

**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**

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**COMPLAINANTS' FINAL SUBMISSIONS  
PART 1  
January 30, 2026**

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**PART 1: REQUIREMENTS ON UBC FROM BC *HUMAN RIGHTS CODE***

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**I. Statutory Requirements**

- 1. Under the BC *Human Rights Code* (the "*Code*"), as interpreted by both administrative adjudicators and the courts, the University is required to provide a

working, learning and living environment free of discrimination and harassment. In 1987, the Supreme Court of Canada found that the obligation to ensure that enterprises meet the requirements of human rights legislation rests with the enterprise itself: *Robichaud v. Canada (Treasury Board)*, [1987] 2 SCR 84. Based on this finding, the obligation to ensure that the University's working, learning and living environment is free from discrimination and harassment, and to restore a working, learning and living environment free from discrimination and harassment if issues arise, rests at all times on the University as the entity in charge of a service or workplace.

2. As stated by the Human Rights Tribunal in *Hale v. University of British Columbia Okanagan (No. 5)*, 2023 BCHRT 121 ("*Hale*"), para. 14:

Under the *Code*, UBC has an obligation to maintain a discrimination-free learning environment for its students: s. 8, *School District No. 44 (North Vancouver) v. Jubran*, [2005 BCCA 201](#) at para. 92 [**Jubran**]; *Ross v. New Brunswick School District No. 15*, [1996] 2 SCR 353 at para. 42. This includes a learning environment free of sexual violence, which is discrimination based on sex: *Janzen v. Platy Enterprises Ltd.*, [1989 CanLII 97 \(SCC\)](#), [1989] 1 SCR 1252 at p. 1291. As an educational institution, it is uniquely placed to further the *Code's* aims of fostering an equitable society: *Code*, s. 3. UBC acknowledges and accepts this responsibility: see e.g. UBC Board of Governors, *Policy 3: Discrimination and Harassment*, app'd January 1995 and rev'd December 2016 [**Policy 3**]; and UBC Board of Governors, *Policy 131: Sexual Assault and Other Sexual Misconduct*, app'd April 13, 2017 [**Policy 131**].

3. As noted by the Tribunal in *Hale*, University has established policies and procedures to assist it to meet its obligations under the *Code*. While these policies and procedures are important, they are *means* by which the University may achieve its obligations under the *Code*; they do not replace the University's obligations under the *Code*. In other words, if following the University's policies and procedures does not provide a working and learning environment free from discrimination and harassment, or does not restore a working and learning environment free from discrimination and harassment if issues arise, the University will remain liable for those deficiencies, despite having followed its own policies and procedures. The University's policies and statements are tools for the University, but do not supplant or limit the scope of the University's obligations to comply with the *University Act* and the *Human Rights Code*.

4. The University's materials have long recognized the University's general obligation to provide a working and learning environment free from discrimination and harassment, and to restore a working and learning environment free from discrimination and harassment if issues arise. These documents further confirm the University's commitment to meeting these obligations. These documents identify some key elements which the University's preventative and corrective actions must have.

5. The University's **Policy 3 - Discrimination and Harassment**, was first approved in 1995. The Background section of the version of Policy 3 in effect at the material time, not amended since at least 2011, says (Exhibit 1, Tab 3, Page 49):

"The University of British Columbia has responsibility for and is committed to providing its students, staff and faculty with an environment dedicated to excellence, equity and mutual respect; one that is free of Discrimination and Harassment; and one in which the ability to freely work, live, examine, question, teach, learn, comment and criticize is protected. ... The University's commitment to maintaining and respecting human rights at every level of the institution is central to this Policy. ... The fundamental objectives of this Policy are to prevent Discrimination and Harassment on grounds protected by the B.C. Human Rights Code, and to provide procedures for handling complaints, remedying situations, and imposing discipline when such Discrimination and Harassment does occur."

6. In July 2008, the University published a version of the **UBC Statement on Respectful Environment for Students, Faculty and Staff** (Exhibit 1, Tab 24, Page 252). It is unknown if this was the first version of this document. Although the University has described a later version of this statement as relating to harassment and discrimination that is *not* covered by the *Code*, the language of the document itself simply addresses "personal" or "psychological" harassment and "bullying". This document begins by stating:

"The University of British Columbia envisions a climate in which students, faculty and staff are provided with the best possible conditions for learning, researching and working, including an environment that is dedicated to excellence, equity and mutual respect. The University of British Columbia strives to realize this vision by establishing employment and educational practices that respect the dignity of individuals and make it possible for everyone to live, work and study in a positive and supportive environment.

A later version adds at the end of the final sentence, "free from harmful behaviours such as bullying and harassment" (Exhibit 1, Tab 25, Page 255).

7. This document says that the primary responsibility for addressing concerns about bullying and harassment lies with members of the UBC community who exercise supervisory or leadership roles, particularly Administrative Heads of Units (p. 3). Administrative Heads of Units are expected to act promptly to determine if behaviour contrary to the Respectful Environment Statement, including bullying or harassment, has occurred or is ongoing, and to address the behaviour and its damaging effects (p. 3). The only mention of Policy 3 as being the tool for dealing with matters that would be a breach of the *Code* is at the very end of the document (p. 4).

8. The University has also long maintained as part of its annual Calendar the **Student Code of Conduct** (Exhibit 1, Tab, Page 290 for the 2015 version). The Student Code of Conduct provides:

1.1 The University is a community of students, faculty and staff involved in learning, teaching, research, and other activities. In accordance with the UBC Statement on Respectful Environment for Students, Faculty and Staff (web location omitted), all member of this community are expected to conduct themselves in a manner that contributes positively to an environment in which respect, civility, diversity, opportunity and inclusiveness are valued, so as to assure the success of both the individual and the community.

