

 The University of British Columbia Board of Governors	Policy No.: SC8
Long Title: Investigations	
Short Title: Investigations Policy	

Background & Purposes:

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

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

1. General

1.1 This Policy applies when:

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

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

1.2 For greater clarity, this Policy:

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

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

1.3 Notwithstanding the terms of any other UBC policy, procedure, rule, or agreement, where an individual is alleged to have engaged in two or more instances of Misconduct that would

otherwise engage separate Investigations or separate Existing Formal Processes, UBC may conduct a Consolidated Investigation. The determination of whether a Consolidated Investigation will be utilized instead of separate Investigations or separate Existing Formal Processes will be made in accordance with the Procedures associated with this Policy.

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

2. Principles

- 2.1 **Nature of Conduct:** Normally, Investigations will not be undertaken where the alleged Misconduct individually or in combination with other conduct is not of a sufficiently substantive or material nature as to warrant discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights, or obligations.
- 2.2 **Fairness:** Investigations must be conducted in accordance with the principles of procedural fairness in the university context and, where the Respondent is a UBC employee, in accordance with employment law and any applicable agreements with unions and employee associations. For example, Respondents have a right to:
 - 2.2.1 know the nature of the allegations against them;
 - 2.2.2 have an opportunity to respond to those allegations;
 - 2.2.3 have those allegations investigated in an unbiased manner; and
 - 2.2.4 receive reasons for any decision that impacts their privileges, entitlements, rights, or obligations.
- 2.3 **Timeliness:** Investigations must be concluded in a timely manner.
- 2.4 **Confidentiality:** Investigations are confidential, and Personal Information must only be disclosed as set out in section 3 of this Policy.
- 2.5 **Reports:** Where an Investigation results in a finding of Misconduct, discipline may be warranted. When an Investigation report is prepared, the disciplinary action will normally be made in reliance upon such report and the report should therefore be prepared in a manner that meets any applicable requirements under employment law, agreements with unions and employee associations, and/or administrative law.

3. Confidentiality and Privacy

- 3.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure

compliance with FIPPA, all participants in an Investigation must act in accordance with the requirements set out below.

- 3.2 Individuals, including the Complainant and Respondent, who have obtained Personal Information through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:
 - 3.2.1 any participants in the Investigation from disclosing information about themselves, or information they have obtained outside the Investigation;
 - 3.2.2 UBC employees, contractors, or volunteers from disclosing Investigation-related information as authorized under section 3.3; or
 - 3.2.3 Complainants and Respondents from disclosing the information they have received under sections 3.4 and 3.5.
- 3.3 UBC will not disclose any Personal Information related to an Investigation except to the extent such disclosure is:
 - 3.3.1 expressly authorized by the affected individual;
 - 3.3.2 to a UBC employee, contractor, or volunteer, if necessary for the performance of that individual's duties;
 - 3.3.3 to a Complainant, Respondent, witness or other participant in the Investigation, if necessary for the conduct of the Investigation;
 - 3.3.4 to a Complainant or Respondent in accordance with sections 3.4 and 3.5;
 - 3.3.5 authorized by the University Counsel for compelling health or safety reasons;
 - 3.3.6 authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the Investigation or UBC's investigatory processes; or
 - 3.3.7 authorized or required under law.
- 3.4 To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation findings and the evidence upon which these findings are based. FIPPA may require UBC to withhold Personal Information that is irrelevant to the Investigation findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, they will only receive the information that is relevant to them.
- 3.5 Under FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons. For example, UBC will normally inform Complainants of any restrictions that may have been imposed upon the Respondent's movements or activities.

3.6 Section 3.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 3.4 and 3.5. However, Complainants or Respondents who choose to disclose such information should keep in mind that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim) and may wish to seek independent legal advice before doing so.

