



SHAMBHALA

February 3, 2019

Dear Shambhala Sangha,

The Interim Board has received the investigative report from Wickwire Holm, a Halifax law firm, and we are releasing it to the sangha. We would like to explain what is contained in the Wickwire Holm Claims Investigation, the perspective of the Interim Board (IB) and how we plan to go forward and support the community.

The Kalapa Council engaged Wickwire Holm in July 2018 to conduct a third-party investigation of claims of sexual misconduct within the Shambhala community ([described in the July 20 Community Letter](#)). In November of last year the Interim Board took over management of the engagement of Wickwire Holm from Shambhala's legal counsel, Alex Halpern, and worked directly with an investigative attorney with the firm, Selina Bath. Ms. Bath was the investigator and writer of the reports. IB members met with her a number of times to understand the scope and progress of her work and her timeframes. At all times, the IB did not attempt to influence her investigation or her findings, and she was steadfast in her adherence to that independence. The Claims Investigation is the product of that work and represents her independent findings.

One of the most important principles we expressed to Ms. Bath was that all Claimants' and Witnesses' identities would be kept confidential. However, for an individual's report to become a claim, the individual had to be willing to identify themselves to Wickwire Holm and to have Wickwire Holm identify them to the respondent. Otherwise, there would be no way for Wickwire Holm to investigate and to interview the respondent and any witnesses to the claim.

More people were willing to share their experiences of harm with Ms. Bath than were willing to have them investigated. She respected those individuals' wishes to remain anonymous and did not include them in the formal investigation. This information is described in the General Introduction and Summary.

We appreciate each individual who came forward to aid in this investigation as a reporter, claimant or witness.

We are releasing the results of the investigation received from Wickwire Holm to the Community in a single package, which includes:

- General Introduction and Summary
- Three completed Claims Investigations, two of which concern Sakyong Mipham Rinpoche

[Please click here](#) to access these documents.

As a Board, we hope that we all can rest with kindness toward ourselves and compassion toward others as we absorb the material in these reports and share our thoughts and feelings with each other. We are committed to the work of restoring trust within our community but recognize that it will be a long journey.

There is much work to be done. We will work closely with the Shambhala Process Team to create dialogue and structure around community listening and healing. To help begin this work, the IB requested a small group of Process Team members to give suggestions for community gatherings that we have distributed to Shambhala leaders. We will also work with the Shambhala Process Team to create Shambhala frameworks that define the ethical conduct to which Shambhala office holders and teachers must adhere. It is our aspiration to let go of unhealthy and unequitable power dynamics that have persisted in our sangha.

As students of Shambhala, we feel strongly that Sakyong Mipham Rinpoche should work to find a path forward to carry his acknowledgement of these past actions in a way that reflects the honesty and bravery that are the hallmarks of the Shambhala teachings. It is our strong wish that he express true sympathy and speaks from his heart on how he will proceed.

In the midst of releasing these reports, we are continuing to plan for Shambhala Day and to fundraise for the continuity of the Shambhala organization. We do this not in the spirit of business as usual, but in the spirit of the natural unfolding of a new year and the recognition that these teachings have power and meaning for many of us. Together, we have something very worthwhile to continue – even if we do not yet know how this will evolve.

We continue to welcome your emails. It is good to have your input and questions, and we endeavor to read and respond to everyone. You can reach us at board@shambhala.org or go to the Interim Board website at board.shambhala.org.

Sincerely,

The Interim Board

Veronika Bauer
Mark Blumenfeld
Martina Bouey
John Cobb
Jen Crow
Sara Lewis
Susan Ryan
Paulina Varas

Shambhala Interim Board

**Report to the Community on the
Wickwire Holm Claims Investigation
into Allegations of Sexual Misconduct**

February 3, 2019

Shambhala Interim Board Report to the Community on the Wickwire Holm Claims Investigation into Allegations of Sexual Misconduct

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I. General Introduction and Summary

I. General Introduction and Summary

Background

In July 2018, Shambhala's Kalapa Council announced (see [Shambhala Community Care Web page](#)) that they had commissioned an independent third-party investigation to be conducted by the Wickwire Holm law firm into allegations of sexual misconduct by Sakyong Mipham Rinpoche and other leaders of Shambhala. The Interim Board (IB) has received the results of the investigation from Ms. Selina Bath, the attorney at Wickwire Holm who conducted the investigation.

Ms. Bath used the following initial questions to assess whether a report of misconduct fell into the scope of the investigation:

- Was the misconduct in question sexual in nature?
- Who was the alleged offender and what was his/her position at the time of the misconduct?
- When did the misconduct occur?

In general, the scope focused on sexual misconduct, included incidents where there was an imbalance of power, and did not include incidents of misconduct before the 1990s since these would be difficult to properly investigate.

General Summary of Contacts with Wickwire Holm

From the beginning of the investigation last July to its close November 16, Wickwire Holm received 100 individual contacts by telephone or email. Of these total contacts, 25 did not respond to Wickwire Holm's follow-up inquiry to engage in further communication.

The investigator engaged in conversation with the remaining 75 contacts. Of these, 42 concerned matters related to potential sexual misconduct.

Of those 42 individuals, 10 were related to the Sakyong, including Claimants No. 1 and No. 3 whose investigative reports are attached; 12 had some evidence that tended to corroborate the investigated reports and 20 were related to matters of sexual misconduct involving other Shambhala leaders (some of these dated from the 1980s).

Of the 10 contacts related to the Sakyong, two were from the late 1990s; six were from the period 2000-2005; and two were in the time period after 2005.

Of the remaining 33 contacts which did not involve sexual misconduct allegations, Wickwire Holm reported to us certain issues raised by these individuals which are described below.

Claims Investigated

Out of the above contacts, six were determined to meet the criteria for investigation and were wholly or partially investigated as follows:

Claim No. 1 was initially referred by Shambhala to Wickwire Holm for investigation and, as shown in the Addendum to Claim No. 1, the claimant eventually came forward and agreed to participate, and that Report is attached hereto as Claim No. 1.

Claim No. 2 was initially referred to Wickwire Holm by Shambhala and, despite efforts by Wickwire Holm to reach out to the potential claimant, she did not come forward to present her claim. Because of that, the matter was not investigated.

Claim No. 3 The Claimant agreed to participate, and the claim was investigated and is attached hereto as Claim No. 3.

Claim No. 4 involved an internal and local dispute (not involving the Sakyong) which after an initial interview, the Claimant withdrew.

Claim No. 5 The Claimant agreed to participate. The claim was investigated, and it is attached hereto as Claim No. 5.

Claim No. 6 The Claimant, for a variety of reasons, came forward after the deadline with a claim (not involving the Sakyong). The nature of the claim and the fact that it would have delayed the final report caused the IB not to have Wickwire Holm pursue the investigation at this time. However, the IB has referred this claim to the International Care and Conduct Panel to determine whether an investigation should be commenced.

Summary of the Findings and Conclusions of Claim Investigations No. 1, No. 3, and No. 5

The following is a summary of the significant Findings and Conclusions made by Wickwire Holm in each of the three claims that were investigated to resolution. The investigative reports are included in their entirety in the following section "II. Claims Investigations by Wickwire Holm."

Claim No. 1: A finding of sexual misconduct by the Sakyong.

Claim No. 3:

1. a.) A finding that more likely than not the Sakyong attempted to have sexual relations with the Claimant and that any sexual advances towards Claimant constituted sexual and clergy misconduct.

1. b.) No finding that sexual assault occurred.

2. The claim that the Sakyong attempted to force Claimant to have sex with other men is not found to be substantiated.

3. Finding that there was no evidence to support the allegation that the Sakyong had sexual relations with teenagers at the Shambhala Mountain Center.
4. Finding that the Claimant was expected to donate her time and money to the Sakyong and Shambhala and, more likely than not, the Sakyong did suggest to Claimant that she donate her townhouse in Boulder.
5. Finding that Claimant was expected to remain silent about what she experienced, saw or heard while in the presence of the Sakyong and that she felt shamed upon leaving the community. No finding that she was verbally threatened.

Claim No. 5: Claimant's allegations against Respondent, another sangha member, were not substantiated. No finding of misconduct by Respondent.

Issues or Claims Reported but not Investigated

During the course of her many interviews, Ms. Bath spoke with those persons wishing to report harm, but who did not wish to pursue a formal claim, as well as a number of witnesses either contacted by her or who contacted her directly. During these conversations and interviews she identified issues that did not become the subject of a formal claim investigation, but that the IB should be made aware of. Nevertheless, the Shambhala Interim Board feels that this information is very valuable, and it is important to share the observations and general themes of these conversations with the community.

It is important to note that this reporting by Ms. Bath is based on a different standard of proof than the formal Claim Investigations No. 1, No. 3, and No. 5 attached which are subject to complete investigation of all sides of the incident and yield findings of fact and conclusions of law based upon a standard of proof as she sets forth in those Claim Investigations.

The investigator received reports that she categorized as either related to sexual misconduct or a general category of "other." The "other" category included conversations around alcohol, abuse of power, financial mismanagement, racism, handling of past claims, exclusion and shaming and neglect of the community outside of North America. Reports of sexual misconduct included conversations pertaining to Sakyong Mipham Rinpoche, the Kusung, other leaders, local centers, misconduct regarding minors and a general category.

Reports Related to Sexual Misconduct and Sakyong Mipham Rinpoche

The ten individuals (including Claims No. 1 and No. 3) who conveyed issues of misconduct related to Sakyong Mipham Rinpoche each told a unique story. However, there was enough consistency for the investigator to paint a picture that the Sakyong's behavior in the 1990s and up to 2005 included frequent sexual contact with women who were his students and, thus, characterized by a power imbalance. Although some of the women reported feeling special or

honored for being asked to see the Sakyong privately, some of these relationships left the women feeling abandoned. Often, they had little to no communication with the Sakyong after their encounter. This added to their confusion and feeling of being dismissed. No one reported criminal behavior.

Of note is the fact that there were two reports of incidents that occurred after 2005, of which one was the incident described in Claim No. 1.

Some individuals (including Kusung) reported on the involvement of Kusung (staff who serve as a close personal assistant to the Sakyong) in bringing them or other women to the Sakyong's quarters. While Kusung facilitated their meeting with the Sakyong, no one reported any direct coercion by Kusung to have sexual relations with the Sakyong. There was a report by at least one woman who served as a Kusung to the Sakyong who reported feeling pressured by him to have sexual relations while on duty that left her feeling used and taken advantage of.

