

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)**

**AND IN THE MATTER of a complaint before the
British Columbia Human Rights Tribunal**

BETWEEN:

Glynnis Kirchmeier – and – Glynnis Kirchmeier on behalf of others

COMPLAINANTS

AND:

University of British Columbia

RESPONDENT

**COMPLAINANTS' FINAL SUBMISSIONS
ADDENDUM to GENERAL CLASS SUBMISSIONS
February 17, 2026**

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ADDENDUM TO GENERAL CLASS SUBMISSIONS

These are the Complainants' further submissions in respect of members of the General Class not yet addressed in the Complainants' main submissions. We thank the Tribunal for permitting this Addendum.

I. JANE DOE 7

1. JD 7 was a resident of St. John's College, which is a residence for international graduate students similar to Green College in that its Administrative Head of Unit is a Principal who is a professor at UBC, requires applications demonstrating academic achievement, is limited to graduate students and is outside the SHHS structure. JD 7 was referred to Ms. Kay by Counselling Services.

2. JD 7 and Ms. Kay met on January 28, 2015. At that meeting JD 7 discussed experiencing very high levels of stress about coming out about her sexual orientation and about witnessing and experiencing high levels of sexual harassment from some men at the College. She described aggressive and unwanted flirting, touching, and staring, including men intertwining their fingers in hers, sitting uncomfortably close to her, touching her shoulders, staring at her body parts, and making intense eye contact with her. She said that when she said that the conduct was unwelcome this was usually met with laughter. She described the problem as a systemic cultural issue at St. John's College, although she reported that 5 or 6 men were worse than the others. She said that female colleagues at Green College had warned her to avoid specific men at St. John's College.

3. Ms. Kay recorded JD 7 telling her that she was feeling high levels of anxiety and some depression, that she was no longer attending meals due to her anxiety and fear, that she was feeling very unsafe psychologically and emotionally, and that she was feeling like she could not take it any more.

4. JD 7 reported raising the issue with a Vice Principal at St. John's College (Ian) whom she said told her that St. John's College was a place to find a spouse and get married. JD 7 reported asking another student if she should raise her concerns with the Principal Henry Yu (a professor in the History Department whom Ms. Kirchmeier had worked with to some extent), and being advised that she should not.

5. Ms. Kay testified that JD 7 wanted a harassment free environment and a safe place to study and to come out about her sexual orientation.

6. Ms. Kay testified that she advised JD 7 about SASC, and about Campus Security for safety planning. She also talked about the options for addressing systemic issues including education and capacity building at the College to address concerns regarding homophobia and disrespectful behaviour. She testified that she discussed the spectrum of complaint processes available including what she was able to do, and what Chad Hyson could do through the NAM process.

7. Ms. Kay's notes (Exhibit 5, Page 214) refer to the fact that she provided information about sexual harassment, sexual assault, homophobia, protection from retaliation, formal and informal complaints, and the complaint processes available.

8. Ms. Kay's notes set out that the planned actions in response were capacity building with the College's Principal and Vice Principals about the procedures to be followed if a complaint or issue arises (to be carried out by Ms. Kay), education with the students (to be carried out by the EIO educators including Rachel and Donna), and support for JD 7 through SASC, Counselling Services and Campus Security. She noted that JD 7 was aware of her complaint options, which Ms. Kay said JD 7 could keep as a "back pocket resource".

9. Ms. Kay testified that the EIO provided a "Positive Space" session which included basic information about gender identity, language, pronouns, transgender issues, people coming out, harassment, sexual harassment, and human rights law. She said the sessions were long and comprehensive.

10. Ms. Kay noted following up with Mr. Bohnen of Campus Security, Vanita of Counselling Services, Ashley Bentley of SASC, and educators from the EIO office. She planned to meet with JD 7 the next day.

11. There is no indication of any further contact with JD 7. On March 31, 2015, two months later, Ms. Kay noted leaving a message for JD 7, and that she had not heard back from Vanita of Counselling Services or Ms. Bentley of SASC (Exhibit 5, Page 217).

12. On April 15, 2015, Ms. Kay noted speaking with Vice Principal Sandra Shepard of St. John's College about a Positive Space session by the EIO (Exhibit 5, Page 218). Ms. Kay noted that Ms. Shepard said that the College had had an interesting year with conflict and communication challenges, and that they were already working with Shirley Nakata (Ombuds Office, Community Fellow of St. John's College) and Richard (conflict management professional) who were putting together a program of workshops and discussions into which a Positive Space session could be added. Ms. Kay testified that she and Ms. Shepard did not discuss the nuts and bolts of the content of the Positive Space session. The package of sessions was very tentatively planned for September 2015. There is no evidence about whether these sessions went ahead.

13. According to her notes, Ms. Kay's plan was to set a reminder for the end of May to get back in touch with Ms. Shepard and to connect her with the EIO educators. There is no indication of further contact in the materials disclosed.

14. JD 7 came forward early in the term. Ms. Kay reported that JD 7 wanted a harassment free living and studying space. Ms. Kay's initial outreach but lack of follow up until the end of March, near the end of term, would not have improved JD 7's living and working space during her term. JD 7's contact with Ms. Kay provided JD 7 with information and potential referral options, but did not result in

the education for students or administrators at St. John's College that Ms. Kay said she had discussed with JD 7.

15. The University was advised that JD 7 was experiencing stress and anxiety, including about instances of sexual harassment and about coming out. Given the absence of actions towards positive change by the University during JD 7's term, which was what JD 7 sought, we submit that it is reasonable to infer that the harms to JD 7 continued. We submit that injury to dignity damages in favour of JD 7 of \$5,000 would be appropriate.

II. JANE DOE 13

16. The Mordvinov Class was defined by the Tribunal in *Kirchmeier and others v. University of British Columbia (No. 2)*, 2017 BCHRT 186 (para. 44), as:

any female student of UBC who at least once reported, disclosed or communicated to a faculty member or administrative staff member of UBC by any means, including telephone, fax, e-mail or in person in a formal, informal, scheduled or unscheduled interaction, a concern about sexual misconduct between January 8, 2014 and November 16, 2015 by a male studying or employed at UBC towards a female student enrolled at UBC.

17. The only information disclosed to the Complainants in the Kirchmeier complaint about JD 13 is the University's letter of April 22, 2014 to her counsel, Jessica L. Derynck, of Moore Edgar Lyster, (Exhibit 5, Page 86). Ms. Kay testified that she saw this letter in the course of her employment, but was not involved in this matter otherwise. The letter came into evidence.

18. Given the fact that the University acknowledges in the letter that JD 13 was offered academic concessions (Page 88, last bullet point), it is clear that she was a UBC student who also worked in an office in the University. It is also apparent that during 2014, the University and counsel for JD 13 communicated about sexual misconduct by a male studying or employed at UBC (KS). As such, JD 13 meets the Tribunal's definition of a member of the General Class.

19. There should, therefore, have been full disclosure of documents relating to JD 13's allegation to the University, and the University's actions in respect of it. These documents were among the General Class documents the Complainants sought disclosure of before the hearing.

20. The University's letter of April 22, 2014 documents a letter from Ms. Derynck to the University of January 2, 2014, a meeting to discuss the complaint on March 4, 2014, and a decision by the University not to pursue an investigation under Policy 3, which was communicated in the University's letter of April 22, 2014. It seems clear therefore that the University has further relevant documents about this matter.

21. By virtue of the resignation of KS, the University says that it met the terms JD 13 required to be able to return to work at the University. As the original letter

from Ms. Derynck was not disclosed to us by the University, we do not know whether JD 13 named other terms. However, it is clear that JD 13 asked that her complaint be investigated, which the University confirms in its letter it refused to do. In this respect at least, the University did not meet JD 13's terms.

22. There is no indication, moreover, that KS was restricted from the University campus, which would have increased the safety of JD 13 on the campus. There is further no indication that the University determined what other attachments KS might have had to the campus to determine if he could be a risk to other women students on the campus.

23. The University acknowledges the very serious nature of the allegation against KS. The University claims that the most severe sanction it could impose would be termination, but fails to acknowledge that it could also restrict KS from campus.

24. The University claims that there is no nexus between the assault JD 13 alleges and the University even though KS was, by the University's description in its letter, a "unionized supervisor". A position of authority conferred on KS by the University might well have been a factor in the circumstances of the assault. The University should have investigated this before asserting that there was no nexus with the University. Asserting that there was no nexus and refusing to negotiate favoured the University's own interests in relation to sexual misconduct, for which it could be liable if a nexus was shown.

25. In our submission, the University preferred its own interests over those of JD 13 and other women on its campus in failing to investigate the allegation, as JD 13 requested, in failing to determine the extent of KS's attachment to the University otherwise than through his position, which might bring him back to the campus, and in failing to consider taking action to restrict KS from the University. In not taking these actions, the University failed to provide an appropriate response to a very serious allegation from JD 13. It is reasonable for the Tribunal to infer from the fact that JD 13 had retained counsel to address her issues with the University that these failures were to her significant ongoing detriment as well as to the detriment of other women on campus to be safe from sexual misconduct.

26. As with JD 7, although for different reasons, the failure to respond appropriately and thoroughly had ongoing consequences for JD 13. In the circumstances, we submit that injury to dignity damages in favour of JD 13 of \$5,000 would be appropriate.

III. JANE DOE 20

27. Ms. Kay referenced this matter in undated notes she made about problems arising with sexual misconduct files (Exhibit 6, Page 323, the matter labeled "First"). Ms. Kay testified that she became aware of this matter through other staff members who were aware of allegations about a spiked drink followed by sexual assaults by two male students. She noted that JD 20 did not want to pursue a formal complaint. Ms. Kay's notes indicate that because of the risk to other

women other staff were very concerned about having the information about these assaults and not acting on that information. Ms. Kay testified that she had no involvement with this matter herself.

28. Mr. Hyson testified about this matter. SASC connected JD 20 to Mr. Hyson and he met with JD 20 on November 7, 2014. There is no indication that Mr. Hyson required her to go through Campus Security before meeting with her. JD 20 advised Mr. Hyson that she had had a prior incident with two men, M1 and M2, who were continuing to say hello to her when they saw her. Mr. Hyson testified that JD 20 did not share details of the prior incident with M1 and M2. He described JD 20 as very concerned about her privacy and about friends or family finding out about what had happened to her. He testified that he talked to her about her options, and that what she said she wanted was for someone to communicate to M1 and M2 that she wanted them to have no further communications with her.

29. Mr. Hyson did not disclose any notes of his meeting with JD 20 and did not prepare a statement of any kind from his meeting with her.

30. On the basis solely of his meeting with JD 20, within a few days, Mr. Hyson communicated by email with M1 and M2 (Exhibit 174, Page 136). He met with M2 and spoke with M1 on the telephone. Both agreed to have no further direct or indirect contact with JD 20. On November 17, 2014, Mr. Hyson communicated this to JD 20, who said that she appreciated his help (Exhibit 174, Page 137). On the basis of these assurances, Mr. Hyson sent concluding communications to M1 and M2 (Exhibit 174, Pages 140, 141, 142, 143) indicating that the allegations would be kept on file and not pursued further.

31. It is clearly exceptionally problematic for the University to receive an allegation about a serious sexual assaults and not to act on it with the individuals involved, even as a warning about conduct following an anonymous concern. Failing to speak with M1 and M2 about their knowledge of the allegation left open a significant risk that the conduct would occur again with other women. In this instance, however, because JD 20 wanted the University to talk to M1 and M2 about not having further contact with her, raising the issue of the assaults even anonymously would have very likely identified JD 20 as the complainant, which she apparently did not want.

32. The evidence in relation to this case does not indicate an adverse impact on JD 20 from the University's actions. As such, we do not claim discrimination against JD 20.

33. Mr. Hyson's ready willingness to speak with and formally write to M1 and M2 without a formal statement or complaint from JD 20 indicates the scope of action that he was empowered and willing to take to obtain an outcome short of discipline for non-academic misconduct. It is notable that Mr. Hyson's communications included warning M1 and M2 that failure to abide by his instructions to have no further contact with JD 20 could result in future discipline. In our submission, this evidence shows Mr. Hyson could act but chose not to in

other instances, including with respect to Mr. Mordvinov, and with respect to Ms. McBryan and X. In these cases, significant allegations did not result in effective communication from Student Conduct in an attempt to prevent further unwanted conduct by men about whom issues had been raised.

IV. JANE DOE 21

34. JD 21 was a fourth year exchange student. Her complaint was about M13, a fellow student. JD 21 and M13 were members of an AMS club called the Players Club. M13 was the director of a play that JD 21 was acting in.

35. JD 21 came forward to SASC who connected her with Mr. Hyson and continued to provide her with support after she met with him.

36. Mr. Hyson met JD 21 on February 25, 2015. He prepared notes of their conversation (Exhibit 174, Page 144).

37. JD 21's complaint was that the morning after an evening of socializing on and off the campus with the cast of the play, JD 21 and M13 were at M13's house. There M13 engaged in a course of unwelcome conduct towards JD 21, including sexual advances and comments, and physical contact including trying to kiss and grope her, grabbing her hand to make her touch him, touching her hair and breasts, and aggressively slapping her behind. JD 21 clearly said no to M13 multiple times. At one point she asked M13 if he was going to rape her. Afterwards, M13 sent text messages expressing regret about what had happened. JD 21 made it clear to M13 that she did not want him attending the play or contacting her again. M13 complied, including by stepping down as director of the play and agreeing not to attend performances.

