

 The University of British Columbia Board of Governors	Policy No.: 3	Approval Date: January 1995 Last Revision: [*2019]
	Responsible Executive: Provost and Vice-President Academic (UBC Vancouver) Deputy Vice Chancellor and Principal (UBC Okanagan)	
Title: <p style="text-align: center;">Discrimination</p>		
Background & Purposes: <p>The University of British Columbia has responsibility for and is committed to providing its students, staff and faculty with an environment dedicated to excellence, equity and mutual respect; one that is free of Discrimination; and one in which the ability to freely work, live, examine, question, teach, learn, comment and criticize is protected. Academic Freedom and freedom of thought, belief, opinion and expression carries with it the expectation that all Members of the UBC Community will conduct themselves in a responsible manner so as not to cause, condone or participate in the Discrimination of another person or group of persons. UBC's commitment to maintaining and respecting human rights at every level of the institution is central to this Policy.</p> <p>The fundamental objectives of this Policy are to prevent Discrimination on grounds protected by the <i>BC Human Rights Code</i>, and to provide procedures for handling complaints, remedying situations, and imposing discipline when such Discrimination does occur. Concerns regarding discrimination or harassment that do not involve any of the grounds prohibited by the <i>BC Human Rights Code</i> are not covered by this Policy. Such concerns may be addressed by other UBC policies or procedures, or the UBC Statement on Respectful Environment for Students, Faculty and Staff, and collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.</p>		

1. General

- 1.1 UBC and all Members of the UBC Community share responsibility for ensuring and maintaining an environment that is free from Discrimination. UBC regards Discrimination as a serious offence that is subject to a wide range of remedial or disciplinary measures, including dismissal or expulsion from UBC.
- 1.2 Concerns regarding Discrimination brought forward under this Policy must be referred to the Equity & Inclusion Office, which is responsible for:
 - 1.2.1 providing information, advice and assistance in a fair and impartial manner to Complainants, Respondents, or anyone else who has a concern about Discrimination related to UBC;
 - 1.2.2 working with the relevant Administrative Head of Unit to address or resolve concerns of Discrimination in an informal manner, where possible;

- 1.2.3 initiating formal complaints of Discrimination, where appropriate; and
- 1.2.4 providing education to Members of the UBC Community and other UBC offices on the prevention and remediation of Discrimination, and issuing guidance on the implementation and interpretation of this Policy and its Procedures.
- 1.3 The Director of Investigations is responsible for investigating formal complaints of Discrimination that are filed under the Procedures.
- 1.4 UBC will not tolerate any retaliation, directly or indirectly, against anyone who, in good faith, complains, gives evidence or otherwise participates in a process under this Policy. UBC considers retaliation to be a serious matter because it prevents potential complainants, witnesses, and administrators from acting on their concerns.
- 1.5 This Policy should not be interpreted, administered or applied to infringe on Academic Freedom. Academic Freedom is a fundamental tenet of UBC. Academic Freedom includes the right to engage in free and full discussion, not only of ideas that are safe and accepted, but of those which may be unpopular and even abhorrent, and to make statements, assign readings or use instructional techniques that challenge and may even offend the sensibilities, ideas and beliefs of others. Members of the UBC Community, in exercising Academic Freedom, shall comply with the *BC Human Rights Code*.

2. **Scope**

- 2.1 This Policy addresses Discrimination on grounds protected by the *BC Human Rights Code* and to the individual areas to which the particular grounds relate. Under the *BC Human Rights Code* everyone has the right to be free from Discrimination based on the following personal characteristics (current as of the date of approval of this Policy): age (actual or perceived), ancestry, colour, family status, marital status, physical or mental disability, place of origin, political belief, race, religion, sex, sexual orientation, gender identity or expression, and criminal conviction unrelated to employment. In the UBC context, this right applies in the areas of publications, public services, tenancy, employment advertisements, wages, and employment.
- 2.2 The prohibited grounds under this Policy will be interpreted in the same manner as they are interpreted by the BC Human Rights Tribunal.
- 2.3 Allegations of sexual assault are to be addressed under UBC Policy #131, Sexual Assault and Other Sexual Misconduct, and not this Policy. 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 allegations, which policy is better suited to address the allegations.
- 2.4 Concerns that do not involve any of the grounds prohibited by the *BC Human Rights Code* are not covered by this Policy. Such concerns may be addressed by other UBC policies or procedures, or the UBC Statement on Respectful Environment for Students, Faculty and Staff, and collective agreements, employee handbooks, and student codes of conduct, and should be taken to the appropriate Administrative Head of Unit, student or employee association, union or human resources office.
- 2.5 Systemic discrimination is a form of Discrimination and, as such, a complaint of systemic Discrimination is to be made in the manner set out in the procedures to this Policy.

