienced Sexual Misconduct at any time, and can provide individualized information, advice, and assistance. The services that can be provided by the Office include:
 - 2.2.1 receiving Disclosures;
 - 2.2.2 identifying, accessing, and coordinating support services and accommodations;
 - 2.2.3 providing information about and referrals to UBC Counselling Services and UBC Student Health Services at UBC Vancouver, the Health and Wellness Centre at UBC Okanagan, and the UBC Employee and Family Assistance Program;
 - 2.2.4 providing information about and referrals to external organizations such as the UBC Hospital, Kelowna General Hospital, the AMS Sexual Assault Support Centre, the Vancouver Rape Relief and Women's Shelter, Women Against Violence Against Women, and the Elizabeth Fry Society;
 - 2.2.5 providing information about confidentiality and how it relates to the information they provide through a Disclosure, a Report, or an Investigation;
 - 2.2.6 providing information about Reporting, Investigations, and alternative dispute resolution processes;
 - 2.2.7 providing information about any other relevant UBC policies, such as Policy #3 – Discrimination and Harassment, and Policy #14 – Response to At-Risk Behaviour;
 - 2.2.8 assisting with the creation of a Report or the submission of a Report to the Director of Investigations, or both;
 - 2.2.9 acting as a liaison with the investigator appointed to conduct an Investigation;
 - 2.2.10 acting as a support person during an Investigation;

- 2.2.11 receiving allegations regarding acts of retaliation for referral to the Director of the Sexual Violence Prevention and Response Office;
 - 2.2.12 providing information about reporting to the police, including information about the police's ability to put measures into place to protect the individual's safety off campus; and
 - 2.2.13 assisting with the creation of a report for the police or the submission of a report to the police, or both.
- 2.3 The Sexual Violence Prevention and Response Office will also:
- 2.3.1 provide support and information to Members of the UBC Community who receive Disclosures or who are supporting someone who has experienced Sexual Misconduct;
 - 2.3.2 establish, oversee, and coordinate sexual misconduct prevention and response protocols and processes, communications, resource materials, training, and a volunteer program; and
 - 2.3.3 raise awareness of and provide education on social attitudes about gender, sex and sexuality that normalize Sexual Misconduct and undermine equality.
- 2.4 Annually, UBC will publically report on the number of:
- 2.4.1 Disclosures received by the Sexual Violence Prevention and Response Office;
 - 2.4.2 Reports received by the Director of Investigations; and
 - 2.4.3 Reports investigated or referred to an alternative dispute resolution process.

3. Disclosures

- 3.1 Through the Sexual Violence Prevention and Response Office, UBC will make appropriate support services and accommodations available to Members of the UBC Community on the basis of any Disclosure, regardless of whether they decide to make a Report, or whether UBC has the Jurisdiction to Investigate.
- 3.2 The decision to Disclose and the decision to Report are separate decisions. An individual may choose to Disclose Sexual Misconduct without making a Report. Consequently, Disclosure does not result in a Report being made, and does not initiate an Investigation or other action by UBC.
- 3.3 Appropriate accommodations can include:
 - 3.3.1 student residence re-location or short term emergency student housing;
 - 3.3.2 class schedule changes;
 - 3.3.3 academic accommodations;
 - 3.3.4 temporary work reassignment, location reassignment, or scheduling changes;

- 3.3.5 emergency funding for students;
 - 3.3.6 safety planning; and
 - 3.3.7 the implementation of safety measures, including restrictions under Policy #14 – Response to At-Risk Behaviour.
- 3.4 UBC recognizes that disclosures of Sexual Misconduct are most often made to someone the individual making the disclosure already knows. If a Disclosure is made to a Member of the UBC Community who is not trained to receive Disclosures, that Member is encouraged to contact the Sexual Violence Prevention and Response Office for support and information on how best to respond to a Disclosure and support the individual making the Disclosure.
- 3.5 To the greatest extent possible, UBC will respect an individual’s choice not to make a Report and will keep the Disclosure confidential. In exceptional circumstances, where required by law or where there is a risk of significant harm to anyone’s health or safety, and at the sole discretion of the Director of the Sexual Violence Prevention and Response Office, UBC may do one or both of the following:
- 3.5.1 initiate an Investigation, in which case the individual who Disclosed has the right not to participate in the Investigation; and
 - 3.5.2 notify third parties, such as the police or child protection authorities.