Reports Related to Sexual Misconduct within the Shambhala Community

The investigator received 20 reports of sexual misconduct by other leaders. This included reports of:

- Men standing too close and acting too familiar with women; of men making inappropriate comments towards women; of men having inappropriate relations with younger women; of men putting their hands on women inappropriately.
- Unwanted kissing and touching by men, especially men in positions of power or privilege within the community.
- Misconduct by teachers at local centers. The investigator shared one incident passed on to her of a senior teacher who tried to seduce women with a promise of secret tantric teachings.

In addition to an allegation in Claim No. 3, Ms. Bath received two reports of sexual harm to a minor. The first matter was reported to local authorities. The second individual did not wish to participate in the investigation and did not provide enough information for Ms. Bath to report the incident to the authorities. The Interim Board takes seriously its legal requirement to report all known incidents of harm involving minors. Any known incidents of harm to minors should be reported to authorities.

Reporting on Other Claims or Concerns

In addition to claims of sexual misconduct, other concerns were raised, which were beyond the scope of Ms. Bath's investigation. She only made note of the following issues:

- Heavy use of alcohol in the community
- Alcohol use by the Sakyong
- Abuse of power in the community

- Feelings of being excluded or shunned after reporting sexual misconduct
- Feelings that reports of misconduct were dismissed, hushed or swept under the rug
- Neglect of community members outside of the US and Canada
- Racism
- Financial mismanagement

Conclusions and Next Steps of the Interim Board

The Interim Board takes seriously the reports of misconduct and lack of care that occurred in our community. We recognize that the Care and Conduct structures and other reporting processes of Shambhala have not been adequate.

The Interim Board feels strongly that the Sakyong must take responsibility for the harm he has caused and be directly involved in the healing process. We, like the rest of the community, are awaiting his response and actions in this regard.

As a community we need to look deeply at our culture. We must dismantle the systemic structures that perpetuate harm in our community. We also need to work together to formulate a Care and Conduct Policy and Procedures that the entire mandala supports and then take the time to thoroughly train ourselves in applying it in a fair and timely manner. The Process Team Steering Committee has been given the proposed Code of Ethics written by An Olive Branch and a Shambhala working group. The Interim Board will work together with our new colleagues to disseminate the proposal for the sangha to review.

The Interim Board also plans to work closely with the Shambhala Process Team to support community dialogue around the Wickwire Holm Report and the findings that will be reported later on An Olive Branch's Listening Post work. We know that we must work together as a community to address the conditions that create harm and create opportunities for care, equity, and kindness to flourish. The Interim Board commits to working with the Community to find resources needed to do this work.

While many of the incidents described by individuals happened years ago, there is no time limit on the pain members of our sangha have experienced. It is our aspiration that we can work together to allow all voices to be heard and together create a Shambhala culture that is respectful and caring for all individuals.

II. Claims Investigations by Wickwire Holm

Private and Confidential

Report of the Investigation into Claim No. 1:

**Allegation of Sexual Assault Against
Sakyong Mipham Rinpoche**

Prepared for Alexander Halpern
By Selina Bath
October 5, 2018

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1. Background

Shambhala is an international community of more than 150 meditation centers worldwide at which more than 14,000 students practice meditation toward a path of enlightenment. While it maintains centres throughout the world, Shambhala operates out of Halifax, Nova Scotia and Boulder, Colorado.

Shambhala is both a spiritual path of study and meditation as well as a path of serving others and engaging with the world which originates from ancient Tibetan Buddhist traditions or teachings. Sakyong Mipham Rinpoche is the current lineage holder of sacred teachings given to King Dawa Sangpo, the first sovereign of Shambhala, and therefore both temporal and spiritual director of Shambhala. He resides primarily in Halifax, Nova Scotia.

The Sakyong, as he is known, travels to Shambhala Meditation Centres to offer teachings and programs. He is supported by Acharyas (teachers) whom he has empowered to represent him and the lineages he holds as well as a number of senior teachers, and meditation instructors.

The Kalapa Council is the governing body of the Shambhala international community. Earlier this year, the Kalapa Council announced a new effort to address issues of harm within the Shambhala community.

In February 2018, and again in June and August 2018, an initiative referred to as Buddhist Project Sunshine released three separate reports containing multiple allegations of sexual and gendered harm within the Shambhala community.

The Sakyong as well as the Kalapa Council have responded to these reports with letters written directly to the Shambhala community.

It is within this context that this investigation was commenced.

2. Appointment and Scope of Investigation

Wickwire Holm was first approached by general counsel for Shambhala USA, the corporate entity of the Shambhala community and formerly known as Shambhala International, in June 2018 to discuss an investigation into claims of sexual harm within the Shambhala community. While these discussions were ongoing, Buddhist Project Sunshine released its second report containing numerous allegations relating specifically to the Sakyong.

Through general counsel, Shambhala formally retained Wickwire Holm to investigate specific allegations of sexual misconduct on the part of the Sakyong and/or other senior members of Shambhala (the “Investigation”).

At the time, both anonymous and identified individuals (“Claimants”) had made claims of sexual misconduct against the Sakyong and other senior members of Shambhala (“Respondents”). Claims varied by geographic area, date and Respondent. Respondents hold or held various positions of authority within Shambhala.

The scope of the Investigation included:

1. Investigating specific allegations of sexual misconduct on the part of Sakyong Mipham Rinpoche brought forward by Claimants; and,
2. Investigating specific allegations of sexual misconduct on the part of other senior members of Shambhala brought forward by Claimants.

Shambhala made community members aware of Wickwire Holm’s involvement in late July 2018. The Kalapa Council invited community members to bring any concerns of sexual misconduct directly to the attention of Wickwire Holm.

At the same time, the Kalapa Council announced an arrangement with An Olive Branch to open a Listening Post for community members to anonymously share stories of misconduct or harm. While a Claimant can authorize An Olive Branch to share information with Wickwire Holm for the purpose of the Investigation, stories shared through the Listening Post are not automatically part of the Investigation.

3. Confidentiality / Anonymity

The task of commencing the Investigation involved receiving stories of harm or alleged misconduct from members or former members of the Shambhala community, many of whom reached out to Wickwire Holm directly to share their concerns and experiences.

To form part of the Investigation, a Claimant must be identified and identifiable to the Respondent. The reason for this is two-fold:

1. To allow a Respondent the opportunity to know the allegations against them and be able to provide a full response; and
2. To allow for the organization of all information gathered during the Investigation.

To the extent possible, I have endeavoured to keep allegations and the Investigation confidential. My intention is to release information on a need-to-know basis only to the extent required to properly investigate each allegation. Accordingly, the Respondent is provided a summary of the allegation with sufficient detail to allow them to fully respond to the allegation.

In order to maintain confidentiality and support the integrity of the Investigation, I asked both parties and witnesses to refrain from discussing the content of the allegation or the interview with anyone else, including other Claimants or potential witnesses, while the Investigation is ongoing.

In this report, I will attempt to protect the identities of the parties involved in the claim as well as witnesses to whom I have spoken. Where possible I have avoided the use of personal pronouns which could tend to identify an individual. However, that is not always possible as the context of the evidence may reveal an individual's gender.

The stories of those individuals who came forward to share their experience but elected not to be identified to the Respondent do not form part of the Investigation. Wickwire Holm has gathered such information and will provide Shambhala with an anonymized summary of what has been shared. The intent of providing a summary is to make Shambhala aware of the extent and kind of harms experienced within the community, without breaching the confidentiality that those individuals specifically requested when contacting Wickwire Holm to share their stories.

4. Investigation Process

The normal process of an investigation is to first receive the claim, meet with the Claimant to obtain further detail of the alleged behaviour, then meet with the Respondent for their response. The parties' credibility is assessed during these initial interviews. When prudent and necessary, the investigator can meet with witnesses to obtain information that will help them make a determination or factual finding.

The interview is the Claimant's opportunity to present additional facts underlying the allegation. It is also a chance for the Claimant to provide the investigator with names of third parties or witnesses who they believe may provide information that is relevant to the Claim. Documents and notes are also welcome at that time.

Similarly, the investigator meets with the Respondent about the allegation. Prior to this interview, the investigator provides the Respondent with sufficient information and detail to allow the Respondent to know the nature and extent of the Claim against them. The interview is the Respondent's opportunity to provide a full response to the allegation.

Either the Claimant or Respondent may suggest names of other witness who they feel may have relevant information. The investigator will interview those witnesses who can provide relevant and useful information to the investigation. Not every witness is contacted. Any party or witness may be accompanied by an advisor or support person provided that individual is not also a witness in the investigation.

In addition to meeting with the parties and witnesses, the investigator reviews relevant documents and other evidence as the case may be available.

An investigation is a voluntary process. At each step, the investigator is beholden to the individual people who come forward as Claimant, Respondent, and witness, to share their experience and perspective. Each individual's recollection of events assists the Investigator to develop a narrative and, as is required here, make a factual determination of what occurred.

It is therefore important for all involved to share what they know, have seen or otherwise observed so that the investigator obtains a complete picture of what has transpired.

While evidence is not taken under oath, it is essential to the process that each individual is forthcoming. Without individual participation, an investigation may be lacking in detail. If one aspect of critical evidence is suppressed, it can have a significant impact on the overall process and ultimate determination.

5. Evidence Considered

As part of this Investigation I have reviewed the following documents:

- Buddhist Project Sunshine Reports 1, 2, 3;
- Various communications from the Kalapa Council to the Shambhala community;
- Correspondence from Sakyong Mipham Rinpoche to the Shambhala community;
- Shambhala's Care and Conduct Policy.

I have also spoken at length with Carol Merchasin who conducted a preliminary investigation for Buddhist Project Sunshine.

6. Terminology

The scope of this Investigation refers generally to sexual misconduct. This term covers an array of sexual behaviour including:

- Sexual assault;
- Sexual exploitation;
- Sexual harassment;
- Stalking;
- Indecent exposure;
- Voyeurism;
- The distribution of a sexually explicit photograph or video of a person to one or more persons other than the person in the photograph or video and with the intent to distress the person in the photograph or video;
- The attempt to commit an act of sexual misconduct; and
- The threat to commit an act of sexual misconduct.

Sexual Assault

Sexual assault has been defined as an assault which is committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated: see *R v. Chase* [1987] 2 SCR 293.

Implicit in this definition is the idea that a claimant does not consent to an assault. In the context of sexual assault, consent is defined as the voluntary agreement of the claimant to engage in the sexual activity in question: see *R. v. J.A.*, [2011] 2 SCR 220 and *Criminal Code*, R.S.C. 1975, c. C-46, s. 273.1. Consent of the claimant must be specifically directed to each and every sexual act.

