

 The University of British Columbia Board of Governors	Policy No.: SC17
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 recognizes that some individuals may be hesitant to Disclose or Report Sexual Misconduct in cases where they have been consuming alcohol underage, or in excess, or using drugs. An individual who makes a Disclosure or Report will not be subject to actions for violation of any applicable UBC policy, rules or regulations related to drug or alcohol use at the time the alleged Sexual Misconduct occurred.
- 1.11 UBC recognizes that certain relationships between students and other Members of the UBC Community are relationships of heightened trust and vulnerability. Sexual or intimate relationships between individuals in the following classes of Members of the UBC Community where there is a supervisory role or where an individual has influence over a student's current or future academic activities, working conditions, or career advancement are Prohibited Relationships:
 - 1.11.1 faculty, or Teaching Staff Members, or emeriti and Students;
 - 1.11.2 staff and Students;
 - 1.11.3 Coaching Staff Members and Student athletes; and
 - 1.11.4 Faculty, or Teaching Staff Members, or emeriti and Medical Residents, Clinical Fellows, or Postgraduate trainees in the Faculty of Medicine.
- 1.12 An individual in a supervisory role or position of influence as described in 1.11 who engages in a Prohibited Relationship, except as provided in this Policy, breaches this Policy and will be subject to disciplinary action notwithstanding that the relationship is claimed to be consensual.

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

2. Definitions

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

- 2.1.6 the distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording.
- 2.2 **“Consent”** is the active, voluntary agreement to engage, and to continue to engage, in the sexual activity in question. Further information about Consent is provided in section 4 of this Policy.
- 2.3 **“Members of the UBC Community”** are individuals who fall under one or more of the following categories:
 - 2.3.1 student, defined as any person, including co-op and exchange students, registered or enrolled in any component of a for-credit academic or training program or course at UBC, or any class of learners designated by resolution of the Senate as students;
 - 2.3.2 registrant, defined as any person registered in non-credit educational activities at UBC;
 - 2.3.3 employees, defined as individuals employed by UBC, including faculty and staff members;
 - 2.3.4 emeriti, volunteers engaged in a UBC activity, or other individuals acting on behalf of UBC;
 - 2.3.5 Teaching Staff Members;
 - 2.3.6 any individual active on any UBC committee or review panel;
 - 2.3.7 post-doctoral fellows; and
 - 2.3.8 anyone contractually obligated to comply with this Policy.
- 2.4 **“Teaching Staff Member”** means any individual who provides or teaches any component of an academic program or course at UBC, including, but not limited to, professors, including part-time and full-time professors, associate professors, assistant professors, adjunct professors, clinical professors, clinical associate professors, clinical assistant professors, clinical instructors, 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’s Jurisdiction to Investigate is determined by the Director of Investigations and is limited by the following:
- 3.1.1 the allegations must be against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct and at the time the Report is submitted;
 - 3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct; and
 - 3.1.3 the alleged conduct must have occurred in a context that has a real and substantial connection to UBC. Whether a real and substantial connection to UBC exists will be considered on the particular circumstances of each Report.
- 3.2 The Director of Investigations may exercise discretion to decline to investigate a Report under this Policy on the grounds that:
- 3.2.1 proceeding with the complaint would be unfair and result in substantial prejudice to any person such as when the passage of time affects access to witnesses or other evidence; or
 - 3.2.2 proceeding with the complaint is otherwise not practicable.

4. Consent

- 4.1 Voluntary agreement to engage, or continue to engage, in sexual activity must be affirmatively communicated through words or actively expressed through conduct. An individual who is incapacitated cannot give voluntary consent. Also, consent obtained through the abuse of a position of trust, power or authority, or through fraud or coercion, or due to fear of consequences, violence, or retaliation is not voluntary consent. For clarity:
- 4.1.1 Consent cannot be implied, which means it must be affirmatively given and cannot be assumed by an individual's silence or inaction.
 - 4.1.2 The initiator of a sexual activity is responsible for obtaining consent for that sexual activity.
 - 4.1.3 Consent can be withdrawn by any party at any time during the sexual activity through words or actions, and if consent is withdrawn the sexual activity must stop.
 - 4.1.4 Consenting to one kind of sexual activity does not mean that consent is given for another sexual activity, and consent given only applies to each specific instance of sexual activity. Neither the relationship status of the parties nor past consent to sexual activity gives or implies future or ongoing consent.
 - 4.1.5 Individuals cannot give consent if they are not able to appreciate the nature of the sexual activity, or to appreciate the risks and consequences of the sexual activity, or are otherwise unable to choose whether to engage in the sexual activity. For example, an individual is incapable of consenting if the individual is:
 - (a) asleep or unconscious;
 - (b) unable to consent due to ingestion of drugs or alcohol; or
 - (c) under the legal age of consent as defined in the *Canadian Criminal Code*.
 - 4.1.6 Evidence that an individual's judgment was impaired by alcohol or drugs is a relevant consideration for determining whether the individual consented to the sexual activity in question.
 - 4.1.7 A Respondent's mistaken belief, formed due to intoxication or impairment from drugs or alcohol, that there was consent is not a defense to the allegation of Sexual Misconduct.
 - 4.1.8 A person's sexual reputation or history of sexual activity cannot be submitted as evidence to prove that it was likely that consent had been given.
 - 4.1.9 Even if sexual activity occurs outside of the class of Prohibited Relationships, there is an inherent risk that consent is not voluntary whenever there is a relationship of trust or authority in which there is an imbalance, or perceived imbalance of power. Where there is an allegation of Sexual Misconduct in these relationships the nature of the relationship will be a significant factor in determining whether there was consent.

