



The Office of Human
Rights and Conflict
Management

201 Allen Building
Winnipeg, Manitoba
Canada, R3T 2N2

EXPRESSIONS OF INTEREST

PROFESSIONAL INVESTIGATION SERVICES

for

**THE UNIVERSITY OF MANITOBA
OFFICE OF HUMAN RIGHTS AND CONFLICT MANAGEMENT**

SECTION A: INFORMATION FOR RESPONDENTS

1.0 Introduction – The University of Manitoba

The University of Manitoba is the province’s largest university. In a typical year, the University has an enrollment of over 29,000 students. The University of Manitoba offers the largest selection of degree programs, including professional and graduate programs, of any university in the province.

The Office of Human Rights and Conflict Management is a sub-unit of The Office of Fair Practices and Legal Affairs at the University of Manitoba. The Office of Fair Practices and Legal Affairs (OFPLA) is managed by Naomi Andrew, Associate Vice-President (Fair Practices & Legal Affairs). For more information on OFPLA at the University of Manitoba, visit http://umanitoba.ca/fair_practices/about_us.html.

The Office of Human Rights and Conflict Management works to prevent discrimination and sexual violence at the University by promoting, supporting and administering the following University of Manitoba Policies and Procedures; Respectful Work and Learning Environment Policy (RWLE); Sexual Assault Policy; RWLE and Sexual Assault Procedure.

Any person may contact The Office of Human Rights and Conflict Management to make a Formal Complaint of a breach of either the RWLE or Sexual Assault Policy. Where the Office of Human Rights and Conflict Management concludes upon Preliminary Assessment that an Investigation should proceed, the Investigation shall be conducted by a qualified Investigator of the University’s choosing.

2.0 Expression of Interest – For Skilled Lawyers with Investigator Certification

OFPLA periodically engages external investigators who have specialized expertise to conduct procedurally fair external investigations and arrive at a finding of either a Breach or No Breach of either the Respectful Work and Learning Environment Policy or the Sexual Assault Policy, or other relevant University policies.

The University's objective of this Expression of Interest (EOI) is to identify and create a directory of lawyers (and law firms) who are trained in trauma-informed investigative processes and who can be called upon to assist the University in specific investigations when the need arises. ("List of External Investigators")

The University is seeking Expressions of Interest from qualified Lawyers or Law Firms who have the following expertise:

1. Training in leading investigations with a trauma-informed perspective;
2. Proficiency with conducting an investigation that conforms to the principles of Equity, Diversity and Inclusion;
3. Experience working in a manner sensitive to Indigenous Culture and perspectives;
4. Experience conducting investigations in accordance with collective bargaining agreements;
5. Ability to create succinct reports with findings of fact that conform to the Guidelines for Investigating Formal Complaints Under the University of Manitoba's Respectful Work and Learning Environment and Sexual Assault Policies and Procedures (**Schedule C**) including proscribed page limits;
6. Efficiency in conducting investigations such that any investigation assigned by the University will be concluded within the timeframe required by policy;
7. Ability to maintain the integrity of an investigation, including keeping information confidential and complying with provincial privacy legislation including; *The Freedom of Information and Protection of Privacy Act; The Personal Health Information Act; The Workplace Safety and Health Act and Regulation.*

3.0 The Intent of the List of External Investigators

The Office of Human Rights and Conflict Management intends to refer to its List of External Investigators when an external investigator is required for a specific matter. The decision as to when the University will use external investigators will be based on the University's Guidelines for the Use and Selection of External Investigators set forth in **Attachment 1**.

The Office of Human Rights and Conflict Management anticipates keeping its List of External Investigators in use for a period of three years from the date of closing, unless the University extends this period.

Investigators may apply at any time, and if qualified, they will be placed on the current List for the remaining amount of time that the list is in use.

4.0 The Intent of this EOI

The Office of Human Rights and Conflict Management invites Expressions of Interest from interested lawyers or law firms with demonstrated competence in the areas listed above.

This EOI is a request for information only and creates no obligations for the University.

This EOI does not imply a commitment by the University of Manitoba to proceed with, continue or complete this EOI or any other similar process. Nothing in this EOI creates an exclusive arrangement between the University and any respondent. The University reserves the right to reject any or all proposals received in response to this EOI. Any costs of replying to this EOI will be at the respondent's own expense.

The University makes no commitment to retain any investigators who have been placed on the List of External Investigators, whether or not that investigator has the relevant expertise requested or meets the University's listed requirements.

This EOI process also in no way limits or prevents the Office of Human Rights and Conflict Management from entering into contracts for investigative services derived from outside this process. The Office of Human Rights and Conflict Management reserves the right to outsource work at its sole discretion.

This current EOI process will not affect or terminate any current retainers or files the Office of Human Rights and Conflict Management has with its existing investigators.