Further, we recognize that an imbalance of power is a relevant consideration in cases of sexual misconduct. Relationships characterized by an imbalance of power, where one party has the ability to dominate or influence the other, include parent-child, physician-patient, teacher-student, and clergy-penitent among others.

Sexual Harassment

Sexual harassment has been defined as:

- (i) Vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome,
- (ii) A sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome, or
- (iii) A reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.

Human Rights Act, R.S.N.S. 1989, c. 214, s.3(o)

It is with these particular definitions in mind that I have considered the evidence and base my findings for this Investigation.

7. Claim No. 1

The following is the report of my Investigation into an allegation of sexual harm which I will refer to as Claim No. 1. To protect the identity of the Claimant, I will refer to that individual as Claimant No. 1.

Claimant No. 1 alleges that the Sakyong sexually assaulted her. Her identity is known to members of the Kalapa Council. I attempted to reach Claimant No. 1 to interview her about the allegation. She was not, however, prepared to speak with me directly. This has altered the normal investigation process somewhat.

Given the seriousness of the allegation, it was determined that an investigation should proceed in any event.

I attempted to elicit potentially relevant information from others who may have observed the alleged behavior in real-time or learned of it from Claimant No. 1 after the fact. After meeting with several witnesses - whom I will refer to only as Witness A, B, C, and so on - I met with and interviewed the Sakyong about the allegation.

I make these comments at the outset of this report as it has had a significant effect on how the Investigation into Claim No. 1 could be carried out and ultimately impacts the evidence which I was able to obtain. It is difficult to investigate a claim when the individual whose experience must be investigated is not willing to provide more than cursory information.

In this context, I must evaluate Claim No. 1 in the absence of direct evidence from Claimant No. 1.

8. Burden of Proof

In carrying out this Investigation, I have applied the Canadian civil standard for the burden of proof: balance of probabilities. This means that in reviewing, assessing and evaluating the evidence, I must be satisfied that a fact occurred “on the balance of probabilities”. Effectively, I asked myself whether “it is more likely than not”, that Claim No. 1 is substantiated.

To be clear, I did not evaluate the evidence or Claim No. 1 on the criminal standard which would require that I be convinced “beyond a reasonable doubt”. Nor did I give consideration to the possibility that the evidence may support a criminal conviction. It remains open to Claimant No. 1 to decide whether or not to pursue criminal charges. This report should not be taken as an endorsement of or dissuasion from any criminal proceeding.

9. Analysis

The overall allegation is that the Sakyong sexually assaulted Claimant No. 1 after a social gathering in Nova Scotia. As Claimant No. 1 was unwilling to speak with me, I do not have the benefit of that individual's firsthand account. What follows is a narrative I have been able to put together from speaking with the Sakyong and others who were present at the time of the alleged incident, as well as others to whom Claimant No. 1 spoke about the incident in the following days.

Claimant No. 1 attended a social gathering at the Kalapa Court, the Sakyong's residence. The atmosphere was celebratory and very joyous. The Sakyong and his wife were both present. Approximately 50-60 people had been invited and attended the gathering. Both alcohol and food were served throughout the evening. The Sakyong consumed alcohol while toasts were made and continued drinking throughout the evening. Although food was served he did not eat much throughout the day.

As the evening wore on, several of the witnesses noticed and were concerned about the Sakyong's inebriated state. In particular, and towards the end of the night, Witness C felt that it would be most appropriate to end the evening and allow the Sakyong to retire to his private quarters.

When most of the guests had left, a small group gradually moved into the kitchen and were eventually all there together although the order in which they arrived in the kitchen is not clear from the evidence. Those individuals included Claimant No. 1, the Sakyong, Witness A, Witness B, and Witness E.

At one point, Witness B walked into the kitchen and saw the Sakyong kissing Claimant No. 1. Witness E was already in the kitchen at this time. Witness B indicates that he clattered some dishes or made a disturbance in the hopes of breaking up the situation.

The Sakyong admits that he kissed Claimant No. 1 in the kitchen. The evidence is unclear as to how the interaction ended or what brought about its ending. The Sakyong recalled that a background noise broke them apart, but he was unable to identify what or who made the noise.

Following this interaction, Witnesses A and B helped the Sakyong to his private quarters. He was intoxicated and unsteady on his feet.

While the Sakyong admits that he kissed Claimant No. 1 in the kitchen, he does not have a clear memory of the entire evening. He felt that the interaction was mutual and consensual. Witness B also perceived that the interaction was mutual. No other Witnesses admit to seeing this interaction between the Sakyong and Claimant No. 1.

Both Witness C and Witness D became aware of the incident in the following days when it was brought to their attention through Witness B. They each spoke with Claimant No. 1 separately and privately in the days after the incident. Both Witness C and Witness D understood from Claimant No. 1 that initially the kiss was consensual, but that she came to realize she was not okay with the interaction. They both indicated that Claimant No. 1 reported the Sakyong had wanted to or tried to see her breasts and it was at this point that she felt that she withdrew consent.

While Witness B brought his concerns to other senior members of the community the following day; he did not speak about this incident with the Sakyong. Neither did the Sakyong speak with Claimant No. 1 at that time. Claimant No. 1 later spoke with Witnesses C and D about this incident.

10. Credibility

In considering the credibility of the individuals with whom I met, I referred to the well-accepted assessment of credibility set out in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA):

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility...

With respect to Claim No. 1, I believe that the witnesses present in the kitchen were least likely to describe a situation that tended to show the Sakyong in an unfavourable light. They appeared unable to believe that the Sakyong would act inappropriately and therefore would only deny the allegation.

I understand from speaking with these witnesses that they have discussed Claim No. 1 and the events that led to this allegation and investigation. I am concerned that there may have been some degree of collusion to set a particular narrative. I believe there may have also been an attempt to discredit Claimant No. 1 as an incredibly troubled individual who is making more out of a situation than necessarily occurred.

11. Findings

Based on all the foregoing and bearing in mind the limitation of not having spoken directly with Claimant No. 1, I find that the Sakyong kissed Claimant No. 1 in a way that left her feeling unsure and confused about the experience. Without hearing from Claimant No. 1, I am not able to conclude whether the interaction was consensual or what degree of harm she experienced as a result.

I do conclude that the interaction was inappropriate given the relative positions of the Sakyong as lineage holder of Shambhala and Claimant No. 1 as a student and member of the Shambhala community. The power imbalance in such a situation is undeniable and is a contributing factor to my determination.

The evidence is inconclusive as to whether Claimant No. 1 consented at any point during the interaction or whether any consent was withdrawn. Accordingly, I am not able to conclude on a balance of probabilities that the interaction constitutes sexual assault as alleged.

I make this finding based on the information and evidence before me. My determination could change with the benefit of further evidence or testimony.

12. Conclusion

Bearing all the foregoing in mind and with the evidence I have before me, I am of the view that Claimant No. 1's allegation of sexual assault is not substantiated. However, the behaviour of the Sakyong was not appropriate and given his position as lineage holder, his behaviour constitutes sexual misconduct.

This concludes the Investigation into Claim No. 1. Other allegations have been brought forward; the investigation is ongoing.

Private and Confidential

Addendum to Report of the Investigation into Claim No. 1:

**Allegation of Sexual Assault by
Sakyong Mipham Rinpoche**

Prepared for Shambhala USA Interim Board
By Selina Bath
January 22, 2019

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Overview

I had the opportunity to speak with Claimant No.1 in January 2019. By the time I spoke with her, I had already spoken with the Sakyong and several other witnesses about her allegation of sexual assault. A report was prepared and forwarded to Shambhala USA in October 2018. As indicated in my earlier report, her evidence is an essential component of the claim and should be considered when making a determination as to whether the claim is substantiated.

Claimant's Position

Claimant No. 1 states that she attended at the Kalapa Court for a birthday celebration in 2011. There were many people in attendance. She was, at the time, in a relationship with a patron of Shambhala and attended the celebration as his guest. Guests left as the evening wore on until eventually there was only Claimant No. 1, the Sakyong, and three other individuals, all men. The men present were drinking heavily, including the Sakyong. The small group moved into the kitchen to prepare something to eat. She felt awkward being there and despite the relaxed and social atmosphere was trying to see the Sakyong as her teacher and the perfect being that Shambhalians are taught he is.

While in the kitchen the Sakyong came up to Claimant No.1 and pulled up her dress; he commented on her legs. This made Claimant No.1 very uncomfortable; it was not the type of behavior she expected from her teacher.

She states that the Sakyong was inebriated; he was stumbling and losing his balance. At one point he fell on or towards her when he lost his balance such that Claimant No.1 was trying to hold him up. It was at this point that he started to grope her breasts and try to kiss her. Claimant No.1 froze. She was immediately extremely confused and wondered "am I supposed to be doing this?" and "am I being set up, is this a test of some kind?". She was not sure what to make of this behavior and was in no way interested in it. She states that the Sakyong's actions were very sudden and without warning. He had not been flirting and had not made any other indications that he was interested in her in this way. He did not ask whether she wanted to kiss him. She feels it was an impulse stemming from his sense of entitlement that he could do or say what he pleased.

As the Sakyong kissed her, he grabbed her breast and pulled at her dress. It was at this point that he asked for the first time whether Claimant No. 1 consented to what he was doing. Up to that time it did not seem that he was paying much attention to her reaction or response to his advances. Claimant No.1 asked him whether this behavior would be harmful or helpful to their friend, her partner. This seemed to give the Sakyong pause. He stopped and moved away from her. The Sakyong then made his way up to bed. The others present followed him and Claimant No.1 was left alone in the kitchen.

None of the men present had tried to intervene or stop what was happening. None of them spoke of the incident with Claimant No.1 that night, however, one of the men present later indicated to Claimant No. 1 that he had seen the Sakyong kiss her and felt he should have done something to intervene.

The impact of this incident on Claimant No. 1 has been significant. She had a great deal of difficulty trying to reconcile the Sakyong's behavior with how she had been taught to see him as part of her practice. This incident has ruined her practice and has shattered her connection to the community.

Credibility

I understand that Claimant No. 1 had great reservations about participating in this Investigation. Several of the witnesses I had already spoken to confirmed that this incident took place. Indeed, the Sakyong admitted to kissing Claimant No. 1 as alleged. It is helpful to hear directly from Claimant No. 1 what the impact of that incident has been on her and her ability to practice.

I find Claimant No. 1 to be a creditable witness. She gave her evidence in a straight forward and forth right manner without hesitation. She was consistent in her story and her answers to my questions.

Findings

Having now spoken with Claimant No. 1, I do find that the Sakyong violated her personal and sexual boundaries in a manner to which she did not consent. He did so without invitation and without permission. I am also mindful of the significant power imbalance between the two parties: he, the teacher who is revered, and she, the student who has been taught he can do nothing that is impure.

