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I. INTRODUCTION

- [1] Glynnis Kirchmeier [the **Complainant/Complainants' Representative**], filed both an individual and a representative complaint against the University of British Columbia [**UBC or the University**] alleging discrimination in the area of accommodation, service or facility on the basis of sex, contrary to s. 8 of the *Human Rights Code* [**Code**].
- [2] The Complainants allege that this Complaint is about the obligation of the University to provide a working, learning, and living environment free of discrimination and harassment. Although the Respondent University recognizes it has an obligation to provide a discriminatory free learning environment, it does not accept the manner upon which the Complainants argue for the Tribunal to analyze this case.
- [3] The Complainants Representative has put forward each individual complainant's case as unique to them and has sought individualized damages for them. Consequently, this Complainant must be analyzed as a group complaint and not a traditional class complaint. This will require the Tribunal to evaluate each complainant individually and for some complaints within the framework of shared factual background. Each Complainant is required to establish a *prima facie* complaint of discrimination, prior to the Tribunal evaluating whether the University's response was reasonable.
- [4] Over the course of the hearing of this Complaint, a number of issues arose with respect to the scope of this Complaint, given the number of Complainants and the varied interactions they had with the University. These interactions range from a female student requesting University support with respect to a male student asking them on a date, to a female student reporting a sexual assault by another male student, to an individual coming forward on behalf of another female student without their consent, to non-students raising concerns about other non-students' experiences with current students.
- [5] Given the range of these interactions, the University's response which is under scrutiny in this Complaint, ranges from informal discussions to full disciplinary hearings contemplating the expulsion of the male students. Consequently, the complaints and desired outcomes raised by women at the University inevitably engaged a variety of different resources and policies within the University.
- [6] One of the aspects raised by the Complainants involves the Student Code of Conduct [the **Code of Conduct**] which sets out the process and procedures for the investigation of complaints of non-academic misconduct. At all material times to the Complaint, sexual

assault perpetrated by a student against another student fell within the definition of prohibited conduct that was subject to disciplinary measures under the Code of Conduct. At all material times to the Complaint, the process for pursuing disciplinary consequences for students involved investigating allegations of prohibited conduct under the Code of Conduct through the President's UBC Non-Academic Misconduct [**NAM**] Committees.

- [7] The Respondent understands the Complainants to be saying that the NAM Committee process [the **NAM Process**] adversely impacted victims of sexual assault. As women are disproportionately the targets of sexual assault, the Complainants say the NAM Process had a disproportionate impact on women. However, only approximately 5 of the approximately 30 student experiences that were reviewed in this complaint went through a NAM process.
- [8] Other complainants came forward to the Equity and Inclusion Office [**EIO**] for support and access to academic resources and informal discussions. The Complainants further allege shortcomings in the EIO's response. Each of these complainants came forward to the EIO with unique circumstances and desired outcomes. The autonomy of each of these complainants in respect of their desired outcomes must be respected and not rewritten by the Tribunal based on what the Complainant's Representative deems appropriate.
- [9] Other complainants were directed through UBC's processes through the AMS Sexual Assault Support Centre [**SASC**] and/or resident advisors and professors. SASC was a highly specialized service that could support students through the Universities processes. Again, the autonomy of each of these complainants in respect of their desired outcomes must be respected and not rewritten by the Tribunal based on what the Complainant's Representative deems appropriate.
- [10] Another branch of the University's response system was Campus Security which does not play an investigative role in a formal sense and instead primarily takes interviews and forward documentation to the appropriate office. Campus Security will, however, review matters for safety concerns. They also regularly assist with safety planning and can assist with referrals for further assistance.
- [11] A service provider's duty to respond reasonably and appropriately to complaints of discrimination is one of reasonableness, not correctness or perfection. This standard contemplates that there is more than one way for a service provider to respond to a complaint of discrimination. As the various Complainants experiences in this complaint demonstrate, there is not a one fix solution for responding to

complaints of sexual harassment or sexual assault. The Complainants all wanted something different that worked for them.

- [12] The Complainants' sincerely held belief that the University processes were inappropriate in the circumstances of each complainant because they took issue with certain aspects of it does not make it discriminatory. For the reasons that will be set out in more detail in this submission, the Respondent submits that the evidence establishes that the Respondent treated the complaints seriously, dealt with the matters promptly and sensitively, and reasonably investigated and acted in response to the various concerns and complaints, all while respecting the individual autonomy of each complaint.

II. SCOPE OF COMPLAINT

1. Class Definitions

- [13] In this case, an important component of the parameters of the complaint is the description of the two classes which Ms. Kirchmeier represents. They are:

A. Mordvinov class

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

B. General class

Any female student of UBC who at least reported, disclosed or communicated to a faculty member or administrative staff member of UBC by any means, including telephone, fax, email or in person in a formal, informal, scheduled or unscheduled interaction, a concern about sexual misconduct between January 8, 2014 and November 6, 2015 by a male studying or employed at UBC towards a female student enrolled at UBC.

Kirchmeier and others v. University of British Columbia (No. 3), 2020 BCHRT 102

2. Time Period

- [14] The temporal scope of the Complaint is therefore January 8, 2014 and November 6, 2015

[the Time Period].

III. LEGAL FRAMEWORK

1. Onus of Proof and Evidentiary Standard

- [15] The burden of proof is on a complainant to prove her allegations of discrimination on a balance of probabilities.
- [16] The standard of proof in a human rights tribunal proceeding is on a balance of probabilities, meaning that a scenario is more likely than not: *F.H. v. McDougall*, 2008 SCC 53 [*McDougall*].
- [17] With respect to making findings of fact, in *McDougall*, the Court adopted the following passage from *In re B (Children)*, [2008] 3 W.L.R. 1, [2008] UKHL 35 (cited in *McDougall* at para. 44):

44 If a legal rule requires a fact to be proved (a “fact in issue”), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.

[emphasis added]

- [18] Because the Complainants bear the burden of proof, the Tribunal must find that the facts they asserted happened in respect to each allegation for the allegation to be sustained.

2. Credibility & Reliability of Witnesses

- [19] In order to make findings of fact where the facts are in dispute, the Tribunal will be required to evaluate the credibility of the witnesses who testified at the hearing of the Complaint.
- [20] It is incumbent on the Tribunal to assess the testimony of witnesses against objective facts and circumstances to determine whether a witness’s account is more probable than not. The test was articulated by the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, at p. 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The

test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[emphasis added]

- [21] The Tribunal has also relied on the principles summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides ... The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally. Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.

[emphasis added]

- [22] In *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, [2019] B.C.J. No. 836, Mayer J. made the following comments in respect of credibility assessment:

89 Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the sincerity of a witness and the accuracy of the evidence the witness provides. In some cases it becomes apparent that a witness has made a conscious decision not to tell the truth. In other cases, a witness may be sincere but their evidence may not be accurate for a number of reasons.

90 Evaluating the accuracy of a witness' evidence involves consideration of factors including the witness' ability and opportunity to observe events, the firmness of their memory, their objectivity, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his pre-trial evidence by the time of trial or their testimony at trial during direct and cross examination, whether the witness' testimony seems implausible, and the demeanor of a witness generally.

91 An acceptable methodology for assessing credibility is to first consider the testimony of a witness on its own followed by an analysis of whether the witness' story is inherently believable in the context of the

facts of the entire case. Then, the testimony should be evaluated based upon the consistency of the evidence with that of other witnesses and with documentary evidence, with testimony of non-party, disinterested witnesses being particularly instructive. At the end, the court should determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[23] The Court went on to list additional factors which may impact credibility. The factors the Respondent says are pertinent to this case are:

(a) A series of inconsistencies, considered in their totality, may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' testimony: (citations omitted)

(b) Where a witness is found to have lied under oath their credibility may be wholly undermined: (citations omitted)

...

(f) Credibility will be in doubt when a witness's explanation defies business logic or common sense: (citations omitted)

(g) Credibility may be impacted where a witness is evasive, longwinded and argumentative in their responses to questions: (citation omitted)

[24] Rather than relying solely on the sincere demeanour of a witness to determine credibility, the Tribunal must assess the testimony of the witness taking into account the witness's capacity to observe, the reliability of his or her recollection, any reason the witness may have to exaggerate or embellish, and the consistency of the testimony with the probabilities as to what occurred. Based on these and other considerations, the Tribunal may choose to accept some but not all of a witness's testimony where an overall picture emerges about the events relevant to the issues.

[25] In this case there were a number of inconsistencies in the complainant witnesses' own evidence and a number of inconsistencies between the complainant's evidence and the testimony of other witnesses. While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to question the reliability of the witness' evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at the least the trier of fact should look to the totality of the inconsistencies in order to assess whether the evidence is reliable.

[26] Where the Tribunal has to resolve conflicts in the evidence, it must be guided by the factors

set out in *Faryna v Chorny* and *Bradshaw v. Stenner*.

- [27] In *Boshoff v. Inspired Retreats*, 2014 BCHRT 6, Tribunal Member Juricevic reviewed the methodology used to assess credibility as outlined by the BC Supreme Court in *Bradshaw v. Stenner*:

[...] a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (para 187)

- [28] The Tribunal Member noted the value of evaluating witness testimony against relevant documents made contemporaneously with the events at issue:

The most helpful evidence in this case is the documents created at the time of events. These provide the most accurate reflection of what occurred, rather than witnesses' memories that have deteriorated through the passage of time, hardened through this proceeding, or been reconstructed. I have used contemporaneous internal emails...as a reliable yardstick against which to compare and assess the reliability of the witnesses' testimony. (at para 8)

- [29] Since the burden of proof in this case is on a balance of probabilities, credibility and reliability are separate, but related, considerations: *Insurance Corporation of British Columbia v. Singh*, 2020 BCSC 1320 at para. 174. One way of understanding the distinction is that credibility is about whether a witness is telling the truth and reliability is about whether their evidence is accurate: *Andreas v. Vu*, 2020 BCSC 1144, at para. 40. As a result, the Respondent submits that the Tribunal must also take into consideration that a credible witness can give unreliable evidence: *Singh* at para. 174.

3. Discrimination in the Provision of a Service

- [30] The onus is on the Complainant to prove a *prima facie* case of discrimination in respect of the Complaint allegations. The elements of the test of *prima facie* discrimination will be discussed in detail later in the Respondent's submission.
- [31] It is only if the Complainant establishes a *prima facie* case in respect of a Complaint allegation that the burden shifts to the Respondent. If a *prima facie* case is not made out

by the Complainant in respect of an allegation, there is no need for the Tribunal to consider any further evidence regarding the allegation.

- [32] If the Complainant establishes a *prima facie* case in respect of a Complaint allegation, the Respondent is then given an opportunity to raise defences including the reasonableness of its response. Reasonableness must be evaluated in the context of the Time Period of the complaint and not on today's societal standards.

4. Shifting Burden of Proof

- [33] The shifting burden of proof was described by the Canadian Human Rights Tribunal in *Chopra v. Canada (Health)*, 2008 CHRT 39:

102 In human rights cases, as well as in civil cases, the complainant or the plaintiff bears the burden of proof and must prove the allegations he or she makes on a balance of probabilities. (*Ontario (Human Rights Commission) v. Simpsons Sears Ltd. (O'Malley)*, [1985] 2 S.C.R. 536.

103 This said, in proceedings before Human Rights Tribunals, the complainant must establish a *prima facie* case of discrimination in order to have the burden of proof shift to the respondent who then has to provide a *reasonable explanation* which is not a mere pretext that will convince the Tribunal that, for example, the reason for not appointing a person to a position was not motivated in any way by a prohibited ground of discrimination. As stated by Mr. Justice McIntyre in *O'Malley*, a *prima facie* case is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent or, in other words, one where the evidence, if believed, and not satisfactorily explained by the respondent, will suffice for the complainant to succeed.

5. Hearsay Concerns

- [34] The Tribunal has broad discretion to admit hearsay evidence, but this discretion is tempered by considerations of reliability and the specific context of the case, particularly concerning survivor autonomy.
- [35] The Respondent acknowledges the Tribunal is not bound by strict rules of evidence and may receive and accept evidence and information it considers "necessary and appropriate," even if it would not be admissible in a court of law (Human Rights Code, [s. 27.2(1)]; *Becker v. Cariboo Chevrolet Oldsmobile Pontiac Buick GMC Ltd.* (No. 2), 2004 BCHRT 80 [18]; *Imperial Parking v. Bali et al*, 2005 BCSC 643 [15]; *Neumann v. Lafarge Canada* (No. 6), 2009 BCHRT 187, [52]; *Francis v. BC Ministry of Justice* (No. 3), 2019 BCHRT 136, at para 10).

- [36] This latitude extends to hearsay evidence, which the Tribunal can admit and rely on for the truth of its contents, provided it is necessary and appropriate to do so (*Neumann v. Lafarge Canada (No. 6)*, [55]; *C.S. v British Columbia (Human Rights Tribunal)*, [39]).
- [37] However, the admissibility of hearsay does not equate to its reliability or the weight it should be given (*Imperial Parking v. Bali et al*, [39], [43]). The Tribunal must assess the reliability of hearsay evidence, considering factors such as whether the source of the hearsay testifies and whether the other party has the opportunity to test the information through cross-examination (*Francis v. BC Ministry of Justice (No. 3)*, at para 20]). Hearsay from unidentified sources, or evidence that cannot be tested, is unlikely to be sufficiently reliable to be useful and may be given little or no weight (*Becker v. Cariboo Chevrolet Oldsmobile Pontiac Buick GMC Ltd. (No. 2)*, at para 26).
- [38] In this case, the Jane Doe complainants in the general class did not testify, meaning their evidence is presented through hearsay or in many instances even double hearsay. This absence of direct testimony significantly impacts the reliability of the evidence, as it cannot be tested through cross-examination (*Francis v. BC Ministry of Justice (No. 3)*, [20]). The use of double hearsay further diminishes its reliability.
- [39] Further, relying on such untested hearsay evidence, particularly for non-testifying Jane Doe Complainants, risks undermining the principle of survivor autonomy, which is central to a trauma-informed approach. The Tribunal is committed to a trauma-informed process, built on the principle of "doing no harm. Both the University and the complainants' own submissions have emphasized the importance of survivor autonomy, choice, and control over their stories and participation in processes. Third-party reporting without explicit consent can remove a survivor's agency, potentially re-traumatize them, and disregard their boundaries.
- [40] Admitting and relying on hearsay evidence from Jane Doe Complainants who chose not to testify, or whose consent for their stories to be used in this manner is unclear, could contradict the very principles of survivor autonomy and trauma-informed practice that the parties and the Tribunal aim to uphold. While the Tribunal has the discretion to admit such evidence, it should exercise extreme caution and consider giving little or no weight to hearsay evidence from non-testifying Jane Doe Complainants, consistent with both reliability concerns and the imperative to respect survivor autonomy and avoid re-traumatization.

6. Class vs Group Complaints

- [41] Another issue in this case is the fact that this has been characterized as a class complaint. The Respondent submits that this matter should be treated as group complaints and that each complainant has to be assessed on an individual basis. It appears that the Complainants agree with this approach based on their final submissions. A more thorough summary of the argument regarding group complaints is in the argument section.

7. Trauma-informed approach

- [42] A further issue in this case is one of survivor autonomy. The complainants include several individuals who were not harassed or assaulted by DM or anyone else. Instead, they are seeking damages for several individuals who engaged with the Respondent University in relation to other student's lived experiences. These complainants did not experience any direct underlying sexual harassment or assault or other adverse treatment but rather wanted to insert themselves into the complaint process of others without their knowledge or consent. This is inherently problematic as it expands the scope of class and detracts from those students who did have adverse lived experiences. This Tribunal has recently held that choice and control are key pillars of "trauma informed practice": *Hale v. University of British Columbia Okanagan (No. 5)*, 2023 BCHRT 121.
- [43] Third party reporting (particularly where an individual or institution reports an alleged sexual assault to authorities without the explicit consent or participation of the survivor) runs contrary to these foundational principles for several reasons:

Loss of Autonomy: Third party reporting removes the survivor's agency to decide if, when, and how to disclose their experience to authorities. This undermines their autonomy and control over the process, which are essential for recovery and empowerment.

Potential for Re-traumatization: Being subjected to a process initiated without their consent can re-traumatize survivors, as it may echo the loss of control experienced during the assault itself.

Informed Decision-Making: Trauma-informed practice requires that survivors be provided with sufficient information and support to make their own choices. Third party reporting deprives them of the opportunity to weigh the personal, legal, and emotional implications of reporting.

Respect for Dignity and Boundaries: The Supreme Court of Canada and BC courts have affirmed that sexual autonomy and the right to set boundaries are fundamental rights (*R. v. Maslehati*, 2024 BCCA 207, para 66). The Respondent submits that third party reporting without survivor consent disregards these boundaries by imposing an external decision on the survivor.

- [44] Ultimately, third party reporting of sexual assaults without survivor consent is inconsistent with trauma-informed practice because it strips survivors of the very choice and control that such an approach is designed to protect. Upholding survivor autonomy is not only a matter of best practice but also a recognition of their inherent rights to dignity, agency, and self-determination.
- [45] Further using it as the foundation for a human rights complaint expands the scope of the Code to apply to those who do not experience any adverse treatment in the first instance.

IV. EVIDENCE

A. **Background Facts**

1. **The University of British Columbia**

- [46] The University of British Columbia [UBC] is a university continued and governed by the *University Act*, R.S.B.C. 1996, c. 468.

2. **Campus Security**

- [47] Steve Bohnen was head of Campus Security during the relevant time period. He testified that the role of Campus Security is to promote the well-being of the university community. It is available to assist the campus community 24 hours a day, 7 days a week.
- [48] Mr. Bohnen testified that Campus Security does not play an investigative role and instead primarily take interviews and forward documentation to the appropriate office.
- [49] In 2015 and 2016, there were a number of resources in place to keep members of the UBC community safe on campus. These included Safewalk, which is a service that provides a safe means of traveling on Campus through which students can be accompanied to their destination.
- [50] Mr. Bohnen testified that the RCMP do not have a permanent presence on the UBC campus. In the event of an emergency, Campus Security is one of the first responders to

arrive on scene.

3. **Resources and Policies**

[51] UBC acknowledges its obligation to provide a safe, harassment-free workplace and educational environment.

[52] UBC maintains an Equity and Inclusion Office [**EIO**]. During the Time Period the EIO had Ms. Kay as the Director, Conflict Management in the Equity and Inclusion Office.

[53] UBC has in place a number of policies relating to student conduct, as well as discrimination and harassment.

(i) ***Policy 3: Discrimination and Harassment***

[54] UBC published Policy 3: Discrimination and Harassment in January 1995. It addresses complaints of Discrimination and Harassment on grounds protected by the B.C. *Human Rights Code* [the **Code**].

[55] In *Hale v. University of British Columbia Okanagan (No. 5)*, 2023 BCHRT 121, the Tribunal found that during the relevant period, the University interpreted Policy 3 as not applying to allegations of discrimination between students (*Hale No. 5* at para 60). Although Ms. Hale strongly disagreed with this interpretation, the Tribunal accepted that this was how UBC understood and applied the policy at the time.

[56] In this case, Ms. Kay, Director of Conflict Management, Equity & Inclusion, testified that Policy 3 was her primary focus at the university. She understood Policy 3 to reflect the Human Rights Code, defining protected grounds, discrimination, harassment, retaliation, and university commitments.

[57] Ms. Kay's role involved informal management of human rights complaints, capacity building, and conflict management, with a mandate to manage conflict informally wherever possible. She was not permitted to investigate complaints; anything requiring investigation was referred to appropriate agencies like Non-Academic Misconduct (NAM) and Chad Hyson's office.

(ii) ***Statement on Respectful Environment for Students, Faculty and Staff***

[58] UBC published a Statement on Respectful Environment for Students, Faculty and Staff [the **Statement**] in 2008. UBC revised the Statement in 2014.

- [59] The Statement prohibits personal harassment, which is harassment not based on a ground protected by the *Code*, and provides that where other policies or procedures already exist to address unacceptable conduct, those govern and not the Statement.

(iii) ***Policy 14: Response to At-Risk Behaviours***

- [60] UBC approved Policy 14: Response to At-Risk Behaviour [**Policy 14**] on June 8, 2011. Policy 14 permits UBC to respond to at-risk behaviour exhibited by students, faculty, staff and visitors that may threaten personal safety.

Exhibit. 1 p. 149 – Policy 14 – section 1.10

- [61] Mr. Hyson testified that during the Time Period, Policy 14 could be applied as an interim measure pending the outcome of an investigation or disciplinary process. These measures are not findings of misconduct but are intended to ensure safety and prevent further harm.
- [62] Mr. Hyson testified that the Vice President Students (or designate) has the authority to approve and issue these restrictions for respondent students, often based on recommendations from Student Conduct or Campus Security.

(iv) ***Student Code of Conduct***

- [63] UBC maintains the Code of Conduct, under which students may be subject to discipline for engaging in non-academic misconduct. Students are expected to conduct themselves in a manner that contributes positively to an environment in which respect, civility, diversity, opportunity, and inclusiveness are valued.
- [64] Section 4.2.1 sets out misconduct against persons under the Code of Conduct. Among the explicitly prohibited conduct is any physically aggressive conduct, assault, and harassment, as well as unwelcome or persistent conduct that a student knows, or ought to reasonably know, would cause another person to feel demeaned, intimidated, or harassed.

Exhibit 1 p. 292

- [65] The Code of Conduct contemplates various options for resolving complaints of misconduct, including hearings before the NAM Committee. If allegations of non-academic misconduct are heard by the NAM Committee, the NAM Committee reports its findings to the President of UBC, who must then issue reasons and a description of any disciplinary measures imposed. This is contemplated by the *University Act*.
- [66] The Code of Conduct contemplates discipline up to and including expulsion from UBC.

4. Reporting Options for Allegations of Sexual Assault during the Time Period

- [67] There were a number of options for reporting a complaint of sexual assault during the Time Period.
- [68] Students could report to staff, faculty, Campus Security, or the Equity and Inclusion Office. Following a report, students were directed to the Equity and Inclusion Office or the office of the Student Conduct Manager (Hyson).
- [69] At the EIO, Ms. Kay would take a report and take steps to determine what had occurred and to refer to any disciplinary process if needed. She would also engage any resources to support survivors and any education as a preventative measure going forward.
- [70] Her evidence was that each situation is unique and how those resources are engaged would be specific to the situation at hand, with a goal of restoring a harassment and discrimination free zone and ensure safety and prevent a recurrence.
- [71] Depending on the circumstances, Ms. Kay could engage in non-formal resolution procedures, which include working with the student complainant and respondent and their faculty to come to an agreeable resolution.
- [72] In some circumstances, Ms. Kay referred the matters to Mr. Hyson and the Non-Academic Misconduct route.

5. The President's Non-Academic Misconduct Committees

(i) *Jurisdiction and Purpose*

- [73] Mr. Hyson, the Student Conduct Manager, testified that purpose of the NAM Committees is to hear and adjudicate complaints of non-academic misconduct on behalf of the President and then to report its findings to the President as to whether non-academic misconduct occurred. Mr. Hyson testified that the Code of Conduct sets out the expectations or various types of behaviour that might fall within the jurisdiction of the NAM Committees.

- [74] Robbie Morrison, Chair of the Non-Academic Misconduct Committee during 2014 and 2015, testified that the rules for the NAM Committees [the **Rules**] set out the process and procedures that the Chair and the NAM Committees must follow when investigating a complaint of non-academic misconduct.

(ii) **Interpretation and Application of the Rules**

- [75] The Rules govern the initiation of the NAM Process, the procedure, and the conduct of proceedings in respect of a complaint of non-academic misconduct.

Exhibit 1 p.310

- [76] Mr. Morrison testified that Rule 14 states: “these proceedings are investigatory and the Committee is conducting an inquiry not a trial. The purpose of these proceedings is to explore and investigate allegations and to reach an informed conclusion as to whether or not non-academic misconduct occurred.”

- [77] Section 7 of the Student Code outlines Committee’s role being to make the findings and determinations on the balance of probabilities, with the President then deciding what disciplinary measures, if any, are to be taken (ss. 7.1, 7.4). The Committee provides a report of its findings for the President’s consideration. The President makes the decision of whether non-academic misconduct has occurred deciding whether to accept the NAM Committee’s findings and determinations. The President’s decision is then sent out in a letter, which includes setting out any disciplinary measures, and encloses a copy of the NAM Committee report (upon which the President’s decision is based) (7.4, 8.1).

Exhibit 1 p. 318 – Section 7

- [78] The president provides a decision in writing to the respondent

Exhibit 1 p. 319 – Section 8.1

6. NAM Committee Members

- [79] In 2015, the Chair of the UBC NAM Committee was Mr. Morrison.

- [80] Mr. Morrison testified that students are selected by university counsel to be members of the NAM Committee.

(i) ***Training – Student Conduct Manager***

- [81] Mr. Hyson received a two-day administrative tribunal training contracted by the University. Beginning in December 2014, Hyson participated in approximately 20 hours of trauma-

informed practice training with Jennifer Hollinshead from UBC Counselling Services, alongside campus security and RCMP members. This training emphasized respecting survivor autonomy, understanding the impact of trauma on memory and anxiety, minimizing repeated retelling of traumatic events, and being mindful of how questions are asked.

(ii) ***Training – EIO***

- [82] The EIO, represented by Ms. Kay (and former lawyer who worked in Human Rights), also engaged in trauma-informed practice training with Jennifer Hollinshead in 2014 or 2015. This training focused on survivor-centered approaches, the effects of trauma on memory, and the importance of not forcing survivors into processes they were unprepared for. Ms. Kay had a strong working knowledge of the Human Rights Code from prior work and additional training. Her responsibilities included providing education on protected grounds, bullying, harassment, university policy, capacity building, and informal management of human rights complaints.

(iii) ***SASC***

- [83] The Sexual Assault Support Centre (SASC) served as a campus resource for survivors, offering peer counseling, hospital accompaniment, advocacy during reporting processes, individual counseling, academic accommodations, and support services. SASC representatives participated in meetings to inform students about their role and limitations, such as small staff size and regular business hours. SASC was frequently referenced as a referral point for support services by both EIO staff and Student Conduct staff. Ashley Bentley from SASC was a support person who attended meetings with and provided support to complainants. Although SASC is legally separate from the University, UBC works cooperatively with SASC.

(iv) ***Training – NAM Committee Members***

- [84] Mr. Morrison testified that he, along with NAM committee members, attended training organized by the Office of the University Counsel. He recalled attending an administrative law training session for the NAM annually on topics such as principles of natural justice / duty of fairness; how to hold a fair hearing; what makes a good decision; and case studies.
- [85] Prior to hearing the Mordvinov case, Mr. Morrison and Committee members attended Non-Academic Misconduct Committee supplemental training focused on cases of sexual assault and sexual harassment”.

[86] Mr. Morrison also had prior training through his previous roles as Residence Life Manager where he heard cases of misconduct in resident. He also had training in his role as Manager, Student Engagement with UBC Student Development & Services. He volunteered to be Chair of the NAM starting in 2012. He remained as Chair of the UBC Vancouver NAM until approximately the end of 2015 and stayed on until January 2016 to assist with the transition for the new chair.

7. Review of UBC's Policies and Procedures Regarding Sexual Assault

[87] On or about December 3, 2015, UBC retained lawyer Paula Butler to review UBC's response to concerns of sexual harassment and sexual assault raised by certain UBC students regarding a fellow student [DM].

[88] Ms. Butler delivered her executive summary to UBC in February 2016.

Exhibit 4, Tab 6

[89] In late 2015, UBC established the Sexual Assault Policy Committee [the **SAP Committee**]. The purpose of the SAP Committee was to develop a new sexual assault policy [**Policy 131**]. Kimberly Beck, UBC Legal Counsel, and Sara-Jane Finlay, then Vice-President, of UBC's Equity & Inclusion, co-chaired the Committee. The Committee members included a cross section of faculty, staff, graduate and undergraduate students.

[90] In April 2016, the Provincial Government passed the *Sexual Violence and Misconduct Policy Act*, S.B.C. 2016, c. 23 [the **SVMP Act**]. The *Act* requires all educational institutions to have policy addressing sexual assault, but does not require any particular form of process for dealing with complaints or reports of sexual assault.

8. Policy 131 – Sexual Assault and Other Sexual Misconduct

[91] Policy 131 was approved and came into effect on May 18, 2017 after extensive discussions with community partners and meetings of the Policy Development Committees. It resulted in a complete new structure of resources and offices.

[92] As discussed above, the tribunal should be cautious to not evaluate or impose obligation on the respondent on the basis of the framework outlined in Policy 131. As will be submitted below, the standard upon which the tribunal is to evaluate the respondent is the traditional *prima facie* test.

- [93] Standards and best practices evolve over time. Therefore, the assessment of whether a past process was discriminatory must consider the context, knowledge, and prevailing philosophies of the time it was in effect, rather than solely through the lens of current understanding or newly adopted policies.
- [94] While the introduction of new policies and processes may reflect an evolution in best practices or a commitment to improvement, they do not retroactively define the discriminatory nature of past practices. The critical inquiry is whether, at the time, the university's conduct had an adverse impact on individuals in a way connected to a protected characteristic, based on the standards applicable then (*Kirchmeier obo others v. University of British Columbia (No. 4)*, at para 98).
- [95] In any event, the Complainants' Representative did not lead any evidence of best practices at the time or in the subsequent decade that has passed since the Time Period. Neither of the experts called by the Complainants testified as to a current system or different system of reporting and disclosing sexual misconduct.

B. The Mordvinov (DM) Complaint

1. Evidence of Glynnis Kirchmeier

- [96] Ms. Kirchmeier was enrolled as a graduate student in the History Department. Ms. Kirchmeier testified that she started UBC in 2011 and graduated in 2014 with a Master's degree in history.
- [97] Ms. Kirchmeier's evidence in chief was that in her first semester at UBC in 2011 she witnessed DM touching Student A at a party in a way that she interpreted as making Student A feel uncomfortable, based on her body language. She later asked student A about it who told her that she and DM live together at Green College and he "touches her every single day". According to Ms. Kirchmeier, at that time Student A did not want to talk to anyone about the issue.
- [98] She further testified that she engaged in a conversation that Student D was having with another student. Student D had just ended a long-term relationship, and she mentioned to DM that her relationship had ended, and he started flirting with her which she found odd. She heard Student D state that DM walked her home, tried to kiss her at her door and she put her hand out and stopped him and they did not kiss and he was texting her

and she talked to another student Elizabeth Nolan about this.

- [99] In cross-examination, Ms. Kirchmeier agreed that she had a consensual sexual relationship with DM that included two sexual encounters in a two-week period. She agreed that she had witnessed DM's behavior towards Student A prior to her sexual relationship with DM. She further agreed that she attempted to initiate dates with DM in December 2013 and he told her he did not want to have any more liaisons with her.

January 2014 Complaint

- [100] Ms. Kirchmeier testified that in January 2014 she went to a movie with two male grad students, and they were discussing various students when one of them mentioned that a student named Caitlin had slapped DM "because he was touching her so much that she felt compelled to slap and scream at him". The following day, on January 8, 2014, Ms. Kirchmeier emailed Michel Ducharme with her concerns about DM. She did not know at the time that the Caitlin mentioned was in fact Caitlin Cunningham, as she was under the impression it was Kaitlin Russell. Ms. Kirchmeier stated in cross-examination that by the summer of 2014 she knew that her information about the Caitlin assault was inaccurate. In cross-examination she stated that she did not clarify or correct her email to Mr. Ducharme, because by the summer of 2014 Ms. Cunningham was at the meeting herself to speak directly on the issue. She initially stated that she did not know that she had made the error until June or July 2014. However, in cross-examination she agreed that there was a communication with Sam Fenn the same day that she sent the email to Mr. Ducharme which indicated that her information regarding Caitlin Cunningham was not accurate. She stated that she did not correct this inaccuracy because she expected Mr. Ducharme to reach out to Sam Fenn himself.
- [101] Ms. Kirchmeier stated in cross-examination that it did not matter that things were not clear at that time because what DM was doing was public and affecting the student environment, and the fact that some aspects of it were not fully clear at the early stage did not matter because it "turned out to be true."
- [102] Ms. Kirchmeier stated in cross-examination that she would not necessarily always advise UBC if she had provided inaccurate information during the complaint process. She stated that eventually there was a breakdown in trust and that it was possible she would advise of a mistake if it furthered her objectives in getting UBC to respond to her complaints about DM.

- [103] After sending the email she told Eric and Sam Fenn that she had sent the email, and Eric told her she had made a mistake in doing so because it would trigger an investigation and she was dragging people into this that did not agree to it. Sam, however, did not even recall the comments in the conversation from the night before. Ms. Kirchmeier then sent a follow-up email to Mr. Ducharme to rescind her allegations that same day. She stated that she did not rescind her allegations because they were untrue, but rather because she did not want there to be a process initiated at that time. On cross-examination, Ms. Kirchmeier maintained that even though she rescinded her allegations, she assumed UBC would see the written email as grounds to initiate a process that she was not aware of. However, she agreed that when she emailed Ms. Kay on January 26, 2014, she told her that Mr. Ducharme had assured her that the meeting with Ms. Kay would not be an escalation of the situation. On cross-examination she stated that she wanted a professor to speak to DM and that is the end she was seeking at the time. She agreed that it would be accurate to say that she did not want a formal process to be initiated at that time.
- [104] Ms. Kirchmeier stated in cross-examination that she did not consult with the other survivors at the time of her email to Mr. Ducharme because she wanted to see what the university process was first to see whether it would be the right thing to do. In cross-examination, Ms. Kirchmeier stated that she respected Student A's wishes in 2011 when she told her she did not want to talk to anyone and that Student A had told Stephen Hay that she could not help him when he reached out to her; however, by 2014 she realized that DM had demonstrated similar behavior toward another student so she felt there needed to be action by other people to stop him.
- [105] Mr. Ducharme replied to her and recommended they have further discussion on the issue. He later emailed her on January 16, 2014, to advise that the proper thing for her to do is to contact Ms. Kay at the Equity and Inclusion Office. At this point she had vaguely heard of the EO office but did not know anything about its function. She asked Mr. Ducharme if they were still meeting and he told her no and that she would only need to meet with Ms. Kay.
- [106] Ms. Kirchmeier testified that her impression at that point was that the complaint was on a "robust institutional track". Her expectation was that Ms. Kay would have a conversation with DM or direct Mr. Ducharme to do it, since it appeared she had the power to do such things. Ms. Kirchmeier testified that she felt it would be more effective if a male professor spoke to DM but she was open to seeing what Ms. Kay was proposing.
- [107] Ms. Kirchmeier testified that the initial meeting with Ms. Kay did not happen due to a

miscommunication which Ms. Kay missed. They decided to talk on the phone first, which occurred on February 6 or 8, 2014. She stated that during the phone call she disclosed to Ms. Kay her concerns including some incidents from 2011 which Ms. Kay noted was “so long ago”. She testified that Ms. Kay interrupted her a few times and asked her if student A wanted to come forward herself, at which point Ms. Kirchmeier told her that Student A was no longer at UBC so she would not be available. She further testified that Ms. Kay implied during the phone call that Ms. Kirchmeier was prejudiced against Russians due to her referencing DM needing to be told no “like a dog”. She stated that Ms. Kay then made further comments about how culture is important and they gave examples of African students being known to be harassers due to cultural differences.

[108] Ms. Kirchmeier testified that Ms. Kay said that because what she observed with student A was so long ago nothing could be done, and that she was a third-party witness and not complaining about his conduct towards her personally because her interactions were consensual, but he was sexually harassing others. Ms. Kay told her that as a third-party person you cannot come forward with complaints. Ms. Kirchmeier then qualified this evidence and said that is not what Ms. Kay said but it’s “what she took from it” and that she did not have standing in this community as an alumni. Ms. Kirchmeier disagreed with this because she noted Ms. Cunningham was still a student and she still felt a part of the UBC community, but what she was told that she could not talk about this. She testified that Ms. Kay never used the term sexual harassment and would not validate her use of the term. She testified that Ms. Kay then told her that if she was telling people there is a problem then it is like hiding a snake in the grass and telling people there is a snake in the grass. She felt that in one breath she was being discouraged from talking about it but in the same breath Ms. Kay said if you want to encourage potential other people who had bad experiences then tell them to come out and talk to her, so she provided her with the names of student A, Student D, and Mr. Hay. Ms. Kay also was firm that Mr. Ducharme would not be able to talk to DM and that Ms. Kay was not going to talk to DM and at this point Ms. Kirchmeier’s job was to get other people to complain to UBC.

[109] Ms. Kirchmeier testified that at the initial meeting, Ms. Kay told her she could not come forward because she was an alumna and was a third-party witness to non-consensual touching of others.

[110] In cross-examination Ms. Kirchmeier agreed that she did not seek Student A’s consent to contact Mr. Ducharme or speak with Ms. Kay. Her reasoning on cross-examination was that she felt DM was escalating his behavior in respect of Ms. Cunningham who she mistakenly thought was Ms. Russell at the time and it was at that point beyond a private

matter between them.

- [111] She further agreed that she did not seek the consent of Student D in coming forward. She stated in cross-examination that Student D opted out from the HRT complaint.
- [112] Ms. Kirchmeier was asked to review and comment on Ms. Kay's notes from the meeting for accuracy and noted there were some inaccuracies including an omission of any reference to the Caitlin Cunningham incident which she raised during the meeting.
- [113] In cross-examination Ms. Kirchmeier agreed that she had stated that during their February 2014 phone call Ms. Kay spent much time detailing the difference between formal and informal complaints, and she did not look up UBC policies at that time.
- [114] She testified that after the meeting she later learned from Caitlin Cunningham some time in summer 2014 that DM had raped a former student he knew from Green College in Toronto.
- [115] She testified that DM had received funding for attending the conference in Toronto. She agreed in cross-examination that she had no direct knowledge that UBC was providing funding to DM to attend the conference. She further stated on cross-examination that she was not aware that the conference was in St. Catharines, not Toronto. She stated that her presumption that DM had been receiving funding from UBC was based on an educated guess.
- [116] In cross-examination Ms. Kirchmeier agreed that she was an advocate but stated that she was also a complainant. She stated that she uses the terms "bystander" and "third party reports" interchangeably and that she was not a direct victim of misconduct, but she observed it.
- [117] She had been in communication with a number of the other complainants in the matter but had not communicated with Student A, Student B, or Student E. When asked in cross-examination about the concept of victims having control over their own stories in terms of trauma informed practice, Ms. Kirchmeier stated that this is balanced against the interest in having the case go forward whether the survivor consents.
- [118] She stated on cross-examination that Ms. Kay told her that her complaint was not included because she was a former student, which Ms. Kirchmeier later told Ms. Finlay. While Ms. Kirchmeier maintained that she had been told she could not bring a complaint because she was an alumni, she nevertheless agreed on cross-examination that she was never

restricted or denied meetings with Ms. Kay, and in fact met with her again in July 2014 and in fact was told that Ms. Kay had suggested she attend the July 2014 meeting.

Summer 2014 Meetings with Monica Kay

- [119] In June 2014 she was contacted by Caitlin Cunningham about her experience with DM. At this point she understood that the Caitlin that was being referred to was Ms. Cunningham and not Ms. Russell. Ms. Cunningham wanted to organize a meeting of the female grad students who had negative experiences with DM and share knowledge about it.
- [120] She met at Kafka's coffee shop with Ms. Cunningham, Ms. Russel, [REDACTED], and Meaghan Longstaffe. Ms. Kirchmeier shared her observations of the conduct of DM she observed as did the others. The consensus was that they needed to go back to UBC with information that UBC could act on to prevent DM from doing anything to other women.
- [121] A few of the women then proceeded to communicate with Dr. Loo, the Department Head of the History Department. Ms. Kirchmeier was not part of these communications. She provided further evidence about the meeting with Dr. Loo, which she did not attend.
- [122] Ms. Kirchmeier, however, did attend the meeting on July 31, 2014, with Dr. Loo, Ms. Kay, Laura Ishiguro, Meagan Longstaffe, Sarah Bashan, Caitlin Cunningham, and Ms. Russell.
- [123] Her recollection was that Ms. Kay "dominated" the conversation for the first half hour and in some ways, she was not a very clear speaker. Ms. Kay said the administration knew about Student B's rape but that the history grad students were not allowed to talk about it. Ms. Kay also used the snakes in the grass metaphor and how the students could not talk about it. Ms. Kirchmeier recalls the students saying they were concerned about their safety with the fall coming up and DM being around. She could not recall whether they knew where DM was at that time. She testified that she challenged Ms. Kay on the snake metaphor and Ms. Kay was defensive and the atmosphere was tense.
- [124] Ms. Kirchmeier testified that Ms. Kay talked about the formal vs informal process, but it was really unclear, although she understood there needed to be a complaint made in the process. Ms. Kirchmeier testified that she again shared her concerns about DM and Ms. Kay told her that her complaint could not be a standalone complaint but could be used to support someone else's complaint.
- [125] She testified that during the meeting Ms. Cunningham disclosed the headlock incident but

there was no follow-up or expressed concern by administrators. She testified that there was no reference by administrators to Policy 3 or the NAM process. She testified that she felt that Ms. Cunningham's disclosure had initiated the complaint and the next step would be a further meeting. She again noted that there was an overall lack of clarity about the process after the meeting.

[126] In cross-examination Ms. Kirchmeier stated that at the July 2014 meeting Ms. Kay denied that she had previously told Ms. Kirchmeier she could not bring a complaint because she was an alumni and that Ms. Kirchmeier must have misunderstood. She agreed on cross-examination that she was not given any impression at the July 2014 meeting that she was not part of the process.

[127] In cross-examination Ms. Kirchmeier agreed that she was not left with the impression after the meeting that she had filed a formal complaint, although she expected there to be follow-up given Ms. Cunningham's disclosure of the assault.

[128] A further meeting took place in August 2014, but Ms. Kirchmeier did not attend as it was for current students and her job at the time was her main concern.

December 2014

[129] Ms. Kirchmeier testified that she moved to Seattle and did not have any involvement in UBC until December 2015. She testified she received an email from Ms. Cunningham on December 5, 2014, indicating she had filed a formal complaint asking if she would support her by filing her own evidence about Student A. She testified that she learned that the July meeting had not resulted in any action and that the grad students were upset and their concerns about safety were not addressed.

[130] In cross-examination Ms. Kirchmeier agreed that she did not write any follow-up emails to anyone at UBC after the July 2014 meeting until she was contacted by Ms. Cunningham in December. She stated that prior to receiving the email from Ms. Cunningham in December advising that she was going to put forward a formal complaint, her impression was that Ms. Cunningham had already done that in July. She agreed in cross-examination that Ms. Cunningham was making a formal complaint completely independent of Ms. Kirchmeier and that she was simply asking her to join her in the process but there was no expectation of doing so.

[131] Ms. Kirchmeier emailed Ms. Kay in December 2014 to set up a meeting. In cross-examination Ms. Kirchmeier agreed that her email to Ms. Kay to set up the meeting

indicated that she had at that time decided to file an informal complaint. She said she used the word 'informal' because Ms. Cunningham's email had used the term. She agreed in cross-examination that this was the first time she was filing a complaint in the official process because the remedy she had been looking for in January 2014 was for someone to have a discussion with DM.

[132] With respect to whether she understood the difference between formal vs informal complaints, Ms. Kirchmeier testified that she knew the formal complaint would have a disciplinary outcome, but her sense was that if there were many informal complaints then UBC could act on its own and there would be a restriction.

[133] Ms. Kirchmeier testified that she had set up a phone call with Ms. Kay on December 17, 2014 in which she repeated all her concerns about Student A as well as her other observations of DM. She felt it was outrageous that Ms. Kay had not previously taken notes of their July meeting. She testified that she pushed Ms. Kay on what the next steps were and that Ms. Kay was defensive.

[134] In cross-examination Ms. Kirchmeier stated that she disclosed her consensual sexual relationship with DM to Ms. Kay in the December 2014 meeting, 11 months after the initial contact with Ms. Kay.

[135] She agreed that at that time she was not told she could not proceed due to being an alumni but she was frustrated with trying to get Ms. Kay to pin down what happened next.

[136] A follow-up phone call took place between Ms. Kirchmeier, Ms. Cunningham and Ms. Kay on December 23, 2014. Ms. Kirchmeier testified that she pushed Ms. Kay as to why there had been a delay and Ms. Kay was again defensive during this meeting and told them they had misunderstood her. Ms. Kirchmeier testified that Ms. Kay told them there would be another meeting after the holiday break and they were clear that they wanted to be informed before DM was told about their complaints and that they were reassured in this regard.

[137] Ms. Kirchmeier testified that in May 2015 she was provided with Ms. Kay's notes from their December 17, 2014, phone call which had a number of inaccuracies. Ms. Kirchmeier testified that she understood the "subtext" of these notes suggesting that she wanted to take revenge on DM and that there was some sort of sexual stereotyping because she told Ms. Kay that she had slept with DM as well.

[138] Ms. Kirchmeier testified that her point in coming forward was to support Ms. Cunningham

and that Ms. Kay represented to her that their complaints were tied together, so she found it odd that there was no mention of Ms. Cunningham in Ms. Kay's notes.

- [139] Ms. Kirchmeier testified that she also sent an email to her mentor, Professor Wang about her concerns and how she had been told by Ms. Kay that they could not do anything because she was a third party reporter and an alumna and that Prof. Wang disagreed with this and told her that UBC should not be giving DM money. Ms. Kirchmeier testified that Prof. Wang spoke to Dr. Loo after this, and she was told that Dr. Loo was receptive.

January 2015

- [140] Ms. Kirchmeier testified that near the end of January 2015 she reached out to Ms. Kay to find out when they were meeting next and she was told that Ms. Kay had already met with Mr. Hyson and Ashley Bentley from the SASC. Ms. Kirchmeier testified that she felt Ms. Kay had been untrustworthy and misled them in that she was trying to get ahead of their complaints or give their complaints the "slow walk" and make them go away.
- [141] In cross-examination Ms. Kirchmeier agreed that she was never told she was a problem to be managed, and no one refused to meet with her at any time, and no one told her they did not believe her. She further stated that Ms. Kay had solicited her complaint to support Ms. Cunningham's complaint and agreed on cross-examination that at that point Ms. Kay was not denying her going forward with a complaint.
- [142] Ms. Kirchmeier testified that she spoke to Ms. Cunningham about the proposed mediation option earlier and Ms. Cunningham was clear that mediation was not going to happen because DM hurt her and she was not at fault.
- [143] Ms. Kirchmeier testified that Ms. Kay told her she was impartial. She further testified that she was told there would be due process for DM, but that did not apply to her and Ms. Cunningham.
- [144] Ms. Kirchmeier testified that there was a further meeting between Ms. Cunningham, Ms. Kay and Mr. Hyson that she did not attend and she agreed in cross-examination that she sent an email which indicated that Ms. Cunningham's in person presence would be sufficient.
- [145] Ms. Kirchmeier testified that in late April she learned that a notice of restriction had been sent to DM without any forewarning, and she emailed Mr. Hyson advising they had been promised that they would be informed before DM was told about the complaint. Mr. Hyson

replied that he was unaware that she had a complaint.

[146] Ms. Kirchmeier testified that in the spring of 2015 she drove up from Seattle to attend a meeting with the History Graduate Students Association because she was asked to help strategize with how to release a statement on the concerns of the students in the department. She recalled she was invited to tell the group about her interactions with attempting to report on DM in the previous year and how it seemed as though nothing had been done despite allegations from various women, and that although the history department said they could not do anything it was not true because they controlled the money that DM was receiving.

[147] Ms. Kirchmeier testified that she learned through Dr. Loo and other grad students that DM was no longer on campus and had gone away to study. He was “all but” dissertation, meaning his course work was completed but he still had to submit and defend his final dissertation. She was concerned that DM was still receiving funding from UBC and that he was attending conferences.

Communications with faculty and staff

[148] She testified that she reached out to Mr. Hyson after learning about the Notice of Restriction of DM. In cross-examination she agreed that she told Mr. Hyson in an email that “to be clear, I do not believe and have never believed that my information constitutes a complaint in and of itself.” She maintained that in hindsight she believes that her information merited the institutional informal action that she was requesting back in January 2014 which was a conversation between a faculty member and DM.

Exhibit 6, p.782

[149] Ms. Kirchmeier was told by Mr. Hyson that two other students had come forward. In cross-examination Ms. Kirchmeier agreed that Mr. Hyson had mentioned that he was willing to speak to DM about her concerns, but she declined this offer as it felt insufficient to address the serious allegations once the process had been activated and she wanted her observations of what happened to Student A to be included in the NAM process.

[150] On May 12, 2015, she emailed Dr. Loo and Mr. Hyson expressing her concerns over Ms. Kay. Dr. Loo did not reply but Mr. Hyson replied on May 17, 2015, and provided her with the notes of Ms. Kay from their previous meeting. Ms. Kirchmeier testified that Mr. Hyson referenced Policy 14 and this was the first time she learned of the policy. She was told by Mr. Hyson that it was unclear whether her report would be needed. She replied to Mr.

Hyson ten days later, on May 27, 2015, and provided corrections on Ms. Kay's notes, including that Ms. Kay did not correctly record what her complaint was, which included observations of nonconsensual touching of student A as well as the assault of Ms. Cunningham. Ms. Kirchmeier testified that at this point she felt there was an attempt to whittle away at the complaints and her complaint had disappeared.

Exhibit 6. P. 658-659, 685

- [151] In cross-examination she stated that she wanted her complaint included in the NAM as it related to Student A. She stated that although Student A did not want to come forward, she felt that DM's behavior had impacted her environment at UBC. She agreed that she was no longer a student at the time, but that UBC environment included an intellectual community as well.
- [152] Mr. Hyson responded and told her to raise her concerns with Ms. Kay to Ms. Kay or her supervisor. Ms. Kirchmeier testified that the response from Mr. Hyson made it seem like there was an understanding to accommodate DM and not disrupt his education for women's concerns and that does not appreciate the time urgency that all these students. After reading Mr. Hyson's email, Ms. Kirchmeier testified that her understanding of the process at that time was that there was policy 14 so there could have been restrictions placed on him earlier, and the NAM process, and that there is a group of undergrad students that would come together and ultimately make the decision. Ms. Kirchmeier testified that having undergrads on the NAM committee seemed inappropriate because they are not professionals, not employees of the university, and they just want a resume line item and want to be able to say they are students and can recognize plagiarism.
- [153] In cross-examination Ms. Kirchmeier agreed that she had no actual knowledge about whether these individuals were undergrad students and she did not know that one of the NAM Committee members was a law student and another was a medical student.
- [154] Ms. Kirchmeier testified that Mr. Hay reached out to Student A during this time and Student A replied that she was not interested in talking to Ms. Kirchmeier.
- [155] Ms. Kirchmeier testified that she reached out to Ombudsperson Shirley Nakata about her concerns and that Ms. Nakata was sympathetic and encouraged her to speak with Dr. Loo.
- [156] Ms. Kirchmeier testified that in June 2015, she contacted Sara Jane Finlay, who was Ms. Kay's supervisor, and emailed her regarding her concerns that Ms. Kay seemed to have

been thwarting her attempts to get the administration to speak to DM and there were delays. She also told Dr. Finlay that Ms. Kay should be fired. Ms. Kirchmeier testified that she was not satisfied with Dr. Finlay's response as it seemed non-committal.

[157] Ms. Kirchmeier testified that throughout this period she remained in communication with Ms. Russell and Ms. Cunningham to ensure Mr. Hyson was receiving adequate pressure to continue with the NAM process which they were concerned was dragging on.

[158] Ms. Kirchmeier testified that there were several other communications with Mr. Hyson, which weighed on her mental health and that she felt upset and angry, misled, and scared for others, as well as abandoned by her mentors. She testified that she promised to help Ms. Cunningham and this took time away from her work and her ability to enjoy life.

[159] In cross-examination Ms. Kirchmeier agreed that she did not tell Mr. Hyson or Mr. Morrison about her consensual sexual relationship with DM.

Interaction with the Media and Media Publications

[160] Ms. Kirchmeier testified that in May or June 2015 she was contacted by Ronna Syed of CBC who told her she was producing a documentary on the issue of institutional responses to reports about sexual misconduct and Ms. Kirchmeier agreed to participate.

[161] Ms. Kirchmeier testified that on July 8, 2015, she received an email from Mr. Hyson in which he proposed a mediated resolution which Ms. Kirchmeier did not find acceptable because it seemed like DM would simply admit to sexual assault and then be able to continue with the program. She testified to a number of communications with Mr. Hyson in which she felt that Mr. Hyson was trying to disregard her complaint.

Exhibit 6 p. 756

[162] Ms. Kirchmeier testified that on August 12, 2015, she received an email from Mr. Hyson which noted that he had completed the statement of allegations and provided it to the NAM Chair and did not include Ms. Kirchmeier's complaint. Mr. Hyson advised her that there were concerns that by including her statements regarding DM's conduct in the Department, where he respected clearly defined verbal boundaries that he may try to use those to refute the more serious allegations regarding his conduct outside the Department. Ms. Kirchmeier responded to Mr. Hyson's email with academic sources which speak to patterns of behavior in sexual harassment.

Exhibit 6 p. 785

- [163] Ms. Kirchmeier testified that she experienced “an emotional storm” during this time in that she was frustrated and hurt about not having a recognized stake in the process. She agreed that she was very upset at not being included in the NAM process and told UBC she would “kick up a nasty fuss” if she was not included.
- [164] Ms. Kirchmeier testified that on August 20, 2015, Mr. Morrison responded and provided her with the contact information for NAM President, Mr. Morrison, and he reiterated the reasons why her statement was excluded from the Statement of Allegations.
- [165] In cross-examination she agreed that she was never prevented from presenting her complaint to the Chair of the NAM Committee and that Mr. Hyson had provided her with contact information for Mr. Morrison.
- [166] Ms. Kirchmeier testified on September 9, 2015, she then reached out to Mr. Morrison; to ask him to distribute a letter she wrote to the panel which outlined why she felt her complaints should be included in the NAM process. She testified that she did not receive a reply from Mr. Morrison, so she reached out to Shirley Nakata and Dr. Finlay to ask them to intervene. Ms. Nakata did email Mr. Morrison to request a response on September 14, 2015. Mr. Morrison initially responded that he was in the process of preparing a response.
- [167] Ms. Kirchmeier testified that letter of September 9, 2015, to the NAM committee included what she said was an accurate overview of her allegations against DM. She agreed on cross-examination that she referred to Student A and Student D without confirming with them the accuracy of the allegations, and that she also referred to “reputation” and “rumour”. She stated that UBC had the ability to ask questions based on the names she had given them if they felt the information provided was insufficient.
- [168] Her letter also provided research that she wanted the NAM committee to review. She agreed on cross-examination that this was advocacy.
- [169] Ms. Kirchmeier testified that on September 22, 2015, Mr. Morrison responded with a number of reasons why her letter could not be provided to the NAM Committee, including that she did not witness the alleged misconduct and that she was never personally harassed or assaulted, as well as the fact that some of her allegations were based on rumour and reputation.
- [170] Ms. Kirchmeier testified that she replied to this email on September 24, 2015, arguing why she disagreed with his assessment and that she was unaware of any policy that excludes a third party report of misconduct. She agreed on cross-examination that she did not

advise Mr. Morrison or Mr. Hyson at any point that she had rescinded her January 2014 allegations and her purpose in doing so was to lead the reader to believe that nothing had been done by UBC since her complaining in January 2014.

- [171] Ms. Kirchmeier testified that on September 30, 2015, Mr. Morrison responded with a different set of reasons why her statement was not included, including that the NAM committee was considering a different allegation of misconduct.
- [172] Ms. Kirchmeier testified that she replied to this email on October 2, 2015, stating that his justification for exclusion of her report was unfounded. She told Mr. Morrison that she was forced to repeatedly embarrass him in front of his colleagues, by having to involve Ms. Nakata and Dr. Finlay. She stated in cross-examination that she had done so because from the outset she had not expected Mr. Morrison to reply to her and she assumed he was trying to whittle away her complaint. She agreed on cross that this was based on assumptions and in fact he engaged with her before proceeding with the NAM hearing and there were back and forth communications.
- [173] Ms. Kirchmeier testified that on October 2, 2015, she received an email from Ms. Cunningham in which the NAM had asked her for further information. Ms. Kirchmeier testified that she sent this letter to Dr. Loo asking that she intervene, but that Dr. Loo indicated it was not her place to do so. Ms. Kirchmeier testified that she felt vulnerable and exposed to someone who was hostile.
- [174] Ms. Kirchmeier testified that she was not included in the NAM hearing. She provided hearsay information on the process which was relayed to her by Ms. Cunningham and which she received through an FOI request.
- [175] She agreed in cross-examination that had her complaint been included she was hoping for the outcome to be that DM would be expelled and she agreed that this is what happened in any event.
- [176] Ms. Kirchmeier testified that on October 20, 2015, she contacted MLA David Eby about her concerns. Mr. Eby responded by drafting a letter to the UBC president which Ms. Kirchmeier was consulted on for accuracy.
- [177] In cross-examination Ms. Kirchmeier agreed that Mr. Eby had commented to her that making allegations against individuals runs a risk of being defamatory. She agreed that she is currently being sued by a former UBC professor Stephen Galloway in respect of defamation. She agreed that she testified in the Galloway preliminary decision hearing

that she participated in the creation of UBC's new policy by sitting with drafters, attending conferences organized by UBC, circulating policy analysis letters, and criticizing specifics on social media and that she told the court that UBC incorporated some of her critiques into the final version, Policy 131. In cross-examination, Ms. Kirchmeier clarified that this was accurate to the extent that UBC sought public comment on the new policy. She further stated that even if she is found to have defamed Mr. Galloway in reality, she will not be responsible for damages for defamation because she lives in the United States and has no connection to Canada and he cannot recover from her in any way.

- [178] Ms. Kirchmeier testified that on November 12, 2015, Ms. Cunningham shared a letter she had received from Mr. Hyson which indicated DM was found to have committed misconduct and that he was no longer a student.

Injury to Dignity

- [179] Ms. Kirchmeier testified that on November 14, 2015 she learned that DM was named as a speaker in an upcoming conference. She testified that she was distraught when she learned this as it felt like Prof. Kojevnikov was trying to advance DM's career and he was being prioritized and that the university did not care about the women. She testified she did not sleep that night and was crying the following day. She further testified that she had sleep disruption from then until she was married in 2017 and several times a week she would use cough syrup or alcohol as a sleep aid. She testified that her sleep disruption was from November 14, 2015, until March 2017.
- [180] In cross-examination Ms. Kirchmeier stated that she did not seek any counseling services in respect of the events that arise in this complaint.
- [181] Ms. Kirchmeier testified that a few days later on November 19, 2015, she noted DM was no longer listed on the conference's website.
- [182] Ms. Kirchmeier then testified to a voluminous number of documents that include policy documents from UBC which were identified for the Tribunal. These include policies regarding harassment and reporting to administration. The Respondent submits that the Tribunal cannot rely on any of her testimony about these documents and notes that the Complainants never adduced any evidence about these documents other than tendering them through Ms. Kirchmeier's testimony.
- [183] Ms. Kirchmeier testified that the CBC 5th Estate documentary aired on November 2015 after which the UBC President issued an apology, but the apology did not address the

women directly and they never received an apology directly. Ms. Kirchmeier further testified that she felt it was not a sincere apology.

[184] Ms. Kirchmeier testified that she was never contacted by UBC about the resolution of the NAM process or about her complaints regarding DM.

[185] Ms. Kirchmeier testified that on November 22, 2015, she and Ms. Cunningham and Ms. Ms. Russell held a press conference about their complaints about UBC. The conference took place in a room at UBC and she testified that it entailed hours of work in terms of preparing what they wanted to say.

[186] Ms. Kirchmeier testified that she met with Paula Butler on January 5, 2015, who was hired by UBC to conduct a review of UBC's response to the concerns of sexual harassment and assault. She testified that she agreed to meet with Ms. Butler first to see if she was reasonable before the other complainants met with her. She testified that Ms. Butlers' notes regarding their meeting were accurate.

[187] Ms. Kirchmeier testified that she recalled that the Butler Report was released on February 15, 2015, as she was at a conference at UBC at the time and she recalled that Dr. Finlay came into the room to state the report had come out and that UBC did not do anything wrong.

[188] Ms. Kirchmeier testified that she filed the HRT complaint shortly after the release of the Butler report. She also testified that she organized a gathering in the spring at Vancouver Public Library which was a day long discussion about institutional response to sexual misconduct and included drafting of a group statement which she later used for lobbying public officials.

[189] She testified that in the spring of 2016 UBC was drafting a sexual assault policy and she was asked by UBC law professors to comment on the draft.

[190] In terms of the impact of her complaints on her relationship with UBC faculty, Ms. Kirchmeier testified that she no longer has a relationship with any UBC faculty other than Professor Paul Krause. She testified that she particularly felt she lost a relationship with her mentors Cole Thrush and Jessica Wang. She testified that in October 2015 she telephoned professor Wang to tell her there would be a CBC documentary coming out and that prof. Wang yelled into the phone "oh my god" and they have not spoken since.

[191] She testified that she applied for her PhD in history at UBC in the fall of 2013 or 2014 but

that she had a conversation with prof. Wang at that time and she was told it was not well-prepared which Ms. Kirchmeier agreed with. She testified that her intention was to take the year and reapply but with all the events surrounding the complaint process she chose not to. In cross-examination she agreed that she did not apply to any other universities and it was her choice not to reapply. She stated that she stopped being interested in applying for a PhD after these experiences, and she obtained a paralegal job in 2015 which she knew she could make a career out of, but at the same time she grew a distaste for academia. In cross-examination she stated that at the time of choosing not to pursue a PhD she mourned the decision and was distressed by it, but she has moved on.

[192] In cross-examination she testified that she took the LSAT in 2018 and applied to law school in 2021 but was not successful. At the time of testifying she stated she had a baby in 2018 and no longer planned to attend law school. She also agreed that she has moved on from pursuing a career or further studies in history.

[193] Ms. Kirchmeier testified that she no longer feels a part of the UBC community and that she is not welcome. She has grieved the loss of her relationship with Prof. Wang and Prof. Cole Thrush. She agreed in cross-examination that she has not made any attempts to reach out to Prof. Wang and she was never told by Prof. Wang not to contact her.

[194] She testified that the process of the HRT complaint has taken a toll as it has been almost 8 years and she wants to move on with her life and that she has been using her vacation time to work on the case. She testified that she does not speak to her family about the case and it is quite isolating.

[195] She testified that she missed a prestigious training opportunity in order to prepare for the November hearing and that she delayed law school applications because she had been thinking about hearing dates.

[196] In terms of her expenses, Ms. Kirchmeier testified that the complaint was funded with grants from AMS student funds in the amount of \$55,000.00 and she received \$1,000.00 from donors. She funded the rest of the complaint on her own. Her salary as of 2023 was \$119,000 US per year as she makes \$57.21 per hour.

[197] Ms. Kirchmeier then testified as to her expenses which included travel for the litigation, and wage loss from missing work. She is seeking damages for one month of wage loss in May 2018 when she claims she was unable to work due to being in the process of seeking disclosure from the University.

[198] In cross-examination Ms. Kirchmeier agreed that she had been in communications with

Dalya Israel of WAVAW since 2016. She stated that she spoke to Ms. Israel about how to respond to disclosures of sexual misconduct or assault made by another person

2. Evidence of Caitlin Cunningham

- [199] Ms. Cunningham testified over the course of several days, which was partially due to way she answered questions. Initially her evidence was reasonable, but as her testimony continued, she began to exaggerate her answers and she tended to provide long winded responses to questions which ended far from the subject matter of the question. She spent a significant portion of her evidence describing the impact of the reporting process on her ability to trust the institution and her mental health status. Her evidence about the impact of the alleged delays on the part of UBC appeared unreasonable and exaggerated.
- [200] At the time of her testimony, Ms. Cunningham was currently in second year law at UBC. She testified that she graduated from her undergraduate program in 2014 and worked as a tutor for some years after. She has completed a PhD at Birkbeck College in the UK. Ms. Cunningham testified that she was 24 when she began her master's degree at UBC and had ambitions to be an academic. Initially she found the atmosphere in the department to be exciting, with a lot of possibilities for her future and respect for the professors.
- [201] Ms. Cunningham testified that she was involved in the History Grad Student Association and was event coordinator and eventually president of the HGSA. She organized social events and helped organize the Burge lecture series.
- [202] She testified that she did not recall any reference to policies or procedures of the university during orientation at UBC. She had no concept of the university's role when it came to report of sexual violence.
- [203] Ms. Cunningham testified that DM was a student in the History Department at the same time she was attending and she only had one course with him. She recalled that he did not come to class often or often came late, and she noticed he behaved in an unprofessional manner and would put his feet up on tables during lecture. She testified that he was an acquaintance and she had little interaction with him. Ms. Cunningham testified that she noticed on a few occasions that DM did not respect personal boundaries and that a couple times he walked by her and would touch her hips or her lower back which made her uncomfortable.

- [204] Ms. Cunningham testified that in April 2013 a group of graduate students (masters and PhD students) had a games night at a house near Cambie Street and 16th. The group then walked to a bar on Cambie and Broadway. Ms. Cunningham testified when they were walking down Cambie towards Broadway, DM was trying to get her attention and eventually grabbed her ponytail and pulled it down and pinned her head against his abdomen area. She testified that she was so scared that she swung against him to create physical space, which was deeply humiliating and DM called her a prude. Ms. Cunningham testified that multiple people witnessed the event and asked if she was alright. She testified that her partner then arrived at the bar sometime later and she shared the story with him as well.
- [205] Ms. Cunningham testified that following this event she felt humiliated by the incident and wanted to avoid the humiliation of having to talk about it. She did not report the incident to anyone at the University. She testified that she only spoke about it with people she was close to, and one of her classmates who later acted as witness in the NAM hearing. Ms. Cunningham's feelings about the incident changed if at all, as they wanted to avoid the humiliation of having to talk about it. Ms. Cunningham testified that she made efforts to avoid being in the same room with DM, such as the reading group they were both in, and she ensured his room Qualicum conference would not be near hers. She also avoided him at other events and did not go to lectures he was attending.
- [206] Ms. Cunningham testified that she attended a mandatory workshop put on by the Equity Office in March 2014. She testified that it seemed like the workshop was designed for a much younger audience and it felt like a schoolyard politics scenarios workshop. She testified that she did not leave the workshop with an understanding of what response UBC would have to allegations of sexual harassment or assault. She did not remember anyone from the Equity Office speaking at the front of the room and had not had any interaction with Ms. Kay up to that point.
- [207] In cross-examination, she was shown documents of the workshop materials and agreed it was possible that the Code of Conduct provisions were discussed at the workshop. She further agreed that based on the scenarios presented, there was reference to policies, but she argued that referring students to policies does not seem like a solution that would have impact on the situation because "referencing a bunch of words did not feel like a meaningful response" and policy in writing does not translate into action. She stated that she did not recall looking up the information about the equity office contact information slide that was presented during the workshop. While she understood the role of the equity and inclusion office, she testified that she did not have a clear understanding of what they

actually do. She also agreed that she had no immediate need to make inquiries or reports at that time because reporting the assault was not a priority for her.

[208] She testified in cross-examination that while she was president of the HGSA she did not deal with any issues specific to harassment and did not engage with policy 3. She did not have a specific recollection but agreed that she would have been aware of the policy because of the workshop. She agreed that despite her complaints about the workshop, she did not provide any feedback to the university on the issue.

[209] Ms. Cunningham testified that in the summer of 2014 she received an email from a fellow student Mr. Hay who indicated he was communicating with her because he heard what had happened to her the year prior, and that DM had just raped his friend. Ms. Cunningham discussed her concerns about DM with her reading group and confided that she felt responsibility towards the individual who was raped and she felt inclined to report to the university. She testified that no one in the reading group knew how to make a report to the University, so they decided to speak to a faculty member to seek support from the instruction. Ms. Cunningham sent an email to Professor Tamara Myers in July 2014, along with her classmate Ms. Russell. She agreed in cross-examination that she did not reference her assault in the email to Ms. Myers.

[210] She testified that Prof. Myers was overwhelmingly supportive and was very concerned about their report. Ms. Myers indicated that they should contact History Department Head Dr. Loo.

Meetings in summer 2014

[211] She testified that the group decided to reach out to others to piece together a larger narrative surrounding their concerns about DM. On July 18, 2014, Ms. Cunningham sent an email to Ms. Kirchmeier indicating that a group of students had similar concerns about DM and suggesting they connect to take their concerns to Dr. Loo. The group met at Kafkas' coffee shop on July 22, 2014, to obtain an understanding of the larger narrative of their concerns about DM. She could not recall whether she disclosed her assault at that meeting but agreed that she had previously disclosed it at her book club meeting and that such disclosure was voluntary. She agreed there were no UBC staff or administrators at her book club meeting where she disclosed.

[212] With respect to Ms. Cunningham's understanding of what Ms. Kirchmeier's complaint entailed, she testified that her understanding is that DM's behavior towards Ms. Kirchmeier

involved taking advantage of her vulnerability and knowingly overstepping boundaries, which she describes as sexual harassment.

- [213] In cross-examination, Ms. Cunningham stated that she did not know “in such sweeping terms” that Ms. Kirchmeier did not bring forward any complaints about her own experience or allegations of harassment and assault by DM and that her concerns were apparently focused on other students. In cross-examination, Ms. Cunningham acknowledged that Ms. Kirchmeier had two consensual sexual contacts with DM, but she argued that she could not see the relevance of that information.
- [214] On July 22, 2014, after the meeting at Kafka’s, Ms. Cunningham, along with Sarah Thornton, Meghan Longstaffe, and Ms. Russell emailed Dr. Loo advising that they were concerned about sexually aggressive behavior or DM. The email inquired about what sort of documentation would be needed to help resolve the issue in the department. The same day Dr. Loo responded that she had had a previous conversation with Ms. Myers and made an appointment to see Ms. Kay in the Equity and Inclusion Office. In cross-examination, Ms. Cunningham agreed that she was not looking for a particular outcome at the time of sending the email to Dr. Loo and that Dr. Loo moved quickly and she appreciated that.
- [215] She testified that on July 31, 2014, she attended a meeting with Ms. Thornton, Meghan Longstaffe, Ms. Russell, Professor Laura Ishiguroo, Dr. Loo and Ms. Kay. In cross-examination, Ms. Cunningham testified that she could not recall whether Ms. Kirchmeier was at that meeting.
- [216] She testified that her expectation was that student would present their concerns and the administrative staff would be able to tell them what to do in terms of next steps.
- [217] Ms. Cunningham testified in direct examination that she was having trouble with recalling the timeline but recalled that there was another meeting with administration in which she disclosed what happened between her and DM in April 2013. In cross-examination it was clarified that the disclosure occurred at the July 31, 2014 meeting. She stated that she had mixed feelings about disclosing in that she understood she needed to share the story as a way to move forward but she was self-conscious about disclosing what she viewed to be an unprofessional incident in front of the department head. She testified that “it was not an immensely traumatizing event in [her] life” but also that she did not feel good about having to disclose it to her superiors. She testified that her impression was that Ms. Kay and Dr. Loo took this disclosure seriously.

[218] In cross-examination, she agreed that the disclosure was voluntary and it was the first time that she had made anyone at UBC aware of the assault by DM that occurred in April 2013. She agreed that her testimony was that it was clear from the meeting that Dr. Loo and Ms. Kay had certain processes and procedures they had to adhere to.

[219] She testified that at this meeting her sense from Ms. Kay was that there was not a clear path forward. She further testified in her evidence in chief that at this meeting she began to understand that there is a distinction between formal and informal complaint processes, although she was confused about the distinction.

[220] She testified that there was no mention of the NAM process at any of the meetings, and she does not recall understanding anything about the NAM process until much later. She recalled that mediation was a potential option the university offers but she did not want it and felt weird to sit in the room with DM when there was not a relationship to repair. She recalls being provided with a list of resources such as campus security, but she did not pay much attention because they were related to the idea of being assaulted again.

[221] In cross-examination, she agreed that she knew that UBC could not do anything until someone came forward as a complainant. She agreed that she was under the impression that she could file a complaint and was aware that there was a process for filing a complaint, although she was not clear at that point that it would achieve what she wanted, which was a record of her experience. She agreed at that meeting she was not looking for a particular outcome and that this felt like the beginning of a conversation.

[222] Ms. Cunningham testified as follows:

At this point in the meeting I understood there was minimal that would be able to occur about those particular things until myself or someone else chose to move forward with complaint about DM, so I understand I would have to have another meeting with Ms. Kay if I chose to move forward with a complaint process formal or informal.

[223] Ms. Cunningham testified that there was another meeting in August 2014 with the group of students from the previous meeting, as well as Ms. Kay, an individual from campus security, and Ashley Bentley from SASC. She testified that they were provided with information on resources and support services including the option of a safe walk home, but she felt like there was not an answer for what to do in a situation in which an individual was regularly harassing other students in the department. Her expectation after the meeting was that there would be a further meeting with Ms. Kay if she chose to move forward with the complaint process whether formal or informal. In cross-examination, she

agreed that she did not go forward with a complaint until December 2014.

[224] She testified that the message from Ms. Kay was that they were “poised and ready to act” but what was needed was for her to make a complaint. She testified that she understood at that point that her “disclosing or talking about it which [she] had done at that meeting was insufficient and that [she] needed to participate in a more formalized process, so [she] felt apprehensive.” She testified that it was communicated to her by UBC that their hands were tied until she decided to move forward.

[225] Ms. Cunningham submitted her thesis at that point in August 2014, and she was no longer on campus. She testified she was busy working as a tutor.

[226] On September 12, 2014, she received an email from Dr. Loo requesting a meeting after the student’s response to the department meeting concerning discrimination and harassment which Ms. Cunningham did not attend. She attended the meeting with Dr. Loo and others via skype. She agreed in cross-examination that she was busy off campus during that time period and the issues were “not at the forefront of [her] mind”. She recalled that Dr. Loo appeared agitated and fearful over an email that Professor Krause had sent in response to the department meeting. She agreed in cross-examination that she did not raise her complaint about DM at that meeting. She further agreed that she did not reach out to Ms. Kay to file a complaint in the days after this meeting. She agreed in cross-examination that Dr. Loo had their best interests in mind when she called that meeting and she had no factual basis to believe that Dr. Loo was not prioritizing them.

Formal complaint

[227] Ms. Cunningham testified that on December 4, 2014, she emailed Ms. Kay and her “intention was to make some kind of institutionally recognized complaint about harassment by DM.” Up until that time she had been busy with work, and she had graduated by November 2014. She testified that she was apprehensive about talking about the situation but felt that there was no other way to do so. She felt that she was helping fellow students by putting on record what she experienced, and that she was also helping Ms. Kay and Tina Loo by upholding a culture of safety. She testified that it was important for her to create a record so the university would have more knowledge and would be empowered to know what to do next.

[228] She agreed in cross-examination that she was never under the impression that she was going ahead with a joint complaint with Ms. Kirchmeier.

[229] She testified that recognized that there were many other female students who were uncomfortable with DM's behavior and she was concerned that information and complaints would be dealt with in silos so it was important to share the information so that the university could have a full understanding of DM and their concerns.

[230] She testified that she waited until after graduation to file a complaint because she did not want to slow down her momentum towards completing her dissertation but also because she did not want the existence of her complaint to shape any of her professional work. She agreed in cross-examination that her ultimately filing a complaint did not have any impact on her career, as she applied for and was accepted into her PhD program and she applied for and was accepted to UBC Law School, which is the same school which is the subject matter of this complaint.

[231] She stated as follows with respect to her coming forward at that time:

I understood that to a degree they couldn't do anything about that particular student until formal complaint lodged and I understand there is a formal process here you just can't address a student out of the blue without formal complaint process. I understood all that.