....

1.3 The University respects the right of students to conduct their own personal lives. This Code governs conduct only to the extent necessary to protect the integrity and proper functioning of the academic and non-academic activities of the University, the peaceful and safe enjoyment of University facilities by other members of the University and the public, the freedom of members of the University to participate reasonably in the programs of the University and in activities in or on the University's premises, or to protect the property of the University or its members.

9. The conduct prohibited by the Code of Conduct is described in the Code as follows:

4.1 Any conduct on the part of a student that has, or might reasonably be seen to have, an adverse affect on the integrity or the proper functioning of the University, or the health, safety, rights, or property of the University or its members and visitors, is subject to discipline under this Code.

10. This language is followed by examples of conduct which will be considered a breach of the Student Code of Conduct, including various forms of misconduct against persons such as assault, harassment, intimidation, threats, coercion, conduct that threatens or endangers the health, safety or property of any person, conduct that creates conditions that endanger the health, safety, property, or well-being of any person, engaging in a course of vexatious conduct, harassment or discrimination that is directed at one or more specific persons and is based on any of the protected grounds under the BC Human Rights Code, or, engaging in unwelcome or persistent conduct which the student knows, or ought to know, would cause another person to feel demeaned, intimidated or harassed (Page 292).

11. The **Student Code of Conduct** sets out processes and procedures to address non-academic misconduct, involving Campus Security, the Student Conduct Manager (here, Chad Hyson), the President's UBC Vancouver Non-Academic Misconduct Committee (here as chaired by Robbie Morrison), and, ultimately, the President (beginning at Page 295).

12. The University's policies also include **Policy 14 – Response to At-Risk Behaviour** (Exhibit 1, Tab 13, Page 149). The purpose of this policy document is set out at the beginning of the document in the following terms:

The University strives to provide a welcoming environment in which all individuals can visit, work, and study without threat to personal safety or property, or disruption. When such threats or disruption occur it is important that the University act to control such behaviour promptly and effectively. This policy outlines procedures for the University community to follow when faced with behaviour that threatens personal safety or property, or disrupts lawful or legitimate activities.

13. Over the years, the University has commissioned numerous reports reflecting and restating its obligation to prevent and respond to discrimination and harassment effectively. Notably, many of these reports recognized deficiencies in the University's processes and policies expected to meet these objectives.

14. In 2013, the University received the report, *Implementing Inclusion, A Consultation on Organizational Change to Support UBC's Commitments to Equity and Diversity* (April 2013), Iyer and Nakata (Exhibit 2, Tab 4, Page 107). The document recognized "compliance" as one of six key areas of activity for the University, and noted that the University must have structures necessary to support equity and diversity in all of its key areas of activity, and must ensure that its activities in each are accessible, coherent, transparent and accountable (Page 110). The paper noted that determining what existed on campus in each activity area was a challenge (Page 112).

15. Inequitable treatment of female graduate students including discrimination and harassment was noted. Current complaint procedures were described as "unhelpful" (Page 123). With respect to the Equity Office, the report noted (Page 124):

Perhaps the most striking feedback we received about the Equity Office was its lack of visibility on both campuses. We heard comments from faculty, staff and students that many do not know the office exists, or what it does. Of those who knew about it, most were only aware of the Vancouver office's compliance function.

With respect to complaint resolution, we heard that the processes followed by the Equity Office are seen as adversarial or in a "damage-control" mode which treats equity and diversity issues as deficits to be fixed and lawsuits to be avoided. We were told that after the issue is resolved, the Equity Office does not follow up to ensure that it does not recur. This is related to an observation that the Equity Office does not have the capacity to be informed by an individual complaint and then shift to an examination at a systemic level.

16. In March 2014, the University received the report, *Transforming UBC and Developing a Culture of Equality and Accountability: Confronting Rape Culture and Colonialist Violence*, prepared by the President's Task Force on Intersectional Gender-based Violence and Aboriginal Stereotypes (Exhibit 2, Tab 7, Page 202). The Task Force had been struck in October 2013 in response to

chants promoting rape culture and Aboriginal stereotypes during student-led freshman activities that fall. The Task Force's first recommendation was to audit and update all current UBC policies, in co-operation with subject matter experts, to identify and address systemic intersectional violence and safety issues. The Task Force identified as a priority the immediate review of the *UBC Student Code of Conduct*, Policy 3, and Policy 14, as well as two other policies (Page 211).

17. In its response to the Task Force report, ***Renewing Our Commitment to Equity and Diversity*** (May 2014) (Exhibit 2, Tab 8, Page 240), the University made a number of broad promises to foster equity and inclusion, beginning with reviewing Policy 3 and the Student Code of Conduct (Page 245).

18. In *Hale*, a case relating to a period after this case, but which has been heard, argued and decided already, the Tribunal specifically considered the University's obligations under the *Code* to provide a working and studying environment free of harassment and discrimination, and to restore an environment for working and studying free of harassment and discrimination, in the context of a complaint from a woman alleging sexual assault. In these circumstances, the Tribunal observed:

[15] In practical terms, this means that UBC is obliged to take reasonable steps to prevent, address, and remedy instances of sexual violence within its learning community: *Laskowska v. Marineland of Canada Inc.*, [2005 HRTO 30](#) at para. 59. When a student reports sexual violence connected to UBC's educational environment, UBC has a duty to respond. Fulfilling this duty has several implications for the human rights analysis.