38. JD 21 advised Mr. Hyson that rehearsals were taking place all over campus (Exhibit 174, Page 145). The performances were scheduled to be at the Dorothy Somerset Theatre on campus (Exhibit 174, Page 146, Exhibit 90, Page 2).

39. Mr. Hyson testified that he discussed formal reporting with JD 21 and she advised that she wished to pursue a complaint through the NAM process. Mr. Hyson testified that he cautioned JD 21 that this might not be possible because the event might not be considered to be within the jurisdiction of the Student Code of Conduct and the NAM process.

40. Mr. Hyson testified that because he had not dealt with a prior case involving an AMS club, he conferred with Kimberley Beck of the Office of University Counsel and with two of her colleagues. Mr. Hyson testified that ultimately he decided that the Student Code of Conduct and the NAM process did not apply because the incident took place off campus. Mr. Hyson testified that he explored whether the Student Code of Conduct applied but did not advocate for this outcome, as he said it was his position to bring things forward and question where jurisdiction rested, but that it was not his position to advocate for certain positions.

41. Mr. Hyson testified that once he determined that the Student Code of Conduct and the NAM process did not apply, he did not consider whether Policy 3 applied. Asked if there was any reason why Policy 3 was not considered, Mr. Hyson said that it was not a policy that he had worked with, that the matter came to him under the Student Code of Conduct, and that that was what he dealt with it under. Asked if he was able to refer the complaint to someone else if it came under Policy 3, Mr. Hyson said presumably so, but that this option was not provided to him for his consideration at the time, and he did not consider it. It is unclear whom Mr. Hyson felt should have told him to consider Policy 3, whether it should have been JD 21 or his supervisor, or University counsel. Mr. Hyson testified that he did not consider the definition of harassment and discrimination in s. 2.5 of Policy 3 as including conduct occurring off campus in a University related context, in determining how the Student Code of Conduct should be applied.

42. On March 24, 2015, Mr. Hyson advised JD 21 that Ms. Beck's perspective was that the event was beyond the jurisdiction of the Student Code of Conduct because it took place off campus (Exhibit 174, Page 148). He further advised JD 21 that Ms. Beck's colleagues had not offered a different view (Exhibit 174, Page 150). As an alternative, Mr. Hyson offered to meet with M13 to make it clear that he was to have no further contact with JD 21. JD 21 did not respond to this communication. Mr. Hyson did not contact M13 at any point.

43. There is no evidence that Mr. Hyson provided JD 21 with any information about other formal avenues she might pursue, including a complaint under the *Human Rights Code*.

44. Mr. Hyson's evidence in relation to the Mordvinov matter was that he decided the scope of the University's jurisdiction for off campus events for the Mordvinov complaints. However, in February 2015 he was provided with information from Ms. Beck and her colleagues that the event in relation to JD 21 was outside of the jurisdiction of the University because it happened off campus. It is clear that Mr. Hyson deferred to University counsel on this issue, at least in relation to JD 21. This calls into question the degree to which Mr. Hyson was acting alone or with Janet Teasdale in making decisions about whether Student B's allegations (discussed at Paras. 173 and 316 of Part 2) and Ms. Cunningham's allegation (discussed at Para. 303 of Part 2) were within the jurisdiction of the University. Our concern is that University Counsel exist to protect the University's legal interests. A narrow view by University Counsel of the University's jurisdiction over events off campus protects the University at the expense of the interests of women coming forward with complaints about sexual misconduct.

45. We accept that the Players Club is an AMS club, and that the AMS is a society under the Societies Act that is not controlled by the University (*Gray and others v. University of British Columbia – Okanagan Students' Union and another*, 2007 BCHRT 424). However, the AMS and its clubs are tightly associated with University life and, as Mr. Hyson acknowledged, are part of the campus community. By statute (*University Act*, s. 27.1), the University collects fees for the

AMS. JD 21 and M13 were members of the Players Club because they were UBC students (only UBC students and members of UBC faculty and staff can be members of the AMS: Bylaws of AMS, readily available in the public domain online). The Club is part of the University community, and the activities of the Club were activities at the University, even if not directly sponsored by the University. The Players Club members were rehearsing at various locations around the University.

46. In our submission, as Mr. Hyson admitted, M13's conduct took place at or near the premises of the University, as contemplated by s. 3.1(a) of the Student Code of Conduct (Exhibit 1, Page 303). It was also conduct that adversely affected, disrupted or interfered with another person's reasonable participation in University programs or activities, as contemplated by s. 3.1(b) of the Student Code of Conduct. As such, we say M13's conduct *was* covered by the Student Code of Conduct. The University took an unreasonably narrow view of its Student Code of Conduct in coming to the view that the Student Code of Conduct did not apply in this case.

47. In any case, in failing to take any effective steps in relation to JD 21's serious allegations of sexual misconduct and harassment directed by one student against another, the University failed to effectively address behaviour which prevented JD 21 from receiving justice and closure and experiencing an environment free of harassment and discrimination at the University, and which placed other women at the University at risk should M13 continue his conduct. In our submission, under the *Human Rights Code*, the University was required to respond effectively to M13's alleged conduct by investigating the allegations, raising them with M13, and taking effective action to ensure that M13's conduct did not continue, whether or not that included disciplinary action against him.

48. In our submission, as we have submitted in relation to Student B and Mr. Mordvinov, it is not open to the University to take no action with respect to serious allegations of sexual misconduct by a student, even if the misconduct did not happen on campus, because of the risk the student perpetrator poses for the person against whom he has already directed sexual misconduct, for others against whom he may direct sexual misconduct in future, and for those who may become aware of and concerned about his conduct. The obligation under the *Human Rights Code* to provide women an environment free of sexual harassment and misconduct and to ameliorate discriminatory conduct that occurs, requires the University to respond effectively to known allegations of sexual misconduct and persons alleged to be engaged in sexual misconduct, wherever those events occurred.

49. In this case, the University could have readily responded under Policy 3, which addresses conduct in a University-related context, which this was. The University's failure to consider Policy 3 or its obligations under the *Human Rights Code* in this instance was a continuation of the University's consistent failure to take action to comply with the *Human Rights Code* seen in the Mordvinov matters. The University also failed to consider its options to protect the safety of JD 21 and other women under Policy 14.

50. When the University wrongly told JD 21 that it could do nothing about her complaint of sexual harassment and misconduct but talk to M13 and tell him to stay away from her, the University failed to respond appropriately and sensitively to her complaint about M13, and failed to ensure that she received the justice, closure, and restoration of a environment free of harassment and discrimination, including safety, to which she was entitled. It is reasonable to infer from JD 21's having come forward in the first place to SASC, and continued to seek a reasonable way forward after her first meeting with Mr. Hyson, that the University's failure to respond to her complaint appropriately had an adverse impact on her. This adverse impact was related to her sex because M13's sexual misconduct towards her was related to her sex. In our submission, as JD 21 expressly wanted a formal way forward which she was denied, damages for injury to dignity and self esteem in the amount of \$10,000 to JD 21 would be appropriate.

V. JANE DOE 24

51. JD 24's allegations related, first, to events on November 2, 2013 at a party at a residence of members of an AMS social service club for women (P1) (Exhibit 80, Page 3, IR 140331-6196). JD 24's allegation regarding the party was that she had been drinking lightly, had passed out on a couch, and had woken up to find that her underwear had been pulled down and she was being raped by M7. She said that M5 was standing behind the couch, M6 was present, and M4 was holding a bag containing pills or capsules. She said that M6 took a capsule or tablet from the bag and forced her to swallow it by covering her nose. JD 24 reported this incident to the VPD.

52. JD 24's allegations related, second, to events during the morning of November 26, 2013 at Totem Park Residence, where M4 lived (Exhibit 81, Page 2, IR 140331-6198). JD 24's allegation about November 26, 2013 was initially that she had gone there at the urging of her friends at P1 to make some sense of the events at the P1 party involving M4 and his three fraternity brothers on November 2, 2013. JD 24 hoped to enter a sorority through her relationship with P1. While in M4's room, JD 24 related that M4 violently sexually assaulted her using his hands and fingers until she passed out from the pain. After the assault she said she attended hospital because of the level of pain she was continuing to experience. This incident was reported to the RCMP.

53. JD 24's complaints were first provided to Mr. Bohnen on March 31, 2014 by Anisa Mottahed, SASC Manager. By the time JD 24's account came to the University, JD 24 had spoken to SASC, made complaints to the VPD and the RCMP, and attended a meeting with the Presidents of the fraternity and P1 with Ms. Mottahed so that JD 24 could share her story with them.

54. On March 31, 2014, Mr. Bohnen advised Mr. Hyson of the allegations at both the November 2, 2013 party and Totem Residence. Mr. Hyson advised Mr. Bohnen that JD 24 was not presently an active student. Mr. Hyson testified that JD 24 had taken a term off. Mr. Hyson further testified that he understood JD 24

registered for courses in September 2014. In our submission, JD 24 remained a UBC student in March 2014 although she was not actively registered, and in any case, that she continued to communicate about her allegations with Mr. Hyson in Fall 2014 when she was registered.

55. Mr. Bohnen followed up with the RCMP and the VPD. He did not receive a response from the RCMP (Exhibit 81, Page 2). On April 14, 2014, the VPD advised Mr. Bohnen that despite interviews and statements involving JD 24, the 4 alleged perpetrators, and a number of witnesses, the VPD was unable to obtain sufficient evidence to send a formal report to Crown Counsel requesting charges (Exhibit 80, Page 2; Exhibit 174, Page 155).

56. On April 4, 2014, Ms. Mottahed communicated with Mr. Hyson (Exhibit 174, Page 151). In his reply of the same date (Page 151), Mr. Hyson offered to meet with JD 24 to provide information about the NAM process and advised Ms. Mottahed that complaints should be provided to Campus Security first. This was in contrast to his position with JD 20 whom he did not require to go through Campus Security before he spoke with her. Ms. Mottahed responded on April 8, 2014 that JD 24 had made two police reports, and also filed an "anonymous" report through the SASC office with Campus Security.

57. Mr. Hyson worked with SASC to arrange a meeting with JD 24 (Exhibit 174, Page 157). On April 24, 2014, in a practice not seen on other files, Mr. Hyson sent questions to Ms. Mottahed before the meeting with JD 24 (Exhibit 174, Pages 157, 162, 210; Exhibit 176). By this time, Mr. Hyson was only focused on the November 26, 2013 allegation. Ms. Mottahed suggested not sending the questions to JD 24 without support (Exhibit 174, Page 158). Mr. Hyson advised that he was happy for Ms. Mottahed to review the questions with JD 24 before he met with JD 24 himself.

58. In evidence, Mr. Hyson said that JD 24 had decided she wanted to go through the NAM process regarding the incident at Totem Park only and that this was communicated to him by Ms. Mottahed. There is no indication in the records of such a decision being communicated to Mr. Hyson before he provided his questions to Ms. Mottahed. There is also no evidence he explored JD 24's wishes with JD 24 himself. Mr. Hyson further testified that although he did not know if there had been a determination about whether the Student Code of Conduct would apply to the November 2, 2013 incident, based on other reports, he did not feel it would fall under the jurisdiction of the Student Code of Conduct. Mr. Hyson said this event took place in Kitsilano. We note that in his statement, M4 said that it took place at a house on campus rented by a P1 member with other students (Exhibit 174, Page 215). In his evidence in direct, Mr. Hyson also testified that his investigation dealt with both allegations, at least to the extent of understanding why JD 24's friends were urging her to meet with M4 after the November 2, 2013 event.

59. As dealt with further below, our concern is that JD 24 was not treated fairly in relation to her complaint about November 2, 2013. Our concern is further is that this is in reality another instance where the University *declined* to act on a

complaint because it viewed it as an off campus event to which the Student Code of Conduct does not apply. It is our view that declining to act because an event happened off campus is not consistent with the *Human Rights Code*.

60. Mr. Hyson said that he prepared the questions in advance so that JD 24 could prepare herself for the meeting by collecting her thoughts. He testified that he did not want her to be caught off guard by his questions. We say Mr. Hyson's awareness by April 2014 of the difficulty for a complainant of responding to questions in the moment is notable given his lack of concern about the NAM process, including NAM Committee hearings, where complainants were expected to answer questions about differences between their accounts and the accounts of others with no warning whatsoever about what other parties had said.

61. Mr. Hyson also communicated with SHHS to confirm M4's residence room number (Exhibit 174, Page 159). SHHS advised that M4's roommate was M6.

62. On May 2, 2014, Mr. Hyson met with JD 24 at SASC to hear about the incident at Totem Residence (Exhibit 174, Page 163). Mr. Hyson's notes of his May 2, 2014 meeting with JD 24 only relate to the November 26, 2013 incident.

63. JD 24 reported meeting with M4 at a coffee shop to discuss why he did not attend the P1 formal with her. She said that M4 provided an excuse about his ID being expired which she later learned was not true. JD 24 accompanied M4 back to his room to see a tattoo on his leg, which was followed by consensual kissing, and then penetration of her with a finger, breaking her hymen, and sustained, very painful, pressure of a fingernail on her clitoris, both of which were non-consensual and caused her pain and harm. JD 24 said that she passed out from the pain for about 15 minutes. M4 eventually let her go after she pounded on the bed and was in tears. JD 24 said she was in too much pain to move and remained on his bed for a while until she could move. She left the residence without him. JD 24 reported pain for 2 days and then numbness for about a week, and said that the pain came back in January at which time she went to her doctor for the first time. JD 24 said that she reported the incident to her parents, her doctor, the women at P1, SASC, and the RCMP. JD 24 said that she would provide a doctor's note confirming her hymen was torn. This note was not disclosed to us. Mr. Hyson later advised that the note said her hymen was intact. JD 24 said that she understood the RCMP were awaiting a statement from M4's lawyer.