4. Reports

- 4.1 Anyone directly subjected to Sexual Misconduct, including an individual who is not a Member of the UBC Community, can make a Report against a Member of the UBC Community under this Policy.
- 4.2 Reports must be submitted to the Director of Investigations who will address them in accordance with the Procedures under this Policy, which includes an initial review as set out under section 3 of the Procedures to determine whether the allegations contained in the Report fall within UBC’s Jurisdiction to Investigate.
- 4.3 Sexual harassment may fall within the scope of both Policy #3 – Discrimination and Harassment and this Policy. Reports that contain allegations of any other Sexual Misconduct in addition to allegations of sexual harassment will be addressed under this Policy. Reports that contain allegations of sexual harassment alone will be reviewed by the Director of Investigations and assessed to 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.
- 4.4 An individual can both submit a Report to UBC and pursue processes external to UBC against the individual alleged to have committed the Sexual Misconduct, such as reporting to the police or initiating a civil action (including a complaint under the BC *Human Rights Code*). These are separate decisions and Reporting to UBC does not result in a report to the police or the initiation of a civil action, although in exceptional circumstances, where required by law or where there is a risk of significant harm to anyone’s health or safety, UBC may notify third parties, such as the police or child protection authorities.

5. Anonymous and Third Party Reporting

- 5.1 Anonymous allegations, or allegations of Sexual Misconduct made by a third party (someone other than the individual who was directly subjected to the Sexual Misconduct) can also be submitted to the Director of Investigations.
- 5.2 UBC may be unable to proceed with an Investigation involving an anonymous or third party Report due to a lack of evidence from the individual who was directly subjected to the Sexual Misconduct. In such cases, the Director of Investigations will consider whether any other steps can and should be taken. Other steps may include practical measures, such as increased Campus Security presence at certain times or in certain places or, in appropriate cases, contacting the third party who submitted the Report to find out if the individual who was directly subjected to the Sexual Misconduct would consider submitting a Report or participating in an Investigation. However, where other sufficient evidence exists, and at the sole discretion of the Director of Investigations, UBC may decide to proceed with an Investigation. In such cases, the individual who was directly subjected to the Sexual Misconduct has the right to not participate in the Investigation.
- 5.3 If UBC is unable to proceed with an Investigation involving an anonymous or third party Report, the Report will be retained by the Sexual Violence Prevention and Response Office.

6. Policy Review

- 6.1 UBC is committed to reviewing this Policy at least once every three years, in consultation with students and other Members of the UBC Community.

7. Definitions

- 7.1 **“Sexual Misconduct”** is any sexual act or act targeting an individual’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against an individual without that individual’s Consent. The following list sets out examples of Sexual Misconduct. The list is intended to help Members of the UBC Community understand the kinds of acts that will be considered Sexual Misconduct. The list is not exhaustive and other acts can still be considered 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:
 - 7.1.1 sexual assault, which is any form of sexual touching or the threat of sexual touching without the individual’s Consent;
 - 7.1.2 sexual harassment, which is unwelcome conduct of a sexual nature that detrimentally affects the work, learning, or living environment, or leads to adverse consequences for the one directly subjected to the harassment;
 - 7.1.3 stalking, which is engaging in conduct that causes an individual to fear for their physical or psychological safety, such as repeatedly following or communicating through any means with someone, engaging in threatening conduct, or keeping watch over the place where the individual happens to be;

