

UNIVERSITY OF MANITOBA POLICY

Policy:	SEXUAL ASSAULT
Effective Date:	September 1, 2016
Revised Date:	
Review Date:	September 1, 2019
Approving Body:	Board of Governors
Authority:	<i>The University of Manitoba Act, s.4(t), s.16(1), s.18</i>
Responsible Executive Officer:	President
Delegate:	Vice-President (Administration)
Contact:	General Counsel
Application:	Board of Governors members, Senate members, Faculty/College/School Councils, employees, anyone holding an appointment at the University, students, volunteers, external parties, contractors and suppliers

Part I Reason for Policy

1.1 The reason for this Policy is to:

- (a) Provide guidance, assistance and support to members of the University Community who have experienced Sexual Assault or who have received a disclosure of Sexual Assault;
- (b) Set out a consistent process for responding to Sexual Assault that ensures that:
 - (i) Members of the University Community understand their respective rights and obligations when reporting or responding to a Sexual Assault.
 - (ii) Those who experience Sexual Assault are treated with dignity and respect and that their rights are respected;
 - (iii) Those who are accused of committing Sexual Assault are treated fairly and in a manner that ensures due process; and

- (c) The University is compliant with relevant legislation, including *The Human Rights Code* (Manitoba), and *The Workplace Health and Safety Regulation* (Manitoba).

Part II Policy Content

Definitions

2.1 The following terms are defined for the purpose of this Policy:

- (a) "**Breach**" means any conduct, behaviour, action or omission which is prohibited under this Policy, including but not limited to Sexual Assault and Reprisals.
- (b) "**College**" means a Professional College as defined under the Definitions of Academic Units Policy.
- (c) "**Committee**" means the Human Rights Advisory Committee established pursuant to section 2.20 of this Policy to:
 - (i) Hear appeals from Preliminary Assessment decisions, in accordance with the Procedure;
 - (ii) Receive and review the HRCMO's annual report under section 2.25 of this Policy; and
 - (iii) Provide advice and guidance on potential amendments or revisions to this Policy and the Procedure.
- (d) "**Complainant**" means the individual or individuals bringing forward a complaint of a Breach.
- (e) "**Consent**" means the voluntary agreement of the person to engage in the sexual activity in question. Without limiting the foregoing, no Consent is obtained where:
 - (i) the person submits or does not resist by reason of the application of force to the person or to someone other than the person;
 - (ii) the person submits or does not resist by reason of threats or fear of the application of force to the person or to someone other than the person;
 - (iii) the person submits or does not resist by reason of fraud or blackmail;
 - (iv) the person submits or does not resist by reason of the exercise of authority;

- (v) the agreement is expressed by the words or conduct of someone other than the person;
 - (vi) the person is incapable of consenting to the activity due to age, consumption of drugs or alcohol, or due to some other mental or physical incapacity;
 - (vii) the accused induces the person to engage in the activity by abusing a position of trust, power or authority;
 - (viii) the person expresses, by words or conduct, a lack of agreement to engage in the activity; or
 - (ix) the person, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.
- (f) **"Designated Officer"** means the Vice-President (Administration), or designate.
- (g) **"Faculty"** means a Faculty as defined under the Definitions of Academic Units Policy.
- (h) **"Formal Complaint"** means a complaint to the Human Rights and Conflict Management Officer that is in writing and contains, at minimum, the following information:
- (i) The name of the Complainant and contact information for the Complainant;
 - (ii) A description of the alleged Breach;
 - (iii) The approximate date of the alleged Breach, being within 1 year from the date of the most recent alleged incident unless, in the discretion of the Human Rights and Conflict Management Officer, extenuating circumstances would warrant an extension of time;
 - (iv) The name of the Respondent;
 - (v) Contact information for the Respondent, if known;
 - (vi) An indication that the Complainant desires the complaint to be the subject of an Investigation; and
 - (vii) The Complainant's signature.
- (i) **"Human Rights and Conflict Management Officer"** or **"HRCMO"** means an individual appointed by the University of Manitoba as someone

possessing the appropriate training and skills to fulfill the role outlined in section 2.24 of this Policy.