5.0 Date for Submission for Initial List

Submissions are to be emailed to Naomi Andrew, Associate Vice-President (Fair Practices & Legal Affairs).

Email: Naomi.Andrew@umanitoba.ca

Investigators wanting to be placed on the initial list of External Investigators should provide their submission by 4:30 pm on October 31, 2019.

The University reserves the right to repost this call for Expressions of Interest at any time.

6.0 University Representative

The University has designated Naomi Andrew, Associate Vice-President (Fair Practices & Legal Affairs) as the representative who can answer questions about this EOI.

7.0 EOI Response Review Process

The review process will consist of the following stages, unless determined otherwise by the University:

Phase 1: All Submissions will be screened for completeness and eligibility.

Incomplete Submissions will not advance to Phase 2.

All potential investigators must be lawyers and must carry valid practicing insurance in the province of Manitoba and be in compliance with the requirements of the Manitoba Law Society.

Phase 2: Review and Evaluation of Submission content.

The following will be considered by the University as part of submission review:

- Expertise and qualifications in conducting investigations at a post-secondary institution;

- Cost of providing services and any value added benefits offered;
- Demonstrated willingness to devote time and resources to best represent the University; and
- Clarity of responses and communication style.

After review of submissions, the University may request clarification on any items in a respondent's submissions.

Phase 3: Selection and List Creation

- Submissions that best meet the requirements of the University, in the absolute discretion of the University, will be put on the List of External Investigators.
- Only those investigators selected to be placed on the University's List of External Investigators will be contacted regarding the outcome of the process.

8.0 Contract Documents

The University has a standard a Retainer Letter that is expects to be the basis for any engagement of external investigators and may take into account any fee proposal or value added benefit set out in a firms EOI's submission. The University's standard Retainer Letter is attached as **Attachment 2**.

--- End of Section A – Information for Respondents ---

SECTION B: PROPOSAL SUBMISSIONS

1.0 Your submission should include the following:

- Identify the name of your firm (or the individual lawyer's name) and provide basic contact information;
- Identify the name of an individual who will act as a liaison or principle contact with the University;
- Provide a current firm profile if applicable;
- Provide the name(s) of lawyer(s) and descriptions of their expertise, including their relevant experience, qualifications, training, awards, year of call to the Bar and fields of expertise;
- Provide a statement about what makes you or your law firm (or practice for individual members) stand out from your competitors in respect to the type of work required by the University and describe any value added benefits you or your firm may offer the University;
- Provide a description to your firm's approach to Accessibility, Sustainability and Indigenous Engagement and how your firm operates in a manner that is consistent with the University's Strategic Plan;
- Provide a description of you or your firm's familiarity with University operations or administration;
- Provide the proposed billing structure (i.e. flat fees, discounts, blended rates or hourly rates for each member of the team that expresses interest) and proposed rates for initial 12 months of eligibility;
- Specify all jurisdictions and geographical locations in which services are provided.

--- End of Section B: Proposal Submission ---

ATTACHMENT 1 – UNIVERSITY GUIDELINES FOR THE USE AND SELECTION OF AN EXTERNAL INVESTIGATOR

GENERAL PRINCIPLES OF SELECTION OF AN EXTERNAL INVESTIGATOR BY THE UNIVERSITY

1. General principles for selection of :

These factors will be considered the selection of an Investigator by the University:

- The Investigator will have specific experience with the kinds of matters in respect of which the Investigator is being retained;
- The Investigator will demonstrate the necessary level of training, competence, expertise and experience to provide a thorough investigation that is both trauma-informed and sensitive to different cultural perspectives including Indigenous perspectives;
- Selection of the Investigator is based on the premise that the University expects the highest quality of investigation with the reasonable demands of economy, efficiency and effectiveness;
- The Investigator must demonstrate an ability to complete their investigation in an efficient, cost-effective and competent manner that conforms to University policies, including the Guidelines for Investigating Formal Complaints Under the University of Manitoba's Respectful Work and Learning Environment and Sexual Assault Policies and Procedures (**Schedule C**);
- The Investigator must be a member of their provincial Law Society in good standing, and must be able to practice law in Manitoba. The Investigator must be fully familiar with the all regulatory requirements including *The Law Society Act* (Manitoba), Rules of Professional Conduct, Regulations, By-Laws, etc.

2. Factors for Choice of an Investigator

In addition to the General Principles, the choice of particular investigators will be determined by:

- Urgency/ Availability – given that University procedure requires an investigation to be completed in 90 working days, it is imperative that the Investigator's schedule permits the Investigator to meet this deadline.
- Experience – does the Investigator have demonstrated experience in conducting investigations in a post-secondary institution?

