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August 29, 2018

**Open Letter**

Dr. Santa Ono  
President, University of British Columbia  
Office of the President

Dear Sir:

**Re: MC Seeks Policy Change and Release of Boyd Report Findings**

I am legal counsel for the Main Complainant (“MC”) in UBC’s investigation of Mr. Galloway that preceded the decision by the UBC Board of Governors to terminate Mr. Galloway’s employment at UBC.

Over two years after Mr. Galloway’s termination and MC’s request for a copy of the report, **MC still does not have the Investigator’s findings on her allegations of sexual harassment.** MC is entitled to know whether Mr. Galloway was found to have sexually harassed her.

UBC’s refusal to disclose an unredacted copy of the Boyd Report to MC is preventing her from responding to defamatory attacks on her character and causing harm and damage to her reputation.

The purpose of this letter is to demand the immediate release of the Boyd Report findings to MC.

Further, as a result of her experience, described below, MC calls on UBC to enact a policy that better addresses the inherent risks of sexual misconduct when faculty engage in sex with students.

As a result of the public nature of this case and the importance of UBC and other universities taking stronger action to protect students from sexual misconduct by faculty members, MC is issuing this letter as a public letter.

## **UBC Caused Unwanted Media Attention and Controversy**

In the fall of 2015, UBC issued a press release confirming that Mr. Galloway had been suspended from his position at UBC due to serious allegations of misconduct. As a result of UBC's decision to publicly release this information, MC's confidential complaint of sexual harassment and sexual assault has played out in the national press and on social media. This was not MC's desire nor choice and has put her safety at risk and caused her extreme emotional and psychological distress.

MC has become a target of hostility and vitriol. She has been maligned and vilified in the national press and on social media. False statements about her and her report to UBC have been published. Persons who have spoken out in support of the Complainants have been threatened publicly and privately.

## **UBC Must Release an Unredacted Copy of the Boyd Report to MC**

In February 2017, UBC released a redacted copy of the Boyd Report to MC. Mr. Galloway prevented its earlier release to MC in the summer of 2016 by requesting a review by the Office of the Information and Privacy Commissioner. In the copy ultimately provided to MC, key information about Justice Boyd's findings with respect to sexual harassment were redacted. Mr. Galloway refused to consent to the release of the redacted findings to MC.

Mr. Galloway, however, has been provided with an unredacted copy of the Boyd Report. Mr. Galloway has leveraged this informational power imbalance by making statements about the findings made by Justice Boyd, which MC, the media and the public, are unable to verify as complete, accurate or misleading without full access to the Report. MC is entitled to know whether Justice Boyd made a finding that Mr. Galloway sexually harassed her.

It is impossible to understand how UBC can permit public access to a finding in the report that the complaint of sexual assault was unsubstantiated and yet deny MC public access to the finding in relation to the complaint of sexual harassment. In principle, there is no distinction between the release of one finding and not the other.

Release of the unredacted report is consistent with UBC's current sexual violence policy and procedure, approved in April 2017. This policy states that complainants are entitled to a copy of the investigation report, including the **"Investigation findings and the evidence upon which these findings are based."** The only redactions required by privacy law relate to information "that is irrelevant to the Investigation findings, or that identifies third parties." UBC's policy confirms the rights of complainants to know the outcome of their complaints. This was as true in 2016 as it is now. The UBC policy makes clear that MC should receive the findings of sexual harassment and all of the evidence on which they are based, since this information is not private or personal information under privacy law. There is simply no basis for UBC to withhold the findings,

regardless of any objection by Mr. Galloway (who in any event has said publicly that he will not block access to information to which MC is legally entitled).

Disclosure of investigation findings and the evidence on which findings are based to complainants is critical to ensure that complainants participate in investigations. No complainant would report sexual harassment or assault if she were denied access to the findings.

Release of the Boyd Report to MC is consistent with UBC's own commitment to providing complainants with fair and equal access to investigation findings. Receipt of the findings and the evidence on which they are based is a due process right for complainants. Denial of this information is not only unfair but also discriminatory. Unequal disclosure disadvantages sexual assault victims and perpetuates barriers to reporting.

Without a copy of the Boyd Report that contains the findings on MC's sexual harassment complaint and the details of the overall conclusions made by Justice Boyd, MC is unable to properly respond to the attacks on her as a result of the UBC process.

Accordingly, MC's loss of privacy and exposure to on-line vitriol as a direct result of UBC's initial statement, has been exacerbated by UBC's policy (in 2016) of providing the respondent with a complete copy of the investigation report while withholding the report in its entirety from the complainant.

At all times, MC should have been provided with a copy of the Boyd report that contains the findings, and she should be provided with a copy forthwith.

