

**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 4
January 30, 2026**

PART 4: CLAIMS OF GENERAL CLASS

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I. MEMBERS OF GENERAL CLASS

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

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

2. Under this definition, the members of the General Class were not identified on the basis that there were deficiencies in the University's response to their complaints.

3. The Tribunal directed that potential members of the General Class be identified by the University, and that communication with potential members of the General Class be undertaken by the University using an approved text. This text included information about right of any potential General Class complainant to opt out of the Complaint. The University sought and obtained an order from the Tribunal that it was did not have to tell the Complainants whom the University had communicated with as potential members of the General Class, or whom they believed to be members of the General Class. The University was to have told the Complainants how many persons it communicated with as potential members of the General Class, but did not do so.

4. As a consequence of these orders, the Complainants were not advised and do not know to this day who the potential or actual members of the General Class are unless those individuals chose to identify themselves to the Complainants. As a result of this arrangement, which the University sought, the Complainants could not contact many General Class members directly, and many General Class members did not testify. It is not uncommon in class litigation as whole for all of the members of a class not to be known to the parties' representatives, but this is a relatively unusual circumstance in a human rights complaint.

5. It was also very difficult for the Complainants to get any sort of proper or complete disclosure from the University about the complaints to the University of the General Class members. This is illustrated by the relative paucity of documents in Exhibit 5/Volume 5 which contains the documents available to the Complainants about the General Class members before this hearing began. A significant number of new General Class members were identified in the eve of hearing, and many further documents relating to the General Class were disclosed as the Complaint went along. The consequence of this is the presence of General Class documents in multiple exhibits relating to many General Class files. This

incomplete and rolling disclosure created significant hardship for counsel in attempting to apprehend and call evidence about the complaints of the General Class members to the University, and in attempting to summarize each General Class matter in these final submissions.

6. Two General Class members testified, Tara McBryan and Lauren Fisher. A third General Class member, Stephanie Hale, filed her own complaint which was heard by the Tribunal. She testified at the hearing of her personal complaint. The Tribunal in Kirchmeier held that Ms. Hale's part of the General Class complaint was foreclosed by a preliminary decision during her personal complaint. As a result, Ms. Hale was foreclosed from remaining a member of the General Class, and did not testify at this hearing.

II. INTRODUCTION

7. Kirchmeier's Complaint included allegations about persons in the General Class to ensure that the experiences of other women making complaints at the time of the Mordvinov events were also brought to the attention of the Tribunal, and to show that the events in relation to Mr. Mordvinov were not somehow exceptional events. This was important to establishing the systemic aspects of what happened in the University's response to complaints about Mr. Mordvinov.

8. The evidence in relation to the General Class complaints thus serves a dual purpose: it details the experiences of General Class members about whom disclosure was provided, and it serves in many instances as further evidence of the practices of the University in general in relation to allegations of sexual misconduct. In some cases, this evidence shows that the University can and does act with greater alacrity in cases of sexual misconduct than it did in relation to the complaints against Mr. Mordvinov. In other instances, it shows that similar deficiencies existed in the response of the University to sexual misconduct allegations as existed in its response to the complaints about Mr. Mordvinov. Evidence relating to the General Class members thus serves as a comparator to the evidence about the University's response to the complaints about Mr. Mordvinov.

III. MT

Witnesses:

Clark Lundeen, Mark Vessey, Monica Kay, Steve Bohnen and Chad Hyson

Documents:

Exhibit 5/Vol 5/#104 to #108;

Exhibits 44 to 64

Exhibit 70

Exhibits 72 to 76

Exhibits 99 to 118

Exhibit 143

Exhibit 174

Partial Chronology of Documents

EX 44 - May 3-6, 2014 Internal Resolution Attempt

EX 45 - May 6, 2014 MT asks no contact and sets intermediary

EX 46 - May 12, 2014 MT describes contact points after no-contact was asked

EX 99 - Undated MK notes of call from CL

EX 58/P27 – May 14, 2014 email CL to MK and MT

EX 47 - May 14 CL instructs Green Lanterns on situation

EX 100 – MK notes of meeting with MT and CL

V5/P233 – May 16, 2014 Email exchange MK/RW re meeting

EX 58/P34 – May 16, 2014 MK narrative about call with and message from RW

EX 58/P41 – May 16, 2016 MK call to SB/Security

EX 48/P3 – May 16, 2014 Email CL to MK

EX 58/P29 – May 20, 2014 Email MK to SB, CH, CL re MT/RW issue report

EX 58/P31 – May 20, 2014 Email MK to SB, CH with documentation

EX 70/P1 – May 20, 2014 Email SB to MK

EX 101 – May 20, 2014 MK notes call with CH

EX 48 - May 20 MV CL notes on residence contract language

EX 60/P6 - May 20, 2014 Email MV to RW telling him that conduct breaches

EX 60/P3 - May 20, 2014 Email RW responding to allegations of misconduct and request to meet by MV MK

EX 60/P5 – May 21, 2014 Email RW to MV responding

EX 58/P41 – May 21, 2014 Email SB with May 21, 2014 **Incident Report** excerpt

EX 102 – May 21, 2014 Emails re planning for meeting with RW

EX 103 – May 21, 2014 MK preparation materials for meeting with RW

EX 104 – May 21, 2014 preparation materials for meeting with agenda and draft language

EX 105 – May 22, 2014 Package of materials re meeting including MK notes of meeting (P7)

EX 106 – May 22, 2014 Materials handed out at meeting with RW

EX 49 - May 22, 2014 **Undertaking** signed by RW

EX70/P3 – May 22, 2014 Email MK to CH summarizing

EX 50 - May 27, 2014 CL email describing post-undertaking transgressions by RW and proposed response

EX 107 – May 27, 2014 Email MT to MK with response re coded Facebook post by RW

EX 51 - May 28, 2014 CL email re investigation into witnesses of post-undertaking contact

EX 52 - May 29, 2014 MV RW defense and meeting setup

EX 53 - May 30, 2014 MV CL transcript of phone meeting with RW

EX 54 - May 30, 2014 CL serves MVs expulsion decision letter incl attachments

EX 109 – May 30, 2014 Email CL to MK about next steps

EX 70/P11, EX 108 – May 30, 2014 Email CL to MT re report to MT about steps taken

EX 70/P4 – May 30, 2014 Email Janice Robinson about putting RW eviction into Early Alert System

EX 70/P6 – May 30, 2014 email from RW about expulsion

EX 70/P6 – May 30, 2014 email from Janice Robinson

EX 110, EX 61 - Jun 1, 2014 RW public announcement to Green College Residents Chat about expulsion

EX 111 - Jun 2, 2014 MT email to CL, MV, MK about impact of RW broadcast email to Green Chat

EX 62 - Jun 6 2014 HB appeal decision to RW

EX73 – IR 14061511281

EX56 – June 15 and 16, 2014 emails RW to MV, copied to MK and CL

EX 55/P3 (also EX 70/P11) – June 16, 2014 at 12:22 AM – Email MT to CL, MV and MK re distress

EX112 - June 16, 2014 at 5:30 AM – Email MT to to CL, MV and MK re distress

EX 55 (also EX 70/P10, EX 115) – June 16, 2014 Email MV to MT explaining

EX 55 (also EX 70/P8) - June 16, 2014 CL notes of drop-in meeting with MT

EX113 – June 16, 2014 MK notes of meeting with MT

EX 114 – June 16, 2014 Email MV to CL responding to notes of meeting

EX 116 – June 16, 2014 MK notes re call with CH

EX 56 - Jun 16, 2014 MK indicates next actions

EX 117 – June 16, 2014 MK notes of call with CL

EX 70/P14 – June 16, 2014 Email CL to SB with time line

EX 63 - June 16, 2014 Copy of broadcast email by RW to residents

EX 70/P13 – June 17, 2014 Email CH to group re his view

EX 70/P13 – June 17, 2014 Email SB to MK, MV, CL, CH re his view of CH's view

EX 70/P16 – June 17, 2014 Email MK to group re due process for RW

EX 70/P20 – June 17, 2014 Email MV to group we can't exclude RW

EX 70/P19 – June 18, 2014 Email SB to Janice Robinson, CH

EX 70/P20 – June 18, 2014 Email CH to group re common to exclude from residences

EX 70/P20 – June 18, 2014 Email SB about where RW studying

EX 70/P25 – June 18, 2014 Email MT re further email by RW to GC

EX 70/P25 – June 18, 2014 Email SB to CH forwarding complaint from MT

EX 70/P26 – June 18, 2014 Email MT re concern about listserv and RW

EX 70/P25 – June 18, 2014 Email SB to MT don't worry

EX 70/P27 – June 18, 2014 Email CH to MT re investigation

EX 174/P426 – June 19, 2014 Email MT to CH

EX 64 - June 20, 2014 RW requesting relief from termination fees

EX 174/P425 – June 23, 2014 Email MT to CH about meeting to understand process

EX 174/P430 – July 2, 2014 Email MT to CH with instructions

EX 174/P430 – July 3, 2014 Email CH to MT will proceed to clarify restrictions

EX 118 – July 23, 2014 MK Notes of call to CL

EX 143/P8 – September 17, 2014 Email RW to MV re attending after party for Gala

EX 143/P7 – September 17, 2014 Email MV to RW responding

EX 143/P6 – September 17, 2014 Email RW to CH

EX 174/P436 – September 18, 2014 Email MT to CH to see if clarifications been provided to RW

EX 143/P5 to P1 – September 18 to 24, 2014 Emails CH to RW reviewing history and interpretation of Undertaking

EX 143/P1 – September 25, 2014 Email RW to CH, MV etc.

Hyson – September 26, 2014 meeting CH with RW

V6/T92/P302 – September 2014 – VM to RW to SB to MK

EX 143/P11 to P9 – October 27, 2014 Emails MV/RW about Halloween

EX73/P1 – November 5, 2014 Update MK to SB in IR

EX 174/P451 – November 7, 2014 RW to CH asking to advance case against him to NAM process

EX 143/P12 to P15 – March 26 to 30, 2015 Emails RW/MV about Spring Gala

EX 57 – April, 2015 [REDACTED] ban from GC premises

V5/P238 – April 7, 2015 Emails MT/CL/MV about RW excluded from GC

EX 76/P2/Bottom – April 7, 2015 Email RW to CL re being banned when questioned MV's decision

V5/P239 – May 2015 Emails re RW protest re exclusion from GC

V5/P239 – May 27, 2015 Email MV and Shirley Nakata, Ombuds Office

V6/#304/P747 – June 24, 2015 Email from MK re workshop

EX 124 – September 28, 2015 Green College Workshop slides

i. Description of Events with MT and RW

9. MT was a resident of Green College where the person harassing her, RW, also lived. MT's complaint was that she had asked RW to leave her alone after she ended a relationship they had been having, and he had entirely failed to do so in a way that MT was finding increasingly upsetting and distressing. In her initial communications with the University she detailed dozens of communications from RW, as well as him coming to her dorm room at Green College when she was there, leaving her hiding in her room.

10. MT did not testify. Ms. Kay, Mr. Bohnen, Mr. Lundeen, Mr. Vessey and Mr. Hyson all testified about their interactions with MT.

11. Original disclosure about this matter was completely inadequate, consisting of 5 documents as shown in the General Class volume created by the Complainants before the hearing began (Exhibit 5/Vol 5/#104 to 108). Disclosure continued prior to and during the evidence of the witnesses that testified about the events relating to MT and RW. This is evident from the multiple groupings of documents eventually entered as exhibits (see listing above). This more complete record was essential to understanding this important file. Having the University produce it piecemeal as they did created serious difficulties for counsel in apprehending the sequence of events and was extremely inefficient, both during the hearing and in relation to preparing these submissions.

12. This matter is important both in terms of the impact on MT as a General Class member, and in terms of the fact that it took place in the context of misconduct by a Green College resident towards another Green College resident in 2014, the same time frame as key allegations against Mr. Mordvinov at Green College. As such it is an important second source of detailed information about how the University responds when presented with serious allegations about sexual misconduct having a deleterious impact on a female student. As such, it is a significant comparator with respect to events involving Mr. Mordvinov and the University's responses to those events.

13. Dr. Vessey said that he knew RW fairly well before the events of the complaint as he was one of the more visibly active members of the community and was a strong and "largely positive" presence. He said that RW was among the 20 to 30 students at Green College (of 80 to 90 in total) that he knew quite well. He said that with another 30 to 40 he had a nodding acquaintance. He described MT as being in this second category.

14. Like Student E, MT's first communication about her concerns was with

[REDACTED]

15. On May 1, 2014, when [REDACTED] was meeting with Mr. Lundeen about Student E, she mentioned the circumstances with MT and RW. In his note of the conversation to Dr. Vessey, Mr. Lundeen noted that [REDACTED] had suggested that MT send RW a firm letter saying she wanted no further contact (Exhibit 6/Vol 6/#33/Page 164). Mr. Lundeen described the circumstance as a “watch item” at that point but also took the account seriously by noting that the “unwanted behaviour borders on stalking”. Dr. Vessey testified that he and Mr. Lundeen discussed the issue after this email.

16. On May 3, 2014, MT emailed Mr. Lundeen asking to meet saying that she was having trouble with someone sending her endless text messages and emails, and showing up at her door (Exhibit 44, Page 8). On May 5, 2014, Mr. Lundeen responded, noting that this person was not respecting her boundaries. They met on May 5, 2014 and Mr. Lundeen sent an email to MT with a detailed summary of their meeting which included: that MT felt anxious and worried and not in control; that RW was not a physical threat but did not seem concerned for her well being; that Mr. Lundeen was concerned for MT and felt that the extra emotions and anxiety will affect her personal relationships and studies; that the conduct was a form of stalking/cyberstalking and was a breach of the residence contract and also a criminal offense; and, that MT should open an RCMP file (Exhibit 44, Page 4). He provided her with a pamphlet on stalking from the RCMP (Exhibit 47, Page 3). This represented a much more engaged and thorough response than Mr. Lundeen provided to Student E after she advised him of her concerns about Mr. Mordvinov.

17. As with Student E, Mr. Lundeen did not contact RW directly to tell him that he must stop, and nor did he involve an outside person such as Chad Hyson who might have done so in a firm manner. Instead, Mr. Lundeen’s advice mirrored that of [REDACTED], namely that MT should write RW a clear letter directing him to stop communicating with MT for a set period of time and to use an intermediary if there was a functional need for RW to contact her. Mr. Lundeen did recommend that MT copy him on the communication so that he could escalate as necessary under the residence contract, and offered to review a draft of it. Mr. Lundeen also suggested that MT gather up the communications from RW. This proved to be so distressing for MT that she asked whether she should be moving out (Exhibit 44, Page 4).

18. On May 6, 2014, MT sent RW a very direct email asking him not to contact her in any way to give her space (Exhibit 45). She named an intermediary. RW responded by immediately sending communications to the intermediary for MT, and sending two emails directly to MT (Exhibit 46, Page 4). On May 7, 2014, Mr. Lundeen responded, saying that sending emails to her was not okay, that he understood the trouble she was having with RW, and noting that RW was not respecting her, was hurting her and her feeling of comfort, and this was very upsetting. Mr. Lundeen recommended escalating the issue to other authorities at the University and to the RCMP if she was feeling threatened.

19. On May 12, 2014, MT send Mr. Lundeen a selection of the emails she had received from RW before and after she emailed to ask him to stop contacting her (Exhibit 46, Page 1). able to do so very st and took action to attempt to assist MT by helping her to draft a clear letter to RW to desist communicating with her. He also suggested that she appoint a person to go between MT and RW. Neither effort stopped the conduct MT was concerned about.

20. On about May 13, 2014, Mr. Lundeen contacted Ms. Kay (Exhibit 99). This was unlike his response to Student E where he did not reach out beyond Green College until after Student B's account came forward. Ms. Kay's notes say that she planned to prioritize meeting with MT and possible Mr. Lundeen.

21. On May 14, 2014, MT met with Mr. Lundeen to express her thoughts on the situation with RW (Exhibit 58, Page 27). Later the same day, Mr. Lundeen sent her an email asking her to schedule a meeting with Ms. Kay, whom he copied on the email (Exhibit 58, Page 27). Mr. Lundeen said that Ms. Kay would be able to provide support to MT in getting the unwanted behaviour to stop and to RW in getting counseling he needed to get through the breakup. Mr. Lundeen said that Ms. Kay planned to meet with RW to "help him understand that what he is doing is harmful" and to connect him to counseling. This plan represented a much more active response to MT than Mr. Lundeen had provided to Student E and that Ms. Kay had provided in respect of Ms. Kirchmeier's report about Mr. Mordvinov to her in February 2014. The plan indicated that an early intervention by Ms. Kay could certainly involve a meeting with a student whose conduct was the subject of complaint.

22. On May 14, 2014, RW wrote an email to the Green Lanterns asking for help with his feelings and with initiating a dialogue with MT so that he could "make things right with her" (Exhibit 47, Page 2). Mr. Lundeen responded to the Green Lanterns that in his view RW's conduct was harassment which required a single "warning shot" from Dr. Vessey and himself (Exhibit 47, Page 1). Mr. Lundeen said that he was unclear whether eviction or some other process would follow that warning shot. He noted that UBC and the residence contract have clear language about harassment and provided citations, and that he had contacted the Equity Office for additional advice about the meeting he was planning with RW, Dr. Vessey and himself. This continue to represented a much more active response to MT than Mr. Lundeen provided to Student E before hearing further about Student B.

23. On May 15, 2015, Ms. Kay met with Mr. Lundeen and MT. In the meeting Mr. Lundeen described Green College to Ms. Kay, and MT provided a full account of events with RW in which she described feeling exhausted, very unhappy and stressed and like she could not take it any more. The description included MT's account of hiding in her bathroom because she was so upset and unnerved when he came to her door. Ms. Kay noted that MT's concerns engaged Policy 3 and could be seen as stalking, and that Campus Security needed to be informed. She also documented her plan to meet with RW. Ms. Kay understood MT's allegations to be very serious including because of the large number of communications and that he was not listening at all. Ms. Kay testified that RW

was completely disregarding MT, bullying her, and harassing and manipulating her, and that his conduct bordered on or crossed the line into stalking. She observed that MT's level of exhaustion and frustration at the meeting was "palpable".

24. Ms. Kay testified that she was certain she told MT about services and processes at the University that might be relevant, mentioning a referral to counseling and SASC. This information and referral is not noted in Ms. Kay's very detailed notes.

25. Unlike with Mr. Mordvinov, Ms. Kay accepted that the allegations were serious and immediately tried to set up a conversation with RW. Asked what she hoped to achieve by meeting with RW, Ms. Kay testified that there are situations where a member of the University community having a conversation with a potential respondent to tell them that they need to take a situation seriously and that they are violating policy, even if there is not yet any formal complaint, can be successful. She noted that people coming out of a consensual relationship often want that step before making a complaint against a former intimate partner. It is notable that despite holding this view, Ms. Kay did not propose meeting with Mr. Mordvinov in February.