[16] To begin, an effective response to an allegation of sexual violence can mitigate or eliminate adverse impacts on a survivor and restore a discrimination-free environment. A response that effectively addresses any discrimination fulfills the purposes of the *Code* and may obviate the need for a human rights proceeding: s. 27(1)(d)(ii), *Williamson v. Mount Seymour Housing Co-operative*, [2005 BCHRT 334](#) at para. 13. For complaints that do proceed, a reasonable response can mitigate the impact on the complainant, reducing the overall harm and damage of discrimination: *Robichaud v. Canada (Treasury Board)*, [1987 CanLII 73 \(SCC\)](#), [1987] 2 SCR 84 at para. 19. Finally, a response which takes all reasonable and practical steps to address allegations of discrimination may support a defence of *bona fide* reasonable justification: *Grismer*.

[17] On the other hand, a failure to reasonably respond can exacerbate the harms of discrimination or even cause further harms. This is especially true in cases of sexual misconduct, where a university's response can be critical to how the event impacts the survivor: *Hawkenes v. Vancouver Public Library*, [2017 BCHRT 250](#) at para. 114. Dr. Maertz, a psychologist called by the complainant and whose evidence I discuss further below, refers to the effects of a poor response as "secondary victimization". He explains that a flawed response "can do damage to a victim that equals or surpasses the original incident that precipitated the complaint." UBC calls this "institutional betrayal." In a February 2016 document called "UBC

Vancouver Sexual Assault Response and Support Protocol” [2016 Protocol], UBC acknowledges:

... institutional betrayal is a term used to refer to the actions, or inactions, of an organization that can exacerbate the impact of traumatic experiences. In the case of sexual violence, this framing points to the imperative of institutions to have in place practices and procedures that support survivors of sexual trauma, and to have protocols that ensure people in the organization have sufficient awareness of and training in, responsive and supportive processes.

[18] In addition to the significant impacts of institutional betrayal, an unreasonable or ineffective response may generate further adverse impacts on a survivor as a result of an environment that continues to be poisoned by discrimination. And, as the UBC Sexual Assault Panel recognized, those impacts can expand beyond the survivor:

... In its aim to promote equality and social justice, as well as to educate its students and allow its faculty and staff to do their jobs safely, UBC has a responsibility and opportunity to help improve the climate of safety, security, and respect for all its community members, especially those who are from groups most commonly subjected to sexual assault. **While individual survivors of sexual assault are most immediately impacted by the violence they have experienced, the overall climate created by an inadequate response to violent incidents also shapes the lives of young people, women, LGBTQ2S people, racialized people and members of other marginalized groups as they study and work at UBC.**

UBC Sexual Assault Panel, Sexual Assault at the University of British Columbia: Prevention, Response, and Accountability (June 2016) [Panel Report], at p. 16 (emphasis added (by Tribunal), citations omitted (by Tribunal)).

[19] Finally, there are circumstances where, in its response, a respondent may engage in further discriminatory conduct or violate the protections afforded by s. 43 of the Code: see e.g. *Jamal v. TransLink Security Management and another* (No. 2), [2020 BCHRT 146](#) at para. [118](#); *Sales Associate v. Aurora Biomed Inc. and others* (No. 3), [2021 BCHRT 5](#) at paras. [148 and 166](#).

[20] As these principles make clear, adverse impacts from an inadequate response are inherently connected to the protected characteristics engaged by the underlying discrimination.

19. Key points being made by the Tribunal in the passages cited above from *Hale* include:

- a. That the University has an obligation to prevent, address, and remedy instances of sexual violence within its learning community, in other words, the duty is take both preventative and restorative measures;
  - b. That an effective response by the University to allegations of sexual misconduct is imperative;
  - c. That the University should be focussed on providing a climate of safety, security and respect for all of its community members, especially those who are from groups most commonly subjected to sexual misconduct;
  - d. That advance preparation in the form of awareness of and training in taking effective reports and providing timely and effective responses is critical; and,
  - e. That failure to respond effectively can create a negative climate for other young people, women, LGBTQ2S people, racialized people and members of other marginalized groups as they study and work at UBC.
20. In *Hale* the Tribunal set out some criteria it will apply to determine if the University has met its obligations under the *Code* in respect of instances of sexual misconduct:

[25] A university's response to discrimination is measured against the "goal of a discrimination-free school environment": *Jubran* at para. 94. Except at a very high level, neither the *Code* nor this Tribunal impose specific procedural or substantive requirements that must be met in a response to a discrimination complaint. Each university is entitled to design its own systems for responding to discrimination, including sexual violence, taking into account their own resources, best practices, context, and expertise.

[26] Generally, the Tribunal considers three aspects of a service provider's response to allegations of discrimination. Those aspects are the conditions that allow a person to complain about discrimination, the response to that complaint, and the resolution of the complaint and restoration of a discrimination-free environment. In *Laskowska*, the Ontario Human Rights Tribunal summarized these considerations as follows (adapted for the service context):

- (1) **Awareness of issues of discrimination/harassment, policy, complaint mechanism and training:** Was there an awareness of issues of discrimination and harassment at the time of the incident? Was there a suitable anti-discrimination/harassment policy? Was there a proper complaint mechanism in place? Was there adequate training;
- (2) **Post-complaint: seriousness, promptness, taking care of the complainant, investigation and action:** Once an internal complaint was made, did the service provider treat it seriously? Did

it deal with the matter promptly and sensitively? Did it reasonably investigate and act; and

- (3) **Resolution of the complaint (including providing the complainant with a healthy environment) and communication:** Did the service provider provide a reasonable resolution in the circumstances? Did the service provider provide the complainant a healthy, discrimination-free environment? Did it communicate its findings and actions to the complainant? [at para. 59].

