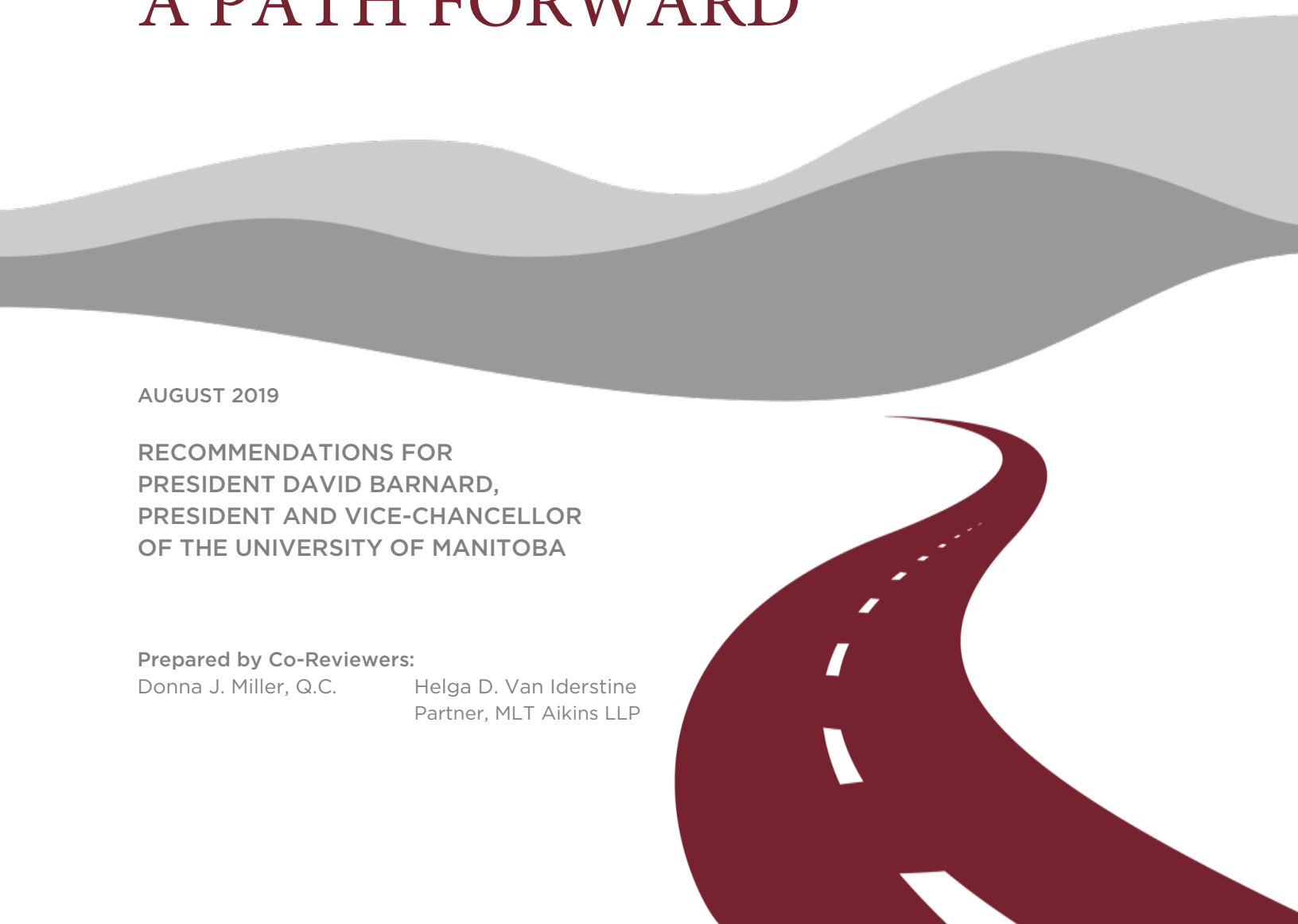


RESPONDING TO SEXUAL VIOLENCE, HARASSMENT & DISCRIMINATION AT THE UNIVERSITY OF MANITOBA: A PATH FORWARD

A decorative graphic at the bottom of the page. It features two wavy, overlapping lines in shades of grey and light grey that sweep across the middle. In the bottom right corner, there is a stylized, winding red path with white dashed lines, resembling a road or a path, that curves upwards and to the right.

AUGUST 2019

RECOMMENDATIONS FOR
PRESIDENT DAVID BARNARD,
PRESIDENT AND VICE-CHANCELLOR
OF THE UNIVERSITY OF MANITOBA

Prepared by Co-Reviewers:

Donna J. Miller, Q.C.

Helga D. Van Iderstine
Partner, MLT Aikins LLP

RECOGNITION & ACKNOWLEDGEMENTS

We wish to recognize the location of our work on Treaty 1 Territory, the original lands of the Anishinaabeg, Cree, Oji-Cree, Dakota and Dene peoples, and on the homeland of the Métis nation. We recognize that colonialism and sexual violence, harassment and discrimination are interconnected, and that effective measures to enhance and foster a safe and secure learning and work environment must begin with a recognition of our nation and community's history to find a way, and clear a path forward, for generations to come.

We also want to acknowledge that our Report builds on the work of many members of the University of Manitoba (UM) community who are committed to making the UM an institution free of sexual violence, harassment and discrimination. We encountered a strong commitment for change from many whom we consulted, and have benefitted from their research and insights on what is working and what needs to be transformed. We particularly want to acknowledge the survivors/victims of sexual violence, harassment and discrimination and thank all those who work directly with them.

This Report would not have been possible without the invaluable assistance from many people, some of whom are part of the UM community and others who work elsewhere in the broader community. Whether it was providing administrative or executive support, or substantive input and feedback, we encountered many talented and dedicated people along the way. We are grateful to each of the following people who helped us in immeasurable ways:

Marcia Anderson
Naomi Andrew
David Barnard
Stefi Baum
Stacey Belding
Sarah Bonnet-Proulx
Karen Busby
Bonnie Campbell
Tannis Campbell
Samantha Carruthers
David Collins
Catherine Cook
Tanis Crump
Christine Cyr
John Danakas
Greg Fleming
Shelley Foster
Carolyn Frost
Mark Gabbert
Sharmaine Gagnon
Jason Gisser
Susan Gottheil
Jackie Gruber
Lisa Halket

Jim Hare
Diane Hiebert-Murphy
Eric Jacobsohn
Rick Jansen
Destiny Jaworski
Digvir Jayas
Inga Johnson Mychasiw
John Kearsey
Andrew Konowalchuk
Mario Lebar
Joel Lebois
Jeff Leclerc
Daniel Leonard
Bev Lockie
Roberta Marsh
Kerry McQuarrie Smith
Karen Meelker
Todd Mondor
Joanne Mooney
Jane Morgan
Janet Morrill
Carla Navid
Carl Neumann
Lisa Park

Charlene Paquin
Laurie Pasieczka
Tracey Peter
Brian Postl
Janice Ristock
Pam Roberts
Randy Roller
Jakob Sanderson
Anjali Sandhu
Kelsey Schade
Alan Scott
Marilyn Shantz
Darlene Smith
Richelle Starke
Don Stewart
Jeff Taylor
Hanh Tran
Jennifer Trotman
Michael West
Val Williams
Marni Yasumatsu
Lynn Zapshala-Kelln

We also wish to record our gratitude to the other members of our team: Sarah Carr, Associate, MLT Aikins LLP, and Richard Bars, Student-at-Law, MLT Aikins LLP, both of whom played a central role in the research and writing of this Report. Their time, effort and commitment have greatly contributed to ensuring that the building of a safe and secure learning and work environment will be significantly advanced as a result of our collective efforts.

Donna J. Miller, Q.C., and Helga D. Van Iderstine
June 2019

TABLE OF CONTENTS

INTRODUCTION & EXECUTIVE SUMMARY	9
A. Introduction and Mandate	9
B. Phases of our Work	10
C. Preliminary Observations	11
D. Overview of the Report	12
E. List of Recommendations	13
PART 1 – AN OVERVIEW OF THE CURRENT SYSTEM.....	21
Chapter 1: Law and Policies on Sexual Violence, Harassment & Discrimination.....	23
A. Introduction and Background.....	23
B. Manitoba Legislation on Sexual Violence, Harassment, and Discrimination	30
C. The Current & Proposed Changes to UM Policies	31
D. The Current Policies at Other Post-Secondary Institutions	38
Chapter 2: The Current Practices.....	45
A. Introduction	45
B. The Intake Process	45
C. Anonymous Complaints.....	45
D. Formal Complaints Process	48
E. Informal Complaints Process	57
F. Other Mechanisms of Support and Assessment	58
G. Ancillary Issues Flowing from a Formal Complaint & Investigation.....	60
Chapter 3: The Current Response to Prevention.....	65
A. Introduction	65
B. Equity, Diversity and Inclusion (EDI).....	65

C. Education and Programming Responsive to Sexual Violence and Discrimination	71
D. Prevention	73
Chapter 4: A Synthesis of the Legal Framework	77
A. Introduction	77
B. Background	77
C. UM Obligations in an Investigation	82
D. Current and Past Investigations Process and Interim Measures	84
E. Privacy and Confidentiality	85
F. References	87
PART 2 – DISCUSSION, ANALYSIS AND RECOMMENDATIONS.....	89
Chapter 5: A Comprehensive Prevention Strategy	91
A. Introduction	91
B. Overall Framework.....	92
C. Respect-Trust-Diversity-Inclusion.....	93
D. Education and Prevention	96
E. Clear Rules and Clear Consequences.....	101
F. Distinct Roles and Responsibilities for a Safe and Secure Learning and work Environment	113
G. Shared Accountabilities for a Safe and Secure Learning and Work Environment	115
Chapter 6: A Fair, Timely and Effective Framework.....	117
A. Introduction	117
B. The Complexity of the Structure and Delivery Model	117
C. Sexual Violence Resource Centre.....	118
D. Bringing Disclosures Forward.....	120
E. Preliminary Observations	121
F. Limitation Periods for Formal Complaints	124

G. The Timeframe for Investigations	126
H. Trauma Training for Internal and External Investigators.....	127
I. Addressing the Legally-Imposed Limitations on Transparency	128
J. The Publication of “Lessons Learned” from After-Action Reviews.....	129
K. Our Observations on the Investigative Process	129
L. Best Practices on Interview Questions and References.....	130
M. Clarifying the Respective Mandate and Roles of OHRCM and HR	132
N. Ongoing Review.....	132
APPENDIX A	133
Terms of Reference.....	133
APPENDIX B	137
Glossary of Terms	137
Acronyms	137
Definitions	138
APPENDIX C	141
Selected Bibliography	141
APPENDIX D	147
Summary of Current Manitoba Laws Governing the Three Areas of our Mandate	147
APPENDIX E.....	151
List of Reporting Options and Post-Incident Supports Available to UM Students and Employees	151

INTRODUCTION & EXECUTIVE SUMMARY

A. INTRODUCTION AND MANDATE

It should be obvious by now that sexual violence, harassment and discrimination have no place anywhere, especially a university community. This Report comments on how the UM community has addressed these issues in the past and provides recommendations for the path forward.

On November 2, 2018, we received the Terms of Reference from the UM asking us to undertake this review of their current practices relating to both the prevention of, and the response to, sexual violence, harassment and discrimination. While the specific Terms of Reference are set out in Appendix A to this Report, the substance of our mandate is three-fold:

1. **Prevention:** To review the current practices relating to the prevention of sexual violence, harassment and discrimination and to identify gaps and best practices towards preventing them from occurring.
2. **Process:** To review the current processes for responding to sexual violence, harassment and discrimination and to identify gaps and best practices towards establishing a fair, timely and effective process for responding to them.
3. **Consequences:** To review the current practices relating to the consequences that may flow from a complaint and investigation relating to sexual violence, harassment or discrimination and specifically to identify gaps and best practices on:
 - (a) interim measures while an investigation is on-going;
 - (b) the content of employment agreements, letters of reference and communication with potential future employers; and
 - (c) public communication relating to an investigation, the findings of an investigation and any disciplinary consequences.

We were instructed by President David Barnard that the hallmark of our Review was intended to be its independence. Further, President Barnard told us that the focus of our review should be identifying those measures that would prevent, or improve the UM's responses to, sexual violence, harassment and discrimination *where these are experienced in the context of an imbalance of power or an abuse of power relationship*.

Our directed focus on relationships involving an imbalance of power or an abuse of power means that our primary focus in this Report is about the UM's faculty/student relationship and, to a lesser degree, relationships between staff involving power differentials. The focus of this Report on an imbalance of power reflects much of the current thinking on the topics of sexual violence, harassment and discrimination.

An American article refers to research about the “harasser” in the following terms:¹

[W]hile there is comparatively limited research on the characteristics of the harassers (e.g., lack social conscience, engage in immature, irresponsible, manipulative, and exploitative behaviors), what does exist leads toward understanding the harasser’s motives as aggression, not seduction. Aggressive, overbearing, and exploitive behaviors would fall into the domain of the abuse of power.

Another writer framed harassment in the following manner:²

Once we acknowledge that most harassment does not take the form of sexual overtures, it becomes clear that harassment is not and cannot be primarily a means of expressing sexual desire or sexual domination. Most of the time, harassment is not about securing sexual gratification; it’s about putting women (and men who are “not man enough”) down, reinforcing the existing gender order, and reaffirming threatened social identities.

These descriptions of harassment make it clear that the concepts of sexual violence, harassment and discrimination are interrelated, with discrimination and harassment standing alone at one end of the continuum, and sexual violence, including elements of both discrimination and harassment, at the other. In this Report we use the term “sexual violence” to include sexual harassment. The full definitions of sexual violence, harassment and discrimination, as used in this Report, are set out in the Glossary of Terms (Appendix B), along with other information.

B. PHASES OF OUR WORK

The Review was undertaken over the course of nearly seven months, from November 2018 to early June 2019. The work involved primarily three phases:

- The first phase (November to early January) involved research and an environmental scan of Canadian and American published work on sexual violence, harassment and discrimination, to further our understanding of the issues before us and the range of challenges facing most, if not all, universities today in the prevention of sexual violence and the enhancement of a respectful workplace as well as a safe and secure learning environment. A selected bibliography is found in Appendix C.
- The second phase (January to May) involved conversations on the ground with members of the UM community from the two main campuses. We interviewed UM student leaders, academics, UMFA representatives, senior administrators, Deans and Associate Deans, Human Resource (HR) personnel, Security Services (UMSS) and many who work directly with survivors/victims of sexual violence, harassment and discrimination. We also interviewed officials from other post-secondary institutions in Manitoba including University of Winnipeg,

¹ James Campbell Quick & M. Ann McFadyen, “Sexual Harassment: Have We Made any Progress?” (2017) 22:3 *J Occupational Health Psychology* 286 at 295.

² Vicki Schultz, “Reconceptualizing Sexual Harassment, Again” (2018) 128 *Yale LJ* (2018) 22 at 45.

University of Brandon, Red River College and Assiniboine Community College. We are grateful to all of those who took the time to share their perspectives and insights on what is working and what could be improved.

- The final phase (May to June) involved further consultations, the development of our reform proposals and the preparation and writing of our final report.

C. PRELIMINARY OBSERVATIONS

A few preliminary observations should be kept in mind regarding our work.

First, we recognize and acknowledge the circumstances that have given rise to this Review. This Report deals with matters that can involve, and have involved, serious harm to survivors/victims. How can we avoid repeating the failures of the past? That is the primary question explored in this Report. And when the system fails and a complaint of sexual violence, harassment or discrimination is made, how can we ensure that – within the limits imposed by law – the process is framed in as fair, timely and effective a manner as possible? And how do we ensure that systems are in place so that when a breach has been found and the respondent wishes to leave and find new employment, “pass the harasser” practices are avoided?

Second, sexual violence, harassment and discrimination are regrettably part of an international phenomenon, far larger than the UM, or even Manitoba or Canada. In the wake of the burgeoning “Me Too” and “Time’s Up” movements, workplaces and post-secondary institutions across Canada and the United States are almost universally grappling with these issues, particularly that of sexual violence. In fact, there were noticeable shifts during the course of our work impacting the pace and momentum for change. In January, the UM Campus Climate Survey on Sexual Violence: A Final Report was completed.³ In March, Concordia University released its Report on Climate Review of the Department of English.⁴ In April, McGill University released its new policy banning sexual or romantic relationships between teaching staff and students. These and other touchstones helped us immeasurably in our research and analysis.⁵

³ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019).

⁴ Pierrette Rayle, Alain Reid & François Rabbat, “Climate Review of the Department of English of Concordia University: A Path Forward” (March 7, 2019), online: Concordia University <<http://www.concordia.ca/about/administration-governance/office-provost-vp-academic-affairs/climate-review/report.html>>.

⁵ Another helpful report is *The F/P/T Report of the CCSO on Access to Justice for Adult Victims of Sexual Assault*, see Coordinating Committee of Senior Officials, “Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims” (27 December 2018), online: Canadian Intergovernmental Conference Secretariat <<http://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/>>.

Third, while we set out the thrust of our mandate above, it is important to also highlight what this Report is *not* about. This Review and our Report are not about casting blame on anyone. In fact, our mandate does not extend to the review of past complaints or files to draw conclusions that are complaint-specific. While we were given confidential access to a few investigative reports and related documents, this was for us to understand how the current process works and to assess how it can best be improved. We hope that the conclusions and recommendations that we make in this Report will better position the UM to prevent, or at least significantly diminish, the incidences of sexual violence, harassment and discrimination and to be more effective and responsive to complaints when they regrettably arise.

D. OVERVIEW OF THE REPORT

The first three Chapters of this Report set out the details of the current policies, processes and prevention practices governing sexual violence, harassment and discrimination at the UM:

- Chapter 1 describes the provincial legislation that governs the three topics of sexual violence, harassment and discrimination and the current UM policies governing these three areas and summarizes the policies of post-secondary institutions elsewhere in Manitoba, along with a select overview of policies from other universities across North America.
- Chapter 2 provides an overview of the current practices at the UM from the beginning to the end of the complaint processes governing sexual violence, harassment and discrimination.
- Chapter 3 consists of an overview of the current practices at the UM to prevent or diminish the incidences of sexual violence, harassment and discrimination focusing on current practices relating to equity, diversity and inclusion; action plans to develop understandings relating to reconciliation with Indigenous peoples; and education programming to enhance engagement on responding to sexual violence, harassment and discrimination across the UM.

In Chapter 4, we respond to the UM's request that our Report include a synthesis of the legal framework in which the UM operates, referencing the elements described in Chapters 1 to 3. While the UM has authority to develop its own policies, processes and prevention strategies with respect to sexual violence, harassment and discrimination, its discretion is limited by a number of factors, including the legislation, collective agreement language, other contractual obligations and privacy and confidentiality concerns. Any proposed changes must consider these constraints on the UM's capacity to move forward.

Chapters 5 and 6 contain the recommendations for change that we believe need to be implemented to strengthen and broaden the current prevention strategy and to improve the framework for responding to sexual violence, harassment and discrimination when these regrettably occur. The recommendations in these Chapters build upon the good work that is already underway at the UM, which we refer to in Chapters 1 to 3.

Chapter 5 is a cornerstone of the Report, proposing changes to improve the current practices to prevent or diminish the incidences of the three topics of our mandate. Unless we address the underlying conditions that foster sexual violence, harassment and discrimination in the first place, real progress on diminishing these problems will not take place. We believe that this holistic approach of setting out a comprehensive prevention framework is essential for a successful response. Chapter 5

also includes recommendations pertaining to policy changes within our mandate so that the policies are clear, and contain clear consequences for breaches.

Chapter 6 identifies our recommendations on improving the framework for ensuring that, when an incident of sexual violence, harassment or discrimination does arise, the UM's response is fair, effective and timely. This is the companion piece to Chapter 5, setting out structural changes we would like to see implemented, along with some changes to improve the process to enhance its overall effectiveness.

To conclude this Executive Summary, we would like to recognize the UM for taking this initiative. Not every institution seizes the opportunity to ask for independent, external advice relating to areas where it has been publicly vulnerable. President Barnard's only overall direction to us was "to write the Report that you think needs to be written." The real work, of course, lies ahead, and the true test will be what approach the UM takes to this Report and ultimately what changes it makes in light of the recommendations we have put forward.

E. LIST OF RECOMMENDATIONS

The 43 Recommendations that we make in this Report are reproduced below in the order of the Chapters in which they appear. We recommend the following:

A COMPREHENSIVE PREVENTION & EDUCATION STRATEGY (CHAPTER 5)

Recommendation 1

The UM establish an Implementation Committee to be chaired by a Vice-President designated by the UM's President, with other members of the UM community selected who, because of their background or expertise, can contribute significantly to the work of the Implementation Committee. It would be the responsibility of the Committee to oversee the implementation of the recommendations in this Report, and related matters.

Recommendation 2

In light of the importance and urgency of the issues addressed in this Report, we recommend that the Committee be set up as soon as practically possible.

Recommendation 3

The comprehensive prevention strategy at the UM consist of the following elements:

1. *Respect-Trust-Diversity-Inclusion*: the values that are reflected in measures such as EDI, Reconciliation and Indigenous Engagement, actively supported and nurtured.
2. *Education and Prevention*: continuous learning involving evidence-based programming that is appropriately timed and of sufficient dose; plus, preventative measures to encourage early and prompt responses.

3. *Clear Rules with Clear Consequences*: clear community-wide norms to guide behaviour, with clear consequences for breaches of behaviour.
4. *Clear Understanding of Respective Roles*: in supporting a safe and secure learning and work environment.
5. *Shared accountabilities*: by all members of the UM community.

Recommendation 4

The UM appoint a widely-respected senior leader from the UM as a Champion of Equity, Diversity and Inclusion (EDI). This person would work with the Director of EDI (Faculty of Health Sciences), the Diversity and Inclusion Consultant in HR, representatives from different faculties, and other staff to help identify a series of initiatives to enhance equity, diversity and inclusion throughout the UM.

Recommendation 5

The model developed at the Faculty of Sciences to appoint an existing member of the faculty to assume new duties relating to EDI be adopted by other large faculties. The model could be adapted to smaller faculties by having one part-time appointment serve several faculties or by reducing the expected workload of an appointee in a single small faculty.

Recommendation 6

The UM develop and adopt a university-wide EDI policy to identify foundational principles, with the Max Rady College of Medicine EDI Policy serving as a guide.⁶

Recommendation 7

The UM adopt a more robust plan to enhance diversity at the university-wide level based upon the good work being done to enhance diversity at the Canada Research Chairs (CRC) levels. Further, we recommend that the university-wide plan seek to address the lack of diversity in all fields with specific attention to closing the gap with respect to Indigenous peoples.

Recommendation 8

The Rady Faculty of Health Sciences Truth & Reconciliation Commission (TRC) Action Plan be used as a resource to help launch conversations elsewhere on campus to help foster a safe and respectful learning environment free from racism, and enhance understandings between Indigenous peoples and non-Indigenous members of the UM community.

⁶ Chapter 5.C.1. Once the Rady Faculty of Health Sciences EDI Policy is finalized, it could serve as the guide for a university-wide EDI policy.

Recommendation 9

The Bringing in the Bystander (BITB) course, an evidence-based peer-facilitated program to prevent sexual violence among students, which is led by Student Support, receive further funding to keep pace with the needs and the demand for this programming.

Recommendation 10

The UM develop a plan to launch the evidence-based Sexual Assault Resistance program for UM women, prioritizing the training for those living in student residences on campus.

Recommendation 11

After-action reviews be implemented at the UM for sexual violence, harassment and discrimination cases to enhance learning and best practices among those who professionally respond to sexual violence, harassment and discrimination cases.

Recommendation 12

Faculties arrange for and take further ownership in organizing programs that are needed for their respective members. The current work of the Vice-Provost (Academic) and her *ad hoc* working group is an example of a model of how to customize learning and develop more ownership at the faculty level around respectful learning and work environment and sexual violence to better reflect the needs of particular faculties and units.

Recommendation 13

The UM develop and launch Indigenous cultural training for members of the UM community. Further, we recommend that an on-line training course to enhance Indigenous cultural training modelled on the MICST training course at the Faculty of Health Sciences be developed and implemented to help open up the dialogue on anti-Indigenous racism, and individual and systemic bias.

Recommendation 14

As a member of U15, the UM seek opportunities to discuss, develop and launch research projects to evaluate and ultimately enhance best practices relating to the prevention of sexual violence, harassment and discrimination, including racism.

Recommendation 15

The “Speak-Up Button” initiative and website at the Max Rady College of Medicine be adapted for use elsewhere across the UM.

Recommendation 16

The Model of Escalating Behaviour successfully used at the Max Rady College of Medicine be adapted for use elsewhere across the UM. The model would be used in conjunction with advice from HR.

Recommendation 17

Deans play an important role in making themselves aware of areas that may require their early attention and informal intervention. Accordingly, we recommend that Deans have early discussions, provide guidance and consider remedial measures, where appropriate.

Recommendation 18

The UM Board of Governors adopt a policy banning intimate or sexual relationships between teaching staff and the students that they supervise. “Teaching staff” includes every person delivering any component of an academic program (faculty member, a sessional employee, an academic appointment, teaching and research assistants), librarians and coaches and coaching assistants of UM athletic teams.