[232] She met with Ms. Kay in early December 2014, and she told her the story of what had happened with DM in April 2013. She testified that at the meeting, she was confused about the difference between formal and informal complaints but that she thought she was filing an informal complaint but that it meant that they could mobilize on that complaint. She testified that her recollection was that if she lodged a formal complaint, she may have to be a participant in mediation, which she did not want to do.

[233] Ms. Cunningham testified that during her meeting with Ms. Kay in December 2014 Ms. Kay told her it would be helpful to the university to have others come forward with complaints, but at the same time she told her that there is a risk of an appearance of collusion which Ms. Cunningham felt was confusing. Ms. Cunningham testified that her expectation at that point was that Ms. Kay would initiate some sort of investigation process, although she did not leave the meeting with a clear understanding of what would happen next, but she expected she would have another meeting with Ms. Kay. She testified that she does not recall any referral to policy at the December 2014 meeting.

[234] With respect to the suggestion that she reach out to others to gather other complaints, Ms. Cunningham could not recall what was said but rather that this was "the general sentiment" to have more information about DM.

- [235] She agreed in cross-examination that Ms. Kay advised her that the more information the institution had the better in that the university would be more empowered to act was a good thing.
- [236] She stated that “felt comfortable” and “did not feel at that time traumatized by what happened”. She testified that she was “not keen” to have to retell the story about what happened but understood that it was necessary. She stated that she was also required to address how emotionally affected she was so this required her to dig into an event that she found humiliating and undermined her professionalism. She testified that overall, it “did not feel great” but she understood it was necessary. In cross-examination she agreed that this was the second time she had told the story to a UBC administrator and that it was voluntary.
- [237] After the meeting, Ms. Cunningham sent an email to Ms. Kirchmeier on December 5, 2014 (Exhibit 6, doc 99, p. 319) in which she told her that she lodged an ‘informal complaint’. She testified that she used quotation marks in her email because she was still figuring out working that process. She expressed to Ms. Kirchmeier that she did so on her own volition, no expectation for anyone to join her and she was offering her an opportunity because she knew that Ms. Kirchmeier had been disappointed earlier about how her concerns were handled.
- [238] She agreed in cross-examination that she did not reply to the email from Ms. Kay until December 18, 2014 (Exhibit 6, p. 319). She agreed that Ms. Kay in her email advised her that she was also dealing with complaints from other students regarding DM. She further agreed that she had asked Ms. Kay to include Ashley Bentley from SASC and Ms. Kay advised her that the SASC was closed until January 5, 2015. Ms. Cunningham agreed that she chose to go ahead and meet without Ashley Bentley for the sake of expedience.
- [239] She then attended a meeting with Ms. Kirchmeier and Ms. Kay over skype. When asked about her understanding of the relationship between her complaint and Ms. Kirchmeier’s complaint, she testified that the relationship was only that they concerned the same person and that they would provide her complaint to Ms. Kay to provide greater degree of information regarding the conduct of DM with other students.
- [240] She testified that her expectation was that after the Christmas break, Ms. Kay would set up another meeting with them and Ashley Bentley of SASC. She testified that sometime in the new year there was reference to a meeting with another individual, Mr. Hyson, and she began to realize that Ms. Kay was not the person who would move the complaint

forward. She testified that she felt that Ms. Kay was a “gatekeeper” to the process and that the actual process had not yet been initiated. She testified that she felt misled to the point that she was asking who was the right person to talk to and asking why Ms. Kay was gatekeeping in an attempt to “placate” her which she testified felt dishonest. She felt at that point that she was being “managed” and that the “subtext” of what she was being told by UBC was that Ms. Kay was not who she needed to go forward with the process.

[241] In cross-examination, Ms. Cunningham stated that although she appreciated Ms. Kay’s efforts to move the process forward, she felt that the route taken was “meandering” and questioned why Ms. Kay was involved if the ultimate decision-maker would be someone else entirely.

[242] Ms. Cunningham emailed Ms. Kay around January 28, 2015, to ask about another meeting, and Ms. Kay replied and told her she had already met with Ms. Bentley and Mr. Hyson. She testified that she felt surprised by this and that she was being “talked about” rather than talked with and that she was being managed. In cross-examination, Ms. Cunningham agreed that she had no direct knowledge that the meeting was contrary to interests. Despite this admission, she continuously stated her evidence that she felt Ms. Kay was not working in her best interests but rather her role was vis-a-vis the university and the policy.

[243] Also on January 28, 2015, Ms. Cunningham was emailing with Ms. Kirchmeier and Mr. Singh (Ms. Kirchmeier’s partner at the time). She received an email from Ms. Kirchmeier in which she stated that it seemed the UBC administrators were trying to cut her out (Exhibit 13, RB Doc 99 p. 406). Ms. Cunningham replied on Jan 28, 2015, at 7:34 pm “my thoughts exactly” (Exhibit 13, RB 99 p. 407). She agreed that she emailed Ms. Kay a few minutes later that she was “happy to meet” with her (Exhibit 13, RB 99, 407). She stated in cross-examination that she agreed that the venue for the meeting suited her and that she was trying to continue to be professional in her communications. She stated in cross-examination that she did not have enough information to know one way or another whether to trust them.

[244] She stated that she continued with the process because she felt committed to it. She disagreed that she was the author of the process but stated that she was the “instigator”. She agreed that there were options presented to her throughout the process but qualified it in that the “streams were constrained”. She agreed that she was given the option to mediate and she chose not to.

[245] She agreed that there were a series of emails in January 2015 attempting to set up a further meeting. She agreed that on February 5, 2015, she sent an email to Ms. Kay advising she could not make the proposed date but to go ahead without her (Exhibit 13, RB 99, p.410). She agreed that when she told Ms. Kay she could not attend, Ms. Kay rescheduled the meeting (Exhibit 13, RB 99 p. 413) because she wanted to include her. She agreed that she did not want to exclude her because she was a key player in the process. When it was put to her that in cross-examination this was therefore not in line with the notion them trying to cut her out of the process, Ms. Cunningham stated “potentially it is” but that she could not say one way or another. She stated that Ms. Kay including her in the meeting was “reassuring.”

NAM Process

[246] She met with Mr. Hyson, Ms. Kay, and Ms. Bentley on February 6, 2015. She testified that at this point she was introduced to the NAM process and that after the meeting she felt reassured that he would be moving the process forward. She agreed that it was likely that Ms. Kirchmeier did not attend this meeting.

[247] She met with Mr. Hyson on February 17, 2015, and he explained the NAM process

[248] In cross-examination, Ms. Cunningham agreed that after her December 2014 meeting with Ms. Kay, the institutional process had begun, although she had no direct knowledge that it happened right after the meeting. She agreed that after her December 2014 meeting Ms. Kay engaged Mr. Hyson. She agreed that she understands now that between December and May 2015 UBC was dealing with other complaints, but she did not know that at the time.

[249] She testified that in May 2015 she was notified that DM had been restricted from campus and that he was informed of the complaint. She testified that she felt shocked after being in limbo and discovering that the process was moving forward and asked to see the narrative of her complaint being sent to DM and Mr. Hyson provided her with Ms. Kay's notes from their December 2014 meeting. She testified that there was editorializing on the part of Ms. Kay and that she would not have described concerns of “aggressive flirting” or “eyeing women”. She testified that she also questioned that the document was being circulated and who had access to it. Ms. Cunningham asked to rewrite her statement and Mr. Hyson said yes. She prepared her statement on May 5, 2015.

[250] In cross-examination, when she was pressed as to what she meant by “circulated”, she

agreed that the statement had only been sent to one person, from Ms. Kay to Mr. Hyson. She stated that “maybe circulated is the wrong word” and that she felt surprised the statement had changed hands.

[251] She testified that she was uncomfortable that her statement was being shared with DM after he was given his Notice of Restriction from Campus. In cross-examination, she was shown the Notice of Restriction (Exhibit. 6. p. 614) and she agreed that it in fact only referenced sexual misconduct towards Student E and does not mention her allegations.

[252] She testified that she met with Ms. Syed later in May and that she had agreed to meet with her because she felt that she was nearly a year in a process that was “at best broken or at worst deliberately designed to conceal or hinder any action”. She testified that when she decided to speak on camera it was in the spirit of being really honest about her experience. She testified that the experience “was not great” and that she “did not love it” but she thought it was important to share her information.

[253] She received an email from Mr. Hyson dated July 8, 2015 (Exhibit6 Doc 308 p. 756) advising her of the complaint proceeding and offering the alternative of a mediated discussion. She testified that she was “incredulous” because she felt like she had been clear that she was not interested in mediation and questioned how a mediation would be possible in a way that would accord with the values the university had communicated to her about respect and safety and dignity. In cross-examination, she agreed that in his email, Mr. Hyson was explaining the process and seeking her input. She agreed that Mr. Hyson was simply presenting her with the option of mediation and wanted her input. She agreed that she is aware now that a mediation option is typical in a proceeding, both judicial and quasi-judicial. She agreed that the goal of mediation is not always to repair a relationship but rather the goal is to resolve the issue to the parties’ satisfaction.

[254] She replied to Mr. Hyson’s email on July 21, 2015, and asked him a series of questions about the education component, which she had little faith in given her understanding of the educational components she had seen at UBC. She agreed in cross-examination that she took two weeks to reply to Mr. Hyson’s email of July 8, 2015. She agreed that she wrote to Mr. Hyson that “your suggestion of educational component while useful, is also vague” but disagreed that she was not being expressly dismissive of the educational component option, but rather that she stated later in her response that she was not comfortable with the option and wanted more information. She agreed that she was seeking more information from Mr. Hyson and asking questions that she wanted to expand on.

- [255] She testified that the suggestion of an alternative measure was a way for DM to avoid the NAM. However, she agreed on cross-examination that this option would go forward only if she agreed. She agreed that her suggestion that Mr. Hyson was making a recommendation for mediation was the wrong word to use and he was simply presenting it as an option. She agreed that in a sense Mr. Hyson was obligated to present her with the options available to her.
- [256] Mr. Hyson replied on July 27, 2015, which she agreed was 6 days later. She testified that he addressed the about role of university, their responsibilities vis-a-vis the allegations, and he reaffirmed that their primary concern was the safety of campus community and clarified the scope of the disciplinary process. She testified that she questioned whether this was truly in line with their values. She agreed in cross-examination that in this email Mr. Hyson invited her to make suggestions for a resolution and that he was offering her the option of her own input in the process. She further agreed that Mr. Hyson confirmed DM was in Russia and that DM was not an imminent physical threat at that time.
- [257] Ms. Cunningham agreed that at the end of his email, Mr. Hyson noted that she did not support the resolution. She agreed that this was an open and fair process and Mr. Hyson was consulting with her. She agreed that he responded to all her questions, and asked for her input on the process, and accepted her decision.
- [258] She agreed in cross-examination that proceeding to the NAM hearing was her decision, and that Mr. Hyson provided her with appropriate, careful, and considerate responses to her concerns.
- [259] She testified that she thought she would be notified before DM was provided with the statement of allegations and in August 2015, she felt it was destabilizing when she found out after the fact that he had been provided with her allegations. In cross-examination, she agreed that as of May 2015 she knew that Mr. Hyson was investigating the complaint, and she agreed that his investigation included the allegations of other students as well. She agreed that just prior to the notification from Mr. Hyson in August 2015 she had been in communication with him and they exchanged emails between July 8 and July 27, 2015. She agreed that after she declined to pursue the alternate process in July that the matter was proceeding but that she was a young student and did not have a lot of understanding of how the bureaucratic processes work.
- [260] She testified that during the summer of 2015 she experienced deterioration of her mental health due to being in limbo with the process and the death of grandmother and receiving

emails about the statement of allegations. She testified that experienced panic attacks and decided to leave her job of tutoring due to her mental health issues. She started seeing a therapist in September 2015. She did some intermittent freelance work during that time. In cross-examination, she agreed there were other factors besides the stress of the UBC complaint process that contributed to her leaving her job, including the fact that the job itself was "quite stressful". She testified that her job involved managing multiple clients and their various needs. She testified that it was challenging to separate the different aspects of her work and personal life. In addition, she testified as to the emotional investment required when dealing with parents who were anxious about their children's well-being in school and it was hard to balance her emotional investment in that.

[261] She testified that on August 25, 2015, Mr. Hyson advised her that DM had been made aware of her complaint and that he was not currently in Canada and not permitted on campus. She agreed that he provided her with a link to the NAM process. She testified that the email introduced her to Mr. Morrison, and he provided her with information about the overall NAM process.

[262] Ms. Cunningham received an email from Mr. Morrison on September 28, 2015 (Exhibit 6, Doc 341, p. 833) introducing himself as Chair of NAM, and advising of the October 19 hearing date. Mr. Morrison wrote as follows:

A hearing date of October 19, 2015 at 12:30pm has been set. It has been very difficult to find dates that work for the Committee, the Respondent and Witnesses. However, if there are extenuating circumstances and this date is not possible, please let me know immediately and I will consider delaying the hearing and working towards a new date. I will send you a confirmation of a meeting location closer to the date of the hearing

[263] In her direct testimony, Ms. Cunningham stated that the words "consider" moving the date were offensive. She stated in cross-examination that she meant that "the subtext" of Mr. Morrison's email was that it would be difficult to find a new date and it there was a possibility that the NAM hearing would occur without her. She agreed that that it is nothing more than a way of Mr. Morrison expressing that her that she had the ability to alter this date and an invitation to her to advise them if the date did not work. She agreed that she did not advise them that the date did not work for her and that she was willing to participate on that date. She further agreed that this is in fact what she wanted, which was to proceed on the earliest possible date.

[264] She testified in chief that she wrote to Mr. Morrison, and she asked to be an observer at the hearing which was denied because she was to be a witness. She then requested that

a number of people be granted observer status. She testified that she was feeling emotional instability at that time and apprehension about the unknowns of the process, including not knowing whether DM would interrogate her. Mr. Morrison advised her she could have one support person, and she ultimately chose Prof. Paul Krause to attend due to his professional expertise.

[265] Ms. Cunningham reviewed her correspondence with Mr. Morrison leading up to the hearing in which she expressed her concerns and questions regarding the process. She was also uncertain about the configuration of the room and the presence of support people. She testified that she had limited information about the overall process, including the number of other complainants, the duration of her involvement, and the requirement to speak about her personal experience.

[266] In cross-examination she agreed that she asked Mr. Morrison a number of questions about the process (Document 351, p. 879) in the email dated September 30, 2015, and he provided her with a response on October 2, 2015 (p. 879). In her email of September 30, 2015, she asked for a support person, and a timeline for the decision and how she will be notified, as well as that she only speak directly to the committee. In cross-examination, she agreed that in his response email (p. 877) he addressed the issue of the support person and acknowledged her concerns about her emotional well-being and safety. She further agreed that he described the process of entering the room and speaking to the committee. She agreed that he advises (p. 878) that the process can be lengthy and provides details about the decision-making process. She agrees that Mr. Morrison also mentions confirming the room location and promises to provide more details. She agrees that Mr. Morrison advises that Ms. Cunningham does not need to visually see the respondent, as he will be present via video and will not address her directly. She agrees that Mr. Morrison advised her that regarding the witnesses, he was still considering this aspect of the process.

[267] She testified that she found it concerning that the NAM committee consisted of undergraduate students, as professionalism was important to her and she was worried about the lack of information regarding the committee's training and expertise. She also questioned the vetting process and the handling of personal information. She testified that she found it demeaning to have her personal information in the hands of potential students who might recognize her name as a teaching assistant, which undermined the professional boundaries she had emphasized.

[268] When it was suggested to her in cross-examination that there was no basis to believe

that undergraduates were not capable of offering courtesy and civility, Ms. Cunningham clarified that her concern was not about the individual capabilities of the undergraduates themselves but rather, she was more concerned about their relationship to her and where they were in the educational process.

[269] Ms. Cunningham agreed that Mr. Morrison provided her with links to the NAM procedure and reviewed them. She stated that she had some understanding of who would serve as the adjudicator in the process, but the exact details are unclear. She agreed that there might have been other processes available to her instead of proceeding with the hearing, but she believed that those alternative processes would not have achieved the outcome she desired.

[270] When offered counseling services by Mr. Morrison, she testified that she already had her own counselor and sought someone with expertise in trauma to be present during the hearing. She testified that she did not trust Mr. Morrison's expertise in conducting proceedings involving assault experiences. In cross-examination, Ms. Cunningham was shown a document which identified the NAM Committee members. She stated she was not aware that one of the members was a law student and another was a medical student. When it was put to her that even if they were all undergrads she had no basis to say that they lacked any skill or insight required to hear her complaint, she stated that was not her concern. She agreed that she did not have any complaints about the way the committee members spoke to her during the hearing.

[271] She testified that the response from Mr. Morrison on October 6, 2015 (Exhibit 6 p. 878) regarding the process of the NAM hearing and the vetting of the Committee was "surface level". When Mr. Morrison's actual email was put to her in cross-examination, she stated that she agreed that there were "a lot of words" in his response but that she read those responses as surface level and that there was little explanation of how they were vetted for conflict of interest and that it was "sweeping policy speak" and that her "experience was that it was superficial." When Ms. Cunningham was challenged again on this point in cross-examination, it was put to her that Mr. Morrison in fact responded to each of her questions with the exception that the length of the hearing and the specific timeline for a decision is difficult to predict, Ms. Cunningham testified that her "experience" was that it was "a lot of words" and that Mr. Morrison "answers the what but not the how" and that it was superficial to her.

[272] She testified that she learned from Mr. Morrison that she would only be present in the hearing room for her portion of the proceedings. She expressed their concerns in writing

Mr. Morrison emphasizing her distress and feelings of lack of power in the process.

- [273] On October 8, 2015, Mr. Morrison emailed Ms. Cunningham requesting further details about how the off-campus assault affected her on campus (Exhibit 6, Doc 362, p. 914). She testified that prior to the hearing, she considered withdrawing her complaint due to the distress caused by Mr. Morrison's requests for additional information. She found it "destabilizing" and "disrespectful" to be asked to provide further details about the impact of the assault on her on-campus behavior. She responded by providing more information but testified that she felt disappointed and disrespected by the way it was requested. In cross-examination, she agreed that the contents of the email are not disrespectful, but that she took issue with the timing of the email.
- [274] She agreed in cross-examination that there was a lot of correspondence between herself and Mr. Hyson, Mr. Morrison, and that both respond to her in a reasonable amount of time when she made inquiries. She further agreed that they would take 6 days to respond and she would take 2 weeks.
- [275] She testified that it was disrespectful that Mr. Morrison indicated if she did not have her response in on time, they may have to reschedule her appearance at the hearing (p. 912). In cross-examination, she agreed that when she responded to the email of October 8, 2015, and told Mr. Morrison she needed more time he granted her the extension until October 16, 2015. She further agreed that by offering to reschedule her appearance Mr. Morrison clearly wanted to accommodate her and have her attend the hearing.
- [276] Ms. Cunningham testified that reached out to the Graduate Student Society (GSS) for support, seeking individuals who would prioritize students' best interests. She also contacted the Ombudsperson's office, hoping for an independent arbiter in the process. She testified that while she received a compassionate reply from Shirley Nakata, nothing substantial came out of their communication.
- [277] Ms. Cunningham replied to Mr. Morrison on October 12, 2015, with her further statement. Mr. Morrison responded on October 13, 2015 (p. 918) and advised that the additional information provided by Ms. Cunningham indicated that it would be considered by the committee. She testified that this made her question why it had not been considered earlier and this felt disrespectful. In cross-examination, she agreed that there is nothing in Mr. Morrison's email to suggest that her statements would not have been considered by the committee.
- [278] She wrote to Mr. Morrison again on October 13, 2015, and asked a number of questions

including the training of the NAM committee. Mr. Morrison replied on October 15, 2015 (p. 916). She testified further that she found Mr. Morrison's mention of the NAM committee's training regarding sexual assault allegations to be superficial and lacking details. She testified that she felt that the promises of utmost sensitivity and respect were empty words, as she had not experienced such treatment and she was frustrated by the lack of clear timeline. In cross-examination, she agreed that Mr. Morrison responded to her in regard to her further questions and inquiries and he addressed each one of them and that that he "filled in the gaps" from the earlier response. She agreed that he answered more substantively after she inquired further from him.

[279] She testified that despite expressing her concerns persistently, she appreciated that Mr. Morrison provided a lengthy response. However, she nonetheless felt distressed by the lack of precision and felt her concerns were not fully addressed. She testified that the entire process caused her hardship, and she reiterated their ongoing concerns to Mr. Morrison in an email. Ms. Cunningham expressed her hardship and distress throughout the process, emphasizing the negative impact it had on her. She testified that she was distressed by issues such as miscommunication, disregard for her concerns, lack of transparency, and the emotional distress caused by the assault. Ms. Cunningham testified that she feels cast out of the University and experiences a disillusionment with the community she was once a part of. She expresses mistrust towards the impartiality and trustworthiness of those involved.

[280] With respect to the NAM hearing, Ms. Cunningham described the hearing itself as brief. She testified that she was unprepared for an open-ended question inviting her to make a statement and rather than discuss the impact of the assault she answered by expressing disappointment in the NAM process.

[281] She testified that she was concerned about the ethics of having undergraduate students on the committee and the lack of privacy because the students appeared to be taking notes on their personal laptops. Ms. Cunningham feels unsupported and vulnerable, believing that her information and well-being were not adequately protected.

[282] In cross-examination, she stated that lack of privacy from the students on their laptops was her own perception. She agreed in cross-examination that the NAM committee members were volunteering their time without the intent of sharing her private information. She further agreed that the NAM committee members were never disrespectful to her.

[283] She testified that following the hearing she was processing her sense of grief and loss.

She emailed Mr. Morrison to clarify that she did not speak about why she was distressed by the assault and wanting to clarify that she felt afraid of DM's lack of consideration for her well-being during the assault.

- [284] In November 2015 she was provided with a letter from Mr. Hyson indicating that that DM was no longer a student. She also received correspondence indicating that the NAM Committee found DM had breached the code of conduct and physically assaulted her. She agreed that she was advised of the findings of the NAM committee (Exhibit 6, p. 1089) that DM had engaged in physically aggressive behavior with her.
- [285] She testified that she was involved in starting the UBC chapter of a student grassroots activism organizing umbrella called "Silence is Violence." The purpose of this chapter was to address concerns about the complaint process and to create awareness.
- [286] She testified that in November 2015 she felt like she was being held in limbo having the CBC documentary pending, as well as the NAM decision, as well as media attention. Cunningham described feeling impatient and wanting to take control of her own narrative.
- [287] She spoke of her experience at the press conference on November 22, 2015, and testified that it was overwhelming but it was important for her to communicate her concerns with the process. She testified that she felt that the statement released by UBC the same day was disappointing in terms of its timing and its adequacy and she was never personally apologized to by UBC.
- [288] She testified at length about how she was impacted by her concerns over how participating in the hearing would affect her privacy and that she was worried about her professional reputation. In cross-examination, she agreed that she was having conversations with Ms. Syed of CBC as early as May 2015 and that she chose be interviewed at length on camera, and the CBC documentary included several minutes of footage of her interviews. She further agreed that she voluntarily chose to discuss the underlying assault on camera and described it in the interview. She further agreed that again she went public and had her name published with the press conference. When questioned about her concerns regarding privacy and reputation in relation to her decision to participate in an on-camera interview with CBC, she acknowledged that her concerns were incongruent with her decision to proceed with the interview, as it went against her instincts and caused distress to be in the public forum. She agreed that despite having the option to appear anonymously, she chose not to exercise that option.
- [289] She further agreed in cross-examination that participating in the CBC documentary and

speaking to the media exacerbated her stress and she felt it was stressful to be in limbo waiting for the documentary to air.

[290] Ms. Cunningham testified that she participated in the review conducted by Paula Butler. She found the review process tough and did not feel fully validated by participating. She testified that was disappointed by the lack of new insights in the executive summary of the report.

[291] Ms. Cunningham also testified about her involvement in the GSS (Graduate Student Society) report and the extensive efforts she made, including sending hundreds of emails, to get UBC to address her concerns about DM. She testified that these efforts took a toll on her mental and physical health, resulting in the deterioration of her overall well-being. She started therapy during that time, incurring a cost of nearly \$5,000. She further testified that she had financial losses as a result of leaving her job.

[292] In cross-examination, she agreed that she was not attending counseling services for issues exclusively relating to the UBC process. She further agreed that she did not provide any of her counseling records at the hearing. She agreed that she declined the offer to attend UBC counselling services because “they only offered 6 sessions” but she agreed that she did not use any sessions.

[293] Ms. Cunningham testified that her taxable income in 2015 was approximately \$15,000 and that she had kept her income throughout the year, she estimates it would have been closer to \$30,000. She did not provide any supporting documents about her income. She agreed in cross-examination that although she quit her job, she continued to do freelance work in the fall which provided her with income into the fall.

[294] In 2016, Ms. Cunningham had an income of \$10,000 due to freelancing and starting a doctorate program. If she had remained in the same position, Ms. Cunningham believes her income would have been higher as she would have built a larger client base and received raises.

[295] Ms. Cunningham testified that her efforts to address concerns about DM had a significant impact on her relationships with faculty members in the history department. She felt alienated and less inclined to be part of that community. In cross-examination, she agreed that she may no longer feel a part of the community because she has graduated and had moved on from the department. She further agreed that she had a community of people who were supportive of her during this time.

- [296] She stated that she continued to check speaker lists at conferences she was attending to see if DM was attending.
- [297] Ms. Cunningham testified that her efforts also affected her relationships with peers. While some offered support, after the hearing and press conference, Ms. Cunningham found it difficult to be around the situation and withdrew from budding friendships, faculty relationships, and going to campus.
- [298] She testified that her relationship with UBC as an institution feels strange, and she has not been on campus much since the events unfolded as it still feels like an embarrassment or humiliation to be there. She testified that she ran into Professor Thrush of the history department at a conference in the UK and he did not seem happy to see her.
- [299] She agreed in cross-examination that it was possible that Prof. Thrush was simply surprised to see her in another continent and that it was possible those were her own feelings about the meeting and she had no factual basis to believe he was not happy to see her, although those were her feelings. She further testified that in law school she debated whether to attend a seminar with guest speaker Laura Ishiguro, but ultimately decided to go. In cross-examination she agreed that there was not a negative interaction, and she stated she was wearing a mask so it was anonymous.
- [300] Ms. Cunningham agreed that she never encountered any opposition while applying to any program, but she “cannot be certain”. She personally feels that she may never be able to apply for a job at UBC, but acknowledges that it is a personal feeling. She testified that now that she is in law school she does not know if the same feelings apply and her feelings about UBC “have shifted”. She agreed in cross-examination that she has a sense of community in law school.
- [301] She agreed that she disclosed her story about the assault to UBC on four occasions: 1) in the July 2014 meeting with Ms. Kay; 2) In December 2014 to Ms. Kay which she rewrote in May; and 3) in her statement to the NAM committee. She agreed that in addition to the disclosures to UBC, she voluntarily told her story to her book club, likely at the Kafka’s meeting, in the CBC documentary, and at the Tribunal.
- [302] She agreed that when she learned that DM had been expelled she was satisfied with the outcome, but maintained that her ultimate goal was to create a record of her own experience. In cross-examination, she agreed that similarly, Mr. Hyson wanted to create a record to be presented to the NAM committee. She agreed that by July when she declined the alternate mediation resolution that a record was created and the matter was

proceeding. She agreed that proceeding with the NAM could result in a notation on DM's transcript and could include expulsion. She agreed that she was pleased that an outcome had been achieved.

- [303] Ms. Cunningham agreed in cross-examination that some of her concerns about the NAM process that she had questions about were related to the procedural fairness and natural justice principles applied to the accused in the process, but she took issue with the timing of the requests. She agreed that Mr. Hyson and Mr. Morrison had told her that there were aspects of the complaint process would be difficult and she agreed that it is a reality in many proceedings that issues come up closer to the date of the proceeding.

3. Evidence of Student E

- [304] Student E's evidence indicated that she was a poor historian and could not recall some significant aspects of evidence or the sequence of events. She did not appear to exaggerate her evidence but seemed deeply affected by the underlying incidents with DM.
- [305] It should be noted that by agreement, Student E was not required to go into detail about the underlying incidents involving DM in order to avoid her having to retell the story and any possibility of further harm during the hearing.
- [306] Student E is currently living with her parents in Kitchener, Ontario. She is a director of communications at a Healthcare organization. She graduated from McMaster in Life Sciences with a minor in psychology in 2013, and then went to UBC from September 2013 to June 2017 to do a Masters of Public Health. Following her Masters degree she took courses at Emily Carr and BCIT before applying to the Masters of Biomedical Communications at U of T in 2021.
- [307] She testified that she chose UBC for her MPH program and to live in Green College due to the sense of community and wanting to meet people and make friends.
- [308] She lived in Green College from September 2013 until 2015, as it was a two-year contract. She testified that she did not recall any orientation at Green College in terms of policy, or student conduct or introduction to the Equity and Inclusion Office. She was aware of the Green Lanterns, and founded the Wellness Committee at Green College, which worked on a range of issues including sexual health and safe spaces and promoting safe sex. She was responsible for gathering supplies for the Green Lanterns, but in terms of actual operations she had little involvement with them.

- [309] She testified that she met DM in the first couple weeks of her start at Green College, but did not talk to him until Halloween of her first year. She testified that she had not previously observed any concerning behaviour on the part of DM. She testified that a non-consensual incident occurred on Halloween 2013, when they were intoxicated and went back to his room. Following the Halloween incident, she told some friends but did not tell anyone in administration at UBC. She avoided DM after that point.
- [310] She testified that a second incident with DM occurred in February 2014. She initially felt like the incidents were isolated that no one else would be at risk. After receiving angry messages from DM on Facebook, she felt scared and realized she was having traumatic symptoms so spoke to the Green Lanterns, who suggested they speak with the Green College office.
- [311] She testified that she met with Clark Lundeen around May 1, 2014, and [REDACTED] [REDACTED] accompanied her. She testified that she felt dismissed by the questions Mr. Lundeen asked, such as if she was drunk and if DM held her down physically in the assault. After the conversation, she testified that she had no understanding of what would happen next, so she was not expecting anything to happen. She testified that she felt frustrated by the interaction. She testified that she was not provided any information about the process of reporting.
- [312] In an email dated May 1, 2014 (Exhibit 6, Doc 34, p. 166) Mr. Lundeen asked her a series of questions, including her feeling of whether DM would do this to other women, and in her response email she indicated that she felt that he would not.
- [313] In cross-examination, she agreed that her disclosure to Mr. Lundeen about the incident was voluntary and that it was a necessary step for the administration to act on this. She agreed that on May 1, 2014, Mr. Lundeen wrote her an email after their meeting (RB p. 192-193) which confirmed their understanding that UBC would not do anything without advising her first. She testified in cross-examination that she did not recall stating in her reply email of May 2, 2014, that "I think raising awareness that these things can happen here and reminding residents what is and what is not consensual would make him less likely to do so again, particularly if there are others around." However, she agreed that this is what she wrote and that she was looking for some education to come as a result of her report and her response was consistent with her belief at the time that DM would not do it again. She stated that she did not write to Mr. Lundeen about anything else she wanted to come from the report.

- [314] On May 2, 2014, she received a response email from Mr. Lundeen (Exhibit 6, doc 35 p. 168) indicating that there was nothing they could do because “the person responsible is leaving” and any disciplinary action would need due process. She was upset and testified that she did not understand what Mr. Lundeen meant by due process. With respect to Mr. Lundeen’s reference to alcohol in his email, she stated that alcohol was a factor but that was not all to it. Mr. Lundeen also suggested some sort of mediated conversation between Student E and DM, which she testified she felt was completely unreasonable given the circumstances in terms of how Green College was structured and she was not interested. She could not recall whether she considered a response to Mr. Lundeen’s email. In cross-examination, she agreed that she understood from his email that DM would be gone for 16 months.
- [315] She testified that DM left for Russia shortly after her meeting with Mr. Lundeen. She then heard about the rape of Student B through Richard Sandlin which she felt was devastating to her. She stated that she felt guilty in that she could have prevented it as she was familiar with Student B and felt like she could have told her about her incident and warned her.
- [316] She testified that she was not doing well emotionally at the time and thought she was on a medical leave from school. She testified that she went on medical leave because she was having symptoms of PTSD and depression and was having panic attacks and difficulty sleeping. She was seeing a psychiatrist for treatment. She stated she had previously suffered from depression as an undergrad. In cross-examination she agreed that she was likely seeking counseling services after the first assault and that her PTSD started after she heard about Student B’s assault.
- [317] She could not recall how she was put in touch with campus security, but the documents put to her demonstrate that she received an email from Mr. Lundeen on June 12, 2014 (Doc 47 p. 197) which encouraged her to contact Steve Bohnen of campus security.
- [318] She agreed in cross-examination that although she felt initially dismissed by Mr. Lundeen in their earlier meeting of May 2014, she never felt that he did not believe her and she agreed that at the point of the June 12, 2014, email Mr. Lundeen was trying to create a record by going through campus security. She further agreed that he offered to go to meet with campus security with her for support.
- [319] Student E emailed a response on June 13, 2014, asking how to file a report. She testified that she did not have any expectation of any action on the part of UBC at that time because she had already been told that they could not do anything. In cross-examination she

agreed that although she was pessimistic, she understood that this step was necessary to have the chance of it going anywhere.

[320] She could not recall if she met with Mr. Bohnen in person or over telephone but she testified that it was stressful to have to relive the incident and tell her story. She was referred to counseling services and had no further communication with security. She agreed in cross-examination that her meeting with Mr. Bohnen was the second disclosure of the incident to UBC and that it was a necessary step.

[321] Student E testified that by November 2014 she had to go on medical leave again because she was having issues of worthlessness, guilt over Student B and suicidal ideation. She had gone to her parents' in Kitchener and stayed there during her medical leave. She stated in cross-examination that she never advised Mr. Lundeen or Mr. Vessey that she was struggling with her mental health.

[322] In cross-examination, she stated she had been diagnosed with depression and bipolar disorder. She agreed that she had previously been treated for mental health issues and she was on regular medication for mental health issues since 2010. She stated in cross-examination that her PTSD was related the underlying assault by DM and by her guilt over Student B.

[323] She recalled attending a workshop on wellness in the fall of 2014 at Green College in which her assault was referenced as a case study without her permission and she was very upset by this. In cross-examination she agreed that the Green College administration had no involvement in this workshop and that none were present during the workshop, including Mr. Vessey and Mr. Lundeen.

[324] In the fall of 2014 she was also involved in reporting another issue to Mr. Lundeen and Mr. Vessey as she was supporting another student at Green College who was being assaulted by a man living there. She testified that she was not surprised by Mr. Vessey's and Mr. Lundeen's stating that this was a personal issue and they would not get involved because it reinforced her belief that they would not act on these issues.

[325] On February 26, 2015, she received an email from Mr. Lundeen advising her of a complaint proceeding against DM and introducing her to Mr. Hyson (Doc 118 p. 384). She met with Mr. Hyson and provided him with a statement, and the Facebook messages DM had sent her. She agreed in cross-examination that this was the third disclosure to UBC.

[326] On April 7, 2015, Student E emailed Mr. Lundeen (Exhibit 6 p. 627) asking him to keep

her apprised as to any developments with respect to DM. She testified that although in the email she told Mr. Lundeen she was generally doing ok, it was not likely accurate but she did not want anyone to worry about her.

- [327] On April 27, 2015, she received an email from Mr. Hyson (Doc 236, p. 597) advising her that DM was banned from campus and that he had been notified of the complaint against him relating to her incident. Testified that she was glad that he was no longer permitted to be on campus, but she was also a little distressed by the fact that the letter contained dates and locations so that DM would know she was the complainant and she had been under the impression that Mr. Hyson would tell her before notifying DM.
- [328] In terms of the impact of reporting to UBC, she testified that over time it was frustrating and mentally taxing to have to tell the same story to many different people.
- [329] She recalled that at some point after DM's ban Mr. Vessey pulled her aside and was trying to validate her feelings but told her that DM could be anywhere and this led to increased anxiety on her part. She stated that she felt Mr. Vessey had good intentions in this conversation.
- [330] She testified that at some point in her second year at UBC there was a petition circulated calling for increased accountability from Green College around issues of sexual assault which was shared with her before it went out. She testified that the administration had objections and dismissed the petition. In cross-examination, she agreed that she did not participate in the discussions on the topic and she was not aware that there was an endorsement by the Green College Resident council of a statement on harassment and sexual assault.
- [331] On July 8, 2015, she received an email from Mr. Hyson which suggested options including a mediated discussion (Doc 317 p. 778). She testified that she did not understand what he meant by mediated discussion. She testified that she then received an email from Mr. Hyson which indicated that the NAM process was going ahead, but she could not recall whether she was told what the NAM process would entail. In cross-examination, she agreed that Mr. Hyson's email advised her of the NAM process and preparing her statement and he wanted to ensure that the statement was accurate. She agreed she was provided with the opportunity to review the statement and did not make any changes to it.
- [332] She agreed in cross-examination that she was told in the subsequent email from Mr. Hyson that DM had indicated that he had no intention of returning from Russia and she agreed that she knew he had already been banned from campus at that point.

- [333] On cross-examination, she agreed that when she was offered the option of a mediated discussion or proceeding, she replied to Mr. Hyson and told him she would be fine with either option. She agreed that her primary objective was to not have DM back on campus and her secondary objective was to participate as little as possible. She agreed that she knew at that point that DM was restricted from campus with no intention of returning to deal with NAM in person and that she was not opposed to an alternative resolution to the NAM if she could be satisfied that he was not going to be around on campus.
- [334] She agreed in cross-examination that she received an email from Mr. Hyson on August 25, 2015, which provided her with further information about the NAM process. She agreed that she never asked Mr. Hyson for any clarification on the NAM process.
- [335] Student E could not recall in any detail her communications with Mr. Morrison prior to the NAM process. She testified that she was deliberating on whether to participate in the NAM process and ultimately, she did so because she thought it would be the right thing to do to protect others, set a precedent, and teach DM a lesson. She was not provided with DM's response to her allegations, but they asked Mr. Morrison if there was anything they could do about having to face DM on a screen at the hearing and notified him that she would be bringing Maggie Callahan to support them during the hearing.
- [336] In cross-examination, she agreed that she did not have to see DM on the monitor or address him at all during the NAM hearing and he did not ask her any questions. She agreed that the NAM had potentially serious consequences for DM and that it would be necessary for him to address the allegations against him. She further agreed that her statements to Mr. Morrison and to the NAM committee were voluntary and that they were necessary in order to obtain a decision from university that would prevent DM from returning.
- [337] She could not recall any details about the hearing or the panel, but recalled that she broke down and cried when she made her statement. She testified that she felt relief after the hearing was over. She further testified that she was again relieved when she found out the outcome of the NAM.
- [338] Student E testified that she was contacted numerous times by Ronna Syed of CBC and eventually had a telephone conversation with her in which she told her to back off. She did not watch the CBC documentary when it aired.
- [339] On November 24, 2015, she emailed Mr. Lundeen and Mr. Vessey (Exhibit 6, Doc 431 p. 1132) advising them that she did not agree with the portrayals in the CBC documentary

and thanking them for their compassion. She testified that she wanted to be on good terms with them.

- [340] She testified that she participated in the Paula Butler review and was unhappy with Ms. Butler's characterization that there was no evidence of psychological harm. In cross examination, she agreed that she told Ms. Butler that the entire process impacted her mental health, and it was difficult to tell how much it was to do with the UBC reporting process or other things. She agreed this was in reference to her mental health being impacted by things such as the assault itself and the harassment from Ms. Syed. She further agreed in cross-examination that the reference to no evidence of psychological harm could be in reference to the fact that there was no evidence from her medical providers.
- [341] She stated that part of the reason she met with Ms. Butler was that she had hoped there would be a change in UBC policy. She agreed in cross-examination that this in fact occurred.
- [342] Student E did not provide any evidence as to the impact of the reporting at UBC on her relationship with faculty or administration, other than that it meant she communicated much more with Mr. Vessey and Mr. Lundeen than she normally would have. She did not provide any evidence of a negative impact on her relationships with her professors. She agreed that she received straight A's throughout her MPH program.
- [343] With respect to the impact on her relationships with her peers, she testified that she had a lot of support so had a closer friendship with many.
- [344] Student E testified that she took 4 years to complete her MPH due to her medical leaves, and it normally should have taken 2 years. She testified that as a result she had to pay for her living expenses for an additional 2 years without working.
- [345] In cross-examination, she stated that she first became aware that her complaint was a part of this proceeding shortly before she was asked to testify, at the time there was a settlement offer. She stated that she was also contacted by [REDACTED] but she could not recall if she told her she would be testifying about the incidents involving Student E and she could not recall if she asked for her permission to testify about her.
- [346] She agreed in cross-examination that she had to make disclosures to UBC on 4 occasions. She agreed that she made numerous other disclosures to family, friends, media, and medical professionals. She testified that she did not consent to any information about her

case in the CBC article and that she felt harassed by Ronna Syed and that the airing of the documentary caused her further harm as it was public and reached her family in Ontario.

[347] She agreed that she had ongoing correspondence with Mr. Vessey and Mr. Lundeen throughout the process and that they were supportive and kind throughout. She agreed that Mr. Lundeen told her she was courageous and Mr. Vessey told her she was one of the true founders of Green College, which was meaningful to her.

[348] Student B did not provide any medical evidence or counseling records.

[349] She agreed in cross-examination that she had straight A's prior to and after the incidents, and that nothing prevented her from pursuing her further degree at University of Toronto.

4. Evidence of Student B

[350] Student B is currently a lawyer living in Toronto. She works as a lawyer for the financial services regulator of Ontario; she was hired by FISRA in July 2019. She completed her undergraduate from U of T with a Masters of English then attended UBC for law school. Following her law degree she articulated in Toronto and then moved to California and obtained a Masters of Law at Berkeley. She lived at Green College from 2011 until April 2014 when she completed her law degree.

[351] She testified that while at the University, she was an active member of the Green College community and directed plays in the theatre group.

[352] She does not recall whether she received an orientation of policies at Green College, but she testified that there may have been something in the student code of conduct in materials she received.

[353] She testified that Green College was a tight knit community and the residents felt like family.

[354] She testified that DM was also a resident at Green College while she was there. She stated he was not really a friend, but they would debate at the dinner table, and she found him to be obnoxious but intelligent.

[355] She testified that there was an incident at a party in which she was standing with a group of students, including DM, and a group of them began pushing her over and in the process

of doing that she hit her head against the wall and sustained a concussion.

- [356] Student B testified that after the incident she spoke to Mr. Vessey about her concerns about oversight and safety at the College and she recalled that he made light of the issue and did not take any notes of the conversation. She testified that she believed she told him that DM was involved. She testified that this incident and the lack of action in response was part of her motivation to be a founding member of the Green Lanterns to provide peer support. She testified that she had little involvement once the group was set up.
- [357] With respect to the concussion she suffered at a party in 2012 at Green College, she stated in cross-examination that more than one person pushed her and she could not say which individual pushed her such that she got a concussion. She agreed that alcohol was involved and no one from Green College administration was around at the time. She agreed that Green College residents are adults between the ages of 22 to 25 and there are no rules around drinking. She did not recall that after the incident there was a discussion of these concerns at the Residence Council meeting.
- [358] She testified that there were other incidents in which she observed DM not respecting boundaries and she saw him place his head in women's laps but it "seemed sort of harmless."
- [359] She testified that in May 2014 she was living in Toronto and DM messaged her to say he was going through Toronto for a conference. She testified he asked if he could stay with her and she agreed, although she had some hesitation but she felt socially obligated. Another student, Tim Hollering, stayed with her as well. She recalled that on May 26, 2014, the three of them went drinking that night and she drank too much and blacked out. She recalled waking up wrapped in a sheet, feeling like she was punched in the stomach, and then she remembered waking up in the night while she was being assaulted by DM. She wanted DM out of her house, so she called him a cab and he left. She stated that he was on his way back to Russia. She cried and disclosed the incident to Mr. Hollering who then went back to the conference. She testified that initially she tried to study for the bar exam, but she telephoned a friend and then went to the hospital where she had a rape kit which confirmed she had vaginal tearing.
- [360] She testified that she had no further contact from DM, although he tried to send her a message on Facebook, but she blocked him.
- [361] In cross-examination, Student B agreed that the assault occurred in Toronto when she was no longer a student at UBC and that she was not receiving a service from UBC at the

time. She agreed that it was not a UBC sponsored event.

- [362] She testified that she did not tell Mr. Vessey or Mr. Lundeen or anyone at UBC that DM would be staying with her in Toronto for the conference.
- [363] In cross-examination, Student B stated that she believed the conference was at Brock University which is in St. Catharines. She agreed it is likely a 1-2 hour bus ride away from Toronto. She was not attending the conference and was not aware of the exact dates, but was shown a document indicating that it was the Canadian Association of Slavists 2014 from May 24-26, 2014. She agreed that the morning DM left her house for the airport was May 27, 2014.
- [364] She agreed on cross-examination that she understood at that time that DM would then be out of the country and she would have no further interactions with him in the future.
- [365] She testified that she called the police to ask what the process would be like and they asked her if she wanted to report and she hung up. She testified that she considered as a lawyer knowing criminal justice system, she had no interest in experiencing a trial involving a rape so she did not proceed.
- [366] She testified that she was worried about people on campus at UBC because DM was not finished his PhD so she contacted a fellow student, Richard Sandlin, and asked him to tell others about the assault. She testified that she also emailed Mr. Vessey about the assault on June 2, 2014, and Mr. Vessey referred her to campus security. She emailed Steve Bohnen of campus security on June 27, 2014, and she testified that her intention in doing so was that she felt DM should be kicked out of UBC because he was a danger to other students. She testified that she was confused by Mr. Bohnen's reply and he encouraged her to go to the police. She testified that she was not provided any information about what services or processes are available to victims of sexual assault.
- [367] In cross-examination, Student B agreed that Mr. Bohnen and Mr. Vessey encouraged her to go to the police and told her it would be helpful to them in the process of trying to bring some action on the part of UBC if there were criminal proceedings. She further agreed that if the RCMP had been involved that would have consequences in terms of DM's ability to return to Canada and she agreed that UBC had no ability to restrict him from returning to Canada.
- [368] She agreed in cross-examination that neither Mr. Vessey nor Mr. Bohnen ever told her they did not believe her, and that their responses were more about how they could help

or respond to the incident. She recalled receiving an email which indicated that intervention by the judicial system was needed to stop him (Exhibit 6 no 51 p. 203). She agreed that she knew that the criminal process could take years and would require his guilt having to be proved, DM being given the opportunity to defend himself, and her having to testify. She agreed that Mr. Vessey never seemed insincere in terms of wanting to help her in any way he could.

[369] She testified that she wrote the bar exam two weeks after the assault and failed because she was so stressed and also had to await results of an HIV test. She had a therapist at Women's College as support. In cross-examination, she agreed that she had a lot of stressors outside of dealing with UBC going on at the time, including her demanding work schedule and the actual assault itself. At that point she had decided to not continue at her firm and to pursue her Masters instead.

[370] In July 2014 she also emailed with Mr. Hay who shared with her an email from DM about the assault in which DM stated that he understood that drunk sex is not consensual in Canada.

[371] Student B continued with her articles and in April 2015 she found out DM had not been kicked out of Green College, so she contacted Mr. Vessey via email to appeal to his powers under the Green College contract. She testified that Mr. Vessey's response of April 23, 2015, was condescending and told her that his hands were tied or that she was not reading the contract correctly. She testified that her reaction to this was that she was shocked and weary and she did not understand why her information was not enough to sufficient a serious response to kick DM out of the college.

[372] In cross-examination, Student B agreed that she had not looked up UBC policies at the time and after her communications in 2014 had not followed up. She agreed that her main concern was DM returning to Canada and she was not concerned with his ability to graduate. She stated that she believed she knew that DM had not returned to Canada at that point and she had no reason to believe he would be returning to campus and putting anyone at risk.

[373] She agreed in cross-examination that in her communications with Mr. Bohnen she had considered the possibility that her pursuing criminal charges could be used as a tool to restrict DM from campus, but she was weighing this against what she would have to go through in the criminal proceedings.

[374] In cross-examination, Student B agreed that DM being kicked out of school would be a

serious consequence for him and he would need to have the opportunity to respond to the allegations before a decision was made with respect to his expulsion.

- [375] Student B emailed Mr. Hyson (Doc 236 p. 599) and identified herself a person assaulted by DM. She testified that she felt that the assault in Toronto was relevant to the question of whether DM should be on campus because he was a risk to safety. She testified that the experience was exhausting.
- [376] Student B received an email from Mr. Hyson on May 15, 2015 (Doc 330, p. 732) which indicated that UBC was moving forward with the allegations about DM but that her case was not being included. She testified that when she found out that her assault was not being considered by UBC it was baffling and shocking and it made her feel like she was crazy. She could not recall whether she had heard that DM was restricted from campus around that time. In cross-examination she agreed that he was banned from campus around April 24, 2015, and that one of her primary objectives, keeping DM off campus, had been met. She further agreed that it was appropriate not to share information about the other complainants for privacy interests.
- [377] She testified that she met with Mr. Hyson in person in August 2015 to discuss what a better system of reporting at UBC could look like and she asked Mr. Hyson if students could report to anyone else and he stated that students could report to someone in another department. She testified that she then asked if that other person stays in contact with him and he said they have coffee sometimes. She testified that during their meeting he reiterated that because the incident occurred off campus it would not be taken into account so it was frustrating for her.
- [378] She testified that she was offered the mediation option at one point which she felt was a ridiculous suggestion as she had no desire to have him anywhere near her. In cross-examination, she agreed that she was given a choice and declined, and she agreed that mediation is often a tool used in dispute resolution, although she felt it was not appropriate in this case. She stated that she was not aware whether other complainants were offered mediation or what their feelings were in that regard.
- [379] In cross-examination, she agreed that Mr. Hyson was trying to get her complaint included, but the decision not to include it was due to the location of the event. She further agreed that Mr. Hyson was trying to get a strong case against DM that would in essence result in a finding of non-academic misconduct on his part.
- [380] She testified that she participated in the CBC documentary because she felt that UBC was

not moving forward, and she felt that it may help get DM kicked out of UBC and protect other women. She testified that the experience of participating in the documentary was re-traumatizing in having to retell her story and experience the emotions of the assault.

[381] She testified that the night before the CBC documentary aired Ronna Syed telephoned her to tell her DM had been expelled and she had some relief.

[382] In cross-examination, she agreed that her participation in the CBC documentary was voluntary on her part. She further agreed that her assumption that the documentary prompted DM's expulsion was only based on the timing of the airing of the documentary. She did not know any information about the NAM process, the number of complainants, the makeup of the committee, or the timing of the hearing. She agreed that she was satisfied with the outcome of the NAM process and that she felt relief when she found out.

[383] She testified that she participated in the Paula Butler review because she wanted to provide advice that UBC did not conduct themselves appropriately. She found the process to be tiring and wanted to move on with her life. She agreed in cross-examination that she understood that UBC had changed its policies significantly.

[384] With respect to the impact on her of how UBC handled her report of the assault, she testified that she felt like she simply wanted to protect other students and it was very difficult to achieve that end which was discouraging and confusing and she felt that the process should not have been as complicated as it was.

[385] She testified that with respect to recovering from the effects of the assault she has been lucky in that she has a supportive employer and family in order for her to recover and move on with her life.

[386] In cross-examination, she agreed that she was not concerned with her privacy in the process as she had told her classmate Richard Sandlin to spread her story to others.

5. Evidence of [REDACTED]

[387] Dr. [REDACTED] testified that she attended UBC from 2011 to 2014 while completing her MA and PhD in clinical psychology. She was a resident at Green College from 2011 until August 2014.

[388] She testified that Green College was a tight knit community which involved a lot of contact among the residents. She testified that in December 2011 there was an issue with her friend who was visiting and staying with her and Green College in which she was

threatened by a male resident and Green College administration did nothing to address the issue. She stated that in response to the incident and other issues she founded the Green Lanterns with two other women. The Green Lanterns were set up as an emotional support group for individuals at Green College. She testified that Clark Lundeen was involved in the Green Lanterns and acted as a guide through the setup process. She testified that Student B was also in the Green Lanterns.

[389] She testified that sexual misconduct came up several times as an issue during her years in the Green Lanterns from 2012 to 2014. She stated that there was an incident in which a student was being harassed by another student, and that Student B was assaulted by a resident (presumably DM). She further testified that there was an issue that involved a student, Melanie Tremblay, who was feeling harassed by her ex-boyfriend. She testified that Ms. Tremblay was distressed by the process in dealing with Green College administration. She further testified that Ms. Tremblay did not know that she was at the hearing telling her story.

[390] She testified that Student B disclosed to her that she had been assaulted by DM and that Student B was upset and felt violated and it was traumatic for her. She testified that Student B wanted others to be aware of what occurred and for the college to know DM was not a safe person. She testified that she was upset and horrified by this information.

[391] Dr. [REDACTED] testified that she did not know DM well, but she saw him at events. She testified that she never observed any conduct of DM that made her concerned. She became aware of concerns when Student E requested a meeting with the Green Lanterns in May 2014 and disclosed that an incident occurred involving her and DM. She attended a meeting with Student E and Mr. Lundeen to support Student E. She did not recall the specifics of the meeting or what MR. Lundeen said. She testified that after the meeting she left it up to Student E to navigate the issue because it seemed like that was what she wanted. On May 14, 2014, another Green Lantern, Brittany Welsh, sent an email to Mr. Lundeen to follow up about whether the issue was resolved. Mr. Lundeen replied and indicated that DM that there had not been enough time to allow for due process with DM and that if he returns the best they can do is to keep watch.

[392] She testified that she emailed Ms. Welsh to suggest taking preventative steps for the future, such as sending a regular email about consent and safety resources.

[393] In cross-examination, Dr. [REDACTED] agreed that she did not know the timing with respect to DM leaving for Russia. She further agreed that she did not know the timing

with respect to Student B's complaint and DM's ban from campus because she was not directly involved in the Student B communications.

[394] In cross-examination, Dr. [REDACTED] testified that she contacted Student E to let her know she was going to testify in this case. She testified that she is not in frequent contact with Student B and they communicated some time last year. She agreed in cross-examination that she is not in contact with Melanie Tremblay and Ms. Tremblay was not aware that she was giving evidence about her story. She agreed that Ms. Tremblay was distressed by the underlying problem with her boyfriend, although she maintained that Ms. Tremblay was also distressed by comments made by Mr. Vessey which implied that she was making a big deal of the situation.

[395] She agreed in cross-examination that at no time did she make a complaint to anyone at UBC or Green College in 2014 and 2015, and her role was simply to support Student E. She agreed that she did not make a complaint independently.

6. Evidence of Caroline Greggo

[396] Ms. Grego currently lives in North Carolina where she works as a professor at Queen's University of Charlotte.

[397] She began her Master's at UBC in geography in 2011 and moved into Green College at that time. She left Vancouver in May 2013 but did not officially complete her Master's until August 2013. She has since completed a PhD in history at the University of Colorado Boulder in 2019.

[398] Ms. Grego testified that orientation at UBC was not formal, but within the geography department, there was a half or full day orientation. She testified that there was no mention of the Equity Office or the student code, and there was no mention of the NAM process. She testified that her assumption was that if an allegation of sexual misconduct had arisen, the university's role would have been guided by something similar to Title IX in the United States, which assumes that simply reporting sexual misconduct or harassment to someone above you would automatically trigger a reporting process. She stated that in retrospect she may have had a sense of the processes at UBC back in 2011, but she cannot say whether it was explained to her or whether she simply was not paying attention. She does not recall any formal orientation at Green College in terms of policy. In cross-examination, Ms. Grego agreed that it is possible this information would have been available online at the time. She further agreed that she received the Student Handbook and that some of the policies are included therein. She agreed that she never had any issues as a student at UBC that required her to look up the policies.

- [399] She testified that when she started at Green College the environment was one of a warm and exciting community and she was optimistic; however, this changed over time. She testified that in January 2012 she attended a party at Green College which she left but she heard the next day that Student B had sustained a concussion from a number of individuals who picked her up and dropped her at that party. She testified that she is very close friends with Student B, and they stay in touch nearly daily.
- [400] Ms. Grego testified that she lived with DM at Green College. She recalled a party in the winter in which DM grabbed her to dance with her and she was alarmed at how aggressive he was so she made a point to avoid him later.
- [401] She testified that she knew DM well as they were both part of a tight knit community at Green College. She testified that in the Fall of 2012 she got into an argument with DM about his views on Canadian women. She testified that DM made a comment to Student B that he did not know whether he wanted to marry her or kill her. Ms. Grego agreed that she did not raise these issues with anyone in administration at UBC but she discussed it with their peers and Mr. Hay, who was older and knew UBC. In cross-examination, Ms. Grego agreed that this event was not a serious concern of hers at the time and that Student B continued to spend time with DM after this incident.
- [402] Ms. Grego testified that there were further issues at Green College such as upsetting emails degrading women being sent on the Green College email listserv which ultimately prompted a forum to discuss the issue in the spring of 2013. She testified that she collaborated with two other colleagues to publish an op-ed about the issues around sexism occurring at Green College which was published in a feminist publication online.
- [403] She testified that in May 2014 Student B contacted her and told her that DM was in Toronto for a conference and stayed with her at her parents' house and sexually assaulted her. She testified she observed that Student B was distressed and upset by the assault. Ms. Grego testified that she was personally shocked and upset by the event. She testified in direct evidence that DM was receiving funding from UBC for the conference but agreed in cross-examination that she has no direct knowledge of this and is only based on her knowledge as a PhD student.
- [404] In July 2014 Mr. Hay sent Ms. Grego an email which included his communications with DM about the assault of Student B in which DM stated he knew that it was illegal to have sex with someone who is intoxicated but he did it anyways.
- [405] Ms. Grego testified that in April 2015 she heard that DM would be returning to Green College

so she sent an email to Clark Lundeen and Mark Vessey on April 24, 2015, describing her experiences with DM and her concerns about him returning. Mr. Vessey replied the same day and asked if she could forward her email to UBC's legal counsel. Ms. Grego testified that she later sent a similar email to Dr. Loo, Mr. Hyson, and Ashley Bentley. She recalled that Dr. Loo replied that her email was thoughtful and compassionate and that she took it seriously, and that Mr. Hyson never responded. In cross-examination, Ms. Grego agreed that she did not know at the time that DM was banned from campus on May 1, 2015, one week after her email to Mr. Hyson. She further agreed that she was not aware at the time that Student B was not told that her complaint would not be accepted until May 15, 2015, after DM was already banned from campus.

[406] Ashley Bentley replied and offered her support and counseling services which Ms. Grego agreed she never used. In cross-examination, Ms. Grego agreed that she never sought counseling services anywhere else in relation to the issues in this case, although she stated she should have.

[407] She further testified that no one requested a copy of the email she referenced in which DM replied to the allegations of Student B. She testified that she was hoping DM would be expelled at this point and that she felt angry and helpless.

[408] She testified that she was not contacted about the NAM process and Mr. Hyson never communicated with her about DM's eventual expulsion.

[409] She testified that this experience caused her emotional distress in the spring of 2015 and has impacted her views of her time at UBC in a negative way and that she had previously been close to Mr. Vessey but no longer has any communication with him.

[410] In cross-examination, Ms. Grego stated that she had graduated from UBC in 2014, so she was not in a service relationship with UBC in 2014 and 2015. She agreed that she had never been assaulted by DM and that at best she was a secondary figure. She agreed that she left Canada in May 2013 and has never returned. She stated in cross-examination that she was not aware of the amount of damages she was seeking in this matter, and stated that the amount sought depends on what the wishes of the others who were assaulted by DM would be. She agreed that the impact on her was related to the assault of Student B.

7. Evidence of Kaitlin Russell

[411] Ms. Russell, a graduate of the UBC History Department, testified about her background, including her academic history and her delayed graduation due to struggles with major

depressive, anxiety, and panic disorders. When she started her MA in September 2011, she expected to graduate in May 2013. However, due to mental health challenges diagnosed in December 2011, she took a medical leave from May 2012 and returned to campus in January 2013. She explained that her mental health struggles left her feeling disconnected from her cohort. Upon returning, she found the department still collegial but interacted mostly with peers and fellow TAs.

- [412] Ms. Russell recalled the orientations provided at the beginning of her MA program, which were standard in nature, covering administrative and student responsibilities, but she says were lacking clear information on policies regarding sexual misconduct, such as UBC's Policy 3. She expressed an expectation that UBC, as an institution, would have a well-defined and sensitive process for handling sexual misconduct complaints.
- [413] Ms. Russell had no direct interactions with DM and did not witness any improper conduct by him. She first heard of sexual assault allegations against him in July 2014 through a gender history reading group she participated in. During a meeting, one of her fellow students, Caitlin Cunningham, shared information about a sexual assault allegedly committed by DM against a student during a UBC-sponsored conference in May 2014. This news triggered Ms. Russell, who had been sexually assaulted by a previous partner in 2012, and this disclosure marked the first time she confided in someone about her own assault.
- [414] Ms. Russell and Ms. Cunningham discussed what actions to take, eventually deciding to inform Dr. Tamara Myers, a feminist historian and Ms. Russell's supervisor. On July 16, 2014, they emailed Dr. Myers, outlining the information they had heard and expressing concerns about DM's return to campus and his potential role as a teaching assistant. They also considered whether they should talk to other students to see if they had experienced any inappropriate behavior from DM. Ms. Russell described feeling validated and supported by Dr. Myers' response, in which Myers encouraged them to speak collectively and reach out to departmental authorities such as Dr. Loo, the new department chair, and the graduate advisor, Dr. Ducharme.
- [415] With respect to the department orientation and training sessions, Ms. Russell admitted that she did not remember specific details about whether Policy 3 or other guidelines on sexual misconduct were covered during her 2011 orientation. She also acknowledged that the March 2014 equity workshop did provide some information about sexual harassment but did not specifically address peer-to-peer misconduct.
- [416] When questioned about her involvement with the gender reading group and her knowledge

of DM's alleged behavior, Ms. Russell clarified that she did not have personal experience with him but had heard of instances of inappropriate behavior from other students over the years. She reiterated that she was not a direct witness to any misconduct by DM but expressed concern about the potential risk posed by his escalating behavior, which she believed was becoming more physically harmful.

- [417] Ms. Russell was also asked about her decision to approach Dr. Myers rather than immediately reporting to Dr. Loo, the department chair. She explained that she and Ms. Cunningham chose Dr. Myers because they felt comfortable with her, had an existing relationship with her, and trusted her to provide guidance. Ms. Russell noted that Dr. Loo was new to her position at the time, and they felt it was important to start with someone they knew.
- [418] Ms. Russell testified that the group sought informal methods of addressing the issue rather than going directly to the Equity office. Ms. Russell explained that they were wary of losing agency in the process and were uncomfortable with the idea of mediation, which they felt was inappropriate in cases of sexual harassment or assault. She emphasized that their priority was to protect the safety of female students in the department and to address the issue in a way that empowered them as a group.
- [419] Ms. Russell testified that after learning of the concerns and advice from Tamara Myers, the group organized a meeting off-campus to discuss what they had learned. The meeting took place at Kafka's, and according to Ms. Russell, Megan Longstaffe, Ms. Thornton, Caitlin Cunningham, Ms. Kirchmeier, and Student D were in attendance. Ms. Russell believed Ms. Kirchmeier was present but noted that Student A had likely left the department by that time. The purpose of the meeting was to collectively consider how they could address the situation and ensure campus safety, particularly in light of supporting Student B, who had not filed a criminal complaint.
- [420] Ms. Russell testified that the group planned to speak with Dr. Loo and had collectively written an email to her (Exhibit 6, p. 213). In this email, they acknowledged their previous communication with Dr. Myers, who they understood had already spoken to Dr. Loo about their concerns. Ms. Russell stated that the email expressed their desire to assist the department in addressing DM's behavior and ensuring a safe working and learning environment. They also sought Dr. Loo's guidance on how they could best support the department, whether by providing documents or other resources.
- [421] Ms. Russell further testified about the group's concerns regarding safety in Buchanan Tower, where graduate students worked late. She described the lack of security, particularly in the

TA offices located in Brock Hall Annex, which were isolated, poorly lit, and difficult to access. The TA offices had an ineffective key control system, and Ms. Russell recounted an incident where she encountered a male and a former student, who had graduated two years earlier, sleeping on a couch in one of the TA offices. Ms. Russell explained that, as a small and relatively new TA, she was uncomfortable using these isolated offices, particularly when meeting large, angry male students, such as members of the UBC football team. She failed to provide any examples of actual uncomfortable interactions with such football players. To avoid potentially dangerous situations, Ms. Russell testified that she would hold her meetings in public places, like cafés, rather than in the TA offices.

- [422] Ms. Russell testified that Dr. Loo responded to the group's concerns by thanking them and acknowledging that she was not an expert. Dr. Loo confirmed that she was seeking guidance from Ms. Kay and reiterated her open-door policy. According to Ms. Russell, Dr. Loo assured the group that she was committed to maintaining a safe and respectful working environment for everyone in the department. Ms. Russell felt that Dr. Loo's response was appropriate.
- [423] The group then arranged to meet with Ms. Kay to discuss their concerns further and understand what steps or processes the university could take at the departmental and institutional levels. Ms. Russell testified that they were satisfied with Dr. Loo's follow-through and were open to learning more about what actions could be taken to address their concerns.
- [424] Ms. Russell stated that much of the preparation for the meeting with Ms. Kay was done via email. She testified that she had read portions of the Sauder Task Force report on the rape chants incident, as well as UBC's Policy 3 on harassment and discrimination, and shared relevant sections with the group. Ms. Russell noted that the task force report did not address the specific needs of graduate students, further emphasizing the blurred lines in their roles as both students and teachers, and highlighting the unique dynamics of graduate student interactions.
- [425] At the July 31, 2014, meeting with Dr. Loo and Ms. Kay, Ms. Russell testified that Caitlin Cunningham, Ms. Thornton, Megan Longstaffe, Ms. Kirchmeier, Student D, and Catherine Haney, a nursing student, were present. Dr. Ishiguro also attended. Ms. Russell recalled that the group shared their concerns about DM's behavior and the general sense of insecurity within the department, particularly in the graduate student areas. According to Ms. Russell, Ms. Cunningham shared her personal experience with DM, while Ms. Kirchmeier spoke about her interactions with DM and the initial concerns she had brought to the department earlier in 2014.

- [426] Ms. Russell testified that Ms. Kay explained her role and the complaint process but appeared displeased that the students had been discussing the allegations with others. Ms. Russell recalled that Ms. Kay referred to their discussions as “rumors” and warned that continuing to talk about the allegations could contribute to a “culture of fear” within the department. Ms. Kay used an analogy about a snake in the room and then turning off all the lights, which Ms. Russell testified was a significant moment for the group. Ms. Russell felt that Ms. Kay was advising them to remain silent, which she says contradicted the earlier advice they had received from Dr. Myers, who had emphasized that safety was paramount. Ms. Russell testified that this advice from Ms. Kay caused frustration within the group, as it seemed to go against their goal of ensuring safety.
- [427] Ms. Russell also testified that Dr. Ishiguro shared an example of DM’s disrespectful behavior during a talk she was giving, where he interrupted her with unfriendly and uncooperative questions.
- [428] Ms. Russell testified that the group left the meeting feeling frustrated by the mixed messages they were receiving from different university officials. They were concerned about how best to proceed in addressing the issues related to DM’s behavior and ensuring the safety of students within the department.
- [429] Ms. Russell testified about her feelings following a July 31, 2014, meeting with Dr. Loo. She explained that the meeting was mostly positive but marred by a warning from Ms. Kay, who advised against discussing the alleged incident involving DM or his pattern of concerning behavior. Ms. Kay cautioned that speaking without a formal complaint would contribute to a culture of fear on campus and infringe on DM’s rights, given that there was a presumption of innocence. Ms. Russell understood that continuing to discuss her safety concerns without filing a formal complaint could deny DM his rights on campus.
- [430] Ms. Russell recounted that after Ms. Cunningham’s meeting with Ms. Kay, Ms. Kay confirmed that Mr. Cunningham’s experience could form the basis for a complaint against DM. However, she recalled Ms. Cunningham was stressed by her thesis deadline and decided to delay any formal action until after completing her MA thesis in August 2014.
- [431] When asked about the supports available to address her concerns, Ms. Russell testified that she understood Ms. Kay’s office to handle complaints primarily through mediation. She also recalled becoming aware of the NAM process around this time. At the July 31 meeting, there was a discussion about convening a follow-up meeting with various campus resources to address the concerns of graduate students and ensure the history department’s safety.

- [432] Ms. Russell attended the resource meeting, which took place in Ms. Kay's office on August 28, 2014. Representatives from UBC Counseling, Campus Security, and SASC were present. Ms. Russell testified that UBC Counseling discussed the services available, including individual counseling and academic accommodations, and Ms. Russell shared her personal experience of accessing those services. She recalled that the SASC representative, Ashley Bentley, spoke about their role, including peer counseling, hospital accompaniment, and advocacy during reporting processes.
- [433] Campus Security's role was also outlined at the meeting. The representative described their relationship with the RCMP and the training their officers received on taking sensitive reports of sexual assault. They emphasized their Safe Walk program, and Ms. Russell recalled feeling that the Campus Security representative seemed out of his depth on the issues of sexual assault and gender-based harassment. The overall message conveyed was, "Call us if you're being attacked," which Ms. Russell found inadequate.
- [434] Ms. Russell testified that she had been hoping for more specific information on how these resources could address the safety concerns within the history department. Instead, the meeting felt more focused on general support services rather than tailored solutions for departmental issues.
- [435] In Fall 2014, Ms. Russell says she took additional steps to educate herself by attending training sessions and conferences related to sexual assault prevention and response, such as Positive Space training and SASC's anti-violence ally training. She also attended conferences on decolonizing rape culture and eradicating campus rape. Her participation in these trainings was driven by her desire to be an effective ally, support others, and process her own experiences with assault.
- [436] Ms. Russell described her involvement in the History Graduate Students' Association (**HGSA**) for the 2014-2015 year, where she held the positions of Secretary and Equity Representative. She testified that the equity rep role was reinstated in response to the concerns raised over the summer of 2014, envisioning it as a way to keep working on broader issues and act as a liaison between students and faculty.
- [437] In September 2014, Ms. Russell and other students reached out to Dr. Loo to discuss how she planned to address the safety concerns raised by female graduate students. Ms. Russell testified that Dr. Loo responded by stating she would address the issue as part of her announcements during the faculty meeting but cautioned that safety and respect were non-negotiable university policies and would not be up for discussion. Dr. Loo also indicated she

would not specifically reference DM but would frame the department's recommitment to a safe environment through references to task force reports related to rape chants at Sauder and unsolved sexual assaults in 2013.

Exhibit 6, p. 285

- [438] Ms. Russell attended the September 11, 2014, faculty meeting. She recalled that Dr. Loo briefly spoke about the university's commitment to a safe and respectful environment and referenced the task force reports. However, Ms. Russell was disappointed that Dr. Loo did not specifically acknowledge the concerns about student safety in the history department.
- [439] After the meeting, Dr. Loo circulated an email to the department reiterating the university's commitment to safety and providing links to resources and policies. Ms. Russell testified that Prof. Krause later sent an email expressing disappointment with Dr. Loo's handling of the issue at the faculty meeting. Prof. Krause's email, which cc'd Ms. Russell and other students, criticized Dr. Loo for not fulfilling her promise to address safety concerns. Ms. Russell described her "holy shit" moment upon receiving the email, feeling uncomfortable about being named publicly, especially as she had not yet disclosed the issue to one of her supervisors. She was concerned that the email would force her to have conversations she was not ready for and potentially jeopardize her "precarious position" in the department as she worked to complete her degree.
- [440] Ms. Russell testified that Dr. Loo reached out shortly after the email from Prof. Krause, asking to meet with her and other students. Ms. Russell met with Dr. Loo, where she apologized for misunderstanding Dr. Loo's prior email about what could and could not be said during the faculty meeting.
- [441] On September 22, 2014, Dr. Loo emailed Ms. Russell, Ms. Cunningham, Ms. Thornton, and Michel Ducharme. The email indicated she was taking the students' concerns seriously and that the students had agreed to take ownership of the workshop.

Exhibit 6, p. 304

- [442] In the direct examination of Ms. Russell, she recounted her frustration over being instructed by Ms. Kay to remain silent about concerns related to DM's misconduct. This frustration stemmed from a September 15 email from Dr. Loo to Ms. Kay, which mentioned that Ms. Russell did not seem to have fully appreciated the advice given regarding confidentiality during a previous meeting. Ms. Russell was upset about being told not to discuss her concerns with other graduate students or faculty members, but she could not recall if Dr. Loo had said it was

up to individuals to share their own stories if they wished.

- [443] Ms. Russell also discussed which faculty members knew about her concerns. She confirmed that Dr. Myers was aware, but her co-supervisor, Leslie Paris, had not yet been informed by her at that point. She explained that she was hesitant to disclose her concerns to Dr. Paris, despite Dr. Paris being a highly respected feminist historian and Americanist. Myers had suggested Dr. Paris as a co-supervisor because of Ms. Russell's focus on American youth history, but Ms. Russell had a closer relationship with prof. Myers, having taken several courses with her. Additionally, Ms. Russell had already disclosed her struggles with depression and anxiety to Prof. Myers, but not to Dr. Paris.
- [444] Ms. Russell described Dr. Paris as someone who was highly professional and able to compartmentalize her personal and professional life, which made Ms. Russell feel apprehensive about confiding in her. She testified that Dr. Paris had experienced significant personal challenges, such as the death of her sister and a near-fatal incident involving one of her children, yet continued to produce academic work without allowing these events to interfere. This contrasted with Ms. Russell's own difficulties in managing her mental health, studies, and family situation, which made her reluctant to discuss safety or harassment issues with Dr. Paris, fearing her response would be focused solely on academic progress.
- [445] Eventually, Ms. Russell did disclose her concerns to Dr. Paris during a meeting at a coffee shop. She says Dr. Paris was supportive of Ms. Russell's involvement in addressing gender inequality in the department but advised her not to let it interfere with her academic work. She encouraged Ms. Russell to continue her work but suggested doing so within the existing departmental policies and procedures.
- [446] Ms. Russell testified that she attended a meeting on September 18, 2014, organized by Dr. Loo, which included Ms. Thornton and Caitlin Cunningham via Skype. The purpose of the meeting was to check in regarding a response from Krause and to ensure the attendees were coping after being outed by him. Dr. Loo aimed to clarify any miscommunications and discussed the limitations on the information she could disclose about DM. She emphasized that graduate students were "driving the bus" regarding what they wanted from the department, particularly concerning issues of inclusion, peer violence, and safety.
- [447] During the meeting, they proposed holding a workshop with Dr. Loo and Prof. Ducharme that would focus on peer violence and harassment at the graduate student level. The workshop aimed to highlight gender inclusion and sexual harassment. Dr. Loo and Prof. Ducharme were to introduce university policies and processes, followed by problem-based learning scenarios

facilitated by Ms. Russell and Ms. Thornton, concluding with a Q&A session and open discussion among graduate students.

