

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

**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 violence<sup>1</sup>. 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 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.
- 1.2 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, including any experience of trauma, 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 recognizes that an individual may experience Sexual Misconduct regardless of their sex, sexual identity, gender identity or expression, or relationship status. UBC further recognizes

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<sup>1</sup> 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.

that historically marginalized and non-conforming individuals may be disproportionately impacted by Sexual Misconduct, both as Complainants and Respondents.

- 1.4 UBC recognizes and acknowledges that the impacts of Sexual Misconduct are experienced by individuals as well as communities and that Sexual Misconduct has an impact on the UBC Community and the working, learning, and living environment at UBC.
- 1.5 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.
- 1.6 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 actions (whether instead of or in addition to pursuing UBC's processes).
- 1.7 UBC will provide support services and assistance to Members of the UBC Community who Disclose or Report Sexual Misconduct.
- 1.8 UBC will establish dedicated positions to provide services to Members of the UBC Community who have had Reports of Sexual Misconduct made against them.
- 1.9 UBC is committed to ensuring procedural fairness in its processes for responding to, investigating, and imposing discipline for Sexual Misconduct and will respond to Reports and conduct Investigations in a timely manner.
- 1.10 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).
- 1.11 UBC is committed to creating a non-judgmental and supportive environment for Reporting and Disclosing. UBC recognizes that an individual may be hesitant to Disclose or Report for many reasons including feeling vulnerable about the circumstances surrounding the alleged Sexual Misconduct. An individual who makes a Disclosure or Report will not be subject to actions for violating any applicable UBC policy, rules, or regulations related to alcohol or drug use at the time the alleged Sexual Misconduct occurred.
- 1.12 UBC recognizes that many relationships in our community have inherent power imbalances and that certain relationships between students and other Members of the UBC Community are relationships of heightened trust and vulnerability. These dynamics present risks for students. To minimize the risks, sexual or intimate relationships between individuals in the following classes of Members of the UBC Community where there is a supervisory role or where an individual has influence over a student's current or future academic activities, working conditions, or career advancement are Prohibited Relationships:
  - 1.12.1 faculty, or Teaching Staff Members, or emeriti and students;

- 1.12.2 staff and students;
  - 1.12.3 Coaching Staff Members and student athletes; and
  - 1.12.4 Faculty, or Teaching Staff Members, or emeriti and Medical Residents, Clinical Fellows, or Postgraduate trainees in the Faculty of Medicine.
- 1.13 An individual in a supervisory role or position of influence as described in 1.12 who engages in a Prohibited Relationship, except as provided in this Policy, breaches this Policy and will be subject to disciplinary action notwithstanding a claim that the relationship is consensual.
- 1.14 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)).
- 1.15 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).
- 1.15.1 Where an existing Prohibited Relationship has been managed under the COI Policy (SC3), engagement in the Prohibited Relationship will not constitute a breach of this Policy.

## 2. Definitions

- 2.1 **"Sexual Misconduct"** includes sexualized violence and refers to any sexual act or act targeting an individual's sex, sexuality, gender identity, or gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against an individual without that individual's Consent. The following list sets out examples of Sexual Misconduct. The list is intended to help Members of the UBC Community understand the kinds of acts that will be considered Sexual Misconduct. The list is not exhaustive and other acts may constitute Sexual Misconduct under this Policy even if they do not appear in the list below. Sexual Misconduct includes, but is not limited to, the following:
- 2.1.1 sexual assault, which is any form of sexual touching or the threat, express or implied, of sexual touching without the individual's Consent;
  - 2.1.2 sexual harassment, which is unwelcome conduct, including comments or gestures, related to an individual's sex, sexuality, gender identity, or gender expression, that detrimentally affects the working, learning, or living environment, or leads to adverse consequences for the individual directly subjected to the harassment;
  - 2.1.3 stalking and cyberstalking (stalking through the use of the internet or other electronic means), which is engaging in unwelcome conduct expressed or implied, that causes an individual to fear for their physical or psychological safety, and includes repeatedly following the individual, repeatedly communicating with the individual through any means, engaging in threatening conduct, or keeping watch over the place where the individual happens to be;

