

UNIVERSITY OF MANITOBA POLICY

Policy:	SEXUAL VIOLENCE
Effective Date:	September 1, 2016
Revised Date:	September 29, 2020
Review Date:	September 29, 2023
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) Articulate the University's Guiding Principles around Sexual Violence;
- (b) Provide a framework for the provision of guidance, assistance and support to members of the University Community who have experienced Sexual Violence or who have received a Disclosure of Sexual Violence;
- (c) Set out a consistent process for responding to a Disclosure or Formal Complaint of Sexual Violence that ensures that:
 - (i) This Policy and the Procedure will be implemented with transparency and fairness;
 - (ii) Those impacted by Sexual Violence will be treated with respect and compassion, as part of a trauma-informed approach that is rooted in Intersectionality and that is culturally sensitive to a person's background, perceptions and experiences;

- (iii) A clear explanation of the process, options available to Complainants, Respondents, and other participants, and potential outcomes of the process are made available through the Office of Human Rights and Conflict Management; and
- (iv) Members of the University Community understand their respective rights and obligations when reporting or responding to Sexual Violence;
- (d) Reduce instances of Sexual Violence through education and training;
- (e) Set out the means by which this Policy will be reviewed and reported; and
- (f) Ensure that the University is compliant with relevant legislation, including *The Human Rights Code* (Manitoba), *The Workplace Health and Safety Regulation* (Manitoba), *The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act*, and *The Advanced Education Administration Act* (Manitoba).

1.2 Guiding Principles:

- (a) Sexual Violence is a significant and systemic social issue that can affect anyone at the University. Anyone can experience Sexual Violence, regardless of a person's social position or position within the University structures, hierarchies, and power relations.
- (b) Some individuals or groups experience Sexual Violence at higher rates and in different ways. Every effort to address Sexual Violence should be grounded in Intersectionality and an understanding that each person's experience will be affected by many factors.
- (c) Sexual Violence does not exist or operate in isolation. Acts of Sexual Violence can also be acts of discrimination. University strategies to address Sexual Violence are therefore informed by broader equity, diversity and anti-discrimination initiatives and goals.

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 or the Procedure, including but not limited to Sexual Violence and Reprisals.

- (b) **"College"** means a Professional College as defined under the Definitions of Academic Units policy.
- (c) **"Complainant"** means the individual or individuals bringing forward a Formal Complaint of a Breach.
- (d) **"Consent"** means the voluntary agreement to engage in physical contact or sexual activity and to continue to engage in the contact or activity. Consent means that all persons involved demonstrate, through words or actions, that they freely and mutually agree to participate in a contact or activity. More specifically:
 - (i) consent must be given at the outset and at all stages of physical contact or sexual activity;
 - (ii) it is the responsibility of the initiator to obtain ongoing consent;
 - (iii) consent can be withdrawn at any time by any participant;
 - (iv) someone who is incapacitated cannot consent;
 - (v) there is no consent where one person abuses a position of trust, power, or authority over another person;
 - (vi) past consent does not imply future consent;
 - (vii) a person cannot give consent on behalf of another person;
 - (viii) silence or the absence of "no" is not consent;
 - (ix) the absence of perceived resistance is not consent; and
 - (x) there is no consent when there is coercion, force, threats, or intimidation towards any person, or where there is fraud or withholding of critical information that could affect a person's decision to consent.
- (e) **"Designated Officer"** means the Vice-President (Administration), or designate.
- (f) **"Disclosure"** means telling someone about an instance of Sexual Violence. For the purpose of this Policy and the Procedures, a Disclosure means telling the Office of Human Rights and Conflict Management. A Disclosure does not initiate an Investigation unless a Formal Complaint is made or the University initiates an Investigation in accordance with the Procedure.

- (g) **"Faculty"** means a Faculty as defined under the Definitions of Academic Units policy.
- (h) **"Formal Complaint"** means a complaint to the Office of Human Rights and Conflict Management 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;
 - (iv) The name of the Respondent;
 - (v) Contact information for the Respondent, if known; and
 - (vi) An indication that the Complainant desires the Formal Complaint to be the subject of an Investigation.
- (i) **"Informal Resolution"** means the resolution of an alleged Breach to the satisfaction of the Complainant and the Respondent, without an Investigation being completed, as per sections 2.23 to 2.32 of the Procedure.
- (j) **"Intersectionality"** means a framework that promotes an understanding that individuals are shaped by interacting social locations and identities (e.g. race, sexuality, gender etc.).
- (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 2.59 of the Procedure.
- (m) **"Office of Human Rights and Conflict Management"** or **"OHRCM"** means the unit appointed by the University of Manitoba to implement this Policy and the Procedure.
- (n) **"Policy"** means this Sexual Violence policy.
- (o) **"Preliminary Assessment"** means the initial review of a Formal Complaint, in accordance with sections 2.36 to 2.41 of the Procedure.
- (p) **"Procedure"** means the Disclosures and Complaints Procedure.
- (q) **"Reprisal"** means any measures taken against a Complainant, Respondent, or any other person because they have asked for advice

regarding this Policy or Procedure, brought forward allegations of a Breach or made a Formal Complaint, cooperated with an Investigation, or rejected a sexual solicitation or advance. Reprisal measures include, but are not limited to:

- (i) Discipline;
 - (ii) Academic penalties (in the case of students);
 - (iii) Demotion;
 - (iv) Termination of employment;
 - (v) Termination of an academic appointment;
 - (vi) Any other measure which significantly adversely affects working conditions or educational experience; and
 - (vii) A threat to take any of the measures referred to above.
- (r) **"Respondent"** means an individual or individuals accused of having caused or contributed to a Breach.
- (s) **"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.
- (t) **"Sexual Assault"** means any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim. Sexual Assault is characterized by a broad range of behaviours that involve the use of force, threats or control towards a person, which makes that person feel uncomfortable, distressed, frightened, threatened, and is carried out in circumstances in which the person has not freely provided Consent, or is incapable of providing Consent.
- (u) **"Sexual Harassment"** refers to one serious incident or a course of objectionable and unwelcome sexual conduct or comments directed at an individual that includes, but is not limited to:
- (i) 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;
 - (ii) Gender-based abusive or unwelcome conduct or comments that would objectively have the effect of creating an intimidating, humiliating, hostile or offensive work or learning environment;
 - (iii) Sexist jokes or remarks, including comments regarding a person's appearance or clothing;

- (iv) Leering, ogling, or other sexually oriented gestures;
 - (v) 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;
 - (vi) Offensive physical contact by a person who knows or ought reasonably to know that the contact is unwanted or unwelcome;
 - (vii) 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
 - (viii) A Reprisal for rejecting a sexual solicitation or advance.
- (v) "**Sexual Violence**" means any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes, but is not limited to, Sexual Assault, Sexual Harassment, stalking, indecent exposure, voyeurism and sexual exploitation. Sexual Violence can occur in many contexts, including in person, in writing, online, on social media, through digital communication or via other technology.
 - (w) "**UMSS**" means the University of Manitoba's Security Services.
 - (x) "**University**" means The University of Manitoba.
 - (y) "**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.
 - (z) "**University Instituted Investigation**" means an Investigation initiated by the Designated Officer in consultation with the OHRCM, pursuant to sections 2.56 to 2.58 of the Procedure.
 - (aa) "**University Matter**" has the same meaning as defined in section 2.3 of the Procedure.

RESPONSIBILITIES OF THE UNIVERSITY AND UNIVERSITY COMMUNITY

University Commitments

- 2.2 The University of Manitoba is committed to maintaining a healthy and safe work, learning, living and social environment for all members of the University Community. The University is therefore committed to:
- (a) Making available and actively promoting programs to educate and train University Community Members on the prevention of and response to Sexual Violence;
 - (b) Encouraging individuals to bring concerns about an alleged Breach to an appropriate authority, and protecting those who bring forward such allegations against Reprisal;
 - (c) Supporting those impacted by Sexual Violence through academic, non-academic, workplace, medical and other supports or accommodations as required;
 - (d) Ensuring a trauma-informed and Intersectional approach to the implementation of this Policy and the Procedure;
 - (e) Ensuring barriers to the application of this Policy are reduced, including that individuals will not be asked to repeat their accounts more than is necessary for the implementation of this Policy or the Procedure;
 - (f) Ensuring that following a Disclosure or Formal Complaint of Sexual Violence, all University Community members are treated with compassion, dignity and respect, and provided with support throughout the process;
 - (g) Responding to Sexual Violence in a manner that minimizes re-traumatization and promotes recovery, empowerment, and self-determination, subject to the limits of confidentiality and the University's community safety obligations as set out in this Policy and the Procedure. This includes providing options to those impacted by Sexual Violence on how to access supports, and allowing them to determine whether or not to proceed with a Formal Complaint process;
 - (h) Providing information and exploring opportunities to engage in Informal Resolution where appropriate, and in matters involving members of a collective bargaining unit, where permissible under collective agreements.
 - (i) Investigating Formal Complaints of Sexual Violence when appropriate, and ensuring that Investigations represent a fair process for all Complainants, Respondents and other participants; that they respect procedural fairness; and where applicable, are in accordance with the collective agreement provisions;

- (j) Respecting the privacy of those impacted by Sexual Violence in accordance with the Procedure;
- (k) Implementing appropriate interim measures that ensure fairness;
- (l) Monitoring and updating University Policies and protocols to ensure that they remain effective and in line with other existing Policies and best practices; and
- (m) Implementing this Policy and the Procedure with transparency and accountability, including applying this Policy to all members of the University Community regardless of a person's social position, or position within the University structures or hierarchies.