- [448] In reference to a statement in the records indicating that Ms. Cunningham had not come forward, Ms. Russell clarified that she believed previous conversations indicated that Ms. Cunningham had made informal complaints. She stated that she was only aware of one sexual assault allegation involving DM in Toronto in the summer of 2014.
- [449] When asked about a plan to speak to DM about his behavior, Ms. Russell acknowledged being aware that Dr. Loo wanted to talk to him but did not recall the specifics of that conversation. She expressed that someone needed to communicate to DM that his actions were inappropriate and harmful. However, she noted that addressing DM's behavior was only part of a larger concern regarding the environment in which he operated, including gender inclusivity and attitudes toward sexualized violence. She did not provide any examples of what gave rise to such concerns.
- [450] Ms. Russell referred to an email from Dr. Loo that reiterated their ability to continue discussions and utilize Ms. Kay as a resource. She observed that Dr. Loo and Ms. Kay seemed to believe that the graduate students were solely focused on DM, while Ms. Russell felt that their concerns were part of a broader issue regarding departmental inclusivity and campus safety.
- [451] In subsequent communications, Ms. Russell emphasized that they were not the right people to develop problem-based scenarios for the workshop. They sought to involve trained facilitators, like Ashley Bentley, to ensure a sensitive approach. Ultimately, they decided to postpone the workshop until they could secure the appropriate resources and training.
- [452] She says Dr. Loo expressed concern about the inability to hold the workshop in a sensitive manner. One suggestion was to postpone the workshop until they had more thoughtfully crafted scenarios, while another was to have Ms. Kay provide a customized workshop instead. Ms. Russell was resistant to the third option, where Ms. would lead the workshop, especially due to her past comments regarding confidentiality and rumors.
- [453] Ms. Russell testified about her discussions with Dr. Ishiguro, who suggested forming a consciousness-raising group to address rape culture in academia. She also had informal conversations with Prof. Krause, discussing gender issues and power dynamics.
- [454] In spring 2015, she became involved with the HGSA statement concerning harassment, focusing on the language used and the demands made. She initially felt the language was

adversarial and was concerned about how it would be perceived by the department, especially by Dr. Loo.

- [455] The HGSA held an in-camera meeting to refine the statement before presenting it to Dr. Loo. During the follow-up meeting, she sought legal counsel regarding the statement and ultimately Dr. Loo concluded that it could not be presented in any form due to concerns about potential defamation and political implications. Ms. Russell expressed disappointment and frustration over this outcome, feeling silenced.
- [456] She says the purpose of the HGSA statement was to publicly acknowledge the existence of gender inequality and violence within the department, setting expectations for action from the chair. This included demands for transparency regarding past incidents of harassment and the establishment of a zero-tolerance policy.
- [457] They presented the proposed statement to Dr. Loo on March 31, 2015, and April 1, 2015. Dr. Loo advised they could not present the statement in its current form and advised she needed to seek some advice.
- [458] Ms. Russell agreed that they presented the statement to Dr. Loo less than 48 hours before the faculty meeting of April 2, 2015, which gave her little time to consider the statement.
- [459] When asked about the potentially defamatory language, Ms. Russell explained that phrases suggesting harassment had occurred in the department were flagged. The politically inflammatory statements suggested that graduate students felt censored and unable to speak about harassment, reflecting broader concerns within the HGSA.
- [460] After Dr. Loo declared the statement unacceptable, the HGSA held an emergency meeting on April 1, 2015, where they decided to seek legal counsel and voted to boycott the upcoming department meeting to highlight their concerns about the lack of open discussion surrounding harassment and safety within the department. Ms. Russell indicated that she did not anticipate the boycott would become as significant as it did, as she was primarily focused on the potential legal ramifications.
- [461] She agreed that when the HGSA announced that they were boycotting the faculty meeting, they in fact received a number of emails of support from faculty.

Exhibit 6 p. 415, 424, 425

- [462] On April 7, 2015, Dr. Loo sent an email to the HGSA, which indicated they would be having a workshop facilitated by SASC in a few weeks, as a way of educating faculty to the issues and

preparing them for a department-wide discussion on harassment, discrimination, and safety. She also inquired as to what they would like Ms. Bentley of SASC to cover in the workshop.

Exhibit 6 p. 426

- [463] In a reply to Dr. Loo, which Burrows cc'd to Ms. Russell, they thanked Dr. Loo for her quick actions and the steps being taken to organize educational initiatives at the faculty level. They agreed that Ashley Bentley was an excellent choice for the facilitator but did not have any specific requests or suggestions for the workshop content.
- [464] The HGSA spent almost two weeks modifying and editing the statement, and revisions were made in an April 14, 2015 version.
- [465] Ms. Russell testified that the HGSA was not involved in the planning of the workshop for faculty beyond being asked what topics to address. When asked if she had spoken with Ashley Bentley regarding the workshop, she confirmed that she had not.
- [466] Following an emergency meeting, HGSA decided to seek legal advice, and Ms. Thornton made an appointment with Professor Young at Allard Hall. Afterward, they received multiple revisions and suggestions for the statement. After meeting with Young, the HGSA made edits to the statement, altering the language to reflect allegations rather than stating them as facts.
- [467] Ms. Russell noted that Mr. Hay, Burrows, and Thornton held a meeting regarding this, which she was unable to attend.
- [468] Subsequently, another HGSA meeting was held, open to all members. Ms. Russell struggled to recall the specifics of that meeting, noting that it was where the complexities of acting as a collective became evident. Some of the emails she sent as the equity representative were being drafted on behalf of Mr. Hay, Burrows, Thornton, and herself as a subcommittee, which added to the confusion and difficulty of managing communication effectively.
- [469] Ms. Russell testified that the HGSA met again to discuss the suggested edits from Margo Young and voted to accept them. The revised statement was adopted and circulated on April 15, 2015.
- [470] In her testimony, Ms. Russell discussed her communication with Ashley Bentley, who expressed concerns about safety and the need for a mediator. Russell clarified that the HGSA did not require mediation and invited Bentley to participate in the discussions.
- [471] Ms. Russell indicated that Dr. Loo emailed the HGSA president, Dylan Burrows, expressing

her concerns that the circulated statement was misleading compared to the original statement they had intended to present. In response to Dr. Loo's email, Ms. Russell drafted a clarification to Dr. Loo, explaining the development of the HGSA statement.

[472] Additionally, Ms. Russell mentioned that Dr. Loo sent an email to the department referencing the HGSA statement and reiterating her concerns regarding the appropriateness of the discussions. On April 28, 2015, Dr. Loo sent out an end-of-year letter addressing the HGSA's concerns, which Ms. Russell found satisfactory.

[473] Ms. Russell testified that in 2015, the GSS initiated a "tell your story" campaign to collect and anonymize graduate student experiences related to harassment. She described her activities during the summer of 2015, stating that she focused on paying rent and tuition, which significantly limited her progress on her thesis due to financial constraints.

[474] Ms. Russell testified in detail about her involvement in the NAM process. She indicated that she applied to attend a hearing as an observer but was ultimately denied entry. Following this denial, she reached out to Mr. Morrison to inquire about the decision and to express her concerns regarding the composition of the NAM panel. Ms. Russell felt that the makeup of the panel was problematic, suggesting that it might not adequately represent or consider the perspectives of all parties involved.

[475] During her testimony, Ms. Russell highlighted that the NAM process was particularly stressful for Ms. Cunningham. She observed that the communication surrounding Ms. Cunningham's preparation for their statement was disorganized, which added to the stress of the situation. Ms. Russell noted that this disorganization led to confusion and potentially hindered Ms. Cunningham's ability to present their case effectively.

[476] Additionally, Ms. Russell described her experience in following up with Mr. Morrison about her concerns and the denial of her request to observe the hearing. She expressed a feeling of being dismissed throughout the process, indicating that her role and contributions as an observer were not taken seriously. This contributed to her overall dissatisfaction with how the NAM process was managed, both in terms of transparency and the consideration of student input.

[477] In her initial email dated October 6, 2015, Ms. Russell posed questions about her unique position and responded to Mr. Morrison's assertion that the presence of observers at the NAM hearing would not be supportive of those involved. She expressed concern about the need for observers who would have a net positive or net neutral effect on the complainant. In a follow-up email dated October 15, 2015, Ms. Russell sought clarification on who from other

university units would be attending the hearing. Mr. Morrison responded, asserting that it was within his discretion to deny her request for observer status. Ms. Russell felt that his response signaled a dismissive attitude, suggesting that he was concluding their correspondence without further discussion. She also noted that the language and formatting of his response felt more formal than his earlier communications, leading her to question whether he actually authored the email.

- [478] Ms. Russell asked Mr. Morrison where she could direct her feedback, but she did not receive a reply. She later became involved in a documentary produced by CBC's "The Fifth Estate" after reaching out to Ronna Syed. This decision came after she learned that other students, including Ms. Kirchmeier, Ms. Cunningham, and Professor Krause, were participating. Although she took time to decide due to concerns about her academic status and the potential impact on her graduate program, she ultimately felt that her position was less precarious compared to other students involved, particularly those who were PhD candidates facing the job market.
- [479] Ms. Russell articulated that while she had concerns about jeopardizing her status as an enrolled graduate student, she felt a responsibility to contribute to the discourse surrounding harassment and safety within the department. Being actively involved in the History Graduate Students' Association (HGSA) since summer 2014, she believed her participation would allow her to offer a student perspective on the events that unfolded over the academic year.
- [480] In describing her experience with the CBC interview, Ms. Russell recalled that it was nerve-racking and took place in her apartment, with Ms. Cunningham present for support. She expressed anxiety about her words being taken out of context and requested the opportunity to review the transcript before it aired. This was part of her broader concern about maintaining control over the narrative of her experiences and ensuring that her statements were accurately represented.
- [481] Ms. Russell also detailed her communication with David Eby in the fall of 2015, which was facilitated by Ms. Kirchmeier. Eby expressed support for the group's efforts to address issues of gender-based discrimination and harassment within the department. There was a push for external pressure on the university to take action regarding DM, who was already banned from campus at the time.
- [482] Ms. Russell provided context for an equity town hall event held in early November 2015, which was aimed at discussing equity issues within the graduate student experience. While she could not recall attending, she received information about the outcome of the NAM process

through Ms. Cunningham, who forwarded an email indicating that DM had been expelled. Ms. Russell reacted critically to the characterization of Ms. Cunningham's assault, noting that it was not identified as sexual in nature, which she found problematic.

- [483] She described her feelings about DM's expulsion as a long-awaited outcome and commented on the timing of David Eby's letter, which coincided with Ms. Kirchmeier's communication about the situation. After the initial article by Lisa Meyer titled "UBC Abandons Women" was released, Ms. Russell experienced a panic attack upon discovering that she had been misquoted. She was inaccurately attributed with circulating a petition for DM's removal, which she had not done. This misrepresentation led to a press conference to correct the record and address the misinformation.
- [484] Ms. Russell expressed concern that the CBC documentary dramatized events, which affected her relationship with Dr. Paris, her supervisor. She felt that the documentary scapegoated Dr. Loo and ascribed more power to her than was warranted in the context of the university's processes. Ms. Russell described her relationship with Dr. Paris as strained, particularly due to her terse communication style and lack of support during difficult times in Ms. Russell's academic career.
- [485] Ms. Russell testified that the purpose of the press conference was to advocate for a centralized body on campus dedicated to handling disclosures of sexual assault, which would provide support and guidance for victims navigating the fragmented processes currently in place. She found participating in the press conference nerve-wracking, especially since it was the first time her extended family learned about her experiences, but she felt a strong commitment to advocacy.
- [486] In addition to the press conference, Ms. Russell attended several conferences, including one on "Decolonizing Rape Culture" and various UBC workshops focused on developing campus sexual assault policies. She participated in the Butler Report process, where she felt relieved to share her experiences with Paula Butler, who was a good listener.
- [487] Upon reviewing the executive summary of the Butler Report, Ms. Russell expressed disappointment that it did not find UBC in breach of its policies, attributing issues to human error and lack of clarity. While the report acknowledged the emotional toll on students, she felt it did not fully capture the nuances of their experiences.
- [488] Following the press conference, Ms. Russell noted a significant change in the atmosphere of the History Department, which she says became tense and isolating, causing her to avoid it altogether. She testified that the events surrounding sexual assault had a negative impact on

her academic progress, exacerbating her pre-existing mental health conditions and leading to burnout. Ultimately, she completed her thesis later than anticipated, and she claims the quality of her work suffered.

8. Evidence of Sarah Thornton

- [489] Ms. Thornton, an educational consultant who grew up in California and studied at UBC, testified about her time as a graduate student in the History Department. Ms. Thornton started her Master of Arts in History at UBC in the fall of 2013, completing it in 2019. Initially, she was supervised by Professor Joy Dixon but later switched to Dr. Paris. She had no direct interaction with DM, but she knew who he was and observed that he often appeared disheveled and rushed during department meetings.
- [490] Ms. Thornton's testimony emphasized her involvement in the History Graduate Students Association (HGSA) and her participation in a discrimination and harassment workshop in March 2014, which she believed focused more on avoiding accusations of sexual harassment rather than addressing broader issues like reporting mechanisms. She did not have a good recollection of her understanding of UBC's policies on sexual misconduct or how the University handled such allegations at that time.
- [491] In July 2014, Ms. Thornton learned from colleagues about concerns regarding DM's alleged sexual misconduct, including claims of sexual aggression and rape. This information was relayed during a meeting at a coffee shop with other students, including Ms. Kirchmeier. Ms. Thornton along with the other women sought advice from professors, including Tamara Myers, and eventually decided to escalate the matter to the department head, Dr. Loo.
- [492] Ms. Thornton testified that after reporting their concerns, they met with Dr. Loo and Ms. Kay from UBC's Equity Office. She felt that Dr. Loo took their concerns seriously, as indicated by her swift response and invitation to discuss the matter. However, Ms. Thornton was confused by the distinctions Ms. Kay made between formal and informal complaints. She says she initially believed that the University was working with the students toward a common goal but realized during the meeting that the University had additional concerns, including the potential consequences of formally naming DM in the complaint.
- [493] Ms. Thornton says the women were confused by the meeting and she felt that only a formal complaint would lead to a significant investigation or follow-up regarding DM's alleged misconduct.

- [494] Despite the confusion, Ms. Thornton remained hopeful after the meeting that UBC was taking their concerns seriously and was working toward protecting the safety of graduate students. However, she did not recall learning anything new about DM's whereabouts or future plans during the meeting.
- [495] In the August 28, 2014, sexual harassment and departmental safety meeting, a variety of topics were covered. The meeting had an educational component that provided information about the resources available for students. Notably, the SASC resources were discussed, which was seen as a valuable advocacy tool. However, she says the security representative's focus on harassment and assault being related to "stranger danger," exemplified by an anecdote about a personal encounter in the Downtown Eastside involving a broken arm and a fight, was puzzling. She says attendees were frustrated, as they had come to discuss more common forms of harassment and assault, particularly those within the university context, which didn't fit the stranger-danger narrative.
- [496] She testified that the process for filing complaints, as understood from the meeting, appeared to be more about formal complaints of assault, which needed to be reported to the RCMP. She testified she felt the meeting did not address the internal university processes for handling such issues effectively, and there seemed to be outdated views held by some in authority on how harassment and assault should be perceived and managed. Additionally, specific concerns about sexual harassment were not directly addressed, nor was there a notable focus on equity and inclusion.
- [497] She testified that the meeting also brought up the role of representatives like Ms. Kay, although there was no clear recollection of her contributing to the discussion.
- [498] Ms. Thornton was cc'd on various emails with Dr. Loo throughout the fall of 2014 but did not author any emails herself (exhibit 65). She testified that her understanding was the first faculty meeting of the 2014/2015 academic year was expected to focus on creating a safe and respectful work environment, and Dr. Loo had seemingly committed to addressing these concerns head-on, albeit without naming any individuals. However, she says the remarks made by Dr. Loo were disappointingly general and unsatisfactory. She felt that rather than directly addressing the issue, Dr. Loo referenced existing policies, like Policy 3, and quickly moved on to the next agenda item.
- [499] After this, both Ms. Thornton and Ms. Russell were left surprised by how the meeting had unfolded. There was a feeling of talking past each other with Dr. Loo, leading to doubts about whether the students had misinterpreted earlier discussions.

- [500] In addition to these frustrations, a separate email from faculty member Paul Krause addressed Dr. Loo's failure to directly identify the concern. Ms. Thornton says the email was appreciated, though the early inclusion of others in the conversation felt a bit uncomfortable. Following this, she says further communications from Dr. Loo seemed like damage control, and meetings held afterward did not lead to any concrete plans or outcomes.
- [501] She further claims that attempts to discuss safety and harassment with other faculty members, such as Dr. Paris, led to disappointment. She says Dr. Paris refused to offer guidance and signaling that she wasn't aligned with the students' concerns. She says this was one of the first moments where isolation within the department became apparent, especially in contrast to earlier relationships that were once more supportive.
- [502] An HGSA initiative to offer a training workshop in Fall 2014, designed to educate on university policies and provide support regarding sexual misconduct, fell through. Organizers, including the HGSA representative, realized that they were not qualified to handle such sensitive topics without risking retraumatizing attendees. Despite efforts to secure qualified expertise and support from the department, it remained unclear whether any assistance was provided.
- [503] During the fall of 2014, further actions around safety and harassment concerns were initiated within the HGSA and the department, though specific initiatives were hard to recall. The department itself did not appear to take significant action on women's safety issues during that period, and concerns about harassment, particularly regarding DM, persisted. Meetings with faculty and graduate students continued, but resolutions seemed elusive.
- [504] By spring 2015, HGSA had drafted a statement addressing harassment and safety concerns within the department, reflecting frustration at the lack of direct acknowledgment of these issues by the department, particularly through Dr. Loo, the department head. Ms. Thornton, along with other members like Mr. Hay, Mr. Burrows, and Ms. Russell, contributed to the statement. The HGSA presented the statement to its membership for a vote, held during an in-camera meeting due to concerns about retaliation from faculty. The statement was eventually approved by a majority.
- [505] The HGSA initially planned to present this statement at the end-of-year departmental meeting, but after presenting it to Dr. Loo, she later informed them that the statement could not be shared at the meeting, calling it "inflammatory." This led to an emergency HGSA meeting, where members voted to boycott the department meeting. Following this, an email was sent to the department explaining the reasons for the boycott. This sparked responses from faculty members, with varying reactions ranging from criticism to support. Some faculty members,

including Tamara Myers, opposed the boycott, while others like Alejandra Bronfman and Carla Knappi expressed confusion or support for the HGSA's position.

- [506] The HGSA organized its own forum to discuss the issues more openly and invited faculty to attend. The forum was seen as a necessary step to break down barriers between faculty and graduate students, and although the forum was generally respectful, it was also emotional for some participants.
- [507] Despite these efforts, Ms. Thornton felt increasingly isolated, both from faculty and other graduate students. She sensed a lack of accountability and commitment from the department in addressing the harassment and safety issues, which contributed to her growing sense of exhaustion and depression. Her relationship with her thesis supervisor, Dr. Paris, had deteriorated by this point. She claims Dr. Paris had previously drawn a line, stating she would only discuss thesis work with Ms. Thornton which made it difficult for Ms. Thornton to seek guidance on departmental politics or personal support.
- [508] Ms. Thornton also testified that DM's exclusion from campus in April 2015 provided some relief, but she viewed his misconduct as part of a larger systemic issue within the department. She says the lack of acknowledgment and action on sexual harassment by the department reflected a broader cultural problem, discouraging students from coming forward with their own experiences. Ms. Thornton continued to engage with efforts to address these concerns, including participating in a Graduate Student Society (GSS) survey about student experiences with UBC's handling of harassment, though she says her mental health and thesis progress suffered during this period.
- [509] Ms. Thornton testified she never attended SASC for materials or support. She attended multiple meetings with Dr. Loo and Mr. Hay but did not recall specific comments, such as Dr. Loo saying "go rogue." Initially, she agreed that Dr. Loo dealt with sexual harassment issues directly but felt this approach changed after September 2014.
- [510] Ms. Thornton recognized differing perspectives within the HGSA regarding the statement and acknowledged having disputes with Mr. Hay over language in the statement. She expressed discomfort with the conciliatory nature of the HGSA statement, emphasizing the importance of maintaining the privacy and autonomy of survivors. She stated that she understood the prioritization of the complainants' privacy and was not consistently updated about the situation involving DM or the faculty's responses to allegations.
- [511] Ms. Thornton discussed the process of editing and finalizing the statement, indicating that changes were made, particularly concerning the language around allegations of harassment.

She acknowledged that the final version of the statement contained substantive changes compared to the draft presented to Dr. Loo. Further, she emphasized that addressing harassment was a faculty responsibility rather than primarily a student issue and criticized Dr. Loo for claiming credit for initiatives that originated as student requests.

[512] Finally, Ms. Thornton questioned whether the meetings provided a "safe space" for discussing sensitive issues, particularly concerning confidentiality and legal risks, reflecting her frustration with the bureaucratic dynamics and shifting tone of faculty engagement over time.

[513] When asked about specific incidents of harassment, she clarified that to her knowledge, there had been no allegations of harassment within the History Department building, with the only known case involving Ms. Cunningham occurring off-campus. Ms. Thornton highlighted that discussions about the power dynamics between graduate students and faculty were essential yet were not adequately addressed by university policies. She felt there was a departmental culture that discouraged open conversations about discomfort or concerns.

[514] Ms. Thornton's responses indicated that while she recognized the importance of initiatives led by the faculty such as reinstating an equity officer and forming an equity committee, her main issue was with Dr. Loo's framing of these actions. She found it problematic that Dr. Loo presented a narrative of progress while simultaneously suggesting that discussing the issues was off-limits. She noted that her frustration stemmed from the disconnection between the steps taken and the lack of acknowledgment of the real concerns within the department.

[515] She acknowledged the Brock Annex space as a significant step taken by faculty to address student concerns and confirmed that she had access to that space despite not being in classes at the time.

[516] When discussing safety concerns, she mentioned that faculty and students were expressing feelings of unsafety on campus generally. Although she had not heard of any other specific complaints outside of Ms. Cunningham's case, she believed that the department needed to acknowledge broader safety issues.

[517] Ms. Thornton found the tone of Dr. Loo's April 28, 2015, letter self-congratulatory, particularly the phrase expressing pleasure in the department's handling of the situation. Despite the constructive steps listed in the letter, Ms. Thornton's critique centered on the lack of meaningful engagement with the underlying issues of harassment and discrimination, which she felt were glossed over.

[518] Ms. Thornton did not recall receiving a specific email from Professor Roosa but acknowledged

that several faculty members had reached out to discuss issues related to HGSA. She confirmed having conversations with Professor Bradley Miller and Professor Myers during significant moments, such as after the HGSA's boycott of a departmental meeting. Ms. Thornton expressed feeling supported by Dr. Myers and agreed that faculty members were generally available to support her and other HGSA members.

- [519] When discussing her relationship with Professor Ishiguro, Ms. Thornton noted that their interactions deteriorated between September and December 2014. She testified that she had sent emails expressing concern about Ishiguro's being distant but later could not remember the specific details of those communications. Ms. Thornton disagreed with the suggestion that Ishiguro did not ignore her.
- [520] With respect to her relationship with Dr. Paris, Ms. Thornton says Dr. Paris had drawn a boundary regarding their discussions, which led Ms. Thornton to avoid bringing up personal issues. However, the record shows that Dr. Paris reached out multiple times to express concern about Ms. Thornton's well-being. Nevertheless, Ms. Thornton felt that the focus was primarily on her thesis progress. She acknowledged a gap in communication with Dr. Paris in late 2015.
- [521] In terms of her thesis writing, Ms. Thornton attributed delays to her struggles with depression and the demands of outside work. She noted that while Dr. Paris had recommended not allowing her to continue in the program, she felt that Dr. Paris genuinely wanted her to finish. Ms. Thornton reflected on her growing lack of trust in Paris and how this affected her willingness to seek help. She found it easier to communicate with other faculty, like Myers, who she felt addressed her situation more holistically.
- [522] Throughout her testimony, Ms. Thornton highlighted the emotional challenges she faced during this period. She described going through her past emails as an emotional process that revealed her struggles to connect with Dr. Paris while attempting to maintain professionalism. Ultimately, she felt a sense of relief when Dr. Paris stepped away from her committee and reorganized her supervisory support.
- [523] Despite her consistent criticism of the lack of support from Dr. Paris, when she was presented with a number of emails in December 2015 from Dr. Paris in which Dr. Paris stated "my central concern is simply to find out how you are doing. A second concern is to find out whether there is a reason you haven't come to talk with me over the past few months that I need to know about or address. I look forward to seeing you soon", Ms. Thornton denied any recollection of these emails (Dr. Paris testified as to these emails and they were entered as exhibits through

her testimony).

Exhibit 69

9. Evidence of Stephen Hay

- [524] Mr. Hay, a former PhD student at the University, provided extensive testimony regarding his experiences at Green College and his involvement in addressing the conduct of DM.
- [525] Mr. Hay described Green College (GC) as an academic unit, residence, and event sponsor that fostered close quarters among its approximately 85 residents and visiting faculty. He characterized it as a cooperative place with a strong sense of community, where residents generally governed themselves unless serious issues arose, as the administration was reluctant to police socialization due to a previous contract crisis. Mr. Hay attended various social events at GC, including a birthday party for DM and a gala, and maintained good relationships with faculty and residents.
- [526] Ms. Hay testified about DM being involved in various incidents of rough housing. During cross-examination, Mr. Hay testified that while GC was a community of adults, he believed organizational intervention was necessary for concerns brought to the GC office, disagreeing with the notion that adults should simply resolve concerns about rough play among themselves.
- [527] Mr. Hay says he observed and received complaints about DM's rambunctious and physical behavior at parties, including horseplay, bumping into people, shaking them, and picking them up. He spoke to DM directly about this behavior but noted no change, leading him to stop attending parties. He recounted an incident where Student B was injured, exhibiting concussion symptoms after being pushed during rough play. Mr. Hay discussed this with Mr. Lundeen, without naming DM, but he believed DM's leadership contributed to the rowdy atmosphere. He also stated that before DM left campus in May 2014, his concerns were limited to the level of physicality among male residents, not harassment or assault.
- [528] Under cross-examination, Mr. Hay admitted to participating in rough housing on one occasion, specifically tying DM to a tree, which he later deemed unacceptable. He said that he generally did not participate in rough housing and did not inform Mr. Lundeen about the tree-tying incident. He also clarified that he did not identify DM to Mr. Lundeen in 2012 but claims he did so in 2015.
- [529] In the fall of 2015, Mr. Hay observed a divided atmosphere in the history department, marked by a "chilling effect" from faculty and a culture of silence, which he noted was

reinforced by a faculty member's presentation titled "silence sustains us." He described UBC's environment as having overlapping relationships and power hierarchies, and he observed a tendency for the university to "stall, stonewall, silence, and bury reports" of serious wrongdoing. After the events, a schism developed between Mr. Hay and GC residents, leading to a loss of his academic community and a reluctance to form new friendships. He ceased socializing with GC residents after a certain point. Mr. Hay further described the departmental climate throughout 2015 as fearful, which he believed prevented open discussion. He noted that gossip and rumour among graduate students often served a protective function in the absence of open communication.

- [530] He noted that Dr. Loo prevented him from presenting the HGSA statement at a faculty meeting, and he felt silenced by this action. He clarified that, apart from Dr. Loo, he was not explicitly told to stop talking about the issues, but the departmental culture contributed to his sense of being silenced.

Knowledge of DM's Conduct

- [531] Mr. Hay first met DM in the fall of 2011 and became aware of his reputation for being a "pest" at parties and making inappropriate comments. In February 2013, he learned from another resident that DM had raped Student C, who later confided directly in Mr. Hay. Respecting Student C's confidentiality, Mr. Hay did not report this information at the time. He also became aware of DM's unprofessional conduct in academic settings, including at conferences, and his belligerence towards faculty. No UBC employee contacted Mr. Hay to inquire about DM's conduct.
- [532] In May 2014, Student B disclosed to Mr. Hay that DM had raped her, causing Mr. Hay to feel guilt for not warning her more explicitly. He received an email from DM in July 2014, which he found self-justifying and manipulative, and forwarded it to Student B. Mr. Hay was aware of other allegations from Student C and Ms. Cunningham, which he referenced to UBC administrators. He communicated his personal observations of DM's behaviors and complaints to UBC officials, including specific incidents like DM planning a drinking night with UBC students in Ottawa, motivated by a sense of urgency that "history might repeat itself." He learned that for an official report, the alleged assailant's name had to be included, leading him to identify DM despite concerns about slander. By May 2015, Mr. Hay was aware of multiple allegations against DM, including from Ms. Cunningham, Student B, Student C, and Student E. He communicated about DM's attendance at conferences and relayed his whereabouts to concerned parties. Mr. Hay testified that he did not have direct or first-hand knowledge of sexual assault or harassment involving DM

and certain students, but claims he did witness harassment of Student C via Facebook.

[533] He stated he learned of Student E's situation in spring 2015, well after the events occurred, and was not aware of DM returning to campus after May 2014, nor did he track his whereabouts. He recalled Ms. Kirchmeier mentioning a past sexual encounter with DM but did not recall specific complaints from her about DM personally, understanding that her complaint shifted from DM personally to UBC's handling of complaints.

[534] Under cross-examination, Mr. Hay's belief about DM's teaching duties being removed was based on information from a graduate student colleague, Carol Matheson, not direct knowledge from UBC or DM. Matheson described DM as disrespectful to Professor Friedrichs and alleged verbal and emotional abuse. Mr. Hay did not have knowledge of DM's TA duties in September 2014, only a general understanding that DM was away conducting research. He saw DM at a mandatory TA conference in spring 2014, which led him to believe DM was still on the TA contract list at that time. His concern about DM's whereabouts increased in March-April 2015, particularly regarding his potential return to campus. Mr. Hay clarified that his knowledge of allegations against DM was primarily from reading communications (emails, Facebook messages) and disclosures from others, rather than direct observation of physical acts, but he considered reading such communications a form of witnessing harassment. He was not present for any alleged assaults involving students B, C, or E. He brought communications between DM and Student B to Mr. Hyson and understood DM had been removed from teaching responsibilities due to harassment, though he lacked exact details.

Advocacy Efforts

[535] Mr. Hay testified that he undertook significant advocacy efforts, contacting the Ombudsman, his department chair, and Mr. Hyson, providing them with information and evidence. He sought advice from the Ombudsman, who informed him that his dilemma was moral or ethical, not legal. He participated in drafting and revising a statement with the HGSA and organized meetings, contacted other students, and participated in a town hall after being forbidden to present the HGSA statement at a faculty meeting. He sent numerous emails to university officials, organized meetings, and participated in forums to address harassment and sexual assault policies. He worked to assemble material for a Caitlin Cunningham complaint and motivate UBC officials to act promptly. He drafted a policy letter to the VP Students, but says he did not send it due to burnout. Mr. Hay lobbied various parts of the administration, believing that effective action required pressure on

multiple fronts, and participated in meetings with the GSS (Graduate Student Society) and policy discussions.

- [536] In May 2015, he researched policy and drafted a letter to UBC administration, seeking legal advice regarding Human Rights Tribunal complaints or delays in UBC's process. He consulted friends who were journalists and the ombuds office about preparing a letter for the VP of UBC. He met with Ashley Bentley of SASC for counseling and discussed concepts like compassion fatigue. He attempted to shift advocacy work to others due to its negative impact on his academic program and funding, and had occasional contact with GSS advocates but did not participate in their report. He was involved in union activities (CUPE 2278), bringing motions about harassment policy. Mr. Hay spent significant time preparing a timeline and drafting letters, seeking advice from the Ombuds Office on how to make his advocacy effective and appropriate. He engaged with SASC for strategic advice and personal counseling and was involved in organizing or supporting departmental responses such as HGSA statements and equity town halls. He alleges he sent over 1,703 emails dealing with DM complaints and UBC's response, participated in policy discussions, submitted comments on draft policies, attended relevant conferences, and provided documents to UBC, participating in the Butler Report process.
- [537] Under cross-examination, Mr. Hay expressed relief at feeling heard by some faculty members after these advocacy efforts but also frustration that the severity of his concerns about DM was not fully appreciated. He provided timelines and other documents (not first-person accounts) to journalist Ronna Syed for a CBC story, but says he refrained from sharing survivor communications without permission.

Alleged Impact on Hay

- [538] Mr. Hay says he experienced significant emotional distress, guilt, and anguish as a result of the disclosures he received and his involvement, leading him to seek counseling from SASC. His academic progress and opportunities were affected, including a rescinded teaching offer and feelings of fatigue and burnout. He expressed frustration with the slow response of the university and the challenges of navigating power imbalances. The personal toll of his advocacy included burnout, distress, and fear for student safety. He says his degree was delayed due to the time spent addressing these issues, and he experienced physical symptoms of anxiety, such as shaking, following perceived threats from university officials. He felt brushed off by faculty and administration, which impacted his trust in the university.

- [539] By May 2015, he says he became burnt out and depressed, missing deadlines for funding and TA positions, and his academic work suffered. He gained weight, experienced a flattened emotional affect, and felt a general sense of doom. After the story became public, he felt relief but soon returned to feelings of dread, noticing increased avoidance by faculty and students, and feeling isolated within his academic community. He faced financial hardship, emotional distress, isolation, and vulnerability, along with physical symptoms like pain and sciatica. The events strained relationships with friends, family, and colleagues, leading to a loss of trust in the institution, and he became cynical and skeptical. He felt burnt out by the administrative burden and emotionally taxed by investigations, fearing retaliation or damage to his reputation.
- [540] Under cross-examination, Mr. Hay testified that he felt threatened by Mr. Hyson's advice to have a law student review his emails, interpreting it as a threat due to Mr. Hyson's disciplinary responsibilities. He described a deterioration of trust in the university and feelings of fear and crisis during his advocacy. He also discussed the personal impact of rumors and the strain on relationships with colleagues and friends. Mr. Hay says he developed a personal safety plan in April 2015 due to concerns about encountering DM, which included avoiding DM, increasing electronic security, and monitoring online information. He did this despite knowing DM was out of the country.
- [541] He described feeling increasingly despondent and concerned, believing he was not being heard by UBC administrators. His trust in the department was severely eroded, and he experienced chilling effects, delays, and uncertainty about his standing. He feared reprisals for speaking up, and his supervisor relationship eroded, contributing to delays in completing his degree. He received multiple extensions for his PhD (16 terms) due to these circumstances, but did not seek a formal leave of absence.

Understanding of UBC Policies

- [542] Mr. Hay stated that he had limited knowledge of UBC's system for reporting and responding to sexual misconduct allegations at the outset. Through subsequent meetings with Mr. Hyson, Mr. Hay became more familiar with university processes, including the NAM process. He did not recall receiving orientation or training on university policies, the student code of conduct, the NAM process, or Policy 3 during his time at UBC or as a TA. He assumed the university would have some disciplinary process but lacked specific knowledge. He attended a session on discrimination and harassment in March 2014, which he found minimally effective.

- [543] Mr. Hay sought to understand Policy 3 and Policy 14 through conversations with Mr. Hyson and information on the UBC website. He expressed frustration with the university's interpretation of these policies, particularly regarding the exclusion of off-campus incidents from consideration, and claims he spent about a week studying UBC policies in detail. He understood UBC's policy situation involved multiple policies, such as Policy 3, Policy 14, and the statement on respectful environment. He believed these policies meant UBC needed to act promptly, but he felt that nothing would change. The Ombuds office informed him that the legal standard for restricting campus access was high, and that Ms. Kay had discretion to take reports orally and after a year had expired, and that non-university members could make reports. He noted that TA training referred to Policy 3, which applies to employees.
- [544] Under cross-examination, Mr. Hay agreed he sought advice from lawyers regarding his legal obligations upon receiving emails from DM about Student B, learning that witnesses are not obligated to cooperate. He understood that discussions about harassment needed to be facilitated appropriately to protect survivors. He understood from Mr. Hyson's email on April 29, 2015, that he had no obligations as a UBC student regarding reporting harassment, but he remained uncertain and sought legal advice. His testimony indicated confusion or lack of clarity about UBC's human rights complaint processes, definitions of class membership in legal actions, and adjudication of complaints against DM. In fact, he believed at one point he could be a plaintiff against UBC but later understood he was not eligible based on class definition (limited to female students). He referenced mandatory training on harassment and noted that privacy rules limited what administrators could share with him regarding actions taken against DM.

Role as Intermediary/Support Person

- [545] Mr. Hay acted as an intermediary and support person for students disclosing allegations against DM. He struggled with decisions about sharing information, balancing confidentiality with the need to warn others. He forwarded relevant emails to Student B and university officials, sought permission from Student B before sharing information with Mr. Hyson, and approached other students who might have complaints. He provided emotional support to individuals he believed were at risk and attempted to facilitate the reporting process for others, including Student C, by connecting them with university staff. He was encouraged by Mr. Hyson to perform this role, despite feeling that the university was shifting its obligations onto him. He motivated students to come forward. Mr. Hay reached out to students at the instruction of others, relaying information, and encouraging

participation in advocacy and support efforts. He communicated with students and faculty about policy issues, timelines, and reports, and attempted to connect students with resources such as the GSS and SASC. He sent emails to HGSA members, hoping they would take over advocacy work, and acted as president of the HGSA during a town hall. He relayed information between students (such as Student C) and officials (such as Mr. Hyson). He attempted to connect students with advocacy resources (e.g., referring Student B to a journalist or connecting students with GSS advocates). In his capacity as VP (and acting president) of the HGSA during key periods, he coordinated responses within the department and encouraged participation in equity town halls. He acted as a support person and advocate for victims, writing emails of support, acting as a spokesperson, and bringing information to UBC. He clarified that his involvement was voluntary and not as a professional, but as a student and peer. He brought information to UBC, acted as a spokesperson for Student C, and provided contact information for Student B to university officials. He clarified that he did not make decisions for complainants regarding going to police.

- [546] Under cross-examination, Mr. Hay says he facilitated communication between students (Student B and Student C) and UBC's director of student conduct, Mr. Hyson, ensuring that students had control over their complaints and only acted with their consent. He described his role as stepping back once direct contact was established between the students and Mr. Hyson. He recounted his careful approach to maintaining confidentiality and consent when acting as an intermediary. He acted as an intermediary by bringing communications from students to UBC administrators like Mr. Hyson, facilitating contact between Student B and Mr. Hyson, and providing documents from Student C to Mr. Hyson. He was careful to obtain permission before sharing contact information with journalist Ronna Syed and stopped acting as a liaison between Student B and Mr. Hyson once they began communicating directly. He provided contact information for survivors to journalists only with their consent. He clarified his role as bringing communications from students to university officials, facilitating contact, and supporting survivors. He acknowledged his role was voluntary and unpaid, and he sought clarification from Mr. Hyson about this status.

Overstepping Survivor Autonomy and Confidentiality

- [547] Mr. Hay repeatedly inserted himself into the role of advocate and intermediary for survivors of sexual assault and harassment, despite not being a direct victim himself. He often acted without clear, documented consent from the actual complainants, forwarding sensitive information and communications to university officials and, at times, to journalists. His

approach to sharing details about others' traumatic experiences, sometimes based on second-hand accounts or his own interpretation, demonstrates a disregard for the autonomy and privacy of the women involved. By acting as a spokesperson and relaying their stories, he risked exposing them to unwanted attention, scrutiny, or even retraumatization, all without the safeguards that a trained professional or official support person would provide.

Inappropriate Self-Identification as a Victim

[548] Despite not being a woman, nor a direct victim of sexual assault or harassment, Mr. Hay repeatedly cast himself in the role of a victim within the narrative. He described experiencing "institutional betrayal," "secondary trauma," and "compassion fatigue," and emphasized the personal toll the events took on his academic progress and mental health. While it is possible to experience distress as a supporter or witness, Mr. Hay's repeated centering of his own suffering risks minimizing or overshadowing the actual harm experienced by the women who were directly assaulted or harassed. This self-identification as a victim may have shifted focus away from the complainants and undermined the survivor-led nature of the process, making the situation more about his own grievances with UBC than about supporting those who were harmed.

Escalation and Public Exposure Without Proper Safeguards

[549] Mr. Hay's conduct included escalating matters to the highest levels of university administration, copying multiple officials on sensitive emails, and referencing potential media and legal exposure for UBC. He also facilitated contact between survivors and journalists, sometimes without clear, explicit, and informed consent. This approach not only risked breaching confidentiality but also exposed survivors to public scrutiny and institutional backlash, potentially against their wishes. His actions suggest a willingness to use the experiences of others as leverage in his campaign against UBC, rather than prioritizing the safety and preferences of the actual survivors.

Blurring of Roles and Lack of Professionalism

[550] Mr. Hay assumed the roles of advocate, investigator, and spokesperson without any formal training or mandate. He took it upon himself to interpret and communicate the experiences of others, sometimes pressuring survivors to come forward or participate in advocacy efforts. His involvement in drafting and pushing for the adoption of statements about harassment, even when other students or survivors were uncomfortable,

demonstrates a lack of respect for the boundaries and agency of his peers. This blurring of roles is particularly problematic in sensitive matters involving sexual violence, where trauma-informed and survivor-centered approaches are essential.

Contribution to Division and Distrust

[551] Mr. Hay's aggressive advocacy style, including his involvement in internal disputes within the HGSA and the history department, contributed to polarization and a "chilling effect" within the academic community. His actions sometimes alienated colleagues and faculty, and his tendency to broadcast concerns widely, rather than working through established, channels grounded in confidentiality, may have undermined trust and discouraged others from coming forward. By making himself the focal point of advocacy and conflict, he arguably exacerbated divisions and made it more difficult for the department and/or other units involved to address the underlying issues collaboratively.

[552] Notably, Mr. Hay admitted to participating in the same roughhousing and boundary-crossing behaviors he later condemned in others, including tying DM to a tree. This hypocrisy undermines his credibility as a critic of the culture at Green College and raises questions about his judgment and self-awareness.

[553] In sum, Mr. Hay's conduct can be criticized for a pattern of overreach, self-aggrandizement, and disregard for the boundaries and autonomy of the actual survivors. By centering his own distress, acting without proper consent, and escalating matters in ways that risked further harm to survivors, he failed to respect the fundamental principles of survivor-led advocacy and confidentiality. His lack of professional training, combined with a tendency to blur the lines between support and self-promotion, ultimately undermined both the effectiveness and the appropriateness of his involvement.

10. Evidence of Alexei Kojevnikov

[554] Mr. Kojevnikov is currently a professor in the UBC History Department. He testified that he has been on faculty since 2006. He stated that he was there to give evidence about the "little that he knows" about the case. Prior to his testimony, counsel for the Complainants indicated that he was being called to testify about "what he was not told" as a professor in the department. Accordingly, it became apparent during his testimony that he had little relevant evidence to offer and his evidence was often rambling and nonsensical and related to his personal grievances within the faculty at UBC.

- [555] He testified about his role in terms of supervising PhD students. When new PhD students arrive, they take classes with different professors and their supervisor discusses which classes are useful for their topic. The next crucial period is during comprehensive exams in February of the 2nd year, where supervisors help prepare for examinations. After 3 years, many students leave campus and go to places for research, so supervisors are not always in contact with them. The next intensive period is when students are writing drafts, and the next interaction is further editing. He testified that PhD students typically attend conferences as presenters.
- [556] In terms of non-academic advising, he testified that if he was told about a student's behavior being a concern he would have instructed the student to correct his mistakes and teach them how to act professionally.
- [557] Mr. Kojevnikov was DM's supervisor during his PhD. He testified that he began in September 2011 and he was likely supervising 3 other students in addition to DM. He stated that DM received funding just like every other PhD student, which is through grants. He agreed on cross-examination that the ledger did not show any grant funds being paid to DM in the 2014 school year.
- [558] He testified that DM did not TA for him and did not take any of his courses or seminars. He further testified that he interacted with DM in a limited manner, specifically he saw him on two or three occasions at social gatherings. He did not attend any conferences with DM and testified that he did not observe any conduct on the part of DM that caused concern.
- [559] He testified that in June or July 2014 he drove Ms. Kirchmeier home and she mentioned DM in a negative sense, but he did not ask anything further. He testified that in the fall of 2014 or early 2015 there was a Department meeting in which there was a discussion that there were complaints of sexual misconduct in the Department but no names were mentioned. He indicated that he asked Dr. Loo about the concerns later and whether he needed to be concerned and she stated that she could not tell him and that was the end of the conversation.
- [560] Mr. Kojevnikov testified that he had heard rumours that DM was involved and there was a meeting called by the graduate students, but no names were mentioned there either.
- [561] He testified that he found out about DM being banned on campus, but the message was that he was not supposed to know and that the information was confidential. He testified that his last meeting with DM was in 2014 as he was off campus after that time. He further

testified that he received a letter advising of DM's expulsion sometime in November 2015 but he could not recall if he opened it right away. He further testified that he was not asked to provide a statement at the NAM hearing, and in cross-examination he agreed that he would not have any evidence to offer since he had limited interactions with DM.

[562] He testified that in 2015 within the department it was clear there was something wrong and the graduate students were in a state of crisis. He testified that he felt helpless because there was a ban on communication under the guise of privacy and he could not be helpful.

[563] He further testified that he learned much of the information about the allegations from the CBC documentary, and that his view was that it was a violation of DM's rights and privacy and that it was racist against Russian foreigners.

[564] Mr. Kojevnikov testified that he is no longer allowed to have PhD students and that his relationship with the department has changed significantly and is no longer positive. He also testified that there is discrimination in the department and certain professors are no longer being assigned PhD students, including himself, and this has caused a division in the faculty. He testified in cross-examination that there are many factors that go into the decision about assigning PhD students.

[565] Mr. Kojevnikov also provided some evidence about the atmosphere at UBC and the issues in Green College, which he has no involvement in. In cross-examination he agreed that everything knows about this case comes from what he has read in the Complaint.

11. Evidence of Paul Krause

[566] Prof. Paul Krause testified that he joined the UBC History Department in the 1990s and served for many years as a senior faculty member specializing in political history. By 2013–2015, he was the graduate supervisor of several students, including Ms. Cunningham, and he was a long-standing advisor to the History Graduate Students' Association (HGSA). As a senior, influential professor, many students viewed him as a source of guidance and expected him to advocate for their interests within the department.

[567] His role in relation to the DM matter arose because several students approached him in 2014 with concerns about DM's conduct, and because he communicated those concerns to other faculty, including the Department Head, Dr. Loo. He acknowledged that he had no formal administrative authority over harassment processes, no role in EIO

investigations, and no training in UBC's harassment procedures.

[568] Prof. Krause acknowledged that he was aware of UBC's Policy 3 at the time. However, he testified that he did not consider himself particularly knowledgeable about the complaint process, and his understanding was shaped largely by conversations with students rather than any direct consultation of policy documents. He stated that he did not know the distinctions between informal and formal complaints, did not understand the structure of the NAM process, and did not receive training on handling student disclosures of sexual harassment.

[569] Despite this, he involved himself directly in advising students on how the department and the university should respond. He also communicated assertively with faculty and administration, including sending the September 11, 2014, email criticizing Dr. Loo.

Exhibit 6, p. 262 (Policy 3 circulated by Dr. Loo to department);
Exhibit 6, p. 290–291 (Prof. Krause's email to faculty and students, Sept. 11, 2014)

[570] In direct examination, Prof. Krause testified that prior to 2014 he had very limited knowledge of DM. He recalled DM as a graduate student who was academically capable and personable but did not recall any concerns being brought to him about DM before the spring or summer of 2014. He noted that he had some professional interactions with DM—such as DM attending talks or participating in department functions—but denied any prior knowledge of problematic behaviour.

[571] This testimony contrasted with several students' recollections that concerns had been circulating for some time. Under cross-examination, Prof. Krause acknowledged that students may have been discussing DM informally before approaching faculty, but he continued to insist that he personally had no earlier knowledge.

Exhibit 6, p. 275–279 (student safety resource meeting notes referencing pre-2014 climate)

[572] According to Prof. Krause, concerns regarding DM first came to him from students in the spring and early summer of 2014. Ms. Cunningham, his graduate supervisee, told him she felt uncomfortable around DM and disclosed the hair-pulling and headlock incident during a social outing. Ms. Russel and Ms. Thornton also expressed concerns to him and indicated that several women were uneasy about DM.

[573] Prof. Krause testified that he took these concerns seriously, regarded Ms. Cunningham

as credible, and believed that the department should act. He said he reached the view that the women were frightened and felt unprotected within the department. He presented himself as someone advocating for greater transparency and departmental acknowledgement of the issue.

- [574] However, under cross-examination he acknowledged that none of the students had asked him to take specific action, and that they had all been in contact with Dr. Myers and later with Dr. Loo and EIO. He also conceded that his intervention was unsolicited and not grounded in any training or mandate.

Exhibit 6, p. 209 (email from Dr. Myers to Dr. Loo);

Exhibit 6, p. 213 (email from ML, Caitlan Cunningham, Ms. Russell,

Ms. Thornton to Dr. Loo indicating wish to meet);

Exhibit 6, p. 221 (notes of July 31, 2014 EIO meeting)

- [575] Prof. Krause testified that after students came to him, he contacted Dr. Loo to convey what he had heard. His July 24 and 25, 2014 emails to Dr. Loo expressed the view that the department should make explicit statements acknowledging concerns and should warn students about DM.

- [576] Dr. Loo responded to him, indicating that she was consulting EIO and emphasizing confidentiality. Prof. Krause testified that he understood the need for confidentiality but believed the department had a parallel duty to provide safety information.

- [577] Under cross-examination, he acknowledged that he had pressed for disclosure despite knowing that confidentiality obligations limited what Dr. Loo could say.

- [578] His testimony indicated that he was frustrated that EIO, not the department, was controlling the process, and he conceded that he believed at the time that the department should “take ownership” of the issue even though he now understands that university policy assigned authority to EIO.

Exhibit 6, p. 224–228 (emails between Prof. Krause and Dr. Loo, July 24–25, 2014);

Exhibit 6, p. 215 (EIO notes confirming Dr. Loo’s consultation)

- [579] Prof. Krause testified that he attended the September 11, 2014, department meeting at which Dr. Loo made general remarks about respectful environments and available policies. He said he expected her to make a more explicit acknowledgement of concerns about DM.

- [580] He stated that he felt Dr. Loo's remarks were insufficient and departed from what he believed had been an "understanding" between them about fuller disclosure. He then sent an email to several faculty and to three graduate students which called Dr. Loo's remarks "lamentably disappointing".

Exhibit 6, p. 290–291 (September 11 email sent by Prof. Krause)

- [581] Under cross-examination, he admitted that no agreement existed between him and Dr. Loo, and that Dr. Loo had never told him she would mention DM or Ms. Cunningham specifically. He also conceded that he did not seek the students' consent before copying them into the email and had not considered the confidentiality implications.

- [582] He acknowledged that copying the students to criticize the Department Head may have caused distress and may have undermined the confidentiality Dr. Loo had promised them.

Exhibit 6, p. 299–300 (EIO/HR consultation following the email);

Exhibit 6, p. 295 (Ms. Russell's email expressing concern)

- [583] Prof. Krause testified that he was aware that students and Dr. Loo were planning a mandatory workshop for graduate students in September 2014. He stated that he supported educational initiatives but thought they were insufficient without more explicit departmental acknowledgement of DM's conduct.

- [584] He admitted under cross-examination that he did not participate in any planning, did not attend coordination meetings, and had no role in preparing the scenarios. He also confirmed that he had no discussions with students about the safety concerns that later caused them to cancel the workshop.

Exhibit 6, p. 304–305 (emails regarding mandatory workshop)

- [585] Prof. Krause testified that through fall 2014 he continued to speak with students and faculty about the DM matter. He believed the department had not taken meaningful action and felt a duty to advocate.

- [586] He admitted he had conversations with one of the SASC volunteers and that she later reported the conversation as inappropriate. He said he was unaware she felt uncomfortable at the time but did not dispute that she made such a report.

Exhibit 6, p. 55–56 (notes referencing SASC volunteer issue);

Exhibit 6, p. 274–279 (SASC resource meeting notes)

- [587] He also testified that he contacted EIO at least once seeking information, though EIO did not engage with him substantively. He acknowledged under cross-examination that he was not entitled to that information as he was not a complainant, a respondent, nor an authorized administrator.
- [588] Regarding early 2015, Prof. Krause testified that Caitlin Cunningham told him about an alleged “incriminating” email by DM. He admitted he never saw the email. He did not provide specifics about the content.
- [589] He also testified that he learned a formal complaint had been initiated, though he continued to press Dr. Loo for departmental action even after the matter was formally under EIO and NAM jurisdiction.
- [590] Under cross-examination, he conceded that once the matter entered a formal complaint process, he had no role and that his expectations of transparency were inconsistent with the confidentiality obligations imposed on administrators.

Exhibit 6, p. 304

- [591] Prof. Krause described advising HGSA members in 2015 and supporting Ms. Kirchmeier’s efforts to push for departmental accountability. He acknowledged that he encouraged students to pursue public-facing advocacy through the Talon article and other means because he believed the university was not responding adequately.
- [592] Under cross-examination, he conceded that he sometimes spoke on behalf of students without confirming that all agreed with him and that he may have overstated consensus within the HGSA.
- [593] He also admitted that drafting or encouraging public statements about an ongoing harassment matter could compromise confidentiality and that he did not seek guidance from EIO before engaging in public advocacy.
- [594] Prof. Krause testified that he was broadly aware of the NAM process but did not understand its mechanisms or confidentiality obligations. He stated that he learned of DM’s expulsion through departmental channels and believed it validated student concerns.
- [595] Under cross-examination, he acknowledged that he had no direct knowledge of the evidence considered in the NAM process and that he spoke publicly about the case without knowing the underlying facts.

- [596] Prof. Krause's testimony was marked by inconsistencies between his recollection and the documentary record. While he presented himself as an advocate acting in students' best interests, his actions often conflicted with confidentiality obligations, and his understanding of university policies was limited. His September 11 email, which copied students and criticized Dr. Loo, was inconsistent with the duties of a senior faculty member and complicated the position of students who were attempting to decide whether to pursue a complaint. His belief that an "agreement" existed with Dr. Loo is contradicted by the email record.
- [597] The exhibits, particularly the email correspondence between him and Dr. Loo, show that Dr. Loo was consistently clear about confidentiality constraints, whereas Prof. Krause persistently pressed for disclosure. The cross-examination further demonstrated that he lacked knowledge of Policy 3 mechanisms despite presenting himself as an informed advocate.
- [598] Many of Prof. Krause's actions were not grounded in concern for students so much as in a broader animus toward the department's leadership and a desire to portray himself as the moral authority in opposition to the administration. Cross-examination also revealed personal grievances that coloured his interactions with the department and with Dr. Loo. Notably, he raised a complaint about what he considered insufficient recognition at his retirement party, a matter entirely unrelated to the DM complaint but telling in terms of his relationship with departmental leadership and his readiness to attribute malice or mistreatment to administrative decisions. The fact that he cited such a trivial interpersonal slight in testimony about a sexual harassment complaint underscores the extent to which his evidence was coloured by personal resentment rather than impartial recollection.

12. Evidence of Monica Kay

Ms. Kay's Background, Training, and Reporting Structure at UBC

- [599] Ms. Kay holds a Bachelor of Arts in psychology from SFU and a law degree from UBC. She was called to the bar in 1993 or 1994 and practiced law for approximately two years, primarily in personal injury, with some criminal work. Her career included roles at the BC Human Rights Commission, as a community coroner, human rights advisor at Metro Vancouver, director of equal employment opportunity at the City of Vancouver, executive officer at the Hastings Institute, and human rights director/advisor at BCIT.
- [600] Ms. Kay joined UBC as Director of Conflict Management in August 2013. She was hired

by Dr. Parhar and reported to him until Dr. Sara-Jane Finlay took over as her supervisor around 2015. She remained in this role until summer 2018. She was not given direction by the OUC but sought advice from them. Ms. Kay was not aware of the full reporting structure above her or the precise structure of the Equity and Inclusion Office. The Equity and Inclusion Office was being restructured when she joined, and her role was focused on conflict management, not investigation or discipline

- [601] Ms. Kay had a good working knowledge of the Human Rights Code from her prior work and training at the Commission, CLE courses, and coaching from Fasken partners. She considered sexual harassment and adverse effect discrimination to be breaches of the Code and university policy. She received trauma-informed practice training at UBC from Jennifer Hollinshead in 2014 or 2015. This training emphasized survivor-focused approaches, the impact of trauma on memory, and the importance of not forcing survivors into processes they were not ready for. Key takeaways included self-awareness of assumptions, not judging credibility based on affect or memory, creating a supportive environment, and respecting survivor autonomy.
- [602] Ms. Kay testified that she became familiar with Policy 3 (discrimination/harassment), Policy 14 (Student Code of Conduct companion), and the Statement on Respectful Environment over time. Her primary focus was Policy 3, while Policy 14 was more relevant to the NAM/ Mr. Hyson process. She understood that Policy 3 reflected the Human Rights Code, defining protected grounds, discrimination, harassment, retaliation, and university commitments. After reorganization, the EIO no longer investigated complaints; investigations were handled by other agencies. For student respondents, investigations went to Mr. Hyson/NAM or the administrative head of unit (AHU); for employee respondents, to HR/LR or the AHU; or by external counsel in special cases.
- [603] She was aware of Policy 14, which dealt with at-risk behaviour and referrals to Campus Security, but she did not administer it. Ms. Kay was familiar with the Student Code of Conduct, its general provisions, prohibited conduct, disciplinary measures, and the NAM process. She understood Campus Security as the main entry point to Mr. Hyson's office. Ms. Kay interacted with legal counsel, Kim Beck, for orientation on Policy 3 and referrals for investigations.
- [604] Ms. Kay's role was focused on informal management of human rights complaints, capacity building, and conflict management. Her mandate was to manage conflict informally wherever possible. She was not permitted to investigate; anything requiring investigation was referred out to appropriate agencies such as NAM/ Mr. Hyson, AHU, or HR/LR.

[605] Her work included providing education on protected grounds, bullying, harassment, and university policy. She worked to improve understanding and address siloing within the university. She supported capacity building and case management under human rights and equity. Her work also involved presentations on conflict prevention and management, supporting individuals in conflict (not limited to human rights issues), and mapping campus resources. Ms. Kay had no disciplinary authority and could not impose penalties or evict students. She could provide advice, support, and referrals, but not conduct investigations or discipline.

Interactions with Students in the DM Complaint

[606] In January 2014, Ms. Kay was contacted by Michel Ducharme regarding allegations of sexual harassment by DM in the history department. She reviewed emails describing aggressive flirting, touching, and boundary violations, which she considered serious and raising safety concerns. She testified that Ms. Kirchmeier emphasized confidentiality and did not want a formal investigation at that time. Ms. Kay suggested a presentation to the department on human rights and harassment as a response.

[607] In February 2014 Ms. Kay met with Ms. Kirchmeier, focusing on confidentiality and options for addressing concerns without a formal complaint. She testified that she did not discourage Ms. Kirchmeier from filing a complaint and clarified with legal counsel that being an alumna was not a barrier to filing. Ms. Kay further testified that she did not tell Ducharme he had no authority to handle the issue. She documented that she could not act on third-party complaints without consent and explained her role as impartial and confidential, able to bridge to agencies for investigation.

Exhibit

[608] On March 19, 2014, a presentation was delivered to the History Department by EIO educators Carmen and Donna as an educational intervention addressing harassment and human rights issues, though it was not well received by students.

[609] June–July 2014: Ms. Kay became aware, via Bohnen and Lundeen, of serious sexual assault allegations against DM by Students B and E. She did not receive direct complaints from B or E but considered these disclosures confidential and did not share details with others without consent. She considered these direct reports of sexual assault to be very serious.

July 31, 2014 Meeting with History Department Graduate Students

- [610] The July 31 meeting, lasting approximately one hour, included graduate students such as Ms. Cunningham, Ms. Kirchmeier, and Laura Ishiguro. The discussion commenced with concerns about DM, sexual harassment, and the process for filing complaints, which then broadened to campus safety and available resources. Ms. Cunningham described an incident where DM pulled her ponytail, put her in a headlock, and made a comment about her being a prude. When Ms. Kay inquired if the headlock had a sexual nature, Ms. Cunningham, irritably interrupted, stating it did not. Ms. Kirchmeier, then asserted that defaming a man was more important to Ms. Kay than raping a woman. Ms. Kay testified that she was aware of the tension between the due process rights of male respondents and the safety rights of women.
- [611] Ms. Kay used a "snake in the room" analogy to encourage formal complaints over social media discussions and rumors, expressing concern that unfiled allegations could lead to defamation accusations. She emphasized the importance of due process, stating that accusations like "rapist" require a formal complaint, an opportunity for the accused to respond to an impartial arbiter, and findings of fact and law. Ms. Kay clarified that she did not conduct formal investigations but could connect students to agencies that did, specifically mentioning Mr. Hyson and the Non-Academic Misconduct (NAM) process. She also offered information about support persons, such as those from SASC, and safety planning through Campus Security.
- [612] She testified that she could not share information about other complainants, such as Student B or E, without their consent, in line with trauma-informed practice. She also acknowledged that fear of retaliation was a common concern for complainants. The meeting concluded with Ms. Kay offering to organize a panel presentation with representatives from campus resources like security, SASC, and NAM, encouraging attendees to share this information with others. Ms. Kay perceived the students as guarded and not particularly forthcoming about their expectations from UBC, feeling they were "test driving" UBC's response to both informal and formal complaint processes. She did not take notes during this meeting due to the number of attendees.

August 28, 2014 Panel Presentation/Meeting

- [613] Following the July 31 meeting, Ms. Kay organized a panel presentation for August 28, 2014, which was open to history students and anyone they wished to invite. The purpose of this session was to address student concerns about safety more broadly and to provide

information about various campus resources. Ms. Kay prepared an introductory blurb for this meeting (Exhibit 145). She canvassed resources including Campus Security for safety planning, SASC for sexual assault support, NAM for formal complaints, the RCMP for police reporting, counseling services for trauma support, Hollinshead for sexual violence counseling, and administrative heads of units under Policy 3.

[614] During the presentation, Ms. Kay provided information on formal complaint processes (NAM), informal options, and bridging support persons, such as Ashley Bentley from SASC. She encouraged attendees to utilize available due process rather than relying on social media or rumor-spreading, explaining that accusations without formal complaints could expose individuals to defamation risks. Ms. Kay reiterated in her testimony that trauma-informed practice necessitates respecting the confidentiality and autonomy of survivors. Ms. Cunningham testified that Ms. Kay conveyed UBC's readiness to act if someone filed a complaint, which Ms. Kay confirmed was accurate, as the goal was for someone to come forward under NAM. She testified that no specific criticisms were raised about the presenters or the content during this meeting.

[615] Throughout these meetings, Ms. Kay consistently explained her role as an informal case manager, not an investigator, and detailed how she could bridge complainants to formal processes like NAM or administrative heads under Policy 3. She extensively discussed confidentiality, noting her role was confidential except in limited circumstances such as harm to self/others or a subpoena. She emphasized that she would not breach confidentiality by sharing details of other complainants without their consent.

[616] In her evidence, Ms. Kay highlighted trauma-informed practice, stressing that survivors' autonomy over their stories and decisions about reporting were paramount, and forcing someone into a process they were not ready for would be inappropriate. She underscored the importance of due process, advocating for impartial investigations before discipline or public accusations, and warned individuals against spreading allegations without findings of fact or law due to the risk of defamation claims that they might face. While she explained that truth is an absolute defense, she noted the risk without an investigation and finding and referenced qualified privilege without delving into legal specifics. Ms. Kay acknowledged retaliation as a common concern among complainants, despite UBC having policy protections.

[617] In December 2014 Ms. Kirchmeier advised she wanted to file an informal complaint about DM. Ms. Kay interpreted Ms. Kirchmeier's desire for consequences as indicating that a formal complaint was appropriate and forwarded materials to Mr. Hyson for investigation.

Ms. Kay's notes indicate she forwarded information to Mr. Hyson for formal investigation when complainants expressed a desire for consequences. She testified that she did not delay processing complaints; any delay was due to complainants' decisions or scheduling.

Exhibit 6 p. 321

- [618] On December 4, 2014, Ms. Kay met with Ms. Cunningham as she decided to come forward with a formal complaint about DM. Ms. Kay facilitated bridging Caitlin Cunningham to the Mr. Hyson/NAM process with SASC support from Ashley Bentley.

Exhibit 6 p. 316

Interactions with Each Jane Doe Complainant

- [619] Jane Doe 5 (January-February 2014): JD5 reported harassment by an older male student, JM, in the library and classroom. Ms. Kay worked with Dr. Dipple and met with JD5, characterizing the complaint as sexual harassment. She learned that librarians had prior concerns about JM. JD5 initially did not want a formal complaint, preferring an informal discussion. Ms. Kay met with JM for informal resolution. After JM breached an undertaking, Ms. Kay referred the case to Mr. Hyson/NAM for a formal process and appeared as a witness at the NAM hearing. JD5 did not report dissatisfaction or stress from the process.
- [620] Jane Doe 3B (Undated): JD3B reported sexual harassment or assault by JZ, who was no longer a student. Ms. Kay referred the case to security, NAM, and police as appropriate. She accompanied JD3B for safety planning and support (Examination of M Kay combined docs.docx, [38]). Ms. Kay noted the problematic consequence of survivors having to repeat their stories due to her referral role. JD3B did not report dissatisfaction.
- [621] Jane Doe 2 (October 2014): A film student, JD2, reported sexual assault by a former TA/graduate student via Dean Averil. Ms. Kay offered to meet, offered support, and referred JD2 to SASC. JD2 declined a formal process and later disengaged. Ms. Kay respected JD2's autonomy to step back and did not force the process. JD2 did not report dissatisfaction.
- [622] Jane Doe 4 (Undated): A TA, JD4, received threatening, sexual material from a student. Due to the seriousness and threatening nature of the material, Ms. Kay referred the case to Mr. Hyson and security for a formal process. JD4 did not report dissatisfaction with the

process.

- [623] Jane Doe 1 (Undated): JD1 complained about unwanted religious and romantic emails from AM in Fine Arts. JD1 did not want a formal complaint. Ms. Kay provided informal resolution and monitored the situation informally with faculty and staff support. She also discussed the matter with Mr. Hyson. No further issues were reported and no dissatisfaction was reported by JD1.

- [624] Jane Doe 7 (January 2015): JD7, a resident at St. John's College, reported sexual harassment and homophobic/transphobic harassment. Ms. Kay provided options, referrals to SASC, counseling, safety planning, and education, including a positive space session. She coordinated positive space training for the college community. JD7 did not pursue further action and no dissatisfaction was reported.

- [625] Jane Doe 6: JD6, a graduate student in English, reported unwanted pursuit by another student, Y. JD6 was highly concerned about confidentiality, retaliation, and anxiety. Ms. Kay worked with Dr. Badir and prioritized confidentiality. She provided support short of a formal investigation, as requested by JD6. This involved counseling, SASC, and providing information to RCMP and VPD for safety files as needed, per JD6's wishes. No formal process was initiated at the complainant's request. Both students were able to continue their degrees with monitoring and support. JD6 did not report dissatisfaction.

- [626] Tara McBryan (April-July 2014): Tara McBryan complained about Josh Emmerman, also known as Student X. Ms. Kay supported the department in managing the situation and provided advice on legal obligations. She monitored the situation and supported Tara through department processes, including meetings with administrative head Bob Shadwick. Ms. Kay offered coaching, separation strategies, legal context, and advice on moving the respondent rather than the complainant. She did not refer the case to NAM. Ms. Kay did not have authority to discipline or move students. McBryan did not report dissatisfaction to Ms. Kay.

- [627] Ms. Tremblay (May-June 2014): Ms. Tremblay reported ongoing harassment and stalking by RW at Green College. Ms. Kay provided support, safety planning, and attempted informal resolution. She coordinated meetings, referrals, counseling, and informal undertakings with RW, Green College administration, security, and NAM as needed. When RW was uncooperative, Ms. Kay referred the case to Mr. Hyson. Ultimately, RW was evicted under a college contract after repeated breaches. Ms. Kay had no authority to evict or discipline. Ms. Tremblay raised concerns about potential retaliation from RW,

not from the university. Ms. Tremblay later wrote a letter supporting Ms. Kay's approach.

Approach to Survivor Autonomy, Confidentiality, and Trauma-Informed Practice

- [628] Ms. Kay emphasized survivor autonomy, never forcing complainants into formal processes, and respecting their decisions to step back. She discussed confidentiality in every case, likening her role to that of a counselor. She only breached confidentiality in limited circumstances, such as imminent harm, child endangerment, or a subpoena. Ms. Kay applied the principles of trauma-informed practice, which included not making assumptions about memory or presentation, and supporting survivors' control over their complaints. This practice also involved minimizing the repetition of stories to avoid retraumatization, creating a supportive and welcoming environment, and respecting survivor choices even if it meant no action or formal process.
- [629] Ms. Kay observed that after the EIO's restructuring and removal of its investigative function, there was confusion about processes, a lack of transparency, and inconsistent knowledge among administrative heads of unit (AHUs). She noted that students rarely knew policies or procedures when coming forward.
- [630] Ms. Kay advocated for collaborative approaches, more training, and clear, consistent, trauma-informed processes. She also advocated for summit meetings among NAM, security, EIO, AHUs, and SASC for consistency and clarity. She noted that policies and procedures were intimidating and not well understood. Ms. Kay acknowledged siloing as a persistent problem. As part of her early work at the UBC Equity Office, she mapped resources and engaged in capacity building.
- [631] Ms. Kay testified that none of the Jane Doe complainants, nor other complainants she worked with, reported dissatisfaction with her process or proposals. They also did not report stress from UBC's response. She consistently checked in and offered further support, resources, and referrals as needed. Some complainants disengaged or chose not to proceed, and Ms. Kay respected their autonomy.
- [632] The only concern about retaliation raised to her was by Ms. Tremblay, regarding RW, not the university itself. Ms. Kay acknowledged that fear of retaliation was a pervasive concern among complainants across cases and a major barrier to reporting. She discussed efforts toward policy development on retaliation protection with Nakata, though no stand-alone policy resulted during her tenure.

Denial of Discouraging or Silencing Complainants

- [633] Ms. Kay explicitly denied ever discouraging or silencing complainants, including Jane Does and others. She maintained an open-door policy and did not turn people away. She denied discouraging or silencing complainants either directly or indirectly through policy/process explanations or warnings about defamation or due process risks. Ms. Kay stated her intention was always to encourage the use of available processes while respecting survivor autonomy and confidentiality.
- [634] In her approach to complaints, Ms. Kay prioritized survivor autonomy, allowing individuals to choose between informal or formal processes, support services, or police involvement, as it was not considered trauma-informed to compel someone into a process. Confidentiality was a cornerstone of her practice, akin to that offered by counselors, with exceptions only for imminent harm, child endangerment, or legal compulsion. She discussed these limits with complainants and respected their wishes regarding process and disclosure, striving to minimize retraumatization by reducing the need for survivors to repeatedly recount their experiences.
- [635] Regarding the DM matter, Ms. Kay provided information about options following initial disclosures but did not escalate matters without consent. When formal complaints were not immediately forthcoming, she arranged educational sessions for the History Department in response to concerns about DM. Upon receiving formal complaints, such as from Cunningham, she facilitated connection to Mr. Hyson/NAM for investigation. She upheld confidentiality by not sharing details about Student B or E without their consent and while she advocated for interim safety measures, she lacked the authority to impose them herself. Her actions and rationale were consistently documented.
- [636] In Jane Doe cases, Ms. Kay tailored her responses to each complainant's wishes, offering informal resolution when requested (e.g., JD5) or referring to formal processes when appropriate (e.g., JD3B), while also supporting safety planning or counseling. She respected complainants' autonomy when they chose not to pursue further action (e.g., JD2) and collaborated with other UBC resources like SASC and Campus Security for safety planning.
- [637] Ms. Kay's approach consistently adhered to trauma-informed principles, prioritizing survivor control over the process, minimizing retraumatization, and fostering supportive environments. She strictly followed UBC policies by referring cases requiring investigation to the appropriate authorities, such as Mr. Hyson/NAM or administrative heads, and did

not exceed her mandate as a non-investigator. She also provided education on policy obligations to colleagues and complainants as needed.

- [638] There is no evidence to suggest dissatisfaction or harm caused by Ms. Kay's actions. Notably, Ms. Tremblay provided a letter supporting Ms. Kay's reapplication for her position. Ms. Kay maintained an open-door policy, consistently checked in with complainants post-resolution, and never attempted to silence them.

13. Evidence of Clark Lundeen

- [639] Mr. Lundeen holds a BA in Psychology and English from UBC (2002) and an MA in Public Administration from UVic (2017). He began working at Green College in 2006, initially as an administrative manager, and later became Assistant Principal Operations around 2013/2014. His duties included administration, HR, IT, facilities, residence life contracts, and supporting student committees. He reports to the Principal and is a member of the AAPS association (management/professional). Green College reports to the Dean of Graduate and Postdoctoral Studies.
- [640] As of January 2014, Mr. Lundeen had no formal training in handling sexual misconduct or human rights issues, and his understanding was limited to lay concepts. He testified that his knowledge developed through working with Ms. Kay from the Equity Office after events in 2014/2015. He had no knowledge of UBC policies or procedures for addressing sexual misconduct at that time, viewing it as a criminal matter to be referred to police or other university offices. Training on trauma and memory came later via SASC and SVPRO.
- [641] Mr. Lundeen testified that Green College functioned as a residential academic community that placed strong emphasis on collegiality, shared meals, and intellectual engagement. He explained that he and Principal Mark Vessey were responsible for managing community expectations and addressing low-level interpersonal or behavioural issues among residents. However, he emphasized that Green College had no authority to investigate faculty conduct, impose discipline under the Student Code of Conduct, or issue campus-wide bans. He stated that when issues exceeded the College's limited jurisdiction, they were referred to the appropriate central units, such as Campus Security, Ms. Kay, Student Housing (including Janice Robinson), the Non-Academic Misconduct (NAM) office (led by Mr. Hyson), and relevant academic departments.
- [642] Initial concerns about rowdy behavior at Green College surfaced in 2012 via Mr. Hay, although he did not name DM at that time. Mr. Lundeen later learned that Student B had been injured, though no formal complaint or follow-up occurred at that time.

[643] Student E reported concerns about DM in May 2014, describing two incidents, one in each term (Term 1 2013 and Term 2 2014), where she felt unsafe around DM. Her account was non-linear and fuzzy, with alcohol involved in both interactions. Student E reported feeling tricked into being alone with DM in a room, having to be forthright about not wanting sex, and texting a friend for help to leave the situation. She also mentioned a subsequent Facebook exchange where DM called her an attention seeker, which Mr. Lundeen interpreted as an attempt to discredit and silence her.

[644] The meeting with Student E was attended by [REDACTED], who helped coax out the account, and Mr. Lundeen noted Student E's reluctance and lack of clarity about what she wanted to happen next. Mr. Lundeen asked questions to clarify details but found her answers unclear, struggling to find actionable details under the residence contract. At the end of the meeting, Mr. Lundeen thanked Student E for sharing and suggested she could avail herself of Green Lanterns or other referrals.

[645] Mr. Lundeen summarized the meeting in a quick email to Principal Vessey and likely also in person, as was their habit for end-of-day debriefs.

Exhibit 6 p. 164

[646] He followed up with Student E by email to clarify details and ask what she wanted as an outcome. Student E indicated she preferred an educational approach, such as workshops, rather than direct action against DM, and assessed the risk of recurrence as low. Mr. Lundeen did not provide Student E with information about university resources or processes for sexual misconduct at that time.

Exhibit 6 p. 166

[647] No immediate action was taken against DM. Mr. Lundeen did not seek permission from Student E to confront DM directly or inform him of the allegations. He did not take steps to warn other residents before the end of May 2014, relying on Student E's assessment that the risk was low and DM was leaving for Russia. Mr. Lundeen communicated with Mr. Vessey about the report and checked with Lyn Pedro regarding DM's whereabouts and travel plans, as DM was leaving for academic reasons.

[648] In June 2014, after learning more about DM's conduct from other sources, Mr. Lundeen encouraged Student E to report directly to Campus Security (Steve Bohnen), as first-hand reports were needed for further action.