64. On May 8, 2014, Mr. Hyson provided his notes to JD 24 for review (Exhibit 174, Page 166). JD 24 provided edits and the names of several witnesses from P1 that were aware of what had happened at the Totem Residence (W1, W2, W4, W5) (Exhibit 174, Page 167). Mr. Hyson sought the name of a witness at the Totem Residence from SHHS (Exhibit 174, Page 170).

65. On May 16, 2014, Mr. Hyson contacted the RCMP to advise that JD 24 wanted to proceed through the NAM process and to ask the RCMP if they had any concerns. The RCMP replied to ask the University not to proceed until their investigation was complete (Exhibit 174, Page 171). Mr. Hyson advised JD 24 of

this request (Exhibit 174, Page 172). On May 31, 2014, the RCMP advised that their investigation was complete and they would not be forwarding charges to Crown Counsel (Exhibit 174, Page 173). Following this update, Mr. Hyson sent emails on June 21, 2014 and July 4, 2014 advising that he would be resuming his process (Exhibit 174, Page 175, 178). Mr. Hyson testified that he did not proceed during the summer because M4 was out of the country and witnesses were away from campus working at their summer jobs. He said that JD 24 agreed with this approach but there is no documentary confirmation of this.

66. Mr. Hyson did not receive information from the RCMP about what allegation or allegations they investigated. He testified that JD 24 told him it was the November 26, 2013 event only. Mr. Hyson did not ask JD 24 to obtain or provide her statement to the RCMP so that he could be clear about what the RCMP had investigated.

67. On September 11, 2014, Mr. Hyson advised JD 24 that since classes were back in session, they would be proceeding with the NAM process (Exhibit 174, Page 179). He advised that the next step was to contact M4 to advise him of the report from JD 24 and to invite him to meet to review the process and the report. On September 16, 2014, Mr. Hyson wrote to M4 to advise him that an allegation had been made and to offer to meet to discuss the allegation and answer questions about the NAM process (Exhibit 174, Page 181). The delay between June 21, 2014 when the RCMP finished their investigation and September 16, 2014 when Mr. Hyson took action was significant.

68. M4 responded to request that the meeting take place in October (Exhibit 174, Page 182). Mr. Hyson's office scheduled the meeting for October 1, 2014 (Exhibit 174, Page 183). On September 24, 2014, M4 followed up to request the allegations and the sections of the Student Code of Conduct he was alleged to have violated (Exhibit 174, Page 184). Mr. Hyson responded that the allegations related to sexual assault in breach of s. 4.2.1 of the Student Code of Conduct, relating to misconduct against persons. Mr. Hyson advised that due to the RCMP investigation, M4 was likely aware of the allegations (Exhibit 174, Page 185). Mr. Hyson's lack of concern about notifying M4 about the specifics of the allegations against him, which is an essential part of due process, is notable.

69. On October 1, 2014, Mr. Hyson met with M4. He prepared notes of M4's response (Exhibit 174, Page 186). M4 said that his sexual relations with JD 24 on November 26, 2013 were consensual, that he walked her to the front doors of his building, and that they talked about going for coffee again.

70. On October 2, 2014, M4 provided some text messages with JD 24 to Mr. Hyson (Exhibit 174, Page 187), and a statement provided by M7 to the VPD (Exhibit 174, Pages 188, 212). M7's statement related to the November 2, 2013 allegations. M4 also said he was working on obtaining the RCMP file of JD 24's complaint against him. M4 noted that he wanted to get the investigation done as quickly as possible as it was affecting his schoolwork. On October 2, 2014, Mr. Hyson shared some screenshots from JD 24 with M4 and asked him to send his complete communications with JD 24 (Exhibit 174, Page 189).

71. On October 3, 2014, M4's counsel wrote to Mr. Hyson to advise that M4 was not prepared to obtain his RCMP file because the request was going to delay the University's investigation, and because Mr. Hyson should be doing his own investigation (Exhibit 174, Page 192). Counsel advised that the allegations were false and had now been hanging over M4 over two terms, causing him stress and anxiety, which was unfair to him. Counsel advised that the University ought to have been continuing its investigation while the RCMP was investigating.

72. Mr. Hyson requested information from W1, W2, W3, W4 and W5 about the November 26, 2013 incident. He received a statement from W3 in which she said that JD 24 told a number of sorority members that M4 choked her until she passed out and that she thought pictures were being taken of her (October 8, 2014, Exhibit 174, Page 195).

73. Mr. Hyson received a statement from W2 in which she said that following a sorority event, JD 24 said that M4 had put his hand on her throat and she got really scared (October 9, 2014, Exhibit 174, Page 200).

74. Mr. Hyson received a statement from W1 in which she said that JD 24 told a number of sorority members that M4 had strapped her down and pressed his fingernail hard on her clitoris (October 9, 2014, Exhibit 174, Page 201). W1 said that JD 24 said that before she passed out she noticed the red light on M4's webcam was flashing so she got scared and left. W1 also provided JD 24's account of the November 2, 2013 event at which W1 reported JD 24 as saying that one of the fraternity members gave her a pill to snort, that she passed out, and that her pants were down and one of the fraternity members was stimulating her clitoris. W1 said the story did not make sense because there were many people at the party, the bedrooms were locked, and the couch where the event allegedly occurred was in the living room in the middle of the party. W1 said that she could not believe this had happened with no one seeing and intervening. W1 also reported JD 24 being concerned that a naked picture M4 had on his phone on November 2, 2014 was of JD 24. As JD 24 had just met M4 that day, W1 said this concern made no sense to her.

75. On November 7, 2014, Mr. Hyson emailed JD 24 to advise that he had spoken with M4, W1, W2 and W3, and received a full transcript of text messages between M4 and JD 24 from M4 (Exhibit 174, Page 202). Mr. Hyson further said that he had contacted W4 and W5 but that despite repeated attempts, neither had scheduled time to speak with him. Mr. Hyson advised that based on the information obtained, he did not think the NAM Committee was likely to find facts to make a determination regarding what transpired on November 26, 2014 that would result in disciplinary action. He advised that as there was insufficient evidence to proceed, he was discontinuing further action under the Student Code of Conduct, as permitted by s. 6.2.

76. On November 7, 2014, Mr. Hyson emailed M4 with the same information (Exhibit 174, Page 203, 204).

77. Mr. Hyson had not provided any of the information he obtained from M4, W1, W2, or W3 to JD 24. On January 18, 2015, JD 24 asked Mr. Hyson to tell her what the conflicting information he had obtained was (Exhibit 174, Page 205). On January 29, 2015, Mr. Hyson roughly summarized the information he had obtained. Some of the information he provided in his summary was not in his notes of the conversations he had had with the witnesses.

78. In keeping with University's practice in NAM investigations, JD 24 was not shown the information from others, including the person against whom she had made her complaint or those individuals whose accounts she thought might help her complaint, nor given an opportunity to respond to that information. Further, although Mr. Hyson did not interview JD 24 about events on November 2, 2013, he heard about those events from others. Mr. Hyson relied on the information he received from others, including about November 2, 2013, in deciding that the NAM Committee was unlikely to find grounds for discipline in relation to JD 24's complaint. In our submission, this denied JD 24 a fair process.

79. As we have submitted elsewhere, a process which treats the complainant as merely a witness and does not give the complainant a full opportunity to respond to what else the University is hearing about their complaint does not ensure that the University is taking every possible step to ameliorate the complainant's concerns and provide her with a harassment and discrimination free environment. JD 24 was clearly concerned that her complaint had been set aside over information that had not been shared with her, and on which she had not been given an opportunity to comment. We submit that the University did not provide an appropriate process in response to her complaint, which had a negative impact on JD 24 and caused her harm. In the circumstances, we submit that damages for injury to dignity in the amount of \$5,000 to JD 24 would be appropriate.

VI. JANE DOE 25

80. In about February 2015, JD 25 reported a sexual assault that took place at the Coquitlam home of M8's father in Coquitlam in November 2013. M8 was also a student. JD 25 reported to Josie Ross at SASC.

81. On February 5, 2015, Mr. Bohnen interviewed JD 25 at SASC and prepared an IR of her statement (Exhibit 91, IR 150205 2362). The statement prepared by Mr. Bohnen reported JD 25 saying that she gave into ongoing encouragement from M8 to go drinking with him at his father's condo. There he gave her two glasses of wine to drink and consumed several drinks of hard liquor himself. He then forcibly raped her during which she repeatedly told him to stop and that he was hurting her. She reported that she lost her virginity in the sexual assault.

82. JD 25 told Mr. Bohnen that she did not fear for her safety but was constantly uncomfortable on campus as she frequently saw M8 there. Mr. Bohnen offered safety planning and contact information for 24 hour patrol assistance if needed. JD 25 told Mr. Bohnen that she did not want to make a police report but was receiving counseling support from Jennifer Hollingshead at

UBC Counselling Services. JD 25 said that she wanted to go on record with the University in case M8 was implicated in other assaults.

83. On February 5, 2015, Mr. Bohnen provided notice to Mr. Hyson of JD 25's account with the Narrative report from his IR attached (Exhibit 174, Page 217). There is no evidence that Mr. Hyson took action on the report at that time, despite JD 25's report of ongoing discomfort around M8.

84. Mr. Hyson testified that SASC brought the incident to his attention towards the end of term and that he met with SASC and JD25 towards the end of April. He testified that he advised JD 25 that because the event took place off campus, it was unlikely that the University had jurisdiction to proceed. He testified that JD 25 asked him to advise M8 that a report had been made about his conduct, and she wanted no further contact with him. Mr. Hyson prepared a version of Mr. Bohnen's statement from JD 25 for JD 25 to edit and approve (Exhibit 174, Pages 222, 223, 225). This document was not disclosed to us. It is not clear if this document was sent to M8.

85. On May 14, 2015, Mr. Hyson emailed M8 with a letter advising him of the complaint and telling him that if the conduct had taken place on campus it would be a violation of the Student Code of Conduct, but since it did not, he had discontinued further action at this time (Exhibit 174, Pages 227, 228). Mr. Hyson asked M8 to respect JD 25's request to have no further contact with her, directly or indirectly. Mr. Hyson did not advise M8 that discipline would flow if he did not abide by this request. Mr. Hyson offered to meet with M8 but did not require M8 to attend a meeting with him.

86. On May 27, 2015, SASC emailed Mr. Hyson to advise that JD 25 was really disappointed in the limits of the process for incidents that take place off campus, especially given how many students live off campus. SASC reported that JD 25 said she could use more clarity about why the limits exist. Mr. Hyson did not respond to this communication or seek further feedback from JD 25.

87. It is not acceptable that Mr. Hyson did not respond to JD 25's further communication complaining about the University's lack of action and interpretation of the scope of its own policy. Dropping communication with her was similar to Mr. Hyson's treatment of Ms. Grego's complaint in April 2015 about Mr. Mordvinov (see Part 2, Para. 309).

88. Despite the language in the Student Code of Conduct permitting the University to act where the conduct is alleged to adversely affect, disrupt or interfere with another person's reasonable participation in University programs or activities (s. 3.1), Mr. Hyson testified that he did not believe the Student Code of Conduct applied to the conduct. He said that this was his view because the conduct came forward at the end of term, and JD 25 had been able to complete her program and was graduating. He testified that he could not recall if he turned his mind to whether M8's conduct impacted JD 25's reasonable participation in University programs and activities. We also note, however, his evidence in relation to JD 21 that by February 2014, University Counsel had told him that off

campus incidents were out of scope of the Student Code of Conduct, and submit it is likely that this was also a significant factor in his decision.

89. The University's obligations to respond effectively to JD 25's account flow from the *Human Rights Code* and were embodied in Policy 3. Mr. Hyson testified that although he spoke to his supervisor and University counsel about this matter, there was no consideration of the University's obligations under Policy 3 or the *Human Rights Code* in relation to the impact on JD 25 of M8's conduct during the time she was at UBC. Having denied JD 25 access to the NAM process, there is no evidence Mr. Hyson provided JD 25 with information about how she could formally proceed elsewhere, including by filing a complaint herself under the *Human Rights Code*. There is also no evidence that the University considered actions under Policy 14 to protect the safety of JD 25 and other women on campus.

90. As we have previously submitted, serious allegations of sexual misconduct against students must be attended to by the University, regardless of where they take place. This is because these events have serious consequences for victims and place victims and other women on campus at risk. The University's obligation under the *Human Rights Code* in this matter was to ensure that all possible steps were taken to ensure that JD 25's experience was ameliorated and that she and others were provided with a discrimination and harassment free living, studying and working space.