[27] These are not rigid criteria that must be satisfied in every case. They are simply a useful guide to assessing the effectiveness of a service provider's efforts to foster and, where necessary, restore a discrimination-free environment. There may be more than one reasonable way to respond: *Laskowska* at para. 60. Context is critical, and perfection is not the standard.

21. The University has established and/or identified entities that bear particular responsibility for carrying out its obligations under the Code. These include: Campus Security, the Equity and Inclusion Office, Administrative Heads of Units, the Non-Academic misconduct process, including the Student Conduct Manager and the President's Non-Academic Misconduct Committee, and the President. Also involved in providing aspects of an effective response is the University's Counseling office, and the Sexual Assault Support Centre, which is not a University entity but in fact is run by the Alma Mater Society (AMS), the undergraduate student society.

22. As can be seen from the passages reproduced above from both the University's own policies and reports and the case law, central to considering whether the University met its obligations under the Code in this case is the requirement that the University must remain focused on providing a climate of safety, security and respect for all of its community members, especially those who are from groups most commonly subjected to sexual assault. Throughout the evidence, witnesses made consistent references to their strong need to feel heard and safe, and for effective action to be taken to ensure that their working, living and studying environments were in fact safe and secure.

23. In *Hale* the Tribunal particularly considered whether the University's Non-Academic Misconduct process was a sufficient response to concerns of sexual violence. The Tribunal found unequivocally that it was not:

[234] I agree with UBCO that the *Code* does not require a complaint process designed specifically and exclusively to address sexual assault. However, as I have explained, a reasonable complaint process must address and meet the needs of the complainant and serve the goal of restoring their discrimination-free learning environment.

[235] During the period of this complaint, UBCO says that the NAM process was the only mechanism it had for responding to Ms. Hale's allegation and imposing discipline on EP. At the same time, it says that the NAM process was not for her, and she was not a party to it. UBCO emphasises this throughout its submissions, explaining that: "the NAM Process was not a forum for protecting the rights of victims of sexual assault." Rather, the purpose of the NAM process is to investigate "an allegation of non-academic misconduct in an effort to determine if the respondent student breached ... expectations as to the general standards of conduct expected of its students as set out in the Code of Conduct". The purpose, UBCO says, is to fulfil its obligations of procedural fairness to a student facing discipline, and to safeguard the safety and wellbeing of the wider UBCO community.

[236] This is clearly reflected in the fact that the parties to the NAM process are the responding student – here, EP – and the University. Ms. Hale's only role in that process, according to UBCO, is to "provide the NAM Committee with information that would assist it in making a recommendation to the President as to whether non-academic misconduct had been established on the balance of probabilities." Ms. Beck characterised Ms. Hale's interest in the process as purely "personal" or "emotional." While Ms. Hale could benefit from the outcome of the NAM process, the process does not consider or address her needs: properly so, in UBCO's submission.

[237] I cannot agree. As I have said, and as UBC has recognized, an appropriate response to sexual violence makes reasonable efforts to restore a survivor with power and control. The NAM process does the opposite. The survivor has no power in the process because she is not a party to it. And she has no control over the process, evidenced by what happened when Ms. Hale stopped participating: it continued without her.

[238] It is conceivable that the NAM process could have been **part** of an appropriate response to Ms. Hale's allegations. However, it was not capable of constituting a full response because it was not designed to, and did not, address Ms. Hale's needs, even when she expressly articulated them – for example, the need to have full information about the process and disclosure of evidence before the hearing.

[239] A reasonable response to Ms. Hale's allegation should have included some consideration of her needs, and measures to safeguard her access to a discrimination-free learning environment.

24. We submit that whereas the *Code* requires the University to fulfil its obligation of providing a climate of safety, security and respect for all of its community members, especially those who are from groups most commonly subjected to sexual assault, and of restoring that climate if issues arise, the University limited its response to engaging in a disciplinary process for the person alleged to have committed sexual misconduct, the respondent. The problem with

this approach is that a disciplinary response addresses the breach of the relationship between the respondent and the University, but does not address in a direct and comprehensive way the needs of those affected by the respondent's behaviour, and does not keep front and centre the actual requirement of the *Code* which is to provide and restore an environment free of harassment and discrimination, including an environment that provides a climate of safety, security and respect for all community members, especially those who are from groups most commonly subjected to sexual assault. As found in *Hale*, the University's approach was not designed to and did not meet the needs of those complaining that the University was not providing an environment free of harassment and discrimination.

25. As we review the evidence in respect of each class, we will set out the ways in which the University failed to take appropriate preventative action, and the ways in which it failed to respond to the need to restore an environment free of harassment and discrimination, including an environment that provides safety, security and respect for all community members, especially those who are from groups most commonly subjected to sexual assault.

## **II. Expert Evidence of Dr. Laura S. Brown, PHD, ABPP**

26. Following the discussion of Institutional Betrayal in the *Hale* decision, the Complainants here called expert evidence from Dr. Laura Brown, an expert in the research on Institutional Betrayal, and the implications of that research in circumstances of sexual misconduct allegations in institutions (Exhibit 16, Report). Dr. Brown was extremely well qualified by her mixture of clinical and forensic training, clinical and forensic practice, teaching and writing to provide this evidence (Exhibit 16, CV).