- 2.1.4 indecent exposure, which is exposing one’s body to another individual either physically or electronically, or through any other means, for a sexual purpose without the individual’s consent, or coercing another individual to remove their clothing in order to expose their body;
  - 2.1.5 voyeurism, which is non-consensual viewing, photographing, or otherwise recording another individual in a location where there is an expectation of privacy and where the viewing, photographing, or recording is done for a sexual purpose; and
  - 2.1.6 the distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording.
- 2.2 **“Consent”** is the active, voluntary agreement to engage, and to continue to engage, in the sexual activity in question. Further information about Consent is provided in section 4 of this Policy.
- 2.3 **“Members of the UBC Community”** are individuals who fall under one or more of the following categories:
- 2.3.1 student, defined as any person, including co-op and exchange students, registered or enrolled in any component of a for-credit academic or training program or course at UBC, or any class of learners designated by resolution of the Senate as students;
  - 2.3.2 registrant, defined as any person registered in non-credit educational activities at UBC;
  - 2.3.3 employees, defined as individuals employed by UBC, including faculty and staff members;
  - 2.3.4 emeriti, volunteers engaged in a UBC activity, or other individuals acting on behalf of UBC;
  - 2.3.5 Teaching Staff Members;
  - 2.3.6 any individual active on any UBC committee or review panel;
  - 2.3.7 post-doctoral fellows; and
  - 2.3.8 anyone contractually obligated to comply with this Policy.
- 2.4 **“Teaching Staff Member”** means any individual who provides or teaches any component of an academic program or course at UBC, including, but not limited to, professors, including part-time and full-time professors, associate professors, assistant professors, adjunct professors, clinical professors, clinical associate professors, clinical assistant professors, clinical instructors, twelve-month lecturers, visiting and emeritus faculty, teaching assistants, supervisors of graduate students, supervisors of researchers, program directors, librarians, or any other person employed by UBC in an equivalent position to the above designated by the UBC Vancouver Senate, the UBC Okanagan Senate, or the Council of Senates.

- 2.5 **“Prohibited Relationship”** is any sexual or intimate relationship prohibited by section 1.12 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.
- 2.15 **“Institutional Report”** means a Report of Sexual Misconduct made by the Sexual Violence Prevention and Response Office pursuant to section 10.2 of this Policy.

### 3. Jurisdiction to Investigate

- 3.1 UBC can only investigate allegations of Sexual Misconduct or Prohibited Relationships if it has Jurisdiction to Investigate. UBC’s Jurisdiction to Investigate is determined by the Director of Investigations and is limited by the following:
- 3.1.1 the allegations must be against an individual who was a Member of the UBC Community at the time of the alleged Sexual Misconduct or Prohibited Relationship and at the time the Report is submitted;
- 3.1.2 the alleged conduct must fall within the definition of Sexual Misconduct or Prohibited Relationship; and

3.1.3 the alleged conduct must have a sufficient connection to UBC. Whether a sufficient connection to UBC exists will depend on all of the circumstances of the Report. Relevant circumstances include but are not limited to:

- (a) whether the Complainant is a Member of the UBC Community or, if no longer a Member of the UBC Community, was a Member of the UBC Community at the time of the alleged Sexual Misconduct or Prohibited Relationship or at the time of the Report;
- (b) whether the alleged Sexual Misconduct or Prohibited Relationship has, or might reasonably be seen to have, a significant impact on the Complainant's ability to participate in the University's programs and activities;
- (c) whether the alleged Sexual Misconduct or Prohibited Relationship occurred in the context of a UBC related event or activity even if such event or activity did not take place on UBC property and was not organized by UBC; and
- (d) whether the alleged Sexual Misconduct or Prohibited Relationship has, or might reasonably be seen to have, a significant impact on the University.