91. Mr. Hyson's soft-ball approach meant that M8 experienced no consequences for his actions and was not put on notice that a further similar conduct would have serious consequences for him. M8 was not provided with the actual allegations, and his behaviour was not censured in any formal way. Mr. Hyson did not meet with M8 to describe the allegations or impress upon him the seriousness of his conduct. Despite the obvious risk that M8 would repeat his behaviour, the University's response fell far short of doing everything possible to ensure that M8 did not do so. Further, the University's response was frustrating to JD 25 and did not meet her need for justice or closure. It did not respond to and ameliorate the serious experience she had had of sexual misconduct.

92. In view of the seriousness of the allegation, JD 25's information to the University about its impact on her over a considerable period of her degree, the University's almost complete failure to take effective action, to her evident frustration and disappointment, and the University's dropping all engagement with her once it decided not to act, despite her request for further clarification, we submit that injury to dignity damages in the amount of \$12,500 to JD 25 would be appropriate.

VII. JANE DOE 26

93. On March 19, 2015, JD 26 came forward to Amy Stewart, a Residence Life Manager, by email with serious allegations about another student in her residence, M10 (Exhibit 174, Page 232). On the evening of March 19, 2015, JD 26 began a room transfer process. On March 20, 2015, Ms. Stewart and JD 26 walked

over to SASC where they met with Josey Ross and then with Mr. Bohnen. JD 26 provided a detailed account of her experiences with M10. Ms. Stewart noted that JD 26 went through her account three times that afternoon. Mr. Hyson testified that he had not had a prior experience of someone telling their story three times. We note, however, that by March 2015, Student E had told her story about Mr. Mordvinov to Mr. Lundeen, Mr. Bohnen, and Mr. Hyson.

94. JD 26 said that she and M10 met in the elevator of their building over a year before in 2013, that he invited her to hear him play piano in a music room where he forcefully kissed her, that he then was nice to her by cooking and leaving food for her and sending her lots of messages, that he came to her room at one point, pushing her onto the bed and forcing her to have sex with him, telling her that she “wanted it”, that after that he continued being nice, that she began dating him, thinking this is what a relationship was, and that there were several more instances when she did not want to have sex but he made her. At some point, JD 26 met a new person (W1), a former UBC student, and realized that she did not want to be in a relationship with M10. She told W1 about M10 but he did not believe her. W1, JD 26 and M10 had a conversation about her allegations in which M10 denied them. After this, M10 invited her on a walk for a conversation. JD 26 insisted they go to a public place. During the walk he grabbed her from behind and hugged her. She responded by telling him to fuck off and never talk to her again. When they were almost back at their residence, M10 grabbed her arms and told her that she was his. This frightened JD 26. She moved in with W1 off the campus. W1 still did not believe her story about M10. He called her a whore who would sleep with anyone, and every few days he would kick her out and she would return to her residence room. He also used her phone to call a family member to tell them about her allegations about M10. After this, W1 kicked JD 26 out and she returned to residence. There she ran into M10 who emailed her. This caused her to realize that she needed to tell someone what was going on and change her situation.

95. Amy Stewart noted that JD 26 wanted to feel physically safe and that she wanted someone to tell M10 that what he did was wrong and that he could not communicate with her anymore, directly or indirectly.

96. On March 19, 2015, Mr. Bohnen also prepared a narrative of JD 26’s account (Exhibit 92, IR 150319 5397). Mr. Bohnen noted that he and SASC personnel discussed police reporting and reporting to Student Conduct to ensure some action was taken (Exhibit 92, Page 2). JD 26 chose to report to Student Conduct.

97. On March 20, 2015, Ms. Stewart noted that JD 26 had changed rooms even though she had hoped that Ms. Stewart would move M10, as JD 26 liked her unit and roommates (Exhibit 174, Page 237).

98. On March 24, 2015, Mr. Hyson met with JD 26 at the SASC office with Josey Ross (Exhibit 92, Email of March 26, 2015). Mr. Hyson provided an overview of the University’s NAM process and walked her through the steps of the process. Mr. Hyson varioulsy offered to initiate the NAM process, or to meet

with M10 to advise him that there were serious allegations but that JD 26 did not want to pursue them and instead wished no further contact with M10, or to simply maintain the report on file with no contact with M10. JD 26 said that although she felt what M10 had done was wrong and he should be punished for his actions, she wanted to put the matter behind her and move forward without further contact from M10. She asked Mr. Hyson to meet with M10 to discuss the report and to reiterate to him that she wished no further contact with him. JD 26 produced a statement of her account by editing Ms. Stewart's notes (Exhibit 92, Pages 1, 2). JD 26 requested that further communication go through Ms. Ross of SASC.

99. On March 26, 2015, Mr. Hyson sent an email and letter to M10 to advise him that a complaint had been received about his conduct which was alleged to be a violation of the Student Code of Conduct (Exhibit 174, Page 265). Mr. Hyson invited M10 to meet with him to discuss the allegation. He advised that if M10 did not meet with him, he might refer the matter to the NAM Committee for investigation. The email and letter did not set out the allegations.

100. The communication was sent on Thursday, March 26, 2015. Mr. Hyson was not available to meet with M10 until Monday, March 30, 2015. M10 communicated multiple times with Mr. Hyson and his office that the unknown nature of the allegations was causing him anxiety and distress and impacting his work (Exhibit 174, Pages 263, 264). M10 wanted to meet and be provided with the allegations sooner. Mr. Hyson advised that although the allegation was serious, he believed it could be resolved when they met the following week with no impact on M10's student or residence status, provided M10 did not have further contact with JD 26. In evidence Mr. Hyson did not agree that this assurance risked undermining the seriousness of JD 26's allegations for M10.

101. On March 26, 2015, Mr. Hyson advised SASC that he had written to M10 and asked them to advise if there was any further contact from M10 with JD 26 (Exhibit 174, Page 249).

102. On March 30, 2015, Mr. Hyson met with M10 and advised him of the allegations, as well as JD 26's requirement that he have no further contact with her. M10 denied the allegations.

103. After the meeting, M10 asked whether he could file a complaint against JD 26 for making false allegations (Exhibit 174, Page 262). On April 1, 2015, Mr. Hyson replied that he could not, but that he could provide a statement in response to the allegations for the file or any evidence he might have that the allegations were false (Exhibit 174, Page 262). Mr. Hyson advised that there would be no investigation of the allegations, they had not been proven, M10 had not been disciplined, and the file was not linked to M10's academic record. He further advised that the file would be retained in Mr. Hyson's office until M10 graduated and then would be destroyed. Mr. Hyson said that he would note in his summary letter that M10 disputed the allegations. Mr. Hyson testified that M10 did not in fact provide a statement or any further evidence. No summary letter to M10 was disclosed to us.

104. In his evidence, Mr. Hyson said that at the time, they had a records retention policy, but that it was not being implemented then. He also said that they were now in the process of cleaning up their records, and that records were kept for at least 5 years after graduation. It appears therefore that his assurance to M10 about destruction of the records of JD 26's complaint about M10 was not accurate.

105. Mr. Hyson testified that he did not communicate to JD 26 after his meeting with M10 because of her direction to communicate through SASC, but did advise SASC that he had met with M10. No communication to SASC or JD 26 after the meeting was disclosed to us.

106. Ms. Stewart promptly arranged for JD 26 to move when she became aware of JD 26's complaint. This was an effective response although JD 26 apparently would have preferred for M10 to move. We note the similarity to Ms. McBryan's case, where she was told to move office and change research projects rather than X, and her testimony that he should have had to move instead.

107. Mr. Bohnen and Mr. Hyson promptly met with JD 26. Within a week of JD 26 coming forward, Mr. Hyson had met with M10, conveyed the complaint and its seriousness to him, and advised him that he was to have no further contact with JD 26. Mr. Hyson testified that he reported back to SASC, although this is not confirmed by the documents.

108. Mr. Hyson only offered JD 26 the option of a NAM process for her complaint. He did not offer her an investigation under Policy 3, even though her allegation clearly fit within matters that could be addressed by Policy 3. A Policy 3 process would have permitted the University to focus squarely on the human rights issues in JD 26's complaint. It is unknown whether JD 26 would have been willing to participate in a Policy 3 process, even if it required less of her, given her advice to Mr. Hyson that she wanted to put the issues with M10 behind her. Mr. Hyson also did not offer JD 26 an order under Policy 14 to M10 to cease communication with JD 26.

109. The actions of Ms. Stewart, Mr. Bohnen and Mr. Hyson were prompt responses to JD 26's complaint within JD 26's preference to put the issues behind her. Although more could have been done under Policy 3 and Policy 14, and M10 could have been moved rather than JD 26, there is a lack of evidence that these limitations in the University's response caused JD 26 an adverse impact. As a result, JD 26 does not have a claim of discrimination about these matters.

110. However, similar to the testimony of Lauren Fisher, we note that in this case as well, no one at the University recognized that JD 26 would have benefited from information about consent and healthy relationships, and that this should have been provided. In our submission, not providing this information amounted to a deficient response that was harmful to JD 26. On the basis of this, we submit that injury to dignity in the amount of \$4,000 would be appropriate.

111. This file is notable for the speed with which it was taken up and resolved by Mr. Hyson, and his willingness to meet with M10 on the basis of a statement from JD 26 taken by others rather than Mr. Hyson himself (although approved by JD 26).

112. This case is also notable for the fact that, unlike in Lauren Fisher's case, the Residence Life Manager personally connected with the VP Students, SASC and Campus Security on behalf of JD 26. This may indicate uneven internal training of Residence Life staff about University offices and resources for complaints of sexual misconduct.

VIII. JANE DOE 29 AND 30

113. Commencing in September 2012, M12 was a student in the Bachelor of Fine Arts Acting program in the Theatre Department. JD 29 and JD 30 were also students in the program.

114. In April 2014, at the end of her second year, JD 29 prepared a lengthy statement about a continuing course of conduct by M12 from October 2012 through to April 2014 in which M12 created and exploited opportunities to press her for sexual contact which she did not want to provide (Exhibit 165, Pages 11 to 15). During this time, M12 had considerable sexual contact with JD 29, which she described as unwanted. In particular, JD 29 detailed a number of occasions when M12 attempted to or did take advantage of the fact that she had been drinking to press for sexual contact. After one instance in which JD 29 had given M12 oral sex at his urging, M12 made crude jokes about the incident afterwards and mocked JD 29 for what she had done. In the summer between first and second year, M12 contrived to join JD 29 without an invitation when she was visiting a friend on Vancouver Island. He ended up staying for the duration of the trip.

115. JD 29 reported that by the start of her second year (September 2013) she was diagnosed with clinical anxiety and was having panic attacks. She said that during this time, she was on medication and often confused and vulnerable. She said that during this period, M12 would always try to walk her home, and that when he did, he would always try to come up to her room. If she let him, he would try to initiate sexual contact. She would say no, which would not deter him, and eventually she would let him kiss her unwillingly. She said that he would then try aggressively to take things further. She described herself as crying and scared during these interactions. She described one occasion on which he offered her a friendly massage, but that during the massage he took off some of his clothing and became sexually excited which she only realized at the end of the massage. At times she described him getting angry and upset when she would not agree to have sexual relations with him.

116. JD 29 described many occasions when she found M12 waiting outside her University residence building. At these times she said that when she opened the front door he would try to sneak in and she would have to physically prevent him from entering. At times he was able to get to the door of her room, where he

would knock urgently and then invite himself in, sometimes asking to stay the night.

117. At the end of classes in 2014, M12 twice contrived opportunities to meet with her at the end of a night of partying when she would be intoxicated. On one of these he pushed her into the grass and attempted to kiss her. On the second he tried to walk her home, and when her friends intervened, he showed up at her residence. On that evening, friends had to make sure that she was safely in her room and that he was not in the residence, before they could leave.

118. JD 29 said that classes in the Acting program are small, that she had to see M12 every day, and that she felt she had to maintain friendly relations with him to prevent him from inflicting emotional damage on her, including by publicly shaming her, and hurting and insulting her on a deep level. She said that her instructors had made it clear at the start of the program that conflicts between classmates were to be worked out by the students, and that going forward with such issues would be harmful to the group. JD 29 said that she felt very alone in her situation with M12. JD 29 described M12 as emotionally and physically manipulative, calculating and predatory. She described him stalking her and harassing her with constant text messages and voicemails.

119. On April 17, 2014, JD 30 provided a statement to Mr. Hyson. JD 30 described a number of instances dating back to December 2012 where M12 pushed for sexual contact which JD 30 did not want to provide, including an instance in his room where he groped JD 30's breast, grabbed and groped her as she was trying to leave, and rubbed up against her, possibly until he ejaculated. She described him trying to use a theatre scene to kiss her in April 2013, stroking her leg while she was lying on a bed in December 2013, and using lessons in period dancing as an opportunity to give her an extended kiss on the hand in January or February 2014. He also suggested inserting a move where she would kiss her finger and touch her hip into a scene in a manner that made her feel very uncomfortable.

120. On May 29, 2014, a witness (W1) provided a statement confirming JD 29's account of M12's multiple attempts to walk her home and get into her residence when she was not feeling well at the end of a Theatre Department party. W1 also described M12 as overly touchy and as pushing to practice kissing in relation to a particular scene they were working on.

121. Mr. Hyson testified that he met with JD 29 and SASC (likely Josey Ross) in April 2014 and received the written statement JD 29 had prepared. At the meeting Mr. Hyson advised JD 29 about the NAM process and what that would entail. At the time of the meeting, Mr. Hyson understood that M12 had been removed from the BFA program for some reason unconnected to JD 29's allegations. Mr. Hyson testified that JD 29 advised that if M12 did register again at UBC and was eligible to return to the BA program in Theatre (as opposed to the BFA program in Theatre) she would like to move forward with the NAM process. There is no documentation confirming the reason for not proceeding with the NAM process in April 2014.

