



Office of the
Ombudsperson for Students

To: Sexual Assault Policy Committee
From: Shirley Nakata
Re: Comments and recommendations on the Draft Sexual Assault Policy
Date: October 28, 2016

Thank you for this opportunity to provide comments to the Draft Sexual Assault Policy and for the time, thoughtfulness and energies of all members of the Committee in creating this document. I have included below my submissions on the Policy for your review and consideration.

I have first set out my general thoughts and recommendations followed by comments relating to specific paragraphs of the Policy.

I make my submissions in the context of this first recommendation that relates more broadly to policy and decision-making at UBC but is perhaps especially significant in this discourse. While appreciating the operational nature of the Policy Committee and that the consultation process is intended to invite and receive a diversity of views and perspectives, it is my experience that the *initial* conversation, drafts and processes have a significant impact not only on the content of the final Policy but also on its credibility and meaningfulness to the community to which it applies. I believe that there is critical importance in whose voices are included and represented at the policy-making (albeit draft policy) table and in the process that follows leading to the finalization of the Policy. We tend to focus on the outcome, the final product for good reason; however it is the process that the public sees which is critical to build and enhance a sense of fairness, and therefore trust and credibility in the institution and the final Policy.

For these reasons, I feel that the diversity of the university community needs to be seen to be reflected and included in the earliest and at each stage of the policy development process, education programming and delivery, and the procedures themselves. I am cognizant of the fact that systemic and structural barriers exist that sometimes make such representativeness and inclusion challenging. But where diverse representativeness may be difficult to achieve, innovative ways of including the voices of those historically marginalized and underrepresented should be pursued while systemic solutions are explored. If the diversity gap is left to be filled through general invitations for feedback, then diversity once again becomes an add-on, rather than being intentionally and respectfully included and embedded into university discourses and decision-making.

I make this commentary with respect and appreciation for the Policy Committee that comprises subject matter experts in their respective units/mandates and who bring important and diverse perspectives and knowledge to the Policy. I also appreciate that policy such as this one is difficult to develop in any situation, let alone amidst so much public attention. And with respect to this particular topic, we must invest and, importantly, *be seen* to invest in a broader and deeper reach into the university community to solicit and include from the beginning a wide range of thinking, lived experiences and perspectives to create manifestly culturally-sensitive (in the broadest meaning that includes gender, gender identity, race, ethnicity, sexual orientation, ability, age, social and economic status, etc.), legally sound and fair policies, programs and responses to sexual assault.

General

1. With respect to the Commitments and General Principles as a whole and especially in relation to paragraphs 2.7, 2.8, 2.9, there is no explicit articulation of who is accountable to ensure that these commitments are respected and enacted. While understanding the responsibility of the broader university community, I believe it is critical that students, faculty and staff understand who will be held to account for these promises.

I would recommend articulation of an identifiable individual(s) or unit(s) that people can see, interact with and hold accountable; "UBC" does not provide sufficient transparency for this Policy.

A related question is who is (are) responsible and accountable for creating and maintaining an effectively integrated and coordinated system-wide oversight of these commitments and their implementation. Who, when and how will assessment and review of the policy, processes and educational plans be conducted?

I would recommend that an individual or unit be identified as being responsible for ensuring an integrated and coordinated approach to achieving the commitments outlined in the Policy. In addition, the review requirement stated in section 3(1)(a) of the Sexual Violence and Misconduct Policy Act should be expressly referenced in the Policy and the university should commit to an annual review that includes consultation with and report back to the broader community.

2. The Background and Purposes section references UBC's commitment to education relating to the prevention of sexual assault. However, the Policy in its current form appears to be heavily weighted towards reacting to disclosures or reports of sexual assault.

I would recommend that there be a distinct section in the Policy on education and prevention that articulates what UBC's commitment to sexual assault prevention and education includes. Such section could follow the section on Commitments and General Principles and outline the key goals and accountability measures of an education and prevention plan. I would also recommend that the Policy Committee consider broadening and further diversifying (in accordance with sections 2.3, 2.4, and 2.5 of the Draft Policy) the Sexual Assault Prevention Team.

My observation is that in some cases a survivor's conduct and interactions with the university can be adversely characterized and may negatively impact their credibility, when their behaviour may be symptomatic of trauma or other health issues.

I would recommend that all university community members, and especially those identified as individuals competent to receive disclosures and reports, be supported and provided appropriate levels of education to understand trauma and post-traumatic stress disorder.

3. Paragraphs 2.3, 2.4 and 2.5 articulate the identity characteristics that are critical in the university's discourse around sexual assault. What is missing is explicit reference to the fundamental role that power, oppression and privilege play in sexual assault as well as in the institutional processes which Survivors must navigate and sometimes endure.

I would recommend that a further explicit statement be made that identifies the role of power, oppression and privilege in sexual assault and that also acknowledges the university's commitment

to an intersectional (beyond women) and culturally-sensitive approach to its work in preventing and responding to sexual assault.

4. Given the diverse nature of the university's population, individuals' capacity to be aware of, understand and engage with the Policy and programming will vary greatly. Beyond training and educating university students, staff and faculty about sexual assault, accessibility will be enhanced if the university population can see themselves reflected in the people providing services and training.

I would recommend that there be an express commitment and action plan referenced in the Policy to ensure the accessibility of the Policy, processes and educational programming across constituencies, employee groups, linguistic and cultural differences.