Recommendation 19

The policy would apply to all students of the UM including undergraduate, professional and graduate students.

Recommendation 20

The policy set out clear consequences for staff who are governed by the policy and do not adhere to it, involving at least suspension without pay.

Recommendation 21

The preamble to the UM Sexual Violence Policy acknowledge that while sexual violence affects all members of the UM community, sexual violence and its consequences may disproportionately impact those members who experience intersecting forms of systemic discrimination on such grounds as, for example, Indigenous identity, disability, ethnicity, racialization, sexual orientation and gender identity and expression. Further, we recommend that the preamble acknowledge that this principle of intersectionality⁷ should be reflected in how trauma-informed services are delivered, and that they should be delivered in a manner that is culturally sensitive to a survivor’s/victim’s background, perceptions and experiences.

Recommendation 22

The Sexual Violence Policy contain a provision, which clarifies that consent cannot occur where a person is rendered incapacitated by alcohol or drugs.

⁷ *This is what is meant by the principle of intersectionality, namely, that many of us have multiple aspects of identity that together creates “something unique and distinct from any one form of discrimination standing alone.” Intersectionality means approaching and responding to an individual on the basis of the confluence of their different identities. See Chapter 5.E.2.a for a more detailed description, with sources.*

Recommendation 23

The Sexual Violence Policy contain a provision which recognizes that some individuals may be hesitant to come forward to disclose or report sexual violence because they were under the influence of alcohol or drugs at the time the sexual violence occurred. Further, we recommend that the Policy state that the UM will provide the survivor/victim with supports and information about disclosing and reporting regardless as to whether alcohol or drugs was used when the sexual violence occurred and that no disciplinary consequences for violations of UM policies for alcohol or cannabis use will be imposed on a person acting in good faith who makes a disclosure or report of sexual violence.

Recommendation 24

Relationships between UM employees involving power differentials continue to be managed under the Conflict of Interest Policy and the recent Guide on “Relationships between University Employees Involving Power Differentials”.

Recommendation 25

The Guide on “Relationships Between University Employees Involving Power Differentials” be amended to require disclosure within two business days of the conflict of interest arising. Further, we recommend that there be clear consequences if the disclosure and/or timeframe are not adhered to.

Recommendation 26

The UM institute a regular annual process for each employee to review and update their conflict of interest declarations in writing, which would be approved by their supervisor. Further, we recommend that this process be incorporated into the annual performance review done for each UM employee.

Recommendation 27

All members of the UM community understand and actively fulfill their particular and distinct role in preventing sexual violence, harassment and discrimination from arising, and building a safe and secure learning and work environment.

Recommendation 28

The annual performance review templates be revised to include questions similar to the ones we have identified in our Report relating to what activities have been undertaken during the past year to enhance a safe and secure learning and work environment at the UM.

A FAIR, TIMELY AND EFFECTIVE FRAMEWORK (CHAPTER 6)

Recommendation 29

The UM establish a Sexual Violence Resource Centre at the Fort Garry campus.

Recommendation 30

The Centre would serve as a single point of contact for all members of the UM community affected by sexual violence. It would be the “central hub”, helping survivors/victims to navigate the sexual violence process, providing information on available mechanisms of support, ensuring that there is appropriate follow-up. The Centre would also help to facilitate the broader coordination among the multiple UM offices delivering services to survivors/victims.

Recommendation 31

The Centre would be university-led with a focus on supporting students but with services that are available to the wider UM community. We recommend that the Centre be centrally located on the Fort Garry campus and located within a larger building and that it maintain anonymized aggregate data on the number and types of inquiries it receives. We further recommend that the development of a more detailed mandate, along with a plan to design and staff the Centre, begin as soon as possible and that the UM provide updates to the UM community on progress relating to its launch.

Recommendation 32

The UM adopt a policy that would require anyone in a supervisory or management position at the UM who receives a disclosure of sexual violence to document this in a form to be sent to the Office of Human Rights and Conflict Management (OHRCM). Further, we recommend that the UM form include a section to be completed for anonymous disclosures.

Recommendation 33

The UM continue to have available a formal complaints process for the redress of sexual violence, harassment and discrimination at the UM.

Recommendation 34

The current practice within the OHRCM and the Indigenous Student Centre of using mediation, restorative justice and alternative measures to repair harm to the survivor/victim in appropriate cases be encouraged.

Recommendation 35

The limitation period contained in the current RWLE and Sexual Assault Procedure be removed entirely and a clear statement encouraging early reporting and why this is desirable be substituted.

Recommendation 36

There should be no changes to the current timeframe for completing an investigation where a formal complaint is filed, but we recommend that the RWLE and Sexual Assault Procedure impose an obligation on OHRCM “to at all times strive to oversee the completion of an investigation within a timeline of no more than 90 working days.”

Recommendation 37

The UM require that its internal and external investigators have trauma-based investigation training with a goal of having all of its investigators trained. Recognizing that there is a small pool of experienced investigators in Manitoba, it may be necessary to implement this recommendation over a period of time so that on-going investigations and those immediately pending occur without unreasonable delay.

Recommendation 38

The UM clearly identify its policy with respect to the sharing of the investigation report and outcomes. At minimum, where a breach has been found, we recommend that the survivor/victim be told generally that appropriate education and/or disciplinary steps have been taken and, further, advised of any conditions or measures that relate specifically to the survivor's/victim's safety.

Recommendation 39

Any “lessons learned” flowing from “after-action reviews” (Recommendation 11) be published in the OHRCM annual report to enhance transparency and public communication on issues relating to sexual violence, harassment and discrimination. Further, if an after-action review identifies issues associated with policy interpretation, this could instigate a policy review addressing the relevant issues.

Recommendation 40

The UM implement a post-investigation review with a goal of reviewing investigation reports over the course of a number of years to identify any lessons learned and to determine if any trends or common issues can be discerned.

Recommendation 41

The UM enhance the training provided by HR to faculties by identifying common best practices relating to hiring, including guidance on interview questions and asking for and providing employment references.

Recommendation 42

The UM identify and communicate to the UM community a clear understanding of the delineation of the respective responsibilities of the OHRCM and HR with respect to sexual violence, harassment and discrimination.

Recommendation 43

A follow-up review be conducted – whether by an independent review body or members of the UM community – in five years' time to assess the degree of success achieved in preventing or significantly diminishing the actual incidence of sexual violence, harassment and discrimination and in assessing how fair, timely and effective the framework is in responding to disclosures and complaints of sexual violence, harassment and discrimination, and to make further recommendations for improvement.



PART 1 – AN OVERVIEW OF THE CURRENT SYSTEM

CHAPTER 1: LAW AND POLICIES ON SEXUAL VIOLENCE, HARASSMENT & DISCRIMINATION

A. INTRODUCTION AND BACKGROUND

In this Chapter, we summarize the most recently available data on UM students and teaching staff. What then follows is a summary of the UM policies and procedures on sexual violence, harassment and discrimination along with a summary of recently proposed policies and procedure for the UM. As will be apparent from this review, several intersecting UM policies impact sexual violence, harassment and discrimination.

We close this Chapter with a review of the policies found at other post-secondary institutions in Manitoba and elsewhere.

1. THE UNIVERSITY OF MANITOBA (UM) COMMUNITY

The UM is located primarily on two campuses in Winnipeg (Fort Garry and Bannatyne), with faculties, colleges, and schools ranging widely in size and composition.

The growth in the size and diversity of the student body during the last few decades has been significant.

The total number of students who were enrolled for studies in the Winter 2019 Academic Term was 28,863 students.⁸ For comparison purposes, in 1981 the total student enrollment was 20,064, meaning that the size of the student body has increased 44% during those intervening years.⁹ Of the total number of students in Winter 2019, 85% (24,448) were enrolled in undergraduate studies, while 12% (3,681) were in graduate studies, and 3% (734) in Postgraduate Medical Education. More than 350 athletes participate in nine sports as part of Bison Sports.¹⁰

In terms of gender diversity, for the Winter 2019 Academic Term, 53% (15,339) of the students were identified as female while 47% (13,524) were identified as male.¹¹ This ratio reflects a consistent trend

⁸ Office of Institutional Analysis, *Student Enrolment Report (Winnipeg: University of Manitoba, Winter 2019)*.

⁹ Source: Executive Director, Office of Institutional Analysis. The Executive Director points out that the 1981 report numbers were generated at December 1st (not November 1st as is the current practice) and classified as Winter Session.

¹⁰ University of Manitoba, “Fact and Figures Athletics and Recreation”, online: University of Manitoba <<http://umanitoba.ca/about/factandfigures/#athletics-and-recreation>>.

¹¹ Office of Institutional Analysis, *Student Enrolment Report (Winnipeg: University of Manitoba, Winter 2019)*.

at the UM of female-identifying students outweighing their male counterparts that has been ongoing since 1988. We note that the Executive Summary of the Spring 2019 UM ACHA-NCHA II Report (the NCHA II Report)¹² indicates that 2.1% of respondents identified as non-binary. Currently, the data reporting of the Office of Institutional Analysis at the UM does not reflect the number of students who may wish to self-identify as non-binary, or transgender.

Of the respondents to the NCHA II Report, the majority of students identified as heterosexual (87.5%), and a majority also identified as “White” (58.3%). However, the student body is constituted by those who self-identify across various groups.

¹² American College Health Association. *American College Health Association-National College Health Assessment II: University of Manitoba Executive Summary Spring 2019*. Silver Spring, MD: American College Health Association; 2019.

Demographics and Student Characteristics ¹³			
Age:		Students describe themselves as:	
18-20 years:	36.4%	Aboriginal:	7.3%
21-24 years:	31.8%	Arab:	0.6%
25-29 years:	17.6%	Black:	10.2%
30+ years:	14.2%	Chinese:	5.1%
		Filipino:	2.5%
		Japanese:	0.8%
Gender:		Korean:	1.0%
Female:	62.0%	Latin American:	2.2%
Male:	35.9%	South Asian:	9.7%
Non-binary:	2.1%	Southeast Asian:	2.8%
		West Asian:	1.9%
Student status:		White:	58.3%
1 st year undergraduate:	23.2%	Multiracial:	2.2%
2 nd year undergraduate:	21.6%	Other:	2.2%
3 rd year undergraduate:	16.4%		
4 th year undergraduate:	10.1%	International student:	
5 th year undergraduate:	7.6%	International:	25.1%
Graduate or professional:	17.7%		
Not seeking a degree:	0.8%	Students describe themselves as:	
Other:	2.5%	Asexual:	1.1%
		Bisexual:	6.2%
Full-time student:	88.4%	Gay:	1.0%
Part-time student:	10.8%	Lesbian:	0.4%
Other:	0.8%	Pansexual:	1.1%
		Queer:	0.6%
Relationship status:		Questioning:	1.1%
Not in a relationship:	46.9%	Straight/heterosexual:	87.5%
In a relationship but not living together:	30.6%	Another identity:	1.0%
In a relationship and living together:	22.5%		
		Housing:	
Marital status:		Campus residence hall:	10.1%
Single:	78.7%	Fraternity or sorority house:	0.0%
Married/partnered:	17.6%	Other university housing:	1.5%
Separated/divorced/other:	3.8%	Parent/guardian home:	28.1%
		Other off-campus housing:	43.8%
Physical activity:		Other:	16.5%
<30 minutes:	33.1%	Participated in organized college athletics:	
30-60 minutes:	25.5%	Varsity:	3.4%
61-90 minutes:	15.0%	Club sports:	6.7%
91-150 minutes:	12.2%	Intramurals:	11.5%
>150 minutes:	14.2%		
Member of social fraternity or sorority:			
Greek member:	0.7%		

As of November 1, 2018, a total of 2,516 students were registered as self-identified Canadian Indigenous Students, comprising 8.5% of the total student population at that time.¹⁴ Canadian Indigenous Students represented 8.9% of the undergraduate student population and 6.8% of the graduate student population. In the Postgraduate Medical Education program, Canadian Indigenous

¹³ American College Health Association. *American College Health Association-National College Health Assessment II: University of Manitoba Executive Summary Spring 2019*. Silver Spring, MD: American College Health Association; 2019.

¹⁴ Office of Institutional Analysis, *Canadian Indigenous Students by Faculty/College/School (Winnipeg: University of Manitoba, Fall 2018)*.

Students represented 3.3% of the student body. The respondents to the NCHA II Report who self-identified as Aboriginal were 7.3%.

As of November 1, 2018, 21,250 of the students enrolled were Canadian citizens, while 2,697 students were Permanent Residents.¹⁵ A total of 5,589 International Students were enrolled at that time, primarily represented by residents of countries in the continents of Asia (3,202) and Africa (1,519). For comparison purposes, the number of International Students in 1981 was 773, meaning that there has been a six-fold increase in the number of International Students at UM in those intervening years.¹⁶ Proportionately, the most recently available figures suggest that approximately 19% of UM students are International Students while in 1981, International Students comprised approximately 4% of the total student population.

In terms of the age, the following chart represents the mean and median ages of new students coming into first-year programs (i.e., University 1 and Direct Entry admission to a Faculty) as well as the mean and median age of full-time undergraduate students at the UM.¹⁷

	First-year undergrads	Full-time undergrads
Median age	18	21
Mean age	18.9	21.7

Note, these numbers do not include those students (and there are a number of them) that transfer to UM with prior post-secondary experience.

As at October 1, 2017, there were 679 full-time teaching staff members identified as male, with 432 female counterparts.¹⁸ While females represent 75% of Lecturers, and 50% of Assistant Professors, their male counterparts represent 56.4% of those ranked as Associate Professor, and 74.0% of those ranked as full Professors. Female identified employees represent 63.5% of Instructors, and 75% of Academic Librarians.¹⁹

The UM currently tracks designated group participation in employment categories and these figures are set out later in our Report.²⁰

¹⁵ Office of Institutional Analysis, *Students by Citizenship* (Winnipeg: University of Manitoba, Fall 2018).

¹⁶ Source: Executive Director, Office of Institutional Analysis. The Executive Director points out that the 1981 report numbers were generated at December 1st (not November 1st as is the current practice) and classified as Winter Session.

¹⁷ Source: Vice-Provost, *Integrated Planning and Academic Programs*.

¹⁸ Office of Institutional Analysis, *Full-Time Teaching Staff by Age, Rank, and Gender* (Winnipeg: University of Manitoba, Fall 2017).

¹⁹ Office of Institutional Analysis, *Full-Time Instructors and Academic Librarians by Age and Gender* (Winnipeg: University of Manitoba, Fall 2017).

²⁰ Chapter 3.B.2.

2. INCLUSION AND DIVERSITY

The UM has implemented various diversity initiatives to promote an inclusive university community. These include the HR Diversity and Inclusion Strategy,²¹ the Employment Equity Policy,²² and the Accessibility Policy.²³ The UM has also implemented a UCount! program, which encourages faculty and staff to self-declare membership in particular groups including Indigenous peoples, racialized persons, people with disabilities, and people of all gender identities and sexual orientations.²⁴ Another example is UMQueer, a group of faculty, staff, and students who advocate for diversity and inclusion.²⁵ The UM is also home to the International Centre, which provides specialized services to international students and faculty members.²⁶

A number of programs have been implemented to support Indigenous representation and achievement within the UM community. Examples include:

- Migizii Agamik (Bald Eagle Lodge), located on the Fort Garry campus, which houses the Indigenous Student Centre, the Access and Aboriginal Focus Programs, Indigenous Engagement,²⁷ and the UM Aboriginal Students Association.²⁸
- The Gaa wii ji'i diyaang Council, originally a working group formulated in support of the Indigenous Achievement strategic planning process, now includes 20 members of the UM community, both Indigenous and non-Indigenous, working to “create a just community through relationship building, education, advocacy, and support of Indigenous Achievement.”²⁹
- Within the Rady Faculty of Health Sciences, Ongomiizwin was launched as the Indigenous Institute of Health and Healing in 2017.³⁰

²¹ University of Manitoba Human Resources Department, “Diversity and Inclusion Strategy” online: University of Manitoba <http://umanitoba.ca/admin/human_resources/equity/about_us.html>.

²² University of Manitoba, “Governing Documents: Staff” online: University of Manitoba <http://umanitoba.ca/admin/governance/governing_documents/staff/311.html>.

²³ University of Manitoba, “Accessibility Policy” (1 September 2017), online: University of Manitoba <http://umanitoba.ca/admin/governance/media/Accessibility_Policy_-_2017_09_01.pdf>.

²⁴ University of Manitoba Human Resources Department, “UCount!”, online: University of Manitoba <http://umanitoba.ca/admin/human_resources/equity/UCount.html>.

²⁵ University of Manitoba Human Resources Department, “UMQueer”, online: University of Manitoba <http://umanitoba.ca/admin/human_resources/equity/6284.html>.

²⁶ University of Manitoba, “Research and International: International Centre”, online: University of Manitoba <http://umanitoba.ca/research/international_centre/index.html>.

²⁷ University of Manitoba, “Indigenous Connect”, online: University of Manitoba <<http://umanitoba.ca/indigenous/>>.

²⁸ University of Manitoba, “Migizii Agamik – Bald Eagle Lodge”, online: University of Manitoba <http://umanitoba.ca/admin/indigenous_connect/5558.html>.

²⁹ Gaa wii ji'i diyaang Council, “Gaa wii ji'i diyaang” (9 December 2015), online: University of Manitoba <http://umanitoba.ca/admin/indigenous_connect/gaawijiidiyaang.html>.

³⁰ University of Manitoba, “Ongomiizwin”, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/indigenous/institute/background.html>.

The UM is also home to the National Centre for Truth and Reconciliation.³¹

The University of Manitoba Students' Union (UMSU) also facilitates numerous student clubs that are involved in support and advocacy initiatives for the diverse student body. The UMSU executive is responsible for campaigns in the areas of Accessible Education, Healthy Sexuality & Consent Culture, Mental Health and Wellness, Sustainability, and Equity.³²

3. SEXUAL VIOLENCE AND STRATEGIC INITIATIVES

As previously mentioned, sexual violence, harassment and discrimination are not just issues for the UM, but part of a universal phenomenon. Some of these incidents are reflected in the UM Discipline Reports³³, and reports from UMSS.³⁴ In the Introduction and Executive Summary of this Report, we referred to the Climate Review Report that was undertaken by the UM in spring 2018. The survey was sent by email to all students who were at the UM, with approximately 1500 students responding. We were provided with a copy of the report and were reminded by the authors of the limitations of this type of survey given the response rate and the fact that participants were not randomly selected.

Nevertheless, it is instructive to note that in the responses, more than 80% of students reported being happy and feeling safe at the UM. Unfortunately, this also means that a significant minority who responded do not feel safe. The American College Health Association (NCHA) administers the National College Health Assessment (NCHA) survey for 41 Canadian universities who participate in this study, including the UM. The data collected measures the health and habits of students to allow universities to better address common health and behavioural risk affecting student's academic performance. The UM participated in the 2016 study and the most recent study that took place earlier this year. The NCHA II Spring 2019 Report for the UM provides further details with respect to how safe UM students feel on their campus.³⁵

³¹ National Centre for Truth and Reconciliation, "National Centre for Truth and Reconciliation University of Manitoba", online: National Centre for Truth and Reconciliation <<http://nctr.ca/map.php>>.

³² University of Manitoba Students' Union, "Campaigns", online: UMSU <<https://umsu.ca/services-and-support/campaigns/>>.

³³ University Discipline Committee, "University Discipline Reports", online: University of Manitoba <http://umanitoba.ca/admin/governance/governing_documents/students/student_discipline_discipline_reports.html>.

³⁴ Security Services Investigator, "Statistics", online: University of Manitoba <<http://umanitoba.ca/campus/security/about/statistics.html>>.

³⁵ American College Health Association. *American College Health Association-National College Health Assessment II: University of Manitoba Executive Summary Spring 2019*. Silver Spring, MD: American College Health Association; 2019.

UM STUDENTS FEELING “VERY SAFE” ON THEIR CAMPUS

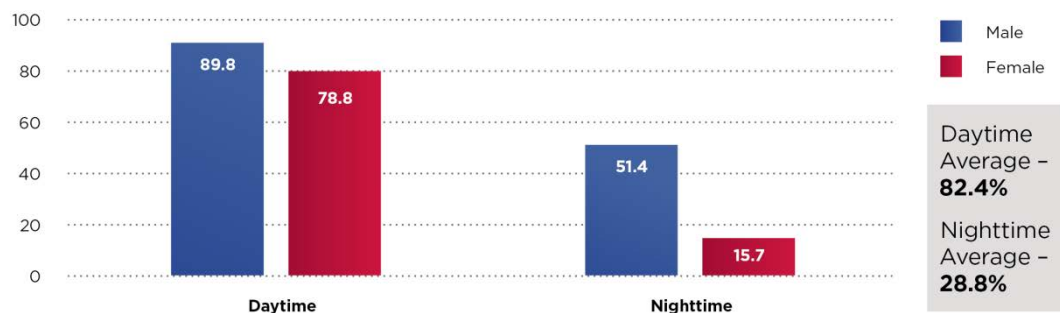


Figure: UM Students Feeling “Very Safe” on Their Campus³⁶

The NCHA-II Spring 2019 Report Executive Summary indicates that 16% of female identified respondents and 3.9% of male identified respondents reported having experienced sexual touching without their consent within the preceding year. However, it should be noted that this data is not specific to sexual violence that occurred on campus or in relation to UM activities.³⁷

The UM has taken various measures to address the issue of sexual violence on campus. These include:

- The introduction of University Initiated Investigations in 2009, and the expansion of their use in 2014;
- The creation of the OHRCM in 2010;
- The creation of the Student/Staff Assessment, Triage, Intervention, and Support team (STATIS);
- Increasing communication between HR, Legal, and the OHRCM;
- Increasing awareness of the Respectful Workplace and Learning Environment (RWLE) Policy;³⁸
- Increased training in relation to the RWLE Policy and Procedures;

³⁶ American College Health Association. *American College Health Association-National College Health Assessment II: University of Manitoba Executive Summary Spring 2019*. Silver Spring, MD: American College Health Association; 2019.

³⁷ American College Health Association. *American College Health Association-National College Health Assessment II: University of Manitoba Executive Summary Spring 2019*. Silver Spring, MD: American College Health Association; 2019.

³⁸ University of Manitoba, “Respectful Work and Learning Environment Policy” (1 September 2016), online: http://umanitoba.ca/admin/governance/media/Respectful_Work_and_Learning_Environment_RWLE_Policy_-_2016_09_01.pdf.

- Regularizing the approach to interim measures for faculty and staff; and
- Creating the Sexual Violence Steering Committee (SVSC).

A more detailed list of steps taken by the UM is set out in Appendix A.

B. MANITOBA LEGISLATION ON SEXUAL VIOLENCE, HARASSMENT, AND DISCRIMINATION

The UM's ability to address and respond to incidents of sexual violence, harassment and discrimination is governed by the following provincial legislation:

- *The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended)*,³⁹ which requires the UM and other post-secondary institutions in Manitoba to implement a stand-alone sexual violence policy that raises awareness of sexual violence; addresses issues related to consent; includes provisions respecting the prevention and reporting of incidents of sexual violence; addresses sexual violence training; and establishes complaint procedures and response protocols.
- *The Human Rights Code*,⁴⁰ which requires the UM to take all reasonable steps to prevent and terminate any harassment and discrimination on campus.
- *The Freedom of Information and Protection of Privacy Act (FIPPA)*⁴¹ and *The Personal Health Information Act (PHIA)*,⁴² which prohibit the UM from disclosing personal information and personal health information with respect to an incident of sexual violence, harassment or discrimination, subject to certain limited exceptions.
- *The Workplace Safety and Health Act*,⁴³ and the *Workplace Safety and Health Regulation*,⁴⁴ which require the UM to maintain a safe and healthy workplace and to develop written harassment and violence prevention policies. These policies must include statements restricting the UM's ability to disclose information about a complaint to anyone unless the disclosure is necessary to investigate the complaint or take corrective action with respect to the complaint or is required by law.

As a result of these various (and at times competing) pieces of legislation, the UM's legal obligations and policy requirements with respect to sexual violence, harassment and discrimination can be confusing to navigate. Nevertheless, the UM has addressed its legal obligations in its RWLE Policy,

³⁹ *The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended)*, SM 2016, c20.

⁴⁰ *The Human Rights Code*, CCSM c H175 at s 10 [Human Rights Code].

⁴¹ *The Freedom of Information and Protection of Privacy Act*, CCSM c F175 [FIPPA].

⁴² *The Personal Health Information Act*, CCSM c P33.5 [PHIA].

⁴³ *The Workplace Safety and Health Act*, CCSM c W210 [Workplace Safety and Health Act].

⁴⁴ *Man Reg 217/2006 [Workplace Safety and Health Regulation]*.

Sexual Assault Policy, RWLE and Sexual Assault Procedure, and its Access and Privacy Policy and Procedure.

Further details on the requirements under these pieces of legislation are set out in Appendix D.