26. On May 16, 2014, Ms. Kay emailed RW to set up a meeting to discuss the issues which had arisen at Green College (Exhibit 5, Vol. 5, #104, Page 233). Ms. Kay noted that she was an impartial and neutral resource to support informal resolution of concerns that may relate to the human rights policy (Policy 3). In response, RW asked if he was being accused of harassment. On May 16, 2014, Ms. Kay spoke with RW but was not able to set up a meeting with RW on reasonable terms (Exhibit 5/Pages 234 to 236, Exhibit 58/Page 34, MK summary of information (Page 33 onwards)).

27. On May 16, 2014, Ms. Kay also advised Campus Security of the concerns about RW (Exhibit 58/Pages 35, 41). Mr. Bohnen recorded that Ms. Kay called Mr. Bohnen about what would be the best processes given the high level of stress exhibited by MT and the multiple contacts RW had made with MT despite her requests not to contact her (IR140521-9829, Exhibit 58/Page 41).

28. On May 16, 2014, Mr. Lundeen emailed to Ms. Kay raising concerns about how RW was likely to respond to contact about meeting with Ms. Kay, and providing his and Dr. Vessey's contact numbers (Exhibit 48/Page 3).

29. On May 20, 2014, Ms. Kay emailed Campus Security/Mr. Bohnen and Mr. Hyson with more detail. She noted that there was nothing in Policy 3 which provided her with guidance on responding to this situation. On May 20, 2014 Ms. Kay also emailed Campus Security/Mr. Bohnen and Chad Hyson with documentation provided by MT (Exhibit 58/Page 31). On May 20, 2014, Mr. Bohnen responded to Ms. Kay to confirm that RW's conduct contained aspects of harassment but might not amount to criminal harassment. Mr. Bohnen recommended moving one or the other of RW and MT out of Green College (Exhibit 70, Page 1).

30. On May 20, 2014, Mr. Hyson left a message for Ms. Kay advising that it was hard to force someone to meet with you, that in the NAM process, if someone chooses not to meet, the process goes on without them, and that Ms. Kay could send RW a letter instead setting out what she would normally cover in the meeting, including that RW's behaviour violates policy and that there would be consequences (Exhibit 101). Ms. Kay testified that the policy in question was Policy 3. Mr. Hyson also suggested that the matter could come to the NAM process, but that they should complete the next step under Policy 3 before sending it over. It is unclear what step Mr. Hyson had in mind. Ms. Kay testified that there was no further step in Policy 3, but that it was her view that Mr. Lundeen had the file, and that they also had a policy and process within Green College. It was also her view that Administrative Heads of Unit, including Dr. Vessey, are responsible for investigating and disciplining, and that this does not change if the subject matter of the issue relates to equity. Ms. Kay testified that sending RW a letter would have been awkward for her as it would have straddled the line between her role and that of Mr. Hyson. The basis for this view is unclear.

31. On May 20, 2014, Ms. Kay emailed Mr. Lundeen to update him on her progress and the contacts she had made (Exhibit 48/Page 2). Following RW's hanging up on Ms. Kay after accusing her of bullying him, Ms. Kay advised that she did not consider it useful or appropriate for her to continue attempting to contact RW unless it was in person and another person was present. She noted that given her non-disciplinary role, she could not compel anyone to meet with her. She laid out three options going forward, involving Security, Green College or Ms. Kay taking the lead.

32. On May 20, 2014, Mr. Lundeen responded to Ms. Kay by email to say that Green College could compel RW to meet with Ms. Kay as she was part of its investigation process under the residence contract, although they were not quite sure how far they could go in that respect (Exhibit 48/Page 1). The email set out excerpts from the residents contract about respectful environment and conflict resolution. In comments on those excerpts, Mr. Lundeen noted, "Given the stakes involved for UBC as a whole and for the affected (MT) regarding safety and security, in our view our independent intervention would be insufficient without additional support". No basis for this view is provided in the email. This view closely mirrored the approach Green College took to questions about whether Green College could prevent Mr. Mordvinov returning to Green College. In his evidence in relation to RW, Dr. Vessey acknowledged in his evidence that he always had the power to remove RW from Green College.

33. In his further comments on the residence contract language, Mr. Lundeen noted that the partial investigation so far consisting of speaking with MT, suggested that MT remained at risk while the investigation was in progress. He observed however that Ms. Kay's investigation could be delayed if they could be assured that RW would be responsible in the interim. It is notable that Ms. Kay testified that at this point, it was her view that Mr. Lundeen had the file. As with the Mordvinov situation, at this stage there appeared to be confusion among

those involved in relation to MT and RW as to which policies should be followed, and whose responsibility it was to act.

34. However, on the evening of May 20, 2014, Dr. Vessey sent a lengthy email to RW addressing the situation directly with RW because of the failure of both the informal process initiated by MT and the meeting with Ms. Kay (Exhibit 60/Page 6). The email set out actions RW was required to take at that point under Green College's policy on Respectful Environment in the residence contract, and under Policy 3, including meeting with Dr. Vessey on May 22, 2014 and signing an undertaking not to initiate any further contact with MT until she decided to remove that limitation. Dr. Vessey advised that if RW did not take the required actions, he would direct SHHS to terminate RW's housing contract as of May 23, 2014 and the Equity Office would make a report to Campus Security who would then decide whether to refer the matter to the NAM process.

35. RW responded on May 20, 2014 (Exhibit 60/Page 3) and May 21, 2014 (Exhibit 60/Page 5). On May 22, 2014, RW signed the undertaking required by Dr. Vessey (Exhibit 49) that he not initiate any contact with MT until MT advises Green College that she is prepared to resume communication with RW. On May 22, 2014, Ms. Kay advised Mr. Hyson that the meeting with RW was successful, and that the desire at that point was to monitor the situation going forward and follow up with MT (Exhibit 70/Page 3).

36. The accounts about MT prior to RW's signing of the undertaking consistently document that she was severely distressed by RW's conduct (for example, Exhibit 102, Page 1. Ms. Kay expressly agreed with this description in her testimony). Given this, the decision to provide RW with another opportunity to ensure his behaviour towards MT did not continue to cause her harm created ongoing risk for MT. The undertaking represented concrete action by Green College, but did not remove RW from MT's living space, did not require RW to admit or hold him to account for his conduct to date, and did not specifically advise him what the consequences would be for failing to abide by the undertaking. Given that Dr. Vessey considered RW to be in breach of Green College's policy on Respectful Environment (Exhibit 102/Page 1), this was a very restrained response. It was a partial measure that impinged on RW's interests as little as possible, and fell significantly short of fully protecting MT.

37. The numerous contemporaneous documents do not say that MT chose this option over alternatives that had been clearly explained to her. Although there was communication with Mr. Hyson, and even discussion of referring the matter to the NAM process, there is no evidence this was discussed with MT.

38. Ms. Kay testified that a decision was made to have this interim process under the Green College residence contract which she described as a "last ditch" meeting with RW, and an effort to throw him a life-line under the residence contract. She also testified that she believed RW was given more opportunities to give an undertaking than he would have been outside the Green College residence contract. She said that she did not know if this interim step was necessary rather than referring the issue directly to the NAM process, and that she did not know

why this decision was taken. She said that at this point she was functioning more as a support person than a decision maker.

39. The Undertaking was signed on Thursday morning, May 22, 2014. MT said that RW breached the Undertaking over the course of the May 24 long weekend, beginning Friday evening, May 23, 2014 (EX 50, Page 1).

40. MT met with Mr. Lundeen on May 27, 2014 and provided an account of the events over the weekend involving RW. Mr. Lundeen summarized those events in an email to Dr. Vessey and Ms. Kay (Exhibit 50, Page 1). He noted that MT was now worried about retaliation. Ms. Kay testified that she considered these events to be very serious given the time and energy that had gone into explaining to RW and educating and warning him, and also given the concern of retaliation that was emerging. She testified that she thought the events amounted to a breach of RW's undertaking.

41. In his email (Page 2), Mr. Lundeen set out his view that it was time to apply greater consequences to RW including terminating his contract for residence at Green College immediately, having him housed elsewhere by SHHS until his contract ended, not providing him a renewal contract, restricting him from Green College grounds altogether so that MT has a safe place on campus away from harassment and retaliation, and notifying Campus Security and the NAM process in case of retaliation. Ms. Kay testified that it was her view that the goal of restoring MT to a safe and harassment free environment required that RW be removed from any contact with her.

42. Mr. Lundeen investigated MT's allegations of breaches of the Undertaking by speaking with others who had been there (Exhibit 51). At this point, if not before, the issues with RW were beginning to impact members of the Green College community beyond the Green Lanterns. On May 29, 2014, Dr. Vessey emailed RW about the claim that he had breached his undertaking, requiring him to meet the following day (Exhibit 52/Page 4). Dr. Vessey, Mr. Lundeen and RW met by telephone on May 30, 2014. Mr. Lundeen prepared detailed notes of the conversation (Exhibit 53).

43. On May 30, 2014, Dr. Vessey provided a letter to RW concluding that he had broken his undertaking of May 22, 2014, that RW's communications with MT over the past several weeks were unwelcome and constituted harassment, and that he had breached Green College's policy on Respectful Environment (Exhibit 54). He advised that he was therefore revoking RW's resident membership at the College effective June 1, 2014 (the next day), directing SHHS to terminate his residence contract as of June 30, 2014, and referring the case to Campus Security and UBC's office for Student Conduct. At the time, RW was residing at Walter Gage Residence. The decision permitted him to remain there until June 30, 2014. The decision advised RW that his Undertaking remained in place and that any reasonable report of attempts to contact MT would be referred immediately to Campus Security and the Office for Student Conduct.

44. In his testimony, Dr. Vessey confirmed that the decision did not ban RW from the Green College precincts which meant that he could set foot in the College again. Not banning RW permitted him to be present for social events, including yoga classes, caring for the garde, and his beer brewing, as well as meals. Dr. Vessey testified that he made this decision in an attempt to apply the principle of minimum necessary force. He said it provided the outcome MT was looking for that she would be untroubled by RW, while permitting RW to get on with his life without making a nuisance of himself. Dr. Vessey said that he hoped this would be sufficient and that he was not in the business of administering exemplary punishment.

45. Evidence from Mr. Hyson and others confirmed that it is University Housing's usual practice on evicting a resident to ban them from all Student Housing premises for two years. Mr. Lundeen testified that the ban could have been part of the original eviction and noted that banning him would have saved a lot of extra grief. Not banning RW from Green College limited the impingement on him of the decision, but did so at MT's expense; the ruling meant that she might well encounter RW at her home again at any time. The ruling created ongoing risk for MT of further significant upset. Dr. Vessey testified that he was aware that if RW were to interact with MT at Green College, she would be annoyed and upset. Dr. Vessey testified that there was evidently some risk entailed in taking this particular decision but he judged it to be a "conscionable risk" because, while RW had been a repeated nuisance, he had never been an actual threat to MT. Dr. Vessey further said that this was a real world in which adults do reckon with certain risk and this was a reasonable balance to try and strike.

46. In our submission, Dr. Vessey's reasoning did not take account of the significant psychological harm those who had met with MT had consistently observed arising from her interactions with RW. The eviction decision was a further instance of Green College preferring RW's interests over those of MT, to her very significant detriment. In our submission, both the decision to have RW provide the Undertaking and the decision not to ban him from the precincts of Green College while MT remained a resident there did not protect her psychological safety and did not restore to her a living and working space free of harassment and discrimination, as required by the *Code*.

47. Mr. Lundeen testified that

48. On May 30, 2014, Mr. Lundeen advised MT of the decision taken by Dr. Vessey (Exhibit 70/Page 11). He advised that RW had been removed from the meal plan immediately and would no longer be living at the College after June 30th. He advised that RW will only be in the Great Hall if he is a paid guest. He noted that RW could be subject to sanctions relating to his employment or education at UBC if he took further actions against MT. He also advised that unwanted contact or retaliation should be referred to Campus Security and/or the RCMP.

49. On June 1, 2014, RW circulated an email within the Green Chat group for Green College residents advising that he had been asked to leave the College by the end of the month over his interactions with MT (Exhibit 61). This email expanded the impact on the Green College community of events with RW. RW appealed the decision even though he had expressed the view that it was for the best (Exhibit 62). His appeal was not successful.

50. On June 2, 2014, MT emailed Ms. Kay to describe the impact on her of RW's decision to broadcast his departure through Green Chat, which she observed goes to present and former Green College residents, including at other universities and including people who do not know her (Exhibit 111). She described her view that RW sent this communication to hurt her in relation to other residents at the College. She described herself as sad, angry, and stressed. She said learning he was asked to leave was sad news for her that she was having to process, and that she had been suffering from a rash, a lump in her throat and an upset stomach for weeks.

51. On June 15, 2014, RW went to Green College to do yoga and attend to his beer brewing, and afterwards sat at a table on the patio with other residents, including MT. When RW came to the part of the table where she was sitting and offered beer to everyone around her, she decided to call Campus Security. Campus Security attended and then called the RCMP who attended and asked RW to leave. Campus Security recorded that "a very emotional and upset" MT call to report RW which caused Campus Security to attend (Exhibit 73, Page 2).

52. On June 15 and 16, 2014, RW and Dr. Vessey exchanged emails in which RW protested what he felt was an over-reaction to his presence at Green College, which was not prohibited by his undertaking, and noted that it was lucky he was "unintimidated by men in uniform" (Exhibit 56).

53. At 12:22 AM on June 16, 2014, MT emailed Mr. Lundeen, Dr. Vessey and Ms. Kay to raise her serious concerns about RW's right to continue being at Green College (Exhibit 55/Page 3, Exhibit 112). MT described RW sitting at the patio table 3 chairs down from her, hanging out, drinking beer he had been at Green College all afternoon brewing, and offering beer to others around her. She said that he was allowed at Green College as he wished and, as a consequence, she was having to avoid him. MT asked why it was on her shoulders not to be bothered, to be strong, and to not let this affect her. She asked why her house was not safe for her when RW's house was safe for him. She described being constantly stressed about the next thing coming. She said that on that night she felt like throwing up and that her work that evening had not been touched.

54. At 5:30 AM on June 16, 2014 (Exhibit 112), MT emailed further to say that she could not sleep and that the previous evening RW had gotten out of his chair to come and stand right across the table from her to ask three other students if they wanted beer. She said that she did not feel good and felt like throwing up and that she felt she would not be free of him. She described seeing both a therapist at Counselling and a Psychiatrist. She said that she had felt really good

when RW was not around over the previous two weeks, and that she now felt that her feelings of safety and freedom from that time were only a fluke.

55. On June 16, 2014, Dr. Vessey responded (Exhibit 55/Page 2) that RW was not banned from the precincts of Green College, and that “unless or until some competent authority decides that RW’s movements should be restricted, he is at liberty to go where he wishes, with the proviso that he is not to communicate with you. As we are all painfully aware, that still leaves a large grey area in which he may feel comfortable and you may feel harassed.” Dr. Vessey later concluded, “I am sorry that we cannot impose a cleaner and clearer solution to this problem. Until someone establishes grounds and means for restricting RW’s movement on campus, everything that can be done (by others than RW) is already being done.”

56. In view of Dr. Vessey’s evidence at this proceeding that he always had the power to bar RW from Green College altogether, this response from Dr. Vessey to MT was simply dishonest. He did not admit to MT that it was his decision not to bar RW from Green College, and he did not admit that in fact he could change that decision and bar RW at any time he chose to do so, as he in fact did in 2015. The response is further misleading because it suggested that restricting RW’s movements would need to be a campus-wide action when in fact this would not be necessary to provide greater security at Green College. Failing to advise MT that the decision to permit RW to remain was his and could be changed confused matters and prevented MT from challenging Dr. Vessey’s decision formally or taking the issue of RW’s conduct up with Student Conduct in order to attempt to achieve an outcome that better protected her. Both Dr. Vessey decision and his plain obfuscation of it here did not help to restore MT to safety or to a discrimination-free environment in her living and working space at Green College. As such, it was not consistent with the *Code*.

57. On June 16, 2014, MT met with Mr. Lundeen and spoke with Ms. Kay, and on June 17, 2014, MT met with Mr. Bohnen, in each case describing what happened, the upset for her, and the hardship for her of the current arrangement with RW. On June 16, 2014, Mr. Lundeen emailed Ms. Kay and Dr. Vessey to document his lengthy visit with MT that morning (Exhibit 55/Page 1). He described MT as having been unable to sleep, being quite distraught, and struggling to control her emotions. He said that she was anxious about what might happen next. He also said that she was most upset about the fact that the interaction with RW happened at dinner when she was obliged to dine at Green College and RW was not. Mr. Lundeen concluded that it was reasonable to expect that under the underaking, RW would avoid MT, and that his actions on Sunday were a transgression of that expectation.

58. On June 16, 2014, Mr. Lundeen also prepared a detailed time line of events on June 15, 2014 for Campus Security (Exhibit 70, Page 14). His timeline added the information that Mr. Lundeen and Mr. Vessey had both received concerned phone calls on their home phone numbers from MT’s supervisor, Catharine Winstanley, asking what she could do.

59. Ms. Kay documented her conversation with MT on June 16, 2014 (Exhibit 113). She described MT as “distraught and tearful, having trouble communicating” when she called. MT reviewed the entire narrative with Ms. Kay, repeated that in the present circumstances there was no safe space for her, and told Ms. Kay that RW had now put emails on the Green Chat about the events on June 15, 2014 (Exhibit 63). Ms. Kay recorded MT feeling that RW was breaching her confidentiality, and attempting to rally people against her in retaliation for her request to be left alone. Ms. Kay walked MT to Counselling Services and also contacted Campus Security.

60. On June 16, 2014, Dr. Vessey responded to Mr. Lundeen’s email (Exhibit 114). Dr. Vessey wrote, “I frankly do not see that we have any further strings to pull at the College”, and “The College has no means to prohibit (let alone prevent) RW from setting foot on these grounds, we have no further sanctions to apply, and we have exhausted our limited powers to “investigate”. As far as I am concerned, this matter is now properly in the hands of Campus Security and such other UBC agencies as Campus Security sees fit to involve.” He concluded, “Meanwhile, MT continues to feel distress that we appear to have no practical way to mitigate. And UBC still has a legal responsibility to prevent her from being harassed.” In our submission, this response also failed disclose that Dr. Vessey as principal of Green College always had the power to excluded RW from Green College.

61. On June 16, 2014, Mr. Lundeen responded to Dr. Vessey that he agreed that this was for other offices on campus (Exhibit 56, Page 1). He noted that a number of individuals would be able to speak to events on June 15, 2014, and provided some of their names.