University Community Responsibilities

2.3 Promoting a safe work and learning environment is a responsibility of all members of the University Community. The University calls for all members of the University Community especially those in instructional, supervisory, or managerial positions to:

- (a) Practise consent and respect, and create a culture in which consent and respect are foundational principles and practices;
- (b) Bring forward evidence of a Breach of which they become aware to the OHRCM;
- (c) Deal appropriately with allegations regarding Breaches or other violations of this Policy or Procedure;
- (d) Provide reasonable cooperation in an Investigation of a Breach;
- (e) Be aware of their responsibilities and educate themselves as to the expectations and reporting requirements under this Policy and the Procedure; and
- (f) Educate those for whom they are responsible regarding expectations for safe and respectful conduct, including this Policy and Procedure.

EDUCATION, TRAINING AND SUPPORT

Education and Training

2.4 Education is a fundamental aspect of the University's commitment to preventing and addressing Sexual Violence. The University will provide access to coordinated education and training programs pertaining to preventing, responding to, and raising awareness about Sexual Violence. Proactive measures that will be taken by the University will be grounded in the Guiding Principles of this Policy, and

include implementing and actively promoting education, awareness, prevention, and training programs, in multiple fully accessible formats and tailored to multiple audiences.

Sexual Violence Steering Committee

- 2.5 The University will establish an institution-wide committee comprising representatives from various stakeholder groups within the University Community in order to advise the University on issues relating to Sexual Violence, including training programs and educational initiatives.

Supports

- 2.6 The University will communicate and provide resources to support Complainants, Respondents, witnesses, and those affected by Sexual Violence, including online resources with links to on-campus and off-campus supports and resources that may be accessed by members of the University Community.

AUTONOMY IN DISCLOSURE AND/OR FORMAL COMPLAINTS

- 2.7 A person who has made a Disclosure and/or Formal Complaint of Sexual Violence has autonomy in decision-making, and in particular with respect to whom to Disclose, whether to make a Formal Complaint, whether to pursue recourse to the criminal or civil justice systems, and whether to access available supports and accommodations.
- 2.8 Notwithstanding section 2.7, 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 Complainant, 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 Complainant, reasonable efforts will be made to preserve the anonymity of the Complainant. In addition, the Complainant will be notified of the actions the University intends to take in order that the Complainant can work with the University to take any additional safety precautions that may be required as a result of the University's actions.

INVESTIGATIONS AND DISCIPLINE

Investigation

- 2.9 The University will investigate allegations of Sexual Violence in relation to a University Matter in accordance with the Procedure.

Discipline

2.10 Any member of the University Community who breaches this Policy or the Procedure in relation to a University Matter will be subject to discipline under the Procedure.

ANNUAL REPORT

2.11 The OHRCM will produce and provide an annual report to the Designated Officer, outlining:

- (a) Information on activities undertaken to raise awareness and contribute to prevention, including the type of activity and the number of students and staff who attend;
- (b) De-identified data regarding the number and types of Disclosures and Formal Complaints received;
- (c) De-identified data on process factors such as the number and types of Investigations conducted and whether they resulted in a finding of Breach or No Breach;
- (d) Aggregate anonymized data on Complainant and Respondent roles at the University;
- (e) De-identified data on fairness factors such as time to process and the identity of investigators;
- (f) Lessons learned flowing from after-action reviews;
- (g) Information regarding observable trends and commentary on the implementation and effectiveness of the Policy; and
- (h) Other relevant information which may further the implementation of the Policy and its Procedures.

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

ADDITIONAL PROTECTIONS

2.13 The OHRCM will provide Complainants with a clear explanation of the available processes and options. 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, for example, the Winnipeg Police Service, the Manitoba Human Rights Commission, professional regulatory bodies, or from exercising any other legal rights pursuant to any other law.

- 2.14 In addition, 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 Formal Complaints, Disclosures 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) Providing information to appropriate disciplinary authorities, 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 29, 2023.
- 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) Sexual Assault Policy effective September 1, 2016;
 - (b) all previous Board of Governors/Senate Governing Documents on the subject matter contained herein; and
 - (c) 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) [Disclosures and Complaints 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
- (n) *The Advanced Education Administration Act*, C.C.S.M. c. A6.3
- (o) *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175
- (p) *The Personal Health Information Act*, C.C.S.M. c. P33.5