Submission to the University Counsel on Proposed Policy 131: Sexual Assault

On Behalf of
Alma Mater Society of UBC Vancouver and
Sexual Assault Support Centre
October 31, 2016
The AMS and SASC would like to thank the Sexual Assault Policy Committee, as well as the UBC Sexual Assault Panel for their hard work in producing this draft policy and report, respectively. We acknowledge the short timeframe in which the Policy Committee was tasked with developing a draft of this policy and are grateful for the groundwork that was laid, as well as for the commitment to strengthening this policy before May 2017. We are pleased to see UBC engaged in the process of developing a stand-alone policy to address sexual assault and are looking forward to seeing the revisions to the policy that emerge from this consultation period. Of course, the work to end rape culture and sexual violence on campus neither starts nor ends with the adoption of this stand-alone policy. The AMS and SASC look forward to continuing to work with the University on revising this policy, its implementation and on new initiatives to continually make campus a safer place.

Since UBC undertook formal investigations into allegations of the mishandling of sexual assault reports and subsequently began the process of developing a stand-alone sexual assault policy, campus sexual assault has continued to be highlighted in the media and across the country. It is important to acknowledge that increased media attention to the problem does not mean that sexual violence on campus is a new issue. However, this scrutiny has certainly put increased pressure on post-secondary institutions to respond to sexual violence on campus.

Governments across the country are also feeling the pressure from activists and the increased scrutiny being given to this pervasive problem. One by one provincial governments are legislating that post-secondary institutions develop stand-alone policies to address the issue of sexual assault on campus. Ontario was the first province to pass provincial legislation with Bill 132, the Sexual Violence and Harassment Action Plan Act, receiving Royal Assent on March 8, 2016. Ontario also developed a province-wide action plan to address sexual violence and harassment within the province more broadly.1 This spring, British Columbia followed suit by passing Bill 23, the Sexual Violence and Misconduct Policy Act, in May 2016, which mandates that all public post-secondary institutions in the province develop sexual assault policies by May 2017. Manitoba’s government also indicated its intention to pass similar legislation and, in the wake of a series of assaults at Laval University, Quebec’s government has also announced consultations regarding on-campus sexual violence in the province.

In parallel to UBC’s consultation process on Policy 131, the AMS and SASC undertook an education and consultation campaign of our own. We developed recommendations on policy changes to share with students and also encouraged students to submit feedback both to UBC’s consultation and to us directly. Students were able to engage with this campaign in a variety of different ways, including passively receiving information on their coffee sleeves and actively signing a banner to support our primary policy recommendation, as well as submitting comment cards and attending in-person consultation. Overwhelmingly, students shared support for the policy recommendations of the AMS and SASC, which are as follows.

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the rights and accommodations for students who disclose experiencing a sexual assault
without requiring them to file a formal report.

The new policy is a great first step to mandate educational programming for campus to
work towards culture change and ending violence on campus.

The policy highlights the inclusive principles and values of our campus. It recognizes the
complexities of violence and that, while anyone can be affected by sexual assault, certain
populations are more at risk.

The proposed policy refers to the Student Code of Conduct and the Non-Academic
Misconduct Process for reporting, which is not a process designed to address the unique
challenges of sexual assault and the needs of survivors. Through this process, a survivor
may have to retell their story in front of other students or come face to face with their
perpetrator. Other, more appropriate, reporting processes should be considered as options.

Students have the right to choose how they report, and know exactly how their report will
be handled. The draft policy refers students to the Student Code of Conduct rather than
explaining the process for reporting and what expectations survivors are entitled to in that
process. The expectations and procedure when making a report against a faculty or staff
member is also not clearly outlined.

Survivors may want to file a formal report but not feel comfortable making this report
themselves. Third party reporting allows for a report of sexual assault to be made by
someone other than the survivor. Although the policy talks about third party reporting,
it is unclear to what extent the university will use these third party reports to ensure safer
campus communities.

Students need to know who in the campus community they can turn to for help and
support in the event of a sexual assault. The policy explains that UBC will provide training
to a number of staff throughout the university but only lists a small number of staff as
resources who will receive this training. For more clarity, a longer list would be helpful.