62. On June 16, 2014, Ms. Kay took steps to refer the matter to Campus Security and the NAM process (Exhibit 116, Exhibit 56, Page 1).

63. On June 17, 2014, Mr. Hyson responded to the email exchanges taking place (Exhibit Exhibit 70, Page 13). Mr. Hyson succinctly stated his view that if the report from MT was accurate, his recommendation would be that RW’s access to Green College be restricted and the matter be referred to the NAM process for further consideration. He noted that typically, an eviction from residence for this type of behaviour would include a restriction from residence property so that the student who is the target of harassment “can feel safe in their own home”. He further noted that, “if RW is permitted to continue to visit, socialize, and dine at Green College, these incidents will continue and will cause further stress for MT.” Mr. Hyson offered to follow up with the other residents present on June 15, 2014 to confirm their details.

64. On June 17, 2014, Mr. Bohnen responded that he completely agreed with Mr. Hyson (Exhibit 70, Page 13). He described MT’s condition as “observably fragile” in the fact of the assaults on her credibility on the Green College chat board, and RW’s continued appearances in her immediate proximity. He noted that he had received two “extremely distraught” messages from MT. He described the circumstances as MT’s privacy and sense of safety being continuously

breached by RW with little concern for her wellbeing, or her ability to work. He raised concern about the completeness of the information RW had provided the RCMP and agreed to follow up with them. In an email to Janis Robinson and Chad Hyson of June 19, 2014, Mr. Bohnen wrote that it would be highly valuable to be able to reassure MT that RW would not keep showing up around her home (Exhibit 70, Page 19). He asked them to outline clear steps that they could take to assist Green College in protecting MT from further harassment.

65. On June 18, 2014, Dr. Vessey responded that he did not impose a ban from Green College because there was no way to police it given the physical set up of Green College (Exhibit 70, Page 21). He further responded that he did “not think such a measure is called for yet, even if it could be enforced”. He said that if others had a practical way to restrict RW’s movements on campus, and saw fit to impose that restriction, “so be it”. He also claimed that the matter was “no longer strictly in his hands”. He noted that the College would not be conducting an investigation of the events of June 15, 2014.

66. On June 18, 2014, Mr. Hyson responded that applying a no visitation rule is a common practice that is used both in residence and in academic buildings at UBC to deal with such matters (Exhibit 70, Page. 20). He noted that if students ignore such restrictions, his office can proceed with further discipline. He continued to offer to follow up with the other students present.

67. On June 18, 2014, MT emailed Ms. Kay and Mr. Bohnen to advise that RW had posted another email damaging her image (Exhibit 70, Page 25). She said that she was upset and felt this was more retaliation, and that RW wanted to destroy her at Green College. On June 18, 2014, MT also emailed with information about who had been present for the events on June 15, 2014 (Exhibit 70, Page 26).

68. On June 18, 2014, Mr. Hyson emailed MT to introduce himself to her and to request information to move forward with his investigation (Exhibit 174, Page 412, Exhibit 70, Page 28). They exchanged emails about the investigation and Mr. Hyson made contact with key individuals (Exhibit 174, Pages 413 to 425). On June 19, 2014, MT said that the whole thing had been stressful for her and she was feeling a bit raw about it (Page 426). On June 23, 2014, MT asked to meet with Mr. Hyson to understand the NAM process as it was “really stressing her” (Page 425). Following their meeting, MT elected to have Mr. Hyson clarify the gray areas in the restrictions with RW rather than proceeding further with the NAM process (Page 430). On July 3, 2014, Mr. Hyson agree to proceed with clarifications but testified that he did not so at the time.

69. Aside from Mr. Hyson’s investigation, no steps were taken by the University following the incident on June 15, 2014 to address the circumstances that had placed MT at risk of tremendous upset on that day. Matters were left with Dr. Vessey’s view that RW could be present and even near to MT, but just not interact her, and MT’s view that this did not protect her in her home. In our submission, permitting RW to continue attending Green College without restriction plainly left MT with a significant level of worry and concern, including because by that point RW had broadcast the issue to every present and former

resident of Green College on the Green Chat system. In our submission, this did not protect MT from further harassment, or provide her with a harassment and discrimination free working and living space. MT's well documented upset after the June 15, 2014 incident was the consequence of exposing her to the risk of further harassment from the previous decisions to request an undertaking from RW and to evict him but not ban him from Green College.

70. Mr. Hyson testified that both MT and RW were away in the summer. In September, RW commenced an email exchange with Dr. Vessey by providing notice to Dr. Vessey of his intention to attend the residents' after party following the first Gala (Exhibit 143/Page 8). Dr. Vessey's response was that RW should not attend the after-party because it was "at the home that MT shares with other residents here" (Page 7). He said that given their recent history, he would expect MT to regard RW's presence as a "threat to her well-being", an "encroachment on her domestic space", and an "infringement of the formal undertaking RW had made not to initiate contact with MT or attempt to communicate with her". This position represented a significant departure from the position Dr. Vessey had taken with MT and RW in June and produced a considerable response from RW (Page 7). Ms. Kay was provided with this response by Mr. Bohnen but otherwise remained uninvolved (Exhibit 6/Vol 6/Page 302).

71. At the same time MT, who remained concerned about ongoing contact with RW at Green College followed up first with Mr. Lundeen and then with Mr. Hyson about Mr. Hyson's promise to clarify the restrictions that had been placed on RW (Exhibit 174/Page 436). Mr. Hyson responded that he had not done so and was now doing so.

72. Mr. Hyson was added to the communication between Dr. Vessey and RW and took the position that RW's actions in June were a breach of his undertaking. In relation to the clarification MT was seeking, Mr. Hyson stated that, "No contact with MT would include both direct and indirect contact and communication. To avoid any future incident, if you encounter MT at Green College or on campus, you should turn and walk away without word or gesture" (Exhibit 143, Page 6). He advised MT about this clarification (Exhibit 174, Page 436).

73. RW objected to this formulation and requested a meeting (Exhibit 143, Page 6). Mr. Hyson testified that this meeting took place on September 26, 2014 and led to a modified description of the restriction (Exhibit 174, Page 441). RW proposed further changes (P441) and there was some further back and forth (P439 to 440). By email dated September 30, 2014, Mr. Hyson provided the amended description of the restriction to MT (Exhibit 174, Page 442). She accepted this description. Importantly, however, Dr. Vessey was not included in this discussion nor copied on it. It is unclear that this formulation of the restriction was provided to Dr. Vessey.

74. Mr. Hyson testified that Dr. Vessey's approach in the fall of 2014 was more like the ban he had not imposed, and that he and Dr. Vessey were saying different things about what RW could do under the Undertaking.

75. In October 2015, Dr. Vessey emailed RW to advise him that he would not be welcome at Green College Halloween celebrations (Exhibit 143/Page 11). In the email, Dr. Vessey noted that RW had at some prior time indicated he would be present at the Green Common kitchen on a non-meal plan night, which Dr. Vessey considered unacceptable. He commented, "This is not a scenario that can be repeated. Green College is MT's home, it is no longer yours, and social arrangements involving you that restrict her enjoyment of any part of her home space at any time will not be tolerated". He distinguished coming for dinner in the Great Hall from social events arranged by or for current residents. Dr. Vessey's communication makes reference to the clarification of the restriction by Mr. Hyson, but it is not clear that Dr. Vessey means the modified clarification of September 30 as this version would not prevent RW from attending. RW objected to Dr. Vessey's communication but did not receive any further clarification (Exhibit 143, Pages 9 to 11).

76. In November 2014, RW communicated with Mr. Hyson to try and get the case against him in the NAM process advanced to hearing so that he could challenge Dr. Vessey's interpretation of the Undertaking he had signed (Exhibit 174/Page 451). Mr. Hyson did not agree to do this (Pages 450 to 449).

77. A similar exchange to the exchange about Halloween occurred in March 2015, with RW emailing Dr. Vessey on March 26, 2015 to advise that he was hoping to attend the Spring Gala (Exhibit 143, Page 12). Dr. Vessey responded that he was free to come to events and dinner on ordinary occasions, but not on occasions where Dr. Vessey considered that the social arrangements for an in-house event would make it impossible for him not to come into contact with MT (Page 12). His view seemed to be predicated on it being a resident organized event. Dr. Vessey considered that RW's attendance then would constitute an "ill judged risk of causing distress to MT, embarrassment to others, and quite possibly additional trouble for yourself if you were to attend". Dr. Vessey made no mention of the amended clarification of the restriction on RW. It does not appear that Dr. Vessey communicated about this with MT at the time.

78. On March 26, 2014, RW objected to this response, specifically citing the language which had come out of his meeting with and discussions with Mr. Hyson in September 2014 (Page 13). RW observed that he could not see how attendance at a massive public event could reasonably be curtailed under this language. RW further asked to speak with whoever was providing legal advice to Dr. Vessey (Page 13). RW followed up again on March 30, 2015 (Page 14). It does not appear he received any reply from Dr. Vessey to these communications.

79. On April 7, 2015, Dr. Vessey banned RW from Green College (Exhibit 57). No explanation was included in this letter for the decision. At the start of his cross examination, Dr. Vessey said the decision was based on the fact that RW made himself a consistent pest towards MT, that he flouted the restriction on him, and that it got to the point that it was necessary to ban him from the premises. Dr. Vessey was not able to identify any event on which these claims were based. In May 2015, RW sought a clarification through an AMS advocate but did not receive one (Exhibit 5/Vol 5/Page 239).

80. Mr. Lundeen advised MT of the decision to ban RW from Green College (Exhibit 5, Vol 5, Page 238). On April 8, 2015 MT thanked Dr. Vessey for this decision which she said she regretted but hoped would provide some clarity in relation to the gray area that was so confusing and give her some peace. She noted that his coming to Green College was disrupting more than just here.

81. Based on Dr. Vessey's evidence about RW making himself a consistent pest to MT and MT's response to the April 2015 that now she hoped she would be able to get some peace, it is reasonable to conclude that up until RW was barred from Green College, his presence continued to be a stress and worry for her. ██████████ supported MT as a Green Lantern. Asked what impact if any the Green College approach to the issues with RW had on MT, ██████████ testified that she seemed distressed throughout the process, and that there were multiple unwanted contacts with her after her initial concerns were expressed.

82. In our submission, both the decision to have RW provide the Undertaking and the decision not to ban him from the precincts of Green College while MT remained a resident there until April 2015 did not protect MT's psychological safety and did not restore to her a living and working space free of harassment and discrimination, as required by the *Code*. In our submission, while the University took some actions in respect of MT's complaints about RW, it resisted taking effective action until almost a year after she first brought her concerns forward on May 1, 2014 through ██████████. This failure to act effectively had a very negative impact on MT, including serious impingements on her well being in May and June 2014.

83. MT required an effective response from the University because the harassment against her by her former intimate partner related to her sex. As such, MT has established a prima facie case of discrimination. The University cannot establish that it had a bona fide justification for failing to act effectively before April 2015.

84. It is also notable that on November 5, 2014 Ms. Kay provided an update to Mr. Bohnen in which she remarked that reasonable rules of engagement for individuals who continue living in common spaces after a break up appeared to be poorly understood and some statement or explanation of the consequences for poor judgment in relation to such issues might be useful for students (Exhibit 73, Page 1). Ms. Kay testified that she later provided a workshop to Green College which may have addressed this issue (Slides, Exhibit 124). This workshop was not given until September 2015, and was not repeated.

ii. Remedy for MT

85. In view of the longstanding and evident nature of the conduct of RW, the seriousness of the impact at certain times in particular, and the fact that the issue remained without an effective outcome until April 2015, we say the harm to MT was serious. Those meeting with MT in May and June in particular were clear

about the serious ongoing impact on her mental health, describing her as distraught and stressed. In the circumstances, we say that damages for injury to dignity in the amount of \$25,000 would be appropriate.

86. We acknowledge that this is more than listed in the Complainants' Statement of Remedy for General Class members who did not testify, but we note the grievously incomplete state of the disclosure at the start of the hearing in relation to MT and RW. All of the documents entered as exhibits were provided after the start of the hearing, in many cases, long after. This fundamentally prevented us from appreciating the nature of this file or the true narrative of what had happened with it.

IV. TARA MCBRYAN

i. Circumstances

87. Tara McBryan testified. Ms. Kay also testified about events involving Ms. McBryan. Neither Mr. Hyson nor Mr. Bohnen testified about Ms. McBryan; both said that they had no dealings with her, meaning that she was not referred to either Campus Security or the Non-Academic Misconduct process, despite being sexually harassed by a fellow student. The University did not call Ms. McBryan's Head of Department, Prof. Shadwick to testify about his actions on Ms. McBryan's complaint to the Zoology Department or his interactions with Ms. Kay.

88. Ms. McBryan was an undergraduate and then a graduate student doing a Masters of Science program in the Department of Zoology at UBC. During the summer of 2013 she worked as an undergraduate research fellow in the Department. She commenced her MSc program in September 2013, expecting to complete in May 2015. Her plans on commencing her MSc were ultimately to become a professor. Ms. McBryan's MSc project originally involved closed containment aquaculture using the University's state of the art recirculating aquaculture laboratory.

89. Ms. McBryan was sexually harassed by another graduate student (X). Her account is set out in notes made by Monica Kay on April 28, 2014, which Ms. McBryan confirmed in her evidence were accurate (Exhibit 5/Vol 5/P89). Ms. McBryan told Ms. Kay that she found X difficult and unnerving to talk to from the start. She said that X made negative comments about her age and competence. She said that she found him controlling and disrespectful, and said that X expected her to do things for him. She described X as a person who would stand too close to her and other women, which other women would also complain about to her. She described him as "touchy and huggy" with women but not men, with whom he was a backslapper, a fact she said other women also complained about.

90. Ms. McBryan related an incident in the summer of 2013 when she went with X to learn how to feed the fish for him because he was going to be away. While doing this, X put his hand on her lower back while she was standing on a low stool. There was no need for him to do this and it was unwelcome.

91. On another occasion, X asked her to go with him to the basement, a place she found isolated and scary, to help with a repair that she was not qualified to assist with, while she was in the midst of doing other paid work that she was obliged to do. She said that X became angry, making derisive comments to her about declining to assist him and involving another person to whom he made negative comments about Ms. McBryan. Ms. McBryan described a second incident where X became angry with her and called her irresponsible because she advised that she would be taking some holiday when he believed she should be staying to feed the fish. X again involved other people to whom he made negative remarks about Ms. McBryan.

92. Ms. McBryan described telling X about a drink-spiking incident where she became very ill. X responded by telling Ms. McBryan that at least she got high for free, and telling her that she should not go to seedy places. Ms. McBryan was upset about the drink-spiking incident and found both comments offensive.

93. Once Ms. McBryan started her graduate program in September, she and X were working in the same lab. During this time, she found X was rude to her and attempted to supervise her, although he was not her supervisor. She described him texting her once to ask “where the fuck are you” when she was late to the lab. She had advised her supervisor that she would be late. She said that X always wanted to know where she was.

94. Ms. McBryan said that at a Departmental Christmas function in December 2013, at which X appeared intoxicated and was dancing with other women who were complaining he was touching them forcefully, he put Ms. McBryan over his shoulder and carried her upstairs to where the alcohol was. Ms. McBryan testified that another graduate student intervened for her safety, which brought the incident to an end. She said that she felt disgusted and betrayed by the incident, and that X was acting predatorily towards other women than night as well.

95. On another occasion in January 2014, she described X coming up behind her while she was talking to someone else and kicking her hard twice in the calf to get her attention. She told him that was not a polite way to get her attention, to which he replied “whatever”.

96. Ms. McBryan described a conference she and X went to in Seattle. He made the travel arrangements and booked them into a double occupancy room. Ms. McBryan was not comfortable with this but did not want to make waves. While at the conference she, X and another woman ended up going drinking. Because the other woman was staying far away she ended up asking to stay in the room with X and Ms. McBryan. The woman shared Ms. McBryan’s bed. During the night, the woman touched Ms. McBryan’s breast and inside her pajama pants. Ms. McBryan told the woman to stop and that the other woman would have to leave first thing in the morning, which she did. Ms. McBryan told X what had happened. In response he blamed her, and ridiculed her repeatedly, both at the time and afterwards. He told Ms. McBryan the incident was “hot”, that she was

“asking for it”, that she should not complain, and that it was “no big deal”. He told Ms. McBryan that he apologized on her behalf to the other woman, which Ms. McBryan found offensive, intrusive, and demeaning. X told others about the incident, and subsequently kept raising it in offensive ways trying to sexualize it, including suggesting that Ms. McBryan should have sex with other women because it was hot.

97. Ms. McBryan testified that she was really embarrassed by the entire thing, that she blamed herself to some extent because she had had drinks that evening as well, and that she found the event pretty traumatic. She said that she had been harassed before, but had not been assaulted until that event. Asked what it was like for her that X kept raising it, Ms. McBryan testified that that was the worst part of it. She said that she was trying to conduct herself as a professional and an academic and he was making the event out to be some type of erotic fantasy involving her. She testified that she found this disgusting and that X did this to embarrass and undermine her.

98. During a ski trip to Big White in February 2014 involving a number of graduate students, X told Ms. McBryan that she had “nice tits” when a group of them were in a hot tub together. During a birthday party in March 2014 for a colleague, X took Ms. McBryan’s hand and tried to put it on another woman’s breast. Ms. McBryan forcefully said “No” to him. Ms. McBryan also testified about X saying how hot it would be if she made out with other graduate students in the lab, and that he played pornography on his computer. Ms. McBryan also noted that there had been attacks on women at campus, that X fit the description of the assailant, and that people had been gossiping about him being the person responsible. She testified that, like other woman at the time, she was in a state of alert over these attacks. She noted that at the time there was a lot of joking about rape culture and X being a rapist in the Department which Ms. McBryan said was funny, and that other inappropriate things were happening as well, such as one of her instructors, a post doc, making advances at a social gathering.

99. Ms. McBryan testified that in the spring issues arose with X over a new shipment of fish that were not doing well health wise. X became quite aggressive with her, phoning her several times a day and yelling at her, which caused another student to step in to help her. She told this student about the events with X, and the student told her that these events were unacceptable.

100. At that point, Ms. McBryan testified that she took her concerns to Prof. Trish Schulty, the undergraduate supervisor, as she was the only female professor in the Department. Ms. McBryan also spoke to her supervisors, Prof. Colin Brauner and Prof. Jeff Richards. This resulted in a meeting with Ms. McBryan, Prof. Schulty, and Prof. Richards which led to the matter being escalated to Prof. Shadwick, the Head of the Department. Ms. McBryan recalled Prof. Shadwick taking the issue very seriously and saying that her description of events was grounds for the Department to kick X out which would result in the revocation of his student visa since he was from Maine, USA. Ms. McBryan left the meeting understanding that Prof. Shadwick was going to sit down with X and that X would be expelled.