122. Mr. Hyson also met with JD 30 on April 17, 2014. At the time, she had conferred with JD 29. SASC was not involved in that meeting. Mr. Hyson walked her through the NAM process and prepared a statement for JD 30 from the meeting.

123. JD 29's account was a lengthy account of very persistent sexual harassment by M12. JD 29 specifically identified M12's return to the BA Theatre program as a concern for her, both with respect to herself and with respect to other women in the program. Despite this, the University did not move ahead with the NAM process in April 2014 or consider restrictions under Policy 14 to ensure no further contact with JD 29, JD 30 and other women in the BFA program, even when M12 registered to return to UBC in the fall of 2014.

124. We submit that if there was a question about whether M12 planned to return to UBC, awareness of the complaint against him might have assisted him to decide not to do so, saving JD 29 and JD 30 from having to go through the NAM process and having to worry about M12 being back in Theatre at UBC. In our submission, in view of M12's serious and prolonged misconduct as described by JD 29, and in particular his refusal to leave her alone, the University's failure to act decisively in April 2014 was a gravely insufficient response to her complaint, and exposed JD 29, JD 30 and other women at UBC to continued risk of sexual misconduct from M12.

125. When M12 returned in the fall of 2014 in the BA Theatre program, Mr. Hyson testified that he had a meeting with M12 to review the allegations with him. He testified that M12 elected not to respond and instead to wait for the Statement of Allegations. This is noted on the Statement of Allegations (Exhibit 174, Page 267). Mr. Hyson testified that in his meeting with M12, M12 did not provide any information about a disability and nothing in the meeting put Mr. Hyson on notice that a disability might be present.

126. Mr. Hyson identified the elements of the Statement of Allegations dated October 2, 2014 as including: the form and statement of facts prepared by Mr. Hyson (Exhibit 174, Pages 266 to 268); the statement of JD 30 (Exhibit 174, Pages 269 to 270); the statement of JD 29 (Exhibit 174, Pages 273 to 277); and, the statement of W1 (Exhibit 174, Pages 279 to 280), (see also Exhibit 165, Page 8 onwards). Mr. Hyson confirmed that he did not obtain a response from M12 before he provided the Statement of Allegations to Mr. Morrison.

127. By letter dated October 23, 2014, Mr. Morrison mailed the Statement of Allegations to M12 (Exhibit 165, Page 6). M12 did not respond. By email dated October 30, 2014, Mr. Morrison's office emailed the package to M12, noting that the package mailed to his address at Walter Gage Residence was returned (Exhibit 165, Page 4). The letter gave M12 10 days to respond. Mr. Morrison did not receive a response and did not schedule the NAM Committee hearing. Mr. Morrison was not able to say why he did not follow up sooner when M12 failed to respond.

128. On December 11, 2014, almost 6 weeks later, Mr. Morrison emailed M12 to say that they had not received a response and would be booking the NAM Committee hearing in January 2015 (Exhibit 165, Page 4). M12 did not respond in 10 days as required by this communication. Mr. Morrison did not schedule the NAM Committee hearing.

129. Mr. Morrison testified that he did not know M12's enrollment status for the fall of 2014. There is no evidence that Mr. Morrison checked in with JD 29 and JD 30 to ensure that they were not having ongoing issues with M12 while the NAM process was waiting for him to respond.

130. By email dated January 5, 2015, M12 provided his response to the allegations together with witness statements (Exhibit 165, Page 22). His email referred to an earlier email which Mr. Morrison testified he had not seen. M12's response included his own statement (Exhibit 166, Pages 14 to 31), a witness statement dated November 26, 2014 from W5, M12's sister (Exhibit 166, Pages 2 to 5), an undated witness statement from W6, a friend and classmate of M12 (Exhibit 166, Pages 6 to 10), an undated witness statement from W7, M12's roommate (Exhibit 166, Page 11), and an undated witness statement from W8, M12's friend and lover (Exhibit 166, Page 12).

131. Mr. Morrison did not schedule the NAM Committee hearing in January 2015. On February 3, 2015, M12 emailed Mr. Morrison to advise that he was now departing for Central America, expecting to return some time in April. He advised that he would only be online intermittently as he would not have wifi at his lodgings. On February 6, 2015, Mr. Morrison emailed M12 to advise that a NAM Committee hearing would be held, but would be delayed until his return date in April. Mr. Morrison asked M12 to provide his return date (Exhibit 166, Page 48). M12 did not respond to this email. Similar to circumstances involving Mr. Mordvinov, no one at the University thought to attempt a phone call or Skype communication with M12 in order to ensure effective communication.

132. By email dated March 20, 2015, Mr. Morrison followed up with M12 about the NAM hearing that would be taking place in April with respect to his return date from Central America (Exhibit 166, Page 47). Mr. Morrison advised that if he had not received a response from M12 by March 30, 2015, he would place a hold on his student account citing a pending NAM hearing which would remain in place until the hearing took place. On March 30, 2015, Mr. Morrison emailed M12 to advise that as no response had been received, a hold had been placed on his student account (Exhibit 166, Page 47). The hold was to remain until its removal was authorized by Mr. Morrison (Exhibit 166, Page 46). Mr. Morrison testified that he had the power to do this under s. 7.2 of the Student Code of Conduct. Mr. Morrison testified that he worked closely with University Counsel on all cases and he imagined they were aware of this hold. Mr. Morrison was not able to describe the effect of being placed on academic hold except to say that it limited a student's ability to do things at UBC.

133. In our submission it is notable that this tool, which was available before a NAM Committee hearing was completed, was never used in any other matter

where there was concern about the responding student's behaviour, including with respect to Mr. Mordvinov.

134. On February 6, 2015, Mr. Morrison emailed JD 30 to set up a meeting to provide her with information on the NAM Committee process and where they were at with it (Exhibit 166, Page 33). Mr. Morrison spoke to JD 30 on February 10, 2015. He advised her about where they were at with scheduling the hearing given that M12 was away.

135. Mr. Morrison testified that JD 30 did not express any concerns about the NAM process. However, on February 10, 2015, the day of their meeting, JD 30 emailed Mr. Morrison in the evening to ask what the consequences for M12 would be, and whether he would be kicked out of UBC or there would be any mention of the complaint on his permanent record (Exhibit 166, Page 39). She advised that she did not want to retract her statement, but nor did she want the complaint to affect M12's schooling for the rest of his life. Mr. Morrison met with JD 30 on February 12, 2015. He testified that he told JD 30 that there were some contradictions between what she had said and what M12 had said, and that these would be explored in the Committee hearing.

136. In the evening of February 12, 2015, JD 30 provided an amendment to her complaint in response to a rebuttal she understood M12 had provided to part of her complaint (Exhibit 166, Page 42). It is clear from the text of the amendment that JD 30 had not been provided with M12's rebuttal to read and was having to guess what allegation he might be rebutting, and was not provided with a copy of her own original complaint, as prepared by Mr. Hyson, to assist her with her amendment. In his email forwarding this amendment, Mr. Morrison also noted that JD 30 raised a number of concerns with him in their meeting of February 12, 2015 (Exhibit 166, Page 42).

137. In cross examination, Mr. Morrison was pressed on the fact that JD 30 should not be having to guess which allegation M12 was rebutting and should have a copy of her own complaint to make any necessary amendments. Mr. Morrison replied that this was not how the process worked at the time and that the purpose of their meeting was for him to answer her questions in the ways he was able to at the time. Mr. Morrison also said that he "could not speak to" whether JD 30 was disadvantaged by not seeing M12's response, and by not having a copy of her own statement. Asked to agree that withholding the rebuttal and JD 30's own complaint when she was wanting to amend it was not consistent with supporting the best information to come forward to the Committee, Mr. Morrison only responded that "it was not part of the process" and that he "can't speak to that, I'm following the procedures and rules outlined".

138. In response we note that the procedures and rules for the NAM Committee in no way prevented the NAM Committee Chair from sharing the responses, witness statements and the complainant's original complaint with the complainant, and that even if they did, the rules could be changed at any time by University Counsel (University Calendar, s. 7.1, Exhibit 1, Page 308: "The

University Counsel may set down rules for Committee investigations and may alter these rules from time to time.”)

139. We submit that when their complaints are being investigated and determined in the NAM process, complainants must be given the responses and witness statements regarding their complaints, as well as the complaints themselves, before any hearing in order to be able to fully pursue their own interests in justice and in ensuring that discrimination and harassment against them is addressed and prevented in the future. We submit that it was evidently a significant disadvantage to JD 30's full participation in the NAM process that she was left to guess about what M12 had rebutted, and about what her original complaint said when she wished to amend her complaint.

140. On February 6, 2015, Mr. Morrison also emailed JD 29 for the same purpose (Exhibit 166, Page 37). On February 10, 2015, Mr. Morrison emailed to provide the purpose of the meeting which was to advise when the hearing would likely take place and the possibility of a delay, to update her with what he had heard from M12, to discuss her options for whether or how to address the Committee, to give her a sense of how the hearing would proceed, and to answer any questions or concerns she might have (Exhibit 166, Page 36). Mr. Morrison met with JD 29 on February 13, 2015 (Exhibit 166, Page 35). Mr. Morrison testified that he did not recall the contents of the meeting, but that he likely followed the bullet points in his email before the meeting.

141. On March 31, 2015, Mr. Morrison emailed JD 30 and JD 29, requesting a time to speak with them about the fact that they had not heard from M12 and a date for the hearing had not been set (Exhibit 167, Pages 4 and 5). He also said that he was going to provide information about what that meant. Mr. Morrison was not able to say what he intended to tell them but expected that he would have set out the next steps if M12 did not respond, which might include holding the hearing without him. Mr. Morrison testified that he would not have left the question of whether to proceed to hearing to the complainants. At this point, JD 29's report was 11 months old.

142. M12 did not respond until May 25, 2015 (Exhibit 167, Page 8). In the more than two months until he did so after the March 20, 2015 communication to him, no NAM hearing was scheduled. In response to the May 25, 2015 email Mr. Morrison advised that the hearing would be scheduled. By email dated June 10, 2015, the NAM Committee hearing was set for July 2, 2015 (Exhibit 167, Page 13).

143. On June 16, 2015, Mr. Morrison provided the hearing date to JD 29 (Exhibit 167, Page 16) and JD 30 (Exhibit 168), and provided his standard pre-hearing letter. Mr. Morrison noted in the email that, as previously discussed, the choice about whether to attend the hearing was hers. He noted that the Committee had her extensive written statement, which she could “choose to recount in person”, but that she did not need to do so. He further said that being at the hearing was in case there were questions from the Committee, but that being available for questions was her choice. Mr. Morrison also advised M12 that the complainants had been given a choice about whether to appear.

144. We note that this option was not provided to all of the complainants in Mr. Mordvinov's hearing in October 2015, despite the very long time delay there as well. In our submission, it would have alleviated the concerns of complainants if they had been given a choice about whether to appear at the hearing.

145. Mr. Morrison testified that he did not hear further from JD 30 after his email to her of June 16, 2015. She did not attend the hearing.

146. On June 17, 2015, Mr. Morrison emailed the NAM Committee members with the complaint, the response, and associated witnesses statements (Exhibit 169). The email emphasized the extreme confidentiality of the information. Mr. Morrison testified that this was his first hearing regarding sexual misconduct. He said that Janet Mee, the Director of the Centre for Diversity, Equity and Inclusion and Kimberley Beck of the Office of University Counsel provided additional training about hearing cases of sexual assault before this hearing. He believed the training discussed consent and responses to sexual assault. No documentation confirming this training, its timing or its content was disclosed. Mr. Morrison also recalled further training from outside counsel before the Mordvinov case went forward, but he could not recall who provided it. No documentation about this training was provided either.

147. On June 24, 2015, Mr. Morrison emailed M12 with information about the hearing, including its location, that JD 29 would attend, and that JD 30 had provided an addendum to her complaint. The email advised M12 that the hearing would proceed even if he chose not to attend (Exhibit 167, Page 21).

148. In response, M12 asked whether JD 29 and JD 30 had had a chance to read his rebuttal. His concern was that JD 29 should do so before speaking about him at the hearing (Exhibit 167, Page 20). By email dated June 26, 2015, Mr. Morrison advised that while M12 would see everything, the complainants would not and would be questioned on any disparities between their statements and his (Exhibit 167, Page 20).

149. The hearing proceeded on July 2, 2015. It was an in person hearing, but JD 29 attended virtually from another room and members of the Committee attended by Skype. No witnesses attended and JD 30 did not attend. M12 attended.

150. On the basis of material in M12's response and discussion at the hearing, a question was raised about whether medically related reasons might provide a partial explanation for M12's behaviour. The Committee decided to request M12 to provide a medical opinion letter about medical conditions M12 mentioned in his documents and at the hearing (Exhibit 167, Page 22). On September 1, 2015, Mr. Morrison emailed M12 with a Request for Opinion letter. M12 was directed to have his treating health professional complete it. A due date of October 1, 2022 was set for the health professional's response. M12 was advised that the Committee would proceed with its decision if no opinion was provided by that date.