Exhibit 6 p. 197

[649] Mr. Lundeen did not conduct his own investigation but facilitated contact with security. He continued communication with Student E through spring 2015, updating her on developments such as DM's restriction from campus. In April 2015, after DM was formally restricted from campus under Policy 14, Mr. Lundeen informed Student E that DM would not be eligible to return to Green College, and she replied that she was reassured.

Exhibit 6 p. 627

Student B

[650] In early June 2014, Richard Sandlin approached Vessey and Lundeen with consent from Student B to share information about a rape by DM in Toronto. Mr. Lundeen's response was concern and shock, and he focused on how to prevent DM from returning to Green College and ensuring support for Student B in Ontario.

Exhibit 6 p. 187-190

[651] Mr. Lundeen reached out to Ms. Kay who suggested he follow up with Bohnen at Campus Security.

Exhibit 6 p. 184

[652] Bohnen opened an Information Report file with details from Green College regarding both Student B and Student E. Bohnen encouraged both student B and E to make police reports and forwarded information up the university chain to Mr. Hyson and Ms. Kay.

Exhibit 6 p. 193-196, 205

[653] Mr. Lundeen did not communicate directly with Student B but understood that Vessey had spoken with her. There was ongoing communication between Green College (Lundeen/Vessey), Bohnen, Mr. Hyson and Ms. Kay regarding how best to proceed given jurisdictional issues and procedural fairness concerns. No investigation was conducted by Green College. Mr. Lundeen testified that Mr. Vessey preferred that action come from another office at UBC.

RW and Melanie Tremblay matter

[654] Mr. Clark Lundeen testified that he first became aware of concerns between Ms. Tremblay and RW when he received information from a Green College resident, [REDACTED] indicating that RW had been attending at Ms. Tremblay's door and engaging in behaviour that "bordered on stalking." Lundeen explained that he used that description because RW had

been going physically to Ms. Tremblay's door in a way that appeared intrusive and unwelcome. At that time, he understood this behaviour to be serious enough that he instructed that it be treated as a watch item should further concerns arise.

Exhibit 6, Tab 33, p. 164

[655] He later recalled direct disclosures from Ms. Tremblay herself, beginning in early May 2014. On May 3, 2014, Ms. Tremblay described to him an internal attempt at resolution, and Lundeen testified that he understood her references to concern RW, based on information already received from [REDACTED].

Exhibit 44

[656] Lundeen met Ms. Tremblay in person multiple times. He testified that Ms. Tremblay told him RW was not respecting her boundaries following the end of their relationship. She wanted no contact, but RW continued to reach out in ways that were causing her "significant distress." She was seeking ways to make the contact stop.

[657] Lundeen stated that he took Ms. Tremblay's concerns seriously because he saw her distress directly. Ms. Tremblay reported that she did not feel physically threatened, but she was anxious, worried, and emotionally overwhelmed by RW's repeated attempts to contact her. His assessment at that time was that the situation, if not addressed, would have adverse effects on her emotional well-being and academic performance.

[658] In the May 5, 2014, meeting, Lundeen recalled advising Ms. Tremblay to make her boundaries absolutely clear to RW and to ensure he understood she wanted no further contact. He testified that he did not recall whether he provided her with information about broader university resources during that first meeting, but that his initial plan was to help Ms. Tremblay clearly communicate her wishes to RW.

May 5, 2014 – Summary of meeting (Document p. 4)

[659] He also recalled giving Ms. Tremblay a criminal harassment brochure, which he researched and provided after seeing her distress, believing that information may help her understand available options.

[660] He advised Ms. Tremblay to keep text messages from RW, though he clarified in evidence that this advice was not because he believed police would necessarily lay charges, but because keeping the messages could be helpful if she chose to report the matter. He testified that, based on prior personal experience, he understood the RCMP would open

a file and collect information even if they did not charge.

- [661] Ms. Tremblay expressed fear and uncertainty, including asking Lundeen whether she “should move out.” He reassured her that she did not need to move and that RW’s behavior, not hers, was the problem. He recalled that Ms. Tremblay attempted to re-read messages from RW and was distressed by them. He told Ms. Tremblay it was “not vital or necessary” to review those messages, recognizing that doing so was causing her harm. He did not recall whether he offered to review the messages himself but emphasized that the priority was making Ms. Tremblay’s expectations clear to RW so that the unwanted contact would stop.

Melanie Tremblay email, May 5, 2014 (Document pp. 1–3)

- [662] On May 5, 2014, Ms. Tremblay drafted an email to RW communicating her request for no contact.

Exhibit 46)

- [663] Ms. Tremblay reported to Lundeen that RW continued contacting her despite this explicit boundary. Lundeen testified that on May 7, 2014, he responded to Ms. Tremblay by assuring her that RW’s continued messages were “not okay” and that they would consider escalating matters. He also asked Ms. Tremblay for her wishes before taking additional steps.
- [664] He noted that Ms. Tremblay expressed relief and validation when he acknowledged that RW’s communications were inappropriate and constituted harassment. Ms. Tremblay told him that RW had sent her a “cheeky” message that felt like a taunt.

Melanie Tremblay emails – May 7 and May 12, 2014;
CL responses (Document pp. 1–3)

- [665] By May 12, 2014, Ms. Tremblay was attempting to assert more control, but Lundeen testified that RW was continuing to disregard her wishes. Lundeen concluded that Ms. Tremblay required more support and more intervention because RW was not respecting her boundaries and was finding ways around the third-party communication system she had put in place.
- [666] He testified that he understood Ms. Tremblay’s reluctance to talk to RW directly because she had been unsuccessful in getting him to stop contacting her on her own, and there was no respect from RW for her stated wishes.

[667] Lundeen referenced a document of approximately 42 pages of emails that he reviewed, possibly in preparation for discussions with Campus Security. He recalled an invitation for Ms. Tremblay to meet with Ms. Kay, the director of Campus Security, and Lundeen offered to attend with Ms. Tremblay to support her.

[668] He testified that RW's behaviour amounted to gaslighting, and in his communications to Ms. Tremblay he explicitly stated that she was being harassed because RW "persisted despite being told otherwise."

[669] He then proposed involving the Equity and Inclusion Office, describing the situation as "novel." He said that he believed escalation was warranted based on harassment information, and that he had also spoken to Vessey, who suggested involving Equity based on his prior experience. Lundeen testified that Vessey believed this matter fell within the Equity Office's scope.

Melanie Tremblay –CL email exchanges, May 12–14, 2014

CL May 14, 2014 message to Green Lanterns (Exhibit 47)

[670] Around May 14, 2014, Campus Security struggled to get RW to attend a meeting, and Lundeen described RW as evasive. Campus Security also met Ms. Tremblay.

[671] On May 16, 2014, Lundeen emailed Campus Security with concerns about Ms. Tremblay's weekend safety, knowing there would be less support available.

CL email to M. Kay – May 16, 2014

[672] On May 20, 2014, he and Vessey reviewed options for addressing RW's continuing conduct based on the residence contract.

May 20, 2014 – MV/CL residence contract notes (Exhibit 48)

[673] By May 20, 2014, Campus Security had forwarded information to both Security and the NAM Office. Lundeen testified that three paths were identified: Campus Security management, Green College handling the matter with Security's guidance; and Referral to Policy 3 (harassment and discrimination) if RW agreed to meet

[674] He had discussions with Vessey and Ms. Kay about which path to take.

[675] On May 22, 2014, an undertaking was drafted, primarily with language provided by Campus Security. This undertaking set out behavioural restrictions for RW.

Undertaking – May 22, 2014 (Exhibit 49)

- [676] Lundeen recalled being present at the meeting in Vessey's office where the undertaking was explained to RW, though he could not recall all details. He testified that the discussion went beyond simply handing RW a document.
- [677] Shortly after signing the undertaking, RW breached it, as reported by Ms. Tremblay. Lundeen passed this information to Vessey, and they spoke with RW by phone. RW admitted breaching the undertaking.
- [678] Lundeen testified that Vessey then initiated termination of RW's residence contract. Lundeen did not recall whether any other investigative steps were taken beyond this conversation with RW.
- [679] On May 27–28, 2014, Lundeen undertook further information gathering, including meeting witnesses Charles and Brittany, which confirmed further contact.

May 28, 2014 – CL witness interviews (Exhibit 51)

- [680] He also consulted Janice Robinson from Student Housing. Discussions involved terminating RW's contract and the timing, noting renovations at Green College that had already temporarily relocated residents.
- [681] On May 29, 2014, emails were exchanged with Vessey regarding RW's defence and setting up a further meeting.

May 29 emails (Exhibit 52)

- [682] On May 30, 2014, RW spoke to Vessey and Lundeen by phone. RW was "in the valley." Vessey put allegations to RW while Lundeen took notes.

May 30 – Transcript of phone meeting (Exhibit 53)

- [683] RW stated he was not trying to hurt Ms. Tremblay but was "missing the point." Lundeen testified that RW had been told earlier that he must avoid Ms. Tremblay entirely. Despite this, contacts continued and were emotionally triggering for Ms. Tremblay.
- [684] Given evidence of breach, the proximity to month-end, and the need to act quickly if termination was to take effect, an eviction notice was issued. Lundeen testified that he and Vessey made this decision together.

[685] He stated that eviction was chosen because RW was “incapable of not triggering Ms. Tremblay,” and because RW had been “disobedient throughout.” The eviction required RW to vacate by the end of the next month, consistent with student housing practices to avoid undue hardship.

May 30 – CL serves MV letter (Exhibit 54)

[686] On June 16, 2014, RW appeared at a Green College event on the patio. Lundeen viewed this as a “transgression” and a “provocation,” given that the undertaking was still active and RW had no reason to be at Ms. Tremblay’s home.

CL notes – June 16, 2014 (Exhibit 55)

[687] Ms. Tremblay sent a grateful message afterward.

[688] RW sent a message to Green College residents via the ListServ messaging system. Lundeen testified that RW’s access to student-managed listservs (Greenchat) was outside Green College’s control.

[689] On June 16, 2014, Campus Security identified next steps.

June 16 – MK next steps (Exhibit 56)

[690] Mr. Lundeen was frustrated that RW was not intimidated by police presence and believed RW’s behaviour demonstrated disregard for authority. He felt the matter needed escalation.

[691] He understood Ms. Kay’s role as connected to Policy 3. He testified that repeated breaches meant consequences needed to come from units beyond Green College’s authority and that this was “turning into something else.”

[692] He also testified that there were discussions about referring the matter to Mr. Hyson, who managed the Non-Academic Misconduct Office (NAM), although he did not recall specifics. He stated that NAM handled breaches of the Student Code of Conduct and had more significant authority.

Exhibit 6, Tab 50, p. 202 – June 19, 2014 email

[693] He was not aware of policies restricting student movement and did not recall the outcome of any NAM investigation.

[694] Ultimately, RW was banned from Green College on April 7, 2015.

April 7, 2015 – Ban letter (Exhibit 57);
Exhibit 5, p. 238 – Melanie Tremblay email, April 8, 2015

14. Evidence of Mark Vessey

[695] Dr. Mark Vessey, a Professor of English Literature at UBC, served as Principal of Green College from 2008 until June 2023, with a leave in 2015–2016. In this capacity, he held overall responsibility for the College's academic community, residential life, and the wellbeing of its members. His role included overseeing the College's governance structures, addressing conflicts within the community, and ensuring that residents complied with the terms of their residence contracts. He explained that Green College was an interdisciplinary community with both residential and non-residential members and that it operated within UBC but retained distinctive practices and traditions relating to community engagement and dispute resolution.

[696] Green College was integrated into UBC's Student Housing and Hospitality Services (SHHS) in 2005, with SHHS receiving most rent revenue and being responsible for physical upkeep. Since 2011, GC residents were subject to a residence contract similar to other UBC residences, though GC retained control over contract offers. Dr. Vessey chaired the membership committee. Day-to-day residence life was managed by Clark Lundeen, who reported to Dr. Vessey

[697] The residence contract and handbook, developed with input from residents and legal counsel, governed resident life at GC, and university-wide policies like UBC's Policy 3 on harassment applied to GC residents. The principal held discretionary authority under the contract to investigate alleged violations and take appropriate action, though evictions were rare and usually for non-payment of fees. He noted that certain powers, particularly those involving student discipline, bans from campus, the management of non-academic misconduct, or the imposition of campus-wide restrictions, were outside the College's jurisdiction and fell instead to broader UBC units such as Student Housing and Hospitality Services, Campus Security, Equity and Inclusion (Policy 3), or, where applicable, the Non-Academic Misconduct (NAM) process. He described his understanding that decisions such as terminating a residence contract could be taken at the College level in consultation with Housing, but that a comprehensive ban or conduct sanction required action from central administrative offices.

[698] Dr. Vessey testified that he regularly collaborated with the Green College Assistant Principal for Programs and Administration (then Mr. Clark Lundeen), who handled day-to-

day matters involving residents, communicated with students, and performed initial fact gathering when concerns arose. He also worked closely with Resident Advisors, Student Housing, and Campus Security when issues escalated beyond ordinary interpersonal conflict. He emphasized that, in dealing with complex situations, particularly those involving potential harassment or breaches of personal boundaries, he relied on the expertise of units such as Campus Security and Housing, and he viewed his role as both community leader and administrative decision-maker where College-level authority allowed.

[699] Dr. Vessey testified that Green College residents were bound by UBC residence contracts, and the College maintained additional expectations regarding collegiality, respectful conduct, and participation in the community. Complaints or concerns involving residents were typically routed first to Mr. Lundeen, who attempted informal resolution where possible. If matters exceeded the scope of informal management or suggested a breach of University policy, Lundeen would consult Vessey, and together they determined whether to involve Student Housing, Campus Security, or other University offices.

[700] He explained that while he had experience with conflict among residents, including interpersonal disputes and occasional behavioural concern, the College had relatively limited tools for enforcing behavioural boundaries beyond termination of a residence contract. He noted that eviction was uncommon and generally occurred only where residents failed to pay fees or where there were serious community concerns. For cases involving psychological distress, harassment, or threats to safety, the College usually depended on Campus Security and other UBC mechanisms to manage risk.

[701] He also stated that the College did not administer the student conduct system and had no independent authority to ban a student from campus or impose University-wide sanctions. He understood that such actions fell within the authority of central UBC departments, including Campus Security and NAM.

Melanie Tremblay /RW matter

[702] Dr. Vessey testified that his first involvement in the RW– Ms. Tremblay matter arose through discussions with Mr. Lundeen in early May 2014. He understood from Lundeen that Ms. Tremblay, a resident, was experiencing ongoing, unwanted contact from RW, with whom Ms. Tremblay had recently ended a relationship. Lundeen informed him that Ms. Tremblay appeared distressed and that RW was not respecting her clearly expressed wish for no further contact. Dr. Vessey testified that this description concerned him

because Green College emphasized respectful community life, and the apparent persistence of contact raised questions about Ms. Tremblay's emotional safety and RW's compliance with reasonable interpersonal boundaries.

- [703] He recalled that Lundeen conveyed information suggesting Ms. Tremblay was becoming increasingly anxious, that RW was attempting to communicate with her despite her request for distance, and that Ms. Tremblay had begun reaching out for help. He understood that Lundeen had met Ms. Tremblay directly and had confirmed that the situation was causing her significant emotional strain. Dr. Vessey credited Lundeen's assessment and took the matter seriously from the outset, recognizing that if RW continued contacting Ms. Tremblay despite clear boundaries, more formal intervention might be required.
- [704] At this stage, Dr. Vessey's understanding was that Ms. Tremblay had attempted to resolve the issue amicably and had expressed her desire for no further communication. From Lundeen's reports, he understood that RW persisted in contacting her, and although not physically threatening, his behaviour was causing Ms. Tremblay emotional distress. Dr. Vessey testified that this pattern raised concerns about potential harassment, as defined in the UBC community standards and supportive materials he later reviewed.
- [705] He also understood that Lundeen had provided Ms. Tremblay with information on potential avenues of support and had encouraged her to maintain records of unwelcome communication. Lundeen advised him that Ms. Tremblay had expressed uncertainty and anxiety about how RW might respond and that she felt overwhelmed by the situation.
- [706] Dr. Vessey testified that by approximately May 20, 2014, the situation had escalated to the point where he and Lundeen determined that further steps were necessary. They consulted Campus Security and Ms. Kay who recommended preparing a written undertaking for RW to sign. The document would formalize behavioural expectations, ensure RW understood Ms. Tremblay's right to no contact, and establish boundaries enforceable within the Green College community.

Undertaking drafted May 22, 2014 (Exhibit 49)

- [707] Dr. Vessey recalled that Campus Security provided sample language for the undertaking and advised on structuring conditions that RW could reasonably be expected to meet. He understood that Campus Security viewed the matter as involving ongoing unwelcome contact that warranted formal intervention. He testified that he accepted Campus Security's recommendation because RW had not responded appropriately to Ms.

Tremblay's informal requests, and because Ms. Tremblay continued to experience distress.

[708] He described the meeting in which he, Lundeen, and RW were present while the undertaking was reviewed. He stated that he explained the expectations to RW and made it clear that Ms. Tremblay required space and that further contact would not be tolerated. According to his recollection, RW expressed that he did not intend harm but seemed to minimize the severity of the situation. Dr. Vessey believed it was necessary to impress upon RW that any further contact risked serious consequences.

[709] He emphasized that the purpose of the undertaking was twofold: to protect Ms. Tremblay from further distress, and to give RW a formal, structured opportunity to comply before more severe measures would be considered.

[710] Dr. Vessey testified that shortly after the undertaking was executed, he was informed by Lundeen of new instances of contact that appeared to breach its terms. He understood that Ms. Tremblay continued to encounter RW in ways that caused her discomfort and that some contacts appeared avoidable. He also understood that RW acknowledged certain interactions during a phone call in which Vessey participated.

May 29–30, 2014 correspondence (Exhibit 52);
Transcript of May 30 call with RW (Exhibit 53)

[711] During the May 30, 2014 call, Dr. Vessey questioned RW about the reported contacts. RW acknowledged interactions but maintained that they were incidental or occurred in group settings. Dr. Vessey testified that despite RW's explanations, he concluded that RW either did not understand or was not prepared to respect Ms. Tremblay's need for distance. He was concerned that continued incidental contact demonstrated a lack of compliance with the undertaking, especially given Ms. Tremblay's fragile emotional state.

[712] Because the end of the month was approaching, Dr. Vessey testified that he and Lundeen considered how to respond in a way that would be both procedurally fair and effective. He recalled discussing with Student Housing the timing of possible eviction, including the hardship associated with requiring a resident to vacate before month-end. Ultimately, he determined that termination of RW's residence contract was appropriate given the breach of the undertaking and the ongoing risk to Ms. Tremblay's well-being.

Eviction notice and attachments served May 30, 2014 (Exhibit 54)

- [713] He testified that he understood eviction to be a significant measure but believed that RW had been given an opportunity to comply and had failed to do so. He explained that eviction was the strongest authority available to Green College itself and that stronger restrictions, such as a ban from campus, required action from other University bodies.
- [714] Following RW's eviction notice, Dr. Vessey testified that he continued to receive information from Mr. Lundeen regarding RW's behaviour and Ms. Tremblay's ongoing emotional distress. He explained that even after RW had been issued notice to vacate, he remained a resident until the end of the contractual period, and during that time, compliance with the undertaking was still required.
- [715] One significant event occurred on June 16, 2014, when Ms. Tremblay reported that RW had appeared on the GC patio, which she considered her home space. Dr. Vessey testified that he viewed this conduct as particularly concerning. Although RW was still a resident until the end of the month, there was no legitimate reason for him to be in Ms. Tremblay's private area, and the conduct constituted a clear breach of the undertaking. He agreed with Lundeen's assessment that this behaviour appeared provocative and dismissive of the boundaries that had been formally imposed.

CL notes of June 16, 2014 (Exhibit 55) ;

MK "Next Actions" email, June 16, 2014 (Exhibit 56)

- [716] He testified that he relied on Lundeen's contemporaneous notes and communications with Campus Security regarding this incident. Lundeen had contacted Campus Security expressing frustration that RW did not seem intimidated by police involvement and continued to disregard instructions. Dr. Vessey agreed that RW's behaviour suggested an ongoing pattern of non-compliance.
- [717] After the June 16 incident, Campus Security outlined proposed next steps, and Dr. Vessey understood that the matter had escalated beyond what Green College itself could manage. He testified that he agreed that further escalation to central UBC offices, including the NAM, was warranted. He explained that the College's authority was limited to residential decisions, while broader behavioural sanctions fell under NAM and Campus Security.

Exhibit 6, Tab 50, p. 202

- [718] He testified that he did not recall the precise outcome of any NAM involvement but understood that NAM possessed institutional authority to impose behavioural conditions or sanctions on a student who continued to violate community standards. His role was to

communicate concerns and support escalation where appropriate.

- [719] He also testified that Ms. Tremblay sent messages conveying her gratitude to College leadership for their ongoing support and intervention.
- [720] Dr. Vessey testified that RW eventually appealed the eviction decision through the Student Housing process. He recalled that the appeal was dismissed, confirming the termination of RW's residence contract. He understood that Student Housing concluded that the eviction had been appropriate given RW's conduct and breach of the undertaking.
- [721] As tensions persisted over the months following RW's departure from residence, Dr. Vessey testified that other incidents or interactions involving RW occurred on or around Green College property. He understood that Ms. Tremblay continued to feel apprehensive about RW's presence and that RW's behaviour indicated ongoing disregard for boundaries, even after eviction.
- [722] He testified that, later in the academic year, further concerns were raised about RW's attempts to be present at Green College events or spaces. In consultation with Housing and Campus Security, and given the history of non-compliance and Ms. Tremblay's continuing vulnerability, the decision was made to impose a full ban on RW from Green College.

April 7, 2015 – Letter banning RW from Green College (Exhibit 57); April 8, 2015 –
Melanie Tremblay email responding to the ban (Exhibit 5, p. 238)

- [723] Dr. Vessey testified that by this point, it had become clear that RW's continuing proximity to Ms. Tremblay and disregard for earlier measures justified a complete prohibition from College premises. He emphasized that this action required coordination with central University offices, as Green College itself lacked unilateral authority to impose campus-wide restrictions.
- [724] He explained that the ban reflected both RW's historical conduct and efforts to protect Ms. Tremblay from further harm. He viewed the final ban as a culmination of months of escalating behaviour and as a necessary measure to maintain safety and wellbeing within the Green College community.

DM

- [725] Dr. Vessey testified that DM became a resident in September 2011 and was active in the

community. Until spring 2014, Dr. Vessey had no serious concerns about DM, with earlier minor incidents such as roughhousing being managed by Lundeen without Vessey's direct involvement. Dr. Vessey was not aware of any allegations of sexual misconduct by DM prior to May 2014, including a reported rape of Student C in 2013; he only became aware of such allegations after subsequent events unfolded in 2014 and 2015.

- [726] In May 2014, Student E reported concerns about DM's sexual advances to Clark, who discussed the matter with Dr. Vessey.

Exhibit 6, page 164

- [727] Student E did not want a direct confrontation with DM but preferred educational initiatives to raise awareness about consent and sexual misconduct. Dr. Vessey and Clark agreed to support this approach, and no formal investigation was initiated against DM at that time. Dr. Vessey relied on Clark's handling of the situation due to his own lack of specific training in responding to such allegations.

- [728] On June 2, 2014, Dr. Vessey learned from Richard Sandlin, the chair of the residents' council, that Student B alleged DM had sexually assaulted her in Toronto. Dr. Vessey responded with dismay and indicated that if the allegations were true, DM would not be allowed to return to Green College. Dr. Vessey had ongoing communication directly with Student B and offered to put her in contact with Campus Security

Exhibit 6, page 175, 186

- [729] After hearing from Mr. Sandlin, Mr. Lundeen immediately contacted the Equity Office and Campus Security for guidance, recognizing the seriousness and complexity of the situation.

Exhibit 6, page 184

- [730] Dr. Vessey emphasized that since DM was out of the country at the time, immediate action at Green College was not required but he would not renew DM's contract unless exculpatory evidence emerged.

- [731] On June 19, 2014, Mr. Lundeen spoke with Mr. Hyson and updated Mr. Vessey. He advised that Mr. Hyson stated there was not much that could be done until first hand reports emerge from Student B and Student E; however, Green College would still need to carry out an investigation from a distance with DM and the reports would then go to legal counsel to consider what their options were to refuse DM's return based on the

allegations.

Exhibit 6, page 202

- [732] Dr. Vessey testified that he was aware of the limitations of Green College's authority to investigate or discipline DM once he was no longer a resident and that any action would need to be coordinated with university authorities. He described a "waiting game" as they awaited direction from Campus Security, the Equity Office, and the Student Conduct Office. No independent investigation was initiated by Green College due to lack of training and the complexity of the allegations.
- [733] Throughout 2014 and 2015, Dr. Vessey and Mr. Lundeen maintained communication with university authorities including Mr. Hyson (Student Conduct), Steve Bohnen (Campus Security), and Ms. Kay (Equity Office), seeking guidance on how to proceed. Dr. Vessey made it clear that Green College would not act independently or take unilateral action against DM; any decision about DM's return would be made in concert with university processes. As principal, he had discretion not to renew DM's residence contract, a measure he did not conceptualize as discipline but as necessary for community safety.
- [734] Dr. Vessey acknowledged frustration and anxiety among the residents about DM's status. He received petitions and statements from residents calling for mandatory training, independent review, and improved procedures. In response, Dr. Vessey supported development of new policies and procedures at Green College, including revisions to the residence contract and handbook, and adoption of annual commitments to a harassment-free environment with improved reporting mechanisms.
- [735] Dr. Vessey balanced fairness with urgency but deferred action when unsure about procedural authority or when cases involved non-residents or incidents outside college jurisdiction.

15. Evidence of Steve Bohnen

- [736] Mr. Steve Bohnen served as the Community Relations Officer for UBC Campus Security from 2003 onward, having started with UBC campus security in 1995. His primary role was to observe and report, not to investigate or enforce. Mr. Bohnen's duties largely focused on documentation, liaison, and referral, particularly in matters of sexual misconduct, where campus security lacked investigative authority and was not deputized as constables. He reported to the Operations Manager, Assistant Operations Manager, and sometimes the Director, with the Director reporting to the Executive Director of Safety

and Risk Services.

- [737] Mr. Bohnen confirmed that campus security's mandate was to promote the well-being of the university community, with a major focus on property theft. Incident reporting was used as a planning and response tool, providing a live map and history of occurrences for preventative work. Sensitive reports, such as those involving sexual misconduct, were vetted by the operations manager and not broadly distributed, with access restricted as appropriate.
- [738] Mr. Bohnen received training in trauma-informed approaches and the impact of trauma on memory, including seminars from Jennifer Hollinshead and independent study of Ms. Russell Strand. He also received training on the Human Rights Code and UBC policies, including Policy 3 (discrimination and harassment), Policy 14 (at-risk behaviour), and the student code of conduct, though he was not an expert in these areas.
- [739] He described the Equity Office as the primary body for complaints under Policy 3, with campus security acting as a documentation and referral agency. Campus security would often walk complainants to support services or refer them to the Equity Office, SVPRO, or police as appropriate. Mr. Bohnen's approach to sexual misconduct reports was survivor-centered, offering support, referrals, and safe transport. He did not investigate or interview alleged perpetrators, focusing instead on documenting disclosures and ensuring they reached the appropriate offices.

DM Matter

- [740] Mr. Bohnen's involvement in the DM matter began in June 2014 when Ms. Kay (Equity Office) referred Clark Lundeen (Green College) to him regarding allegations of sexual misconduct by DM. The initial Incident Report (IR) (Exhibit 77) documented two complainants, Student B and Student E. Mr. Bohnen recognized these as potential sexual assaults and recommended documentation for future action by Student Conduct.
- [741] Mr. Bohnen testified that his role was limited to documenting information, forwarding it to Student Conduct (Mr. Hyson), Equity (Ms. Kay), and Green College administration. He did not investigate but encouraged complainants to consider police reporting for both survivor support and institutional leverage.
- [742] He communicated with Student E by phone and email, referred her to Jennifer Hollinshead for support, and documented Facebook messages she provided. Mr. Bohnen also encouraged Student B to report to Toronto police but respected her reluctance. All

information was forwarded to relevant parties.

- [743] Mr. Bohnen received a vague report from Student E, spoke with her by phone, and referred her to Equity Advisor Jennifer Hollinshead. He generated an initial consultation IR summarizing the phone call and shared her narrative in larger IR files alongside other Green College complaints. He engaged with Student E primarily through phone and email to document her complaint and received Facebook communications from her indicating DM's attempts to blame her. Information was escalated to management (Ms. Kay, Mr. Hyson, Joanne) for potential student-conduct action, but no formal outcome was documented in campus security records beyond consultation IRs. Bohnen did not have decision-making authority on jurisdiction or conduct proceedings for Student E's assault, which occurred in Ontario.
- [744] Mr. Bohnen liaised with Lisa Lafreniere (SASC) regarding Student B's decision not to report to police, encouraging reporting for evidentiary value. He drafted and forwarded multiple IRs (Sept 24, 2014; Oct 6 & Dec 18, 2014) to Ms. Kay, Mr. Hyson, and Lundeen. He understood the allegations as sexual assault and a potential crime, with concerns about DM's return to UBC. Bohnen communicated with Student B by phone and email, expressing support and encouraging police involvement, while acknowledging her reluctance to go to police.
- [745] Mr. Bohnen recalled learning of Ms. Kirchmeier's January 2014 complaint via Ms. Kay and escalating it to management (Heather, Ali) and the history department. He described receiving an email with serious allegations against DM, which Ms. Kirchmeier rescinded two hours later. He testified that he would have created an IR and alerted student conduct had the complaint been formally received, but no evidence of a formal IR for Ms. Kirchmeier exists in security records.
- [746] Mr. Bohnen recalled awareness of Caitlin Cunningham's name, who alleged DM grabbed her off-campus, but lacked detailed recollection of the allegation. He knew that Mr. Hyson's office and Green College administration were involved but did not directly communicate further with Ms. Cunningham. No specific IR was created by Mr. Bohnen, as Ms. Cunningham's claim was managed by student conduct and Green College administration teams beyond campus security's direct documentation.
- [747] Mr. Bohnen noted that Policy 14 (At Risk Behaviour) was rarely used for affiliated students, with restrictions more often applied by VP Students or Housing. He saw his role as providing accurate documentation for others to act upon. Mr. Bohnen was not involved in

the final decision to exclude DM from campus but documented the prohibition notice when it was issued by VP Students in April 2015 (Exhibit 78). He had no role in enforcement or the NAM process beyond documentation.

Melanie Tremblay /RW matter

[748] Mr. Bohnen became aware of Ms. Tremblay 's distress when Ms. Kay brought her to his office, observing her "extremely distraught" state and documenting it in incident reports (IRs). He reviewed emails from Ms. Tremblay expressing vulnerability and academic concerns. His actions included entering observations into IRs, agreeing with recommendations to restrict RW's access, and deeming enforcement beyond campus security's authority under Policy 14. He also emailed Janice Robinson about housing safeguards and facilitated referrals to Mr. Hyson for formal equity investigation. Mr. Bohnen was aware that Ms. Kay and Green College administration were involved in supporting Ms. Tremblay. He did not know the ultimate outcome of the investigation or whether further protections were enacted, noting the matter escalated through Student Conduct rather than campus security enforcement.

Jane Doe 5

[749] Mr. Bohnen described the Milligan file as one of the more complex and high-profile matters he handled as Head of Campus Security. He first received reports of Milligan's conduct in December 2012, when a female student reported that Milligan had been approaching her repeatedly, making her uncomfortable, and ignoring prior warnings. Mr. Bohnen explained that this behavior was not an isolated incident but part of a pattern of harassment that had been ongoing for several months.

[750] Mr. Bohnen received multiple reports from library desk staff, including Julie Mitchell of Barber Library, who observed Milligan persistently following and attempting to engage female students despite being told to stop. Julie Mitchell provided detailed accounts of Milligan's conduct, which Mr. Bohnen carefully documented. He also reviewed prior incident reports from other students and staff, identifying complaints dating back to at least 2012, including patterns of Milligan "hanging around and asking young women out", which demonstrated a recurrent and unwanted pattern of behavior.

[751] In February 2014, Mr. Bohnen created a formal Incident Report (IR) dated February 18, 2014, summarizing the pattern of harassment, including multiple prior incidents documented by staff and students. The IR recorded the repeated approaches, disregard

for warnings, and persistent behavior, establishing the scope of Milligan's misconduct. Mr. Bohnen emphasized that the IR documented the risk to complainants and ensured the matter was formally captured, even though no direct enforcement action could be taken by campus security alone.

- [752] Following the documentation, Mr. Bohnen forwarded the compiled information to relevant university officials, including Ms. Monica Kay, who was responsible for informal resolution and supporting complainants, as well as Student Conduct. He also coordinated with Mr. Hyson (VP Students) to ensure proper escalation. Mr. Bohnen was informed by Mr. Hyson that in early 2014, the President had found Milligan in violation of the student code of conduct, with recommendations for restrictions, space prohibitions, and undertakings to prevent further contact with complainants. Mr. Bohnen understood that enforcement of these measures was the responsibility of VP Students or law enforcement, while his role remained one of documentation, monitoring, and support.
- [753] Mr. Bohnen provided priority-response escorts and safe transport to complainants on campus, beginning in February 2014, to ensure they could move safely between classes, library facilities, and residences. He met with complainants to discuss reporting options, including filing complaints with Student Conduct or the police, and offered advice while respecting the complainants' autonomy in determining how to proceed. Mr. Bohnen emphasized that his guidance focused on reducing stress, enhancing safety, and ensuring complainants were informed about available resources, rather than directing them toward any particular course of action.
- [754] Throughout 2012 to 2015, Bohnen regularly monitored the Milligan file, documenting complainant interactions and any ongoing concerns. He coordinated with library staff, including Julie Mitchell, other students, Student Conduct, Ms. Kay, and Mr. Hyson to ensure a comprehensive understanding of the harassment pattern. Mr. Bohnen noted that Milligan had also been involved in a theft incident in 2015, though his role was limited to documenting the matter; enforcement and investigation were handled by other departments.
- [755] Mr. Bohnen emphasized that the Milligan file was complex due to the number of complainants, prior incidents, and persistent harassment over several years. He detailed the process of interviewing complainants, compiling narratives, coordinating with witnesses and university officials, and offering safety planning. He also noted that the formal enforcement measures, including space prohibitions and undertakings, were managed by VP Students and Student Conduct, not campus security.

Jane Doe 3A

- [756] JD 3A's complaint concerned harassment by a former student over a period extending through 2013 and early 2014. Minimal details were presented about what the concerns were at that time. Mr. Bohnen first became involved when JD 3A requested a priority response from campus security in early 2014, seeking safe escort across campus due to repeated interactions with the respondent. Mr. Bohnen reviewed prior complaints involving JD 3A and related complainants and noted that some incidents had not previously been reported to campus security. He coordinated with Ms. Kay, who provided informal resolution and support, and Barry Eccleton, Director of Campus Security, to ensure appropriate measures were in place.
- [757] Mr. Bohnen provided guidance on reporting options, including filing a statement with the RCMP, while emphasizing the complainant's autonomy in deciding how to proceed. He documented all interactions and maintained a record of the complainant's requests, safety concerns, and ongoing monitoring. He noted that police involvement was encouraged to add procedural weight, even though the respondent was no longer a student. Mr. Bohnen emphasized that his role was supportive, documentation-focused, and safety-oriented, rather than investigatory or adjudicative.

Jane Doe 3B

- [758] JD 3B made her complaint in March–April 2014, and Mr. Bohnen was asked by Ms. Kay to formally record the complaint with campus security. Mr. Bohnen met JD 3B, documented her account, and coordinated with Barry Eccleton and police to pursue a Policy 14 prohibition against the respondent, who had ceased to be a student. He attempted follow-up to confirm compliance with undertakings made by the respondent.
- [759] Mr. Bohnen also reviewed related complaints to understand the broader context, noting the complexity of multiple complaints involving the same respondent. All communications were carefully documented, including attempts to contact the complainant and coordination with university security. Mr. Bohnen emphasized priority-response measures, safety planning, and ongoing support, ensuring that JD 3B's complaint was properly recorded and escalated to the relevant authorities.

Jane Doe 3C

[760] Mr. Bohnen had no direct contact with JD 3C, whose complaint was documented in 2014. He reviewed incident reports concerning her complaint and noted that Mr. Hyson may have contacted her. Mr. Bohnen's involvement was limited to documentation and monitoring, ensuring that the complaint was escalated appropriately. No alternative outcomes or concerns were expressed to him.

Jane Doe 4

[761] JD 4's complaint, reported in 2013–2014, related to objectionable content in assignments. Mr. Bohnen recalled general concerns about inappropriate content but did not have details about specific incidents or outcomes. He ensured the complaint was documented and forwarded to Student Conduct for follow-up, but he did not engage in interviews or investigations himself.

Jane Doe 6

[762] JD 6 reported harassment by a male student referred to as M3 in 2014. Mr. Bohnen met with JD 6 once to discuss the harassment and explain reporting options, including student conduct proceedings, police reporting, and safety planning. He coordinated with Ms. Kay and Ashley Bentley, who interviewed the respondent and confirmed he had disengaged. Mr. Bohnen did not conduct further investigation but documented the complainant's concerns and the support measures provided. He emphasized the importance of autonomy, stress reduction, and informed choice in handling the complaint. Bohnen did not recall the final outcome of the case.

Jane Doe 8

[763] JD 8 reported that a male student had contacted her and waited outside her classroom in 2014. Mr. Bohnen met with JD 8 to document the incident and provide guidance on expressing disinterest and maintaining personal safety. She did not report fearing for her safety. Mr. Bohnen did not recall further investigation but ensured that the complaint was recorded and monitored, and he emphasized the importance of documenting all interactions for institutional oversight.

Jane Doe 21

[764] JD 21's complaint concerned an incident at Dorothy Somerset Studio in 2014–2015. Mr. Bohnen did not meet JD 21 but reviewed the incident report and ensured proper

documentation. He did not recall the follow-up or outcome. His role was limited to maintaining records and monitoring the situation.

Jane Doe 22

[765] JD 22 reported being assaulted by a male student near Totem Residence on March 18, 2015. Mr. Bohnen reviewed the file and coordinated with the RCMP, who issued a notice of prohibition and likely obtained a conviction. Mr. Bohnen emphasized that campus security's timely response and cooperation with law enforcement were critical to ensuring complainant safety. He maintained documentation of all actions taken and the escalation steps involved.

Jane Doe 24

[766] JD 24 reported two sexual assaults at fraternity-associated residences in November 2014, including one incident involving non-consensual administration of a pill. Mr. Bohnen conducted interviews, coordinated with Mr. Hyson and the Vancouver Police Department sex crimes unit, and briefed his supervisors on the seriousness of the matter. While police did not proceed with charges, Mr. Bohnen ensured priority-response measures and documentation were completed. He did not have direct contact with complainants following the initial reporting and was not involved in ongoing safety planning. All information was escalated appropriately for administrative oversight.

Jane Doe 25

[767] JD 25 made a complaint in March 2014 regarding ongoing contact with a student respondent on hold status. Mr. Bohnen met JD 25 and SASC coordinator Josie Ross, providing safety planning, counseling options, police reporting guidance, and priority campus transport. The complainant was uncomfortable but did not fear for her safety. Mr. Bohnen noted that there was no referral to Student Conduct documented, and the final outcome of the complaint was unknown. He emphasized supportive measures, monitoring, and documentation.

Jane Doe 26

[768] JD 26 reported harassment in 2014, but Mr. Bohnen did not meet her directly. He reviewed her file, noting that she had requested edited notes to maintain privacy. Mr. Bohnen coordinated with SASC to advise on police reporting and potential housing relocation,

confirmed the respondent's identity, and documented that the complaint concluded once an undertaking was obtained from the respondent. JD 26 did not want police involvement. Mr. Bohnen emphasized that he treated the allegations seriously and prioritized safety, documentation, and complainant well-being.

16. Evidence of Tara McBryan

- [769] Ms. McBryan testified with respect to her claim in the general class. She currently lives in Richmond and works as an aquatic biologist. She has been working in that position since June 2020.
- [770] She testified that she completed her undergrad at UBC in May 2013 after which she worked in a lab at the Department of Zoology of UBC. She started her Masters of Science in September 2013 in zoology. She testified that her plan was to complete her Masters in 2 years after which she wanted to pursue further research and then ultimately be a professor. She testified that her final project ended up being research on genetic markers associated with rainbow trout. However, she testified that this was not the original project she worked on, which was originally research on how to make closed containment aquaculture feasible for growth of salmon. She described the state of the art tank systems at UBC that allowed researchers to isolate the fish and modify parameters.
- [771] Ms. McBryan testified that at UBC she shared a closed containment facility with Student X, who had a pattern of sexual harassment, bullying, and physical violence. She testified that during a social event, Student X put her over his shoulder and tried to move them to a different floor.
- [772] She further testified that she attended a conference in Seattle and was required to share a room with Student X. She testified that one evening they were with another female grad student from a different university who was very drunk, and Ms. McBryan asked if it was alright for the grad student to stay in their room, and grad student proceeded to sexually assault Ms. McBryan who told her to leave. She testified that when she told Student X about it, he proceeded to make fun of her and tried to sexualize the incident.
- [773] She testified that there were other incidents involving Student X in which he touched her lower back in the fish tank area and that he asked her into his office and he was watching pornography. There were also insensitive jokes about sexual assaults on campus made in the department and that Student X looked like the perpetrator of those assaults. In cross-examination she agreed that she never brought forward her concerns about this to anyone at UBC, including Ms. Kay.

- [774] She testified that Student X also made comments about her body and was verbally abusive and would scream at her on the phone and calling her repeatedly when there were issues with the fish' health and fungal infections in the tanks. She testified that another student noticed that Student X was speaking to her harshly and she confided in him the series of events and he told her they should take her concerns to the faculty. She spoke to her supervisor, Trish Shulty, and they attempted to go to the Equity and Inclusion Office but Ms. Kay was not in so they were redirected to SASC.
- [775] She testified that they agreed to escalate the matter to Robert Shadwick, Head of Zoology. Ms. McBryan testified that Mr. Shadwick took the matter seriously and told her that these allegations would be grounds for expulsion for Student X. She testified that Prof. Shadwick did not tell her about the process and her understanding was that he was going to speak to Student X and he would likely be expelled. However, according to Ms. McBryan, after Ms. Kay became involved the matter became more about due process and she was under significant stress at that point.
- [776] Ms. McBryan met with Ms. Kay on April 28, 2014. She reviewed Ms. Kay's notes (Exhibit 5, doc 37, .89) about the meeting and testified that they were accurate and that she was impressed by how thorough Ms. Kay had been. Ms. Kay's notes indicate that Ms. McBryan told her that Student X would physically touch her and make her uncomfortable. She also told Ms. Kay about Student X carrying her upstairs at the Christmas party, and that Student X ridiculed her about the incident in Seattle.
- [777] Ms. McBryan testified that she did not tell Ms. Kay or anyone at UBC about several of her concerns about student X, including that he would call her repeatedly, speak harshly to her, and make derogatory comments about her appearance, specifically mentioning her breasts. Additionally, there was an incident where he pretended to have data on his computer but instead played pornography. He also made inappropriate remarks about another graduate student, suggesting they engage in sexual activities. She does not recall telling Ms. Kay or anyone at UBC about those concerns.
- [778] She testified that when she met with Ms. Kay in April 2014, Ms. Kay told her that if even 1/10th of what she had told her was true, it would be grounds for punishment. However, as part of due process, Ms. Kay told her she needed to stay quiet and not let other graduate students know what was going on. Ms. McBryan testified that Ms. Kay did not discuss UBC policies or filing a formal or informal complaint. She testified that she felt she had been heard and was in good hand with Ms. Kay.

- [779] Ms. McBryan testified that she felt excluded from the process and she did not see any significant changes in Student X's behavior, even though she knew he was told he was not allowed to speak to her anymore. She testified that he continued to intervene in conversations and she felt she could not say anything to him so she had several conversations with Prof. Shadwick about her concerns.
- [780] On May 6, 2014, Ms. McBryan emailed Prof. Shadwick (Exhibit 6 p. 98) that she was starting to get a little bit more comfortable around the building. She relayed that Student X had sat at her lunch table. She agreed in cross-examination that she told Prof. Shadwick in the email that "I don't wish for [Student X] to be excluded" and she stated in cross-examination "I never wished for him to be excluded".
- [781] She testified that there were interim measures put in place during the investigation. She testified that she was issued a rape whistle and given a card with campus security number, and an undergrad student liaison to protect her in the aquatic facility. She testified that when it became clear that things were going to work out on sharing fish, efforts were made to change the research project to rainbow trout from salmon, which are more relevant to industry. Ms. McBryan testified that she was put into a position where she could not raise fish in the state of the art facility, so she had to grow them in static garbage cans. She testified that her fish were suffering in the poor conditions that were assigned to her while Student X was able to access the better facility and complete his thesis. She testified that she also moved her office to a different floor to avoid Student X.
- [782] On July 10, 2014 Ms. McBryan telephoned with Ms. Kay. She testified that Ms. Kay's notes accurately reflect what she told her (Exhibit 5 doc 42, p.114). The notes indicate that she told Ms. Kay that Student X had been talking loudly outside her office with another student which she felt was not necessary because he had other places to meet with the student, and that at one point she walked past him and he leered at her chest. She also told her about Student X sitting down at her table lunch. She advised that she was seeking treatment and was on medication.
- [783] Ms. McBryan testified that by September 2014 she was having issues with anxiety and panic attacks and was suicidal, so she was on medical leave from September 2014 to November 2014 and prescribed medication. She returned to complete her program and began a new project to work on. She testified that she also attended counseling for managing her feelings towards the events.
- [784] Ms. McBryan testified that her new project started November 2014 and she graduated in

May 2017 and that she essentially lost a year by taking more time to complete her degree because she had to change the project. She estimates \$50,000 in income loss in addition to her tuition fees in the range of 10-15,000 for the extra year. She testified that these events made her decide not to pursue a PhD. She agreed in cross-examination that this decision meant she actually entered the workforce earlier than had she chosen to pursue further studies. She also testified in cross-examination that she received approximately \$7,000 in bursaries in 2014 and possible income from working as a TA. In cross-examination, she agreed that she did not produce any documents relating to her tuition, nor any documents relating to her wage loss calculations.

[785] With respect to impact, M. McBryan testified that she felt that the lack of resolution took put her in mental distress and she was made to feel that Student X was more valued than her. She also felt like she lost opportunities with colleagues and professors as a result.

[786] In cross-examination she agreed that the only complaint that she brought to Ms. Kay were related to the comments made by Student X about her breasts when they were in a hot tub, and his comments relating to the incident in Seattle. She agreed that she did not report to Ms. Kay or anyone at UBC the jokes about the campus rapist, or Student X's comments about her appearance.

[787] Although in direct testimony she testified that Ms. Kay's notes were accurate and very thorough, in cross-examination she testified that Ms. Kay's note that when Student X carried her upstairs at the Christmas party and there were lots of people there must have been a mistake Ms. Kay made in typing out her notes.

[788] She further agreed that she waited a year before bringing the complaint. She agreed that no one at UBC could have done anything about Student X until she came forward.

[789] She agreed in cross-examination that she was attending counseling for the underlying assault not committed by Student X and also for the issues with Student X.

[790] She agreed in cross-examination that after she complained Student X stopped talking to her, but she argued that he continued to immerse himself in her conversations and linger, such as sitting down at the same lunch table and hanging out near the doorway of her office. In her testimony in chief, she stated that Student X was "leering" at her doorway. In cross-examination she stated Student X was "in the doorway area".

[791] In cross-examination, she agreed that she stopped communicating with Ms. Kay in July 2014 because she "got tired of this". She agreed that she never told Ms. Kay that she was

not continuing with these communications. She further agreed that UBC, particularly Ms. Kay, would not have known that she was done unless they heard this from her. She stated “I don’t think I formally communicated that I didn’t want their assistance anymore.”

17. Evidence of Lauren Fisher

- [792] Lauren Fisher began their studies at the University of British Columbia (UBC) in September 2014, residing in Place Vanier. During their first year, they experienced issues involving sexual activity with a male partner in residence but did not initially discuss these with anyone at UBC. In early 2015, Ms. Fisher disclosed their experiences to Ivan Yastrebov, the Residence Coordinator (RC) at Place Vanier, due to emotional strain and distress. Mr. Yastrebov provided emotional support, including conversations, offering a safe space, and once taking Ms. Fisher to the ER when they were feeling suicidal. Mr. Yastrebov also suggested Ms. Fisher visit the Sexual Assault Support Centre (SASC).
- [793] Ms. Fisher first visited SASC on January 22, 2015, discussing their experiences and scheduling follow-up appointments. SASC intake included information about confidentiality, privacy policies, client rights, and options for referrals, including UBC counseling, campus security, and police reports. Ms. Fisher could not specifically recall discussions about all formal reporting options but agreed they were likely presented during intake forms. They specifically did not consent to release information to police or educational institutions at that time. SASC provided emotional support, assertiveness training resources, academic concessions, and referrals to Student Health and UBC Counseling. They also discussed boundaries, self-care, and grounding techniques.
- [794] In October 2015, after further incidents, Ms. Fisher returned to SASC for support. SASC assisted them with academic accommodations, including support with missed schoolwork and midterms, and helped create safety plans due to suicidal thoughts. SASC staff, including Ashley Bentley and Josey, accompanied Ms. Fisher to Student Health for STI testing. Student Health performed tests but did not provide information about formal reporting options. Ms. Fisher also received academic accommodations through Access and Diversity (now Centre for Accessibility) following a referral from SASC and a letter of support from their psychiatrist.
- [795] Ms. Fisher testified that they continued to experience mental health struggles, leading to hospitalizations for suicidality, and received medical notes for academic accommodations from their psychiatrist. They disclosed their experiences to Mr. Yastrebov, Maggie Tung (Resident Advisor), SASC staff, some professors, their psychiatrist and eventually their

parents. Ms. Fisher did not make a formal complaint about sexual assault or harassment during their time at UBC, limiting their disclosures to informal channels.

[796] Ms. Fisher expressed appreciation for Ivan's support and felt well supported by SASC. However, they would have appreciated more proactive follow-up from UBC administration after disclosures, and a greater emphasis on education regarding consent, reporting options, and resources. They did not recall ever providing constructive feedback to SASC or taking issue with the timing or process of receiving academic concessions.

[797] During cross-examination, Ms. Fisher admitted they could not recall all details of meetings or correspondence but agreed with the general accuracy of the documentary record presented by counsel. They acknowledged that notes from SASC meetings generally did not include specific details about the assaults or names of individuals involved and that they did not disclose those details. They agreed that most records focused on their emotional state and need for support rather than explicit complaint content. Ms. Fisher confirmed they never wrote to SASC with constructive feedback or complaints about their services and consistently stated that SASC staff were supportive and responsive whenever they sought help.

C. Evidence of Complainants' experts

1. Evidence of Dalya Israel

[798] Ms. Israel testified as an expert witness and tendered her summary report on what survivors of sexual assault need from processes that are created to address sexual misconduct.

[799] Ms. Israel is the executive director of WAVAW and has been working at WAVAW since 2004. She became executive director in 2019. WAVAW is a feminist sexual violence support centre which provides support services to survivors of sexual violence.

[800] The Respondent objected to the report on the basis that Ms. Israel has no expertise with respect to educational institutions and their response to complaints of sexual assault or harassment. Further, the Respondent objected on the basis that her report was advocacy as she was engaged with the Complainants' cause as early as 2016 through her work with WAVAW. Further, the Respondent argued that there is no reference to the facts of this case in the report and a summary report cannot be expanded upon. The Respondent maintains its objections.

- [801] Ms. Israel was permitted to testify as an expert, and her report was determined to be admissible. She was qualified as an expert in what survivors of sexual assault need from processes that are created to address sexual misconduct.
- [802] Ms. Israel testified that survivors of sexual violence need sharing of information about how processes within systems work and having a “menu” of options is important because every survivor’s experience is vastly different. She testified that survivor consent needs to be sought at every step of the way, and that survivors need support when they are testifying in hearings or mediations. She further testified that not knowing the outcome of a process can prevent healing from the perspective of a victim.
- [803] Ms. Israel testified that sexual assault and misconduct are community issues and not just interpersonal issues, so it is important to have mechanisms in place to create accountability. She testified that accountability within an institution can be done through education; for example, working with police to examine their own biases.
- [804] She further testified that it is important for survivors to speak up because sexual assault is about control, and further silencing survivors takes further control from them. She testified that trauma informed practice is an orientation to a practice of being with people who experienced trauma and understanding that trauma changes people. Ms. Israel testified that it requires an additional social context and is about showing up with compassion, understanding it creates a reaction, and putting the person at the centre of the process. Ms. Israel testified that best practices for trauma informed approach include being present and seeing people as whole humans, naming systems that deny equity and how they shape the process, and identifying how systemic inequality actually plays out in these scenarios.
- [805] Ms. Israel testified that institutions should permit and respond to witness/third party reports, because communities know who is perpetrating harm and say nothing and survivors are watching how people around them talk about sexual assault, and media talks about it, which takes away from accountability and takes away from the survivor’s ability to feel like a full human and their belief that what happened to them was not acceptable.
- [806] Ms. Israel stated that survivors need more support due to rape culture influencing internalizing blame and perpetuating stereotypes about survivors.
- [807] In cross-examination, Ms. Israel agreed that her report does not reference any of the complainants or any of the policies at UBC.

- [808] In cross-examination she stated that her understanding was that a process before a college or university with respect to sexual misconduct is not a judicial process.
- [809] In cross-examination, Ms. Israel agreed that loss of autonomy in the context of legal processes can be traumatic, including loss of control over one's story. She agreed that her summary report discussed the need to have the consent of the survivor throughout the process and consideration to attending to survivor's needs.
- [810] She testified that the definition of a survivor in the context of her report is someone who has had an experience or multiple experiences of sexual violence. She agreed that through her work through WAVAW she would not report to an institution without the survivor's consent. She stated that a third-party disclosure would be appropriate if a minor was involved or an incapable adult and that it does not extend to anybody else, with the exception of cases involving power imbalance. She testified that the reference to third party reporting in her summary is a specific context which does not mean a third party or witness reporting an incident, but rather it is a provincial report coming in for ages 19 and up to provide experience with sexual violence used for profiling purposes only and that WAVAW spearheaded third party reports with respect to indigenous and sex workers in an effort to share information and this was dealt with in more integrated ways.
- [811] She agreed in cross-examination that mediation is an option that is part of processes dealing with sexual violence, but she stated she has not seen it successfully resolve disputes although she agreed it is possible it could work in some scenarios. She agreed that mediation is optional and it is up to the individuals and whether they want to participate.
- [812] The Respondents submits that the evidence of Ms. Israel should not be considered by the Tribunal. Ms. Israel has no expertise with respect to educational institutions and their response to complaints of sexual assault or harassment. Further, Ms. Israel as an advocate for WAVAW is not an impartial expert, but rather an open advocate for Ms. Kirchmeier's cause.

2. Evidence Dr. Laura Brown

- [813] Dr. Brown testified as an expert witness and tendered her report on the concept of Institutional Betrayal.
- [814] The Respondents objected to the report on the basis that there is no reference to the facts of this case in the report and the report is simply a summary of scholarly articles without

any application or analysis of the facts of this case.

- [815] Dr. Brown was permitted to testify as an expert and her report was determined to be admissible. She was qualified as an expert in Institutional Betrayal and Trauma.
- [816] Dr. Brown testified that she based her report on her knowledge of the peer-reviewed scholarly literature on Institutional Betrayal, Institutional Betrayal Trauma, and Betrayal Trauma and has referred to some specific studies in the report.
- [817] She testified that trauma is an experience that has particular neurobiological responses in humans and those are the responses of fear, the desire to flee, flight, freeze and compliance and collapse. She indicated that symptoms of trauma include depression and sleep disruption.
- [818] She testified that Institutional Betrayal is the violation of reasonable expectations; for example, one expects the institution to protect them because of explicit policy and the institution fails to protect the individual or group when harm occurs. She testified that betrayal trauma can occur in the absence of other forms of trauma. She agreed in cross-examination that Institutional Trauma and the other types of traumas she described are not found in the DSM IV but there are a variety of traumas not found in the DSM that are nonetheless traumatizing. She indicated there can also be biological responses to trauma such as sleep disruption, headaches, stomach aches etc.
- [819] Dr. Brown testified that Institutional Betrayal is identified by noting whether the institution has a policy about protecting individuals or groups, and examining whether that vulnerable individual or group has been protected or whether the institutions has failed to enact their own policies, or attempt to silence or blame the vulnerable individual or group. She further testified that Institutional Betrayal does not require a conscious choice on the part of the institution, and that is where Institutional Cowardice comes in. For example, the institution does not want to look bad and cares about its reputation, so they are not explicitly trying to betray the vulnerable persons but rather are motivated by their loyalty to the reputation of the institution and respond, or not, accordingly.
- [820] Dr. Brown testified that institutions participate in betrayal by refusing to apologize, by ignoring victims, by hiding behind their excuse of "just following orders" and by being helpless bystanders to injustice.
- [821] In cross-examination, Dr. Brown agreed that she did not interview any of the complainants in this case and that no diagnoses were made of any of the parties in the case. She further

agreed that she did not review any of the documents in this case and did not review any documents relating to UBC, but rather that she was attending this hearing to simply present on the concepts of Institutional Betrayal and trauma. She agreed that on the previous occasion in which she provided expert opinion in a case on the issue of Institutional betrayal she was asked to review the possible harms done to a particular student at a particular institution so she reviewed all of the documentation and interviewed the student to determine whether Institutional betrayal had occurred in that case, rather than provide a general statement about Institutional betrayal which she had done in this case.

[822] The Respondent submits that in light of the limited information provided to Dr. Brown regarding the circumstances of the case, the report of Dr. Brown should be given little weight.

[823] An explanation of the concept that the manner in which institutions handle reports of sexual misconduct can have an effect on a complainant is not something beyond the scope of the knowledge or experience of a Tribunal member. A trier of fact does not require the assistance of persons with special knowledge to make an assessment as to this issue and therefore the report does not satisfy the requirement of necessity in regard to admissibility of expert evidence, and the Respondent thus repeats its objections as to its admissibility.

D. Respondent Witnesses

1. Evidence of Chad Hyson

[824] Mr. Hyson testified that he was the Associate Director, Student Conduct & Safety, VP Students, in 2014–2015, having started in January 2012. He reported to Managing Director Janet Teasdale, who reported to Louise Cowan (VP Students). Approximately 50% of his role was as Student Conduct Manager for UBC Vancouver. The other half of his role involved supporting the VP Students in critical incidents, including student deaths, and providing support for grief and academic concessions. He also participated in committee work and addressed disruptive or concerning behavior not rising to Student Code violations.

[825] Mr. Hyson stated that there was no identifiable metric for success in his role or for Non-Academic Misconduct (NAM) investigations, but he provided updates to supervisors on whether resolutions were reached and if students re-engaged in misconduct. His annual caseload was roughly 60–80 cases, with about 20% involving sexual misconduct. He had

prior experience as Residence Life Manager starting in 1998, where he investigated contract violations but received no specific training on sexual misconduct. At that time, there was no central database for residence incidents.

- [826] He outlined campus resources for survivors, including AMS SASC, UBC Counselling Services, and Student Health Services, noting that referrals typically came from SASC or campus security, and reports were generally directed to campus security before reaching him
- [827] Mr. Hyson received two-day administrative tribunal training contracted by the University, but it did not specifically address sexual misconduct. He stated he had limited knowledge of the Human Rights Code (HR Code) between 2012 and 2015, understanding only protected grounds and basic concepts of discrimination and sexual harassment, mostly in a workplace context, and did not receive further HR Code training during this period.
- [828] He participated in approximately 20 hours of trauma-informed practice training with Jennifer Hollinshead from UBC Counselling Services, alongside campus security and RCMP members, starting in December 2014. Key takeaways from this training included respecting survivor autonomy, understanding trauma's impact on memory and anxiety, minimizing repeated retelling of traumatic events, and being mindful of how questions are asked.
- [829] Mr. Hyson confirmed his familiarity with UBC's Respectful Environment Statement and Policy 3 on harassment and discrimination, understanding that serious misconduct could result in expulsion or dismissal. He described the Student Code of Conduct as largely unchanged between 2014 and 2016, acknowledging its purpose was to protect academic integrity and campus safety. He clarified that Policy 3 was not a policy he worked with closely and did not provide a path to discipline in his view.
- [830] He outlined available resources for survivors of sexual misconduct on campus, including AMS SASC, UBC Counselling Services, Student Health Services, and RCMP. Typically, he was not the first point of contact for complainants, with referrals often coming from SASC or campus security. Reports of suspected misconduct were generally directed to campus security before reaching him.
- [831] Mr. Hyson explained that the Student Code of Conduct applied to currently registered UBC students for conduct on or near campus, or at university-sponsored activities with direct campus connections.

Exhibit 1, p. 303

- [832] He clarified that academic misconduct, residence community standards, and professional school codes were handled separately. He described efforts to communicate the new Student Code of Conduct and NAM process across campus before its launch in January 2012, including presentations to various university bodies, which led to an uptick in complaints due to increased awareness. The rationale for change was to address less serious cases more efficiently through resolution rather than committee hearings.
- [833] The NAM process allowed for investigation by the Student Conduct Manager, who could refer matters to a committee or resolve them if appropriate. The code did not specify who could make a complaint. Jurisdiction and prohibited conduct were outlined in the Student Code.

Exhibit 1, p. 303,305 (Section 4.2)

- [834] Mr. Hyson testified that most cases were resolved through discussion with respondents, with high compliance rates for resolution agreements. However, resolution was typically not used for sexual misconduct unless the respondent admitted responsibility, with such cases usually going to a committee. When meeting with complainants, Mr. Hyson would explain the NAM process, reporting options (including police), statement-taking procedures, and what to expect at hearings. He clarified that respondents could not question complainants directly at hearings; only committee members could ask questions.
- [835] Mr. Hyson first became aware of concerns about DM in June 2014, when Clark Lundeen from Green College contacted him regarding disclosures by Student E. Student E reported two incidents where DM made unwanted advances and pressured her for sex, and later led her to his room while she was intoxicated, ignoring her refusals. He believes he first had a telephone conversation with Clark Lundeen about the incident. The first written communication he received about the allegations was from Mr. Bohnen on June 12, 2014.

Exhibit 6 p. 190

- [836] Mr. Hyson testified that he advised Green College that they could investigate under their residence contract or refer Student E to him for a university report if she wished.

Exhibit 6 p. 202

- [837] Around the same time, he learned of an incident involving Student B in Toronto having been sexually assaulted by DM. Mr. Hyson did not initially contact Student E or B directly.

He says he did not reach out to Student E because he had given Mr. Lundeen his options for proceeding if Student E wanted to move forward. He testified that he told Mr. Lundeen he could contact the director of student housing to find out more options for proceeding with Green College investigation and if that was not possible then Mr. Lundeen could put Student E in touch with his office if she wanted to make a report about DM to the University.

- [838] He was aware by June 2014 that information about Student B was circulating at Green College and that there was concern about DM's return.

Exhibit 6 p. 193

- [839] Mr. Hyson stated that if an incident occurred outside UBC's jurisdiction, the university could take little action beyond that. He did not document decisions not to proceed for lack of jurisdiction, nor did he inform complainants directly. He acknowledged that a student credibly accused of sexual assault elsewhere could pose a risk to UBC students, but without jurisdiction, the university could not act. He consulted with Janet Teasdale about jurisdictional decisions, and she agreed with his approach. He did not follow up to ensure Green College was moving ahead with Student E's matter or consider NAM for Student E's complaint at that time. He received a summary from Mr. Bohnen about Student B but did not initiate NAM as the incident was outside jurisdiction.

- [840] In December 2014, Ms. Kay reported that women from the History Department raised concerns about a graduate student, later identified as DM. Mr. Hyson agreed to meet with students wishing to report NAM incidents. He stated that Ms. Kay's notes about the meeting somewhat accurately reflects what he would have discussed, and that the notes about the NAM elements were accurately captured. She coordinated meetings for students to learn about NAM and potentially make reports, and Mr. Hyson agreed to meet with any interested students.

Exhibit 6 p. 352

- [841] In February 2015, Mr. Hyson met with Caitlin Cunningham at SASC with Ms. Kay and Ashley Bentley present. Ms. Cunningham shared an incident involving DM after a social event and expressed belief that others had similar experiences. Mr. Hyson explained NAM process options, and Ms. Cunningham wanted to proceed through NAM rather than resolution.

- [842] Following this meeting, Ms. Cunningham referred Mr. Hay to Mr. Hyson as someone with relevant information. Mr. Hyson responded to Mr. Hay, stating he could not discuss

specifics of Ms. Cunningham's complaint without her consent but was open to meeting if Mr. Hay had relevant information.

Exhibit 6 p. 389

[843] After obtaining Ms. Cunningham's, Mr. Hyson met with Mr. Hay, who shared experiences regarding DM's conduct at Green College, including incidents of physical aggression and disclosures of assault. Mr. Hay also relayed information about an incident in Toronto involving DM and Student B. Mr. Hyson encouraged Mr. Hay to pass his contact information to other Green College residents who might wish to report, offering to explain the process and assure privacy.

[844] Mr. Hyson and Mr. Hay exchanged emails about university jurisdiction over incidents occurring at conferences, exploring whether funding sources could make such events university-sponsored. Mr. Hyson confirmed with colleagues that funding alone did not confer jurisdiction if the incident did not occur at the conference. He reconnected with Green College about Student E's earlier report, and Student E agreed to meet with him in March 2015 and provided a statement about her experiences with DM.

[845] In April 2015, Mr. Hyson became aware of DM's potential return to campus and moved forward with reports from Student E and Ms. Cunningham, considering grounds to restrict DM's return. He collected information for the VP Students, confirming with the history department that DM did not require physical campus access to continue his studies. Based on Student E's ongoing student status, Mr. Hyson recommended restricting DM from the UBC Point Grey campus as an interim measure, which was approved and issued on April 30, 2015.

Exhibit 6 p. 614

[846] He communicated with Ms. Kay, keeping her updated on the process, and discussed the rationale for the notice of restriction.

Exhibit 6 p. 446

[847] Mr. Hyson received further information from Mr. Hay, including contact details for Student B and Facebook messages between DM and Mr. Hay. He addressed safety concerns related to a conference in Ottawa and advised Mr. Hay on how to approach DM and his friend regarding those concerns. He clarified that the university would notify DM of the allegations under the code of conduct prior to his return. Mr. Hyson protected Student E's

privacy by not disclosing her identity to Mr. Hay and offered to meet with any hesitant potential complainants to explain the process.

- [848] Mr. Hyson testified that he communicated with Green College representatives about DM's possible return, explaining that the notice of restriction would prevent DM from returning to Green College while interim measures were in place.

Exhibit 6 p. 598

- [849] He received a report from Caroline Greggo, a former Green College student, detailing her own experiences with DM and her observations of Student B's interactions with DM. He did not follow up with Ms. Greggo because at that time he was receiving a lot of emails and he had noted he would be following up with Student B directly.

- [850] Mr. Hyson updated Student E about the notice of restriction, clarifying that she would be referenced in the notice due to her ongoing student status, while Ms. Cunningham's name would not be included as she had graduated.

Exhibit 6 p. 597

- [851] He held internal meetings with history department representatives, his supervisors, and university counsel to review information and finalize the notice of restriction, which he drafted for VP Students' approval.

- [852] Mr. Hyson testified that banning DM from UBC Vancouver did not address concerns about DM attending conferences elsewhere. He did not consider a registration hold for protection outside UBC. He believed DM's supervisor was aware of the situation due to discussions about campus access. There was no way to record a hiring caution for faculty or sessional positions. The notice of restriction was issued in April 2015, typically copied to the college, campus security, and sometimes the department. It was not public knowledge and not posted at Green College. Enforcement relied on security and key individuals being notified. It was not placed on the student's academic file or provided with transcripts or references. If DM was found on campus, he would be asked to leave, and RCMP would be called if he refused.

- [853] Mr. Hyson stated that filing with police or providing hospital records would not have changed his decision to exclude Student B's allegations from NAM. He did not consider Policy 3 as a viable way to address Student B's complaint. He acknowledged that the NAM chart and online materials provided only a brief overview of the process, and students

preferred online sources to written copies.

[854] Regarding resolution agreements, Mr. Hyson considered it only if the respondent took full responsibility for misconduct. He testified that he was concerned that avenue would allow DM to complete his degree. He did not send resolution proposals to Student B, as her statement had not yet been included. Ms. Kirchmeier's allegations about Student A were not included in the Statement of Allegations prepared for the NAM Committee because they were observations, not direct statements from Student A. He did not contact Student A or determine when she left UBC.

[855] He acknowledged that delays in moving forward with complaints contributed to ongoing concern among students and staff about DM's potential return to campus. When multiple allegations accumulated (from Caitlin Cunningham, Student E, Mr. Hay, Ms. Kirchmeier), he waited to see if more would come forward before notifying DM or proceeding with a hearing.

[856] After the notice of restriction was issued, Mr. Hyson received further communications from Mr. Hay about other Green College residents willing to provide information. In response he facilitated contact with Student C.

Exhibit 6 p. 638

[857] He continued to update Ms. Cunningham about the process, confirming that DM had been notified and that Caitlin Cunningham was not listed in the notice.

[858] Caitlin Cunningham requested to review her statement, found editorializing she disagreed with, and decided to rewrite it, which Mr. Hyson accepted.

[859] Mr. Hyson was contacted by Ms. Kirchmeier, who expressed concerns about the process moving forward without her involvement. He clarified Ms. Kirchmeier's role, apologized for assumptions, and explained that only Student E's report was referenced in the notice of restriction, with no information shared about Ms. Kirchmeier's complaint. He responded to Ms. Kirchmeier's questions and explained the process.

Exhibit 6 p. 658

[860] Mr. Hyson confirmed that Student D did not wish to come forward with a complaint and had not contacted him.

Exhibit 6 p. 685

[861] He continued communications with Mr. Hay, who provided screenshots of conversations between DM and Student C.

[862] After the notice of restriction, DM reached out to Mr. Hyson, and they scheduled a Skype meeting around May 18, 2015. Mr. Hyson explained the NAM process to DM, who indicated his intention to cooperate, respect the notice of restriction, and remain in Russia during the proceedings.

[863] Mr. Hyson updated Student E about the process and her statement. He informed Student E that DM would be remaining in Russia.

Exhibit 6 p. 691

[864] By May 2015, Mr. Hyson had still not heard from Student C. He emailed Mr. Hay to advise him of this and to advise that DM had made the decision to remain in Russia. He had ongoing communications with Mr. Hay trying to facilitate contact with Student C.

Exhibit 6 p. 692-699

[865] Mr. Hyson received multiple emails from Ms. Kirchmeier in June 2015 about the process and her concerns. He responded to Ms. Kirchmeier's concerns, consulting with supervisors and university counsel about including her concerns in the NAM process. He clarified the seriousness of reports outside the history department and discussed with Ms. Kirchmeier whether her concerns would be included.

Exhibit 6 p. 718

[866] He also remained in contact with Student B and advised her he would look for ways to include her report in the process but shared his concern regarding the jurisdictional issue. He discussed the issue with colleagues and the decision was not to include Student B's report and to move forward with the reported conduct that was clearly within the University's jurisdiction.

[867] He continued communication with Student E who confirmed in July 2015 that her statement was an accurate reflection of what she shared with him in March and he communicated to her that he was still waiting for another report before proceeding (student C). He gave Student E the option of a resolution process and she stated she was ok with proceeding with either option.

Exhibit 6 p. 758

[868] On August 5, 2015, Mr. Hay received the Statement of Allegations from Student C. He responded and explained the process to her.

Exhibit 6 p. 770-771

[869] In August 2015, Mr. Hyson finalized the Statement of Allegations based on statements from Ms. Cunningham, Student E, and Student C. On August 11, 2015, he submitted it to the NAM chair Mr. Morrison.

Exh.6 p. 776

[870] He notified all complainants when DM received the Statement of Allegations and confirmed that none reported further contact from DM after their complaints were made known.

Exhibit 6 p. 777 (emails with Student E); Exh.6 p. 788 (Emails with Ms. Cunningham)

[871] He continued to have email communications with Ms. Kirchmeier, further explaining why her statement was not included in the process but welcomed her to submit her statement to the NAM Chair and provided his contact information. He had previously explained to her that there was concern that if they included her statements he may use them to refute more serious allegations because Ms. Kirchmeier pointed out that he respected clearly defined verbal boundaries.

Exhibit 6 p. 783-787

[872] Mr. Hyson had no role in NAM proceedings beyond submitting the Statement of Allegations; he did not attend hearings or participate in decision-making by the committee or President. He was copied on outcome letters so he could inform complainants of results within privacy constraints. He answered follow up questions from Ms. Cunningham about the outcome and whether DM had been expelled.

Exhibit 6 p. 1089, 1123

Mr. Hyson evidence regarding Jane Doe Witnesses:

Jane Doe 1 (AM case):

[873] Mr. Hyson became aware of this case through Ms. Kay. JD 1 reported there was a male classmate whose religious views were making people uncomfortable. He asked her on a date. After JD1 declined his invitation out, he respected her wishes. Concerns were raised about religious proselytizing by AM, which did not breach UBC policy. JD1 did not wish

to make a report or have her interaction discussed with the male. Mr. Hyson met with AM to check on his well-being and referred him to support but did not mention JD1's concerns directly.

Exhibit 174 p. 229

Jane Doe 3A/3B (JZ case):

[874] Campus security and Mr. Bohnen reported inappropriate propositioning by a male on campus, whose identity was unclear. Mr. Hyson received statements about sexual harassment and unwanted touching reported to Ms. Kay. Jane Doe 3B reported being propositioned by a male on campus

Exhibit 88; Exhibit 85

[875] He determined that the alleged perpetrator, JZ, was no longer a UBC student, so NAM would not apply. He advised Ms. Kay that if the individual was not a student, the university could only address the matter as a trespass issue. Mr. Hyson explained that the lower threshold for visitor conduct applied.

Exhibit 5 p. 74

[876] He sent templates for notice of restriction under Policy 14 to campus security for their use. He did not have direct contact with the complainants but was able to manage the file and move it forward. Mr. Hyson advised campus security could issue a trespass notice and sent templates for restriction letters. He followed up to ensure campus security was moving ahead with prohibition and was aware JZ was eventually banned from campus.

Jane Doe 4:

[877] The case came to Mr. Hyson's attention through the Dean's office in the Faculty of Arts, specifically Sunaina Asand, who brought it to his supervisor

[878] He received multiple emails regarding the incident, including from S. Assanand and J. Elliot, and was copied on an email from J. Elliot. The concern was that a TA (JD4) received sexually explicit assignments under false names in a tutorial. Materials submitted from a discussion group included sexualized content directed at a teacher. Mr. Hyson did not see the written submissions until he met with the course professor and TA.

[879] Mr. Hyson coordinated meetings with the TA (JD4), faculty (Dr. Potter), and the dean's office. He investigated by interviewing students and witnesses (W1/W2). The investigation

included meetings with suspected students (W3/W4) and IT checks for alibi confirmation. Two males were ultimately identified, one UBC student (LL) who had failed out, and one SFU student (BF). Both took responsibility and apologized. LL admitted involvement, and BF apologized but was not subject to the UBC Code of Conduct as a non-student.

[880] Mr. Hyson determined LL was no longer enrolled and did not proceed with NAM. Janet Teasdale had emailed Mr. Hyson indicating Policy 3 might apply, but Mr. Hyson did not know why she thought that; he felt it would likely fall under the Code of Conduct.