101. On April 23, 2014, Ms. McBryan also went to the Equity Office with her concerns. Ms. Kay was unavailable. The Equity Office referred Ms. McBryan to Counselling and to SASC.

102. On April 24, 2014, Prof. Shadwick reported to Ms. McBryan that he had met with X, told him that Ms. McBryan had come forward with concerns about interactions that she felt were inappropriate and were causing her stress and anxiety, and that they wanted to resolve things quickly to create a work environment where all could feel comfortable. He said that X had agreed to avoid all contact with Ms. McBryan and to avoid involving others or retaliating. He also said that her supervisors had worked out a strategy for her research that would accommodate the no contact plan (Exhibit 5/Vol 5/Page 98).

103. On April 28, 2014, Ms. McBryan met with Ms. Kay and described her interactions with X (Exhibit 5/Vol 5/Page 89). At the meeting, Ms. McBryan stated that she did not want to be in the same work environment with X, and asked that he be moved as their offices were 3 doors apart. She expressed concern about being moved off the project she was working on as that would damage her career aspirations (Exhibit 5/Vol 5/Page 93). In her testimony, Ms. McBryan recalled Ms. Kay having a more due process approach than Prof. Shadwick. She recalled Ms. Kay saying that even if one-tenth of what she had said about X was true, that would be grounds for some type of punishment. She also recalled Ms. Kay saying that she would engage with Prof. Shadwick to facilitate an investigation, and that while the investigation was underway, as part of due process, Ms. McBryan needed to stay quiet and not let other graduate students know that an investigation was underway.

104. Asked if Ms. Kay said anything about process or policies, Ms. McBryan recalled Ms. Kay saying that she would touch base with Prof. Shadwick, but she did not recall Ms. Kay getting into policies or anything like that. Asked if there was any discussion about filing a formal complaint, Ms. McBryan responded not that she could recall. Ms. McBryan described herself as quite stressed out at this point, and not doing well. She said that she just wanted the problem with X to go away so that she could focus on school. She said that she did not want to be interfered with any more.

105. Asked if any interim measures were put in place during the planned investigation, Ms. McBryan said that she was issued a rape whistle and a little card with the campus security number, and she was told about the blue phones. She was told that it was not safe to be alone in the enclosed aquatic facility, and she was issued an undergraduate liaison person to go to the facility with her and protect her.

106. Ms. Kay agreed in evidence that Ms. McBryan's allegations were very serious and amounted to sexual harassment. Asked if Ms. McBryan's account raised safety concerns, Ms. Kay testified that they did, particularly incidents of violence, like picking Ms. McBryan up, and his misogynistic comments and approach. Ms. Kay also described what Ms. McBryan had related about the

ethanol, dry ice and tang drink at the Christmas party and about being asked to share a hotel room at a conference as obvious and quite shocking safety issues which raised clear liability issues for the University. Ms. Kay said that she dug out the Tribunal's decision on double occupancy as a guide for her when she spoke to Prof. Shadwick about the double occupancy issue. Ms. Kay testified that she understood Ms. McBryan to be angry with X.

107. On the basis of the meeting, Ms. Kay recorded in her notes that she planned to offer the Department a due process meeting with X, coaching for X if he was willing, advice to the Department on separating Ms. McBryan and X, and guidelines for event and travel situations to avoid potential incidents and liability (Exhibit 5/Vol 5/Page 92). Ms. Kay described the University's responsibilities towards Ms. McBryan as being to put a stop to the safety hazards, to reinstate a safe environment, and to separate and monitor Ms. McBryan and X without moving Ms. McBryan.

108. In testimony, Ms. Kay said that she planned to support the Department's complaint management, and that her advice would be not to move the complainant if she or X needed to be moved. She also testified that if she met with X she planned to describe to X where the boundaries of appropriate behaviour were, and also to work with him on what was likely to be welcome and not in his dealings with women. She also planned to talk to him about the discipline he might face for violating Policy 3. Ms. Kay said, however, that she did not recall ever meeting with X.

109. In evidence, Ms. Kay said that when she met with Ms. McBryan, it was her view that Ms. McBryan had an active complaint underway which was being dealt with by her Administrative Head of Unit, Prof. Shadwick. Ms. Kay described this complaint as a formal complaint, and saw this process as appropriate under Policy 3. She said that Policy 3 empowers an Academic Head of Unit to take on and resolve a complaint, and it was her expectation that Prof. Shadwick would do this in this case. Ms. Kay said that her plan was to support Prof. Shadwick and Ms. McBryan's supervisors in their efforts to address Ms. McBryan's concerns by clarifying their legal obligations. She said that all three had the authority and ability to make the changes that needed to be made. Ms. McBryan testified that she did know the details of what would happen next, and was focused on getting back on track as a student.

110. Policy 3 does provide for Administrative Head of Units to deal with concerns "in accordance with the usual practices and procedures of the University" (Section 1.1, Exhibit 1/Vol 1/Page 52). This is distinct from the processes for a formal complaint if made to the "Director, Equity Complaint Management" (Page 53/Section 3.1). There is no direction in Policy 3 as to what the "usual practices and procedures of the University" were for an Administrative Head of Unit handling a complaint of sexual harassment from one student to another.

111. Ms. Kay testified that she met with Prof. Shadwick and perhaps one or both of Ms. McBryan's supervisors. She said that this meeting took place days or weeks but not months after she met with Ms. McBryan. No notes of this meeting

were disclosed to us. She said that she pushed quite hard on the drink and hotel room issues. She recalled Prof. Shadwick not having a detailed plan about Ms. McBryan and X, and that he was having difficulties separating them. She testified that Prof. Shadwick had spoken with both parties and other individuals and an investigation “of some shape” had taken place. She said that he did not detail any findings from his investigation other than loose conversation about the merits of each person’s perspective.

112. No documents of any kind including notes or an investigation report or any other outcome of an investigation was disclosed by the University in relation to Ms. McBryan. The University did not call Prof. Shadwick to testify that he actually did any form of investigation into Ms. McBryan’s complaint.

113. Ms. McBryan testified that she did not see any change in X’s behaviour. She said that he would stand in the doorway to her office and at other times involve himself in conversations others were having with her. She testified that she went back to the Department several times over this. On May 6, 2014 she emailed Prof. Shadwick about an incident where X joined her table in the lunchroom (Exhibit 5/Vol 5/Page 98).

114. On June 11, 2014, Ms. McBryan sent Ms. Kay a follow up email saying that she was not happy with where things were at and requesting a meeting (Exhibit 5/Vol 5/Page 99). On June 17, 2014, Ms. McBryan had a further conversation with Ms. Kay (Exhibit 5/Vol 5/Page 94). In that conversation she advised that X was still hanging around where she is working for no good reason, and that she was very uncomfortable with this and was starting to feel angry. Ms. Kay confirmed in evidence that Ms. McBryan was angry and frustrated at that point. Ms. McBryan also reported that because X kept inserting himself in her social circle, she wound up not socializing and that it was unfair that she was having to avoid him rather than the other way around. Ms. Kay reported that Ms. McBryan felt physically unsafe with X. Ms. Kay also reported that Ms. McBryan was receiving counseling from Jennifer Hollinshead about the drink spiking and sexual assault incidents, and X’s mocking and bullying her about those incidents. Ms. McBryan also reported that she was seeing a doctor and taking anti-anxiety medication, including in relation to X’s mocking and ridiculing her because of the trauma she had experienced.

115. In evidence, Ms. Kay noted that there is difficulty when students are not removed, that departments are quite small and it is challenging to separate students, including at Departmental meetings and social events. In fact, however, no effort had been made to separate Ms. McBryan and X to that point, except to ask him to avoid contact with her.

116. On June 19, 2014, Ms. McBryan sent an email to Ms. Kay forwarding some of her communication with the Department and detailing a further event where X entered a conversation she was part of (Exhibit 5/Vol 5/Page 96). On July 10, 2014, Ms. Kay reported that she would be meeting with Prof. Shadwick the next day (Exhibit 5/Vol 5/Page 105). On July 10, 2014, Ms. McBryan called Ms. Kay to report another incident of X deliberately having a lengthy conversation right

outside her office door (Exhibit 5/Vol 5/Page 114). In these communications, Ms. McBryan advised that X's office remained 3 doors away from hers.

117. On July 11, 2014, Ms. Kay met with Prof. Shadwick (Exhibit 5/Vol 5/Page 115). At this meeting she noted Prof. Shadwick saying that he was surprised that Ms. McBryan was still having issues, and that he felt that X was "shell shocked" by Ms. McBryan's complaint, which also surprised Prof. Shadwick. He also noted that it was difficult to keep Ms. McBryan and X apart. The outcome of this meeting according to Ms. Kay's notes was that Prof. Shadwick would try to connect X to Ms. Kay, and Ms. Kay would speak with Ms. McBryan's supervisors. There was no discussion of preventing X from going to the lab were Ms. McBryan was working, moving his office, or addressing the sharing of the fish.

118. Ms. Kay testified that she was never contacted by X and had no conversation with him. She said that it would have been offensive to Prof. Shadwick for her to ask X directly to have a meeting with her, but that she should have followed up with Prof. Shadwick to set up a meeting for her with X. She described this as "another weakness in the file". She claimed however that she had "no leverage" over X because he could not discipline him, take his fish away, or impede his academic career. This claim failed to acknowledge that Ms. Kay could have referred the file to Mr. Hyson for disciplinary action. Ms. Kay says that she spoke with Prof. Richards but there are no notes of this conversation. Ms. Kay did not follow up any further with Ms. McBryan after their communications in July about her speaking with Prof. Shadwick. Ms. Kay acknowledged that the onus should *not* have been on Ms. McBryan to keep her complaint alive, and that Ms. Kay could have pushed harder.

119. Ms. Kay acknowledged in her evidence that although Ms. McBryan returned to her "disappointed and frustrated", she did not at that point bridge Ms. McBryan to the NAM process. Ms. Kay said that she could be fairly criticized for not putting that on the table for Ms. McBryan. Ms. Kay said that as Ms. McBryan wanted to manage the situation in the Department, she felt that Prof. Shadwick and Ms. McBryan's supervisors had the authority and technological knowledge to facilitate that. Ms. Kay said that she was happy to support the Department and was hopeful this would work. She testified that she was disappointed in that hope. She also said that even if Ms. McBryan had been referred to the NAM process, the matter might have been referred back to Prof. Shadwick and Ms. McBryan's supervisors. She testified at one point that this might not have assisted *both* Ms. McBryan and X in completing their education. Ms. Kay did note, however, that a referral to NAM might have resulted in a finding against X which might have made Prof. Shadwick feel more empowered to act.

120. Ms. Kay said that she did not talk to anyone at the University about risk to the University if Ms. McBryan's studies were affected and that she did not mention to Prof. Shadwick that incidents of sexual harassment violate the University's policies and could be subject to a complaint to the Human Rights Tribunal. Ms. Kay said that she did not remind people that they could be subject to a complaint to the Human Rights Tribunal, and that she assumed that Administrative Heads of Unit realize that sexual harassment is illegal under

provincial statute. She said that if Prof. Shadwick did not know that, she would be pretty shocked. In our submission, Prof. Shadwick's actions do not suggest any awareness on his part of the risk of a complaint of sexual harassment against the University from Ms. McBryan.

121. In our submission, no effective action took place at the departmental level in support of Ms. McBryan, and none was taken by Ms. Kay. The conversations Prof. Shadwick had with X did not prevent him from continually placing himself in Ms. McBryan's spaces. As well as following up with Ms. Kay, Ms. McBryan said that she continued to follow up with Prof. Shadwick, to advise him that contact was continuing, and to ask him how the investigation was going, including speaking with him at a conference once, but that things did not improve and she was not advised about any investigation. When it was decided offices should be changed (some time after July 11, 2014), it was Ms. McBryan who was moved upstairs. Ms. McBryan testified that this did not help and that X continued to come and stand in the doorway to her office.

122. Most egregiously, to address Ms. McBryan's concerns about both she and X continuing to use the aquaculture facility, the Department's solution was to ask Ms. McBryan to switch from Atlantic salmon to rainbow trout, and to grow her fish in static water in plastic garbage containers. Ms. McBryan testified that instead of having access to a \$7 million dollar facility as planned, she was reduced to using \$200 worth of plastic containers and piping. She noted that there was no filtration in these containers so the nitrogenous waste was not removed and oxygen levels could not be maintained. She said that these types of fish inherently want to be in moving systems. She said that her fish were dying and that she did not consider attempting to grow them in garbage cans either ethical, or worthwhile scientifically given all the uncontrollable factors affecting her data. She described the conditions as some of the worst growing conditions for the fish. She also noted that it was a huge undertaking to do a full batch water change every day.

123. Ms. McBryan testified that she found this new arrangement enormously stressful. She also said that as a result of the change, she missed out on transferable skills in relation to land-based aquaculture. She noted that by contrast, X was able to continue using the state of the art facility, complete his project, and graduate.

124. Ultimately, the new growing arrangement proved totally unworkable and Ms. McBryan determined that she could not continue her MSc in this way. On September 1, 2014 she took a leave from school until November 1, 2014. She testified that by this time she was having panic attacks, taking anti-anxiety medications, and feeling suicidal because school was her entire life and the events had really taken a toll on her. Following discussions with her physician, she went on medical leave in October, providing a medical note citing chronic stress.

125. Ultimately Prof. Schulte assisted Ms. McBryan to find a new supervisor and start on a completely new project which involved genetic traits related to high pH (alkalinity) tolerance relevant to socking fish into alkaline lakes in BC. One of the

selling points of this project for Ms. McBryan was that it mostly involved desktop research which meant that she could largely work from home except for weekly or biweekly visits to the Fraser Valley Trout Hatchery and some remote trips to experimental lakes. She no longer needed to come to UBC to use the labs there.

126. Ms. Kay testified that she did not have further contact with Ms. McBryan, was not aware that her office was moved and not that of X, and was not aware that Ms. McBryan was required to switch to using static water in containers rather than the aquaculture facility for her project. She testified that she was not aware that Ms. McBryan had to take a leave or switch to a different supervisor and a different project, or that she lost a year in so doing. She described this outcome as “a shame”.

127. The case sets out a stark failure by Ms. Kay to fully think through and present to Ms. McBryan her options with respect to X, including a formal complaint under Policy 3 to the “Director, Equity Complaint Management”, a referral to Campus Security, or a referral to Chad Hyson and the Non-Academic Misconduct process. This mirrors Ms. Kay’s failure in relation to concerns about Mordvinov to provide full information to Ms. Kirchmeier in February 2014, or the women from the History Department who came forward in July 2014 about the options available to them to seek further action from the University. Her explanations for not providing further options here were wholly unconvincing.

128. This case also shows the Department being willing to speak with X in the early going, which did not happen in relation to Mr. Mordvinov, but given that doing so was ineffective in having X keep away from Ms. McBryan, the limitations of this if not done in a formal and firm fashion. We do not see Ms. Kay pressing to speak with X herself in this case, as she also did not do in relation to Mr. Mordvinov, or ensuring that X was formally required to commit in writing to leaving Ms. McBryan alone, as was done with RW and JM.

129. When the original steps did not work, the facts here do not show Ms. Kay raising the issue of a more formal approach with either Ms. McBryan or the Department. Ultimately, Ms. Kay meets for a second time with Prof. Shadwick and then drops the file without following up at all. This soft-pedaled approach by Ms. Kay and the Department had little benefit for Ms. McBryan. It reflected a reluctance to act effectively, particularly if that might have a negative impact on X’s education, and a failure to apprehend in any real way the harm being done to Ms. McBryan and her academic opportunities and experience.

130. Ms. McBryan ultimately pays the price for X’s inappropriate behaviour towards her when her office was moved and she was required to stop using the state of the art aquaculture facility for her Masters project. This had catastrophic effects on her ability to continue with her Masters program, including the loss of her project and a year of work, with very serious consequences for her confidence and academic drive.

131. We submit that this case starkly illustrates the serious limitations of a system built on self-advocacy. Ms. McBryan would never have come forward at

all if it had not been not for another student who urged her to do so. When she did come forward, she had to return to Prof. Shadwick and Ms. Kay a number of times to raise ongoing concerns, without success. Neither Prof. Shadwick nor Ms. Kay became an ongoing advocate for her, or referred her to such a person. Ultimately, Ms. McBryan's stamina was not endless and her self-advocacy was defeated by isolation, self-doubt and mounting mental health issues. The case particularly shows that the risks of relying on self-advocacy are very serious if full information is not provided to a student with concerns. Once she had gone to both Prof. Shadwick and Ms. Kay, Ms. McBryan was out of options she was aware of, although in reality there were important steps that had not been taken on her behalf which Ms. McBryan was not informed about. This case shows the limitations of a system built on being governed by what a student "wants"; this is not a meaningful concept if the student has not been fully informed of their options, as Ms. McBryan was not.

132. The ultimate outcome of this case was the end of an originally promising academic career. While Ms. McBryan finished her Masters program, the personal cost of managing the sexual harassment she experienced was so high that she did not feel willing or able to pursue further academic training or a career in academia. This case demonstrates that sexual harassment and the University's failure to prevent or address sexual harassment and restore non-discriminatory conditions for a female student can amount to such a serious headwind for female academics that it costs them their academic careers. Although the Mordvinov circumstances were different, including because of the number of people who came forward and their ability to support one another, the outcome was starkly similar; a number of very promising female academics were dissuaded by the University's failed response to sexual harassment from pursuing academic careers (Glynnic Kirchmeier, Caitlin Cunningham, Kaitlin Russell and Sarah Thornton). Beyond the evident turmoil, emotional upset and anguish that cases of sexual harassment cause, including well beyond the direct recipients of sexual misconduct in the case of Mordvinov, it is apparent that a further very serious consequence of sexual harassment at the University, and the University's failure to stop or address it, is the loss of women to academia. This is both a tremendous personal loss, *and* a heavy loss to the University and the community at large. We saw no sign throughout the evidence in this case that this loss was apprehended in any meaningful way by the University.

133. The University's failure to effectively address Ms. McBryan's complaints about X had a very adverse impact on her which was related to her sex in that she required an effective response to the sexual harassment she had experienced because she had been sexually harassed as a woman. Having shown adverse impact related to her personal characteristic of sex, Ms. McBryan has established a *prima facie* case of discrimination. Ms. Kay admitted that there were significant deficiencies in the University's response. The University has provided no justification for those deficiencies to answer the *prima facie* case Ms. McBryan has established.

ii. Remedies

134. Ms. McBryan testified that the lack of resolution to her situation with X left her in mental peril and without any type of closure. It appeared to her that in the eyes of the University, X's education was more important than hers. She said that she felt less than him and not cared about, and she said that she felt exhausted by what had happened. She testified that although she had loved school before these events occurred, and had been one of the top students in her courses, for years afterwards she did not have the same eagerness for knowledge. After these events, she said that she just wanted to get out of the University and felt willing to give up. Asked if she had pursued academic work beyond her Masters, she testified that she had not because the process related to X stripped her passion and that she no longer had the spark and drive to become a professor.

