

**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
PART 2
January 30, 2026**

PART 2: CLAIMS OF MORDVINOV CLASS

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I. Members of Mordvinov Class

1. The Complaint was brought by Glynnis Kirchmeier in her own right, and as the representative complainant for two groups or classes, the Mordvinov Class and the General Class. The Mordvinov Class was defined by the Tribunal in *Kirchmeier and others v. University of British Columbia (No. 2)*, 2017 BCHRT 186 (para. 41), as:

Any female student who at least once reported, disclosed or communicated to a faculty member or administrative staff member of UBC by any means, including telephone, fax, email or in person in a formal, informal, scheduled or unscheduled interaction, a concern about the sexual misconduct of Dmitry Mordvinov towards women.

2. The Complainants submit that the following individuals are complainants in respect of the facts relating to Mordvinov, Green College and the History Department, either directly (Glynnis Kirchmeier) or as members of the Mordvinov Class:

Glynnis Kirchmeier
Student B
Student C
Student D (Complainants understand from HRT that D opted out in 2019)
Student E
Caitlin Cunningham
Kaitlin Russell
Sarah Thornton
Caroline Grego
Meghan Longstaffe
KM

All remaining Complainants but Student C, and Meghan Longstaffe testified before this Tribunal.

II. Introduction

3. The account of events relating to Mr. Mordvinov is first, an account of students repeatedly coming forward to the University over time to express their concerns about the conduct of Mr. Mordvinov, and their belief that his conduct was inappropriate, harmful and dangerous. In doing so, the students were asking the University to take action. The student's efforts often involved multiple students and, when the University did not respond effectively or at all, became more concerted and evolved into different forms. Ultimately, this is an account of students eventually being successful in having the University act effectively in respect of the concerns arising from Mr. Mordvinov's behaviour, but not until long after their first concerns were raised, and not until many had expended extraordinary efforts to get the University to act. The University received descriptions of Mr. Mordvinov's conduct toward Student A, Student B, Student C, Student D, Student E, Caitlin Cunningham, Glynnis Kirchmeier, and Caroline Grego. It received concerns directly from Glynnis Kirchmeier, Student E, KM, Richard Sandlin, Student B, Caitlin Cunningham, Kaitlin Russell, Meghan Longstaffe, Student D, Sarah Thornton, Stephen Hay, and Caroline Grego.

4. The account of events relating to Mr. Mordvinov is also an account of the University failing to respond appropriately or effectively for a very long time. To some extent this is an account of weak and overly confusing policies as well as lack of knowledge about the operation of those policies by key personnel. But much more it is an account of a pervasive and persistent reluctance of key University personnel to act effectively or at all. This reluctance to act often seemed to stem from a failure to focus on safety and a failure to recognize the seriousness of the conduct being described and the impact it was having on the persons to whom it was directed, and others who might be subject of it in future or became aware of it. It also seemed strongly related to the tendency of persons with obligations to act to avoid action in case that action turned out to be wrong or to cause them harm or liability in some way.

5. Avoiding this failure to act in future will in part be a matter of adopting better policies and responses which focus on the needs of those experiencing the misconduct to be safe, and to have their work, study and living environments returned to non-discriminatory states. It will also be a matter of better training emphasizing the serious harm of sexual misconduct, not only to the persons against whom such misconduct is directed, but also to the community at large, particularly the community of women. Also importantly, it will be a matter of much better education about the *obligation* to act effectively, including under the *Human Rights Code* and University policy, and the ability and permission to act effectively to meet the requirements of the *Code*. This is particularly essential to overcome the reluctance to act at all or effectively that was so evident in relation to the events relating to Mr. Mordvinov here.

III. Early descriptions of behaviour to Green College

6. Mr. Mordvinov was a resident of Green College from about September 2011 to late May 2014. He remained a member of the Green College Society until at least his expulsion from UBC in November 2015. He was a PhD student in the History Department. He commenced his degree in September 2011 and remained

a student until his expulsion. At various times, adverse descriptions of his conduct amounting to allegations of sexual misconduct were provided to responsible leaders of Green College and the History Department.

7. Green College is a small residence on the UBC campus for graduate, post-doctoral and professional students, and a limited number of resident scholars. It houses about 100 people. Green College is operated by a non-profit society which contracts with the University to operate the residence. Residents of Green College are members of the Green College Society. The residence is not under the direct control of the office that controls the other UBC residences, at the time in question known as the Student Housing and Hospitality Services office (SHHS). Clark Lundeen testified that Green College reported to the Dean of Graduate and Post Doctoral Studies, who in 2014 and 2015 time was Hugh Brock. He testified that Green College was mostly but not fully autonomous. Dr. Vessey testified that there had been some recent negotiation between the University and Green College about its degree of integration into the University's administrative streams. This had resulted, he said, in theoretically greater integration of Green College into the University.

8. Dr. Mark Vessey became the Principal of Green College in 2008 and was Principal of Green through the years relevant to this complaint. During that period, Clark Lundeen was the Assistant Principal Operations. The Principal was described as the heart and spirit of the institution (Hay direct). The Principal has both an administrative role as the head of the institution, and an academic role. He also held an academic appointment with the University in the English Department.

9. At the time in question (2011 onwards), residents of Green College were carefully selected by a committee, of which Dr. Vessey was a member, through a competitive application process in which there were many more applicants than successful candidates. Length of residence for Green College residents varied and could be up to 4 years for PhD students. About 50% of the College's residents were new at the start of each academic year (September).

10. Residents of Green College enter into a contract with the University (Exhibit 1, Tab 39, Page 385, Exhibits 42, 43). This contract establishes that the Principal is the head of Green College administratively and places responsibility for decision-making in respect of Green College residents, including in relation to disciplinary issues, with the Principal. Eventually the evidence was clear that Dr. Vessey as Principal had the right to determine who could and could not be on the premises of Green College, including its surrounding environs.

11. Green College is set up as an interdisciplinary community in which residents are expected to dine together twice a day and contribute fully to other community events including lectures, committees and social gatherings, including both private and public gatherings involving alcohol. The consequence of the size of the College, these close quarters and the high level of social engagement encouraged was a significant level of ongoing contact and familiarity among residents. While this conferred many benefits, it also created a space in which

sexual misconduct could occur, and in which sexual misconduct could be difficult to manage because of the difficulty in providing an environment free of discrimination and harassment once sexual misconduct had occurred or was believed to have occurred. As well, unlike other residences at the University, Green College did not have Residence Advisors to act as peer support and a point of contact between housing authorities and the students.

12. Despite the fact that they were running a residence as part of University with clear obligations under the *Human Rights Code* to prevent and ameliorate instances of discrimination and harassment, neither Dr. Vessey nor Mr. Lundeen came to their positions with any particular understanding of the College's or the University's obligations under the *Human Rights Code*. The University took no formal steps to furnish them with this information during their tenure. Mr. Lundeen testified that he had received some information in conversations with Mark Crosbie, Rashni Narain and Monica Kay. Mr. Lundeen testified that in January 2014 he had little knowledge that sexual misconduct in a service or employment setting could be a breach of the *Human Rights Code*. He did not describe much change by December 2015. Ultimately, he testified that he was focused on the residents' contract and that anything that crossed the line of another policy would be referred to another office and would not be "something that he would hold himself".

13. Similarly, neither Dr. Vessey nor Mr. Lundeen had training in how to handle allegations of sexual misconduct when they began in their positions, and neither received that training from the University prior to the events in this case. Neither had a strong understanding of the University's policies for responding to issues of sexual misconduct, including the processes that such policies might establish. Asked about his understanding of what role if any the University had in responding to student allegations about sexual misconduct, Mr. Lundeen testified that he had not much if any idea at all about this, but that his assumption would be that there would be some channel somewhere within the University to work through the issue. Asked where he might refer matters relating to sexual misconduct he mentioned Non Academic Misconduct, the RCMP and SASC and said that they would read the directory and see what policies might fit. Mr. Lundeen said that as of January 2014, his understanding of Campus Security was that it was the first response on campus for something criminal. Mr. Lundeen testified that he had no understanding of what the Equity and Inclusion Office did in January 2014, and had little understanding of the Student Code of Conduct or the NAM process. He said that he was not aware of Policy 3 or Policy 14 at that time.

14. Asked about his understanding of what role if any Green College had in preventing sexual misconduct, Mr. Lundeen's answer was that his understanding was whatever there was in the Green College residents' contract. He also understood that Green College could engage in some educational messaging to students about potential breaches of the residents' contract. In relation to what role Green College might have in responding to student allegations about sexual misconduct, Mr. Lundeen testified that any response would be within the residents' contract or would require referral to a different office. He understood

that he was to facilitate complaints and perhaps to suggest a conflict resolution process to arrive at a mutually agreeable solution. The idea, he said, was to provide an opportunity for greater understanding and to de-escalate. Mr. Lundeen testified that he had no training in how to assist people to sit down and work things out.

15. Asked about his knowledge of trauma in January 2014, Mr. Lundeen testified that he did not have any particular knowledge at that time, and that he had no understanding about the impact of sexual misconduct on survivors.

16. In our submission, it was insufficient and unreasonable for the University to operate a residence at Green College without ensuring its administrators had a working knowledge of the *Human Rights Code* and were equipped to receive and deal appropriately with allegations of sexual misconduct.

17. The evidence from Dr. Vessey and Mr. Lundeen suggested that because residents were carefully chosen as individuals with high academic and personal standards, they had a high level of confidence in those residents and did not consider sexual misconduct by any of them to be likely. As a consequence, over the years, they had taken few steps on their own initiative to attempt to prevent sexual misconduct, including even having conversations at key points such as the start of the academic year about appropriate interpersonal boundaries. They had taken no steps to familiarize themselves with current University policies and the procedures under those policies. As well, they had taken no steps to acquire proper skills in receiving and managing allegations of sexual misconduct, or to establish robust means of encouraging reporting and requests for help in relation to concerns about sexual misconduct. Further, the Green College administrators had taken no steps in the form of surveying to determine if residents had concerns about the interpersonal interactions they were having with residents or others at the College, or if they found the College and the University appropriately responsive if they did have such concerns.

18. In 2012, perhaps because of the generally low level of engagement by the administrators of Green College with concerns about interpersonal conflict, some students came forward to create a peer support group called the Green Lanterns. Student B testified that this was a group of concerned students who thought there should be greater safety mechanisms for students to assist them if they experienced negative impacts in their lives. Mr. Lundeen testified that the Green Lanterns were intended to be a means to help students to come forward and be referred to other resources.

19. Mr. Mordinov came to UBC and became a member of the Green College community as a resident in about September 2011. At that time, it was not the practice of the administrators of Green College to make any comments to the residents of Green College about appropriate interpersonal boundaries or sexual misconduct, or about what was available in terms of support or a response if concerns about these issues arose.

20. Mr. Mordvinov was an active member of the Green College community who was valued by Dr. Vessey in particular for his intellectual contributions during community events.

21. Concerns about Mr. Mordvinov's conduct at social events began to arise shortly after his arrival. Mr. Hay testified that Mr. Mordvinov was a large, rambunctious man who enjoyed horseplay and running around, bumping into other people. Mr. Hay testified that he both observed concerning behaviour by Mr. Mordvinov and heard complaints from others.

22. **Injury to Student B** Student B testified about being at a party shortly after New Year in 2012. She said that everyone was drinking and that a group of students including Mr. Mordvinov thought it was funny to push her because she was wearing high heels on which she was unsteady. After more than one push, she hit her head on the wall, sustaining a concussion. She testified that the symptoms of her concussion were quite severe. She described having crying fits and having to sit in a dark room, having a cloudy head, feeling emotional quite often and having headaches. She described feeling so terrible one night while she was directing a play involving Mr. Hay that she ended up crying and lying on a table. Mr. Hay helped her to the hospital to be examined.

23. Mr. Hay testified about becoming aware that Student B was experiencing concussions symptoms because she had been pushed over and had knocked her head. Mr. Hay confirmed that Student B sought medical care at the hospital. Mr. Hay understood that the person who pushed her over was not Mr. Mordvinov, but that Mr. Mordvinov had been part of the group surrounding Student B and pushing her. Mr. Hay testified that he met with Mr. Lundeen to tell him that because of rowdiness at a party someone had gone to the hospital. Mr. Hay said that he told Mr. Lundeen that one person was making the parties rowdy and that he would speak to that person on a peer-to-peer basis. Mr. Hay did speak to Mr. Mordvinov about the fact that although he did not push Student B, he had a leadership role in making things rowdier, that people followed his lead, and that if he refrained from horseplay, others would follow suit (Exhibit 6, Page 105, 106, Emails with DM setting up the meeting, Page 107, Email from Hay to Lundeen describing his communication with Mordvinov).

24. Mr. Lundeen responded to Mr. Hay's concern by email (Exhibit 6, Page 107). The email clearly conveyed the administration's view that the office could take no "direct action" and that it was up to the community to "act as adults, learn the mistake, and correct it". Mr. Lundeen said that Dr. Vessey would be bringing the subject of rough play and alcohol up at a Resident's Council meeting. Mr. Lundeen's response suggested there was some issue with the residence contract in the administration taking action itself: "Direct action on the part of the office when nothing but your account has surfaced so far isn't something we can do without serious challenges to the contract". In fact, the residence contract shows Dr. Vessey had full authority to govern conduct in the residence (Exhibit 1, Page 387).

25. In his email follow up to Mr. Hay, Mr. Lundeen did not seek information about who had been involved, who had been injured, or to whom Mr. Hay had spoken. Mr. Lundeen testified that there was no process for finding out who had been injured or if they were okay, and instead that their approach was to wait for the injured person to come forward. He said that their principal concern was to respect the complainant and that in this instance, Mr. Hay was not providing names of who was involved. Mr. Lundeen also said that this may have been the first report he had ever received about someone being injured. The administration's laissez-faire approach in January 2012 meant that they lost the opportunity to speak informally with the people involved, and importantly, to make sure that Student B was recovering and getting the help she needed.

26. KM gave evidence about raising her own concerns about the conduct of a male resident towards a female guest of hers in 2011. The male resident had been threatening towards her guest, and had yelled at her. KM related the male resident saying that if the guest had been a man, he would have put her in the hospital. KM testified that that she did not get the impression in any way that the administration was going to speak to the male resident. Instead, Mr. Lundeen told her that it was her fault that the guest had upset the resident. She described the event as disturbing in hindsight because an older, larger man had threatened her younger, smaller friend. The incident is also notable because Mr. Lundeen *had* called her in over complaints others had made about her friend (Exhibit 17). It is unclear why Mr. Lundeen could speak to KM and not the male resident in that instance, or Mr. Mordvinov or the others involved in the injury to Student B.

27. Horseplay directed at a female student because she is wearing heels arguably engages the *Code* protections against discrimination and harassment on the basis of sex. The administration's view, that the students would sort the issue out among themselves, was not consistent with the obligation of the University, and of Green College as an administrative unit of the University, to maintain an environment free of harassment and discrimination on the basis of sex. The College, on behalf of the University, missed this first opportunity to address issues arising from Mr. Mordvinov's behaviour, even though his conduct and that of others had led to injury of a female student.

28. Student B testified about discussing the event with Dr. Vessey in the spring of 2012. She told him then that Mr. Mordvinov had been involved in the incident. She testified that she spoke to Dr. Vessey about her concerns about oversight and safety at the College, and her view that someone should be paying more attention at functions. She said that Dr. Vessey made light of and joked about the incident, and that it was her view he was not going to take any action on it. She testified that his response disappointed her and made her feel sort of foolish, and as though she was being ridiculous in raising it. This response also left the issue to the students to address. The College on behalf of the University missed this second opportunity to address issues arising from Mr. Mordvinov's behaviour, even though his conduct and that of others had led to injury of a female student.

29. Student B testified that she saw the Green Lanterns as a way to fix the problem of how hard it was to go to the administration. She thought maybe peer support would be easier for students to connect with.

30. **Other reports about Mordvinov before 2014** Mr. Hay also described a party where he spoke to Mr. Mordvinov because Mr. Mordvinov was picking people up and shaking them upside down and Mr. Hay feared he would break someone's neck. After Mr. Hay spoke to him, Mr. Mordvinov continued picking people up but not turning them upside down. Mr. Hay described trying to convey the experience of being restrained to Mr. Mordvinov in a playful way by tying him to a tree outside, but said that this did not seem to make any impression on Mr. Mordvinov.

31. Mr. Hay also described hearing about other behaviours by Mr. Mordvinov that Mr. Hay considered disturbing, including hearing from Student B that Mr. Mordvinov told her he did not know if he wanted to marry or kill her, hearing from Student C that Mr. Mordvinov was not accepting refusals of his advances to her, and hearing from Caroline Grego that Mr. Mordvinov was complaining that Canadian women were frigid.

32. On about February 20, 2013, Mr. Hay heard from another friend who was a student resident of Green College, Jessica Saunders, that Mr. Mordvinov had raped one of her friends, Student C. Ms. Saunders did not name the person assaulted, but otherwise made it clear whom she was talking about. Mr. Hay testified that about one year later (in 2014), Student C spoke to him in confidence about the incident and at that time provided him with a detailed account. As Student C was not interested in bringing her issue forward in any formal way at that time, Mr. Hay did not report it to anyone in 2014.

33. Mr. Hay also testified about hearing about Mr. Mordvinov's conduct at the History Department's Qualicum conference, where he heard that Mr. Mordvinov showed up drunk in a T shirt without socks and shoes, acting belligerently and aggressively towards Dr. Laura Ishiguru as a young female professor in the History Department at an Imperial and Global History meeting, about him harassing Caitlin Cunningham, and about him wearing a T shirt in an academic setting with an image of one figure mounting another and the phrase, "Porn is life".

34. Mr. Hay testified that concerning accounts about Mr. Mordvinov were common, but that he did not tell anyone in authority at that time about what he was hearing. Mr. Lundeen testified that he did have a conversation with Mr. Hay about another resident who was behaving very "bodily" towards other residents, picking them up and putting them down. He testified that Mr. Hay was concerned about people getting hurt. Mr. Lundeen testified that because no one came forward to complain, Green College took an educational approach. Mr. Lundeen said that Mr. Hay did not identify whom he was talking about but the account closely matches Mr. Hay's account of some of Mr. Mordvinov's behaviour.

35. Mr. Lundeen testified that he did not hear any concerns about Mr. Mordvinov from other students besides Mr. Hay. Dr. Vessey testified that they had no reason to be concerned about Mr. Mordvinov's conduct prior to 2014.

IV. Complaint of Glynnis Kirchmeier to History Department

36. In January 2014, Glynnis Kirchmeier came forward to the History Department with concerns about Mr. Mordvinov's conduct on a number of occasions in respect of a number of individuals. At the time, Ms. Kirchmeier was a former Masters student in History, age 26, who had completed her degree and left the University, but who still maintained contacts with students and professors in the History department.

37. Ms. Kirchmeier first raised her concerns with the History Department in an email to Prof. Michel Ducharme of January 8, 2014 (Exhibit 6, Tab 19, Page 113). Prof. Ducharme was the History Department's Graduate Student Liaison at the time. The email laid out the information Ms. Kirchmeier had to that point about a concerning pattern of behaviour from Mr. Mordvinov. The email set out in detail the information which Ms. Kirchmeier had at that time. The email clearly identified that Mr. Mordvinov was touching women without their consent and treating them disrespectfully, and was titled, "A sexual harassment issue in the department".

38. Ms. Kirchmeier testified at the hearing about the information she had which prompted her email to Dr. Ducharme. Ms. Kirchmeier testified about her own experience with Mr. Mordvinov in 2011 (Kirchmeier evidence, January 26, 2023). She said that after she had broken off a relationship with another man and confided in Mr. Mordvinov about it, Mr. Mordvinov became flirtatious with her and they hooked up on two occasions. After he said that he did not want to see her, she testified that he showed no further interest in communicating with her socially or collegially.

39. Ms. Kirchmeier also testified about her observations of Mr. Mordvinov's behaviour towards fellow History Graduate Student A in 2011 when both Student A and Mr. Mordvinov were living in Green College (Kirchmeier Evidence, January 26, 2023). Ms. Kirchmeier observed Mr. Mordvinov touching Student A around her shoulders and sitting with his leg touching hers. Ms. Kirchmeier testified that she could tell from Student A's body language that Student A did not like Mr. Mordvinov touching her. Ms. Kirchmeier also testified that she had conversations with Student A in October 2011, and again after a party in November 2011 when Mr. Mordvinov had been touching Student A, in which Student A told her that Mr. Mordvinov was touching Student A all the time, and that she did not like it. Student A did not want to complain to their supervising professor, Jessica Wang, and Ms. Kirchmeier did not know how else to support her. Ms. Kirchmeier testified that at the time it was her view from her previous experiences meeting young Russian men in Colorado, where she grew up, that young Russian men could be sexually aggressive and rude, and that young Russian women knew to speak up quickly if they did not like something. On the basis of this, it was Ms.

Kirchmeier's view at that time that Student A should stand up for herself. To Ms. Kirchmeier's knowledge, Student A did not complete her degree at UBC.

40. Ms. Kirchmeier testified about Mr. Mordvinov pursuing another student, Student D, after she had gone through a break up with a long-term boyfriend. Ms. Kirchmeier testified that Student D told her in the spring of 2013 that she had to duck a kiss from Mr. Mordvinov after he had walked her to her room. Student D also reached out to Ms. Kirchmeier and another student, Liz Knowland, at about the same time about receiving text messages from Mr. Mordvinov that she found walked the line of being too flirtatious. After speaking with Ms. Kirchmeier and Ms. Knowland, Student D reinforced professional boundaries with Mr. Mordvinov. Ms. Kirchmeier testified that Student D advised that Mr. Mordvinov stopped his behaviour towards Student D after this, and also stopped interacting with her at all.

41. Ms. Kirchmeier also testified about being told in January 2014 by another former MA student in History, Eric Wright, about Mr. Mordvinov touching a female History student in a way she did not like until she slapped him. Ms. Kirchmeier understood that this account was about Kaitlin Russell and was recent, but later learned that it was about Caitlin Cunningham and had happened some time before.

42. Ms. Kirchmeier testified that she found the account of this event concerning because by this point Mr. Mordvinov had been in Canada for some time and presumably knew that his conduct was not acceptable. She testified that he needed to be corrected and restrained, and that someone needed to know about his conduct so that he did not continue acting as he was.

43. Ms. Kirchmeier testified that when she emailed Prof. Ducharme she knew nothing about the University's processes for responding to a complaint of sexual harassment.

44. Ms. Kirchmeier testified that after she sent the email of January 8, 2014 to Prof. Ducharme she emailed another History graduate student, Sam Fenn, advising him what she had done. Following the email, both Ms. Kirchmeier and Mr. Fenn assumed that the email would be taken seriously by the University and would cause the University to commence an investigation. Ms. Kirchmeier also informed Eric Wright of her email. He also presumed the University would act, chastised Ms. Kirchmeier for "dragging" the people she named into possible "further proceedings" and suggested she should have a verbal conversation instead. Ms. Kirchmeier then sent a second email to Prof. Ducharme on January 8, 2014. This email set out Ms. Kirchmeier's preference not to immediately instigate a formal action that might have serious consequences for Mr. Mordvinov, and instead to set up a meeting with Prof. Ducharme to review her concerns (Exhibit 6, Page 116). Prof. Ducharme agreed to meet with Ms. Kirchmeier (Email of January 8, 2014, Exhibit 6, Page 116).

45. In her Facebook communications with Sam Fenn at the time, Ms. Kirchmeier stated that her hope wasn't to get Mr. Mordvinov kicked out but to

have an older male figure sit down with him to tell him to “knock it off” (Exhibit 6, Tab 20, Page 132).

46. Prof. Ducharme reached out to the head of the History Department, Anne Gorsuch, who referred him to Monica Kay. Prof. Ducharme sent Ms. Kay an email dated January 16, 2014 advising her that he had been made aware of a case of sexual harassment in the Department, and that he was not sure of what to say or ask Ms. Kirchmeier or what to do with the allegations (Exhibit 6, Tab 21, Page 133). He said that he understood he was supposed to do something, but he was unsure how to proceed. In our submission, it is notable that neither the Head of the Department or the Graduate Student Liaison had been trained in how to receive or manage allegations of sexual harassment.

47. After Ms. Kay and Prof. Ducharme had spoken, Prof. Ducharme sent Ms. Kay an email on January 16, 2014, attaching both of Ms. Kirchmeier’s emails of January 8, 2014 (Exhibit 6, Tab 22, Page 134). Prof. Ducharme also sent Ms. Kirchmeier an email on January 16, 2014 advising her that he had spoken to Ms. Kay about Ms. Kirchmeier’s concerns about sexual harassment, that Ms. Kay had advised him that he was not the person Ms. Kirchmeier should be speaking with, that he had no authority to deal with such complaints, and that Ms. Kirchmeier should speak with Ms. Kay who could provide her with the safe next steps to take (Exhibit 6, Tab 23, Page 137). By further email of January 17, 2014, Prof. Ducharme said that he would organize an educational activity in the department to address the issue in a broad manner (Exhibit 6, Tab 24, Page 139). Ms. Kirchmeier testified that she and Prof. Ducharme did not meet to discuss the issue.

48. Ms. Kay confirmed in her testimony that it was her view that it would not be appropriate for Prof. Ducharme to speak with Mr. Mordvinov as he had no ability to discipline. She also said that Academic Heads of Unit and Department Heads were not necessarily conversant with human rights and University Policy. She acknowledged that she did not consult with the Department Head, Anne Gorsuch, about how to go forward with Ms. Kirchmeier’s concerns. She did not consider consulting Mr. Mordvinov’s advisor, Prof. Alexei Kojevnikov.

49. On January 26, 2014, Ms. Kirchmeier contacted Ms. Kay by email to ask for an appointment (Exhibit 6, Tab 27, Page 148). Ms. Kay did not attend their meeting scheduled for February 4, 2014, but they were eventually able to speak on February 6, 2014 (Exhibit 6, Tab, Page 153, 154). Ms. Kirchmeier testified that she had not had previous dealings with the Equity and Inclusion Office, although she had probably heard of it. Ms. Kirchmeier testified that her hope in meeting with Ms. Kay was to find out what the University was prepared to do to talk to or warn Mr. Mordvinov or to restrict him based on Ms. Kirchmeier’s concern that he was posing a sexual harassment risk.

50. When Ms. Kirchmeier met with Ms. Kay, Ms. Kay was relatively new in her position, having commenced at UBC at the end of August 2013. Ms. Kay testified that when she was hired, the Equity and Inclusion Office (“EIO”) had just undergone a very substantial reorganization which had included the loss of about 8 investigative staff. She testified that she was provided with no training and was

effectively left to find her own way through the University's policies and processes. She also testified that in her position she was not authorized to conduct any investigations, which was a significant change from the mandate of her predecessors at the EIO who had been specifically tasked with conducting investigations into complaints. Ms. Kay had years of experience conducting investigations when she came to UBC. She testified that her role was to informally manage interpersonal conflict, including issues that might trigger Policy 3, for the whole University.

51. Ms. Kirchmeier testified that Ms. Kay told her that because she was not a student and was not personally a victim, Ms. Kirchmeier could not make a formal complaint. Ms. Kirchmeier further testified that Ms. Kay told her that because the events happened so long ago, and also because Ms. Kirchmeier was no longer a student, it would not be possible for the University to even have a conversation with Mr. Mordvinov on the basis of Ms. Kirchmeier's information. Ms. Kay raised the possibility that one of the people named by Ms. Kirchmeier might come forward and make a complaint, in which case Ms. Kirchmeier's information could be used to support that complaint, or the possibility that others whom Mr. Mordvinov had harmed might come forward. Ms. Kay suggested to Ms. Kirchmeier that she find others whom Mr. Mordvinov had harmed, but other than that, directed her not to talk about the concerns she had raised. Ms. Kirchmeier testified that Ms. Kay supported this direction by suggesting that otherwise her concerns would be like "snakes in the grass". Ms. Kirchmeier testified that she provided Ms. Kay with the names of Students A and D, Stephen Hay and Liz Knowland at this time.

52. Ms. Kirchmeier testified that her meeting with Ms. Kay left her feeling "very dissuaded". She left the meeting with the distinct impression that Ms. Kay was not going to take action, and would not be amenable to receiving complaints. Ms. Kirchmeier felt like it would not be worthwhile doing anything further because it would not result in Mr. Mordvinov being spoken to, and therefore would just be a waste of both her time and Ms. Kay's time. Ms. Kirchmeier testified that after speaking with Ms. Kay she did not understand that there were further options for her concerns, because Prof. Ducharme could not speak with Mr. Mordvinov and Ms. Kay would not do so.

53. Ms. Kay's notes of the meeting are largely consistent with Ms. Kirchmeier's recollection, except that they suggest that the limitations arising from the fact that Ms. Kirchmeier was no longer a student and that her observations are dated were raised by Ms. Kirchmeier, rather than by Ms. Kay herself (Exhibit 6, Tab 28, Page 155). Ms. Kay testified that she thought there was an issue of timeliness because Policy 3 has a one year time limit. As the University was not applying Policy 3 at that time, but rather the Non-Academic Misconduct process, the relevance of this was unclear. Ms. Kay also testified that she did not know if the fact that Ms. Kirchmeier had graduated was an issue, but she followed up with Ms. Beck of Legal (the Office of the University Counsel) who advised that this would not be a barrier as long as the issues in the complaint had occurred during the time Ms. Kirchmeier was a student.

54. Ms. Kay did not follow up with Ms. Kirchmeier or with anyone in the History Department about Ms. Kirchmeier's concerns. Although Mr. Mordvinov was a resident of Green College and some of the concerns raised by Ms. Kirchmeier related to other female residents at Green College, Ms. Kay did not contact Green College to either advise them of the concerns that had been brought forward by Ms. Kirchmeier, or to find out if any concerns had come to them about Mr. Mordvinov's conduct towards women. Given that a worrying pattern of behaviour was being described, Ms. Kay did not determine if there was any information about Mr. Mordvinov at Campus Security. She did not seek input from Mr. Hyson. (In fact, on February 14, 2014, in relation to the JD5 file, Ms. Kay admitted that she did not know anything about the NAM process, including who was in charge of it (Exhibit 174, Page 62). On that date, Joanne Elliot provided the web citations for the Student Code of Conduct and the NAM Committee process, and referred Ms. Kay to Mr. Hyson.) Ms. Kay also did not bring the concerns being raised to Mr. Mordvinov's attention or caution him that concerns were circulating about his interactions with women in both the History Department and at Green College.