C. THE CURRENT & PROPOSED CHANGES TO UM POLICIES

The UM undertook a consultation process last year within the UM community requesting feedback on potential changes to its current policies, specifically its RWLE and Sexual Assault Policies⁴⁵ and its RWLE and Sexual Assault Procedure. Feedback was sought through a variety of mediums, including the development of an online feedback website; the setting up of in-person targeted consultation sessions; community town hall meetings; and written requests for feedback. We note that the UMFA Collective Agreement requires consultation with UMFA with respect to changes to policies that “effect a general change in the terms or conditions of the employment of their members”.⁴⁶

Following the completion of the consultation process, the UM’s RWLE and Sexual Assault Policy Advisory Committee (Policy Advisory Committee) prepared a revised draft RWLE Policy, Sexual Violence Policy⁴⁷ (in place of the previous Sexual Assault Policy) and Disclosures of Complaints Procedure (in place of the previous RWLE and Sexual Assault Procedure). The proposed revisions made to the draft Policies and Procedure were guided by the UM’s duties to ensure compliance with provincial legislation; to more clearly outline the process for addressing and responding to prohibited conduct across the UM; to clarify the rights and responsibilities of community members; and to appropriately respond to the feedback received from the consultation process.

The proposed RWLE Policy, Sexual Violence Policy and Disclosures of Complaints Procedure have not yet been adopted by the UM. The following summary refers to the UM’s current policies and procedures, and identifies the proposed changes flowing from the Policy Advisory Committee’s good work.

1. THE RESPECTFUL WORK AND LEARNING ENVIRONMENT POLICY (RWLE POLICY)

The RWLE Policy was first approved in 2009. The policy is intended to promote and support a respectful learning and work environment at the UM, and to ensure compliance with provincial legislation, including *The Human Rights Code*, and the *Workplace Safety and Health Regulation*. Under the RWLE Policy, the UM has committed to creating a respectful learning and work environment, free of discrimination and harassment, through education, prevention, responsive action, and adopting policies and procedures that promote such an environment.

⁴⁵ University of Manitoba, “Sexual Assault Policy” (1 September 2019), online: University of Manitoba <https://umanitoba.ca/admin/governance/media/Sexual_Assault_Policy_-_2016_09_01.pdf>.

⁴⁶ University of Manitoba and the University of Manitoba Faculty Association, *Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021)* at art 4.2, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>> [UMFA Collective Agreement].

⁴⁷ Sexual Assault Advisory Committee, “Draft Policy” (Winnipeg: University of Manitoba, 2018).

Discrimination and harassment, for the purposes of the RWLE Policy, are defined in the RWLE and Sexual Assault Procedure. The latter will be renamed the Disclosures and Complaints Procedure pursuant to the changes proposed by the Policy Advisory Committee.

The UM encourages all members of the UM community to bring forward evidence of a breach of the Policy when they become aware of one; to cooperate in the investigation of a breach; and to be aware of their rights and responsibilities with respect to the RWLE Policy. The Policy expects that managers, academic staff, and unit heads will identify and address issues of concern in a timely manner. Notably, the RWLE Policy states only that those in supervisory or managerial positions are “to deal appropriately with allegations”, but does not give guidance as to what constitutes an appropriate response.

The RWLE Policy also identifies the issue of balancing rights under the policy. The Policy specifically addresses academic freedom, and states that the Policy is not intended to detract from academic freedom, compromise academic standards, discourage informed debate, or limit the ability of authority figures to assign work and provide feedback.

The RWLE Policy and its related Procedure are stated to be in addition to those which are provided for elsewhere, and that a collective agreement will prevail when the two are in conflict.

Pursuant to the Policy Advisory Committee’s proposals, sexual harassment would be removed from the RWLE Policy and inserted into the proposed Sexual Violence Policy, so that all behaviour that constitutes sexual violence would be addressed under the same policy.

The RWLE Policy provides that disciplinary measures may be implemented where a person has caused or contributed to a violation of the Policy, but does not identify a range of penalties or a minimum penalty.

The investigation and resolution of complaints under the RWLE Policy are detailed in the next Chapter of this Report.

2. THE SEXUAL ASSAULT POLICY / THE PROPOSED SEXUAL VIOLENCE POLICY

The Sexual Assault Policy came into effect on September 1, 2016. The Policy is intended to provide guidance and support to members of the UM in relation to sexual assault; to set out a consistent process for responding to instances or allegations of sexual assault; and to ensure compliance with provincial legislation. As previously noted, the Policy Advisory Committee has recommended that the UM amend this policy and re-name it the Sexual Violence Policy to ensure that it encompasses and prohibits all forms of sexual violence.

With respect to the current Sexual Assault Policy, the UM has stated its commitment to supporting individuals who are impacted by sexual assault, engaging in education and prevention activities, and monitoring the UM’s policies and protocols. Two particular matters are of note:

- (1) First, the UM emphasizes its commitment to “respecting the privacy of individuals who disclose sexual assault and recognize that those individuals are the final decision-makers about their own best interest, subject to the limits of confidentiality set out in this Sexual Assault Policy and the Procedure”. The Policy goes on to clarify that a person who has experienced sexual assault will retain control of the process where possible, but that the UM may be required to take actions and disclose the assault without the consent of the survivor, for instance when the UM community may be at risk, or where reporting is required by law.
- (2) Second, the UM also emphasizes its commitment to “coordinating and communicating among the various departments who are most likely to be involved in the response to sexual assault affecting the UM community and implementing interim measures, while ensuring that fairness and due process are respected”.

The UM has committed to providing support and accommodation to those who are affected by sexual assault, and to creating a safety plan for such persons in coordination with the UM’s Student Support Case Manager in the case of a student; the Unit Head in the case of an employee; and the UMSS. While the existing Sexual Assault Policy states that those who have experienced Sexual Assault are to be supported and treated with compassion, dignity and respect throughout the process of disclosure and institutional response, the proposed Sexual Violence Policy would provide that all members of the UM community are to be treated with compassion, dignity and respect, and provided with support throughout the process following a disclosure.

The Sexual Assault Policy states that where a report of sexual assault is received by any member of the UM community outside UMSS, the community member is encouraged to consult with the OHRCM to ensure that coordinated support and action are put in place, and in turn the OHRCM may consult with the STATIS.⁴⁸ As outlined in more detail later in this Report, the OHRCM promotes a respectful learning and work environment by promoting, supporting and administering the RWLE and Sexual Assault Policies and the RWLE and Sexual Assault Procedure.

Where a report of sexual assault is received by UMSS, UMSS is required to create a security report and refer the matter to the OHRCM and STATIS. STATIS is comprised of the Vice-Provost (Students), the Associate Vice-President (HR), the Director of UMSS, the Executive Director of Student Support, the Student Support Case Manager, and Legal Counsel. Where a report of sexual assault is received by STATIS, STATIS is to develop an action plan, to ensure that impacted individuals are kept informed and consulted where appropriate, and to ensure that all necessary action is taken. The proposed Sexual Violence Policy does not include these guidelines for the handling of complaints.

Similar to the RWLE Policy, the Sexual Assault Policy provides that the UM does not mandate, but only encourages, all members of the UM to bring forth evidence of breaches that they are aware of. The proposed Sexual Violence Policy provides that “The University calls for all members of the University Community” to bring forward evidence of a breach that they become aware of to the OHRCM.

⁴⁸ *The role of OHRCM is described in further detail at Chapter 2.D.1.*

The Sexual Assault Policy states that the UM is to investigate allegations of sexual assault where the OHRCM receives a formal complaint and determines upon preliminary investigation that the matter should be investigated. The UM will also investigate allegations where the Designated Officer, being the Vice-President (Administration) or their designate, receives a recommendation by the OHRCM that a University Instituted Investigation should be initiated, and determines that the circumstances warrant such action. Issues relating to the complaints process and issues relating to privacy and confidentiality are explored elsewhere in this report.

The Sexual Assault Policy provides that any member of the UM community who commits sexual assault in relation to a University Matter will be subject to discipline under the procedure.

The proposed Sexual Violence Policy sets out more formalized standards for annual reporting.

3. THE RWLE AND SEXUAL ASSAULT PROCEDURE / THE PROPOSED DISCLOSURES AND COMPLAINTS PROCEDURE

The Policy Advisory Committee proposes that the RWLE and Sexual Assault Procedure be renamed the Disclosures and Complaints Procedure, so as to recognize the current distinction between a disclosure and a complaint (currently only a complaint will initiate an investigation), and thereby avoid confusion. The proposed Disclosures and Complaints Procedure would also provide additional information on informal resolution processes, and give better insight into alternatives to formal complaints that are available, noting that the informal resolution process carries no formal time limitations. The RWLE and Sexual Assault Procedure and the proposed Disclosures and Complaints Procedure both deal extensively with the complaint process. Procedural concerns and matters relating to confidentiality and privacy are both discussed in Chapter 2 of this Report.

Pursuant to the RWLE and Sexual Assault Procedure, persons who commit discrimination or harassment will be subject to discipline. The details of the current and proposed Procedure are set out below.

Definitions: The same definition of “sexual violence” is used in the proposed Sexual Violence Policy and the proposed Disclosures and Complaints Procedure. “Sexual violence” is appropriately and broadly defined to mean “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.” Both documents also clarify that sexual violence can occur through any medium and each sets out the same range of examples including social media and digital communication. The Policy Advisory Committee’s revised Procedure would require a more trauma-informed approach to be employed by the OHRCM, and the Procedure would explicitly state that the investigation procedure would not include cross-examination.

Interim measures: Additional information has also been incorporated to reflect interim measures that may be instituted.⁴⁹

Disclosing: The proposed Disclosures and Complaints Procedure would also provide that UM community members impacted by sexual violence, harassment or discrimination are encouraged to disclose such experiences to the OHRCM, and that a formal complaint need not be made. However, the proposed Procedure would provide that further disclosures may need to be made or further investigated where warranted.⁵⁰ The proposed amendments would further clarify that the UM would not pursue disciplinary action should an individual come forward with a Disclosure or Formal Complaint that involves alcohol or substance use.

Limitation periods: With respect to limitation periods, the Policy Advisory Committee proposes to extend the limitation period for filing a formal complaint from one to two years, with the possibility of a further extension where there are extenuating circumstances. The proposed Sexual Violence Policy would clarify that there is no limitation on making a disclosure.

Accommodations: Pursuant to the proposed Disclosures and Complaints Procedure, where a disclosure is made, the UM would act promptly to accommodate persons affected by sexual violence, harassment or discrimination, and to provide them with a safety plan in concert with UMSS, the appropriate Unit Head (in the case of an employee) or the UM's Student Support Case Manager (in the case of a student), and other offices as appropriate. A formal complaint need not be filed to access these services.

The Policy Advisory Committee has also proposed to maintain an online resource website, with links to on-campus and off-campus supports and resources that members of the UM Community may access. One such website has already been implemented.⁵¹

⁴⁹ *The proposed Disclosures and Complaints Procedure included in the "Draft Policy" prepared by the Policy Advisory Committee would include the following provisions:*

2.49 Interim measures involve the University making changes to a University Member's living, working, and/or learning environment before an investigation is concluded in order to protect the health and safety of all University Community members.

2.50 The need for interim measures, and which measures are imposed, will be determined on a case by case basis, taking into account the circumstances of each situation.

2.51 Interim measures will have the least impact on the Complainant and Respondent in order to achieve the desired result, and will not be construed as a decision or discipline against the Complainant or Respondent. Interim measures will not be weighed against the Respondent in a disciplinary process.

⁵⁰ *Sexual Assault Advisory Committee, "Draft Policy" (Winnipeg: University of Manitoba, 2018), Disclosures and Complaints Procedure at s 2.16.*

⁵¹ *University of Manitoba, "Sexual Violence Support & Education", online: University of Manitoba <<http://umanitoba.ca/sexual-violence/>>.*

4. THE CONFLICT OF INTEREST POLICY

The Conflict of Interest Policy is intended to acknowledge that conflicts of interest arise, and to assist in ensuring that such conflicts are properly disclosed and consistently addressed and managed. The Policy provides extensive examples of conflicts of interest and defines a conflict of interest broadly as follows:

*“Conflict of Interest” means a situation in which the private interests (Financial Interests or Personal Interests) of a Person or Related Party compromise or have the appearance of compromising the Person’s independence and objectivity of judgment in the performance of his or her obligations to the University, including teaching, Research and service activities. Conflicts of Interest can be potential, actual or perceived.*⁵²

The Policy is relevant to our mandate because two guiding documents have recently been prepared, approved and disseminated, providing information to students and faculty on how to manage relationships at the UM. One of the Guides is directed at relationships between employees and students, while the second is directed at relationships between employees involving power differentials.

Pursuant to the Guide entitled “Relationships Between University Employees and Students” that is currently accessible on the UM website,⁵³ disclosure is deemed to be mandatory where there is a supervisory relationship involving a conflict of interest between an employee and a student. The Guide provides that intimate relationships between employees and students are strongly discouraged and should be avoided. While failure to disclose a conflict of interest may result in disciplinary actions, the Guide does not indicate what it would be. Pursuant to the Guide entitled “Relationships Between University Employees Involving Power Differentials”,⁵⁴ the same principles apply with respect to relationships between employees where there is a power differential or supervisory relationship.

The Conflict of Interest Policy has corresponding Procedures that provide for the management of conflicts of interest. In addition to the Policy and the corresponding Procedure, the UMFA Collective Agreement imposes on “the person who is first aware” of a possible conflict of interest to “immediately inform all parties with a view to resolving the conflict “in an open and unbiased manner”.⁵⁵ Neither the Policy, the related Procedures, nor the Collective Agreement indicate what, if any, disciplinary procedures may be followed where a party fails to disclose a conflict of interest.

⁵² University of Manitoba, “Conflict of Interest Policy” (16 June 2019), online: University of Manitoba <https://umanitoba.ca/admin/governance/governing_documents/community/248.html>.

⁵³ University of Manitoba, “Relationships Between University Employees and Students”, online: University of Manitoba <<http://umanitoba.ca/student/media/Relationships-Between-Employees-and-Students.pdf>>.

⁵⁴ University of Manitoba, “Relationships Between University Employees Involving Power Differentials”, online: University of Manitoba <<http://umanitoba.ca/student/media/Relationships-Between-Employees-Power-Differentials.pdf>>.

⁵⁵ University of Manitoba and the University of Manitoba Faculty Association, *Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021)* at art 15.3.2, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.

5. THE CONFLICT OF INTEREST BETWEEN EVALUATORS AND STUDENTS DUE TO CLOSE PERSONAL RELATIONSHIPS POLICY

In addition to the Conflict of Interest Policy, the UM also has had this more specific Policy, which has been in effect since April 25, 1991.

This Policy clearly states that evaluators who are in a conflict of interest due to their close personal relationship with a student are responsible for avoiding the conflict of interest, and they must refer the matter for determination where they are uncertain. Although the Policy identifies that a conflict of interest will exist between spouses or persons living together, it does not refer to romantic or sexual relationships.

Where a conflict of interest arises under this Policy, an evaluator must withdraw from participation immediately and inform the student and the relevant Department Head, or Dean or Director of the Academic Unit. However, the Policy provides little guidance with respect to the procedure to be followed, and with respect to which conflicts may be accommodated.

Those who fail to observe the requirements of the Policy will be “subject to the discipline procedures provided by the appropriate collective agreement or personnel policy of the University.”⁵⁶

6. THE NEPOTISM POLICY

The Nepotism Policy, effective as of January 27, 2009, provides for the prevention and accommodation of conflicts of interest in the workplace. The Policy should be read in conjunction with the UMFA Collective Agreement, which places limits on members taking part or voting on matters “with regard to the determination of the terms and conditions of employment which apply particularly to a member of his/her immediate family”.⁵⁷ The UMFA Collective Agreement also precludes its members from hiring “any member of his or her immediate family” for UM administered research grant, contract or project for which the member has signing authority unless they have the approval of the UM President.⁵⁸

The Nepotism Policy is short and states in part:⁵⁹

⁵⁶ University of Manitoba, “Conflict of Interest between Evaluators and Students Due to Close Personal Relationships Policy” (25 April 1991) at s.4, online: University of Manitoba <http://umanitoba.ca/admin/governance/governing_documents/students/277.html>.

⁵⁷ University of Manitoba and the University of Manitoba Faculty Association, *Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021)* at art 15.3.1, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.

⁵⁸ University of Manitoba and the University of Manitoba Faculty Association, *Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021)* at art 15.3.1, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.

⁵⁹ University of Manitoba, “Nepotism Policy” (27 January 2009) at s 2.1, online: University of Manitoba <http://umanitoba.ca/admin/governance/governing_documents/community/911.html>.

The University permits members of the same immediate family to be employed by the University, even in the same department. Prior approval from the Executive Director of HR or designate must be obtained before entering into any supervisory relationship between immediate family members or participation in the evaluation of a family member's performance or suitability for employment.

The Policy prohibits a supervisory or evaluator relationship with respect to two parties in most familial relationships, including marriage. It does not speak to romantic or sexual relationships beyond married spouses or common law partners.

7. THE VIOLENT OR THREATENING BEHAVIOUR POLICY

The Violent or Threatening Behaviour Policy, effective since March 22, 2006, provides that violent behaviour (actual or threatened physical acts against a person) will be subject to discipline pursuant to the related procedure.⁶⁰ This Policy was enacted to comply with the *Workplace Safety and Health Regulation*. The Policy and its related Procedure does not clearly articulate how its provisions interact with those of the RWLE Policy or the Sexual Assault Policy.

8. ADDITIONAL POLICY CONSIDERATIONS

While the substance of this Report focuses on university-wide policies and procedures, it should be noted that UM has numerous faculties that maintain their own policies and procedures. Additionally, several programs at the UM will see some students and staff being subject to the regulations of professional bodies, such as the Law Society of Manitoba and the College of Physicians and Surgeons of Manitoba.

D. THE CURRENT POLICIES AT OTHER POST-SECONDARY INSTITUTIONS

1. MANITOBA

As earlier referenced, part of the Review included meetings with the following Manitoba post-secondary institutions: Assiniboine Community College, Brandon University, Red River College, and University of Winnipeg. The purpose of these meetings was to discuss what each institution is doing in the area of responding to allegations of sexual violence, harassment and discrimination on campus, including any best practices and challenges that have been identified. Prior to the meetings, we sent

⁶⁰ University of Manitoba, "The Violent or Threatening Behaviour Policy" (1 September 2016), online: University of Manitoba <https://umanitoba.ca/admin/governance/media/Violent_or_Threatening_Behaviour_Policy_-_2016_09_01.pdf>.

to the UM a list of questions that they intended to ask during the meetings. The questions were reviewed by the UM's legal counsel and the OHRCM, with no changes being requested.

Each post-secondary institution has its own policies and procedures in place that address sexual violence, harassment, discrimination and conflict of interest. The following sets out a summary of points following a review of these policies and procedures and meetings with the institutions:

- **OHRCM equivalent:** Each institution has a dedicated individual (OHRCM equivalent) who is responsible for receiving and, where appropriate, investigating complaints of sexual violence, harassment or discrimination. While some investigations continue to be conducted by the OHRCM equivalent or another employee, there is a shift towards having investigations conducted externally, mostly by lawyers. One institution indicated that they become aware of available lawyers through word of mouth;
- **Time limitations:** Every discrimination and harassment policy contains a time limit for filing complaints (which ranges from six months to one year). These time limits may be extended when extenuating circumstances exist and are often extended. However, a time limit is not contained in every sexual violence policy;
- **Transparency:** The information or documentation provided to survivors/victims and respondents following the completion of the investigation varies from a meeting summarizing the findings, a summary of the report, a redacted copy of the report or a full copy of the report;
- **Institution-initiated complaints:** Each institution has the ability to instigate its own investigation in appropriate circumstances, or to carry on with an investigation when the survivor/victim does not wish to proceed. There is recognition that, when appropriate, the survivor/victim should have some level of control over the process. However, university or college-initiated complaints are used when appropriate, though not often;
- **Disclosures:** It is recognized that, while disclosures made to individuals other than the OHRCM (or its equivalent) should be elevated to the OHRCM's attention, this is not always done;
- **"No Wrong Door" Policy:** It is recognized that the "No Wrong Door" approach, though valuable, may create certain issues, including the fact that the survivor/victim may be required to tell their story to multiple individuals and that an issue that warrants further investigation may not be investigated if it's not brought to the attention of the OHRCM (or its equivalent);
- **Confidentiality:** Similar to the UM, the institutions err on the side of confidentiality with respect to disclosures to the public regarding past or ongoing complaints and investigations. There is also recognition of limitations with respect to what, if anything, can be said to prospective employers regarding a former employee's personnel file. A few institutions indicated that they will confirm the former employee's employment (i.e., the former employee's dates of employment and duties) and nothing more;

- **Intimate relationships between employees:** None of the institutions currently ban intimate relationships between two employees where there is a power differential. Rather, these relationships are to be disclosed under the applicable conflict of interest policy or bylaw;
- **Intimate relationships between student/faculty:** None of institutions currently ban intimate relationships between students and faculty, except for Red River College. Red River College's conflict of interest policy bans these relationships and its sexual violence policy states that consent cannot be obtained by an individual who is in a position of trust, power or authority.⁶¹ The other institutions require disclosure of such relationships pursuant to the applicable conflict of interest policy or bylaw;
- **Responsiveness to the needs of survivors/victims:** It is recognized that immediately escalating a complaint to investigation that does not necessarily require such escalation may cause additional issues since survivors/victims are often only seeking an accommodation, informal resolution or mediated response, rather than a full investigation and disciplinary action imposed on the respondent;
- **Interim measures:** There is an effort to implement interim measures and accommodations during the investigation process that have the least impact on the survivor/victim and respondent. However, suspension with pay is imposed when the circumstances warrant the respondent's removal from the environment pending the completion of the investigation;
- **Training:** Both bystander training and training with respect to appropriate responses to a disclosure are offered at some of the institutions; and
- **Online service:** One institution referred to LYNDIA.com, which is an online service that employees and students can access (with a subscription) which directs them to training modules on a variety of issues, including interpersonal conflict. This website is now called LinkedIn Learning.⁶²

2. BEYOND MANITOBA

Sexual Violence Centres: Universities across Canada and internationally have been implementing policies and procedures to address the issue of sexual violence. A common theme is the increasing prevalence of sexual violence centres, which serve as a single point of contact or referral where incidences of sexual violence are disclosed. The University of Ottawa, University of Toronto, University of Calgary, University of British Columbia, Carleton University, and Université de Montréal each have a sexual violence centre. A more detailed description of sexual violence centres in Canada is found in Chapter 6 of this Report.

⁶¹ Red River College, "Conflict of Interest Policy" (April 2019) at s 4.3(c), online: RRC <<https://cpb-ca-c1.wpmucdn.com/www.rrc.ca/dist/1/69/files/2018/07/P3-Conflict-of-Interest-149prao.pdf>>.

⁶² LinkedIn, "LinkedIn Learning", online: LinkedIn <https://www.linkedin.com/learning/subscription/products?trk=lynda_direct_learning&isFromLynda=true>.

Websites: As is the case at the UM, many universities have created websites dedicated to information and resources for persons who have received disclosures of sexual violence or those who have experienced sexual violence.

Reporting: Similar to the UM policies and procedures, many institutions recommend or direct that where people become aware of incidences of sexual violence, harassment or discrimination, that they refer the matter to a designated office for follow up.⁶³ Several institutions require that the recipient of a disclosure of sexual violence must refer the person making the disclosure to the applicable policy, and the relevant body responsible as the central point of conduct for managing such matters.⁶⁴ However, many institutions specifically require that persons in positions of authority who become aware of incidents of sexual violence, harassment or discrimination must escalate and address the issue.⁶⁵ The University of Waterloo requires that perceived violations of the Ethical Behaviour Policy must be reported by authority figures and escalated for remedial or disciplinary measures.⁶⁶

Limitation periods: Institutions across Canada have taken different approaches to imposing limitation periods for filing a complaint in relation to sexual violence. The University of Calgary's Sexual Violence Policy has no time limit; however, its policy notes that as time passes, investigating a complaint may be more challenging.⁶⁷ Similarly, the University of Toronto's Policy on Sexual Violence and Sexual Harassment states that the need to allow survivors/victims to come forward in their own time must be balanced with the fact that a late complaint may negatively impact the ability of the institution to respond.⁶⁸ The University of Ottawa's Prevention of Sexual Violence Policy currently

⁶³ University of Toronto Governing Council, "Policy on Sexual Violence" (1 January 2017) at s 36, online: University of Toronto <<http://www.governingcouncil.lamp4.utoronto.ca/wp-content/uploads/2016/12/p1215-poshsv-2016-2017pol.pdf>>.

⁶⁴ University of Ottawa, "Prevention of Sexual Violence Policy" (2016) at s 5.1(b), online: UOttawa <<https://www.uottawa.ca/administration-and-governance/policy-67b-prevention-sexual-violence>>;
Carleton University Office of the Vice-President (Students and Enrolment), "Sexual Violence Policy", (April 25, 2019) at 6.1(b), online: Carleton University <<https://carleton.ca/secretariat/wp-content/uploads/Sexual-Violence-Policy.pdf>>.