I had previously found it inappropriate for the Sakyong to make sexual advances towards a student. Having now heard directly from Claimant No. 1, I am more certain in my finding and conclude that his actions and behavior on that night constitute sexual misconduct.

Private and Confidential

**Report of the Investigation into Claim No. 3:
Allegation of Sexual Assault**

Prepared for Shambhala USA Interim Board
By Selina Bath
January 22, 2019

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1. Executive Summary

This investigation was precipitated by claims of sexual abuse within the Shambhala community. Several claims were raised anonymously in a publication prepared by Buddhist Project Sunshine. Through general counsel Shambhala USA, retained Wickwire Holm to conduct an investigation into claims of sexual misconduct on the part of Sakyong Mipham Rinpoche and/or other senior leaders.

Shambhala USA invited its community members to reach out to Wickwire Holm with any claims of sexual misconduct that they wished to have investigated. More than 75 people came forward with claims of sexual misconduct or information pertaining to sexual misconduct within the organization. The majority of the individuals who came forward with claims of misconduct did not want to be identified and therefore did not fall within the scope of the investigation set by Shambhala USA. These accounts, while not formally investigated, were provided to the Interim Board in an anonymized summary fashion

The following is my report into an investigation of sexual misconduct on the part of Sakyong Mipham Rinpoche brought forward by Claimant No. 3. Claimant No. 3 makes several distinct allegations. I do not find that Sakyong Mipham Rinpoche forced Claimant No. 3 to perform sexual acts for other men or that there is evidence of teenage girls being brought to him. Further I do not find that Shambhala used fear to silence Claimant No. 3.

I do find, however, that Sakyong Mipham Rinpoche attempted to have sexual relations with Claimant No. 3 and that Claimant No. 3 was expected to donate both her time and money.

2. Background

Shambhala is an international community of more than 150 meditation centers worldwide at which more than 14,000 students practice meditation toward a path of enlightenment. While it maintains centers throughout the world, Shambhala USA operates primarily out of Halifax, Nova Scotia and Boulder, Colorado.

Shambhala is a spiritual path of study and meditation which originates from ancient Tibetan Buddhist traditions and teachings. Sakyong Mipham Rinpoche is the current lineage holder of sacred teachings given to King Dawa Sangpo, the first sovereign of Shambhala. He is both temporal and spiritual director of Shambhala. He resides primarily in Halifax, Nova Scotia.

The Sakyong travels to Shambhala Meditation Centers to offer teachings and programs. He is supported by acharyas (teachers) whom he has empowered to represent him and the lineages he holds as well as a number of senior teachers and meditation instructors.

The Kalapa Council is the governing body of the Shambhala international community. In 2018, the Kalapa Council announced a new effort to address issues of harm within the Shambhala community.

In February, June and August 2018, an initiative referred to as Buddhist Project Sunshine released three separate reports containing multiple allegations of sexual and gendered harm within the Shambhala community.

The Sakyong and the Kalapa Council responded to these reports with letters written directly to the Shambhala community.

It is within this context that this investigation was commenced.

3. Appointment and Scope of Investigation

Wickwire Holm was first approached by general counsel for Shambhala USA (formerly known as Shambhala International), the corporate entity of the Shambhala community, in June 2018 to discuss an investigation into claims of sexual harm within the Shambhala community. While these discussions were ongoing, Buddhist Project Sunshine released its second report containing numerous allegations relating specifically to the Sakyong.

Through general counsel, Shambhala USA formally retained Wickwire Holm to investigate specific allegations of sexual misconduct on the part of the Sakyong and/or other senior members of Shambhala (the "Investigation").

At the time, both anonymous and identified individuals ("Claimants") had made claims of sexual misconduct against the Sakyong and other senior members of Shambhala ("Respondents"). Claims varied by nature, geographic area and date. Respondents hold or held various positions of relative authority within the Shambhala community.

The scope of the Investigation included:

1. Investigating specific allegations of sexual misconduct on the part of Sakyong Mipham Rinpoche brought forward by Claimants; and,
2. Investigating specific allegations of sexual misconduct on the part of other senior members of Shambhala brought forward by Claimants.

Shambhala USA made community members aware of Wickwire Holm's involvement in July 2018. The Kalapa Council invited community members to bring any concerns of sexual misconduct directly to the attention of Wickwire Holm.

At the same time, the Kalapa Council announced an arrangement with An Olive Branch to open a Listening Post for community members to share stories of misconduct or harm anonymously. Information shared through the Listening Post is not automatically included as part of the Investigation.

Shortly thereafter, the Kalapa Council resigned en masse in August 2018. Our retainer remained in place and we continued to investigate. Our point of contact during this time was Shambhala USA's general counsel.

Following the resignation of the Kalapa Council, an Interim Board was appointed in October 2018. In November 2018, the Interim Board elected to become the point of contact for this Investigation. The scope of the investigation did not change.

4. Confidentiality

The starting point of the Investigation involved receiving accounts of harm or alleged misconduct from members or former members of the Shambhala community. Many of these individuals reached out to Wickwire Holm directly to share their experiences.

To form part of the Investigation, a Claimant must be identified and identifiable to a Respondent. The principal reason for this is to allow a Respondent the opportunity to know the allegations against them and be able to provide a full response.

To the extent possible, I kept all allegations and the Investigation into those allegations confidential. My intention is to release information only to the extent required to properly investigate each allegation. Accordingly, a Respondent is provided a summary of the allegation with sufficient detail to allow them to fully respond to the allegation. I did not advise Shambhala USA who specifically had reached out to us to give an account or participate in the Investigation.

In order to maintain confidentiality and support the integrity of the Investigation, I asked parties and witnesses to refrain from discussing the content of the allegation or the interview with anyone else, including other Claimants or potential witnesses, while the Investigation is ongoing.

In this report, I will attempt to protect the identities of the parties involved in the claim as well as witnesses to whom I have spoken. Where possible I have avoided the use of personal pronouns

which could tend to identify an individual. However, that is not always possible as the context of the evidence may reveal an individual's gender.

The stories of those individuals who came forward to share their experience but elected not to be identified to the Respondent do not form part of the Investigation. I gathered this information and provided the Interim Board with an anonymized summary of what had been shared. The intent of doing so is to make Shambhala USA aware of the extent and kind of harms experienced within the community, without breaching the confidentiality that those individuals specifically requested when contacting Wickwire Holm to share their stories.

5. Investigation Process

General Comments

The normal process of an investigation is to first receive the claim, meet with the Claimant to obtain further detail of the alleged behaviour, then meet with the Respondent for their response. The parties' credibility is assessed during these interviews. When prudent and necessary, the investigator can meet with witnesses to obtain information that will help them make a determination or factual finding.

The interview is the Claimant's opportunity to present additional facts underlying the allegation. Documents and notes are also welcome at that time.

Similarly, the investigator interviews the Respondent about the allegation. Prior to this interview, the investigator provides the Respondent with sufficient information and detail to allow the Respondent to know the nature and extent of the Claim against them. The interview is the Respondent's opportunity to provide a full response to the allegation.

Either the Claimant or Respondent may suggest names of other witness who they feel may have relevant information. The investigator will interview those witnesses who can provide relevant and useful information to the investigation. Not every witness is contacted. Any party or witness may be accompanied by an advisor or support person provided that individual is not also a witness in the investigation.

In addition to meeting with the parties and witnesses, the investigator reviews relevant documents and other evidence as may be available.

An investigation such as this is a voluntary process. At each step, the investigator is reliant on the individual people who come forward as Claimant, Respondent, and witness, to share their experience and perspective. Each individual's recollection of events assists the Investigator to make a factual determination of what occurred based on the information available.

While evidence is not taken under oath, it is essential to the process that each individual is forthcoming and truthful. Without individual participation, an investigation may be lacking in detail. If one aspect of critical evidence is suppressed, it can have a significant impact on the overall process and ultimate determination. It is therefore important for all involved to share what

they know, have seen or otherwise observed so that the investigator has much evidence as possible about what has transpired.

The structure of this Investigation was unique because of the manner in which claims of misconduct came to light.

Investigating Claim No. 3

I became aware of the allegations that form the basis of Claim No. 3 before actually speaking with Claimant No. 3. I was at first advised that Claimant No. 3 was not willing to speak with me directly. After some time, she came forward and we met. I spoke with her on two separate occasions for several hours about the allegations.

In the interim, I had been contacted by a number of people who independently volunteered information and requested a time to speak with me about Claimant No. 3. I had spoken with several of these individuals prior to speaking with Claimant No. 3 directly; I spoke with several more after meeting with Claimant No. 3.

Due to the relative locations of the interviewees, the vast majority of interviews for this Investigation were conducted via video conference. This provided an excellent means of interviewing and observing the witnesses when an in-person meeting was not viable. In some instances, the interview was conducted by telephone.

Most interviews lasted between 80 to 95 minutes. If an interview was not concluded within that timeframe, the witness and I scheduled a second interview time.

The interviews were largely unstructured. While there were certain points or issues that I wished to discuss with each witness, the interview did not follow a set list of questions. Generally, I asked each witness to provide me with some background information about their involvement in Shambhala to give me a better understanding of their role, involvement, and familiarity with the organization and spiritual practice.

The remainder of the interview depended in part on how the witness had come to my attention and whether or not they had already advised me what they wished to speak about. Conversations were largely organic and proceeded through the various issues and allegations. Particularly in circumstances such as this where the subject matter is inherently sensitive and personal, my experience has been that information flows more naturally during organic conversation rather than strict adherence to a set list of questions.

For those individuals implicated by Claimant No. 3, I raised each of the allegations with them in turn.

The interviews were not recorded, though all participants were advised that I would take notes of the conversation.

Many witnesses were concerned about the confidentiality of the investigation process and expressed concern that their names would become known. I advised each witness that interviews

were confidential; they would be identified only as “Witness A” or “Witness B” etc. in this report. As will be seen, this is what I have done to protect the identities of those whom I interviewed.

6. Evidence Considered

As part of this Investigation I interviewed Claimant No. 3 and most of the individuals directly implicated by the allegations. I also interviewed 15 individuals who had information relevant to the issues. Some of the witnesses came forward independently to share their observations. Other witnesses were individuals whose names were suggested to me by one of the parties. The interviews were conducted independent of each other.