- Reputation – does the nature or seriousness of the matter, both in terms of public and University interest, require an Investigator with a strong and well-recognized professional reputation?
- Geography – is the Investigator able to conduct thorough investigations in person at one of the University of Manitoba's campuses?
- Customer Service – does the Investigator demonstrate (or in the past demonstrated) a willingness and ability to devote time and resources to best represent the interests of the University?
- Fee Arrangements – does the Investigator offer preferential fee rates or other value offered benefits to the University?

ATTACHMENT 2 – – UNIVERSITY’S STANDARD RETAINER LETTER



201 Allen Building
Winnipeg, Manitoba
Canada R3T 2N2
204-474-6378

Email:
naomi.andrew@umanitoba.ca

The Office of Human
Rights and Conflict
Management

RETAINER AGREEMENT

THIS AGREEMENT made as of the **DATE**

BETWEEN:

NAME
(hereinafter the “Investigator”)

OF THE FIRST PART,

- and –

THE UNIVERSITY OF MANITOBA
(hereinafter the “University”)

OF THE SECOND PART.

WHEREAS the University wishes to retain the services of the Investigator as set forth in this Agreement;

AND WHEREAS the Investigator is able and willing to perform said services upon the terms and conditions contained herein;

NOW THEREFORE in consideration of the covenants and agreements set out in this Agreement, and for other good and valuable consideration given by each party, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties agree as follows:

1.0 **AGREEMENT FOR PROVISION OF SERVICES**

1.1 **Engagement of the Investigator** – The University agrees to retain the Investigator to provide services on the terms set out in this Agreement.

1.2 **Term** – This Agreement shall commence on **DATE** and, unless terminated sooner in accordance with section 3 of this Agreement, shall expire on **ONE YEAR LATER** (the “Term”).

1.3 Renewal – This Agreement may be renewed for a further 12 month period upon written agreement by the parties prior to the expiry date of the Agreement or within 14 days following said expiry date.

1.4 Nature of Relationship – This is an agreement for services. It is not intended by the parties to create a partnership or an employer and employee relationship.

1.5 Services – During the period of this Agreement, the Investigator agrees to be retained by the University and to provide services as may be assigned by the University. The services to be provided to the University under this Agreement shall include those set out in Schedule “A” to this Agreement, and such other duties as may be assigned by the University from time-to-time by further agreement in writing (the “Services”).

1.6 Assignment – The Investigator explicitly agrees not to assign the Services to a third-party without the express written agreement of the University. Unless otherwise agreed to in writing by the University, the only individuals expected to work on this retainer are **NAME**.

1.7 Reporting – The Investigator agrees to provide the University with progress reports at reasonable time intervals that are satisfactory in form and content to the University.

1.8 Responsibility - The Investigator agrees to assume the entire responsibility for the quality of the work performed for the University and to repair or complete, at their own cost, all work that is not properly performed in accordance with Schedule “A”.

1.9 Other Business – The Investigator is not restricted from providing services to any other individual, business, corporation, or other entity during the term of this Agreement, so long as any other business does not interfere with the Investigator’s ability to perform the Services assigned by the University.

1.10 Policies and Procedures – The Investigator shall comply with all mandatory standards, methods, procedures and specifications prescribed by the University, which will be provided to the Investigator by the University. These include all investigative practices, file management and reports as per the “Guidelines for Investigating Formal Complaints Under the University of Manitoba’s Respectful Workplace and Learning Environment and Sexual Assault Policies and Procedures” (the Guidelines). The Guidelines are mandatory and must be complied with. (Schedule “C”).

2.0 PAYMENT FOR SERVICES

2.1 Remuneration – In consideration for performing the Services, the University shall pay to the Investigator a fee as set out in Schedule “B” to this Agreement. The agreed upon rates will remain in effect for the duration of the retainer, unless a proposed increase has been approved, in writing, by the University. The Investigator shall invoice the University each month, and payment shall be made by the University within 30 business days from the date of receipt of the Investigator’s invoice. The Investigator shall substantiate time logged on a file-by-file basis in a Complaint Activity Log, which will be presented to the University along with the invoice.

2.2 Interest and Late Charge – The Investigator will not levy any interest or late payment charges against the University.

2.3 Expenses – Except as otherwise explicitly agreed, the Investigator shall not charge the University for any out of pocket expenses, such as parking, mileage, meals, travel costs and costs associated with the purchase of any material or equipment.

2.4 Non-Billable Activities – Unless otherwise agreed to in writing, the Investigator will not bill for, and the University will not be expected to pay for, time spent on the following activities; Opening, maintaining, closing, or storing files; Preparing or processing budgets, dockets, or invoices, or responding to inquiries about any of these items; Repetitive file reviews or other duplicative tasks, particularly when those tasks are performed by an individual who is new to the matter and who is performing the task(s) for the purpose of gaining familiarity with it; Tasks of a purely clerical or administrative nature such as filing, file organization, and photocopying, scanning, stamping, numbering, tabbing, or binding of documents, whether the task is performed by a lawyer, a student, a paralegal, or any other technical or administrative staff.