55. Ms. Kay testified that she considered speaking with Mr. Mordvinov but she considered it more important to provide information to his colleagues in the History Department about proper boundaries and available resources. She expected that any presentation to the Department would identify expectations to those in the Department, including Mr. Mordvinov, and make it clear that there would be consequences for failing to respect boundaries. Ms. Kay acknowledged however that she could have done both training and speaking to Mr. Mordvinov, if someone had said that they did not think the training was adequate. In our submission, it was unreasonable for Ms. Kay not to speak with Mr. Mordvinov at this time. It was not likely that general training would be sufficient to ameliorate Mr. Mordvinov's behaviour, and he should have been spoken to personally about the concerns raised.

56. Instead, Ms. Kay spoke with Prof. Ducharme about holding a training session, which did in fact take place. The training session was not well received by several graduate students who attended. They testified that it did not seem relevant to their circumstances as graduate students and Teaching Assistants. They testified that Mr. Mordvinov attended, and that he giggled and otherwise did not seem to take the session seriously. Evidence shows that his behaviour continued after he received the general training with his assault of Student B.

57. Ms. Kay testified that Green College was not on her radar at the time she was speaking with Ms. Kirchmeier. As Prof. Ducharme framed Ms. Kirchmeier as coming from the History Department, Ms. Kay was focused on the History Department. In answer to a question about referring Ms. Kirchmeier to Campus Security in case there were other reports about Mr. Mordvinov, Ms. Kay testified that she did not refer Ms. Kirchmeier to Campus Security because Ms. Kirchmeier did not indicate that she felt personally unsafe in any way.

58. The evidence is clear from General Class files with which Ms. Kay was involved, that Ms. Kay had the power herself to take the initiative to speak with

an individual whose conduct was the source of concerns about sexual harassment (see [REDACTED] RW). Equally, persons in authority in a department had the power to have a conversation with a student whose conduct was in question on an informal basis (see McBryan). There is also evidence in the General Class cases of Chad Hyson offering to speak with individuals about whom complaints about their conduct have arisen (See JD1 for example).

59. In our submission, it was a serious deficiency and missed opportunity that the History Department did not to speak to Mr. Mordvinov. Further, the evidence is clear that neither Prof. Gorsuch nor Prof. Ducharme ensured any institutional memory of Ms. Kirchmeier's complaint. Prof. Alexei Kojevnikov, Mr. Mordvinov's supervisor, testified that he was never formally told details of the allegations by University personnel, and first learned the details through Mr. Mordvinov in November 2015. In May of 2015, when Mr. Mordvinov was banned from campus, he had been advised only of generic allegations of "misconduct" by Mr. Mordvinov. Tina Loo, the subsequent Head after Dr. Gorsuch, testified that neither Dr. Gorsuch nor Dr. Ducharme told her about Ms. Kirchmeier's complaint, and that the first time she had ever seen Ms. Kirchmeier's January 8, 2014 emails was during her testimony in 2024. Academic Heads of Units, as well as persons in authority in a department, have the power to have a conversation with a student whose conduct was in question on an informal basis. If no disciplinary action was being taken, no formal complaint was required for either action to be taken, and there was no need to disclose the name of the person raising the concerns. There was no reason they could not have acted on Ms. Kirchmeier's information. Ms. Kay had no authority to direct them not to act.

60. The University's failure to take any action on Ms. Kirchmeier's information was a serious deficiency which arguably had wide ranging consequences. By early 2014, Mr. Mordvinov had already committed serious acts of sexual misconduct with Students C and E at Green College, and Ms. Cunningham in History, although these were not yet known to the University. The opportunity to speak with Mr. Mordvinov and caution him about non-consensual and objectionable conduct towards women before further grave and catastrophically harmful events occurred with respect to Student E was lost. The opportunity to alert Green College to issues with Mr. Mordvinov was also lost, with the effect that they were unprepared when Student E came forward, failed to receive her concerns fully, take them seriously, or act on them in a timely way. The University's failure is particularly notable because Ms. Kirchmeier was not talking about an isolated incident, but rather a pattern of non-consensual and harmful conduct with women going back to Mr. Mordvinov's earliest days at the University. Mr. Bohnen described Ms. Kirchmeier's email as a "bombshell" and said he would have escalated it immediately. The evidence does not prove that action by the University on Ms. Kirchmeier's concerns would *certainly* have prevented the event with Student B, but the opportunity to moderate or prevent that event was certainly lost.

61. In our submission, the University's failure to act effectively on Ms. Kirchmeier's concerns demonstrated systemic weaknesses in the University's approach to sexual misconduct concerns. First, its over-reliance on "formal

complaints”, which did not recognize and accommodate the difficulty for sexual misconduct survivors of coming forward formally, or at all. Second, its exclusive preference for first-hand reporting, which also did not allow for the difficulty for sexual misconduct survivors of coming forward, or the benefit to the community if information from bystanders and allies was also available to and accepted by the University as a basis for action. Third, the University’s failure to apply a human rights lens to consider to what extent the concerns coming forward indicated that female students were not experiencing a working, living and studying environment free of harassment and discrimination, and if so, what would be required to restore a discrimination and harassment free working, living and studying environment for them, and what would be required to restore safety and security to them as members of the community liable to be subject to sexual harassment. Had a human rights lens been applied, the needs of vulnerable persons in the community as recognized by the *Human Rights Code* would have been given proper weight, and procedural concerns about the person about whom the complaint is being made would not be permitted to preclude any effective response. Fourth, the failure to consider the information Ms. Kirchmeier provided with respect to whether it showed that Mr. Mordvinov posed a risk to the safety of women students and whether therefore existing tools like Policy 14 should be engaged. We submit that on the basis of Ms. Kirchmeier’s account, Mr. Mordvinov posed at least as great a risk to women as JM did. JM was subject of years long Policy 14 restrictions.

62. Ms. Kirchmeier approached the University for a service in hearing and responding effectively to her concerns about Mr. Mordvinov. This did not happen. Her gender was a factor in her own interactions with Mr. Mordvinov and in her allyship with others having issues with him in relation to his sexual advances and sexualized conduct towards them. She was adversely impacted by the University’s response to her concerns, including feeling frustrated and put off, and later in having to become involved again in the summer of 2014 and beyond in attempting to have the University provide a reasonable response. Ms. Kirchmeier testified about the burden the University’s ineffective response put on her. As such, the University’s response to Ms. Kirchmeier’s concerns, as expressed in January and February 2014, had a negative impact on Ms. Kirchmeier that was related to her sex, and therefore discriminated against Ms. Kirchmeier.

V. Information Provided by Student E

63. Student E began a Masters in Public Health at UBC in September 2013. She was born in October 1989 and was about 23 at the time. She was a resident at Green College. Student E was an active member of the community at Green College, including founding and chairing a committee called the Wellness Committee to promote mental, physical and spiritual health among the residents.

64. Student E testified about two incidents with Mr. Mordvinov, one after a Halloween Party in the fall of 2013, and one in late January 2014. Both took place after College events when Student E had been drinking and was intoxicated. Student E provided a detailed account of events with Mr. Mordvinov to Chad Hyson on March 9, 2015 (Exhibit 6, Tab 119, Page 386). This is the account that

the University relied upon in its Non–Academic Misconduct process against Mr. Mordvinov. As this case does not require the Tribunal to make determinations about the details of Mr. Mordvinov’s conduct towards Student E, Student E was not asked to testify directly about events with Mr. Mordvinov described in the notes of her statement to Mr. Hyson and was permitted instead to rely on her statement to Mr. Hyson.

65. In the first event, Student E agreed to accompany Mr. Mordvinov to his room after the Halloween party because he told her that others would be coming as well. When she got there, no one else was there. Her account of what transpired in Mr. Mordvinov’s room included non–consensual sexual touching by Mr. Mordvinov in the form of him kissing her and putting his hand up her shirt. Student E says that she told Mr. Mordvinov that she did not want to kiss or engage in other sexual activity. Student E says that Mr. Mordvinov then started questioning her about why she did not want to have sex with him and trying to convince her to have sex with him. This made Student E uncomfortable. Eventually he stopped and she was able to leave.

66. At the hearing, Student E testified that she hoped the first event would not be repeated, that she felt very uncomfortable around Mr. Mordvinov afterwards, and that she tried to avoid him. After the event she sought some input from others about how she should manage the event.

67. The second incident involved Mr. Mordvinov leading Student E to his room after a party where she had consumed more alcohol than she had planned and was intoxicated. At the time Student E was having difficulty walking unassisted. When she realized what was happening, she made it clear to Mr. Mordvinov that she did not want to go back to his room and did not want to have sex with him. Mr. Mordvinov ignored her wishes and took her back to his room. While in his room, Mr. Mordvinov verbally criticized Student E for being insecure, too interested in other people’s business and attention seeking. At one point, Mr. Mordvinov got up to go to the washroom. Because of her level of intoxication, Student E did not feel that she could leave unassisted. This resulted in her sending a text to a friend saying, “Help Dmitry”. Mr. Mordvinov saw this text and started yelling at Student E that it was no one’s business. Student E eventually ended up back in the Common Room, although she is not sure how. The following day, Mr. Mordvinov sent Student E a long Facebook message criticizing her for what happened and attempting to shame her (Exhibit 6, Tab, Page 594). In response, Student E told Mr. Mordvinov that he should not be inviting people back to his room when they are intoxicated as that was non–consensual.

68. Student E testified that she felt scared around Mr. Mordvinov after the second event and Mr. Mordvinov’s Facebook communication because Mr. Mordvinov was angry with her for saying what had happened. She also testified that she felt lonely and vulnerable and was concerned that Mr. Mordvinov, who had been at Green College longer than her, would turn his friends against her. She said that she tried to avoid Mr. Mordvinov, including by not eating at tables that he was at, and did not want to talk with him.

69. Student E also testified that she did not do well after the second incident and went on leave for medical reasons because she was suffering PTSD and depression. Her PTSD symptoms included being unable to sleep, having panic attacks, not being able to focus and having bad nightmares when she did sleep. She said that she was under the care of a psychiatrist at the time. She testified that although she had had depression as an undergraduate, she had not had symptoms of PTSD before the second episode with Mr. Mordvinov. Her summary of grades (Exhibit 23) showed that she only took one course in Term 2 of the 2013 Winter session. The Winter Session of 2013 ran from September 2013 to April 2014.

70. Student E's account of both events raises a number of serious concerns. It describes Mr. Mordvinov seeking out a person that he did not otherwise interact with much or at all for sexual encounters on two occasions when she was intoxicated and therefore in a vulnerable state. It describes unwelcome and persistent sexual advances where Mr. Mordvinov did not accept "no" for an answer, where he engaged in non-consensual sexual touching, attempted to denigrate Student E for rejecting a sexual encounter with Mr. Mordvinov, criticized Student E for talking about her concerns, and attempted to silence her. These are serious allegations which displayed a pattern of behaviour from Mr. Mordvinov that is of great concern, including in relation to the close quarters of residents at Green College.

71. Student E raised these events with two members of the Green Lanterns (Brittany Welsh and then KM) both of whom she found supportive and validating of her feelings. They encouraged her to report the events to Clark Lundeen.

72. On May 1, 2014, Student E and KM met with Clark Lundeen. In that meeting Student E described what had happened with Mr. Mordvinov. As Mr. Lundeen candidly admitted in his testimony, despite his responsibilities for College residents in his role, he was not trained or equipped to manage the information Student E was providing. He did not take notes of the meeting or if he did, he did so in a notebook that has since been destroyed. He did not see his role as obtaining a complete statement from Student E or advising Student E about what her options were within the University or beyond. Asked whether he asked Student E questions during the meeting, Mr. Lundeen suggested his plan was to follow up for details afterwards. The email Mr. Lundeen sent to Student B afterwards did not ask her for further details of the events. Ms. Kay also testified that in her view, asking questions by email does not provide enough sensitivity and may come across as accusatory. In his evidence, Mr. Lundeen also said he was hoping Student E would provide her information directly to Mr. Bohnen so that he would not be interpreting things. However, Mr. Lundeen did not contact Mr. Bohnen about Student E or suggest Student E get in touch with Mr. Bohnen until June 12, 2014, about 6 weeks later.

73. Although it was an important part of Student E's account of events, Mr. Lundeen did not ask Student E for the Facebook communications between Student E and Mr. Mordvinov after the second incident. He could not explain why he did not request this document.

74. Asked what information he provided to Student E about the resources and processes at the University at their May 1, 2014 meeting, Mr. Lundeen said that he did not provide anything as he was not trained to do so or aware of what those resources were at the time.

75. Mr. Lundeen did not explore with Student E what Student E wanted to happen, although he clearly believed that the College should do something and that “closure” might be helpful for Student E.

76. Student E testified that she felt dismissed in her meeting with Mr. Lundeen. She testified that Mr. Lundeen asked her if she had been drunk and whether Mr. Mordvinov had held her down physically. Student E said that she felt like these things should not have mattered. She testified that she went to the meeting without a clear sense of what would happen, and that she left the meeting expecting nothing to happen because Mr. Lundeen had told her that there was not really anything the College could do. She said she felt frustrated by the meeting.

77. Mr. Lundeen testified that he recalled not liking at all what Student E was telling him, that it felt gross and out of place, but that it also left a bit of room for benefit of the doubt. He said his gut was that it was not good and there was a conversation to be had about Mr. Mordvinov’s advances and about Student E having to be forceful and tell Mr. Mordvinov that she was not interested in sex. He noted that the event with Student E had occurred before the “Me Too” movement, and before consent was so much a part of the process. He also recalled Student E’s fear of retaliation by Mr. Mordvinov, and that Green College would have to be careful and considerate about how they approached the issue.

78. Mr. Lundeen set out his version of his meeting with Student E in his emails of May 1, 2014 to Dr. Vessey (Exhibit 6, Tab 33, Page 164), and June 12, 2014 to Steve Bohnen (Exhibit 6, Tab 43, Page 187). These emails do not contain a comprehensive narrative of what happened between Mr. Mordvinov and Student E. In the email to Mr. Bohnen, Mr. Lundeen candidly admitted that he “regrettably”, “did not ask her specifically what his unwanted sexual behaviours and manipulations manifested as (touching, language, blocking the door, etc.)”. In his email to Mr. Bohnen and in a later email to Dr. Vessey, Mr. Lundeen suggested that the incomplete narrative he received was due to Student E not remembering many of the details when she met with him, rather than that he did not ask her for details (Exhibit 6, Tab 50, Page 202).

79. In the email of May 1, 2014 to Dr. Vessey, Mr. Lundeen set out his view that they should be having a conversation with Mr. Mordvinov about his sexual advances and inappropriate methods at that point, including because of other events they were “loosely aware of” involving with Student B, and with another student whom they had only heard about through Richard Sandlin, another Green College resident. Mr. Lundeen testified about Mr. Mordvinov not being good at taking instruction about what was going to happen in a social situation,

and about wanting to tell Mr. Mordvinov that if someone is saying “no”, that means no.

80. Mr. Lundeen wrote that he thought the most constructive approach would be some sort of mediated session with Student E and Mr. Mordvinov to discuss events and where lines may have been crossed, and to clear the air and patch things up with Student E. He wrote that this would be better than a generalized conversation with Mr. Mordvinov where they would tell him he was on some sort of watch list. Mr. Lundeen was of the view that Student E would need to be involved because Mr. Mordvinov would connect the dots in any event if they spoke with him.

81. Mr. Lundeen suggested he was leery of a general conversation because of a prior experience with a student called A, an event referenced in his email. In his testimony, Mr. Lundeen explained that some women had complained about A making them uncomfortable. Those women had wanted Dr. Vessey to have a word with A, but had wanted to remain anonymous. As a result, Dr. Vessey spoke with A without identifying the behaviours that were a concern. As A did not know what behaviours were at issue, he became unable to be in a room with other students and had a serious panic attack in the residence. Mr. Lundeen said A was “taken away” and then released from his residence contract. Despite this event, neither Mr. Lundeen nor Mr. Vessey saw a need to become more skillful about having conversations about adverse interpersonal conduct among residents, or to identify someone else who could have such conversations for them.

82. In his testimony, Mr. Lundeen also said that his suggestion of a mediated conversation between Student E and Mr. Mordvinov came from Appendix II of the residence contract which focused on resolution and on trying to understand each other and de-escalate a situation of conflict. Mr. Lundeen admitted that he and likely Dr. Vessey did not have training to attempt such a mediated conversation, and that they had not done so in situations beyond conflict over a messy roommate.

83. Mr. Lundeen expressed the view on May 1, 2014 to Dr. Vessey that in the worst case, they could “cut Dmitry loose” and not allow him to return or split his residency term. In evidence, Mr. Lundeen clarified that Dr. Vessey might have the option to apply a sanction if Mr. Mordvinov was not remorseful, did not take responsibility for his actions, or attempted to deflect blame in a way that was uncivil. These comments were an important acknowledgement by Mr. Lundeen that the Green College administrators were aware as of a least May 1, 2014 that they had the option of terminating Mr. Mordvinov’s residence at Green College if they were not confident he could correct his behaviour.

84. Asked in evidence what the concern would be if Mr. Mordvinov was not remorseful, Mr. Lundeen replied that from a membership perspective, they obviously would not want someone like that in the residence community, and that if Mr. Mordvinov could not see the errors of the behaviours described, he should not have the privilege of being at Green College.

85. Asked why it was obvious they would not want someone like that in residence, Mr. Lundeen replied that it was complicated. That in a resident community of only 100 students, they had found over time that small issues could really burn up good and constructive energy and become a distraction for students at the College and the way they contribute. He said that they would not want someone to potentially divert and derail issues in the community. He went on to say that if a person has behaviours where they are not taking “no” for an answer or were needing to be told “no” more forcefully, then there was a question about whether they could be trusted. In this explanation, Mr. Lundeen characterized the event with Student E as a “near miss”, borrowing language from WorkSafe BC about workplace situations in which injury is narrowly averted when the cause of potential injury is present. Mr. Lundeen testified that in a “near miss”, there are things they would want to do to remedy the situation. Mr. Lundeen noted that Mr. Mordvinov not being in the residence was one of the potential remedies to the “near miss” situation that had happened with Student E. Later Mr. Lundeen testified that once he had heard about Student B’s experience with Mr. Mordvinov in Toronto, he came to believe that the event with Student E was not a matter of miscommunication and was not a near miss but really a hit.

86. In our submission, Mr. Lundeen originally believed Mr. Mordvinov’s actions towards Student E were a near miss because he did not conduct a thorough interview with Student E. Had he done so, he would have learned that Mr. Mordvinov had nonconsensually kissed and touched Student E sexually, attempted to criticize and denigrate her for not agreeing to have sex with him, and attempted to silence her.

87. Mr. Lundeen raised the possibility of a mediated session with Student E in an email to her of May 1, 2014 (Exhibit 6, Tab 34, Page 166). As Mr. Lundeen testified he later learned, if trauma is present, a mediated solution is not appropriate. Ms. Kay also testified that given the serious allegations, the situation required a disciplinary response not mediation. She noted that mediation can just amount to more trauma. We submit that ongoing contact may be harmful to the complainant who frequently does not want any further contact with the harasser. Student E testified that given the way Green College was structured, a mediation was something she really did not want to do. She said that the suggestion seemed completely unreasonable to her, and that she could not imagine it going well. In her response email of May 2, 2014, Student E answered questions posed by Mr. Lundeen but did not address his proposal of mediation.

88. Asked if he had a conversation with Dr. Vessey after hearing from Student E, Mr. Lundeen replied “probably, I don’t recall” and that he may have had a conversation with him. He noted that at the end of a day at Green College he may or may not debrief with Dr. Vessey, whose office hours were from 2 PM until late. Dr. Vessey testified that he and Mr. Lundeen did discuss Student E’s report at 9:30. Dr. Vessey testified that they were trying to think through how to have a process that would be useful to Student E and the College, and a response that would be appropriate to the concern Student E and raised and fair to Mr. Mordvinov.

89. Asked what meaning he made of Student E's allegations, Dr. Vessey testified that Student E was looking for guidance and support, as a leading member of the Wellness Committee and as prompted by KM, to make sure the problem she was having with Mr. Mordvinov was addressed in order to minimize the risk to others.

90. On May 2, 2014, Mr. Lundeen emailed Student E again (Exhibit 6, Tab 35, Page 168). By this time, only a day after Student E spoke with Mr. Lundeen, Green College had formed the view that because Mr. Mordvinov was leaving Green College for a year, he could not be reasonably told of the allegations and given a chance to defend himself before having his return to Green College terminated, and therefore that due process could not be provided to him. Mr. Lundeen suggested a meeting with Mr. Mordvinov was necessary to give Mr. Mordvinov important feedback about where his behaviour had crossed the line and what kind of behaviour could not happen in the future. He set out his belief, however, that in 16 months time when Mr. Mordvinov returned, his behaviour would be difficult or impossible to correct.

91. On May 2, 2014, Mr. Mordvinov was still at Green College but was due to be leaving on May 3, 2014 (Exhibit 6, Page 168), would be back for two or three days towards the end of May, and then planned to travel to Russia to conduct archival research for his thesis. They were aware that he planned to return to Green College in September 2015 (Exhibit 6, Page 160). Dr. Vessey had previously told Mr. Mordvinov that Green College would permit him to divide his time at Green College and return the following year. Mr. Vessey testified this was a common arrangement which he had discretion to approve.

92. Mr. Lundeen concluded his email to Student E of May 2, 2014, "In this instance I am regretful that there is no direct action we can take other than being vigilant when he returns." He proposed instead to "invest our energies into other forms of education for the College", perhaps by getting more information out about responsible drinking and consent. In his evidence, Mr. Lundeen said the plan was to work with Student E and a person called Victoria Cowan to get the EIO to do a presentation on these topics.

93. Mr. Lundeen claimed in evidence that Student E had agreed to the educational approach. Under examination by the University, he agreed with the statement that Student E did not want to pursue anything other than an educational approach. Student E's email of May 2, 2014 (Page 166) is clear that she thought education would be helpful, but does not amount to agreement to education *instead of* any other response. It is clear that the decision to go with an educational approach alone was Green College's decision which they communicated to Student E as their conclusion on her complaint. The evidence shows that Student E was willing to pursue a complaint. Soon after Student B disclosed her assault, Student E wrote that she was prepared to do whatever might help to keep others safe from Mr. Mordvinov. That Student E had not decided that she did not want anything further is clear from her email to Mr. Lundeen on June 13, 2014, after Student B disclosed Mr. Mordvinov's assault, in

which she wrote that she was “willing to do whatever might help to keep others safe. How should I go about filing a report?” (Exhibit 6, Page 197).

94. In his evidence, Mr. Lundeen said that he had been wondering for 10 years why the conversation with Mr. Mordvinov did not happen or was delayed, but that he had no idea why it did not happen except that Student E did not indicate any further steps with Mr. Mordvinov. Given the content of Mr. Lundeen’s email to Student E in which he says that they *cannot* take any further steps, it is not reasonable to suggest that Student E’s preferences were the reason they did not speak with Mr. Mordvinov. The duty to take effective steps in response to Student E’s account belonged to the University.

95. In his testimony, Mr. Lundeen agreed that after the meeting with Student E he would have checked Mr. Mordvinov’s whereabouts with Green College Administrator Lyn Pedro, and that he knew Mr. Mordvinov was coming back later in May. Mr. Lundeen also agreed that a person who was out of the country could be communicated with by mail, email, telephone and video conferencing technology like Skype, and that Mr. Mordvinov could likely be reached by email or telephone while away. He was not able to satisfactorily explain why these tools could not have been used to have a conversation with Mr. Mordvinov at the time about his conduct towards Student E in order to determine if Mr. Mordvinov should have his return to Green College rescinded. He merely said that it was not normal practice to have conversations like this on the telephone. Dr. Vessey identified no reason why a discussion could not take place with Mr. Mordvinov when he returned later in the month.

96. Ms. Kay also did not agree that there was nothing more they could have done at the time with the information from Student E. Her view was that if they had contact information for Mr. Mordvinov, they could have carried out the investigation by Skype or equivalent, and that there would have been other alternatives to dealing with the geographic distance than just letting the matter drop. Ms. Kay acknowledged however that she never sought Mr. Mordvinov’s contact information, including from his supervisor, Prof. Alexei Kojevnikov.

97. Asked if there was a reason they did not pursue a conversation with Mr. Mordvinov but they did pursue a conversation with RW in the same time period, Mr. Lundeen said that Student E had had an encounter with Mr. Mordvinov that was concerning in which she had felt confined and bullied, but he did not hear about explicit violence in meeting with her. He said that he did not connect her account with a “sexualized thing” in the sense that he had of that at the time. He said that whereas there was active harm ongoing with MT from RW’s presence, Mr. Mordvinov was not physically present at Green College after May 3, except for 2 or 3 days at the end of the month.

98. Asked to comment on their approach in light of what happened with Student B at the end of the month, Dr. Vessey testified that with the benefit of hindsight, they were bound to regret that did not take a different course. He also said, though, that all they had originally were Mr. Mordvinov’s “awkward” interactions with Student E, they had not seen the full set of his interactions. Dr.

Vessey said that all they had was a report of putting an unacceptable level of pressure on a woman. In our submission, describing Mr. Mordvinov's actions as "awkward" or an unacceptable level of pressure significantly underplayed the seriousness of the allegations from Student E and especially the fact that they included nonconsensual sexual touching and two occasions on which Mr. Mordvinov deliberately attempted to pressure a person under the influence of alcohol that he normally did not interact with into sexual interactions that she did not want, and then bullied and attempted to shame her over saying no.

99. Dr. Vessey was adamant in his testimony that in May 2014 Mr. Lundeen and Green College were doing what they could in relation to Student E's allegations to reduce the overall level of risk at Green College. Asked what message was being communicated to the Green Lanterns about the consequences for improper actions and the steps Green College was going to take to ensure safety, Mr. Vessey said that he saw the information about Student E and RW as being initiatives of the Green Lantern that were bearing fruit, and that Green College was beginning to respond to a situation that had been causing serious concerns to members of the community for some time but that no one had communicated to them. He said that he thought the way they responded was broadly agreeable to Student E and was the result of conversations between Student E and Mr. Lundeen. This view does not take account of Mr. Lundeen's clear message to Student E that Green College could do nothing more than provide an educational session and be vigilant when Mr. Mordvinov returned.

100. Mr. Hyson claimed in his evidence that he heard from Mr. Lundeen about Student E's allegations *before* Student B came forward in June 2014. He thought maybe this happened in late May or June 2014. There is no documentary evidence supporting this claim, and Mr. Lundeen did not mention it in his account of events. The University did not ask Mr. Lundeen about this in its questions for Mr. Lundeen, who testified prior to Mr. Hyson. Mr. Hyson said that the concern was that Mr. Mordvinov wanted to return to Green College. Mr. Hyson testified that as Student E and Mr. Mordvinov were both residents of Green College, the allegations could be investigated under the Residents' Contract and Community Standards relating to the residence. He said that his view of this was based on his time as a Residence Life Manager. This information matches the communication between Mr. Lundeen and Mr. Hyson around June 19, 2014, which was documented, but does not match anything documented between May 2, 2014 and the time when Student B's allegation came forward.

101. We submit that in its decision by May 2, 2014 not to take action with Mr. Mordvinov personally, Green College significantly downplayed Student E's report and allowed a flawed view of Mr. Mordvinov's due process interests to result in no effective action being taken on Student E's information about Mr. Mordvinov, even though Mr. Lundeen was clear at the outset that some action with Mr. Mordvinov was called for by Student E's account, by what Student E herself needed in terms of "closure", and by what they had heard to date about Mr. Mordvinov.

102. We submit Green College's approach resulted in part from Mr. Lundeen's failure to obtain a full account from Student E and from his failure to recognize sexual misconduct. Student E's account, which even to Mr. Lundeen included improper pressure for sex, belittling when sex did not occur, and attempts to blame and belittle Student E after the fact, was a clear account of sexual misconduct.

103. We submit Green College's approach also resulted in part from Dr. Vessey's personal fondness for Mr. Mordvinov, the administrators' belief that residents at Green College were decent people, and an associated tendency not to take reports of bad behaviour very seriously. As Mr. Lundeen wrote in his email of May 2, 2014 to Student E: "We assume we're all decent and reasonable people, though we understand that a mixture of close-living, alcohol, and perhaps taking some liberties and cultural norms for granted can lead us to conflict".

104. The tendency to minimize and deflect accounts of sexual misconduct was also evident in Mr. Lundeen's comments to Mr. Bohnen on June 12, 2014, after he had learned of the sexual assault of Student B (Exhibit 6, Tab, 43, Page 188):

My sense of the situation then was that she was embarrassed that she's gotten into this kind of situation with him. I also got the sense that a lot of this information was coaxed out of her by [REDACTED], coloured by [REDACTED]'s concerns.

...

There's no prior relationship between (Student E) and Dmitry. The October incident was the first time she admitted having talked with him. She can't remember much detail about either event, either from the alcohol, drink spiking or time elapsed. That overarching sense of doubt was what led me to a more open investigation path, exploring options such as miscommunication etc. Depending what we'd find after talking separately with Dmitry we would determine how to act going forward, however Dmitry left the College shortly after (Student E) came forward, and I ran out of time to ask him any questions.

105. This passage is concerning for its suggestion that when Student E first came forward, Mr. Lundeen saw the problem as being that *Student E* had gotten into a situation with Mr. Mordvinov when she was intoxicated and that the issue was really only a miscommunication, rather than that *Mr. Mordvinov* had acted towards Student E in a way that was harmful to her.