- 2.6 Neither this Policy in general, nor its definitions in particular, are to be applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students.

3. Access to Other Processes and Multiple Complaints

- 3.1 The fact that a complaint is being pursued under this Policy does not preclude the Complainant from pursuing another UBC process, such as requesting an accommodation under Policy #73, Accommodation for Students with Disabilities, or a process outside of UBC, such as filing a complaint with the BC Human Rights Tribunal. If a complaint is being pursued under another process, the party conducting the process under this Policy may elect to continue with the process under this Policy or may elect to suspend the process until the outcome of the other process is determined.
- 3.2 Complainants who are members of faculty or staff unions may choose to proceed with a complaint under the provisions of their collective agreement rather than under this Policy. The Complainant may not concurrently pursue a complaint under both their collective agreement and this Policy.

4. Definitions

- 4.1 **Academic Freedom** is defined in the UBC Vancouver and UBC Okanagan calendars.
- 4.2 **Administrative Head of Unit** is any of the following: Director of a service unit; Head of an academic department; Director of a centre, institute or school; Principal of a college; Dean; Associate Vice President; University Librarian; Registrar; Vice President; Deputy Vice Chancellor & Principal; or President.
- 4.3 **Complainant** is an individual who has made a formal complaint of Discrimination under the Procedures.
- 4.4 **Discrimination** is intentional or unintentional conduct, which can be individual or systemic, that imposes burdens, obligations, or disadvantages on or limits access to opportunities, benefits and advantages to specific individuals or groups as defined by the BC *Human Rights Code* and for which there is no bona fide and reasonable justification. Harassment that is related to one or more of the prohibited grounds of discrimination set out in the *Human Rights Code* is Discrimination under this Policy. Discrimination can involve individuals or groups, and it can occur during one incident or over a series of incidents including single incidents, which, in isolation, would not necessarily constitute discrimination. It is the impact on the Complainant, subject to the reasonable person test, and not the intent of the Respondent that defines the treatment as Discrimination. The reasonable person test refers to an assessment of responsibility that takes into account not only what the Complainant and Respondent actually experienced, knew, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.
- 4.5 **Members of the UBC Community** are individuals who fall under one or more of the following categories:
- 4.5.1 students, defined as individuals enrolled at UBC, including co-op and exchange students;

4.5.2 employees, including faculty and staff members;

4.5.3 holders or teaching appointments;

4.5.4 post-doctoral fellows; and

4.5.5 anyone contractually obligated to comply with this Policy.

4.6 **Respondent** is the person against whom an allegation of Discrimination has been made.

PROCEDURES

Approved: January 1995

Revised: [*2019]

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

1. General

- 1.1 Individuals exercising their authority and discretion under these Procedures will do so in conformity with the principles of procedural fairness in the UBC context.
- 1.2 If an individual exercising authority and discretion under these Procedures has a real or apparent conflict of interest in a particular matter, or there is a reasonable apprehension of bias, then that individual will not continue their involvement in the matter and UBC will appoint an appropriate individual to act in that role for the purposes of that matter. For certainty, participation of the individual in any informal or consultation process does not, of itself, constitute a conflict of interest or a reasonable apprehension of bias.
- 1.3 The Complainant and the Respondent may have a representative or support person present at any time during the process outlined under these Procedures. Members of unions and employee associations have all rights to representation that their collective agreements confer.

2. Confidentiality and Privacy

- 2.1 In order to protect the integrity, fairness, and effectiveness of the process under the Policy and this Procedure and to ensure compliance with the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), all participants in the process must act in accordance with the requirements set out below.
- 2.2 Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual ("Personal Information") through their participation in the process 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:
 - 2.2.1 any participants in the process from disclosing information about themselves, or information that they have obtained outside the process;
 - 2.2.2 UBC representatives from disclosing process-related information as authorized under section 2.2.3; or
 - 2.2.3 Complainants and Respondents from disclosing the information that they have received under sections 2.4 and 2.5.
- 2.3 UBC will not disclose any Personal Information related to the process except to the extent such disclosure is:
 - 2.3.1 expressly authorized by the affected individual;