- 7.1.4 indecent exposure, which is exposing one's body to another individual for a sexual purpose or coercing another individual to remove their clothing in order to expose their body, without their Consent;
- 7.1.5 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
- 7.1.6 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.
- 7.2 **"Consent"** is the voluntary agreement to the act or acts in question and to continue to engage in the act or acts. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct. For clarity:
- Consent cannot be implied, and it can be revoked at any time during the act or acts in question.
 - Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent only applies to each specific instance of sexual activity.
 - No consent is obtained where an individual is incapable of consenting. An individual may be incapable of consenting if they are intoxicated, or if they are induced to engage in the activity by fraud, by someone exercising a position of trust, power or authority, or through coercion or the threat of violence.
 - Evidence that an individual was impaired by alcohol or drugs will always be a relevant consideration for determining whether they consented to the sexual activity in question.
- 7.3 **"Members of the UBC Community"** are individuals who fall under one or more of the following categories:
- 7.3.1 students, defined as individuals enrolled at UBC, including co-op and exchange students;
- 7.3.2 employees, including faculty and staff members;
- 7.3.3 holders of teaching appointments;
- 7.3.4 post-doctoral fellows; and
- 7.3.5 anyone contractually obligated to comply with this Policy.
- 7.4 **"Disclose"** or **"Disclosure"** is the sharing of information with UBC regarding any incident of Sexual Misconduct. Further information about Disclosures is provided in section 3 of this Policy.
- 7.5 **"Report"** or **"Reporting"** is providing a statement of allegations to the Director of Investigations about a Sexual Misconduct. Further information about Reporting is provided in sections 4 and 5 of this Policy.
- 7.6 **"Jurisdiction to Investigate"** is the legal authority to investigate under this Policy, which is limited by the following: the allegations must be made against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct and at the time the Report

was submitted; the alleged conduct must fall within the definition of Sexual Misconduct; and the alleged conduct must have a real and substantial connection to UBC, as that term has been interpreted under BC law.

- 7.7 **“Investigation”** is an investigation carried out by UBC on the basis of a Report, as set out in the Procedures to this Policy.

PROCEDURES

Approved: [DATE]

Pursuant to Policy #1: Administration of Policies, "Procedures may be amended by the President, provided the new procedures conform to the approved policy. Such amendments are reported at the next meeting of the Board of Governors." Note: the most recent procedures may be reviewed at <http://universitycounsel.ubc.ca/policies/index/>.

1. General

- 1.1 The Director of Investigations and the Investigators will exercise their authority and discretion under these Procedures in conformity with the principles of procedural fairness in the university context, and will take a trauma-informed approach to their work.
- 1.2 Investigations are not adversarial processes. Complainants and Respondents may have an advisor or support person present at any time during their participation in an Investigation.
- 1.3 The Director of Investigations will liaise with the Sexual Violence Prevention and Response Office to ensure that appropriate support services and accommodations remain in place, or are established, for the duration of the Initial Review and the Investigation.

2. Reports

- 2.1 Reports must be made in writing, although the Director of Investigations has the discretion in exceptional circumstances to defer this requirement.
- 2.2 The Report should set out the relevant details with regard to the alleged Sexual Misconduct. Reports should also identify any potential witnesses, along with a description of the information witnesses are expected to provide. Any relevant documents, including any available social media communications, should also be provided with the Report.

3. Initial Review

- 3.1 Upon receipt of a Report, the Director of Investigations will conduct an initial review to determine if UBC has the Jurisdiction to Investigate. This review will occur within 14 calendar days of receiving a Report unless exceptional circumstances exist that prevent the Director from meeting this timeline, in which case the Director of Investigations will contact the individual making the Report as soon as possible to inform them of the revised timeline.
- 3.2 Once the Director of Investigations determines that UBC has the Jurisdiction to Investigate, the individual directly subjected to the Sexual Misconduct becomes the Complainant, and the individual against whom the allegations have been made becomes the Respondent.
- 3.3 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, they will do one of the following:
 - 3.3.1 appoint an Investigator to Investigate the Report under section 4 of these Procedures;
or
 - 3.3.2 subject to section 3.4, refer the matter to an alternative resolution process.