⁶⁵ University of Calgary, "Sexual Violence Policy" (1 June 2017) at s 4.19, online: University of Calgary <<https://www.ucalgary.ca/policies/files/policies/sexual-violence-policy.pdf>>;
McMaster University, "Policy on Discrimination and Harassment Policy" (8 June 2017) at 30, online: McMaster University <https://www.mcmaster.ca/policy/General/HR/Discrimination_and_Harassment.pdf>;
Queen's University, "Interim Workplace Harassment and Discrimination Policy" (22 August 2016) at s 5.7, online: Queen's University <<https://www.queensu.ca/secretariat/sites/webpublish.queensu.ca.uslclwww/files/files/policies/InterimWorkplaceHarassmentandDiscriminationPolicyfinal.pdf>>.

⁶⁶ University of Waterloo Secretariat, "Ethical Behaviour Policy" (30 June 2010) at s 3, online: University of Waterloo <<https://uwaterloo.ca/secretariat/policies-procedures-guidelines/policy-33>>.

⁶⁷ University of Calgary, "Sexual Violence Policy" (1 June 2017) at s 4.26, online: University of Calgary <<https://www.ucalgary.ca/policies/files/policies/sexual-violence-policy.pdf>>.

⁶⁸ University of Toronto, "Sexual Violence and Sexual Harassment" (1 January 2017) at s 31, online: University of Toronto <<http://www.governingcouncil.lamp4.utoronto.ca/wp-content/uploads/2016/12/p1215-poshsv-2016-2017pol.pdf>>.

sets out flexible timelines, but provides for a six-month limitation period for sexual harassment complaints absent extenuating circumstances.

Consequences: Many universities ground their disciplinary authority by including reference to possible disciplinary outcomes for violations of policies relating to sexual violence, harassment and discrimination in the policies themselves. In many cases, they clearly delineate that the consequences of being found to have perpetrated sexual violence may include expulsion or dismissal.⁶⁹ Other universities note that in the case of employees, sanctions will be in accordance with relevant legislation and the employment contract, or collective agreement.⁷⁰

Supports: The University of Waterloo's Prevention and Response to Sexual Violence Policy is notable in that it states that the campus Sexual Violence Response Coordinator is available as a source of support for both survivors/victims and respondents alike.⁷¹

Intimate relationships: Many post-secondary institutions manage sexual or romantic relationships between faculty and staff through conflict of interest policies. Several institutions require that conflicts of interest be disclosed, with disciplinary consequences for failure to do so.⁷² Some institutions provide that evaluators may be engaged in intimate relationships with their students with

⁶⁹ University of British Columbia Board of Governors, "Sexual Assault and Other Sexual Misconduct Policy" (18 May 2017) at s 5.1.1, online: UBC <https://universitycounsel.ubc.ca/files/2017/05/policy131_final.pdf>, and University of British Columbia Board of Governors, "Discrimination Policy" (April 2019) at s 1.1, online: UBC <<https://universitycounsel.ubc.ca/files/2019/04/policy3.pdf>>;

University of Calgary, "Sexual Violence Policy" (1 June 2017) at s 4.35, online: University of Calgary <<https://www.ucalgary.ca/policies/files/policies/sexual-violence-policy.pdf>>;

University of Ottawa, "Sexual Harassment Policy" at s 29, online: UOttawa <<https://www.uottawa.ca/administration-and-governance/policy-67-sexual-harassment>>;

McMaster University, "Policy on Discrimination and Harassment: Prevention and Response" (8 June 2017) at s 118, online: McMaster University <https://www.mcmaster.ca/policy/General/HR/Discrimination_and_Harassment.pdf>.

⁷⁰ Université de Montréal, "Politique Visant à Prévenir Et à Combattre Les Inconduites et les Violences à Caractère Sexuel" at s 5, online: U Montreal <https://nouvelles.umontreal.ca/fileadmin/user_upload/Archives_images/2018/11/Politique-VACS_pour_publication.pdf>;

University of Waterloo Secretariat, "Sexual Violence Response Protocol and Procedures" at s 2(f), online: University of Waterloo <<https://uwaterloo.ca/secretariat/sexual-violence-response-protocol-and-procedures>>.

⁷¹ University of Waterloo Secretariat, "Prevention and Response to Sexual Violence Policy" (1 January 2017), online: University of Waterloo <<https://uwaterloo.ca/secretariat/policy-42-prevention-and-response-sexual-violence>>.

⁷² Memorandum of Cheryl Regehr University of Toronto Provost (9 May 2019);

University of British Columbia, Conflict of Interest and Conflict of Commitment Policy;
Carleton University Office of the Vice President (Students and Enrolment), "Sexual Violence Policy" (25 April 2019) at s 2.2(e), online: Carleton <<https://carleton.ca/secretariat/wp-content/uploads/Sexual-Violence-Policy.pdf>>;

McGill University, "Regulation on Conflict of Interest" (27 September 2011) at s 9.1, online: McGill <https://mcgill.ca/secretariat/files/secretariat/conflict-of-interest-regulation-on_0.pdf>.

prior written approval.⁷³ Others merely provide that intimate relationships between faculty members and students are strongly discouraged.⁷⁴ However, an increasing number of institutions provide for an explicit ban on consensual sexual relationships where there is a power differential between the participants.⁷⁵ Both Yale University and Harvard University's Faculty of Arts and Sciences provide that sexual relationships between faculty members and undergraduate students that they are evaluating are to be avoided and are prohibited, and that no faculty member shall have a sexual or amorous relationship with any undergraduate student regardless of whether or not the faculty member engages in any pedagogical or supervisory role with respect.⁷⁶

⁷³ University of Toronto Governing Council, "Policy on Conflict of Interest – Academic Staff" (22 June 1994) at 2.2, online: University of Toronto <University of Toronto, Conflict of Interest Policy>.

⁷⁴ Carleton University Office of the Vice President (Students and Enrolment), "Sexual Violence Policy" (25 April 2019) at s 2.2(a), online: Carleton <<https://carleton.ca/secretariat/wp-content/uploads/Sexual-Violence-Policy.pdf>>.

⁷⁵ University of Saskatchewan, "Prevention of Discrimination and Harassment Policy: Standards and Provisions for Handling Complaints" (30 August 2012) at s 7(b), online: USask <<http://www.usask.ca/stu/luther/documents/Discrimination-and-Harassment-Policy.pdf>>;

McGill University, "Policy Against Sexual Violence" (28 March 2019) at s 8.1, online: McGill <https://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf>;

New York University, "Policy on Consensual Relationships" (21 January 2018), online: NYU <<https://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/policy-on-consensual-intimate-relationships.html>>;

University of Pittsburgh, "Consensual Relationships Policy" (29 March 2017), online: University of Pittsburgh <<https://www.policy.pitt.edu/policies-and-procedures/human-resources/consensual-relationships>>.

⁷⁶ Yale University, "Teacher-Student Consensual Relations Policy", online: Yale University <<https://uwc.yale.edu/policies-procedures/teacher-student-consensual-relations-policy>>.

CHAPTER 2: THE CURRENT PRACTICES

A. INTRODUCTION

In addition to its current and proposed Policies and Procedures, the UM has taken many steps to address sexual violence, harassment and discrimination, including the creation and expansion of the OHRCM; since 2016, a regular three-year review and revision of its RWLE and Sexual Assault Policies and Procedure; and the creation of a series of training and educational initiatives for students, faculty and staff. Many of these were summarized in the previous Chapter and a more detailed list is set out in Appendix A.

B. THE INTAKE PROCESS

UM students and employees have a number of reporting options and post-incident supports available to them. This could be referred to as the “No Wrong Door” approach in the sense that students and employees are able to decide who they are most comfortable reaching out to at first instance. A list of options available to students and employees is attached as Appendix E.

Notably, the “No Wrong Door” policy has also been adopted by the Province of Manitoba. Its Respectful Workplace Policy, which applies to all Manitoba government employees, provides that there are a number of reporting options available to employees who have experienced inappropriate behaviour, including the employee’s immediate supervisor, any level of management, HR, respectful workplace advisor, union, Manitoba Human Rights Commission and SAFE Work Manitoba. Further, this policy provides that where a supervisor or anyone receives a complaint of sexual harassment, they *must* document it on the applicable form and report it immediately to HR.⁷⁷

C. ANONYMOUS COMPLAINTS

Anonymous complaints can encourage early disclosure and can be made to the UM through a variety of avenues.

1. SPEAK UP BUTTON: BANNATYNE CAMPUS

The UM’s Max Rady College of Medicine has a [Speak Up Button website](#) where students and employees can report an incident of harassment, discrimination or mistreatment and can elect to

⁷⁷ Manitoba Civil Service Commission, “Principles and Policies for Managing Human Resources” (6 March 2019) online: Manitoba <<https://www.gov.mb.ca/csc/policyman/respect.html>>.

remain anonymous. However, the website encourages reports that are not anonymous, stating that the UM's response to anonymous reports may be limited and that reports will remain confidential.⁷⁸

2. ANONYMOUS & THIRD-PARTY REPORTING

The OHRCM accepts anonymous and third-party complaints. However, maintaining the anonymity of the survivor/victim is not always possible in order for a proper investigation to be conducted. Furthermore, and pursuant to the RWLE & Sexual Assault Procedure, the OHRCM has discretion to refuse to accept a third-party complaint unless the person against whom the breach is alleged to have occurred consents to the filing of the formal complaint.

UMSS has an anonymous online reporting system called “[Silent Observer](#)”, which allows anyone to anonymously notify UMSS of an incident.⁷⁹ The individual submitting the report includes on the online form the date, time and location of the incident, the nature of the incident, whether the individual was a survivor/victim and their contact information (only if they would like to be contacted by UMSS).

Anonymous complaints can also be made to counsellors at the UM's Student Counselling Centre (SCC) or physicians at the medical clinic within the UM Health Services. Certain professional requirements may limit the ability of professionals to disclose such anonymous complaints. For example:

- The College of Physicians & Surgeons of Manitoba's Code of Ethics provides that physicians must protect the personal health information of their patient and respect the patient's right to confidentiality, except as provided by the law or when doing so may result in a significant risk of substantial harm to others.⁸⁰
- The Manitoba College of Social Workers' Code of Ethics provides that social workers shall only disclose confidential information with the informed consent of the client or permission of the client's legal representative and that they may only break confidentiality when required or permitted by law or court order.⁸¹
- The Psychological Association of Manitoba's Code of Conduct provides that psychologists should normally disclose confidential information about a client to a third party only with the client's consent. Further, it provides that for the purposes of case reports, teaching, presentations, research, published reports, the psychologist shall ensure that confidential

⁷⁸ University of Manitoba Max Rady College of Medicine, “*SPEAK UP: Report an incident*”, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/medicine/reporting.html>.

⁷⁹ University of Manitoba Security Services, “*Silent Observer*”, online: University of Manitoba <<http://umanitoba.ca/campus/security/safety/observer.html>>.

⁸⁰ The College of Physicians and Surgeons of Manitoba, “*The Affairs of the College and Code of Ethics Bylaw*” (1 January 2019) at s 38, online: CPSM <<https://cpsm.mb.ca/cjj39alckF30a/wp-content/uploads/ByLaws/Code%20of%20Ethics.pdf>>.

⁸¹ Manitoba College of Social Workers, “*Code of Ethics*” (March 2018) at 11, online: MCSW <<https://mcsw.ca/wp-content/uploads/2018/04/Code-of-Ethics-MAR-2018-WEB.pdf>>.

information concerning clients is appropriately disguised to prevent identification of such clients.⁸²

3. ANONYMOUS REPORTING SYSTEMS

Anonymous reporting systems, similar to the Silent Observer, are becoming more common elsewhere. Examples of these anonymous reporting systems include the following:

- The Red River College Ethics Program uses a Canadian-based ethics reporting service – ClearView Connects – allows employees to anonymously report what they perceive as cases of workplace misconduct or unethical behaviour. Anonymous reports can be made through the ClearView Connects website, telephone service, or by mail. ClearView Connects then collects the report and provides the information to the appropriate individuals within RRC to address the issue.⁸³
- Callisto is an online program where individuals log on and enter information about an incident of sexual assault involving them, including information about the perpetrator. That information is not shared with anyone unless and until another entry regarding the perpetrator is entered into the program, at which point a Legal Options Counsellor contacts the individuals to ensure that the individuals understand their options for taking action. If more than one survivor/victim of the same perpetrator wants to connect with other survivors/victims of the same perpetrator, their Legal Options Counselors facilitate the sharing of information. Callisto is currently in place across 13 college campuses in the United States and has recently expanded its services to professional environments beyond colleges.⁸⁴
- In Manitoba, Ending Violence Across Manitoba Inc. (EVA Manitoba) has submitted a proposal to the federal government to receive funding for a pilot project where post-secondary institutions in Manitoba would test the Callisto program, with some changes. A number of post-secondary institutions in Manitoba have identified an early interest in participating in this pilot project, including the UM.
- The Globe and Mail's SecureDrop provides an anonymous connection to The Globe and Mail's journalists. SecureDrop anonymizes the interaction and files and messages uploaded to this service are encrypted and can only be decrypted by the journalists on a dedicated air-gapped decryption station. The SecureDrop website states, however, that no form of communication is 100% secure and that The Globe and Mail will take all steps to protect sources but that use is at the source's own risk.⁸⁵

⁸² *Psychological Association of Manitoba, "Psychological Association of Manitoba: Code of Conduct" (February 2013) at s 6, online: CPMB <<https://www.cpmmb.ca/docs/Code%20of%20Conduct%20-%20Final.pdf>>.*

⁸³ *Red River College, "Ethics Program", online: RRC <<https://www.rrc.ca/legal/ethics/>>.*

⁸⁴ *Callisto, "Our Solutions", online: Project Callisto <<https://www.projectcallisto.org/>>.*

⁸⁵ *The Globe and Mail, "Secure Drop at the Globe and Mail", online: The Globe and Mail <<https://sec.theglobeandmail.com/securedrop/>>.*

4. MAINTAINING RECORDS REGARDING ANONYMOUS REPORTS

As outlined in more detail below, the UM policies and collective agreements place limits upon the UM regarding what information, if any, can be maintained on an employee's personnel file regarding anonymous complaints made against an employee. In that regard, there may be an opportunity for the UM to maintain records regarding anonymous complaints and disclosures received by the OHRCM on a file separate from the employee's personnel file and outside of HR. This would ensure that records regarding these anonymous complaints and disclosures are maintained and can be referred to in appropriate circumstances involving similar complaints regarding the same employee while at the same time protecting an employee from unfounded or investigated complaints from potentially impacting their career advancement and employment. This issue is discussed in more detail in Chapter 5 of this Report.

D. FORMAL COMPLAINTS PROCESS

The process for filing a formal complaint and the steps that follow are outlined in the RWLE and Sexual Assault Procedure. The UM's Toolkit includes the following flowchart, which illustrates the formal complaint process (as set out in detail below):

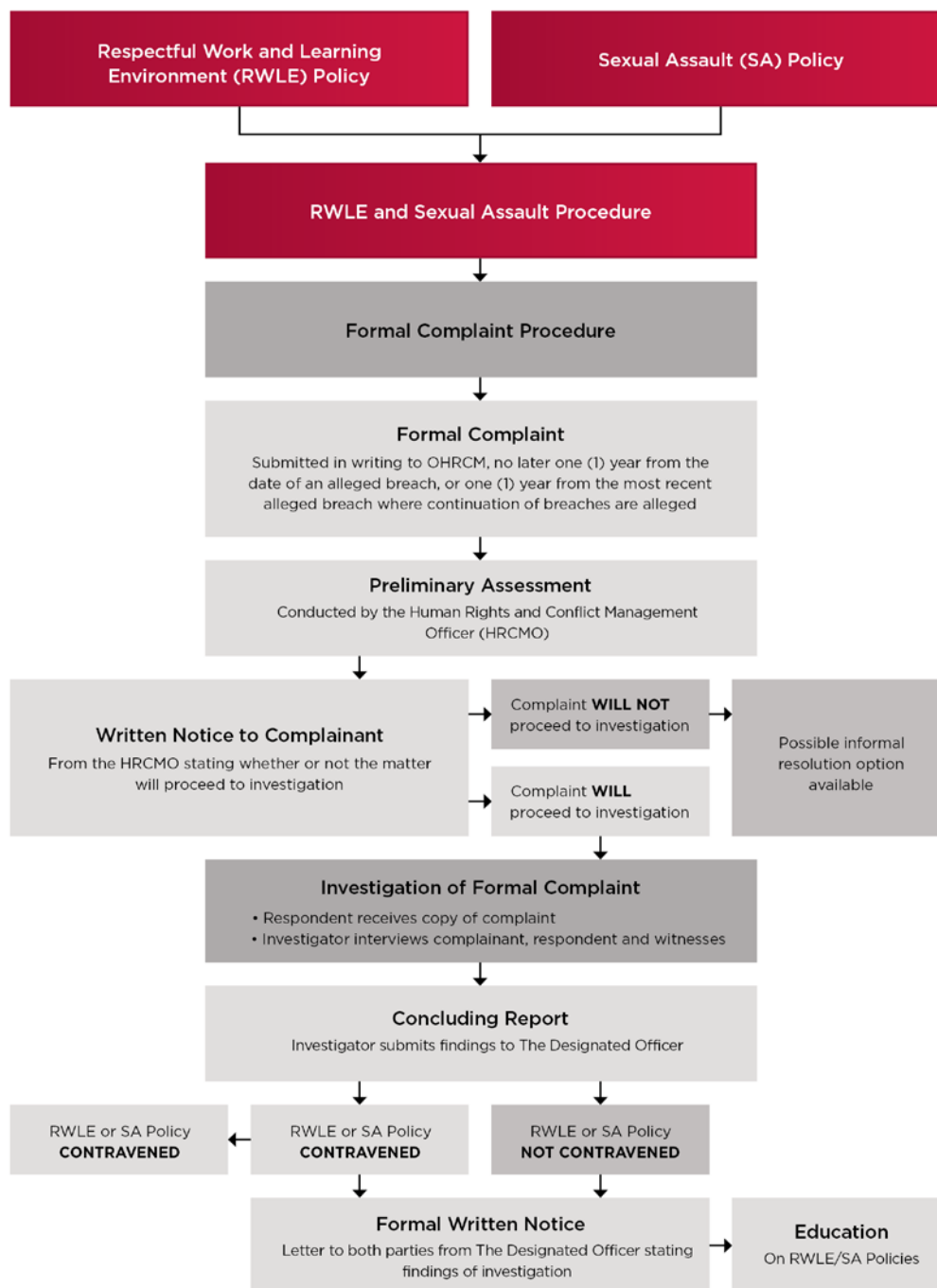


Figure: Formal Complaints Flowchart⁸⁶

⁸⁶ University of Manitoba, “Standard Operating Procedures and Toolkit for Management of Formal Complaints under the University of Manitoba’s Respectful Workplace and Learning Environment and Sexual Assault Procedures” (December 2018), page 62.

1. RECEIVING A FORMAL COMPLAINT

The UM's Confidential Intake Officers outline for survivors/victims their options and provide certain resources, including guides to the formal complaint process, the RWLE and Sexual Assault Policies and Procedure and the formal complaint flowchart. Formal complaints under the RWLE and Sexual Assault Policies are to be made to the OHRCM and must contain certain information, including the survivor's/victim's name and contact information, a description of the alleged breach, the approximate date of the alleged breach, being within one year from the date of the most recent alleged incident unless, in the discretion of the OHRCM, extenuating circumstances warrant an extension of time, the respondent's name and contact information, if known, an indication that the survivor/victim desires the complaint to be the subject of an investigation, and the survivor's/victim's signature.

The Sexual Assault Policy includes a section addressing the UM's immediate response to disclosures of sexual assault, including providing reasonable work or academic accommodations and the creation of a safety plan. Furthermore, the Sexual Assault Policy highlights the importance that the individual retain control over the process of reporting an incident of sexual assault and can thereof report an incident of sexual assault to the OHRCM, UMSS or STATIS. Notwithstanding that, a formal complaint must be directed to the OHRCM's attention.

Following receipt of a formal complaint, the OHRCM conducts a preliminary assessment to determine whether an investigation should occur. This assessment must be completed within 30 working days of receipt of the formal complaint, subject to extenuating circumstances. A formal complaint will not proceed to investigation, and no further action is required by the OHRCM or the UM, if the formal complaint does not strictly meet the requirements outlined above, including where the formal complaint is not in writing, is anonymous, is out of time, or does not contain all the required information. However, the OHRCM may exercise its discretion to accept a non-compliant formal complaint or to bring it forward for consideration of a University Instituted Investigation.

During the preliminary assessment, the OHRCM considers a number of factors, including whether the complaint deals with a breach to which the RWLE or Sexual Assault Policy applies; whether the complaint appears credible and made in good faith; whether the issues disclosed by the complaint have been address in another forum or would be more appropriately addressed in another forum; whether the matters included in the complaint are of sufficient seriousness to warrant an investigation and an investigation would serve the UM in furthering the objectives under the RWLE or Sexual Assault Policy; and whether the survivor/victim has attempted to address the matters included in the formal complaint through informal resolution.

The survivor/victim is then advised by the OHRCM in writing of its decision on the preliminary assessment. If the formal complaint is dismissed on preliminary assessment, the survivor/victim can appeal that decision to the Human Rights Advisory Committee (HRAC) within ten working days of the decision. The HRAC will decide within ten working days whether to direct the OHRCM to appoint an investigator to investigate the formal complaint or to confirm the OHRCM's decision to dismiss the formal complaint. The Committee's decision is final.

2. LIMITATION PERIODS FOR FORMAL COMPLAINTS

A formal complaint must be filed no later than one year after the alleged breach, or where a continuing contravention is alleged, no later than one year after the last alleged instance of the breach, unless, in the discretion of the OHRCM, extenuating circumstances warrant an extension of time.

3. UNIVERSITY INSTITUTED INVESTIGATION

The UM may require that an investigation be completed where a non-compliant formal complaint was received, but nonetheless disclosed a credible issue of sufficient importance to warrant an investigation; where a matter comes to the attention of the Vice-President (Administration), or designate, that leads him/her to believe that there has been a breach of sufficient importance to warrant an investigation; and/or where the UM has received formal complaints from two or more individuals and it is more practical to conduct a single investigation.

In these circumstances, the Vice-President (Administration), or designate, will launch a University Instituted Investigation, which proceeds in the same manner as an investigation into a formal complaint. Once the investigation is underway, the UM may not be able to maintain the survivor's/victim's anonymity since the respondent is entitled to know and respond to the allegations made against them.

4. THE INVESTIGATION AND REPORT

Once it has been determined that an investigation will occur, an UM employee or an external consultant is appointed to act as investigator and the selection of the investigator is based on whether the individual has the skills and/or experience desirable in the circumstances, would be able to conduct the investigation in an unbiased manner and would not be placed in a conflict of interest. External investigators are typically lawyers and the UM is currently developing an "Expression of Interest" process to assist it in developing a list of interested and qualified external investigators.

Once appointed, the investigator determines the manner in which they will conduct the investigation, which may include interviewing witnesses, reviewing relevant documents, records, photographs, recordings and electronic systems, examining and arranging for testing of physical evidence and arranging for medical or psychological evaluations (with the participant's consent). The investigator ensures that:

- the survivor/victim is provided with an opportunity to explain and provide evidence in support of the complaint;
- the respondent is informed of the alleged breach and provided a copy of the formal complaint and is provided a reasonable opportunity to respond to the allegations, including being provided access to documentary and other evidence as required, subject to limits with respect to confidentiality;
- the survivor/victim is provided with a copy of the respondent's response to the formal complaint and is provided an opportunity to respond, usually as part of their interview. Third

party information and attachments may be redacted/removed from the respondent's response to maintain privacy;

- appropriate weight is given to evidence based on its credibility and reliability; and
- all parties interviewed may consult with and be accompanied by a representative.

An investigation will normally be completed within 90 working days of the complaint being assigned to the investigation, which timeline may be extended up to 30 additional working days by the OHRCM upon receipt of request for such an extension from the investigator. An investigator may make multiple applications for extensions, but extensions may only be granted if reasonable in the circumstances and at a maximum of 30 working days at a time. The survivor/victim and respondent are advised of any extensions granted.

While the inclusion of a reasonable timeline in a procedure with respect to the completion of an investigation is good practice as it sets expectations, the inclusion of a lengthy timeline may have the effect of removing the sense of urgency from the investigator and therefore unreasonably delaying the process (we explore this further in Chapter 6). We have received feedback that, generally, internal investigations are completed faster than external investigations, and investigations involving a student survivor/victim and faculty respondent generally take longer to complete than investigations involving a student survivor/victim and student respondent, or a faculty survivor/victim and faculty respondent. The information collected as part of this Review did not indicate the reasoning for such differences in timing, but may, at least in part, be due to delays in reporting.

At any time during the investigation, the investigator may apply to the OHRCM to expand the scope of the investigation, or, with the consent of the survivor/victim, respondent and OHRCM, suspend the investigation in order to provide an opportunity for informal resolution. At the conclusion of the investigation, the investigator will issue a report to the OHRCM and the Vice-President (Administration), or designate, which report will include the following:

- a summary of the formal complaint and the alleged breach;
- a summary of the process and key timelines in the investigation;
- a summary of the key evidence obtained through the investigation, including a summary of the respondent's response;
- an indication of which key evidence was considered credible and reliable;
- a conclusion as to whether, on a balance of probabilities, a breach has been committed, including identification of which individuals caused or contributed to the breach;
- a summary of the investigator's reasons for the conclusion; and
- a summary of any remedial measures taken in regard to a breach to the date of the report.