2.5 Deductions – The Investigator acknowledges that they are wholly responsible for the payment of any federal or provincial taxes and shall make the proper arrangements for the payment of such monies. The University acknowledges and agrees that it shall not withhold or deduct from any payments made to the Investigator any taxes, withholdings, source deductions, employment insurance premiums, or pension plan contributions.

3.0 TERMINATION

3.1 Without Cause – During the Term of this Agreement the Investigator or the University may terminate this Agreement by providing the other party with:

- i. 15 days notice of termination in writing or payment of an amount equal to 15 days' fees under this Agreement to be calculated on the basis of the daily average of all time logged during the previous 30 days; or
- ii. if there are less than 15 days in or remaining in the Term, payment of an amount equal to 3 days' fees prorated by the number of days remaining in the Term (to be calculated according to the formula in 3.1 i).

3.2 With Cause – Notwithstanding any other provision of this Agreement, the University may terminate this Agreement during the Term at any time for just cause without notice or payment of fees in lieu of notice for any material breach of this Agreement.

3.3 Other Events of Termination – Notwithstanding any other provision of this Agreement, this Agreement shall automatically terminate upon the happening of any of the following events:

- i. The death of **NAME OF INVESTIGATOR**;
- ii. If **NAME OF INVESTIGATOR** becomes not sound of mind or totally disabled and thereby is unable to fulfill their obligations under this Agreement.

4.0 CONFIDENTIALITY

4.1 Non—Disclosure – The Investigator hereby covenants and agrees with the University that they will not, without the prior written Consent of the University, either during the period of this Agreement or at any time thereafter, disclose any information obtained as a result of any Investigation undertaken on behalf of the University to any person, nor shall they use the same or assist any other person or entity in using the same for any purpose other than that of a properly conducted investigation in accordance with the Guidelines. The Investigator shall have a fiduciary obligation to use their best efforts to protect any information collected throughout the course of their investigation from any misuse, misappropriation, or disclosure. The foregoing shall not apply to any information which is or becomes available or known to the public, otherwise than by a breach of this Agreement by the Investigator.

4.2 Confidential Information – For the purpose of this Agreement, “confidential information” means all information obtained by the Investigator pursuant to their assigned investigation, including but not limited to the identities of involved parties, the nature and content of any complaint, the response to any such complaint, witness statements, any physical evidence, and any response by the University. Such information shall be considered confidential, regardless of whether or not prepared or obtained by the Investigator or marked “confidential.”

4.3 Return of Records and University Property – The Investigator shall at any time upon request by the University and, in any event upon the termination of this Agreement, promptly return to the University all originals or copies of records, files, lists, documents, software, intellectual property and any other property belonging to the University or relating to the University’s business, including those containing information of a confidential or a proprietary nature.

5.0 WORK PRODUCT

5.1 Ownership of Information and Work Product – The Work Product, namely the preliminary assessment reports and investigation reports as described in Schedule “A” to this Agreement, as well as all information contained therein, shall become the sole property of the University, and the University may use the Work Product as the University sees fit in its sole discretion.

5.2 Use of Technology – The University wishes to strive to keep paper to a minimum. In appropriate circumstances, and providing privacy and confidentiality can be adequately preserved, the Investigator will use technology to streamline its processes and to facilitate the sharing of information and documentation with the University.

6.0 DISCLAIMER - None of the Investigator’s services shall be considered legal advice. The Investigator shall not be held liable for any consequences of the University’s actions. The Investigator will make a finding in a given report which will be based on the information gained through a properly conducted administrative investigation process. Through an alternate process, evidence may be presented differently (through representation by lawyers, discover/cross-examination), new evidence may be produced and witnesses may present themselves differently leading a tribunal or judge to make a different assessment of credibility. The investigator shall not be held liable if a tribunal makes a finding that differs from the determination in the report.

7.0 RESTRICTED ACTIVITIES

7.1 Non-Solicitation Clause – During the term of this Agreement and for a period of one (1) year after the termination of the Agreement, the Investigator shall not, directly or indirectly solicit any employee or Investigator of the University to terminate his or her contract with the University.

7.2 Conflict of Interest – The Investigator undertakes to conduct the necessary conflict checks and to immediately advise University if it learns that they or any other lawyers at their firm represent or are otherwise associated with any of the parties or expected witnesses in this matter. During the term of this Agreement the Investigator shall serve the University in good faith and use her best efforts to promote the best interests of the University, and shall not, without the prior written consent of the University (which consent may be withheld at the sole discretion of the University), engage in any other business where that engagement conflicts, or could reasonably conflict with at some future date, or interferes, or could reasonably interfere with at some future date, the Investigator’s duties and obligations to the University.