106. Mr. Lundeen was asked in evidence what he meant when he said that Student E's account was coaxed out of her by [REDACTED], coloured by [REDACTED]'s concerns. He testified that he always felt that KM was supporting Student E, and that "coaxed" was the wrong word, the wrong angle. Asked what he understood KM's concerns to be, he said that she was concerned about the community, and was as concerned as Mr. Lundeen was about student safety.

107. The failure to fully obtain Student E's account, to take Student E's account seriously at the time, and to evaluate it in the context of other known information

about Mr. Mordvinov's conduct during evenings when people were drinking, and to ensure that Mr. Mordvinov was spoken with immediately was not an adequate response to the allegations about Mr. Mordvinov's sexual misconduct. This inadequate response by the University harmed Student E by denying her closure, including any proper consequences for Mr. Mordvinov's actions, leaving her in the position of having to take the issue to Campus Security, to Chad Hyson of the NAM process, and then to the NAM Committee process, and ultimately of having to tolerate the uncertainty of a man who had sexually assaulted her returning to Green College to live with her. Student E's sex was a factor in her experiences with Mr. Mordvinov, and in her associated need to make a complaint and have the University respond appropriately. As such, there was a nexus between her sex and the University's failure to respond effectively and fully to Student E's concerns raised in May 2014 such that this failure amounted to discrimination against Student E on the basis of sex.

108. Further, Green College's failure to act eliminated the University's second clear opportunity to intervene before the sexual assault of Student B took place. As will be discussed below, this sexual assault had a very serious impact on Student E as well as Student B. In failing to act on Student E's account with Mr. Mordvinov, the University exposed Student B and Student E to severe harm, and caused many women in the University community very serious and longstanding concerns about whether their working, studying and living spaces would be safe and free of discrimination and harassment.

109. Mr. Lundeen admitted that he did not give any consideration to whether taking no action would be harmful to Student E or other women. The University's response to Student E's allegations in May 2014 was wholly inadequate, and amounted to discriminatory action towards Student E, Student B and other women in the University community who were concerned about Mr. Mordvinov's actions and return, including in relation to their own safety.

VI. GUTS Articles

110. On January 27, 2014, after Ms. Kirchmeier sent her email to Prof. Ducharme but before she met with Ms. Kay, a publication called the GUTS Canadian Feminist Magazine published an opinion piece by Alana Boileau entitled, "Rape Culture in America, Part One: Women's Stories from a Graduate Residence". Ms. Boileau was a former resident of Green College and the College, while not named, is identifiable from the information in the article that the residence was premised on a combination of "ideas and friendship", which is the motto of Green College.

111. In the article, Ms. Boileau says that the residence was not always the safe haven they had imagined it to be, and that she wished to point out the pervasive nature of sexism, and the institutional structures that secure it firmly in place by trivializing violence against women. The article addresses a number of specific events, a number of which involve Mr. Mordvinov (the person who made people uncomfortable at parties, the incident where Student B was pushed over and suffered a concussion, and the person who accused female residents of being frigid). This is confirmed by Ms. Grego in an email to Dr. Loo of April 24, 2015

(Exhibit 6, Page 546). Ms. Boileau also makes the connection between the Green Lanterns peer support system being established and the climate of sexism at the College.

112. Ms. Boileau concluded her piece by arguing that mechanisms put in place by residents to deal with things once they have already happened is not enough:

“How can administrators, those who ensure continuity in these institutions (because students, as long as it takes us to finish our damn dissertations, do eventually leave), help to create safe environments for women in the academy? How might they make use of the institutional memory that they have the privilege of carrying forward to prevent these harmful cycles? There is no doubt in my mind that institutional change is necessary to disrupt the successions of harassment and sexism in the academy.”

113. On January 29, 2014, in Part 2 of the series, Caroline Grego, another former resident of Green College, commented: “As elsewhere in academia, members of this residence have gotten away with so much without much consequence: with overt contempt for feminism and activism; with men dominating the visible accolades and awards; and worst of all, with sexual assault.”

114. Dr. Vessey and Clark Lundeen were aware of these articles by May 23, 2014, and that they related to Green College, as set out in an email exchange between them on that date (Exhibit 6, Tab, Page 173). In his email response, Dr. Vessey remarked that there “is nothing in what Alana or Caroline says that will surprise you”. Given Ms. Boileau’s multiple examples of sexism and sexual misconduct, and Ms. Grego’s comment about members of Green College getting away with sexual assault, this statement itself is surprising. That said, Dr. Vessey and Mr. Lundeen would have recognized the description of the injury to Student B, and of a student who had to be watched at parties, given the information provided to them in the past by Student B and Mr. Hay. Dr. Vessey testified that he probably did join the dots between this description and the Student B pushing event. In his email, Dr. Vessey went on to describe Green College as a “living laboratory, in the most experimental and potentially dangerous sense”. Dr. Vessey’s proposed response was to give some thought to a continuing strategy for the problem the writers raise, and to how to respond if there was attention from the media.

115. Despite the clear reference to specific events in Ms. Boileau’s piece, and Ms. Grego’s statement that sexual assault had taken place at the residence, and despite Dr. Vessey’s admission that the persons described might still be in the community and might still be a worry to women, neither Dr. Vessey nor Clark Lundeen contacted the authors to attempt to learn who had been involved in the incidents described in order to be able to take steps to ensure safety at the College going forward. Despite having no information about the events in question that he was not already familiar with, Mr. Lundeen described the events as being “in the past for Green College”.

116. This was a gravely insufficient response to public information both about serious events at the College, and a pervasive climate of sexism there, particularly in light of the information that Student E had just provided to the College about her experiences with Mr. Mordvinov. This response was a continuation of the casual attitude towards sexism and violence against women that Ms. Boileau and Ms. Grego were decrying in their articles.

117. It is important to recall how many accounts there were of men making women uncomfortable and unsafe at Green College by this point. In addition to the information in the GUTS articles, we note the information from Mr. Hay and Student B about the pushing incident, the information from KM about the male student yelling at and threatening her female friend, the incident with A, and the issues with MT which were underway by May 2014.

VII. Information from Student B

118. On May 26, 2014, Mr. Mordvinov sexually assaulted Student B at her home in Toronto where he and another Green College resident and UBC graduate student, Tim Hoellering, were staying. In her evidence, Student B said that Mr. Mordvinov asked to stay with her and that she felt nervous enough about letting him stay at her home that she asked a friend about it. She testified Mr. Mordvinov had been at a conference and was travelling through Toronto to Russia. In her evidence, Student B described the assault, which included full penetration while she was passed out under the influence of alcohol. Student B reported attending at hospital for tearing and to have a rape kit done. Afterwards, Student B testified that Mr. Mordvinov tried to contact her but she blocked him on social media.

119. Student B testified about telling some of her friends about the assault, including Richard Sandlin, whom she asked to tell other people at Green College. She said that she did this to let people know so that they would not be alone with Mr. Mordvinov in a room in case he came back to Green College. She testified that she found it easier to delegate a friend to tell others rather than to re-disclose her experience again and again and be forced to comfort her friends when they expressed distress about her assault.

120. Richard Sandlin sent an email to the Green Lanterns, including KM (Exhibit 20). In his response to this email one of the Green Lanterns, James Flemen, explicitly stated that he hoped Mr. Mordvinov would have no option to live in Green College again, and asked whether there was some obligation to inform Mr. Mordvinov's department (History).

121. Among the other people that Richard Sandlin told about the sexual assault of Student B was Student E. Student E testified that she was horrified to get the information about the sexual assault of Student B. She said that she felt helpless, guilty and angry about it. She felt that if she had told Student B directly about her own experiences with Mr. Mordvinov, Student B would not have allowed Mr. Mordvinov to stay at her house.

122. Mr. Lundeen testified that Richard Sandlin asked Mr. Lundeen and Dr. Vessey for an urgent meeting. At that meeting, Mr. Sandlin told Mr. Lundeen and Dr. Vessey about the assault of Student B which he said he had Student B's permission to disclose. Mr. Sandlin also disclosed the existence of another person who had an issue with Mr. Mordvinov. Mr. Lundeen testified they did not ask Mr. Sandlin who this person was or any details at the time, and did not tell Mr. Hyson that there might be a third person. Mr. Lundeen was not able to say why not.

123. After the meeting, Dr. Vessey and Mr. Lundeen considered their next steps, noting that the event happened at a jurisdiction outside of UBC and the province. Mr. Lundeen testified that at that point he had no idea what mechanisms UBC might have to deal with an allegation of sexual assault. Mr. Lundeen testified that his principal consideration at that point was to make sure that Mr. Mordvinov did not come back, and to ensure that there was support for Student B. He said that the risk of Mr. Mordvinov returning, which they had already been talking about for a month, had become darker and more significant upon receiving information about the sexual assault of Student B. Mr. Lundeen described this risk as being to the residence community.

124. Dr. Vessey testified that his response to Student B's allegation was dismay, regret and outrage, and that he aimed to ensure that Mr. Mordvinov would not set foot in the College again, assuming that all of what they were hearing proved to be substantially true, which he expected it would given his knowledge of Student B. Dr. Vessey testified that he shared Mr. Lundeen's concern about the exposure of current and future residents to Mr. Mordvinov, but also said that he did not fear Mr. Mordvinov's return any time soon. Dr. Vessey said that the issue at the forefront of mind for him at that time was Mr. Mordvinov's responsibility and culpability for what had happened. Asked if he believed Green College had a legal responsibility to protect the members of Green College, Dr. Vessey testified that he did everything in his power during his entire tenure as Principal to protect the community, starting with the residents.

125. On June 2, 2014, Dr. Vessey emailed Student B to express his condolences (Exhibit 6, Tab 39, Page 175). On June 4, 2014, Student B emailed Dr. Vessey confirming that she had asked Richard Sandlin to publicize at Green College what had happened so that no one would be in a vulnerable position with Mr. Mordvinov again (Page 175).

126. Mr. Lundeen testified that they also reached out to Monica Kay, likely adding the "bombshell news" about Student B to their ongoing conversations with Ms. Kay about RW and MT. Mr. Lundeen testified that Ms. Kay referred them to Steve Bohnen at Campus Security, which she said had a process to escalate a matter to other offices (such as the Non Academic Misconduct process). On June 4, 2014, Mr. Lundeen emailed Dr. Vessey to advise that Ms. Kay had referred them to Steve Bohnen, noting that, "I had no idea that Campus Security played such a big role on matters like this" (Exhibit 6, Tab 41, Page 184). His understanding was that the referral was appropriate because it was a matter that could have a criminal element. Ms. Kay testified that she understood from the outset that the

allegations from Student E and Student B were not something she was going to be able to address, that they needed to go to Mr. Bohnen and that there was a potential for involvement of the police and/or the Non Academic Misconduct process.

127. Mr. Lundeen reported that Ms. Kay told him that if Student B filed charges, Green College could use the charges to restrict Mr. Mordvinov's activities at Green College. Mr. Lundeen described this as electing to protect their members from risk. He continued, "It casts enough doubt on the safety of others that we are acting prudently, and behind the legal case against him we are not directly accusing/defaming him." It is apparent that this approach was largely conditioned by concern over actions Mr. Mordvinov might take in response to any actions by the University that had an impact on him. Ms. Kay said that she was not sure what Mr. Lundeen meant by this.

128. Ms. Kay testified that it was her view throughout that the Principal of Green College had the authority to act in a disciplinary way, including under Policy 3 as the Academic Head of Unit, or under the policies of Green College. She testified that they did not need police charges to be filed before they could act. She testified that she did not have the authority to tell Green College when to discipline its students.

129. Ms. Kay testified that she could have taken a report and referred it to Mr. Hyson, and that she had done that in other cases. She testified, however, that because this was a criminal file with safety issues, Mr. Bohnen was a more appropriate resource because Campus Security deals with safety issues. She testified that although she could take report and pass it to Mr. Hyson, the focus of her role was not formal. She said that Mr. Bohnen needed to know about the events, and that putting her in the mix just added another step. Ms. Kay testified that in relation to serious sexual assault allegations, the priority was to get the issue into a formal process appropriate to that level of seriousness as soon as possible, proceed with formal investigation procedures with someone competent to do that, and make findings that could be the basis of discipline, rather than wasting time on an informal process in her office. She said that someone with authority to discipline needed to be involved. Ms. Kay's evidence sets out a binary set of options, either proceed informally or proceed formally through a disciplinary process.

130. Ms. Kay testified that in her role at the EIO she was specifically not permitted to undertake investigations. Similarly, Mr. Bohnen testified that he would hear and record the account of a complainant but that he did not follow up with respondents to hear their account of events. He testified that it was not his mandate to ensure due process in investigations, and that he did not do them. He testified that in his position he had never asked a person accused of sexual misconduct for their account of events that had come to him from a complainant.

131. On June 5, 2014, Mr. Lundeen called Mr. Bohnen to report the sexual assault of Student B in Ontario and to seek advice in case Mr. Mordvinov returned to UBC and sought admission to Green College (Incident Report, Exhibit 6, Tab

40, Page 176). Mr. Bohnen opened an “information only” file at Campus Security in case of future need for the information, including by Student Conduct (Original Narrative, Page 182). Mr. Bohnen testified that on opening the file was “information only” because little was known about the events in question and what might be happening with them in other jurisdictions, including criminally. By June 12, 2014, the Incident Report had been changed to a “sexual assault” file (Exhibit 6, Tab 46, Page 196). He testified that an Incident Report would be “rescored” as more became known and that this was commonplace. He further testified that the scoring of an Incident Report would determine who would be notified of the event, and what follow up action would be taken.

132. On June 5, 2014, Mr. Lundeen reported this conversation to Dr. Vessey (Exhibit 6, Tab 41, Page 184). In his account he noted that by opening a file, UBC would be able to demonstrate on record that Student B’s assault was reported in a timely way, even if UBC was unable to act further on the information available. Neither Mr. Lundeen nor Mr. Bohnen noted any mention of Student E in this initial communication. Mr. Lundeen testified that maybe he did not mention Student E in his first conversation with Mr. Bohnen. Dr. Vessey testified that talking to Mr. Bohnen engaged Mr. Bohnen’s resources in addressing the Mordvinov issues. Dr. Vessey admitted that he did not know what Mr. Bohnen’s resources might be, and did not think that he needed to know this information.

133. Asked about his position at the start of June, Dr. Vessey confirmed that he knew that the process in Appendix II of the Residents’ Contract was available, but he considered the matter to be too complex, and it to be too early to start deciding how to proceed. He further said that from the outset he thought there were more genuinely expert personnel on the case. He also noted that if Mr. Mordvinov had been in Vancouver or there had been good reason to think he was going to appear on the scene it would have been different and they would not have had the luxury to wait for events to unfold, but as it was they had time for a strategic response. Asked what information Dr. Vessey needed to make a decision under Appendix II regarding the return of Mr. Mordvinov, he replied that he already had almost enough information, and that as a purely precautionary measure, he would not extend another contract to Mr. Mordvinov. He testified that his interest and Mr. Lundeen’s was to find out as soon as possible what the most effective process at UBC would be regarding what they already understood to be very serious allegations. He said that to have made up his mind at that point about what action to take, given who else was at the table, would have been a willful and pretentious thing to do.

134. On June 5, 2014, Dr. Vessey emailed Student B to ask her to provide a statement to put on file at Campus Security as Campus Security was the appropriate authority to decide what steps would be taken at the University to protect other members of the UBC community, which he noted UBC had a legal responsibility to do (Exhibit 6, Tab 39, Page 175). On June 11, 2014, Student B responded to Dr. Vessey asking what she needed to do (Exhibit 6, Tab, Page 186). Dr. Vessey responded that Mr. Bohnen of Campus Security was the best person for her to talk to at UBC, and provided Mr. Bohnen’s contact information (Page 186).

135. On June 12, 2014, Mr. Lundeen called Mr. Bohnen to provide further details, including about Student E (Exhibit 6, Tab 40, Page 179). Mr. Lundeen testified that Mr. Bohnen said Campus Security could forward the matter on to the NAM Committee or the Vice President once there was enough information. On June 12, 2014, Mr. Lundeen sent Mr. Bohnen an email which contained the information he had about Student E (Exhibit 6, Tab 43, Page 187). Mr. Lundeen concluded his email by saying that Green College took the duty to be fair quite seriously and that in this case it potentially protected the perpetrator more than any victims (Page 188). Dr. Vessey testified that this was not his view.

136. Mr. Bohnen testified that the information he received from Mr. Lundeen left him with the view that Mr. Mordvinov likely had a pattern of serially manipulating women using alcohol with the goal of having sex with them. He termed this conduct "alcohol facilitated sexual assault". He said that what he knew of the allegations fit a pattern of offending he was familiar with involving grooming and coercion and if so, that Mr. Mordvinov would likely continue his conduct. Asked if he thought Mr. Lundeen's initial report about Student E was a report that UBC needed to take action on, he responded, "Yeah, absolutely. I assumed that action would be taken." Asked if he thought there was urgency in investigating the allegations of Student E, he said that there was "clearly some urgency". He said that he was unsure what the University would do if Mr. Mordvinov was out of the country or had finished his degree and departed, but that there was a need to investigate and do due process. It was his view that there should be an investigation by Student Conduct even if there was also a public safety investigation going on (by which we understood him to mean a police process). He said that Student Conduct needed to do what they needed to do to protect student safety. Mr. Bohnen testified that he thought Student Conduct would investigate under the Residence Code of Conduct or under the Student Code of Conduct. He said that he was not thinking about Policy 3 and that there was a "lack of granularity" in his understanding of Policy 3 investigations. Mr. Bohnen testified that his priority was to get the information about the allegations first and that this would inform further processes. For this reason he wanted to have first hand contact with the two complainants, Student B and Student E.

137. On June 12, 2014, Mr. Bohnen responded to Mr. Lundeen's email about Student E. Mr. Bohnen looped Monica Kay, Chad Hyson and Joanne Elliot into his reply on the basis that they might become involved with the conduct of Mr. Mordvinov or the provision of care to the women involved. In his email he identified the goals for all of them as accurate documentation, victim support, and providing proper information "upward" to the University so that they could best protect the community from these "toxic behaviours" (Exhibit 6, Tab 45, Page 190).

138. Asked in evidence if he was talking about safety when he wrote about protecting the community from toxic behaviours, Mr. Bohnen said that he was talking about the "broader meaning of safety" which was a word that had been expanding. He said the duty of institutions was a lively subject of debate. Asked in evidence if he was talking about ensuring an environment free of harassment and discrimination when he talked about protecting the community from toxic

behaviours, Mr. Bohnen said, “yes, by inclusion”. Asked what he expected Mr. Hyson to do with the information, Mr. Bohnen responded that it was relatively early in the file, but he expected that Mr. Hyson would be conducting a Student Conduct investigation. Mr. Bohnen said that the duty of care moves forward to agencies with the ability to take action, investigate, find some facts and take action or apply sanctions. He contrasted that to the mandate of Campus Security which was to document events. Asked why he was having contact with Student B and Student E rather than Mr. Hyson if there was to be an investigation by Student Conduct, Mr. Bohnen responded that he was asked to do it, he knew how to do it, and he was trying to be helpful. He suggested that he was directed by his managers to follow up with Students B and E.

139. Mr. Lundeen was asked what action if any he understood Chad Hyson, Monica Kay and Joanne Elliot would be taking at this time. He said that he was not sure if he had any expectations, and that he and Dr. Vessey were asking for support because they did not have a process for proceeding. He said they were trying to lean on Mr. Hyson for information about how they could restrict Mr. Mordvinov from returning. Mr. Lundeen also testified that he was very wrapped up in the RW situation at that time, and could not place what he was thinking about with respect to Mr. Hyson in relation to Mr. Mordvinov at this time.

140. On June 12, 2014, Mr. Bohnen updated his Incident Report with the information he had received from Mr. Lundeen, including Mr. Lundeen’s email about Student E, and circulated it to Mr. Lundeen, Ms. Kay, Chad Hyson and Joanne Elliot (Exhibit 6, Tab 46, Page 194). Mr. Lundeen agreed in evidence that he had requested updates about Mr. Bohnen’s direct communications with Student B and Student E because of his concern about Mr. Mordvinov “continuing a pattern of victimizing female students” as alleged by Students B and E (Page 195).

141. On June 12, 2014, Mr. Lundeen responded to the email to reiterate that the information he now had about Student B cast the information he had received from Student E in a darker light than he had initially interpreted it, and noted that this “adds to our concern of any ongoing exposure of Mordvinov with any current or future residents.” Dr. Vessey testified that as soon as news came in regarding what Mr. Mordvinov had done in Toronto, their view of what they had been hearing previously was inevitably changed. Mr. Lundeen wrote that they were “unclear when our procedural fairness is superseded by sufficient reasonable doubt to take action and restrict his return.” He claimed that they had no procedure for this (Page 193 to 194). Asked in evidence what he meant by “sufficient reasonable doubt”, Mr. Lundeen said that his conversations with Dr. Vessey were about when is there enough information to take action, and if all the facts are not present, when can Dr. Vessey make the call? Also, could he do so about activities that are not in Vancouver?

142. Asked about Mr. Lundeen’s question about when procedural fairness would be superseded by reasonable doubt such that Green College could restrict Mr. Mordvinov’s return, Dr. Vessey testified that although Mr. Lundeen had been thinking through the procedural challenges re Student B’s report, there was never

any doubt in Dr. Vessey's mind about the means available to act since Mr. Mordvinov would never be a member of Green College if Dr. Vessey did not issue him a residence contract, and Dr. Vessey was not likely to do that while this cloud was hanging over Mr. Mordvinov. Dr. Vessey testified that he considered fairness, timeliness and effectiveness, in the sense of a course of action likely to produce positive results, to be the principle considerations in June 2014.

143. In relation to mid-June, Dr. Vessey testified that he expected the College's interests would be managed in a way that fit with UBC's wider and larger response to an emergency that affected more than just Green College, that the response would not just be what was expedient for Green College but would part of a deliberated and concerted response. He testified that they were all conscious that there might be criminal charges in Toronto, and that nothing they did at UBC should compromise investigations of that kind. He said he had been concerned from the outset about wading into a crime scene. He said he had no basis to investigate those circumstances.

144. On June 13, 2014, in an email to the group he had looped in, Mr. Bohnen asked Mr. Hyson to weigh in on how the University has dealt with criminal allegations or charges from other jurisdictions and how they would apply to UBC students applying to return, etc. (Exhibit 6, Page 193).

145. On June 13, 2014, Mr. Lundeen also emailed Dr. Vessey to advise that the file had been "elevated" to Monica Kay, Chad Hyson and Joanne Elliot (Exhibit 6, Tab 48, Page 199). Mr. Lundeen said that Green College needed feedback on how to proceed given conflicting duties of care to current/future residents and their duty to be fair "in the face of allegations without fact".

146. Asked about this comment in evidence, Mr. Lundeen claimed that it would "unfair to act on an allegation", and that they "had no means to verify" the allegations from Student B about what happened in Toronto in order to use that event to restrict Mr. Mordvinov's ability to return to Green College. It is unclear why it was not possible to ask Student B for her account and then to ask Mr. Mordvinov to respond, and then to determine what their view of the allegation was, especially as Mr. Lundeen testified that Mr. Bohnen had emphasized the importance of first hand accounts. Asked if they considered asking Mr. Mordvinov about the allegations, Mr. Lundeen said that he could not recall. He said Dr. Vessey wanted to be clear about which person would have the authority to deal with Mr. Mordvinov about what they had heard, that they did not want to mess that up, that there was "quite a bit of pressure", and that the allegations were criminal in nature and they did not want to "muddy the waters".

147. Asked in evidence about this conversation with Mr. Lundeen, Mr. Bohnen said that in investigations, due process is a big piece of it, and that the University of Toronto had been sued in a situation of inadequate due process. He testified that a case could be made for only proceeding with really adequate evidence. Mr. Bohnen continued however that he did not believe the allegations in this case were without fact, and that direct contact with those involved could inform the process and ensure allegations were accurate. Asked if there had been any

conversation about Mr. Mordvinov suing the University, Mr. Bohnen did not answer directly, replying that due process was important.

148. On June 12, 2014, Mr. Lundeen wrote to Student E to request her to file a report with Campus Security (Exhibit 6, Tab 47, Page 197). In that email he stated that Green College did not have enough time for due process to work through her allegations about Mr. Mordvinov before he left, and could not now perform an investigation. He described her complaint to him about Mr. Mordvinov as a complaint about unwanted sexual advances, confinement and bullying/silencing afterwards. He suggested the reason to report to Campus Security was to make sure information was on file in case there were *other* reports.

149. On June 13, 2014, Student E responded that she had heard about Mr. Mordvinov's recent actions and things he had done in the past, and was willing to do "whatever might help to keep others safe" (Page 197). She testified that she was devastated by what she had heard about Student B and wanted to do anything she could to stop it from happening to anyone else. Mr. Lundeen responded that although the reports were "disturbing", they (Green College) were stuck in that they had a duty of care for their residents and also a duty to be fair in case of false accusations (Page 197).

150. Student E testified that when she spoke to Steve Bohnen she had to talk to him in detail about what had happened between her and Mr. Mordvinov. She said it was stressful having to relive her experiences with Mr. Mordvinov. On June 13, 2014, Mr. Bohnen emailed Student E after their conversation to provide a referral to Jennifer Hollinshead of UBC Counselling, and to request the Facebook communication with Mr. Mordvinov. Student E sent the Facebook communications to him (Exhibit 6, Tab 49, Page 200).

151. In his testimony, Mr. Bohnen also recalled a conversation with Student E. He thought it was likely they spoke by telephone based on the contents of his email to Student E. No Incident Report documenting the contents of his conversation with Student E was produced by the University. Mr. Bohnen testified that he maintained a day book of his calls, but otherwise there might not be much documentation of a phone call. He testified that his day books were shredded in about 2018 in conjunction with changes in the Campus Security office. Mr. Bohnen testified that the request to him for records in connection with this proceeding was for electronic records, and that he therefore did not review his paper records at that time.

152. On June 19, 2014, Mr. Lundeen had a conversation with Mr. Hyson about Mr. Mordvinov and RW. In an email to Dr. Vessey about his conversation with Mr. Hyson, Mr. Lundeen reported that Mr. Hyson said that there was nothing Green College could do until first hand reports surfaced from Student B and Student E (Exhibit 6, Tab 50, Page 202). By this time, both Mr. Lundeen and Mr. Bohnen had received first hand accounts from Student E. Mr. Lundeen agreed in evidence that his conversation with Student E in May was a first hand report. In his evidence, Mr. Bohnen was asked if he had conveyed the fact that he had spoken with Student E to Mr. Lundeen. He said that he thought Mr. Lundeen had

been copied and he did not know why the Incident Report did not have content about his conversation with Student E.

153. Mr. Lundeen further reported to Dr. Vessey Mr. Hyson's comment that Green College needed to carry out an investigation with Mr. Mordvinov to give him an opportunity to defend against the claims against him in order to determine Green College's options with respect to Mr. Mordvinov's return. Mr. Lundeen agreed in evidence that the Principal of Green College can investigate and said that Dr. Vessey might ask him to carry out such an investigation or might appoint someone else to do it. Asked whether there was any reason why Green College could not proceed with an investigation of Mr. Mordvinov at that time, Mr. Lundeen said that he could not recall.

154. Mr. Lundeen said that the investigation would involve hearing Mr. Mordvinov's response to allegations, and being clear whether the allegations were a breach of the Residents' Contract. He described the situation as difficult because it was one person's word against another, even though he had never spoken to Mr. Mordvinov about any allegations. Mr. Lundeen said his understanding was that the investigation should take place as soon as reasonably possible.

155. Mr. Lundeen confirmed that no investigation took place, that he was not tasked to have a conversation with Mr. Mordvinov. He said that he expected there were conversations about how to proceed, that he recalled Dr. Vessey wanting the decision to be taken outside his office, and that he "vaguely" recalled "some resistance" from Dr. Vessey about Mr. Lundeen being involved in something with criminal implications. Asked why that would matter, Mr. Lundeen said that there was concern about not messing it up and about the risk that could bring for himself and the College. Mr. Lundeen confirmed that he was supportive of Dr. Vessey's position and wanted to be very careful. Mr. Lundeen testified that he did not consider seeking legal advice about investigating, and that he did not advise Mr. Hyson that Green College was not investigating. Mr. Lundeen testified that the issue went cold in the summer and was "awkwardly quiet" for several months until the spring of 2015 when as much as possible was channeled to Mr. Hyson's office.

156. Asked how not proceeding with the investigation protected the community, Mr. Lundeen said that he did not recall the reasons the investigation did not happen but that he and Dr. Vessey were discussing how to get support to prevent Mr. Mordvinov from returning to the College. Dr. Vessey confirmed that he did not take any steps to warn Green College students who might see Mr. Mordvinov at conferences.

157. Dr. Vessey testified that he understood Mr. Hyson's call on June 19, 2014 to confirm that there needed to be statements from Student B and Student E, that there needed to be an investigation, that Mr. Mordvinov needed an opportunity to explain himself and provide an accounting for his actions, and that until these actions had been taken, there was nothing Green College could do to block Mr. Mordvinov's return to Green College. In our submission, this represented a

significant departure from Dr. Vessey's original position that he always had the option of withholding a further contract from Mr. Mordvinov.

158. Dr. Vessey also testified that he did not take the communication from Mr. Hyson through Mr. Lundeen as direction for them to proceed with an investigation, and that they did not commence an investigation. Dr. Vessey testified that by the end of June 2014, the matter was sufficiently complex that a more coordinated response was necessary. He testified that the idea that Mr. Lundeen and he would conduct an investigation into allegations with no relevant training or experience when the alleged perpetrator of the assault was in another country as far as they knew seemed, from the outset, inappropriate for them to shoulder. He further said that he was "waiting to see how things proceeded to find a point to make an issue of that".