5. THE FINDINGS

If the investigation results in a finding that no breach has occurred, the survivor/victim and respondent are advised of this finding and may be provided with a copy of the investigation report. No record of the complaint is maintained on the respondent's personnel or student file and no record of the complaint is maintained on the survivor's/victim's personnel or student file, unless it is determined that the complaint was frivolous or vexatious. If the investigation results in a finding that a breach has occurred, either the investigation report or a summary thereof will be provided to the

survivor/victim, the respondent, and any other individuals as outlined in the Procedure. The amount of information provided to the relevant parties is outlined in more detail under heading 8 below.

6. DISCIPLINARY ISSUES

An individual who is found to have breached the RWLE or Sexual Assault Policy is subject to disciplinary action. For employees, such disciplinary action is implemented in accordance with applicable legislation, common law, collective agreements and UM policies, procedures and bylaws. For students, such disciplinary action is implemented in accordance with the Student Discipline Bylaw and the Student Non-Academic Misconduct and Concerning Behaviour procedure. The respondent can appeal a disciplinary decision made against him/her in accordance with the applicable collective agreement or the Student Discipline Bylaw and the Student Discipline Appeal Procedure.

With respect to limits on the imposition of disciplinary action, the RWLE and Sexual Assault Procedure provides that anonymous material can only be considered in a disciplinary decision where it does not violate the principles of procedural fairness and natural justice and does not conflict with applicable collective agreements. In that regard, the UMFA Collective Agreement provides, in part, as follows:

- anonymous material (i.e., material of which the authorship has not been disclosed to the faculty member) shall not be used in any disciplinary or evaluative proceeding or action involving the member and includes oral or written comment received by the UM related to a member's performance or conduct;
- notwithstanding the above, the UM may inquire or investigate into matters raised by anonymous material; and
- statistical data arising from teaching evaluations is not considered to be anonymous.⁸⁷

Further, the UMFA Collective Agreement indicates that the Board of Governors must approve the dismissal or suspension without pay of a faculty member.⁸⁸

7. COLLECTIVE AGREEMENTS: GRIEVANCES AND PROCESS

Each collective agreement sets out a grievance and arbitration process for its members, which process includes timelines and necessary stages that the member and union/association must follow with respect to grievances. Generally, the collective agreements provide that:

⁸⁷ *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021) at art 11.1, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.*

⁸⁸ *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021) at art 19.B.1.3, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.*

- grievances must first be addressed with the member's appropriate manager or department head, who then has a set amount of time in which to reply to the grievance;
- if the grievance is not resolved at the first stage, the next stage is for the grievance to be delivered to the appropriate dean, director or vice-president, who then has a set amount of time in which to reply to the grievance; and
- if the grievance is not resolved at the second stage, the next stage is either for the grievance to be delivered to the appropriate vice-president or vice-provost, or to be referred to arbitration, depending on the collective agreement. For the former, the fourth and last stage is for the matter to be referred to arbitration.⁸⁹

The decision of the arbitrator is final and binding on all parties.

8. COMMUNICATION WITH THE PARTIES AND WITNESSES

In most cases involving a breach of the RWLE or Sexual Assault Policy, the survivor/victim is usually provided with a copy of the response provided by the respondent, although it may be redacted or summarized to protect privacy and relevance (for example, to maintain the privacy of third party or health information). Following the investigation, a copy of the full investigation report is usually provided to the survivor/victim and respondent and to the necessary authorities in order to impose

⁸⁹ *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021) at art 32, online: UMFA* <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>;

University of Manitoba and the National Automobile, Aerospace, Transportation, and General Workers Union of Canada UNIFOR-Canada and its Local 3007 (2014-2017) at art 14, online: University of Manitoba <[https://umanitoba.ca/admin/human_resources/services/hris/media/UNIFOR_Collective_Agreement_\(2014-2017\).pdf](https://umanitoba.ca/admin/human_resources/services/hris/media/UNIFOR_Collective_Agreement_(2014-2017).pdf)>;

University of Manitoba and the Canadian Union of Public Employees Local 3909 (Students), Collective Agreement between University of Manitoba and the Canadian Union of Public Employees Local 3909 (2014-2018) at art 20, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/staff_relations/media/CUPE-TA_Agreement_2014_2018_Final.pdf>;

University of Manitoba and the Canadian Union of Public Employees Local 3909 (Sessionals), Collective Agreement between University of Manitoba and the Canadian Union of Public Employees Local 3909 (2015-2018) at art 21, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/staff_relations/media/CUPE_Unit_2_Signed_Collective_Agreement.pdf>;

University of Manitoba Faculty of Engineering and the Canadian Union of Public Employees, 1482, Collective Agreement between the University of Manitoba Faculty of Engineering and the Canadian Union of Public Employees, 1482 (2014-2018) at art 14, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/services/hris/media/CUPE_Engineering_CA_2014_2018.pdf>;

University of Winnipeg and the Association of Employees Supporting Education Services, Collective Agreement between University of Winnipeg and the Association of Employees Supporting Education Services (2015-2019) at art 23, online: UMFA <<https://aes.ca/wp-content/uploads/2016/11/UW-Collective-Agreement-2015-2019-w-bookmarks.pdf>>.

disciplinary action. The investigation report may be redacted if, for example, it contains personal health information or intimate details regarding an involved person (for example, disclosure of a disability, or drug or alcohol dependency). Further, the summary of the investigation report is used in circumstances involving sensitive content. A witness who makes additional allegations during the investigation regarding the respondent may be provided with the portion of the investigation report that relates to those allegations. Any individual who receives the investigation report, or a portion or summary thereof is instructed to maintain strict confidentiality with respect to it, as outlined in more detail below.⁹⁰

The RWLE Policy and the RWLE and Sexual Assault Procedure were drafted in accordance with the *Workplace Safety and Health Regulation*. They include statements that the UM will not disclose the name of the survivor/victim or respondent or the circumstances related to the complaint except where such disclosure is necessary to investigate the complaint or take corrective action or is required by law. Furthermore, the Sexual Assault Policy highlights the importance of confidentiality as it relates to complaints of sexual assault and provides that the confidentiality of all persons involved in a report of sexual assault will be strictly observed, subject to the provisions contained in the RWLE and Sexual Assault Procedure.

If a breach of the RWLE or Sexual Assault Policy is found, the UM will not disclose the survivor's/victim's name or the circumstances related to the finding of the breach, except where disclosure is necessary to address a risk to the health or safety of an individual or group or to comply with insurance requirements or as required by law. With respect to the respondent, the UM may disclose the respondent's name or the circumstances related to the finding of the breach in limited circumstances, including:

- in order to address a risk to the health or safety of an individual or group;
- in order to prevent further or continuing breaches or other violations of the RWLE or Sexual Assault Policy, or the RWLE and Sexual Assault Procedure;
- in order to obtain confidential professional advice, to report a legal offense to appropriate authorities, to respond to legal or administrative proceedings, to comply with any legal or contractual requirement, or in accordance with the Access and Privacy policy; or
- as otherwise permitted or as necessary to give effect to the RWLE or Sexual Assault Policy, or the RWLE and Sexual Assault Procedure.

Any personal information disclosed in accordance with the above must be the minimum amount necessary for the purpose. It is important to note that if disciplinary steps are taken, the respondent will get disclosure in order to ensure fairness in the disciplinary process. If a grievance is filed and an arbitration hearing takes place, *The Labour Relations Act*⁹¹ (LRA) provides that the hearing would be open to the public, unless the arbitrator orders that members of the public are not allowed to attend

⁹⁰ University of Manitoba, "RWLE and Sexual Assault Procedure" at s 2.67, 2.68 and 2.51(a-f) online: University of Manitoba <https://umanitoba.ca/admin/governance/media/Respectful_Work_and_Learning_Environment_RWLE_and_Sexual_Assault_Procedures_-_2016_09_01.pdf>. This Procedure guides the distribution of the reports to the parties and others. Generally, full copies are provided to authorities who require them for disciplinary action.

⁹¹ *The Labour Relations Act, CCSM c L10 [LRA]*.

the hearing due to intimate financial or personal matters which may be disclosed and the desirability of avoiding disclosure of the intimate financial or personal matters outweighs the desirability of adhering to the principle that hearings be open to the public.⁹² However, the LRA also provides that the arbitrator's decision must be filed with the Manitoba Labour Board, which decision shall be open to the public (typically the decisions are available on CanLII, Quicklaw and/or Westlaw).⁹³

With respect to confidentiality obligations placed on the survivor/victim, respondent, and witnesses involved in the investigation, such individuals must keep confidential the existence and nature of the investigation, and any information or documentation obtained as a result of the investigation, which information may only be disclosed to those who reasonably need to know. The individual can seek advice from the OHRCM or from the UM's Access and Privacy Office if they are unsure of whether they may disclose particular information. Notwithstanding that, such individuals are permitted to:

- obtain confidential advice and/or direction in relation to the complaint from their supervisor, lawyer, union/association representative, Student Advocate, or support person;
- disclose information to others only to the extent reasonably necessary to gather evidence and, in the case of a Respondent, to make full answer and defense to the allegations; and
- use information obtained independent of the Investigation in any other forum.

Confidentiality obligations are, of course, also imposed on the investigator. In that regard, the investigator is required to comply with FIPPA and PHIA with respect to personal information and personal health information collected, used and disclosed during the investigation. Furthermore, the investigator must only provide to those individuals participating in the investigation such information as they may reasonably need to know to be effective witnesses, or in the case of the Respondent, to address the allegations.

9. COMMUNICATION WITH THE UM AND THE COMMUNITY

None of the full, redacted, or summarized version of the investigative report is provided by the UM to the general public. Moreover, the UM will rarely, if ever, comment on the status or existence of a matter falling under the RWLE or Sexual Assault Policy or the RWLE and Sexual Assault Procedure, including the existence of an informal or formal complaint and an ongoing or completed investigation.

In addition to the confidentiality obligations placed on the UM by provincial legislation (namely, the *Workplace Safety and Health Regulation*, FIPPA and PHIA) and its policies, some of the UM's collective agreements also contain specific restrictions on what, if anything, the UM can disclose with respect to information contained on a member's personnel file. Specifically:

⁹² *The Labour Relations Act, CCSM c L10 at s 122.*

⁹³ *The Labour Relations Act, CCSM c L10 at s 126.*

- the UMFA Collective Agreement provides that no information contained in a member's personnel file shall be made available by the member's dean or director to third parties without the member's written consent or as provided for in the Collective Agreement;⁹⁴
- the CUPE (Sessionals) Collective Agreement provides that no information contained in an employment file shall be made available to another outside of the UM without the member's written consent or as required by law;⁹⁵ and
- the CUPE (Students & TAs) Collective Agreement provides that access to employment files will be in accordance with FIPPA and PHIA.⁹⁶

E. INFORMAL COMPLAINTS PROCESS

1. INFORMAL PROCESSES

The UM's policies and procedures outline informal processes to resolve conflict, where appropriate. For example, the RWLE and Sexual Assault Policies and the RWLE and Sexual Assault Procedure provide that the OHRM will provide information to the survivor/victim and respondent regarding opportunities and resources available to facilitate informal resolution of concerns and, where appropriate, coordinate communications between them. The chart included in the UM's Toolkit (included earlier in this Report) sets out the following informal resolution options: conflict coaching, mediation, conciliation (shuttle mediation), restorative justice and facilitated group dialogue.

2. THE PROS AND CONS OF THE INFORMAL COMPLAINTS PROCESS

Informal resolution requires the voluntary participation of all involved parties and is not suitable for resolution of more serious complaints, which may depend on whether the complaint involves sexual violence, harassment or discrimination. However, in appropriate circumstances, this method can move quickly to find solutions to situations and to restore relationships, since the results are fully transparent and the parties control the process. Conversely, we were told that the formal complaint and investigation process do not often lead to a satisfying result for all parties; there is less control over the process, less transparency and the results may be disappointing for all concerned.

⁹⁴ *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021) at art 11.2.7, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.*

⁹⁵ *University of Manitoba and the Canadian Union of Public Employees Local 3909 (Sessionals), Collective Agreement between University of Manitoba and the Canadian Union of Public Employees Local 3909 (2015-2018) at art 20.6, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/staff_relations/media/CUPE_Unit_2_Signed_Collective_Agreement.pdf>.*

⁹⁶ *University of Manitoba and the Canadian Union of Public Employees Local 3909 (Students), Collective Agreement between University of Manitoba and the Canadian Union of Public Employees Local 3909 (2014-2018) at art 19.5, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/staff_relations/media/CUPE-TA_Agreement_2014_2018_Final.pdf>.*

Informal intervention is, in most cases, the appropriate first step when dealing with a single unprofessional incident, subject to legal or policy requirements that dictate otherwise.

F. OTHER MECHANISMS OF SUPPORT AND ASSESSMENT

1. INTRODUCTION

As previously indicated in this Report, UM students and employees have a number of reporting options and post-incident supports available to them. A detailed description of some of these support options is set out below and a complete list is attached at Appendix E.

2. INDIGENOUS STUDENT CENTRE

The Indigenous Student Centre is located in its own building called Migizii Agamik and is made up of a team of approximately nine people that welcome and support Indigenous students. The supports and services offered by the Centre include academic student advisors, cultural support and elder referrals and programs, fireside chats and sharing circles, full moon ceremonies and one-on-one, couple and group counselling sessions. A psychologist spends one day a week at the Centre, and there are one to two Elders available to assist as an advisor or counsellor. The Centre works closely with other services and departments at the UM, including the OHRCM, the SCC, the medical clinic within the UM Health Services, and Deans and Associate Deans from various faculties, as appropriate, and resources outside of the UM to ensure that students receive appropriate support and services.⁹⁷

3. ONGOMIIZWIN INDIGENOUS INSTITUTE OF HEALTH AND HEALING

Ongomiizwin is located at the Rady Faculty of Health Sciences and its mandate is to provide leadership and advance excellence in research, education and health services in collaboration with First Nations, Metis and Inuit communities. Its work is guided by Knowledge Keepers and Elders and helps to achieve health and wellness of Indigenous peoples. Ongomiizwin is leading the implementation of the Rady Faculty's Reconciliation Action Plan, developed in response to the health-related calls to action made by the Truth and Reconciliation Commission of Canada, which Action Plan addresses honouring traditional knowledge and healing practices, providing safe learning environments, improving support and retention of Indigenous students, educating all students and faculty in cultural safety and anti-racism, and removing barriers to health professional education.⁹⁸

⁹⁷ Source: Director, Indigenous Student Centre, and University of Manitoba Student Affairs, "Migizii Agamik – Bald Eagle Lodge", online: University of Manitoba <http://umanitoba.ca/admin/indigenous_connect/5558.html>.

⁹⁸ Rady Faculty of Health Sciences, "Ongomiizwin", online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/indigenous/institute/background.html>.

4. SEXUAL VIOLENCE STEERING COMMITTEE

The Sexual Violence Steering Committee is an institution-wide body with representatives from various stakeholder groups within the UM community, including students, faculty, and administrators. The Committee guides the planning, implementation and evaluation of assault and sexual violence prevention, education and response initiatives at the UM.⁹⁹

5. STATIS

STATIS is a team of professionals committed to promoting a safe and respectful learning and work environment for the campus community. The composition of STATIS is outlined in Chapter 1. A report can be made to STATIS regarding a threatening or disruptive incident, a pattern of concerning behaviour, or any other concern under the UM's Violent or Threatening Behaviour Policy, Sexual Assault Policy, RWLE Policy or Student Non-Academic Misconduct and Concerning Behaviour Procedure. Upon receipt of a report, STATIS develops an action plan to assist and support the members of the UM community affected by the incident/concerning behaviour, ensures that members of the UM community affected by the incident/concerning behaviour are consulted where appropriate and kept informed of the developments within the parameters of confidentiality, makes recommendations to the appropriate Unit Head and/or Disciplinary Authority, and recommends support for the individual(s) perpetrating the incident/exhibiting concerning behaviour where appropriate.¹⁰⁰

6. UM SECURITY SERVICES

UMSS's mandate is *"To create a culture of enterprise risk management and emergency preparedness across the university community and to continually enhance our organizational wide resilience in support of our students, faculties, management and staff."* We heard from UMSS and others of UMSS's efforts to create a safe environment at the UM. While UMSS's focus is on physical security, it plays a significant role relating to prevention by providing campus security initiatives, such as safe walks, physical safety tips and on campus reporting of sexual violence.

⁹⁹ UM Today News, "Educating our community on sexual violence" (5 September 2018), online: University of Manitoba <<http://news.umanitoba.ca/educating-our-community-on-sexual-violence/>>;

University of Manitoba Sexual Violence Steering Committee "Terms of Reference" (3 October 2018), online: University of Manitoba <<http://umanitoba.ca/student/media/SVSC-Terms-of-Reference-Final.pdf>>.

¹⁰⁰ University of Manitoba Student Affairs, "STATIS – Student/Staff Threat Assessment Triage, Intervention and Support", online: University of Manitoba <<http://umanitoba.ca/student/case-manager/statis/index.html>>.

7. STUDENT ACCESSIBILITY SERVICES (SAS)

SAS provides support and advocacy for students with disabilities, including mental health disabilities and acts as a liaison between students, faculty, staff and service agencies. SAS is located at both the Fort Garry and Bannatyne campus.¹⁰¹

G. ANCILLARY ISSUES FLOWING FROM A FORMAL COMPLAINT & INVESTIGATION

1. INTERIM MEASURES AND ACCOMMODATIONS

Interim measures and accommodations may be necessary where concerns have been raised with respect to sexual violence, harassment, or discrimination. An essential requirement is that any interim measures to be imposed are just and reasonable.¹⁰² The principles to be considered when determining the appropriateness of interim measures pending the determination of criminal charges have long been applied,¹⁰³ and this analytical framework has been extended to cases where criminal charges have not been filed, but where an employer is conducting an investigation into an employee's alleged misconduct.¹⁰⁴ Employers must act in good faith, establish the existence of a reasonably serious and immediate risk, explore options that minimally impact the employee, and consider reinstatement throughout any period of suspension during which new facts may come to light.¹⁰⁵ In assessing the appropriateness of interim measures, one must balance the harm that may be caused to the employer absent the measures against the harm that may be caused to the employee by imposing the measures. It must be kept in mind that the employee may in fact be innocent.¹⁰⁶ The essential question will be whether or not the proposed interim measures are reasonably necessary to protect the employer's interests.¹⁰⁷ The potential for negative publicity may be enough to justify suspension where the public might reasonably lose confidence in the employer's ability to carry out its mandate absent the suspension.¹⁰⁸

¹⁰¹ University of Manitoba Student Affairs, "Student Accessibility Services About Us", online: University of Manitoba <<http://umanitoba.ca/student/accessibility/about-us.html>>.

¹⁰² *Potter v New Brunswick (Legal Aid Services Commission)*, 2015 SCC 10.

¹⁰³ *Ontario Jockey Club v Mutual Employees' Assn., S.E.I.U. Local 528*, 1977 CarswellOnt 762, [1977] OLAA No. 4. (Ontario Arbitration).

¹⁰⁴ *St. Amant Inc. and MGEU (TAWO)*, 2010 CarswellMan 873, [2010] MGAD No. 34;

Pierro v Hospital for Sick Children, 2016 ONSC 2987;

Ryerson University v Ryerson Faculty Association, 2018 CarswellOnt 18961, 138 CLAS 42.

¹⁰⁵ *Ontario Jockey Club v Mutual Employees' Assn. S.E.I.U. Local 528*, 1977 CarswellOnt 762;

Vancouver Coastal Health Authority and HSA (BJ), Re, 2018 CarswellBC 1320.

¹⁰⁶ *Ontario Jockey Club v Mutual Employees' Assn. S.E.I.U. Local 528*, 1977 CarswellOnt 762.

¹⁰⁷ *St. James-Assiniboia School Division and St. James-Assiniboia Teachers' Assn. (MTS)*, Re, 2014 CarswellMan 331.

¹⁰⁸ *St. James-Assiniboia School Division and St. James-Assiniboia Teachers' Assn. (MTS)*, Re, 2014 CarswellMan 331.

When a formal complaint is made to the UM, the UM considers and, as appropriate and necessary, implements interim measures and accommodations. Throughout the investigation process, the UM continues to re-evaluate and consider the appropriateness and necessity of any interim measures and accommodations.

The Sexual Assault Policy indicates that the UM is committed to supporting those who have experienced sexual assault by providing appropriate and reasonable academic, work or other accommodations and implementing interim measures while ensuring that fairness and due process are respected.

Furthermore, the RWLE and Sexual Assault Procedure indicates that the UM will implement interim measures as appropriate to facilitate a thorough investigation, discourage reprisal and prevent any future breaches.

Interim measures may include changes to reporting structures, academic or work accommodations, logistical measures and/or safety-related measures.¹⁰⁹

2. DISCIPLINARY MEASURES

The determination of the appropriate disciplinary measure when an employee is found to have breached a workplace policy is highly contextual and fact specific. Among the factors to be considered are the nature of the conduct, the nature of the employment of the respondent, the nature of the relationship between the respondent and the survivor/victim, the respondent's prior employment and discipline history, and the existence of a known policy that is clear and routinely enforced.¹¹⁰

The RWLE Policy states that discipline may be implemented against any person whose behaviour is found to have caused or contributed to a breach or other violation of the RWLE Policy and the RWLE & Sexual Assault Procedure. The Sexual Assault Policy states that any member of the UM community who commits sexual assault in relation to a UM matter discipline will be subject to discipline pursuant to the RWLE and Sexual Assault Procedure.

Individuals who are found in breach of the RWLE or Sexual Assault Policies or the RWLE and Sexual Assault Procedure will be subject to disciplinary action as follows:

- for employees, discipline is implemented in accordance with applicable legislation, common law, collective agreements and UM policies, procedures and bylaws;
- for students, discipline is implemented in accordance with the Student Discipline Bylaw and the Student Non-Academic Misconduct and Concerning Behaviour procedure; and

¹⁰⁹ University of Manitoba Human Resources, "Manager's Toolkit: Recruitment, Hiring and Onboarding)" (February 2019) at 28, online: University of Manitoba <http://umanitoba.ca/admin/human_resources/consulting/managers_toolkit/recruitment-selection-onboarding.html>.

¹¹⁰ Foerderer v Nova Chemicals Corp., 2007 ABQB 349.

- for individuals who are neither employees nor students, the Vice-President (Administration) or designate may make a determination regarding the individual's continued access to the UM.

Unionized employees and students can appeal a disciplinary decision made against them. For unionized employees, such appeal would be in accordance with the grievance process defined in the applicable collective agreement, and for students, such appeal would be in accordance with the Student Discipline Bylaw and the Student Discipline Appeal Procedure.

The UM's collective agreements address discipline imposed on members. More specifically, each collective agreement indicates that the UM has the right to discipline members for misconduct. Some collective agreements indicate that the UM must apply progressive discipline, except in the case of severe problems, including violent behaviour and harassment.¹¹¹ Further, as outlined above, the UMFA Collective Agreement indicates that the Board of Governors must approve the dismissal or suspension without pay of a faculty member.¹¹²

¹¹¹ *University of Winnipeg and the Association of Employees Supporting Education Services, Collective Agreement between University of Winnipeg and the Association of Employees Supporting Education Services (2015-2019) at art 9.2, online: UMFA <<https://aes.ca/wp-content/uploads/2016/11/UW-Collective-Agreement-2015-2019-w-bookmarks.pdf>>;*

University of Manitoba and the National Automobile, Aerospace, Transportation, and General Workers Union of Canada UNIFOR-Canada and its Local 3007 (2014 – 2017) at art 23.2,; online: University of Manitoba <[https://umanitoba.ca/admin/human_resources/services/hris/media/UNIFOR_Collective_Agreement_\(2014-2017\).pdf](https://umanitoba.ca/admin/human_resources/services/hris/media/UNIFOR_Collective_Agreement_(2014-2017).pdf)>;

University of Manitoba Faculty of Engineering and the Canadian Union of Public Employees, 1482, Collective Agreement between the University of Manitoba Faculty of Engineering and the Canadian Union of Public Employees, 1482 (2014-2018) at art 17.3, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/services/hris/media/CUPE_Engineering_CA_2014_2018.pdf>;

University of Manitoba and the Canadian Union of Public Employees Local 3909 (Sessionals), Collective Agreement between University of Manitoba and the Canadian Union of Public Employees Local 3909 (2015-2018) at art 17.6, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/staff_relations/media/CUPE_Unit_2_Signed_Collective_Agreement.pdf>;

University of Manitoba and the Canadian Union of Public Employees Local 3909 (Students), Collective Agreement between University of Manitoba and the Canadian Union of Public Employees Local 3909 (2014-2018) at art 18.4, online: University of Manitoba <https://umanitoba.ca/admin/human_resources/staff_relations/media/CUPE-TA_Agreement_2014_2018_Final.pdf>.