[881] Mr. Hyson provided updates to JD4 throughout the process. JD4 expressed relief when identities were clarified and did not complain about the process or its impact

Exhibit 174 p. 12–49

Jane Doe 5 (JM case):

[882] JD5 experienced a series of unwanted contacts by JM in the library and course settings. Mr. Hyson received a real-time report of an encounter with JM in the library. The complaint came via Ms. Kay, and prior incidents were noted by staff supervisor Julie Mitchell regarding JM's pattern of behavior toward female staff. Mr. Hyson checked residence records for further concerns, finding none.

[883] Mr. Hyson issued a restriction under Policy 14 after meeting with JD5. Mr. Hyson met with JD5 to discuss the NAM process and options, and JD5 chose the NAM process. He coordinated meetings between JD5, an instructor, the department head, and Ms. Kay. JM was notified and invited to a meeting, where he denied the allegations but was instructed not to contact JD5. Mr. Hyson prepared a Statement of Allegations for the NAM committee based on the campus security report and information from Ms. Kay. JM denied the allegations in the meeting. Mr. Hyson attended the NAM committee meeting as a presenter of evidence. JM was found in violation by the President after a NAM hearing but not expelled; restrictions were imposed. Mr. Hyson communicated the outcome to JD5, indicating a finding of misconduct and that JM was instructed to have no further contact with JD5. He would have told her to contact him, the police, or campus security if there was further contact

[884] After continued violations by JM despite instructions to cease contact, Mr. Hyson prepared a Statement of Allegations for the NAM committee. Later, after JD5 returned for a diploma program, another incident was reported involving JM violating the restriction. Mr. Hyson recommended an interim restriction under Policy 14 for spaces where JD5 studied, which was approved by VP Students. Restrictions on JM's access were communicated to

campus security. Restrictions on JM's access to certain buildings remained in place until 2017, even after JD5 left campus.

[885] Mr. Hyson assisted JD5 with academic concessions following the impact on her studies.

Exhibit 174 p. 66–122.

Jane Doe 6:

[886] In October 2014, Mr. Hyson received a report via Mr. Bohnen about JD 6's complaint against M3.

Exhibit 5 p. 146

[887] Mr. Hyson testified that he did not take any steps in relation to the email as JD 6 was working with Ms. Kay and SASC. In this case he was aware that Mr. Bohnen had connected JD6 to SASC and they were considering moving the case forward through the VPD. Interim measures under Policy 14 were not considered without JD 6's participation.

Jane Doe 20:

[888] My Hyson became aware of this case when SASC referred from JD20 who disclosed a prior incident involving two male residents who continued pleasantries despite a request for no contact.

[889] Mr. Hyson met JD20 at SASC and advised on options per her privacy concerns. With JD20's consent, he instructed both males to cease all contact. Mr. Hyson met/spoke with both men at JD20's request (one by phone, one in person). Both complied willingly and agreed to cease contact.

[890] Mr. Hyson did not pursue further details about the underlying incident due to privacy concerns and the complainant's wishes. No NAM process was initiated as JD20 did not wish to pursue it. He testified that JD20 was relieved and expressed gratitude, and did not complain about the process.

Exhibit 174 p. 136–143

JD21 (M13 Case)

[891] My Hyson became aware of this case through SASC. The incident involved an AMS players cast party off-campus (at the director's residence) where the director made unwanted and touched JD21 without consent.

[892] The director apologized, stepped down from the play, and agreed to no further contact. SASC supported JD21. Mr. Hyson explained the lack of university jurisdiction over AMS club activities off campus but offered options including police reporting or informal communication with the director if desired. JD21 was not interested in Mr. Hyson meeting with the male involved.

[893] Mr. Hyson explained the lack of university jurisdiction over AMS club activities off campus. He pushed for a second opinion on the applicability of the Code of Conduct and determined that there was no jurisdiction under the student code due to the off-campus context after consulting legal counsel/university colleagues. He advised police reporting as an option.

Exhibit 174 p. 147–149

Jane Doe 24 (M4 case):

[894] Mr. Hyson became aware of this case through SASC in April 2014. An anonymous campus security report detailed these incidents: one off campus at a sorority mixer and one on campus at Totem Park, both involving M4 on November 2, 2013 and November 26, 2013.

Exhibit 81, p. 2 – IR about JD 24

[895] On April 4, 2014, Mr. Hyson emailed Anisa at SASC and advised that JD 24 was no longer an active student and he explained that this was because she had taken a year off.

Exhibit 174 p. 151

[896] Mr. Hyson confirmed that he met with Anisa at the SASC office early in the process. Although he could not recall the exact details of the meeting, he believed it involved both himself and Anisa, and he could not remember whether JD24 attended that initial discussion. His understanding was that JD24 had decided to proceed through the NAM process regarding the Totem Park incident, and because she had already disclosed information about two incidents to Campus Security, he prepared a list of questions in advance and sent them to Anisa for review. These questions were intended to guide the taking of her formal statement.

[897] With respect to the November 2, 2013 event, Mr. Hyson understood that the event was organized by a group called “Frateres,” which he believed to be an AMS social club that interacted with sororities but was not itself a sorority. He believed that the event took place in an apartment off campus, likely in Kitsilano. He understood that JD24’s allegations

relating to that night involved four different men and included allegations of non-consensual sex and forced drug administration.

[898] He confirmed that he did not pursue the November 2, 2013, allegations within UBC's process. He explained that, at the time, the report had been made through Anisa on a third-party basis, and Anisa had indicated that her client did not want to proceed with the University but wanted UBC to be aware of the incident. He also believed that the allegations fell outside the University's jurisdiction because they occurred off campus and had been reported to police.

[899] With respect to the development of his interview questions, Mr. Hyson said that he sent his proposed questions to SASC because he wanted to ensure that none were inappropriate and that they were phrased sensitively. He explained that, typically, he would ask open-ended questions such as "walk me through what happened," but because information about the two incidents had already been shared with Campus Security, he felt it was more appropriate to obtain advance clarification on specific issues.

Exhibit 176, page 1

[900] He agreed that he approached the matter cautiously because of the nature of the allegations and the potential trauma involved. When describing his observations of JD24 during their meeting, he said that she appeared matter-of-fact, showed very little emotion, and simply relayed what had happened to her. He also confirmed that he received no information from Anisa about how SASC believed she was coping emotionally.

[901] He then took a statement from JD24 and included his notes.

Exhibit 174, page 163.

[902] When asked about a reference to an AEPi event, he confirmed that this referred to a fraternity. After taking JD24's statement, he paused his investigation at the request of the RCMP. He testified that JD24 told him she had reported the incident to the RCMP and provided the name of the constable. When he contacted the RCMP, they told him that they could not disclose details but asked that UBC hold off on proceeding until their investigation was complete. This occurred near the end of the academic term, when M4 had left the country and JD24 and other witnesses were away for the summer. He understood that M4 resided in California.

[903] He testified that, ultimately, the RCMP declined to proceed with charges relating to the

incident, although they did not confirm which incident they were investigating. They did not disclose to him any reason for their decision due to privacy restrictions. He believed the RCMP likely would have informed JD24 directly about their decision. He did not ask her for any information she may have received about the police decision, explaining that she did not volunteer such information and he did not pursue it.

- [904] He testified that JD24 agreed it made sense to resume the process at the beginning of the fall term. He emailed her in the fall advising her that the NAM process could begin.

Exhibit 174, page 179

- [905] He then sent a letter to M4 notifying him of the NAM process. He confirmed that, despite the police involvement, he did not include details of the allegations in that letter, only the date of the incident.

Exhibit 174, page 181

- [906] He acknowledged that although he testified he received a response from RCMP in the summer, he had first learned of the incident at the end of March 2014. He said he considered "summer" to begin at the end of the academic session.

- [907] Mr. Hyson received a letter from counsel for M4. He stated that the letter appeared to have been sent after he had attempted to obtain M4's authorization to release the police file. He testified that M4 had told him the police investigation related to the November 2, 2013, incident and that M4 had offered to obtain a copy of the report. He believed M4's lawyer continued to write about the November 2, 2013, incident. He did not understand the police's decision not to proceed as meaning that M4 had been "cleared," noting that police operate under a different burden of proof and may have numerous reasons for not pursuing charges.

Exhibit 174, page 181

- [908] He also testified that M4 was willing to speak with him and shared his views on what had occurred between himself and JD24.

- [909] Mr. Hyson confirmed that he spoke with three women identified as W1, W2, and W3. He stated that JD24 had provided him with the names of five members of the organization she belonged to. He did not provide this statement to W3 for review because the University was not proceeding with NAM, and she would not be called as a witness.

Exhibit 174, page 195

[910] In cross-examination he disagreed with the suggestion that most of W3's information related to the November 2, 2013, event. He stated that W3 primarily discussed the November 26, 2013, incident and the context surrounding a semi-formal event that JD24 and M4 had planned to attend. W3 told him that after the November 2, 2013 mixer, M4 and JD24 had planned to go to a formal together. However, because the event was at a bar requiring attendees to be 19, and M4 was only 18, he was unable to attend. W3 indicated that M4 told JD24 his identification was expired, which contributed to tension between them. W3 also recalled that she saw M4 and JD24 sitting together on a couch at the mixer on November 2, 2013, and believed JD24 might have stayed over that night.

[911] When asked whether W3 had been queried about whether she was present in the living room the entire time, he testified that he understood all bedrooms were locked, and that people were in the living room and kitchen. One witness estimated that approximately 30 people were present at the event. He acknowledged that people come and go during parties.

[912] When asked whether he questioned W3 about whether the November 2, 2013, allegations were possible from her perspective, he said that he did not, explaining that he was not meeting with her about that event and that she provided no information beyond observing the two on a couch.

[913] Mr. Hyson also took statements from W1 and W2. He confirmed that he did not provide either W2 or W1 with their statements for approval. He stated that W1 discussed both incidents. W1 had been present at the November 2, 2013, event but left early and found it difficult to believe that certain events could have occurred because everyone was in the same room while she was there. W1 said that people appeared to be having a good time while she was present and also expressed concerns that some of the dates regarding the November 26, 2013, incident did not align.

Exhibit 174, page 200-201

[914] Mr. Hyson did not provide any of the witness statements to JD24 after deciding not to proceed with her complaint. He explained that, after reviewing the statements and the text messages between JD24 and M4, it appeared unlikely that a committee would be able to make findings due to conflicting information. The decision was therefore made not to proceed.

- [915] He acknowledged that no factual findings were made because only a committee can make findings of fact, and he does not make findings himself.
- [916] When asked whether the decision not to go forward was based on a conclusion that the allegations were implausible, he stated that the primary issue was the conflicting accounts regarding the November 26, 2013, incident. Although only JD24 and M4 provided direct accounts of the incident, he noted that information had also been disclosed to others and that he reviewed text messages between the two. He described text conversations relating to the cancelled semi-formal event, including JD24's belief that M4 was lying to her and that he may have been seeing other people. He said that JD24 expressed in texts that she did not want to see him at future Frateres events. He stated that he did not consider this inconsistent with her allegations.
- [917] When asked whether he took into account that trauma can affect a person's account, he confirmed that he did.
- [918] Mr. Hyson received an email from JD24 after the complaint had been closed, in which she stated that she had never said she was choked and asked why the complaint was not proceeding. He stated that her denial of the choking allegation was not a determinative factor but formed part of the broader conflicting information he had received. He did not follow up with her after receiving that email.

Exhibit 174, page 207

- [919] He also testified that he did not ask JD24 to provide him with a copy of any RCMP statement she may have given for comparison with her UBC account. He further stated that he did not ask her at any point whether she was satisfied with how UBC handled her complaint. He confirmed that he met with her in person only once, and that the remainder of their communication occurred by email.

Jane Doe 25 (M8 case):

- [920] Mr. Hyson testified regarding his involvement in a complaint brought by Jane Doe 25 ("JD25") concerning an allegation of forcible sexual assault by a student identified as M8. He confirmed that the alleged assault occurred at M8's father's house, and that his understanding was that M8 was living at his father's residence at the time.

Exhibit 91

- [921] He acknowledged that JD25 reported that she was not fearful for her safety but was “constantly uncomfortable” because she continued to see M8 on campus. He testified that he believed this information had been shared during a meeting with SASC.
- [922] When asked about the impact on her ability to work and study at the University, he stated that when the matter came to him, JD25 was already at the point of graduating. He believed this was around April, when she was completing her program. He agreed that the alleged incident occurred in November 2013. He added that, to his knowledge, they were in different programs.
- [923] He was presented with the suggestion that this impact on her university experience gave the University jurisdiction to proceed under the Student Code of Conduct. He disagreed. He stated that because the event took place off campus, the University would not have jurisdiction.
- [924] Section 3.1(b) of the Code, found at Exhibit 1, page 303, states that the Code applies where conduct is alleged to disrupt another person’s ability to participate in the University. When asked whether this provision gave grounds to proceed through NAM in JD25’s case, Mr. Hyson maintained that he did not agree. He explained that although JD25 reported feeling uncomfortable upon seeing M8 on campus, she had been able to continue in and complete her academic program, which was different from M8’s program, and therefore he viewed her as having reasonably participated in university life.
- [925] He sent a letter to M8 in which he stated that he was “available to meet” if M8 wished to discuss the matter further. He agreed that this wording was different from instructing M8 that he needed to meet with him. He stated that because JD25 was graduating and simply wanted him to inform M8 that she wished no further contact, and because the matter was outside the University’s jurisdiction, he could not compel M8 to meet; he could only invite him.

Exhibit 174, page 228

- [926] Mr. Hyson reviewed a SASC email stating that JD25 was impressed by how the University handled the matter but was disappointed by the limits of the process.

Exhibit 174, page 229

Jane Doe 26 (M10 case):

- [927] Mr. Hyson testified about his involvement in a complaint brought by Jane Doe 26 (“JD26”)

relating to her interactions with a student identified as M10, who lived in residence. He confirmed that the complaint initially went to Residence Life Manager Amy Stewart, then to SASC, and then to Mr. Bohnen at Campus Security.

- [928] He sent an email to Associate Vice-President Teasdale. In that email, he wrote that he had been speaking with "Janice," whom he confirmed was Janice Robinson. The email referenced Amy Stewart walking JD26 to SASC and that it had been unclear to Stewart how JD26 wished to proceed. He confirmed that the purpose of his email was to provide that clarification.

Exhibit 174, page 234

- [929] On March 20, 2015 he received an email from Amy Stewart who noted that JD26 had been required to "tell the story three times" in one afternoon. When asked whether this was unusual based on his experience, he stated that it was unusual and that this was not something he typically encountered. He testified that he took this information into account when determining how to interact with JD26. By the time he met with her at SASC, he was already aware that she had provided an account to Campus Security and that Stewart had also taken notes. For that reason, he chose not to have JD26 repeat her story again. He explained that, during his first meeting with her and Josie from SASC, he walked them through the NAM process and answered their questions. At that time, JD26 stated that she did not want to move forward with NAM and instead wanted him to speak with M10 to ensure there would be no further contact.
- [930] JD 26 transferred residences. When asked why JD26 transferred rather than M10, he stated that his understanding was that she requested the transfer. Mr. Hyson said he had not been involved in discussions about JD26 wanting a different outcome in terms of the transfer. He testified that he did not become involved in arranging either person's relocation and did not know why JD26 was ultimately moved, other than that it appeared to be undetermined at the time how she wanted to proceed.
- [931] On March 24, 2015, Mr. Hyson sent an email to Josie at SASC and asked her to check with JD26 about how she wished to provide a statement. He explained that, at that point, JD26 had indicated she did not want to proceed through NAM and instead wanted him to speak to M10 about maintaining no further contact. Because she had already given accounts to both Stewart and Mr. Bohnen, he offered both sets of notes to Josie and asked whether JD26 preferred that he rely on one, combine them, or otherwise clarify which facts she wanted conveyed to M10.

Exhibit 174, page 243

[932] Exhibit 174, page 251, contained an email he sent on February 26, 2015, giving an update on the matter. He confirmed the accuracy of his summary in that message, including that JD26 understood her decision and that he could use Amy Stewart's notes.

[933] On March 26, 2015, Mr. Hyson sent a letter which offered M10 an opportunity to meet with him. The letter also stated that if M10 did not want to meet, the matter might be referred to NAM. At this time, however, JD26 had made it clear that she did not want to use NAM and only wanted no further contact. When asked why he had told M10 that NAM was a possibility, he explained that he had stated only that he may refer it to NAM. He said that if M10 refused to meet or comply with a directive for no contact, then one of the things he would have discussed with JD26 was that continued non-compliance could make NAM an option. He also stated that, depending on circumstances, Policy 14 might be considered if contact continued.

Exhibit 174, page 246

[934] Mr. Hyson testified that he met with M10 and provided an overview of the NAM process, allowed M10 to review the statement, and explained that JD26 did not wish to pursue NAM but did want M10 to have no further direct or indirect contact with her. He told M10 that if he agreed to comply, the matter would be considered resolved.

[935] He recalled that M10 disputed the contents of the report. He was unsure whether it was in that meeting or afterward that M10 indicated he wanted to file a misconduct report against JD26 for making false allegations. Mr. Hyson told him that this was not how such matters would proceed. He explained that JD26 wished for no further contact and that he would not be investigating her or opening a misconduct proceeding against her. He told M10 that if he wished to provide his own account, he could do so and it would be placed on file.

Exhibit 174, page 262

[936] He testified that there were no further issues involving either JD26 or M10 after that point. He believed that M10 complied fully with the no-contact directive. He did not hear from JD26 again because she had requested that all further communication go through Josie at SASC, and he followed that request.

Jane Doe 29/30 (M12 case):

[937] Mr. Hyson testified regarding his involvement in a case concerning two complainants, Jane

Doe 29 ("JD29") and Jane Doe 30 ("JD30"), and a respondent identified as M12. He confirmed that the individuals involved were students in the Theatre and Fine Arts program. The matter came to him in April 2014 through SASC.

- [938] He testified that he met with Josie at SASC as well as with JD29. During that meeting, he explained the NAM process and walked them through the steps involved. At that time, there was uncertainty about whether M12 would be returning to campus. He explained that M12 was no longer enrolled in the Theatre program but remained eligible to return as a Bachelor of Arts student. JD29 told him that she wished to move forward with the NAM process only if M12 returned to campus in the fall term. In discussing options for how statements could be provided, JD29 elected to prepare and submit her own written statement rather than having him take it. She later provided him with that written statement.

Exhibit 174, page 273

- [939] He also met with JD30. Unlike JD29, JD30 chose to provide her statement verbally for him to transcribe. He testified that he transcribed her statement, sent it to her to review, and obtained her approval.

Exhibit 174, page 269

- [940] He further confirmed that he met with a witness identified as WB, who had been identified by the complainants. He took a statement from WB and prepared a written summary, which he then shared with WB for review.

Exhibit 174, page 279

- [941] Once the fall term began, M12 registered for classes in the BA program. At that point, Mr. Hyson contacted him and invited him to meet to discuss the NAM process. During their meeting, he provided M12 with an overview of the allegations that had been brought forward. According to his recollection, M12 stated that he did not agree with the allegations but chose not to respond substantively at that time. Instead, M12 elected to respond later through the formal Statement of Allegations process.

- [942] When asked whether M12 disclosed any disability during their meeting or in communications prior to the completion of the Statement of Allegations, Mr. Hyson explained that M12 did not disclose anything of that nature. He further confirmed that nothing in their meeting suggested to him that M12 had a diagnosis or disability. He

described the meeting as fairly short, noting that he did most of the talking while explaining the process. He recalled that M12 asked questions about next steps, appeared engaged and polite, and did not discuss the substance of the case. There was nothing about the interaction that alerted him to any disability or diagnosis.

[943] He provided M12 with the Statement of Allegations issued to M12 and the statement of facts, which he prepared himself.

Exhibit 174, page 266-267

[944] JD30 provided an Amended Statement.

Exhibit 174, page 278

[945] Mr. Morrison sent a letter to M12 enclosing the Statement of Allegations. On January 5, 2015 M12 provided a response, which Mr. Morrison provided to Mr. Hyson. He testified that he believed he had been copied on that letter, though letters of that kind were only sometimes copied to him.

Exhibit 166, page 1

[946] He recalled that Mr. Morrison had asked to meet with him because some of the documents submitted by M12 were not relevant to the events under investigation. For example, he believed that one was a character reference from a former instructor of M12, and another was possibly a statement from M12's sister. Neither appeared to relate to the alleged incidents. He testified that Mr. Morrison's role was to determine what materials were relevant and should be placed before the committee, and that if Mr. Morrison had concerns, he could consult legal counsel.

Exhibit 166, page 42, updated statement from JD30.

[947] The NAM hearing took place in July 2015. He confirmed he had no involvement in efforts to obtain a medical opinion from M12, and that such matters did not fall under his responsibilities as the investigator. The President's decision letter of December 18, 2015 expelled M12, prohibiting him from re-enrolling, and placed a notation on his transcript.

Exhibit 167, page 32.

[948] Mr. Hyson reviewed the NAM report. When asked what information he provided to JD29 and JD30 about the outcome of the NAM process, he testified that he could not recall whether he or Mr. Morrison communicated the outcome to them. He stated that he had no

communication with JD29 or JD30 about their views of the University's process or the results of the NAM proceedings.

Exhibit 167, page 34

[949] He confirmed that M12 filed an appeal, which he later withdrew. Mr. Hyson had no involvement in the appeal process.

Jane Doe 31 (M14 case):

[950] Mr. Hyson testified that he first became aware of Jane Doe 31's concerns through SASC, specifically through Josey, who indicated that JD 31 wished to make a report about a sexual assault that had occurred during her first week of university. Hyson could not recall whether he received the report before or after meeting JD 31, but he confirmed that JD 31 had chosen to prepare her own statement.

Exhibit 174, p. 286

[951] He met with JD 31 at SASC to discuss the university NAM process and the options for proceeding. During this meeting, JD 31 was clear that she wanted to move forward through the NAM process. Mr. Hyson reviewed JD 31's statement, which included references to witnesses and Facebook communications, and requested copies of the messages to assist in preparing the investigation report.

Exhibit 174, p. 286–289

[952] In October 2015, JD 31 provided an email summarizing her discussion with W2 and indicated that two witnesses could corroborate that she had met the male respondent at a party, including a blurry photo of herself dancing with him.

Exhibit 174, p. 289

[953] Mr. Hyson followed up with W1, who was not a UBC student, by phone and eventually connected with the other three witnesses, although some were traveling or living abroad.

Exhibit 174, p. 293

[954] He took witness statements in October 2015 after JD 31 provided contact information on October 21 (Witness statements, p. 297–300). Communications with W4 indicated he was traveling and could only confirm limited details about the night in question (Exhibit 174, p. 305–306).

[955] In November 2015, Mr. Hyson continued attempting to schedule a meeting with W2, who was difficult to reach. JD 31 followed up to assist with scheduling (Exhibit 174, p. 307, 311, 313). Hyson ultimately met with W2 on November 20, 2015, which was the final witness statement collected (Exhibit 174, p. 313). He began preparing the Statement of Allegations while keeping JD 31 updated on progress and tentative timelines.

[956] Throughout December 2015, witness statements and JD 31's statement were reviewed and confirmed. Hyson made a minor edit to JD 31's statement by removing a witness phone number and submitted it for her review.

Exhibit 174, p. 345, 350

[957] M14, the male respondent, was notified on December 16, 2015, with a letter attached, and Hyson made it clear that JD 31 would have no contact with him.

Exhibit 174, p. 328, 331

[958] Mr. Hyson met with M14 in person on December 18, 2015, explained the NAM process, and provided a copy of the Statement of Allegations. M14 indicated that he agreed with some but not all of the contents. Mr. Hyson confirmed that M14 could not speak with JD 31. JD 31 was subsequently updated and provided a copy of her statement for her records.

Exhibit 174, p. 341; Exhibit 174, p. 345

[959] Mr. Hyson finalized the Statement of Allegations, including all witness statements, and submitted it to Chair Mr. Morrison on December 24, 2015.

Exhibit 174, p. 351–352, 354

[960] In early January 2016, JD 31 requested updates. Mr. Hyson explained that the Chair would notify M14 and that proceedings would be scheduled afterward, even if M14 chose not to participate (Exhibit 174, p. 356, 359). Mr. Hyson clarified that he had no role in selecting the Chair; his responsibilities were limited to preparing and submitting materials. Mr. Morrison was unable to chair the case, and Ms. Shannon Dunn, Chair of UBC-Okanagan NAM, was considered and eventually confirmed.

Jane Doe 32 (M15 case):

[961] Mr. Hyson testified that the matter involving Jane Doe 32 came to him through SASC in early January 2015. He met with JD 32 and Josie from SASC to discuss the complaint.

Mr. Hyson confirmed that he took a statement from JD 32.

Exhibit 174, page 409

[962] The allegation concerned unwelcome sexual contact between JD 32 and M15 during a ski trip in Whistler. Both JD 32 and M15 were students at UBC, and Mr. Hyson noted that they had briefly dated in the fall of 2014 for three days. The evidence included that they were not in the same classes or faculty, JD 32 lived on campus, and M15 lived in Richmond.

[963] After receiving JD 32's account, Mr. Hyson discussed with her whether the complaint fell under the UBC Student Code of Conduct and jurisdictional issues. Mr. Hyson followed up with JD 32 to clarify whether any activity that took place on campus between them had been non-consensual. JD 32 indicated that any activity on campus in the fall had been consensual.

Exhibit 174, page 411

[964] Mr. Hyson testified he sought to determine whether the events in Whistler had any ongoing impact on JD 32's participation in university activities. He asked if she felt safe on campus, and JD 32 did not report any concerns or impacts. Mr. Hyson noted that the events had taken place off campus and among friends, which was part of the consideration for determining whether the Student Code of Conduct applied.

[965] Mr. Hyson testified that the decision-making process regarding whether the code applied was not documented, and this was not usually his practice. He offered to speak with M13 about the matter but left the option with SASC and JD 32. He did not hear further from them regarding this, and he did not speak with JD 32 about whether she was satisfied with the university's response to her allegations.

[966] In summary, JD 32's complaint was investigated to the extent of clarifying jurisdiction, but it was determined that the Student Code of Conduct did not apply because the relevant events were off campus and consensual. No formal NAM or disciplinary process was initiated, and there is no record of further follow-up from JD 32 or M13.

Melanie Tremblay and RW matter:

[967] The issues involving Ms. Tremblay and RW came to Mr. Hyson's attention initially through Ms. Kay, campus security, Dr. Vessey, and Mr. Lundeen. Mr. Hyson reached out to Ms. Tremblay after receiving a report from campus security that RW had been on the grounds

of Green College following his eviction. RW had approached a table where Ms. Tremblay was sitting, which was considered in violation of prior directives from GC. Mr. Hyson contacted Ms. Tremblay to obtain further information about the incident, including the names of witnesses present that day, and scheduled a meeting with he.

Exhibit 174, p. 412

- [968] Ms. Tremblay responded and provided details, and Mr. Hyson confirmed that some of the incidents she reported had already been addressed in GC's prior investigation that led to RW's eviction (Exhibit 174, p. 414, p. 426).
- [969] Mr. Hyson also contacted a potential witness identified by Ms. Tremblay, L. Lovebridge, to gather further information (Exhibit 174, p. 418).
- [970] Mr. Hyson maintained ongoing communication with Ms. Tremblay, providing updates about the individuals contacted and the progress of the inquiry (Exhibit 174, p. 425). In a meeting, Mr. Hyson explained the options available under the NAM process and indicated that there seemed to be grounds to move forward if Ms. Tremblay wished. He outlined the process, including the likely outcome that RW would not take responsibility, and that the matter would likely proceed to committee. Mr. Hyson also acknowledged that Ms. Tremblay had recently been involved in a lengthy process through GC and suggested she might prefer clarification of boundaries with RW rather than pursuing another formal process. Ms. Tremblay decided to take time to consider her preferred course of action.
- [971] Ms. Tremblay subsequently communicated that she preferred not to initiate another formal NAM process and instead sought clarification for RW regarding the parameters of indirect contact (Exhibit 174, p. 430). RW initially resisted the university's authority and questioned Mr. Hyson's role, but through email communication (Exhibit 174, p. 432, p. 431) and a subsequent in-person meeting, RW agreed to comply with the clarified expectations. Mr. Hyson described RW as sincere and understanding in person, and RW committed to avoiding further indirect contact with Ms. Tremblay and to notifying Dr. Vessey and Lundeen if he intended to attend events at GC, so Ms. Tremblay would be aware. Mr. Hyson then communicated the agreed outcomes to Ms. Tremblay (Exhibit 174, p. 442), and Ms. Tremblay confirmed her satisfaction.
- [972] Despite the resolution regarding Ms. Tremblay, RW continued to contact Mr. Hyson regarding grievances about his eviction and treatment by Dr. Vessey. RW requested that his case be brought forward before the President's NAM for a "fresh and fair trial." Mr. Hyson clarified to RW that the NAM process was inappropriate for challenging GC

administrative decisions or actions taken by Dr. Vessey and reminded him that pursuing the matter could draw Ms. Tremblay back into the dispute, which she did not wish to do (Exhibit 174, p. 449–451). Mr. Hyson advised RW to seek guidance from the Ombudsperson for issues unrelated to Ms. Tremblay.

2. Evidence of Robbie Morrison

[973] Mr. Morrison holds a BA, BEd, and MEd from UBC and has nearly two decades of experience in various student affairs roles at the university. His appointment as NAM chair was voluntary and not connected to his paid employment. He described receiving both general and case-specific training for the NAM role, including sessions on administrative law, natural justice, hearing procedures, and sexual assault, delivered by university counsel, outside lawyers, and internal experts, particularly before hearing sexual assault cases.

[974] He described the NAM process as an internal adjudicative mechanism designed to address allegations of non-academic misconduct through a formal hearing structure that ensured fairness to both the reporting student and the respondent.

[975] He testified that the Rules provide that the NAM proceedings are investigatory and the Committee is conducting an inquiry not a trial.

Exhibit 1 p. 310

[976] He testified that affected parties are entitled to disclosure of documentary or verbal evidence the decision-maker relies on and at the time all non-academic misconduct hearings were done via an oral hearing

Exhibit 1 p. 311 Rule 10

[977] He testified there is no right to cross examination, however after hearing from a witness the respondent was able to respond to the committee and if the committee determined that relevant follow up required from what the respondent shared the committee could bring a witness back and follow up with that witness

Exhibit 1 p. 312 – Rule 19

[978] He testified that he served as Chair for 8 years and was familiar with the procedural

requirements, timelines, and composition requirements of the panel. He explained that a NAM panel must consist of three members: a faculty member, a student, and a staff member, each of whom participates fully and with equal authority in assessing credibility, weighing the evidence, and rendering the decision.

- [979] He further testified that his practice was to provide panel members with orientation and access to the materials they needed to review in advance of the hearing. Mr. Morrison sent the panel a comprehensive package that included the formal notice of allegations, student and witness statements, relevant email correspondence, and the procedural guidelines governing NAM hearings. He described the importance of panel members reviewing these materials beforehand so that the hearing itself could focus on clarifying questions and oral testimony rather than reading documents for the first time. Mr. Morrison said he reminded members not to discuss the file outside official deliberations and to keep all materials confidential.

Exhibit 6, pages 837–840

- [980] Mr. Morrison first heard about the DM complaint through Mr. Hyson. On August 11, 2015 he was provided with the statement of allegations.

Exhibit 6 p. 776

- [981] On August 24, 2015 he sent a letter to DM regarding the NAM hearing.

Exhibit 6 p. 822

- [982] He testified he first heard from Ms. Cunningham on September 17, 2015, when she wrote to him and requested observer status. He responded to her on September 21, 2015, and advised that she is a witness in the matter and it would not be appropriate to grant observer status as this is reserved for those not directly participating in the process.

Exhibit 6 p. 824-826

- [983] He testified that he wrote to Ms. Cunningham on September 28, 2015, to advise her that a hearing date had been set for October 19, 2015. He advised that if that date was not possible for her, he would consider delaying the hearing and working towards a new date. He advised that the NAM hearing can be a challenging process and also attached a letter that provided an overview of what to expect.

Exhibit 6 p. 833-834

[984] He testified that if Ms. Cunningham advised that she was not available then he would have moved the NAM hearing; however, she never advised him that she was unavailable.

[985] Ms. Cunningham responded on September 30, 2015, asking questions about the process, to bring a support person and to have a friend to be there as an observer. He testified he replied on October 1, 2015, to advise he received her email and would be getting back to her. He testified that he needed time to seek direction from University Counsel on appropriate follow up.

Exhibit 6 p. 879-880

[986] October 2, 2015, he received an email from Ms. Cunningham with further questions. She asked for Ms. Russel, Ms. Thornton and Prof. Paul Krause to be observers and shared her concern regarding the process format and the experience of the committee members and for her emotional wellbeing and safety.

Exhibit 6 p. 879

[987] Mr. Morrison testified he informed University Counsel (Kimberly Beck) as well as Mr. Hyson and Janet Teasdale of the new concerns. Ms. Teasdale shared she would connect with Ms. Beck about next steps with Ms. Cunningham. In response, Mr. Morrison testified he wrote to Ms. Cunningham on October 6, 2016, and offered the support and services of UBC counselling services. He also described the process of the hearing in more detail, and that the process can be lengthy and provided details about the decision-making process. He further advises that he was confirming the room location and would provide more details of that. He advises you do not need to visually see the respondent as he is by video and that he will not address her. With respect to the witnesses he advises he is still considering this.

Exhibit 6 p. 877-878

[988] Mr. Morrison emailed Ms. Cunningham again on October 8, 2015, asking for further details about how the DM assault affected her life on campus.

Exhibit 6, p. 914

[989] He testified that he was reluctant to send this email, but he did so because university counsel had raised the concern that the DM assault on Ms. Cunningham was outside of the NAM jurisdiction and they needed information to connect the assault to her campus life.

[990] Ms. Cunningham responded on October 13, 2015, to ask for more time. She also raised concerns about the expertise of the panel members in working with individuals who have experienced sexual assault. She also asked a number of follow up questions about the process and the room setup for the hearing.

Exhibit 6 p. 918

[991] Mr. Morrison responded on October 15, 2015, and advised that the committee was trained to fulfil its investigatory purpose to determine whether misconduct has taken place, and the training included specific training as to the hearing of sexual assault allegations. He notified Ms. Cunningham that he arranged for support services to be available to her before and immediately after her appearance before the Committee. He also described the timeline as well as the setup of the room and what to expect.

Exhibit 6 p. 916-917

[992] Ms. Cunningham responded on October 16, 2015, in which she advised his response helped alleviate some of her concerns, but she also expressed her frustration with the university process.

[993] With respect to Student E, Mr. Morrison testified that he sent a letter to Student E on September 28, 2015, to advise her of the NAM hearing. Mr. Morrison recalled that Student E responded and was anxious about the process, and he reassured her that she would not visually see DM. He also advised she could bring a support person.

Exhibit 6, page 837-840

[994] Mr. Morrison then explained his logistical preparations for the hearing. He testified that he arranged the physical room to ensure that Student E would not be seated directly across from DM and took steps to ensure that she would feel as comfortable as possible during her testimony. This included arranging seating positions, ensuring availability of water, tissues, private space for breaks, and reviewing safety considerations with Campus Security. He testified that he also prepared the panel members by confirming the procedure for questioning: panel members would ask the questions directly, and DM would pose his questions through the Chair rather than being permitted to cross-examine Student E directly.

Exhibit 6, pages 839–840

[995] Mr. Morrison testified that he had reached out to Student C on September 28, 2015 to

advise her of the NAM committee hearing. He did not hear back from Student C. He again reached out October 19, 2015, to confirm the hearing was proceeding. He testified that she did not attend the hearing and the committee took the written statement of allegation as the allegations against DM.

Exhibit 6, pages 931–933

[996] Mr. Morrison received an email on September 25, 2015 from Ms. Thornton who had requested observer status. Mr. Morrison responded explaining that the NAM process did not allow observers unless they were an approved support person and that Cunningham could attend in that capacity only during Student E's testimony. He emphasized that observers are not permitted to remain for the entirety of the proceedings because the hearing involves sensitive evidence and parties' privacy must be protected. He explained that support persons are not allowed to speak on behalf of the complainant, answer questions, or participate in any way beyond providing emotional support.

Exhibit 6, pages 835-836

3. Evidence of Tina Loo

[997] Dr. Loo testified that she holds a BSc from UBC, an MA from the University of Toronto (1986), and a PhD in History from UBC (1990). She joined UBC as faculty in 2003 and was promoted to Professor in 2006 or 2007. She was Head of the History Department from July 2014 to July 2017.

[998] When she became Head, she completed the Academic Leadership Development Program (ALDP), which included "University 101," HR and budget training, and introductions to units she might interact with in leadership roles, including the Equity and Inclusion Office (EIO). In addition, she had access to coaching through Fran Watters.

[999] Her responsibilities as Department Head included faculty hiring, tenure and reappointment processes, graduate and undergraduate program oversight, TA assignments, and general departmental administration. She testified that she had no disciplinary authority over students beyond normal academic processes, and she had no training at that time in conducting investigations into sexual harassment.

DM complaint

[1000] On assuming the Headship in early July 2014, Dr. Loo received an email from Dr. Tamara

Myers advising that multiple women graduate students had approached Myers with concerns about sexually aggressive behaviour by DM. This was the first time Dr. Loo became aware of any concerns of this nature.

Exhibit 6, p. 209

[1001] Dr. Loo immediately responded and encouraged the students to come forward. She simultaneously contacted the EIO Director Ms. Kay for guidance (Exhibit 6, p. 211).

[1002] Shortly afterward, Dr. Loo received an email directly from four graduate students—Megan Longstaffe, Caitlin Cunningham, Ms. Thornton, and Ms. Russell, confirming that they had spoken to Dr. Myers and wished to speak to Dr. Loo. (Exhibit 6, p. 213).

[1003] Dr. Loo responded promptly, thanking them, acknowledging the difficulty of coming forward, and assuring them of privacy and that her “door is open.”

[1004] Dr. Loo met with Ms. Kay the next day. Ms. Kay advised that a joint meeting should be held including the students, Ms. Kay, and Dr. Loo.

[1005] Ms. Kay also undertook to make inquiries regarding DM’s status, presence on campus, past complaints, and any police involvement. Dr. Loo’s handwritten notes (Exhibit 6, p. 215; p. 54) reflect that EIO contacted campus security (Steve Bohnen), confirming DM had no charges, no formal complaints at UBC Legal, and that an alleged sexual assault in Toronto had led to no charges.

[1006] Dr. Loo also investigated whether DM had a TA assignment for fall 2014 and confirmed he did not; his coursework had been completed and he was away doing research.

First Meeting with Students and EIO (July 31, 2014)

[1007] Prior to the formal meeting, several of the women (Ms. Russell, Caitlin Cunningham and Ms. Thornton) dropped by Dr. Loo’s office to introduce themselves, express concerns, and ask practical questions including whether DM would be TA’ing undergraduates (he would not), whether he was present on campus, and what Dr. Loo knew about his whereabouts.

[1008] Dr. Loo told them she had consulted Ms. Kay, and that Ms. Kay was investigating.

[1009] Dr. Loo attended a meeting at the EIO with Ms. Kay and some of the women from the department. She recalled that in attendance were Ms. Kay, Dr. Loo, Ms. Russell, Caitlin

Cunningham and Ms. Thornton and [REDACTED].

Exhibit 6, p. 221; p. 54; Exhibit 4, p. 89–90

[1010] The students shared their general concerns about vulnerability and safety on campus. When prompted, Ms. Cunningham disclosed a specific incident involving DM: during a social gathering and walk, DM pulled her hair, put her in a headlock, and, after she pushed him off, called her a “prude.”

[1011] Dr. Loo recalled that Ms. Kay advised Ms. Cunningham that her options were to make no complaint; to make an informal complaint, or to initiate a formal complaint through UBC processes.

[1012] She further testified that Ms. Kay emphasized that no immediate decision was required.

[1013] Dr. Loo testified that Ms. Kay cautioned strongly against using rumour as a safety mechanism, quoting campus security’s analogy that rumours create fear “like telling people there are snakes in a room and then turning the lights off.”

[1014] Dr. Loo testified that she believed EIO, as the trained office, would “shepherd” any complaint. As Head, she understood her role to be consultation with experts and departmental education (e.g., arranging workshops).

[1015] On July 24, 2014, Prof. Paul Krause, Ms. Cunningham’s supervisor, contacted Dr. Loo to express concerns about what he had heard. He advocated for transparency and disclosure.

Exhibit 6, p. 224–228

[1016] Dr. Loo, seeking guidance, drafted her response in consultation with Ms. Kay. Her email reassured Prof. Krause that steps had been taken, a meeting with students and Kay was being convened, and emphasized balancing safety with the confidentiality owed to the women.

[1017] Prof. Krause responded that he understood the need for confidentiality and caution.

Second Safety Resources Meeting (August 2014)

[1018] Dr. Loo testified that Ms. Kay convened a second meeting with SASC, Counseling, Security for the graduate students. She recalled the meeting was attended by Ms. Kay,

Ishiguro, and multiple graduate students (including Ms. Cunningham, Ms. Russell, Ms. Thornton, Ms. Kirchmeier, Megan Longstaffe).

Exhibit 6, p. 238; p. 274–279

[1019] The purpose was informational: outlining campus safety supports, after-hours procedures, SASC services, police interfaces, Safewalk, and responses to sexual assault.

[1020] The group also raised concerns about safety in the Brock Hall Annex (student workspaces), including an incident where Dr. Loo discovered a beer can on her desk.

[1021] Students did not express dissatisfaction with the session to Dr. Loo.

[1022] On August 12, 2014 Dr. Loo received and reviewed the broadcast email from VP Students Louise Cowin, summarizing university initiatives on safety following prior sexual assaults, and measures including lighting improvements and Safewalk.

Exhibit 6, p. 262

Department Meeting Preparation and Announcement (September 2014)

[1023] In the lead-up to the September 11, 2014 departmental meeting, Dr. Loo exchanged emails with Ms. Russell, who was then serving as the HGSA equity representative, and with D. Burrows. Ms. Russell thanked Dr. Loo for supporting a workshop addressing sexual harassment and broader cultural concerns and asked if she and Burrows could attend the departmental meeting to support Ms. Thornton, the graduate equity representative. Dr. Loo agreed.

[1024] Dr. Loo explained to Ms. Russell the manner in which she intended to raise the matter at the meeting. She planned to speak generally about the department's obligations under Policy 3 and the Respectful Environment Statement without disclosing any specific information about the disclosures she had received. She emphasized to Ms. Russell, that Ms. Cunningham had not yet determined whether to bring a formal or informal complaint and that she had committed to preserving the confidentiality of the students. Ms. Russell no concerns about this plan.

[1025] The departmental meeting took place on September 11, 2014. Dr. Loo reminded the assembled faculty, staff, and students of their responsibilities under Policy 3 and the Respectful Environment Statement and highlighted the availability of the Equity and Inclusion Office and of Ms. Kay. No questions or objections were raised.

[1026] Following the meeting, Dr. Loo circulated a department-wide email containing links to Policy 3, the Respectful Environment Statement, EIO resources, and university task force reports addressing sexual assault and discrimination. She testified that she included these broader materials because the concerns raised by the students throughout the summer extended beyond DM and spoke to wider issues of vulnerability and campus safety.

Exhibit 6, p. 285–287 (emails with Ms. Russell and Burrows); Exhibit 6, p. 287
(department-wide email, Sept. 11, 2014)

[1027] Shortly after Dr. Loo's department-wide message, Professor Krause sent an email to several faculty members and to three of the graduate students, Ms. Thornton, Ms. Russell, and Caitlin Cunningham, criticizing Dr. Loo's remarks at the meeting as "lamentably disappointing." Krause asserted that Dr. Loo had deviated from what he described as an "agreement" regarding the content of her address, although Dr. Loo testified that no such agreement existed and that she had always committed to protecting the confidentiality of the students.

[1028] Dr. Loo testified that the email was troubling because it breached the confidentiality she had promised the students by revealing their identities to faculty members and because it undermined her authority in her early tenure as Department Head. She forwarded the email to Ms. Kay seeking guidance on how to proceed.

[1029] Ms. Kay involved Human Resources, including Mr. Trowell, and a meeting was held with Dr. Loo, Ms. Kay, and HR to discuss the confidentiality issues raised by Krause's email and the broader implications for collegial governance within the department. Krause subsequently apologized for his message.

[1030] Following these events, Ms. Russell wrote to Dr. Loo indicating that she had misinterpreted one of Dr. Loo's earlier emails and emphasizing that Professor Krause did not always represent the views of the graduate students.

Exhibit 6, p. 290–291 (Krause's critical email)

Exhibit 6, p. 299–300 (consultation with HR)

Exhibit 4, p. 92 (Krause's apology)

Exhibit 6, p. 295 (Ms. Russell email)

Planning of Graduate Workshop (September 2014)

[1031] After the department meeting and the circulation of Krause's email, Dr. Loo convened a Skype meeting with Caitlin Cunningham, Ms. Russell and Ms. Thornton to discuss

constructive next steps. The students expressed a desire to address not only the specific concerns relating to DM but also broader cultural problems, including rape culture, unsolved campus sexual assaults, and general concerns about personal safety. They proposed designing a mandatory workshop for graduate students that would focus on peer interactions, sexual harassment, rumours, and gendered safety, using scenarios developed by the students themselves.

[1032] Dr. Loo agreed to support this initiative and informed the students that she and the Graduate Chair, Dr. Ducharme, would attend the workshop to answer questions about Policy 3 and related processes. On September 22, 2014, she circulated an email to all graduate students advising them that the workshop would be mandatory.

[1033] The night before the workshop, Ms. Russell contacted Dr. Loo to report that the students had not been able to finalize the scenarios in a manner they felt was safe and appropriate. Accordingly, they cancelled the workshop. Dr. Loo testified that she remained ready to support such a workshop at any time and directed the students to Ms. Kay, who had experience in developing customized harassment-prevention workshops.

Exhibit 6, p. 304–305 (emails re: mandatory workshop)

[1034] From October through December 2014, Dr. Loo received no further disclosures or concerns regarding DM from any students. In December, she was contacted by Professor Jessica Wang, Ms. Kirchmeier's supervisor, who conveyed Ms. Kirchmeier's ongoing concerns about DM and her belief that the January 2014 workshop had been ineffective. Dr. Loo testified that this was the first time Ms. Kirchmeier had been raised to her since the summer and that Ms. Kirchmeier had not personally contacted her.

[1035] On December 22, 2014, Dr. Loo made handwritten notes of a discussion with Ms. Kay in which she sought an update on whether Ms. Cunningham had decided to file a formal complaint. Ms. Kay advised that it appeared that a complaint was forthcoming but had not yet been formally confirmed. Dr. Loo also inquired whether she could advise the department of the existence of a complaint and whether guidelines specific to the department should be created. Ms. Kay recommended waiting until the complaint process was more advanced. Dr. Loo noted that Ms. Cunningham and Ms. Kirchmeier were no longer enrolled students at that time.

[1036] Around the same period, Dr. Loo received information that Professor Krause had contacted SASC's Ashley Bentley regarding DM. Bentley reported that one of her volunteers, who was a graduate student in the department but not one of the women who

had disclosed concerns in July, felt that a conversation with Krause had been inappropriate. Bentley asked Dr. Loo to address the matter.

Exhibit 6, p. 55–56 (v Dr. Loo’s handwritten notes, Dec. 22, 2014)

Exhibit 6, p. 274–279 (context: SASC/Campus Safety resources)

Early 2015: Formal Complaint and Department Response

[1037] In early January 2015, Dr. Loo contacted Ms. Kay again to determine whether Ms. Cunningham had filed a formal complaint. Ms. Kay confirmed that the complaint had been initiated. Dr. Loo asked whether she could announce the fact of a complaint to the department. Ms. Kay advised that she could state that a complaint of sexual harassment had been brought forward but should not refer to the matter as the “NAM” process, because that terminology could signal that the complaint involved a student.

[1038] The January department meeting became a closed faculty-only meeting, so no announcement was made. At the February department meeting, Dr. Loo informed the department that a complaint of sexual harassment relating to the department had been filed. She explained that it would be handled through the university’s formal processes, external to the department itself, and she announced that the department would be reinstating its Equity Officer, forming an Equity Committee, and providing mandatory education to faculty and staff.

Exhibit 6, p. 304 (emails regarding complaint and policy guidance)

Additional Concerns Raised by Professor Krause in Early 2015

[1039] In early 2015, Professor Krause contacted Dr. Loo to report that he had been told by Ms. Cunningham of an incriminating email allegedly written by DM in which he admitted to sexual assault or harassment. Krause had not seen the email himself Dr. Loo took no action because she understood that both EIO and the NAM process were managing the formal complaint and that they were the proper authorities to receive and assess such information.

[1040] Around the same time, SASC’s Ashley Bentley called Dr. Loo to report that one of the SASC volunteers had found a conversation with Krause about DM to be inappropriate. Dr. Loo testified that she sought advice from Associate Dean Pratt, who recommended speaking with Krause in an informal but direct manner. Dr. Loo met with Krause, advised

him of the concern in general terms, and cautioned him about such interactions. She did not reveal the student's identity.

Exhibit 6, p. 274–279 (context re: SASC contact)

Dr. Loo's Knowledge and Understanding Throughout the Events

[1041] Dr. Loo testified that she had no knowledge of any concerns about DM prior to July 2014. She understood during the summer that four women had raised concerns and that only Ms. Cunningham had disclosed a specific incident. She received no disclosures directly from Ms. Kirchmeier in 2014 and did not learn of Ms. Kirchmeier's concerns until contacted by Dr. Wang in December. After July 31, 2014, she received no additional disclosures of harassment or assault until the formal complaint was filed.

[1042] She consistently understood the Equity and Inclusion Office to have the expertise and statutory responsibility to investigate and manage sexual harassment complaints. As Department Head, she viewed her role as providing support, information, education, and appropriate referrals, and she did not believe she had the authority or training to conduct investigations herself.

Exhibit 6, p. 209–305 (emails reflecting scope of Dr. Loo's knowledge)

Exhibit 6, p. 53–56 (handwritten notes)

Exhibit 4, p. 89–92 (Excel chronology)

[1043] Dr. Loo's testimony aligns with the documentary record in all material respects. Her emails, notes, and chronology corroborate each step she described. Her account of the timing and content of student disclosures matches the exhibits, and her description of her communications with Ms. Kay, Human Resources, and senior administration corresponds exactly with contemporaneous documentation.

Exhibit 6, p. 209–305 (email chronology);

Exhibit 6, p. 53–56 (notes);

Exhibit 4, p. 89–92 (timeline)

[1044] Dr. Loo's evidence demonstrates prompt and appropriate action within her authority immediately upon receiving concerns in July 2014. She consulted EIO, ensured the students had access to supports and complaint pathways, and maintained confidentiality. She undertook departmental education, created structural supports, and managed difficult faculty conduct appropriately through consultation with EIO, HR, and the Dean's Office.

Her evidence also establishes that her knowledge of the concerns was limited, intermittent, and mediated largely through EIO once the complaint was initiated.

4. Evidence of Leslie Paris

[1045] Dr. Paris testified with respect to her role as supervisor of two of the complainants, Ms. Russell and Ms. Thornton. She testified that she made ongoing efforts to support Ms. Thornton, which was supported by email where she encouraged her work and made inquiries as to how she was doing personally.

[1046] Dr. Paris and Ms. Thornton exchanged several emails from November 2014 to February 2015 in which Dr. Paris encouraged her work progress and also made inquiries as to her wellbeing.

[1047] In December 2015 she checked in with Ms. Thornton and stated in her email "As for my concerns, the thesis is the least of them... central concern to find out how you are doing".

Exhibit 69, p. 1

[1048] Dr. Paris met with Ms. Thornton in December 2015. Ms. Thornton did not raise any concerns with her about her impression that Dr. Paris had "drawn a line".

[1049] In May 2016, Dr. Paris emailed with Ms. Thornton regarding her work progress. Ms. Thornton asked Dr. Paris to set deadlines for her. Throughout June and August 2016, they exchanged further emails in which Dr. Paris encouraged Ms. Thornton in her work progress.

Exhibit 69, p. 5-8

[1050] In the fall of 2016 Dr. Paris made further inquiries about the progress of Ms. Thornton's work and they exchanged a series of emails in which Ms. Thornton advised she was "not nearly done writing yet". Dr. Paris responded offering support and stating she was "always available to chat."

Exhibit 69, p. 8

[1051] Dr. Paris agreed that she eventually chose to remove herself from Ms. Thornton's thesis committee but felt she had no choice as Ms. Thornton had refused to engage with her. She told her she believed she had a great story to tell and encouraged her to complete her thesis.

Exhibit 66

[1052] With respect to Ms. Russell, Dr. Paris testified that she supported her throughout her academic terms, including supporting her during medical leave. She also sought out funding for Ms. Russell to help her financially for her summer tuition, and she signed off on a request for an extension.

Exhibit 71

[1053] In the fall of 2016 Ms. Russell emailed Professor Thrush and advised she decided to finish her thesis with the encouragement of Dr. Paris and Dr. Myers.

[1054] Dr. Paris stated that she had at some point expressed to the students that she did not agree with Ms. Kirchmeier's approach to handling the complaints within the department, but she never told the students that they should not talk about the issue nor did she draw any sort of line in the sand between faculty and students in this regard.

5. Evidence of Vi Addams

[1055] Mx. Addams currently serves as the administrator for the Department of History at the University. Their responsibilities encompass overseeing the department's financial environment, human resources for staff, facilities, general operational management, and strategic planning. Mx. Addams has been with UBC since 1998, primarily in roles involving financial responsibilities, and described the 2020 transition from PeopleSoft to Workday for financial and HR records.

[1056] Mx. Addams testified to their familiarity with financial records pertaining to graduate and PhD students in the history department. They detailed the retention and destruction schedule for physical records, indicating that records from 2014-2015 would have been destroyed if physical, and noted that most financial records are now archived or inaccessible at their level.

[1057] They described their process for investigating financial records related to DM which involved contacting central resources and reviewing available records. Mx. Addams found no evidence of travel reimbursements or other payments to DM, apart from TA payments, a \$30 reimbursement from Green College, award payments, and one month of fellowship monies. They explained that the travel reimbursement process in 2013–2014 required original receipts and approval, and confirmed that no such receipts or payments for DM were located in the records.

V. **LAW & ANALYSIS**

A. **Law**

1. **Section 8 and Prima Facie Case**

[1058] To prove her claim of discrimination, Ms. Kirchmeier must establish that she and the class members were adversely impacted in connection with a service customarily offered by UBC, and that their sex was a factor in that adverse impact: *Moore v. British Columbia*, 2012 SCC 61, at para. 33. If she does that, then the burden would shift to UBC to justify the adverse impact.

[1059] Section 8 of the *Code* prohibits discrimination in a service customarily available to the public. Under section 8, the Tribunal must first determine what the service is that is alleged to have been provided, and whether there is a service relationship between the Respondent and the Complainant.

[1060] In establishing that there has been a breach of section 8, a complainant must satisfy the Tribunal that there has been a *prima facie* case of discrimination by meeting the test set out by the Supreme Court of Canada in *Moore v. British Columbia*, 2012 SCC 61 [**Moore**] at para. 33:

...to demonstrate *prima facie* discrimination, complainants are required to show that they have a characteristic protected from discrimination under the *Code*; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact.

[1061] In this Complaint, each Complainant must establish that she was adversely impacted in connection with a service customarily offered by the Respondent, and that her sex was a factor in that adverse impact: *Moore* at para. 33. Once a *prima facie* case has been established, the burden shifts to the respondent to demonstrate the reasonableness of its response.

[1062] The Tribunal's final decision in **Hale** and the paradigm of examining discrimination in the institutional response cannot remove the requirement for the establishment of a *prima facie* case. The Tribunal must apply the Moore test to determine whether there has been a breach of the Code. Further, it must do so to each complainant in either class given the scope of the evidence that was adduced and the varying experiences of complainants

from being survivors of sexual assault to those who felt impacted by the fact that others had been sexually assaulted.

[1063] Further, in **Hale**, there appears to be no dispute about whether there was a service provided or what that service was as she was a student at the relevant times of her complaint. These issues are being disputed in this case. Many of the Complainants were not in a service relationship with Respondent during the relevant time of their complaint.

[1064] An important aspect to this case is trauma-informed practices and the respect for the autonomy of Complainants who are in a class. This is especially important where the Tribunal is being asked to adjudicate individual complaints of sexual assault where the survivors have not testified and seemingly have not participated in this complaint process.

2. Group vs. Class Complaints

[1065] At paragraph 69 of Part 1 of the Complainants' submissions, they state that the "members of the Mordvinov Class establish their complaints of *prima facie* discrimination as **individual complainants** by establishing that the concerns and complaints they made about Mr. Mordvinov because of the risk he posed to them as women..." [emphasis added]. By this admission, the Respondent submits that the complainants agree that the complaint should be treated as a group complaint rather than a class complaint.

[1066] Through preliminary motions, the Tribunal determined that there are two classes which represented in this Complaint: The Mordvinov class and the General Class. The definitions of each class are set out above.

[1067] The Tribunal does not have any rules of practice or guidelines regarding Class and Group Complaints. The Code has no provisions which assist with this determination. The Tribunal's jurisprudence on this issue has been developed through the case law.

[1068] Further, it is important to note that unlike *Class Proceedings Act*, the Tribunal does not have a certification process. A certification process would have permitted the parties to better understand the complaints and how they fit together into a class before the hearing. The Tribunal's process of defining the class is not based on the evidence of the Complainants' but primarily on the allegations put forward by a Complainant's Representative who does not necessarily have any knowledge of each complainant's experience.

[1069] The class must be identified by specific, objective criteria that are rationally connected to

the subject matter of the complaint. Members must share common issues of fact and law: *Citizens for Safe Technology Society obo others v. BC Hydro*, 2012 BCHRT 300 at paras. 57-59.

[1070] In *Gatica and Migrante obo Temporary Foreign Workers from Guatemala v. Golden Eagle Blueberry Farm*, 2020 BCHRT 214, the Tribunal stated at paras. 25-27:

In Dutton, the Court said at para. 40 that “[...] with regard to the common issues, success for one class member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent. A class action should not be allowed if class members have conflicting interests.” Here, among other issues, subsuming the un-hired females into the class definition proposed by the Complainants is simply wrong when their very claim, as I have said, is based on their having not worked for the Farm. Similarly, it is unclear the degree, if any, to which the female workers allege an intersection of place of origin, race and sex in their specific allegations, such that their allegations may take on a different character than those of the male workers making the analysis of the common issues more rather than less complex.

It is clear to me on the face of the materials and from both parties’ submissions that were this Complaint to proceed as a class or group complaint, the class or group as currently defined must be broken into three to reflect the actual categories of Complainants that they themselves have recognized, namely, the male workers; female workers; and un-hired female workers. As the Tribunal said in *Kirchmeier* at para. 25, the Tribunal applies the general principles from civil class actions in a way that furthers the purpose of the Code.

[...] In some cases, that may entail relaxing some of the strict requirements established in class action litigation. For example, the Tribunal has said that the class does not need to be ‘precisely defined’ at the preliminary stage, and that difficulty in defining the class will not necessarily support dismissal at an early stage: *Cole v. Northern Health Authority*, 2014 BCHRT 26 at para. 94.

Moving to the question of whether there are issues in common amongst the members of the class or group, it seems to me that many of the Respondents’ concerns are adequately addressed by remedying the definition of the class or group in the way set out

[1071] A class should not be unnecessarily broad, meaning that “the class could not be defined more narrowly without arbitrarily excluding some people who share the same interest in the resolution of the common issue”: *Hollick v. Metropolitan Toronto (Municipality)*, 2001 SCC 68 at para. 21. Once again, the same principle should be applied in the human rights context.

[1072] To determine whether a complaint is an appropriate class complaint, the Tribunal may

consider whether: (a) the group or class is defined, or is capable of definition, by clear parameters or characteristics; (b) the alleged contravention is similar for all members of the group or class, and, in particular, there are issues in common for all of the individuals in the group or class; (c) proceeding with the complaint is in the interest of the group or class on behalf of which the complaint is made; and (d) the proposed representative is appropriate. In a class complaint, the definition of the class is critical. A group complaint is filed on behalf of a number of people who are individually identifiable, or who could be identified with relative ease. A class complaint is more appropriately defined where the people cannot easily be individually named but are described by shared characteristics (*BC Community Alliance v. School District No. 39 (Vancouver) and another*, 2022 BCHRT 3 at paras 15 and 44).

[1073] There are no rules preventing the Tribunal from reconsidering the structure of a class or group complaint after hearing the evidence. In fact, in some decisions where the Tribunal defines the scope of the Complaint, it appears that the Tribunal implies that it will conduct such an assessment after hearing the evidence. In *Ruff obo seniors living with a family member v. Crescent Downs Housing Cooperative*, 2023 BCHRT 41, the Tribunal noted that it accepted, and anticipated, that the circumstances of each member of the class will not be identical. The Tribunal further held:

However, this will be true in any class complaint and is not inherently a bar to proceeding. It is not necessary for Ms. Ruff to show that the interest of each class member is identical with respect to the common issue: *Hollick* at para. 21. Rather, the important point at this stage is that the class is defined narrowly by objective criteria and that members of the class share a common issue capable of resolution in this Tribunal's process. Later in the complaint, the parties and/or the Tribunal may identify subgroups within the class if necessary. That may be helpful, for example, to differentiate between members of the class who have physical or mental disabilities and those who do not. However, at this preliminary stage, and particularly because Ms. Ruff does not seek individual remedies, it is not necessary to define subgroups or to refuse to accept the complaint for filing as a class complaint merely because of potential differences between members of the Class.

[1074] In contrast, the Complainants in this case are seeking individual remedies for each member of both classes. They have put forward individual evidence as it relates to the individual complainant's *prima facie* case and as it relates to the individual complainant's injury to dignity as part of the individualized remedies that they are seeking. They have analyzed the Respondent's response as it relates to each individual complainant.

[1075] The Respondent submits that this case is not suitable for determination on the basis of the preliminary rulings on the structure of the classes. At the hearing of this matter, the

Complainants elected to lead evidence of every individual class member in the Mordvinov Class and evidence of every individual the member of the General Class where documentation existed.

[1076] The Respondent submits that in the alleged Mordvinov Class, there are several sub-classes of Complainants that testified. Specifically:

- i) A group of students who testified that they were assaulted by DM and went through UBC's NAM process (Student E, Ms. Cunningham, and although Student C did not testify, she would fit into this subclass);
- ii) A former student who was assaulted by DM in another province after she graduated at her home and not during a university sponsored event and whose complaint was not accepted by UBC for inclusion in its NAM process (Student B)
- iii) A group of students who were involved in meetings with the History Department regarding their concerns for student safety (Ms. Thornton, Ms. Russel, and Ms. Longstaffe)
- iv) A student who supported a complainant to come forward to Green College (Ms. [REDACTED])
- v) A former student who wanted to provide information to Student Conduct Committee to support the Complaint of Student B (Caroline Greggo)
- vi) Former students who came forward on behalf of others (Ms. Kirchmeier)

[1077] There is a host of different issues for each of these sub-groups including whether the Complainant was in a service relationship with the Respondent, whether the Complainant was sexual assaulted, whether the Complainant experienced a discriminatory learning environment, and whether the student went through a NAM process and engaged with UBC policies after filing a complaint. Further, different relief has been sought for different complainants. The evidence was not presented in a manner in which the Complainants in the Mordvinov Class can be evaluated through one common issue for resolution of their complaint.

[1078] In terms of the General Class, only two complainants testified: Mx. Fisher and Ms. McBryan. Ms. Kay, Mr. Hyson, Mr. Bohnen, Mr. Lundeen and Dr. Vessey were cross-examined on approximately 21 other general class complainants who did not testify. Through that cross-examination it was clear that there were a number of different

experiences and interactions between General Class Complainants and the Respondent. Although the Complaints in this class are related to sexual discrimination in the provision of a service, the paths and interactions each of these students had with the Respondent are completely different. Individual remedies are being sought for each member of each of class. The Respondent submits that the General Class also requires a breakdown into sub-classes or individual assessment of each Jane Doe.

[1079] The Complainants' Representative did not elect to present evidence of two members of the General Class and then have those experiences applied to other Complainants as would have been permitted under a typical general class. Rather they adduced information about 23 different class members and have argued each of their experiences individually and have sought individual amounts of damages for each.

[1080] A hallmark of general class complaints is that the complainants share common issues and facts. That was not the case for the General Class. The 23 class members that were discussed at the hearing all had different experiences ranging from simply wanting a respondent male to be talked to by administrators all the way to those Complainants who proceeded through NAM hearings. There were numerous Jane Does who do not qualify as a general class member and others who would never have wanted their story to be told in this public space. There were general class members who only interacted with their department or only interacted with the EIO. There were other general class complainants that only interacted with security or student conduct personnel. There were general class claimants who interacted with all of these branches of the university or just one. There are general class claimants who interacted with multiple UBC policies and others who did not interact with any policies. Again, the Complainants in the General Class cannot be evaluated through one common issue for resolution of their complaint.

[1081] To be clear, the Respondent is not asking for any class member's complaint to be excluded from consideration because of the class definitions. Rather, the Respondent wants each claim to be evaluated on the basis of the evidence called, the facts underlying the particular complainant's experience that can be ascertained from the evidence, and the applicable jurisprudence. The service needs to be defined for each of the general class members as well as what the specific adverse treatment was to determine whether a *prima facie* case and can be established. Then the Tribunal needs to review the Respondent's response in the unique context of each complainant.

[1082] Success for one class member cannot mean success for all, when there is such a wide varying array of complainant experience.

[1083] In ***Ballance obo Ballance and others v. Lower Fraser Valley Exhibition Association and another***, 2023 BCHRT 13, the Tribunal held at paras. 62-71:

[62] The alleged conduct set out in the complaint is not the same for all proposed class members. As set out above, allegations range from racial slurs used in front of staff and volunteers, to angry outbursts towards certain women, to sexual harassment on the maintenance crew, to accessibility and safety concerns related to volunteers with disabilities. This wide range of alleged discrimination includes different grounds, perpetrators, and acts. For example, even under the broad heading “misogyny”, the complaint alleges conduct ranging from sexual harassment of female volunteers by Mr. Claypool, to targeting of female staff by Mr. MacSorley, including verbal taunting and physical assault; to condonation of sexism in the maintenance crew, including sexual harassment and no pregnancy accommodations for female workers.

[63] The Complainant does not explain how success (or a finding) for one class member would mean success for all or promote efficiency. In my view, it is unlikely that evidence related to one allegation would apply across the proposed class membership given the divergence in the allegations, including allegations arising from different incidents involving different individuals at separate times in different locations. There is also a distinction between class members who allege they experienced discrimination as compared to those who allege they witnessed it. I would expect the adverse impacts, for example, to be different. I agree with the Respondents that, in these circumstances, liability determination is likely to require individualized assessments.

[64] I also agree with the Respondents that the language of “hostile and demeaning conduct” is too vague and broad. Whether it amounts to Code-based discrimination will depend on specific factual findings. It is also not clear to me how this can be adjudicated collectively in an effective way.

[65] Where I do find common issues, is in relation to the alleged lack or response and/or mechanism to address complaints of discrimination, including the absence of a policy. There is a common theme in the complaint that there was no safe place to report concerns, and when individuals did complain, they were ignored, or met with dismissive and unhelpful responses.

[66] At the same time, I am not persuaded this a sufficient basis to ground this as a class complaint. This is because, even if the Tribunal finds commonalities in the response or lack thereof, each alleged incident of discrimination will still require an individualized assessment. While I understand the access-to-justice reasons for wanting to deal with the broad allegation of a poisoned work environment at the Fairgrounds in a class complaint, there are not issues in common for all the individuals in the proposed class. In my view, this would not be a fair, efficient, or manageable way to administer the claims.

[67] The Tribunal will not proceed with the class as framed in the complaint

...

[71] I agree with the Association that this complaint is better suited to be a group rather than a class complaint. Proceeding as a group will provide clarity to the scope of the claim, allow affected individuals to be identified, allow the Respondents to make full answer to the case against them, and be the most

fair and efficient way to proceed. Proceeding as a group does not preclude the availability of systemic remedies at a hearing, if discrimination is proven. I return to next steps for the group complaint below.

[1084] The Respondent submits it would not be procedurally fair to adjudicate these claims as class complaints with only two classes. This would permit complainants like Ms. Thornton and Ms. Russell who were not sexually harassed or assaulted by DM to be evaluated identically to those complainants who were. In other words, they can leverage their complaint which otherwise might not have been permitted to proceed and seek damages as the result of someone else's sexual assault. Success for Student E cannot mean success for Ms. Thornton or Ms. Russell.

[1085] Further, this would place Student B, whose complaint was determined to be outside of the jurisdiction of UBC, and who was not receiving a service from UBC, to be in the same class as Student E (who was in a service relationship and engaged with policies to the point of a NAM hearing). This also precludes the Respondent from arguing the service relationship aspect of the test. Success for Student E cannot be success for Student B.

[1086] Further, by not analyzing the complaints individually, the Tribunal would be placing students in the General Class who never wanted to be identified nor wanted any particular response from the Respondent in the same class as a student who pursued disciplinary measures and went to a NAM hearing. Success for Jane Doe 5 (who went to a NAM) cannot be success for Jane Doe 6 (who did not want to proceed to the NAM and wanted to keep her story private).

[1087] It is submitted that the Mordvinov Class and General Class Complaints should be converted to group complaints for the purpose of analyzing this Complaint.

3. Failure of Class Complainants to Testify

[1088] The issues in ***Ballance obo Ballance and others v. Lower Fraser Valley Exhibition Association and another*** are clearly present in this case.

[1089] In ***Pivot Legal Society v. Downtown Vancouver Business Improvement Association and another (No. 6)***, 2012 BCHRT 23 [Pivot] the Tribunal dealt with a class complaint where no complainants testified. Pivot was a class complaint brought by Pivot Legal Society ("Pivot") and Vancouver Area Network of Drug Users Society ("VANDU") against

the City of Vancouver and the Downtown Vancouver Business Improvement Association (“DVBIA”). Pivot was the final hearing of the complaint. The class was individuals who appeared to be street homeless and/or drug addicted and inhabited the geographical jurisdiction of the DVBIA.

[1090] The facts underlying the complaint involved a uniformed street patrol in the Downtown area called the Ambassadors Program, which was run by the DVBIA and funded by the City. The Ambassadors were security personnel contracted by the DVBIA. They had no authority to enforce the law, but they would regularly “remove” people by talking to them, waking them if they were sleeping, informing them of any law that they appeared to be breaking, and encouraging them to move on.

[1091] The complainants alleged that the Ambassadors Program discriminated against the homeless population in the Downtown area, on the basis of race, colour, ancestry and mental or physical disability, by “removing” them from places that were public property, or facilities customarily available to the public.

[1092] The Tribunal analyzed whether the complainants had established a *prima facie* case of discrimination, which required the complainants to show that:

- (a) the members of the Class belonged to a protected group under the Code;
- (b) they had experienced adverse treatment (with respect to a service, facility or accommodation customarily available to the public); and
- (c) there was a connection or link between that adverse treatment and the protected grounds.

[1093] The Tribunal found that the complainants had established the first two factors but failed to establish a nexus between the adverse treatment and the protected grounds. This conclusion turned on the absence of direct evidence from the members of the class. In essence, although the Tribunal accepted that the Ambassadors’ actions had an adverse effect on class members within the street homeless population, there was no direct evidence to support that the Ambassadors’ actions had a disproportionate impact on the class members. The Tribunal accepted a theoretical framework for how the Ambassadors’ actions could have had a differential impact on those with Aboriginal ancestry, compared to other homeless individuals, but was unable to conclude that such differential impacts occurred in fact.

[1094] Traditionally, the Tribunal has not accepted a complaint as proven where a complainant has not testified in the past. We are unaware of any complaint that has been successful where a complainant did not testify.

[1095] Recently, in ***Union of BC Indian Chiefs v. Provincial Health Services Authority and others***, 2024 BCHRT 300 the Tribunal provided the following regarding autonomy of class complaints in a complaint alleging discrimination in the provision of health care services:

Next, I am not satisfied that the privacy interests of Class members would be sufficiently safeguarded by simply redacting their names and personal identifiers. I agree with, and adopt, the Respondents' argument on this point:

"The information about one's issues with alcohol and substance use varies from person to person. Information about family and living circumstances varies from person to person. The individuality inherent in every individual story is unique to the individual and there is no way to redact the patient's life from the record.

Even if members of the public do not know who the Tribunal may be referring to in a final decision, that individual person does as it is their life story being examined. It is a gross breach of any individual's autonomy over the story of their life for someone else to make the decision to put their story into a public record without their consent. This outcome could not be anticipated by any potential patient who decides to meet with health professionals regarding their medical concerns.

[1096] Although the Tribunal took a different approach in this complaint with respect to the production of documents, the Tribunal can still respect the privacy and autonomy of complainants by refusing to adjudicate the complaints of Complainants who did not testify and where no evidence was provided that they wanted to engage in this process. It is not a trauma informed practice for the Tribunal to explain the circumstances of a class complainants' sexual harassment or assault when the details of those events will be so particular to that person. Even if the public might not be able to identify that person, they will be able to do so. Not only should the failure of the Complainants to call these witnesses result in a dismissal because of a failure to establish a nexus, it should result in dismissal because to evaluate their complaints would be a violation of their autonomy.

[1097] Further, any submission from the Complainant that the Notice of the class complaint should suffice for the Tribunal's purposes in permitting the Complainant Representative to be able to argue their complaints cannot be accepted. The Tribunal did not create a process whereby UBC was to directly contact potential class complainants in all circumstances. Rather, the notice was to go to staff who may be aware of student

complaints. Even if they were aware of complainants, they were not required to notify those complainants of the complaint. This creates a situation whereby no fault of the Respondent class complainants are not aware of the Complaint. The Tribunal must keep in mind by the time the Tribunal made its order regarding notice, most of the relevant females would no longer have been students or attending the University.

[1098] If the Tribunal permits the Complainant's Representative to proceed with the class complainant for the Complainants who did not testify, the Tribunal risks breaching the autonomy of the individuals by telling their story without their knowledge. The Respondent submits that: "Even if members of the public do not know who the Tribunal may be referring to in a final decision, that individual person does as it is their life story being examined. It is a gross breach of any individual's autonomy over the story of their life for someone else to make the decision to put their story into a public record without their consent" (*Union of BC Indian Chiefs v. Provincial Health Services Authority and others*, 2024 BCHRT 300)

[1099] In process of reaching conclusions as to what these complainants wanted from UBC, their psychological state, or the impact of UBC's process on them, the Tribunal itself would not be engaging in trauma informed practice. The Tribunal would be removing the Complainant's power and control over their story. Further, in the context of sexual assault, the Tribunal risk retraumatizing these complainants.

3. Comparator Group

[1100] The Complainants' reliance on comparator-based reasoning, such as contrasting the treatment of Jane Doe 20 with the Mordvinov case is inconsistent with the current approach to discrimination analysis under the Human Rights Code. The British Columbia Human Rights Tribunal and the Supreme Court of Canada have clarified that the test for *prima facie* discrimination does not require a comparator group (*Moore v. British Columbia (Education)*, [2012] 3 SCR 360, 2012 SCC 61, at 30). Instead, complainants must demonstrate that they possess a characteristic protected by the Code, experienced an adverse impact, and that the protected characteristic was a factor in that adverse impact (*Moore v. British Columbia (Education)*, [33]; *Makhija v. CSH (Carlton Gardens) Limited Partnership and others*, 2024 BCHRT 98 at 59).

[1101] Therefore, arguments that UBC "could act but chose not to" in other instances, as suggested by the Complainants regarding Mr. Hyson's actions in the JD 20 case versus the Mordvinov matter are not relevant to establishing discrimination under the current legal

framework. Further, examining these differences is not helpful as the individual circumstances and autonomy of each complainant was respected by the University.