- (j) **"Informal Resolution"** means the resolution of an alleged Breach to the satisfaction of the Complainant and the Respondent, without an Investigation being completed.
- (k) **"Investigation"** means a formal investigation of an alleged Breach conducted in accordance with the Procedure.
- (l) **"Investigator"** means one or more persons appointed as the investigator of an alleged Breach, pursuant to section 2.36 of the Procedure.
- (m) **"Policy"** means this Sexual Assault Policy.
- (n) **"Preliminary Assessment"** means the initial review of a Formal Complaint, in accordance with sections 2.23 to 2.28 of the Procedure.
- (o) **"Procedure"** means the RWLE and Sexual Assault Procedure.
- (p) **"Reprisal"** has the same meaning as defined in section 2.57 of the Procedure.
- (q) **"Respondent"** means an individual or individuals accused of having caused or contributed to a Breach.
- (r) **"School"** means a "School of the University" or a "School of the Faculty", as those terms are defined under the Definitions of Academic Units Policy.
- (s) **"Sexual Assault"** means the intentional sexual touching of another person with any object or body part without Consent or by force.
- (t) **"STATIS"** means the Student/Staff Threat Assessment Triage Intervention Support team comprised of the following representatives:
 - (i) Vice-Provost (Students);
 - (ii) Associate Vice-President (Human Resources);
 - (iii) Director, Security Services;
 - (iv) Executive Director, Student Support;
 - (v) Student Support Case Manager; and
 - (vi) Legal Counsel.
- (u) **"UMSS"** means the University of Manitoba's Security Services.

- (v) **"University"** means The University of Manitoba.
- (w) **"University Community"** means all Board of Governors members, Senate members, Faculty/College/School Councils, employees, anyone holding an appointment with the University, students, volunteers, external parties, contractors and suppliers.
- (x) **"University Instituted Investigation"** means an Investigation initiated by the Designated Officer in consultation with the HRCMO, pursuant to section 2.34 of the Procedure.
- (y) **"University Matter"** has the same meaning as defined in section 2.3 of the Procedure.

Vision for the University Community

- 2.2 The University recognizes that Sexual Assault can occur between individuals regardless of sexual orientation, gender, gender identity and/or relationship status. The University also recognizes that individuals who have experienced Sexual Assault may experience mental, physical, academic and/or other difficulties. The University is committed to:
- (a) Supporting those who have experienced Sexual Assault by providing information, including the provision of and/or referral to counselling and medical care, and the provision of appropriate and reasonable academic and other accommodation;
 - (b) Ensuring that those who disclose that they have experienced Sexual Assault are supported and treated with compassion, dignity and respect throughout the process of disclosure and institutional response;
 - (c) Respecting the privacy of individuals who disclose Sexual Assault and recognize that those individuals are the final decision-makers about their own best interests, subject to the limits of confidentiality set out in this Sexual Assault Policy and the Procedure;
 - (d) Coordinating and communicating among the various departments who are most likely to be involved in the response to Sexual Assault affecting the University Community and implementing interim measures, while ensuring that fairness and due process are respected;
 - (e) Engaging in public education, awareness and prevention activities;
 - (f) Providing information to the University Community about Sexual Assault on campus;
 - (g) Providing appropriate education and training to the University Community about responding to the disclosure of Sexual Assault; and

- (h) Monitoring and updating University policies and protocols to ensure that they remain effective and in line with other existing policies and best practices.