¹¹² *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021) at art 19.B.1.3., online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.*

3. LETTERS OF REFERENCE AND COMMUNICATION WITH POTENTIAL FUTURE EMPLOYERS

In 2017, the UM developed a Manager's Toolkit to assist managers with recruitment, hiring and onboarding, which Toolkit includes a hiring checklist, hiring guidelines, an interview template, and a reference check guide and questionnaire. The reference check guide and questionnaire indicate that the manager must always check two references, where possible, and should ask each reference regarding the circumstances surrounding the applicant leaving their organization and whether they would rehire the applicant in the same or similar position. Managers are expected to direct any questions they have regarding the Toolkit to their HR Consultant.

We were advised that the UM currently has six HR Consultants and three HR Advisors. Each HR Consultant represents a cross-section of faculties/administrative units and is the main point of contact between the unit and the HR Department. The HR Advisors each have one or two units that they support, similar to the HR Consultants, plus additional duties primarily in the recruitment process. There are also some decentralized HR roles imbedded within various faculties that work closely with the HR Consultants. HR Consultants may participate in the hiring process for new employees, including sitting in on the applicant's interview and conducting reference checks. This process is typically managed by the department in which the applicant has applied to work and HR will participate only in certain circumstances. This includes when the position being filled is a higher-level position and in situations where internal and external applicants have applied for a position. HR does not participate in the academic hiring process, which process is governed by the UMFA Collective Agreement and handled by the UM's Provost's Office in conjunction with the hiring Faculty.¹¹³

In addition to the Toolkit, the UM has an Employment of Support Staff Policy and Procedure, which provide general guidelines regarding the selection of support staff. The Employment of Support Staff Procedure provides that reference checks on the preferred applicant shall be conducted, but does not provide any required process regarding such reference checks, including the questions to be asked of the applicant's references.¹¹⁴

We were advised that it is not a common practice for an applicant to be asked during the interview process whether they have a disciplinary record and whether any complaints were made against them at their past employment. Further, the UM's current practice with respect to providing references for an employee who has left the UM is not addressed in any UM policy, procedure or guideline. If the employee leaves the UM on good terms, the UM does not generally place any restrictions on the provision of a reference, which would typically be provided by the employee's direct manager.

¹¹³ *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021) at art 18, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.*

¹¹⁴ *University of Manitoba Human Resources, "Manager's Toolkit: Recruitment, Hiring and Onboarding)" (February 2019), online: University of Manitoba <http://umanitoba.ca/admin/human_resources/consulting/managers_toolkit/recruitment-selection-onboarding.html>.*

We were further advised that HR Consultants are currently not actively included in the hiring process of UMFA members and when dealing with labour issues or the annual review process for UMFA members the HR Consultants will usually act in a supportive role to Staff Relations. Staff Relations has three Staff Relations Officers who manage labour relations issues and they work with the HR Consultants with respect to unionized employees. Their roles differ from the HR Consultants in that they deal primarily with the grievance process under the collective agreements or interpretations of the collective agreement that could potentially result in a grievance or require specific union/association agreement. They also play a more active role in the formal discipline process leading up to termination. The HR Consultants work hand in hand with the Staff Relations Officers. The HR Consultants work closely with their clients to ensure that they are properly managing their human resources in accordance with the collective agreement while the Staff Relations Officers are involved to resolve the dispute or when they are imposing formal discipline as part of the collective agreement. As such, they may have the most relevant knowledge in circumstances where discipline or dispute resolution is involved.

4. PUBLIC COMMUNICATION RELATED TO AN INVESTIGATION

As earlier indicated, the UM will rarely, if ever, comment on the status or existence of a matter falling under the RWLE or Sexual Assault Policy or the RWLE and Sexual Assault Procedure, including the existence of an investigation or formal complaint and an ongoing or completed investigation.

CHAPTER 3: THE CURRENT RESPONSE TO PREVENTION

A. INTRODUCTION

In this Chapter of our Report, we focus on those practices that are currently in place to help diminish the prevalence of sexual violence, harassment and discrimination by preventing them from arising. We describe the work to develop and deliver educational programming to students, faculty and staff and outline the current measures that have been implemented to build a more respectful, inclusive and diverse workplace, with early remedial measures to be taken should there be behaviour that places these principles at risk. We believe that building a more respectful, inclusive and diverse institution is an integral element in preventing sexual violence, harassment and discrimination from arising.

B. EQUITY, DIVERSITY AND INCLUSION (EDI)

Our description of current practices relating to education and prevention starts with an overview of the policies and practices relating to EDI. In our view, sexual violence, harassment and discrimination are more likely to arise in environments that are not as respectful, diverse and inclusive as they should be. Further, workplaces and institutions that value EDI are more likely to appreciate the importance of identifying effective responses to sexual violence, harassment and discrimination.

We note that, in addition to the EDI policies and practices described below, the UMFA collective agreement has provisions that are very supportive of EDI for women, visible minorities, Indigenous peoples and persons with disabilities.¹¹⁵

At the UM's administrative level, the Diversity & Inclusion Consultant in HR has facilitated the development of an EDI strategy consisting of three primary components, which are described below.

1. HUMAN RESOURCE STRATEGY ON EDI

The HR Strategy on EDI describes its goal in the following terms: "to achieve a discrimination-free workplace and be inclusive of all community members." The strategy is linked to all five institutional priorities identified in *Taking Our Place*, the UM's Strategic Plan, which are:¹¹⁶

¹¹⁵ *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021) at art 18, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.*

- Inspiring Minds through innovative and quality teaching
- Driving Discovery and Insight through excellence in research, scholarly work and other creative activities
- Creating Pathways to Indigenous Achievement
- Building Community that creates an outstanding learning and work environment
- Forging Connections to foster high impact community engagement that build on the advantages of a diverse and inclusive workplace.

The UM is reviewing its HR Strategy on EDI and considering whether to replace it with an institutional-wide EDI strategy in consultation with a variety of stakeholders.¹¹⁷

One of the stated goals of the current HR Strategy is to develop a university-wide diversity policy. While the UM has yet to complete a university-wide diversity policy, the Max Rady College of Medicine approved its Equity, Diversity and Inclusion Policy in June 2010, and last updated it on August 21, 2018.¹¹⁸ It is an excellent document grounded in seven fundamental principles:

1. **The correlation between EDI and excellence.** The policy acknowledges that institutions and workplaces that embrace EDI are better for it. It is not just about “doing the right thing”; it’s about making the College a better place, strengthening its effectiveness and the quality of its work.¹¹⁹
2. **EDI is not just an HR strategy.** There is a commitment to embed EDI “throughout every area and level of the College of Medicine and RFHS” (Rady Faculty of Health Sciences).¹²⁰

¹¹⁶ Found at University of Manitoba, “Taking Our Place: University of Manitoba Strategic Plan”, online: University of Manitoba <https://umanitoba.ca/admin/president/media/PRE-00-018-StrategicPlan-WebPdf_FNL.pdf>. The UM has since published a report on its progress in implementing its strategic plan, found at University of Manitoba, “Taking Our Place: University of Manitoba Strategic Plan Sharing Our Progress” online: University of Manitoba <<https://umanitoba.ca/admin/president/media/UM-Strategic-Plan-Progress-Report.pdf>>.

¹¹⁷ Source: Director, Human Resources Client Services.

¹¹⁸ Max Rady College of Medicine, “Max Rady College of Medicine Equity, Diversity and Inclusion Policy” (21 August 2018), online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/media/Equity-Diversity-and-Inclusion-policy-August-21-2018.pdf>.

¹¹⁹ The “business case” for EDI has been convincingly made for years. See, e.g., Christopher Mims “Keywords: Making a Business Case for Diversity”, *Wall Street Journal*, (14 August 2017) B1: “Research has established the business case for diversity. This isn’t an argument about redressing historical inequities or even present-day fairness. More diverse companies have better financial returns, are more innovative and are just plain smarter than their more homogenous competitors”.

¹²⁰ Max Rady College of Medicine, “Max Rady College of Medicine Policy” (21 August 2018) at s 4.1, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/media/Equity-Diversity-and-Inclusion-policy-August-21-2018.pdf>.

3. **EDI is rooted in the importance of our shared history with Indigenous peoples.** The policy contains a territorial acknowledgement and promotes the importance of supporting the principles of the TRC Report, and implementing the RFHS Reconciliation Action Plan led by Omgomiizwin.¹²¹
4. **Broad definition of diversity.** Diversity is about enhancing the representativeness of historically under-represented groups (women; Indigenous peoples; persons with disabilities and members of racialized communities), other historically underrepresented groups (e.g., LGBT2SQ+), and also celebrating the ways in which we all differ.¹²²
5. **EDI is not just about hiring better; it is also about retention and development.** The Policy sets out the efforts that will be taken to train, develop and mentor its faculty and staff.¹²³
6. **EDI is grounded in continuous learning.** Valuing diversity means continually building an awareness of inequities, reflecting the perspectives and experience of a pluralistic society.¹²⁴
7. **We are all accountable.** Everyone is responsible for educating themselves on matters relating to EDI, to be bold and innovative in leading and supporting EDI initiatives, and to respect and value the dignity of all.¹²⁵

Significant work has already been undertaken to develop an EDI policy for the Rady Faculty of Health Sciences that would apply to all of its five Colleges: Dentistry, Medicine, Nursing, Pharmacy and Rehabilitation Sciences. Towards that end, the Deans of the five colleges signed a detailed letter of commitment to EDI on January 26, 2018, and it is expected that the Rady Faculty of Health Sciences EDI Policy will be finalized later this year.

¹²¹ Omgomiizwin is the Indigenous Institute of Health and Healing and part of the Max Rady College of Medicine. The RFHS Reconciliation Action Plan can be found at Rady Faculty of Health Sciences, “Reconciliation Action Plan”, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/indigenous/media/TRC_Action_Plan_Full.pdf>.

¹²² Max Rady College of Medicine, “Max Rady College of Medicine Policy” (21 August 2018) at s 3, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/media/Equity-Diversity-and-Inclusion-policy-August-21-2018.pdf>.

¹²³ Max Rady College of Medicine, “Max Rady College of Medicine Policy” (21 August 2018) at s 4.3, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/media/Equity-Diversity-and-Inclusion-policy-August-21-2018.pdf>.

¹²⁴ Max Rady College of Medicine, “Max Rady College of Medicine Policy” (21 August 2018) at s 4.6, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/media/Equity-Diversity-and-Inclusion-policy-August-21-2018.pdf>.

¹²⁵ Max Rady College of Medicine, “Max Rady College of Medicine Policy” (21 August 2018) at s 4.15, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/media/Equity-Diversity-and-Inclusion-policy-August-21-2018.pdf>.

The Rady Faculty of Health Sciences has also created a Director of EDI leadership position to work with colleges, units and departments to improve the representation of diverse groups across the faculty as leaders, faculty members, researchers, staff and students. The incumbent will also help develop an EDI strategy that will include the promotion of inclusive hiring practices and anti-racism initiatives. A candidate was recruited for this position and has been in the role since April.

The Faculty of Science has recently developed a Science Faculty Lead for Equity, Diversity and Community (part-time position) whose mandate includes establishing best practices, training, and education to develop and maintain a positive environment for diverse faculty, staff and students within the Faculty and to research and develop approaches to supporting diversity where gaps exist. The incumbent is also to work with the Associate Dean (Research) to ensure that EDI issues are properly addressed in grant applications.¹²⁶

We applaud these measures to enhance EDI and make recommendations in the next Chapter of our Report for the UM as a whole to develop similar measures.

2. HIRING POLICY TO ENHANCE DIVERSITY AND UCOUNT

The second component of EDI strategy at the UM administrative level is a hiring policy to enhance the representativeness of historically disadvantaged groups. The tracking is done according to self-declarations by those who are members of the designated groups, which can be updated by each staff member at their choosing. “UCount!” initiatives are also launched periodically by UM to encourage faculty and staff to update their profiles. We replicate below the chart we were provided that sets out the representation of the historically designated groups on a University-wide basis according to the categories depicted:

¹²⁶ *Source: Dean, Faculty of Science.*

Representation of Designated Groups, UM, as of March 26, 2019

Category	All	Indigenous Peoples		Racialized Persons		Persons with a Disability		Female	
		Count	%	Count	%	Count	%	Count	%
Academics*	2655	44	1.7	267	10.1	51	1.9	1230	46.3
Leadership ⁺	365	10	2.7	35	9.6	12	3.3	167	45.8
Support Staff**	2976	170	5.7	370	12.4	87	2.9	1928	64.8
Totals	5996	224	3.7	672	11.2	150	2.5	3325	55.5

Source: HRIS, Human Resources, University of Manitoba.

* Academic Positions include GFT (Geographical Full-Time) Medical Doctors and Clinical Psychologists at the rank of Professor, Associate Professor, Assistant Professor, Lecturer jointly employed by UM and a regional health authority; Research Academics; Sessional (Sessional Instructors, Part-Time Instructors teaching degree credit programs); and UMFA (University of Manitoba Faculty Association)

⁺ Leadership Positions include President, Vice-Presidents, Provost, Vice-Provosts, University Secretary, Centre/Institute Program Director, Dean/Director, Associate Dean/Director and Department Heads

** Support Staff managerial and non-managerial positions include Clerical/Administrative, Professionals and Managerial (EMAPS), Retail/Services, Technical/IT and Trades

NOTE: these numbers exclude Casual appointments because individuals employed in these categories are not asked to complete a workplace diversity self-declaration and are not factored in the equity numbers.

Current Labour Market Availability (LMA) numbers are not available as these are completed according to occupations and the last one done was in 2016, with the next LMA analysis to be completed later this year. The information on the chart is also limited by the fact that there is no indication as to the levels of seniority within the categories provided. For example, are those who are part of the designated groups in the Academic and Support staff categories well-represented throughout each category or mostly clustered at the entry levels of these categories? As pointed out in Chapter 1 of our Report, female representation for faculty members is lower at the more senior ranks.

While progress needs to be made in all categories for all designated groups (other than the general representation of women in support staff positions), particular attention should be given to the representation of Indigenous persons in each category. With Statistics Canada reporting that Indigenous persons in 2016 represented 18% of Manitoba's population,¹²⁷ the representativeness of Indigenous persons is disappointing. A more concerted effort needs to be made at the institutional

¹²⁷ Statistics Canada, *Focus on Geography Series, 2016 Census, Province of Manitoba: Aboriginal Peoples*, Catalogue no. 98-404-X2016001 (Ottawa: Statistics Canada, 2017).

level to develop linkages with First Nations and other Indigenous communities to target and attract Indigenous candidates for UM positions. This point is developed further in Chapter 5 of our Report.

More encouraging diversity results can be found relating to the strategy outlined in the UM Canada Research Chairs (CRC) Action Plan.¹²⁸ This initiative has been launched further to the Government of Canada's commitment under the Minister of Science and Sport, The Honourable Kirsty Duncan, to enhance the diversity of Canada's research community. Under this Plan, the UM is committed to ensuring not only that all CRC applicants have "fair and equitable access to opportunities throughout hiring retention and advancement" but that "strategies are necessary to ensure that researchers who are members of these groups (racialized persons, Indigenous Peoples, Persons with Disabilities and Women) are better represented among nominations for CRC positions." With respect to CRC Chairs, the UM reports no gaps with respect to all of the designated groups other than persons with disabilities where there is a gap of 1%.¹²⁹ The percentage representation for CRC positions at UM is identified in the following chart:¹³⁰

Category	UM Target	UM Current Occupancy
Women	31%	43%
Visible minorities	15%	25%
Persons with disabilities	4%	3%
Aboriginal peoples	1%	5%

3. EDUCATION AND TRAINING

We are not aware of any general, institution-wide training for UM faculty and staff with respect to EDI. However, with respect to EDI training in the research context, all members of CRC search committees have been required since September 2017 to complete EDI training including an in-house session on how to reduce the negative impact of unconscious bias in the evaluation of applications and throughout the selection process.

Through the work of Ongomiizwin (the Indigenous Institute of Health and Healing at the Faculty of Health Sciences) and its head and her team, a course has been developed specifically for Manitoba, which is called Manitoba Indigenous Cultural Safety Training (MICST). MICST was based upon a program that was established by the Provincial Health Services Authority in B.C.¹³¹ The course provides a history of Indigenous and colonial interface in Canada, reviews the evolution of that relationship to today's context and enhances self-reflection to sensitize oneself in approaching and advancing cultural safety in the delivery of health care services involving Indigenous peoples. The course has been described as an important step in understanding individual and systemic biases and

¹²⁸ Office of Research Services, "CRC Public Accountability and Transparency" online: University of Manitoba <http://umanitoba.ca/research/ors/crc_public_accountability.html#Action_Plan>.

¹²⁹ Source: Vice-President (Research and International).

¹³⁰ Percentages are shown rather than numbers because UM cannot publish numbers below 5 as per the CRC policies.

¹³¹ Source: Vice-Dean, Indigenous, Rady Faculty of Health Sciences.

developing and maintaining respectful processes and relationships with Indigenous peoples based upon mutual trust. The Deans and other leaders across the Rady Faculty of Health Sciences have taken the course, and it has been well-received as a tool to help open up the dialogue on anti-Indigenous racism, and individual and systemic bias.¹³²

C. EDUCATION AND PROGRAMMING RESPONSIVE TO SEXUAL VIOLENCE AND DISCRIMINATION

There are a variety of training sessions and initiatives in place to educate and train students, faculty and other staff on the importance of a respectful workplace and information concerning sexual violence and discrimination across the campus. The UM recently launched a university-wide sexual violence awareness on-line course for faculty, staff and students, consisting of five modules. These modules are to be used in conjunction with workshops and other resources, including the [Sexual Violence Support and Education Website](#), which was developed to serve as a hub for information about sexual violence support and education resources. The site is organized around five categories: Get Support; Give Support; Report Sexual Violence; Understanding Consent and Sexual Violence; and Prevention and Education. In addition to providing information about on- and off-campus resources, the site also includes a downloadable version of the guide, *Helping Someone Who Has Experienced Sexual Violence and Resources for Responding to a Disclosure of Sexual Assault*.¹³³

The Vice-Provost (Academic) is leading an *ad hoc* working group from the Sexual Violence Steering Committee to develop strategies on how best to engage faculty members in the various units but also to discuss what other information faculty members need to know about sexual violence, including prevention, and how to communicate that information. This work reflects the fact that the sexual violence awareness on-line training conveys basic information and that further initiatives are needed to augment and contextualize responses to sexual violence through more faculty-specific, on-site training. The establishment of the working group is an encouraging signal because it reflects a desire to develop more ownership around training and to develop workshops and modules on issues relating to respectful learning and work environment and sexual violence that are more responsive to the needs of particular faculties and units.

There are other workshops relating to respectful learning and work environment and sexual violence including orientation sessions organized for new faculty, students (including specific training for students in residence), staff and UM leaders. We received a detailed account of the programs and workshops that have taken place across the UM, and set out below is a description of three of the more innovative and effective programs:

¹³² For further information, see Winnipeg Regional Health Authority, “Indigenous Health” online: WRHA <<http://www.wrha.mb.ca/aboriginalhealth/education/MICST.php>>.

¹³³ University of Manitoba, “Helping Someone Who Has Experienced Sexual Violence”, online: University of Manitoba <<https://umanitoba.ca/student/media/Sexual-Assault-Guidelines-Resources.pdf>>.

(1) **The Responding to Disclosures of Sexual Violence Workshop**, offered since Spring 2017, provides practical training and skill-building in the area of responding to disclosures of sexual violence. A core purpose of the training is for attendees to feel empowered and comfortable to respond to a disclosure and to do so in a compassionate and supportive way. This workshop is presented both as a regular offering at the Fort Garry and Bannatyne Campuses, as well as a customized program for individual units. The workshop is led by officials from the OHRCM who work in conjunction with representatives from Student Advocacy, Health and Wellness and staff from Student Residency. Attendance at workshops is capped at 25 and the response to the workshop has been very positive.

(2) **Bringing in the Bystander (BITB) Workshop** is led by Student Support and is an evidence-based peer-facilitated program to prevent sexual violence among students. Student volunteers for this program offer sessions throughout the academic year, with a heavy focus around September orientation as well as within Student Residences. BITB has been on campus since the summer of 2015. Approximately 150 students per year have been trained. As of April 2019, funding has been allocated to hire a program assistant and to pay student facilitators. We were told that staff is hopeful that the program is bolstered to be able to train a greater number of students each year at both the Fort Garry and Bannatyne Campuses. Much has been written on the effectiveness of the program¹³⁴ and in the next Chapter of our Report we join those voices in support of the program receiving further funding to keep pace with the needs and the demand for this programming. Further information on the workshop can be found on the following UM website page: <http://umanitoba.ca/student/sexual-assault/prevention-education.html>

(3) **Consent Culture Workshops** organized by UMSU and delivered by the Justice for Women student group, these workshops focus on educating students on definitions of sexual assault and violence, gender stereotypes, and the meaning of consent in contexts of power imbalance. Consent Culture training is mandatory for members of the UMSU Executive, student council representatives, UMSU volunteers, and student group leaders (500 students participated annually).

Another program, which has not yet been delivered on the UM's campus, but which was positively reviewed by the New England Journal of Medicine, is a sexual assault resistance program for university women, which was shown to have reduced the risk of sexual assault at three Canadian universities: Windsor, Guelph and Calgary.¹³⁵

We also note that for training to work well, it must be part of a comprehensive strategy, which also includes a focus on structural or systemic discrimination (measures to advance EDI and

¹³⁴ Report prepared for the White House Task Force to Protect Students from Sexual Assault, found at Soteria Solutions, "Prevention Programming Matrix" (April 2014), online: Culture of Respect <<https://cultureofrespect.org/program/bringing-in-the-bystander/>>.

¹³⁵ Charlene Y. Senn et al, "Efficacy of a Sexual Assault Resistance Program for University Women" (2015) 372:1 New Eng J Med 2326, found at <http://www.nejm.org/doi/full/10.1056/NEJMsa1411131>.

address anti-Indigenous racism, above) and prevention. Senator Murray Sinclair has described systemic discrimination or systemic racism in the following terms:¹³⁶

Systemic racism is the racist effect that arises from bias built into the structure of a system. It's the rules, policies and practices of a system that create such bias.

This need for training to be part of a comprehensive strategy has been explained in the following terms:¹³⁷

The antidiscrimination measures that work best are those that engage decision makers in solving the problem themselves.

We find that special college recruitment programs to identify women and minorities — sending existing corporate managers out to find new recruits — increase managerial diversity markedly. So do formal mentoring programs, which pair existing managers with people a couple of rungs below them, in different departments, who seek mentoring and sponsorship. So do diversity task forces that bring together higher-ups in different departments to look at the data on hiring, retention, pay and promotion; identify problems; brainstorm for solutions and bring those back to their departments. So do management training programs that use existing managers to train aspiring managers. All of these programs put existing higher-ups in touch with people from different race/ethnic/gender groups who hope to move up. All of them help existing managers to understand the contours of the problem. And all of them seem to turn existing managers into champions of diversity.

We also note that there is no overall plan for each member of the UM, meaning that courses are often offered generally to the UM community, with inadequate attention to the notion that there needs to be “sufficient dosage” (as one person we interviewed described it) for the core teachings of a course to be understood and to ultimately change behaviour. In the next Chapter of our Report we set out our recommendation to augment and strengthen EDI through a more comprehensive strategy.

D. PREVENTION

While there is currently no comprehensive prevention strategy at the UM, there are some best practices that exist in particular faculties, some of which we describe below.

1. SPEAK UP BUTTON AT THE MAX RADY COLLEGE OF MEDICINE

It is estimated that 90% of those who experience sexual violence in Canada do not report their experiences to authorities.¹³⁸ Measures are needed to facilitate the reporting of sexual violence and

¹³⁶ Murray Sinclair, “Mizana Gheezhik”, (17 December 2018), online: Sincmurr <<https://sincmurr.com/>>.

¹³⁷ Frank Dobbin & Alexandra Kalev, “Why Doesn’t Diversity Training Work? The Challenge for Industry and Academia” *Anthropology Now*, 04 May, 2018, Vol 10(2), pp. 48-55, at 52.

other mistreatment so that survivors/victims have a real choice to make in deciding whether to report. The Max Rady College of Medicine introduced “speak up” buttons to make it easier and generally more accessible for students to bring forward complaints on mistreatment including allegations of bullying, discrimination and sexual violence.¹³⁹ The concept is to encourage students to bring issues to the forefront early so that they can be responded to quickly. Shortly after the initiative was launched, it was attracting a handful of incidents, but it is now estimated that there are 40 to 50 incidents being reported a year.¹⁴⁰ While students are encouraged to self-identify so that complaints can be responded to quickly, anonymous and third-party complaints are permitted as well. We regard this program as a highly successful initiative. It is used in conjunction with other measures of written feedback from undergraduate medical education students (UGME) including end of rotation evaluation reports that include questions on whether the UGME student was “personally mistreated”, or “witnessed the mistreatment of another learner, patient or health care professional”.