135. Ms. McBryan also described feeling like she had become a burden on the professors in the Zoology Department and that she was not someone they wanted to have to deal with. She said that the focus was no longer on her and her academic progress, but rather on her interactions with X.

136. She testified that the fact that she could not tell other students anything and had to awkwardly step away from the Department meant that she missed out on opportunities that other colleagues had, including contact with the Department of Fisheries and Oceans which was essential to future opportunities in her field. She said that she was not around to make those connections. She said that the loss of these opportunities affected her ability to go on with an academic career in her field and hampered her in finding work after her Masters was finished. She said that for about a year she had to work as a lifeguard until she was able to find work in her field.

137. Ms. McBryan testified that she agreed to participate in the Complaint and sought Ms. Kirchmeier out because she wanted the University to see that how they handled her situation was unacceptable, and that it was unacceptable to have faculty that were not trained to properly handle her situation.

138. The persistence of the issues with X, the lengthy period of time during which Ms. McBryan was attempting to get the University to act, the serious impact on her Masters program and her ability to move forward with her career, and the impact on her self esteem and desire to continue in academia altogether are all factors which support a significant award for injury to dignity in this case. We also note the significant mental health harms described by Ms. McBryan including significant anxiety and thoughts of suicide. In all the circumstances, and considering the quanta of damages sought for other complainants, we say that damages in the amount of **\$40,000** for injury to dignity would be appropriate in for Ms. McBryan.

139. Ms. McBryan testified that her new project commenced in November 2014. She was able to complete her project and graduate in May 2017. Ms. McBryan testified that because she had to start a new project, she lost the year she had spent working on her original project, and graduated a year later than she would have done otherwise. She estimated the cost in lost earnings to her of a lost year of work as about **\$50,000**, based on her pay subsequent to leaving University.

She also said that she had additional expenses of being a student for a year such as tuition and equipment, including a car and parking because her research location was now in East Abbotsford. Ms. McBryan estimated her costs for an extra year of university tuition and expenses to be **between \$10,000 and \$15,000**. Ms. McBryan seeks compensation for both her lost wages and her additional expenses of an extra year in her Masters program.

V. LAUREN FISHER

140. Lauren Fisher testified about her circumstances. None of Ms. Kay, Mr. Hyson or Mr. Bohnen testified about Ms. Fisher. There is no evidence that she was referred to Campus Security or the Non-Academic Misconduct process, despite describing serious allegations to the University about several instances of non-consensual sexual conduct towards her. The University did not call anyone from Residence Life, Counselling or Student Health Services to testify about the University's actions in response to Ms. Fisher's allegations of non-consensual sexual conduct, although she had various contacts with all of these entities in which the non-consensual sexual conduct was disclosed.

141. Ms. Fisher attended UBC from September 2014 to April 2018. She came to University with a significant history of mental health issues and treatment. However, when she arrived she was feeling optimistic and doing well. Ms. Fisher was clear that her mental health history before UBC had included feelings of anxiety, depression, overwhelm and distress, but had not been related to sexual experiences, and had not included suicidal ideation or suicide attempts.

142. Despite the significant mental health issues Ms. Fisher experienced during her time at UBC, she was able to graduate and get her degree, a BA Honours in Anthropology, in four years. Her program including courses in Biology, History and French. Her ambition in undertaking a degree in Anthropology was to go on to research the evolution of humans. Ultimately, she did not end up going into academic anthropology or archeology, or pursuing this ambition.

143. Ms. Fisher testified about a number of instances of non-consensual sexual conduct towards her in the first term of her first year, some taking place at social events with people she did not know, and some involving persons whom she did know and was seeing or dating.

144. The first incident occurred at a party at a fraternity at Westbrook near 16th. It involved an unwanted kiss while she was dancing with a man she did not know. She told him that he could not go around randomly kissing people. The second incident happened at an AMS dance at which a person on the dance floor suddenly grabbed her butt. Ms. Fisher described those events as shocking and offensive in the moment and said that they threw her off. She said that she was not used to men approaching her in ways that she did not agree with or desire. Ms. Fisher did not disclose these events to the University at the time, although she said they may have come up later.

145. Ms. Fisher also described dates with a man living in the same residence as her which quickly became sexual and in which he pressed her for oral sex which she did not want to engage in. She said that she recalled crying while performing oral sex with him, and finding it very distressing at the time. She said that this experience was something that would still flash into her memory from time to time up until the time of her testimony at the hearing. She said that she had great difficulty speaking up in this situation and that she felt she had to suppress how she was feeling to maintain a connection with this man. She said that she did not know how to get her self out of situations like this moving forward.

146. Ms. Fisher also described several interactions in first year with a second student that she met at a party. She said that she felt hesitant to engage with him and that he tried to convince her and change her mind. She described giving up to this pressure, and being sexually intimate with him a number of occasions in her first year without feeling eager or wanting to do it.

147. Ms. Fisher further described connecting with a third UBC student on Tinder during her first year. He invited her out to dinner. They went to a restaurant in Vancouver and afterwards went to his place to hang out. He pressured her for sex, telling her multiple times that it would be fun, and she told him that she did not want to have sex. She said that at some point she stopped protesting and that she did have sex with him. Afterwards, he dropped her back to Place Vanier and they did not go out again.

148. Ms. Fisher said that these events in first year caused her a lot of distress, confusion and shame and that she began at that time to have suicidal ideation. Ms. Fisher said that she was presenting well but these sexual experiences were weighing on her a lot and she was having lots of moments of despair at night. She said that she had not been sexually active before she came to UBC. She said that she wanted to date and be in a relationship, but that she felt very overwhelmed and sad about these experiences. She said that she did not know what to call them, and that she just felt bad about them. She described struggling to get out of these situations. She said that what she said to these men did not matter, and that her boundaries were not being respected by them. She said that this caused her a lot of hopelessness.

149. Ms. Fisher described talking to and texting her residence co-ordinator Yvan Yastrebov at Place Vanier, where she was living, about these experiences and feelings. She said that she went to talk to him for support, and because she needed someone to talk to. She said that she was reaching the point where she could not handle how she was feeling on her own. Ms. Fisher described talking to Mr. Yastrebov on multiple occasions starting in the beginning of 2015. She said that she would sit in the living space of his place, that he would make her tea, and that it was a safe place for her to talk and cry. She said that she was distressed and feeling hopeless because she was being pressured by men and felt that she could not do anything about it.

150. Ms. Fisher recalled Mr. Yastrebov suggesting she go to SASC. On one night when she was very distraught, he took her for a drive around Vancouver to help

her ride the wave of distress she was in. She also described him taking her to Emergency one night when she was feeling suicidal.

151. When asked in evidence if the residence co-ordinator had offered anything particular in the way of information and resources in relation to what she was experiencing, Ms. Fisher said that what she remembered was him referring her to SASC. Mr. Yastrebov documented his interactions with Ms. Fisher between January 20 and 26, 2015 (Exhibit 129). In our submission, it is clear that although Ms. Fisher had told him about non-consensual sexual conduct towards her, he did not provide her with any information about other steps that she might take, or refer her to a University service that would provide that information. He did not discuss with her the requirements of formal consent to sex, or discuss with her whether the sexual experiences she was having were consensual.

152. Ms. Fisher described the Tinder date as having a long-term impact on her. She said that in later years, when she started understanding that this conduct had been bad for her and non-consensual, and that it amounted to sexual assault, this was the incident she particularly thought about. She said that up until that time she knew that she was being pushed into situations, but she did not really know what to make of them, or what term would be considered applicable to those situations. She said that she knew she felt very uncomfortable in them, and that she did not feel like she was being treated well. She also described starting to feel in first year like anyone who was interested in her just wanted to have sex, and finding that a hard thing to process when what she wanted was to date and build a long-term relationship.

153. In relation to her second year, Ms. Fisher provided evidence about contacts with two students in about a week in October, 2015. At that time she reconnected with one of the three men from first year. He invited her over to hang out but when she got there, he did not want to hang out or watch television, but rather to have sex. She described conflict between them about using a condom, which she told him was an absolute necessity, and said there was quite a bit of back and forth in which she was pushing for protection. She said they did end up having sex, and that she could not definitively say whether he used a condom. She described feeling upset and numb during the incident, and finding it exhausting to repeat over and over her boundary about using sexual protection. She said that after they had sex she went home to Kits because she was not keen to stay, and that she did not recall connecting with him again. Ms. Fisher also said there was another incident with a second person, but she could not recall the details of that event.

154. Ms. Fisher described being very distraught after the two incidents in October 2015, struggling with day-to-day things, and finding nights particularly hard. She said that she would leave her apartment and walk around at night in Kits and at UBC. She described feeling very hopeless at that time. She missed a mid-term in that period, and began to need academic support. Her upset at that time led to her opening up to her mother about her experiences to that point, and also seeking support from SASC who connected her to support from academic advising.

155. Ms. Fisher described really struggling for the remainder of 2015 into the start of 2016, and dealing with a lot of suicidal ideation and panic. She said that she found it hard to be with friends, and that she felt misunderstood. She described mental health emergencies in January and February 2016, including admissions at Peace Arch and Royal Columbian Hospitals. Ms. Fisher also described an abusive relationship between second and third year that almost led to her dropping out of UBC, and a hospital admission in July 2016 after she attempted suicide. She said that her emotional turmoil and suicidality affected her social relationships, including with her roommate who moved out.

156. Ms. Fisher testified about the long-term impact of the events in first and second years, including the feeling that she needed to please the person she was with or be discarded. She said that this impacted how she viewed sexual intimacy and relationships going forward.

157. Ms. Fisher testified that when she was at UBC, she did not have a good understanding of what consent was from an objective point of view. She said that she had a really hard time understanding that consent should be clear, enthusiastic, and freely given, and that her first experiences were non-consensual. She said that it was a shock to her that it took so long for her to understand this and that she felt frustration and anger when she did. She testified that she wished she had known about what to do about the circumstances she was experiencing at the time.

158. Ms. Fisher provided evidence about her extensive contact with SASC, which is a service of the AMS not the University, and also some limited contact with UBC Counseling. She described UBC Counseling as being provided by students, and that she did not find that service to be a good fit for her. The evidence about her contact with SASC, including SASC's records (Exhibit 132) suggests that they focused on supporting her and on helping her establish safety plans and boundaries, regulate her emotions, and practice self-care. This aligns with Ms. Fisher's evidence about her contact with SASC. SASC also assisted Ms. Fisher to access student health services when indicated, for example in October 2015 when she needed STI testing (Exhibit 131), as well as academic advising and her professors when she needed academic accommodations in second year (Exhibit 132/Pages 7, 8 and 9 and Exhibits 133, 134, 135).

159. There is no evidence of SASC reviewing with Ms. Fisher information about University resources to address the responsibility of the men she was interacting with for their non-consensual sexual conduct towards her. They spoke to her about consent but it is unknown to what degree this included a formal definition of consent. Ms. Fisher testified that she did not recall SASC providing her any information about reporting incidents in any way including formally, and including in October 2015.

160. Ms. Fisher also provided evidence about receiving medical and psychiatric services starting in the summer of 2015 and into the fall of second year and beyond.

161. Ms. Fisher testified that while she appreciated the support she had received from UBC, she would have appreciated knowing how to hold the men involved accountable so that the heaviness would not have been on her alone. She said that education and awareness, including around consent and sexual intimacy, harassment and assault, was very missing from her experiences at UBC. She said that it would have been helpful to have open discussion about these things at UBC, including around expectations around consent in the residences and information about resources before the incidents she experienced happened. She said that she would have liked to have been aware of options at UBC if she had wanted to pursue justice at UBC, and to have information about what that might have looked like so she could make an informed decision. She also said that she would have liked information about consent and about ways to support aggressors to learn about consent and sensitivity to sexual interactions which she described as largely lacking for everyone.

162. Asked what difference being given information about reporting the conduct she was experiencing might have made, Ms. Fisher testified that she would have like to have known her options and been informed about them at the time. She said that this would have been something she could have considered which would have given her insight into the possibilities that existed to protect herself and stand up for herself, and also to prevent similar conduct from happening to other students. She said that knowing the options and being informed would have been useful to her to make decisions moving forward.

163. It is clear from Ms. Fisher's evidence that both at the time and since, the non-consensual sexual conduct which she experienced in her first and second years at UBC was very negative for her and led to very serious impacts on her mental health, which were longstanding. These impacts affected Ms. Fisher while at UBC. In recovering from these experiences and looking back, Ms. Fisher has identified that it was not helpful to her that she was not provided with information about consent and about how to hold the male actors accountable.

164. It appears from cross-examination that the University's perspective is that Ms. Fisher received the services she asked for. The problem with this analysis, as seen with Ms. McBryan as well, is that what Ms. Fisher knew to ask for was limited by the information she had been provided by University resources and SASC, which did not include any information about responding to conduct from the men she was interacting with that was non-consensual. Not understanding the nature of her interactions with the students she had dated, not being equipped with information about consent, and not being advised of steps she might take in relation to responding to sexual conduct towards her that was not consensual, was not helpful to her. She was not in a position to ask for different services or assistance.

165. We submit that the University has an obligation under the *Code* to respond effectively and fully to descriptions of events that might amount to sexual harassment or assault, both for the person involved and the safety of other women in the community. It was not consistent with this responsibility for

University entities not to provide Ms. Fisher information about consent and about steps she might take to hold the persons who were harming her accountable. Not providing this information hampered Ms. Fisher's ability to respond to the situations she found herself in effectively, and feel that she could act to prevent them or get out of them. To the extent the University intends to suggest that Ms. Fisher could have or should have looked up information about sexual harassment or sexual assault we say that given Ms. Fisher did not have language to describe her experiences, it would not have been realistic to expect her to do this. We submit that this case as well illustrates the limitations of a University approach that depends on self advocacy.

166. Ms. Fisher has described the harm to her of the sexual misconduct she experienced and the very limited role the University played in helping her to name and respond to this conduct. We submit this harm was related to her sex as a woman. As such, we submit that Ms. Fisher has established a *prima facie* case of discrimination. We submit that there is no bona fide justification for the discrimination she experienced.

ii. Remedies

167. Ms. Fisher was not expected to testify. As a result, she was not specifically listed in the Complainant's statement of remedy prepared prior to the hearing. As she did testify, we say the amount we named for General Class members who did not testify should not apply to her.

168. We submit that the harm to Ms. Fisher of the University's insufficient responses to her accounts of what had happened to her must be considered in light of her underlying significant mental health vulnerabilities, and the grave harm to her of the sexual misconduct she had experienced. In these circumstances, we say the harm of the University's insufficient response was significant, and contributed to the long period of time it took the Complainant described to begin to understand and work through her experiences of sexual misconduct, including being able to name them as such. She said this did not happen until after she left UBC in 2018. The very serious mental health symptoms Ms. Fisher experienced, including panic attacks, suicidality and a suicide attempt in July 2016, must be seen as consequences *both* of what had happened and the incomplete information and support she received from the University. In particular, the support she received was focused on what *she* could do to prevent and recover from the sexual misconduct she had experienced, and not on assigning responsibility to those who had engaged in misconduct towards her. Ms. Fisher described in evidence of the need to share the "heaviness" of responding to the sexual misconduct to those whose conduct it was. We also note that Ms. Fisher is included among those whose academic aspirations were disrupted by sexual misconduct which was not fully and properly addressed.

169. In these circumstances, we say injury to dignity in the amount of \$25,000 for Ms. Fisher would be appropriate.

VI. JANE DOE 1

170. This complaint arose in February 2015 (Exhibit 5/Vol 5/P220). The original complaint came from a student about another student and was provided to an instructor who forwarded the account to Scott Watson. JD1 did not want to make a formal complaint. The original allegation was about a series of emails from AM talking about religion and suggesting he and the complainant should get together, as well as and a claim that after the complainant had turned him down by email, he had been physically confrontational and was stalking JD1.

171. Ms. Kay responded by speaking with the instructor and then meeting with JD1 (Exhibit 122, Exhibit 5/Vol 5/P221). She also contacted Mr. Bohnen for any other reports about AM. This is a notably more proactive approach than Ms. Kay took when first contacted about Mr. Mordinov.

172. In her meeting with JD1, JD1 clarified that when she replied by email that she was not interested, AM sent her a long email about religion to which she did not respond, approached her in person to say hi after class, to which she responded very briefly, and later emailed to say that he hoped he had not upset her. JD1 reported feeling concerned that he was targeting her in some way, as he had allegedly pursued another student the previous year who did not make a complaint. JD1 said that she was avoiding him. JD1 reported feeling safe in the studio and in class. Ms. Kay assisted JD1 to think about how she would respond to AM if he approached her in person again. She offered to speak with AM if the complainant felt the need in the future or to arrange a session with educators from the Equity Office, although she expressed concern about either step might simple be an escalation (Page 222). She offered to look into a priority response with Campus Security.

173. Ms. Kay's notes do not indicate that she provided JD1 with any information about making a formal report or other campus services. Ms. Kay testified that not doing so would be unusual.

174. On March 2, 2015, Ms. Kay had a conversation with Mr. Hyson (Exhibit 5/Vol 5/Page 227). This was a much more proactive approach than she had taken with respect to issues regarding Mr. Mordvinov. Both Ms. Kay and Mr. Hyson agreed that AM had been respectful to JD1 and had not transgressed any UBC policy at that point, either with his approach to JD1 or with his religious email, and as such that there was no need for an investigation. Ms. Kay determined that there was no basis to bring AM in to discuss his approach to women he may be interested in dating, and that doing so might leave him feeling wrongly accused or attacked. She also determined that she wanted to ensure that the alert with Campus Security did not suggest he had done anything contrary to UBC policy or law. Instead she suggested that the Department and JD1 stay in touch if there were any further concerns. Ms. Kay had a conversation to this effect with JD1 (Exhibit 5/Vol 5/Page 228).

175. Mr. Hyson did not speak with JD1 or anyone from the Department. He testified that he and Ms. Kay were to meet with AM because of concerns about his conduct in class which had also been mentioned, but that as Ms. Kay was

away, Ms. Mee from Access and Diversity came to his meeting with AM instead. That there was to be a meeting with AM is not consistent with Ms. Kay's evidence. Mr. Hyson said they met with AM to ask him broadly about how things were going in class and in his relationship with his peers. They did not mention JD1. Mr. Hyson said that from the meeting they learned that AM did not feel that he fit into the class, and that he was struggling with his own religious faith and other things in life.