8.0 NOTICES – Any notice, demand, consent, waiver or other communication required or permitted under this Agreement shall be made in writing and shall be delivered personally or sent by prepaid registered mail or sent by email and addressed as follows:

To the Investigator:

NAME
ADDRESS
CITY
EMAIL

To the University:

Naomi Andrew
Associate Vice-President (Fair Practices & Legal Affairs)
Office of Fair Practices and Legal Affairs
E3-250 Engineering Building
University of Manitoba
Winnipeg, MB R3T 2N2
naomi.andrew@umanitoba.ca

Any such notice, demand, consent or waiver shall be conclusively deemed to have been received on the day of delivery if delivered, on the fifth business day after the date of mailing if mailed or on the day of transmittal if emailed.

9.0 ENTIRE AGREEMENT AND AMENDMENTS – This Agreement contains the entire agreement between the parties hereto, and supersedes all earlier agreements, whether written or oral. This Agreement may be altered and amended only by further written agreement of the parties hereto.

10.0 GOVERNING LAW – This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Manitoba and the laws of Canada applicable in the Province of Manitoba. The Investigator and the University agree that any disputes arising from or in connection to this Agreement, shall be resolved by way of arbitration and by way of a single arbitrator pursuant to *The Arbitration Act* of Manitoba.

11.0 SEVERABILITY – Each and every term, condition and provision of this Agreement shall be severable one from the other, and if any term, condition or provision hereof is at any time declared by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall not extend to invalidate, make void or make unenforceable, any other term, condition or provision of this Agreement.

12.0 CONFIDENTIALITY OF AGREEMENT - The Investigator shall keep confidential and not disclose any of the terms of this Agreement to any person unless required to do so by law or for the purpose of obtaining confidential legal, financial or tax planning advice.

The parties have hereto duly executed this agreement as of the day and year first above written.

NAME
Investigator

THE UNIVERSITY

SCHEDULE "A" – SERVICES

A. SERVICES TO BE PERFORMED

1. Preliminary assessments of Complaints

- i. On an as needed basis, it will be the Investigator's duty to conduct preliminary assessments of complaints of harassment and/or discrimination that are referred to her/him by the University in order to determine whether the said complaints trigger the University's applicable internal policy;
- ii. Upon completion of the preliminary assessment, the Investigator will provide a report to the University detailing the results of the assessment, including a conclusion as to whether the complaint requires a formal investigation.

2. Investigations

- i. On an as needed basis, the Investigator will be required to investigate complaints of discrimination and/or harassment and/or workplace misconduct that are referred by the University;
- ii. Subsequent to the completion of the investigation, the Investigator will be required to prepare a written report, to be submitted to the University, outlining, among other things, the evidence collected during the investigation and the Investigator's conclusions regarding whether or not the applicable University policy has been breached;
- iii. In conducting the investigation and preparing the written report, the Investigator shall meet all procedural requirements of the applicable University policy, specifically, the Guidelines at Schedule C.

SCHEDULE "B" – REMUNERATION

A. REMUNERATION

1. For preliminary assessment and investigation work, the Investigator will be paid an hourly rate of \$*****.



**University
of Manitoba**

**GUIDELINES FOR INVESTIGATING FORMAL
COMPLAINTS UNDER THE UNIVERSITY OF
MANITOBA’S RESPECTFUL WORKPLACE
AND LEARNING ENVIRONMENT AND
SEXUAL ASSAULT POLICIES AND
PROCEDURES**

March 2019

The University of Manitoba seeks to provide a welcoming and supportive environment for staff, faculty and students that is free from discrimination and harassment, and that provides for reasonable accommodation. The following policies and procedures help to maintain such an environment:

- ❖ [*The Respectful Work and Learning Environment Policy \(RWLE\);*](#)
- ❖ [*The Sexual Assault Policy;*](#)
- ❖ [*The RWLE and Sexual Assault Procedure \(The “Procedure”\).*](#)

This Guide is intended to support and inform Investigators as they investigate formal complaints under the above-noted policies. It includes guidance on conducting Investigations; writing reports; managing information that is collected through the Investigation; and maintaining confidentiality.

Questions regarding this document should be addressed to the Human Rights and Conflict Management Officer (OHRCM).

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1. Purpose

It is the duty of the Investigator to thoroughly investigate the alleged breach and to arrive at a finding of either Breach or No Breach. This finding must be supported by a clear but concise report that includes only the level of detail that is necessary to support the finding. The Investigator should retain their original notes until the conclusion of the Investigation, at which time they should be securely transferred to the OHRCM where they will be retained.

This document is intended to provide guidance to Investigators as they fulfil those duties. The information contained here originates primarily from the associated Policies and Procedures.