I have also reviewed the following documents:

- Buddhist Project Sunshine Reports 1, 2, 3;
- Written statement of Witness S;
- Written statement of Witness J;
- Written statement of Witness P;
- Written statement of Witness B;
- Written statement of Witness C;
- Written response of Sakyong Mipham Rinpoche, provided through counsel;
- Various communications from the Kalapa Council to the Shambhala community;
- Correspondence from Sakyong Mipham Rinpoche to the Shambhala community;
- Correspondence from Pema Chodren to the Shambhala community;
- Shambhala’s *Care and Conduct Policy*;
- Email correspondence from various witnesses;
- An unofficial transcript of a meeting between the Kalapa Council and the Shambhala community;
- *Clergy Sexual Misconduct and the Misuse of Power*, white paper, Wiedman, K and Hospodar, L, An Olive Branch: 2017;
- *Understanding sexual abuse by a church leader or caregiver*, Block, H. et al, Mennonite Central Committee: 2011.

I have also spoken with Carol Merchasin. Ms. Merchasin conducted a preliminary investigation for Buddhist Project Sunshine.

7. Terminology

The scope of this Investigation refers generally to sexual misconduct. This term covers an array of sexual behaviour including:

- Sexual assault;
- Sexual exploitation;

- Sexual harassment;
- Stalking;
- Indecent exposure;
- Voyeurism;
- The distribution of a sexually explicit photograph or video of a person to one or more persons other than the person in the photograph or video and with the intent to distress the person in the photograph or video;
- The attempt to commit an act of sexual misconduct; and
- The threat to commit an act of sexual misconduct.

Sexual Assault

Sexual assault has been defined as an assault which is committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated: see *R v Chase* [1987] 2 SCR 293.

Implicit in this definition is the idea that a claimant does not consent to an assault. In the context of sexual assault, consent is defined as the voluntary agreement of the claimant to engage in the sexual activity in question: see *R v JA*, [2011] 2 SCR 220 and *Criminal Code*, RSC 1975, c C-46, s. 273.1. Consent of the claimant must be specifically directed to each and every sexual act.

Further, I recognize that an imbalance of power is a relevant consideration in cases of sexual misconduct. Relationships characterized by an imbalance of power, where one party has the ability to dominate or influence the other, include parent-child, physician-patient, teacher-student, and clergy-penitent among others.

Sexual Harassment

Sexual harassment has been defined as:

- (i) Vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome,
- (ii) A sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome, or
- (iii) A reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.

Human Rights Act, R.S.N.S. 1989, c. 214, s.3(o)

Because of the context within which this Investigation must take place, it is useful to also consider Clergy Misconduct which FaithTrust Institute defines as:

It is clergy misconduct when any person in a ministerial role of leadership for pastoral counseling (clergy, religious, or lay) engages in sexual contact or sexualized behavior with a congregant, client, employee, student, or staff member (adult, teenager, or child) in a professional relationship. Such misconduct is a violation of the ministerial relationship in which a person in a position of religious leadership takes advantage of a vulnerable person instead of protecting her/him.

I note that An Olive Branch refers to this definition in its white paper *Clergy Sexual Misconduct and the Misuse of Power*, referenced above.

It is with these particular definitions in mind that I have considered the evidence and base my findings for this Investigation.

8. Claim No. 3

The following is the report of my Investigation into an allegation of sexual misconduct which I will refer to as Claim No. 3. To protect the identity of the Claimant, I will refer to that individual as Claimant No. 3, not by name.

Claimant No. 3 came forward with a number of allegations that spanned several years. The events she described to me occurred at different times, in various locations, and involved several individuals. Notably, much of her complaint related to Sakyong Mipham Rinpoche. The claim raised the following allegations.

The Sakyong assaulted/abused Claimant No. 3

- This particular element of Claimant No. 3's allegations has several aspects:
 - o She states that the Sakyong attempted to have sex with her on many occasions, and often referred to himself as Padmasmbhava. In doing so, she alleges that he used the dharma for his sexual gain.
 - o Claimant No. 3 states that the first time the Sakyong attempted to have sex with her she thought she had been invited to see him to discuss her spiritual path. She was prepared for a meaningful conversation; she arrived to find her teacher wearing only his bathrobe, with other intentions in mind.
 - o She states that the abuses would often follow a similar pattern or routine, whereby the Sakyong would be seated on his bed or a chair, in his bedroom, semi-clothed, and she would be asked to sit near or next to him. Often, she was seated at his feet. He would place her hand on his genitals and ask that she touch him there.
 - o She states further that on other occasions, the Sakyong did force her to perform oral sex on him by positioning himself such that she could not get away and forcing her head to his genitals.

- Claimant No. 3 does not feel that she was the Sakyong's girlfriend or that the encounters were consensual. She questioned other senior members of the community, and was told that she should feel honoured to have attracted his attention. She did not.
- Claimant No. 3 described the Sakyong as cold and hostile toward her when she refused his sexual advances. She feels he did not like her.

The Sakyong attempted to force Claimant No. 3 to perform sexual acts for others

- Claimant No. 3 states that she was invited to be part of the Sakyong's marathon team when he participated in the Boston Marathon in 2005. During that time she was asked to come to his bedroom. She believed the request was to provide healing treatment.
- Upon her arrival, she saw several other men, all wearing suits, already in the Sakyong's bedroom. She was asked to sit on his bed near him. The Sakyong was not wearing much clothing; he placed her hand on his genitals and held it there, firmly.
- He asked her what she could do for him which she understood meant he wanted her to perform a sexual act on him.
- She tried to pull away. He asked what she could do for them, referring to the other men in the room.
- Claimant No. 3 believed she would be raped.
- Claimant No. 3 pushed her way out of the room and ran out of the house.

The Sakyong had sexual relations with teenage girls at Shambhala Mountain Center

- Claimant No. 3 states that she observed teenage girls being brought to the Sakyong's residence at Shambhala Mountain Center in 2004-2005. She states they were brought to his bedroom and left alone with him there.
- Claimant No. 3 states further that when the girls were alone with the Sakyong she overheard explicitly sexual encounters which she recognized as the Sakyong's pattern of behavior and language.
- She was concerned for the well-being of these young girls and asked kusung and members of the Sakyong's inner circle repeatedly what was going on. She states she tried to get into the Sakyong's bedroom to get the girls out. Each time she was told not to worry.
- Claimant No. 3 could not say how many teenaged girls she had seen enter the Sakyong's bedroom.

The Sakyong pressured Claimant No. 3 for money and property

- Claimant No. 3 states that the Sakyong advised her that he intended to purchase a home in Boulder, Colorado; he suggested she do the same. She believed it was so that she could live in Boulder and be near him.
- She purchased a property and allowed an acquaintance, mutual to them both, to stay there. When the Sakyong came to see the property, he suggested that she donate the property to him.
- The Sakyong indicated that Claimant No. 3 would not be able to stay in the property and did not care where she or their mutual acquaintance would stay.
- Claimant No. 3 also states that she was pressured for donations. She cites one example of being asked to make the Sakyong's donation for a particular feast during his travels in India.

Shambhala used fear to silence Claimant No. 3

- Claimant No. 3 states that several members of the Shambhala community, including the Sakyong, questioned whether she would be silent about what she knew.
- She states that she was told she was a "Samaya breaker" for leaving the community and that she would be sent to hell for breaking Samaya, a commitment she made to take the Sakyong as her teacher and guru.

9. The Sakyong's Response

I reached out to the Sakyong through his personal legal counsel to seek an interview in relation to Claimant No. 3. I provided his counsel with the allegations. I also provided further information and evidence as given to me directly by Claimant No. 3 during our interviews to ensure he had sufficient information to respond.

The Sakyong's counsel wrote to me on December 24, 2018, as follows:

I can confirm that we are familiar with the allegation to the extent that it appears in the BPS report. Please accept this letter as our response to that investigation.

...

The [Claimant No. 3] allegation stands in stark contrast and appears to be comprised of three component allegations:

- 1. The allegation that the Sakyong had a sexual relationship with [Claimant No. 3]. It is unclear whether that relationship is alleged to have been consensual or not;*
- 2. The allegation that the Sakyong participated in the ritualized molestation of children; the same was facilitated by the victim's parents, seeking to make "offerings" of their children for the Sakyong's sexual gratification; and*

3. *The allegation that the Sakyong – and others – conspired to sexually assault [Claimant No. 3] in a hotel room in what could only be described as a “gang rape”.*

None of the events described above occurred. There is no context or mischaracterization at issue here. The [Claimant No. 3] allegation and its component allegations are dismissed in their entirety. That notwithstanding, we can specifically confirm that:

1. *The Sakyong has never had a sexual contact, of any kind, at any time, consensual or otherwise, with [Claimant No. 3]. There are any number of people who worked in the Sakyong’s household that can confirm same;*
2. *The Sakyong has never had sexual contact of any kind with a child or children, as described by [Claimant No. 3] or otherwise. Again, the availability of witnesses present at the time should offer ample opportunity for confirmation that this claim is baseless;*
3. *The Sakyong did not participate in any sexual assault of [Claimant No. 3], attempted or otherwise, as part of a group or otherwise. The Sakyong is familiar with the other individuals referenced by [Claimant No. 3] and expects they are equally shocked by this bizarre and unsupported allegation.*

Given that there is no truth whatsoever to [Claimant No. 3’s] allegations, and that these events did not occur, we do not believe that an interview would yield any additional context or information.

I am, of course, disappointed that I was not able to speak with the Sakyong directly about these allegations. However, I take his written response for what it is. I am conscious of the fact that I have not met with him face-to-face about these allegations. That did not mean that the Investigation could not continue.

In his response of December 24, 2018, the Sakyong denies what he terms “three component allegations”, and states simply that they did not occur. He further gives the impression that other individuals will confirm his position. Neither the Sakyong nor his counsel offered the names of any other witnesses with whom they thought I should speak.

For those of Claimant No. 3’s allegations which the Sakyong did not specifically address, I will consider his position as that of a “no comment”, neither admitting nor denying the claim.

Regardless of whether he stated a position to each allegation, I must establish whether there is sufficient evidence to support each aspect of Claim No. 3.

10. Evidence of Other Witnesses

As part of the Investigation into Claimant No. 3's allegations, I spoke with many individual witnesses. In order to afford confidentiality and anonymity to the witnesses with whom I spoke, I will not refer to them by name. These witnesses hold, or held, many different positions within the Shambhala organization ranging from student to acharya. Their collective responses have been informative throughout this process.

Overall, Claimant No. 3 was often described to me as being enthusiastic and ambitious in her practice. She wanted to, and in fact did, advance through the programs quite quickly, attending certain programs and teachings more quickly than some witnesses felt is normally appropriate.

Claimant No. 3 was also described as devoted and highly respectful of the Sakyong. Witnesses state she was fascinated with him and became, in time, quite taken with the Sakyong Wangmo, the Sakyong's wife.

