



## GUIDELINES FOR RESPONDING TO AND INVESTIGATING COMPLAINTS

Issue Date: September 20, 2017

### A. Definitions

In these Guidelines, the following terms are used:

**Complainant:** The individual making the complaint

**Respondent:** The subject of the complaint

**HR:** The HR Advisor or Faculty Relations (on the Vancouver campus) or the Director of HR (on the Okanagan campus)

**OUC:** Legal Counsel, Information and Privacy in the Office of the University Counsel

**Misconduct:** A breach of a Policy, code of conduct, employment duty, or other requirement.

### B. Scope of These Guidelines

These Guidelines have been issued by the University Counsel and the Vice-President, Human Resources under the authority of Policy #95, Investigations, to deal with complaints filed by students, staff or faculty members. If you are dealing with a complaint for which there is already an established process, then you do not need to follow these Guidelines. Here are examples of established investigation processes:

- Policy #3 (Discrimination and Harassment)
- Policy #85 (Scholarly Integrity)
- Policy #111 (Internal Audit, Investigations and Financial Whistleblower)
- Student Code of Conduct

These Guidelines are non-binding and may be varied where it makes sense to do so. They are primarily designed for use in situations where there is a single, identifiable complainant who is alleging Misconduct. In situations where there are multiple complainants, or the complainant is not identifiable, you should contact the OUC or HR as appropriate to determine how to proceed. Note that you must always inform HR about complaints about employment-related conduct.

Before commencing an investigation in accordance with these Guidelines, it is essential for you to determine whether your role is to be a fact-finder, a decision-maker, or both.

A fact-finder collects evidence to determine what happened. A decision-maker decides, on the basis of those facts, whether the Respondent is guilty of Misconduct. In some investigations, you may fill both roles. In other investigations, you will only be asked to be the fact-finder, and somebody else will be the decision-maker. It is essential for you to understand your role in any particular investigation; if you are in any doubt, you should consult with the OUC or HR as appropriate.



## C. General Principles

### *Fairness*

UBC has a responsibility to respond to complaints fairly, and in accordance with any applicable University protocol, policy, collective agreement or statute. When you investigate a complaint, you do so as a representative of UBC and are bound by these same obligations. You must treat complaints seriously, always keeping in mind how difficult it may be for the Complainant to come forward, especially in situations where a power imbalance exists between the parties. At the same time, you must never forget that the Respondent has a right to a fair, unbiased investigation, which includes the right to know the allegations against them and an opportunity to respond to these allegations. Finally, you have an obligation to respect the rights of witnesses, and all other individuals involved in investigations.

Before you take any steps to investigate a complaint, you must be certain that you can do so fairly. If your involvement in the current situation raises a reasonable apprehension of bias which calls into question your impartiality, then you should contact the OUC or HR for assistance in delegating responsibility for conducting the inquiry or making the decision.

### *Timeliness*

UBC must resolve investigations in a timely manner, while not sacrificing the fairness of the process. One of the most common causes of dissatisfaction for parties to an investigation is the slow pace of the process. You should try to ensure that Complainants and Respondents have a realistic understanding of how long the investigation will take, and keep them informed of your progress.

You should not underestimate the amount of time it will take you to investigate a complaint. You may need to hold several meetings with the Complainant, the Respondent, and/or with witnesses to ensure you have fully explored all aspects of the complaint and the response. You will also need time to write your notes or investigation report.

### *Confidentiality*

Although investigations should be conducted as confidentially as possible, you cannot guarantee absolute confidentiality. The principles of information disclosure during the investigation process are set out in Policy #95, Investigations. As an investigator, it is essential for you to familiarize yourself with these rules and communicate them clearly to the parties to the investigation.

### *Union/association and Legal Representation*

In some employment-related processes, faculty and staff may be entitled to union/association representation. You should always check with HR to determine if this is required or appropriate in your investigation.



Although either a Complainant or a Respondent can seek legal advice, lawyers are generally not permitted to participate in the investigation process. If you receive a request for a lawyer to participate, you should refer this request to the OUC or HR as appropriate.

### *Record-keeping*

You are responsible for keeping detailed notes of all interviews and conversations related to your inquiries. You may have another person with you during your investigation as a record-keeper. If someone takes notes on your behalf you should review them promptly, make any changes you think appropriate, and initial them to indicate your adoption of the contents. Since these notes may have to be disclosed to the parties through Freedom of Information requests or other legal processes, you should ensure that they are clear, relevant and objective.

The parties may provide written evidence or other documentation to you during the investigation. You must store all of this documentation in a secure location.