2. Conduct of the Investigator

In conducting sexual violence Investigations, the Investigator should be aware that it is the intention of the University of Manitoba that those who are impacted by sexual violence will be treated with dignity and respect as part of a trauma-informed approach and that Investigations represent a procedurally fair process for all participants and is in accordance with collective agreement provisions.

Investigators are required to be trauma informed; diversity aware and sensitive to Indigenous Culture.

3. Maintaining Confidentiality

3.1 Collection, Use and Disclosure of information

Investigators are obligated to comply with the following provincial privacy legislation:

- [The Freedom of Information and Protection of Privacy Act](#);
- [The Personal Health Information Act](#); and
- [The Workplace Safety and Health Act and Regulation](#).

Please review this legislation and familiarize yourself with the requirements as they pertain to the collection, use and disclosure of personal information and personal health information in your role of Investigator.

Please note that Investigators are also expected to comply with the confidentiality obligations as found within the Procedure.

Note that participants should only be provided with the information that they reasonably need to know. This means that, depending on the case, individuals may not need to receive the names of other participants, or the full text of the Formal Complaint.

Should you have any questions regarding what information may be disclosed, please contact the OHRCM.

3.2 Exceptions

Every effort is made to respect the confidentiality of Complainants, of Respondents and of witnesses. There are, however, some instances when complete confidentiality cannot be assured. These include:

- ❖ If a person is a physical danger to themselves or others;
- ❖ If there has been a formal access to information request;
- ❖ If an Investigator's notes or other records are required by law to be disclosed or if an Investigator is subpoenaed pursuant to a legal proceeding.

When it is deemed necessary to disclose any information that pertains to a complaint, the OHRCM and any other parties involved are guided by the following principle:

Personal information that is disclosed in respect of an alleged Breach or a finding of Breach will be the minimum amount necessary for the purpose.

3.3 Advising Participants About Confidentiality

It is the duty of the Investigator to advise all parties involved in the Investigation (Complainants, Respondents and witnesses) of their obligations regarding confidentiality and of the limitations of confidentiality.

In order to protect the integrity of the Investigation, it is critical that they keep the Investigation confidential. This means keeping confidential not only information or documentation that they may obtain as a result of the Investigation; but even the very existence of the Investigation and its nature.

They should be advised not discuss the matter with anyone except those from whom they need to seek advice or legal counsel. This may be their supervisor, lawyer, union representative, Student Advocate, or other support person. They can be directed to either the OHRCM or to the Access and Privacy Office should they have specific questions about what may be disclosed.

4. What Constitutes a Breach

Investigations will begin with a Preliminary Assessment that assesses whether an Investigation will proceed. The Preliminary Assessment will also identify which policies may apply to an allegation of Breach.

“Breach”, as defined in the Procedure, means “any conduct, behaviour, action or omission which is prohibited under the Respectful Work and Learning Environment Policy, the Sexual Assault Policy, or the Procedure, including but not limited to Discrimination, Harassment, Sexual Assault, and Reprisals.”

The following explanations are based on information provided in the Procedure – please refer to sections 2.4 to 2.14, and sections 2.57, 2.58 and 2.61 of the Procedure for the comprehensive definitions.

4.1 Discrimination

Discrimination is an act or an omission that results in **differential treatment** of an individual or a group, or **failure to accommodate** the needs of an individual or group. Discrimination is based on one or more of the following characteristics, which are protected as per the [Manitoba Human Rights Code](#), Section 9(2).

- a) Ancestry, including colour and perceived race;
- b) Nationality or national origin;
- c) Ethnic background or origin;
- d) Religion or creed, or religious belief, religious association or religious activity;
- e) Age;
- f) Sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- g) Gender identity;
- h) Sexual orientation;
- i) Marital or family status;
- j) Source of income;
- k) Political belief, political association or political activity;
- l) Physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device;
- m) Social disadvantage.

An individual or group can be discriminated against even on the basis of presumed membership or perceived association with another individual or group that may be identified under one of the above characteristics.

Discrimination may or may not be intentional.

It must be noted that the Procedure provides for certain acts or omissions that might be perceived as discrimination to be permitted in the following cases:

- (a) There is a genuine, reasonable cause for the Discrimination.
- (b) The acts or omissions are intentional, and designed to:
 - i. Accommodate special needs; or
 - ii. Ameliorate the conditions of disadvantaged individuals or groups, including those disadvantaged by a Protected Characteristic.
- (c) The acts or omissions are in the context of a research project that has received all required research ethics approvals.

4.2 Harassment

4.2.1 Personal Harassment

Personal Harassment is offensive behaviour that is directed towards another person or group but is not connected to one of the protected characteristics identified in Section 4.1. It typically consists of objectionable and unwelcome conduct or comments that impact on the work/learning environment and/or on the mental/physical health of the object(s) of the behaviour. It may consist of either a single incident or of a series of events; and comments may be verbal or written.