[1102] Further, there are dramatic differences between JD 20's complaint and Ms. Kirchmeier's complaint. JD 20's complaint was not a third-party complaint. Comparing a third-party complaint to a first-person complaint has no utility in the Tribunal's analysis.

[1103] The Complainants' approach of using the experiences of Jane Does as mere comparators, rather than pursuing their claims substantively, undermines their obligations as class representatives. In their submissions, the Complainants' Representative explicitly states that for some Jane Does, they do not seek a remedy for the individual but rather use their experiences as "further evidence of the practices of the University in general" or as a "comparator". For instance, the complainants acknowledge that they do not seek a remedy for Jane Doe 2 because there is no evidence that the University's failure to act had a negative impact on her personally. Similarly, they state that they do not claim discrimination against Jane Doe 20 as the evidence does not indicate an adverse impact from the University's actions, and that Jane Doe 26 does not have a claim of discrimination due to a lack of evidence of adverse impact. This selective pursuit of claims, where some class members' experiences are used solely to bolster other claims, raises questions about the fulfillment of representative duties to the entire General Class. Further, it implicitly acknowledges the need for direct evidence from the actual complainants to establish a basis for a complaint and damages.

[1104] Further, this approach affirms that the complainants are treating the various claims as a group of individual complaints rather than a class complaint.

4. Remedy

[1105] The Tribunal's remedial powers are set out in section 37 of the *Code*:

(1) If the member or panel designated to hear a complaint determines that the complaint is not justified, the member or panel must dismiss the complaint.

(2) If the member or panel determines that the complaint is justified, the member or panel

(a) must order the person that contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,

(b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Code,

(c) may order the person that contravened this Code to do one or both of the following:

(i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;

(ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this Code, and

(d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;

(ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;

(iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

[1106] The Respondent submits that the appropriate remedy in this matter is to dismiss the Complaint under section 37(1) on the basis that the Complaint is not justified. The Respondent submits that there has been no discrimination, as alleged or at all, and so the Complaint must be dismissed.

[1107] In the alternative, in the event that the Tribunal finds some or all of the Complaint to be justified, the Respondent submits that injury to dignity awards must be assessed on a individual complainant basis. To this extent, we have included submissions on injury to dignity in each section dealing with each complainant below.

[1108] The majority of the remedies sought by the Complainants are under section 37(2)(d) of the *Code*, particularly with respect to injury to dignity damages, lost wages, and expenses.

[1109] This provision of the *Code* is expressly permissive and not mandatory. In respect of lost wages and expenses, the Tribunal may order some or all of the amounts claimed by the Complainant. In respect of injury to dignity damages, no amounts are prescribed. The

Tribunal therefore has a great deal of discretion in determining the appropriate awards under these heads of damages.

[1110] In respect of lost wages and expenses; however, the Tribunal is expressly limited to awarding such amounts that may have been lost (in the case of wages) or incurred (in the case of expenses) by the contravention of the *Code*. In other words, there must be a causal connection between the contravention of the *Code* and the lost wages or expenses claimed. If the lost wages or expenses were not caused by the breach of the *Code*, they cannot be awarded under section 37(2)(d)(ii).

[1111] Although section 37(2)(d)(iii) does not contain the same express language, the Tribunal has read in a similar requirement. That is, the Tribunal will only compensate injury to dignity, feelings, and self respect that is occasioned by the breach of the *Code* that has been found by the Tribunal.

[1112] This requirement of causation in respect of injury to dignity damages was confirmed in *Francis v. BC Ministry of Justice (No. 5)*, 2021 BCHRT 16, where the Tribunal held that “the purpose of an injury to dignity award is to compensate the complainant for the actual harm they have suffered as a result of the discrimination” (at para. 157).

[1113] In *Francis*, the Tribunal thoroughly considered the principles of causation and apportionment (emphasis added):

157 Section 37(2)(d)(ii) of the Code gives the Tribunal discretion to compensate the person discriminated against for wages lost by the contravention. The purpose of this remedy is to restore the person, to the extent possible, to the position they would have been in had the discrimination not occurred: *Gichuru v. The Law Society of British Columbia (No. 9)* 2011 BCHRT 185 [Gichuru], at para. 300, upheld in *Gichuru v. The Law Society of British Columbia*, 2014 BCCA 396 [Gichuru Appeal] at para. 43. The burden of establishing an entitlement to compensation is on the complainant. It is open to the Tribunal to deny compensation when there is insufficient evidence to support a claim: *Gichuru Appeal* at para. 51.

158 Causation is "simply an expression of the relationship that must be found to exist" between the wrongful act of the respondent and the injury to the complainant in order to justify compensation: *Snell v. Farell* [1990] 2 SCR 311 at p. 326. Before proceeding any further, I observe that the causation required to establish liability is different from the causation required to assess remedy under the Code. As stated by the Tribunal in *Gichuru* at para. 289:

I accept the proposition that the law does not excuse a respondent from

liability merely because other causal factors for which they are not responsible helped produce the harm. However, this is not helpful in determining an appropriate award for wage loss. In the context of complaints before the Tribunal, a prohibited ground of discrimination need be only a basis, not the only basis, for any adverse treatment to amount to discrimination. This is a matter of liability. In the matter before me, liability has been determined. I am tasked with a separate issue, which is the assessment of remedy.

159 The first step in this assessment is for the complainant to show "some causal connection" between the discriminatory act and the loss claimed: Gichuru, at para. 302, upheld in Gichuru Appeal at para. 43. In this case, the Respondent acknowledges that there is "some causal connection" between the Contraventions and Francis' wage loss. Francis' wage loss was the result of him going off work. He went off work because of his medical condition. There is a causal connection between his medical condition and the Contraventions. Thus, there is no dispute that a causal connection has been established.

160 This decision turns on the second step in the assessment. Once a causal connection has been established, it is necessary to determine the amount of compensation. The amount of compensation "is a matter of discretion, to be exercised on a principled basis, in light of the purposes of the remedial provisions of the Code, and the purpose of the award": Gichuru Remedy, at para. 303, upheld in Gichuru Appeal at para. 43.

161 Since I have found that the Contraventions are causally connected to a particular loss, there are a number of key principles that guide my assessment of damages flowing from that fact. These principles are found in the common law. The application of common law principles is compatible with the purpose of compensation under s. 37(2)(d)(ii) given the remedial nature of this provision in the context of the broader purposes set out in s. 3 of the Code: Gichuru Appeal, para. 46.

162 While not bound by common law principles in the exercise of discretion, I find it helpful to apply them in assessing damages to ensure that my discretion is exercised on a principled basis: *Gichuru v. The Law Society of British Columbia* 2013 BCSC 1325, at para. 34; *University of British Columbia v. Kelly*, 2016 BCCA 271 [Kelly Appeal], para. 53.

[1114] In order to establish a base entitlement to the damages claimed, therefore, the Complainants must prove that the damages they seek were caused by the contraventions of the *Code* at issue here. The Complainants must also prove that they are entitled to the full amount of their claimed losses in that there were no other causes or contributing factors.

[1115] The issues of causation are particularly acute in this case.

[1116] The Respondent submits that, as set out in *Francis*, the Tribunal must make a determination as to the extent of the Complainants' injuries and damages that are actually incurred by the conduct at issue in this Complaint, and only those injuries and those

damages can be compensated.

[1117] Under s. 37(2)(d)(iii) of the *Code*, the Tribunal has the discretion to award damages as a way to compensate a complainant for injury to their dignity. As the Respondent emphasizes that the purpose of these awards is compensatory, and not punitive: closing submissions at para. 80. In making an injury to dignity award the Tribunal often considers several factors: the nature of the discrimination; the complainant's social context or vulnerability; and the specific effect the discrimination had on the complainant: *Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others*, 2021 BCHRT 137 [**Nelson**] at para. 33. Determining the amount of an injury to dignity award depends on the specific facts and circumstances in any given case: *Gichuru v. Law Society of British Columbia (No. 2)*, 2011 BCHRT 185, upheld in 2014 BCCA 396 at para. 260. At the same time, the Tribunal often finds it helpful to consider the range of awards made in similar cases: *Campbell* at paras. 155-162. I begin with the nature of the discrimination in this case.

[1118] To determine an appropriate award, the Tribunal generally considers three broad factors: the nature of the discrimination, the complainant's social context or vulnerability, and the effect on the complainant.

[1119] While the Tribunal is not bound by previous decisions, they serve as a useful reference point and should be treated as influential. They should be given weight in order to provide predictability and transparency to parties before the Tribunal.

[1120] The Tribunal must only compensate the Complainant for the harm caused by the conduct that is within the scope of the Complaint. The purpose of a remedial award is to put the Complainant in the position she would have been in absent the discriminatory conduct.

[1121] The Tribunal does not independently take into account the impact of the hearing process on the complainant when calculating an award for injury to dignity damages. The Tribunal's stated rationale is that even though there may be difficulties for a complainant in proceeding before the Tribunal, that procedure is the result of legislation and thus any difficulties should not be held against a respondent. The ***Tribunal in Gichuru v. The Law Society of British Columbia (No. 9)***, 2011 BCHRT 185 stated:

However, I cannot find that an award for injury to dignity, feelings, and self-respect should independently take into account the impact of the hearing

process. I come to this conclusion for the following reasons.

First, while the Tribunal processes certainly flow from the initial discrimination and the complainant's efforts to remedy that discrimination, that does not mean that any impact resulting from pursuing the remedy is compensable under the head of an injury to dignity award. The Tribunal and its processes have been established by the legislature as the procedure for obtaining redress for those individuals who feel they have been discriminated against. The Tribunal processes are the conduit to providing a remedy to discrimination and the resulting impact on injury to dignity. I cannot find that they themselves impact on the dignity of a complainant in the same manner that the initial discrimination does. While there may be difficulties in pursuing those processes, it does not follow that those difficulties should be assessed and awarded as against the respondent.

Second, if there are actions of a respondent that impact on the dignity and self-respect of a complainant arising during the Tribunal processes, there are separate remedies for such behaviour, including an award of costs for improper conduct, provided for under s. 37(4) of the Code; or the filing of an additional complaint under s. 43 of the Code, which prohibits a person from, among other things, intimidating, coercing, or otherwise discriminating against an individual for (again, among other things) filing a complaint under the Code. An example of the former is *Ford*, where the Tribunal awarded costs against a respondent for engaging in intimidating and bullying conduct during the complaint process; an example of the latter is *C.S.W.U., Local 1611 v. SELI Canada Inc. (No. 3)*, 2007 BCHRT 423 [reported 61 C.H.R.R. D/352], where the complainant filed a retaliation complaint with respect to conduct of the respondent after the hearing had commenced. The Tribunal found that a breach of s. 43 had occurred and awarded substantial remedies.

To be clear, I am not suggesting that the Law Society's conduct in this case could give rise to a finding of discrimination contrary to s. 43, I am simply stating that such a claim may be made in an appropriate case.

[1122] This principle was accepted by the Court of Appeal ***Gichuru v. The Law Society of British Columbia***, 2014 BCCA 396.

[1123] There have only been 7 complaints in the last 10 years, in which \$50,000.00 or more was awarded for injury to dignity. In this complaint, the Complainant's Representative is seeking \$60,000.00 for three complainants and \$40,000.00 for four complainants.

[1124] Of the 7 complaints that awarded injury to dignity has been over \$50,000.00 in the last ten years, three of them involved sexual assault and harassment. In two of those three cases, the Complainant was physically sexually assaulted by the Respondent. The only one that was against an institutional respondent was ***Hale***. Ms. Hale was awarded \$50,000.00 for injury to dignity. Ms. Hale presented expert medical evidence on the impact on her and provided her *viva voce* evidence about her experience. No Complainant in this case provided any expert evidence or evidence from friends and family about the impact of any alleged discrimination. In fact, very little *viva voce* evidence was adduced at the trial to

support damages in the range sought.

[1125] The Tribunal in **Hale** confirmed that the award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. The Tribunal will have to make this analysis for each and every complainant. The Tribunal cannot make this assessment with many of the complainants who did not testify. The Complainant's Representative provided no evidence for the Tribunal to be able to conduct this analysis on basis of fact and evidence and not on its speculation as to the impact on the basis of hearsay or double hearsay evidence.

[1126] Further, the evidence about the vulnerability of these complainants was very different than **Hale**. Outside of one Complainant, no other complaint adduced any evidence of a prior medical condition that impacted their mental wellbeing that was adversely impacted by the alleged discriminatory conduct of the Respondent. This type of evidence was completely lacking from this case.

[1127] Even further, all of the Mordvinov class were graduate students, most of whom were graduated at the time they came forward, who stand in a significantly different position than **Hale** did as an undergrad student. Further, Ms. Hale did not complete her schooling. There was no evidence that any of the complainants involved in this complaint not finishing their schooling because of sexual assault or harassment or the University's response to it.

[1128] It is important to note that several of the complainants who are seeking \$40,000.00 for injury to dignity did not even bring forward a complaint of sexual harassment or assault of their own to the University at the relevant time. Further, of the Complainant's seeking \$60,000.00, one complainant participated in the NAM process, one was excluded because of jurisdiction, and one (the Complainant's Representative) was not survivor sexual assault and therefore was not included in the NAM process as she had no direct evidence to provide to the NAM committee. The amounts sought as between complainants in the Mordvinov Class and the General Class lack any consistency in terms of how the amount sought relates to the impact on the particular complaint. Further, no basis was provided on how the Complainants in this case should be viewed to be similarly impacted as **Hale** was.

5. Prima Facie Case

[1129] As noted above, the burden is on the Complainants to establish a *prima facie* case of discrimination. For the reasons that follow, the Respondent submits that the Complainants have failed to satisfy this burden.

i. Protected Characteristic

[1130] The Respondent does not dispute that the Complainants have the protected characteristic of sex.

ii. Adverse Impact

[1131] The Respondent submits that the Complainants have failed to adduce sufficient evidence that the University Process, including the NAM, had a disproportionate impact on survivors of sexual assault.

iii. Nexus

[1132] The Complainants assert that the Complaints falls within the definition of adverse impact because the University Process adversely impacted survivors of sexual assault, the majority of whom are women. However, in making that argument, the Complainant conflates disproportionate *access* with disproportionate *impact*.

[1133] While the Respondent accepts that women are disproportionately the victims of sexual assault, the Respondent submits that this statistic alone is not sufficient to establish that the process had a disproportionate impact on women. If it were sufficient, it would mean that every policy or process aimed at addressing sexual misconduct would necessarily breach the *Code* so long as women are disproportionately the survivors of sexual misconduct.

[1134] In *Vancouver Area Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 [**VANDU**], the Court of Appeal considered whether the Tribunal's dismissal of a complaint should be upheld. The Tribunal accepted that certain groups protected by the *Code* were disproportionately represented among the class making the complaint, namely individuals who were or appeared to be street homeless. The Tribunal also accepted that class members had experienced adverse treatment, including that they had been asked to leave places otherwise ordinarily available to the public. The Tribunal concluded, however, that there was no evidence of a nexus between the protected characteristics and the adverse treatment. The fact that the class had

disproportionate representation of individuals with protected characteristics was not evidence of nexus.

[1135] The Tribunal's decision was overturned on judicial review but restored by the Court of Appeal.

[1136] Nexus requires more than mere speculation; there must be evidence that the protected characteristic was an operative element in the adverse treatment (*Radek v. Henderson Development (Canada) and Securiguard Services (No. 3)*, 2005 BCHRT 302 at para. 482). While the protected characteristic need not be the sole or primary factor, it must be a factor.

[1137] The Tribunal in *Makhija v. CSH (Carlton Gardens) Limited Partnership and others*, 2024 BCHRT 98 reaffirmed that the nexus must be more than speculative or based on generalized assumptions. In *Makhija*, the Tribunal found that the complainant's argument that alleged inappropriate conduct was only considered unacceptable because he was a man, or an older, racialized man, was speculative and unsupported by evidence. Similarly, statistics regarding the gendered nature of sexual harassment did not support a reasonable prospect of proving a connection between the adverse impacts experienced and the complainant's sex. This principle is critical here, as the complainants' submissions in Part 2 often rely on generalized assertions that sex was a factor without providing specific evidence to take the nexus out of the realm of conjecture.

[1138] The Tribunal will not find that a protected characteristic is a factor in an adverse impact based on statistical correlation alone. The Tribunal must analyze the evidence to determine whether statistics demonstrate the required connection: *Vancouver Area Network of Drug Users v. BC (Human Rights Tribunal)*, 2018 BCCA 132 [VANDU] at paras 90-93. In cases involving allegations of systemic discrimination, the Tribunal may infer a connection from statistical information because of an understood theory of the nature of the connection between a facially neutral policy or practice and a protected characteristic, which demonstrates that the protected characteristic is a factor in the adverse impact: VANDU at para. 94.

[1139] However, the Tribunal does not stop its analysis at statistical information alone. The Tribunal still has to conduct an analysis of the evidence presented to it for the particular Complainants and determine whether a *prima facie* case has been made out.

[1140] In *Thompson Rivers University v. Ministry of Advanced Education and Skills Training (No. 2)*, 2023 BCHRT 18, although the Tribunal was presented with statistics, it found that statistics alone were insufficient to establish the disproportionate impact alleged in the

complaint. The Tribunal reviewed the evidence of the complainants and did not find that the complainants had established a *prima facie* case based on the experiences presented. The Tribunal held at para 120: "I find that their evidence does not support any explanation that would allow me to find a connection between adverse impact and race."

[1141] The Tribunal in *Pivot Legal Society v. Downtown Vancouver Business Improvement Association and another (No. 6)*, 2012 BCHRT 23, similarly held that statistical evidence of disproportionate representation alone is not sufficient to establish a connection between adverse treatment and protected grounds.

[1142] The Respondent contends that the mere fact women are disproportionately victims of sexual assault is insufficient to establish that its processes had a disproportionate impact on women. To establish adverse impact discrimination, there must be evidence of a distinction in how the University processes impacted victims of sexual assault.

[1143] The experience of Mr. Hay, a male advocate, further undermines the complainants' position on nexus. Mr. Hay described significant emotional distress, academic delays, financial hardship, isolation, loss of trust in UBC, and burnout as a result of his advocacy efforts related to sexual misconduct complaints. These adverse impacts are similar to those described by female complainants, yet Mr. Hay is not a class member. This demonstrates that the adverse impacts experienced by advocates were not necessarily sex-based, but rather related to the engagement with an institutional processes, regardless of sex.

[1144] Consequently, the Tribunal needs to examine the evidence of each individual complainant, rather than making the leap that the protected characteristic of sex is enough to establish discrimination.

[1145] Further, the argument that advocacy or bystander status meets the legal threshold for discrimination is problematic. Several complainants, such as Ms. Kirchmeier Ms. Russell, Ms. Thornton, Ms. [REDACTED], and Ms. Greggo, did not experience or report sexual harassment or assault themselves, but rather acted as advocates or bystanders. An advocate or bystander's status in the University process is different from that of an affected party. The adverse impacts experienced by advocates or bystanders (who might also be male), while potentially distressing, do not automatically establish a personal nexus to sex-based discrimination for those individuals. The complainants' submissions sometimes conflate group advocacy or systemic dissatisfaction with individual adverse impact connected to sex (see paras. 61-62 of Part 2), which does not meet the legal threshold for nexus as clarified in *Makhija* (at 74-78) and other Tribunal jurisprudence.

[1146] UBC's processes were neutral and applied equally to all students. The standard for UBC's response to complaints is one of reasonableness, not perfection, and any procedural flaws or delays are not discriminatory unless linked to a protected characteristic. The evidence does not support an inference that UBC's actions or inactions were effects of stereotypical beliefs related to the complainants' sex or other protected characteristics (*Makhija* at [99-101]). Therefore, the complainants have not established a sufficient nexus between sex and any adverse impact, as required by the BC Human Rights Code.

6. Duty to Respond

[1147] Before the Tribunal considers the duty to respond, the Tribunal must complete the *Moore* analysis in determining a prima face case. The jurisprudence before the Tribunal in recent years has developed the duty to respond analysis which ignores the requirement for the application of the *Moore* analysis. Even though those cases cite *Moore*, the cases tend to skip over the question of the prima facie analysis and move directly to the question of a duty to respond. The Respondent submits that this is an error of law which erodes the principles established in *Moore*.

[1148] The duty to respond is an analysis of the reasonableness of the response, akin to the duty to accommodate to the point of undue hardship. The Tribunal, in its jurisprudence, has been careful to caution against the collapsing of the duty to accommodate analysis into the prima facie test. Accordingly, the Respondent submits that the Tribunal ought to engage in a similar analysis as that which is applied in an accommodation case (which requires a prima face case).

[1149] The Complainants bear the burden of proving they were adversely impacted in connection with UBC's services and that their protected characteristics were a factor in that impact: *Moore*, at para. 33. If they do that, then UBC can justify those impacts by showing it was acting in good faith for a purpose rationally connected to its function and that its response was reasonably necessary: *Hale*, at para. 13.

[1150] Under the *Code*, an employer is obligated to respond reasonably and appropriately to complaints of discrimination. This includes a duty to investigate: see *Jamal v. TransLink Security Management Ltd*, 2020 BCHRT 146 at para 106 [**Jamal**], *Denness v. PDK Café Inc*, 2020 BCHRT 184 at para. 200 [**Denness**] and *Beharrell v EVL Nursery Ltd*, 2018 BCHRT 62 at para. 33 [**Beharell**].

- [1151] The Code imposes the same duty upon service providers: see *Kirchmeier v. University of British Columbia*, 2021 BCHRT 149, at para. 101 [**Kirchmeier**]; *Ahmed v Vancouver College of Dental Hygiene Inc*, 2020 BCHRT 161 at para. 115 [**Ahmed**] and *Matias v Hudson's Bay Co*, 2022 BCHRT 17 [**Matias**].
- [1152] The analysis of whether a respondent met its duty to provide reasonable accommodation is not collapsed into the analysis of the complainant's case, and it is properly considered as a defense to discrimination: *University of British Columbia v Kelly*, 2016 BCCA 271 at paras. 22-28. The same principles should apply in the analysis of duty to respond. Therefore, the Tribunal should consider the parties' arguments about duty to respond distinctly from the above discrimination analysis.
- [1153] While the Complainant accepts that the underlying conduct between the students does not form part of the discrimination analysis that the Tribunal is applying, the Respondent submit that the Tribunal is still required to find discrimination by the University against the particular Complainant before considering whether the duty to respond has been met.
- [1154] The standard imposed on the service provider is reasonableness, not correctness or perfection. Whether a service provider has satisfied its duty to appropriately and reasonably respond to a complaint of harassment by an employee depends on the unique facts of each case: *Beharrell* at para. 21, cited with approval in *Denness* at para. 202.
- [1155] Delay in the context of investigations must also be looked at with reasonable lens in the context of all the surrounding circumstances. The Tribunal has found that investigations that can take six months for reasons relating to both the complainant and the respondent not to be unreasonable. (***Employee v. The University and another (No. 2)***, 2020 BCHRT 12)
- [1156] The Tribunal has applied the factors set out by the Human Rights Tribunal of Ontario [**HRTO**] in *Laskowska v. Marineland of Canada Inc.*, 2005 HRTO 30 [**Laskowska**], as a means of measuring the reasonableness of an employer's actions following its receipt of a complaint of discrimination. These factors are: i) whether the employer and persons charged with addressing discrimination have a proper understanding of discrimination, ii) whether the employer treated the allegations seriously and acted "sensitively", and iii) whether the complaint was resolved in a manner that ensured a healthy work environment [together, the **Laskowska Factors**]: *Laskowska*, at para. 59, cited in *Beharrell* at para. 21.

[1157] The Tribunal has also adopted the flexible approach advocated by the HRTO in *Laskowska* regarding the application of the Laskowska Factors. The HRTO articulated this approach in *Laskowska* as follows:

60 While the above three elements are of a general nature, their application must retain some flexibility to take into account the unique facts of each case. The standard is one of reasonableness, not correctness or perfection. There may have been several options - all reasonable - open to the employer. The employer need not satisfy each element in every case in order to be judged to have acted reasonably, although that would be the exception rather than the norm. One must look at each element individually and then in the aggregate before passing judgment on whether the employer acted reasonably.

[emphasis added]

Criterion #1 – Pre-Complaint: Awareness of Issues of Discrimination/Harassment

[1158] The Tribunal has opined that relevant factors under this criterion are “whether there was a suitable anti-discrimination/harassment policy and a proper complaint mechanism in place, and whether there was adequate training given to management and employees”: *Denness*, at para. 204.

[1159] The Respondent submits that there can be no dispute that it had a proper understanding of discrimination and proper complaint mechanisms for the resolution of complaints of discrimination during all relevant times of this complaint.

Anti-Discrimination/Harassment Policies

[1160] UBC has a number of policies in place relating to student conduct, as well as discrimination and harassment. Those policies are accessible through UBC’s website.

[1161] Policy 3 commits UBC to providing a discrimination and harassment free environment for students, faculty, and staff. Policy 3 sets out procedures available for those members of the UBC community with concerns about harassment or discrimination by the University, including an informal consultation procedure and a formal complaint procedure. Policy 3 additionally contains procedures for managing and resolving complaints.

[1162] UBC also publishes the Statement. Under the Statement, UBC envisions a climate in which it provides students, faculty and staff with the best possible conditions for learning, researching and working, including an environment that is dedicated to excellence, equity and mutual respect.

- [1163] UBC strives to realize this vision by establishing employment and educational practices that respect the dignity of individuals and make it possible for everyone to live, work, and study in a positive and supportive environment.
- [1164] The Statement, which is workplace focused, prohibits personal harassment, which is harassment not based on a ground protected by the *Code*.
- [1165] Specifically as to students and student-on-student conduct, UBC also maintains the Code of Conduct, under which it can discipline students for non-academic misconduct. UBC expects students to conduct themselves in a manner that contributes positively to an environment in which respect, civility, diversity, opportunity, and inclusiveness are valued.
- [1166] The purpose of the Code of Conduct is to define the general standard of conduct expected of students, provide examples of conduct that may be subject to disciplinary action, and set out the processes and procedures that UBC will follow when an allegation of non-academic misconduct is made.
- [1167] Among the explicitly prohibited conduct is any physically aggressive conduct, assault, and harassment, as well as unwelcome or persistent conduct that a student knows, or ought to reasonably know, would cause another person to feel demeaned, intimidated, or harassed.
- [1168] The process and procedures for the reporting and investigation of allegations of non-academic misconduct are clearly outlined in Section 6.1 of the Code of Conduct.
- [1169] The Respondent submits that there can be no dispute that it had a proper understanding of discrimination and proper complaint mechanisms for the resolution of complaints of discrimination prior to the Complainant's initiation of the NAM Process in November 2015.
- [1170] With respect to its employees, the Respondent submits that Ms. Kay, Mr. Morrison, and Mr. Hyson the individual responsible for receiving a complaint of non-academic misconduct, had a comprehensive understanding of discrimination and harassment.

Criterion #2 – Post-Complaint: Seriousness, Promptness, Sensitivity, Investigation, Action

- [1171] The Tribunal has opined that “[t]his criterion considers actions [a service provider] took after an internal complaint of sexual harassment has been made. Relevant factors are whether the employer treated the complaint seriously, dealt with the matter promptly and sensitively, and reasonably investigated and acted in response to the complaint”: *Denness*, at para. 211.

[1172] While it is evident that the Complainant does not believe that her complaint was taken seriously, dealt with promptly and sensitively, or reasonably responded to, the Respondent submits that the documentary and oral evidence indicates otherwise.

Seriousness and Promptness

[1173] In response to the concerns raised by Ms. Kirchmeier in January 2014, Mr. Ducharme encouraged Ms. Kirchmeier to meet with Ms. Kay. Ms. Kay met with Ms. Kirchmeier on February 6, 2014 and her notes indicate that Ms. Kirchmeier would “consider whether she wants to come forward herself” and that she will “encourage [the others] to come to me” but had not done so.

Exhibit 6 p. 155

[1174] Ms. Kay organized an equity workshop for the department which proceeded in March 2014. This was an appropriate response given Ms. Kirchmeier’s follow-up email of January 8, 2014 to Mr. Ducharme in which she stated “I fear that my recklessness will force an outcome beyond my intentions. I did not intend to set in motion any brute force formal action, and I don’t intend to get Dmitry disciplined or expelled or any of the other really serious consequences that can occur based on my word alone. So what I should have done a few hours ago was request a meeting to speak with you.”

Exhibit 6 p. 118

[1175] In response to the concerns of the women raised in the meeting of July 2014, Ms. Kay promptly organized the presentation of August 2014 which provided a comprehensive overview of the various resources for campus safety.

[1176] With respect to proceeding to any disciplinary action, the University acted in an appropriately prompt manner once it received the consent of first party complainants to proceed with the NAM process. It could not proceed prior to that.

[1177] We further note that the Tribunal in *Makhija* found that the Respondent’s response to the complaints was unfair to him and noted at paras. 84-85:

There is also evidence the Respondents acted hastily, based on vague information...

All this evidence could support a finding that the Respondents responded to the Complaints in a way that was unreasonable and unfair to Dr. Makhija.

- [1178] Accordingly, UBC's approach of not acting hastily on vague, incomplete, or third-party information was consistent with the requirement to act reasonably, balancing promptness with essential principles of fairness and due process. This approach aligns with the need for a reasonable institutional response to complaints while avoiding the unfairness that can arise from premature action and undermine any disciplinary or other actions taken against the alleged wrongdoer (respondent).
- [1179] Prompt action is important but cannot come at the expense of thoroughness and procedural safeguards. This balance was evident in processes that involved interim safety measures rather than immediate exclusion or discipline, reflecting an attempt to balance safety with procedural fairness. UBC's stance, therefore, reflects a considered approach that prioritizes both the safety of the community and the procedural rights of all individuals, ensuring that actions are taken based on sufficient and reliable information rather than hasty reactions to vague or unverified reports.
- [1180] In *The Employee, supra*, a six-month investigation was found not to be unreasonably delayed. The Tribunal in that case recognized that some delays were attributable to the complainant's own choices, such as the time taken to decide on a process, holidays, and the time to file a complaint. The university's actions, including privacy reviews and communications, were deemed reasonable and sensitive.
- [1181] Similarly, in the present case, any alleged delays in UBC's response to complaints were reasonable and often attributable to factors outside UBC's immediate control. These factors include complainant choices, such as the time taken to decide whether to proceed, requests for extensions, or disengagement from the process. Delays also arose from necessary procedural steps, such as privacy reviews, ensuring procedural fairness for all parties, and scheduling considerations.
- [1182] UBC's staff, including Ms. Kay and Mr. Hyson, have testified that they respected survivor autonomy and did not compel complainants into processes they were not ready for, while providing ongoing support and information. This approach aligns with the principle that an employer's response should be prompt, effectual, and proportionate to the seriousness of the incident, addressing the needs of the survivor and their right to a discrimination-free environment (*Hale*, at 218).
- [1183] The Tribunal in *The Employee* case also noted that the complainant's negative perception of the university's actions was influenced by her own experience and mistrust, despite the university making clear and consistent efforts to support her. This highlights that a

complainant's subjective experience of delay or perceived hostility does not necessarily negate the objective reasonableness of the institution's actions.

- [1184] The jurisprudence confirms that the determination of whether a delay is inordinate is not based on length alone, but on contextual factors, including the nature and complexity of the case, the purpose and nature of the proceedings, and whether the respondent contributed to the delay.

Sensitivity and Investigation

- [1185] UBC demonstrated sensitivity to complainants through its trauma-informed and survivor-centered approach, prioritizing survivor autonomy and minimizing retraumatization. Complainants were offered a range of options, including informal resolution, support, and formal investigation, tailored to their wishes. Staff, such as Ms. Kay and Mr. Hyson, consistently testified that they respected complainants' decisions regarding whether to proceed formally, never forced anyone into a process, and maintained open-door policies. Complainants were provided with information about available resources, such as SASC and counseling, and referrals were made as appropriate. Interim safety measures were implemented where necessary, including campus bans, office moves, and safety planning. For instance, in the case of Ms. Tremblay, Green College and Ms. Kay took her concerns seriously, met with her multiple times, provided advice, involved campus security, implemented undertakings and bans, and coordinated with other departments. Student C was given the option to remain anonymous, choose her meeting format, and participate via written statement, receiving information and support at every stage.

- [1186] UBC also conducted reasonable investigations within the constraints of jurisdiction and procedural fairness. UBC had multiple relevant policies in place, including Policy 3, Policy 14, and the Student Code of Conduct. Staff involved in complaint response, such as Ms. Kay, Mr. Hyson, and members of the NAM Committee, received training in trauma-informed practice, administrative law, natural justice, and specific supplemental training on sexual assault and harassment cases. The NAM process itself was designed to be investigatory and non-adversarial, based primarily on written statements, and allowed for accommodations such as anonymity, support persons, and alternative participation formats like written statements instead of in-person testimony. Staff like Mr. Hyson and Mr. Morrison provided detailed explanations of the process, answered questions, and made accommodations for complainants' comfort and safety, including room arrangements, support persons, extensions, and offers of counseling. Consistent with trauma-informed practice and procedural fairness, UBC did not act on vague, incomplete,

or third-party information without consent. Where complaints were rescinded or complainants chose not to proceed, UBC respected those decisions and did not force further action.

Criterion #3 – Resolution of the Complaint

[1187] This Tribunal has opined that “[r]elevant factors under this criterion are whether the employer provided a reasonable resolution in the circumstances, whether the employer provided a healthy and discrimination-free work environment if the complainant chose to return to work, and whether the employer communicated its findings and actions to the complainant”: *Denness*, at para. 218.

[1188] In this case UBC provided a reasonable resolution in the circumstances by having multiple relevant policies in place for its varied operations and relationships, including Policy 3 and Policy 14, and the NAM process serving as the established mechanism for formal complaints of student-on-student misconduct, including discriminatory behavior. UBC's approach was trauma-informed and survivor-centered, and offered a range of options such as informal resolution, support, and formal investigation tailored to the complainant's wishes. For instance, UBC clarified Student E's wishes, respected her assessment of risk, and ultimately implemented a campus ban on DM, which brought her relief. UBC explained options and provided resources to Caitlin Cunningham, facilitating her access to the NAM process, which ultimately led to DM's expulsion and satisfied her core concern.

Obligations on the University

[1189] The Complainants have argued in their final submissions that “had the various entities at the University applied a human rights analysis to the allegations of Mr. Mordvinov, as they were required to do to comply with the Code, they would have approached the complaints of Student B and Student E in a fundamentally different way.” This is a misstatement of the law and it is incorrect to state that the University has any obligation to apply a human rights analysis to the allegations.

[1190] The University was not under an obligation to apply a specific “human rights analysis” to the allegations against DM. Instead, UBC's legal obligation under the Human Rights Code was to respond to complaints of discrimination in a manner that was reasonable and appropriate in the circumstances (*Kirchmeier obo others v. University of British Columbia* (No. 4), 2021 BCHRT 149 at para. 101; *Hale* at para. 25). The Code does not mandate any particular process or system for addressing discrimination (*Kirchmeier obo others v.*

University of British Columbia (No. 4), at para. 101; *Hale v. University of British Columbia Okanagan (No. 5)*, at paras. 25, 53)

- [1191] The Tribunal has consistently held that its role is not to review the internal processes of institutions for fairness or adequacy unless there is a nexus to a prohibited ground of discrimination (*Maughan v. University of British Columbia and others*, 2006 BCHRT 33, at para. 122). Internal processes can be unfair or reach incorrect conclusions without being discriminatory (*Maughan v. University of British Columbia and others*, at para. 122). The Code does not require any specific process for addressing or remedying sexual harassment.
- [1192] UBC maintained various policies, including Policy 3, Policy 14 and the Student Code of Conduct, which provided mechanisms for addressing complaints. Key staff members, such as Ms. Kay and Mr. Hyson, received training in relevant policies and trauma-informed practice. The NAM Committee members also received annual training on administrative law, natural justice, fairness, and specific supplemental training on sexual assault cases.
- [1193] UBC submits that a service provider's response is not rendered unreasonable simply because an individual does not possess a comprehensive understanding of broader human rights concepts. The assessment of whether past processes were discriminatory must be based on the standards and knowledge prevalent at the time they were in effect, not retroactively judged by later standards or policies, such as Policy 131, which was adopted after the relevant period.
- [1194] UBC's position is that it treated complaints seriously, acted promptly and sensitively, reasonably investigated allegations, and took action where warranted. Furthermore, UBC respected survivor autonomy, including decisions not to proceed with formal complaints, which is consistent with trauma-informed practice. The duty to respond is measured by reasonableness in all circumstances, not by perfection or by reference to evolving best practices.
- [1195] Further, at paragraph 197 of Part 2 of the Complainant's final submissions, the Complainants argue that the University should have gathered full information from Students E and B and then presented those allegations to DM for his response and then make a decision about the reliability of those allegations and what needed to be done if DM was found to be a risk. This proposed approach emphasizes a structured investigation, disclosure to the respondent, and a determination of facts and risk and resulting discipline, akin to the NAM process.

- [1196] However, elsewhere in their submissions, the complainants are highly critical of the NAM, which they characterize as adversarial, opaque, and ill-suited for sexual misconduct cases. They contend that the NAM process was focused on discipline rather than safety and restoration, and that it failed to provide a trauma-informed, equal-party, fact-finding process. They specifically state at paragraph 396 that a "simpler process without a hearing component, and fact finding and recommendations from the person doing the investigating, would have been a much more suitable process for complaints involving sexual misconduct". The Complainant is arguing for contradictory approaches which highlights the necessity for a respondent to consider individual needs and circumstances in its response rather than a one-size-fits-all solution. Throughout the hearing, the evidence presented by various witnesses further highlighted this need.
- [1197] Further, in their submissions on systemic remedies, the Complainants advocate for an independent, non-adjudicative fact-finding process (part 5, para 53). They say this alternative process would proceed by way of interviews, written submissions, and documents, rather than an adjudicative process. They propose that this process should ensure equal party status, be staffed by trauma-informed investigators competent in human rights law, and focus on determining what happened to ensure a discrimination-free and safe environment, rather than a disciplinary or criminal model.
- [1198] The process described at para 197 in Part 2 of the Complainant's submissions, namely, gathering allegations, presenting them to the respondent for a response, and making a decision on reliability and risk, closely mirrors the investigative and adjudicative elements inherent in processes like the NAM, which the Complainants otherwise criticize as inappropriate. This inconsistency highlights the practical reality that there is no single, universally satisfactory method for addressing such sensitive allegations. The Complainants' shifting positions, at times advocating for a process that includes elements they elsewhere reject, demonstrate the significant challenges institutions face in balancing procedural fairness for all parties with the need for a trauma-informed and safety-focused response.
- [1199] Further, the Respondent notes that there is inherent difficulty in universities responding to complaints of sexual harassment or assault. Survivors of sexual harassment and assault present with diverse needs and preferences regarding process, outcome, and support, making a "one size fits all" approach impractical and potentially harmful. Some survivors may seek formal investigation and disciplinary action, while others prioritize confidentiality, informal resolution, or simply wish to be heard without initiating a formal process. Ms. Kay's testimony highlighted that trauma-informed practice requires respecting survivor

autonomy and avoiding forcing individuals into processes they do not desire.

[1200] UBC's approach was designed to offer a range of options, including informal resolution, support, and formal investigation, tailored to the survivor's wishes.

[1201] Further, the University has limited jurisdiction. The University does not have any inherent powers or authority such as a superior court, administrative tribunals or other law enforcement. Universities' jurisdiction, as well as their functions and powers, are found in the University Act (see in particular, section 47). Nor is the university akin to a court or taking on that role of adjudicating disputes between students. The relationship between a university and its students is contractual in nature.

[1202] Contrary to the Complainants' submissions, universities cannot simply assert jurisdiction over the lives of individuals merely as they happen to be UBC students. If UBC were to do so, such action would likely be *ultra vires*.

[1203] The Complainants suggest in their submissions that University counsel, when advising the Student Conduct Manager as to the scope of UBC's jurisdiction in applying the Student Code, is seeking to limit UBC's liability in allegations of sexual assault. The Complainants explicitly state their concern that "University Counsel exist to protect the University's legal interests" and that "A narrow view by University Counsel of the University's jurisdiction over events off campus protects the University at the expense of the interests of women coming forward with complaints about sexual misconduct". They argue that asserting no nexus for certain allegations and refusing to negotiate "favoured the University's own interests in relation to sexual misconduct, for which it could be liable if a nexus was shown".

[1204] This is not the case. In fact, any advice given regarding jurisdiction is to ensure that actions taken by UBC are legally defensible and fall within its established legal authority. Clearly UBC will expel or take other disciplinary action and has done so in many instances of student misconduct that are within its jurisdiction.

[1205] UBC's jurisdiction over student conduct is explicitly limited by its statutory authority, primarily the *University Act*, and its own policies, such as the Student Code of Conduct. As indicated by the evidence of the Respondent and the wording of the Student Code of Conduct, the Student Code of Conduct generally applies to currently registered students for conduct occurring on or near campus, or at university-sponsored activities with direct campus connections. Incidents that occur off-campus without a direct university connection, or involve individuals who are no longer current students, typically fall outside

the scope of UBC's disciplinary jurisdiction. For example, Mr. Hyson did not initiate the NAM process for certain reports because the incidents occurred off-campus, at non-UBC events, in students' private lives, or involved former students, concluding that UBC lacked jurisdiction.

[1206] The rationale behind the University's position on jurisdiction is rooted in the necessity for procedural fairness, due process, and adherence to statutory and policy limits. Decisions not to proceed with certain complaints are based on clear jurisdictional limits and the need for legal defensibility and compliance with university policy and statutory authority, rather than a desire to limit liability. Acting on vague, incomplete, or third-party information without a formal complaint or clear allegations would expose UBC to significant legal risks and the risk of acting ultra vires. The courts have affirmed that matters that are fundamentally academic in nature, including disciplinary processes, do not fall within the jurisdiction of the court except through an application for judicial review, underscoring the importance of universities acting within their prescribed authority (*Homma v University of British Columbia (School of Music)*, 2023 BCSC 1926, at para 51).

[1207] The Respondent consistently undertook action, including expulsion, when student misconduct clearly falls within its jurisdiction (for example, DM and M12 were expelled after a NAM hearing). Other disciplinary actions, such as eviction from residence, campus bans, and restrictions, have also been imposed following processes within UBC's jurisdiction. These examples demonstrate that UBC does not hesitate to impose significant disciplinary measures or other actions when misconduct is within its legal and policy boundaries.

7. University's obligation to provide a safe campus

[1208] While the complainants emphasize overall campus safety for women, arguing that UBC's processes failed to provide a safe and discrimination-free environment, it is crucial to recognize that "safety for all" on campus encompasses a broader scope. This includes not only the physical safety of complainants but also the legal and procedural fairness rights of respondents/accused students. The British Columbia Human Rights Code and administrative law principles mandate that institutions balance the rights and safety of all parties, including the constitutional rights of the accused in sexual misconduct cases.

[1209] UBC's policies and processes, such as the NAM process, are designed to balance the safety and well-being of all community members, including both complainants and respondents. UBC's duty under the Human Rights Code is to provide a reasonable, non-

discriminatory response, not to guarantee a perfect outcome. University Staff testimony confirms adherence to trauma-informed practice, which respects survivor autonomy while also upholding procedural fairness for respondents, including the right to know allegations, respond, and participate in a fair process.

[1210] The Tribunal and courts have consistently affirmed the importance of procedural fairness in disciplinary actions, particularly when serious consequences like expulsion or impact on livelihood are at stake (*Zaki v. University of Manitoba*, 2021 MBQB 178 at para. 60; *Watter v. McMaster University*, 2025 ONSC 4930 at para. 51). This includes the presumption of innocence, the right to due process, and protection from arbitrary or unfair treatment. For instance, the Supreme Court of Canada has established that the content of procedural fairness depends on the context, requiring individuals to have a full and fair opportunity to present their case (*Telfer v. The University of Western Ontario*, 2012 ONSC 1287, at para. 23).

[1211] UBC's approach requires a formal complaint or clear, reliable information before initiating disciplinary or safety measures. This is partly to protect the procedural and constitutional rights of the accused. Acting hastily on vague or third-party information can be unfair to respondents and undermine procedural fairness, a principle recognized by both UBC and the Tribunal. Adequate notice of allegations and the opportunity to respond are fundamental components of procedural fairness (*Watter v. McMaster University*, at para. 61).

[1212] The Tribunal has acknowledged that a university's response to discrimination is measured against the goal of a discrimination-free school environment, and that there may be more than one reasonable way to respond, with context being critical and perfection not being the standard (*Hale No. 5*, at para. 25, 27). While the Tribunal in *Hale* found UBCO's NAM process unreasonable due to its failure to address the complainant's interests and exacerbation of her disability, this does not negate the overarching requirement for procedural fairness for all parties. The balancing of interests is a critical consideration in such processes.

[1213] The complainants consistently allege that someone at the university should have simply approached DM based on the general, third-party allegations brought by Ms. Kirchmeier and that somehow this would have put a stop to his behavior. This is inconsistent with fundamental principles of procedural fairness and due process. A core component of procedural fairness is the right of the accused to know the specific allegations against them and to have an opportunity to respond (*Zaki v. University of Manitoba*, at 68). UBC

staff consistently testified that they could not act on vague, incomplete, or third-party information without the consent of the survivors, as this would violate due process. Ms. Kay emphasized that accusations require a formal complaint, an opportunity for the accused to respond to an impartial arbiter, and findings of fact and law.

[1214] Acting on unsubstantiated or third-party reports without a formal complaint or clear, direct allegations would expose the university to significant legal risks, including claims of defamation.

[1215] The factual context of Ms. Kirchmeier's January 2014 email further illustrates the unsuitability of acting on her allegations. Her email contained numerous inaccuracies, including misidentifying individuals, and she later rescinded her allegations, explicitly stating she did not want a process initiated at that time. She also admitted in cross-examination that she did not seek consent from other survivors before coming forward with information about them. UBC staff informed her that as a third party, she could not bring forward complaints about others without their participation or consent.

[1216] Therefore, the suggestion that UBC should have confronted DM based on Ms. Kirchmeier's unsubstantiated, third-party, and rescinded allegations is not only speculative regarding its potential to stop his behavior but also fundamentally disregards the legal and ethical obligations of procedural fairness, the rights of the accused, and trauma-informed practices.

[1217] Further, the Respondent submits that unlike *Hale*, the Complainants in this case have failed to demonstrate that they continued to interact with DM in the learning environments following their initial disclosures.

[1218] The Respondent submits that it was critical to the decision in *Hale* that, in terms of considering the discriminatory-free learning environment, a significant concern was that Ms. Hale continued to have interactions with EP, including having to sit in class with him that had a substantial impact on her ability to continue her studies. The Tribunal in *Hale* noted as follows at para. 47:

She says that “from every moment after the incident, I felt in danger on campus”. She continued to attend classes with EP, sitting behind him to preserve a sense of safety. She describes an “awkward routine” of “plastic friendliness in class” and “complete avoidance outside”.

[1219] The Complainants in this case adduced no evidence of any Complainant interacting with

DM on campus after Student E came forward (the first person to come forward with a personal disclosure about an interaction with DM).

[1220] In fact, many of the Complainants in the Mordvinov Group had no interactions with DM at any relevant time. Even further, complainants like Ms. Thornton and Ms. Russell never testified that they had any direct interactions with DM whatsoever.

Alleged Deficiencies in NAM process

[1221] The Respondent disputes that the evidence establishes that the NAM Process was deficient in the ways alleged by the Complainants in paragraphs 374-395 of Part 2 of their submission and that any such deficiencies in isolation or in conjunction could amount to a breach of the *Code*.

ii. The NAM Process is not trauma informed

[1222] The Respondent submits that the evidence does not establish that the NAM process was not trauma-informed. The NAM process incorporated numerous trauma-informed accommodations and practices, particularly through the actions and communications of Mr. Hyson and Mr. Morrison. Both Mr. Hyson and Mr. Morrison received trauma-informed practice training, which included understanding the impact of trauma on memory, respecting survivor autonomy, and minimizing repeated retelling of traumatic events.

[1223] Mr. Hyson consistently demonstrated a trauma-informed approach by centering survivor preferences and offering flexible options. He would meet with complainants to discuss their options and ascertain their wishes, never forcing them into formal processes, and engaging with and involving their preferred support persons (e.g. SASC). For instance, he offered to meet Student C at SASC or on the phone, allowing her to remain anonymous until she chose to make a report, showcasing flexibility and sensitivity to privacy. Mr. Hyson also made efforts to minimize retraumatization by ensuring complainants did not have to repeatedly tell their stories, relying on prior notes when possible. He provided detailed explanations of the NAM process, reporting options, and what to expect at hearings, ensuring transparency. Further, he offered support services such as UBC Counselling Services and SASC to complainants. Mr. Hyson also respected complainants' wishes regarding participation, including when they chose not to proceed with formal complaints or preferred no-contact directives over full hearings. He implemented interim measures, such as campus bans under Policy 14, when safety concerns were present.

[1224] Mr. Morrison also implemented significant trauma-informed accommodations during the hearing process. He ensured that panel members received specific training on handling sexual assault allegations and trauma-informed practices before relevant hearings. To enhance complainant comfort and safety, Mr. Morrison arranged the physical hearing room so that complainants would not have to face respondents directly, and respondents appeared via video link. He provided water, tissues, and private space for breaks, and reviewed safety considerations with Campus Security. Complainants were permitted to have a support person of their choice present at hearings. Mr. Morrison offered UBC counselling services before and after hearings. He also accommodated requests for extensions for submissions due to emotional distress or timing issues. Questions from respondents were relayed through the Chair, preventing direct cross-examination of complainants by respondents.

[1225] Beyond the individual actions of Mr. Hyson and Mr. Morrison, the NAM process included general trauma-informed elements. Complainants were given options for resolution by agreement, which could avoid adversarial hearings if all parties consented, potentially reducing trauma for those who preferred not to participate extensively. They were also given opportunities to review and correct their statements before they were shared or used in proceedings. These documented practices collectively demonstrate that the NAM process incorporated trauma-informed principles in both policy and practice, directly countering the assertion that it was not trauma-informed.

ii. Inclusion of students on the NAM Committee

[1226] The complainants expressed concern regarding the inclusion of students on the NAM Committee, questioning whether students possessed the necessary life experience and training to adjudicate sensitive issues like sexual misconduct without resorting to common myths and stereotypes. Ms. Cunningham specifically voiced concerns about propriety and privacy, fearing that students who might become her future students would be hearing and judging her complaint, and noted the presence of a History undergraduate student on the Committee.

[1227] However, the complainants' assumptions about the academic status of the student members were inaccurate. During cross-examination, Ms. Cunningham was shown a document identifying the NAM Committee members and stated she was unaware that one member was a law student and another was a medical student. Similarly, Ms. Kirchmeier, who testified that having undergraduates on the committee seemed inappropriate, later admitted she had no actual knowledge of whether these individuals were undergraduate

students and was unaware of the law and medical student members.

[1228] The NAM Committee, including its student members, received comprehensive training. Mr. Morrison testified that he and committee members attended annual administrative law training sessions covering principles of natural justice, duty of fairness, and how to conduct a fair hearing. Further, prior to the Mordvinov case, Mr. Morrison and the Committee members received supplemental training specifically focused on cases of sexual assault and sexual harassment.

[1229] While Ms. Cunningham expressed concern about the students' relationship to her and their educational process, she clarified that her concern was not about the individual capabilities of the students. She also agreed that she had no complaints about how the committee members spoke to her during the hearing. The student members were mature, advanced students (a law student and a medical student), and not more junior than the complainants themselves, who were graduate students or had completed undergraduate studies.

[1230] Further, the Respondent submits that the Complainants were grasping at straws with their criticisms of the NAM committee members. One complainant commented that it felt unprofessional that the NAM committee students were wearing hoodies during the hearing. Meanwhile, the Complainants' own expert witness, Dalya Israel, was wearing a hoodie while she testified from her couch during this hearing. The Respondent recognizes that the witnesses' clothing is immaterial to their ability to contribute to the process and only raise this to point out the hypocrisy in the Complainant's criticisms of the NAM committee members.

iii. No dedicated process for sexual assaults

[1231] In further response to the sixth alleged deficiency, the Respondent submits that the *Code* does not require the Respondent or any service provider or employer to have in place any particular processes for ensuring that sexual harassment does not occur or for addressing or remedying harassment if it does occur. The Tribunal has previously confirmed that the *Code* does not require any particular processes, including with respect to allegations and investigations of sexual harassment. In *Rojas v. EaglePicher Energy Products Corp.*, 2006 BCHRT 450, the Tribunal dismissed a complaint alleging that the complainant was treated unfairly in the investigation of sexual harassment allegations against him.

[1232] The Tribunal held (at paras. 50-51):

In accordance with the Court's direction, I now consider whether the procedure followed in the investigation and the treatment of Mr. Rojas during and after the investigation raise the inference that Mr. Rojas' gender was a factor in that treatment. ...

I begin by observing that these aspects of Mr. Rojas' complaint can only succeed if his sex or other protected characteristic was a factor in how he was treated. The Code only prohibits discrimination on defined grounds. It does not create a comprehensive code of fair treatment in the workplace. An employer or a union could engage in unfair procedures in the investigation of a complaint of sexual harassment or reach wrong or unreasonable conclusions, without falling afoul of the Code. While unfair procedures might ground some other sort of legal action, including a duty of fair representation complaint against the Union under the Labour Relations Code or a grievance under the collective agreement, they would not be the basis for a complaint under the Code unless there is some connection or nexus to a prohibited ground of discrimination: *Ingram v. Workers' Compensation Board and others*, 2003 BCHRT 57, at para. 20.

[emphasis added]

[1233] The Tribunal has also previously declined to inquire into the Respondent's internal processes and procedures. In *Maughan v. University of British Columbia*, 2006 BCHRT 33, the Tribunal held (at para. 122):

... Ms. Maughan takes issue with the processes that they followed and certain steps they took. It is not the role of the Tribunal, absent discrimination, to engage in a review of the internal processes of UBC or their committees. In fact those processes, from the perspective of a party, can be unfair and reach wrong conclusions without being discriminatory. Ms. Maughan clearly believes they were. Further, there is nothing to suggest that Ms. Maughan was denied a service contrary to s. 8 of the Code by Ms. Egan or UBC in this regard. Ms. Maughan may not have liked the results of the various appeal processes and the actions taken by certain faculty, including written documents, but that does not constitute an act of discrimination based on her religion contrary to the Code. I do not see that any of these allegations form the basis of an act of discrimination contrary to ss. 7 or 8 of the Code and they would have been dismissed under s. 27(1)(b) of the Code.

[1234] The Respondent submits that Complainant has not established that in the circumstances of this case there was a lack of clarity about the Respondent's options in relation to addressing an allegation of sexual assault or that there was no dedicated process for responding to sexual assault complaints. The Complainant grounds their arguments in her position that Policy 3 was an option for addressing allegations of sexual assault during the Time Period, which is not true. As has been stated numerous times throughout this submission, the only process with formal discipline and/or consequences available during

the Time Period for addressing sexual assault allegations made by a student against another student was the NAM Process.

[1235] The DM case highlights how proceeding under Policy 3 would have been ineffective. Policy 3 is a tool for the administrative head of unit. In the DM instance, there would have been two administrative heads of unit; namely Green College administration and the history department administration. Any proceedings pursued by one administrative head of unit would not effectively impose restrictions to the student as they engage in the other administrative unit. For example, a student could be removed from Green College but remain in their faculty. However, under the *University Act*, only the President could remove an individual's ability to be a student. Consequently, the only process relating to DM that would have resulted in an outcome that would meet the goals and demands of the women who came forward was through the NAM process.

[1236] The Complainants' submissions maintain that the university should have ensured a discrimination free environment. While the Respondent disputes there ever was such a risk, proceeding under Policy 3 could never have accomplished that goal. There was no evidence led that even if Dr. Loo proceeded under Policy 3, she would have had the ability to restrict DM's access to the history department, or to the campus generally.

[1237] Further, the Complainants did not introduce any evidence of what would have ensured a discriminatory free environment in the summer of 2014, during which most of the DM parties were either not on campus or had graduated (with the exception of Student E). The Respondent submits that the only action which would have satisfied this demand would be the expulsion of DM from the University. This requires a formal process given the serious consequences to the student in question and under the *University Act* the only process was through the President. Whether he committed the acts or not, the University is obliged to provide, and DM is entitled to procedural fairness.

[1238] The evidence from the Respondent's witnesses was clear in that the purpose of the NAM Committee is to hear and adjudicate complaints of non-academic misconduct on behalf of the President allegations of non-academic misconduct and report its findings on the balance of probabilities to the President, with the President determining what discipline, if any, to be imposed as a result of that misconduct. The Code of Conduct sets out the expectations or various types of behaviour that might fall within the jurisdiction of the NAM Committees.

[1239] The NAM Process was not a forum for protecting the rights of victims of sexual assault.

That forum is through the civil court or this Tribunal, in which survivors act as plaintiffs or complainants in seeking damages for the alleged harms done to them by specified defendants, who may or may not have been convicted in a criminal court. The NAM Committee investigated allegations of non-academic misconduct in an effort to determine if the respondent students breached the Code of Conduct. If there were parties in the NAM Process, they would be the University and the respondent student. The role of the Complainant in the process was to provide the NAM Committee with information that would assist it in making a determination for the President's consideration as to whether non-academic misconduct had been established on the balance of probabilities. The nature of the relationship between the University and students necessitates this type of process. The University is not required to facilitate an adversarial approach where in essence it turns into a court or tribunal for these types of allegations.

[1240] The Respondent submits that the Complainant is asserting that the only appropriate response to allegations of sexual assault is one that mirrors a process provided by the Tribunal of the courts. The Respondent submits that simply because a process does not provide an individual with everything they want does not make the process unreasonable or discriminatory. It is an objective and not a subjective standard.

iv. Deficiencies in NAM Committee Process

[1241] The Respondent submits that there is absolutely no evidence before this Tribunal that any of the decisions it made during the NAM Process in respect of the Complainants were not *bona fide*. There is also absolutely no evidence that the Respondent had an interest in the NAM Process other than promoting, advancing, and fostering the safety of the UBC Community.

[1242] The implementation of new policies in 2017 does not retroactively render the prior NAM process discriminatory, as standards and best practices evolve over time. As stated previously, the Human Rights Code does not mandate any particular process for addressing harassment or sexual assault (*Hale v. University of British Columbia Okanagan* (No. 5), at para. 25).

B. The Mordvinov Complainants

1. Glynnis Kirchmeier

[1243] At all relevant times of her complaint, Ms. Kirchmeier was not a student and not in a service relationship with the Respondent. She has not established the base requirement for a complaint for herself in that she has not established the service she was receiving from

the Respondent.

[1244] At the time she came forward and at any time after that, she did not fit the definition of the Mordvinov Class. She was not a student studying at UBC at that point and never returned to being a student at any relevant time. It is submitted that her complaint must be dismissed as she is not a class member.

[1245] The Respondent submits that the credibility and reliability of Ms. Kirchmeier's testimony must be carefully assessed by the Tribunal. Where the Complainant's evidence conflicts with the evidence given by the Respondent's witnesses, the Respondent says the Tribunal should accept the Respondent's witnesses' evidence over the Complainant's evidence.

[1246] Ms. Kirchmeier is highly invested in the outcome of this Complaint. She has devoted countless hours to advancing her interest in the outcome of the Complaint. Ms. Kirchmeier has a singular objective in this matter and that is to have the Tribunal conclude that the Respondent discriminated against the Complainants contrary to the *Code*. Ms. Kirchmeier's motivation means that she has reason to exaggerate, embellish and tailor her evidence to put forward the strongest case possible.

[1247] It is not possible for Ms. Kirchmeier's to be a dispassionate witness. She is emotionally involved and committed to her cause. She believes in the merits of her Complaint. She is not an objective witness.

[1248] Throughout Ms. Kirchmeier's testimony, it became evident that she had no faith or confidence in the *bona fides*, efforts, or competency of the Respondent, its representatives and employees or other persons and organizations involved in issues related to the Complaint. The evidence she disclosed was highly critical of the competency of Ms. Kay, Mr. Hyson and Mr. Morrison. She evidenced a serious distrust of the Respondent's Representatives without any foundation for it.

[1249] Ms. Kirchmeier's testimony was coloured by mistrust and suspicion of the Respondent's conduct as it related to the Complaint allegations and its conduct in these proceedings.

[1250] Ms. Kirchmeier's recollection of her interactions with the Respondent and its witnesses regarding the Complaint allegations consistently cast these individuals as making attempts to dismiss or silence her, despite evidence to the contrary. The Respondent says that the Complainant has provided no objective evidence to corroborate many of these disputed facts, whereas the Respondent has adduced objective evidence including email and other correspondence that indicates she was treated with dignity and respect.

[1251] Ms. Kirchmeier was readily willing to make several unfounded statements that DM received funding to be in Toronto for the conference in May 2014. This was proven to be untrue by the evidence of Vi Addams. In their submissions, the Complainants have backtracked from this by stating “Whether or not he was specifically funded for his travel to this conference and on to Russia through Toronto is not determinative as his general funding would be available for his travel expenses to complete the requirements of his program.” The Complainants’ recasting of this allegation in their submissions highlights another example where Ms. Kirchmeier was willing to make a statement with no direct knowledge and, until challenged, unwilling to move off the statement or accept it could be wrong.

[1252] The Complainants’ final submissions make countless references to the argument that the University should have acted in January 2014 when Ms. Kirchmeier sent an email to Michel Ducharme regarding DM. However, the Complainants have chosen to ignore the fact that the evidence clearly demonstrates that the email contained significant inaccuracies and unsubstantiated allegations, undermining its reliability as a basis for any action by the University. For instance, Ms. Kirchmeier initially misidentified the student involved in a slapping incident, believing it was Ms. Russell when it was Caitlin Cunningham, and failed to correct this error to Mr. Ducharme even after learning of it by summer 2014. Further, the Complainants consistently ignore the fact that Ms. Kirchmeier sent a follow-up email on January 8, 2014, to rescind her allegations, stating she did not want a process initiated at that time. The Complainants’ argument that the University was obliged to act upon an email that was later withdrawn is not tenable and again conflicts with principles of a trauma-informed approach that prioritizes survivor-centered approaches to third party complaints.

[1253] In any event, it was reasonable to respond at that point with an education-based approach given that Ms. Kirchmeier had no authority to come forward on anyone’s behalf nor did she have her own complaint that could proceed either informally or formally.

[1254] Ms. Kay’s notes from September 16, 2014, are revealing:

[Per my notes: Glynnis indicated that her own experience with Dmitry was over a year earlier; she had not come forward before. She described that he stopped offensive behaviour when she told him to. She was coming forward now, because she witnessed him behaving badly, including touching, with a colleague. **She did not wish to pursue a complaint, her colleague(s) had not, but she would encourage them to come to me. No one did. No one has, as yet.** I referred the matter to the Educators, who provided a workshop to the group on March 19th.]

The workshop was mandatory and all Grad students, including Dmitry, were compelled to attend. The female students were unhappy with the presentation and felt it was too superficial and didn't address their concerns.

In June, Security becomes aware that there has been an allegation that Dmitry, who is on leave until September of 2015, and in Toronto at a conference, has been accused of sexual misconduct by two women, one a former Law student and one a History student. One of them is also a resident of Green College, as is Dmitry. Neither were willing to go to the Police in Toronto. The allegations include drink spiking. One of them had a rape kit performed.

Throughout the summer, there is talk and rumour among the History students regarding Dmitry. There is also evidently growing fear and anger.

In mid-July, Tina took over the Head position from Anne Gorsuch. She learns from a colleague, Tamara Myers, that there are female History grad students who are concerned about sexual harassment from Dmitry. Tina connects with me, and advised Tamara to tell the students to report the harassment to me. They do not come forward to me...

On July 31ST, six female History grad students meet with me; this includes a former student and a Faculty member, Laura Ishigura. They are upset and feel UBC is not safe, they are not safe, Dmitry is a known sexual predator, and no one is doing anything about it. There are rumours about him, and the expression "Gossip is your friend" is related. **We discuss resources available, including the ability of anyone with concerns to come to EIO and open a file, discussion of what that process entails;** also discussion of due process and the need to avoid exposure to claims of defamation from Dmitry. This is not welcome. Two of the attendees indicate they have not had experiences with Dmitry but are there for support; one {Caitlin} shared an incident in which Dmitry allegedly pulled her hair, ignored her requests to stop the behaviour, and put her in a headlock, at which point she vehemently told him to stop, and he commented that she was a "prude." Confirmed that this behaviour would be sufficient to open a file. **[Caitlin has not come forward to date.]** Discussion of a further meeting, which I would arrange and invite several representatives from Campus resources related to safety and specifically sexual safety...

At this point, I am willing to speak with Dmitry upon his return, because of the volume of issues that have come up... This would be strictly in the nature of advice that no, there is no complaint, but there have been several concerns expressed and I am simply ensuring he is aware of the policy and legal requirements, so that he can conduct himself in a way that will avoid his being on the receiving end of a complaint related to his future behaviour.

Exhibit 6 p. 299-301

[1255] Ms. Kay's notes confirm that the University had no basis to initiate formal action at the relevant time due to the absence of a formal complaint from a current student or direct survivor.

[1256] We further note Ms. Kirchmeier is also being sued for defamation in another proceeding (*Galloway v. A.B.*, 2021 BCSC 2344) which she admitted to on cross-examination. The Respondent submits that she was not warned about the concern for defamation by Ms. Kay in an effort to silence her, but rather she was warned about this because it was a real concern which in fact became a reality. When asked about whether she was concerned about there being a judgment against her, Ms. Kirchmeier was flippant and replied that she was “judgment proof” because she lived in the United States.

[1257] Further, Ms. Kirchmeier’s evidence is inconsistent with the other witnesses for the complainant, including Ms. Cunningham, particularly with respect to the understanding between a formal and informal complaint after the meeting with Ms. Kay.

[1258] Ms. Kirchmeier’s testimony about her coming forward in January of 2014 cannot be used for the basis of a delay argument for the reasons outlined above.

[1259] Further, the evidence of Ms. Cunningham and Ms. Russel regarding the meeting June of 2014 with Dr. Loo and Ms. Kay indicated that they understood that the Respondent required a formal complaint to forward with a formal process. Ms. Cunningham was the only person with an individual complaint at that meeting and did not wish to proceed with a formal process at that time. In the interim, DM was not on campus, not in the country, and no evidence of his interactions with other students was presented.

[1260] As previously noted, Ms. Kirchmeier agreed in her testimony that she did not write any follow up emails to anyone at UBC after the July 2014 meeting until she was contacted by Ms. Cunningham in December 2014 advising that she was filing a complaint. There was no delay attributable to the University during these months.

[1261] Ms. Kay, Ms. Kirchmeier and Ms. Cunningham communicated on or around December 23, 2014, about moving forward with Ms. Cunningham’s complaint. There was a meeting between Ms. Cunningham and Ms. Kay and Mr. Hyson which Ms. Kirchmeier did not attend and she testified that she had sent an email indicating that Ms. Cunningham’s presence would be sufficient. Ms. Kirchmeier’s lack of participation at this point again is not attributable to the University.

[1262] In the spring of 2015, despite Ms. Kirchmeier not being a student on campus, nor being the basis for the Notice of Restriction, she nevertheless took issue that the University had not informed prior to issuing it to DM. In fact, during this time period Ms. Kirchmeier was not even living in Canada and had no reason to be on campus.

- [1263] Further, despite having no basis for a complaint of her own, in May 2015 Mr. Hyson nevertheless offered her the opportunity to provide him with the basis for her participation in the complaint process proceeding to the NAM hearing. During these communications she also admitted to Mr. Hyson that she did not believe that her information constituted a complaint in and of itself (and she adopted this in cross examination).
- [1264] Mr. Hyson was responsive to her communications in the Spring and Summer of 2015. Ultimately, she was not permitted to be a witness in the NAM process.
- [1265] The Respondent submits it was correct not to include Ms. Kirchmeier in the NAM process primarily because she was not a direct survivor or complainant and was not personally harassed or assaulted by DM. Her complaint was based on information about other individuals, such as Student A and Student D, without confirming the accuracy of those allegations with them or obtaining their consent to bring these allegations forward. Further, some of her allegations relied on "reputation" and "rumour" rather than direct evidence or firsthand knowledge.
- [1266] The University's decision aligned with a trauma-informed and survivor-centered approach, which prioritizes the wishes and agency of direct survivors. For instance, Student A, whom Ms. Kirchmeier was concerned about, explicitly stated she was not interested in speaking with Ms. Kirchmeier. The rationale for excluding Ms. Kirchmeier's statement from the Statement of Allegations included her lack of being a direct witness to the alleged misconduct, her non-victim status, and the hearsay nature of her information. It is also troubling that she did not inform the University of Student A not being interested in speaking with her.
- [1267] Due process considerations, as discussed by the Tribunal and noted in the cases above, also supported her exclusion, given her lack of direct knowledge, the hearsay nature of her information, and her reliance on rumour and reputation. The NAM committee was considering a different allegation of misconduct, further justifying the exclusion of her statement.
- [1268] Further, Ms. Kirchmeier was nevertheless given opportunity to present the information that she wanted to go before the NAM committee to Mr. Hyson and to Mr. Morrison, both of whom determined that it would not support the complaints of the other complainants. Ms. Kirchmeier was not aware of the specifics of the other complainants the Respondent was preparing the case for presentation to the NAM committee. There was nothing discriminatory about this decision. Ms. Kirchmeier's gender was not a factor in this

decision. Rather, it was her role as a third-party observer/researcher/advocate that deemed her unsuitable to be an active participant in the NAM process. She therefore cannot establish a *prima facie* case regarding her participation in the NAM process.

[1269] Additionally, Ms. Kirchmeier did not advise relevant officials that she had rescinded her January 2014 allegations, and her communications were intended to create the impression that no action had been taken by UBC since her original complaint. While Ms. Kirchmeier's advocacy included providing research, this was acknowledged as advocacy rather than direct evidence. Ultimately, her desired outcome for DM to be expelled occurred regardless of her participation in the process

[1270] Ms. Kirchmeier's experience with the Respondent in 2014 cannot be used to establish institutional delay in the response. The University required a Complainant to come forward who wanted to participate in a formal complaint process in order to effect any sanction against DM. Her evidence was in stark contrast to other complainants, including Ms. Cunningham and Ms. Russel, both of whom understood that a formal process could not be commenced without their willingness to lodge their formal complaints with the Respondent.

[1271] Ms. Kirchmeier's combativeness, willingness to add details on the stand, speculative assertions, and inability to be reasonable when challenged on difficult matters undermined the credibility and reliability of her account. Her approach to testifying in this manner suggested that she would say whatever was necessary to strengthen her claims, even if they were not true. An example of this includes her statement at the hearing that despite rescinding her allegations she nonetheless assumed the University would see the January 2014 email as grounds to initiate a process. When confronted with this as being an unlikely expectation on her part, particularly since in the email in which she rescinded the allegations she stated that she did not want any disciplinary action against DM and "What I should have done...was request a meeting with you", she refused to accept that this was what she expected from the university and instead continued to maintain that she expected the university to act.

[1272] Ultimately, Ms. Kirchmeier, acting as an individual and representative complainant, third-party reporter, and advocate, alleged that UBC's Process adversely impacted victims of sexual assault, disproportionately affecting women. UBC asserts it provided a non-discriminatory, fair, and appropriate investigation process. Ms. Kirchmeier was never denied meetings or told she could not proceed due to her alumni status and despite not being in a service relationship with UBC. At no point in the hearing did Ms. Kirchmeier

establish that she was receiving a service from UBC at the relevant time as an alumni. She made no attempt to lead any evidence of this nature. It is submitted that she was not in a service relationship with UBC at any relevant time in this complaint.

[1273] If the Tribunal determines that she was in a service relationship with UBC, her complaint was not included in the formal NAM process because she was a third-party reporter, a procedural distinction not connected to her sex. This decision was made only after careful consideration at multiple levels of the complaint process. Consequently, it is submitted that Ms. Kirchmeier did not establish a *prima facie* case of discrimination which is a requirement for her complaint. She did not establish the required nexus.

[1274] UBC treated Ms. Kirchmeier with dignity and respect, and there is no evidence of an adverse impact connected to her sex that would constitute discrimination. The legal standard requires a nexus between any adverse experience and her sex, which has simply not been demonstrated.

[1275] If the Tribunal accepts that Ms. Kirchmeier has established a *prima facie* case, then the Code requires a reasonable and appropriate response from service providers, not a specific process (*Kirchmeier obo others v. University of British Columbia (No. 4)*, 2021 BCHRT 149, at para. 101) and UBC's actions were reasonable in managing a third-party complaint without direct consent from the survivors. Ms. Kirchmeier was unaware of the identities or stories of the other Complainant's involved in the NAM process. She did not experience any sexual harassment or assault by DM. Allowing her to participate in the NAM on the basis of her individual observations would undermine the autonomy of those survivors who did participate in NAM process. It would have detracted from their experiences. It would not have been trauma informed.

[1276] As a result of Ms. Kirchmeier's status as a graduated student who was not enrolled in the University, she did not experience any discriminatory environment issues. Although she testified to a perceived breakdown in her relationship with a professor, she did not explain how that impacted her in the University environment given that she was not a student and living in another country pursuing a career that was unrelated to her history degree. It is submitted that Ms. Kirchmeier cannot establish that she experienced a discriminatory educational environment.

[1277] It is submitted that Ms. Kirchmeier's complaint on her own behalf must be dismissed.

[1278] Ms. Kirchmeier seeks to be paid out the most in injury dignity out of any complainant involved in this complaint. She seeks a higher amount than women who were sexual

assaulted and those who participated in the NAM committee process. She seeks to be paid more in injury dignity than **Hale**, who had a well-documented adverse impact based on sex and disability. Ms. Kirchmeier provided no medical information or other documentation to support her request for injury to dignity. Rather, Ms. Kirchmeier conflates the notion of injury to dignity with her “extraordinary efforts” and “onerous role” including her interactions with the media. In this regard, the Complainant’s Representative is attempting to be compensated for her time spent as a representative complainant which is not compensable under the injury to dignity analysis.

[1279] The representative complainant role is not a paid role. If it were a paid role, this would create a situation of conflict between the representative and the complainants which she represents. It is submitted that the Complainants’ Representative accepts this proposition as during the hearing she put forward the proposition of claiming a percentage of injury to dignity that would be awarded to each individual complainant. When challenged that this would place her in a conflict, her counsel back down from this proposition.

[1280] Further, the majority of Ms. Kirchmeier’s related stress was with regard to the efforts she put in towards Tribunal hearing process itself and not the experience with the Respondent. She filed this complaint in approximately 2015.

[1281] The Tribunal and its complaint process itself cannot be an independent factor that impact the dignity of a complainant in an assessment of an award against a Respondent. (**Gichuru v. The Law Society of British Columbia (No. 9)**, 2011 BCHRT 185, **Gichuru v. The Law Society of British Columbia**, 2013 BCSC 1325, **Gichuru v. The Law Society of British Columbia**, 2014 BCCA 396, **Akinbiyi v. Community Builders Benevolence Group (No.2)**, 2025 BCHRT 177). It is submitted that The Tribunal cannot factor in her experience in the decade that followed in which she pursued her complaint through the Tribunal’s process and the impact of that on her in assessing her injury to dignity.

[1282] The Respondent submits that if the Complainant’s Representative has successfully proven that the Respondent’s process for responding to Ms. Kirchmeier’s was discriminatory under the *Code*, an appropriate damages award would be in the range of \$5,000 to \$10,000.00, taking into her failure to be forthright with UBC, her withdrawal of her initial complaint, her lack of any personal experience of sexual harassment or assault, her lack of experience with a discriminatory environment and the fact that she was not a student or receiving a service from the Respondent at any relevant time.