Policy Recommendations:

❤️ What we like:

1. The policy acknowledges that reporting and disclosing are two different things and outlines
   the rights and accommodations for students who disclose experiencing a sexual assault
   without requiring them to file a formal report.

2. The new policy is a great first step to mandate educational programming for campus to
   work towards culture change and ending violence on campus.

3. The policy highlights the inclusive principles and values of our campus. It recognizes the
   complexities of violence and that, while anyone can be affected by sexual assault, certain
   populations are more at risk.

⚠️ What we would like to see changed:

1. The proposed policy refers to the Student Code of Conduct and the Non-Academic
   Misconduct Process for reporting, which is not a process designed to address the unique
   challenges of sexual assault and the needs of survivors. Through this process, a survivor
   may have to retell their story in front of other students or come face to face with their
   perpetrator. Other, more appropriate, reporting processes should be considered as options.

2. Students have the right to choose how they report, and know exactly how their report will
   be handled. The draft policy refers students to the Student Code of Conduct rather than
   explaining the process for reporting and what expectations survivors are entitled to in that
   process. The expectations and procedure when making a report against a faculty or staff
   member is also not clearly outlined.

3. Survivors may want to file a formal report but not feel comfortable making this report
   themselves. Third party reporting allows for a report of sexual assault to be made by
   someone other than the survivor. Although the policy talks about third party reporting,
it is unclear to what extent the university will use these third party reports to ensure safer
campus communities.

4. Students need to know who in the campus community they can turn to for help and
   support in the event of a sexual assault. The policy explains that UBC will provide training
to a number of staff throughout the university but only lists a small number of staff as
resources who will receive this training. For more clarity, a longer list would be helpful.
Values of the Policy

The AMS and SASC are glad to see that this policy highlights the inclusive principles and values of our campus. It recognizes the complexities of violence and that, while anyone can be affected by sexual assault, certain populations are more at risk.

While women are still more likely to experience sexual assault than men, individuals of all gender identities experience sexual assault and, as such, it is fitting that this policy explicitly states that it is not restricted by gender. This is an essential step towards reducing barriers to disclosing and reporting on campus and an important component of dismantling mythologies surrounding sexual violence.

Similarly, not only are there gender-based differences in the prevalence of sexual assault, there are also clear differences in the incidence of sexual violence between different groups of women. Some women are more likely to be victims of sexual assault due to the intersections of their identities. An intersectional approach allows us to identify how interactions between different aspects of a person’s identity, such as age, race, status, disability, sexual orientation or mental health condition, make some people more vulnerable to experiencing sexual violence than others. While this policy recognizes that certain individuals are more at risk for sexual assault, it does not go on to outline how the university will address this heightened risk in its prevention and response. The policy should also outline how it will address the barriers to disclosing, reporting and accessing services that certain populations may face.

In working to address sexual violence on campus, it is also essential to recognize that sexual assault does not exist in a vacuum. Other social forces, such as colonialism, racism, transphobia, and homophobia, interact with sexual violence and contribute to maintaining the rape culture that we experience today. Thus, a comprehensive approach to sexual assault also needs to acknowledge the existence of these other social forces and concurrently work to mitigate their power. This is not currently found in Policy 131.

Furthermore, the AMS and SASC believe that any effective approach to dealing with sexual assault must be trauma-informed and survivor-centric. This approach recognizes that both the immediate and long-term needs of every survivor will be different, which necessitates the provision of a variety of options. A trauma-informed approach to sexual assault recognizes the need for a survivor's physical and emotional safety, as well as prioritizing choice and control of decisions. In the campus context, this means “understanding the impacts of sexual violence and sexualized trauma on victims/survivors (and others) and responding in a manner that promotes empowerment and recovery and minimizes re-traumatization.” To complement this, a survivor-centred approach is based on the lived reality of survivors, recognizing that they are the experts on their own realities and needs. This is in contrast to prioritizing the needs or rights of the perpetrator or the institution.