4.2.2 Human Rights Based Harassment

Human Rights Based Harassment is offensive behaviour that is directed towards another person or group and is connected to one of the protected characteristics identified in Section 4.1. Similar to personal harassment, it typically consists of objectionable and unwelcome conduct or comments that impact on the work/learning environment and/or on the mental/physical health of the object(s) of the behaviour. It may consist of either a single incident or of a series of events; and comments may be verbal or written.

4.2.3 Sexual Harassment

Sexual Harassment is Human Rights Based Harassment that is specifically based on the following protected characteristics (from the list in Section 4.1):

- f) Sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- g) Gender identity; or,
- h) Sexual orientation

It typically consists of:

- Unwanted sexual attention, including persistent invitations for dates, by a person who knows or ought reasonably to know that such attention is unwanted or unwelcome;
- Gender-based abusive or unwelcome conduct or comments that impact on the work/learning environment;
- Sexist jokes or remarks, including comments regarding a person's appearance or clothing;
- Leering, ogling, or other sexually oriented gestures;
- Questions about a person's sexual history, sexuality, sexual orientation, or sexual identity by a person who knows or ought reasonably to know that the questions are unwanted or unwelcome;
- Offensive physical contact by a person who knows or ought reasonably to know that the contact is unwanted or unwelcome;
- A single sexual solicitation or advance or a series of solicitations or advances made by a person who is in a position to confer any benefit on or deny any benefit to the recipient, and who knows or ought reasonably to know that the solicitation or advance was unwanted or unwelcome; or
- A Reprisal for rejecting a sexual solicitation or advance.

4.3 Sexual Assault

Sexual Assault means the intentional sexual touching of another person with any object or body part without Consent or by force.

Consent means the voluntary agreement of the person to engage in the sexual activity in question.

These concepts are more broadly defined in the Procedure.

4.4 Reprisal

Reprisal is one or more of the following measures taken against a person for seeking advice regarding one of the applicable policies, making a complaint, cooperating with an Investigation or rejecting a sexual solicitation or advance:

- Discipline;
- Academic penalties (in the case of students);
- Demotion;
- Termination of employment;
- Termination of an academic appointment;
- Any other measure which significantly adversely affects their working conditions or educational experience; and/ or
- A threat to take any of the measures referred to above.

It is not considered Reprisal if the University disciplines or take other measures against an individual in the following cases:

- The person interfered or tried to interfere with an Investigation;
- The person made a Formal Complaint or allegations in bad faith;
- The person breached either of the applicable policies or the Procedure; or
- Discipline is otherwise warranted against the person under applicable legislation or common law, or University policies, procedures or bylaws.

4.5 Other Forms of Breach

Other forms of breach contemplated by the policies and procedure include breaches of confidentiality obligations and the filing of frivolous or vexatious complaints. Investigating an Alleged Breach

5. The Investigation

5.1 Investigation Protocol

The Investigator has significant latitude in deciding how to conduct the Investigation. They must:

- Give the Complainant the opportunity to explain and provide evidence in support of the Complaint; and
- Inform the Respondent, provide them with a copy of the Formal Complaint and access to any evidence, and give them the opportunity to respond to the allegations. The Respondent must be provided access to all documentary and other evidence as required to ensure procedural fairness.

Beyond those necessities, depending on the nature of the complaint, the Investigator may need to:

- Review physical evidence, including possibly arranging for testing;
- Obtain additional evidence;
- Interview witnesses.

All evidence should be weighed, as per the Common Law, based on credibility and reliability.

5.2 Obtaining and Assessing Evidence

5.2.1 Interviews

The Investigator will interview the Complainant and the Respondent at a minimum. Where there are witnesses, they should be interviewed as well. All individuals interviewed have the right to consult with and be accompanied by a Representative.

As noted in Section 2.3 of these Guidelines, the Investigator should advise all participants in the Investigation of their obligation to maintain confidentiality.

Completing the Investigation as expediently as possible is one of the University's priorities. In order to maintain the Investigation schedule, the Investigator will set reasonable timelines for individuals to respond to requests for assistance with the Investigation. Both the Complainant and Respondent are obliged to cooperate fully with the Investigator.

Should an individual fail to cooperate, the Investigator may make a determination based on the information available.

All interviews must be audio recorded. Copies of their own audio recordings can be provided upon request to participants at the end of an Investigation.

5.2.2 Physical Evidence

The Investigator will review and examine all physical evidence, which may include:

- Paper/ electronic documents and records;
- Photographs, audio, and video recordings; and
- Other physical evidence.

If necessary, the Investigator will arrange for testing of physical evidence. If electronic systems must be accessed, they will submit a *Third-Party Data Access Request Form* to [Information Services and Technology](#) (IST).