If one of the parties requests access to any of the investigation records, you should consult with the OUC or HR to determine what can be released. Documents may have to be redacted prior to disclosure as required by privacy legislation to protect the rights of third parties.

### *Support*

If you do not know what to do at any point in your investigation, you should request advice from the OUC or HR, as appropriate.

## **D. Receiving the Complaint**

Your first task is to gather evidence related to the complaint. You should generally follow the following steps:

1. Ensure that the complaint is not covered by one of the established investigation processes (e.g. Policy #3 (Discrimination and Harassment)). If it is, refer the Complainant to the individual or unit responsible for that particular process.
2. Promptly acknowledge receipt of the complaint and advise the Complainant that you will schedule a meeting as soon as possible. If you are meeting with a faculty member or a staff member, check with HR to determine whether any union/association representation is required at the meeting.
3. Generally, you will meet with the Complainant first to clarify the allegations and the scope of the complaint. Take notes during the interview or have a record-keeper attend the interview. It is preferable that a complaint be set out in writing by the Complainant. There is no particular form required for a written complaint but the matter should be described in sufficient detail to clearly identify the conduct complained about. Advise the Complainant to be as factual and objective as they can. Make sure you have enough evidence about the complaint to understand the issues and to fully present the matter to the Respondent. The Complainant must also provide his or her contact information to you.



4. If the Complainant insists on submitting the complaint orally, you should produce a written summary of the complaint as described by the Complainant and then review your summary with the Complainant to confirm that you have accurately captured the complaint.
5. Describe the process you will be following to investigate the complaint. Inform the Complainant that you are undertaking the investigation as a representative of UBC and not on behalf of either party to the complaint and that therefore, you must be impartial and maintain a neutral position.
6. Provide a copy of Policy #95 to the Complainant and review the confidentiality and privacy principles contained in that policy that apply to the investigation process.
7. Advise the Complainant against discussing this matter with the Respondent or potential witnesses during the investigation, in order to protect the integrity of the investigation process.
8. Advise the Complainant that a decision will be made only after the Respondent has had an opportunity to respond and you have sufficient reliable and credible evidence to support findings upon which a decision can be made.
9. Provide the Complainant with information about the resources available to them within UBC that can provide them with information or support.

## E. Meeting the Respondent

Your next task is to gather evidence from the Respondent. You should generally follow the following steps:

1. Meet with the Respondent as soon as practicable. If you are meeting with a faculty or staff member, check with HR to determine whether any union/association representation is required at the meeting.
2. Take notes during the interview or have a record-keeper attend the interview. Explain the investigation process. Emphasize that you are undertaking the investigation as a representative of UBC and not on behalf of either party to the complaint, and that therefore you must be impartial and maintain a neutral position.
3. Provide a copy of Policy #95 to the Respondent and review the confidentiality and privacy principles contained in that policy that apply to the investigation process.
4. Caution the Respondent against discussing this matter with the Complainant and against engaging in any form of retaliation against the Complainant or potential witnesses.
5. In most circumstances, you will provide the Respondent with the written complaint or the summary that you created. However, not all statements in a complaint require a response. Sometimes evidence is provided which, even if true, is not relevant to the complaint or would not constitute Misconduct. If you can, you should identify those matters in the complaint that could constitute Misconduct if established and therefore require a response.



6. The Respondent may choose whether to verbally respond to the complaint at this meeting, or to respond in writing at a later time. You should allow the Respondent a reasonable time to consider their response to the complaint.
7. While the Respondent must be provided an opportunity to respond to the allegations, the Respondent is not obliged to provide a response. However, you should advise the Respondent that in the absence of a response you will base your findings on the available evidence and that you may be required to make reasonable inferences when making your findings or making a decision in the matter.
8. Reiterate UBC's commitment to investigate all complaints fairly under UBC's policies, and identify any resources that can provide the Respondent with information or support.

## F. Interviewing Witnesses

During your meetings with the Complainant and Respondent, it will be important to determine whether there were any witnesses to the events described by either party. If there were, you may need to interview these witnesses. When interviewing witnesses you should generally follow the following steps:

1. You must interview witnesses without either the Complainant or the Respondent in attendance. Describe your role and the process you will follow. Take notes during the interview or have a record-keeper attend the interview. Witnesses do not normally have a right to any union/association representation in the interview; however, you should consult with the OUC or HR for direction if this issue arises.
2. Discuss confidentiality with the witnesses. Explain to them that they are obliged to maintain the confidentiality of personal information that they have received through the investigation process. Advise them that their identity will be disclosed to the Complainant or the Respondent only if, in your judgment, such disclosure is required to give them a fair opportunity to respond. Also, their identity may need to be revealed in any subsequent proceeding related to the investigation, such as an arbitration or lawsuit.
3. Before interviewing a witness, you should know why you are interviewing the individual and what contribution they may make to your inquiry into the complaint. Witnesses do not need to be told details of the complaint but must be provided sufficient information to place their evidence in context. You may tell the witness why you are interested in speaking to him or her, i.e. how they fit into the picture.
4. Potential witnesses may refuse to be interviewed or to provide evidence related to the complaint. In these circumstances you should contact the OUC or HR for direction.