2. Caitlin Cunningham

[1283] Ms. Cunningham reported an assault by DM and described confusion about UBC's complaint processes. However, the evidence has clearly shown that UBC was prepared to act but required a formal complaint, and Ms. Kay provided information on processes and resources. Ms. Cunningham was given choices, support, and information, and was ultimately included in the NAM process once she chose to proceed. Any delays or confusion she experienced were attributable to process requirements and her own decisions regarding participation, not her sex, and therefore do not constitute discrimination.

[1284] Ms. Cunningham made her initial disclosure to Ms. Kay and Dr. Loo at a meeting with multiple students in July 2014. She then attended resource meeting in August of 2014. In the fall of 2014, she was no longer on campus. She testified that at that point in time she understood that she needed to express to the Respondent that she wanted to proceed with a formal process and did not do so. In the interim, she was aware of supports that were available on campus.

[1285] Ms. Cunningham admitted to knowing that she had to file a formal complaint and did not indicate any intention to do so until December of 2014. At that time, she completed her studies and did not discuss any more interactions she had in the academic environment that were discriminatory in terms of her education. In fact, from the late fall of 2014 to the time of the decision of NAM, Ms. Cunningham did not seek to access campus for the purposes of furthering her studies. She provided no evidence of how any alleged discriminatory environment impacted her as a person who was not studying at the University anymore.

[1286] It is submitted that at the time that Ms. Cunningham came forward in December, she no longer fit the definition of a class member in the Mordvinov Class. At that time, she was no longer a student studying at the University. It is submitted that the Tribunal must dismiss all of the allegations relating to her after she stopped studying at the University.

[1287] The Respondent submits that Ms. Cunningham's complaint should be dismissed. She cannot establish a *prima facie* complaint of discrimination. She cannot establish that she was receiving a service from the Respondent at the time she elected to proceed with her NAM complaint as she was no longer a student. Further, she experienced no adverse treatment during the time period which she was a student. After she came forward with her concerns about DM, she did not interact with him at any future point while she

remained a student. She was not denied any service from the Respondent. She was able to access all the available resources and commence all process that were available to her. She has not provided any evidence that an omission on the part of the University while she remained a student caused her adverse impact.

[1288] Although UBC made attempts to meet with her in January of 2015, she was unable to meet until February of 2015. At that point, Mr. Hyson commenced gathering information from her and other complainants to present a case against DM before the NAM committee. It would not make sense for the University to have commenced three separate NAM hearings. It was appropriate to wait until it was able to collect a firsthand complaint from Student C before moving the matter to the NAM committee.

[1289] Ms. Cunningham was advised that DM was banned from campus in May 2015. Although Ms. Cunningham's complaint was not the basis of the Notice of Restriction, she was nevertheless informed of how the matter was progressing. The Respondent submits that there was no need to notify her of the notice of restriction given that DM was not being advised that Ms. Cunningham's complaint formed the basis for the restriction.

[1290] In July 2015 Mr. Hyson communicated with her about her options (and she took two weeks to reply to his email). She was presented with the option of mediation and elected to proceed to the NAM hearing. The Respondent submits it was not discriminatory to present her with options, including education and mediation, and that in fact mediation for a sexual harassment complaint is offered as a matter of course by the Tribunal itself.

[1291] Ms. Cunningham elected to proceed with the NAM Process over any other type of process because she understood that the NAM was the only mechanism whereby DM could be expelled (and she agreed on cross-examination she was satisfied with this outcome).

[1292] Mr. Morrison, as Chair of the NAM Committee at UBC, provided extensive support, guidance, and logistical assistance to Ms. Cunningham throughout the NAM process. This support included detailed email correspondence, procedural explanations, accommodations for support persons, and logistical arrangements.

[1293] Mr. Morrison initiated contact with Ms. Cunningham via email on September 28, 2015, informing her of the NAM hearing date and offering to consider delaying it if the date was not feasible for her. He also attached a letter outlining what to expect at the hearing. Ms. Cunningham acknowledged that Mr. Morrison was giving her the ability to alter the date and inviting her input, despite finding the wording "consider" offensive.

- [1294] Ms. Cunningham posed numerous questions about the process, including bringing a support person and having a friend as an observer. Mr. Morrison responded on October 1, 2015, indicating he would seek direction from University counsel, and on October 6, 2015, he offered UBC counselling services, described the hearing process in detail, explained its potential length, and provided specifics about the decision-making process. He confirmed that Ms. Cunningham would not need to visually see DM in the hearing.
- [1295] On October 8, 2015, Mr. Morrison requested details on how the alleged assault affected Ms. Cunningham's campus life for jurisdictional purposes, and when she requested more time, he granted an extension until October 16, 2015. In response to her concerns about panel member expertise, Mr. Morrison advised on October 15, 2015, that the committee was trained for its investigatory purpose, including specific training in hearing sexual assault allegations, and arranged for support services to be available before and after her appearance. He also described the timeline and room setup.
- [1296] Mr. Morrison made specific accommodations for Ms. Cunningham's comfort and safety during the hearing. He confirmed that panel members would ask questions directly, and DM would pose questions through the Chair, not cross-examine complainants. Ms. Cunningham agreed that Mr. Morrison provided her with links to the NAM procedure, reviewed them, and addressed her questions about support persons, decision timelines, and the process for entering the hearing room. She also agreed that Mr. Morrison acknowledged her concerns about emotional well-being and safety.
- [1297] While Ms. Cunningham testified that she found Mr. Morrison's responses "surface level" and "sweeping policy speak," she acknowledged that he responded to each of her questions and provided more substantive answers after further inquiry. She appreciated his lengthy responses, even if she felt her concerns were not fully addressed. She declined UBC counselling services and brought Professor Krause as her support person. Ms. Cunningham had no complaints about how committee members spoke to her during the hearing.
- [1298] Cunningham's interactions with Mr. Morrison highlighted his routine efforts to provide procedural guidance, accommodations, and support to complainants, including providing orientation materials, ensuring confidentiality, coordinating with Campus Security, and offering counseling resources. He responded promptly to all inquiries and made efforts to ensure Ms. Cunningham felt supported throughout the NAM process.
- [1299] UBC's provision of options, support, and information demonstrates a reasonable and

appropriate response. When asked about the workshop in March 2014, Ms. Cunningham stated that she “understood UBC was interested in making sure we knew they cared about safety and wellbeing”.

[1300] In response to the History Student concerns raised with Ms. Kay on July 31, 2014, Ms. Kay organized a presentation for the group regarding sexual harassment and campus safety resources. Two days before that meeting, Ms. Cunningham wrote to Ms. Kay and stated:

Apologies for not having a better memory on this - but the meeting on Thursday will be to discuss available campus resources, information that we can take back to our department. Is this correct? I just finished my thesis, so my mind has been very occupied elsewhere, and the expense of almost all other things!

On that note, now that I have more time, I was hoping that we might be able to set up a meeting with just the two of us. **I am in no rush**, but I hope that I can provide information that may offer some insights to the greater situation. Just let me know when may work for you, I trust that you have greater insight as to the urgency of a such a report from me!

Thanks for your support in all of this.

Exhibit 6 p. 267

[1301] Further, the NAM Committee found that DM had breached the Code of Conduct and physically assaulted Ms. Cunningham, and she was advised of these findings.

[1302] Since the NAM Committee determined the incident was a physical assault and not sexual in nature, there is no reasonable basis to infer a nexus between the assault and the protected characteristic of sex. Not every adverse treatment or harm constitutes discrimination; there must be evidence connecting the adverse impact to a protected ground (*Teacher D v. The School District and others*, at para. 139). Therefore, Ms. Cunningham's claim for discrimination based on sex lacks the necessary nexus.

[1303] With respect to Ms. Cunningham's alleged concerns with the NAM process, the Respondent relies on the earlier submissions in argument where it outlined the numerous email exchanges between Ms. Cunningham and Mr. Hyson and Mr. Morrison whereby they diligently answered all of her questions and supported her through the process.

[1304] With respect to any allegation of delay, the Respondent submits that there simply was no delay in dealing with Ms. Cunningham's complaint. Specifically, the Respondent notes the following timeline:

- April 2013, Ms. Cunningham experiences the headlock incident with DM.
- July 31, 2014, Ms. Cunningham has an initial meeting with Ms. Kay. Ms. Cunningham admits that at that point she understood that she had to make a complaint but elected not to do so.
- November 2014, Ms. Cunningham completes her thesis and is no longer attending campus or enrolled in classes.
- December 4, 2014, Ms. Cunningham decides to come forward with complaint and notifies Ms. Kay of the same. (Exhibit 6, p. 316)
- December 18, 2014, Ms. Kay has a telephone call with Ms. Kirchmeier and Ms. Cunningham to discuss moving forward with Ms. Cunningham's complaint.
- December 2014, Ms. Cunningham is no longer a student studying at the University.
- Early January 2015, after a brief closure for the Christmas break, Ms. Cunningham was advised by Ms. Kay that in that she had met with Ms. Hyson and Ms. Bentley on January 13, 2015, and then with Dr. Loo to discuss next steps.
- January 28, 2015, Ms. Kay emails Ms. Cunningham and Ms. Kirchmeier to set up a meeting (RB 99, p.405). Ms. Kay asks Ms. Cunningham for her availability (Exhibit 6, p. 356)
- February 5, 2015, Ms. Cunningham cancels the meeting with Ms. Kay (Exhibit 6 p. 361)
- April 27, 2015, the Respondent issues a restriction to DM preventing him from coming on campus. The Respondent notifies Ms. Cunningham of the same shortly thereafter.
- During the Spring of 2015, Mr. Hyson organizes the statement of allegations and makes efforts to obtain information from several complainants, whose identities were not known to Ms. Cunningham
- August 2015, Mr. Hyson forwards the statement of allegations to NAM committee.
- Early fall of 2015, the NAM committee is being constructed, and Mr. Morrison is in constant communication with Ms. Cunningham and others regarding the hearing

process.

- Late October of 2015, the NAM hearing is held.
- Early November 2015, DM is expelled from the University.

[1305] The incident occurred in April 2013. Ms. Cunningham waited until December 2014 to make a formal complaint. She had the opportunity to make a complaint in July 2014 when she first came forward to the University and chose not to. The University respected her autonomy in not electing to pursue a complaint. This decision was a trauma informed one.

[1306] The Tribunal has held that responses and investigations that take six months are not presumptively delays amounting to discrimination. This was a complicated complaint and involving multiple survivors, the length of time that it took to get to a decision was reasonable in light of the fact that the first time Ms. Cunningham meets with Mr. Hyso in early spring of 2015.

[1307] Ms. Cunningham seeks to be compensated for her therapy expenses. She estimated a cost of just under \$5,000 and provided no receipts. Further, she did not disclose the records to confirm whether she was in fact attending therapy for the UBC process or for other factors such as grieving the death of a grandparent, thereby depriving the Respondent of any opportunity to test this evidence. The Respondent submits that she did not meet the evidentiary threshold required to establish compensation for counseling.

[1308] Ms. Cunningham's evidence as it related to the impact of the University process was prone to exaggeration. She claimed that she sent hundreds of emails and that it felt like she "spent her entire life" trying to get UBC to address the concerns about DM. In light of these and other exaggerations, her evidence about injury to dignity is unreliable.

[1309] She testified that given her efforts in the complaint process, she was impacted in her relationships with UBC faculty. This perspective was not supported by any evidence outside of her own views and is not reflective of her current status as a UBC law student. The Respondent submits that Ms. Cunningham's choice to attend UBC further undermines her allegations of any sort of ostracization from UBC and ongoing stress related to the University.

[1310] Ms. Cunningham's situation is in contrast to Ms. Hale, who had adduced medical evidence about the impact and her condition. Further, Ms. Hale was on medical leave and uncertain as to whether she would return to UBCO (and the Respondent notes that in *Hale* the

Tribunal found there was no evidence of lifelong impact). In contrast, Ms. Cunningham was able to complete her degree and enrolled in another program at UBC thereafter. She even expressed her desire to become a UBC faculty member, which further undermines any suggestion that she experienced an impact of institutional betrayal or long term harm.

[1311] Further, the Tribunal cannot assess her involvement in the complaint process and the impact on her of testifying as part of the assessment for injury to dignity for reasons outlined above.

[1312] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal make this determination. They provide no medical evidence or evidence from family members or friends to substantiate the impact of the University's response on Ms. Cunningham.

[1313] The Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be in the range of \$10,000 taking into account previous similar decisions, the increasing awards under this head of damages, and an appropriate contingency discount.

3. Student E

[1314] Student E's claim of discrimination against the University fails because there was no adverse impact resulting from UBC's actions or alleged delay. Student E's primary objective was to ensure DM was not on campus, and this objective was achieved. She agreed in her testimony that she was satisfied with the outcome of the NAM process. Crucially, Student E never had any further interactions with DM after her initial report in May of 2014.

[1315] Student E testified that at the time she came forward at the urging of [REDACTED], she was not expecting anything to happen and was not certain what outcome or process she wanted from UBC at the time. Despite the initial feeling of uncertainty in her understanding of the process, she stated she never felt Mr. Lundeen did not believe her and acknowledged his efforts to create a record through campus security. She further agreed in her testimony that she wrote to Mr. Lundeen indicating that she wanted an

educational approach as a result of her disclosure. She further agreed that she understood DM would be off campus for 16 months at that time.

[1316] Mr. Lundeen connected Student E with Campus Security on June 12, 2014. She went on medical leave in the Fall of 2014. On February 26, 2015, she was advised by Mr. Lundeen that a complaint was proceeding against DM and she was connected to Mr. Hyson and met with him thereafter and provided him with information.

[1317] Further, the alleged procedural gap, specifically Mr. Lundeen's failure to connect Student E with Mr. Hyson earlier, did not result in an adverse impact. DM was not in the country and had no interactions with any UBC student after May 2014.

[1318] The Complainants Representative takes issue with Mr. Lundeen's failure to provide proper options to Student E; however, they are unable to point to any evidence which indicates that in the Summer of 2014 Student E wanted a formal complaint process or any outcome other than an education approach. The approach of the Complainant's representative with respect to Student E's disclosure in May 2014 again fails to acknowledge the reality that DM was no longer on campus during this time.

[1319] The Complainants Representative has failed to establish a *prima facie* case of discrimination on behalf of Student E. They did not establish how she experienced adverse treatment by the Respondent in the course of receiving a service from it. If the Tribunal finds a *prima facie* case has been made out, then the Respondent submits that it responded reasonably to Student E's complaint.

[1320] Mr. Hyson advised Student E on April 27, 2015, that DM was banned from campus and she testified she was satisfied that he would no longer be permitted on campus.

[1321] Student E received an email from Mr. Hyson on August 25, 2015, providing information about the NAM process, and she never sought clarification from him. She was informed that DM had no intention of returning from Russia and was aware that he had already been banned from campus at the time of the NAM hearing. Student E also indicated she was not opposed to an alternative resolution to the NAM if she was satisfied DM would not be on campus. When offered a mediated discussion or proceeding, she stated she would be fine with either option.

[1322] The University took reasonable steps to limit the impact of the NAM hearing process on Student E. Student E testified that she deliberated as to whether she wanted to participate in the NAM process. She did not have to see DM during the NAM process and he was not

permitted to ask her any questions. She testified she understood that the allegations had serious consequences for DM and agreed that her statements to the Committee were voluntary and necessary. In her testimony she could not recall any details about the hearing or the panel and felt relief when the hearing was over and when the decision was communicated to her.

[1323] Student E did not testify as to any specific adverse treatment that she experienced from the NAM process. She did not provide any evidence that she took issue with the composition of the NAM committee or with the process of preparing a statement.

[1324] The Respondent submits that Student E's mental health impacts were influenced by multiple factors beyond UBC's conduct. She agreed that her mental health was impacted by the assault itself and harassment from media, not solely by the UBC reporting process. Further, she maintained straight A's before and after the incidents and was not prevented from pursuing a further degree, further indicating no adverse academic impact. UBC's staff, including Mr. Vessey and Mr. Lundeen, maintained ongoing, supportive, and kind correspondence with Student E throughout the process.

[1325] The Respondent submits that Student E's experience needs to be examined within the context of her desired outcomes at the time. She testified that her primary objective was to not have DM back on campus and to participate as little as possible.

[1326] Given that Student E's primary objective was met, she had no further contact with DM, and any procedural imperfections did not lead to an adverse outcome, there is no demonstrable adverse impact connected to a protected characteristic that would satisfy the requirements for a discrimination claim under the BC Human Rights Code.

[1327] The Respondent submits that Student E's complaint is not similar to the *Hale* complaint. In the *Hale* complaint, the NAM process went forward without her participation. That did not occur here. Further, the panel in the NAM committee for Student E was comprised differently and had training to deal with the unique sensitivities of Student E's complaint. Unlike *Hale*, Student E was able to continue her education and obtain high level grades. Further, after coming forward with her Complaint against DM, she did not have to see or interact with him again. Education was provided to the students at Green College to increase awareness. Further, the college had created an environment where peer support was available.

[1328] The Complainant's representative alleges that Student E having to endure multiple requests from the Fifth Estate as part of the basis for her injury to dignity. Student E was

clear that she did not want to participate in the documentary and that she was not in favour of the final product. The Fifth Estate pestering Student E to be a part of it cannot be a factor that is held against this Respondent in terms of the assessment of injury to dignity. It was not the Respondent who set the Fifth Estate reporters into motion.

[1329] Further, as submitted above, the 10-year Tribunal process cannot be a factor in determining the extent of Student E's injury to dignity.

[1330] The Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be \$20,000.00, taking into account an appropriate contingency discount for the underlying misconduct for which the University was not responsible.

4. Student B

[1331] Student B was not a student at UBC at the time of the alleged sexual assault by DM, which occurred off-campus in Toronto. She completed her law degree at UBC in April 2014 and was living in Toronto when the incident took place. Student B herself confirmed in cross-examination that she was not receiving a service from UBC at the time of the assault and that it was not a UBC-sponsored event.

[1332] Student B does not fit the class definition of a student studying at the University at the time of her Complaint. It is submitted that her complaint should be dismissed on that basis.

[1333] UBC's NAM process and Student Code of Conduct have jurisdictional limits, applying to currently registered students for conduct on or near campus, or at university-sponsored activities with direct campus connections. Mr. Hyson, UBC's Student Conduct Manager, did not initiate the NAM process for Student B's report because the incident occurred outside UBC's jurisdiction. He clarified that if an incident occurred outside UBC's jurisdiction, the university could take little action beyond that. The NAM process was designed to investigate allegations of non-academic misconduct to determine if a student breached the Student Code of Conduct. Given that Student B was no longer a student and the incident occurred off-campus, she was not within a service relationship with UBC that would entitle her to the protections or processes afforded to current students. The Code of Conduct explicitly excludes incidents outside its scope reflecting the University's own limited jurisdiction, such as those involving former students or occurring off-campus, in other provinces, without a university connection.

[1334] It is submitted that the Complainant's Representative cannot establish that Student B was receiving a service from the University. Further, it is submitted that the Complainant's Representative cannot establish a *prima facie* complaint of discrimination on behalf of Student B. The decision to not accept her complaint was not based on her sex or gender but based on the location and circumstances of the underlying interaction with DM. The fact that other complaints by females against DM which fell within the jurisdiction in the Respondent were accepted and acted on highlights how this decision had nothing to do with Student B's gender. It is submitted that the Complainant's representative cannot establish the required nexus on behalf of Student B.

[1335] If the Tribunal accepts that Student B has established a *prima facie* complaint, then UBC's duty is one of reasonableness, not correctness or perfection, and there may be several reasonable options available to a service provider. The Human Rights Code does not obligate service providers to implement any one specific process, but rather to respond in a manner that is reasonable and appropriate (*Hale v. University of British Columbia Okanagan* (No. 5), 2023 BCHRT 121 at para. 25).

[1336] UBC's actions were reasonable in applying its established jurisdictional limits, which are a reasonable application of policy, not discrimination. The determination of jurisdiction was not based on gender; this is implicit in the fact that the University accepted multiple other complaints from female students during the relevant time period in which the underlying facts permitted for an application of the University's jurisdiction. The complainants failed to adduce any evidence of another university's practice to accept complaints of sexual assault that did not occur within its stated jurisdiction. The Respondent submits that it would be unduly onerous to require a University to govern the behaviour of their students in private homes in other provinces during interactions that have no relationship to the University. Even if the Tribunal wants to accept that the conference DM attended in May in St. Catharine's was a UBC related event (which it was not), the conference was over 100 km from Student B's home in Toronto, Ontario and Student B did not attend the conference.

[1337] Mr. Hyson consistently testified that in assessing student misconduct proceedings, he considered the ongoing interactions between the students and whether those interactions would occur on campus or affect campus life and therefore fall within the ambit of jurisdiction. Student B had no ongoing interactions with DM through a University related activity.

[1338] UBC encouraged Student B to report the incident to the police and implemented a campus

ban on DM, addressing her primary concern of keeping DM off campus. The inability to include an off-campus incident involving a non-student and a non-UBC sponsored event in the internal NAM process was a reasonable application of policy. There is no evidence that UBC's actions were connected to Student B's sex or that she experienced an adverse impact in a protected area under the Code due to her status as a former student. Therefore, Student B cannot establish a *prima facie* case of discrimination against UBC.

[1339] Although the Respondent does not dispute that the events between Student B and DM were traumatic for her, that impact cannot be conflated on the Respondent's decision not to assert jurisdiction over her complaint. Further, in the end, the Respondent was able to affect the remedy of having DM expelled on the basis of complaints that took place within its jurisdiction.

[1340] The Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the Code, an appropriate damages award would be in the range of \$5,000.00, taking into account an appropriate contingency discount for the underlying assault. The Respondent notes this is in the same vicinity of the awards being sought for others whose complaints the Respondent determined were not within University's jurisdiction. There is no basis for Student B to be assessed any differently than general class complainants in this regard.

5. Kaitlin Russell and Sarah Thornton

[1341] It is egregious for Ms. Russell and Ms. Thornton to seek \$40,000 each in injury to dignity damages and lost tuition, given their lack of direct personal experience with sexual assault or harassment at the University. Neither Ms. Russell nor Ms. Thornton experienced or reported any personal incident of sexual assault or harassment at UBC, nor did they have direct interactions with DM.

[1342] The Respondent submits that only those directly affected by alleged misconduct have standing to bring complaints affecting their personal rights, and awarding damages to non-complainants without compensable injury is inappropriate and in fact never been accepted by the Tribunal.

[1343] Damages for injury to dignity or lost tuition are intended to compensate for a violation of a person's human rights and dignity resulting from direct discrimination See *Hale*. It is not

for those who see themselves as advocates for others.

[1344] Ms. Russell and Ms. Thornton's claims before the Tribunal lack the requisite personal foundation and improperly rely on the experiences of others, undermining their standing as complainants under the BC Human Rights Code. Their knowledge of alleged misconduct was entirely second-hand, based on information they heard from other students.

[1345] Ms. Russell's involvement was primarily as advocate, group member, organizer, and equity representative, within the HGSA. While she maintains she was committed to advocacy for departmental safety and inclusivity, her role was focused on collective action and support for others, not on seeking redress for personal harm caused by DM or by any other student.

[1346] This form of advocacy, while potentially well-intentioned, permits for a capitalization and further exploitation of the claims of direct survivors. The Tribunal emphasizes that trauma-informed practice requires survivor autonomy, and third-party reporting without explicit consent or participation of the survivor runs contrary to foundational principles, potentially stripping survivors of choice and control. While the record indicates Ms. Russell acted collectively with other concerned students, the broader context of this matter includes instances where she relied on sensitive information without consulting or obtaining consent from direct survivors. For example, she mentioned Student D's experience in her affidavit of December 3, 2020, and at the hearing admitted she did not have her consent to do so. Student D opted out of this complaint and yet Ms. Russell felt it appropriate to comment on her experiences and in fact make assumptions about her reaction to DM because she is "from the American South". Further, institutional representatives, such as Ms. Kay, also stressed the importance of survivor autonomy and respecting choices even if it meant no formal action.

[1347] Ms. Russell was not discriminated against by the University, Dr. Loo, or the History Department. Ms. Russell did not experience or report a personal incident of sexual assault at UBC, and the responses from Dr. Loo and the department were reasonable and appropriate given the circumstances and systemic limitations.

[1348] Ms. Russell did not experience or report a personal incident of sexual assault at UBC. Ms. Russell explicitly stated she had no direct interactions with DM, nor did she witness any improper conduct by him. Her own experience of sexual assault was unrelated to UBC and was perpetrated by a previous partner in 2012, prior to her involvement in the DM

matter or any reporting at UBC. Throughout her testimony, Ms. Russell reiterated that she was not a direct witness to any misconduct by DM and was not a complainant or victim in the DM case. It is submitted that she does not meet the class definition.

[1349] Dr. Loo and the History Department did not discriminate against Ms. Russell. Dr. Loo took prompt and appropriate action within her authority upon receiving concerns in July 2014. She consulted the EIO, ensured students had access to supports and complaint pathways, maintained confidentiality as required under Policy 3, undertook departmental education, and created structural supports. Dr. Loo consistently understood the EIO to have the expertise and statutory responsibility to investigate and manage sexual harassment complaints, viewing her role as providing support, information, education, and referrals, not conducting investigations herself.

[1350] Meetings with students, including Ms. Russell and Ms. Thornton, focused on options for making complaints, with no pressure for immediate decisions. The EIO emphasized due process rights for all parties and explained the risks of rumor-spreading without formal complaints. The department's actions were shaped by practical realities, such as jurisdictional constraints, and evolving best practices, rather than by discriminatory intent or animus.

[1351] There is no explicit evidence of direct discrimination by Dr. Loo or individual faculty members against Ms. Russell. The evidence establishes that Dr. Loo acted within her authority, consulted experts, provided appropriate referrals and supports, and maintained confidentiality as required, none of which constitutes discrimination.

[1352] Further, there is no evidence of an adverse impact connected to a protected characteristic, such as her sex, by their actions.

[1353] Further, Ms. Russell was interviewed by Paula Butler on January 8, 2016, about her experiences at UBC. She told Paula Butler that in the summer 2014 meeting with Ms. Kay, Ms. Kay told them they were “in the driver’s seat” and “encouraged us to make a formal complaint.” This undermines any statement Ms. Russell has made otherwise in her evidence about confusion about the process.

Exhibit 6 p. 1330

[1354] Ms. Russell and Ms. Thornton, as female students, claim to have experienced significant emotional distress, anxiety, and academic disruption due to their roles as advocates and bystanders in this case. They assert that their sex was implicated in their need for an

effective response to the allegations and the subsequent harm they experienced.

[1355] However, Mr. Hay, a male graduate student, also acted as an advocate and intermediary for complainants, despite not being a direct victim of sexual assault or harassment. Mr. Hay testified to experiencing a "chilling effect" within his department, significant emotional distress, guilt, anguish, fatigue, and burnout as a result of his involvement. He says his academic progress and opportunities were adversely affected, including a delayed degree, missed deadlines, and a general sense of doom. He testified that he took undertook extensive advocacy efforts, contacting university officials, drafting statements, and organizing meetings.

[1356] The experiences of Mr. Hay, a male advocate, closely parallel the adverse impacts claimed by Ms. Russell and Ms. Thornton. Both experienced emotional distress, academic disruption, and feelings of isolation due to their advocacy roles. The respondent submits that Mr. Hay's adverse experiences were a consequence of his advocacy role, not his sex. If a male advocate experienced the same adverse impacts as female advocates, it strongly suggests that the impact is connected to the nature of the advocacy role itself, rather than to sex.

[1357] Therefore, the similar experiences of Mr. Hay, who is not a class member, undermine the assertion that sex was a factor in the adverse impacts experienced by Ms. Russell and Ms. Thornton. The fact that women are disproportionately victims of sexual assault is not, on its own, sufficient to establish adverse impact discrimination; rather, evidence is required to establish a distinction between how the process impacted victims of sexual assault and how it impacted another group. In this case, the evidence suggests that the adverse impacts were a result of the challenges inherent in the advocacy role and UBC not accepting these third-party reports, irrespective of the advocate's sex.

[1358] The Respondent further notes that Ms. Russell and Ms. Thornton repeatedly made generalized statements about departmental safety but failed to provide any examples of how the history department was unsafe. Ms. Russell and Ms. Thornton cannot credibly argue there was an unsafe or discriminatory environment in the History Department during the relevant period because their statements were largely generalized and lacked specific incidents of direct harm. Ms. Thornton, for instance, clarified that to her knowledge, there had been no allegations of harassment within the History Department building, with the only known case occurring off-campus.

[1359] Further, Ms. Russell acknowledged that she may have misunderstood Dr. Loo's position

regarding making a public statement about a discrimination-free environment. Dr. Loo had planned to speak generally about the department's obligations under Policy 3 and the Respectful Environment Statement without disclosing specific information, and Ms. Russell raised no concerns about this plan at the time. Ms. Russell later indicated that she had misinterpreted one of Dr. Loo's earlier emails.

[1360] At the time of the faculty meeting and the ongoing discussions about the HGSA statement, there were no direct complainants about DM's behavior remaining in the History Department. Ms. Kirchmeier was no longer a student, Ms. Cunningham had graduated, and Student B was no longer a student. Student E was also not in the History Department.

[1361] The Complainants have failed to demonstrate how the absence of a public statement could amount to discrimination. Generalized dissatisfaction or advocacy burdens do not meet this threshold, and group-level assertions are insufficient without individualized evidence of adverse impact (*Moore v. British Columbia (Education)*, at 33; *Makhija v. CSH (Carlton Gardens) Limited Partnership and others*, at 69, 74-78). The evidence presented by Ms. Russell and Ms. Thornton, focusing on psychological impacts and relationship breakdowns rather than specific discriminatory incidents, does not establish the requisite individualized adverse impact.

[1362] It submitted that Ms. Russell and Ms. Thornton did not establish a *prima facie* case of discrimination. They did not experience any adverse treatment on the basis of their gender. In the alternative, it is submitted that the Respondent's response was reasonable.

[1363] The Respondent submits that if Ms. Russell and Ms. Thornton successfully prove a complaint of discrimination on the basis of third-party observers/advocates, an appropriate damages award would be a nominal amount in the range of under \$5,000. Neither of these complainants were undergraduate students at any relevant time but rather were mature graduate students. Both experienced difficulties in completing their thesis for reasons unrelated to their complaint. Neither presented any medical information about a pre-existing condition that made them more vulnerable. Neither presented any medical information regarding the impact on them. To award them damages on par with the highest level of the Tribunal's case law and the *Hale* decision would mean that the injury to dignity assessment would not be grounded in the facts of this case.

[1364] Ms. Russell also seeks \$7,000 for tuition. There is no evidentiary foundation for a reward for tuition for Ms. Russell. Ms. Russell's inability to complete her degree on time had nothing to do with any alleged discrimination in the provision of a service. It had to do with

her inability to complete her thesis. Dr. Paris was always supportive of her and assisted her. As the Tribunal outlined in *Hale*, there needs to be an evidentiary basis for such an award.

6. Caroline Greggo

[1365] Ms. Greggo's own testimony establishes that she was not in a service relationship with UBC at the relevant time. In cross-examination, Ms. Greggo expressly agreed that she had graduated from UBC in 2014 and was not in a service relationship with UBC in 2014 or 2015. She further confirmed that she was never assaulted by DM and, at best, was a secondary figure in the events at issue. She also acknowledged that she never had any issues as a student at UBC that required her to look up the relevant policies.

[1366] Ms. Gergo was not a student studying at the University during the time of her complaint and such does not fit the class definition. It is submitted that her complaint must be dismissed on the basis that she does not qualify as part of the class.

[1367] The Code requires a complainant to establish that they were adversely impacted in connection with a service customarily offered by the respondent institution. Discrimination under section 8 of the Code can only occur if the complainant was receiving a service from UBC at the relevant time. Ms. Greggo's own admission that she was not in such a relationship is fatal to her claim. It is submitted that the Complainant's Representative has failed to establish a *prima facie* complaint on behalf of Ms. Greggo. Further, she failed to show any adverse treatment.

[1368] The evidence demonstrates that her status was that of a witness, not an affected party or direct complainant, and any differential treatment arose from this distinction rather than from any protected characteristic.

[1369] Ultimately Ms. Greggo's own admissions regarding her lack of student status and absence of any service relationship with UBC at the relevant time are determinative. Without such a relationship, there can be no claim under section 8 of the BC Human Rights Code.

[1370] The Complainants' Representative argues that Ms. Grego was deeply worried about DM's potential return to campus. However, at all relevant times she was not in the country and not a student of the Respondent. There was no basis for her to have any interaction with DM. Worrying for others does not create the foundation for a provable human right complaint otherwise anyone who reads a concerning new story who then worries would have a valid complaint. Ms. Grego's role in this complaint was limited to her support of

her friend.

[1371] The Respondent submits that there is no basis for an award for injury to dignity to Ms. Grego. She did not experience any discriminatory learning environment as she was not even in the country at the time of the alleged discrimination. She had no experience of sexual assault and was not trying at any point bring forward a complaint on her own behalf. She had graduated before any of the allegations occurred. There was no evidence of any vulnerability. There was no medical evidence submitted on her behalf about the impact.

[1372] In the alternative, the Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be in the range of \$2,000.00.

7. [REDACTED]

[1373] Ms. [REDACTED] was not discriminated against under the Code because she did not personally experience or report sexual harassment or assault at the University. Her involvement was limited to supporting Student E and being part of the Green Lanterns. She did not make an independent complaint to UBC in 2014 or 2015.

[1374] Ms. [REDACTED] has not demonstrated that any adverse impact she may have experienced was connected to her own protected characteristic. The Complainant's Representative failed to establish a *prima facie* complaint of discrimination on behalf of Ms. [REDACTED]. The Complainant's representative failed to establish that Ms. [REDACTED] who did not bring forward her own complaint of assault or harassment to the Respondent was treated adversely by the Respondent's act or omission. Rather, Ms. [REDACTED] is seeking to obtain a monetary remedy on the basis of her attachment or advocacy for Student B who did deal directly with the Respondent regarding her complaint of sexual assault. If the Tribunal finds that Ms. [REDACTED] has established a *prima facie* complaint of discrimination, then it is opening the door for all advocates to leverage their own complaint on behalf of the basis of the adverse experience of the person that they are representing.

[1375] The Tribunal and established legal principles indicate that only those directly affected by alleged misconduct have standing to bring discrimination complaints. The University's processes have historically focused on direct complaints and first-hand reporting, not on claims from those indirectly involved.

[1376] As discussed above, there is no retaliation complaint filed on behalf of Ms. [REDACTED] [REDACTED] that could support an assertion that she was treated adversely as the result of supporting someone who had a potential human rights complaint.

[1377] The Respondent submits that there is no basis for an award for injury to dignity for Ms. [REDACTED]. She did not experience any discriminatory learning environment. At best, Ms. [REDACTED]'s role was as an advocate. She had no experience of sexual assault and was not trying at any point bring forward a complaint on her own behalf at any time. There was no evidence of any vulnerability. In fact, she was operating in an advocacy position at the relevant times of the complaint as a green lantern. There was no medical evidence submitted on her behalf about the impact.

[1378] In the alternative, the Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be in the range of \$2,000.00.

8. Student C

[1379] Student C did not testify at the hearing of this Complaint.

[1380] Student C was not a student studying at University at the time of her complaint. Consequently, she is not a class member and her complaint must be dismissed.

[1381] As Student C was not a student she was not receiving an a service from the respondent at the time of her complaint to the University. It is submitted that her complaint must be dismissed as she was not in a service relationship with the Respondent.

[1382] There is no basis for a finding of discrimination against Student C in connection with her interactions with UBC. The evidence demonstrates that Student C never directly made a complaint to anyone at UBC; rather, her involvement arose only after Mr. Hay, acting as an intermediary, connected her to Mr. Hyson. Mr. Hyson had not heard from Student C directly and relied on Mr. Hay to facilitate contact and obtain her statement.

[1383] Once Student C was connected to UBC through this process, several accommodations and safeguards were provided to her:

- i. She was offered the option to remain anonymous until she chose to make a report;
- ii. She could choose the format and location of any meeting, including the option to

meet at SASC or by phone, prioritizing her privacy and comfort;

- iii. Mr. Hyson offered to answer any questions and explain the process before she made any formal statement;
- iv. She was provided with links to the Student Code of Conduct and the NAM process to ensure she was fully informed;
- v. Multiple follow-ups were made by Mr. Hyson to ensure support and offer opportunities for participation, without any pressure or requirement for direct engagement;
- vi. Upon submission of her statement, Student C received information about the ongoing process and was provided with contact information for UBC Counselling Services and SASC;
- vii. She was given the option to participate in the process via written statement rather than attending the hearing in person and her written statement was accepted as evidence;
- viii. She was notified about process developments and outcomes, including restrictions placed on the respondent not to attend campus.

[1384] These measures reflect a trauma-informed approach that prioritized survivor autonomy by allowing Student C full control over whether, when, and how she participated. The process respected her privacy and provided her with information and support at every stage.

[1385] There is no evidence that Student C experienced any adverse impact or discrimination in connection with a service provided by UBC. The record focuses on the accommodations and supports offered rather than any negative outcome or treatment experienced by Student C.

[1386] The Respondent submits that the Complaint of Student C should be dismissed. The Complainant's Representative has not established a *prima facie* complaint of discrimination on her behalf. They did not establish any adverse treatment that she experienced. In the alternative, the Respondent's response was entirely reasonable in the circumstances of this case.

[1387] The Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was

discriminatory under the *Code*, an appropriate damages award would be in the range of \$5,000.00 to \$10,000.00. This is a similar range that is being sought for other members of the General Class complaint with similar experiences who did not testify.

[1388] Student C did not testify as to the difference in the impact to her from the University's response versus the underlying conduct of DM. An award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. The Tribunal cannot make that assessment in Student C's case.

[1389] Student C was not part of any discriminatory environment that was created by the Respondent after she came forward. She provided no evidence as to the impact of being involved in the NAM process. No medical evidence was presented on her behalf. No evidence of a pre-existing condition was presented on her behalf.

9. Megan Longstaffe

[1390] Ms. Longstaffe did not testify in this hearing. It is surprising to learn she is seeking injury to dignity damages. Her involvement in the matter is limited to the following: She attended the meeting with the women from the history department and Dr. Loo and Ms. Kay on July 29, 2014. There is no evidence that she made any statements about concerns about DM or safety generally at that meeting. Ms. Longstaffe was also involved in discussions about the history department workshop led by the HGSA. There is no evidence before the Tribunal beyond some emails exchanged in July 2015 amongst the HGSA which include Ms. Longstaffe. She sent one draft email in September 2014 about her concern that the workshop could be triggering and that someone from SASC could attend. There is no evidence she ended up sending the email to Dr. Loo, and in any event, this does not establish a finding of discrimination against Ms. Longstaffe. The Complainants in their submission fail to establish or refer to any evidence or specifics about Meghan Longstaffe which would justify any award.

[1391] Crucially, there is no direct evidence from Meghan Longstaffe regarding any personal adverse impact, emotional distress, or academic impact she may have experienced. Her name appears in the context of group activities and advocacy efforts, including attending meetings and being part of group emails. However, these references do not include any individualized statements from her about personal harm.

[1392] Further, it is submitted that her complaint should be dismissed on the same basis as Ms. Thornton, Ms. Russel, Ms. [REDACTED] on the basis of there being no *prima facie*

complaint and no complaint of retaliation.

[1393] Again, at paragraph 68 of Part 1 of their submission, the Complainants state “For each Complainant in this complaint, the Complainants must establish that they suffered adverse impact from events which occurred, that they had personal characteristics covered by the Code, and that there was a nexus between their personal characteristics and the adverse impact which they suffered.” This criterion, which was established as a baseline requirement for a *prima facie* case by the Complainants, has not been met in the case of the Complaint on behalf of Ms. Longstaffe.

[1394] The Tribunal requires complainants to establish an adverse impact connected to a protected characteristic to demonstrate a *prima facie* case of discrimination (*Deboo and others v. B.C. (Ministry of Public Safety and Solicitor General)*, 2018 BCHRT 10). The Tribunal has emphasized that injury to dignity damages are a head of damages that may be awarded, but an adverse impact is an essential element that complainants must first establish (*Deboo* at 85). Without evidence of such an impact, complaints may be dismissed. In *Deboo and others v. B.C. (Ministry of Public Safety and Solicitor General)*, the Tribunal dismissed complaints where there was no evidence of negative effect on the complainants beyond bare assertions, and the connection between the alleged adverse impact and the protected characteristic was not established (*Deboo* at 148, 151, 166).

[1395] While Ms. Longstaffe was involved in group advocacy, group-level assertions or general dissatisfaction are insufficient to meet the evidentiary threshold for an individual award of damages. In *Chilliwack Teachers’ Association v. Neufeld*, 2021 BCHRT 6, the Tribunal dismissed allegations made on behalf of non-LGBTQ teachers due to a lack of specific evidence regarding any actual adverse effects on them, despite the broader context of discriminatory statements. The Tribunal found no reasonable prospect of success without specific evidence of adverse impacts (*Chilliwack Teachers’ Association v. Neufeld*, at 121).

[1396] The absence of testimony, a personal complaint, or any direct evidence from Ms. Longstaffe regarding personal adverse impact means there is no factual foundation to support an award of injury to dignity damages. The Complainants’ Representative argues that this complainant “carried the worry of the University’s lack of action for a lengthy period of time” for the basis of an injury to dignity. This concern cannot support a complaint for injury to dignity. Not only is there no evidence of this, there is a clear floodgates concern with the scope who is entitled to injury to dignity damages.

[1397] There was simply no evidence presented to make any assessment of the damages for Ms. Longstaffe. She did not testify about her experience with a discriminatory response from the University or that she was subject to a discriminatory environment. She was a graduate student who was not particularly vulnerable. No medical evidence was adduced on her behalf and no information about any pre-existing condition was adduced. There was simply no evidence presented upon which the Tribunal could make any award for injury to dignity for Ms. Longstaff.

[1398] In the alternative, the Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be in the range of \$2,000.00.

C. General Class Complainants

1. Melanie Tremblay

[1399] UBC's response to Ms. Tremblay 's reports of concern regarding RW was prompt and serious, consistently prioritizing her well-being and safety. This prioritization occurred even while Green College was managing other complex cases.

[1400] The Ms. Tremblay process unfolded over a relatively short period. Direct disclosures from Ms. Tremblay began on May 3, 2014. After this disclosure, Ms. Tremblay took informal steps to deal with setting boundaries with RW. By mid-May 2014, she requested further University involvement. University resources became involved, with Campus Security struggling to get RW to attend a meeting around May 14, 2014. On May 22, 2014, an undertaking was drafted for RW to sign, setting out behavioral restrictions. He signed it that day. Shortly after signing the undertaking on May 22, 2014, RW breached it, which was reported by Ms. Tremblay. An eviction notice was issued to RW on May 30, 2014, requiring him to vacate by the end of June 2014.

[1401] The process involved rapid escalation from informal attempts at resolution in early May 2014 to formal undertakings by late May 2014, with breaches addressed within days and eviction following within a month of initial reporting. The University's approach was reasonable within the context of what was known to them at the time. They had to consider the serious consequences to RW and could not immediately move to an eviction without first attempting less punitive measures such as giving him notice that his behaviour was unwanted and having him sign an undertaking.

[1402] On June 16, 2014, RW appeared at a Green College event. Although he did not directly

interact with her, Ms. Tremblay reported feeling distressed. Following the June 16, 2014 incident, further escalation beyond Green College was deemed necessary, including referral to Mr. Hyson. Ultimately, after continued issues with RW's presence and disregard for boundaries, a full ban from Green College was imposed on April 7, 2015. Ms. Tremblay responded positively to this action on April 8, 2015.

[1403] Continued breaches led to a full ban within approximately ten months from the initial report. Between June 16, 2014, and April 8, 2015 there were not reported interactions by Ms. Tremblay.

[1404] Again, the Respondent acted promptly and reasonably in the circumstances. Throughout this period, coordination occurred between Green College administration, Campus Security, the Equity and Inclusion Office, Student Conduct/NAM, and Student Housing.

[1405] Mr. Lundeen met with Ms. Tremblay multiple times, taking her concerns seriously. He advised her to clearly communicate her boundaries to RW and provided her with a criminal harassment brochure. Mr. Lundeen also advised Ms. Tremblay to retain text messages from RW and reassured her that she did not need to move out, emphasizing that RW's behavior was the problem. He acknowledged RW's continued messages as inappropriate and as harassment. Mr. Lundeen assessed that the situation would adversely affect Ms. Tremblay's emotional well-being and academic performance if not addressed.

[1406] Mr. Lundeen proposed involving the EIO (Ms. Kay), describing the situation as warranting escalation based on harassment information. He coordinated with Campus Security and communicated concerns about Ms. Tremblay's weekend safety. Dr. Vessey also took Ms. Tremblay's concerns seriously from the outset, relying on Mr. Lundeen's assessment of the ongoing unwanted contact.

[1407] Green College, with input from Ms. Kay and Campus Security, prepared a written undertaking for RW to formalize behavioral expectations and protect Ms. Tremblay. Mr. Lundeen was present when this undertaking, which required RW to avoid contact with Ms. Tremblay, was explained to RW. After RW breached the undertaking, Lundeen and Dr. Vessey initiated the termination of RW's residence contract, choosing eviction due to RW's non-compliance. Dr. Vessey testified that these measures were intended to protect Ms. Tremblay from further distress.

[1408] Mr. Lundeen and Dr. Vessey continued to monitor the situation, gathering information and consulting with Student Housing. Following further breaches by RW, a full ban from Green College was imposed on RW on April 7, 2015, in consultation with central university

offices, as Green College lacked unilateral authority for campus-wide restrictions. Ms. Tremblay expressed relief and gratitude for the support and interventions by Green College leadership throughout this process.

[1409] Ms. Kay provided support, safety planning, and attempted informal resolution. She coordinated meetings, referrals, counseling, and informal undertakings with RW, Green College administration, security, and the NAM office as needed. When RW was uncooperative, Ms. Kay referred the case to Mr. Hyson. Ms. Kay had no authority to evict or discipline but facilitated these processes.

[1410] Ms. Kay met with Ms. Tremblay, where Ms. Tremblay provided a full account of events, and Ms. Kay also advised Ms. Tremblay about university services and processes, including referrals to counseling and SASC. Ms. Kay consistently checked in with Ms. Tremblay post-resolution and Ms. Tremblay later wrote a letter supporting Ms. Kay's approach, indicating satisfaction with the support received.

[1411] Mr. Bohnen became aware of Ms. Tremblay's distress when Ms. Kay brought her to his office. He documented her concerns in incident reports and agreed with recommendations to restrict RW's access. Mr. Bohnen facilitated referrals to Mr. Hyson for a formal equity investigation and coordinated with Janice Robinson regarding housing safeguards. He confirmed that RW's conduct contained aspects of harassment and recommended moving one of the individuals out of Green College.

[1412] Mr. Hyson contacted Ms. Tremblay after RW was seen on Green College grounds post-eviction, obtaining further information and explaining the NAM process to her. He outlined possible outcomes of the NAM process and Ms. Tremblay subsequently decided not to initiate another formal NAM process but sought clarification for RW regarding parameters of indirect contact. Through email and an in-person meeting with RW, Mr. Hyson secured RW's agreement to comply with clarified expectations, including avoiding further indirect contact with Ms. Tremblay and notifying Green College leadership if he intended to attend events so Ms. Tremblay would be aware. Mr. Hyson communicated these outcomes to Ms. Tremblay, who confirmed her satisfaction. Crucially, Ms. Tremblay's autonomy and decisions regarding how to proceed at each stage were respected.

[1413] UBC's policies and trauma-informed practices were followed, and survivor autonomy was respected. The escalating interventions, from informal undertakings to eviction and a formal ban, illustrate a reasonable and adaptive response to the evolving situation. The comprehensive nature of these actions, coupled with Ms. Tremblay's expressed

satisfaction, indicates that any alleged adverse impact was mitigated by the University's diligent and appropriate response, thereby negating the necessary nexus for a finding of discrimination.

[1414] It is submitted that Ms. Tremblay did not establish a prima face complaint of discrimination.

[1415] Further, the fact that RW subsequently breached the undertaking does not retroactively render UBC's initial approach wrong or too lenient. UBC, like any institution, does not possess a "crystal ball" to predict with certainty whether an undertaking will be effective in every case. In many instances, such undertakings are sufficient to resolve issues without further escalation. The standard for an institutional response is reasonableness, not perfection; service providers are not required to predict outcomes with certainty or guarantee a particular result (*Hale* at 27). UBC's approach was intended as a reasonable balance, acknowledging some risk but considering it "conscionable" given the circumstances.

[1416] There was no evidence provided by Ms. Tremblay regarding the impact of her interactions with the Respondent. She did not testify. The Complainants' Representative is seeking to have the Tribunal infer the impact on the basis of emails mostly of which dealt with mental state in dealing with RW rather than in dealing with the University. The Complainant's Representative provide no reasonable way for the Tribunal to make the ascertain whether the University's actions or omissions impacted her. The Complainants' Representative does not acknowledge that Ms. Tremblay was thankful to the University for taking the steps it did. On October 28, 2016, Ms. Tremblay wrote a positive letter in respect of her interactions with Ms. Kay. Ms. Tremblay wrote as follows:

Mme Kay was not only extremely knowledgeable about the law and the various procedures given her positions at the office, she also demonstrated a non-judgmental deep understanding of the more human and psychological perspective. I was initially very nervous to take my case to the Equity and Inclusion office, but I was rapidly reassured and found great support in Mme Kay. She made me feel understood, that my issue mattered, and I felt that she took it very seriously. Given the situation, she promptly met with the offices involved in order to attempt to resolve my issue. At every step of the way, Mme Kay consulted me and gave me options on what would make me most comfortable with further procedures to take, never forcing them on me. Mme Kay's help was invaluable during this difficult time. She allowed me to contact her with any questions I had. I actually called her many times to get further specifications about the process, and her answers were professional, informative, and supportive. With Mme Kay, I knew I was not alone in the issue, I could count on her as a professional, but also as a human, to help me deal with the problem. Having shared with her my level of stress at the time, Mme Kay also made a point to update me on the progress of the issue. I cannot thank her enough for all the work she did with me, and cannot

emphasize enough the professionalism Mme Kay demonstrated in her treatment of my case. She made me feel that I could count on her in a time that was so important to me, when I felt very vulnerable. I would certainly ask her for help in another issue may it arise.

[1417] There was simply no evidence presented to make any assessment of the damages for Ms. Tremblay. She did not testify about her experience with any alleged discriminatory response from the University or that she was subject to a discriminatory learning environment. No medical evidence was adduced on her behalf and no information about any pre-existing condition was adduced. She was a graduate student at all relevant times and graduated on time by all accounts. She thanked the University staff for their help. There was simply no evidence presented upon which the Tribunal could make any award for injury to dignity for Ms. Tremblay.

[1418] The Tribunal in **Hale** confirmed that the award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. There is no basis for the Tribunal to make this distinction in Ms. Tremblay's case.

[1419] In the alternative, the Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be in the range of \$10,000.00, taking into account an appropriate contingency discount for the underlying misconduct of RW.

2. Tara McBryan

[1420] Tara McBryan raised a number of concerns regarding her time at UBC. She discussed an incident that took place in Seattle, Washington in which she was sexually assaulted by a female who was not a student of UBC. She also discussed her experience with Student X who was a student in her program.

[1421] Ms. McBryan testified about numerous interactions with Student X but agreed that she had not told anyone from the Respondent about several of those interactions. She discussed that she did not report to anyone that he had put porn on in his office or talked about how Ms. McBryan should make out with another female student. She referenced that there was a rapist on campus and that she thought it was Student X. She also gave evidence about a drink spiking incident that did not occur during a University related activity. The Tribunal must be careful not to impute knowledge of these parts of her issues with Student X onto the Respondent.

- [1422] The Respondent provided Ms. McBryan with a comprehensive and reasonable response to her concerns, including emotional support, safety measures, academic accommodations, and ongoing follow-up. Ms. McBryan met with Ms. Kay from the EIO on April 28, 2014, and felt heard and supported, describing herself as being "in good hands". Ms. Kay's notes were described as accurate and thorough.
- [1423] Ms. McBryan did not come forward for over a year, which impacted the timing of the response from the Respondent. She agreed that when she first came forward most of the egregious conduct from Student X had already occurred. This did not give the Respondent opportunity to prevent some of the harm which Ms. McBryan experienced. She agreed that after she came forward her concerns were more about their interactions in communal spaces and his loitering near her.
- [1424] Ms. McBryan agreed that Student X did not assault her as part of the incident that occurred in Seattle.
- [1425] She only sought counselling for two incidents, the drink spiking incident and for the sexual assault that occurred in Seattle by an unidentified non-UBC female. She testified that "I don't think that the spike drink incident was a huge incident in my life but I can't speak to something from ten years ago".
- [1426] It is submitted that the Complainant's Representative did not establish a *prima facie* case of discrimination on behalf of Ms. McBryan. She did not establish that the Respondent treated her adversely in the provision of the service of education.
- [1427] Upon her coming to see Ms. Kay, interim safety measures were promptly implemented, including issuing a rape whistle, providing a campus security contact card, assigning an undergraduate student liaison for protection in shared facilities, and facilitating an office move to avoid Student X. Efforts were also made to change her research project to minimize contact with Student X. These efforts need to be reviewed in light of her communicating that she never wished for him to have been excluded.
- [1428] Ms. McBryan received counseling for managing her feelings, including sessions with Jennifer Hollinshead, a sexual assault specialist at UBC, and attended SASC. After taking a short medical leave due to anxiety, she was supported in returning to her program with a completely new project and was granted additional time to complete her degree, which she did in May 2017.
- [1429] UBC maintained ongoing communication and follow-up, including with the Head of

Zoology, and corresponding multiple times with Ms. Kay. Ms. McBryan agreed in cross-examination that after her complaint was communicated to the department, Student X stopped talking to her and about her. She also acknowledged that UBC would not have known that she wanted further assistance unless she communicated it, which she did not formally do.

[1430] Ms. McBryan testified that she did not care about recourse for Student X. She testified that she never wished for him to be excluded. The Complainants' Representative counsel did not put this to Ms. Kay. Instead, she attempted in her examination to have Ms. Kay accept that she could be criticized for not excluding Student X. Perhaps, Ms. Kay at the time of her examination just did not remember that Ms. McBryan did not want a formal NAM process given that she did not wish for Student X to be excluded.

[1431] It is unfortunate that Student X and Ms. McBryan could not continue to work at the same centre. However, Ms. McBryan was given the opportunity to work with a new supervisor on a new project with the Fraser Valley Trout Hatchery.

[1432] Based on the evidence, Ms. McBryan felt heard and supported by Ms. Kay and the resources available to her, and she did not report dissatisfaction with UBC's response or the services provided. Ultimately, there is no evidence in her testimony that she experienced an adverse impact connected to a protected characteristic by UBC's response. UBC's actions were trauma-informed, reasonable, and supportive, encompassing various forms of assistance and accommodations. Therefore, there is no basis for a finding of discrimination against the Respondent.

[1433] UBC's response to her concerns also has to be reviewed in light of the Complainant stopped communicating with Ms. Kay. As a Complainant she has an obligation to participate in the process and to clearly state what it is she is looking for which she failed to meet.

[1434] She discussed her mental state at the relevant time but disclosed no medical records to support it. The Respondent had no opportunity to test her evidence in this regard.

[1435] She claimed that she was delayed in entering the profession and that she had a wage loss claim. Her calculations were what she called "a back of napkin assessment". No documents relating to her loss or the napkin assessment were produced. She alleged that her wage loss only came up in hearing preparation and that is why she didn't disclose any documents relating to the loss. As a complainant who was represented by counsel throughout this process, she had an obligation to produce these documents in the event

that she would be seeking damages for wage loss.

[1436] She indicated that she worked as a lifeguard during the time period of her loss but again did not disclose how much she made as a lifeguard to permit for any assessment of her actual loss. She disclosed no records of her bursaries and how that impacted any loss. She provided no information about the income she earned from being a teaching assistant and how that impacted her loss. She provided no documentation about her earnings from the part-time jobs that she held.

[1437] She explained that only 50% of students had jobs right after graduation. She did not provide any academic information or application information for the Tribunal to determine whether she would have had a job immediately after graduation.

[1438] Accordingly, the Respondent submits that Ms. McBryan did not establish a wage loss.

[1439] The Respondent submits that if the Complainant has successfully proven that the Respondent's process for responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be in the range of \$15,000.00. Ms. McBryan adduced no medical evidence to support her claim for damages nor did she adduce evidence from her family and friends about the impact on her. She adduced no medical evidence about any underlying condition or any medical assistance that she sought attention for.

[1440] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal make this determination.

[1441] After Ms. McBryan came forward, Student X made his best efforts to no longer engage with her. She did not want a formal process and none proceeded like it did in Hale. She did not have an underlying mental condition and nor did she provide any evidence of one.

[1442] Ms. McBryan was a graduate student at the time of her issues who did not want to proceed with any formal resolution that would have ended up in punishment for Student X. She did not seek counseling for her experience at the University but rather for two incidents, the drink spiking incident and for the sexual assault that occurred in Seattle by an unidentified non-UBC female student.

[1443] Ms. McBryan also claims for an extra year of tuition of \$10,000.00 to \$15,000.00. Again,

insufficient evidence was presented to support this loss. Ms. McBryan testified that she received bursaries for the relevant time period but did not identify how much. She did not provide any support from evidentiary records to support how this calculation was made. She has not met the required burden for establishing this loss.

[1444] The Complainants' Representative also uses Ms. McBryan's experience to support the Mordvinov group complaint. She alleges that Ms. Kay's failure to provide Ms. McBryan with options was similar to the interaction between Ms. Kay and Ms. Kirchmeier in February 2014.

[1445] This is entirely inconsistent with the actual evidence adduced in which Ms. Kirchmeier agreed that she was presented with the concepts of informal and formal complaints by Ms. Kay in their February 2014 discussion. Further, this ignores the fact that Ms. McBryan did not want any consequences for Student X, which means that formal process would not have worked for her.

[1446] Further, the cases of Ms. McBryan and Ms. Kirchmeier are distinguishable on the basis that Ms. McBryan was a direct complainant and not a third-party complainant.

3. Lauren Fisher

[1447] Ms. Fisher testified about an incident on the dance floor and an unwanted kiss but was unable to testify that the males involved in these incidents were students. In fact, for the incident on the dance floor, she did not see the male who touched her bottom. These interactions did not occur at UBC related events and cannot form the basis of her complaint before the Tribunal.

[1448] Ms. Fisher gave evidence regarding a Tinder date that occurred off campus. This too cannot form part of the complaint against the Respondent.

[1449] She gave evidence about attending a guy's house who she liked who told her to leave or he would call the cops. This incident resulted in her being hospitalized. During this hospitalization she indicated that she had not experienced any trauma or abuse. This statement was made post the interactions which she has brought forward as a complainant in this case.

[1450] The Complainant's Representative did not establish a *prima facie* complaint on behalf of Ms. Fisher. She did not establish that Ms. Fisher was treated adversely on the basis of prohibited ground the Respondent.

- [1451] Ms. Fisher received support and accommodations from the University and its associated services, demonstrating a reasonable and responsive institutional approach to their needs. These supports included emotional assistance, academic accommodations, counseling referrals, and medical assistance, all provided in a trauma-informed and survivor-centered manner.
- [1452] Specifically, Mr. Yastrebov, a Residence Coordinator at Place Vanier, provided emotional support, suggested SASC that she then engaged with, and accompanied Ms. Fisher to the emergency room when they were experiencing suicidal ideation. SASC offered emotional support, safety planning, academic accommodations (including contacting professors for missed exams), referrals to UBC Counseling and Student Health, accompaniment to medical appointments, and assistance with Access & Diversity for disability accommodations. They could have offered assistance with understanding consent. There was no evidence adduced by the Complainants' Representative that SASC was asked about this type of information by Ms. Fisher.
- [1453] Ms. Fisher testified that she attended SASC many times. She testified that they offered her assertiveness training and that they supported her with obtaining academic concessions. They took her to student health and talked to her about how she was feeling. She discussed with SASC how to set up boundaries in her interactions and was invited to an assertiveness workshop which she understood would help her in speaking up for herself and being firm. Despite these offers, she testified that she did not recall taking the workshop and her counsel now asserts that she could benefit from this type of training.
- [1454] Ms. Fisher also had access to Jennifer Hollinshead. She testified that she met with a counselor but couldn't remember her name.
- [1455] Ms. Fisher was taken to a SASC document relating to interactions with SASC in which it highlighted the options of proceeding to NAM, Campus security, or a police report. She could not recall whether SASC discussed those options with her. Interestingly, there was a check for academic advocacy which was something she remembered. There is no basis to assert that SASC did not discuss those options with her. Throughout this complaint, we have seen SASC support survivors through the UBC complaint and reporting processes and UBC welcoming and working collaboratively with SASC as the survivor's desired support person.
- [1456] While Ms. Fisher testified that she wanted a more comprehensive training on consent, she was offered to attend a workshop on assertiveness training which she declined.

[1457] Minimal evidence was presented about the impact on Ms. Fisher of interacting with the Respondent. Her documented interactions with SASC who has been shown throughout the rest of this complaint to know how to assist students navigating reporting of sexual assault and how to commence the more formal NAM process. There is no reasonable basis to say that Ms. Fisher was not offered those options. Further, it is submitted she was offered to attend a workshop on assertiveness training which she refused.

[1458] Although Ms. Fisher may have had complex mental health issues while she was a student, her condition was not the result of any discriminatory action taken by the University.

[1459] The systems in place with Respondent appropriately addressed Ms. Fisher's concerns at the relevant time. She simply did not wish to pursue any formal complaint process.

[1460] The Respondent submits that if the Complainant has successfully proven that the Respondent's process of responding to her complaint of sexual misconduct was discriminatory under the *Code*, an appropriate damages award would be in the range of \$5,000.00, taking into account an appropriate discount for the lack of supporting evidence.

[1461] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination.

4. **Jane Doe 1**

[1462] Jane Doe 1 did not testify at the hearing of the Complaint. All the evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay and was not proven by any reasonable onus of proof by the Complainants' Representative who had this onus.

[1463] There was no evidence adduced by the Complainants' Representative that this Jane Doe felt any stress or anxiety with respect to the Respondent's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to her Complaints to the Respondent.

[1464] In *Pivot Legal Society v. Downtown Vancouver Business Improvement Association and another* (No. 6), 2012 BCHRT 23, the Tribunal discussed the need for complainant testimony in order to establish a complaint of discrimination. The Tribunal found that the

representative complainant had established the first two factors but failed to establish a nexus between the adverse treatment and the protected grounds. This conclusion turned on the absence of direct evidence from the members of the class. The Tribunal accepted a theoretical framework for how the Ambassadors' actions could have had a differential impact on those with Aboriginal ancestry, compared to other homeless individuals, but was unable to conclude that such differential impacts occurred in fact. The Tribunal found that the allegations failed to establish a *prima facie* case because of the lack of evidence from members of the class

[1465] Given that the Complainants have elected to pursue this Complaint as a group complaint by examining each individual's complaint, this failure to call evidence cannot be overlooked by the Tribunal. It is the individual's experience that the Tribunal is evaluating in circumstances where there is no one-size fit all solution or standard application of a term or policy to all class members. Many of the General Class group complainants did not choose to go forward with a complaint through the Respondent processes such as the NAM. Further, others were told that the Respondent had no jurisdiction to accept their complaints given where the conduct took place.

[1466] The situation is further complicated because there is no way for the Tribunal to differentiate harm from the actions of the male respondent versus that of the University. This is a necessary evaluation in a complaint like this as it is the University's response that is at issue. Further, there is no way to know what these Complainants wanted from the University process and whether the University's response was reasonable without knowing each Complainant's unique perspective. The Complainants' Representative cannot be permitted to stand in the shoes of other complainants and advise the Tribunal purportedly what they wanted or did not want from the process of complaining to the Respondent in this case. This is argument and not evidence.

[1467] The Tribunal should not override the autonomy of these women as the Complainants' Representative has attempted to do.

[1468] The Respondent submits that all complainants who did not testify should have their complaint dismissed on the basis that they cannot establish a *prima facie* case of discrimination.

[1469] It is significant that the Complainants' Representative does not allege a breach of the Code with respect to Jane Doe 1. They are not seeking any damages on her behalf. This is significant because it is a recognition of the frailties in which they approached this

complaint. There is no rationale manner in which the Complainants' Representative appears to be willing to override the autonomy of complainants.

[1470] Ms. Kay testified that she in fact met with Jane Doe 1. She explained that Jane Doe 1 did not want to make a formal complaint. It is vital that the Tribunal recognize that the Complainants' Representative accepts in this scenario the autonomy of Jane Doe 1 to determine what she wanted from a complaint process. Respect for the Complainants' autonomy can only be achieved if the Representatives of the Respondent accepts the autonomy of all the Complainants who came forward to the Respondent regardless of the Complainants' Representative's personal view on what that particular complainant wanted or did not want.

[1471] A third party who has never met a particular complainant and did not experience the harm should not be permitted to stand in that Complainant's shoes and assert what it is they may have wanted.

[1472] Ms. Kay testified that there was a rumour that the male involved aggressively pursued someone else, however that person had not come forward. The Complainants' Representative appears to accept that the Respondent cannot act on rumours without any information from the person involved in respect of Jane Doe 1's complaint. However, in the case of Ms. Kirchmeier they seem to refuse to accept such an outcome. The Complainants' Representative approach to her own complaint contradicts her approach to Jane Doe 1's complaint and highlights the problematic position that she is taking.

[1473] It is not discriminatory to not act on a complaint that was not brought forward by the individual impacted. The Complainants' Representative appears to accept that fact for Jane Doe 1 but not for own circumstances where she attempted to bring forward complaints on behalf of others that had not consented to her doing so and in fact had no idea she was doing so.

[1474] Further, Ms. Kay testified to concerns that this particular male would feel discriminated against on the basis of his religion and that she had a concern with procedural fairness for the male. The Complainants' Representative did not challenge this. Nevertheless, the Complainants' Representative does not appear to accept that the Respondent had to consider DM's procedural fairness in determining its approach to the investigation of the initial rumours brought forward by a third party (Ms. Kirchmeier).

[1475] Although the Complainants' Representative agrees that there are no grounds for a discrimination complaint for Jane Doe 1, they rely on the underlying circumstances to

allege that Ms. Kay took a more proactive approach than with DM by speaking with Mr. Hyson about the allegations. Presumably, the Complainants' Representative is attempting to draw a comparison to her own situation when she had a discussion with Ms. Kay to show that Ms. Kay was less responsive to her. The Respondent submits that the situations are not comparable.

[1476] The Complainants' Representative fails to recognize that her situation is drastically different from Jane Doe 1. Jane Doe 1 came forward to address her own experience and not that of another student. Further, she is not referencing incorrect facts nor did not rescind her initial complaint before speaking with Ms. Kay. There are no similarities between the two complainants.

[1477] This case highlights that it is appropriate for there to have been a wide continuum of responses from the University with respect to issues relating to alleged sexual harassment or sexual assault. The Complainants' Representative appears to accept this notion given that she does not argue any discrimination occurred against Jane Doe 1.

5. Jane Doe 2

[1478] This complainant did not testify. All the evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay.

[1479] There was no evidence adduced by the Complainants' Representative that this Jane Doe felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to their Complaints.

[1480] The Respondent submits that all complainants who did not testify should have their complaint dismissed on the basis that they cannot establish a *prima facie* case of discrimination.

[1481] The Complainants' representative admits that at the time Jane Doe 2 came forward she was not a student. The Complainants' Representative does not seek a remedy for Jane Doe 2. Although the Complainants' Representative recognizes that the class definition required complainants to be students, they are unwilling to recognize that the class definition required corresponding male respondents to all also be students or males studying at UBC.

[1482] Jane Doe 2 was offered counselling services and provided information for SASC from Ms. Kay.

[1483] Although Jane Doe 2 was not a student, her case highlights issues with this complaint when the Complainants' Representative attempts to step into the shoes of a class complainant who did not wish to proceed with a complaint process with the Respondent. When asked about Jane Doe 2's decision, Ms. Kay testified that:

"She needs to take a step back at that point, telling us she will let us know, she has autonomy and control over that decision. Trying to force people into formal procedures when not ready or signaling they want to take a step back, would not be appropriate, would not be respectful, would not be respecting her autonomy, would also be very difficult if not impossible to pursue complaint against the will of a complainant, you need complainant to be participatory usually, so pursuing complaint is difficult on top of issues respecting her control or her autonomy"

[1484] Ms. Kay testified that confidentiality is part of respecting a complainant's control over her complaint and respecting her autonomy and the right to come forward, if when and how is best for the survivor. The Respondent submits that advancing claims on behalf of Jane Doe Complainants without their consent undermines the autonomy and control of complainants over their own story.

[1485] Ms. Kay testified:

"control over the complaint needs to rest with survivor, so not pushing people into policing settings, not dragging an unwilling or unready complainant into a process they are not ready for and at the same time not withholding it when they are ready... and also being alive to fact that confidentiality was very significant concern for survivors and respecting that, and also that there can be significant issues for safety around confidentiality."

[1486] The Respondent submits that the Complainants' Representative repeatedly ignores the concern of confidentiality and respect for the autonomy of survivors in her role as the Class Representative (and she did the same when it came to her own interactions with the University regarding DM). The Complainants called no evidence to contradict Ms. Kay's testimony regarding the importance of autonomy and confidentiality, nor did they adduce any evidence of another system of reporting sexual harassment or assault that permitted for a third party to override the decision of the survivor. There has not been any basis for the Tribunal to accept that this was an appropriate practice.

[1487] The manner in which the Complainants' Representative has selectively chosen not to follow what Complainants wanted is troubling. The Complainants' Representative did not need to place the complaints of Jane Doe 1 or Jane Doe 2 before the Tribunal when they

were not seeking to establish a complaint of discrimination for them. The concern here is that the Complainants' Representative is using these other complainants' experiences to bolster her own agenda regarding third party complaints.

[1488] The Complainants' Representative specifically argues that Jane Doe 2's experience is an example of where there is a safety risk to the University but because the Complainant did not authorize it to take action, it did not. The Complainants' Representative argues that the University has an obligation to other female students to provide a work and study space free of harassment and discrimination. She argues that this interest may supersede the confidentiality of a student coming forward. This position clearly does not support autonomy for complainants nor was there any evidence provided to establish this position from someone qualified to provide such an opinion. If the University were to act without the consent of the survivor that would arguably be a deterrent for survivors. Rather, this would in fact create a discriminatory environment for survivors.

[1489] The Tribunal has accepted that privacy and confidentiality in one's life story is of paramount concern. In *Union of BC Indian Chiefs v. Provincial Health Services Authority and others*, 2024 BCHRT 300, the Tribunal stated at paragraph 15:

Next, I am not satisfied that the privacy interests of Class members would be sufficiently safeguarded by simply redacting their names and personal identifiers. I agree with, and adopt, the Respondents' argument on this point:

The information about one's issues with alcohol and substance use varies from person to person. Information about family and living circumstances varies from person to person. The individuality inherent in every individual story is unique to the individual and there is no way to redact the patient's life from the record.

Even if members of the public do not know who the Tribunal may be referring to in a final decision, that individual person does as it is their life story being examined. It is a gross breach of any individual's autonomy over the story of their life for someone else to make the decision to put their story into a public record without their consent. This outcome could not be anticipated by any potential patient who decides to meet with health professionals regarding their medical concerns.

[1490] The Complainants' Representative attempted to circumvent this issue by arguing that they were not given permission to know the identities of the Complainants and it was the Respondent's obligation to notify the potential complainants personally of the Complaint. This is a complete misinterpretation of what the Tribunal ordered regarding notice. The Tribunal in its December 5, 2017, letter outlined the following:

“I agree with the **privacy concerns** raised by UBC. The faculty and administrative staff **may** have the **option** of sending the initial communication to the women who made the disclosures or reports to them in confidence” [emphasis added].

[1491] There was never an order from the Tribunal that the Respondent communicate directly with class members or that they force class members to speak directly to the Complainants’ Representative.

[1492] The Complainants’ Representative accepts that they do not have any evidence that the Respondent’s alleged failure to act had a negative impact on Jane Doe 2. They did not seek a remedy for Jane Doe 2.

[1493] The Complainants’ Representative accepted that Jane Doe 2 was no longer a student at the time of her Complaint, yet they elected to put her confidential and personal story before the Tribunal in clear breach of her autonomy and privacy to make points for their own pursuits and benefits and not for the benefit of Jane Doe 2.

6. Jane Does 3A, 3B, 3C

[1494] These complainants did not testify. All of the evidence adduced about their experiences was hearsay, double hearsay, and triple hearsay and was not proven by any reasonable onus of proof by the Complainants’ Representative who had this onus.

[1495] There was no evidence adduced by the Complainants’ Representative that these Jane Does experienced any stress or anxiety with respect to the University’s response to their concerns. Further, there was no evidence adduced by the Complainants’ Representative that these Complainants were not satisfied with the outcome of the Response to their Complaints.

[1496] The male respondent(s) in these three complaints was not a student or a male studying at the University at the time of their complaints coming forward. Further, in the case of Jane Doe 3C, the male was never properly identified. The Tribunal has no factual foundation to find that Jane Doe 3C is part of the class. The Respondent submits that these three complainants do not fit under the definition of the class as outlined by the Tribunal as the male respondent(s) was not a student or male studying at the University.

[1497] The Complainants’ Representative appears to accept the class definition with respect whether a female is required to be a student but not whether a male is required to be student without any explanation for the clearly contradictory position that they are taking.

[1498] As previously stated, the scope of the class complaint as defined by the Tribunal is as follows:

“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”.

[1499] With respect to Jane Doe 3B, it is clear that the male Respondent was not a student or a male studying at UBC at the time of the Complaint. The Complainants’ Representative accepted the evidence of the Respondent that the male Respondent involved with these Complaints graduated in 2013 and was not a student at any relevant time. The Complainants adduced no evidence that he was studying at the University during the relevant time or that he was employed by the University. Therefore, Jane Doe 3B cannot be a complainant.

[1500] The Complainants’ Representative alleges that the allegations involving Jane Doe 3A relate back to her experiences as a student. However, at the time she came forward the male respondent was not a student nor was he studying at UBC. The timing of her experiences cannot be applied in a way that does not take into account the male respondent’s status at the time of her complaint. The male respondent was not studying or employed at UBC towards a female student enrolled at the time of the Complainant and therefore the complaint does not fit within the class.

[1501] With respect to Jane Doe 3C, the Complainants’ Representative submits that, due to insufficient disclosure, the impact on her is unknown, and no claim for injury to dignity is advanced on her behalf. This position reveals an inconsistency. While the Complainants’ Representative acknowledges an absence of evidence regarding the impact on Jane Doe 3C, she nevertheless advances specific assertions regarding the experiences and alleged harm of other unnamed Jane Does, without any evidentiary basis to confirm that those individuals adopt or support those characterizations.

[1502] Further, the Complainants’ Representative never established the identity of the male in involved with Jane Doe 3C. Despite some suspicion that he might be JZ that was never proven. There is no basis to find that Jane Doe 3C fit in the class as the male has not been identified to fit within the class. The Complainants’ Representative failed to meet her onus.