She was alternately described as troubled or needy. Several witnesses questioned whether she was too new a student to serve in the Kalapa Court.

The Sakyong assaulted/abused Claimant No. 3

Claimant No. 3 alleges that the Sakyong assaulted her and/or demanded that she have sex with him many times over the course of several years. He would be angry with her if she refused. On times she gave in and submitted to his will.

The Sakyong's response is that he *"has never had a sexual contact, of any kind, at any time, consensual or otherwise"*.

Both parties indicate that others in the household and in the community could corroborate their respective positions. However, there is no indication that anyone else was present during the alleged incidents. I did not receive any information to definitively corroborate or refute the allegation that Claimant No. 3 and the Sakyong engaged in any sexual activity.

The Sakyong attempted to force Claimant No. 3 to perform sexual acts for others

It is no secret that the Sakyong was in Boston in April 2005 to participate in the Boston Marathon. A simple Google search will confirm this and several witnesses also confirmed his participation. Some of those witnesses were present in Boston at the time, others were not.

As noted in his response, the Sakyong states the alleged group assault did not occur.

I have reached out to the men who Claimant No. 3 says the Sakyong attempted to force her to have sex with these men. Two of the men, Witness S and Witness P, state that they were not present in Boston at the time; this fact has been corroborated by others. The others deny that this incident occurred at all.

Witness J admits that he visited the Sakyong while the latter was in Boston. He states that a visit occurred in the living room of the house where the Sakyong was staying. He denies having been in the Sakyong's bedroom and states he did not see Claimant No. 3 at all during his visit.

Witness B admits that he was in Boston with the Sakyong in 2005. He also admits to Claimant No. 3 being present in the house during that visit. He denies seeing the Sakyong make any sexual advance toward Claimant No. 3 and specifically denies that the Sakyong made the request she attributes to him. He states further that he would not stand for such behavior on the part of the Sakyong and has never been involved in any group sexual occurrence with the Sakyong.

A further witness, Witness R, who was present in the home but not in the Sakyong's bedroom at the time of the alleged incident, would have had opportunity to observe or hear the encounter. He denies that it could have happened as has been alleged. He further denies speaking with Claimant No. 3 about the incident after the fact.

The Sakyong had sexual relations with teenage girls at Shambhala Mountain Center

I did not receive any evidence to support this allegation. Specifically, nobody gave evidence of ever having observed or hearing of teenage girls being brought to the Sakyong. While some witnesses acknowledge that teenage participants at nearby Sun Camp could be on the Shambhala Mountain Center grounds on occasion as part of their own program, I did not receive evidence that those participants would have had one-on-one encounters with the Sakyong.

The Sakyong pressured Claimant No. 3 for money and property

Donations

Many witnesses to whom I spoke indicated that Claimant No. 3 freely donated large amounts of money to the Sakyong and Shambhala. She openly reported that she had done so and appeared proud that she supported the organization and her teacher in this way. She also followed the Sakyong in his travels at her own expense.

Witness I described counseling Claimant No. 3 to not "over give". Witness I reported expressing concern to Claimant No. 3 that she was giving more than she should; that the organization would continue to accept her generosity but that she would eventually be the one to suffer. She reportedly told Claimant No. 3 that "you can't buy access" to the Sakyong.

I am advised that there are no set donation amounts or prescribed donation schedules. However, there is a certain degree of status or prestige associated with being a large donor. Witness S, Witness I, Witness L, and Witness M all indicated that Claimant No. 3 expressed her desire to be a patron of the organization. She brought attention to her donations and contributions, boasting that she could afford to do so.

Witness B and Witness M also indicated that Claimant No. 3 did give generously and on occasion was asked to contribute to a particular expense of the Sakyong's, as were other students. Several

witnesses noted that Claimant No. 3 travelled extensively to be near the Sakyong. Although she was not formally part of his travelling party, she would often turn up wherever they went, even traveling to India and Tibet.

This particular aspect of her efforts was characterised as being part of her extreme devotion to and fascination with the Sakyong.

Property

Several witnesses recall Claimant No. 3's interest in purchasing a property in Boulder. The common belief was that this purchase was of her own doing.

Witness I, however, recounted seeing Claimant No. 3 angry and distressed because the Sakyong had said she could not keep a room in the house she bought in Boulder if she was donating it. Witness I sees this as being the outcome she tried to warn Claimant No. 3 against – the Sakyong calling the Claimant's bluff on her devotion to him.

Shambhala used fear to silence Claimant No. 3

The witnesses did not confirm or describe any direct or indirect communication they or others may have had with Claimant No. 3 when she decided to leave the community. Some witnesses expressed regret that she chose to leave. None admitted to speaking with her or attempting to dissuade her from leaving.

That said, I did hear evidence that there is an expectation that things one has seen, heard, or done while in the Kalapa Court should remain private, and not be disclosed to others outside the Court. This was explained to me as a means of protecting the Sakyong and his privacy. However, Witness L, Witness I, Witness T, Witness K, and Witness B acknowledged that such a desire for privacy could be construed by some as a requirement for secrecy akin to "what happens in the Court, stays in the Court...."

11. Standard of Proof

In carrying out this Investigation, I have applied the Canadian civil standard for the burden of proof: balance of probabilities. This means that in reviewing, assessing and evaluating the evidence, I must be satisfied that a fact occurred "on the balance of probabilities". Effectively, I asked myself whether "it is more likely than not", that each allegation of Claim No. 3 is substantiated.

To be clear, I did not evaluate either the evidence or Claim No. 3 on the criminal standard which would require that I be convinced beyond a reasonable doubt. Nor did I give consideration to the possibility that the evidence may support a criminal conviction. It remains open to Claimant No. 3 to decide whether or not to pursue criminal charges. This report should not be taken as an endorsement of or dissuasion from any criminal proceeding.

12. Credibility

In considering the credibility of the individuals with whom I met, I referred to the well-accepted assessment of credibility set out in *Faryna v Chorny*, 1951 CanLII 252 (BC CA):

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility...

I am also guided by the following passage from *AMS v Wootton*, 2016 NSSC 351:

For reliability, courts look at: (A) the accuracy and completeness of observations; (b) the circumstances of observations; (c) memory; and (d) the presence of collaborative or supporting evidence.

...

For credibility, courts look at: (a) honesty, (b) whether a witness has an interest in the matter or a motive to give certain evidence, (c) the consistency or inconsistency over time amongst a witness' different iterations of the facts, (d) internal inconsistencies in a witness' evidence, (e) consistency or inconsistency with other evidence, (F) demeanor, but considered with caution, and (g) the inherent reasonableness of the evidence, that is, whether it makes common sense.

Claimant No. 3

I spoke with Claimant No. 3 over the course of several hours about each of the allegations. Throughout the conversations she routinely spoke in generalities and accusations such as "it all happened" and "they all knew/know".

It is clear from my discussions with Claimant No. 3 that she believes her story to be true. She also expects many of the responding witnesses to deny her allegations.

Yet, when asked for information and detail of the incidents alleged, particularly in relation to incidents where she would have been alone with the Sakyong, Claimant No. 3's evidence was not forthcoming. Her story was internally inconsistent at times. While some aspects of her evidence appear credible, on the whole her evidence is not entirely reliable.

The Sakyong

I can make no comment on the credibility or the reliability of the Sakyong's response. I consider it as being essentially neutral in the totality of evidence I have gathered.

The Witnesses

Most of the witnesses I spoke with are current members of Shambhala. Many hold, or have held, positions of relative authority or importance within the community: Acharya, Shastri, meditation instructor, (former) member of Kalapa Council, kusung (both continuity kusung and campaign kusung). A few others hold no particular role within the community, but have been very close to the Sakyong, his family, and/or former members of the Kalapa Council over the years. What they all have in common is a closeness to the Sakyong and the world that surrounds him. This is to say there was an incredible degree of loyalty shown to the Sakyong both by way of ardent denial that he would ever act as alleged and attempts to bolster his character and convince me of his inherent goodness.

While all information and perspective is welcome, I attempted to assess each individual's credibility in accordance with the comments outlined above. I relied less on the witnesses' personal characterization of the Sakyong, and more on direct knowledge and observations.

Witness S is incredibly loyal to the Sakyong and has held a seat of particular access to him. At the same time, he confessed to not seeing the Sakyong as infallible and advised me of his concerns about some of the Sakyong's earlier behavior particularly his alcohol consumption. I expect he is aware of the Sakyong's behaviors generally, but would not have been present during some or all of the incidents alleged.

As someone implicated by the Buddhist Project Sunshine report, he had motive to provide self-serving evidence. However, his evidence was corroborated by others, and at times was consistent with that of Claimant No. 3. I tend to believe Witness S's evidence.

Witness J, also implicated by the Buddhist Project Sunshine report, gave evidence in a straightforward manner. He acknowledged certain aspects of the allegations and denied others. In doing so, he gave clear, reasonable, and plausible reasons to refute the allegations. His evidence is in many places corroborated by others. I tend to believe Witness J's evidence in respect of the allegations relating to him.

Witness P was also implicated by the Buddhist Project Sunshine report. His evidence was straightforward and corroborated in large part by other evidence. He answered all questions in a straightforward manner. While I suspect he may tend to want to protect the Sakyong and the organization, I do find him credible in relation to the allegations of which he has direct knowledge.

Witness B was also implicated by the Buddhist Project Sunshine report. He has been especially close to the Sakyong over many years and has been in a particularly good position to observe and hear about the Sakyong's behaviors. He is incredibly loyal to the Sakyong, but appears to have had his faith shaken by revelations of his past. During our interview he appeared genuine.

However, evidence from another witness whom I did find entirely credible, leads me to question whether Witness B was as forthcoming as he portrayed.

Where his evidence is consistent and corroborated by others, I tend to believe it. However, I have some difficulty with the broad, sweeping statements he gave about the Sakyong's character and behaviors in the Kalapa Court and have not given his evidence much weight.

Witness C was implicated by the Buddhist Project Sunshine report. He is fiercely loyal to the Sakyong such that he would provide very little response to any question. What information I gained from our conversation is of limited value and I tend not to find him credible.

Witness I came forward voluntarily to comment on specific allegations contained within Claim No. 3. Witness I was particularly placed to be able to observe the activities and behaviors of the parties. Her evidence was not motivated by self-interest, but could be a result of loyalty to the Sakyong. Her evidence was candid and internally consistent. I tend to believe her evidence.

Witness K also came forward voluntarily. Her evidence was mostly evidence of the parties' character, and therefore of little value to the Investigation of Claim No. 3.