In order to make this policy more trauma-informed and survivor-centric, the AMS and SASC believe that a new reporting procedure within the university should be developed, a structured third-party reporting option should be implemented and clear and transparent information about options and processes need to be outlined in order to allow survivors to make informed, empowering choices.

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5Ibid., p. 23.
Reporting Procedure

As outlined in our recommendations, the AMS and SASC feel that the current reporting process referred to in the proposed policy is wholly inadequate to deal with the unique challenges of sexual assault. The recommendation to create a new reporting process for sexual assault cases was supported by every student who responded to our consultation and, in addition, hundreds of students signed our public banner to show their support for this specific policy recommendation.

An extremely small number of sexual assault cases have been handled through the Non-Academic Misconduct process in the years from 2004-2015, which is a strong red flag that students do not feel safe or comfortable coming forward and reporting through this process. While the decision to report is an extremely personal choice that not every survivor will pursue, the small numbers in comparison to the number of students at UBC can still be taken as an indication that the current process is not adequate.

These numbers are even more striking when considered in conjunction with the usage rates of the Sexual Assault Support Centre, which continue to increase year after year. The increase in SASC usage rates between 2015 and 2016 has been particularly noticeable. In 2015, the SASC provided 128 in-person support appointments, 247 support interactions and 71 initial appointments. In 2016, up to July, the SASC has already provided 225 in-person support appointments, 320 support interactions and 82 initial appointments.

Referring reports of sexual assault back to the current Non-Academic Misconduct Process also calls into question whether this policy, in its current form, is truly stand-alone. A stand-alone policy is essential in order to acknowledge the impacts of sexual violence as distinct from other instances of violence or harassment on campus and this should also dictate that an appropriate investigative or reporting process is developed that addresses these realities. Referring back to an existing process that was not designed with sexual assault cases in mind does not reinforce the underlying reasoning for creating a stand-alone policy in the first place nor does it create trust in the institution to effectively handle cases of sexual assault on campus.

These numbers were found through UBC’s Annual Summaries of Student Discipline Cases, which can be found at http://universitycounsel.ubc.ca/discipline/annualsummaries/. Specifically, these summaries indicated that between 2004-2015, 284 students were suspended for plagiarism and/or cheating while only 1 student was suspended for sexual assault. In the same time frame, 617 cases of academic misconduct were brought before the President’s Advisory Committee on Student Discipline compared to only two cases for sexual assault.
While the usage rates of the Sexual Assault Support Centre continue to increase year after year, statistics from the annual Student Discipline Summaries indicate that a negligible number of cases of sexual assault are brought before the President’s Advisory Committee on Student Discipline. This is the same reporting process that is referred to in the current draft of the sexual assault policy. What this shows is that students are clearly not comfortable accessing this process and that is not meeting the needs of the campus community.

**Statistics**

While the usage rates of the Sexual Assault Support Centre continue to increase year after year, statistics from the annual Student Discipline Summaries indicate that a negligible number of cases of sexual assault are brought before the President’s Advisory Committee on Student Discipline. This is the same reporting process that is referred to in the current draft of the sexual assault policy. What this shows is that students are clearly not comfortable accessing this process and that is not meeting the needs of the campus community.

**2013-2014 Student Suspensions***

| 53 | Plagiarism and/or cheating |
| 0 | Sexual assault |

**2004-2014 Student Suspensions**

| 257 | Plagiarism and/or cheating |
| 0 | Sexual assault |

**2004-2014 - Cases Brought Before the President’s Advisory Committee on Student discipline**

| 549 | Academic misconduct |
| 1 | Sexual assault |

**Sexual Assault Support Centre**

| In-person Support Appointments | Support Interactions | Number of Initial Appointments |
| 2016 (to date): 225 | 2016 (to date): 320 | 2016 (to date): 82 |

*Taken from 2013/2014 Student Discipline Summaries. These numbers are for UBC Vancouver and UBC Okanagan.*
Problems with the Current Process

The SASC has intimate experience with helping survivors navigate the Non-Academic Misconduct Process with cases of sexual assault and has identified some troubling characteristics of the process that make it inappropriate to deal with sexual assault and inaccessible to survivors. It has been noted that the current process does not always address survivors’ physical and emotional safety concerns and that the onus is often placed on the student to manage their own safety. For example, in some cases, a survivor is able to access a no contact order but this is not guaranteed. In some instances, even accessing a no contact order does not provide the safety that a survivor is seeking as the university does not act to enforce this order when it is violated. It should be made clear what a survivor can expect throughout the process in order to address safety concerns.