3.2 Once the Director of Investigations determines that Jurisdiction to Investigate exists, UBC will maintain Jurisdiction to Investigate even if the Respondent stops being a Member of the UBC Community, including but not limited to where the Respondent resigns from their employment or withdraws from studies.

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

3.3.1 proceeding with an Investigation would be unfair and result in substantial prejudice to any person, such as when the passage of time affects access to witnesses or other evidence; or

3.3.2 proceeding with an Investigation is otherwise not practicable.

#### **4. Consent**

4.1 Voluntary agreement to engage, or continue to engage, in sexual activity must be affirmatively communicated through words or actively expressed through conduct. An individual who is incapacitated cannot give Consent. Also, agreement obtained through the abuse of a position of trust, power or authority, or through fraud or coercion, or due to fear of consequences, violence, or retaliation is not Consent. For clarity:

4.1.1 Consent cannot be implied, which means it must be affirmatively given and cannot be assumed by an individual's silence or inaction.

4.1.2 The initiator of a sexual activity is responsible for obtaining Consent for that sexual activity.

- 4.1.3 Consent can be withdrawn by any party at any time during the sexual activity through words or actions, and if consent is withdrawn the sexual activity must stop.
- 4.1.4 Consenting to one kind of sexual activity does not mean that Consent is given for another sexual activity, and Consent given only applies to each specific instance of sexual activity. Neither the relationship status of the parties nor past consent to sexual activity gives or implies future or ongoing Consent.
- 4.1.5 Individuals cannot give consent if they are not able to appreciate the nature of the sexual activity, or to appreciate the risks and consequences of the sexual activity, or are otherwise unable to choose whether to engage in the sexual activity. For example, an individual is incapable of Consenting if the individual is:
- (a) asleep or unconscious;
  - (b) incapacitated due to ingestion of alcohol or drugs; or
  - (c) under the legal age of consent as provided in the Canadian *Criminal Code*.
- 4.1.6 Evidence that an individual's judgment was impaired by alcohol or drugs is a relevant consideration for determining whether the individual consented to the sexual activity in question.
- 4.1.7 A Respondent's belief that there was Consent, if formed due to the Respondent's intoxication or impairment from alcohol or drugs, is not a defence to the allegation of Sexual Misconduct even if the belief was honestly held.
- 4.1.8 An individual's sexual reputation or history of sexual activity cannot be submitted as evidence to prove that it was likely that the individual provided Consent.
- 4.1.9 Even if a relationship is not a Prohibited Relationship, there is an inherent risk that Consent cannot be given in any relationship of trust or authority that includes an imbalance, or perceived imbalance, of power. Where there is an allegation of Sexual Misconduct in such a relationship, the nature of the relationship will be a significant factor in determining whether there was Consent.

## **5. The Sexual Violence Prevention and Response Office**

- 5.1 An individual who has experienced Sexual Misconduct may make a Disclosure to the Sexual Violence Prevention and Response Office which is a point of contact and liaison on each campus for Members of the UBC Community who are affected by Sexual Misconduct, regardless of who committed the Sexual Misconduct, or where or when it took place.
- 5.2 An individual may access support and assistance from, or make a Disclosure to, the Sexual Violence Prevention and Response Office regardless of whether they have made or intend to make a Report under this Policy or to any third-party investigating body. The Sexual Violence Prevention and Response Office will provide support, information, options, and assistance described in section 8.3 of this Policy based on the expressed needs of the individual.

- 5.3 The Sexual Violence Prevention and Response Office coordinates and oversees all UBC sexual misconduct Disclosure response protocols and processes, communications, resource materials, and training.
- 5.4 Members of the UBC Community who are affected by Sexual Misconduct may choose to seek assistance from third-party agencies such as the Sexual Assault Support Centre of the AMS. At the request of the Member of the UBC Community, the Sexual Violence Prevention and Response Office will liaise with third-party agencies to provide support, information, options, and assistance described in section 8.3 of this Policy. Third-party agencies may make representations to UBC on behalf of the Member of the UBC Community in support of a request for academic concessions.