A critical component of the success of these initiatives involves the selection of the person who is responsible for following up on complaints involving mistreatment. In particular, it has been pointed out to us that, while the model of the “speak up” button is “translatable to the general campus”, the person who follows up on a complaint must enjoy universal respect from his or her peers. This quality is essential because the person needs to be able to speak up on behalf of a student and “stare down” behaviour and language that undermines the dignity and respect to which every student is entitled. The initiative has been successfully implemented because the Associate Dean of Professionalism at the Max Rady College of Medicine has been responsible for responding to reports of mistreatment, including “speak up” incidents.

2. MODEL OF ESCALATING BEHAVIOUR

At the Max Rady College of Medicine, the disciplinary approach that is used is based upon a model developed by Dr. Gerald Hickson from the Vanderbilt University School of Medicine.¹⁴¹ We believe that this model is also adaptable to be used elsewhere on the UM campus, which is why we describe it below. The process for guiding interventions in responding to behaviour is captured in the following pyramid:

¹³⁸ Doolittle, Robyn, “Unfounded: Why Police Dismiss 1 in 5 Assault Claims as Baseless” (3 February 2017), online: *The Globe and Mail* <<http://www.theglobeandmail.com/news/investigations/unfounded-police-dismiss-1-in-5-sexual-assault-claims-as-baseless-Globe-investigation-reveals/article33891309/>>.

¹³⁹ The details of the initiative are set out on their webpage. University of Manitoba Max Rady College of Medicine, “SPEAK UP: Report an incident”, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/medicine/reporting.html>.

¹⁴⁰ Sources: Associate Dean, Professionalism and Associate Dean, Student Affairs PGME, Rady College of Medicine.

¹⁴¹ Gerald B. Hickson et al, “A Complementary Approach to Promoting Professionalism: Identifying, Measuring, and Addressing Unprofessional Behaviors” (2007) 82:11 *Academic Medicine* 1040.

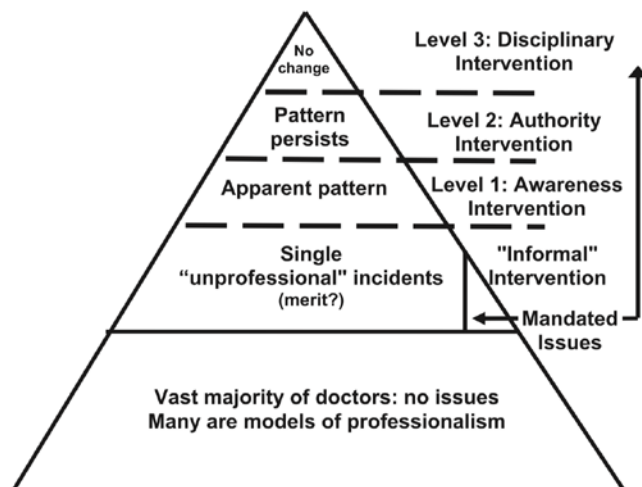


Figure: The disruptive behaviour pyramid for identifying, assessing, and dealing with unprofessional behaviour.

As the pyramid reflects, the vast majority of staff represented at the bottom of the pyramid never or very rarely generate complaints and in fact many exhibit the kind of qualities that reflect model behaviour. Moving upwards on the chart, the “single behaviour” incident will normally involve an informal intervention – a “cup of coffee conversation” – unless, of course, the matter is serious, *e.g.*, claims of sexual violence.

The next level up in the pyramid – “Apparent Pattern” – involves behaviours that recur where the appropriate response is awareness interventions that present an apparent pattern to the “offender” so that he or she can make significant adjustments to their behaviour. Discussions with HR advisors should be made so that informed decisions can be reached as to when to escalate to discipline ensuring due process for faculty relating to allegations. As one person who we interviewed put it, it is important to recognize when matters may escalate to discipline for a faculty member because this will give rise to a process under the collective agreement, which is called “19.B.1.8”, a reference to the relevant section of the agreement. Still, before that arises, early remedial measures should be considered to catch and address misbehaviour or potential misbehaviour as soon as possible.

3. ROLE OF DEANS

In our view, the Deans can and should play an important role in monitoring and addressing inappropriate behaviour. While their engagement is encouraged at all stages, it is particularly critical for Deans to “walk the hallways” and make themselves aware of areas that may require their early attention and informal intervention. Is a faculty member, for example, demonstrating “boundary issues” by attending student evening events apart from other faculty members? Having early discussions and providing guidance with a focus on remedial measures can be a very effective response. So too can the tools of restorative justice. In our interviews, we heard successful stories of

discrimination issues being resolved through the use of a Sharing Circle at Migizii Agamik (Bald Eagle Lodge, the home of the Indigenous Student Centre).

One story in particular related to a matter where the faculty member originally contemplated responding to a student's concerns of racism by sending an email to the student but then decided to reach out to staff at Migizii Agamik and ultimately agreed to be part of a Sharing Circle. Engaging in this process was viewed as very successful because, in the words of one who was there: "I realized that the student just needed to be heard. That is often, I feel like that is life right, like many of us, we just want to be heard. So, the faculty member was emotional, the student was emotional; there was resolution; it felt really good." While Deans may wish to consult with HR advisors at this very early stage, it is particularly important that they work with HR advisors if behaviour escalates and discipline may become necessary, as we caution above.

CHAPTER 4: A SYNTHESIS OF THE LEGAL FRAMEWORK

A. INTRODUCTION

We were asked to provide a clarifying statement on the legal framework in which the UM operates when addressing complaints of sexual violence, harassment and discrimination, including the UM's legislative obligations, obligations related to collective agreements, additional contract obligations and privacy and confidentiality obligations.¹⁴²

The request for the Review and Report occurred in the context of the UM's recent experience with both high profile and public allegations of misconduct by faculty members¹⁴³ and in the environment of the burgeoning "Me Too" and "Time's Up" movements. Understanding the manner in which the UM has dealt with these issues in the past and how it can move forward requires a consideration of a number of factors including the legal landscape in which these complaints/investigations arise; an acknowledgement of the need to be sensitive to those who have been victimized and to the impact of this type of complaint on a respondent; as well as how the complaint and the UM's response will ultimately impact the UM community. While the specifics of the legislative requirements, collective agreements and university policies are detailed elsewhere in the Report, in this Chapter we provide some context on how the legislation and policies are applied.

B. BACKGROUND

1. RECENT INVESTIGATIONS

As part of the review conducted, the UM provided us confidential access to a number of recently conducted external investigation reports. We did not re-investigate any complaints as this was outside our mandate. We were mindful too that it was important that we not re-victimize survivors/victims by re-interviewing those involved; interviewing survivors/victims of sexual misconduct also requires special training and skillsets. However, it was important to understand what has been done in the past in order to consider the policies, processes and legislation in place and make recommendations for the path forward.

¹⁴² *Terms of Reference, Appendix A.*

¹⁴³ Austin Grabish, "Ex-student says former jazz prof Steve Kirby was a bully and the reason he left U of M music school", (12 September 2018), online: CBC <<https://www.cbc.ca/news/canada/manitoba/former-student-speaks-out-about-steve-kirby-1.4820437>>;

The Canadian Press, "Former University of Manitoba professor charged with sexual assault of student", (September 2018), online: CTV News <<https://www.ctvnews.ca/canada/former-university-of-manitoba-professor-charged-with-sexual-assault-of-student-1.4089106>>.

The investigations we reviewed included those which related to complaints involving students and faculty members as well as complaints involving allegations by a faculty member about another faculty member's behaviour. Each of the investigations were initiated through complaints brought to the attention of the OHRCM, who then engaged external investigators. The determination of when to request an external investigation is not provided for in any policies and is determined on the basis of facts or complexities of any particular situation. The investigations were necessitated by concerns that there may have been breaches of the UM policies which, if proven, could lead to corrective or disciplinary action. The investigators interviewed survivors/victims and the respondent as well as numerous witnesses. The investigations followed accepted practice.

As previously detailed, the current and proposed Policies and Procedures reflect the requirements of provincial legislation (including the *Workplace Safety and Health Act*, the *Workplace Safety and Health Regulation*, and *The Human Rights Code*, the summaries of which can be found in Chapter 1, and Appendix D to this Report). The investigators do not determine the penalty. It is only once an investigation is completed that the UM's administration decides the nature of the corrective or disciplinary action, if any, that will be imposed. This will typically be done according to the provisions of the applicable collective agreement. In that context, for guidance on appropriate discipline, one needs to consider the applicable collective agreement; previous arbitration decisions and discipline imposed in similar situations; and whether the policies specify consequences for breaching the policy. The lack of clarity in a policy, including with respect to the penalty, may be a limiting factor in determining if there is a breach of the policy and what if any penalty can be imposed.

The following points can be gleaned from the complaints made and investigations performed:

- The complaints were varied and included complaints of sexual misconduct (*e.g.* consensual relationships, non-consensual sexual assault and/or harassment), personal harassment, favouritism, and reprisals.
- Not all complaints were substantiated and even where facts were substantiated the actions were not invariably found to be breaches of UM's policies.
- The complaints often involved historical concerns, meaning that the complaint could be considered to be outside the limitation period contained in the current RWLE Policy as well as in the expanded timeframe recommended in the recently proposed changes to the RWLE Policy. The issue of limitation periods is addressed in Chapter 6 of this Report.
- The investigations involving historical complaints typically took longer to complete.
- Student to faculty member complaints appeared to be more likely to be historical, in cases where students were reluctant to come forward while still completing a degree, expressing concern about how this could impact their ability to complete their degree. However, this concern about continuing to operate in the environment was not exclusive to the student/faculty member experience.

- Investigations involving a student survivor/victim and a faculty member respondent generally take longer to go from rumour, to complaint, to investigation, to finding than investigations involving a student survivor/victim and student respondent, or a faculty member survivor/victim and faculty member respondent. This may be due to delays in reporting.
- Delays in investigation will occur where survivors/victims do not want to come forward and those to whom they have reported are bound by professional obligations of confidentiality and cannot report the concern. (for example, if disclosure is made to a physician/psychologist or social worker, their professional obligations of confidentiality may not permit them to disclose information to a third party).
- Lack of a clear policy prohibiting sexual or intimate relationships between faculty members and students complicates the reporting and the respondent can quite legitimately respond that the intimate relationship was consensual. This doesn't address the power imbalance inherent in the relationship that may leave a faculty member vulnerable to misapprehension of the nature of the relationship and the student vulnerable to overtures by the faculty member. The lack of clear policies and consequences limits the available responses of the UM to the complaints.
- Inappropriate behaviours often begin with personal boundaries being crossed or blurred, including, for example, off campus trips or social activities.
- Anonymous complaints are taken seriously by the UM, but the anonymity hampers both the timeliness and effectiveness of investigations and prevents the UM from being able to rely on that evidence or complaint unless it can be independently verified through other aspects of the investigation.
- The UM appropriately uses external investigators although we don't have a clear sense of what triggers that decision by the OHRCM. We have been advised that most investigations are sent to external investigators each year and that there is no explicit policy because of the variety of issues which might trigger a referral, including a conflict of interest and the complexity of the investigation.
- Delays in reporting not only inhibit the UM's ability to respond in a timely way, but it can also impact the reputations of those involved both by substantiated and unsubstantiated rumour mills and whisper campaigns developing which may adversely impact both the survivor/victim and the respondent.
- Delays in reporting may also set the stage for complaints that the workplace is 'toxic'.

It is noteworthy that many of these observations and behaviours are echoed in the Concordia University Climate Review of the Department of English¹⁴⁴ and, to the extent information is in the

¹⁴⁴ Pierrette Rayle, Alain Reid & François Rabbat, "Climate Review of the Department of English of Concordia University: A Path Forward" (March 7, 2019), online: Concordia University

public realm, are similar to the type of complaints made in the Galloway investigation at the University of British Columbia.¹⁴⁵ Thus, the challenges experienced by the UM and the behaviours of those who contravene the policies are not isolated occurrences. Rather the issues relating to the alleged behaviours, the investigations, and the policies that are alleged to be breached are very similar to those faced by other universities across Canada (see Chapter 1).

2. INTERVIEWS

To gather an understanding of the current landscape at the UM, we interviewed more than 35 individuals at the UM across many disciplines and representing a variety of perspectives. In almost every interview we asked the following question:

A student had a relationship with a faculty member, the relationship ends and the student then tells someone in the faculty that “I think I’m being discriminated against in the way I am getting marked now as a result of this relationship.” How do you respond?

This question represents a generalized scenario. When we put it to those interviewed, many stated that this was a “common” scenario. This scenario with some modifications to individual environments is thus neither farfetched nor unusual in the university context, particularly in the current environment where there is no prohibition on consensual faculty member/student relationships. Everyone agreed that the students’ concerns would need to be addressed and taken seriously.

The responses we received to the question varied widely. While many of those we interviewed mentioned seeking the advice of the OHRCM or that they would go to their Dean, it was by no means invariable. Other responses included reference to reviewing policies, seeking advice from HR, going to speak to the faculty member involved, and advising the student about Student Counselling Services. From the interviews we learned that Deans and senior executive in at least some of the larger faculties may conduct initial investigations, and act either with or without the involvement of the OHRCM or HR.

Some of the comments we received in response to this scenario include the following:

<<http://www.concordia.ca/about/administration-governance/office-provost-vp-academic-affairs/climate-review/report.html>>.

¹⁴⁵ University of British Columbia and UBCFA (Galloway), Re, 2018 CarswellBC 2841, 137 CLAS 262 [Galloway].

"It either goes to HR or to the OHRCM."

"That scenario is a little bit unique because it also deals with conflict of interest, so there is a policy that addresses disclosures of conflict of interest and how those work."

"We are not going to do something that [the survivor/victim] is not ready to do themselves. So we can say you can go to Police in a certain situation, you can lay a complaint with Security Services, you can go to... [OHRCM], you might just need some counselling to help process it and then later might make one of those decisions. We pull people in depending on the situation."

"The faculty member should go to the Dean, who would then ensure that there are supports for the student."

"They can go to Counselling Services."

"...how distressed is the student, what does the student need right now in order to feel safe and supported, they are obviously upset about something so that really draws to what do you need to do to just ensure basic physical and emotional safety of the student, which would be, you know, obviously if you were the Dean or the Department Head you would be accessing all of the range of student support and/or connecting this individual to resources off Campus if that was the preference. Then, I guess, there is: What are we going to do with the allegation?"

"They might call...[Executive Director of Student Support] . . . that has Student Counselling Services, Student Case Managers who are Social Workers, Student Advocacy Reports up through him and is within Student Affairs, and say, 'This has happened. Who should the student talk to?'"

"All discrimination complaints would go to the Dean of the Faculty."

"Yeah, we don't practice what we preach in a lot of ways and I think that it needs to be an ongoing dialogue that it's not ok to just turn a blind eye and I think also being aware that power, power structures are everywhere even within faculties. So there may be a senior faculty member that is acting inappropriately and as a junior you don't know that there is a power imbalance there as well."

"I receive those kinds of allegations; in fact I receive any kind of allegations of potentially inappropriate behaviour or what appears to be inappropriate behaviour. I call a meeting under the Collective Agreement which is called 19B18, a meeting where the allegations are sent in advance to the Faculty member and they are informed of their right to have any representation and have a meeting which would be the member, their Union Representative, sometimes a staff member and a Grievance Officer and then someone from Staff Relations."

"I think in a situation like that, that would be part of the discussion with the student about, you know, ... do you think this could happen to other students? Do you think this is something that might be helpful to disclose? Because there are ways in which you can disclose more or less anonymously, but of course we all know that in some cases it wouldn't be hard for a Faculty member to figure it out, or think they know. So in many cases it is a very challenging discussion to have, and obviously you want to follow the lead of the student."

We have set out below a word cloud, which illustrates the breadth of answers we received to our scenario, with font size reflecting the relative frequency of a particular response to our scenario question:



The lack of consistency in the responses raises concerns about the implementation and impact of the “No Wrong Door” reporting policies.¹⁴⁶ It also raises concerns about the ability to track complaints and collect aggregate anonymized data and it contributes to the silos of information that results in the UM’s administration remaining unaware of the incidence of the problem and how and whether it has been addressed.

C. UM OBLIGATIONS IN AN INVESTIGATION

1. INTRODUCTION

The legal requirements of any investigation require sensitivity to the survivor/victim and fairness to the respondent. The need for fairness is fundamental to our legal system. At the most basic level, this means the person being investigated needs to be advised of the nature of the complaint against them and given an opportunity to respond.

One of the challenges evident from the investigations performed and from a review of literature is that there will frequently be delays in survivors/victims coming forward with complaints. This is not a criticism of the survivor/victim, but it does complicate the ability to respond in a timely way and may impact the quality of the evidence provided to the investigator.

When a disclosure of sexual violence, harassment or discrimination is brought to the attention of a person in a supervisory role, there may be a legal obligation to act on it.¹⁴⁷ In fact, the recently

¹⁴⁶ Chapter 6.B.

¹⁴⁷ The Human Rights Code, CCSM c H175 at ss 10, 19;

enacted Government of Manitoba respectful workplace policies relating to sexual harassment, harassment and bullying make clear that if a supervisor receives a disclosure relating to sexual harassment, they must document it and report it immediately to HR. This is to enable them to appropriately respond and track complaints.¹⁴⁸ In the UM context, the obvious and established place to seek advice and report that concern is to the OHRCM. The UM has prepared a toolkit which outlines the supports available, the processes to be followed, the steps to be undertaken and the necessity for confidentiality. It is comprehensive and can be modified as policies or personnel change. The OHRCM has a website which provides detailed information for those seeking advice. Unfortunately, as is evident from the responses we received to our scenario, that is not the first stop for many at the UM. When it was being referenced, it was often described using the first name of the Director of the OHRCM at the time that our interviews were conducted.

2. THE UM'S RESPONSIBILITY AS AN EMPLOYER TO ACT

The Legislature of Manitoba has imposed on employers a duty to ensure, so far as practicable, that no worker is subjected to harassment and discrimination in the workplace.¹⁴⁹ The UM has addressed this responsibility through the implementation of policies which meet the basics of the law and it must remain vigilant in ensuring that a safe learning and work environment is maintained. As set out later in the Report, we recommend further measures to enhance those policies and the safety of the learning and work environment.

The courts have made it clear that employers may be liable for failing to follow up on an employee's acts of sexual violence, harassment and discrimination.¹⁵⁰ In a recent decision in Ontario¹⁵¹, the employee was a survivor/victim of ongoing sexual harassment and discrimination. Management was aware of the harassment and discrimination and failed to take any action in the absence of a formal complaint. The employee was awarded more than \$98,000 in damages.

Arbitrators and courts have upheld lengthy suspensions where there have been consensual intimate relationships between faculty members and students.¹⁵² Courts have upheld dismissal in circumstances where there have been consensual relationships between employees where one is in a

The Workplace Safety and Health Act, CCSM, c W210 at s 4(1);

Workplace Safety and Health Regulation, Man Reg 217/2006 at s 10.2.

¹⁴⁸ Government of Manitoba, "Respectful Workplace Policy" (6 March 2019) at s 4, online: <<http://www.manitoba.ca/csc/policyman/respect.html>>.

¹⁴⁹ *The Human Rights Code, CCSM c H175 at ss 10, 19;*

The Workplace Safety and Health Act, CCSM, c W210 at s 4(1);

Workplace Safety and Health Regulation, Man Reg 217/2006 at s 10.2.

¹⁵⁰ *Janzen v Platy Enterprises Ltd.*, 1 SCR 1252 at para 72.

¹⁵¹ *OPSEU v Ontario (Ministry of Community Safety and Correctional Services)*, [2013] OGSBA No 116, 235 LAC (4th) 324.

¹⁵² *Okanagan University College v Okanagan University College Faculty Assn.*, 1997 CarswellBC 3215, [1997] BCCA 313.

supervisory role.¹⁵³ In a human rights tribunal decision which was subsequently upheld by the BC Superior Court,¹⁵⁴ the arbitrator found a professor to have created a “sexualized” environment and ordered the professor and University to pay damages to the student. These cases demonstrate the very real and potential liability on the UM if it fails to address sexual violence, harassment and discrimination in accordance with its legal obligations.

D. CURRENT AND PAST INVESTIGATIONS PROCESS AND INTERIM MEASURES

Removing a person from their position temporarily in the face of a complaint not proven should only be done in the most serious circumstances. However, accommodations may need to be made during an investigation.¹⁵⁵ In a recent decision relating to a complaint of sexual assault which was not part of a criminal charge, an arbitrator agreed that interim measures were appropriate:

*Without a doubt, the most compelling justification for the imposition of the disputed Interim Measures relates to the consideration to the Employer’s reputation in terms of acting with the utmost rigour to endeavor to provide for the safety of its students and employees.*¹⁵⁶

In some cases, the interim suspension of a respondent may be appropriate. Suspension will usually be with pay pending the outcome of the investigation, although there may be circumstances which justify a suspension without pay. Suspending someone even with pay is a significant step, as it is often seen as punitive and can have long term implications to the reputation of the individual, and therefore should be used sparingly.

Since the nature of the complaint may not always warrant suspension, there may be less severe limitations that can be imposed to address the perceived risk. As an alternative to suspension, it may be appropriate to reach consent agreements with faculty members/employees, in conjunction with their legal or union/association representative, to relieve them of specific duties while the investigation is ongoing, including, for example, not teaching a class, not attending any events where the survivor/victim is likely to be or more generally not being permitted to do any one-on-one supervision.

Although the public may see consent agreements as ‘secretive’ and the respondent not deserving of that consideration, consent agreements have merit as they permit the UM to address issues which may not rise to the level which would warrant suspension. They may also more appropriately address concerns raised by the survivor/victim. If there is a concern that there is a threat to safety contained in a complaint, consent agreements may be used to quickly alleviate the concern so that an

¹⁵³ *Cavaliere v Corvex Manufacturing Ltd.*, 2009 CarswellOnt 3199, [2009] OJ No. 2334.

¹⁵⁴ *Mahmoodi v Dutton*, 1999 BCHRT 56, *aff’d* 2001 BCSC 1256.

¹⁵⁵ *St. James-Assiniboia School Division and St. James-Assiniboia Teachers’ Association*, 2014 CarswellMan 331 at para 36.

¹⁵⁶ *Ryerson University v Ryerson Faculty Association*, 2018 CarswellOnt 18961 at para 44.

investigation can be undertaken without concern about an ongoing threat. This limits the potential consequences to the reputation of the individual if the complaint is unfounded.

However, consent agreements should be carefully used in circumstances where the concern for safety is real but the evidence to support the complaint is weak, since suspension or imposing other measures is a more transparent approach, creates a better legal record and thus has more formal structures and policies surrounding it. The benefit of formal structures is that arbitration decisions are public and create both a record and precedent, which may assist in clarifying the law and consequences. However, arbitrations are like trials and are thus adversarial which may not be consistent with meeting the needs of the survivor/victim.

It is our understanding that the UM has used these types of tools in past cases depending on the circumstances.

Discipline may take a variety of forms and will reflect both the seriousness of the misconduct and whether the respondent is likely to repeat the behaviour.¹⁵⁷ Formal discipline, including permanently removing someone from the workplace, is the final step in a process. In the UM context, removing a tenured faculty member requires approval of the Board of Governors.¹⁵⁸

As we have seen through our review of the policies, the collective agreements, the legislative framework and from our interviews and investigations, sexual violence, harassment and discrimination complaints resulting in formal discipline occur but are not in public. Early interventions, informal processes and discipline are part of the overall approach to addressing sexual violence, harassment and discrimination when it arises with education, remediation and informal processes remaining key components of the UM's strategy.¹⁵⁹ The emphasis should always be on prevention.

E. PRIVACY AND CONFIDENTIALITY

It should be clearly understood that the UM cannot disclose the nature of, or even the existence and outcomes of, specific investigations which are being conducted in accordance with *Workplace Safety and Health* legislation and FIPPA and PHIA. The UM's policies reflect the requirements of this legislation. The limitations on disclosure contained in the legislation creates frustration for many, including those at the UM who are tasked with responding to survivors/victims, the UM community and the media when confronted by complaint which has been made public. We also heard from many individuals of their dissatisfaction with not being provided sufficient or any information about investigations that may be underway.

However, everyone acknowledged the need for privacy for the survivor/victim and fairness to the respondent, which may include privacy considerations. Nevertheless, the UM's inability to respond to

¹⁵⁷ *Calgary (City) v Canadian Union of Public Employees, Local 37*, 2017 ABQB 662 at paras 14-16.

¹⁵⁸ *University of Manitoba and the University of Manitoba Faculty Association, Collective Agreement between University of Manitoba and the University of Manitoba Faculty Association (2017-2021)* at art 19.B.1.3, online: UMFA <<http://www.umfa.ca/images/UMFA-CA-2017-2021.pdf>>.

¹⁵⁹ Chapter 2.

the complaint tends to undermine confidence in the UM's response to serious complaints of misconduct even where appropriate steps to investigate and limit the risk to the UM community have been undertaken. Presently the most that can be said by the UM in response to any inquiry about an investigation is to acknowledge that the UM acts on all complaints and has policies and process to investigate and remediate.

Many in the UM community are aware of elements of a decision in British Columbia, arising from a dispute between the University of British Columbia and one of its former professors, Steven Galloway. It is now winding its way through the courts. This is a cautionary tale for anyone who considers disclosing information about investigations and complaints, beyond that which is currently permitted by the law.