27. Dr. Brown defined Institutional Betrayal using the same language as the University, as cited by the Tribunal in *Hale*, namely: institutional action and inaction that exacerbate the impact of traumatic experiences (Exhibit 16, Page 1). She explained further that the experiences of Institutional Betrayal can lead to a person suffering Institutional Betrayal Trauma, just as experiences of betrayal can lead to betrayal trauma (Page 2). She noted that these forms of trauma can be layered if a person in whom trust was reposed become involved in an institution's actions of betrayal (Page 5). She said that such situations can lead to the most significant harms, including because individuals often work hard psychologically to deny that a person whom they have trusted has betrayed them (Page 6). Dr. Brown stated that Institutional Betrayal Trauma multiplies the original trauma of an event to an individual.

28. Dr. Brown in her oral evidence also provided some important information about the psychological mechanisms underlying the significant impact of Institutional Betrayal. She described betrayal as a violation of reasonable expectations from a relationship, and identified betrayal as a form of trauma. She also said that humans are wired to trust and depend on others, and that violations of the understandings human have in their relations with others are traumatic, mess with people's wiring, and do them harm. She described betrayal as affecting

neurobiology, and causing responses like intrusive thoughts, avoidance of the institution and academic environments, leaving the institution or doing poorly, increases in fear and anxiety, numbness and dissociation. She also talked about compulsive behaviour.

29. Dr. Brown's evidence about the impact of Institutional Betrayal provides a framework or construct to assist the Tribunal to appreciate the particular nature of the harm which arises when the University does not respond appropriately to complaints about sexual misconduct, including complaints that may not relate to conduct directed specifically at the complainant. Dr. Brown's evidence confirms that research has confirmed that this harm exists, and can be very significant.

30. A number of witnesses described very significant psychological concerns which arose for them in the course of dealing with the University over issues of sexual misconduct. The description provided by Dr. Brown of the effects of Institutional Betrayal is consistent with descriptions provided by some of the witnesses with how they were feeling over time in dealing with these issues (see for example Ms. Russell, Ms. Cunningham, Ms. Thornton, Lauren Fisher, MT, Student B and Student E). While Dr. Brown has not examined these individuals and provided an opinion that they are suffering from Institutional Betrayal Trauma, it is reasonable to derive from her evidence that the effects of the University's lack of action were a factor in the psychological issues that arose for these individuals.

31. Dr. Brown's evidence of how both personal and institutional betrayals can be layered is, we submit, important in understanding the experiences of Ms. Russell and Ms. Thornton whose relationships with their supervisors broke down in the course of their efforts to deal with the University over its response to sexual misconduct. Dr. Brown's evidence in particular sheds light on the inability of Ms. Thornton to continue productively with Dr. Paris when she was unsupportive of the efforts to have the History Department provide a more robust response to issues of sexual harassment and discrimination, including lack of safety.

32. Dr. Brown testified about the particularly negative impact when a complainant comes to understand that the institution is aware of a potential or actual danger to the complainant or her group and chose not to take effective actions to protect her. Both Lauren Fisher and MT spoke sharply about how terrible they felt when the interests of the men who were harming them were preferred over their interests. Dr. Brown's evidence provides insight into why those feelings were particularly strong and harmful.

33. Dr. Brown described some of the actions that are common in institutions that are engaged in protecting themselves rather than focussing on the needs of persons subject to misconduct and other persons at risk. In our submission, a number of the actions and inactions identified by Dr. Brown as common in institutions protecting themselves are evident in the circumstances described in the evidence here regarding UBC, including:

- a. Silencing and isolating victims. We saw a number of instances where complainants were instructed not to talk about their complaints to others, and where University administrators suggested that speaking about concerns about sexual misconduct would itself lead to fear or a toxic environment. Dr. Brown identifies that whatever the motivation for these messages, they are harmful to complainants because they isolate them and prevent them from building coalitions of support.
- b. Denying victims access to information. It is a consistent theme in the evidence that persons coming forward with complaints were not provided comprehensive information about their options, within and beyond the University, as well as basic information about the processes that were part of the various options, and what those processes might achieve. While we acknowledge that this can be a lot of information for a person coming forward with an experience which is already difficult and emotional for them, no effort was made by University officials to circle back with this information a bit later, or to provide online or printed resources containing this information for further reference. Often this lack of information was presented as an effort to provide a taylor-made process for each complainant, but proceeding in this way left complainants in the dark.

The consequences of this consistent deficiency in information were numerous, including confusion on the part of complainants about what was happening or could happen with their complaints, resulting anxiety, and in some instances, tremendous efforts to get a more comprehensive picture of what was or could be happening. The absence of this information made it very difficult for complainants to follow up or track the progress of their complaints.

The evidence here suggests that frequently persons providing information themselves did not have a comprehensive picture of the options and processes available, a circumstance that plainly arose from the lack of comprehensive training, and the absence of a focus on a comprehensive approach. In our submission, this itself arose from the University's failure to prioritize excellence and comprehensiveness in its responses to sexual misconduct. Mr. Bohnen, for example, did not have much information about the NAM process or the extent of Ms. Kay's powers. Ms. Kay was very vague about the NAM process, formal processes under Policy 3 beyond her informal role, and processes under the Statement on Respectful Environment. She was entirely in the dark about actions under Policy 14, At Risk Behaviour and processes by which prohibitions and restrictions might occur. Mr. Hyson was not knowledgeable about processes beyond the NAM process and some housing practices.

Further, the processes that did exist often sidelined the interests of complainants and it was a frequent event that complainants were not reliably advised of the outcome of their complaints, even if there was an outcome. This is another instance of complainants being denied information.

34. Dr. Brown's evidence shows that practices at UBC are consistent with practices in other institutions, underscoring the systemic nature of these approaches, and the difficulties and harm they cause for complainants.