- 2.3.2 to a UBC representative, if necessary for the performance of that individual's duties;
 - 2.3.3 to a Complainant, Respondent, witness, or other participant in the process, if necessary for the conduct of the process;
 - 2.3.4 to a Complainant or Respondent in accordance with sections 2.4 and 2.5;
 - 2.3.5 authorized by the University Counsel for compelling health or safety reasons;
 - 2.3.6 authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the process or UBC's investigatory processes; or
 - 2.3.7 authorized or required under law, which for certainty shall include directions received from external agencies such as the BC Human Rights Tribunal.
- 2.4 To maintain the integrity of the process under this Policy, UBC must ensure that both Complainants and Respondents know the process findings and the evidence upon which these findings are based. The FIPPA may require UBC to remove Personal Information that is irrelevant to the process findings, or that identifies third parties. If there are multiple Complainants or multiple Respondents, they will only receive information that is relevant to them.
- 2.5 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. For example, UBC will normally inform Complainants of any restrictions that may have been imposed upon the Respondent's movements or activities.
- 2.6 Section 2.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 2.4 and 2.5. 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.

3. **Consultations and Informal Resolution**

- 3.1 Members of the UBC Community who have concerns about matters of Discrimination that relate to a Member of the UBC Community or to a UBC-sanctioned program, event or activity may consult with the Equity & Inclusion Office. Administrative Heads of Unit who become aware of such concerns should forward them to the Equity & Inclusion Office.
- 3.2 Such individuals may consult with the Equity & Inclusion Office anonymously. However, any information provided to this office anonymously or in a consultation-only capacity will not be independently substantiated, further investigated, or acted upon by this office unless the AVP, Equity & Inclusion determines that it would be appropriate to do so and initiates a complaint under section 4.2.3 below.
- 3.3 As part of this consultation process, the Equity & Inclusion Office may work with the relevant Administrative Head of Unit to resolve the concern informally. In doing so, this office should take into considerations all relevant factors, such as risks to health or safety, financial or logistical challenges, disruption of any collective agreements, and impact upon ability to deliver or meet requirements of the relevant course, program, or activity.

4. **Making Formal Complaints**

- 4.1 Those with concerns relating to matters of Discrimination are strongly encouraged to consult with the Equity and Inclusion Office as set out in section 3.1 above prior to taking any other action under these Procedures. However, if the person with the concern believes that it was not satisfactorily addressed through consultation, or believes that consultation is not appropriate in the circumstances, that person may submit a formal complaint to the Director of Investigations. The Director of Investigations will provide a copy or summary of the complaint to the Equity & Inclusion Office.
- 4.2 Discrimination complaints may be made
 - 4.2.1 by any Member of the UBC Community who is directly affected by the conduct that forms the basis of the complaint;
 - 4.2.2 at the discretion of the Director of Investigations, by a non-Member of the UBC Community who is directly affected by the conduct that forms the basis of the complaint; and
 - 4.2.3 by the AVP, Equity & Inclusion.
- 4.3 If the AVP, Equity & Inclusion initiates a complaint under section 4.2.3, they will act as the Complainant in the complaint proceedings under these Procedures. In such cases, the person directly affected by the conduct that forms the basis of the complaint, and/or the person who is the subject of the complaint, may be called upon as witnesses in the proceedings.
- 4.4 Complaints must be made in writing.
- 4.5 Complainants may withdraw from the complaint proceedings at any time. However, UBC's responsibility to provide an environment free from Discrimination may obligate UBC to proceed regardless of the Complainant's withdrawal.
- 4.6 The Director of Investigations has jurisdiction to investigate complaints in the following circumstances:
 - 4.6.1 the complaint must have been made by an individual described in section 4.2;
 - 4.6.2 the complaint must be either a complaint of systemic Discrimination by UBC or a complaint about Discrimination by a Respondent who was a Member of the UBC Community at the time the alleged Discrimination occurred and at the time the complaint was submitted;
 - 4.6.3 the alleged conduct must fall within the definition of Discrimination; and
 - 4.6.4 the complaint must have a real and substantial connection to UBC, as that term has been interpreted under BC law.
- 4.7 If the Director of Investigations determines that there is jurisdiction to investigate a complaint, the Director of Investigations may do any one or more of the following:
 - 4.7.1 address the complaint under section 5 below; or

4.7.2 decline to proceed with the complaint.

4.8 If the Director of Investigations determines that there is no jurisdiction to investigate a complaint, the Director of Investigations will not accept the complaint and will take no further action under these Procedures.

4.9 Where the Director of Investigations makes a decision under sections 4.7.2 or 4.8, the Director of Investigations will provide written reasons to the Complainant.