### ***Acceptance of Evidence of Sexual Harassment***

A key misrepresentation of MC in the press has been the direct or indirect suggestion that MC was found by Justice Boyd to be wholly untruthful in relation to her complaints against Mr. Galloway. In fact, the redacted version of the report received by MC shows that Justice Boyd accepted significant portions of MC's evidence of sexual harassment. The sexual harassment pre-dated any sexual contact between MC and Mr. Galloway.

In this section of the report, Justice Boyd wrote:

“I accept MC's allegations that the Respondent made increasingly inappropriate sexual comments and advances towards her over a number of months in late 2010 and early 2011.”

Justice Boyd accepted that Mr. Galloway's sexual advances and comments were “**unwelcome**” to MC (emphasis added).

Further, Justice Boyd acknowledged that Mr. Galloway was in a position of power over MC, finding that:

“Given the Respondent’s position as professor, undergraduate advisor, and international professional fiction writer versus MC’s position as an undergraduate student and aspiring fledgling writer, **there was a clear power differential between the parties**.....” (emphasis added)

Justice Boyd also accepted MC’s evidence that she feared rejecting Mr. Galloway because of his position of power, writing that:

“I find that MC found herself in a situation where the “stakes were high” since she believed that unless she tolerated this conduct, her acceptance into the MFA program and the other special treatment she had been promised...might all be in jeopardy”

Justice Boyd also found that in the spring of 2011, MC attempted to put an end to the increasingly intimate relationship:

“...the fact remains that MC, an undergraduate student, was trying to end the relationship and the Respondent (her Undergraduate Advisor, and Professor) was bombarding her with messages to persuade her not to do so.”

It appears that Justice Boyd must have found sexual harassment occurred, however, MC has been excluded from access to the findings. There is no principled basis upon which UBC can justify releasing findings of fact in relation to the complaint of sexual harassment but refuse to release the ultimate conclusion arising from those disclosed facts.

At present, MC cannot fully respond to the attacks on her being circulated widely. By the actions of UBC, MC continues to be unfairly victimized and is being deprived of a full opportunity to respond to the attacks and protect herself.

### ***False Information Being Circulated about MC and Backlash against Complainants***

The false information circulated about MC that she deserves and demands the right to fully respond to, relates to the characterization of her as a classic vengeful serial liar who preys on powerful men. A characterization that heavily draws on stereotypes about women who report sexual assault.

By withholding a copy of the unredacted Boyd Report from MC, UBC is preventing MC from defending herself.

For example, contrary to what has been reported in the media, MC has never made a complaint of sexual harassment at any other institution. Similarly, she had never before

the complaint against Mr. Galloway, reported being choked (strangled) by anyone. No such findings about these alleged prior reports were made in the Boyd report, at least to the knowledge of MC.

It is also untrue, contrary to comments attributed to Mr. Galloway and made by others, that in her report to UBC MC denied a relationship with Mr. Galloway, and that she changed her story after confronted with their text messages. MC never denied a relationship existed, but rather described it as abusive. It has already been made public by Mr. Galloway in the press that MC referred to her relationship with him as “Stockholm Syndrome” and “traumatic bonding.” Mr. Galloway has thus already publicly shared MC’s confidential disclosure that the relationship was characterized by her as abusive. The Investigator did not make any finding that MC had at any point denied a relationship existed between her and Mr. Galloway.

MC sought to file an expert report in the course of the investigation, from renowned psychologist Dr. Lori Haskell, to explain the discriminatory misconceptions about women who remain in relationships with men (particularly men in positions of power) despite alleging that they have committed violence against them. The Faculty Association opposed the acceptance of the expert report and Justice Boyd declined to receive it for various reasons including that such evidence is “rarely introduced in workplace investigations” and was not “anticipated by the Terms of Reference.” Accordingly, this expert evidence did not inform Justice Boyd’s analysis. After Justice Boyd decided to exclude this expert evidence, MC asked Justice Boyd not to make any findings relating to the period of time of May 2011 to 2013.

The public has been presented with the suggestion that the only wrong committed by Mr. Galloway was that he had an inappropriate but consensual sexual relationship with a student. The quotations produced above suggest that Mr. Galloway engaged in sexually harassing conduct with MC before any sexual contact occurred.

As stated above, the findings on sexual assault have been released. The findings on sexual harassment have not. MC is entitled to know what is contained in the sections blacked out.

### ***The Unredacted Findings Are Not “Private Information”***

There is no question that since at least the fall of 2016, the findings with respect to sexual harassment cannot be characterized as “private” information of Mr. Galloway. It appears that Mr. Galloway or those acting on his behalf, have widely and publicly shared the report and have publicized his summary of the findings.

For example, a journalist, Brad Cran, recently posted on twitter that he has seen a complete unredacted copy of the report, provided by legal counsel (apparently referring to Mr. Galloway’s legal counsel). The screenshot of this post is attached.