## **6. The Investigations Office**

- 6.1 Reports 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 Investigations.

## **7. Annual Reporting**

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

## **8. Disclosures**

- 8.1 The decision to Disclose and the decision to Report are separate decisions and an individual may choose to Disclose but not Report. UBC will respect an individual's choice and a Disclosure will not result in a Report or an Investigation or any other action by UBC subject only to sections 10.1 and 10.2 of this Policy.
- 8.2 UBC will make appropriate support services and assistance available to Members of the UBC Community on the basis of a Disclosure, regardless of whether they decide to make a Report or whether UBC has the Jurisdiction to Investigate. If information about the Member or the Disclosure must be shared in order to allow the Member to access support services and assistance, the information shared will be limited to the information required to provide the services or support.



- 8.3 Assistance will be available to Members of the UBC Community who have Disclosed or Reported 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 rather than directly to the Sexual Violence Prevention and Response Office, 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.
- 8.5 Members of the UBC Community who receive a Disclosure are expected to honour the choices of the person making the Disclosure.
- 8.6 If a Member of the UBC Community who receives a Disclosure believes that there is a risk that not investigating a matter would result in significant harm to the community or anyone's health or safety, then the Member of the UBC Community may forward the Disclosure to the Sexual Violence Prevention and Response Office.
- 8.7 The Sexual Violence Prevention and Response Office will handle Disclosures made by third parties in accordance with sections 10.1 and 10.2 of this Policy.
- 8.8 Subject to sections 10.1 and 10.2 of this Policy, records of Disclosures made to a Sexual Violence Prevention and Response Office will be kept strictly confidential, and access to those records will be limited to the Director and staff members of the relevant Sexual Violence Prevention and Response Office unless UBC is ordered to produce the records in a court proceeding or otherwise required by law.

## **9. Reports**

- 9.1 Anyone directly subjected to Sexual Misconduct, including an individual who is not a Member of the UBC Community, can make a Report about a Member of the UBC Community under this Policy.
- 9.2 Reports must be submitted to the Investigations Office, where they will be addressed in accordance with the Procedures to this Policy, which include an initial review as set out under

section 4 of the Procedures to determine whether the allegations contained in the Report fall within UBC's Jurisdiction to Investigate.

- 9.3 Sexual harassment may fall within the scope of both the Discrimination Policy (SC7) and this Policy. Reports that contain allegations of Sexual Misconduct other than sexual harassment will be addressed under this Policy. Reports that contain only allegations of sexual harassment will be reviewed by the Director of Investigations who will determine, based on the particular facts of the case and in consultation with the individual making the Report, which policy is better suited to address the allegations.
- 9.4 An individual can submit a Report to the Investigation Office and also pursue other processes external to UBC against the individual alleged to have committed the Sexual Misconduct. These external processes may include reporting to the police or initiating a civil action (including a complaint under the *BC Human Rights Code*). These are separate processes and submitting a Report to the Investigations Office does not result in a report to the police or the initiation of a civil action except as provided in section **Error! Reference source not found.** of this Policy, where UBC may notify third parties, such as the police or child protection authorities.
- 9.5 If an Investigation, or Alternative Resolution Process, is initiated under the Procedures to this Policy, and an external process is also being pursued, the Director of Investigations may elect, after consultation with the Complainant, to continue with the UBC process or to suspend the UBC process as appropriate. Suspension of a UBC process does not prevent UBC from resuming its process or taking further action under its process at a later date as the Director of Investigations deems appropriate.
- 9.6 Where a Report found to fall within UBC's Jurisdiction to Investigate includes At-Risk Behaviour, as defined under the At-Risk Behaviour Policy (SC13), the Director of Investigations may refer the At-Risk Behaviour to the appropriate decision maker under the At-Risk Behaviour Policy (SC13).