176. On March 20, 2015 Janet Mee provided an update to Ms. Kay indicating that they were monitoring the situation with AM as he seemed to be developing some mental health issues, perhaps stress related, and was becoming something of an outcast in class (Exhibit 123, Exhibit 5/Vol 5/Page 229). Ms. Kay testified that the issue had changed shape while she was gone and that she was not sure why Ms. Mee was involved.

177. On April 10, 2015, Ms. Kay received a further update from Ryan Holliday (Exhibit 5/Vol 5/Page 230). She was not able to say exactly what his role was. His concern was that AM was becoming subject to some racial profiling by some of the students in class. On April 10, 2015, Ms. Kay spoke with Mr. Watson who also expressed concern that AM was becoming the focus of negative commentary by other students about his religion or race (Exhibit 121, Exhibit 5/Vol 5/Page 231). Mr. Watson and Ms. Kay spoke about the need to avoid racial profiling. By this point, classes were over. Ms. Kay and Mr. Watson left it that they would continue to communicate as necessary to monitor the situation, and JD1 could contact Ms. Kay if something else came up. Ms. Kay checked in with JD1 who did not raise further concerns.

178. This file is principally of note for the proactive role Ms. Kay and Mr. Hyson played in speaking with each other, Campus Security, persons in the Department and AM himself. As such, this matter provides a contract to the University's approach to the allegations about Mr. Mordvinov. There are not grounds in this case for findings of discrimination against JD1.

VII. JANE DOE 2

179. JD2 came forward in early October 2014 with a serious allegation about a sexual assault involving strangling, slapping and groping after an undergraduate student rebuffed a pass made by a graduate student TA after he invited her to a bar to discuss a project. JD2 was second year film student at the time. The original disclosure was made to a Departmental Advisor. By the time she came forward, JD2 had dropped out of the program for financial reasons and was in an unclear residency situation because of her country of origin. The complaint was prompted by the fact that the TA had begun to email her again with some apologetic language and expressing an interest in reforming a relationship, as well as emailing some of her friends. The TA was no longer a TA at UBC but remained a graduate student.

180. JD2's account was provided to Averil Gage, Dean of Arts, who contacted Ms. Kay (Exhibit 5, Vol 5, Page 173). Contact had also been made with other

administrators in the Film Department. Dean Gage proposed that Ms. Kay and Sunaina Assanand, Associate Dean, Student Success, Faculty of Arts work together to support JD2.

181. Despite the fact that JD2 was no longer a student and more than a year had elapsed since the incident, Ms. Kay took the position that the University needed to take action because of the seriousness of the allegation (Exhibit 5, Vol 5, Page 172). Ms. Kay also proposed offering the services of Counselling and SASC even though JD2 was no longer a student. This was done.

182. On October 15, 2014, Prof. Assanand met with JD2 (Exhibit 5, Vol 5, Page 180). During the meeting they discussed Counseling Services, support through SASC and commencing an investigation. JD2 agreed to seek support from SASC and expressed interest in meeting with Ms. Kay to discuss an investigation.

183. Ms. Kay was not able to set up a meeting with JD2 and did not speak with her. On November 21, 2014, after a period during which JD2 was out of contact, she emailed Prof. Assanand to say that she was not able to proceed for the time being because she was going home for Christmas and would be back in Vancouver in mid January 2015. She advised that she would provide her decision at that time. There was no further communication with JD2 that came to Ms. Kay's attention.

184. This matter is an example of the difficult situation that arises when a serious allegation is brought to the attention of the University involving a current student, and there is therefore a safety risk to other women at the University, but the complainant has not authorized the University to take action, and has not provided a detailed statement. Further, JD2's circumstances included concern about her immigration status. Ms. Kay testified that there was concern that the TA may repeat his conduct against others.

185. On November 10, 2014, prior to hearing from JD2 that she wanted to take a step back, Ms. Kay had identified a number of steps that could be taken other than an investigation (Exhibit 5, Vol 5, Page 191). As well as attempting more detailed communication with JD2 in writing to address any concerns she might have, Ms. Kay proposed providing some capacity building in the Film Department should there be a further disclosure, and an education session on law, policy and expectations around sexual conduct, as well as resources that are available if sexual misconduct takes place, which would be directed at a group including the TA identified as the assailant.

186. Ms. Kay testified that in her view, the University cannot *not* respond when a serious issue comes forward. She also noted the importance of using support to a complainant to get the complainant into a relationship with the institution so that she can realize that engaging with the institution is not frightening.

187. Ms. Kay also agreed that Policy 3 allows an Administrative Head of Unit or Sara Jane Finlay to take a complaint forward on their own. Ms. Kay said that she did not recall considering Policy 14.

188. However, we accept that the University could not effectively proceed with an investigation in these circumstances, not for the reason Ms. Kay gave, which was the student's right to confidentiality, but because without JD2's statement, an investigation was not likely to yield anything but a bare denial from the TA. In our submission, the University has competing obligations when it becomes aware of serious allegations but the complainant does not want to proceed. In the instance of a serious allegation, the interests of other women to a work and study space free of harassment and discrimination may supersede the confidentiality interests of a student coming forward.

189. Similarly, we say the University would have been hampered in using Policy 14 by the lack of a detailed statement from JD2.

190. Ms. Kay testified that no one took her up on her suggestions of alternate steps to take. In our submission, this was a serious deficiency in the University's response in light of the serious allegations brought forward by JD2 which indicated ongoing risk for other women at the University where the TA remained a graduate student. This is particularly true given the evidence, including from Ms. Kay, that no proper orientation was provided to graduate students about expectations of conduct, and the policies and law that applied to sexual misconduct. However, as JD2 was no longer a student, we accept that there is no evidence that the University's failure to act had a negative impact on JD2 personally as the complainant here. We do not, therefore, seek a remedy for JD2.

VIII. JANE DOES 3A AND 3B

i. Circumstances

191. This matter involved complaints to UBC from 3 women about harassing conduct towards them by JZ (Zhou). The first report was provided by the mother of JD3A on March 21, 2014 (Exhibit 88, IR 140321). The allegation with respect to JD3A was that she had been stalked by a male since her first year. She was at that time in her third year. The mother said that she became aware of the stalking after her younger daughter and a friend were approached by JZ in an outlet mall in Washington (Page 3, Original Narrative).

192. JD3A was interviewed by Mr. Bohnen on April 4, 2014 after following up on a another call from her mother (Exhibit 88, Page 2, Update 14.04.04). JD3A said she had been targeted and harassed by JZ since 2011, including several instances of unwanted sexual touching. She reported an incident where JZ followed her to her residence in Totem, pushed his way into her room, refused to leave, got on her bed, attempted to disrobe her, groped her, and removed his pants and attempted to have her masturbate him. She also referred to many later incidents of JZ appearing in and around locations she frequented on campus, including several instances where he tried to hold her hands, put his arms around her and kissed her while she was in various public places. JD3A reported that she had told JZ multiple times that she wanted nothing to do with him but this did not change his behaviour.

193. JD3A also reported that in the summer of 2013, JZ appeared at an outlet mall in Washington State, where he and a friend accosted JD3A's sister and a friend. JZ kissed the sister in public in the mall, placing his hands on her and his arms around her. JZ and his friend then attempted to coerce the sister and her friend to get in a car to drive to Seattle. They refused.

194. JD3A stated that the pattern of harassment by JZ towards her continued until about mid February 2014 when she attended the RCMP Detachment on Campus and discussed the occurrences with a constable there. JD3A said that she had not yet made a full statement to the RCMP because she was not aware that there were others with similar experiences, and she feared reprisals from him should he become aware that she made a police complaint. JD3A also said that she had seen a website titled, "UBC Confessions" where multiple women had commented about being harassed by JZ. JD3A said that she would make a full statement to the RCMP but did not do so.

195. On April 1, 2014, JD3B, an undergraduate Film student reported a recent disturbing incident to Ms. Kay (Exhibit 85, Page 4, Kay's Notes). On March 24, 2014, between classes, a man stopped JD3B outside the Koerner Library and said "Hi", to which she responded, "Hi". He then started being very friendly, asking her questions that became increasingly familiar, including whether she had a boyfriend. Even though she said she did, he talked about wanting a date with her, and then pulled her by the hand towards the Music School. She pulled her hand away. As they were walking, he made comments about "liberal people" and "liberal girls". She told him it was okay to talk but that she did not want him holding her hand. He led her into the theatre, saying he wanted to show her something, and at one point stopped and hugged her. She told him not to hug her. He wanted her to follow him into a dark corner, which she did not agree to do. They then went up into the balcony area of a building across from the theatre where he again began asking her personal questions, including how many men she had slept with, and other sexual talk. He asked why she would not have sex with him, and repeated over and over that "liberal girls" liked sex, that she was a "liberal girl", and she was "sex-crazed. He said, "I bet you like blow jobs" and, "I bet you do threesomes". She responded that she did not sleep with strangers and that she had a boyfriend. He offered to take her to the pub for some shots. She declined. The encounter continued, including further unwanted touching which she told him off for. Eventually, she was able to leave and go home on the bus. She gave him her Facebook account but not her number. She described feeling very uncomfortable and like she had been treated as if she was a prostitute. He requested to become her Facebook friend, from which she found that his name was JZ and he was described himself as an Engineering student.

196. Ms. Kay characterized the allegation as a serious violation of JD3B's rights. She testified that it was her view that there was no point in her having a conversation with JZ, and that the matter needed to go straight to a formal process and investigation.

197. Ms. Kay referred JD3B to Counselling, and advised her to meet with Campus Security as soon as possible. She advised JD3B that she would be contacting Mr. Hyson at Non-Academic misconduct. Her notes do not record her providing other general information about services and processes on Campus to address this matter, but do record that JD3B felt comfortable coming forward to file a report. Ms. Kay reported JD3B's account to Chad Hyson and Mr. Bohnen, asking him to interview JD3B. She testified that she was concerned that what had happened with JD3B might be happening with others, and Campus Security should be aware of this behaviour on campus. Ms. Kay was aware that by referring JD3B to Campus Security she was likely to have to tell her story again, but she also believed that some safety planning was necessary.

198. On April 1, 2014, Mr. Hyson called Ms. Kay to advise that JZ had graduated in 2013 and was no longer a student (Exhibit 5, Vol 5, Page 74; Exhibit 174, Page 3). As a result he said, the Student Code of Conduct NAM process no longer applied, but also the threshold for conduct requiring action was lower. Ms. Kay testified that she was not sure what this meant. She also noted Mr. Hyson saying that this incident might require a no trespassing response, as well as a referral to the police. Mr. Hyson said that JZ should not be on Campus. Ms. Kay testified that she was not clear then or when she testified who had the authority to say that a person could not be on campus. She was also unclear how such a ban would be policed. Ms. Kay testified that she provided the information supplied by JD3B to support the proposed ban and contribute as best she could, but that she did not know what was involved in instituting a ban.

199. Asked what the purpose of making a report to the RCMP was, Ms. Kay said that a criminal charge could come of it. Asked if there could be a downside to reporting to the RCMP, Ms. Kay said that it could be quite an unpleasant experience and that complainants can lose control of the file and of decision making. She said that the process can be quite insensitive, and not very trauma informed and that because it is not always an optimal experience, making a police report is therefore a step that needs to be taken with care and support. Ms. Kay said, however, that she did not speak to JD3B about the potential downsides of making a report to the RCMP.

200. Mr. Hyson also reported to Mr. Bohnen that JZ was no longer a student (Exhibit 85, Page 2, 14.04.02 Update). On April 2, 2014, Mr. Hyson advised Mr. Bohnen that as JZ was no longer a student, Student Conduct had no way to modify his behaviour (Exhibit 85, Page 2). Mr. Hyson said that JZ could be banned from Campus and requested Mr. Bohnen to relay a prohibition request to his Director and Operations Manager, which Mr. Bohnen recorded he did. Mr. Hyson provided a draft Letter of Prohibition. This was the end of Mr. Hyson's action on this file.

201. On April 3, 2014, JD3B met with Mr. Bohnen and Ms. Kay at Campus Security (Exhibit 5, Vol 5, Page 76). JD3B repeated her story to Mr. Bohnen. She added that she believed at first that JZ had something wrong with him mentally and felt sorry for him. She wondered if that was why she tolerated so much of his behaviour. Later in the encounter she decided he was not mentally challenged,

and was just “a creep”. When she was told that JZ was no longer a student and had been implicated in other similar complaints, she also agreed to report to the RCMP (Exhibit 85, Page 2, 14.04.03 Update, Exhibit 5, Vol 5, Page 78). Mr. Bohnen agreed to coordinate a meeting between JD3B and an RCMP constable, who transported JD3B to the University RCMP Detachment to provide a video statement.

202. On April 30, 2014, Ms. Kay had a conversation with Mr. Bohnen about where the file was at. She was told that despite there being multiple women impacted by JZ’s behaviour, none had come forward consistently with enough evidence to proceed with criminal charges. Mr. Bohnen relayed that the RCMP did not believe JD3B’s account was sufficient for criminal charges. Ms. Kay noted that there was “little more that can be done at this point”. This was objectively incorrect as the University did not require a criminal charge to ban JZ from Campus to protect women at the Campus.

203. On May 6, 2014, Mr. Bohnen followed up with the RCMP with respect to the status of the investigation (Exhibit 85, Page 2, Update 14.05.06). The RCMP reported that the matter was still under investigation and they had not received a report from JD3A.

204. On May 15, 2014, Mr. Bohnen followed up with the RCMP and JD3A to try again to have her provide a full statement to the RCMP (Exhibit 88, Page 2, Update 14.05.06).

205. Ms. Kay testified that she believed that Mr. Hyson remained involved, although she could not say how. Asked if there were other steps she could take if she thought an issue of safety had not been addressed, she spoke vaguely about talking to Sara Jane Finlay, her manager. Asked if there was any way for her to agitate for action to be taken if safety was an issue, Ms. Kay responded that she did not know of any way she could agitate and be listened to as she was not a person who was well respected or had a relationship of influence with the VP Students Office, and that her relationship with them was not warm. She said that if she stepped out of the work she was assigned to do, she would be reminded of that instantly. She said that she could not think of any agitation, activism, pressure, or influence she could have exercised because she did not have any influence.

206. On May 21, 2014, Mr. Bohnen advised Ms. Kay that JZ had been banned from campus, although this was still winding its way through legal (Exhibit 5, Vol 5, Page 84).

ii. Analysis

207. During the hearing, the issue of whether JD3A was a member of the General Class came up. A similar issue arises with respect to JD3B. Both made reports to the University within the time frame of the General Class definition. JD3A’s report was made about JZ’s conduct both when he was a student and when he was not. JD3B’s report was made about a person who presented himself

as a student, although he turned out not to be in 2014. In both cases, the University had an obligation to act to ensure the safety and security of women on the Campus, and to ensure that their work and study environment was returned to a non-discriminatory state. The fact that JZ was no longer a student affected the steps the University could take, but not its obligation to act effectively.

208. During Mr. Bohnen's evidence on this matter, a ruling was made that the reports that bring a person within the General Class definition must be reports that relate to time periods *before* the report was made, and that this might include time periods before the reporting period defined in the definition of General Class. The ruling was that a report by a student during the defined time period about a person who was a student when the conduct complained of occurred would be sufficient to bring the person within the General Class.

209. In our submission, JD3A is clearly a member of the General Class. JD3B should also be considered to be a member of the General Class given that her report, made on the information she had from JZ, was that a student was harassing her. That this proved to be factually incorrect, in that JZ was no longer a student, should not disqualify her from General Class membership, particularly not, as we note above given the University's obligation to act in respect of her complaint in any event.

210. In our submission, the University was pro-active in obtaining the details of the allegations of both JD3A and JD3B, in sharing those details with Student Conduct and Campus Security, and in determining that JZ was not a student but could be banned from Campus. Eventually, it appears that JZ was banned from campus, although the actual mechanism of this, including who made the decision, is unclear. Mr. Bohnen testified only that he conferred "upline" and one of us wrote and it was provided to legal to serve it. There was a lack of clarity for Ms. Kay about who was going to take the next steps, which hampered her in her role of communicating with JD3A.

211. There was delay between the start of April 2014 and May 22, 2014 in enacting the prohibition from campus which was signed by the Director of Campus Security (Exhibit 83). No explanation has been provided about the reason for this delay as it appears no further information was obtained from anyone involved. There is also no indication that JD3A or JD3B were advised of the ban, which would have limited its effectiveness for them in both feeling more secure at UBC, and in acting effectively if JZ was again seen on campus.

212. We also submit that given the University's capacity to act whether or not a police complaint was made, the pressure placed on both JD3A and JD3B to make complaints to the RCMP was questionable. JD3A in particular had already had to tell her story in full to Ms. Kay and Mr. Bohnen before she was assisted to attend the RCMP to provide a further video statement. As Ms. Kay testified, making an RCMP report can be a less than optimal experience for the complainant. As is clear even from the case of JD3B, complainants can be quite reluctant and afraid of making police complaints. It is clear from Mr. Bohnen's testimony on multiple files that he was a strong believer in complainants making police complaints, but the

chief reason for this seemed to be his view that the police could act more effectively than the University. This, in our submission, is really an acknowledgement that often the University did not act effectively. It is plainly not open to the University not to act simply because a police complaint has not been made. The University's apparent practice, which may have been at play here in the delay, of waiting to see if the police will act does not support the interests of safety or of effectively addressing discriminatory circumstances in a timely way.

213. In our submission, the University's responses in relation to both JD3A and JD3B's reports of sexual harassment were delayed and to some degree unhelpful. In our submission, it is clear that sub-optimal responses by the University do have an impact, including here the loss of contact with JD3A who was reluctant to report to the RCMP, and the requirement on JD3B that she tell her story 3 times. As such, we say both JD3A and JD3B have established a prima facie case of discrimination in relation to the University's sub-optimal and delayed responses.

iii. Remedy

214. In the circumstances, we submit that the Tribunal should infer that there was harm to JD3A and JD3B in the University's sub-optimal response, and injury to dignity damages in the amount of \$5,000 to each of JD3A and JD3B would be appropriate.

IX. OTHER REPORT IN JANE DOE 3 DOCUMENTS – JANE DOE 3C

215. The documents provided by the University in relation to Jane Doe 3 include a partial IR report about a complaint about an Engineering student called "Jordan" from a person Mr. Bohnen referred to as 3C (Exhibit 5, Vol 5, Page 79). Mr. Bohnen testified that this was not a report related to JZ because the physical descriptions did not match. However the person who made this report is a member of the General Class as she made a complaint to Campus Security as a student about a student within the designated time frame. However, nothing other than this partial IR report was disclosed about her. JD3C's complaint was that despite telling J multiple times that she wished no involvement with him, J had shown up outside her classroom multiple times that school year, started conversations with her despite her lack of any engagement, and sent unwanted email and Facebook messages to her. This unwanted contact is sexual harassment, even if JD3C did not fear for her safety, as she reported. She said she would send the emails and Facebook messages to Mr. Bohnen. It is unclear if she did. Mr. Bohnen's advice was to let J know that she was not interested in a relationship with him. Mr. Bohnen made no effort to identify this person so that other reports could be searched for, and did not follow up with JD3C to determine if there was further contact.