5. **Managing Formal Complaints**

5.1 If the Director of Investigations decides to address the complaint, the relevant Administrative Head of Unit and the Equity & Inclusion Office will be notified and a copy or summary of the complaint will be provided to the Respondent, who will be invited to respond to the allegations contained in the complaint.

5.2 The Director of Investigations may manage the complaint using any means deemed appropriate in the circumstances, subject to the principles of procedural fairness in the UBC context. Such means may include, but are not limited to, the following:

5.2.1 suspending or discontinuing the proceedings;

5.2.2 consolidating multiple complaints so as to be addressed together;

5.2.3 recommending interim measures to preserve safety while a complaint is being investigated or resolved;

5.2.4 interviewing or requesting written submissions from the Complainant and/or the Respondent and/or any other individuals with information that may be useful;

5.2.5 consulting with other UBC offices or employees;

5.2.6 gathering documents relevant to the complaint; and/or

5.2.7 referring the matter for internal or external investigation, or mediation or other forms of alternative dispute resolution.

5.3 Both the Complainant and the Respondent are expected to participate in the complaint management process outlined above in a timely manner. In cases where the Complainant and/or the Respondent fails to participate within a reasonable time without appropriate justification, the process may proceed without their participation and an adverse inference may be drawn as a result of their failure to participate.

5.4 Except in exceptional circumstances, the complaint management process outlined above will be completed within 90 calendar days of the provision of the complaint to the Respondent. In the event that this timeline cannot be met, the Director of Investigations will contact the Complainant and Respondent as soon as possible to inform them of the revised timeline.

6. Resolving Formal Complaints

- 6.1 After addressing the complaint under section 5 above, the Director of Investigations may resolve the complaint and/or make recommendations as deemed appropriate in the circumstances. Such resolutions or recommendations may include, but are not limited to, the following:
 - 6.1.1 resolving the complaint by consent of the Complainant and the Respondent, through mediation or any other means;
 - 6.1.2 recommending such measures as may be appropriate to remedy the effects of Discrimination and restore the Complainant's and/or Respondent's unit to effective functioning;
 - 6.1.3 recommending such measures as may be appropriate to remove systemic barriers and/or prevent Discrimination;
 - 6.1.4 making findings about whether the Respondent or any other individual has violated this Policy or these Procedures;
 - 6.1.5 making findings about whether the Complainant made the complaint in bad faith or was frivolous, vexatious or malicious;
 - 6.1.6 recommending other remedies to the appropriate Administrative Head of Unit; and/or
 - 6.1.7 dismissing the complaint.
- 6.2 No resolution of a complaint that may adversely affect the academic, employment, professional, or other interests of a party shall proceed without giving that party the opportunity to fully respond to the complaint.
- 6.3 Where the Director of Investigations has referred a complaint for internal or external investigation, the Director of Investigations or their delegate will prepare a written report ("Investigative Report") for the appropriate Administrative Head of Unit and the AVP, Equity & Inclusion. The Investigative Report will normally include the following information:
 - 6.3.1 a summary of the evidence considered;
 - 6.3.2 any assessment of credibility that is required to render a determination;
 - 6.3.3 the findings of fact, and a determination as to whether, on a balance of probabilities, Discrimination has occurred; and
 - 6.3.4 any resolution or recommendations made under these Procedures.
- 6.4 In addition and as appropriate, the Director of Investigations may communicate any resolution and/or recommendations to the Complainant, Respondent and others whom the Director of Investigations determines ought to know under the circumstances.
- 6.5 The Administrative Head of Unit receiving the Investigative Report has the authority to determine the appropriate disciplinary and/or remedial measures needed to resolve or address the complaint, if any. The Administrative Head of Unit will provide a written report of the decision made and any measures taken to the Director of Investigations, the appropriate Dean and/or Head,

and the Respondent. Disciplinary actions will not be disclosed to Complainants except in the limited circumstances set out in section 2.5.

- 6.6 The Director of Investigations will conclude the investigatory process by ensuring all necessary communications are made to those responsible for implementing decisions, providing or adjusting support services and accommodations, providing education, or conducting administrative transactions.

7. Appeals

- 7.1 Students may appeal any discipline that is imposed under these Procedures through the UBC Vancouver Senate Student Appeals on Academic Discipline Committee or the UBC Okanagan Senate Appeals of Standing and Discipline Committee.
- 7.2 Staff or faculty may appeal any discipline that is made or imposed by the Administrative Head of Unit under these Procedures through the provisions of their collective agreements or their terms and conditions of employment.
- 7.3 The Complainant and/or the Respondent may also have recourse to processes outside of UBC, such as filing a complaint with the BC Human Rights Tribunal.