Implementation of Vision

2.3 In furtherance of its vision, the University will:

- (a) Take action in accordance with the Procedure respecting any person under the University's direction who subjects a student, an employee, or any other member of the University Community to Sexual Assault;
- (b) Adopt procedures, protocols, and practices which will encourage individuals to bring concerns about an alleged Breach to an appropriate authority, including provisions to protect against Reprisal those who bring forward such allegations;
- (c) Through various academic and administrative units and programs, educate members of the University Community about the rights and obligations of members of the University Community under this Policy and the Procedure;
- (d) Provide information and supports to encourage and facilitate the Informal Resolution of an alleged Breach if appropriate; and
- (e) Supplement existing policies, procedures or bylaws, by providing a mechanism for the Investigation of an alleged Breach that ensures procedural fairness and due process to the Respondent.

2.4 The University is committed to promoting a safe work and learning environment by encouraging all members of the University Community to:

- (a) Bring forward credible evidence of a Breach of which they become aware to an appropriate authority, subject to section 2.9 of this Policy;
- (b) Provide reasonable cooperation in an Investigation of a Breach; and
- (c) Be aware of their responsibilities under this Policy and the Procedure.

Immediate Response to Disclosures

2.5 The University will maintain a website to support those affected by Sexual Assault, with links to on-campus and off-campus supports and resources that may be accessed by members of the University Community. Members of the University Community are encouraged to consult this website, to consult with the resources contained therein, and to consult with a health care provider for treatment or referral for post-incident counselling, if appropriate.

2.6 For students affected by Sexual Assault, the University will:

- (a) Provide reasonable academic accommodations (such as extensions on assignments, deferrals of exams, leaves of absences, authorized withdrawals, etc.); and
 - (b) Create a safety plan in consultation with the University's Student Support Case Manager, UMSS, and other offices as appropriate.
- 2.7 For employees affected by Sexual Assault, the University will:
- (a) Provide reasonable work accommodations, in consultation with Human Resources; and
 - (b) Create a safety plan in consultation with the Unit Head, UMSS, and other offices as appropriate.
- 2.8 Any information required to facilitate accommodations under sections 2.6 and 2.7 above will be subject to section 2.9 below, and will be limited in accordance with the confidentiality provisions outlined in section 2.16 of this Policy and sections 2.63 to 2.66 of the Procedure.

Reporting Protocol

- 2.9 **Rights of survivors of Sexual Assault.** Where possible, a person who has experienced Sexual Assault will retain control over the process of reporting a Sexual Assault. However, the University also has an obligation to protect the University Community from harm. The University reserves the right to initiate a University Instituted Investigation in accordance with the Procedure, and/or to report the incident to local police services, even without the consent of the survivor, if it believes that the safety of the University Community is at risk or if reporting is required by law (for example, in the case of a minor). In cases where actions are taken without the consent of the survivor, reasonable efforts will be made to preserve the anonymity of the survivor. In addition, the survivor will be notified of the actions the University intends to take in order that the survivor can work with the University to take any additional safety precautions that may be required as a result of the University's actions.
- 2.10 **Report to HRCMO.** Where a report of Sexual Assault is received by a member of the University Community other than UMSS, that member is encouraged to consult with the HRCMO to ensure that coordinated support and action is provided to the member(s) of the University Community affected by the Sexual Assault. The HRCMO may consult with STATIS in providing support.
- 2.11 **Report to UMSS.** Where a report of Sexual Assault is received by UMSS, a UMSS member shall create a security report and refer the matter to the HRCMO and STATIS to ensure that coordinated support and action is provided to the affected members of the University Community.

- 2.12 **Report to STATIS.** Where a report of Sexual Assault is received by STATIS, the role of STATIS will be to:
- (a) Develop an action plan to assist and support the members of the University Community affected by the Sexual Assault;
 - (b) Ensure that members of the University Community affected by the Sexual Assault are consulted where appropriate and kept informed of the developments within the parameters of confidentiality; and
 - (c) Take all necessary action relative to the above.
- 2.13 Any information required to facilitate support and action by the University will be subject to section 2.9 above, and will be limited in accordance with the confidentiality provisions outlined in section 2.16 of this Policy and sections 2.63 to 2.66 of the Procedure.