The current process can take anywhere from six months to two years to be completed. The inconsistency and dramatic differences in timeframes can be a barrier to filing a formal report. This uncertainty about how long it will take for the process to be completed is not in keeping with a survivor-centred approach. Furthermore, the SASC notes that the onus is often put on survivors to move the process forward. They are often forced to contact the university in order to ensure that the process is moving and that their case is still being dealt with.

The SASC also notes that many survivors opt to report through the Non-Academic Misconduct Process with the expectation that the perpetrator will be expelled. However, as the statistics clearly demonstrate, this is rarely ever the outcome. This leaves survivors feeling that they haven’t found justice through reporting through the university and that their needs have not been met by the process. This gap demonstrates that there is a need to explore alternative forms of justice, including education of perpetrators, to make the process more survivor-centred.

In developing a new procedure for reporting sexual assault, the AMS and SASC recognize that there is a need to be mindful of how the procedure intersects with other university policies, collective or staff agreements and protocols and even with the criminal process. That being said, it is also important to acknowledge that structural power relationships and imbalances can act as a barrier to disclosing or reporting, especially within the post-secondary context. Any reporting procedure that is created for sexual assault cases should be developed with these realities in mind and work to mitigate the effect of power imbalances on the process.
Components of a New Reporting Process

Power imbalances can be particularly evident in the makeup of the panel that is evaluating the report. Careful consideration should be given to who is on the panel, their impartiality and the training that they are provided. For example, survivors may find it difficult to have to share the details of their assault in front of their peers who they may have classes with or know socially. This is particularly complex for graduate students who could be in the position where they teach an undergraduate student who is part of a panel. For this reason, it may not be appropriate to involve students in this reporting process. For similar reasons, members of the panel should not be affiliated with the faculty that the survivor and the accused are in. All members of this panel should have experience with anti-violence work, receive proper training on how to handle sexual assault complaints and should engage in ongoing training and education on the topic. Training should be provided by subject-matter experts, such as the university’s Sexual Assault Intervention and Prevention Advisor or by educators on that team.

It is also important that an appropriate evidentiary standard be utilized in this process if a hearing or panel model is adopted to adjudicate a report. The “guilt beyond a reasonable doubt” standard used by the criminal justice system is, for understandable reasons, quite a high bar. In the post-secondary context, the “preponderance of the evidence” standard that is used in civil cases is much more appropriate. This standard puts the survivor and the accused on equal playing field and means that the survivor only needs to show that it is more likely than not that the accused is guilty.

Survivors should be given the option to have an advocate accompany and assist them through all stages of the reporting process. This is an important component of a trauma-informed and survivor-centred approach and helps to ensure that a survivor’s safety concerns are being met throughout the process.

In order to set realistic expectations for survivors and to afford them the most options possible, the reporting process should have an accompanying understanding of potential consequences for those who commit sexual assault. Given the severity of the offence, the AMS and SASC would recommend that the university set consequences that are survivor-driven, with the option of expulsion. For example, if a survivor will not report if the accused will be expelled, the school should retain some flexibility to accommodate the survivor’s request. However, this process should also not require the survivor to pick the punishment for the perpetrator. Most survivors know the person who assaulted them and, as a result, may feel pressured into forgiveness or picking a lighter punishment than they feel comfortable with if they were put in this position. Feedback received through our consultation on this policy highlighted the view that students found to have committed sexual assault should be expelled. One student wrote, “Students who committed sexual assault should be expelled. UBC should have zero tolerance for any student who wishes to sexually assault other students. Their expulsion should note the reason in a clear and obvious way.”