216. The University's lack of documentation, minimal investigation or follow up with respect to this matter was an insufficient response. Due to the insufficient disclosure, however, it is unknown what impact this insufficient response had on JD3C.

X. JANE DOE 4

i. Circumstances

217. This matter related to a complaint by a Teaching Assistant (JD4) in January 2015 about extremely inappropriate sexualized content submitted to her under pseudonyms as part of an in class essay assignment in a first year English course tutorial. As there were the same number of individuals present as in the class, and the TA believed everyone was present that day, the TA believed that the work was submitted by students in the class. One submission described a sexual assault of a female teacher by a student. Ms. Kay testified that she considered the allegations to be serious and to be a breach of Policy 3.

218. JD4 made her complaint to her supervisor, Professor Alex Dick, who forwarded it to Prof. Tiffany Potter, the coordinator of first year English in the English Department on Friday afternoon. Dr. Potter forwarded it to Dr. Sunaina Assanand on an urgent basis (Exhibit 5, Vol 5, Page 10). Dr. Assanand was the Associate Dean of Student Success in the Faculty of Arts. Dr. Potter noted that the TA was shaken and they were seeking discipline.

219. By Saturday January 17, 2015, Dr. Assanand had reached out to Ms. Kay and Mr. Bohnen as well as Joanne Elliot of the VP Students Office and Mr. Hyson (Exhibit 5, Vol 5, Page 9). She noted that they had already developed a strategy for the continuation of the course on Monday. Joanne Elliot recommended 911 for any urgent safety concerns, provided contact information for Mr. Bohnen around safety planning, and directed JD4 to Counselling Services as she was a student, or to seek support through EFAP (Exhibit 5, Vol 5, Page 8) both of which she was said to qualify for (Exhibit 5, Vol 5, Page 6). Joanne Elliot also noted that in many cases involving concerning writing or imagery, they recommended following up with the students to review the concerns about the content and hear from them their explanation. She said this provided space for corrective guidance and support. She noted that an investigation for alleged misconduct could follow that process.

220. Cheryl Washburn clarified the counseling available to JD4 and noted that Policy 3 applies but that they would want to consider discipline under the NAM process. She asked Mr. Hyson if he would be advising on the investigation (Exhibit 5, Vol 5, Page 6). Mr. Hyson responded that he was waiting to see what was written to determine how to proceed and if restrictions under Policy 14 preventing contact with the TA were required (Exhibit 5, Vol 5, Page 5).

221. Mr. Hyson testified that he met with Dr. Potter, Dr. Dick and JD4 on Tuesday afternoon, January 20, 2015. At the meeting he learned that there had been two Asian males at the back of the room who were sharing and giggling. Although JD4 thought they were being somewhat disruptive, they seemed to be working so she did not feel the need to intervene. When JD4 reviewed the assignments turned in, and realized that one had graphic sexualized violence and the other did not make much sense, she reviewed all of the assignments and found that all students she thought were there were accounted for but for two.

Of these two, one had dropped the course on Friday afternoon. The other remained in the course and was moved to a different tutorial.

222. Before the end of January 2014, Mr. Hyson met with the two students who had been identified. Both denied being in the class on Friday. Mr. Hyson was able to determine, including from the University's wireless network records, that this was likely true (Exhibit 174, Pages 26 and 28). On February 23, 2014 he met with JD4 to provide her with what he had learned (Exhibit 174, Page 33). JD4 said that she would like Mr. Hyson to continue trying to identify the persons responsible. By early March, through further investigation, including interviewing others in the tutorial, he was able to determine that two persons were in the tutorial that afternoon who were not students in the course, at the invitation of someone who was (Exhibit 174, Page 46). One was a UBC student and one was not.

223. On May 13, 2014, Mr. Hyson invited the UBC student to meet with him in relation to an alleged violation of the Student Code of Conduct. In early June, Mr. Hyson met with both individuals, who admitted that they had written the materials, and in particular that the non-UBC student had written the sexualized material (Exhibit 174, Page 57). The non-UBC student said that the material was not in reference to the TA and that it was not their intention to hand in what they were writing. They could not explain how this had happened. By June 2015, the UBC student had failed and been required to withdraw by UBC. Mr. Hyson let the students know that their actions were inexcusable and that their presence had a negative impact on the learning environment.

224. Mr. Hyson did not advise JD4 that he had spoken with the individuals who had been wrongly in her tutorial, or consult with her about whether further steps would be taken. On November 24, 2015, JD4 emailed Mr. Hyson to follow up "in light of recent on campus developments" (Exhibit 174, Page 57). This was just after the Fifth Estate documentary was released regarding the University's response to the Mordvinov allegations. Mr. Hyson responded the same day with the information about his meeting with the offending individuals.

225. The University did not take further steps in relation to the actions of these two individuals. Mr. Hyson agreed in cross-examination that under Policy 3 the University can take action against non-students. He was unclear whether this could have resulted in a notation on the former UBC student's transcript. The University could also have pursued the individuals for accountability under the *Human Rights Code*. Finally, given their heedless and harmful conduct, the University could have prohibited the non-students from the University Campus. Mr. Hyson agreed that he did not consider prohibiting the non-students or bringing a human rights complaint against them for their actions. Mr. Hyson did not ask JD4 if there were any other steps she felt should be taken by the University, or advise her of these options.

226. While Mr. Hyson's investigation was thorough and eventually successful in determining what had happened in the classroom in January 2015, he failed to put JD4's mind at ease by confirming his findings in June 2015, and did not consider or

consult with her about any further steps that might be taken. In our submission, in taking no steps after Mr. Hyson identified the individuals responsible, the University did not take sufficient action to protect women on Campus, and to ensure a harassment and discrimination free environment going forward.

ii. Analysis and Remedy

227. Mr. Hyson's failure to follow up with JD4 had an impact on her as she took the trouble to follow-up with him in November 2015 to find out what had happened. This impact was related to her status as a woman as that was the basis on which the actions of the two individuals had affected her, and the reason when she needed an appropriate response from the University. For this reason and because Mr. Hyson did not communicate with JD4 about the University's decision to take no further action or properly advise her of options available to her, JD4 has established *prima facie* discrimination. In our submission, damages for injury to dignity in the amount of \$5,000 to JD4 would be appropriate.

iii. JD4 Membership in General Class

228. During the hearing the University noted for the record that they intend to argue that JD4 is not a member of the General Class because she was acting as an instructor when the incident happened. We submit that JD4 is a member of the General Class. We note the evidence from the Mordvinov Class witnesses that graduate students are granted TA-ships by the University as part of their graduate student funding. JD4 would not have had a TA-ship but for the fact that she was a graduate student. In our submission, while a TA-ship is paid work, a TA-ship is part of the program of many graduate students and has an important educational component. Mr. Hay gave evidence about the importance of teaching opportunities in pursuing an academic career. We further note the vulnerability that female graduate students face as TAs as spoken to in the evidence of Mordvinov Class members. Ms. Cunningham for example described the difficulty she had in being taken seriously and treated respectfully by students as a female TA. JD4's status as a female graduate student was arguably a factor in why the incident happened, and her experience of the harassment was likely affected by her status as a graduate student, and the vulnerability that is part of that status. Finally, we note that the University itself considered JD4 to be eligible for student Counselling Services following the incident *because she was a student* (Exhibit 174, Page 22 Bottom).

229. In our submission, it would be artificial to suggest that JD4 was only an employee and not a student while acting as a TA in first year English. A finding that JD4 was not a member of the General Class would be a failure to recognize the dual nature of TA-ships as paid work and educational opportunities, a failure to take account of the vulnerability of female graduate students to disrespectful and harassment treatment as TAs, and a failure to acknowledge that JD4's experience of the harassment would have been coloured by her junior status and relative vulnerability as a graduate student.

XI. JANE DOE 5

Witnesses:

Monica Kay, Steve Bohnen, Chad Hyson

Documents:

Exhibit 5, Vol 5, Pages 8 to 71

Exhibit 174, Pages 61 to 133

Exhibits 82, 94, 95 96, IRs (including IRs from 2012 in Exhibit 94)

Exhibit 98, MK notes of meeting with Dipple

Exhibit 127, Emails

Exhibit 182, Decision re JM in June

i. Circumstances

230. This matter related to a complaint by JD5 about JM, an older student with a history of harassing young women in the University's libraries. JD5's complaint was that starting in December 2012, JM had inappropriately approached her, followed her around the library, sat beside her and asked her questions, causing her to move (Exhibit 94, Page 2, narrative as provided to Bohnen). When she did, she woke up to find him sitting across from her. In the Winter term of 2013, she stopped using the library except to get books, but even then she would see him or he would come and sit near her (Exhibit 5, Vol 5, Page 16). On December 27, 2013 she further saw him while working at a public terminal outside Ike's Café. She immediately left the area and later found him working on the terminal next to hers (Exhibit 94, Page 3). He then enrolled in one of her courses, which she felt extreme anxiety over. At this point, she raised concerns with her course instructor, Prof. Kurt Grimm.

231. This matter is notable for the fact that JM had been documented to be harassing young women who were volunteering for the University library system in 2012 (Exhibit 5, Vol 5, Page 8, Page 42). At that time, at least three women came forward with email complaints about their own experiences to Julie Mitchell an administrator, who raised the issue with Campus Security (Pages 8, 9, 10, 12). Both complainants at that time and Ms. Mitchell in her response made reference to JM being well known for his inappropriate approaches to women. A fourth staff person reported observing JM engaging in unwelcome conversation with a female patron in the library (Page 12). The staff person documented approaching the patron, and the patron advising her that she had had various prior dealings with JM, that she had told him clearly that she was not interested in going out with him, and that she had made many complaints about him to Campus Security (Page 13).

232. In its February 2014 IR, Campus security described events in 2012 as a string of complaints from young female desk staff at Chapman Learning Commons. Campus Security documentation in 2012 consisted of setting up a priority response in May 2012 after JM told a woman that he would see her after work (IR 120517, Exhibit 94, Page 6, Page 12), creating an incident report in July 2012 from the statements of a number of witnesses about harassment of women (IR 120713, Exhibit 94, Pages 8, 9), updating that IR with the August 2012 account

from a patron through a volunteer, and providing transport for a female student due to harassment at closing time in September 2012 (Exhibit 94, Page 10). The July 2012 IR noted Ms. Mitchell saying that the issue had been ongoing over the last year or more (Exhibit 94, Page 9). In 2014, Campus Security claimed that in 2012 Ms. Mitchell had tried to gather witness statements of “detailed, verifiably harassing content” without success.

233. Despite these reports, no action was taken with respect to JM at the time other than creating the priority response. There is no record of anyone from the University even speaking with JM about his contacts with young women. The documents from that time suggest that the University took no action because it did not have formal complaint from one or more of the young women, notwithstanding their emails to Ms. Mitchell. If this was the reason the University did not act, it is a pointed example of the way in which a requirement for a formal complaint which results in the University not acting, despite credible notice of an individual sexually harassing others, places others at risk, including JD5. Had the University acted effectively in mid-2012 when it had multiple written complaints in hand, the events involving JD5 and the harm, upset and inconvenience to her might have been avoided altogether.

234. JD5 raised her concerns with Prof. Grimm in early January. By email of January 12, 2014, Prof. Grimm referred her to the Department Head, Prof. Gregory Dipple, and Campus Security (Exhibit 5, Vol 5, Page 14). Prof. Grimm thanked JD5 for reporting, acknowledged that discussion of the issue could be uncomfortable or inconvenient and assured her that everyone took the issue seriously and wanted to support her. He noted that her safety and feeling of safety inside and beyond the classroom was paramount.

235. On January 13, 2014, JD5 prepared a written outline of her experiences with JM for Campus Security (Exhibit 5, Vol 5, Page 16). Prof. Dipple forwarded this document to Ms. Kay. JD5 described her complaint as a concern for her personal safety in class.

236. On January 13, 2014, Ms. Kay spoke with Prof. Dipple (Exhibit 5, Vol 5, Page 30, 42). Prof. Dipple advised that JD5 emailed Campus Security with her updated experiences on January 13, 2014 (email at Exhibit 127, Page 4).

237. On January 14, 2014, Ms. Kay met with JD5 and Prof. Dipple (Exhibit 5, Vol 5, Page 43). JD5 provided them with a detailed account of events with JM. JD5 advised that she did not want JM to interact with her in future. JD5 described JM's overtures as too aggressive, unwelcome and frightening, even though she did not feel that he had any malicious intent. She wanted to provide him with an opportunity to change his behaviour and leave her alone. JD5 authorized Prof. Dipple and Ms. Kay to meet with JM to tell him that his contact with JD5 was unwelcome and that she wanted all interaction to stop.

238. On January 15, 2014, Ms. Kay had a call with Prof. Grimm who was concerned that JM's behaviour was already stalking (Exhibit 5, Vol 5, Page 45).

239. On January 22, 2014, Ms. Kay and Prof. Grimm met with JM. JM made an agreement not to have further contact with JD5, but claimed that he did not know who JD5 was. Ms. Kay advised him to avoid young women of Asian descent until she could be identified to him.

240. On February 12, 2014, before JD5 had been formally identified to JM, JM again made eye contact with JD5 in the library and came to sit in a computer directly in her line of sight and stared at her. JD5 moved locations and JM again came to sit near her.

241. On February 14, 2014, at the start of the class JD5 and JM shared, Prof. Dipple walked JD5 across the room so that JM could see who she was.

242. On February 14, 2014, Cheryl Dumaesq, Direction of Arts Advising planned to meet with JD5. She sent an email to Ms. Kay querying her involvement and that of the Head of the Department and Campus Security with JD5 (Exhibit 174, Page 64). Ms. Kay responded that because JD5 was complaining of sexual harassment, Policy 3 was engaged which Equity and Inclusion administers (Exhibit 174, Page 63). Ms. Kay explained that it was her job to deal with complaints of harassment like this, starting informally by making it clear that the person's behaviour was unwelcome and contrary to UBC policy and law. If the behaviour escalated, becoming a problem of safety and non-academic misconduct, then she would bridge the complaint to Campus Security and the non-academic misconduct process. In her email, Ms. Kay critically admitted that at that time, *she did not know what the non-academic process looked like or who the contact person was* (Page 64, Para. 1). Joanne Elliot responded to direct Ms. Kay to the Chad Hyson, Student Conduct Manager, VP Students as well as to provide her with the web citations for the Student Code of Conduct and information about the NAM Committee process. (This communication happened just after Ms. Kay met with Ms. Kirchmeier on February 6, 2014.)

243. On February 17, 2014, Ms. Kay and Mr. Dipple met with JM about the incident on February 12, 2014 with JD5. JM denied being aware of who JD5 was that day and said that he moved around to avoid people who were coughing and sneezing and not covering their faces.

244. On February 18, 2014, Ms. Kay spoke with Mr. Bohnen who described JM as a "frequent flier" with security because lots of young women had complained (Exhibit 5, Vol 5, Page 29). On February 19, 2014, JD5 provided a detailed statement to Mr. Bohnen of events with JM (Exhibit 94, Page 2).

245. On February 19, 2014, Mr. Bohnen met with JD5 and took a detailed statement from her (Exhibit 174, Page 66). He described her as angry and disturbed that JM appeared to have defied the instruction of the University not to approach her. He reported that she was willing to interview with Mr. Hyson to take action to protect other young women from JM's actions.

246. On February 19, 2014, Ms. Kay emailed JD5 about meeting with Mr. Hyson (Exhibit 174, Page 72). She proposed setting up a meeting with herself, Mr. Hyson

and JD5 to ensure that JD5 was comfortably bridged from the Equity Office to Student Conduct. Ultimately, Ms. Kay provided her file to Mr. Hyson and left it to him to meet with JD5 (Exhibit 174, Page 72).

247. On February 24, 2014, Mr. Hyson reached out to Janice Robinson of SHHS as he believed that JM had been involved in a similar incident in Housing (Exhibit 174, Page 69). This is a step that was not taken with respect to Mr. Mordvinov. SHHS responded that there had been no recent concerns (Exhibit 174, Page 70).

248. On March 7, 2014, Mr. Hyson met with JD5 to provide an overview of the NAM process and to ask her some follow up questions (Exhibit 174, Page 75).

249. On March 11, 2014, 4 days later, Mr. Hyson wrote to JM to advise him that an allegation had been made that he violated certain provisions of the Student Code of Conduct on February 12, 2014, and that Mr. Hyson would like to meet with him to discuss the allegation and answer any questions he might have about the NAM process. He advised that if JM did not make an appointment to meet, he would refer the matter directly to the NAM Committee for investigation. The speed with which Mr. Hyson took the step of seeking a meeting with JM is notable in light of the lack of action on the Mordvinov matter when he was first apprised of it in June 2014.

250. Mr. Hyson met with JM (Exhibit 174, Page 84). JM denied the allegations on the basis that he was uncertain who JD5 was at the time of the February 12, 2014 incident. He also denied conceding on February 17, 2014 in his meeting with Ms. Kay and Prof. Dipple who JD5 was.

251. On April 17, 2014, a Statement of Allegations to the President's NAM Committee was prepared in relation to JM (Exhibit 174, Page 79). Mr. Hyson's list of recommended witnesses included JD5, Ms. Kay and Prof. Dipple. The Statement of Allegations contained a detailed narrative from JD5 but did not contain the specific charges against JM. It also included information provided by JM about his response to the allegations (Exhibit 174, Page 82), which has generally not been seen in other Statements of Allegations.

252. On May 16, 2014, JM provided a Students Documents and Witness List in response to the Statement of Allegations against him (Exhibit 5, Vol 5, Page 46, Exhibit 174, Page 85). He also wrote to Mr. Morrison to request assistance in the upcoming NAM Committee proceedings.

253. The NAM Committee hearing took place on May 27, 2014, after the end of term (Exhibit 5, Vol 5, Page 63). Mr. Hyson read the allegations. Ms. Kay attended to review the timeline with the Committee and returned to answer a question about the first meeting with JM. JD5 was not asked to attend the Committee hearing. Prof. Dipple also did not attend the hearing as he was away at a conference (Exhibit 174, Page 87).

254. The NAM Committee produced an undated report (Exhibit 5, Vol 5, Page 64) which was provided to the President on June 19, 2014 (Exhibit 174, Page 88).

The report set out the allegations against JM. They consisted of: (1) engaging in sexual contact without consent, in violation of s. 4.2.1(e) of the Student Code of Conduct; and, (2) failure to abide by a direction of Ms. Kay and agreement with Ms. Kay to stay away from, not talk to and not contrive to run into JD5 or people of a similar appearance, in violation of s. 4.2.8 of the Student Code of Conduct.