Witness A came forward voluntarily and was also named by Claimant No. 3 and other witnesses as someone who could speak to the alleged behaviors. Witness A acknowledges being present during the relevant times. Witness A is very loyal to the Sakyong and was visibly distressed by the allegations. Her evidence was consistent with that of others. She had a difficult time believing that the Sakyong could act inappropriately or mistreat women; on this point I do not find her evidence credible. However, her evidence in relation to other allegations, specifically relating to teenage girls at Shambhala Mountain Center I do find credible.

Witness D's name was given to me by Claimant No. 3 and other witnesses. Witness D was very guarded in the information he would share. He had no direct knowledge of the alleged behaviors, and could speak only of his observations of Claimant No. 3. Out of loyalty to the Sakyong, I believe he provided evidence that would tend to show the Sakyong in the best light possible. Much like Witness B, I accept only his evidence which is consistent with that of others.

Witness F's name was given to me by Claimant No. 3. Her evidence was credible and appeared unbiased.

Witness R's name was given to me by Claimant No. 3; he also reached out to Wickwire Holm independently. Witness R appeared loyal and protective of the Sakyong. His evidence is consistent with that of others.

Witness L presented as a very loyal student of the Sakyong. I believe Witness L would have great difficulty seeing anything the teacher does as wrong; she tended to provide justifications for certain behaviors or patterns rather than acknowledge that his actions are his own. I do not place much weight on Witness L's evidence.

Witness E came forward voluntarily. He gave evidence in a matter-of-fact manner which I found to be objective, rather than clouded by devotion. His evidence is corroborative of some others', but also provided a challenge to other pieces of evidence. I tend to believe Witness E.

Witness N was an individual referenced by Claimant No. 3 and others. I am not aware of any motive or interest which would tend to make her untruthful. I tend to believe her evidence.

I also spoke with Witness O, Witness G, Witness M, Witness H, and Witness T. Each witness could speak to only a small aspect of the overall Claim No. 3. They each expressed doubts about the veracity of the allegation and could point to other evidence that tended to impact Claimant No. 3's credibility.

13. Findings

Based on my assessment of all of the above information, I make the following findings.

The Sakyong assaulted/abused Claimant No. 3

I find it more likely than not that the Sakyong attempted to have sexual relations with Claimant No. 3. I find that when she was first called to see him privately, she believed it was to discuss her practice. I believe her that the Sakyong intention was for a sexual encounter. This behavior is consistent with evidence that I received from corroborating witnesses. In much the same way as with many other women, I believe that the Sakyong was interested in Claimant No. 3 and tried to be intimate with her.

I do not find that the Sakyong continually and repeatedly assaulted or abused Claimant No. 3. I am not convinced that he tried to force himself on her or force her to perform sexual acts as she has alleged. Her evidence lacked sufficient clarity and detail to allow me to make a finding that the Sakyong continually abused her as she has alleged. Her memory was not clear on dates or times. She did not or could not provide details of specific instances, but rather spoke in generalities that 'he did this' and 'they all knew'.

The Sakyong attempted to force Claimant No. 3 to perform sexual acts for others

Witness S and Witness P were not present in Boston at the time of this allegation. The claim against them, such as it is, is not substantiated.

The evidence before me does not support the allegation that the Sakyong attempted to force Claimant No. 3 to have sex with other men as alleged. I do not find it to be substantiated.

The Sakyong had sexual relations with teenage girls at Shambhala Mountain Center

I did not receive any information to support any aspect of this allegation. I therefore cannot uphold this allegation.

Given the very serious nature of this specific allegation I would expect anyone with information, particularly any mandatory reporters under Colorado State law, to alert local authorities.

The Sakyong pressured Claimant No. 3 for money and property

I find that there is an expectation, formally and informally, that community members will give generously and support the Sakyong, his family, and his spiritual pursuits. Indeed, the entire organization seems to be centered around supporting the Sakyong and his ability to teach.

I find further that Shambhala would often request that individuals pay for the Sakyong's expenses or contribute to expenses on his behalf. In this way, I find that Claimant No. 3 was expected to donate her time and money to the Sakyong and the Shambhala organization. I make no distinction as to whether the donation was to support Shambhala USA, the Sakyong's foundation, or the Sakyong personally.

I also find it more likely than not that the Sakyong did suggest to Claimant No. 3 that she donate the house in Boulder. I find this aspect of Claim No. 3 to be substantiated.

Shambhala used fear to silence Claimant No. 3

I find it more likely than not that Claimant No. 3 was expected to remain silent about what she had experienced, seen, and heard while inside the Kalapa Court and in the presence of the Sakyong. I do not find that her claim that various community members said she would be sent to hell is substantiated, but I do find that Claimant No. 3 felt shamed and guilty that she was leaving the community.

14. Conclusion

It is almost trite to say in this context that there was a fiduciary relationship between Claimant No. 3 and Sakyong Mipham Rinoche. He is the teacher and lineage holder of sacred teachings underpinning the entire Shambhala community. Claimant No. 3 was a student, looking to him for compassion and spiritual guidance.

Sexual advances in the context of a fiduciary relationship such as that of teacher-student or clergy-penitent fall squarely within the definition of sexual harassment relied upon for this Investigation. Further, sexual activity that is not consensual falls within the context of sexual assault. The relative positions of power in this situation as between the teacher and student, or clergy and penitent, do not favour a finding of consent.

Accordingly, any sexual advance made by Sakyong Mipham Rinpoche towards Claimant No. 3 constitutes sexual misconduct and clergy misconduct as outlined above.

Private and Confidential

Addendum to Report of the Investigation into Claim No. 3:

**Allegation of Sexual Assault by
Sakyong Mipham Rinpoche**

Prepared for Shambhala USA Interim Board

By Selina Bath

January 31, 2019

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Overview

On January 22, 2019, I received an Affidavit sworn by Sakyong Mipham Rinpoche. By the time I received this Affidavit I had already interviewed Claimant No. 3 as well as other responding parties and as many as 15 additional witnesses about her allegations. I had also received a written response from the Sakyong through his legal counsel in December 2018. My report of the investigation into Claim No. 3 had been finalized and sent to the Interim Board.

I have since considered the evidence contained in the Sakyong's Affidavit.

The Sakyong's position

The Sakyong's Affidavit addresses three component allegations relating to the allegation of a sexual relationship with Claimant No. 3, sexual relations with teenage girls, and an assault on Claimant No. 3 that was described as "gang rape". The Sakyong steadfastly denies that either of these events, or any others like them, ever occurred and are entirely without any foundation in truth. Further he states this is why he declined my request for an interview.

The Sakyong's Affidavit does not refer to Claimant No. 3's allegations of being pressured for money or property. Neither does it refer to her allegation that Shambhala attempted to silence her using fear.

Credibility

As I did not have the opportunity to interview the Sakyong prior to or after receiving his Affidavit I am still not in a position to comment on the credibility or reliability of his response. I do not place more weight on the affidavit evidence than I did on the written response that I received from his legal counsel in December 2018.

Findings

My findings remain unchanged from that outlined in the Investigation Report dated January 22, 2019. I refer the reader to that report.

Private and Confidential

**Report of the Investigation into Claim No. 5:
Allegations of Sexual Misconduct**

Prepared for Shambhala USA Interim Board
By Selina Bath
January 22, 2019

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1. Executive Summary

This investigation was precipitated by claims of sexual abuse within the Shambhala community. Several claims were raised anonymously in a publication prepared by Buddhist Project Sunshine. Through general counsel Shambhala USA, retained Wickwire Holm to conduct an investigation into claims of sexual misconduct on the part of Sakyong Mipham Rinpoche and/or other senior leaders.

Shambhala USA invited its community members to reach out to Wickwire Holm with any claims of sexual misconduct that they wished to have investigated. More than 75 people came forward with claims of sexual misconduct or provided information pertaining to sexual misconduct within the organization. The majority of the individuals who came forward with claims of misconduct did not want to be identified and therefore did not fall within the scope of the investigation set by Shambhala USA. These accounts, while not formally investigated, were provided to the Interim Board in an anonymized summary fashion.

The following is my report into an investigation of sexual misconduct at a local center wherein the Claimant alleged that the Respondent used power and influence to have him ejected from the local community. I do not find the claim to be substantiated.

2. Background

Shambhala is an international community of more than 150 meditation centers worldwide at which more than 14,000 students practice meditation toward a path of enlightenment. While it maintains centres throughout the world, Shambhala operates out of Halifax, Nova Scotia and Boulder, Colorado.

Shambhala is a spiritual path of study and meditation which originates from ancient Tibetan Buddhist traditions or teachings. Sakyong Mipham Rinpoche is the current lineage holder of sacred teachings given to King Dawa Sangpo, the first sovereign of Shambhala, and therefore both temporal and spiritual director of Shambhala. He resides primarily in Halifax, Nova Scotia.

The Sakyong travels to Shambhala Meditation Centers to offer teachings and programs. He is supported by acharyas (teachers) whom he has empowered to represent him and the lineages he holds as well as a number of senior teachers and meditation instructors.

The Kalapa Council is the governing body of the Shambhala international community. In 2018, the Kalapa Council announced new efforts to address issues of harm within the Shambhala community.

In February, June and August 2018, an initiative referred to as Buddhist Project Sunshine released three separate reports containing multiple allegations of sexual and gendered harm within the Shambhala community.

The Sakyong and the Kalapa Council have responded to these reports with letters written directly to the Shambhala community.

It is within this context that this investigation was commenced.

3. Appointment and Scope of Investigation

Wickwire Holm was first approached by general counsel for Shambhala USA (formerly known as Shambhala International), the corporate entity of the Shambhala community, in June 2018 to discuss an investigation into claims of sexual harm within the Shambhala community. While these discussions were ongoing, Buddhist Project Sunshine released its second report containing numerous allegations relating specifically to the Sakyong.

Through general counsel, Shambhala USA formally retained Wickwire Holm to investigate specific allegations of sexual misconduct on the part of the Sakyong and/or other senior members of Shambhala (the "Investigation").

At the time, both anonymous and identified individuals ("Claimants") had made claims of sexual misconduct against the Sakyong and other senior members of Shambhala ("Respondents"). Claims varied by geographic area, date and Respondent. Respondents hold or held various positions of authority within Shambhala.

The scope of the Investigation included:

1. Investigating specific allegations of sexual misconduct on the part of Sakyong Mipham Rinpoche brought forward by Claimants; and,
2. Investigating specific allegations of sexual misconduct on the part of other senior members of Shambhala brought forward by Claimants.

Shambhala made community members aware of Wickwire Holm's involvement in late July 2018. The Kalapa Council invited community members to bring any concerns of sexual misconduct directly to the attention of Wickwire Holm.