- [1503] In the alternative, the Complainants' Representative failed to establish a *prima facie* complaint of discrimination involving these complainants. There was no evidence of any adverse treatment while they were receiving a service from this Respondent. There was no evidence of how the University was responsible for any of the underlying actions of JZ to these three complainants.
- [1504] Nevertheless, the University still issued a ban to JZ within 8 weeks of the students coming forward. There were no reported interactions between Jane Doe 3A, Jane Doe 3B, or Jane Doe 3C and the respondent male after this matter was brought to the Respondent's attention. There was no evidence of adverse impact or how their learning environment was impacted after that time for these Complainants.
- [1505] The Tribunal has previously dismissed complaints where evidence is not led with respect to a Class Complainant where no evidence of differential impact was led to support any findings that could be made (see ***Pivot Legal Society v. Downtown Vancouver Business Improvement Association and another (No.6)***, 2012 BCHRT 23).
- [1506] The Respondent submits that the complaints of Jane Doe 3A, Jane Doe 3B, and Jane Doe 3C should be dismissed. In the alternative, if the Tribunal finds discrimination, then the Respondent submits that Jane Doe 3A and Jane Doe 3B should be awarded injury to dignity of \$3,000.00 which is slightly less than what the Complainants' Representative is seeking. No direct evidence of the harms to these Jane Doe's was presented.
- [1507] The Complainants' Representative did not indicate the amount of injury to dignity that they are seeking for Jane Doe 3C. Arguably, they admit that the impact on her is unknown. Should the Tribunal find discrimination that Jane Doe 3C should be awarded injury to dignity of \$2,000.00.
- [1508] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for these three Jane Does. They invite the Tribunal to speculate that the Respondent caused harm by any alleged discrimination. They presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

7. **Jane Doe 4**

[1509] Jane Doe 4 did not testify at the hearing of this Complaint. All the evidence adduced about her experience was hearsay, double hearsay, and triple hearsay and was not proven by any reasonable onus of proof by the Complainants' Representative who had this onus.

[1510] There was no evidence adduced by the Complainants' Representative that Jane Doe 4 felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to their Complaints.

[1511] It is submitted that all complainants who did not testify should have their complaint dismissed on the basis that they cannot establish a *prima facie* case of discrimination. (see ***Pivot Legal Society v. Downtown Vancouver Business Improvement Association and another (No.6)***, 2012 BCHRT 23).

[1512] Jane Doe 4's complaint relates to allegations that students in her class handed in graphic sexual material for an assignment. At the time of the interactions, Jane Doe 4 was not participating in the University environment as a student but as an employee. Accordingly, the Respondent submits that she does not qualify as part of the General Class.

[1513] Jane Doe 4 was an employee at the time that she experienced the allegations. She was supported through the department and had access to the mental health and support plan for faculty and staff on campus through her employee benefits. The employee-related supports that she received highlights that she was not a student at the time of the allegations.

[1514] In the alternative, there was no evidence that this Complainant felt any impact from the University's response to her complaint. Further, there was no evidence adduced that this Complainant was not satisfied with the outcome of the response to her complaint. The only evidence that was adduced about her views was that she was appreciative of Mr. Hyson's efforts to determine who has submitted the assignments.

[1515] Further, after an extensive investigation, it was determined that both male respondents were not students at the University nor were they studying there. Again, this Complaint does not fit under the class definition set out by the Tribunal. Consequently, Jane Doe 4 cannot qualify for class membership even if the Tribunal considers her to be a student for the purposes of the Complaint.

[1516] The Respondent submits that the Complainant of Jane Doe 4 must be dismissed. She

does not fit within the class definition.

[1517] In the alternative, the Complainants' Representative has not established any discrimination from the University's response to Jane Doe 4's complaint regarding the unidentified male respondents who submitted assignments for her review while she was teaching them.

[1518] The Complainants' Representative glosses over the fact that there was no identification of the individuals who submitted the assignments and the efforts that Mr. Hyson undertook to identify them. Mr. Hyson conducted an extensive investigation to determine who did the writings. He kept Jane Doe 4 updated of his progress throughout. He specifically updated Jane Doe 4, Dr. Dick and Dr. Potter prior to various investigatory meetings and when he was able to confirm the identities of the two males.

[1519] Mr. Hyson testified that based on the samples writing it appeared that the conduct would fall under the student code of conduct and this would be a better approach given the seriousness of the allegations. Again, there was simply no basis in this case to move forward with a Policy 3 complaint. It would not have yielded any different outcome. The department would not be able to take action against these non-University actors.

[1520] Jane Doe 4 did not complain about her experience in complaining to the Respondent. She did not advise Mr. Hyson or anyone who testified about how the process of complaining impacted her. There was simply no evidence presented which would permit for a finding that Mr. Hyson "failed to put JD4's mind at ease" (which is a purely speculative subjective view with no evidence from JD4).

[1521] The Complainants' Representative did not present any evidence from Jane Doe 4 about how the response from the Respondent impacted her. Rather, the Complainants' Representative substituted her views for her and disrespected her autonomy. There is no rationale provided as to why they did not substitute their views for Jane Doe 1 or Jane Doe 2 but do so for Jane Doe 4.

[1522] The Complainants' Representative alleged that Mr. Hyson did not take sufficient steps to protect women on campus. They led no evidence of this allegation and provided no factual foundation to support it. They did not show that the harassment continued or that anyone suffered harassment as result of the conduct of the male respondents involved in these allegations. They did not lead any evidence of any further interactions between the males who were eventually identified to have provided the writing samples and any other female student.

[1523] It is submitted that the Complaint of Jane Doe 4 must be dismissed.

[1524] In the alternative, it is submitted that Jane Doe 4 would be entitled to \$3,000.00.

[1525] No evidence of the harm to Jane Doe 4 was adduced to support the sum sought by the Complainant's Representative.

[1526] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying experience with the male student or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 4. The Complainant's Representative invites the Tribunal to determine to infer that the Respondent caused harm by any alleged discrimination. They presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence. There was no evidence that Jane Doe 4 had to seek counselling for the interaction with the males and no evidence that her learning environment was impacted.

8. Jane Doe 5

[1527] Jane Doe 5 did not testify at the hearing of this Complaint. All the evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay and was not proven by any reasonable onus of proof by the Complainants' Representative who had this onus.

[1528] There was no evidence adduced by the Complainant's Representative that this Jane Doe felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to their Complaints.

[1529] It is submitted that all complainants who did not testify should have their complaint dismissed on the basis that they cannot establish a *prima facie* case of discrimination. There is no basis to assume adverse impact from the University's actions or omissions in Jane Doe 5's case.

[1530] Jane Doe 5 came forward on January 12, 2014, to complain about unwanted interactions with JM, an older male student. Jane Doe 5 first came forward to her professor. She was then referred to her department head and security. The following day she provided campus security with outline account of her experience with JM. Her concerns were forwarded to Ms. Kay.

[1531] Ms. Kay testified that she discussed options with Jane Doe 5 and specifically testified that:

“Rather than go straight to formal complaint, she wanted Greg Dipple and myself to have conversation with JM and let him know his conduct was unwelcome, that it needed to stop, that he needed to change his behaviour and she asked that both Greg Dipple and I be in room and we worked out what that conversation would consist of so she was aware of what would be said. We met with JM and I drafted notes about that.”

“She did not want it forwarded to investigation she wanted informal process instead” [emphasis added].

[1532] In response to a question about having Mr. Dipple there, Ms. Kay testified that: “it was really her call, what she wanted.”

[1533] The Complainants’ Representative ignores the process that Jane Doe 5 wanted and substitutes her own perspective in place in the view of the evidence that was adduced at the hearing and not contradicted. It was reasonable for her to want to pursue an informal response in these circumstances. The Complainants’ Representative ignores the autonomy of the Complainant and asks the Tribunal to do the same without any evidence from the particular Jane Doe to support their position.

[1534] After Jane Doe 5 met with Ms. Kay, Ms. Kay spoke to JM the following week. He gave a verbal undertaking that he would leave Jane Doe 5 alone. There was no reason to believe at that point he would not keep his undertaking. There was no reason why a progressive approach to limiting the interactions was inappropriate or unreasonable. The Complainants’ Representative did not adduce any evidence of the actual risk that JM presented.

[1535] When JM breached this undertaking, Ms. Kay met with him again. The file was then referred to Mr. Hyson. Ms. Kay testified that she had exhausted her resources at that point and Jane Doe 5 agreed to move forward with a formal complaint.

[1536] When questioned about Policy 3 and engaging the administrative head of unit, Ms. Kay testified that this was done, as Mr. Dipple had been involved. She was not challenged by the Complainant’s counsel regarding her testimony about Policy 3. It is troubling that the Complainants’ Representative in the first instance suggested that an informal approach was inappropriate then takes issue when the matter is referred to a formal approach.

[1537] The Complainants’ Representative makes continuous reference to JM’s history as part of their submissions on what the University response should have been. This was addressed

by Ms. Kay in her testimony. Ms. Kay testified that she did not have any information directly from any other complainant against JM. She testified that:

“Jane Doe 5 was the only person who came to me and made a complaint about JM. The only other information I had about JM was the librarians saying that they were aware of this behaviour towards other women by JM. Those women were not named and did not come to my office, and largely referred to a period of time in the past. Mr. Bohnen here told me there were other individuals coming forward about JM, but the only information that come to me was about JM was JD5”.

[1538] Ms. Kay was not challenged on this evidence by counsel for the Complainants.

[1539] Mr. Hyson confirmed that he also did not have another complaint before him regarding any other female interactions with JM. He too was not challenged regarding his evidence in this regard.

[1540] The Complainants' Representative attempted to rely on the history of JM to criticize the approach of the Respondent. That history was not established through any reliable evidence. There was simply no factual foundation for it to be presented at the hearing. Further, these other women had never come forward with complaints to any of the Respondent's employees who interacted with Jane Doe 5 in dealing with her concerns.

[1541] Ms. Kay provided Jane Doe 5 with her personal cell number. Jane Doe 5 already had security numbers on her phone if the situation escalated.

[1542] Unfortunately, JM did not heed the direction by Ms. Kay and made further contact with Jane Doe 5. Ms. Kay met JM again. Subsequently, Jane Doe 5 met with Mr. Bohnen. He took a detailed statement from her. Mr. Bohnen referred her to Mr. Hyson.

[1543] Jane Doe 5 met with Mr. Hyson on March 7, 2014. On March 11, 2014, Mr. Hyson met JM. The matter subsequently proceeded to the NAM. Jane Doe 5 did not attend the NAM hearing.

[1544] There is no basis for a finding of a *prima facie* case of discrimination on the basis of Jane Doe 5's interactions with the Respondent.

[1545] The Complainants' Representative makes reference to the fact that a decision was made by the NAM without Jane Doe 5's attendance at the hearing. The Complainants' Representative then argues that a complainant's attendance at the NAM was not essential and that complainants should be advised of this before electing to attend. The Complainants' Representative then references the cases of Student E and Ms.

Cunningham to suggest that they were not provided the option of not attending the NAM hearing. However, this argument fails to acknowledge that Student C was not required to attend the DM NAM hearing and her allegations were still included.

[1546] Ms. Cunningham would have an issue with the University if she was told that her attendance was optional. Further, all of this ignores that it is clearly more persuasive to have the complainant attend the hearing to support her allegations. This was the uncontradicted evidence of Ms. Kay. In any event, they never asked Ms. Cunningham if she would have preferred not to attend the hearing.

[1547] The Complainants' Representative takes issue that JM's prior history was not part of the complaint before the NAM. The similar fact evidence from unidentified women would not have made the allegations against him regarding Jane Doe 5 any more persuasive. Rather, they would have made the university process against JM open to appeal by him and procedurally unfair.

[1548] The Complainants' Representative claims that the Respondent did not advise Jane Doe 5 of the outcome of the NAM process. However, this ignores the uncontradicted evidence of Mr. Hyson which was that Jane Doe 5 knew of the outcome.

[1549] Jane Doe 5 wrote to Hyson that she felt taken care of in the process. This evidence specifically contradicts any argument from the Complainants' Representative that the University's response to Jane Doe 5 impacted her in a negative way.

[1550] Unfortunately, when Jane Doe 5 returned to campus she had further situation involving JM where he was present in her vicinity.

[1551] On November 11, 2015, the Respondent issued a notice of restriction to JM. The Complainants' Representative alleges that this was done because of the proximity of the Fifth Estate documentary. They provided no evidence to support this. It is also troubling that even in other complaints, the Complainants' Representative appears to put herself front and centre to take credit for any action from the university. The true fact is this outcome had nothing to do with the Fifth Estate Documentary.

[1552] The Complainants' Representative claims that the University failed to take appropriate action until it put the ban in place. They allege this failure caused harm to Jane Doe 5 but provide no basis upon which this inference can be made. The Complainants' Representative is calling for the Tribunal to speculate how Jane Doe 5 felt. The Tribunal should not accept this invitation.

- [1553] It is difficult to accept that the NAM process that was evoked in this case could amount to adverse treatment of the Complainant. She did not have to participate in the hearing itself, and the outcome was that JM was found to have violated the Student Code of Conduct with respect to his treatment of her. He was instructed to have no further contact with her. The Complainants' Representative has not provided any factual foundation to support her argument that the NAM was somehow a discriminatory process.
- [1554] When JM violated the terms of the letter decision of the President in the fall of 2015, the Respondent acted swiftly in issuing a notice of restriction. The Complainants' Representative cannot establish that Jane Doe 5 did not have access to a discriminatory learning environment after she complained.
- [1555] There was no evidence from Jane Doe 5 regarding how she felt about UBC's response to her concerns outside of her note to Mr. Hyson, which contradicts any assertion that UBC's response adversely impacted her. In fact, Mr. Hyson supported Jane Doe 5 in receiving an academic concession.
- [1556] The Complainant's Representative ignores that when Mr. Hyson went back to speak with JM in the fall, he noted that there appeared to be significant deterioration in JM's physical and cognitive ability from previous time that he had met with him. Mr. Hyson believed at this point JM was in his late seventies.
- [1557] When Mr. Hyson met with JM, he had indicated that he was having difficulty recognizing individuals and recalling memories. At this point, based on the fact that Jane Doe 5 wanted JM not to be in certain spaces and the fact that JM did not require access to those spaces to continue studies, JM agreed he would not go in those spaces. Consequently, a decision was made to not move forward with any further processes and to leave restrictions in place so Jane Doe 5 could continue studies without running into JM.
- [1558] There were no further reports of any kind from Jane Doe 5.
- [1559] It is submitted that the Complainants' Representative has not made out a *prima facie* complaint for discrimination for Jane Doe 5. In the alternative, the Complainants' Representative has led no direct evidence regarding actual harm that Jane Doe 5 experienced as a result of the respondents' response to her complaint. In these circumstances, if the Tribunal does make an award for injury to dignity it should be on the modest end of the spectrum. The Respondent submits that \$7,000.00 is a reasonable amount for injury to dignity for this Complainant.

[1560] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying interactions with JM or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal make this determination for this Complainant. They invite the Tribunal to infer that the Respondent caused harm. They presented no medical evidence or any evidence of impact to the learning environment to Jane Doe 5. The Tribunal should not speculate on the harm, if any, that was caused by the Respondent in the presence of a lack of evidence.

9. Jane Doe 6

[1561] Jane Doe 6 did not testify. The evidence advanced by the Complainants' Representative regarding her alleged experiences consists entirely of hearsay, including multiple levels of hearsay.

[1562] There was no evidence adduced by the Complainants' Representative that Jane Doe 6 felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to their Complaints.

[1563] The Complainants' Representative alleges that this matter was effectively managed by Ms. Kay and others from the Respondent.

[1564] Ms. Kay testified that:

"When she [Jane Doe 6] first came in she did not want formal steps but at same time she was very fearful, so challenging to navigate police involvement and to provide that practical intermediary support so that she wasn't being forced into formal process that she clearly didn't want but at same time having that same coercive power to be involved in process if her fear required it and actually I was surprised we were able to navigate this without going to formal process just because of high level of fear. I should say she shared her personal information and that helped me understand her very high anxiety and distress so that was helpful but this is good illustration of just how unique every situation is and how it needs a customized support process."

[1565] Ms. Kay testified further that:

"she [Jane Doe 6] made it very clear she was not interested in formal response. She wanted informal response and that is what I discussed with her.

[1566] She testified that informally meant:

“My understanding was that short of investigation, in other words informally, the strategies or the methods or tools could vary from person to person and it was about custom building a solution to fit the circumstances, so it could involve working with faculty and staff in dept, me having conversation with respondent, me and someone else having a conversation, me making suggestions for support of complainant. There wasn't a set list of things that I could or could not do”

[1567] Ms. Kay testified about the impact of a formal process:

“a formal process is always stressful, I don't know that there would have been any more effective outcome in terms of achieving a safe and comfortable outcome other than taking her through a formal process would have been stressful and unpleasant and it was not necessary to ensure here ability to complete her education, also forcing someone into a formal process or into any process is not an optimal practice and raises a host of issues including procedural issues. This complainant was very anxious about confidentiality and was already in need of significant support and I don't think I want to answer further than that”

[1568] Ms. Kay comments make it clear that she is considering the autonomy of the Complainants, while the Complainants' Representative does not. The Complainants' Representative' continuously seeks to establish the particular class complainant's perspective through their own lens and not through the lens of the complainant. This ignores the autonomy of the class complainant and overrides their control of their own story and situation.

[1569] This case is distinguishable in its treatment from that of Ms. Kirchmeier as Jane Doe 6 is the author of her complaint to Ms. Kay and not complaining about what she observed on behalf of others without their authority or consent.

[1570] The Complainants' Representative argues that 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 JD6 has established a complaint of discrimination against the University in relation to this matter.” They are not seeking damages for Jane Doe 6.

[1571] Again, it is troubling that the Complainants' Representative knowing the private nature of Jane Doe 6 decided to adduce evidence regarding her experience but not in support of a complaint for her. The individuality inherent in every individual's story regarding whether real or perceived sexual harassment or assault is utterly unique to that individual. Even if members of the public do not know who the Tribunal may be referring to in a final decision, that individual person does as it is their life story being examined. It is a gross breach of

any individual's autonomy over the story of their life for someone else to make the decision to put their story on a public record without their consent. This outcome could not have been anticipated by Jane Doe 6 when she came forward to the University.

[1572] A further troubling aspect of this approach is that the complainants did not put her story forward for her benefit. They are not making a complaint on her behalf or seeking damages for her. Again, this raises concerns about the motive and reason for adducing Jane Doe 6's private and unique story.

[1573] The issues raised by JD6 highlight the need for a spectrum of responses and that a one size fits all model does not work for all women.

[1574] Further, this Jane Doe's experience highlights that this complaint is not about discrimination but about whether the Complainants' Representative is satisfied with the response of the University. This again puts the cart before the horse. The Complainants' Representative is required to establish discrimination first. The Complainants' Representative is required to establish that a Complainant is being treated adversely in the provision of a service on the basis of their protected characteristic. Recognizing in these cases, the University is not responsible for the initial behavior of the respondent male, the Complainants Representative continuously fails to allege any nexus.

10. Jane Doe 7

[1575] Jane Doe 7 did not testify. The evidence advanced by the Complainants' Representative regarding Jane Doe 7's alleged experiences consisted entirely of hearsay, including multiple levels of hearsay.

[1576] Jane Doe 7 did not advise Ms. Kay that she felt any stress or anxiety as a result of UBC's response to her concerns. She never advised Ms. Kay that she was not satisfied with her proposals or the outcome. No direct or even speculative evidence was lead in this regard.

[1577] The Respondent submits that all complainants who did not testify should have their complaint dismissed on the basis that they cannot establish a *prima facie* case of discrimination.

[1578] The Complainants' Representative improperly substitutes her own views and opinions for the evidence of what this Jane Doe experienced. This approach fails to respect Jane Doe 7's autonomy and does not meet any recognized evidentiary burden before the Tribunal.

[1579] Jane Doe 7 came to Ms. Kay to discuss issues that she was experiencing at St. John's

College. Her concerns were in respect of her sexual orientation and witnessing alleged sexual harassment by men at the College.

[1580] Ms. Kay considered and responded to the concerns raised, notwithstanding that Jane Doe 7 did not continue to pursue those issues with her. In doing so, Ms. Kay advised Jane Doe 7 of options available to her, including pursuing educational measures with the College or initiating a complaint through the NAM process. She also offered supports through SASC, counselling services, and campus security.

[1581] Ms. Kay testified that Jane Doe 7 was receiving support from a counselor in counselling services. She also indicated that Shirley Nakata was working with students to develop a program for the college. Ms. Kay testified that she discussed bringing in Mr. Bohnen and Ashley Bentley and SASC.

[1582] Ms. Kay coordinated positive space training for the college community. Jane Doe 7 did not pursue further action and no dissatisfaction with Ms. Kay's response was ever reported to her. Jane Doe 7 did not take up Ms. Kay's offers of safety planning with Mr. Bohnen or the option of taking a complaint forward in a formal or informal way. There was no evidence adduced by the Complainant's Representative that Jane Doe 7's learning environment impacted her after she came forward.

[1583] The Respondent submits that the Complainants have not established a prima face case of discrimination on behalf of Jane Doe 7. In the alternative, the Complainants' Representative's assertion that that nothing was done in response to this Complaint is inaccurate. As outlined above, the Respondent's response was multifaceted and reasonable in the circumstances of Jane Doe 7's concerns.

[1584] The Respondent submits that this Complaint must be dismissed. In the alternative, if the Tribunal finds discrimination, then the Respondent submits that Jane Doe 7 should not be awarded any injury to dignity as there was no evidence of harm presented. The Tribunal is being invited to presume the harm to Jane Doe 7. If the Tribunal makes an award of injury to dignity, then the award should be \$2,000.00 which is slightly less than what the Complainants' Representative is seeking.

[1585] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying interactions or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal make this determination for Jane Doe 7. The Complainant's invite the Tribunal to determine to infer that the Respondent caused

harm by any alleged discrimination. They presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

11. Jane Doe 13

[1586] Jane Doe 13 did not testify. The evidence advanced by the Complainants' Representative regarding Jane Doe 13's alleged experiences consisted entirely of hearsay, including multiple levels of hearsay.

[1587] As a result, there is no reliable or direct evidence before the Tribunal concerning Jane Doe 13. The Complainants were permitted to introduce a letter, but neither its author nor its recipients testified, and no contextual evidence was provided to assist in assessing its contents or the circumstances to which it relates.

[1588] In any event, the concerns attributed to Jane Doe 13 appear to arise from her employment. On that basis, she does not fall within the proposed class. The Complainants' Representative's position that there was a failure to negotiate a resolution further reflects an understanding that this was, at its core, an employment matter.

[1589] The burden of proof rests with the Complainants to establish that Jane Doe 13 is a member of the class and that she was discriminated against. That burden has not been met in respect of the allegations concerning Jane Doe 13.

[1590] It is submitted that the Complaint of Jane Doe 13 must be dismissed. The Complainant's did not establish a *prima facie* case of discrimination in support of Jane Doe 13's complaint.

[1591] In the alternative, if the Tribunal finds discrimination, then the Respondent submits that Jane Doe 13 should not be awarded any injury to dignity as there was no evidence of harm presented. The Tribunal is being invited to presume the harm to Jane Doe 13. If the Tribunal makes an award of injury to dignity, then the award should be \$2,000.00, which is slightly less than the amount sought by the Complainants in their submissions.

[1592] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 13. They invite the Tribunal to infer that the Respondent caused harm by any alleged discrimination. They presented no medical evidence or any evidence of impact to the

learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

12. Jane Doe 20

[1593] Jane Doe 20 did not testify. The evidence advanced by the Complainants' Representative regarding Jane Doe 20's alleged experiences consisted entirely of hearsay, including multiple levels of hearsay.

[1594] There was no evidence adduced by the Complainants' Representative that Jane Doe 20 felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to their Complaints.

[1595] Jane Doe 20 complained about Male 1 and Male 2. Mr. Hyson testified with respect to Jane Doe 20:

"[she was] referred to me by SASC and with the specific issue regarding an incident that had taken place the year before that resulted in her wanting no further contact with two male individuals, so I met with JD 20 to discuss what it was she was looking for in terms of outcome and she had indicated to me that there had been incident that led her to not want contact from two male students, they continued to say hello and she wanted that to stop, she was very concerned about privacy and her family if they were to find out, I indicated I could have conversation with them."

[1596] Mr. Hyson testified that he did not make Jane Doe 20 elaborate upon her story as she did not want to proceed with a NAM process. He testified that she was receiving support from SASC.

[1597] Ms. Hyson spoke with both of the male respondents. They acknowledged saying hello and did not realize that was unwelcome and they had agreed that they would cease all further contact from Jane Doe 20 as Jane Doe 20 was requesting. Mr. Hyson testified that he was thankful and relieved that M1 and M2 had met with him and agreed they would not have further contact with her.

[1598] There was no evidence adduced that Jane Doe 20 experienced further issues after this conversation had taken place.

[1599] Mr. Hyson testified that Jane Doe 20 did not ever complain about the process of complaining about her experiences. In terms of impact on Jane Doe 20, Mr. Hyson testified that Jane Doe 20 was relieved that someone spoke to the two male students.

[1600] The Complainant Representative candidly admits that there is no evidence to support an adverse impact on Jane Doe 20 from the University actions which again begs the question on what basis she elected to exposed Jane Doe 20's story to the public via the Tribunal's process.

[1601] Jane Doe 20 was concerned about her privacy and about her friends and family finding out what happened to her. The Complainants' Representative nevertheless led evidence of her experience and were critical of the University for following her desired outcome. This approach overrides the autonomy of this survivor and highlights the issues with permitting a class complaint to proceed in this manner.

[1602] It is concerning that the Complainants' Representative, while recognizing the highly private nature of Jane Doe 20's circumstances, chose to adduce evidence regarding her experience without advancing a complaint on her behalf. Allegations of sexual harassment or assault are inherently personal and individualized. Even where anonymity is preserved in a Tribunal's decision, the individual concerned will recognize their own experience, as it is their life being examined. Introducing such evidence into the public record without the individual's consent raises serious concerns regarding respect for personal autonomy. This is not an outcome that Jane Doe 20 could reasonably have anticipated when she came forward to the University.

[1603] The Complainants' Representative relies on the account of Jane Doe 20 not in support of a complaint advanced on her behalf, but rather to support broader submissions regarding third-party complaints. There is no evidence arising from Jane Doe 20's interactions with the Respondent to suggest that she would have supported another individual advancing her experience on her behalf. On the contrary, the evidence indicates that she was deeply concerned about her privacy and the potential impact on her family should her circumstances become known. Those concerns appear to have been given insufficient weight in the decision to place her experience on the record, raising the risk of further harm.

13. Jane Doe 21

- [1604] Jane Doe 21 did not testify. All the evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay.
- [1605] There was no evidence adduced by the Complainants' Representative that Jane Doe 21 felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that Jane Doe 21 was not satisfied with the outcome of the response to her Complaints.
- [1606] Jane Doe 21 disclosed to the University an incident arising in connection with an AMS club, the Players Club. The events she described occurred off campus, at the residence of M13. At the time of the interactions that led to her disclosure, neither Jane Doe 21 nor M13 was engaged in a university-related activity.
- [1607] Mr. Hyson testified that the AMS is a non-profit organization representing the student body and its clubs, and that many clubs include both student members and members of the public who are not affiliated with the University.
- [1608] Following receipt of Jane Doe 21's disclosure, the Respondent determined that the reported events did not fall within the jurisdiction of the Student Code of Conduct.
- [1609] The Complainants' Representative did not adduce evidence establishing that this jurisdictional determination constituted adverse treatment on the basis of a prohibited ground. In particular, beyond disputing the conclusion based on the nature of AMS activities, no connection was drawn between the jurisdictional decision and Jane Doe 21's gender or sex. It is submitted that the Complainant did not establish a *prima facie* case of discrimination on behalf of Jane Doe 21.
- [1610] Mr. Hyson met with Jane Doe 21 to discuss the incident. He understood that she was upset by the conduct of the male individual involved. The individual had subsequently apologized and indicated that he would step down from his role in the play. Jane Doe 21 did not wish to have further contact with him, and that preference was respected. She was also supported by SASC throughout this process.
- [1611] In reaching the jurisdictional determination, Mr. Hyson consulted with University counsel. He subsequently advised Jane Doe 21 that the matter did not fall within the NAM or the Student Code of Conduct, and that, should she wish to pursue the matter further, she could consider reporting it to the police.

[1612] Mr. Hyson testified that:

“when I spoke with JD 21 about concerns for safety she indicated she had none and she indicated that she believed that M13 was afraid of her and she felt he was afraid of getting in trouble and so there was no contact between the individuals, JD 21 was an exchange student who was returning to her home institution”.

[1613] Mr. Hyson asked Jane Doe 21 if she had any safety concerns and she indicated that she did not. Jane Doe 21 and M13 did not have any classes together and their only involvement had been through the play that the male respondent had now agreed to step down from. There was no ongoing interaction between the male Respondent and Jane Doe 21. There would be no basis to engage Policy 3 in these circumstances even if the matter had been brought to the department.

[1614] Mr. Hyson offered to speak with the male respondent about his conduct. Jane Doe 21 was not interested in Mr. Hyson speaking to the male respondent given that he had already stepped down from the play and agreed to have no further contact with her.

[1615] The Complainants' Representative submits that, because the Respondent collects fees on behalf of the AMS pursuant to the *University Act*, it thereby assumes jurisdiction over this complaint. There is no principled legal basis for this proposition. On that logic, any governmental body that collects and allocates funds to an independent entity would, by virtue of that financial relationship alone, assume responsibility for the entity's activities. In other words, the government would be responsible for all agencies that receive government grants, bursaries, or fundings. Such a conclusion is not supported in law.

[1616] Further, the Complainants' Representative's argument illustrates the difficulty with proceeding directly to a discriminatory environment analysis without first establishing a *prima facie* case of discrimination. This approach risks bypassing the necessary inquiry into whether the impugned decision, here, the Respondent's determination regarding jurisdiction, constituted discrimination in respect of the particular complainant.

[1617] There is no evidence that the jurisdictional decision was connected to the Complainant's gender; rather, it was based on the circumstances of the incident. The Respondent's approach in this regard was consistent with its treatment of similar situations. To dispense with the requirement of establishing a *prima facie* case and proceed directly to a broader environmental analysis would depart from the established framework set out by the supreme Court of Canada in **Moore** and would introduce an analytical approach unsupported by the jurisprudence.

- [1618] Mr. Hyson was questioned why he did not consider whether this complaint could be reviewed under Policy 3. There was no evidence that Jane Doe 21 wanted a policy 3 outcome nor was there any evidence that could support that an AHU had jurisdiction over both her and the male Respondent.
- [1619] The Complainants' Representative's assertions regarding Policy 3 fail to account for Ms. Kay's evidence that, during the relevant period, any matter requiring formal intervention would have been addressed through the NAM student conduct process.
- [1620] Further, the Complainants' Representative ignores the uncontradicted testimony of Ms. Kay that, between 2013 and 2015, she was unaware of any Administrative Head of Unit (AHU) disciplining a student under Policy 3 or removing a student from their faculty. As noted above, even if an AHU had taken such action, it would not have permitted removal of a student from campus, as that remedy falls exclusively within the Student Code of Conduct process.
- [1621] Ms. Kay confirmed that she was not addressing these allegations under Policy 3 at the relevant time. The Complainants' Representative also did not establish why handling the allegations under Policy 3 would have been preferable. AHUs possess limited authority with respect to university-wide restrictions and lack the training or expertise to manage serious allegations of this nature. It is therefore illogical to suggest that the University should rely on AHUs to navigate such matters.
- [1622] It is submitted that the Complaint of Jane 21 should be dismissed. In the alternative, if the Tribunal finds discrimination, then the Respondent submits that Jane Doe 21 should not be awarded any injury to dignity as there was no evidence of harm presented. The Tribunal is being invited to presume the harm Jane Doe 21 experienced as a result of the University's response to her concerns. If the Tribunal makes an award of injury to dignity, then the award should be \$5,000.00 which is the same amount that they are seeking for Jane 32 who had similar circumstances.
- [1623] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 21. The Complainant's Representative invites the Tribunal to infer that the Respondent caused harm to Jane Doe 21 in its response. They presented no medical evidence of impact to Jane Doe 21 or any evidence of impact to the learning environment.

The Tribunal should not speculate on the harm, if any, that was caused by the Respondent in the presence of a lack of evidence. The Complainant's Representative failed to meet her onus to support an award of damages.

14. Jane Doe 24

[1624] Jane Doe 24 did not testify. All the evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay.

[1625] There was no evidence adduced by the Complainants' Representative that Jane Doe 24 felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to their Complaint.

[1626] The Respondent submits that Jane Doe 24's complaint was taken seriously by the Respondent and investigated. She made a parallel complaint to the RCMP involving an initial incident in which criminal charges were not pursued by the RCMP.

[1627] Jane Doe 24 was supported by SASC when Mr. Hyson received a request to meet with her. Around the same time, he had received a report from campus security.

[1628] Mr. Hyson met with Jane Doe 24 at the SASC office shortly after being contacted by SASC. Prior to the meeting, SASC had made an anonymized security report which did not name Jane Doe 24. That report had detailed two incidents, one occurring off campus involving four males and another occurring on campus involving one male. When SASC reached out to Mr. Hyson, they advised that Jane Doe 24 wanted to meet with him and find out more about the process and was interested in making a report.

[1629] At the meeting with Mr. Hyson, Jane Doe 24 indicated that she wanted to move forward with a report regarding the incident that had taken place on campus.

[1630] Mr. Hyson accepted the autonomy of Jane Doe 24 with respect to the incident involving the four males off campus and did not move forward with a complaint under the Student Code of Conduct. There was no evidence that she requested him to proceed with the off-campus complaint.

[1631] The off-campus incident was reported to him by SASC and not by Jane Doe 24. Mr. Hyson testified that at that time SASC indicated that their client did not want to move forward with

that complaint but wanted the University to know. Further, he testified that it happened off campus at a non-University sponsored event and that he did not believe that the University had jurisdiction under the Student Code of Conduct.

[1632] There was no evidence adduced which would support a finding that Jane Doe 24 wanted to file a complaint regarding the incident with the four males that occurred off campus. The Complainants' Representative seeks to have the Tribunal substitute its view of what should have happened over the evidence that was adduced at hearing. Jane Doe 24 did not testify and there is no evidence that she wanted to proceed with the complaint against the four males and that Mr. Hyson refused to do so. There was no documentary evidence to support this conclusion adduced. Without this evidence, the Tribunal would be overriding the autonomy of Jane Doe 24 that Mr. Hyson respected and the actual evidence presented at the hearing.

[1633] Mr. Hyson conducted a thorough investigation of this Complaint and interviewed multiple witnesses.

[1634] When Mr. Hyson met with Jane Doe 24, she was accompanied by a representative of SASC. Further, Mr. Hyson provided SASC with questions that they could review to ensure that the questions were respectful of their client. SASC provided no suggested changes to the questions put forward by Mr. Hyson. There was no evidence that SASC indicated that Mr. Hyson had not dealt with the incident that occurred off campus as part of these discussions.

[1635] Mr. Hyson eventually prepared a statement for Jane Doe 24 that he typed up and shared with her and SASC to ensure that he had accurately captured the information that she had shared with him. Jane Doe 24 has some minor changes which Mr. Hyson accepted.

[1636] Jane Doe 24 also reported the incident off campus to the RCMP who conducted its own investigation. When Mr. Hyson reached out to the RCMP he was asked not to proceed with anything through the University until they could finish their investigation.

[1637] However, very shortly after this conversation, the RCMP confirmed that they had concluded their investigation and that criminal charges would not be forwarded to crown counsel. Mr. Hyson testified that he complied with this request as he did not want to jeopardize the RCMP investigation or interfere with it.

[1638] Mr. Hyson testified that he had kept Jane Doe 24 apprised of his interactions with the RCMP. In the interim, he collected witness information and other documentary information

from Jane Doe 24.

[1639] Jane Doe 24 was away from campus for the summer. He advised Jane Doe 24 that he would pick the investigation back up in the fall and would be notifying the witnesses and the male respondent at that time. Jane Doe 24 confirmed to Mr. Hyson that there was no contact with the male respondent in that window of time.

[1640] In the fall, Mr. Hyson met with the male respondent who provided a different version of the events. He also provided text messages between him and Jane Doe 24. Mr. Hyson also received statement from the witnesses that were provided to him by Jane Doe 24.

[1641] In the process of obtaining information from the witnesses, Mr. Hyson learned more information about the event that was not going forward as part of the complaint process before him. Even though this event was not the basis of the complaint before Mr. Hyson, it provides context for the interactions between the male Respondent and Jane 24. It was reasonable to include it as part of the factual matrix that may have ended up before the NAM committee in determining whether to recommend that the complaint proceed to a hearing before the committee.

[1642] The Respondent submits that it was not discriminatory for Mr. Hyson, after conducting his investigation and consulting with his supervisors and University counsel, to conclude that it would be difficult for the NAM Committee to make findings on the matter. The Complainant's gender was not a factor in this decision. Mr. Hyson confirmed the conflicting information with her, noting that the issues extended beyond a simple "he said / she said" conflict and involved discrepancies between Jane Doe 24's allegations and information obtained from other witnesses. The Complainant's Representative has not established a *prima facie* case of discrimination on behalf of Jane Doe 24.

[1643] The Complainants' Representative has not identified any basis on which this decision was discriminatory, beyond expressing disagreement with the outcome. It is difficult to see how such a claim could be sustained, particularly given that in other scenarios involving he said / she said conflicts, the matter proceeded to the Committee on Mr. Hyson's recommendation.

[1644] Mr. Hyson's decision to defer interviews until after the summer was reasonable in light of the students' locations and the time of year. It was also reasonable to comply with the RCMP's request to delay the investigation until their own process was complete.

[1645] The Complainants' Representative raises concerns regarding due process owed to M4,

which is puzzling given that she rejects any argument regarding due process owed to DM.

[1646] The Complainants also question the fact that, in determining that the NAM Committee was unlikely to find grounds for discipline, Mr. Hyson did not provide Jane Doe 24 with an opportunity to comment on other witnesses' statements. This procedure is not part of the NAM process. The NAM Committee is not a quasi-judicial or adversarial body, and it does not provide parties with the right to cross-examine or independently evaluate the conduct manager's findings. This approach does not constitute discriminatory treatment. Moreover, the Complainants did not provide evidence of any comparable system in which complainants were afforded such an opportunity.

[1647] It is submitted that the Complaint of Jane Doe 24 be dismissed. In the alternative, if the Tribunal finds discrimination, then the Respondent submits that Jane Doe 24 should not be awarded any injury to dignity as there was no evidence of harm presented. The Tribunal is being invited to speculate on the harm caused to Jane Doe 24 by not permitting her complaint to go to a NAM committee hearing. The Tribunal was presented with no evidence that would permit it to distinguish between any harm caused by the underlying events. If the Tribunal makes an award of injury to dignity, then the Respondent accepts the amount of \$5,000.00 put forward by the Complainant's Representative.

[1648] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to her allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 24. The Complainant's Representative invites the Tribunal to infer that the Respondent caused harm by any alleged discrimination. The Complainant's Representative presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

15. Jane Doe 25

[1649] Jane Doe 25 did not testify. All the evidence adduced about her experiences were hearsay, double hearsay, and triple hearsay.

[1650] There was no evidence adduced by the Complainants' Representative that Jane Doe 25 felt any stress or anxiety with respect to the University's response to her concerns.

[1651] Jane Doe 25's Complaint involved allegations of an off campus sexual assault that occurred in a home in Coquitlam. The students involved were not involved in any University sponsored event at the time of the alleged assault.

[1652] In those circumstances, there was no jurisdiction for the Respondent to act in this case under the Student Code of Conduct. Although Mr. Hyson advised Jane 25 that a statement was not required, she chose to give one to him about what had occurred. The Complainants' Representative has failed to establish how this decision was discriminatory. The jurisdictional decision was not based on the Complainant's sex or gender but based on the location and circumstances of the alleged behavior and the parameters as set out in the Student Code of Conduct and, ultimately, the Respondent's jurisdiction grounded in the University Act. The Complainant's failed to establish a *prima facie* case of discrimination on behalf of Jane Doe 25.

[1653] Jane Doe 25 was supported by SASC through her meeting with Mr. Hyson. He shared the statement he had taken with her to ensure it was accurate. Jane Doe 25 did take Mr. Hyson up on his offer to meet with the male respondent.

[1654] Jane Doe 25 was graduating at the time of her complaint and there was no evidence led about how her educational environment was impacted by any decision of the Respondent.

[1655] Mr. Hyson wrote to M8 as he agreed to do.

[1656] The Complainants' Representative repeatedly challenged the University's discretion under the Student Code of Conduct to determine whether complaints arising off campus, in private residences, should be accepted. She sought to argue that a survivor's learning environment could be affected by the presence of the alleged perpetrator on campus. This argument is entirely inapplicable to Jane Doe 25, who was not on campus at the time of the alleged incident. There is no evidence, nor could there be, to suggest that her learning environment was impacted for Jane Doe 25, and any such impact cannot be presumed. The Complainants' Representative's position, therefore, lacks both factual and legal support in relation to this complainant and invites the Tribunal to speculate.

[1657] It is submitted that the Complaint of Jane Doe 25 be dismissed. It is submitted that this Complaint must be dismissed. In the alternative, if the Tribunal finds discrimination, then the Respondent submits that Jane Doe 25 should not be awarded any injury to dignity as there was no evidence of harm presented. The Tribunal is being invited to presume the harm to Jane Doe 25.

[1658] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to Jane Doe 25's allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 21. They invite the Tribunal to infer that the Respondent caused harm by any alleged discrimination. The Complainant's Representative presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

[1659] If the Tribunal makes an award of injury to dignity, then the award should be \$5,000.00 which is the same amount that they are seeking for Jane 32 who had similar circumstances.

16. Jane Doe 26

[1660] Jane Doe 26 did not testify. All evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay.

[1661] There was no evidence adduced by the Complainants' Representative that Jane Doe 26 felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to her Complaints.

[1662] Jane Doe 26 was supported by SASC when she decided to come forward to speak with Mr. Hyson. When she met with Mr. Hyson, she asked him to meet with the male respondent to reiterate that she wanted no further contact with him. Jane Doe 26 did not want to pursue a NAM complaint.

[1663] Jane Doe 26 was working with SASC. Mr. Hyson was asked in cross-examination about why he did not ask her to share her story. He responded:

“number of reasons, first was that when I first met with her and Josie from SASC I walked through NAM and answered questions and **JD 26 at that time did not wish to go forward with a report through NAM and wished instead for me to speak with M10 regarding no further contact.**” [emphasis added]

[1664] Mr. Hyson testified that Jane Doe 26 made it clear she did not wish to participate in a formal process or advance a complaint to a committee, even though she felt the male respondent should be held accountable. She requested only that someone speak to the respondent to ensure he had no further contact with her. The Complainants' Representative did not contradict this evidence.

[1665] The Complainants' Representative nonetheless alleges a failure to engage Policy 3 in relation to Jane Doe 26's complaint. This argument is fundamentally unsupportable. Jane Doe 26 explicitly chose not to pursue a formal complaint, yet the Complainants' Representative seeks to substitute her own judgment for the complainant's expressed wishes. No evidence was presented to suggest that Jane Doe 26 would have wanted a Policy 3 complaint, or that any such process would have produced a materially different outcome from the resolution offered by Mr. Hyson.

[1666] The Complainants led no evidence that Jane Doe 26 lacked knowledge regarding consent or healthy relationships. Even if she did, it is well-established that individuals with such education may still, through no fault of their own, experience situations similar to that of Jane Doe 26. The Tribunal cannot be asked to speculate about what Jane Doe 26 did or did not understand.

[1667] Furthermore, students have a responsibility to access resources and education on these issues, including through services such as SASC. Jane Doe 26 was supported by SASC, and there is no evidence suggesting that she did not receive appropriate guidance or education from representatives of SASC. In the absence of her testimony, the Complainants' Representative cannot assert what Jane Doe 26 may have needed or received without inviting the Tribunal to speculate.

[1668] This is another example of where the Complainants' Representative is more than willing to substitute her view of what Jane Doe 26 wanted for that of real and tangible evidence from Jane Doe 26.

[1669] The Complainants' Representative does not seek any damages for this Complainant.

17. Jane Does 29 and 30

[1670] Jane Doe 29 and Jane Doe 30 did not testify. All evidence adduced about their experiences was hearsay, double hearsay, and triple hearsay.

[1671] There was no direct evidence adduced by the Complainants' Representative that these Jane Does had experienced any stress or anxiety with respect to the University's response to their concerns. Further, there was no evidence adduced by the Complainants' Representative that these Complainants were not satisfied with the outcome of the

Response to their Complaints.

- [1672] If the Tribunal determines to consider the evidence presented on these complainants, then the Respondent submits that the complaints should be dismissed. The Complainant did not establish a *prima facie* case of discrimination for either of these complainants.
- [1673] The Complaints brought forward by Jane Doe 29 and Jane Doe 30 regarding M12 resulted in a NAM hearing. The outcome of the NAM hearing was that M12 was expelled from the University. Jane Doe 29 and Jane Doe 30 obtained the result that they were presumably looking for in terms of outcome. Further, there was no evidence that M12 had harassed any other female students after Jane Doe 29 and Jane Doe 30 came forward. There was no evidence of any further impact on the educational environment for Jane Doe 29 and Jane Doe 30 after they came forward.
- [1674] SASC contacted Mr. Hyson near the end of the spring semester in April of 2014 to facilitate a meeting with Jane Doe 29. He met with Jane Doe 29 and SASC and learned about Jane Doe 29's complaint against M12. She advised Mr. Hyson that over the course of a year plus, M12 had engaged in unwanted and nonconsensual sexual misconduct with her and had continued to pursue her even when she had indicated that that was not welcome. She indicated in the meeting that M12 had been removed from the program for other reasons and that if he was returning to campus he would be returning to a different program.
- [1675] After Jane Doe 29's disclosure, Mr. Hyson advised her of her options. She indicated that that if M12 was returning to the University in the fall, then she would like to proceed with a complaint through university NAM process.
- [1676] Jane Doe 29's preference was to write her own statement of what had happened to her which she did. She was supported by SASC during this time.
- [1677] Mr. Hyson then met with Jane Doe 30. She indicated that she wished to submit her own report. He advised her of her options and walked her through the NAM process and what she could expect. Jane Doe 30 wanted to make a report and go forward with a process should he return to campus in the fall.
- [1678] Jane Doe 30 preferred to have Mr. Hyson transcribe her statement which he did. She was able to review the statement and agreed with its form.
- [1679] Mr. Hyson also interviewed a witness who was identified to him by Jane Doe 29.

- [1680] Mr. Hyson checked back in fall and M12 had decided to return to campus as student and was in general undergraduate program. M12 was no longer in same Fine Arts program. After learning that M12 had returned to campus, the next step was to finalize the statement of allegations and then notify M12 that a report had been made regarding his conduct.
- [1681] Mr. Hyson invited M12 to meet with him should he wish to review the NAM process and learn more about the next steps in the process. Mr. Hyson also communicated to him he should have no further contact with the individuals who made the report.
- [1682] On October 2, 2014, Mr. Hyson forwarded the complaint to the chair of the NAM committee.
- [1683] Jane Doe 29 came forward to Mr. Hyson through SASC. At the time of his first meeting M12 was no longer in the educational environment. He had been removed from the BFA program. In other words, a NAM process could not proceed at that time because M12 was not a student. Accordingly, at that time, the complaint would not fit into the class. The Complainants' Representative has not considered these facts or issues in outlining its delay argument relating to this Complainant.
- [1684] The NAM hearing was scheduled for February 2015, a reasonable period after M12 was notified of the statement of allegations. At that time, M12 was not in the country, and by March 2015, a hold was placed on his student record to ensure engagement with the NAM process.
- [1685] The Complainants' Representative attempts to compare Jane Doe 29 and Jane 30 to the circumstances of DM. This comparison is misplaced. After the first complainant came forward, DM had no remaining courses, and there was no evidence that an academic hold would have affected his engagement with the University. By contrast, the hold in M12's case was a legitimate procedural tool intended to secure his participation in the NAM process—an issue entirely absent in DM's case. Mr. Morrison confirmed that DM fully cooperated and participated in the NAM process, further highlighting the inapplicability of the comparison.
- [1686] The NAM hearing for M12 proceeded in July 2015 and resulted in his expulsion. The NAM committee had received training prior to the hearing, ensuring that the process was conducted in accordance with University policy and procedural fairness.
- [1687] Mr. Morrison testified that Jane Doe 30 raised no concerns regarding the NAM process when he met with her. He explained the misconduct process, the operation of the Student

Code of Conduct, and the potential disciplinary outcomes. Following the meeting, Jane Doe 30 submitted a revised statement, demonstrating her engagement with the process. Mr. Morrison met with Jane Doe 29 prior to the hearing.

[1688] Despite M12's expulsion, the Complainants' Representative criticizes the process for not investigating other potential complainants, educating the department, or for the time taken to reach a hearing. These criticisms are internally inconsistent: expanding the investigation to include other potential complainants would have inevitably delayed the hearing further. Moreover, there was no evidentiary basis to suggest that seeking out additional complainants was necessary or required.

[1689] The Complainants raise concerns regarding the NAM committee's composition and the inability to review all materials or respond to the Respondent's submissions. However, they provided no evidence that these procedural aspects caused any actual harm to Jane Doe 29 or Jane Doe 30. In the absence of such evidence, the Tribunal cannot presume harm, and the criticisms remain speculative and without foundation.

[1690] It is submitted that the Complaints of Jane Doe 29 and Jane Doe 30 must be dismissed.

[1691] It is submitted that the Complainants' Representative has not made out a complaint for discrimination for Jane Doe 29.

[1692] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to Jane Doe 29's allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 29. They invite the Tribunal to infer that the Respondent caused harm by any alleged discrimination. The Complainant's Representative presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

[1693] In the alternative, the Complainants' Representative has led no direct evidence regarding actual harm that Jane Doe 29 experienced as a result of the University's response to her complaint. In these circumstances, if the Tribunal does make an award for injury to dignity it should be on the modest end of the spectrum. The Respondent submits that \$7000.00 is a reasonable amount for injury to dignity for this Complainant.

[1694] It is submitted that the Complainants' Representative has not made out a complaint for discrimination for Jane Doe 30.

[1695] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to Jane Doe 30's allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 30. They invite the Tribunal to infer that the Respondent caused harm by any alleged discrimination. The Complainant's Representative presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

[1696] In the alternative, the Complainants' Representative has led no direct evidence regarding actual harm that Jane Doe 30 experienced as a result of the Respondent's response to her complaint. In these circumstances, if the Tribunal does make an award for injury to dignity it should be on the modest end of the spectrum. The Respondent submits that \$5,000.00 is a reasonable amount for injury to dignity for this Complainant.

18. Jane Doe 31

[1697] Jane Doe 31 did not testify. She did not provide any direct evidence. All the evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay.

[1698] There was no evidence adduced by the Complainants' Representative that Jane Doe 31 felt any stress or anxiety with respect to the University's response to her concerns. Further, there was no evidence adduced by the Complainants' Representative that this Complainant was not satisfied with the outcome of the Response to her Complaints.

[1699] If the Tribunal determines to weigh the evidence presented on this complainant, then the Respondent submits that the complaints should be dismissed. The Complainant's Representative has failed to establish a complaint of discrimination.

[1700] Jane Doe 31 came forward to the University in October of 2015 with a complaint of sexual assault that had occurred in September 2013.

[1701] Jane Doe 31 first reported to Mr. Hyson through SASC on October 19, 2015. Mr. Hyson met with her two days later. After meeting with her, Mr. Hyson spent the next month gathering information from witnesses, some of which were difficult to track down as they were out of the country.

[1702] There was no evidence of ongoing risk of harm to Jane Doe 31 by the male respondent during this window. Jane Doe 31 and the male respondent were not talking at the time and had not engaged with each other for a long period of time. There was no evidence led

about the impact of being on campus for Jane Doe 31 after she came forward. There was no evidence about the impact to her learning environment during this period of time.

[1703] The statement of allegations did not go to the male Respondent before the end of 2014 after Mr. Hyson was able to complete his interviews which required him to communicate with a witness who was in Thailand. Mr. Hyson acted diligently in trying to obtain the evidence of the witness throughout November of 2015.

[1704] Mr. Hyson testified that he met with the Male Respondent on December 16, 2015, to provide him with a package of information regarding the allegations against him. In that meeting he advised the male to have no further contact with Jane Doe 31. Mr. Hyson updated Jane Doe 31 about the meeting.

[1705] Mr. Hyson forwarded the materials to the chair of the NAM Committee on December 23, 2015. The University then closed for the holidays between December 24, 2015 and January 2, 2016.

[1706] Mr. Hyson testified that he believed that the hearing would proceed in January of 2016.

[1707] There was no evidence presented that after Mr. Hyson met with the male respondent, that the male respondent attempted to contact Jane Doe 31 or otherwise interfered with her learning environment.

[1708] Mr. Morrison had stepped down from his role as the chair of the Vancouver campus NAM committee in early January 2015, and the Respondent needed to find a new person to chair the committee. Eventually, Ms. Dunn from the Respondent's Okanagan campus was chosen to chair the committee. After a new chair was selected, the package of materials was sent to the male Respondent on February 11, 2016. Jane Doe 31 was updated on February 19, 2016.

[1709] Ms. Dunn experienced some difficulties getting a response from the male respondent. Eventually, the hearing was to be set after the exam period at the end of the semester to accommodate the students who were participating in the NAM Committee. Mr. Hyson testified that it was not his normal practice to remain involved after the statement of allegations were forwarded to the chair of the NAM committee. However, given in this case, Ms. Dunn was in the Okanagan, he stayed on to support the Complainant.

[1710] Ms. Dunn made herself available to speak to with Jane Doe 31 before the hearing.

[1711] Mr. Hyson testified that he explained the following to Jane Doe 31 about the NAM process:

“yes when we initially met I would have walked JD 31 what to expect through hearing, that she would have been able to bring a support person, that she may not want to be present in the same space as respondent and arrangements could be made, I gave her overview of what to expect, that process not meant to be adversarial, because respondent was the one who was facing the allegations they would need to be present during proceedings so they could respond to evidence provided by witnesses, I would have shared you will be given opportunity to speak to committee, but clear there was no cross examination just questions to determine what occurred and any questions that went to her would have been directed to the chair or committee member”

[1712] Mr. Hyson’s interpretation was that Jane Doe 31 felt anxiety about the process cannot suffice as evidence that University’s response caused this impact. There is an expected level of anxiety for all complainants going through process in which the person who is alleged to have sexually assaulted them is being investigated for that assault. That same level of anxiety would apply to any complainant who comes before the Tribunal.

[1713] If the Tribunal finds that there was delay in the process, then it was not due to the Complainant’s gender. It was due to Mr. Morrison stepping down as the chair and there not being a readily available replacement. It is submitted that this delay does not amount to a breach of the Code. (see *The Employee v. The University and another (No. 2)*, 2020 BCHRT 12)

[1714] There was nothing discriminatory about the investigation or NAM process. The Complainant’s Representative has failed to establish a *prima facie* complaint of discrimination on behalf of Jane Doe 31 against this Respondent.

[1715] Mr. Hyson provided Jane Doe 31 with an email outlining the process. He did his best to answer all her questions and accommodate her any way he could. Jane Doe 31 had a support person and arrangements were made for her to not have to see the Male Respondent during the NAM hearing. She was told that she would get to address to the committee and speak about her experience and the impact on her.

[1716] The Complainants’ Representative alleges that the questioning of Jane Doe 31 may not have been trauma-informed. There is no evidence to support this assertion, nor any evidence that the NAM committee’s interactions negatively affected Jane Doe 31. The Tribunal cannot presume harm where none has been demonstrated.

[1717] It is also important to note that even the Tribunal’s own process does not permit witnesses who have not testified to observe other witnesses, unless the witness is the Complainant or the Respondent. Witnesses are not entitled to know the verbatim statements of others

in order to tailor their own responses. Allowing such a process would undermine confidence in the credibility of the evidence of those who provide their testimony without prior exposure to others' statements.

[1718] The Complainants' Representative provided no evidence or reference to any alternative sexual assault investigation process in an academic context that allows for pre-hearing exchange of statements between the survivor and the accused, or that subjects the complainant to an adversarial process akin to a Tribunal hearing.

[1719] There is likewise no evidence that Jane Doe 31 experienced any further discriminatory interactions in the learning environment. Any suggestion of harm is entirely speculative and cannot be presumed by the Tribunal.

[1720] The Complainants' Representative further argues that Jane Doe 31's experience demonstrates "institutional betrayal," yet provides no evidence linking this concept to any actual conduct of the University, other than disagreement with the outcome of the NAM process. In fact, the University took Jane Doe 31's complaint seriously, supported her throughout the NAM process, and ensured she had appropriate accommodations and access to SASC supports. The response provided was reasonable and proportionate. There is no evidence of ongoing impact on Jane Doe 31's learning environment following her complaint, and no basis to conclude that she was subject to discrimination.

[1721] It is submitted that the Complainants' Representative has not made out a complaint for discrimination for Jane Doe 31. In the alternative, the Complainants' Representative has led no direct evidence regarding actual harm that Jane Doe 31 experienced as a result of the Respondent's response to her complaint.

[1722] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to Jane Doe 31's allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 32. They invite the Tribunal to speculate that the Respondent caused harm by any alleged discrimination. The Complainant's Representative presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.

[1723] In these circumstances, if the Tribunal does make an award for injury to dignity it should be on the modest end of the spectrum. The Respondent submits that \$7,000.00 is a

reasonable amount for injury to dignity for this Complainant.

19. Jane Doe 32

- [1724] Jane Doe 32 did not testify. She did not provide any direct evidence. All the evidence adduced about her experiences was hearsay, double hearsay, and triple hearsay and was not proven by any reasonable onus of proof by the Complainants' Representative who had this onus.
- [1725] If the Tribunal determines to weigh the evidence presented on this complainant, then the Respondent submits that the complaints should be dismissed.
- [1726] Jane Doe 32 came forward to the Respondent with allegations of sexual assault occurring in Whistler, British Columbia while staying in a home with her friends. Jane Doe 32 was not in Whistler for any University related purposes.
- [1727] Jane Doe 32 did not have classes with M15 and they did not see each other on campus. Further, she advised Mr. Hyson that everything that occurred on campus between them was consensual. Mr. Hyson testified that Jane Doe 32 did not share any impacts regarding the events that had taken place in Whistler. He testified that he had asked her specifically whether she felt safe on campus.
- [1728] There is no basis for any findings of discrimination relating to the learning environment. No evidence was adduced of how the learning environment was impacted for Jane Doe 32. The Tribunal cannot make this assumption given that Jane Doe 32 and the male respondent did not have classes together nor did they see each other on campus.
- [1729] Mr. Hyson advised Jane Doe 32 that the University did not have jurisdiction over her complaint under the Student Code of Conduct. The allegations occurred off campus on a non-university related ski trip. This decision was not based on her sex or gender but because the events did not occur within any University related context. The Complainant's Representative has failed to establish a *prima facie* complaint of discrimination on behalf of Jane Doe 32
- [1730] The Complainants' Representative asserts that the Respondent failed to consider Policy 3. Policy 3 would have no application given these allegations would be resolved by application of the Code of Conduct. Further, the two did not have any classes together. There was no evidence submitted of how an AHU would have been able to assist irrespective whether Policy 3 could even apply to this situation.

- [1731] The Respondent asserts its submissions above regarding jurisdiction of the university to respond to off campus assaults apply equally here. Further, the Respondent relies on its submission above regarding the application of Policy 3 to situations like this one.
- [1732] It is submitted that the Complaint on behalf of Jane Doe 32 should be dismissed. In the alternative, if the Tribunal finds discrimination, then the Respondent submits that Jane Doe 32 should not be awarded any injury to dignity as there was no evidence of harm presented.
- [1733] The award of injury to dignity must reflect the harm that flowed from the University's conduct in responding to Jane Doe 32's allegations, and not the harm that flowed from the underlying assault or other events in the Complainant's life. No evidence was led by the Complainant's Representative to permit the tribunal to make this determination for Jane Doe 32. They invite the Tribunal to speculate that the Respondent caused harm by any alleged discrimination. The Complainant's Representative presented no medical evidence or any evidence of impact to the learning environment. The Tribunal should not speculate on the harm, if any, that was caused by the respondent in the presence of a lack of evidence.
- [1734] If the Tribunal makes an award of injury to dignity, then the Respondent agrees that \$5,000.00 is appropriate.

D. Expenses of the Complainant's Representative

- [1735] The Respondent opposes Ms. Kirchmeier's claims for expenses and lost wages, as they lack a causal connection to any contravention of the Code and are not supported by sufficient objective evidence. The burden of establishing an entitlement to compensation rests with the complainant, who must demonstrate a causal link between the discriminatory act and the claimed loss (*Gichuru v. The Law Society of British Columbia* (No. 9), 2011 BCHRT 185 [301], *Hale v. University of British Columbia Okanagan* (No. 5), 2023 BCHRT 121 [384]). The purpose of compensation under the Code is to restore the complainant, as much as possible, to the position they would have been in had the discrimination not occurred.
- [1736] Ms. Kirchmeier seeks compensation for lost wages in May 2018 (USD\$3,922.80) due to a delayed job start for document review, and in July 2024 (USD\$7,354.20) for early termination of employment to attend the hearing. The Respondent challenges these claims, as they were not caused by any Code contraventions and lack an appropriate

evidentiary basis.

[1737] While wage loss for hearing attendance can be compensable, the complainant must provide evidence of their efforts to mitigate losses and documentation to show earnings. The Respondent submits that Ms. Kirchmeier's testimony regarding wage loss lacks supporting documentation and objective evidence.

[1738] The documentary evidence she provided from Finra did not support the fact that she left her position with them early to attend this hearing to observe. She told Finra **"As we discussed, later this year I will be leaving FINRA to attend law school. I would like to continue to work with you and our MAP colleagues until July 12, 2024. Please let me know how I can help to make that transition."** [emphasis added]

[1739] These requests are akin to making the representative complainant a paid role. There is simply no basis to say that Ms. Kirchmeier left Finra early to participate in the hearing process as an observer. No wage loss can be awarded for this time period.

[1740] Further, the Tribunal cannot award her damages for reviewing documents after she filed the Complaint in 2018. The Tribunal does not compensate complainants for take steps to further their complaint once it has been filed.

[1741] Ms. Kirchmeier claims various travel expenses to Vancouver for meetings, document preparation, and hearing attendance between April 2015 and December 2024, totaling several thousand dollars in USD and CAD. She also claims expenses for parking for interviews (CAN\$56.00). While expenses incurred to attend a hearing may be compensable if reasonable and causally related to the contravention (**Cassidy v. Emergency and Health Services Commission and another (No. 3)**, [104], [106]), some of Ms. Kirchmeier's travel claims, such as a \$400 accommodation payment to a friend, lack supporting documentation. The Respondent challenges the necessity and reasonableness of extensive travel and meal costs, particularly if alternative arrangements could have mitigated these expenses such as video conferencing.

[1742] There was no requirement that Ms. Kirchmeier attend in person in Vancouver to then only remotely attend the hearing via video conferencing. At that point all of the relevant documents had been scanned and sent to the Tribunal. All other witnesses were able to attend remotely. In fact, Ms. Kirchmeier continued to participate remotely from her home in the United States of America for the other times involved in the complaint hearing including when giving testimony. This expense was unreasonable and should not fall at the feet of the Respondent.

[1743] Ms. Kirchmeier seeks reimbursement for shipping documents (USD\$417.10), notarial services (USD\$270.00), office supplies (CAN\$22.71), computer equipment (USD\$34.99), research assistant fees (USD\$1,141.66), Wordpress website hosting (USD\$386.86 to 2022, plus future claims), and digitization of documents (CAN\$375.20). Legal expenses incurred after the filing of a human rights complaint are generally not compensable under the Code, as the Tribunal's jurisdiction to award such costs is not expressly provided (*Francis v. Ministry of Justice* (No. 4), 2020 BCHRT 160 at [5]). Many of these administrative expenses, particularly those related to ongoing litigation support like research assistance and website hosting, fall outside the scope of compensable expenses under the Code.

[1744] Ms. Kirchmeier claims USD\$2,000 for an expert report by Laura Brown and USD\$3,725.00 for Dr. Brown's preparation and testimony, as well as CAN\$204.00 for medical records related to Ms. Fisher. Expert reports are compensable if they are necessary to establish a contravention of the Code (*Biggings obo Walsh v. Pink and others*, [141]; *Hale v. University of British Columbia Okanagan* (No. 5), [441]). The Respondent questions the admissibility, necessity or scope of these expert fees and medical record costs, and Ms. Kirchmeier has failed to demonstrate their direct causal connection to the alleged discrimination and their necessity in proving the complaint. There was little to no reliance on these reports in the argument sections of the submissions of the Complainant's Representative

[1745] The Respondent maintains that only losses directly caused by a proven breach of the Code are compensable, and that Ms. Kirchmeier has not provided objective evidence for many of her claims.

E. Other Remedies

F. Declaratory Orders

[1746] Under section 37(2), the only mandatory order that the Tribunal must make is an order that a respondent cease and desist the discriminatory conduct. Although such an order would be moot in this case, as the process about which the Complainant has complained is no longer in use for sexual misconduct allegations, the Respondent accepts that such an order is required under the Code if the Tribunal finds a breach of the Code.

[1747] The Respondent submits, however, that as the process is no longer in use for sexual misconduct complaints, no other declaratory orders are warranted in this case.

G. Systemic Remedies

- [1748] UBC opposes the systemic remedies sought by the complainants, particularly because the implementation of its new sexual assault policy, SC17, has substantially addressed the concerns raised and that further systemic orders are largely unnecessary or redundant. The Tribunal's ability to fulfill the purposes of the Code is harmed when its resources are taken up with matters that have already been adequately addressed through unilateral respondent action (*Chin v. British Columbia Ferry Services Inc.*, (No.2), 2025 BCHRT 170 at 8).
- [1749] UBC acknowledges the Tribunal's broad power to order systemic remedies to address and prevent discriminatory practices (*HMTQ v. Moore et al*, 2001 BCSC 336 17-18). However, where a respondent has already taken reasonable and effective steps to remedy alleged discrimination, it may not further the purposes of the Code to proceed with a complaint (*Kirchmeier obo others v. University of British Columbia (No. 4)*, at 116). In *Chin v. British Columbia Ferry Services Inc.*, the Tribunal dismissed a complaint, finding that systemic policy changes, combined with a settlement offer, adequately addressed both public and private interests, and that the public purposes of the Code had been fulfilled. UBC's implementation of SC17 is a similar comprehensive, proactive measure designed to address systemic issues.
- [1750] While cases such as *Hale* have held that new policies do not retroactively remedy individual harm experienced under old policies, thereby may not warrant dismissal of an entire complaint solely on that basis, the present argument focuses on the redundancy of systemic remedies. The implementation of SC17 addresses the forward-looking systemic issues that many of the requested remedies aim to resolve, distinguishing the need for broad systemic orders from the ongoing need to address individual past harms.
- [1751] Further, the complainants did not lead evidence regarding UBC's current SC17 sexual assault policy in the hearing. Their evidence and arguments for systemic remedies are therefore based on the evidentiary record from the period before SC17 was implemented. This case was not intended to deal with current policies. The Tribunal was not presented with a Complainant who had engaged with the current policies in order to permit for any findings to be made about the current policies and their application.
- [1752] The lack of evidence about SC17 is significant for the scope of systemic remedies. The complainants' arguments for systemic remedies are not premised on a finding that SC17 is discriminatory or inadequate, but rather on the need for UBC to ensure its current and future policies comply with the Human Rights Code and address identified harms.

[1753] The Tribunal has broad remedial powers under section 37(2) of the Code and systemic remedies are within the purposes and powers of the Human Rights Code. However, it is not appropriate for the Tribunal to order the implementation or evaluation of policies and training where there is insufficient evidence about the scope of current policies, how they influence behavior, and where particular deficiencies may lie (*Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275 at 167). The Tribunal also has discretion to dismiss a complaint if it would not further the purposes of the Code, such as when a respondent has already adequately addressed the complaint (*Matias v. The Hudson's Bay Company and another*, 2022 BCHRT 17 at 47).

[1754] The complainants request numerous specific orders regarding the current University process. The Complainants' failure to adduce any evidence about the current process makes it impossible for the Tribunal to make any order regarding these requests. The Tribunal is unaware of the state of the University's current response process.

[1755] UBC submits that the public purposes of the Human Rights Code have been substantially fulfilled through the implementation of SC-17, making the broad systemic remedies requested by the complainants unnecessary. There is no complainant who interacted with University under SC-17 as part of this complaint. This issue can be addressed by the Tribunal if at any time a complainant comes forward to the Tribunal with a complaint regarding their treatment under SC-17.

[1756] The Respondent submits that there is no basis on which to order any of the systemic remedies sought by the Complainants.

[1757] Ultimately, the Complaint relates to a process that is no longer used for responding to sexual assault.

VI. CONCLUSION

[1758] The Complainants' Representative has not met her onus to establish discrimination by the Respondent.

[1759] These submissions provided comprehensive individual responses for each of the 9 complainants in the Mordvinov class and the 22 complainants in the General Class.

[1760] The submissions deal with the scope of how the Tribunal must assess these 31 Complaints as individual complaints within a group complaint model. This complaint has been treated by the Complainants as a group complaint as they have outlined the components of each complainant's complaint and the individual damages that they seek

for each complainant.

[1761] The Tribunal must review each complaint to determine whether: (1) whether the Complainant is a class member (2) whether the Complainant was in a service relationship with the Respondent (3) whether the Complainant established a *prima facie* case of discrimination. If a Complainant establishes all three in a particular case, then the Tribunal must review the Respondent's response to determine if it met its obligations under the Code to respond. It is submitted that the Tribunal must review each case individually within the context of the collective factual background.

[1762] The complainants' experiences and interactions with the University differ vastly. Several complainants were not students at the time of their complaints, several complainants never experienced any direct sexual harassment or assault, several complainants wanted support but not formal processes, several complainants' allegations involved events that did not occur during university related events, and several complainants wanted formal processes. What was clear from all the complainants was that there is no one fit for all solution for responding to complaints of sexual harassment and assault during the relevant times of this complaint. Nevertheless, the Respondent consistently respected the individual autonomy of all complainants in determining the scope of the response necessary for the circumstances of that complainant.

[1763] Further, the Respondent's response mechanism, EIO, Campus Security, and Student Conduct all understood and took a trauma informed approach to each student. The Tribunal heard evidence about the trauma informed training and experience of Ms. Kay and Ms. Hyson and was made aware of the counselling services offered by Jennifer Hollinshead as well as the advocacy and support services of SASC and how SASC frequently interacted with Mr. Hyson

[1764] Unfortunately, not all the facts underlying complainants' claims came within the jurisdiction of the University's response policies (e.g. Student B, Jane Doe 21, Jane Doe 25, and Jane Doe 32). The Respondent cannot be expected to investigate allegations that are criminal in nature that take place in another province with a former student and a current student.

[1765] In the Mordvinov Class, Ms. Kirchmeier, Ms. Grego, and Student B are not qualified members of the class. They were not students studying at the University. Their complaints must be dismissed.

[1766] Further, Ms. Cunningham was at all relevant times after she came forward to complain not a student studying at the University anymore. She did not fit the class definition for most

of the relevant time period of the Complaint.

[1767] Further, not all of the Complainants experienced any underlying harassment or assault and therefore did not engage with the University's response systems (e.g. Kirchmeier, Thornton, Ms. Russel, [REDACTED], Longstaff and Greggo). They did not establish adverse treatment. Even further, not all these complainants were students or receiving a service from the University at the time of their complaints.

[1768] Several complainants (Kirchmeier, Thornton, Ms. Russel, [REDACTED], Longstaff and Greggo) could not distinguish their complaints from Mr. Hay, a male student, who also advocated on behalf of Cunningham and Student B, and Student C. Mr. Hay engaged in the same activities as Ms. Kirchmeier, Ms. Thornton, Ms. Russel, [REDACTED], Longstaff and Greggo. In other words, these complainants could not establish that their gender was the factor in any adverse treatment by the Respondent. It is submitted that they failed to make out a *prima facie* case of discrimination.

[1769] Even further, the Complainant's Representative dropped the complaints on behalf of Jane Doe 1, Jane Doe 2, Jane Doe 6, Jane Doe 20, and Jane Doe 26. The rationale of dropping these complainants' claims highlights that there was not a one fits all solution for all of the complainants who come forward to the Respondent with allegations of sexual assault or harassment. Each complainant's autonomy must be respected in determining what the proper response was in each case.

[1770] Even further, several the Complainant's did not meet the class definition as set out by the Tribunal including Student B, Jane Doe 3a, Jane Doe 3b, and Jane Doe 3c, Jane Doe 4, and Jane Doe 13. These Jane Does' are not complainants.

[1771] Even further, numerous complainants were not in a service relationship with the Respondent during the time of their complaints including Ms. Kirchmeier, Ms. Grego, and Student B.

[1772] The Complainants seek to broaden the application of the Code to protect advocates and others who attempted to be involved in the complaints of others. In some circumstances, these complainants advocated without the consent from the person that they were purporting to represent. The Tribunal must act very cautiously to not extend the protections of the Code to those who act on behalf of others and cannot show any independent complaint of discrimination regarding themselves.

[1773] There was no complaint of retaliation in this case, which could support a complaint for an

individual who did not experience any underlying assault or harassment but was alleged treated adversely as a result of coming forward on someone else's behalf. It was open to the Complainant's to file this as a retaliation complaint, but they did not. This provides the protection to those who help others deal with discrimination but do not have their own independent complaint.

[1774] The Respondent acknowledges its obligation to provide a safe, harassment-free and educational environment, which is an obligation that it takes seriously. The Respondent submits that at all material times to the Complaint it met its obligations.

[1775] A service provider's duty to respond reasonably and appropriately to complaints of discrimination is one of reasonableness, not correctness or perfection. This standard contemplates that there is more than one way for a service provider to respond to a complaint of discrimination with various outcomes. The Complainants' Representative's belief that the process at the time was inappropriate for the complainants because they took issue with certain aspects of it does not make it discriminatory. The preponderance of evidence establishes that the Respondent treated complaints seriously, dealt with them promptly and sensitively, and reasonably investigated and acted in response to complaints.

[1776] Further, the Tribunal must carefully consider how the rationale in the **Hale** decision applies to those students who proceeded to the NAM with their own individual complaint (e.g. Student E, Ms. Cunningham, Student C, Jane Doe 5, Jane Doe 29, Jane Doe 30 and Jane Doe 31). The **Hale** complaint was contextualized to her individual experience, including the intersectionality of sex and disability. In this complaint, for example, Student C and Student 5 did not participate in the NAM hearing. Further, in this complaint, there was no direct or admissible evidence of adverse impact or of a disability on Student C, Jane Doe 5, Jane Doe 29, Jane Doe 30, and Jane Doe 31. These are only a few of the many distinguishing factors from these Complainants cases and that of **Hale** that were outlined above.

[1777] Further, but for Jane Doe 31, all of the male respondents involved in NAM complaints were penalized for their actions. The penalties included expulsion for the male respondent in Student E, Cunningham, Student C, Jane Doe 29, and Jane Doe 30's cases. Even further, after coming forward with a complaint, there was no evidence that the learning environment was impacted as a result of further interactions with the male respondent for Student E, Ms. Cunningham, Student C, Jane Doe 29, Jane Doe 30 and Jane Doe 31's case.

[1778] The Respondent's multifaceted response teams acted in accordance with the Code at all relevant times. The Respondent submits that it met its duty to reasonably respond.

[1779] The Complaint should be dismissed in its entirety as the Complainants have not proven their claim of discrimination.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF MAY, 2026.



Alon Mizrahi Counsel for the
Respondent



Devon Peck Counsel for the
Respondent