151. On September 28, 2015, M12 emailed Mr. Morrison to advise that he would not be able to make the deadline (Exhibit 167, Page 23). He said that he had been away from his email and had only just received the message. He raised concern that the Request for Opinion anticipated a treating relationship with a health professional. He said that he had only seen the physician at Student Health twice, and only in enough depth to have him support a course withdrawal. Mr. Morrison responded that the Committee expected M12 to have a health care professional complete the form which might require establishing a relationship and an assessment process. He extended the deadline to November 1, 2015. The University did not offer to pay for the assessment it was requesting.

152. On October 1, 2015, Mr. Morrison emailed the Committee to advise that they were still waiting for the medical information they were seeking, but also that the Committee would be meeting in November to make a decision, with or without the information from M12 (Exhibit 167, Page 25). The University clarified at the Tribunal Hearing that the passage redacted for "Litigation Privilege" should have been redacted for "Solicitor Client Privilege".

153. On November 1, 2015, M12 emailed Mr. Morrison to advise that he was unable to obtain the requested assessment from a health care professional (Exhibit 167, Page 26).

154. It appears that M12 sent an email to Mr. Morrison on October 19, 2015 which was not disclosed to us. In that email he apparently requested information about suitable healthcare professionals and requested assistance with the cost of an assessment and report. By email dated November 2, 2015, Mr. Morrison acknowledged that he had not responded to M12. In his response Mr. Morrison advised that healthcare professionals such as clinical social workers, psychotherapists and psychiatric professionals would be acceptable to the Committee and offered to pay the nominal amounts M12 had listed as necessary to obtain the medical information. Mr. Morrison extended the deadline to November 15, 2015.

155. By email dated November 17, 2015, M12 provided information from Dr. Gottfried which confirmed that he did have a condition which could result in compromised executive functioning and diminished self regulation (Exhibit 167, Pages 28, 29 to 30). Dr. Gottfried suggested M12's issues with his peers may have been due to poor judgment and miscommunication. He recommended certain treatment including a cognitive behavioural program to assist him to better understand social cues.

156. Mr. Morrison testified that he communicated with Janet Mee over this medical information, and they decided it was irrelevant to the Panel's decision. Mr. Morrison testified that as a result, he did not provide the medical information to the Committee. In our submission, this was not an appropriate response to evidence that M12 had conditions that could have been at play in his conduct.

157. The President's decision letter and committee report was issued on December 18, 2015 (Exhibit 167, Page 33) and provided to Mr. Hyson on

December 22, 2015 (Exhibit 167, Page 32). The Committee concluded that M12 committed three incidents of sexual assault, multiple incidents of harassment and intimidation and engaging in unwelcome or persistent conduct he knew or ought to have reasonably known would cause JD 29 to feel demeaned, intimidated, or harassed, and two incidents in which M12 created conditions that endangered the well being of JD 29 (Exhibit 167, Page 49).

158. The President's decision included that M12 would be expelled, that he would not be permitted to apply for re-admission, and that there would be a notation on his transcript that he had been expelled. From the report (Exhibit 167, Page 35), it appears that only the complaint of JD 29 was considered by the Committee. The Committee's report and the President's decision were not provided to JD 29 and JD 30.

159. M12 initiated an appeal and then abandoned it (Exhibit 167, Page 51).

160. Mr. Morrison was unable to say if JD 29 and JD 30 were advised in any way about the outcome of the NAM Committee hearing.

161. While the University took JD 29 and JD 30's allegations seriously, and ultimately disciplined M12 by expelling him, the University's narrow focus on a disciplinary complaint process against M12 precluded it from addressing the very broad and troubling allegations before it in an effective, comprehensive and timely fashion. As the NAM Committee ultimately concluded, the two years that JD 29 endured this behaviour from M12 was "deeply troubling". They found the fact that JD 29 spent two years "being pursued by someone relentlessly sexually aggressive while being forced to closely interact with him on a daily basis as part of achieving her academic degree as deeply upsetting and unfortunate" (Exhibit 167, Page 50).

162. JD 29 described a person whose conduct was sufficiently outside what was safe for his peers and colleagues that she expected he would be asked to leave the BFA program after Year 1. The file is notable for the fact that when JD 29 came forward, there was no attempt by the University to gather information from anyone in the Theatre Department about M12 and his interactions in the Department generally. There was also no attempt to determine what safeguards the Department had in place to ensure that the intimacy that is part of theatre studies was being appropriately managed by Faculty. This is especially problematic given that JD 29 said that students had been told by Faculty to resolve interpersonal matters amongst themselves. There was no follow up by the University with the Faculty of the BFA program to determine if this was their direction to students. It is clear on the basis of JD 29's account that this direction was not consistent with the University's obligation to ensure a discrimination and harassment free working, living and studying space for students.

163. In our submission, a University response focused on the needs of women to work, live and study in an environment that is free of harassment and discrimination required a far more comprehensive survey of the situation in the BFA program with M12, a more prompt assessment of who else might have been

harmed by M12, and an evaluation of processes within the BFA program to manage the intimacy of theatre studies and whether sufficient protections were in place for this. That survey should have included asking questions about M12's medical circumstances, and whether there were circumstances relating to him that had not been appropriately identified and addressed or at least managed.

164. In our submission, while M12's conduct was clearly a significant contributor to the harm to JD 29 and JD 30, there were also systemic issues at play in the Theatre Department and its approach to safety and intimacy that were not considered or addressed at all by the University's response to the complaints of JD 29 and JD 30.

165. Once the complaint had come forward, there should have been consideration of what was going to happen during the summer, and what would be in place for JD 29, JD 30 and other women students for the fall with respect to M12. Simply assuming that M12 would not return was not sufficient, especially as he did return. There should have been clear consideration of Policy 14 restrictions or at least an agreement by M12 to leave JD 29 and JD 30 alone before the term started. There also should have been clear check-ins with JD 29 and JD 30 once the term started to make sure that issues with M12 were not continuing.

166. Failing to move ahead swiftly with the complaint allowed M12 to avoid it for the entire fall term of 2014, and then for the entire winter term of 2015 as he travelled in Central America. This delay of more than a year to the NAM Committee hearing was onerous and unfair to the complainants. In our submission, while concerns for M12's interests are important, the fact that complainants are not seen as full participants in the NAM process meant that their interests in having the matter resolved were not factored into University decision making.

167. In our submission, part of the University's delay here arose from its flawed view of "due process" for M12. Having provided notice of allegations against him, and notice of process, the University was not obliged to accept his lengthy delays in response. The Respondent's response is important, but in our submission, due process for Respondents does not include taking no action for many months when Respondents fail to engage.

168. As noted above, this file also shows the problems for complainants in the NAM process identified elsewhere, where their interests and participation as equals is not protected or seen as something important. Chief among these concerns here, as elsewhere, is the failure to provide the response, witness statements and any supporting documents to the complainants, failure to ensure the complainants have access to their own complaints, failure to ensure that they are able to be present for as much of the hearing as they wish to attend and failure to ensure that they are provided with the decisions of the Committee and the President. We note M12's view that it would be better for *him* if the complainants saw his response. Mr. Morrison's only explanation for ignoring M12's request for this to happen is that it was "not the process at the time". It also remains our view that having complainants provide their accounts to Mr. Hyson and then having

their case judged by students with almost no training and no or almost no interaction with them is not an appropriate process for significant claims of sexual misconduct, including assessment of credibility in relation to those claims.

169. In our submission complainants in the NAM process have interests to see their complaints proven, to have their complaint heard and decided, to avoid the embarrassment of not being believed, to have an effective outcome including no ongoing contact with the person about whom they filed their complaint, to be part of a fair and equitable process, and to see justice being done, and not just be told that justice was done.

170. We do not have direct evidence from JD 29 and JD 30 about the impact on them of their complaints and the University's response. It can be inferred however from the materials we do have that JD 30's concerns grew as she was told that M12 had rebutted some of what she said, but was not told what exactly he had said to the extent that she changed her statement and shortly after, stopped participating in the process with no further contact. It can also be inferred that JD 29's state of concern was very high when she made her complaint, both for her own wellbeing and that of her peers, as set out in the last passage of her complaint, and that her concern remained as the process dragged on.

171. In our submission, the experience of JD 29 is similar to that of Mordvinov class complainants with very severe underlying experiences with sexual misconduct. In those circumstances, it is our view that complainants have an acute need for an appropriate University response to their complaints. In the absence of direct evidence from JD 29 about the impact on her of the University's inadequate response, we submit that damages for injury to dignity in the amount of \$15,000 to JD 29 would be appropriate.

172. In our submission, the experience of JD 30 is less extreme than that of JD 29, including because her underlying complaint was much less severe. However, she has the additional harm that her complaint was never adjudicated and is not covered in the Committee's report. In the absence of direct evidence from her about the impact on her of the University's inadequate response, including its failure to consider her complaint ultimately, we submit that damages for injury to dignity in the amount of \$6,000 to JD 30 would be appropriate.

IX. JANE DOE 31

173. In October 2015, Josey Ross of SASC contacted Mr. Hyson to advise that a client she was supporting wanted to make a report about a sexual assault from the first week of classes in Fall 2013. On October 19, 2015, Ms. Ross provided Mr. Hyson with a statement prepared by JD 31 about the events of September 6 and 7, 2013 (Exhibit 174, Pages 286 and 281).

174. JD 31 alleged that after meeting M14 at a frat party, she went back to his room at Totem. On the way she said that she told him she did not want to have sex. She said that after about an hour of consensual kissing and touching, when she had turned over and was falling asleep, M14 had non-consensual anal sex

with her. She said that even though it hurt a lot, she was scared because he was a really big guy so she stayed there and did not move. She said that he then turned her over and started to have vaginal sex with her. She told him multiple times to stop. He said that it won't hurt that much. She continued telling him to stop. He then groaned and got off her. She decided to give him a blow-job so that he would not do anything else to her, and then they both fell asleep. She woke up at 4 AM naked and very drunk. She said she tried to get her clothes on to leave. He told her to calm down and go back to bed. She went back to bed and fell asleep. In the morning she said that she went to the bathroom and was bleeding a bit. She asked him what happened the previous night and he replied, "Fellatio". She said that more than that happened. She asked him if he knew what consent was. He replied, "Um, what?", so she just left. Afterwards, she tried to contact him because she thought if she saw him in a different scenario what happened would not seem as bad, but she did not hear from him again. She said that she reported the incident to a friend of hers who was a Residence Advisor two days before she was to move out of residence in April 2014.

175. On October 21, 2015, Mr. Hyson met with Ms. Ross and JD 31 (Exhibit 174, Page 289). He went over JD 31's options for moving forward, including making a report to commence the NAM process. He testified that JD 31 elected to proceed with the NAM process.

176. Mr. Hyson asked for the names of persons who had been with JD 31 that evening so that he could collect statements from them. He also asked JD 31 for Facebook messages. On October 21, 2015, JD 31 provided contact information for W1, JD 31's best friend whom JD 31 had told about the incident a few days later, W2, a person with whom JD 31 had an electronic conversation about the event, and W3 and W4 who were present at the dance that evening before JD 31 left with M14. She also provided her electronic communication with W2 and a photograph (Exhibit 174, Page 289).

177. On October 21, 2015, Mr. Hyson provided the Facebook conversation with W2 to Janet Teasdale and specifically noted that M14 was a current member of the Varsity Football team (Exhibit 174, Page 291). Asked in cross examination why this was relevant, Mr. Hyson said that Varsity athletes have a high profile as ambassadors for the University. Mr. Hyson noted that M14 had played for two years but was no longer on the team. We note that we have very few documents in which Mr. Hyson informed his supervisor Ms. Teasdale about any of his work.

178. On October 23, 2015, Mr. Hyson interviewed W1 by telephone (Exhibit 174, Page 295). W1 recalled receiving a call from JD 31 in September 2013. She said that when she answered the phone, JD 31 was crying. W1 said that JD 31 said that she had met a guy at a party, they had been dancing together, and then had left the party together to go to his residence. W1 said that JD 31 said she was clear she did not want to have sex with him, but when they were together he continued to push to have sex with her, even after she told him to stop. W1 said that JD 31 questioned if it was somehow her fault because both she and the guy had been drinking. JD 31 said that she talked with the guy in the morning and he remembered what had happened. W1 said that she further spoke to JD 31 about

the event in February 2014 during reading week when W1 was in Vancouver. W1 said that at that time, JD 31 opened up a bit more about what had happened and was still questioning whether it was her fault that she was sexually assaulted because she agreed to participate in some sexual activities that night, even though she clearly said no to having sex.

179. On October 27, 2015, Mr. Hyson interviewed W3 (Exhibit 183). W3 saw JD 31 and M14 dancing and kissing at the frat party and took a photograph of them together. W3 said that JD 31 spoke to her on September 7, 2013 about what happened with her and M14. W3 said that JD 31 told her then that they were naked and were hooking up. At one point JD 31 rolled over and they were spooning. W3 said that JD 31 said that while they were spooning M14 put his penis inside of JD 31 and JD 31 said stop, stop. M14 pulled his penis out and apologized. JD 31 slept over at M14's residence. JD 31 told W3 that she told M14 that she did not want to have sex that night. W3 recalled JD 31 being visibly upset about the events of the previous night and had a sticky note on her wall for the rape hotline. W3 said that at the time, JD 31 seemed to acknowledge that the event was the result of a misunderstanding between her and M14. W3 said that since then the story seemed to have changed, including JD 31 telling her roommate that at one point M14 was on top of her and was almost restraining her. W3 said that JD 31 had received a lot of positive support to tell her story of what happened that night, and had referenced the incident in her poetry which she posted on her Facebook profile.