255. The Committee found that JM had not followed Ms. Kay's direction to have no contact with JD5 and to avoid young Asian women until he knew who JD5 was. The Committee found that JD5 did not take reasonable steps to ensure that further harassment of JD5 did not occur. The Committee also found that JM engaged in unwelcome and persistent conduct that JM ought to have known would cause JM to feel harassed. The Committee did not specifically find that JM engaged in sexual conduct, which was not a required finding for the section under which JM was charged. The Committee was further concerned that JM's actions in engaging female students and asking them out will continue to harass other students.

256. It is notable that the Committee was able to make a finding in relation to JM's conduct towards JD5 without any attendance from her at the hearing. This supports the view that attendance by complainants was not essential and that complainants ought to have been advised of this before electing to attend. This could have saved Ms. Cunningham and Student E considerable anxiety, for example.

257. Mr. Morrison also provided a letter for the President to provide to JM (Exhibit 174, Page 89, Exhibit 182, signed copy). The letter found that JM had committed harassment (rather than sexual harassment, which it did not address) and set out his penalties as: (a) a direction to stay away from, not talk to or contrive to run into JD5 in any way on or off the UBC campus; (b) a written reprimand; and, (c) a direction to meet with a University representative designated by Janet Mee to help him gain an understanding of appropriate behaviour to help him avoid harassing conduct in future. The discussion from this meeting was to be documented and made available to the Chair of the NAM Committee and the Associate Director, Student Conduct and Safety. It was not made available to Campus Security, even though they would be responsible for responding if he violated the no contact terms. The President did not suspend or expel JM or limit where he could go on campus, even though he had a long history of misconduct in certain libraries. There is no documentary evidence about whether the conversation with JM took place.

258. It is notable that in determining the outcome for JM, the Committee did not have before it the history with respect to JM and multiple other complaints against him in 2012. In the circumstances of his ongoing misuse of his library privileges to harass women, we submit that proper attention to ensuring a discrimination free studying and working environment for women, including an environment that protected their safety, required the University to limit JM's access to library facilities to the greatest extent possible. That they did not take this step, improperly left women at risk of sexual harassment by JM.

259. It does not appear that the outcome was shared with Ms. Kay until July 2015, more than a year later (Exhibit 174, Page 91). JD5 graduated in 2014. It is also unclear that the outcome was shared with her. It remains our submission that a process based on a complainant's complaint must provide her with the outcome in order for it to amount to an appropriate response to her complaint. In our submission, it was not of assistance to JD5 not to advise her that her complaint had been upheld by the NAM Committee, and that JM had been reprimanded, ordered to stay away from her and directed to engage in a conversation aimed at avoiding harassing conduct in the future. It is reasonable to infer that it would have been of interest to JD5 to know that her complaint had yielded outcomes that might protect her and others going forward. Not telling JD5 the outcome failed to take account of the harm to her of JM's conduct, and her deep interest in a harassment free environment at the University for herself and other women.

260. JD5 returned to UBC for further study in September 2015 (Exhibit 174, Page 109). On October 28, 2015, JD5 had a further incident with JM, this time in the David Lam Library at the Sauder School of Business (Exhibit 174, Page 93). On October 29, 2014, Mr. Bohnen shared this information with Ms. Kay and Mr. Hyson, and others. Mr. Bohnen wrote in the narrative of the IR he sent that interventions with JM had not worked, but did not list among those interventions the decision of the NAM Committee or the directions of the President. This information must be available to Campus Security for the decisions of the President to be enforceable. The failure to provide this information to Campus Security significantly undermined the utility of the University's response through the NAM process.

261. On October 29, 2015, Mr. Hyson emailed JD5 to request a meeting. In his email he notes that the latest allegation is a violation of the terms of the President's decision. Mr. Hyson suggests that JD5 knows the decision, but there is no documentation to suggest that she was aware of it.

262. On November 1, 2015, JD5 responded to a request from Mr. Hyson to meet over the October 28, 2015 incident by reporting that she was at that moment studying at the Chapman Centre and that JM had been present earlier in close proximity to her, which had led to her changing locations in the library (Exhibit 174, Page 101).

263. On November 6, 2015, Mr. Hyson wrote to Louise Cowin to provide her with the history involving JM, including the findings in 2014 and the 2015 incidents (Exhibit 174, Page 108). He advised that he would be contacting JM to advise him that the matter was returning to the NAM process. He further sought restrictions under Policy 14 – Response to At Risk Behaviour. He proposed a number of restrictions, including that JM not be permitted in the Irving K. Barber Learning Centre, including the Chapman Learning Commons, the David Lam Management Research Library, nor the David Angus Building from 6 to 9 PM, the hours of JD5's course. Ms. Cowin responded that she supported the proposal.

264. On November 6, 2015, JD5 wrote to Mr. Hyson to request a letter from him to support her request for an academic concession in one course (Exhibit 174, Page

113). It is evident from this letter that the further incidents with JM had been upsetting to her and had negatively affected her academic progress. In a subsequent communication it appears that she was seeking to withdraw from a course, and that the uncertainty around that request was creating issues that were harming other courses (Exhibit 174, Page 114). Mr. Hyson provided the requested letter, advising JD5's course director that given the long history with JM, the latest incidents had caused JD5 a considerable amount of stress and had impacted her studies (Exhibit 174, Page 116).

265. In response to Mr. Hyson's letter and the conditions placed on JM, JD5 wrote to Mr. Hyson that she felt safe and taken care of (Exhibit 174, Page 117). This communication underscored the importance to JD5 of effective University responses to her complaints, and by inference, the negative effect on her of the University having chosen ineffective remedies in June 2014.

266. On November 11, 2015, the University issued a Notice of Restriction to JM (Exhibit 174, Page 120, 121). The terms of the notice followed Mr. Hyson's recommendation. The short time needed to achieve this from JD5's most recent complaint (about 12 days) illustrates the University's capacity to act in a timely way if moved to do so. It is notable that this action was taken just before the Fifth Estate documentary about Mr. Mordvinov was to air. The restriction was provided to Campus Security (Exhibit 95, IR 151112). Mr. Bohnen responded that their staff at both facilities would be alerted to the restrictions (Exhibit 174, Page 123). On November 15, 2015, Campus Security was able to serve JM with the Notice of Restriction (Exhibit 174, Page 125; Exhibit 95, Page 2).

267. Mr. Hyson met with JM on November 20, 2015 in furtherance of preparing a second case for the NAM Committee (Exhibit 174, Page 132). However, Mr. Hyson testified that the new complaints against JM did not proceed once the Policy 14 restrictions were in place. It does not appear that JD5 was informed of this decision or consulted about it.

268. In May 2017, the restrictions on JM were still in place but were relaxed to accommodate changes in his schedule (Exhibit 96).

ii. Analysis and Remedy

269. While parts of the University (notably the Department and Ms. Kay) were responsive to JD5's safety concerns when JM appeared in her course, overall the University's response to concerns about JM placed JD5 (as well as others) at risk in of ongoing harassment from JM in 2012, 2013, 2014 and 2015. As a result, the University's response to the issues created by JM was wholly insufficient and harmful.

270. As ultimately became clear, the University has the power to put significant restrictions in place, and leave those restrictions in place indefinitely to ensure safety and a harassment and discrimination free environment for women students. The University's failure to do so in 2012 despite numerous complaints at that time, their failure to do so in 2014 when JM turned up in JD5's course, and their failure

to do so as part of, or along side, the President's decision in 2014 all had very negative impacts on JD5, including causing her anxiety in 2014, and interfering with her academics in October and November 2015 to the point that she had to drop a course and experienced negative effects in relation to her other courses. It is also of considerable concern that JD5 was not advised of the outcome of the NAM process, or the sanctions put in place by the President in 2014.

271. This matter also demonstrates the extent to which the narrow function of the NAM Committee process in considering disciplinary action does not fit at all comfortably with the University's very broad obligations to ensure discrimination and harassment free studying and working environments at UBC. This is evident in the failure to keep JD5 informed about the NAM process, in the fact that the NAM process and remedy did not consider the whole picture concerning JM and therefore failed to provide appropriate protection, and the way in which the NAM outcome did not become part of the narrative about JM that was available to Campus Security.

272. JD5 was subject to harassing conduct intermittently for a long period of time, and continued to be subject to harassing conduct after coming forward to her instructor in January 2014, including on February 12, 2014, when JM again harassed her despite agreeing not to do so, and again in October 2015 when she returned to UBC, including after she came forward on October 28, 2015. There is evidence from which the harm to JD5 can be inferred, including the loss of a course in 2015. In our submission, the fundamental failure to take effective action until November 11, 2015 amounted to an insufficient response with negative impacts on JD5. JD5 has thus established discrimination. In our submission, given the longstanding and repetitive nature of the harassment, and known harms to JD5 including having to repeat her narrative over and over, injury to dignity damages in the amount of \$15,000 would be appropriate for JD5.

XII. JANE DOE 6

Witnesses:

Monica Kay, Steve Bohnen, Chad Hyson

Documents:

Exhibit 5, Vol 5, Pages 117 to 171

Exhibit 174, Pages 134 to 136

Exhibit 84

Exhibit 119

Exhibit 120

273. This matter involved a complaint from a PhD student in the English Department about an MA student in the English Department (Y) who was pursuing a relationship with her and whom she described as manipulative and a compulsive liar, whom she feared might be saying negative things about her in the Department to damage her reputation, and who had once expressed suicidal ideation.

274. JD6 raised her concerns with Prof. Patricia Badir. On September 4, 2014, Prof. Badir raised them with Ms. Kay (Exhibit 5, Vol 5, Page 136). On September 8, 2014, JD6 contacted Ms. Kay directly by email (Exhibit 5, Vol 5, Page 135). After some preliminary communications about confidentiality, JD6 agreed to have a conversation with Ms. Kay (Exhibit 5, Vol 5, Pages 131 to 134).

275. On September 18, 2014, Ms. Kay met with JD6 (Exhibit 5, Vol 5, Page 137). JD6 described Y as lonely, needy, psychologically unstable and a compulsive liar. She also described him as overtly emotional which she described as manipulative. She described instances of his holding his breath when he did not get his way and related taking him to counseling when she did not think he was doing well. JD6 believed that Y was saying or threatening to share confidences about her to compel her into a relationship or punish her for not wanting a relationship. This was her chief concern at the time of reporting. JD6 reported being afraid of Y and said she had bear spray at home. Ms. Kay testified that she reviewed various options with JD6 and that JD6 was firm that she did not want to file a formal complaint.

276. On September 19, 2014, JD6 reported with concern that Y had shown up to an event for PhD students that she was at (Exhibit 5, Vol 5, Page 140). She reported finding his presence oppressive.

277. Ms. Kay responded by arranging a meeting for Ms. Kay and JD6 with Mr. Bohnen to do safety planning (Exhibit 5, Vol 5, Page 142). She passed on Mr. Bohnen's recommendation that she open a file with the Vancouver Police Department which would be of assistance if she ever felt unsafe and needed to call 911. Ms. Kay also suggested communicating with Y that she wanted all contact to cease. Ms. Kay offered to help her with wording the communication. Ms. Kay described some steps that were available after that if Y did not respect her wishes for no contact. Ms. Kay testified that it was unusual for the complainant to write the non contact letter and that she preferred to do it to make it clear that there were other eyes on the situation.

278. On September 23, 2014, Ms. Kay and JD6 met with Mr. Bohnen (Exhibit 5, Vol 5, Page 145). Mr. Bohnen documented the contact in an IR (140923, Exhibit 84, Exhibit 5, Vol 5, Page 145) in which he described JD6's complaint as a complaint of personal and sexual harassment and intimidation. They discussed opening a file with the VPD because most of Y's harassing behaviours were described to have taken place at her residence, and then communicating about no contact with Y. They discussed advising key persons in the English Department of her situation with Y, and also discussed further steps if Y did not respect her wishes for no contact, including a signed undertaking and perhaps referral to the NAM process. Mr. Bohnen documented referring JD6 to Counselling due to her level of agitation and concern for her personal safety.

279. On September 24, 2014, Mr. Bohnen wrote that based on the interview with JD6, he believed Y might be a risk to himself or others (Exhibit 5, Vol 5, Page 146). He noted that JD6 had drafted a communication to Y about not contacting her and not talking about her to others.

280. Mr. Hyson was asked why he did not meet with Y when he became aware of the file, unlike in JD1 where he met with AM. He responded that the issues on this file related to the relationship between Y and JD6 and meeting with Y would have required disclosure of Y's concerns which she was still deciding what to do about.

281. On September 24, 2014, Ashley Bentley of SASC advised Mr. Bohnen that the VPD recommended opening a file with the RCMP which could then be transferred to the VPD (Exhibit 5, Vol 5, Page 149). Bentley reported JD6 having high levels of distress about a Departmental meeting, and that she planned to move from her residence to avoid Y finding her there alone.

282. On September 24, 2014, JD6 provided some of her email communications to Ms. Kay and continued to express concern about Y and his reaction to her telling him firmly that she did not want ongoing communication (Exhibit 5, Vol 5, Page 151). She also noted advice from Ms. Bentley that if an RCMP file was opened, they would insist on warning Y. JD6 was concerned that this would prompt retaliation by him. JD6 asked to set up a meeting with her department to discuss her situation as she felt that she was falling behind. Ms. Kay testified that JD6's anxiety level was very high at this point.

283. On September 24, 2014, JD6 sent an email to Y saying that she wanted no further relations with him and asking him to cease all contact with her (Exhibit 5, Vol 5, Page 153). The email contained a number of specific requests, including that he not linger in places he knew she needed to be, that he not spread information about her of any kind which she described as workplace bullying and harassment, and that he leave her alone at Departmental functions (Exhibit 5, Vol 5, Page 151). She ended by stating that she hoped Y would agree.

284. Y did not respond to the email. He sought advice about it from his father, a lawyer, and also from legal counsel who advised that the terms were unworkable and he should not sign it. It is not clear that JD6 had intended that he sign it in a formal way.

285. On September 25, 2014, JD6 had further communication with Ms. Kay about her concerns and setting up some support for her at a Departmental function, as well as a meeting with persons in the Department (Exhibit 5, Vol 5, Page 154). Ms. Kay testified that she did not know if security attended the Department event.

286. On October 1, 2014, JD6 contacted Ms. Kay about assistance she required speaking to the Department about an absence to get counseling (Exhibit 5, Vol 5, Page 162). Ms. Kay noted that JD6 sounded better. On October 1, 2014, Ms. Kay contacted Prof. Badir to advise that there was no evidence Y had done anything at this point to engage Policy 3 or the EIO (Exhibit 5, Vol 5, Page 163). This was Ms. Kay's introductory conversation with Prof. Badir.

287. On October 9, 2014, JD6 contacted Ms. Kay who contacted Mr. Bohnen about an image JD6 had seen on Y's Facebook page which caused JD6 to fear for her personal safety (Exhibit 84, 14.10.09 Update; Exhibit 5, Vol 5, Page 165). It was later learned that the image was of an artwork by an Indigenous artist related to healing in relation to murdered and missing Indigenous women. The "blood" visible in the image was actually beads.

288. On October 29, 2014, Prof. Badir contacted Ms. Kay to raise concerns about the conditions JD6 had asked Y to comply with in her non contact email which had lately been provided to Prof. Badir, and which Prof. Badir considered unworkable in the Department, including because MAs and PhDs take courses together and socialize together, and it is difficult to discern whether an event or gathering is a "social thing" or an "academic thing" (Exhibit 5, Vol 5, Page 164).

289. At some point, Ms. Kay met with Y. Although she testified that there is no way that there would not be notes of her meeting with Y, none were seen. After the meeting, Y provided notes to Ms. Kay about his relationship with JD6 (Exhibit 5, Vol 5, Page 155). Ms. Kay testified that Y's comments put the relationship with JD6 in a less threatening light.

290. On November 5, 2014, Ms. Kay provided Mr. Bohnen with the update that she had met with Y and he had assured her that he had disengaged from JD6 as much as possible given that they are in the same department (Exhibit 84, 14.11.05 Update). Mr. Bohnen noted that Ms. Kay advised that she was confident Y would exercise reasonable efforts to avoid confrontation. Ms. Kay testified that this likely overstated her confidence and that the matter could blow up again.

291. On November 10, 2014, Ms. Kay updated Ms. Hollinshead about her meeting with Y (Exhibit 5, Vol 5, Page 166). She advised that Y had not agreed to JD6's non-contact terms because he felt some of the terms were impossible to comply with in practice. Ms. Hollinshead agreed that they needed to avoid direct contact and to go through Ms. Kay or people in the Department if contact was required.

292. On December 5, 2014, Ms. Kay and Y had a conversation about his coming to the Christmas party. Ms. Kay checked in with JD6 who advised that Y had been in her vicinity in the academic environment uneventfully a number of times. Ms. Kay invited JD6 to be in contact if there were further concerns.

293. On February 10, 2015, Ms. Kay had a meeting with Y to address 3 concerns: his desire to join a reading group related to his work and to find out if JD6 is also attending; his concern that JD6 had not advised that she was going to the Christmas Party which led to some awkwardness on his part as he did not want to ambush her or be ambushed by her; how to navigate questions about her professionally when he has personal concerns about how she managed information about his psychiatric disability; and, how to manage a Facebook friend request from JD6's brother (Exhibit 120; Exhibit 5, Vol 5, Page 168). Ms. Kay provided some advice to Y including that he should not disclose anything he

learned in his personal relationship with JD6, and agreed to follow up with JD6 about social events and whether she planned to join the book club.

294. On February 17, 2015, Ms. Kay emailed JD6 in her role as intermediary about the book club and social gatherings. Ms. Kay recommended that both JD6 and Y keep her apprised of upcoming events they planned to attend to avoid surprises. It does not appear that JD6 responded or that there was further contact with Ms. Kay on this matter.

ii. Analysis

295. This matter was effectively managed by Ms. Kay and others from the Department at an informal level which allowed the original high level of emotion on the part of JD6 to be addressed, and JD6 and Y to find a way to coexist in the Department. At the outset, Ms. Kay discussed options with JD6 including escalating to the NAM process, and Campus Security was appropriately looped in at the beginning when there were security concerns. Ms. Kay had numerous communications with JD6 and also met with and communicated with Y, which provided a different perspective on his relationship with JD6. While the resolution of certain issues is not clear on the record, JD6 appears to have been satisfied. As a sounding board and intermediary, Ms. Kay was able to stick handle a number of concerns for each of JD6 and Y. It also appears that assistance was provided by Counseling, including Ms. Hollinshead, to JD6. While other steps could have been used, including Policy 14, it appears that JD6's email to Y was effective. It is not evident that anything further was asked for or needed by JD6 in relation to this matter. As such, the evidence does not indicate that JD 6 has established a complaint of discrimination against the University in relation to this matter.