As noted earlier, the university should also consider expanding the misconduct process to consider alternative forms of justice. Models such as restorative justice should be considered and education for those who cause harm should be a central part of the process. Even if a perpetrator is expelled through this process, they will still be living in their community or even potentially attending another post-secondary institution. As such, perpetrator education is an essential component to crafting a reporting process that will contribute to dismantling rape culture on campus.

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7 University of British Columbia, Proposed Policy 131, Section 4.8.
8 EVA BC, Campus Sexual Violence, p. 34.
The AMS and SASC also feel that it is ineffective and confusing to have a reporting process for faculty and staff that is separate from students. These should be merged to create one reporting process for sexual assault that can encompass the entire UBC community. The current multiple processes that exist are unclear and confusing. While we recognize that any process that involves faculty and staff must respect Human Resources practices, contracts and collective agreements, we still believe that it is possible to create one streamlined process with clear procedures that is easily accessed by survivors.

Finally, if a panel or investigative model is adopted as the reporting process for sexual assault then it is essential that a right to appeal is afforded to both parties.

**Third Party Reporting**

In order to provide survivors with as many options as possible, the university should present a clear third-party reporting option. In the proposed policy, the AMS and SASC are glad to see that a mention of third party reporting has been included in the “Reporting Options” section; however, the reference to third party reporting at UBC is extremely vague and does not provide enough information about what the university would do with a third party report. In the interest of transparency and providing survivors with access to options that are understandable, the policy should clearly outline what third party reporting means in the context of the university.

Currently, the policy states that “UBC’s ability to address the allegation will be dependent on whether the evidence required to make findings of fact regarding the assault can be obtained. In many cases of Sexual Assault, only the person who has been Sexually Assaulted and the one accused of the assault can provide this evidence. In such cases, if the person who has been Sexually Assaulted does not wish to participate in UBC’s process, then UBC may be unable to act.” While it is understandable that UBC may not be able to pursue an investigation into a sexual assault reported by a third party, this information can still be used to create a safer campus community similar to the way that third party reports to the police are utilized.

The Ending Violence Association of BC (EVA BC) has proposed the option of anonymous reporting to post-secondary institutions via a survivor support service as an option that would complement third party reporting to the police. The AMS and SASC believe that implementing this option on our campus would be a step towards making the institution’s response truly survivor-centric. The SASC has experience in taking third party reports for the police and, as such, would easily be able to act as a survivor service to record reports and submit them to the university. Student feedback noted that, with regards to third-party reporting, steps should be taken to ensure that false reports aren’t filed and that reports are not filed without the survivor’s consent. Allowing the SASC to receive third party reports and file them with the university would mitigate this concern.

Finally, the university should be clear about how exactly third party reports will be used if they cannot lead to investigation. If the university is committed to collecting and analyzing the information provided through these reports, this information can be used to identify patterns and serial offenders in order to help make the campus safer. Information about what will be done with the information from third party reports should be clearly identified so that survivors understand what will happen if they choose this option.
Clear and Transparent Information

An important component of this policy should be the commitment to provide clear and understandable information to survivors in order for them to be able to choose the best option for their situation. Much of the information in this policy, including the current reporting process, is vague and does not set clear expectations. As outlined in our recommendations, **students have the right to choose how they report and know exactly how their report will be handled.** This includes setting expectations about timelines and potential outcomes of the process.

Additionally, students should be made aware of the full range of accommodations, both academic and non-academic, that can be made available to survivors. The policy begins to do this in section 3.5 but more information could be provided in order to clarify all of the options that are available. If it is not feasible to include this detailed information in the policy, then it should be provided in an appendix or accompanying document that is easily accessible to students.

Next Steps in Policy Development

The AMS and SASC acknowledge the creation of the Steering Committee on Sexual Assault and are encouraged to see that the mandate of this committee includes considering feedback from the public consultation on this policy and addressing the recommendations from the University Sexual Assault Panel. This is a positive step towards ensuring that the campus community is meaningfully involved in the development of this policy and in continuing to build institutional trust.

Given that substantive changes to this policy are being requested, including the creation of a new reporting process, the AMS and SASC request that a second consultation period be held in order to solicit feedback on the new draft of the policy before it is presented to Board for final approval.