180. On November 20, 2015, Mr. Hyson met with W2 (Exhibit 174, Page 319). W2 and JD 31 belong to the same campus club. W2 was M14's Residence Advisor in Totem Park residence on campus. In April 2014, JD 31 told W2 about what happened on the evening of September 6, 2013 with M14. After the disclosure, W2 spoke to her Residence Life Coordinator, Leslie Thompson, as required of Residence Life staff who receive disclosures of sexual assault. W2 said that she believed what JD 31 said was true and still did. W2 met with M14 at the request of JD 31 to discuss JD 31's disclosure. W2 said that M14 was taken aback. He said that he was very intoxicated that evening, that he did not interpret the events of September 6, 2014 the way JD 31 did, and that he showed remorse over what W2 told him she had heard from JD 31. W2 advised Mr. Hyson that the events of September 6, 2013 had really affected JD 31 and still did. She said that at first JD 31 did not know what to do because she and M14 were both intoxicated that night and she consented to going to his room. W2 said that she did not doubt that M14 may not recall the events of September 6, 2013. W2 said that while on her floor, she found M14 respectful and a person who cared about people a lot.

181. Mr. Hyson had an email exchange with W4 on October 28, 2015 (Exhibit 174, Page 305). W4 recalled being at the party with JD 31 and M14. He remembered their dancing and grinding on the dance floor being "very consensual". He reported that JD 31 later told him that she went to M14's room and slept in his bed consentingly, but at one point M14 went too far while they were hooking up and tried to have sex with JD 31. He said that JD 31 told him that M14 stopped after she told him she was not consenting. W4 said that based on what he heard at the time, he would not support any kind of charge against

M14. W4 later advised that his grammar was bad because he had originally sent his email to JD 31 to explain what he would say to Mr. Hyson. On November 4, 2015, Mr. Hyson confirmed to JD 31 that he did not expect that W4 would be able to provide much information beyond accompanying JD 31 to the party so there was no need for him and W4 to speak (Exhibit 174, Page 304).

182. Mr. Hyson responded to requests for updates from JD 31 when she sent them (Exhibit 174, Page 304). He also contacted JD 31 because he was having trouble reaching W2 (Exhibit 174, Page 307, 311).

183. In preparation for the Statement of Allegations, Mr. Hyson confirmed the statements he had prepared with the witnesses.

184. On December 1, 2015, Ms. Ross emailed Mr. Hyson to advise that JD 31 felt that M14 should be expelled (Exhibit 174, Page 316). On December 7, 2015, JD 31 emailed Mr. Hyson for an update (Exhibit 174, Page 321). On December 8, 2015, Mr. Hyson provided a detailed update and advised that he was ready to finalize and submit the report to the Chair of the NAM Committee and to notify M14 of the report. He said that he hoped the Committee proceedings could be scheduled in early January 2016. In evidence, Mr. Hyson confirmed that the report he was referring to in this email was the Statement of Allegations he was preparing. In evidence Mr. Hyson confirmed that he concluded from JD 31's contacts with him that it was important to JD 31 to keep the process moving forward. He testified that he was keeping her up to date as he was going through the process.

185. Mr. Hyson testified that although he would usually notify the respondent that there were allegations against him and walk him through the process, he did not usually do so in the lead up to exams. He said that as the allegations were from a couple of years earlier, it seemed best to notify M14 once he had completed his exams. In this instance he said that he planned to provide M14 with the allegations but did not expect a response as he felt it was important for M14 to review the package in full and understand the allegations against him before responding.

186. On December 14, 2015, JD 31 emailed Mr. Hyson to find out if the report had been finalized and M14 had been notified (Exhibit 174, Page 325). Mr. Hyson replied that the report was finalized and he was hoping to meet with M14 the next day. On December 16, 2015, Mr. Hyson sent M14 an invitation to meet and confirmed with JD 31 that he had done so. On December 17, 2015, Mr. Hyson advised JD 31 that he would be meeting with M14 on December 18, 2015 (Exhibit 174, Page 341). On December 18, 2015, Mr. Hyson advised JD 31 that his meeting with M14 had taken place. JD 31 responded to request a copy of her statement and any documents he shared with M14 as she did not have copies herself. Mr. Hyson responded with a copy of the complaint from JD 31 which he received from SASC (Exhibit 174, Page 345).

187. On December 24, 2015, Mr. Hyson provided Mr. Morrison with the Statement of Allegations, including the statements of JD 31, W1, W2, W3 as well

as the Facebook conversation between JD 31 and W2 (Exhibit 184, Pages 106 to 109 (Statement of Allegations), Pages 110 to 111 (Statement of JD 31), Pages 112 to 113 (Statement of W2), Page 114 (Statement of W1), Page 115 (Statement of W3), Page 116 (Photograph), and Pages 117 to 133 (Facebook exchange)). By email dated December 7, 2015, W2 confirmed that her Facebook communication with JD 31 was accurate (Exhibit 174, Page 319). At the time, Mr. Morrison had decided that he would not be continuing as the NAM Committee Chair. Mr. Hyson did not have this information yet. Mr. Hyson testified that the Statement of Allegations was not sent out to M14 before the winter break.

188. On January 5, 2016, JD 31 sought an update from Mr. Hyson. She also advised Mr. Hyson that after this semester she would be moving out of the province. On January 6, 2016, Mr. Hyson responded to advise JD 31 that the Statement of Allegations had been provided to the Chair of the NAM Committee before the break and he anticipated that the Chair would be in touch with M14 before the end of the week (Exhibit 174, Page 356) and that “this would likely move forward by the end of the month or in early February”. In evidence Mr. Hyson advised that he meant that it would be reasonable for the Committee to be scheduled and the hearing to go forward in that time frame.

189. The process for NAM Committee hearings permitted the University to use the Chair of the UBCO NAM Committee or hire outside counsel if the Vancouver NAM Committee Chair was not available. Nonetheless, Ms. Dunn, Chair of the UBCO NAM Committee was not appointed to hear JD 31’s complaint until close to the end of January. Mr. Hyson could not say why there had been this lengthy delay. Mr. Hyson testified that he advised Ms. Dunn that JD 31 was leaving at the end of term, but did not tell her that JD 31 had been consistently emailing for updates throughout the fall and into early January. Even though Ms. Dunn at this point assumed carriage of the file, she did not take over communicating with JD 31.

190. On February 3, 2016, JD 31 sought an update from Mr. Hyson (Exhibit 174, Page 358). On February 4, 2016, Mr. Hyson responded to advise that Ms. Dunn had been appointed to Chair the NAM Committee hearing the case but that he had not received any updates, including regarding the timeline for the hearing. He was not clear in his email that the Statement of Allegations had not yet been sent out to M14 (Exhibit 174, Page 359).

191. On February 11, 2016, Ms. Dunn formally sent M14 the Statement of Allegations and attachments (Exhibit 184, Pages 254, 104, 105). Neither Ms. Dunn nor Mr. Hyson advised JD 31 of this.

192. On February 19, 2016, JD 31 reached out for an update through Ms. Ross of SASC as she had not received any update on the timing of the hearing (Exhibit 174, Page 360). On February 19, 2016, Mr. Hyson advised JD 31 that the Statement of Allegations had been sent to M14, they were awaiting his response, and that while he was preparing his response, they would be moving forward with scheduling the hearing. In evidence Mr. Hyson confirmed that he did not advise

Ms. Dunn at this point that JD 31 was anxious to keep the hearing process moving.

193. On March 24, 2016, Ms. Dunn communicated concern to Ms. Lui, an administrator in the Office of University Counsel, that M14 had still not responded and advised that she was not keen to hold the hearing without him (Exhibit 184, Page 246). At that point, about 6 weeks after the package was sent to M14, arrangements were made to hand deliver the package to M14 at his residence on campus.

194. On March 24, 2016, JD 31 contacted Mr. Hyson for an update as she had heard nothing for over a month and was moving away in a month's time (Exhibit 174, Page 364). On March 24, 2016, Mr. Hyson advised that he heard from the Chair two days earlier that M14 had not responded to the Statement of Allegations or regarding scheduling the hearing and that the Chair was in the process of scheduling the hearing. He said it appeared that April 26 and 27 might be available for the Committee members. Mr. Hyson apologized for the matter having been "dragged out for so long". On March 24, 2016, JD 31 responded that her plane was leaving on April 30, 2016. She asked Mr. Hyson to stress the urgency of the situation. Mr. Hyson agreed to pass this along to the Chair (Exhibit 174, Page 368), and did so (Exhibit 174, Page 370).

195. Sometime during the weekend of March 26/27, 2016, JD 31 called Martha Piper, Acting President, with concerns (Exhibit 174, Page 379). On March 29, 2016, Dr. Piper emailed JD 31 to say that she had been disturbed to receive JD 31's message over the weekend. No record of the content of this call was disclosed to us. On March 29, 2016, Louise Cowin, VP Students, also emailed JD 31 to advise that Dr. Piper had made her aware of the call and that she was dismayed by the information JD 31 had shared (Exhibit 174, Page 379). She said that she would speak with Mr. Hyson the following day. Mr. Hyson confirmed that he was aware of these events because Ms. Cowin spoke with him about them.

196. On March 29, 2016, after JD 31's call to President Piper, Ms. Lui of the Office of University Counsel emailed M14, copying Ms. Dunn and Mr. Hyson, scheduling the hearing for April 27, 2016 (Exhibit 184, Page 259) and asking him to submit his Student's Documents and Witness List.

197. On March 31, 2016, Louise Cowin emailed JD 31 to confirm that the hearing had been set for April 27, 2016 (Exhibit 174, Page 379). She also said that she had received a chronology from Mr. Hyson of his interactions with JD 31 since their first meeting of October 21, 2016. She offered to meet with JD 31 to hear about her experiences navigating the University's processes, her understanding of the reasons for the delay, and their impact on JD 31. By email of March 31, 2016, JD 31 said that most of her frustration was that nothing was ever communicated to her unless she phoned or emailed, and that she was given false information on timelines (Exhibit 174, Page 384).

198. By email dated April 1, 2016, Mr. Hyson agreed that he gave JD 31 a false time line early in January about when the hearing would be (Exhibit 174, Page

383). He said he did so in consultation with Kimberley Beck of the Office of University Counsel. Mr. Hyson said that he had only met with JD 31 once, and that they only ever communicated by email.

199. On March 31, 2016, Mr. Hyson also emailed JD 31 to confirm that the hearing would proceed on April 27, 2016, and that she would hear further about the format of the hearing from the Chair (Exhibit 174, Page 371). JD 31 responded that she would like to attend, but did not want to see M14 in person. She also asked Mr. Hyson to ask someone to contact her about what to expect. Mr. Hyson agreed to pass this information on to Ms. Dunn. On April 5, 2016, Mr. Hyson sent on JD 31's concerns to Ms. Dunn and offered to provide her with a copy of the letter Mr. Morrison would send to complainants before hearings (Exhibit 174, Page 386). Asked why he was still communicating with JD 31 at this point and not Ms. Dunn, Mr. Hyson said that was how things worked out because there was no NAM Committee Chair in Vancouver and he wanted to keep things moving forward.

200. On April 17, 2016, JD 31 emailed Mr. Hyson to say that she still had not received any information on who would be at the hearing, what to prepare, what she would have to say, whether she could bring a family member for support and what the potential outcomes might be (Exhibit 174, Page 392). This echoes the experiences of other complainants about the difficulty of obtaining timely information about the NAM Committee process, including Ms. Cunningham and Ms. Hale in her case. Mr. Hyson testified that JD 31's email was a concern given that she had reached out in March to say that she was not receiving the communications she needed. Mr. Hyson testified that Ms. Dunn's practice was not to provide information in advance but to meet with complainants on the day of the hearing to walk them through the process. Mr. Hyson noted that typically Mr. Morrison communicated with complainants about what to expect in advance. Mr. Hyson testified that he encouraged Ms. Dunn to make herself available before the hearing.

201. On April 18, 2016, Mr. Hyson sent an email to Ms. Dunn saying that he had answered some of these questions in the past and would answer them as best he could now, but he believed a call from Ms. Dunn would help to ease JD 31's anxiety about the upcoming hearing (Exhibit 174, Page 393). Mr. Hyson testified that based on his communications with JD 31 he was aware that JD 31 was feeling anxious about the hearing and her impending departure. On April 18, 2016, Mr. Hyson sent an email to JD 31 confirming her time of arrival at the hearing, and that she would be in a separate room, and providing a link for the potential outcomes of a NAM Committee hearing. Otherwise he advised that he had suggested to Ms. Dunn that a call might be a good idea (Exhibit 174, Page 394).

202. On April 19, 2016, M14 provided his Student's Documents and Witness List form to Ms. Lui, along with his statement in response and witness statements (Exhibit 184, Pages 218 to 221, 225). This information was not provided to JD 31, and nor was she told that it had been received. Because M14 had JD 31's statement, he was able to provide a detailed response that went on for the better part of 2 pages. Shown the response at Exhibit 184, Page 218 and 219, and asked

about this, Mr. Hyson said that M14 was the one facing allegations of non academic misconduct. Asked if he had any concerns about the Committee hearing going ahead without JD 31 seeing the detailed rebuttal, Mr. Hyson said it was the Committee's process to explore the conflicting accounts and it would do so. Asked if he was concerned that M14 had had weeks to prepare his response to JD 31 but JD 31 would have only minutes in a hearing to provide hers, Mr. Hyson testified, that the Committee would "take time to address those matters".