## **10. Reports by the Sexual Violence Prevention and Response Office**

- 10.1 Where required by law or where, in the discretion of the Director of the relevant Sexual Violence Prevention and Response Office, there is a risk that not investigating a matter would result in significant harm to the community or 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:
  - 10.1.1 refer the matter to the Investigations Office as a Report under section 9; or
  - 10.1.2 notify third parties, such as the police or child protection authorities.
- 10.2 If the Sexual Violence Prevention and Response Office has received more than one Disclosure from different individuals involving a Member of the UBC Community, the Director of the relevant Sexual Violence Prevention and Response Office may make an Institutional Report to the Director of Investigations based on the allegations in the Disclosures.
- 10.3 If the Director of the relevant Sexual Violence Prevention and Response Office makes a Report to the Director of Investigations under section 10.1 or 10.2 of this Policy, the Director of the relevant Sexual Violence Prevention and Response Office will inform the individual or

individuals who made the Disclosure or Disclosures that they are making a Report. The name or names of the individual or individuals who made the Disclosure or Disclosures will not be included in the Report unless the Director of the relevant Sexual Violence Prevention and Response Office believes it is necessary to do so (because of the risk of significant harm to the community or anyone's health or safety) or has received express consent from the individual or individuals for their name or names to be included.

- 10.4 If the Director of Investigations decides to investigate a Report made to them under section 10.1 or 10.2 of this Policy, the Director of the relevant Sexual Violence Prevention and Response Office will notify the individual or individuals who made the Disclosure or Disclosures that an Investigation is taking place and ensure that appropriate support services are made available to the individual or individuals.
- 10.5 If the name or names of the individual or individuals who made the Disclosure or Disclosures are shared with the Investigations Office, the Investigations Office will not share the name or names of the individual or individuals who made the Disclosure or Disclosures with anyone unless the Director of Investigations believes it is necessary under section 10.1.2 to do so or the individual or individuals provide express consent for their name or names to be shared. The individual or individuals who made the Disclosures have the right not to participate as a witness or witnesses in any Investigation. In such cases, the Director of Investigations may consider whether any other steps can and should be taken, including referring the matter to the Director of Campus Security or the appropriate decision maker pursuant to the At-Risk Behaviour Policy (SC13). However, an individual's decision not to share their name or participate as a witness may impact the University's ability to proceed with an Investigation or impose measures under the At-Risk Behaviour Policy (SC13).
- 10.6 In appropriate circumstances, where other evidence exists and where proceeding with an Investigation would not violate procedural fairness, the Director of Investigations may exercise discretion to proceed with an Investigation into a Report made under section 10.1 or 10.2 of this Policy.

## **11. Conflicts of Interest**

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

## **12. Policy Review**

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



## PROCEDURES ASSOCIATED WITH THE SEXUAL MISCONDUCT POLICY

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

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

### 1. General

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

### 2. Timelines

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

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

### **3. Reports**

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

### **4. Initial Review**

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

- 4.5.1 notify the Complainant that the matter has been referred to an Investigator, and provide information about the resources available and the Investigation process, including the Complainant's right to have an advisor, support person, or union/association representative present during meetings with the Investigator; and
- 4.5.2 notify the Respondent that a Report has been made and the matter has been referred to an Investigator, and provide the Respondent with:
  - (a) a summary of the Report, including the allegations of Sexual Misconduct or a Prohibited Relationship contained in the Report and any other information the Respondent needs to know in order to respond to the allegations against them; and
  - (b) information about the resources available, including the Respondent Resource Specialist, and the Investigation process, including the Respondent's right to have an advisor, support person, or union/association representative present during meetings with the Investigator.
- 4.6 When the Director of Investigations exercises discretion to decline to investigate under section 3.23 of the Policy, the Director will:
  - 4.6.1 provide written reasons to the individual making the Report; and
  - 4.6.2 report the decision to decline to investigate in the Investigation Office annual reporting.
- 4.7 If the Director of Investigations determines that the Report discloses other kinds of misconduct or information that requires action by UBC under another UBC policy or process, the Director will refer the Report, or the relevant portions of the Report, to the appropriate UBC authority. The Director will discuss with the individual making the Report before referring the matter elsewhere.