5. The Sexual Violence Prevention and Response Office

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

6. The Investigations Office

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

7. Annual Reporting

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

8. Disclosures

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

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

9. Reports

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

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

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

10. Anonymous and Third Party Allegations

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

11. Conflicts of Interest

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

12. Policy Review

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



PROCEDURES ASSOCIATED WITH THE SEXUAL MISCONDUCT POLICY

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

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

1. General

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

2. Reports

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

3. Initial Review

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

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

- 3.4 If the Director of Investigations determines that UBC has the Jurisdiction to Investigate, the Director will do one of the following:
 - 3.4.1 appoint an Investigator to Investigate the Report under section 5 of these Procedures; or
 - 3.4.2 subject to sections 4.1 and 4.2 of these Procedures, refer the matter to an Alternative Resolution Process.
- 3.5 Upon initiating an Investigation, the Director of Investigations will:
 - 3.5.1 notify the Complainant that the Report has been referred to an Investigator, and provide information about the resources available and the investigation process, including the Complainant's right to have an advisor, support person, or union representative present during meetings with the Investigator; and
 - 3.5.2 notify the Respondent that a Report has been made and has been referred to an Investigator, and provide a copy of the Report along with information about the resources available and the investigation process, including the Respondent's right to have an advisor, support person, or union/association representative present during meetings with the Investigator.
- 3.6 If the Director of Investigations determines that UBC does not have the Jurisdiction to Investigate, the Director of Investigations will advise the individual making the Report and will provide reasons for the decision.
- 3.7 When the Director of Investigations exercises discretion to decline to investigate a Report under section 3.2 of the Policy the Director will:
 - 3.7.1 provide written reasons to the individual making the Report; and
 - 3.7.2 report the decision to decline to investigate in the Investigation Office annual reporting.
- 3.8 If the Director of Investigations determines that the Report discloses other kinds of misconduct or information that requires action by UBC under another UBC policy or process, the Director will refer the Report, or the relevant portions of the Report, to the appropriate UBC authority. The Director will discuss with the person making the Report before referring the matter elsewhere.

4. Alternative Resolution Processes

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

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

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

5. Investigations

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

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

6. Outcome and Disciplinary Measures

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

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

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

7. Confidentiality and Privacy

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

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

8. Appeal Processes

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



EXPLANATORY NOTES REGARDING THE SEXUAL MISCONDUCT POLICY AND ASSOCIATED PROCEDURES

Issued September 2020 by the Office of the University Counsel

The OUC has prepared these Explanatory Notes to provide context and background regarding the Sexual Misconduct Policy. These Explanatory Notes do not replace or supersede the content of the Sexual Misconduct Policy and its Procedures.

Policy Long Title:	Sexual Misconduct and Sexualized Violence Policy
Policy Short Title:	Sexual Misconduct Policy
Policy Number:	SC17
Responsible Executive:	Vice-President, Students Vice-President, Human Resources
Responsible Board Committee:	People, Community & International Committee
Related Policies:	GA2 - Regulatory Framework Policy SC7 - Discrimination Policy SC13 - At-Risk Behaviour Policy SC18 – Retaliation Policy
History:	<ul style="list-style-type: none">• The Sexual Misconduct Policy and Procedures were first approved by the Board of Governors in April 2017;• The Sexual Misconduct Policy was updated in July 2019 to reflect a new policy identification system; it is currently identified as the Sexual Misconduct Policy, its long title is Sexual Assault and Other Sexual Misconduct, and its number is SC17. The previous identification number for this policy was #131;• In September 2019, as required by the Act, a committee was constituted to review the Policy and Procedures and make amendments. The committee recommended changes and these changes to the Policy and Procedures were approved in June 2020 with an effective date of July 1, 2020. Its long title is revised to Sexual Misconduct and Sexualized Violence Policy;• The Policy was updated in September 2020 to correct a minor typographical error.
Related Legislation:	<i>Human Rights Code</i> (R.S.B.C. 1996, c. 210)

*Freedom of Information and Protection of Privacy Act (R.S.B.C.
1996, c. 165)*
Sexual Violence and Misconduct Policy Act (S.B.C. 2016, c. 23)