## G. Facilitating Resolution

Resolution of the complaint may be accomplished in a number of ways. You should consider whether the parties can reach an informal resolution. It may be possible to retain the services of a third party to facilitate discussions between the Complainant and the Respondent. HR and the OUC are available to provide support at this stage of the process.



If you are unable to resolve the complaint with the parties, or if you determine that an informal resolution is not appropriate in this case, then it will be necessary for you to make findings of fact and render a recommendation or a decision regarding the complaint.

## H. Making Findings of Fact

At the end of the evidence-gathering phase of your inquiry, you must analyze this evidence to make findings of fact. This is the most difficult aspect of responding to a complaint as the evidence you gathered may be complex or contain inconsistencies that are difficult to reconcile.

When making findings of fact, you must apply the standard of ‘balance of probabilities’. This means that the allegations will be considered to be proven if you conclude that, given all the evidence, it is more likely than not that the events as alleged by the Complainant occurred. You do not have to be satisfied that the events have been established ‘beyond a reasonable doubt’; that standard of proof is only used in criminal trials. Depending on the evidence, you may accept some aspects of the claim as established and not accept others. It is strongly recommended that you consult with the OUC or HR if you are uncertain about how to apply the ‘balance of probabilities’ standard.

In reaching your findings of fact you may be required to resolve conflicting versions of events (i.e. a ‘he-said/she-said’ dispute). If the Complainant, Respondent or witnesses disagree about what happened, you will need to assess their credibility by carefully considering their evidence in the context of all the other evidence available to you. Credibility is determined by which version of events is more consistent with all of the evidence, and not simply on the basis of which party presents a better appearance of sincerity or seems more believable.

You must be impartial and fair, and you must not reach any conclusions until you have gathered and considered all the relevant evidence. Whatever findings you make, you must base them upon the relevant evidence and make conclusions that, in your view, can reasonably be drawn from this evidence, and you must clearly explain how you came to these conclusions.

If you determine that the complaint has not been established on a balance of probabilities, this is not the same as finding that the Complainant lied about the allegations; it only means that there was insufficient evidence, on the balance of probabilities, to prove the allegations. If you have evidence that the Complainant pursued the complaint knowing it to be false, then you should consult with the OUC or HR about whether there should be any consequences for the Complainant for knowingly making a false complaint.

## I. Deciding Whether the Respondent Committed Misconduct

After you have made your findings of fact, the next step will be to decide whether these facts support a finding of Misconduct. If your role in the investigation is solely to be a fact-finder, then somebody else will make this decision. The decision-maker is not obliged to accept your findings of fact, and may ask for more information from you or from any of the investigation participants. The requirements of procedural fairness continue to apply to all such requests for information.



If you are responsible for deciding whether the facts support a finding of Misconduct, then it is strongly recommended that you seek advice from HR (for investigations of staff or faculty members) or the OUC (for investigations of students) about how to undertake your analysis and record your conclusions.

## J. Documenting and Communicating Findings and/or Decision

It is highly recommended that you prepare a written report, even if you believe that the allegations are trivial or unsubstantiated. The report should summarize the relevant evidence provided from the Complainant, Respondent and witnesses, and set out your findings of fact along with an explanation of how you came to those findings.

If you are solely a fact-finder, you should include sufficient detail in your report to allow the decision-maker to reach an informed decision about whether the facts support a finding of Misconduct. The decision-maker is not obliged to accept your findings of fact, and must be able to satisfy themselves that these findings are supported by the evidence cited in your report.

If you are also the decision-maker, then your report should clearly explain how you determined whether the facts support a finding of Misconduct.

Investigations are confidential. As set out in Policy #95, you should only disclose your findings and/or decision as follows:

- to UBC staff and faculty members on a 'need-to-know' basis;
- to Respondents; and
- to Complainants (if they have alleged that they have been directly subjected to Misconduct by the Respondent).

Generally, you only need to disclose a summary of your findings and decision. If you are asked to provide a copy of your investigation report, you should first consult with the OUC or HR. They will let you know whether you need to redact (black out) information in the report to protect anybody's personal privacy.