35. Dr. Brown also identified some common behaviours of individuals in institutional settings who are in positions to act but who are not doing so, a practice she termed Institutional Cowardice:

- a. Never saying sorry. Apart from the general apology issued by Martha Piper after the Fifth Estate documentary was released, a situation of overwhelming pressure from external eyes on the University, the evidence does not contain many if any examples of apologies to complainants for the experiences they have had at the University, both with the original misconduct and with the University's response. This is a fundamental lack of accountability on the part of the University.
- b. Ghosting. While there are many examples of attentiveness to complainants when they first came forward, there are many further examples of a lack of follow up and information to complainants about the disposition of their complaints. This reflects, in our submission, a basic failure to be attentive to the interests of complainants in the results of their complaints.
- c. Just following orders. There are certainly examples of this in the evidence, notably the failure of persons in the NAM process to question at all the practices of not treating complainants as persons with a full interest in the proceedings giving them a right to disclosure, presence at the hearing, a right to make a full response and access to the final result. Mr. Hyson and Mr. Morrison's evidence that this just was not their process is a highly unsatisfactory response from the two individuals responsible for carrying out the process, and certainly in a position to press for changes. Equally, we saw various instances of passiveness on the part of Ms. Kay when recommendations she made or actions she could see were necessary were not happening. Her evidence that there was no way she could advocate for a better response was insufficient given her level of knowledge, including about the requirements of the Human Rights Code for the University. We also consistently saw her declining to press issues from a human rights point of view, apparently on the basis that this would be unwelcome or should have been obvious to others (see Fisher, for example).
- d. Helpless bystander. There are examples of this as well, in the very cautious actions of Prof. Loo, and particularly in Dr. Vessey's decision not to act more assertively in respect of both RW and Mr. Mordvinov. He certainly had the capacity to act, was aware he had the capacity to act, was plainly choosing not to act, and was providing outright misinformation or confusing non answers about his decision making.

36. Again, it is of assistance in understanding that these are systemic issues that Dr. Brown identified them as common strategies or approaches in instances of institutional responses to sexual misconduct complaints.

37. Finally, Dr. Brown provided evidence about Freyd and Smidt's work on Institutional Courage. They defined "Institutional Courage" as an institution's commitment to seek truth and engage in moral action, despite unpleasantness, risk and short term cost. It is further defined as a pledge to protect and care for those who depend on the institution for the common good of individuals, the institution and the world. This work provides an orientation that we say is consistent with the requirements of the Human Rights Code.

38. In our submission, Dr. Brown's evidence assists the Tribunal in noting patterns in the University's responses to sexual misconduct complaints, and identifying those patterns as systemic problems which interfere with the University's ability to respond appropriately, promptly and sympathetically to complaints of sexual misconduct so that the University can meet its obligations under the Human Rights Code to do so. Her evidence also assists to provide some background to the experiences witnesses testified about having while trying to address the University's response to sexual misconduct concerns. Finally, her evidence helps to underscore the gravity of the harm and to support the Tribunal in providing full measures of relief in any awards that it makes.

### **III. Expert Evidence of Dalya Israel**

39. The Complainants called evidence from Dalya Israel, the Manager of Victim Services and Outreach at WAVAW (now the Salal Sexual Violence Support Centre). Based on her extensive experience assisting survivors with victim services at WAVAW and her writing and presenting on what survivors need from the processes they encounter, Ms. Israel was found qualified by the Tribunal to provide evidence on what survivors of sexual misconduct need from the processes that are created to address sexual misconduct. Ms. Israel testified that part of what their organization supports people to navigate are processes designed to address sexual misconduct, and that she had a great deal of experience with the processes of different institutions. She also testified about specific work she had done supporting a post secondary institution to develop a strategic plan to increase their capacity to respond in a survivor centric way, and to shift the culture on campus to provide safe access to services following sexual misconduct.

40. Ms. Israel testified about the importance of the ways in which survivors are responded to when they first disclose, and the impact that responses can have on whether survivors seek support and whether they feel blamed or accountable in some way for the sexual misconduct they experienced. She particularly commented on approaches that lead to shame, that minimize the experiences survivors have had, or that tend to suggest that they are responsible for what happened.

41. In our submission, there were examples in the evidence here of University administrators receiving complaint information who minimized the account they

received. This was particularly seen, for example in relation to Mr. Lundeen's response to Student E.

42. Ms. Israel testified about the extent to which the experience of sexual misconduct is a loss of bodily autonomy and how formal processes to respond to sexual misconduct can replicate and continue a survivor's loss of autonomy and loss of control over their story. She described this as a "third party" experience which feels like an erasure. She particularly talked about the tendency to see sexual misconduct as a crime against the state rather than against the person, and the survivor then as merely a witness. She also talked about survivors not being centred in formal response processes, which tend to be focussed on the person who caused the harm.

43. In our submission, the University's disciplinary process, which was the formal process the University used to respond to sexual misconduct, was a process entirely focussed on the person who caused the harm, and which did not consider the survivor of sexual misconduct to have interests that also needed to be attended to. She described survivors feeling like audience members watching the process unfold without them.

44. Ms. Israel said that even though survivors are experts in their own experience, and what their needs, goals and outcomes sought are, not many processes centre survivors. She particularly focussed on the importance of asking survivors what their needs and goals were and having their responses drive the process.

45. Ms. Israel testified that survivors must be a party at the table and that their interests must be at the table. She said that survivors need to be seen as someone who is really part of the process. She said that that is what accountability looks like.

46. In our submission, this is a key observation about any process designed to effectively address complaints of sexual misconduct, and a condition that was absent in the NAM process.