## **5. Alternative Resolution Processes**

- 5.1 A Complainant may request an Alternative Resolution Process instead of a formal investigation. Alternative Resolution Processes may not be appropriate or available in all circumstances. If the Director of Investigations is satisfied that an Alternative Resolution Process may be appropriate, options will be discussed with the Complainant and, if the Complainant agrees, with the Respondent. If the Complainant and the Respondent agree to participate in the Alternative Resolution Process, the Director of Investigations will refer the matter to that process for resolution.
- 5.2 Participation in an Alternative Resolution Process will be considered by the Director of Investigations only at the Complainant's request and must be consented to by the Complainant and the Respondent. If at any time during the Alternative Resolution Process either the Complainant or the Respondent no longer wishes to participate in the Alternative Resolution Process, then with the consent of the Complainant, the Director of Investigations will appoint an Investigator to investigate the Report under section 6 of these Procedures.

- 5.3 Alternative Resolution Processes are confidential processes and participants are encouraged to maintain confidentiality until the process is completed. Information obtained during an Alternative Resolution Process where either the Complainant or Respondent withdrew participation will not be shared with the Investigator in any subsequent Investigation and cannot be relied upon in the Investigation unless that information is independently obtained by the Investigator in the course of the Investigation.

## 6. Investigations

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

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

## **7. Outcome and Disciplinary Measures**

- 7.1 The Investigations Office does not determine the outcome or disciplinary measures to be imposed in response to the Investigation Findings.
- 7.2 If the Investigation Findings includes a determination that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to the appropriate UBC authority responsible for making a final decision on outcome or disciplinary measures as follows:
  - 7.2.1 in the case of a student Respondent, to the President;
  - 7.2.2 in the case of a registrant Respondent, to the Administrative Head of Unit in whose educational activity the Respondent is registered;
  - 7.2.3 in the case of a faculty member Respondent, to the faculty member's Dean or, in the case of a librarian, to the University Librarian;
  - 7.2.4 in the case of a staff member Respondent, to the staff member's administrative head of unit or as set out in the applicable collective or employment agreement;
  - 7.2.5 in the case of an emeritus Respondent, to the appropriate Dean who will make a recommendation to the UBC Vancouver Senate Tributes Committee or the UBC Okanagan Learning and Research Committee, as relevant. A final decision with respect to the emeritus appointment will be made by Senate;
  - 7.2.6 in the case of a Respondent who is serving on a UBC committee, to the chair of the committee.
- 7.3 If the Respondent has more than one relationship to UBC, then the Director of Investigations will provide a copy of the Investigation Findings to all appropriate UBC authorities and each