159. Dr. Vessey testified that he was uneasy in his own mind that he would be conducting a rape investigation. He said that he had never stopped to think that as the Principal of Green College he would be investigating a student-on-student rape in a different province. He further testified that it still appalled him that there was a general assumption regarding this kind of "misdemeanor" that he would have the responsibility to investigate in the first instance. He said that there were better ways of conducting a matter like this than him playing "amateur rape investigator". Ultimately, it was his view that Green College was not in a position to investigate something as serious as an allegation of sexual assault. He described the idea that someone at Green College would start an investigation about a sexual assault in Toronto as "slightly fanciful".

160. Dr. Vessey further noted that since 2011, when UBC and Green College had updated and revised the nature of their relationship so that Green College was no longer a semi-autonomous ancillary unit but rather a full part of UBC, entitled to full benefit of UBC's administrative services, he had been trying to ensure that that actually happened, so that Green College did not have to put itself in situations like it was an off shore unit of UBC with all the risks that entailed. He said that it quickly became apparent to him that the Mordvinov situation was going to be a most decisive test of how, in practice, a small unit with limited resources would function as a unit of UBC with all the resources UBC had. He said that early on he was encouraged to see how quickly all entities available to advise and assist came on board.

161. Dr. Vessey testified that by the end of June he understood that there were several students in the History Department who were available to authorities beyond him, including Campus Security and Chad Hyson. He said that his office had very little communication from those offices in the weeks and months after the June 19, 2014 communication, except that they heard that Student B was not going to pursue a criminal process in Ontario. He believed that if it would become appropriate for him to do something, he would hear about it, an instruction would come to conduct an investigation of Student B's allegation in Ontario, at which point, Dr. Vessey testified, he would have said that he was not comfortable doing it and was not going to do it. He said that this showdown did not occur, that the wheels continued to turn and they received little feedback from other agencies,

despite this being an urgent and important matter, and despite the University putting together a policy for response to these issues. He said that he and Mr. Lundeen played the waiting game, sending reminders and requests for updates, and heard nothing back. Asked if he had any concern that playing the waiting game might have a negative impact on the women at Green College who were aware of the sexual assault allegation against Mr. Mordvinov, Dr. Vessey replied that he was “aware of the stakes, yes”. Dr. Vessey testified that, though he regretted many things in retrospect, he did not regret declining to take upon himself and the College the running of this rape investigation. Asked whether while he was waiting to see how things proceeded in the following months he considered the possibility that everyone was waiting for someone else to act, Dr. Vessey replied that he did not know if he considered that possibility, but he did wonder what other people were up to.

162. Dr. Vessey testified that he “had no way of knowing” what Mr. Hyson’s next steps would be with respect to Mr. Mordvinov. He testified that by the end of June, he felt he had done everything he could reasonably do. He had given the necessary information to other agencies, and felt he should wait to hear what came from the discussions they were having. He also did not expect that the issue had stopped at the level he was aware of, namely Campus Security, Monica Kay and Chad Hyson, but said that he did not know that, saw no reason to ask, and did not think he would be told if he did.

163. Some of Dr. Vessey’s evidence, above, is not consistent with the time line as otherwise known, particularly about when the History students came forward and when UBC developed Policy 131. Further, the documents disclosed do not include reminders and requests from Mr. Lundeen or Dr. Vessey for updates to anyone.

164. Further, Dr. Vessey did not appear to have considered that one investigation did not need to cover all potential issues. The evidence is that Mr. Hyson *did* propose that Dr. Vessey do an investigation by speaking with Student B and Student E, and that the investigation was to be for the limited purpose of determining if Mr. Mordvinov should be allowed to return to Green College. Mr. Hyson was not asking Dr. Vessey to address Mr. Mordvinov’s status at UBC in general, and was not asking him to undertake a criminal investigation for the police in Toronto. Moreover, if Dr. Vessey was not prepared to undertake the proposed investigation, the time had come by the June 19, 2014 conversation to say so to Mr. Hyson and Dr. Vessey’s report, including Hugh Brock. Dr. Vessey’s failure to proceed with an investigation, or advise Mr. Hyson that he was not proceeding, allowed Mr. Hyson to believe that an investigation was underway at Green College that was not taking place.

165. On June 27, 2014 Student B sent Mr. Bohnen an email (Exhibit 6, Tab 51, Page 204) confirming that she was sexually assaulted by Mr. Mordvinov, that she had some injuries, that she had sought medical attention at the hospital, and that she had not yet decided whether to report the incident to the police. By email of the same date, Mr. Bohnen responded (Page 203). His primary message was to urge her to make a police report on the basis that intervention by the judicial

system was often needed to stop a pattern of behaviour that might victimize numerous other women causing them pain, distress, and potentially serious physical and psychological issues. He described justice system outcomes as often not being perfect, but often being the only realistic option to get action taken. He urged her to at least speak with the police, and to consider an anonymous report.

166. Mr. Bohnen testified that the primary reason he contacted Student B was to provide her information to Student Conduct, but notably, Mr. Bohnen did not ask Student B to speak with him or to provide him with a first person account of the incident with Mr. Mordvinov. He agreed that he also did not advise her about other avenues of action, such as a complaint to the NAM process or a complaint under Policy 3. Mr. Bohnen was asked what he was talking about when he said that the Student Conduct people were working on options, but he was not able to elaborate. Asked if Mr. Bohnen approached the issue of Mr. Mordvinov from a safety planning perspective, he testified that safety planning was not top of mind for him because Mr. Mordvinov was out of the country.

167. By the end of June 2014, Mr. Bohnen had made personal contact with Student B and Student E and had forwarded the file to Student Conduct and Mr. Hyson, whom he understood to be working on the file and the University's options with respect to Mr. Mordvinov. Asked in evidence what his understanding was of where things stood with the issues that had been brought forward about Mr. Mordvinov, Mr. Bohnen testified that they had accumulated more information, and that information had been passed to parties that could take action. He strongly believed that information about Student E in particular had been passed on to persons who could take action but was unable to say where or when this had happened. Asked what he understood to be the objectives of the steps he and the University were taking in relation to the complaints of Students B and E, he testified that he was focused on accurate documentation and getting assistance with how to proceed because he said "they had never had to do this before". He said that the service he was requested to provide was to help Student Conduct with the file in order to work towards the broader safety of women on campus. Asked if his objectives included increasing safety and reducing the risk of sexual discrimination or harassment for women at UBC, including at Green College, he answered, "Yeah, more broadly for the whole University, yes, of course." He said, however, that his focus was not on the broader issues, but on the fact that help was needed in the moment on this file and the RW file, which were both major disturbances at Green College.

168. Asked what the University's obligations were once it had heard from Ms. Kirchmeier, Student B and Student E, Ms. Kay testified that if the University had received a request to move forward with a formal process it had to take steps to secure the University in the interim in case Mr. Mordvinov returned, either through Mr. Hyson's office or through the police. She said the choice of what to do would lie with Student B and Student E.

169. In his evidence, Mr. Hyson agreed that the communications from Campus Security to him about the allegations of Student E and Student B meant that those

incidents had been brought to his attention as required by s. 6.1 of the Student Code of Conduct. This section provides:

- 6.1 All incidents of suspected non-academic misconduct will be reported to Campus Security, who then bring the matter to the attention of the Student Conduct Manager. The Student Conduct Manager will consider the allegations and may do any of the following:
- (a) meet with the student suspected of the misconduct;
 - (b) investigate further by any means deemed necessary and appropriate; or
 - (c) refer the matter to the President's UBC Vancouver Non-Academic Misconduct Committee (the "Committee").

170. While this language is permissive, it does not anticipate that the Student Conduct Manager will simply decide not to do anything in respect of serious allegations. Notably, s. 6.2 provides that the Student Conduct Manager must advise both the Non-Academic Misconduct Committee and the individual about whom the allegations were made if the Student Conduct Manager decides not to proceed:

- 6.2 If the Student Conduct Manager believes that the suspected misconduct is of such a minor nature that it does not require corrective action or that the Committee is not likely to find facts that would result in disciplinary action, the Student Conduct Manager may discontinue further action. Upon discontinuing further action, the Student Conduct Manager will notify the Committee and the student named in the allegations in writing of their decision, and will invite the student to respond if the student wishes to do so. The student will also be advised of the possible effect of the allegations in the future, as set out below in s. 6.6.

171. Mr. Hyson disagreed that the notice to him of the allegations was sufficient to initiate the Non-Academic process regarding Students B or E under the Student Code of Conduct. He confirmed that by the end of June 2014, despite Campus Security bringing the matters to his attention multiple times, including after hearing directly from Student B and Student E, he had decided not to move ahead with the Non-Academic process with respect to either complaint.

172. In relation to Student B, he was concerned that the reports were not first hand and there was still information that needed to be gathered from Student B. He testified that it was not his process to reach out to someone over "third or fourth hand reports" to Campus Security. Given that his process was to interview complainants to prepare their statements in any event, it is unclear why the fact the original information was third or fourth hand would matter. He also testified with respect to Student B that it was still unclear if she would be proceeding through local law enforcement in her jurisdiction. Mr. Hyson agreed, however, that not having all of the information was not a reason not to accept the report, and the fact Student B might be pursuing the matter through local law enforcement was not a reason not to accept the report.

173. Ultimately, Mr. Hyson testified that it was his conclusion, and that of his direct supervisor Janet Teasdale, that the Non–Academic Misconduct process did not have jurisdiction over Student B’s allegations because she was no longer part of the University community and the allegations related to the conduct of one of the University’s students outside of the University’s jurisdiction. However, s. 3.1(b) of the Student Code of Conduct provides that the Student Code of Conduct and its processes apply “where the conduct is alleged to adversely affect, disrupt, or interfere with another person’s reasonable participation in University programs or activities”. In cross examination, Mr. Hyson said he understood that Mr. Mordvinov’s assault on Student B created enormous worry about Mr. Mordvinov, and that it was possible that it would be the case therefore that this had the potential to adversely affect, disrupt, interfere with another person’s reasonable participation in University programs or activities of others as provided in s. 3.1(b) of the Student Code of Conduct.

174. Asked if Mr. Bohnen was correct to write to Student B that the student conduct management people were working on options and were in consultation with UBC legal, Mr. Hyson testified that this was not accurate. He said that they were not working on options because their view was that the Non–Academic Misconduct process did not have jurisdiction over Student B’s allegations, and the matter would be better reported through law enforcement if that was something Student B wanted to do.

175. Asked if the facts relating to Mr. Mordvinov’s trip to Toronto, namely that he was travelling from a conference which he attended as a student, to further work on his dissertation as a student in Russia, and was travelling on University money, might have changed the view that the Non–Academic Misconduct process did not have jurisdiction, Mr. Hyson said that was possible. Nonetheless, Mr. Hyson said they had made the decision not to proceed further with the allegations of Student B. Asked if they documented that decision in any way, he said they did not. The failure to document this decision was itself inconsistent with s. 6.2 of the Student Code of Conduct, which required written notice to both Student B and Mr. Mordvinov of their decision.

176. Asked if a student about whom a credible allegation of sexual assault had been made posed a risk, Mr. Hyson agreed this was possible. Asked how the University dealt with that risk if it was not proceeding under the Non–Academic Misconduct process, Mr. Hyson simply answered that if they did not have jurisdiction to investigate, it was difficult to take action. He agreed that in making that decision, he did not consider the Human Rights Code.

177. Pressed on the language in s. 3.1 which provided that the Student Code of Conduct applied in relation to conduct that is alleged to adversely affect, disrupt, or interfere with another person’s reasonable participation in University programs or activities, Mr. Hyson agreed that he anticipated that those who were aware of Student B’s allegations would be concerned, that it was communicated to him that there was concern about Mr. Mordvinov returning to Green College, and that it was possible that his return might have the adverse effect described in that section. Mr. Hyson testified that they did not consider this at the time.

178. In relation to Student E, Mr. Hyson agreed that her allegations were serious, and that she was concerned about Mr. Mordvinov returning to Green College. However, Mr. Hyson said that he did not have information about why Student E had disclosed her allegations to Mr. Lundeen and it was his practice to follow the wishes of the complainant. He testified that typically, he would meet with complainants to discuss options moving forward and find out what they wanted to do. Although he agreed that the easiest way to resolve questions about Student E's allegations and preferences would be to contact Student E and ask her, Mr. Hyson agreed that he did not contact Mr. Bohnen, Mr. Lundeen, Student E or Mr. Mordvinov for more information about the allegations.

179. Mr. Hyson's view was that Green College had the ability to move forward with a process under their residence contract. He testified that he told Green College that he had been involved in circumstances where a violation took place in the last couple of days of residency, and that SHHS staff had moved forward to gather evidence and make a decision in that case about whether there had been a breach. He testified that the penalty in such circumstances could include a period during which the student was not permitted to reapply or return to residence. He also agreed that if a person is evicted from residence, it was usual to have a period, typically 3 years, in which they were not permitted to reapply for, return to or visit *any* student housing.

180. Mr. Hyson testified that if misconduct was being considered under the Green College contract, that could be a reason for the Non Academic Misconduct process not to move forward. Section 3.2 of the Student Code of Conduct provides:

However, this Code will not apply to conduct that,
(a) is specifically assigned to another disciplinary body within the University (eg. Academic Misconduct or Scholarly Misconduct);

In our submission, it is not clear that a Green College proceeding about being a member of a residence would be equivalent to disciplinary proceedings by "another disciplinary body with the University", as intended by this section. Asked if he would consider the Non-Academic Misconduct process precluded even if any decision by Green College would not affect Mr. Mordvinov's participation in the University, Mr. Hyson answered yes, but then he suggested that *after* the Green College process the matter could be forwarded for further consideration to the Non-Academic Misconduct process. As this position indicates that the Non-Academic Misconduct process *did* have jurisdiction, it is unclear why waiting until the Green College process was over would be reasonable.

181. Although Mr. Hyson testified that he was not moving forward because on Student E's allegation because he thought Green College could be dealing with it, he agreed that he did not follow up with them to make sure they were.

182. The other remarkable aspect of the events in June 2014 after Student B's allegation of sexual assault by Mr. Mordvinov was raised at Green College is that Ms. Kay never advised anyone that a report had come to her in January 2014 from Glynnis Kirchmeier about aggressive sexual behaviour and sexual misconduct by Mr. Mordvinov, or that that report related in part to Student A who was a Green College resident. She never mentioned this, never attempted to see if there was any knowledge about it at Green College, and never attempted to see if any follow up with Student A was possible. In fact, Dr. Vessey testified that he heard about Ms. Kirchmeier's report for the first time when he was asked about it while testifying at this proceeding.

VIII. Summary of Status to End of June 2014

183. By the end of June 2014, Student B and Student E had done everything asked of them to move their concerns forward and obtain an effective University response. Both had made first person contact with Mr. Bohnen, the sole person they had been told they needed to contact.

184. In view of that, the University's failures to coordinate information and develop a comprehensive plan for moving forward at the end of June were comprehensive.

~ Ms. Kay had no power to investigate, but she did not share the information she had about Ms. Kirchmeier's disclosure in January 2014, which included Ms. Kirchmeier's first-hand accounts of seeing Mr. Mordvinov touching a History student who was also a Green College resident against her will, the student's report that the conduct was repeated and unwelcome (Student A), Ms. Kirchmeier's own accounts of Mr. Mordvinov's sexually aggressive actions towards her, and an account of him touching another student against her will (the report regarding Ms. Cunningham). Ms. Kay did not take any steps to follow up with Student A.

~ Mr. Bohnen also had the power to document but not investigate, but did not clearly document and forward his interview with Student E and did not ask Student B for a statement. He also assumed without checking that Student Conduct would be moving forward with an investigation.

~ Mr. Hyson was provided with contact information for Student B and E, and advised that both had been in contact with Green College and Mr. Bohnen, and had the power to investigate, but did not follow up with either, commence an investigation, or properly consider moving ahead with Student B's allegation despite the fact that it took place in Toronto.

~ Dr. Vessey, Mr. Lundeen and Green College had the power to investigate and had a clear issue to address at Green College, namely whether they would admit Mr. Mordvinov back to Green College, but did not take the next steps to answer this question, and did not tell anyone they were not moving forward.

~ None of their supervisors took any steps to make sure there was a plan of action or that it was being carried out.

185. The failure to come together to build a comprehensive response was a clear example of siloing. Each entity made its own decisions without considering what

the whole was that emerged from those decisions. As well, information was not fully shared, including by Ms. Kay and Mr. Bohnen.

186. By the end of June, as the evidence described above shows, all of the responsible parties had talked themselves out of acting to that point for a variety of reasons. They had also failed to meet together to agree on a plan of action going forward. For this reason, as well as inattention and inadvertence, information was imperfectly sought, recorded and shared among them. While Mr. Mordvinov's absence was a factor, it was not the main reason that anyone failed to take the next step, or why they failed to come together to establish a plan. Some even noted that student plans change, and Mr. Mordvinov could have returned at any time.

187. As set out in the evidence described above, all of the involved parties, both students and administrators, had identified the ongoing safety of women as a key issue. Some had also identified the need for Student E and Student B to obtain some closure and a sense that their concerns had been acted upon. All of Dr. Vessey, Mr. Lundeen, Mr. Bohnen, Mr. Hyson and Ms. Kay were aware of significant safety concerns for women and the community at large arising from the allegations against Mr. Mordvinov. However, this awareness of the issues of risk and lack of safety for women did not drive the analysis of what steps to take, or ensure an effective path forward. They treated the issues of risk and lack of safety as a background concern, not as a primary factor governing the choices these administrators were making. As set out by Ms. Kay, the University saw itself as having a choice between proceeding informally (which here amounted to not proceeding at all with respect to Mr. Mordvinov directly) and proceeding formally into a disciplinary proceeding.

188. However it is our submission that, pursuant to the *Human Rights Code*, as found in *Hale*, the University was required to focus on addressing the breach of the University's obligation to provide a work, study and living space free of discrimination and harassment which the complaints against Mr. Mordvinov alleged, to restore a work, study and living space free of discrimination and harassment, and to ensure such an environment going forward. In our submission, a key component of these requirements was a need to address safety concerns for the women in the University community arising from the allegations about Mr. Mordvinov, given Mr. Mordvinov's status as a student and his intended return to campus. Moving forward on this obligation required the University to consider an alternative to the binary options of an informal complaint or a disciplinary proceeding. While disciplinary action might achieve the requirements of the *Code*, these objectives required an effective response, not necessarily a disciplinary one.

189. In the circumstances, the failure to take any effective action on the complaints of Student B and Student E was a critical failure by the University to respond appropriately to the complaints of Student E and Student B to the University about the sexual misconduct they had experienced by Mr. Mordvinov and to ensure a work, study and living environment going forward that was free of harassment and discrimination on the basis of sex.

190. No one at the University formally considered their obligations under the *Code* to provide a work, study and living space free of discrimination and harassment, to restore a work, study and living space free of discrimination and harassment, or to ensure such an environment going forward. No one approached the issues arising from the allegations against Mr. Mordvinov in this light. No one identified that the safety issues arising from the allegations against Mr. Mordvinov had to be addressed for any of these things to happen, as required by the *Code*. No one considered that the obligations under the *Code* gave the University a basis on which to act, and the power to do so. Ms. Kay was aware of the obligation to ameliorate conditions of harassment and discrimination, but she did not see any path arising from this obligation other than either an informal process or a formal disciplinary proceeding. She was aware of Policy 3, but she did not suggest proceeding under it to anyone in relation to the allegations against Mr. Mordvinov. She also stated that the University had the authority to secure the campus when it deemed it necessary to do so, that there were no limits on the University's ability to take steps to secure the campus, and that this power was not contingent on a complaint, whether formal or not.

191. The University had Policy 3, Harassment and Discrimination, in place. It is notable, and consistent with the failure to consider events from the perspective of the requirements of the *Human Rights Code*, that this Policy was not in active use by any of Campus Security, the Equity and Inclusion Office, Student Conduct and the Non-Academic Misconduct process or Green College in June 2014. No one considered approaching the allegations against Mr. Mordvinov from the perspective of Policy 3 or the *Human Rights Code*. As a result, there was a consistent failure to consider what addressing a lack of safety for the women on campus might entail, or to see that there was authority in the *Code* for doing so.

192. Some of the responsible parties, notably Mr. Bohnen and Mr. Hyson, considered the issues which had arisen from the point of view of a formal disciplinary proceeding under the Student Code of Conduct. The Student Code of Conduct is focused on the students' relationship with the University and whether a particular student has breached the obligations of that relationship such that they should be disciplined. Resorting to the obligations of the Student Code of Conduct, and the associated Non-Academic Misconduct process, created significant procedural problems with respect to the allegations of both Student B and Student E.

193. In Student B's case, it led the University to be pre-occupied with whether it had jurisdiction to discipline Mr. Mordvinov under the Non-Academic Misconduct process over the event in relation to Student B that had occurred in Toronto. In Student E's case, it led Mr. Hyson to believe that the Non-Academic Misconduct process should give way to an investigation he believed Green College was conducting in order to determine if Mr. Mordvinov should be offered a further contract at Green College.

194. None of these considerations approached the safety of the women at Green College or on campus as the central concern. While a sufficiently harsh

disciplinary action that involved expelling Mr. Mordvinov might effectively result in safety for the women on campus and at Green College, this was not the purpose of the Non-Academic Misconduct process, and the interests of safety were not a central part of the discussion around the Non-Academic Misconduct process. Moreover, this would only be the outcome if the Non-Academic Misconduct process actually went forward in respect of either student, which it did not in June 2014.

195. Further, none of the key operational personnel considered applying Policy 14 in 2014, and none had a clear explanation why, other than they were not familiar with that policy or who at the University had ownership of it.

196. The other formal process that was considered by Mr. Hyson, but apparently not by Dr. Vessey, was an investigation under the Green College Residents' Contract to determine if a breach had occurred there such that Mr. Mordvinov would not be offered a contract to return to Green College. This also raised procedural questions about Mr. Mordvinov's status in June 2014, which were of concern to Mr. Lundeen, but in any case was a non-starter because of Dr. Vessey's view that he was not competent to actually address the issue of Mr. Mordvinov's conduct which had arisen following Student B's disclosure. In Dr. Vessey's view it was not possible to investigate the Student E allegation alone if he felt the Student B allegation was too grave for someone at his level to pursue.

197. In our submission, had the various entities at the University applied a human rights analysis to the allegations of Mr. Mordvinov, as they were required to do to comply with the *Code*, they would have approached the complaints of Student B and Student E in a fundamentally different way. They would have been focused on what was necessary to restore and ensure safety for women at Green College and the University, and would have understood that they had the power to act to do this. Focusing on safety would have required the various entities at Green College to consider what the allegations about Mr. Mordvinov indicated about the risk he posed if he returned to campus or Green College and would have required them to take effective action to ensure any risk found did not materialize. In this analysis, it would have been necessary to gather full information from Student E and Student B (which apparently was done by Mr. Bohnen with respect to Student E, although this was not documented), present those allegations to Mr. Mordvinov for his response, and make a decision about the reliability of the allegations and what then needed to be done if Mr. Mordvinov was found to be a risk. Because the University was locked into the binary options of responding informally or in a disciplinary way, these steps did not happen effectively or at all.

198. Focusing on safety and risk would have ensured the University was considering directly what it was responsible for under the *Code*, and would have ensured that procedural issues in the Non Academic Misconduct process did not improperly trump considerations under the *Code*. In particular, focusing on risk would have yielded the conclusion that the location where Mr. Mordvinov committed his actions against Student B was not relevant to whether he posed a *risk* on return to UBC and Green College. The proposed analysis could have been

carried out by Dr. Vessey for Green College, and by a person appointed by the University otherwise, since Student Conduct is only empowered to investigate under the Student Code of Conduct. If Dr. Vessey did not feel equipped to carry out this evaluation of the allegations pursuant to the *Code* in relation to Green College, the person appointed otherwise could have been tasked with addressing the question for Green College as well.

199. Student B and Student E were clear about what they were looking for: neither wanted anyone else to have to go through what they had gone through with Mr. Mordvinov. Student E stated this overtly in her emails to Mr. Lundeen. Dr. Vessey understood that Student B wanted Mr. Mordvinov to be expelled from UBC as a danger to other students. Having not addressed the risk posed by Mr. Mordvinov as described in the allegations of Student B and E, and having not ensured that those risks were dealt with and would not be present going forward, the University discriminated against the women at Green College, including Student E, and at the University as a whole, who might be affected by Mr. Mordvinov going forward. Further, in not addressing the allegations of Student B and E in a timely way, they denied those complainants a proper process through which to recognize and respond to their experiences, and obtain closure in respect of them. This was specific discrimination against Student B and Student E.

200. In making these arguments, we also note that we do not agree that the University could not move forward with investigations by Green College and the Non Academic Misconduct process in June 2014 as well. In relation to the Non Academic Misconduct process, as noted above, it has jurisdiction if the impugned conduct is “alleged to adversely affect, disrupt, or interfere with another person’s reasonable participation in University programs or activities” (s. 3.1(b)). It is clear that Mr. Mordvinov returning to UBC and Green College in particular had a significant potential to adversely affect, disrupt, or interfere with the reasonable participation in University programs or activities of other persons, namely women who were aware of the allegations against him and who might be affected by his further conduct. As such, Student B’s allegation was within the jurisdiction of the Non Academic Misconduct process and should have been pursued in a timely fashion by Mr. Hyson.

201. It is also our view that Mr. Mordvinov was on University business when he was in Toronto. He travelled from UBC to the conference outside of Toronto on about May 23. He attended the conference as a UBC student. He then travelled to Toronto on May 26 on his way to Russia to continue working on his dissertation, also as a UBC student. Mr. Mordvinov was in receipt of a 4 year fellowship including tuition which continued to be paid through the 2013 and 2014 academic years (to August 31, 2015). He was in receipt of an international tuition award through the same period (Exhibits 152, 191). Through the first four months of 2014, Mr. Mordvinov was employed by the University and received pay cheques from the University (Exhibits 152, 186, 187). Mr. Mordvinov received funding from the University as a UBC student in January and May, 2014 (Exhibits 189, 190). This funding continued in September 2014 and through January and May, 2015 (Exhibits 152, 189). Whether or not he was specifically funded for his travel to this conference and on to Russia through Toronto is not determinative as

his general funding would be available for his travel expenses to complete the requirements of his program. We submit that a student athlete who misconducted him or herself between athletic competitions would certainly be considered to remain a UBC student, and to be liable to UBC for their behaviour while in transit, even if that transit involved a stopover somewhere.

202. As well as remaining a student of UBC on UBC funding for graduate students, including with respect to payment of his tuition, we say that Mr. Mordvinov had an ongoing contract with Green College through the summer of 2014. Mr. Lundeen questioned whether Mr. Mordvinov was still a student at the College such that the provisions of the Residents' Contract and Appendix II continued to apply to him. However, Mr. Lundeen testified that residence at the College was yearly, starting in September and ending in the third week of August of the next year. Mr. Lundeen told Ms. Kay on July 23, 2014 that Mr. Mordvinov was granted a leave from residency in Green College *from September 2014 to September 2015* (Exhibit 6, Tab 62, Page 220). Mr. Lundeen also agreed that Green College had funds from Mr. Mordvinov that it was holding and planned to apply to cover his rent for some of the summer months in 2014. Green College had also granted Mr. Mordvinov rent relief for May and June 2014. He would not have required rent relief if he did not have an ongoing obligation to pay rent, which required an ongoing contract with Green College. Mr. Lundeen agreed that there would be no basis to require Mr. Mordvinov to make ongoing lease payments if there was not an ongoing lease. Mr. Mordvinov clearly retained a contractual relationship with Green College until August 2014 at least. As such, Dr. Vessey had authority over Mr. Mordvinov until at least that time under the Residents' Contract. As such, it was incumbent on Dr. Vessey to move forward to investigate and respond to any issues that had arisen with Mr. Mordvinov during his tenure.

203. Further, Mr. Mordvinov had suggested he would be returning in 2015, and Dr. Vessey had agreed that he would be extended a new contract at that time. This agreement was an exercise of discretion by Dr. Vessey over which Dr. Vessey retained the power to determine if conditions had changed such that the offer should not be extended. For this reason as well, it was incumbent on Dr. Vessey to consider and investigate the information he had received about Mr. Mordvinov's unwelcome activities to determine if the renewal contract should still be offered. In either case (a continuing contract or an agreement permitting Mr. Mordvinov to return), we say that Mr. Mordvinov's ongoing relations with Green College required it to act in the short term to determine his ongoing status.

204. With respect to Student E, we disagree that any action by Green College meant that the University could not address whether Mr. Mordvinov should remain a student or be disciplined through the Non Academic Misconduct process. The allegations from Student E were serious. If the University was committed to a disciplinary path, they should have been taken up by the Non Academic Misconduct process with a timely investigation.

205. In relation to Green College, it is equally the case that Green College should have been moving forward with an investigative process to determine if

Mr. Mordvinov could return to residence there. They had a discrete question to answer (could he return?), and were not required to wait on larger questions about Mr. Mordvinov's status as a student at UBC which might turn on different considerations. That said, there is no reason why the allegations of Student B and Student E and Mr. Mordvinov's response to both could not have been made available to both Green College and the Non Academic Misconduct process for use by each in their processes. This should have been achievable in short order as both Student E and Student B were communicating with key personnel at the University, and making clear their willingness to do so.

206. The failure to move ahead with effective investigations of the allegations of Student B and Student E focused on the risk to these Students of not responding, and to other women at Green College and the University as a whole Mr. Mordvinov's anticipated return, negatively impacted Student B and Student E in a manner in which implicated their gender. They had had negative experiences with Mr. Mordvinov because of their gender, and needed the assistance of the University for the same reason. The failure to move ahead with effective investigations in June 2014 therefore amounted to discrimination against Student B and Student E. The failure to move ahead also negatively impacted the women of Green College and the University who were aware of the allegations or might be present and personally at risk if Mr. Mordvinov returned to UBC or Green College. This impact arose because of their gender. The failure to move ahead with effective investigations therefore amounted to discrimination against all of these individuals. We acknowledge that not everyone potentially harmed by this failure to act is a complainant in this proceeding.