47. Ms. Israel testified about the importance of giving survivors information about the process, and of slowing down and having them make decisions about how things will go. She described a menu of options and giving survivors wide choices as important. She said this was important because the lived experience of survivors is likely different than that of those assisting them.

48. In our submission, there were very frequently significant deficiencies in the information provided to complainants by University administrators, caused by the biases or job descriptions of the persons involved in providing the information.

49. Ms. Israel testified about the importance of providing information about when personal information will be shared so that survivors are part of the process and have control over it. She also described the importance of consent over who

will be present. In particular, she talked about the harm that can be caused by putting a person in front of a survivor who has caused harm.

50. In our submission, there were circumstances in relation to both Mordvinov and General Class members where survivors had to continue dealing with the person who caused them harm (MT) and where mediation was inappropriately proposed (Mordvinov complainants).

51. Ms. Israel testified that sharing the outcomes of processes was important because it sets everyone up for success. She said that results are key to accountability, and that if results are kept secret, then it is difficult to achieve accountability. Ms. Israel further testified that accountability is critical to changing conditions that fostered or permitted the sexual misconduct in the first place, which she described as essential to preventing future harm.

52. In our submission this is a key observation here given that the NAM process did not provide information about either the respondent's response or outcomes of NAM processes to complainants.

53. Ms. Israel also testified about the importance for survivors of being able to speak to their experiences, particularly as sexual misconduct is about violence and control and is not about sex gone wrong. She identified not being able to speak for any reason as form of continuing power over a survivor, and noted that because of the loss of control in relation to sexual misconduct, healing cannot happen if survivors cannot speak about their experiences and continue to feel a loss of power and autonomy.

54. Ms. Israel also talked about the importance of trauma informed practice and of being aware of the ways in which trauma changes people, which can include inducing depression, anxiety, issues processing information, hyper vigilance, and difficulty sleeping. She also noted however, that focussing on a trauma informed approach looks at the interpersonal dynamics outside of larger political frameworks which must also be considered. She noted the prevalence of sexual misconduct, and the need to be fully aware of that and to incorporate that reality into an institution's responses.

55. Ms. Israel was asked about third party reporting, and whether institutions should permit or respond to reports of sexual misconduct from witnesses and third parties. Ms. Israel testified that institutions should do so as long as there is a plan to attend to the harm that does not force or require the person experiencing the harm to participate, and does not require emotional labour from the non participant survivor.

56. In our submission, this observation is relevant to the University which consistently downplayed or resisted third party and witness reporting, which impaired its ability to respond to sexual misconduct in some instances, including with respect to Mr. Mordvinov.

57. Ms. Israel also talked about the harm when people are sounding the alarm about someone causing harm and persons in positions of power are not listening. She said that survivors are watching, and that lack of response affects opportunities to seek accountability, to grieve and to feel like a full human. In our submission these observations have obvious relevance to the Mordvinov circumstances where people at various distances from Mr. Mordvinov's actions were harmed by the lack of response from the University because they were aware of Mr. Mordvinov's actions.

58. In our submission, Ms. Israel's evidence provides support for many of the criticisms we have identified of the University's practices, and for many of the systemic remedies we are seeking.

#### **IV. UBC Failure to Be Conversant With and to Consider the Code**

59. Despite the University's acknowledged obligation to comply with the *Human Rights Code*, and its recognition in its own materials of the duties it had as a result, the University consistently failed to approach issues arising in relation to sexual misconduct using a human rights lens.

60. The evidence in this case is that University employees with responsibility to carry out the University's obligations under the *Code* were not vetted for their knowledge of the *Human Rights Code* when they were being hired or promoted to their positions, were not trained by the University on the requirements of the *Code* or to consider matters from the perspective of the *Human Rights Code*, and were never evaluated by the University on their understanding of and ability to ensure the University's compliance with the *Human Rights Code*. It is telling that the only policy of the University that actually mentions the *Human Rights Code*, Policy 3, Discrimination and Harassment, was not in active use throughout the time period relevant to this complaint in relation to students, except to the extent that Ms. Kay saw her mediation and resolution activities as incorporating an understanding of the *Code*.

61. It is remarkable and unacceptable that the evidence was consistently that key operational staff of the University were not conversant with the *Code*, had no understanding of basic concepts in the *Code*, including the key idea of adverse effect discrimination, and did not think about whether the *Code* had anything to say about how to respond when allegations of sexual misconduct arose. The evidence is that key operational staff of the University did not consider the *Human Rights Code* and its requirements in determining how to approach issues that arose with respect to sexual misconduct, even though sexual misconduct specifically engages the requirement in the *Code* that persons not be discriminated against or harassed on the basis of sex, and even though failure to properly address sexual misconduct creates circumstances in which people may be exposed to discrimination and harassment in their working, living, and studying environments.

62. The only person who had a working familiarity with the *Human Rights Code* and an ability to approach sexual misconduct issues using a human rights analysis

was Monica Kay, who had gained this knowledge and associated skills from other work she had done before being hired by the University. In practice, she did not bring this knowledge to bear in an overt way because the systems and University personnel she was interacting with did not approach sexual misconduct issues from the perspective of the *Human Rights Code*. At times she would make oblique references to “University policy and law”, but which she testified she meant Policy 3 and the Human Rights Code, but she did not specify this.