203. W3 provided a second statement that was included with M14's response and provided to the Committee. JD 31 was not told of the existence of this statement.

204. On April 22, 2016, Mr. Hyson rather than Ms. Dunn provided some details of the hearing process (Exhibit 174, Page 396). He offered to meet JD 31 in advance to ensure that she did not run into M14, he advised her that she could bring a support person, he advised that a staff person would be with her the whole time, and he provided links to the online Student Code of Conduct and Rules for NAM Committee hearings.

205. Notably, Mr. Hyson advised JD 31 what the Committee would have seen in advance and would have heard before she entered the hearing, and that when she joined the hearing she would have a chance to state her experience, and share anything with the Committee that she would like to add such as the impact of the incident. He offered to answer any questions she might have about how to prepare.

206. Mr. Hyson agreed in evidence that one thing JD 31 might want to do, which was respond to what M14 was saying, she would not be able to do because she had not seen M14's statement. Asked if he was concerned that JD 31 was being offered a chance to speak to the Committee when she did not know M14's response and what the issues were between them, Mr. Hyson said that she was not the one with the allegations against her and that she was a witness in the process whereas M14 was facing discipline. He did agree however that she had a stake in the process. Asked why, if she had a stake in the process, she was not entitled to know what was being said in response, Mr. Hyson said, "it was just not the process we used". He said that he had no concerns about that process at the time. He also testified that he had no concerns about fairness even though the Committee was choosing between the versions provided by JD 31 and M14, and he had tools in responding that she did not have. He also testified that he did not have concerns about whether exposing JD 31 to questions at the hearing about a response she had not seen was a trauma informed approach.

207. Mr. Hyson further advised that the Committee was likely to have questions about her statement and any discrepancies with the statements of other people participating in the process, and were likely to "focus on those contradictions". Although he thought it was important for responding students to have a chance to study the statements of others before responding (see for example his position with M12 in the JD 29/JD 30 matter), he did not offer the same opportunity to JD 31. Instead, he said that she should "take the time she needed to formulate her

responses” and not feel “rushed or pressured”, presumably within the constraints of sitting in a room with people expecting her response, in the context of a hearing which Mr. Hyson said was 1 hour to 90 minutes long, and without any opportunity to see and consider for herself the entirety of what the other participants had said which had prompted the questions being asked. As we have stated elsewhere, this was a very different opportunity than that afforded respondents, and did not represent an equitable, fair or effective process for complainants.

208. Mr. Hyson also included the comment from Mr. Morrison’s letter that this did not mean that the Committee did not believe her but that they had to decide what had happened on a balance of probabilities. Asked to agree that the Committee had not decided *whether* to believe her, Mr. Hyson said that they needed to go in with an open mind and not made any decision prior to the hearing. In our submission, this statement unhelpfully and disingenuously omitted the key points that the Committee *did* have to decide whom to believe, which might not be her, and also that if it could not decide, JD 31’s complaint against the respondent would be dismissed because the respondent, and not the complainant, had the benefit of the doubt on the balance of probabilities standard.

209. The hearing took place on April 27, 2016. JD 31 and M14 were present. Mr. Hyson testified that the hearing itself took between 1 hour and 90 minutes.

210. The NAM Committee report was provided close to the end of May (Exhibit 184, Pages 165 to 175). The NAM Committee found that having heard both versions, they were unable to determine on a balance of probabilities what happened on the evening of September 6, 2013, and as a result, they were unable to find that M14 violated the Student Code of Conduct.

211. On May 17, 2016, President Piper wrote to M14 to advise that the NAM Committee was unable to determine that the Student Code of Conduct was violated in this instance, and that the allegation was therefore dismissed (Exhibit 184, Page 164).

212. On June 3, 2016, JD 31 emailed Mr. Hyson to ask what was happening as she had heard nothing (Exhibit 174, Page 407). On June 7, 2016, Mr. Hyson emailed JD 31 to advise that the Committee was unable to determine on a balance of probabilities that the Student Code of Conduct had been violated, and therefore that the allegations had been dismissed. He acknowledged that this was not the result she had been hoping for and provided contact information for UBC Counselling Services and SASC. In this instance, unlike many of his other communications, he did not offer to answer any questions she might have.

213. The Committee found both JD 31 and M14 credible. Mr. Hyson did not tell JD 31 this or that this was why they could not determine what occurred on September 6, 2013. He did not speak to JD 31 or get any feedback from her about the NAM process. He also did not contact SASC to advise them of the result so that they could provide support to JD 31.

214. On June 7, 2016, M14 emailed Mr. Hyson to advise that JD 31 made a post on Facebook saying that M14 had raped her and that he had significant concerns about this (Exhibit 184, Page 257). He attached JD 31's Facebook post (Exhibit 184, Pages 145 to 149). In the post, JD 31 wrote that she believed that the NAM Committee believed she had made up her claim. Mr. Hyson confirmed in evidence that he did not make sure that JD 31 was made aware that this is not what the Committee had decided.

215. The processing of JD 31's complaints involved unconscionable delays awaiting M14's response and many instances where JD 31 had to follow up with the University for updates.

216. As in the case of other complainants, the process of waiting for and having to be involved in a hearing dragged this matter out for months for JD 31, and was a clear source of frustration and anxiety for her. While care was being taken not to stress M14 during his exams, JD 31 had to wait through 2 exam cycles of her own to have her complaint addressed by the NAM Committee.

217. In our submission, the possible benefit of a very short hearing process with the Committee (60 to 90 minutes of actual hearing time in this case, according to Mr. Hyson) does not warrant the extreme delays and anxieties of employing hearings as the final stage in what is largely an investigation process that proceeds by written statements.

218. This case also clearly illustrated how inappropriate the NAM process was for determining this matter. Although JD 31 had a profound interest in bringing her complaint forward and having it addressed and resolved appropriately, she was literally and overtly treated as a person with no interests in the hearing process. Given the plain "he said, she said" nature of this matter, sending it to a hearing where JD 31 had far less procedural rights than M14, even though he would have the benefit of the burden of proof if the Committee could not decide whom to believe at the end of the day, was exceptionally inequitable, and left JD 31 without a proper resolution to her complaint. We say it is a reasonable concern that the inequitable way the process was structured was a factor in the Committee's decision.

219. We say that the procedural issues for complainants common to all NAM Committee hearings were gravely exacerbated by the University's practice of not providing the Committee's decision report to the complainant, with the unacceptable and entirely preventable consequence that JD 31 was left believing that the Committee did not believe her. In fact, the Committee said that they found *both* the Complainant and Respondent credible. We submit that not providing this information to JD 31 significantly increased her distress, which is evident from her Facebook post. It is highly significant that even with evidence of this distress in hand, the University did not ensure that JD 31 was told that the Committee found her credible. Her distress was just not of concern to the University.

220. We further note that in focusing on disciplining M14 for breaching its Student Code of Conduct, the University was in fact focusing on its own legal interests over the interests of JD 31 as protected by the *Human Rights Code*.

221. It is reasonable to infer that the sexual assault in this case was a traumatic experience for JD 31, made much worse by the University's failure to provide a response that was timely and attentive to her needs. While the University was not obliged to ultimately conclude that the allegation was proven, it cannot say that it was not proven on the basis of such an obviously one sided process, and it must not compound that harm by failing to tell JD 31 that the Committee *did* find her credible. The University's harmful response to JD 31's complaint of sexual assault had an adverse impact on her related to her sex since her need for the University to respond appropriately resulted from a sexual assault in which her sex was implicated. The vulnerability that women feel in sexual assault proceedings is also related to their sex.

222. We submit the anxiety JD 31 experienced waiting for the NAM Committee hearing and going through the NAM Committee process was very like that experienced by other witnesses who testified such as Ms. Cunningham and Student E, and was compounded by the harm of not receiving a proper reporting to her of the outcome such that she was left with a very damaging impression of the Committee's view of her complaint. JD 31's experiences exemplify the institutional betrayal described by Dr. Brown in her opinion which occurs when an institution does not provide a reasonable response to serious wrongs, and prefers its own interests to those of complainants. In the circumstances, we say injury to dignity damages in the amount of \$20,000 to JD 31 would be appropriate in this case.

X. JANE DOE 32

223. JD 32 came to Mr. Hyson through SASC. Mr. Hyson met with Ms. Ross of SASC and JD 32 on February 10, 2015. Mr. Hyson prepared notes of the statement from JD 32 (Exhibit 174, Page 409).

224. JD 32 and M15 had seen one another briefly in the fall of 2014. On January 23, 2015, during a trip to Whistler with a group of friends to stay at the place of one of her friend's parents, M15 had repeatedly pressured her to have sexual contact with him which was unwelcome to JD 32, including intercourse without a condom, and had not stopped immediately when she asked him to. JD 32 was concerned that M15 had a girlfriend and he replied that that did not matter. JD 32 and M15 were both UBC students. The trip to Whistler was not a University sponsored event. Mr. Hyson recorded that JD 32 and M15 did not have classes together and did not see one another much on campus. JD 32 lived in residence and M15 lived in Richmond. JD 32 was concerned about how M15 might react to her having made a report about him.

225. Mr. Hyson testified that JD 32 wanted to make a statement but was not sure how she wanted to proceed. Mr. Hyson testified that at their meeting, there

was discussion between him and JD 32 about whether the University had jurisdiction over events at Whistler.

226. Mr. Hyson testified that after his meeting with JD 32, he spoke to colleagues about whether the Student Code of Conduct would apply to the events at Whistler.

227. Mr. Hyson testified that he requested and had a second meeting with Ms. Ross and JD 32 to ensure that contact that occurred at UBC in the Fall of 2014 had been consensual (Exhibit 174, Page 411). Mr. Hyson reported that JD 32 confirmed that M15 had put a lot of pressure on JD 32 to do things, but that she had not agreed. Mr. Hyson testified that his advice to JD 32 was that the University did not have jurisdiction over M15's conduct at Whistler, but that Mr. Hyson would be willing to meet with M15 if that was something JD 32 wanted him to do. He left the question with JD 32 and SASC. Mr. Hyson did not hear further from JD 32.

228. Mr. Hyson confirmed in evidence that aside from asking JD 32 if she felt safe on campus, Mr. Hyson had not asked her about any impacts on her of M15's conduct at Whistler. He confirmed that the decision that UBC did not have jurisdiction over this conduct was based on the fact that the events in question had taken place off campus among a group of friends at an event that was not sponsored by the University. Mr. Hyson said that his decision-making process was not formally documented in any way. He agreed that it was not his practice to formally document decisions he might make about the jurisdiction of the University under the Student Code of Conduct in any particular matter.

229. Mr. Hyson did not follow up with SASC or JD 32. He did not ask for or receive any information from JD 32 about whether she was satisfied with the University's response to her report.

230. Despite the language in the Student Code of Conduct permitting the University to act where the conduct is alleged to adversely affect, disrupt or interfere with another person's reasonable participation in University programs or activities (s. 3.1), Mr. Hyson failed to ask questions to determine if this was the case.

231. The University's obligation to respond effectively to JD 32's account flowed from the *Human Rights Code*, and were embodied in Policy 3. Although Mr. Hyson testified that he spoke with his colleagues about JD 32's complaint, there is no evidence that there was any consideration of the University's obligations under Policy 3 or the *Human Rights Code* in relation to the impact on JD 32 of M15's conduct. There is also no evidence that the University considered actions under Policy 14 to protect the safety of JD 32 and other women on campus.

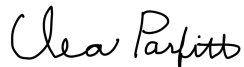
232. As we have previously submitted, allegations of sexual misconduct against students by other students must be attended to by the University, regardless of where they take place. This is because these events have serious consequences for victims and place victims and other women on campus at risk. The University's

obligation under the *Human Rights Code* in this matter was to ensure that all possible steps were taken to ensure that JD 32 was provided with a discrimination and harassment free living, studying and working space at UBC and that her concerns as set out in her complaint were addressed.

233. Mr. Hyson's conclusion on little information that the Student Code of Conduct did not apply and therefore that the University had no jurisdiction over the events at Whistler meant that M15 was not made aware of JD 32's complaint, was not advised that it had caused JD 32 sufficient harm for her to come forward to SASC and the Student Conduct process, and was not put on notice that his conduct was unwelcome, that unwelcome sexual conduct was illegal, and that any further similar conduct could have serious consequences for him. Despite the risk that M15 would repeat his behaviour, the University's response fell far short of doing everything possible to ensure that M15 did not do so. The University's response did not provide JD 32 with any justice or closure. It did not respond to or ameliorate the experience she had had of sexual misconduct.

234. Information about the impact on JD 32 in this case is scant because Mr. Hyson did not ask her about this, despite needing this information to make a proper decision about whether the Student Code of Conduct applied. Mr. Hyson did not offer JD 32 any response under the *Human Rights Code* or Policy 3. M15's conduct was serious enough to JD 32 for her to come forward to SASC and then Mr. Hyson shortly after it happened. In the circumstances, JD 32 should be compensated for the University's failure to respond appropriately under the *Human Rights Code* in the amount of \$5,000.00.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of February, 2026.



Clea Parfitt
Counsel for the Complainants