IX. Note on Recommendation to File Criminal Charges

207. In relation to both the Mordvinov allegations and allegations against some other perpetrators, Mr. Bohnen strongly recommended to complainants that they file criminal charges. It was his view in general that it was good if the police were involved and criminal charges were laid because charges and criminal processes could effectively bring about improvements in the behaviour of persons involved in objectionable behaviour, including sexual misconduct.

208. In his email of June 12, 2014 about the update from Green College including the information from Student E, Mr. Bohnen wrote (Exhibit 6, Tab 45, Page 190):

As we know, if local police had received a complaint early on in this process, we might not be faced with the extent of the current concerns. Our goals in working with victims are always to support them and explain their option, but in cases with sinister overtones such as you've described below we very much encourage reporting to police provided a victim is willing to enter that process. The Police can bring very serious consequences to bear on perpetrators which often changes their behaviour rather quickly, while our interventions can often be challenged or even ignored.

209. Asked to elaborate, Mr. Bohnen testified that he had seen a lot of people engaging in unwanted conduct changing their tune very quickly when the police became involved. He said that the initial interventions of the University could be challenged, and that police reporting could give the University more latitude.

210. In relation to Student B's allegations, Mr. Bohnen also wrote that the criminal justice system is often the "only realistic option to get action taken" (Exhibit 6, Tab 51, Page 203). In relation to this he testified that the police arresting, detaining and interviewing a person could be a powerful event for a person whose conduct was out of line, and could be a bit of a cold shower for some folks who were arrogant enough to believe that they could act without consequences. He also noted that a police report could result in Mr. Mordvinov's passport being flagged, which could result in a person like Mr. Mordvinov walking away and never coming back without the University having to do anything.

211. He also testified that if there were police charges, that would be informative about the verity of the allegations because the bar to getting charges laid was quite high. He felt this would help UBC with its decision on registration. Mr. Bohnen acknowledged, however, that UBC had an obligation to keep its community safe and free from harassment and discrimination whether or not Student B went to the police. He testified that whether she brought criminal charges would "not modify that basic Policy 3 responsibility to provide a safe environment."

212. In relation to whether there were benefits to the complainant in making a police complaint, Mr. Bohnen acknowledged the difficulty of entering into a process which can be very onerous and is "legendarily challenging", in which the complainant's reputation might be picked apart, and in which there may be further victimization. He testified that some complainants want the behaviour stopped, and others were so overwhelmed by the prospect of the police process that they would not enter into it. He said the reason some proceed is to prevent the further victimization of other people.

213. Mr. Bohnen's comments about the advisability of making a police report can be seen as a recognition by him that the University might find reasons not to act, or might be ineffective in trying to act. However, in relation to the allegations against Mr. Mordvinov, Mr. Bohnen's position from the beginning of his involvement, that a police report should be made in relation to Student B's allegations against Mr. Mordvinov, had the effect of creating delay while parties waited to see if this would happen, and diluting the impetus for the University to act immediately. While there was no formal decision to delay while Student B considered whether to complain to the police, there was inaction and complacency among entities at the University in the early going which we say is partly attributable to Mr. Bohnen's ongoing talk of Student B making a report to the police. This is most evident in Mr. Bohnen's response to contact from Student B, where *instead* of gathering her statement, he urged her to go to the police. At that point, Mr. Bohnen, like the University, was waiting rather than taking steps to evaluate the allegations and respond if they were found credible, as most seemed to expect they would be. As such, whatever the upside, the recommendation to

go to the police was part of how the University talked itself out of acting effectively in June 2014. In General Class files, Mr. Bohnen routinely recommended complaints to the police, but these recommendations did not become impediments to action by the University in the same way.

X. Further Involvement of History Department

214. The decisions made to the end of June 2014 by the various University entities involved influenced many of the events that were to follow, and ensured the involvement of many more people in attempting to have the University respond appropriately to the issues posed by the allegations of sexual misconduct against Mr. Mordvinov. This proved to be an enormously time consuming, emotional and disruptive endeavour for a number of present and former female graduate students in History and in Green College, a number persons involved in aiding them, and faculty members of the History Department. Some individuals ended up devoting immense amounts of time to their attempts to get the University to act, to the detriment of their academic relationships, progress on their degree work, and their academic careers.

215. Student B's account of Mr. Mordvinov's sexual misconduct continued to circulate, including to Mr. Hay and from him to various others, including Caitlin Cunningham, Glynnis Kirchmeier and Eric Wright, the person Ms. Kirchmeier had spoken with in January 2014.

216. Ms. Cunningham was a Masters student in History. She commenced her program in September 2012, submitted her thesis in August or September 2014 and graduated in November 2014. Ms. Cunningham had had prior dealings with Mr. Mordvinov. She testified about taking a European History course in which Mr. Mordvinov was also a student. She described his behaviour in the course as generally disrespectful. She said that he occasionally did things that she found uncomfortable, such as not respecting her personal space and boundaries and touching her as he passed her in the halls of Buchanan Tower, for example, by placing his hands on her lower back or hips.

217. In April 2013 she attended a games night near Cambie and 16th with a lot of History graduate students in MA and PhD programs. After the event, a group of less than 10 decided to go to restaurant at Cambie and Broadway. As they walked down Cambie Street towards Broadway, Mr. Mordvinov tried to get her attention but she was engaged in another conversation. She had her hair in a high pony tail which he began grabbing at, at first gently. She told him to stop but he did not and she got irritated. He then put his arm around her shoulders and pulled her head and body down so that her face was squashed into his lower abdomen. She said she felt hot and panicked because he was much larger than her. When she could not break free, she testified to having a really intense feeling of panic, fear and claustrophobia which she found scary. She said that he was laughing at her, and humiliating her. Once free, she recalled swinging towards him and perhaps slapping him. She testified that the fact she did that was also deeply humiliating. She said that he did not take it all seriously and may have called her a prude, which she found insulting on top of the humiliation she was already

feeling. She said that she was really angry and that when they got to the restaurant, she sat in a different booth and texted her partner so that she could go home. She testified that when her partner arrived she was embarrassed by how relieved she felt that he was there.

218. Ms. Cunningham testified that she felt humiliated by the whole event. She described herself as a person that took professional boundaries and decorum very seriously, especially as she was young-looking for her age and sometimes had students undermine her authority in the classroom. She said that Mr. Mordvinov's actions undermined her professionalism. She said that through his behaviour, he made her look petty and small, silly or juvenile. She said that she wanted to pretend that the event had never happened. She testified that she never wanted to be in the same room with him again, and that the incident made her dedicated to avoiding him as much as possible professionally without jeopardizing decorum. This caused her to avoid a History Department reading group he was in and to take extra care at the Qualicum conference to avoid the talks he was at and to stay away from where she knew his hotel room to be.

219. At least one of Ms. Cunningham's peers saw the event happen, and she spoke to others that she was close to about it, but she did not formally report it at the time to anyone in authority at the University. She testified that it was not an event that she wanted to be associated with.

220. Ms. Cunningham testified about hearing from Mr. Hay about Student B's allegation of rape against Mr. Mordvinov. Ms. Cunningham said that she was shocked by the news, and that it brought up her experience with Mr. Mordvinov. She said that it was awful to hear that something like this had happened, and that she felt she had left someone at risk and let them down by not letting anyone know about Mr. Mordvinov's conduct towards her.

221. At a meeting of a feminist and queer reading group she belonged to, Ms. Cunningham confided about how she was feeling about her experience with Mr. Mordvinov and asked for the group's thoughts about what her professional collegial responsibility was in the situation. She wanted information about how to report what had happened to her. She said that no one knew what to do, but they decided to speak with a faculty member they trusted to ask for her perspective on how to seek support from the institution and how to find out what the University could do in response.

222. The group's discussion led to an email from Ms. Cunningham and Kaitlin Russell to Tamara Myers (Exhibit 67, Page 4), a faculty member in Canadian Gender History, who referred them to the new Department Head, Tina Loo (Exhibit 67, Page 3, Response, Page 2). In her response of July 16, 2014, Prof. Myers recommended taking the issue up with Prof. Loo, and also advocated acting in concert so no one felt isolated. She wrote, "This student is in a position to do real harm to undergrads and peers as well as to the 'respectful workplace environment'." She further wrote:

"Everyone will understand that you cannot work beside someone who is being accused of sexual assault. The issue has to be cleared up and

everyone should be confident that their best interests and safety are being acted upon.”

From this earliest communication, it was clear what the issue was for the students with respect to Mr. Mordvinov.

223. Ms. Cunningham described Prof. Myers’ response as overwhelmingly supportive and reassuring, which pleased her because she was feeling a bit panicked. This led to a group of graduate students working together to identify a number of issues with respect to safety to raise with Prof. Loo.

224. On July 18, 2014, Ms. Cunningham reached out to Ms. Kirchmeier (whose January report she was aware of from Eric Wright), mentioning to her that a group of graduate students were reaching out to others to attempt to create a broader narrative of Mr. Mordvinov’s behaviour to take to Prof. Loo, and inviting Ms. Kirchmeier to be part of the discussions (Exhibit 6, Tab 53, Page 206). The email described Mr. Mordvinov’s behaviour as making a lot of people in their Department uncomfortable.

225. On July 19, 2014, Meghan Longstaffe, another History graduate student (PhD) sent an email to a number of graduate students including Student D, Sarah Thornton, Ms. Cunningham, Ms. Russell and Ms. Kirchmeier inviting them to a meeting at Kafka’s Coffee at Main and Broadway (Exhibit 6, Tab, Page 207). The email made reference to “upsetting information with respect to harassment and assault” involving a History colleague, and their desire to alert the Department and ensure their own comfort and safety working in the Department.

226. On July 21, 2014, Prof. Myers wrote to Prof. Loo and Prof. Ducharme to advise that she had been contacted by a small group of graduate students about sexual harassment perpetrated by a graduate student who was now also alleged to have sexually assaulted a student who was not in History (Exhibit 6, Tab 55, Page 209) (Mr. Mordvinov was not named). She wrote that as the story spread, there would need to be some sign that the Department was addressing student and faculty concerns. In the first instance then, the Mordvinov issue was presented to Prof. Loo as concern about sexual harassment in the Department and sexual assault of another student. The person involved was shortly identified as Mr. Mordvinov. Prof. Loo responded to say that she had no information about this issue. Prof. Loo commenced her headship on July 1, 2014. On July 21, 2014, Prof. Myers advised the students that she had advised Prof. Loo of the allegations. She said that she did so because she heard from another professor who had heard about the situation from a graduate student (Exhibit 67, Page 1).

227. On July 21, 2014, Prof. Loo reached out to Ms. Kay, to whom she had been referred by Prof. Ducharme. She said that Ms. Kay had assisted the Department with an issue of harassment earlier in the year (Exhibit 6, Tab 56, Page 211).

228. The meeting of concerned graduate students at Kafka’s coffee took place on July 22, 2014, and resulted in an email from Ms. Cunningham to Prof. Loo on the same day requesting a meeting (Exhibit 6, Tab 57, Page 213). The email

identified concerns about the sexually aggressive behaviour of Mr. Mordvinov (without naming him), as well as feelings of lack of safety in the Department in Buchanan Tower, as well as the TA offices in Brock Hall. The email notably framed the issue in terms of safety: "More broadly, what can we do to help resolve this unsettling issue in our department and contribute to the safety of our faculty, grad students and the undergrad students we TA?" The email closes, "We appreciate your support and concern for the well being and safety of all members of our department, and we look forward to meeting with you soon". Ms. Cunningham testified that the purpose of their communications with Prof. Myers, Prof. Loo and the graduate students was to have a frank and open conversation to figure out how best to move forward. She said they had an issue, it would be overstepping her role to presuppose solutions, and they were trying to hand the issue over to someone in a position of knowledge who would know what to do.

229. On July 22, 2014, Prof. Loo responded (Exhibit 6, Tab 57, Page 213). She wrote, "I know how difficult it is to raise the issue of sexual harassment. Let me assure you that the Department and I take seriously our responsibility for ensuring that the work and study environment at UBC is free from discrimination and harassment". She thanked them for contacting her which she said was the "first step in what I hope will be a resolution".

230. On July 23, 2014, Prof. Loo met with Ms. Kay. Ms. Kay's notes of the meeting (Exhibit 6, Tab, Page 215) show that Mr. Mordvinov was identified, the previous report from Ms. Kirchmeier to Prof. Ducharme about sexually aggressive behaviour was referenced, although not using Ms. Kirchmeier's name, and the spring training session was mentioned. In relation to the spring training session, Prof. Loo reported that the session was mandatory, Mr. Mordvinov attended, and the session was not satisfying to students in that the information was too general and did not address the specific issues being raised. The notes say that the resurgence of interest in Mr. Mordvinov was due to the allegation of rape this summer and, "Now, all of these women, and a couple of male students as well, are concerned for safety because of Dmitri". There is no mention of complaints from Student B or Student E to Green College and Campus Security. The notes also say that they did not know Mr. Mordvinov's status or his location. Prof. Loo provided the information that Mr. Mordvinov's coursework was done, that he had full standing as a student, that he was funded for research, and that there had been "no charge or formal complaint". There is mention of Mr. Lundeen and Mr. Bohnen and whether there have been updates.

231. The notes also mention that faculty member Laura Ishiguro was upset, that she had taken the view that "gossip is their friend" (meaning is the friend of the concerned students), and that defamation and "ramping up" may need to be discussed.

232. On July 23, 2014, Ms. Kay contacted Mr. Lundeen to let him know that there were women in the History Department with concerns about Mr. Mordvinov going back a year or two (Kay notes, Exhibit 6, Tab 62, Page 220). The notes record Mr. Lundeen saying that Green College does not feel comfortable taking him back in 2015, "but don't know how to refuse him residency if there is

not even an informal complaint". The notes go on to describe the information from Student E (which Ms. Kay already knew as she was copied on Mr. Bohnen's email update of June 12, 2014). In an email to Dr. Vessey of July 23, 2014, (Exhibit 6, Tab 58, Page 214), Mr. Lundeen wrote about the information through Ms. Kay about the History Department, noting "though as with here, none have ever gone as far as to lodge a complaint". He also described matters at Green College as "ethereal allegations". In view of the fact that Student E and Student B had each contacted both Green College and Mr. Bohnen for the purpose of lodging complaints, as Mr. Lundeen was aware, this comment critically misstates where matters were at by that point with Student E and Student B. Mr. Lundeen noted that concerns of slander and acting on "inappropriately based on allegations" were also a concern in the History Department.

233. On July 24, 2014, Prof. Loo emailed the graduate students to advise of her conversation with Ms. Kay (Exhibit 6, Tab 63, Page 221). She wrote, "I discussed your concerns about sexually aggressive behaviour on the part of Mr. Mordvinov and your feelings of discomfort and lack of safety in the department. We take these concerns seriously, as we do our responsibility to act on them." She went on to say that Prof. Loo and Ms. Kay wanted to meet with the students and provide information about available resources including the EIO. The purpose of the meeting was said to be to hear about the concerns and what the Department and University could do to address them and support the students. She again concluded by saying, "We look forward to working together towards a resolution". It is a concern that despite these sentiments, Prof. Loo in fact had no idea what a resolution might look like or how it would be achieved. In our submission, it was disingenuous for Prof. Loo to repeatedly say that she was committed to finding a resolution when in reality she had not identified any steps she envisaged taking, or outcomes she envisaged pursuing.

234. In preparation for the meeting with Ms. Kay and for many months subsequently, the evidence shows History graduate students took the time to investigate and review University publications. They circulated policies, procedures, proposed drafts presented to the UBC Board, historical and news articles, documents related to the Sauder Rape Chant, the Task Force Report, the Iyer Report, etc. amongst themselves. Ms. Kirchmeier, Mr. Hay, and Ms. Russell in particular spent enormous energy documenting and understanding the University's public positions on misconduct. In contrast, Mr. Lundeen, Dr. Vessey, Dr. Loo, Mr. Bohnen, Mr. Hyson and Ms. Kay variously testified that they did not regard it their responsibility to assess or understand all potential University policies on the topic, nor how it had handled misconduct in the past.

235. On July 24, 2014, Prof. Krause also contacted Prof. Loo to express his concern that allegations had come forward in January 2014, had led to a mandatory workshop, but had not been disclosed to the Department (Exhibit 6, Page 225). His focus was on safety, including communicating to the students the faculty's commitment to safety as a primary concern. He wrote, "All of our students deserve to feel safe and secure in their workplaces, and acknowledging, publicly, that this has been an issue would have reinforced our oft stated commitment to, among other things, workplace safety. It also would have

enhanced the safety of our students, in my view, and might have mitigated the isolation and distrust that has resulted from our public silence.” He concluded that he was committed to making certain that the concerns of their students receive public recognition at a departmental meeting about an issue that the students felt was public and disturbing. He expected the public discussion to protect the identities of the students involved.

236. The meeting between the graduate students, Prof. Loo and Ms. Kay took place on July 29, 2014. Prof. Ishiguro attended along with Sarah Thornton, Kaitlin Russell, Meghan Longstaffe, Ms. Cunningham, Student D and Ms. Kirchmeier. Ms. Cunningham testified that at the meeting she expected the University would mobilize its response to their concerns, and that something concrete would manifest from the meeting. Ms. Cunningham testified that she disclosed the details of her incident with Mr. Mordvinov at the meeting. She said that she had not planned to do this, but it felt like they needed more details to get an idea of the shape of what was happening with Mr. Mordvinov, and the person with experience in the room was her. She said that she entrusted them with the story as a way of moving forward but that it was difficult to be trying to move into a professional sphere and to be sitting with the Department Head and talking about having her hair pulled and being grabbed, and then swatting at Mr. Mordvinov. She said she felt mixed about having to go into the details, although she noted that it was not immensely traumatizing. Ms. Cunningham testified that Prof. Loo and Ms. Kay seemed to take her account seriously. Ms. Cunningham testified that she did not leave the meeting understanding a clear path forward. This is consistent with what Ms. Russell observed about the meeting.

237. At the meeting, Ms. Kay may have talked about formal versus informal complaints, but it is not clear that she discussed and particular policies or processes, or what moving a complaint forward would look like. As Prof. Loo testified that she did not know that Ms. Kay could not investigate, it is unlikely that Ms. Kay discussed her role in relation to different forms of complaints.

238. At the meeting there was also discussion of safety concerns with offices and study spaces in Buchanan Tower and Brock Hall.

239. A number of witnesses recalled Ms. Kay discouraging discussion of allegations and using the phrase that doing so would be like snakes in the grass or releasing snakes in a room and turning out the lights. Ms. Kirchmeier testified that Ms. Kay said this to her in February 2014. Prof. Loo testified that Ms. Kay said that discussion of the allegations against Mr. Mordvinov should not continue because saying that someone was accused of sexual assault without being able to say who created fear and was unhelpful, like releasing snakes into a room and then turning off the lights.

240. Ms. Kay disputed some of what was said about her comments, but not her basic message discouraging the spreading of unproven allegations. In evidence she testified that she did not and does not agree with women, including survivors, warning other women about persons who may pose a risk of sexual misconduct in the absence of due process (meaning due process for the perpetrator), and in

particular, that she did not agree with doing this when survivors did not want to take a complaint about their experiences forward into a formal process. She testified that this interferes with their confidentiality, and with their ability to control their stories. She said that there were other ways of dealing with the safety issue.

241. Throughout this proceeding, the University has also adopted the view that it *must not act* unless given express permission from survivors to address their accounts of events. It is the case, however, that institutional failures to protect women from sexual misconduct and address complaints about sexual misconduct create the need for women to speak out about their experiences in other ways to protect other women, even if the allegations have not been formally dealt with. Moreover, the inefficacy and low success rate of processes for formally dealing with sexual misconduct allegations make informal disclosure all the more essential in the interests of safety.

242. The other concern that arises is that claiming a need for survivors to drive the process forward becomes very muddled when proper information about the options available and what the University will need from survivors before proceeding is not provided by the University to survivors, and the University appears to all too often interpret survivor preferences as instructions for it to do less or to do nothing. We saw that, for example, in relation to Mr. Lundeen's evidence about Student E. There is also strong example of this in information provided by Ms. Kay to Prof. Loo in relation to the HGSA Statement (Exhibit 6, Tab, Page 418). Ms. Kay relates a circumstance where training was provided because the student did not wish to pursue a complaint. It appears she is referring to the EIO training provided as the only response to Ms. Kirchmeier's complaint in January 2014. It is not the case that Ms. Kirchmeier stated that she did not want to make a complaint.

243. In relation to the allegations about Mr. Mordvinov, we say the concern about survivor control was in fact largely beside the point. The conscious decision Student B made was to disseminate information about her experience widely to protect those who might come into contact with Mr. Mordvinov. Student E also testified about her abiding anxiety that she had not come forward and warned others about her own experiences with Mr. Mordvinov which might have enabled Student B to avoid a dangerous situation with Mr. Mordvinov. For both of these survivors, the control they required in fact was the control to discuss their experiences as they felt necessary, a power which Ms. Kay did not think they should have when she testified that it is not appropriate to go forward without due process (for the perpetrator).

244. By the end of this meeting with Ms. Kay and Prof. Loo on July 29, 2014, the graduate students had clearly articulated their concerns about Mr. Mordvinov's behaviour, including the allegation of sexual assault against him, as well as various concerns about the safety of work and study spaces for graduate students in Buchanan Tower and Brock Hall. As readily apprehended by Prof. Myers and Prof. Krause, they had clearly identified that these were safety and professional comfort issues.

245. Despite this, Prof. Loo testified that at the end of July 2014, she did not know the student's concerns. Further, both Ms. Kay and Prof. Loo continued to maintain that there was "no complaint" for them to move forward on. Prof. Loo's evidence about what information she had when was particularly inconsistent and confusing; she persistently downplayed what she was aware of, even though much of what she had been told was documented in emails and the notes of Ms. Kay and Prof. Loo's own time line (Exhibit 4, Tab 10, Page 89 and onwards). For example she said more than once that she was not aware until January 2015 that there was "a complaint". She also said that she was not aware of the sexual assault allegation "until later", although this was discussed in the earliest emails to Prof. Loo (Exhibit 6, Page 209, for example). She also claimed that she did not understand that students were sharing info about a sexual assault by Mr. Mordvinov even though this was the one of the key reasons for the students having come forward.

246. It is also clear both that Ms. Kay did not comprehensively provide Dr. Loo with the information she was privy to, and that Prof. Loo did not make any effort to ensure her information was as complete as possible, including by ensuring that she had the details of Ms. Kirchmeier's account in January 2014, and that she was aware of the allegations coming out of Green College and what was happening with those allegations.

247. Asked what she believed the University needed to do after the July 2014 meeting, Prof. Loo testified that she left the meeting believing that UBC would act on any complaint that came forward, that it was up to the students, Ms. Cunningham or any other student at the meeting who had not disclosed their experience, to decide what to do. Asked what she thought the University needed to do about the fact that a person facing an allegation of sexual assault would be returning to the University, Prof. Loo replied that, were the University aware of the allegation and of an actual return, the University would take action, barring the person from campus, and would follow up in whatever was necessary. Her view, however was that the University was not aware of the sexual assault allegation. In our submission, this is simply inconsistent with the facts about who knew about Student B's allegations of sexual assault.

248. Prof. Loo's view, ultimately, was that her task was to refer the matter to Ms. Kay, which she testified she had done, and that otherwise she was limited to providing educational sessions. Asked what concerns arose for her as Department Head when a PhD student, on funding from the University, was alleged to have sexually assaulted someone, Prof. Loo testified that it was a concern, that she followed up on the student's questions about whether Mr. Mordvinov had a TAship, that she ascertained he was not on campus or in Canada, and then determined that he was no danger to the Department. Asked if she was concerned that students might encounter him at conferences, she testified that she was not "because the students that came forward were not in his field". This of course did not address other students in the Department that were in his field. Asked if she only understood him to be risk to the students who came forward, Prof. Loo testified, "No I thought there was a risk but no immediate danger

because Mr. Mordvinov was not on campus and the extent of my ambit of control was the Department that I had responsibility over". Asked if she was concerned that Mr. Mordvinov had standing to go anywhere in world and hold himself out as a UBC PhD candidate in good standing despite sexual assault allegations, she responded that she might have been concerned, but there was no complaint before her or that she had referred to the EIO, no complaint or process initiated, and no determination.

249. In our submission, this was far from an adequate understanding of her role. At a minimum, we say that as the Administrative Head of Unit in the History Department, responsible for a working and studying environment free of discrimination and harassment as she repeatedly stated she was, it was essential for her to understand as much as possible about the allegations against Mr. Mordvinov across the University, and to be pursuing possible resolutions to the issues he posed as a continuing member of the History Department as quickly as possible, whatever his location might be at that moment. Prof. Loo agreed in evidence that she needed to know about Mr. Mordvinov because she was ultimately responsible for upholding Policy 3 and the Statement on Respectful Environment as far as she could as Department head. She also agreed that the first thing she identified was the need for information about the circumstances and concerns for safety in the Department.

250. To the extent that steps needed to be taken by others, she could not view the process and ensure it was moving forward if she had no idea what the full picture was or what could be done to address the concerns raised to ensure a working and studying environment free of discrimination and harassment going forward. In our submission, as the events in relation to Mr. Mordvinov starkly illustrate, it is essential that persons with responsibility for outcomes do not simply leave it to others to act, because the consequence may well be that no one is in fact acting. The system in place may have some overlap and redundancies, but this should serve as a failsafe, not as a reason for complacency by any person in a key position of responsibility, like Prof. Loo.

251. In our submission, neither Ms. Kay nor Prof. Loo considered how the students' interest in a working and studying environment free of harassment and discrimination might be achieved other than through a disciplinary process. Asked if there was a safety based but non-disciplinary route to bar someone from campus, Prof. Loo replied that she did not know. Their single-minded focus on a disciplinary process meant that they failed to apprehend and pay attention to the issues of safety and comfort that were critical to the students, and led to a long period during which the university representatives failed to act to address the concerns of the students, to the puzzlement of the students. It also was the reason for the focus on "a complaint". After saying that she felt there needed to be a complaint to go forward, Prof. Loo was asked, "Do you understand that women have already raised a complaint about safety given certain conditions on campus and the fact that Mr. Mordvinov remains member of the Department?" she replied that she understood there was a concern about safety and about Mr. Mordvinov, but she did not understand that there was a complaint.

252. In our submission, the piece Ms. Kay and Dr. Loo were both missing and were not turning their minds to were the actions that were required under the *Human Rights Code* to address discriminatory circumstances, and restore a non-discriminatory environment for the women in the Department, especially those overtly articulating concerns about Mr. Mordvinov.

253. The second formal meeting between Ms. Kay, Prof. Loo and the students in August 2014 exemplified this lack of a shared understanding of the problem. The meeting consisted of representatives of SASC, Campus Security and counseling describing their services. Student witnesses said that the information provided in this session appeared relevant to a person with a new personal experience of sexual misconduct, but not to their situation where they had identified various threats to a working and studying environment free of harassment and discrimination, and were keenly interested in how the University could respond to ensure those threats were dealt with. Providing such a session to a few graduate students, rather than the Department as a whole, was a confusing choice. Certainly doing so avoided inconvenient questions about whether there was an ongoing issue with sexual misconduct in the Department, which Ms. Kay was determined to prevent.

254. Eventually Prof. Loo identified some systemic steps that would be of assistance, including reinstating the position of Equity Officer, creating an Equity Committee as a faculty committee, and developing guidelines about the Department's response to allegations of sexual misconduct. However, she did not take these steps until the start of the 2015 academic year in September 2015. Prof. Loo testified that such roles are identified in July each year, claiming therefore that she was obliged to wait until the following year. Given that she was a new head and the student's issues came forward in mid-July 2014, this was an unconvincing explanation. These were steps that should have been taken immediately and in time for the 2014 academic year, but again this might have required disclosure of the current issue, which she and Ms. Kay were trying to avoid.

255. A further issue in dispute became what should be communicated to the Department about the issues with Mr. Mordvinov. The evidence is that both Prof. Myers and Prof. Krause were clear that there needed to be some acknowledgement that an issue of sexual misconduct had arisen in the Department, and was being dealt with by the Department. Both cited similar reasons for this, namely that there was knowledge in at least parts of the Department about the allegations against Mr. Mordvinov, and that it would be key for student confidence and indeed faculty and staff confidence, for the Department's commitment to addressing these issues to be overt. Disclosure was strongly opposed by Ms. Kay, who convinced Prof. Loo not to disclose and instead to merely remind faculty of the duties on all to ensure a working and studying environment free of discrimination and harassment. The sense articulated by Prof. Krause that this was very different than owning up to a current issue affecting the Department was accurate. Eventually, limited disclosure was made by Prof. Loo of a current issue in a faculty meeting in February 2015. Delaying this disclosure did not provide any tangible benefit, and we submit contributed to rising tensions in the Department.

256. There was evidence about the conflict between Prof. Krause and Prof. Loo that emerged over the Department's failure to be frank about the current issues it was facing. This conflict first emerged after the first Faculty Meeting of the academic year in September 2014 where Prof. Loo provided a general reminder about the obligation to prevent harassment and discrimination, but did not mention the fact that the Department was faced with current allegations of harassment and discrimination. What was clear from this conflict was that failure to permit openness did not maintain secrecy but rather ensured disclosure that was more divisive and less carefully handled, and that made conflict within the department overt. While Prof. Loo maintained in her evidence that there was no danger for *students* in raising concerns about sexual misconduct, in fact, faced with communication from Prof. Krause that she did not support, she engaged human resources and had at least two cautionary chats with Prof. Krause. This demonstrated that speaking frankly did create professional dangers, even for a well established long term professor, let alone for graduate students who were entirely beholden to their academic mentors for their academic progress and path forward. While Prof. Loo characterized her issues with Prof. Krause as relating to perception that he was improperly challenging her authority, it is clear that when speech is unwelcome, there is often a way to characterize it as improper such that consequences should flow. Prof. Loo testified that she ultimately blamed the CBC and Prof. Krause for the negative consequences of events on the History Department and on her personally.