Investigation

- 2.14 The University will investigate allegations of Sexual Assault in relation to a University Matter in accordance with the Procedure where:
- (a) The HRCMO receives a Formal Complaint and determines in the Preliminary Assessment that the matter should proceed to Investigation; or
 - (b) The Designated Officer determines, upon recommendation by the HRCMO, that the circumstances warrant a University Instituted Investigation, in accordance with section 2.34 of the Procedure and section 2.9 of this Sexual Assault Policy.

Discipline

- 2.15 Any member of the University Community who commits Sexual Assault in relation to a University Matter will be subject to discipline under the Procedure.

Confidentiality

- 2.16 Confidentiality is particularly important to those who have disclosed Sexual Assault. The confidentiality of all persons involved in a report of Sexual Assault must be strictly observed, and the University will respect the confidentiality of all persons, subject to section 2.9 above and in accordance with sections 2.63 to 2.66 of the Procedure.

Awareness Building and Responsibilities

- 2.17 All members of the University Community have a responsibility to educate themselves as to the expectations and reporting requirements outlined in this Policy and the Procedure.

- 2.18 All members of the University Community, especially those in an instructional, supervisory or managerial position, have a duty to educate those for whom they are responsible regarding expectations for safe and respectful conduct, including this Policy and the Procedure. It is further the duty of such individuals to deal appropriately with allegations regarding Breaches or other violations of this Policy or the Procedure.
- 2.19 The University, through the Office of Human Rights and Conflict Management and other units as appropriate, will provide information to and respond to inquiries from the University Community regarding the University's expectations for safe and respectful conduct and the rights and obligations of members of the University Community under this Policy and the Procedure.

Human Rights Advisory Committee

- 2.20 The University will establish the Committee, with a membership consisting of:
- (a) The Associate Vice-President (Human Resources) or designate;
 - (b) The Vice-Provost (Students) or designate; and
 - (c) The Vice-Provost (Academic Affairs) or designate, provided that the designate holds an academic appointment with the University.
- 2.21 The mandate of the Committee is to:
- (a) Hear appeals from Preliminary Assessment decisions, in accordance with the Procedure;
 - (b) Receive and review the HRCMO's annual report under section 2.25 of this Policy;
 - (c) Provide advice and guidance on potential amendments or revisions to this Policy and the Procedure.
- 2.22 If any member of the Committee is unable or unwilling to fulfill his/her responsibilities under this Policy and the Procedure, or if the subject matter of a Formal Complaint is such that it would be inappropriate for that member of the Committee to review the matter for reason of conflict of interest or any other reason, the HRCMO will ask the President to appoint an alternate to act in place of that member. The alternate may be any person with a direct report to the Vice-President (Administration) or Provost and Vice-President (Academic), or any other employee of the University, who:
- (a) Has skills and/or experience desirable in the circumstances;
 - (b) Would be able to review the Formal Complaint in an unbiased manner; and

- (c) Would not be placed in a conflict of interest.

2.23 Any appointment under section 2.22 must be made with notice to the Complainant.

Role of HRCMO

2.24 The Human Rights and Conflict Management Officer (HRCMO) will:

- (a) Provide advice and guidance to the University Community on how to best implement this Policy and the Procedure;
- (b) Facilitate education and training opportunities for members of the University Community regarding their rights and obligations under this Policy and the Procedure;
- (c) Conduct Preliminary Assessments of Formal Complaints;
- (d) Provide information to both the Complainant and Respondent regarding opportunities and resources available to facilitate Informal Resolution of concerns and, where appropriate, coordinate communications between Complainants and Respondents on the understanding that such communications will not be provided to the Investigator if the matter moves to a Formal Complaint;
- (e) Identify and track trends in matters relating to this Policy and the Procedure, and provide advice and guidance to the administration and the University Community on such trends; and
- (f) Provide advice and guidance on potential amendments or revisions to this Policy and the Procedure.