- 3.4 If the Director of Investigations believes that an alternative resolution process may be appropriate in the circumstances, they will discuss this option with the Complainant. If the Complainant agrees that an alternative resolution process may be appropriate, the Director of Investigations will contact the Respondent to advise them that a Report was made, and will discuss this option with the Respondent. If the Respondent agrees to participate in an alternative resolution process and the Director is satisfied that an alternative resolution process is appropriate, then the Director of Investigation will explore the options available and, with the agreement of both parties, will refer the matter to that process for resolution. Participation in an alternative dispute resolution process is entirely voluntary. If either the Complainant or the Respondent decides they no longer wish to participate in the alternative resolution process at any time, then the matter will be referred back to the Director of Investigations and the Director of Investigations will appoint an Investigator to Investigate the Report under section 4 of these Procedures.
- 3.5 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 of this decision along with their reasons. If the Director of Investigations believes that the Report discloses other kinds of misconduct or information that UBC may need to act on, the Director may refer the Report to the appropriate UBC authority and will inform the individual making the Report when appropriate.
- 3.6 If an Investigation is initiated, the Director of Investigations will:
- 3.6.1 contact the Complainant to advise them that the Report has been referred to an Investigator, and provide the Complainant with information about the investigation process and the resources available to them; and
 - 3.6.2 contact the Respondent to advise them that a Report has been made and has been referred to an Investigator, and will provide the Respondent with a copy of the Report, along with information about the investigation process and information on the resources available to them for support.

4. Investigations

- 4.1 Except in exceptional circumstances, Investigations (including the preparation of the Investigative Report) 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 of the revised timeline.
- 4.2 The Investigator may carry out the investigation in any manner they deem appropriate in the circumstances. This may include, but is not limited to, the following:
- 4.2.1 meeting with or requesting further information from the Complainant;
 - 4.2.2 meeting with or requesting further information from the Respondent;
 - 4.2.3 meeting or requesting further information from any other individuals who may have information relevant to the Investigation; and

- 4.2.4 obtaining any other evidence that may be relevant to the Investigation.
- 4.3 At the completion of the Investigation, the Investigator will prepare a written Investigative Report for the Director of Investigations. The Investigative Report will normally include the following information:
 - 4.3.1 a summary of the evidence considered;
 - 4.3.2 any assessment of credibility that is required to render a determination; and
 - 4.3.3 the findings of fact, and a determination as to whether, on a balance of probabilities, Sexual Misconduct has occurred.

5. Outcome and Disciplinary Measures

- 5.1 If the Investigator determines that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigative Report to the appropriate UBC authority, as follows:
 - 5.1.1 in the case of a student Respondent, to the President, who will then determine what disciplinary or other measures are appropriate based on the findings of fact, up to and including suspension or expulsion;
 - 5.1.2 in the case of a faculty member Respondent, to the faculty member's Dean or, in the case of a librarian, to the University Librarian, who will then determine what disciplinary or other measures are appropriate based on the findings of fact. If suspension or termination of a faculty member is considered appropriate by the Dean or University Librarian, a recommendation will be made to the President who will then, in turn, make a recommendation to the Board of Governors. The Board of Governors will then decide if suspension or termination is appropriate; and
 - 5.1.3 in the case of a staff member Respondent, to the staff member's Administrative Head of Unit, who will then determine what disciplinary or other measures are appropriate based on the findings of fact, up to and including suspension. If termination of a staff member is considered appropriate by the Administrative Head of Unit, they will consult with the applicable Vice President, or Deputy Vice-Chancellor and Principal who will then decide whether to authorize the termination.
- 5.2 Once the appropriate UBC authority has made a decision regarding the appropriate disciplinary or other measures under section 5.1 above, that decision will be communicated in writing to the Respondent, along with a copy of the Investigative Report in accordance with section 6.4 of these Procedures. A copy of the decision and the Investigative Report will also be provided to the Director of Investigations. The Director of Investigations will then provide a copy of the Investigative Report to the Complainant and will inform the Complainant of any relevant restrictions that may have been imposed upon the Respondent's movements or activities, in accordance with sections 6.4 and 6.5 of these Procedures.
- 5.3 If the Investigator determines that Sexual Misconduct has not occurred, the Director of Investigations will provide a copy of the Investigative Report to the Complainant and the Respondent in accordance with section 6.4 of these Procedures.