257. Ms. Russell testified that the conflict with Prof. Krause drew attention to her and Ms. Thornton in a way that she was really not hoping for. She described herself as already anxious and suffering from imposter syndrome and said that she did not want to be seen as not cooperating or antagonizing the department. She said that she felt in a precarious position in the Department and like she was on borrowed time because she should have graduated in May 2013 and did not because of her medical leave. She also described being concerned about sharing her concerns about safety in the Department with Prof. Paris, her supervisor, because she anticipated that Prof. Paris would be focused on the lack of progress with her thesis. When they did have a conversation near the end of September 2014, Prof. Paris did caution Ms. Russell not to get so involved in the issues of gender inequality and safety at the Departmental level that her work suffered. Ms. Russell said that Prof. Paris supported the work they were doing in general, but said she should not let it interfere with school. Having to discuss this issue with Prof. Paris and suffer additional anxiety about her progress were costs to Ms. Russell in trying to prompt the University to Act.

258. Ms. Thornton also recalled having a conversation with Prof. Paris in about September 2014 about the issues being raised with the History Department about safety and security for women. Ms. Thornton testified that Prof. Paris made it clear that she would not discuss the issues with her or assist her to navigate what was going on, that they were in different camps, and that the issue was not to be brought up with her. Ms. Thornton described this leaving her feeling isolated in the Department because of her participation in what was going on. She said that she felt pushed away by Prof. Paris.

259. The orientation provided to incoming students by the History Department in September 2014 did not include content about sexual misconduct, consent or what to do if a student experienced sexual misconduct. Prof. Loo testified that instead it was an anti-bullying, anti-harassment workshop designed to make students aware of respectful environment policy. By September 2015 the orientation was changed, and was delivered by SASC and the EIO.

XI. Student E

260. Student E testified that in Fall 2014 Green College held the workshop that was planned as a result of her disclosure to Green College of the incidents with Mr. Mordvinov. She said that Jessie Saunders led the workshop. Student E attended the session where she found that Ms. Saunders had used Student E's experience with Mr. Mordvinov as a case study for an exercise in which people talked through what the resident should and should not have done. Student E described this as distressing in such a small place where everyone who had been there the previous year knew they were talking about her. Whatever the value to Green College, as delivered, the workshop increased the harm to Student E of the University's approach to her complaint about Mr. Mordvinov.

261. Student E also testified about an incident in Fall 2014 where she helped a student who was being assaulted by a man living at Green College. Student E testified that Mr. Lundeen and Dr. Vessey declined to get involved because it had to do with a personal relationship between the student and the man. Student E testified that this reinforced her belief that administrators at Green College were not going to do anything about these sorts of problems, that it was not something they wanted to be involved in, and that the residents were on their own. She described this as upsetting and difficult because she loved the community and liked being involved, and wanted to be on good terms with Mr. Lundeen and Dr. Vessey. We note that this event should have been disclosed to us as a Jane Doe file, and was not.

262. Student E testified that in January 2015 she took a medical deferral because she was having suicidal ideation and feelings of guilt and worthlessness (Exhibit 6, Tab 510, Page 1556). She said that these feelings were in relation to the fact that she had not been able to prevent Mr. Mordvinov from raping Student B. She said that she felt a lot of guilt and helplessness that she could not do more. She also said that having to recount her experiences to lots of different people was difficult and did not help her with moving past her feelings of guilt and helplessness.

XII. Fall 2014 History Department

263. Throughout the fall of 2014, there was no forward motion on the allegations of Student B or Student E, or the information originally raised by Ms. Kirchmeier, or the information now provided by Ms. Cunningham. While the University witnesses attributed this to a lack of a formal complaint, it is clear that Student E and Student B had done *everything* asked of them to commence complaints and their issues had not been pursued. Meanwhile, there was a

growing and accurate concern in multiple quarters that the University was not doing anything.

264. The conversation among the students involved in coming forward to the University remained actively engaged in trying to move the University towards a more functional approach to concerns about safety and sexual misconduct. See for example Ms. Russell's lengthy email of September 11, 2014 following the first Faculty Meeting of the year (Exhibit 67, Page 8).

265. There was to have been a workshop conducted by the History Graduate Students Association (HGSA) on issues of sexual misconduct, the University's policies and graduate student to graduate student power and gender dynamics. The idea was for the students to share what they had learned in the last few months of trying to determine how to move forward with the concerns about Mr. Mordvinov. The workshop ultimately did not proceed when it became clear to the organizers, including Ms. Thornton, Ms. Cunningham and Ms. Russell, they were not qualified to do the workshop safely. As Ms. Thornton testified, they were concerned that other graduate students attending who had experienced harassment or sexual misconduct could be traumatized and they did not have the skills to create a safe space for them. Ultimately they communicated to Prof. Loo that they did not have the skills to do the workshop (Exhibit 67, Page 13). Work on this workshop and worry about it consumed a significant amount of energy for Ms. Russell and Ms. Thornton as well as Meghan Longstaffe (Exhibit 67, Page 10). Ms. Cunningham testified that they were very stressed and burdened by attempting to create the workshop, and that it was a big role for people who were not on the payroll, had no expertise, and were supposed to be writing their theses.

266. In December, Ms. Cunningham met with Ms. Kay to make an "institutionally recognized" complaint about harassment by Mr. Mordvinov. Ms. Cunningham testified that the timing was due to a few logistical matters, the most important of which was the fact that she had graduated in November and thus felt greater safety in initiating a report to UBC about what had happened with Mr. Mordvinov. She testified that she did not want the existence of the complaint to shape anyone's assessment of her professional work.

267. Ms. Cunningham testified that she did not want to move forward with making an institutionally recognized complaint, and that she felt apprehensive about doing so, but that she also felt that there was no other way forward for the institution. She understood Ms. Kay and Prof. Loo to have told her that they could not move forward without a formalized disclosure. Ms. Cunningham said that she felt she was helping other students by putting her experiences on record, and that she felt an ethical duty to her colleagues and the Department to do this. She said that she felt Ms. Kay and Prof. Loo were interested in upholding safety but could not do so until she acted. She testified that she really saw herself as a member of the UBC community, and was thinking about how best to act in a positive way.

268. Ms. Cunningham testified that in retelling the story she wanted to be dry eyed and professional about it because this was an environment in which her credibility was being assessed, but she found that she was starting to have more emotional reaction to the story. She also found it hard to speak dispassionately about how an event she found humiliating and undermining of her professionalism made her feel.

269. In coming forward, Ms. Cunningham was focused on the University having a record of her experiences with Mr. Mordvinov and adding her account to the accounts of others so the University could better understand the shape and scope of Mr. Mordvinov's patterns of behaviour. She testified that she did not know what the University would do with her account, and she did not feel like it was her job to determine that. She hoped that with her report, if the University received other reports, the University would be armed with a fuller perspective of who Mr. Mordvinov was, and how he conducted himself. Ms. Cunningham testified that she did not want what had happened with Ms. Kirchmeier's concerns to happen again. Her view was that following Ms. Kirchmeier raising her concerns, nothing meaningful had transpired with Mr. Mordvinov, and instead, their whole cohort of graduate students had been sent to "don't be mean to each other" training. She testified that because she believed that Ms. Kay and Prof. Loo cared, it mattered if she made a record of her experiences.

270. In our submission, the University induced Ms. Cunningham to come forward and make a formal complaint by falsely suggesting to her that they did not have accounts on which they could already be moving forward, when in fact they had serious complaints in hand from Student B and Student E that spoke directly to the safety issue. The consequence of this for Ms. Cunningham was significant. She was drawn into a very lengthy and anxiety provoking experience that went on almost through all of the 2015, and ultimately required her to attend the University's NAM hearing in October 2015.

271. In the course of their meeting, Ms. Cunningham testified that she told Ms. Kay again what had happened with Mr. Mordvinov, and Ms. Kay took notes. Ms. Cunningham said that at the meeting she was quite confused about the relationship between a formal and an informal complaint. She thought she was making an informal complaint, which they could move forward on. She understood that if she lodged a formal complaint, it would involve a mediation in which she would have to be a participant, which she absolutely did not want to do. Ms. Cunningham also understood that because understanding patterns of behaviour was useful to the University, it would be good if others came forward, but also that she had to be careful about any appearance of collusion. She found this confusing. She understood that having made the complaint, Ms. Kay would investigate the steps forward, and she left the meeting expecting she would have to meet again with Ms. Kay to hear about what the steps forward would be. After the meeting Ms. Cunningham let Ms. Kirchmeier know that she had made a complaint in case that felt like something Ms. Kirchmeier wanted to pursue.

272. Ms. Kay and Ms. Kirchmeier also had a meeting about Ms. Kirchmeier's complaint. Ms. Kay took notes of the meeting which she did not share with Ms.

Kirchmeier. When Ms. Kirchmeier later saw the notes, she did not find them accurate.

273. Before Christmas, Ms. Kay and Ms. Cunningham met with Ms. Kirchmeier by Skype. The conversation was an introduction to the process for Ms. Kirchmeier. Ms. Cunningham understood that Ms. Kirchmeier's complaint would provide Ms. Kay and the University with a better understanding of the conduct of Mr. Mordvinov. At some point, likely in this meeting, Ms. Cunningham became aware that Ms. Kay would not be the person moving the complaint forward. This caused her to feel a bit misled as well as disappointed and frustrated that she was not talking to the right person. It felt to her a bit like she was being managed. Ms. Kirchmeier also asked Ms. Kay in this meeting why she had been involved in the process at all, which prompted a defensive response from Ms. Kay. Ms. Kirchmeier and Ms. Cunningham asked Ms. Kay to confirm that she would not meet with any else at the University about their complaints without them.

274. In January, Ms. Cunningham followed up with Ms. Kay to find out what would happen next. Ms. Kay advised that she had met with Ashley Bentley from SASC and Mr. Hyson. Ms. Cunningham was surprised that Ms. Kay had carried on without her.

275. In mid-February, Ms. Cunningham met with Ms. Kay, Mr. Hyson and Ms. Bentley. This was the first time she received concrete information about the process she had become involved in, which she learned was the NAM process. Ms. Cunningham felt that this meeting was the beginning of the process she thought she had started in early December. At this meeting, Ms. Cunningham learned that there would be an investigation of some sort conducted by Mr. Hyson, that he would collect information, and then that there would be a hearing of some sort. She understood that Mr. Mordvinov would be informed of her allegations and would have an opportunity to respond. She felt reassured that Mr. Hyson was taking up her matter and would be responsible for its forward momentum. Ms. Cunningham did not hear anything further until May 5, 2015 when she learned that Mr. Mordvinov had been banned from campus.

XIII. Student E Statement

276. Although it is our view that the University did not need a complaint from Ms. Cunningham to move forward, her complaint did provide an essential impetus to the University to return to Student E. By email dated February 26, 2015, Mr. Lundeen advised Student E that a case was progressing with Mr. Mordvinov "regarding a pattern of conduct on campus" (Exhibit 6, Tab, Page 384). He requested her permission to share her contact information with Mr. Hyson, which she readily gave. Mr. Hyson then reached out to her to meet and provide a statement. Contrary to Mr. Lundeen's claims, interviewed more thoroughly, Student E was able to provide a reasonably detailed description of her two interactions with Mr. Mordvinov. Mr. Hyson's interview with Student E was the basis of the statement he prepared and reviewed with her (Exhibit 6, Tab, Page 386).

277. It is evident that this could have happened in June 2014, at the same time as Student E had provided her account to Mr. Bohnen, except that both Mr. Hyson and Green College decided they would not move forward with her complaint at that time. This would have saved Student E having to return to the allegations with a new person 8 months or more later, and perhaps would have eased the serious mental health issues she was having in the early part of 2015 arising from the fact that she had not acted sooner and been able to save Student B from Mr. Mordvinov's actions.

XIV. Student B

278. In a similar time frame, Mr. Hay approached Mr. Hyson with further information to support proceeding against Mr. Mordvinov with Student B's allegations. Mr. Hay met with Mr. Hyson (Exhibit 6, Tab, Page 388) and provided him with information about funding sources Mr. Mordvinov may have had from the University to support his travel to the conference and then to Russia in 2014 (Exhibit 6, Tab, Page 393). Mr. Hay correctly supposed that Mr. Mordvinov might be in receipt of a Faculty of Graduate Studies fellowship, and proposed a number of travel funds he may have accessed, including the Canadian Association of Slavists Travel Grant, about which there has been no evidence. Mr. Hay also pointed out the conferences in which Mr. Mordvinov was listed as a participant in 2014 as a UBC PhD student, including the Canadian Association of Slavists Conference in St. Catherines, Ontario, which Mr. Mordvinov was at until the night he spent in Student B's home (May 26, 2014) before flying on to Russia.

279. In our submission, this is information that Mr. Hyson and his supervisors should have sought in June 2014 and had in hand before determining if Mr. Mordvinov was acting in his role as a UBC student when passing through Toronto on May 26, 2014.

280. Also in a similar time frame, Mr. Hay approached Mr. Hyson about a further complainant, Student C.

XV. HSGA Statement on Harassment

281. As the post-Christmas term wore on, concern continued among the graduate students who had come forward that the Department was taking no action on their safety concerns. The only step that had been taken in this time by the History Department was that Prof. Loo had disclosed in mid-February to the Faculty that there was a current issue with sexual misconduct which was of significant concern to the students. This action was not publicized to students. The students felt acutely that they needed to do something to get the Department moving to address the concerns about safety, including the concerns arising from the allegations against Mr. Mordvinov. They originally developed the "Gender Equity and Inclusiveness Petition" for signature by members of the HGSA (Exhibit 6, Tab, Page 396). This had been an enormous amount of contentious work for HGSA members.

282. At the end of March 2014, Prof. Krause published an article titled, "The Enduring Silence of UBC's 'Hunting Ground'" (Exhibit 6, Tab, Page 402). In this piece he noted the University's preference for silence on the issue of sexual harassment, and the cost of this for involved students. While the mechanisms of the costs were different in this case, the University's silence and inactivity nonetheless had serious costs for the students involved.

283. On March 30, 2015, the HGSA met to discuss the Petition. In order to promote solidarity and anonymity, at this meeting this document became the HGSA "Statement Concerning Harassment" (Exhibit 6, Tab, Page 398, or Exhibit 6, Tab, Page 420, these two versions are not quite the same but have the same action dates). The HGSA passed a motion adopting the Statement and determining that they would provide it to the Faculty. The Statement opened with the claim that History Graduate Students and TAs had been harassed by faculty and graduate students in the course of their work and study in the History Department. It called upon the Department to take a number of public actions to remediate harassment in the Department as an urgent priority, and to address issues with respect to the studying and office spaces in the Department.

284. Among the calls to action in the Statement were designating a tenured faculty member as an Equity Representative for graduate students and TAs, having the EIO provide mandatory anti-discrimination and anti-harassment training for incoming students, and having the Department provide training for ongoing graduate students on harassment and discrimination, including providing training on Policy 3 and the Statement on Respectful Environment for Students, Faculty and Staff.

285. On April 1, shortly before the Faculty Meeting on April 2, 2015, the HGSA presented the Statement to Prof. Loo with a request that they be permitted to present it at the Faculty meeting. Prof. Loo reviewed the Statement and decided it was inflammatory and possibly defamatory because of its claim that graduate students had been harassed by other graduate students and faculty. After some thought and consultation, she declined to permit the Statement to be presented at the Faculty Meeting by the HGSA, even if the offending statement was removed, which the students had proposed. She testified that she was not sure how faculty members would react, she was concerned about the content of any discussion that might ensue, including whether there would be improper disclosure of who was involved in the current harassment allegations, and she did not consider herself able to Chair the meeting and properly participate in any resulting discussion.

286. In response, the HGSA met on April 1, 2015 and after a very lengthy and difficult meeting, decided to boycott the Faculty Meeting, and to advise faculty that they were doing so (Exhibit 6, Tab, Page 406 and Tab, Page 411, Tab, Page 413, 414). The Faculty Meeting proceeded on April 2, 2015 without the student representatives who would normally attend. Concerned that students had issues they were not hearing, the faculty agreed at this meeting to participate in an anti-violence, harassment and discrimination workshop to better familiarize themselves with the University's policies about harassment and discrimination, and to prepare

them for a discussion on harassment, discrimination and safety (Exhibit 6, Tab, Page 426). Some faculty also provided statements of support directly to the students (Exhibit 6, Tab, Page 415, 416, 423, 424, 425).

287. On April 2, 2015, Ms. Kay also provided a lengthy and detailed response to the original Statement (Exhibit 6, Tab, Page 417). This document is notable for her detailed summary of resources available to students with concerns about sexual misconduct. The list even includes a reference to Policy 3 and the elusive Director, Equity Complaint Management referred to in that policy, whom she notes is "located in legal". Ms. Kay's evidence about the Director, Equity Complaint Management was that this was an "empty seat position" which was filled only on an as needed basis with an external investigator to conduct an investigation when this was necessary for a senior employee or a conflict of interest. She said that this was an uncommon occurrence and did not happen in 2014 but may have happened in 2015. She said further that a request for such a person would be handled through her manager, Sara Jane Finlay, and would be forwarded to legal. She said that irrespective of the language under Policy 3, the first ports of call were Administrative Heads of Unit and the NAM process. Such a written summary of resources was never provided to any student in any of the files we have reviewed in this case, including any student involved with the Mordvinov allegations. It is remarkable that Ms. Kay could set this information out so succinctly to Prof. Loo, but *never* did so in writing for any of the students she advised that we are aware of. In this material, the commitment to a complaints-based process is also evident, with no indication that a comprehensive view of threats to safety from harassment and discrimination must also be considered. We note that this document did not mention Policy 14.

288. Following its meeting of April 1, 2015, the HGSA engaged in further extensive discussion of the document, finally settling on an amended version (Exhibit 6, Tab, Page 464 and 466). This version they distributed to faculty and invited them to a meeting to discuss the document (Exhibit 6, Tab, Page 494, 495). Although emotions were running high, the meeting proceeded respectfully and did not result in discussion of the specific allegations in play, as Prof. Loo had feared. Shortly after, the Faculty held their training session, which apparently also went well. As the documentary record shows, in the run up to the meeting on April 23, 2015, the HGSA engaged in extensive discussion and consultation on how the meeting should proceed.

289. Prof. Loo raised concern that the revised version of the Statement was circulated without it being, in her view, clear that the version had been revised (Exhibit 6, Tab, Page 646, Para. 2, Tab, Page 470, Tab, Page 476). She called the students out for attempting to mislead the Department about the revised statement, in her view leaving the impression that her refusal to have them present the Statement on April 2, 2015 was unreasonable. In fact however, since she had not agreed to have the students present a revised version in any event, the actual text of the Statement was not the main reason for her decision not have the students present it (Exhibit 6, Tab, Page 471).

290. In a pattern that repeated itself multiple times, the HGSA's public Statement produced action by Prof. Loo and the Department where the students' private overtures to the Department in July 2014 had not. By email dated April 13, 2015 (Exhibit 6, Tab, Page 442), Prof. Loo sent a series of queries to Ms. Kay about issues raised by the students through the HGSA Statement, including how Policy 3 can be operationalized at the department level, and what the Department can do to let staff, students and faculty know what to do if they have a concern about harassment, discrimination or safety, including what resources are available to them. She also noted that she had committed to drafting guidelines for the Department's response to concerns about harassment, discrimination and safety. In her email of April 16, 2015 (Exhibit 6, Tab, Page 476), Prof. Loo advised the HGSA of actions she had taken since the April 2, 2015 Faculty Meeting, including organizing the workshop for faculty with the assistance of Ashley Bentley, meeting with Sara Jane Finlay and Ms. Kay of the EIO, planning to reinstate the Equity Officer for the History Department, organizing training for new graduate students and TAs in September 2015, and planning to strike an Equity Committee to draft guidelines for how concerns and complaints about harassment, discrimination and safety would be dealt with at the Departmental level. She also reported back on efforts she was making to address the facilities issues the students had raised. By letter to the History Department dated April 28, 2015, Prof. Loo reaffirmed the Department's commitment to a harassment and discrimination free environment, and to upholding Policy 3 and the Statement on Respectful Environment. She also reported on the steps taken (Exhibit 6, Tab, Page 592).

291. Asked why work on the proposed guidelines could not begin at once, Prof. Loo testified that when she spoke with Ms. Kay about drafting departmental guidelines regarding the handling of sexual misconduct complaints, Ms. Kay said they should not do this while a complaint was in process. By April 2015, following the Faculty Meeting, there was broad support for creating guidelines (Exhibit 6, Tab, Page 415). Like Anne Gorsuch and Michel Ducharme before her, Prof. Loo simply accepted Ms. Kay's suggestion not to act, although she had her own authority as an Academic Head of Unit and Ms. Kay had no authority over her.

292. Prof. Kojevnikov testified that in about March or April 2015, he met Prof. Loo to ask her if discussions he was hearing in the Department about sexual misconduct concerned any students he supervised. He testified that Prof. Loo said that she could not tell him and she left him to understand that he was not supposed to know. Prof. Kojevnikov first became aware of allegations of generic misconduct against Mr. Mordvinov when he was banned from campus. Even then he was not made aware of what the allegations were or who was making them.

293. Coming at the end of term, this series of events was very emotionally challenging and time consuming for involved members of the HGSA, including Sarah Thornton, Kaitlin Russell and Stephen Hay. It took students away from their academic endeavours, and left the students extremely concerned about their relationships with important members of faculty, including their supervisors. Both

Ms. Russell and Ms. Thornton were supervised by Prof. Leslie Paris. Ultimately, the working relationships of each of these students with Prof. Paris broke down, and the students had to complete their theses with the assistance of different supervisors.

294. The fact that the students felt moved to call for action from the Department in the bald terms of the Statement was the direct result of the total lack of evidence of action by the Department or the University since the students came forward to the History Department in July 2014, eight months earlier. These events also demonstrated that efforts to preclude discussion, whatever the reason for those efforts, were not successful and only served to contribute to a heightening of tension and a loss of collegiality within the Department. The fact that students felt compelled to act because the University had not done so was the consequence for them of needing a response from the University to their concerns of safety and a discriminatory work and study environment arising from the sexual misconduct allegations against Mr. Mordvinov. For the Complainants Ms. Thornton and Ms. Russell, their sex was implicated in their need for an effective response to the Mordvinov allegations of sexual misconduct. The harm to them was the high emotion and anxiety attending their work on the Statement and the meeting to present it to faculty, and the impact on their academic progress as a result.

295. Ms. Thornton testified that the History Department culture was flawed in that when issues of sexual misconduct were brought up, the culture did not encourage those issues to be brought into a public space for discussion. She said that she formed this view dealing with the Department and Prof. Loo, and finding it impossible to receive even an acknowledgement that harassment had occurred. Ms. Thornton described this as a particularly harmful position to take. She said that the amount of work the HGSA had to do over 2014 and 2015 to address the issue of sexual misconduct was monumental. She said that she knew that if she had been student who had experienced sexual harassment watching what happened, she would not have brought her complaint forward.

XVI. Green College Statement Concerning Safety

296. In May 2015, the Green College Residents Council similarly presented a Statement Concerning Safety to the administration at Green College (Exhibit 6, Tab, Page 645). Their Statement was modeled generally on what had been done by the HGSA, and contained calls to action like in the HGSA Statement. As in the History Department, the Statement grew out of the students' concern about the issues of harassment and sexual assault at Green College and Green College's incapacity to deal with such issues in a timely, sensitive and transparent manner. Like the HGSA, the students at Green College felt Green College's processes could benefit from specific training, the creation of explicit and public procedures, and a renewed affirmation from the Green College administration that this kind of aggression is not acceptable at Green College. In preparing the document, the students obtained the written support of 114 Green College Society members, 58 current residents and 56 alumni.

297. In contrast to the History Department, the Residents Council affirmed their support of the administration in their presentation of it to the administration. After describing some of the document as “strident” and a throw back to past times of confrontational relations between residents and administration, the administration proposed seeking out consensual understandings of difficult subjects including this one, and remained willing to engage in a consensual process with the students. Dr. Vessey explicitly testified that he embraced the Green College Statement as an exercise in self-government by the students of the Green College community, and supported their initiative as a learning exercise. He concluded his initial response by saying, “I hope we can all move forward together on this one” (Page 657), and then worked with the students to modify the statement so that it could be jointly adopted by the administration and the students (Exhibit 6, Tab, Page 663 noting that revisions were made in the Statement in discussion with Dr. Vessey and Mr. Lundeen, Tab, Page 665, Tab, Page 667). This resulted in modifications that were returned to the Residents Council for confirmation (Exhibit 6, Tab, Page 675).

298. The Green College Statement contained a statement that, “Residents of Green College have alleged harassment and sexual assault by other residents in the course of their residency, studies and work as members of the College,” without naming Mr. Mordvinov. Documentary evidence shows Dr. Vessey never attempted to modify this statement, and in testimony was surprised at the idea that this fact should *not* be acknowledged, saying, “What, you think I should lie?”

299. As a consequence, the introduction of the Statement did not create the tension between the Green College students and administration that occurred in the History Department. It is notable however that while Dr. Vessey and Mr. Lundeen only had the Residents Council to work with, Prof. Loo had both the faculty group and the HGSA to manage. Her task was, therefore, more complex and likely to contain disparate views and approaches.

300. In particular, Dr. Vessey’s immediate response to receiving the Green College Statement was to “restate the College’s commitment to a harassment-free and sexual-assault-free environment; one that has no tolerance for harassment or sexual assault, that encourages harassment and sexual assault concerns to be brought forward, that commits to sensitive and timely responses to such concerns, that guarantees a timely and effective administrative process dealing with such concerns, and that is as transparent as possible, consistent with the requirements of confidentiality and privacy applicable in such cases.” (Exhibit 6, Tab, Page 656).

301. We note however the degree to which Green College’s response to Student E and Student B did not meet this standard. Student E’s account was not fully apprehended or acted on when she first came forward on May 1, 2014, and Student B’s account was also not acted upon by any active investigation or decision-making by Green College when she first came forward. Further, there was a lack of transparency with Student B and Student E about the College’s position on their complaints, and particularly its view that some other entity at UBC should be taking responsibility for acting on their complaints, and that it would not be investigating nor telling Mr. Hyson that it was not investigating or

moving forward. Administrators at Green College did not follow up on the complaint of Student E until February 2015 when Mr. Lundeen approached Student E to speak with Mr. Hyson. They did not follow up with Student B until she contacted them again after hearing from Mr. Hay that they had made no decision about Mr. Mordvinov's return.

302. Student E also witnessed and was impacted by Green College's refusal to take action on a separate sexual misconduct matter in the fall of 2014.

303. On April 14, 2015, Ms. Kay received an update from Mr. Hyson saying that events which happened off campus would not fall under the Student Code of Conduct (Exhibit 6, Page 446). As a result, Ms. Cunningham's complaint would not be addressed by the NAM process. Mr. Hyson suggested he was not aware that the incident had happened off campus. A review of the information provided to Mr. Hyson showed this to be untrue. In this conversation, nothing was said about Ms. Kirchmeier's complaint which had been provided in a package with Ms. Cunningham's complaint.

XVII. Hay Letters of Alarm

304. Mr. Hay was active in the spring of 2015 trying to get Mr. Hyson to proceed with complaints. Shortly before the end of April, Mr. Hay became aware that Mr. Mordvinov was planning to attend the same conference he had attended the previous year after which he assaulted Student B in Toronto. Mr. Hay learned further that Mr. Mordvinov was again planning an evening of drinking with another female student he knew from UBC. Unsurprisingly, this caused Mr. Hay extreme alarm. At considerable peril to himself and his relationship with the University, he sent out a number of emails calling on individuals to act immediately to prevent this outcome and to address Mr. Mordvinov's return to UBC and Green College. He sent the emails to Mr. Lundeen and Dr. Vessey, Prof. Loo and Mr. Hyson at UBC (Exhibit 6, Tab 173, Page 493, Tab 183, Page 508 and Tab, Page 512).

305. Mr. Hay also sent a letter to a professor at SFU (Exhibit 6, Tab, Page 570) because SFU had posted a position that was a good fit for Mr. Mordvinov's areas of interest which had been circulated at UBC (Exhibit 6, Tab 171, Page 491). Mr. Hay was extremely concerned that because Mr. Mordvinov remained in good standing at UBC, and a member of his dissertation committee was from SFU (Exhibit 6, Tab, Page 569), he would be able to apply for the SFU position using references from UBC without anyone at SFU being aware of the current issues regarding his conduct and the risk he represented to women students and others.

306. Mr. Hay's email to Prof. Loo prompted her to reach out to Mr. Hyson about her concern about Mr. Mordvinov's anticipated return to Canada seeking "direction and assistance in dealing with this situation" and asking what Mr. Hyson and others intended to do to ensure the safety of the members of her Department (Exhibit 6, Tab, Page 516). Despite being aware since July 2014 about serious allegations involving Mr. Mordvinov and the students' concerns about his return, she had not previously done this. This led to some

communication about having a joint meeting with Mr. Hyson, Green College and Prof. Loo. Ultimately, for reasons that were not disclosed, Mr. Hyson acted to ensure that Prof. Loo and the Green College administrators would not attend the same meeting (Exhibit 6, Tab, Page 551, 552).

307. Mr. Hay's email to Prof. Loo also prompted Ms. Kay to communicate to her superior, Sara Jane Finlay, that her reaction to the email was to suggest a multi-party approach (Exhibit 6, Tab, Page 516). Her ongoing focus, however, was confidentiality and how to balance that against transparency and disclosure if they were actually going to take action. Although Ms. Kay has been aware of the involvement of Green College, the History Department, Campus Security and Student Conduct/Mr. Hyson since June 2014, this is her first documented call for a multi-party approach, although that would seem to be essential to ensure an effective response in the complex situation the University was facing with Mr. Mordvinov.