At the same time, the Kalapa Council announced an arrangement with An Olive Branch to open a Listening Post for community members to anonymously share stories of misconduct or harm.

Shortly thereafter, the Kalapa Council resigned en masse in August 2018. Our retainer remained in place and we continued to investigate. Our point of contact during this time was Shambhala's general counsel.

Following the resignation of the Kalapa Council, an Interim Board was appointed in October 2018. In November 2018, the Interim Board elected to become the point of contact for this Investigation. The scope of the investigation did not change.

4. Confidentiality

The starting point of the Investigation involved receiving stories of harm or alleged misconduct from members or former members of the Shambhala community. Many of these individuals reached out to Wickwire Holm directly to share their concerns and experiences.

To form part of the Investigation, a Claimant must be identified and identifiable to a Respondent. The principal reason for this is to allow a Respondent the opportunity to know the allegations against them and be able to provide a full response.

To the extent possible, I have kept allegations and the Investigation into those allegations confidential. My intention was to release information only to the extent required to properly investigate each allegation. Accordingly, a Respondent was provided a summary of the allegation with sufficient detail to allow them to fully respond to the allegation.

In order to maintain confidentiality and support the integrity of the Investigation, I asked parties and witnesses to refrain from discussing the content of the allegation or the interview with anyone else, including other Claimants or potential witnesses, while the Investigation is ongoing.

In this report, I will attempt to protect the identities of all to whom I have spoken. Where possible I have avoided the use of personal pronouns which could tend to identify an individual. However, that is not always possible as the context of the evidence may reveal an individual's gender.

The stories of those individuals who came forward to share their experience but elected not to be identified to the Respondent do not form part of the Investigation. I gathered this information and

provided the Interim Board with an anonymized summary of what had been shared. The intent of doing so is to make Shambhala USA aware of the extent and kind of harms experienced within the community, without breaching the confidentiality that those individuals specifically requested when contacting Wickwire Holm to share their stories.

5. Investigation Process

The normal process of an investigation is to first receive the claim, meet with the Claimant to obtain further detail of the alleged behaviour, then meet with the Respondent for their response. The parties' credibility is assessed during these initial interviews. When prudent and necessary, the investigator can meet with witnesses to obtain information that will help them make a determination or factual finding.

The interview is the Claimant's opportunity to present additional facts underlying the allegation. Documents and notes are also welcome at that time.

Similarly, the investigator meets with the Respondent about the allegation. Prior to this interview, the investigator provides the Respondent with sufficient information and detail to allow the Respondent to know the nature and extent of the Claim against them. The interview is the Respondent's opportunity to provide a full response to the allegation.

Either the Claimant or Respondent may suggest names of other witness who they feel may have relevant information. The investigator will interview those witnesses who can provide relevant and useful information to the investigation. Not every witness is contacted. Any party or witness may be accompanied by an advisor or support person provided that individual is not also a witness in the investigation.

In addition to meeting with the parties and witnesses, the investigator reviews relevant documents and other evidence as the case may be available.

An investigation such as this is a voluntary process. At each step, the investigator is reliant on the individual people who come forward as Claimant, Respondent, and witness, to share their experience and perspective. Each individual's recollection of events assists the Investigator to make a factual determination of what occurred.

It is therefore important for all involved to share what they know, have seen or otherwise observed so that the investigator obtains a complete picture of what has transpired.

While evidence is not taken under oath, it is essential to the process that each individual is forthcoming and truthful. Without individual participation, an investigation may be lacking in detail. If one aspect of critical evidence is suppressed, it can have a significant impact on the overall process and ultimate determination.

6. Terminology

The scope of this Investigation refers generally to sexual misconduct. This term covers an array of sexual behaviour including:

- Sexual assault;
- Sexual exploitation;
- Sexual harassment;
- Stalking;
- Indecent exposure;
- Voyeurism;
- The distribution of a sexually explicit photograph or video of a person to one or more persons other than the person in the photograph or video and with the intent to distress the person in the photograph or video;
- The attempt to commit an act of sexual misconduct; and
- The threat to commit an act of sexual misconduct.
-

Sexual Assault

Sexual assault has been defined as an assault which is committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated: see *R v. Chase* [1987] 2 SCR 293.

Implicit in this definition is the idea that a claimant does not consent to an assault. In the context of sexual assault, consent is defined as the voluntary agreement of the claimant to engage in the sexual activity in question: see *R. v. J.A.*, [2011] 2 SCR 220 and *Criminal Code*, R.S.C. 1975, c. C-46, s. 273.1. Consent of the claimant must be specifically directed to each and every sexual act.

Further, we recognize that an imbalance of power is a relevant consideration in cases of sexual misconduct. Relationships characterized by an imbalance of power, where one party has the ability to dominate or influence the other, include parent-child, physician-patient, teacher-student, and clergy-penitent among others.

Sexual Harassment

Sexual harassment has been defined as:

- (i) Vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome,
- (ii) A sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome, or
- (iii) A reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.

Human Rights Act, R.S.N.S. 1989, c. 214, s.3(o)

It is with these particular definitions in mind that I have considered the evidence and base my findings for this Investigation.

7. Burden of Proof

In carrying out this Investigation, I have applied the Canadian civil standard for the burden of proof: balance of probabilities. This means that in reviewing, assessing and evaluating the evidence, I must be satisfied that a fact occurred “on the balance of probabilities”. Effectively, I asked myself whether “it is more likely than not”, that Claim No. 5 is substantiated.

To be clear, I did not evaluate the evidence or Claim No. 5 on the criminal standard which would require that I be convinced “beyond a reasonable doubt”. Nor did I give consideration to the possibility that the evidence may support a criminal conviction. It remains open to Claimant No. 5 to decide whether or not to pursue criminal charges. This report should not be taken as an endorsement of or dissuasion from any criminal proceeding.

8. Claim No. 5

In essence, Claimant No. 5 alleges that the Respondent used her considerable power and influence to have him ejected from serving within the Kalapa Court as a result of bitterness over his ending of their romantic relationship.

9. Evidence Considered

During the course of this investigation I interviewed both the Claimant and Respondent as well as one witness specifically identified by both parties. To protect the identity of the individuals, I will refer to them as Claimant No. 5, Respondent, and Witness Z.

The Claimant's Position

Claimant No. 5 and Respondent were in a romantic relationship which ended more than 5 years ago. Claimant No. 5 has continued to be in contact with the Respondent periodically, despite being in relationships with other women.

Over the last few years, both Claimant No. 5 and the Respondent have served within the Kalapa Court. Generally, they do not work in the Court at the same time. Claimant No. 5 feels this situation had been working well until recently.

Claimant No. 5 contends that the Respondent remains bitter that the relationship ended. He states that she has been awkward towards him when he has attempted to speak with her. He brought his

concerns to another community member asking her to deal with the situation; this, he says, went no where.

Most recently, he alleges that the Respondent has taken steps to have him removed from the Kalapa Court. He alleges that she complained to others within the Court, specifically the Master of the Court, about him. Because of her position as a teacher and the role she plays within the Court, he states that the Respondent used the current crisis to pressure him out of the Court.

He admits that he is still welcome to attend the local Shambhala Center, but is not satisfied with that outcome.

The Respondent

The Respondent views the aftermath of their relationship differently. She states that Claimant No. 5 continually tried to contact her. She reminded him that their relationship had ended; there was no reason to keep in touch.

Approximately 5 years ago, Claimant No. 5's behavior prompted the Respondent to call police. Both parties were instructed to not have any communication with each other.

The Respondent initially attempted to bring her concerns about Claimant No. 5's presence in the Kalapa Court to the Kasung. No action was taken as the Respondent was not prepared to be identified as having brought the issue forward out of fear of how Claimant No. 5 may retaliate.

Since that time, the Respondent states she has tried to abide by police instruction and have no contact with him. He has not done so and has attempted to speak with her on occasion. The Respondent takes steps to ensure that she and Claimant No. 5 are not scheduled to be at the Court at the same time.

The Respondent states that did not bring her concerns to the Master of the Court or anyone else to complain about the Claimant's behavior. The Respondent states it was not her request or decision to have the Claimant removed from serving within the Kalapa Court.

Witness Z

Witness Z recounts that as a result of the ongoing crisis within the community and #Metoo movement, the Master of the Court decided to assess the individuals who serve within the Kalapa Court in various capacities to ensure that all members of the Kalapa Court (including the Sakyong, his wife and children, and those who serve them) feel safe in their surroundings.

Witness Z indicates that he had been aware of the situation between Claimant No. 5 and the Respondent for some time. He understood that others had also experienced difficulty and discomfort because of Claimant No. 5 in the past. Witness Z advised that the determination to remove Claimant No. 5 from serving in the Kalapa Court was based on consideration of the

situation between Claimant No. 5 and the Respondent as well as information received from members of the Desung in relation to his fitness to serve in the Court.

Witness Z confirmed that Claimant No. 5 was advised that he could continue to serve at the local centre. That remains the case, whether Claimant No. 5 has chosen to do so or not.

10. Credibility

In considering the credibility of the individuals with whom I met, I referred to the well-accepted assessment of credibility set out in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA):

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility...

I find that the Respondent and Witness Z were credible. They gave evidence in a straight-forward and forthright manner. The Respondent in particular made a concerted effort to be truthful.

I find Claimant No. 5 was not credible. He left out significant details in his version of events which diminished his overall credibility and the veracity of his claim.

As between the parties, I prefer the evidence of the Respondent in all respects.

11. Findings of Fact

I find that Claimant No. 5 and the Respondent had a romantic relationship which ended several years ago. Claimant No. 5 continued to contact the Respondent despite her attempts to discontinue communication.

His continually contact resulted in police intervention as a result of which both parties were instructed to have no contact with the other.

The Respondent has tried to abide by this instruction; Claimant No. 5 continues to ignore it. After the incident he began to serve at the Kalapa Court where he knew she would be. The Respondent has taken extra measures to ensure they are not both at the Court at the same time.

In light of current events and the ongoing crisis within the Shambhala community, the Master of the Court recently assessed whether all individuals serving within the Court should continue to do so. He considered the situation of the parties and consulted members of the Desung about his concerns. The Master of the Court determined that Claimant No. 5's service should be limited to

programs and the local center. The Respondent did not request Claimant No. 5's removal from the Kalapa Court.

I find that Claimant No. 5's allegations have not been substantiated.

I make this finding based on the information and evidence before me.

12. Conclusion

Bearing all the foregoing in mind and with the evidence I have before me, I do not find that the Respondent has acted improperly or that her actions amount to misconduct of any kind.

This concludes the Investigation into Claim No. 5.