The Investigator will be provided with all materials received through the OHRCM. These may include:

- Emails;
- Text messages;
- Screenshots;

- Audio or video recordings;
- Witness lists; and/or
- Other relevant documents.

Contact information may be supplied by the OHRCM or by participants.

5.3 Scope of the Investigation

5.3.1 Expanded Scope

There are instances where an Investigator uncovers additional evidence in the course of an Investigation, or new events occur that are related to the Investigation that expand the scope of the Investigation. This may include:

- Another breach;
- A subsequent complaint or cross-complaints;
- Involvement of additional individuals; or
- Reprisal (see below)

In this case, the Investigator may request an expansion of the scope of the Investigation to the OHRCM. Similarly, if it becomes clear that it would be beneficial for a Formal Complaint to be investigated jointly with another organization or institutional partner, the OHRCM may make arrangements for a joint Investigation.

5.3.2 Reprisal

Should the Investigator become aware of an alleged Reprisal the Investigator should assess the urgency of the situation. If the matter is urgent, they should immediately notify the OHRCM. Urgency includes situations such as interferences with the investigation or safety concerns. Otherwise, they should investigate and include information relating to the alleged Reprisal in the report.

5.4 Timeline

Once the complaint has been assigned, the Investigator has 90 working days to complete the Investigation and submit their final report. It is expected that most Investigations will be completed in this time. Completing the Investigation as expediently as possible is one of the University's priorities. In order to maintain the Investigation schedule, the Investigator must be diligent in setting reasonable timelines for individuals to respond to requests for assistance with the Investigation.

Should an exceptional circumstance arise where additional time is required, the Investigator may apply to the OHRCM for an extension of up to 30 working days. More than one extension may be granted if warranted, but each will be a maximum of 30 working days and must be applied for separately. The OHRCM will inform the Complainant and Respondent in writing of any extensions granted.

6. Report and Records Management

6.1 Case File

The Investigator should keep a detailed case file including the following, as applicable:

- Log of all evidence reviewed, including where and when it was obtained or viewed, along with a brief description and the relevance to the matter;
- Copies of any digital or paper-based evidence, if appropriate;
- Copies of third-party assessments of evidence;
- Findings from review of evidence;
- Dates, times and locations of all interviews; and
- Detailed interview notes.

The Report will be based on the case file and the information collected must be comprehensive enough to support the finding.

Once the report has been accepted by the University, the original case file should be securely transferred to the OHRCM and the Investigator will keep a copy for their own records.

6.2 Report

The Report should be based on the information contained in the case file but should summarize the evidence in only enough detail to support the finding. **It is neither necessary nor appropriate to repeat all of the detail from the notes.**

The Report cannot be finalized until it has been vetted by the University's Access and Privacy Office. Given that the final report must be submitted to the University within 90 working days, a draft report must be submitted prior to the deadline to allow for appropriate guidance from Access and Privacy.

Please refer to the template included in Appendix A for additional guidance on report format.

Appendix A– Report Template

Investigation Report
University of Manitoba Formal
Complaint [*Case ID*]

[*Investigator*]

[*Date*]

General Guidelines for Investigators

In developing the report, include only the information that is necessary to build the case and support the finding. It is not necessary to include details (particularly those that are salacious) that do not actively contribute to the reader's understanding of why you arrived at your finding. Aim to be concise.

Do not use names in the body of the report. This will help to maintain confidentiality as the report may be shared with a number of individuals who will not all need to know the identities of those involved. Refer to the Complainant and the Respondent as such, and identify the witnesses as Witness 1, Witness 2, etc. These individuals can be described as student, academic staff, non-academic staff, along with faculty if applicable. The relationship of the witness to the Complainant and/or Respondent can be described.

Identifying information should be included in an appendix.

Executive Summary

This summary must contain a summary of the evidence and enough information for the reader to understand the essential nature of the Formal Complaint and whether or not a breach was found to have occurred.

*Provide a **one-page maximum** high-level summary of the report.*

Complaint

Provide a summary of the Formal Complaint.

Maximum one page.

Summary of Evidence

Summarize the key findings of the Investigation, including from interviews and evidence.

The Investigation consisted of piecing together an accurate rendition of events based on testimony and evidence. This section should concisely relate that story, and show how it is supported by the testimony and evidence.

Do not include a play-by-play of the Investigation.

Maximum five pages.

Finding

Indicate your finding of Breach or No Breach. In the case of a Breach, include assessment of which individual(s) caused or contributed to the Breach.

Show how this finding is rationally supported by the evidence and testimony collected.

Maximum five pages.

Conclusion

Provide a summary of breaches and non-breaches and any other relevant findings.

Maximum one page.

Appendix A – Identifying Information

Complainant: Name
Respondent: Name
Witness 1: Name
Witness 2: Name
Etc.