Annual Report

2.25 The HRCMO will produce and provide an annual report to the Designated Officer and the Committee, outlining:

- (a) De-identified data regarding the number and types of complaints received;
- (b) De-identified data regarding the number and types of Investigations conducted;
- (c) Information regarding observable trends;
- (d) De-identified information regarding particularly important cases;
- (e) De-identified information regarding disclosures of Sexual Assault that have been reported to the HRCMO;
- (f) Information on educational activities; and

- (g) Other relevant information which may further the implementation of the Policy and its Procedures.

2.26 The annual report will be made available to the University Community.

Additional Protections

2.27 Nothing in this Policy or the Procedure is intended to discourage or prevent a member of the University Community, including students and employees, from filing a complaint with the Manitoba Human Rights Commission, or from exercising any other legal rights pursuant to any other law.

2.28 Nothing in this Policy or the Procedure is intended to limit the rights of an employee governed by a collective agreement. If there is any ambiguity or conflict between this Policy or the Procedure, and a collective agreement, the collective agreement will prevail.

Part III Accountability

3.1 The Office of Legal Counsel is responsible for advising the President that a formal review of this Policy is required.

3.2 The Vice-President (Administration) is responsible for the implementation, administration and review of this Policy.

3.3 All members of the University Community are responsible for complying with this Policy.

Part IV Authority to Approve Procedures

4.1 The Vice-President (Administration) may approve procedures, if applicable, which are secondary to and comply with this Policy, including but not limited to:

- (a) A procedure to supplement existing policies, procedures or bylaws, by providing a mechanism for the Investigation of an alleged Breach, including regarding:

- (i) Receipt and review of complaints;

- (ii) The circumstances under which an Investigation should take place;

- (iii) Appointment of investigators;

- (iv) Conduct of an Investigation, in accordance with the principles of procedural fairness and natural justice;

- (v) Respecting the confidentiality of information collected in relation to complaints and Investigations;
 - (vi) Protecting individuals against Reprisal;
 - (vii) Protecting individuals against unfounded allegations of a Breach;
 - (viii) Producing a report at the conclusion of an Investigation; and
 - (ix) Implementing discipline, if necessary.
- (b) Generally defining the responsibility, authority and accountability of members of the University Community under this Policy.

Part V Review

- 5.1 Governing Document reviews shall be conducted every three (3) years. The next scheduled review date for this Policy is September 1, 2019.
- 5.2 In the interim, this Policy may be revised or repealed by the Approving Body if:
- (a) The Vice-President (Administration) or the Approving Body deems it necessary or desirable to do so;
 - (b) The Policy is no longer legislatively or statutorily compliant; and/or
 - (c) The Policy is now in conflict with another Governing Document.
- 5.3 If this Policy is revised or repealed all Secondary Documents, if applicable, shall be reviewed as soon as possible in order that they:
- (a) Comply with the revised Policy; or
 - (b) Are in turn repealed.

Part VI Effect on Previous Statements

- 6.1 This Policy supersedes all of the following:
- (a) all previous Board of Governors/Senate Governing Documents on the subject matter contained herein; and
 - (b) all previous Administration Governing Documents on the subject matter contained herein.

Part VII Cross References

- 7.1 This Policy should be cross referenced to the following relevant Governing Documents, legislation and/or forms:
- (a) [RWLE and Sexual Assault Procedure](#);
 - (b) [Respectful Work and Learning Environment Policy](#);
 - (c) [Definitions of Academic Units Policy](#);
 - (d) [Access and Privacy Policy and Procedure](#);
 - (e) [Records Management Policy and Procedure](#);
 - (f) [Student Discipline Bylaw](#);
 - (g) [Student Non-Academic Misconduct and Concerning Behaviour Procedure](#);
 - (h) [Student Discipline Appeal Procedure](#);
 - (i) [Use of Computer Facilities Policy and Procedure](#);
 - (j) [Violent or Threatening Behaviour Policy and Procedure](#);
 - (k) [Criminal Code](#), RSC 1985, c C-46;
 - (l) [The Human Rights Code](#), C.C.S.M. c. H175;
 - (m) [The Workplace Safety and Health Regulation 217/2006](#).