5. Paragraph 4.2.1 references the non-academic misconduct process as the reporting option where the alleged perpetrator is a student. My understanding is that the Policy Committee is considering alternate processes so I will be brief on this point. The non-academic misconduct process, as a peer-based model of adjudication, is suitable for the vast majority of allegations made against students. However, aspects of that process such as the timelines for reporting, structure of the hearing process, profile and competencies of decision-makers make it inappropriate to respond to sexual assault allegations. Further, making administrative heads of unit responsible for receiving reports of sexual assault from faculty and staff may lead to inconsistent responses and processes regardless of training opportunities provided. A specialized and dedicated resource to address sexual assault would be most effective in achieving the university's objective to create a survivor-centric and procedurally fair approach to sexual assault.

My recommendation is to create a separate process for sexual assault allegations that is responsive to and recognizes the nature of sexual assault, its serious impact on all parties involved and the significance of the perception of privacy, safety and care in order for fairness to be experienced and effected. This separate process must incorporate and demonstrate flexibility and accessibility that respects the Survivor's right to support and the Respondent's right to a fair process. Such process requires individuals with specific expertise on conducting fair and respectful procedures relating to sexual assault allegations.

6. I understand the intent behind 4.8 and putting the university community on notice regarding the requirements of procedural fairness in these circumstances. I believe however that the university has a responsibility to act, or at least consider whether it ought to act, when it becomes aware of information relating to sexual assault where no one complainant is identified (or is willing to be identified) or where allegations are general but are of a serious nature. Such information may be indicative of an environment or climate in which sexual assault could occur or has occurred.

I would recommend that the Policy Committee explore and articulate the university's responsibility in such circumstances and consider questions such as: What is the threshold that triggers the duty to inquire? How can the university respond effectively to differing levels/nature of disclosure? How can the university responsibly and fairly respond to anonymous concerns or third party complaints of sexual assault?

Feedback on specific sections:

Background and Purposes

The stated purpose (“to articulate UBC’s commitment to the safety and security …”) in the first sentence seems overbroad and sounds similar to the purpose statement in Policy 118, Safety and Security Cameras.

Recommendation for alternate wording to focus the purpose on sexual assault: “The purpose of this policy is to articulate UBC’s duty and commitment to support members of the UBC community who experience sexual assault and to create and make available programs and resources to educate its community on the prevention of sexual assault and a central source of information regarding the resources and options available to those affected by sexual assault”. The comments regarding a safe and respectful environment could follow the purpose statement.

Definitions

Use the word “Survivor” in place of “those who have been Sexually Assaulted” and include in the Definition section. Also add “Respondent” as a defined term as it appears in 5.3.1.

2.3

The word “regardless” preceding descriptions of identity can be misconstrued to mean that those identifying characteristics are not significant (like the use of the word “colour-blind”). The good intent here might be better conveyed by: “respect all Members of the UBC Community acknowledging their gender identity, gender expression and sexual orientation.”

2.6

The Sexual Violence and Misconduct Policy Act requires that the policy “addresses sexual misconduct prevention”. While appreciating the importance of articulating the process for disclosure and reports, only paragraph 2.6 under the Commitments and General Principles section references education. I would recommend that there be a separate section preceding the Disclosure section that deals with education and sets out the broad parameters for UBC’s prevention and education plan.

As this paragraph is under the Commitments and General Principles section, I would recommend that there be an aspirational statement or encouragement for academic units to include issues relating to sexual assault and sexualized violence in curriculum.

2.9

This commitment is limited to those who receive disclosures, but not reports. Should this university support be provided to university community members who might receive disclosures and reports?

2.10

Recommendation: “UBC is committed to providing support and fair process to Respondents.”

2.12

Current wording could be read to mean that the university is committed to imposing discipline. Even in cases where there is a finding against a Respondent, it should not necessarily lead to an automatic imposition of discipline, but leave room for discretion to be exercised in fact patterns where discipline may not be appropriate (mental health issues, other extenuating circumstances). May also want to leave room for any use of restorative justice processes and outcomes.

Recommendation: "UBC is committed to ...and if found to have committed Sexual Assault, imposing disciplinary or other measures appropriate to the case."

2.14

Recommendation: add "supports a Survivor" before "or who participates in a UBC process ..." as there may be individuals who fear retaliation for helping someone who decides not to engage in any university process.

3.2 and 3.5

3.2 says "will make" available and 3.5 says "can provide" regarding the support services for a Survivor based on a disclosure. Could combine into one paragraph (i.e. adding the list of possible resources to 3.2).

4.2

Please see my general comments above.

4.6

I would recommend that the core message intended here be described in plain language. The last sentence in particular may not only confuse Survivors, it could discourage reporting. I would suggest that the language of the Policy be in plain language to achieve the highest level of accessibility for all members of the university community.

4.7

Consider putting this in the positive rather than the negative and in plainer language? For example: "A person may report to police even"

4.8

Last sentence could be tightened regarding UBC's inability to "proceed against the alleged perpetrator". By saying "UBC may be unable to act", it may give the impression that the university will do nothing in the face of some information when there might be opportunities and a responsibility to take some action, albeit not a formal, adjudicative process.

6.6

Would there be any circumstances under which the university may wish to take action against students under various contracts if there is a finding of guilt outside of a UBC process (i.e. criminal)?

Respectfully submitted,

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Ombudsperson for Students