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

- 7.4 Where there is a determination that a student Respondent has engaged in Sexual Misconduct, the President will determine what disciplinary or other measures are appropriate in accordance with the *University Act*. For clarity and without limiting the President's discretion, the disciplinary measures that may be imposed are the same as the disciplinary measures that may be imposed for non-academic misconduct and are set out in in the UBC Academic Calendar under the headings Discipline for Non-Academic Misconduct: Student Code of Conduct and Disciplinary Measures.
- 7.5 Where there is a determination that any other Respondent has engaged in Sexual Misconduct, the appropriate UBC authority or authorities will determine what disciplinary measures are appropriate in accordance with the applicable collective or employment agreements, the *University Act*, and any other applicable legal requirements. A Respondent found to have violated the Policy may be subject to disciplinary action up to and including termination of employment or appointment.
- 7.6 Once the appropriate UBC authority has made a decision regarding the disciplinary or other measures to be imposed, that decision will be communicated in writing to the Respondent. A copy of the decision will also be provided to the Director of Investigations. The Director of Investigations will inform the Complainant of any disciplinary outcomes that the University Counsel has authorized the Director to disclose in accordance with section 8.5 of these Procedures.
- 7.7 If the appropriate UBC authority determines that Sexual Misconduct has occurred, the Director of Investigations will provide a copy of the Investigation Findings to:
  - 7.7.1 UBC Student Housing and Hospitality Services, if the Respondent is subject to a UBC residence contract or agreement;
  - 7.7.2 the UBC authority charged with addressing concerns under a Faculty or school's standards of professional conduct, if the Respondent is a student subject to those standards; and
  - 7.7.3 UBC Athletics and Recreation, if the Respondent is subject to a Varsity student athlete agreement.
- 7.8 The Director of Investigations will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and assistance, providing education, or conducting administrative transactions.
- 7.9 Whether or not the Investigation Findings includes a determination that Sexual Misconduct has occurred, if the Director of Investigations is satisfied that the Investigation Findings disclose other misconduct, or information, that UBC may need to act on under another UBC policy or process, the Director may refer the Investigation Findings, or the relevant portions of the Investigation Findings, to the appropriate UBC authority. The Director of Investigations will

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

## 8. Confidentiality and Privacy

- 8.1 In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”), all participants in an Investigation must act in accordance with the requirements set out below.
- 8.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual (“**Personal Information**”) through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. However, this section does not prevent:
  - 8.2.1 any participants in the Investigation from disclosing information about themselves, or information that they have obtained outside the Investigation;
  - 8.2.2 UBC representatives from disclosing Investigation-related information as authorized under section 8.3 of these Procedures; or
  - 8.2.3 Complainants and Respondents from disclosing the information that they have received under sections 8.4 and 8.5 of these Procedures.
- 8.3 UBC will not disclose any Personal Information related to an Investigation except:
  - 8.3.1 when expressly authorized by the affected individual;
  - 8.3.2 to a UBC representative and disclosure is necessary for the performance of that individual’s duties;
  - 8.3.3 to a Complainant, Respondent, witness, or other participant in the Investigation, if necessary for the conduct of the Investigation;
  - 8.3.4 to a Complainant or Respondent in accordance with sections 8.4 and 8.5;
  - 8.3.5 when authorized by the University Counsel for compelling health or safety reasons;
  - 8.3.6 when authorized by the University Counsel to correct misleading or inaccurate information where disclosure is necessary to protect the integrity of the Investigation or UBC’s investigatory processes; or
  - 8.3.7 when authorized or required under law.
- 8.4 To maintain the integrity of the Investigation process, UBC must ensure that both Complainants and Respondents know the Investigation Findings and the evidence upon which these findings are based. Complainants and Respondents will be provided with a copy of the Investigation Findings. The FIPPA may require UBC to remove Personal Information that is irrelevant to the Investigation Findings, or that identifies third parties. If there are multiple Complainants or

multiple Respondents, each will only receive the portions of the Investigation Findings that are relevant to them.

- 8.5 Under the FIPPA, UBC is only authorized to disclose disciplinary actions taken against a Respondent if the disclosure is consented to in writing by the Respondent or authorized by the University Counsel or the University Counsel's designate (such as for compelling health or safety reasons or informing the Complainant of restrictions imposed upon the Respondent's movements, activities, or contact with the Complainant).
- 8.6 Section 8.2 of these Procedures does not prevent Complainants and Respondents from disclosing the information received under sections 8.4 and 8.5 of these Procedures. However, Complainants or Respondents who choose to disclose such information should keep in mind that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim), and may wish to seek advice before doing so.

## **9. Appeal Processes**

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