308. Mr. Hay also sent a number of emails behind the scenes to individuals to get them to press for action as well, including Caroline Grego and Prof. Krause. Ms. Grego responded with emails to Green College, Mr. Hyson and Prof. Loo detailing her own experiences with and observations of Mr. Mordvinov which included unwelcome touching while dancing, sexist comments about Canadian women being frigid and an inappropriate comment to Student B during a political discussion that he did not know if he wanted to marry or kill her (Exhibit 6, Tab, Page 540, Tab, Page 542, Tab, Page 545). Ms. Grego emphasized that her information contributed to understanding Mr. Mordvinov's harmful patterns of behaviour towards women.

309. Her intent for the University to consider and use her observations to support taking action in respect of Mr. Mordvinov put her in the same position as Ms. Kirchmeier. Dr. Vessey and Prof. Loo directed Ms. Grego to Mr. Hyson and took no further action on her complaint. Mr. Hyson never responded to her and took no further action in respect of her complaint.

310. Mr. Hay's emails to Prof. Loo and Mr. Hyson prompted Prof. Krause to communicate to Mr. Hyson by email dated April 24, 2015 (Exhibit 6, Tab, Page 531). In it, Prof. Krause noted that "his student and faculty colleagues continue to harbour concerns about the on and off campus safety of those members of the UBC community who may find themselves proximate to the alleged perpetrator." On the basis of news that there might be a further incident, Prof. Krause urged Mr. Hyson to "move as expeditiously as possible to resolve the outstanding complaints and, above all, to ensure the safety of our charges."

311. Mr. Hyson's initial response to Mr. Hay was to suggest that *Mr. Hay* speak with Mr. Mordvinov or to the friend that he understood had been invited drinking with Mr. Mordvinov (Exhibit 6, Tab, Page 536). In our submission, given the University's state of knowledge about allegations against Mr. Mordvinov by that time, it was highly inappropriate for it to be suggesting to a student that any responsibility fell on him to act in the circumstances, particularly in the face of their own inaction with Mr. Mordvinov over many months to that point.

312. Mr. Hay's communication to Green College had the effect of giving renewed impetus to the conversation about by what mechanism Mr. Mordvinov's return to Green College might be restricted. By email dated March 20, 2015, Mr. Lundeen had communicated with Mr. Hyson about the matter of retracting the offer to Mr. Mordvinov (Exhibit 6, Tab, Page 505). He expressed Green College's view that acting on the accounts of Student B and Student E would alert Mr. Mordvinov to the fact that there were concerns about his conduct before the University could raise those with him in a disciplinary context. They described their taking on doing so as "disproportionate". On April 22, 2015, shortly after hearing from Mr. Hay, Green College responded by reaching out to Mr. Hyson again (Exhibit 6, Tab, Page 505). At this point Green College was asking whether the concerns with Mr. Mordvinov were still allegations.

313. Mr. Hay's communications also alerted Student B to the fact that Mr. Mordvinov had not been barred from returning to Green College (Exhibit 6, Tab, Page 510). She was understandably very upset by this information, describing herself as in shock. Dr. Vessey's response to her email conveying this was that no one could be kicked out of Green College without a full investigation of the facts and an opportunity to answer for him or herself, which investigation was beyond the powers of the Principal's office. He suggested that "campus authorities" were considering the file. On April 23, 2015, Dr. Vessey forwarded his response to Mr. Hyson, noting that resident contracts for Green College would be available by the middle of May so it was increasingly urgent to develop an agreed upon strategy for dealing with this matter (Exhibit 6, Tab, Page 511). He requested a meeting with Mr. Hyson.

314. Student B responded by citing Appendix II of the Green College Residents' Contract which expressly *requires* the Principal to investigate an alleged violation of the College's policies, and to impose an appropriate sanction if the policies have been breached, including, in circumstances where a person poses a threat to others at the University, terminating the contract and imposing other reasonable measures to ensure the safety and security of persons and property (Exhibit 6, Tab, Page 538). Her view was that Dr. Vessey had the power to act and should have already done so. Dr. Vessey responded to say that they should not get into an argument about the contract language but that he was expecting things to move forward with the University (Exhibit 6, Tab, Page 539). He noted that Mr. Hay's most recent input had "helped in a timely way".

315. Mr. Hyson eventually advised that using the Student E incident might form a basis for not offering Mr. Mordvinov another contract (Exhibit 6, Tab, Page 585). Dr. Vessey's perspective was that offering a further contract was usual for returning students with time left (Exhibit 6, Tab, Page 534), and that they could not discipline Mr. Mordvinov because he was no longer under contract with Green College (Exhibit 6, Tab, Page 585).

316. Mr. Hyson also noted to Mr. Hay that they were not moving forward on Student B's case because they could not proceed with the process if the event occurred off campus (Exhibit 6, Tab, Page 578).

317. Ultimately, Mr. Hay's communications, and the other communications which they spawned, had the direct result of goading UBC into action with respect to Mr. Mordvinov on April 30, 2015, 15 months after the University was first provided with Ms. Kirchmeier's concerns in January 2014. The University determined that they were able to act to bar Mr. Mordvinov from the UBC campus, on an interim basis, under Policy 14, Response to At Risk Behaviour (Exhibit 6, Tab, Page 613). This action demonstrated that the University was able to act quickly and somewhat effectively when it focused on at least some of the safety issues that had been consistently raised since people first started coming forward with concerns about Mr. Mordvinov's conduct towards women.

318. It is notable that the University acted promptly when Mr. Hay, a male student, complained about the risk posed by Mr. Mordvinov, but did not act when Student B, Student E, Glynnis Kirchmeier, Caitlin Cunningham, Kaitlin Russell, Sarah Thornton, Meghan Longstaffe, and Caroline Grego, all female students, complained.

319. As set out in its letter to Mr. Mordvinov, the University formally based its actions on the information from Student E. The decision to bar Mr. Mordvinov was effective until revoked. The University's decision was conveyed after the fact to Student E by Mr. Hyson on April 28, 2015 (Exhibit 6, Tab, Page 597). Mr. Hyson confirmed the safety basis of the decision, writing to Student E: "The University takes these matters very seriously and is committed to providing an environment where all members of the campus community can study, work and live without threat to personal safety".

320. The bar did not affect Mr. Mordvinov's funding or academic status, and he continued to receive University funds and to work on his dissertation with his supervisor, Prof. Alexei Kojevnikov, until November 2015. He also continued to apply to go to conferences, and was listed as planning to attend conferences as a UBC student with Prof. Kojevnikov in November 2015 and January 2016.

321. The University's action was not directed at and did not allay the threat that Mr. Mordvinov posed to UBC students off campus, including at conferences where they might meet Mr. Mordvinov, but it did provide the basis sought by Green College not to offer Mr. Mordvinov a contract to return to Green College.

322. The University's decision to act at the end of April to bar Mr. Mordvinov was another example of the University not taking steps until pressured to do so by very concerted and somewhat public agitation by a graduate student, in this case Mr. Hay.

323. Student E testified about the difficulty for her of learning in early April that no decision had been made yet about whether Mr. Mordvinov would be returning to Green College (Exhibit 6, Tab, Page 627). She testified that she was nervous and worried that he might be coming back and that she was unhappy and upset to learn that no decision had been made. She said that it was still not enough, and that she felt frustrated and scared. She also testified that although

she told Mr. Lundeen that she was doing okay, she probably was not, but did not want him to worry about her. When she later learned that Mr. Mordvinov had been banned from campus, Student E testified that she was glad he would no longer be permitted on campus, but she was distressed by the fact that the letter to Mr. Mordvinov would contain dates and locations that would identify her. She said she had been expecting Mr. Hyson to ask her or at least tell her before he made the decision to advise Mr. Mordvinov about her allegations.

324. Student E said that she was pretty shaken up by the news that Mr. Mordvinov was to be advised of her allegation. At a Green College coffeehouse talent night, she had a conversation with Dr. Vessey about the letter she received that Mr. Mordvinov would be told details that would identify her as the complainant. Dr. Vessey pulled her into his office and was trying to make her feel better and validate her feelings, but he ended up telling her that she should be really scared because Mr. Mordvinov was a big man, that he could be anywhere because UBC was a big place, and they did not know if he was there or not. She appreciated that his heart was in the right place but stated that his comments came out “really wrong”. She said that this definitely made her feel worse and exacerbated her anxiety. The conversation is adverted to in an email the next day from Dr. Vessey (Exhibit 6, Tab, Page 626).

325. Student E was asked what impact her dealings with the University regarding Mr. Mordvinov had had on her to the end of April 2015. She responded that it was frustrating and mentally taxing to have to talk to different people about it, and to have to tell the same story in great detail to multiple people (KM, Brittany Welsh, Clark Lundeen, Steve Bohnen and Chad Hyson). She said that it made her feel disheartened that it took so much and so many women to have to speak up and do so much for anyone to really believe them.

326. The University did not publicize the fact that Mr. Mordvinov had been banned from campus. They elected only to advise a select few, including Student E, Ms. Cunningham, Mr. Lundeen and Prof. Vessey, and Prof. Loo. Neither the University nor Prof. Loo advised his supervisor, Prof. Kojevnikov, although he did become aware of it. Given the small circle of people aware of the University’s action, it is unclear how the ban would have worked in practice had Mr. Mordvinov returned to campus but not to Green College. However, there is no evidence that Mr. Mordvinov returned to campus, or that he attended the conference he was scheduled to attend in May 2015.

XVIII. Cunningham Statement to NAM Process

327. On about May 5, 2015, Ms. Cunningham received an email from Mr. Hyson advising her that Mr. Mordvinov had been banned from campus and had been informed that there were specific complaints against him. Ms. Cunningham understood these complaints to have been from several women and to have included her complaint. She felt shocked, wary and confused that information about her would be sent to Mr. Mordvinov without her having had an opportunity to see it in advance.

328. She asked to see her complaint so that she could make it accurate. She said that the process felt immensely personal and formal. She wanted to make sure that, if an account was being provided to a person she did not trust, it was as accurate as possible. She said that having an account go to Mr. Mordvinov felt scary and nerve wracking, especially as it was about an event that she already was having difficult talking about. Mr. Hyson sent her a typewritten account made from Ms. Kay's handwritten notes (Exhibit 6, Tab 98, Page 316). Ms. Cunningham testified that she found the account not entirely accurate, including because it contained editorializing that was not how Ms. Cunningham would have described the events. She felt very concerned that the University had not sought feedback on the account from her and that it may have already been circulating. She said she really had to advocate to be able to ensure that the account was accurate, and that it felt to her that there was a real lack of transparency. This did not give her faith in the process.

329. Ms. Cunningham found that Ms. Kay's account did not express things as she would have and that it was very uncomfortable for her to read. Ms. Cunningham rewrote the statement so that it would be in her own words (Exhibit 6, Tab 378, Page 989). She testified that Mr. Hyson was not involved in rewriting the account.

330. At some point she was also informed of her right to hire legal counsel. She testified that she was not in a financial position to do so, and that the invitation made her feel scared and as though there was a reason she needed to be careful.

XIX. Information from Student C

331. In an email exchange dated April 24, 2015, Mr. Hay advised that his second friend who said she was sexually assaulted by Mr. Mordvinov was about to come forward (Exhibit 6, Tab, Page 535). This was Student C. Mr. Hyson responded offering to have Mr. Hay contact him, and also offering to meet with Student C to answer any questions and explain the process. He noted that the meeting could take place at SASC or on the phone so that if she wished, Student C could remain anonymous until she chose to make a report. This was indicative of the extent to which Mr. Hyson was able to accommodate a student.

332. On May 5, 2015, Mr. Hay wrote to Mr. Hyson providing Student C's name and screen shots of her communications with Mr. Mordvinov (Exhibit 6, Tab, Page 637). On June 3, 2015, Mr. Hyson followed up with Mr. Hay about Student C (Exhibit 6, Tab, Page 692). In this email he noted that Mr. Mordvinov had not travelled to Canada for the conference he was supposed to attend. On June 4, 2015, Mr. Hay responded that Student C was intending to write a statement but had not yet done so. He said that he had given Student C Mr. Hyson's information and encouraged her to contact him. On June 9, 2015, Mr. Hyson wrote to Student C offering her assistance with any questions she might have about writing her statement, and provided her links to the Student Code of Conduct and the Non-Academic Misconduct process (Exhibit 6, Tab, Page 774). On June 28, 2015 Student C sent him a question to which he did not respond (Page 774). On July 23, 2015 and July 29, 2015, Mr. Hyson followed up with

Student C advising that he needed to move ahead with the Statement of Allegations and would include her statement if he had it by August 5, 2015 (Page 773). On August 5, 2015, Student C provided her statement.

333. By email dated August 7, 2015, Mr. Hyson sent a similar email to Student C that he had sent to Student E and Ms. Cunningham, advised Student C about the Statement of Allegations moving forward, next steps in the process, and the restriction placed on Mr. Mordnivov not to attend the UBC campus (Page 771). He also provided Student C, as he had the others, with information about how to contact UBC Counselling Services and SASC.

334. Ultimately, Student C's statement went forward to the NAM Committee hearing. Student C did not participate in the hearing. Mr. Hay's assiduous support of Student C coming forward, which involved making contact himself with Mr. Hyson, carrying information to Student C from Mr. Hyson, and carrying Student C's information back to Mr. Hyson, made it possible for Student C's account to move forward through the NAM process and exemplified full support of a complainant. His actions stood in marked contrast to the University's approach which for the most part amounted to saying come and talk to us if you want (similar to Mr. Hyson's referral of Student C to counseling services). Mr. Hay's approach was more similar to the support provided by SASC in setting up meetings with Mr. Hyson, and accompanying students to those meetings if the students wanted.

XX. Student E

335. On June 3, 2015, Mr. Hyson also sent Student E the draft statement he had prepared from his interview with her in March 2015 (Exhibit 6, Tab, Page 743). He provided her with the update that he had spoken with Mr. Mordinov by Skype, and advised him about the NAM process. Mr. Hyson advised that Mr. Mordvinov had said that his plan was to stay in Russia while the process was underway. Mr. Hyson followed up with Student E again on June 15, 2015. Student E responded to say that the statement looked accurate (P742).

XXI. Complaint of Glynnis Kirchmeier

336. The University often used the rhetoric of safety, but generally failed to apply a safety lens when addressing the concerns raised by the students. Instead, it applied a narrow focus, asking whether it had grounds to discipline Mr. Mordvinov. This led to a persistent sense on the part of the students that the University was not listening to them, was not understanding their concerns, and was not acting to respond to their concerns.

337. In a pattern that was repeated a number of times, the initial response from the University was received positively by the students, because it talked about the duty to prevent harassment and discrimination and to ensure safety, but doubt and suspicion began to creep in for students as the University began to act. The reason for this was that the action the University was taking was in fact in relation to whether the perpetrator had breached his obligations to the University and

should be disciplined. This amounted to the University pursuing and looking after its own interests. This approach contrasted with the concerns the graduate students were raising, which were that there was a breakdown in the University carrying out its obligations to keep them safe from harassment and discrimination and to ensure their safety, and their interest in seeing this breakdown remedied. The University's persistent shift from the issue that came forward to its own interest in disciplining students created in the students an abiding sense of disconnection between the University's actions and the students' interests. This abiding feeling of disconnection arose from the fact that the University was in fact failing to address the students' interests in having the harassment and discrimination the students had complained about dealt with, and in preventing it from recurring.

338. Because the University was focused on whether it could discipline Mr. Mordvinov, rather than what was required to address harassment and discrimination of women at University, including in the History Department and at Green College, and ensure that harassment and discrimination did not continue, including what was required to ensure the safety of women at UBC, the University consistently failed to take a global view of the information it had received, including from Student B, Ms. Kirchmeier, Ms. Grego and Ms. Boileau, the author of the first GUTS article. This led to enduring issues, including enduring issues with the information Ms. Kirchmeier had brought forward.

339. Ms. Kay formally received Ms. Kirchmeier's information in December 2014 and provide it to Mr. Hyson, but neither Mr. Hyson nor Ms. Kay were clear about how that information would be part of the NAM process. The NAM process does not easily incorporate supporting or corroborative evidence because it does not focus on risk or context or the source of discrimination and harassment or what is required to ensure safety, but instead is focused on whether an individual complaint can go forward and whether that complaint is proven.

340. On May 12, 2015, Ms. Kirchmeier wrote to Mr. Hyson and Prof. Loo to say that Ms. Kay had advised her that she would be advised before Mr. Mordvinov was advised of complaints against him, and that this had not happened (Exhibit 6, Tab, Page 658). She noted that her name was on a "presumably active" complaint against Mr. Mordvinov and that she was due the basic respect of communication about an ongoing problem in the Department. On May 12, 2015, Mr. Hyson responded with an update (Page 658). He said that he had been waiting for further accounts of inappropriate conduct to come forward, and had determined that he would move forward with the NAM process as of May 1, 2015. Mr. Hyson claimed that he had received a number of reports regarding Mr. Mordvinov's conduct in the last few months, and that those reports became the basis of a notification to Mr. Mordvinov that he had been banned from the UBC Point Grey campus. In fact, only the report of Student E was implicated in the ban, and he had first received notice of that report in June 2014. Mr. Hyson assured Ms. Kirchmeier that she and Ms. Cunningham had not been identified to Mr. Mordvinov.

341. Mr. Hyson noted that he was not sure after meeting with Ms. Cunningham whether Ms. Kirchmeier was making a separate complaint or supporting Ms. Cunningham in her complaint. He said that he assumed Ms. Kirchmeier was being kept up to date by Ms. Cunningham, and apologized for this error. Mr. Hyson provided Ms. Kay's notes from December 2014 to Ms. Kirchmeier and said that given the seriousness of the other allegations, it was unclear if Ms. Kirchmeier's report would be "needed". He promised to provide advance notice if her report was to be included in any communication to Mr. Mordvinov. In our submission, unknown to Ms. Kirchmeier, Mr. Hyson's understanding of what might be "needed" was limited by the disciplinary context in which he was functioning and did not involve a broader view of the risk represented by Mr. Mordvinov and his pattern of behaviour.

342. Ms. Kirchmeier was very unhappy both with Ms. Kay's actions and statements to date, and her notes of Ms. Kirchmeier's concerns. On May 27, 2015 she emailed Mr. Hyson with her concerns about the ongoing issues regarding the role her complaint would play, as well as her concerns about Ms. Kay's conduct (Exhibit 6, Tab, Page 719). She explained that she had made her complaint as a co-complainant with Ms. Cunningham, that her complaint helped to establish a pattern of behaviour leading up to Mr. Mordvinov's actions towards Ms. Cunningham, and that she expected that Mr. Mordvinov would have to answer her concerns. Fundamentally, she wished to see her complaints being used as part of a case against Mr. Mordvinov. Ms. Kirchmeier provided a comprehensive review of Ms. Kay's comments to her, and the ways in which those comments were not consistent or based on what was actually happening (Page 720 to 721).

343. On May 27, 2015, Ms. Kirchmeier also provided a lengthy correction to Ms. Kay's notes, including to what she had been seeking in January 2014 (for someone to speak to Mr. Mordvinov and tell him to behave more professionally), and what she was seeking at the time of her email (for Mr. Mordvinov to no longer be granted the privilege of attendance at UBC) (Exhibit 6, Tab, Page 685). It does not appear that Ms. Kay had ever forwarded to Mr. Hyson Ms. Kirchmeier's original written email statement to Prof. Ducharme from January 2014.

344. On June 8, 2015, Mr. Hyson responded (P717 to 718). His view was that Mr. Mordvinov's inappropriate and unprofessional behaviour should have been addressed within the Department or with the assistance of the EIO. This did not happen through Ms. Kirchmeier's dealings with Ms. Kay. In his email to Ms. Kirchmeier, Mr. Hyson raises that Ms. Cunningham's account would "likely" be addressed through their resolution process. The option of a resolution process had not been raised with Ms. Cunningham to this point. He also suggested that in more serious situations, the complaint would progress to the NAM Committee. He indicated that other complaints about Mr. Mordvinov, the nature of which he did not share, were felt to require this approach. Mr. Hyson raised the concern that because Mr. Mordvinov did not respect boundaries with Ms. Kirchmeier and others she spoke about, her information might not strengthen the University's case.

345. The variability in information being provided over time by different individuals in the University's processes was a significant barrier to students attempting to address concerns, and was part of the reason why the experience was so frustrating for students. Frustration tended to lead to a need for repeated and lengthy communications, as seen in Ms. Kirchmeier's communications with the University, which proved to be very burdensome for the students.

346. We submit that throughout this exchange, the University and Ms. Kirchmeier are at odds because the questions they understand to be in play are different. Ms. Kirchmeier is concerned about addressing and preventing harassment and discrimination, and ensuring safety as part of that. Mr. Hyson is concerned about how best to determine if serious non-academic misconduct has occurred such that discipline should be imposed by the University. While disciplining Mr. Mordvinov might assist with restoring an environment free of harassment and discrimination and ensuring safety, that would only be as a by-product of the University's process, rather than as the principal objective of it.

XXII. Proposal to Resolve Complaints by Agreement

347. On July 8, 2015, Mr. Hyson emailed Ms. Kirchmeier with a further update. In this email he raised the possibility of seeking a resolution rather than proceeding directly to a hearing before the NAM Committee (Exhibit 6, Tab, Page 756). It appears that the impetus for this suggestion came from Kimberley Beck of the Office of University Counsel. Mr. Hyson described a resolution as requiring the student to admit to the misconduct, agree to steps to resolve the misconduct, and comply with the steps identified otherwise the matter would be referred to the Committee. Mr. Hyson proposed a resolution that would include Mr. Mordvinov agreeing to ongoing restricted access to the Point Grey campus of UBC, and to no direct or indirect contact with the students who had reported his conduct. He also said that he would like to include an educational component but was unsure how that would work with Mr. Mordvinov in Russia. Mr. Hyson was seeking Ms. Kirchmeier's response to this proposal. Mr. Hyson sent similar communications to Student E (Exhibit 6, Tab, Page 778), and to Caitlin Cunningham (Exhibit 14, Page 3).

348. Student E testified that she thought that at some point there was an option of a mediated discussion, and that she definitely did not want to be part of a mediated discussion with Mr. Mordvinov. In relation to what Mr. Hyson had written, she testified that she did not really understand it. By email dated July 9, 2015 (Page 777), Student E advised that as long as Mr. Mordvinov was not allowed to be on campus and as long as she did not have to be too involved with the process moving forward, she would be fine with either option.

349. On July 13, 2015, Ms. Kirchmeier replied with a series of questions, including whether agreeing to a resolution would permit Mr. Mordvinov to remain a graduate student and earn his degree from UBC. She also asked how the various complaints related to each other, and how Mr. Hyson would manage resolutions with each of them (Exhibit 6, Tab, Page 766). On July 17, 2015, Mr. Hyson responded to advise that he had received reports from 4 individuals, not including

Student B, that Mr. Mordvinov would be permitted to complete his degree at UBC but would not be permitted to return to campus ever, and that once a resolution was reached, there would be no further action by the University against Mr. Mordvinov unless he did not comply with the resolution, or new allegations came forward about his conduct. Mr. Hyson noted that a resolution would not prevent individuals from pursuing other legal remedies as well. Mr. Hyson said that he proposed a resolution to avoid a Committee process that some may find difficult. In terms of process with multiple complainants, Mr. Hyson wrote that he was trying to preserve privacy, that he was open to suggestions for what to include in the resolution, and it might be the case that they would proceed with a resolution even if not all complainants wanted that, but it would not be a majority rules situation.

350. On July 21, 2015, Ms. Cunningham replied with a series of questions as well, including what kind of notation would appear on Mr. Mordvinov's transcript, what the University's liability would be if it knowingly awarded a PhD to a student who is subject to multiple allegations that he had repeatedly harassed and harmed his academic colleagues and what would happen if some resolved and some did not, and whether this would weaken the larger narrative of his behaviour. She concluded that she did not think the suggested resolution was appropriate, and the suggestion made her quite uncomfortable.

351. Ms. Cunningham testified that she was both incredulous and not surprised at all when she received Mr. Hyson's email with the proposal. She testified that the proposed resolution felt like a mediation type response, and she felt she had been clear from the beginning that she did not want to mediate with Mr. Mordvinov. She also felt surprised that a resolution was on the table given the seriousness of some of the allegations in her understanding, and the values of safety and dignity that had been communicated to her by the University. She also felt that the proposal was not precise enough. Ultimately she felt that the proposal was just a way for the University to avoid going through the NAM Committee process.

352. On July 27, 2015, Mr. Hyson provided a lengthy response (Exhibit 14, Page 1). Mr. Hyson asserted that his primary concern was safety on campus, and that if the allegations were true, which the facts seemed to suggest they were, Mr. Mordvinov should not be back on campus. This presumably supported a resolution in his view. He confirmed, however, that a resolution would not result in a notation on Mr. Mordvinov's transcript because that would be disciplinary and unavailable without a hearing. Ms. Cunningham testified that her priority had been to create a record of Mr. Mordvinov's actions, and that the proposed resolution did not do that.

353. On August 11, 2015, Mr. Hyson sent the Statement of Allegations he had prepared to Robbie Morrison, the Chair of the President's Non-Academic Misconduct Committee (Exhibit 6, Tab, Page 776). On August 12, 2015, Mr. Hyson emailed Student E to advise that the final statement he had been waiting for had arrived, and the decision had been made to proceed with the Committee process (Exhibit 6, Tab, Page 777). Mr. Hyson advised that his completed

Statement of Allegations had been provided to the Chair of the Non Academic Misconduct Committee, Robbie Morrison (Exhibit 6, Tab, Page 776), who would now contact Mr. Mordvinov and provide him with a copy of the Statement of Allegations.

354. By email of August 12, 2015, Mr. Hyson also advised Ms. Kirchmeier that based on the feedback on the proposed resolution, the decision had been made to proceed to the NAM Committee (Exhibit 6, Tab, Page 785). He advised Ms. Kirchmeier that he did not include her materials because Mr. Mordvinov might use the fact that he respected her clear boundaries as part of his defense. He offered to have a conversation with Mr. Mordvinov about his conduct within the History Department.

355. By email dated August 17, 2015, Ms. Kirchmeier responded with copies to Ms. Cunningham and Prof. Loo (Page 783). She strongly objected to the decision to exclude her material on the basis that it was necessary to establish Mr. Mordvinov's pattern of behaviour. She cited academic material suggesting Mr. Mordvinov was likely to re-offend. She asked for the names of the Committee members so that she could provide her information directly to them. Ms. Kirchmeier's position was that she made a report and she wanted the University to deal with it and address Mr. Mordvinov's behaviour.s

356. Ms. Kirchmeier's point was entirely reasonable: she had reported concerns relating to harassment and discrimination and the University needed to provide a process whereby her concerns were taken forward and addressed. Because the University viewed itself as locked into a disciplinary process, it was unable to consider her interest in a proper investigation of and response to her concerns, and to the underlying call in her concerns to restore a discrimination and harassment free environment for women at the University. This amounted to an insufficient response to Ms. Kirchmeier's complaint to the University about Mr. Mordvinov. Further, without her complaint, Mr. Mordvinov's misconduct against Student A would not be addressed.

357. By email dated August 25, 2015, Mr. Hyson advised Student E and Ms. Cunningham (Exhibit 6, Tab, Page 788, Tab, Page 799) that the Statement of Allegations had been sent to Mr. Mordvinov, that he had been asked for a reponse, and that the proceedings to come would be by teleconference.

358. Student E testified that she was not sure what would happen going forward or how involved she would have to be. She did not want to have to go into her complaint again, and was definitely feeling hesitant.

359. Ms. Cunningham testified that she found out after the fact that the matter was going forward and had no notice this was going to happen. Her experience was that the matter kept popping up in shocking ways without warning or preparation time so that she was always on edge and finding herself surprised and taken aback.

XXIII. CBC's Fifth Estate Documentary

360. In about May 2015, the producer Ronna Syed of the CBC program, *The Fifth Estate*, began contacting students at UBC about the University's response to sexual misconduct allegations. Ms. Syed was preparing a documentary on the institutional responses of various Canadian universities to allegations of sexual assault in Canada as a way of exploring the Canadian context of issues developed in the American context in a documentary called "The Hunting Ground". This is also the work which Prof. Krause had used as the jumping off point for his piece published in the *Talon*.

361. *The Fifth Estate* also spoke with Glynnis Kirchmeier, Kaitlin Russell, Caitlin Cunningham, Student B, Student E, a student at Green College who had been involved in creating the Green College Statement (Ngwatilo Mawiyoo), and Prof. Krause.

362. Ms. Kirchmeier testified that she and Ronna Syed of CBC's *Fifth Estate* connected in May or June 2015. Ms. Kirchmeier testified that Ms. Syed became aware of Student B in Toronto and connected to the Green College community, including Steven Hay as a result. Ms. Kirchmeier testified that she agreed to Ms. Syed's request for an interview out of her general philosophy that journalism is a key way for democratic societies to make things work properly. Ms. Kirchmeier testified that the way the University was operating in relation to allegations of sexual misconduct, without any sunlight on the things happening on the ground, was a problem. That was why, she said, it was important for her to talk to Ms. Syed.

363. Student B testified that Ms. Syed had contacted her about an assault on campus and asked her if she would be willing to talk to Ms. Syed. Student B said that she was. She said that she agreed to be interviewed because no one was keeping her informed and nothing was happening at UBC. She saw speaking to the media as a way to get Mr. Mordvinov expelled from Green College and the University, and to protect the women she cared about. Initially, Student B agreed to be a background witness. Ms. Syed advised her that they would not move forward unless she agreed to be the main witness. Student B said that she then agreed to do an interview as long as she was blacked out and her voice was changed. Student B testified that doing the interview was retraumatizing in the sense that it brought back the emotions she experienced in relation to the sexual assault, and that it was awful to have to talk about what had happened to her over and over.

364. Student B testified about what it was like for her when the documentary aired. She said that she was at Berkeley in California. Ms. Syed called the night before and told her that Mr. Mordvinov had been expelled. She felt that doing the documentary was what was necessary to get the University to expel Mr. Mordvinov. When the documentary aired, she found it difficult because she had to relive the events again, but she said that because Mr. Mordvinov was expelled, she felt some relief.