Mr. Galloway has stated publicly that the decision to release the report to MC rests with UBC, subject to protecting personal information relating to him that may be protected by privacy law. He states that he does not have the power to block MC from seeing the parts of the Boyd report to which she is legally entitled. UBC's own policy makes clear that MC is legally entitled to the findings, and in particular the findings on her report of sexual harassment.

The findings in response to MC's report of sexual harassment (and sexual assault) are personal information of MC, as well as Mr. Galloway. Pursuant to s.22(2)(c) of the *Freedom of Information and Protection of Privacy Act*, release to MC of the redacted portions of the report are essential to a "fair determination" of MC's rights. The public denigration of MC, among other harms caused by the withholding of the findings, requires production under s.22(2)(e) of the Act. Any refusal by UBC to release the report under s.6.4 of UBC's policy will further perpetuate and exacerbate the harms suffered by MC.

MC should not be required to wait lengthy periods of time through the access to information process to receive a copy of the Boyd report that contains all of the findings and the evidence on which they are based.

MC requests immediate receipt of a copy of the report that complies with s.6.4 of UBC's (2017) Sexual Violence Policy and Procedure. MC is asking for nothing more than what all complainants are currently entitled to under university policy. Surely UBC believes that its current policy on sexual violence is consistent with British Columbia privacy law.

UBC has publicly stood by its termination of Galloway as "fully justified." The termination grievance was withdrawn by the UBC Faculty Association and its legal counsel after more than three weeks of hearing dates. The issue of whether UBC had cause to fire Mr. Galloway was dropped by him/his union. Mr. Galloway was not awarded any damages for loss of wages or benefits. Had the arbitration over the termination continued to its conclusion, the arbitrator's decision would have been a publicly available document. By pulling the termination grievance, the full facts of why Galloway was fired by UBC have been removed from the public realm.

### ***MC Calls for UBC to Prohibit Faculty-Student Sexual Relationships***

Since the emergence of the #MeToo movement in late 2016, there is increased public awareness of the ways women cope with sexual harassment by men in positions of power. The undeniable risks for abuse and of coercion by professors over their students must ground a clear policy by UBC prohibiting such relationships.

The difficult process MC (and others) have endured and continue to endure could have been avoided. At all times, UBC was aware that faculty/student relationships put the safety of students at risk and UBC should have had a policy that prohibited sexual relationships between faculty and students. Justice Boyd confirmed the "clear" power

differential, in which Mr. Galloway was in a position of authority and power over MC. This power differential was not mitigated by MC's age or her professional accomplishments in other fields. As found by Justice Boyd, MC was an undergraduate student and newcomer to writing, with no clout.

Such power differentials can be even greater when the student is a graduate student and the professor has significant influence over the student's career.

This is not a question of whether it's impossible for a woman (or man) to ever have a consensual relationship with someone who has power over them. But the potential for abuse of power in particular sectors, such as health and education, clearly justify a bright line rule. For over twenty years, doctors and other health professionals have been prohibited from sexual relationships with their patients. The public protection basis for these laws must apply with equal force to professors.

Universities are protected spaces of learning where students should expect their safety and rights to be free from discrimination to be a top priority.

Women, and particularly women from marginalized groups, are too often targets for sexual harassment and sexual assault on campus. Recent legislative and policy changes have made some limited progress toward addressing this serious social problem, but current policies need to be strengthened. Sexual advances by professors remain extremely difficult for students to resist. Professors have the power to evaluate and to both advance and limit (or block) career and academic pathways.

Students should not be put in the position of proving this obvious imbalance of power in sexual relations with professors on a case by case basis. Classrooms and graduate programs must not be "dating" pools for faculty. UBC should protect its students, whether undergraduate or graduate, from the risk of sexual harassment and predation by having a bright line rule. It is unclear who UBC is protecting by its failure to have a clear policy, but it is certainly not the students. Harvard and many other Ivy League schools have started to enact policies prohibiting intimate relationships between faculty and students. It's time for UBC, and other Canadian universities, to follow suit in the interests of protecting students from the life-long harms of boundary violations and sexual harassment.

### ***Conclusion***

In sum, MC seeks the following from UBC:

- (1) The immediate release to her of a copy of the Boyd report which includes all of the findings in respect of her report of sexual harassment and sexual assault and the evidence on which those findings are based. For greater clarity, MC seeks the immediate release of the redacted paragraphs in the pages attached, including the findings in respect of the report of sexual harassment.

- (2) That UBC take pro-active steps to correct any statements in the press to date which misrepresent the Boyd report and/or its findings.
- (3) A commitment from UBC to enact a policy to prohibit sexual relationships between faculty and students at UBC.

I look forward to your prompt and positive response.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Joanna Birenbaum', with a long horizontal flourish extending to the right.

Joanna Birenbaum

Cc: Paul Hancock  
Access and Privacy Manager  
Office of the University Counsel

*By Email to:*

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