63. The BC *Human Rights Code* was first introduced in 1973, more than 40 years before the principle facts in this case. In our submission it is unreasonable that by the time of the incidents in this Complaint, the University, as a major institution with an clear role in promoting social justice in the Province, had not ensured that its key operational staff were conversant with the requirements of the *Human Rights Code*, had an understanding of what the University was required to do to comply with the *Human Rights Code*, and were able to apply a human rights analysis to determine if steps that were being taken were compliant with the requirements of the *Human Rights Code*. In our submission, this is basic legal literacy which key operational personnel of the University must have and did not. We expect motorists in this province to have a working knowledge of the rules of the road. It is reasonable to expect those who are directing key institutions to have a working knowledge of a key piece of legislation, with quasi constitutional weight, which governs how those institutions must operate.

64. While it may be theoretically possible for the University to meet the requirements of the *Code* without its key operational personnel knowing what those requirements are or deliberately applying a human rights analysis as they address issues relating to sexual misconduct, it is obviously very difficult to do so. By failing to ensure that its key operational staff were able to overtly approach issues relating to sexual misconduct from a human rights perspective, the University fundamentally undermined and limited its ability to meet the requirements of the *Code* in the circumstances arising in this case.

65. In our submission, should the Complainants establish discrimination, a key remedial priority for the Tribunal will be for the Tribunal to direct the University to take steps in relation to training and procedural practice to ensure that its key operational personnel and all legal personnel can say with confidence that they understand the *Human Rights Code*, understand what it requires of the University, understand when issues plainly engage the *Code*, and be able to use the *Code* to consider and pursue appropriate responses. We will ask the Tribunal to direct the University to work with the Commission to develop a basic literacy among its key operational personnel and all of its legal personnel with the *Code* and its application to the University in relation to sexual misconduct allegations.

## **V. Note on Language re Information Provided to University**

66. The language used to discuss information provided to the University about instances of sexual misconduct has been diverse, including the terms “reporting”, “disclosing”, “informing”, “complaining” and “coming forward”. The University has, to date, attempted to suggest that its obligations varied depending on the

form information took as it was provided to the University. In particular, it has attempted to suggest that a critical distinction existed between “disclosing” and “reporting”, and that its obligation to respond in certain ways was not engaged until allegations were formalized, perhaps as a “report”. We submit, however, that the University’s practices around information it was receiving about sexual misconduct were not consistent or clear at the time, and that weight then cannot be placed on what a particular piece of information was called at the time. We say this is particularly so because the people bringing forward information about sexual misconduct did not have access to complete or consistent advice about the impact of providing information in different forms, and there was a great deal of confusion about this in terms of what they understood, what they were being told, and what they took away. Further, we say that what was required to formalize a complaint, and what would then happen was not operationally clear at the time. In particular, what amounted to a formal “report” or why a formal report was required was often totally unclear, both to the complaining students and to key operational staff.

67. To avoid what we see as an unhelpful debate about what was a formal “report” and what was a “disclosure”, we will try to use the language of information being provided to the University and/or complaints being made. It is our view that once information was provided to the University in any form, the University obligation to take effective action was engaged, even if the necessary content of that action might vary depending on the circumstances, including the nature of the information provided and the wishes of the person providing it.

## **VI. Discrimination Against an Individual**

68. For each Complainant in this complaint, the Complainants must establish that they suffered adverse impact from events which occurred, that they had personal characteristics covered by the Code, and that there was a nexus between their personal characteristics and the adverse impact which they suffered (*Moore v. British Columbia (British Columbia)*, 2012 SCC 61, para. 33). Once the Complainants establish this *prima facie* case of discrimination, the University must establish that it had a bona fide and reasonable justification for its actions (*British Columbia (Public Services Employee Relations Commission) v. BCGSEU* 1999 CanLII 652 (SCC)).

69. The members of the Mordvinov Class establish their complaints of *prima facie* discrimination as individual complainants by establishing that the concerns and complaints they made about Mr. Mordvinov because of the risk he posed to them as women, were not responded to effectively or in a timely way by the University, and that this caused them negative impacts as individuals.

70. In our submission, there is a clear nexus between the negative impacts for the women who raised concerns about Mr. Mordvinov, and their personal characteristics as women because the fact they were women was critical to their concern about Mr. Mordvinov’s conduct and the risk it posed to them, and to their conviction that it was essential for the University to act decisively to address the threat posed by Mr. Mordvinov.

71. Similarly, the members of the General Class establish their complaints of *prima facie* discrimination as individual complainants by establishing that the concerns and complaints they made about individuals whose conduct was alleged to be sexual misconduct towards them as women, and whose conduct created risk and fear for them and interfered with their enjoyment of a working, studying and living environment free of discrimination and harassment, were not responded to effectively or in a timely way by the University, and that this caused them negative impacts as individuals.

72. Once again, we say there is a clear nexus between the negative impacts for women who brought forward sexual misconduct complaints and their characteristics as women because the fact that they were women was central to why the misconduct negatively affected them, and was also central to why they needed the University to act and to restore a working, studying and living environment free of harassment and discrimination in relation to sex.

73. The evidence led in the hearing in relation to both the Mordvinov Class and the General Class was directed to setting out the ways in which the University failed to act effectively, decisively and in a timely way on the concerns raised, and on the impact this had on the students raising those concerns.

## **VII. Layout of submissions**

74. In Part 2 we address the evidence regarding the University's failure to act effectively, decisively and in a timely way on the concerns raised in relation to the conduct of Mr. Mordvinov.

75. In Part 3 we address the evidence of the harm to Mordvinov Class members as a result, and the remedies we are seeking for those class members.

76. In Part 4 we address the evidence regarding the University's failure to act effectively, decisively and in a timely way on the concerns raised in relation to the sexual misconduct complaints of the General Class Members, the evidence of harm to the General Class members, and the remedies we are seeking for those class members.

77. In Part 5 we address the expert evidence of Dalya Israel and the systemic remedies we are seeking.