365. Ms. Cunningham testified that although she did not want to talk about her experiences, her back was up and she wanted to do the best thing for students in relation to a process that she did not think respected her dignity or was looking out for her interests. She said the process had left her feeling like she was no longer part of the University community, and like she was now the problem. She said that she wanted to do what she could do to get the University back on track. She said that she thought maybe speaking with the Fifth Estate would accomplish what she had set out to do, since talking to Ms. Kay and Mr. Hyson did not seem to have helped. Ms. Cunningham thought her interview took place some time in late June 2015.

366. Ms. Russell testified that she became involved in the documentary when she reached out to Ronna Syed. She said that it took her some time, handwringing and discussions with others to arrive at the decision to participate. By the time she did, she was aware that Ms. Kirchmeier, Ms. Cunningham and Prof. Krause had themselves spoken with Ms. Syed.

367. Asked what held her back, Ms. Russell testified that she had not graduated and was not making much progress on her thesis. She felt there was potential for her involvement to jeopardize her status in the program as an ongoing graduate student. In particular she noted that she and her supervisor, Prof. Leslie Paris, had had one initial conversation in the fall of 2014 in which Ms. Russell asked for advice from Prof. Paris as a feminist and a mentor about the information regarding Mr. Mordvinov and broader issues regarding gender-based harassment, sexual assault and safety in the Department. She testified that she did not remember having another direct conversation with Prof. Paris about these issues, especially not in the spring of 2015 when the HGSA Statement was being drafted, the students were boycotting the Faculty Meeting and holding their own forum. She also had not spoken with Prof. Paris in the summer of 2015 when she was working full time and trying to keep afloat financially and emotionally. She testified that she was worried about what Prof. Paris would think, and how participating in the documentary might damage any relationship she had left with Prof. Paris. Ms. Russell noted that Prof. Paris was very good at maintaining professional boundaries, and was her only remaining supervisor as Prof. Myers was no longer at UBC and was not responsible in the same way for her program and graduation.

368. On the other hand, she testified, she had been involved in events since the summer of 2014 and was in a less precarious position academically and professionally than some of the other students who had also been heavily involved with the HGSA. Ms. Russell said that she was still a student, and could provide that perspective, but was closer to graduating than some of the other students involved, including Sarah Thornton, Steven Hay, Dylan Burrows, Megan Longstaffe and even Student D. She also noted that she was not a PhD student and was not looking to build a career in academia. Ms. Russell said that as she was fairly sure she was not going to continue in academia, it was safer for her to risk "career suicide" than it was for those hoping to continue. She further testified that participating was a way to follow through with what she and the other students had started collectively in the summer of 2014. She felt that it was a way that she could contribute, continue to speak up and advocate for change, and

continue to educate herself and others. She said that contributing to the documentary was a meaningful way to walk the talk of her personal and professional values and ethics as a historian and a human being.

369. Asked what the experience of being interviewed was like, Ms. Russell testified that it was completely nerve wracking. She felt concerned that her comments would be reduced to sound-bites and taken out of context to support a narrative that she did not agree with. As a result, she chose her words very carefully and sought approval of the transcript before it went to air.

370. Student E testified that she did do an interview with the reporter after the reporter was very persistent in reaching out to her by email, trying to get in contact with her, and asking for information. Student E told Ms. Syed that she was having symptoms of PTSD and that it was not a good idea for her to participate. Student E said that eventually she relented and had telephone conversation with Ms. Syed to “get her off my back”, but that she did not agree to be interviewed on camera. After the program aired, Student E told Mr. Lundeen and Dr. Vessey that the documentary did not reflect her opinions because she wanted to stay on good terms with them and she feared they would hold the documentary against her. She testified that in fact she had not watched the documentary.

371. Dr. Krause testified that he agreed to participate because the graduate students he was in touch with thought it would be a good idea for him to be involved as the member of faculty who had supported them, and who had tried to generate an open discussion within the Department. Prof. Krause said that he was not certain that a male faculty member was the most appropriate person to appear in the documentary.

372. The participants in the documentary also had a number of anxious days dealing with last minute scheduling delays by the CBC, and even the suggestion that they might not air the documentary.

373. Participation in the documentary and taking on the risks and anxiety of doing so, particularly for continuing students, was a further consequence for the students of the University’s lack of action in respect of the concerns they had raised about harassment, discrimination and safety in the Department. They did so out of their conviction that the University’s approach to allegations of sexual misconduct needed to change substantially to amount to an appropriate response for students.

XXIV. Non-Academic Misconduct Committee Hearing

374. On August 11, 2015, Mr. Hyson sent the Statement of Allegations he had prepared to Robbie Morrison, the Chair of the President’s Non-Academic Misconduct Committee (Exhibit 6, Tab, Page 776). Mr. Hyson testified that his role after this point was limited, although he did maintain some contact with Student E, Ms. Cunningham and Ms. Kirchmeier. The Committee’s hearing ultimately took place in October 2015.

375. The Statement of Allegations included only the allegations of Ms. Cunningham, Student E and Student C. The allegations of Ms. Kirchmeier, Student B and Ms. Grego did not go forward in any form. Similarly, the concerns raised by the graduate students in the summer of 2014 about the impact of Mr. Mordvinov's harmful behaviour on them and their sense of equality and safety did not go before the Committee.

376. The complaints that went forward through the Statement of Allegations, did not allege a pattern of conduct by Mr. Mordvinov, or set out the full array of issues that had arisen in relation to Mr. Mordvinov and the impact of these issues on both the direct recipients of his conduct and those aware of his conduct and likely to be sharing the University's spaces with Mr. Mordvinov in the future. The purpose of the hearing was not to evaluate the extent to which the whole picture presented against Mr. Mordvinov impacted whether the University was offering a discrimination and harassment free working, studying and living environment for women at UBC and in Green College, or was taking appropriate steps to ensure that in future women at UBC would be assured of a discrimination and harassment free working, studying and living environment. As such, the hearing was not an adequate response under the *Human Rights Code* to the issues which had been raised about Mr. Mordvinov by those affected by his behaviour in different ways.

377. On the basis that the University should be assessing the risk posed by Mr. Mordvinov's pattern of behaviour and the threat he posed to the University's ability to provide working, studying and living environments at the University free of discrimination and harassment, and on the basis that Mr. Mordvinov should have to answer her allegations in some forum, Ms. Kirchmeier advocated assiduously with Mr. Morrison as Chair of the NAM Committee to attempt to convince him to proceed with her complaint. Mr. Morrison testified however, that he had no authority to proceed with a complaint that had not been referred to hearing by the Student Conduct Manager (Mr. Hyson), and that he had not done this in other cases. It does not appear that any point Mr. Morrison appreciated that Ms. Kirchmeier was advocating for a broader inquiry than he was authorized to carry out.

378. Similarly, the University could not fully assess the risk posed by Mr. Mordvinov nor provide a process for Student B's complaints to be heard and considered if it did not proceed with them in the only forum in which it was moving forward.

379. Further, the Complaint that went forward for Ms. Cunningham alleged assault but not sexual assault or sexual harassment, although Ms. Cunningham was clear throughout that this was what she was alleging. As Ms. Cunningham was never shown the parts of the Statement of Allegations that defined the nature of the allegations going forward, including her allegations, she had no opportunity to correct this or address it before the NAM Committee.

380. The University consistently described the decision-making process of the NAM Committee as a hearing. This obscured the true nature of the NAM Committee's process. The NAM Committee is an investigative body. It does not hold adversarial hearings. The evidence on which the Committee makes its decisions is in fact primarily the unsworn written statements created by Mr. Hyson from his interviews with the complainants, the Respondent's unsworn written reply, and the written statements of any witnesses the Respondent identifies, which may also be created by Mr. Hyson, although not in the Mordvinov case. NAM Committee decisions are therefore primarily decisions on written submissions. The oral portion of the process is an opportunity for the Committee to ask follow-up questions about any disparities in the evidence before it, but does not provide the main evidence on which the Committee makes its decision.

381. Describing the process as a "hearing" created expectations about how onerous the process would be that were far beyond what the process itself turned out to require. This meant that Complainants, and likely other witnesses, readied themselves for an ordeal that was not in fact what they were facing. This also meant that there was a consistent disconnect between what Complainants were being told and what was actually going to happen, such that Complainants did not feel they had received concrete information about how the hearing would go, how they should prepare, or what they might wish to say at the hearing in addition to their statement. This disconnect also did not help witnesses to understand what was at stake at the hearing, as opposed to what was at stake in the preparation of their statements.

382. It is also the case that breaking the investigation into two stages and changing the person in charge part way through did not make the process more efficient, fairer or quicker. Doing so meant that the person who generally heard first person accounts from the Complainants, Mr. Hyson, had not heard a first person account from the Respondent, and was not the ultimate decision maker. As first person accounts were available, this was not the best use of them. Passing the case to the NAM Committee also prolonged the process, which had already waited for meetings with Mr. Hyson to be arranged, and statements of the complainants to be provided and vetted. Waiting a further two months for the Committee to have a brief meeting to pose additional questions on the written statements to the complainants was not an efficient process.

383. As previously described in *Hale*, there were also consistent serious deficiencies in the hearing process for Complainants. Most glaringly, while Respondents see all of what is provided to the Committee in writing and all of what is said to the Committee by witnesses orally in answer to questions, Complainants only see their own statements and hear their own answers to questions. They do not see the statements of other Complainants, they do not see the Respondent's responses, they do not see any documents put forth by the Respondent or other Complainants, and they do not see any responses provided by other witnesses, including respondent witnesses, either before or at the hearing. They are not present for anything that may be said orally by anyone,

other than themselves. They are also not present for the reading of the Statement of Allegations at the start of the hearing, if that takes place.

384. Complainants also do not see the final decision of the Committee, although they will be informed of the outcome in very brief terms. They will also be told something about any decision by the President to discipline. In the present case, this meant that they were told if their complaint had been upheld, but not the reasons why, and were told that Mr. Mordvinov would never be a student at UBC again, but were not told that Mr. Mordvinov had been expelled.

385. The University's idea is that at the hearing, the witnesses will be asked about disparities between their evidence and the evidence of others. The effect of the total non-disclosure to Complainants before or at the hearing of everything provided by anyone other than themselves, is that although they are the allegedly wronged party, and may well be suffering significant trauma from the conduct being alleged, at the oral portion of the process they will be asked questions about disparities in the evidence with no advance warning at all about what those disparities may be. It is difficult to imagine setting up a more stressful situation for Complainants. That this is not remotely a trauma-informed approach is obvious. It also places Complainants and their accounts on very different footing than the accounts of Respondents. The fact that multiple University witnesses in this hearing and in *Hale* expressed no concern *at all* about the completely different treatment of Complainants and Respondents in the NAM Committee process is a continuing significant failure by the University and its staff to appreciate the interests at stake for Complainants in these complaint proceedings. It underscores the fact that these processes do not provide any form of equity for Complainants and in fact discriminate against them.

386. The theory of the University is that this set-up is justified on the basis that only the Respondent has a legal interest in the proceeding, as only the Respondent is facing discipline. In our submission, however, and as found by the Tribunal in *Hale*, Complainants clearly also have a profound interest in seeing the complaints they have brought forward fully addressed, and in the actual outcome of their complaints at hearing. For example, the students' sense of safety here, and their sense that the University was acting effectively to eliminate harassment and discrimination and provide a harassment- and discrimination-free environment going forward, including an environment that was safe from sexual misconduct, was entirely contingent on their not having to encounter Mr. Mordvinov in the future in their working, studying and living spaces. This required Mr. Mordvinov's expulsion or permanent ban from campus. They therefore had a very distinct interest in how the hearing turned out. They also had a very distinct interest in a fair hearing, and one in which they were full participants and which fully addressed their concerns as a matter of justice and equity. In the context of complaints about sexual misconduct by Mr. Mordvinov, the University's attempts to suggest here and in *Hale* that this is not a real interest is itself a form of discrimination on the basis of gender.

387. It is also our view that a proceeding which is based primarily on written statements created by a third party investigator is likely not an appropriate means

by which to adjudicate sexual misconduct allegations, as third party statements like this provide little basis on which to judge relative reliability and truthfulness other than consistency and perhaps detail. The Committee really has no ability to judge demeanour or ability to recall or opportunity to observe if it is only asking a few questions about differences in the evidence, and does not at any point hear a full first person account from any party. A process designed to deal with petty theft or vandalism is not capable of being a satisfactory tool for making decisions which will have grave impacts on Complainants and Respondents that decisions about whether sexual misconduct occurred are likely to have.

388. We also raise the issue of having students on the NAM Committee. As in *Hale*, significant concern arose here about whether students have the life experience and training necessary to adjudicate sensitive issues like sexual misconduct without resorting to common myths and stereotypes about survivor responses and victim presentations. Concern arises that without significant training about rape myths and the impact of trauma on recall, there is a risk that lack of knowledge about sexual misconduct trauma will negatively impact decisions being made about sexual misconduct. Ms. Cunningham was also very concerned for reasons of propriety and privacy that students who might become her students in future would be hearing her complaint and judging it. In fact, the University placed a History undergraduate student on the Committee.

389. Ms. Cunningham testified at length about how confusing she found the run up to the hearing, and how she felt that she was never getting useful information about it. We submit this stemmed in the first instance from her natural belief that the hearing would be a substantive endeavour as opposed to the Committee's understanding that the oral portion for witnesses would be very limited. Because she expected the hearing to be onerous, Ms. Cunningham also advocated for various supports for herself in the hearing. Had she been told that the decision would largely turn on her written statement, that the process was really a meeting, and the Committee might only have a question or two for her, we submit that many of her concerns would have been allayed. Ms. Cunningham testified about only being in the hearing for a few minutes and essentially feeling that she was not asked anything substantive during it. It was harmful to Ms. Cunningham and disrespectful to her to put her through the very significant anxiety of worrying about and preparing for a "hearing" when what was actually going to take place was a brief meeting with very few questions.

390. Ms. Cunningham also testified that she was told right before the hearing that she could make a statement to the Committee. This did not help her to understand what the Committee was doing, or what statement would be of assistance to it, and served only to increase her frustration and anxiety.

391. There was also evidence here that suggested that questions about process could be raised during the oral hearing. This was incorrect and unhelpful to the witnesses.

392. Student E testified about being advised that the NAM Committee process was moving forward. She said that she was not really sure what that would

mean, or how involved she would have to be in the process. She said that she did not want to have to go into what had happened with her again and was definitely feeling hesitant. By the time her matter was referred to hearing in August 2015, Student E had exhausted her two years at Green College and had moved out. She further ended up having to go on leave in the fall of 2015 for mental health reasons. When further information about the NAM Committee hearing was provided to her, she testified that she was not in a great place and was deliberating about whether she should or should not go through with it. She said that she thought the hearing would be the last of it and therefore that she should do it to set some sort of precedent, protect others, make sure Mr. Mordvinov could not come back and teach him a lesson.

393. Student E testified about feeling quite uncomfortable with the fact that Mr. Mordvinov would be on screen at the same time that she was in the hearing. She sought a modification to this and it was granted. She also testified about arranging to bring someone with her as a support person because talking about the event was hard for her. Student E testified that having to participate in the hearing resurfaced memories about what had happened with Mr. Mordvinov, and associated feelings of guilt and helplessness. She said that she believed she was having bad nightmares at around that time, and was seeing her psychiatrist pretty regularly.

394. In relation to the hearing itself, Student E recalled being nervous and breaking down and crying. She said that she did not remember much else. She said that after it was over she thought that would be the end of it, and she was glad to be done with it. When the decision came, she said that she felt relieved.

395. Ultimately it is the Complainants' submission, as in *Hale*, that the NAM Committee process was not an appropriate process by which to conduct any part of the investigation of the complaints here, and that using this process was a harmful response to the complaints which amounted to discrimination in view of the nature of the complaints, and the Complainants' interest as women in having their complaints properly dealt with. In saying this we are referring to the ways in which discrete disciplinary charges did not allow the Committee to consider the overall threat that Mr. Mordvinov posed to a harassment and discrimination free working, studying and living space for women, and did not guide the University in addressing that threat, and the fact that the discrete allegations that did go forward were not fully dealt with from the Complainants' point of view (for example, the failure to allege or find that Mr. Mordvinov's conduct with Ms. Cunningham amounted to sexual harassment). Most importantly, we say that the additional time and stress involved in having the final stage of the University's investigation involve a "hearing" with a panel of mostly students that had not had any prior exposure to the circumstances or the complaints created a lot of additional stress and delay for Complainants without in any way improving the University's decision making.

XXV. Note on Policy 3

396. We note that in contrast to the NAM process, some of the paths in Policy 3 involved investigation and fact finding by a single person. Section 4.2 of the procedures in Policy 3 (Exhibit 1, Tab 3, Page 49) anticipate an investigation by the “Director, Equity Complaint Management” via written submissions from the parties and other witnesses, or an investigation conducted by an internal or external investigator. Either way, the process seemed to anticipate findings about whether there has been a violation of the policy and recommendations that others would then implement (s. 5.2 and 5.3 of the procedures). In our submission, a simpler process without a hearing component, and fact finding and recommendations from the person doing the investigating, would have been a much more suitable process for complaints involving sexual misconduct, though such a process is still focused on discrete complaints rather than the broader evaluation of circumstances which we say is necessary to address overall concerns about the working, studying and living environment at the University and whether it is free of discrimination and harassment.

397. Policy 3 appeared to be essentially moribund during the time of this complaint. Although Ms. Kay was aware of Policy 3 and the requirements therein to provide a working, studying and living environment free of discrimination and harassment, as was Mr. Bohnen, and Prof. Loo may have understood that Policy 3 was the source of this obligation on the History Department, there was little reference to the terms of Policy 3 the processes arising from Policy 3 to guide the University in handling the concerns which were raised about sexual misconduct in relation to Mr. Mordvinov. Mr. Bohnen said that he was not aware of Policy 3 processes or what the detail of those policies might be, and was much more aware of the student conduct processes.

398. There was also a lot of misunderstanding about Policy 3. Mr. Bohnen testified that he thought Ms. Kay was the person to take the lead on a Policy 3 investigation, which was inaccurate, including because Ms. Kay was not permitted to investigate in any case.

XXVI. Aftermath of NAM Committee Hearing and Fifth Estate Publications

399. The NAM Committee hearing took place on October 19, 2015. The Committee further met to speak with Kilroy Abney, a History graduate student and witness to the assault on Ms. Cunningham on October 22, 2015, at which time they requested a further statement from Mr. Mordvinov. On November 12, 2015, Mr. Hyson wrote to Ms. Cunningham to advise that the Committee found that Mr. Mordvinov committed misconduct against her in the form of “physically aggressive behaviour” and that Mr. Mordvinov was no longer a student at the University and would not be a student at the University in the future (Exhibit 6, Tab, Page 1089). This was the extent of the information the University provided to Ms. Cunningham about the decisions of the NAM Committee and the President.

400. The careful wording of this decision, and in particular its failure to use the word ‘expelled’, and the fact that Mr. Mordvinov was listed as attending upcoming conferences as a student of UBC, gave rise to very serious concerns

among the graduate students raising concerns about him that he had been permitted to withdraw from UBC rather than being expelled. This was a serious concern for much of the following week. Ms. Kirchmeier testified about the anguish she felt that Mr. Mordvinov might have been permitted to step away rather than being held accountable for his actions. As Mr. Hyson could not be more precise for confidentiality reasons, the matter was not settled until Mr. Mordvinov himself confirmed to Ronna Syed that he had been expelled from UBC.

401. The Fifth Estate first approached the University for comment in August 2015. Prof. Loo indicated in an email that as early as May 2015 she was aware of attention from reporters. As a result, the University was aware throughout the proceedings of the NAM Committee that it was going to be the subject of very public scrutiny over its handling of the concerns about Mr. Mordvinov. On November 11, 2015, the Fifth Estate again asked the University to comment for the documentary.

402. The close timing between the release of the documentary and the University's decision to finally take decisive action with respect to Mr. Mordvinov created the distinct impression that the students' actions in putting the story out to the public through the Fifth Estate documentary was a strong motivating force in having the University finally hold and conclude the NAM Committee hearing, and make the decision to expel Mr. Mordvinov from UBC. Certainly, the nature of the risk he posed was evident in June 2014, 17 months before he was eventually expelled, and that did not change in the intervening long period of time before the University provided its response.

403. The Fifth Estate documentary was first scheduled to air October 30, 2015, but Ms. Kirchmeier testified that Ms. Syed told her that her superiors at the Fifth Estate wanted her to re-edit the piece. This raised very significant concerns about whether the documentary would be aired at all. It was next scheduled to air on Friday, November 13, 2015, but was not because a serious bombing attack in Paris took over the news cycle at that time. In the following week, there was significant back and forth about when or if it would be shown. On Friday, November 20, 2015, the CBC published a text article by Lisa Mayor about the documentary online (Exhibit 6, Tab, Page 1109). Ms. Kirchmeier testified that the original publication included some stills from the documentary. On Saturday, November 21, 2015, the University published its response to the Fifth Estate (Exhibit 6, Tab, Page 1113).

404. On Sunday, November 22, 2015, Ms. Kirchmeier, Ms. Russell and Ms. Cunningham held a press conference to talk about the University's process, the outcome of the NAM decision and the Fifth Estate documentary. On Monday November 23 or Tuesday, November 24, 2015, the full documentary became available online on youtube, when Ms. Russell testified that she and other graduate students watched it together. The documentary did not air on television until January 2016.

405. On Monday, November 23, 2015, Prof. Ducharme and Prof. Col Thrush of the History Department held an emergency meeting of the Department faculty.

406. The period after the decision from the University was tumultuous for the students involved, because of their concern about whether Mr. Mordvinov had been expelled, the CBC's indecision about airing the documentary, and the press conference that Ms. Kirchmeier, Ms. Russell and Ms. Cunningham held. Although the Complainants who participated in the documentary felt doing so was necessary, they felt put in the position of battling CBC as well as the University to take their concerns seriously, an added harm that would not have occurred had the University responded appropriately to the Complainants' concerns.

407. Ms. Russell testified that the article written by Lisa Mayor misquoted her as saying that the HGSA had circulated a petition to have Mr. Mordvinov removed from the History Department, which did not happen. The HGSA Statement was not released as a petition and did not deal with Mr. Mordvinov personally at all. Ms. Russell said that she had a panic attack when she read the article. She said that it represented her in a negative light with respect to Prof. Loo because it cast her as taking a position with Prof. Loo which Prof. Loo ignored, which did not happen. Ms. Russell testified that she was concerned the article singled Prof. Loo out and would antagonize her when Ms. Russell's intent had always been to communicate with Ms. Russell in a professional, polite way. Ms. Russell said that she asked the CBC to correct the article and that addressing the article became one of her main objectives at the press conference.

408. Ms. Kirchmeier testified that they originally decided to hold a press conference to advertise for the Fifth Estate documentary and to identify in their own words what they believed the problems to be to date with UBC's response. As well, by that time they were anticipating the filing of a human rights complaint which they also wanted to announce.

409. Ms. Cunningham testified that she was interested in supporting the other students and in making sure that the concerns of the students did not get buried in all of the placating rhetoric coming their way.

410. Ms. Kirchmeier testified that originally the press conference was timed to complement the date originally planned for the airing of the documentary. Later, the students went ahead with the press conference to put pressure on the CBC to air the documentary. It was Ms. Kirchmeier's view that the CBC might not have done so but for the press conference.

411. Ms. Kirchmeier testified that pulling together the press conference was a lot of work and co-ordination with facilities and with the three of them about their press release and what they wanted to say at the press conference itself. Ms. Kirchmeier drove to Vancouver from Seattle for the weekend to attend the press conference. She described the whole process as stressful and time-consuming and said that she was in a cold sweat for three days over it. She testified that the three of them wanted to be very accurate in what they said. Ms. Kirchmeier further noted that minutes before the press conference was due to start she heard from

Ms. Syed, who was in France, that Sara Jane Finlay would be attending the press conference and would be distributing something from the University. Ms. Syed warned Ms. Kirchmeier that this was meant to throw them off and displace their voices.

412. Ms. Finlay did attend the press conference and distribute the University's response to the Fifth Estate. Asked about the apology in Martha Piper's response to the Fifth Estate, Ms. Kirchmeier noted that President Piper apologized to students who "feel they have been let down by our university". She noted that an apology that amounts to saying I'm sorry you feel that way is not a very sincere apology. Ms. Kirchmeier further noted that the apology was placed on a public website and was not sent to Ms. Kirchmeier nor in any way personally directed to her. She said that she did not feel included in the apology. President Piper further said that UBC as institution was committed to justice for survivors. Ms. Kirchmeier testified that she did not agree that this statement was accurate.

413. Ms. Russell testified that she had only watched the documentary once, and that she found it over-dramatized. She also noted that it was very negative about Prof. Loo and ascribed to her more power than she had. Ms. Russell testified that it did not bode well for the environment in the History Department, or for her relationship with Prof. Paris.

414. Asked what she was hoping the press conference would accomplish, Ms. Russell noted that she wanted to correct the record following the CBC article, and that her focus at the conference was on the steps they thought UBC could to improve processes and explicitly support survivors. She said that in her view UBC should have a sexual assault response team in the form of a dedicated, centralized body which was trained to take disclosures, support survivors and use evidence collection kits. She felt this body could set out the various paths a survivor might wish to take. She said that she saw this as a major improvement over the current situation where survivors had to repeat their stories to multiple different bodies, with no one knowing where survivors should go.

415. Asked what the press conference process was like for her, Ms. Russell testified that it was nerve wracking, including because she did not feel comfortable opening herself to the court of public opinion, and it was the first time her family had learned about her involvement in this issue at the University. She testified that her parents started getting calls from family members about it.

416. Asked about the press conference, Ms. Cunningham testified that she found the press conference incredibly overwhelming because there were so many cameras and microphones and that she felt really nervous. She said it was a much bigger deal than she expected, and that she was stunned by the degree of interest. She said that she did not want to talk about the actual incident with Mr. Mordvinov because she did not want a salacious conversation about a sexual assault. When she was asked about it, she said she sidestepped the question. What she wanted to talk about instead was the fact that the University's process was not great, and the University could have done better for her and the other

students. Afterwards she said she thought a lot about how she expressed herself, and whether she had said everything as articulately as she could have.

417. Multiple witnesses testified that before the documentary, the History Department was characterized by collegiality and literally open office doors, but that afterward that atmosphere was substantially changed and professors kept their office doors closed.

418. Asked about the environment in the History Department after the Fifth Estate program, Ms. Russell said it was cold and chilly. She said that before the program, if she was in the lounge, which was a glassed in space, people would acknowledge her by stopping and waving if they passed by. Ms. Russell testified that the change meant that she did not feel comfortable going to the Department any longer and that even if she went to campus, she avoided Buchanan Tower in particular where the History Department was located.

419. For her part, Prof. Loo testified that the Department was “shattered” after the documentary aired. While Dr. Loo testified that participating in speaking up about the issues in the Department did not create risk for graduate students, in our submission it is naïve to think that there would be no hard feelings against students whose efforts had led to the Department being shattered.

420. Prof. Kojevnikov testified that for a number of years, certain faculty, including himself and Prof. Wang, had not been assigned any PhD students. He also testified that in his view, graduate students felt abandoned by faculty who refused to understand their concerns. He testified further that students felt betrayed. He said that faculty wanted to help but could not and that this was traumatic for faculty and students.

421. Dr. Krause also testified about the impact on the Department and his role within it. He said that he was not assigned PhD students going forward, and was treated like something of a pariah. He testified that there was no celebration of his academic career when he retired. Both Prof. Loo and Prof. Paris blamed Prof. Krause for negative changes to the Department and for Prof. Loo.

422. Mr. Hay also testified about the impact on the Department, negative changes to his relationship to the Department, extreme delay in finishing his thesis, and damage overall to his career prospects which meant he did not go on to an academic position.

423. Collectively, this evidence demonstrates the significant and broad impact on the Department of not responding appropriately to allegations of sexual misconduct, and not working openly and swiftly to create or restore an environment free of discrimination and harassment.

XXVII. Conclusion

424. Ultimately, the University’s response to the concerns that were brought forward to it was unimaginably slow, with the consequence that students felt

bound to make greater and greater efforts to get the University to take a decisive stance to protect the women of Green College and the Department from any further threat from Mr. Mordinvov. The efforts required were harmful to them and part of the reason for pursuing this complaint. These efforts took them away from their studies, compromised their comfort and enjoyment in their students and, in some instances, their mental health, and damaged their careers and their relations within the Department.

425. The need to keep agitating and pushing the University to act drew additional people into the conflict and ultimately caused very significant negative changes to the Department, in particular. These changes weighed heavily on the students and became part of the harm to them also.

426. It is our submission that by not approaching the concerns raised about Mr. Mordvinov in a concerted and coordinated fashion, and in not viewing the problem through the harm his actions had caused to the University's obligation under the *Human Rights Code* to provide a working, studying and living environment free of discrimination and harassment, and in not asking what was required to restore and ensure a working, studying and living environment free of discrimination and harassment going forward, and instead in focusing on pursuing a sub-set of discrete complaints as disciplinary issues between itself and Mr. Mordvinov, the University did not respond effectively to the concerns raised, and in failing to do so, discriminated against the women raising those concerns.

427. In his testimony, Dr. Vessey noted the positive things that came out of the work done by students on issues related to sexual misconduct, including pressure for legislation requiring Universities to have sexual misconduct processes, the Green Lanterns at Green College, and the subsequent introduction of more explicit remarks at the start of the year at Green College. Dr. Vessey testified that he believed it was no accident that the students from Green College and the History Department were the ones making this tremendous collective effort to have the University act and to change its processes, as they were highly motivated and had the training to analyze the University's culture and take activist positions. His view was that the reason the issues arose as sharply and prominently as they did was in significant part due to the context and company in which the issues with Mr. Mordvinov arose. While these may be fair observations, it remains the case that what was asked of the students because the University did not act effectively or in a timely way was too much, caused too much harm, and should not have been necessary. That it was necessary amounted to discrimination against the women who complained to the University about Mr. Mordvinov.