4. Definitions

- 4.1 **“Complainant”** is an individual who has alleged that the individual has been directly subjected to Misconduct by a Respondent;
- 4.2 **“Consolidated Investigation”** means a process consolidating Investigations or Existing Formal Processes with respect to multiple allegations of Misconduct against the same individual(s);
- 4.3 **“Designated Persons”** are the individuals set out in section 1.1 of the Procedures associated with this Policy;
- 4.4 **“Existing Formal Process”** means an investigation or hearing process established under another UBC policy or procedure, such as the Discrimination Policy, the Sexual Misconduct Policy, the Scholarly Integrity Policy, the Financial Investigations Policy, or the Student Code of Conduct;
- 4.5 **“FIPPA”** means the *Freedom of Information and Protection of Privacy Act* [RSBC 1996] Chapter 165;
- 4.6 **“Investigations”** include Consolidated Investigations and are the formal processes, whether by investigation or hearing, undertaken by Designated Persons for the purposes of ascertaining whether a Respondent has engaged in Misconduct and informing a decision as to whether discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations should be imposed; (For the purposes of this Policy, “Investigations” do not include informal or preliminary inquiries or fact-finding that are intended to determine whether to commence an Investigation.);
- 4.7 **“Misconduct”** is any conduct that, in the view of UBC, breaches acceptable standards of conduct, including, but not limited to, UBC rules, regulations, or policies;
- 4.8 **“Personal Information”** is information about an identifiable individual; and
- 4.9 **“Respondent”** means an individual against whom an allegation of Misconduct has been made and who is a student (as defined under the *University Act*), registrant (being an individual registered in non-credit educational activities), employee, or appointee of UBC, including, without limitation, a full-time or part-time student, staff member, or faculty member, temporary or sessional instructors, and adjunct professors; an emeritus; a volunteer engaged in a UBC activity; or any other individual acting on behalf or under the auspices of UBC.

PROCEDURES ASSOCIATED WITH THE INVESTIGATIONS POLICY

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

Capitalized terms used in these Procedures that are not otherwise defined herein shall have the meanings given to such terms in the Investigations Policy.

1. Subject Matter of Alleged Misconduct and Designated Persons

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

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

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

2. Determining if Consolidated Investigation is to be Undertaken

- 2.1 Without limiting the notification obligations that may be set out in other UBC policies and procedures, prior to a Designated Person undertaking an Investigation or Existing Formal Process, the Designated Person must provide notice (the “**Investigation Notice**”) to the Legal Counsel, Information and Privacy, or such other person as may be designated by the University Counsel (the “**Privacy Counsel**”). The Privacy Counsel may specify the form and manner of Investigation Notice that is required, as well as the specific information that should be included in the Investigation Notice.
- 2.2 If any other Designated Person is dealing with an allegation of Misconduct involving the same Respondent, the Privacy Counsel will advise the Designated Persons who provided Investigation Notices regarding the applicable Respondent.
- 2.3 Where there is more than one Designated Person dealing with allegations of Misconduct involving the same Respondent, those Designated Persons will seek advice from the Office of the University Counsel. The Designated Persons will share such information with each other as is reasonably necessary for each of them to understand the totality of the allegations being made against the Respondent. They may then jointly determine to undertake a Consolidated Investigation instead of separate Investigations or separate Existing Formal Processes and determine the procedure that will apply to the Consolidated Investigation in place of the procedures that would otherwise apply if separate Investigations or separate Existing Formal Processes were to be undertaken. When determining whether to undertake a Consolidated Investigation and what the Consolidated Investigation procedure should entail, the Designated Persons should consider the procedural requirements that would apply if separate Existing Formal Processes were to be utilized.
- 2.4 In the absence of an agreement between those Designated Persons to undertake a Consolidated Investigation, the Investigations or Existing Formal Processes, as applicable, will not be consolidated.
- 2.5 All information that is shared between the Privacy Counsel and the Designated Persons pursuant to this section 2 is confidential and the Privacy Counsel and the Designated Persons will not disclose such information except as permitted by the Investigations Policy or under FIPPA.