- 5.4 If the Investigator has determined that Sexual Misconduct has occurred and the Director of Investigations believes that other UBC authorities may need to act on that determination in addition to the authority identified in section 5.1, the Director of Investigations may refer the Investigative Report to the appropriate UBC authority. This may include one or more of the following authorities: an Administrative Head of Unit, a Student Conduct Manager, UBC Student Housing, a student's program if that student is in a program that has standards of professional conduct, and a student's Administrative Head of Unit if the student is also a UBC employee.
- 5.5 If the Director of Investigations believes that the Investigative Report discloses other kinds of misconduct or information that UBC may need to act on, whether or not the Investigator has determined that Sexual Misconduct has occurred, the Director of Investigations may refer the Investigative Report to the appropriate UBC authority.
- 5.6 The Director of Investigations will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and accommodations, providing education, or conducting administrative transactions.

6. Confidentiality and Privacy

- 6.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the *Freedom of Information and Protection of Privacy Act*, all participants in an Investigation must act in accordance with the requirements set out below.
- 6.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual ("Personal Information") through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. This section does not prevent:
 - 6.2.1 any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;
 - 6.2.2 UBC representatives from disclosing Investigation-related information as authorized under section 6.3; or
 - 6.2.3 Complainants and Respondents from disclosing the information that they have received under sections 6.4 and 6.5.
- 6.3 UBC will not disclose any Personal Information related to an Investigation except to the extent such disclosure is:
 - 6.3.1 expressly authorized by the affected individual;
 - 6.3.2 to a UBC representative, if necessary for the performance of that individual's duties;
 - 6.3.3 to a Complainant, Respondent, or other individual who participated in the Investigation, if necessary for the conduct of the Investigation;
 - 6.3.4 to a Complainant or Respondent in accordance with sections 6.4 and 6.5;
 - 6.3.5 authorized by the University Counsel for compelling health or safety reasons;

- 6.3.6 authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the Investigation; or
- 6.3.7 authorized or required under law or UBC policy.
- 6.4 For reasons of fairness, Complainants and Respondents will be provided with a copy of the Investigative Report, subject to the removal of Personal Information where required under the *Freedom of Information and Protection of Privacy Act*. If there are multiple Complainants or multiple Respondents, they will only receive the portions of the Investigative Report that are relevant to them.
- 6.5 Complainants do not have the right to know whether UBC has taken any disciplinary action against the Respondent because the disclosure of such information is considered to be an unreasonable invasion of the Respondent's privacy. However, if necessary for health or safety reasons, Complainants will be informed of any relevant restrictions that may have been imposed upon the Respondent's movements or activities.
- 6.6 Section 6.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 6.4 and 6.5. However, Complainants or Respondents who choose to disclose such information are responsible for the consequences of their decisions, and should be aware 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).

7. Appeal Processes

- 7.1 Student Respondents may appeal any discipline that is imposed under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee if they are a UBC Vancouver student, or the UBC Okanagan Senate Appeals of Standing and Discipline Committee if they are a UBC Okanagan student.
- 7.2 Staff or faculty may appeal any decision or discipline that is made or imposed under these Procedures in accordance with the provisions of their collective agreements or their terms and conditions of employment.