The initial complaint was serious. Professor Galloway was accused of sexual misconduct by a student. The University of British Columbia responded by suspending him without pay and appointing an investigator. As the investigator's findings are not public, it is unclear on what basis the University suspended Professor Galloway or what basis he was ultimately dismissed. The University made public comments about the reasons for doing so, which became the subject of further litigation. Although the investigative report was confidential to Professor Galloway and the University (with a redacted report available to the student involved), there was widespread media coverage of some of the allegations and the outcome.

Professor Galloway subsequently stated in an article he authored in the National Post that he had a consensual sexual relationship with the student of similar age to him. The University did not have a policy prohibiting sexual relationships between professors and students. He appears to have been found not guilty of the most serious allegations made, which alleged sexual assault. He then grieved on the basis that the University had breached his privacy and breached confidentiality when it publicly commented on the findings and its decision to terminate his position at the University. He was awarded \$167,000 for breach of privacy and confidentiality.¹⁶⁰ A further \$75,000 was awarded when the University continued to comment on the award made and decisions taken by the University.¹⁶¹ Professor Galloway has now issued a defamation action against the student and some of the other professors and students who repeated the allegations after the investigation was completed.

This case serves as a reminder of the need to follow the provisions of the applicable laws, which protect privacy in these circumstances, and of the need for UM's policies on appropriate workplace behaviours to be clearly drafted and clearly identify that breaches will have consequences. It is also a reminder to University administrators and Boards who desire to respond to requests for information that someone has placed in the public sphere of the risks in doing so.

¹⁶⁰ Steven Galloway, "Steven Galloway in his own words: I'm not a monster. I won't let false allegations define me" (19 July 2018), online: Vancouver Sun <<https://vancouversun.com/opinion/steven-galloway-in-his-own-words-exclusive/wcm/80349ce1-8f71-425f-be9c-79a0b1eb4e85>>;

Kerry Gold, "Steven Galloway wins \$167,000 decision against UBC over harm to his reputation" (8 June 2018), online: McLean's <<https://www.macleans.ca/society/steven-galloway-wins-167000-decision-against-ubc-over-harm-to-his-reputation/>>.

¹⁶¹ *University of British Columbia and UBCFA (Galloway), Re, 2018 CarswellBC 2841, 137 CLAS 262.*

Finally, it is important to note that, with the consent of the survivor/victim and the respondent, it may be both desirable and appropriate in some circumstances to comment on issues in order to clarify the scope of any investigation or outcome. It may also be part of a negotiated outcome in some cases. If this is considered, caution will need to be exercised so that the consent of those affected is obtained before disclosures are made. It is always appropriate to remind the persons demanding information that the UM takes all allegations of misconduct seriously, has processes to respond and to remind them of the limits of the legislation which prevents public comment.

F. REFERENCES

In Chapter 2, we described the UM's current practices with respect to HR and practices relating to providing and requesting references.

There is nothing inherently wrong with giving employment references. References are important for the employee in seeking and finding work and in the university context in obtaining scholarships, fellowships, grants and other professional recognition and advancement. References may enhance the UM's ability to place alumni in new and important positions which reflect well on the UM. The UM itself should be seeking references before hiring any new faculty or staff and therefore blanket policies prohibiting or limiting the giving of references may impact on the ability to seek information about prospective hires.

Best practices for employers with respect to the provision of employment references is to ensure that when giving references, it be limited to what is reasonably required; it be honest, accurate, and specific to the individual and the work done; and only work-related information, including factual, relevant examples, be provided.

Employers are often concerned about potential liability in defamation for giving negative employment references about past or current employees. There are two decisions from Ontario, both of which support the employer who gave truthful references containing some negative comments. This should not be interpreted as giving employers free rein to say anything they want about their past or current employees, but is a good reminder of the need to be truthful.¹⁶²

It is also worth noting that, absent a requirement in an agreement between an employer and a current or former employee (including an agreement following the termination of the employment relationship), there is no legal obligation on an employer to provide an employment reference. Therefore, in circumstances where an employee's employment has been terminated, the provision of a reference by the former employer should be carefully considered. HR should be consulted as there may be reputational risks associated with the provision of a reference in those circumstances and care needs to be taken both with respect to what is said and what is not said.

¹⁶² *Papp v Stokes Economic Consulting Inc.*, 2017 ONSC 2357;
Kanak v Riggin, 2016 ONSC 2837.

1. SUMMARY

In the current legal environment, when complaints are made, the UM is constrained by what it can say about whether an investigation is underway, the scope of any investigation and the results of the investigation. In appropriate circumstances, the UM may interim suspend a person alleged to have breached UM policies. Suspension will usually be with pay pending the resolution of the investigation. The UM has an obligation pursuant to the *Workplace Safety and Health Act* and *The Human Rights Code* to act on complaints, investigate and, when appropriate, take action. The actions it can take must be read together with the processes and outcomes that have been negotiated in the collective agreements.



PART 2 – DISCUSSION, ANALYSIS AND RECOMMENDATIONS

CHAPTER 5: A COMPREHENSIVE PREVENTION STRATEGY

A. INTRODUCTION

The most effective measures to promote a safe and secure learning environment that is both respectful and inclusive are typically found at the “front end”: preventing sexual violence, harassment and discrimination before it occurs. In Chapter 3 of our Report, we set out some of the practices that are currently in place at the UM to help diminish the prevalence of sexual violence, harassment and discrimination. In this part of our Report, we focus on those measures we recommend be implemented to help close the gap and build a more respectful, inclusive and diverse institution.

While gaps exist and significant steps need to be implemented to provide better protection against sexual violence, harassment and discrimination at the UM, we do not wish to leave any impression that this is because of an indifference on the part of those who work in this field at the UM. Rather, a clear “takeaway” for us based upon the people we met and the interviews that we conducted is that there are leaders strongly committed to a safe and secure learning environment at every level of the UM community (administration, faculty, non-academic community, student leaders). So, what is missing? And what fundamentally needs to change to better protect the vulnerable from sexual violence, harassment and discrimination?

The answers to these questions can be found in the recommendations set out in this Part of the Report. Collectively, these recommendations provide a comprehensive prevention strategy for sexual violence, harassment and discrimination. Taken as a whole, we believe that these will help the UM make significant strides in clearing a path forward towards enhancing a safe and secure learning environment. The steps we identify and recommend below are based upon our interviews and discussions with members of the UM community, as well as our research and analysis on what needs to be done to prevent breaches from arising as much as possible.

To facilitate the implementation of the recommendations that follow in this and the next Part of the Report, we recommend the establishment of an Implementation Committee, with the chair to be a Vice-President as designated by the UM’s President. Further details are set out below.

Recommendation 1

The UM establish an Implementation Committee to be chaired by a Vice-President designated by the UM’s President, with other members of the UM community selected who, because of their background or expertise, can contribute significantly to the work of the Implementation Committee. It would be the responsibility of the Committee to oversee the implementation of the recommendations in this Report, and related matters.

Recommendation 2

In light of the importance and urgency of the issues addressed in this Report, we recommend that the Implementation Committee be set up as soon as practically possible.

B. OVERALL FRAMEWORK

A comprehensive prevention strategy, in our view, contains the following elements:

1. Fundamental values of respect, trust, diversity and inclusion
2. Education and prevention
3. Clear, community-wide norms to guide behaviour
4. Distinct roles and responsibilities
5. Shared accountabilities borne by everyone

These elements are interrelated; they complement and build on one another. They are captured in the figure below:



Comprehensive Prevention Strategy: Sexual Violence, Harassment & Discrimination

Recommendation 3

The comprehensive prevention strategy at the UM consist of the following elements:

1. *Respect-Trust-Diversity-Inclusion*: the values that are reflected in measures such as EDI, Reconciliation and Indigenous Engagement, actively supported and nurtured.
2. *Education and Prevention*: continuous learning involving evidence-based programming that is appropriately timed and of sufficient dose; plus, preventative measures to encourage early and prompt responses.

3. *Clear Rules with Clear Consequences*: clear community-wide norms to guide behaviour, with clear consequences for breaches of behaviour.
4. *Clear Understanding of Respective Roles*: in supporting a safe and secure learning and work environment.
5. *Shared accountabilities*: by all members of the UM community.

The description and context of these foundational elements and the recommendations pertaining to each are set out below.

C. RESPECT-TRUST-DIVERSITY-INCLUSION

1. EQUITY, DIVERSITY AND INCLUSION (EDI)

As we previously noted, building a more respectful, inclusive and diverse institution is an integral element in preventing sexual violence, harassment and discrimination from arising. Workplaces and institutions that value and enhance EDI do not just focus on increasing the representation of diversity at every level of the organization. They also value the unique contribution of each person and “create an inclusive environment where awareness of, and respect for, different cultures is promoted and different ideas are going to be heard and valued. In such an environment, people are more likely to speak up when they see things that are potentially problematic.”¹⁶³

In Chapter 3, we reviewed the new leadership position established at the Bannatyne campus, namely the Director of EDI. We have assessed whether such a position should also be created at the Fort Garry campus. While we are confident that the Director position is the right solution to enhance diversity and inclusion at the Bannatyne campus, we are less confident of its suitability at the Fort Garry campus owing to the latter’s organizational complexity and size. The model that we think could be more effective at the Fort Garry campus is to appoint a widely-admired and respected senior leader from the UM as a Champion of EDI. That person would work with representatives from different faculties, the Diversity and Inclusion Consultant in HR, and other staff to identify a set of tools to enhance diversity and inclusion throughout the UM. Those tools could include measures such as mentoring programs, specific training programs, and targeted measures to enhance diversity for new hires.

At the faculty level, the model developed at the Faculty of Sciences to appoint an existing faculty member to assume new duties relating to EDI is a good model for adoption by other large faculties.¹⁶⁴

¹⁶³ See, e.g., David Bracaccio, Ali Oshinskie, & Redmond Carolipio, “Why a diverse workplace can reduce cases of harassment and bullying”, (15 August 2018) online: Marketplace <<https://www.marketplace.org/2018/08/14/world/why-diverse-workplace-can-reduce-cases-harassment-and-bullying>>;

Laura Sherbin & Ripa Rashid, “Diversity Doesn’t Stick without Inclusion” (1 February 2017), online: Harvard Business Review <<https://hbr.org/2017/02/diversity-doesnt-stick-without-inclusion>>;

FisherBroyles LLP, “Diversity and Inclusion: Best Response to Increased Sexual Harassment” (28 October 2018), online: Lexology <<https://www.lexology.com/library/detail.aspx?g=ff1edc00-ed0e-4791-a0ec-472b77f5a4a4>>.

¹⁶⁴ Chapter 3.B.1.

The model could be adapted to smaller faculties by having one part-time appointment serve several faculties or by reducing the expected workload of an appointee in a single small faculty. The goal is to embed leaders of diversity and inclusion across the UM to drive change so that the UM better reflects the diversity of the people it serves.

In the previous Chapter, we set out some of the current gaps with respect to diversity at the UM including the fact that a university-wide EDI policy has yet to be adopted. Further, in the previous Chapter we set out the current data with respect to the diversity of UM staff and found significant gaps, particularly with respect to the hiring of Indigenous persons. We make recommendations below to address these gaps.

Recommendation 4

The UM appoint a widely-respected senior leader from the UM as a Champion of EDI. This person would work with the Director of EDI (Faculty of Health Sciences), the Diversity and Inclusion Consultant in HR, representatives from different faculties, and other staff to help identify a series of initiatives to enhance equity, diversity and inclusion throughout the UM.

Recommendation 5

The model developed at the Faculty of Sciences to appoint an existing member of the faculty to assume new duties relating to EDI be adopted by other large faculties. The model could be adapted to smaller faculties by having one part-time appointment serve several faculties or by reducing the expected workload of an appointee in a single small faculty.

Recommendation 6

The UM develop and adopt a university-wide EDI policy to identify foundational principles, with the Max Rady College of Medicine EDI Policy serving as a guide.¹⁶⁵

Recommendation 7

The UM adopt a more robust plan to enhance diversity at the university-wide level based upon the good work being done to enhance diversity at the Canada Research Chairs (CRC) levels. Further, we recommend that the university-wide plan seek to address the lack of diversity in all fields with specific attention to closing the gap with respect to Indigenous peoples.

2. RECONCILIATION AND INDIGENOUS ENGAGEMENT

Specific measures also need to be taken to enhance reconciliation and Indigenous engagement at the UM. With respect to Indigenous engagement, we defer to the work of the Vice-Dean, Indigenous, Rady Faculty of Health Sciences and her Committee which is to clarify the role and mandate, and

¹⁶⁵ *Once the Rady Faculty of Health Sciences EDI Policy is finalized, it could serve as the guide for a university-wide EDI policy.*

identify the conditions of success, relating to the Vice-Provost (Indigenous Engagement) position, which is currently vacant. We understand that an interim report from the Committee has been sent to the Provost, with a final report to be prepared by July 1st of this year following further consultations.¹⁶⁶ In our interviews, we heard from UM members of the significance of this senior Indigenous role.

The importance of mutuality and collaborative respect was also highlighted in our interviews, with the connection between the Indigenous Student Centre and Student Support cited as a leading example of a collaborative, mutually respectful and supportive relationship. This positive and constructive relationship could help serve as a guide towards building stronger mutually supportive relationships between Indigenous and non-Indigenous staff across the UM.

At the Rady Faculty of Health Sciences, a Truth & Reconciliation Commission (TRC) Action Plan has been developed. The plan sets out calls to action under the following themes:

- Honouring traditional knowledge systems and practices;
- Safe learning environments and professionalism;
- Student support, mentorship and retention;
- Education across the spectrum; and
- Closing the gap in admissions.

Under the leadership of the Executive Director of Indigenous Academic Affairs, Ongomiizwin Indigenous Institute of Health and Healing,¹⁶⁷ a committee is now working on the implementation of the calls to action set out in the Plan. The second theme, namely, the enhancement of a safe learning environment Plan, is particularly relevant to our mandate and includes many applicable items. One action item in particular speaks to developing and implementing “a process by which concerns about racism in the learning environment raised by patients, learners, staff or faculty are addressed as issues of professionalism.” Identifying a correlation between racism and professionalism could be a very effective strategy to reduce racism, which we think should be considered by other professional faculties across the UM.

While the focus of the Rady Faculty of Health Sciences Action Plan is health-related, it provides a good start to help launch conversations elsewhere on campus to help foster a safe and respectful learning environment free from racism, and to develop further understandings of Indigenous history, knowledge and culture.

Recommendation 8

The Rady Faculty of Health Sciences Truth & Reconciliation Commission (TRC) Action Plan be used as a resource to help launch conversations elsewhere on campus to help foster a safe and respectful learning environment free from racism, and enhance understandings between Indigenous peoples and non-Indigenous members of the UM community.

¹⁶⁶ For information on the Committee: <<https://news.umanitoba.ca/indigenous-leadership-consultations-at-u-of-m/>>.

¹⁶⁷ Executive Director, Indigenous Academic Affairs, Ongomiizwin Indigenous Institute of Health and Healing, Rady Faculty of Health Sciences.

D. EDUCATION AND PREVENTION

1. TRAINING AND EDUCATION

a. Introduction

There is no silver bullet on training and education. It is clear that training and education alone is not enough to effect significant progress on the incidence of sexual violence, harassment, and discrimination. Training and education need to be part of a broader comprehensive prevention plan, which is what we recommend in our Report. The best research to date on training and education suggests that it should be comprehensive and informed by the best available research evidence on strategies that work to prevent sexually violent behaviour.¹⁶⁸ In a nutshell, best practices for effective training on sexual violence includes the following indicia of success:¹⁶⁹

Specifically, effective programs tend to be comprehensive, appropriately timed in development, of sufficient dose, administered by well-trained staff, socio-culturally relevant, theory-driven, provide opportunities for positive relationships, and utilize varied teaching methods.

The point in the above quote that programs need to be “of sufficient dose” reflects the evidence that “multiple sessions tend to be better than single sessions.”¹⁷⁰ It is not surprising that effective training requires multiple sessions that are socio-culturally relevant in light of the significant change that is required to address sexual violence. One of the persons we interviewed expressed the reasons for supporting multiple training sessions in the following way:

And I’m not against training because I do think education and training are very important but I also know . . . that we often find with the problems, we just need to educate. We just need to educate and train people and that is true but people seem to think it’s the silver bullet, right? That once, you know, once you offer this training, then all social ills will be corrected and it’s not as simple as that. I think it needs to be continual, especially when you’re talking about things that are structural in terms of culture and power balance and you know those kinds of things. There’s not, it’s not just simply being aware.

The idea, above, that programs also need to be “appropriately timed in development” is one we support and later in this Chapter we set out recommendations for individualized learning plans to be incorporated into the annual performance review undertaken by everyone at the UM. So too is the

¹⁶⁸ Centers for Disease Control and Prevention, “Preventing Sexual Violence on College Campuses: Lessons from Research and Practice” (April 2014), online: NCCP Safety <https://www.nccpsafety.org/assets/files/library/Preventing_Sexual_Violence_on_College_Campuses.pdf>.

¹⁶⁹ Centers for Disease Control and Prevention, “Preventing Sexual Violence on College Campuses: Lessons from Research and Practice” (April 2014) at 12, online: NCCP Safety <https://www.nccpsafety.org/assets/files/library/Preventing_Sexual_Violence_on_College_Campuses.pdf>.

¹⁷⁰ Centers for Disease Control and Prevention “Preventing Sexual Violence on College Campuses: Lessons from Research and Practice” (April 2014) at 4, online: NCCP Safety <https://www.nccpsafety.org/assets/files/library/Preventing_Sexual_Violence_on_College_Campuses.pdf>.

notion that programs should be socio-culturally relevant; later in this Chapter we recommend that intersectionality be considered in the design of education and training.

b. Evidence-Based Training

The point, above, that training programs be “theory-driven” refers to the desire to include and enhance training programs that have been proven to be effective in changing behaviour. In the following paragraphs we identify current programming at the UM that are “theory driven” and identify another program that has not yet been included in the training program but which we believe should be.

In the last Chapter, we referred to the Bringing in the Bystander (BITB) course, which is led by Student Support and is an evidence-based peer-facilitated program to prevent sexual violence among students. BITB is “designed to help students understand the importance of speaking out against social norms that support sexual assault and coercion, recognize and safely interrupt situations that could lead to sexual assault, and be an effective and supportive ally to rape survivors.”¹⁷¹ Much has been written on the effectiveness of the program.¹⁷² As of April 2019, funding has been allocated at UM to hire a program assistant and to pay student facilitators. We were told that staff is hopeful that the program is bolstered to be able to train a greater number of students each year (currently at about 150 per year) at both the Fort Garry and Bannatyne Campuses. In light of the fact that there are few sexual violence training courses that are evidence-based, we recommend that the BITB program receive further funding to keep pace with the needs and the demand for this programming. We note that it has been suggested that “10% to 15% of students” were needed to be trained at the University of Windsor to meet their “tipping point model”, *i.e.*, the point where change is, practically speaking, almost inevitable.¹⁷³

Recommendation 9

The Bringing in the Bystander (BITB) course, an evidence-based peer-facilitated program to prevent sexual violence among students, which is led by Student Support, receive further funding to keep pace with the needs and the demand for this programming.

Another program, which has not yet been delivered on UM campus, but which was positively reviewed by the New England Journal of Medicine is a sexual assault resistance program for university women, which was shown to have reduced the risk of sexual assault at three Canadian

¹⁷¹ Anne Forrest & Charlene Y. Senn, “Theory Becomes Practice: The Bystander Initiative at the University of Windsor” in *Sexual Violence at Canadian Universities: Activism, Institutional Responses, and Strategies for Change*, edited by Elizabeth Quinlan, Curtis Fogel, Andrea Quinlan & Gail Taylor (Waterloo: Wilfred Laurier University Press, 2017), 175-192, at 180.

¹⁷² Report prepared for the White House Task Force to Protect Students from Sexual Assault, found at Soteria Solutions, “Prevention Programming Matrix” (April 2014), online: Culture of Respect <<https://cultureofrespect.org/program/bringing-in-the-bystander/>>.

¹⁷³ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 180.

universities: Windsor, Guelph and Calgary.¹⁷⁴ Again, because there are so few sexual violence courses that are evidence-based, demonstrating to be effective tools to prevent sexual violence, we recommend that the UM develop a plan to launch this course and to prioritize the training for those women living in student residences on campus. We recommend that:

Recommendation 10

The UM develop a plan to launch the evidence-based Sexual Assault Resistance program for University women, prioritizing the training for those living in student residences on campus.

The two evidence-based training programs just identified are to enhance training for students. Another area of evidence-based training that we would like to see implemented at the UM – this time targeting those who are involved in responding to complaints – is “after-action reviews” following the completion of a sexual violence, harassment or discrimination case. An after-action review is a structured review or de-brief process for analyzing what happened, why it happened, and how it could have been done better by the participants and those responsible for a project or event. While after-action reviews were originally developed for the military, they have since been used in many other settings including government, business and non-profits.¹⁷⁵ An after-review is essentially a knowledge management tool that can be an effective way to build a culture of accountability and enhance best practices. We think it could be particularly effective at the UM for sexual violence, harassment and discrimination cases because of the number of offices that are often involved and the complexity and sensitivity of the subject matter.

Recommendation 11

After-action reviews be implemented at the UM for sexual violence, harassment and discrimination cases to enhance learning and best practices among those who professionally respond to sexual violence, harassment and discrimination cases.

c. Faculty-Led Training

Faculties should be arranging for and taking further ownership in organizing programs that are needed for their respective members. The current work of the Vice-Provost (Academic) and her *ad hoc* working group is an example of a model of how to customize learning and develop more ownership at the faculty level around respectful learning and work environment and sexual violence to better reflect the needs of particular faculties and units.¹⁷⁶ The goal is to shift the culture so that, ultimately, breaches of conduct like sexual violence, harassment and discrimination, including racism, are taken as seriously as academic dishonesty.

¹⁷⁴ Charlene Y. Senn et al, “Efficacy of a Sexual Assault Resistance Program for University Women” (2015) 372:1 *New Eng J Med* 2326, found at <<http://www.nejm.org/doi/full/10.1056/NEJMsa1411131>>.

¹⁷⁵ Stichting Center for Evidence Based Management, “Guide to the After Action Review”, online at <https://www.cebma.org/wp-content/uploads/Guide-to-the-after_action_review.pdf>.

¹⁷⁶ Chapter 3.C.

Recommendation 12

Faculties arrange for and take further ownership in organizing programs that are needed for their respective members. The current work of the Vice-Provost (Academic) and her *ad hoc* working group is an example of a model of how to customize learning and develop more ownership at the faculty level around respectful learning and work environment and sexual violence to better reflect the needs of particular faculties and units.

d. Indigenous Cultural Awareness

Specific measures need to be taken to enhance a respectful learning and work environment free from racism and to develop further understandings of Indigenous history, knowledge and culture. The UM should develop and launch Indigenous cultural training for members of the UM community. As we noted in the last Chapter of our Report, the MICST on-line training course developed through the work of Ongomiizwin at the Bannatyne campus has now been taken by Deans and other leaders across the Rady Faculty of Health Sciences. The course has helped to open up the dialogue on anti-Indigenous racism, and individual and systemic bias.¹⁷⁷ While MICST was developed to enhance cultural safety in the delivery of health care services involving Indigenous peoples, it provides a model of an on-line training course for enhancing Indigenous cultural training for adaptation elsewhere at the UM.

Recommendation 13

The UM develop and launch Indigenous cultural training for members of the UM community. Further, we recommend that an on-line training course to enhance Indigenous cultural training modelled on the MICST training course at the Faculty of Health Sciences be developed and implemented to help open up the dialogue on anti-Indigenous racism, and individual and systemic bias.

e. The Sharing of Best Practices with U15

We mentioned earlier that very few training courses seeking to prevent sexual violence are evidence-based. Earlier in this Chapter we identified those exceptional programs that have been subjected to rigorous outcome evaluation and recommended that funding for these be expanded for an existing program or start-up funding be created to develop and ultimately launch another program. As others have pointed out: “Rigorous outcome evaluation research benefits the field as a whole and can provide valuable feedback to individual campuses on the impact of their initiatives.”¹⁷⁸

As part of U15, the UM participates in discussions “to drive the national policy agenda and provide critical advice and analysis about higher education and research and development.”¹⁷⁹ Membership in the U15 is an opportunity for the UM to hear from its counterparts about best practices to prevent

¹⁷⁷ Chapter 3.B.3.

¹⁷⁸ Centers for Disease Control and Prevention “Preventing Sexual Violence on College Campuses: Lessons from Research and Practice” (April 2014) at 12, online: NCCP Safety <https://www.nccpsafety.org/assets/files/library/Preventing_Sexual_Violence_on_College_Campuses.pdf>.

¹⁷⁹ U15, “Our Members”, online: U15 <<http://u15.ca/our-members>>.

sexual violence, harassment and discrimination, including racism, and, more directly, to embark on research projects to evaluate and ultimately enhance best practices relating to the prevention of sexual violence, harassment and discrimination, including racism. We recommend that:

Recommendation 14

As a member of U15, the UM seek opportunities to discuss, develop and launch research projects to evaluate and ultimately enhance best practices relating to the prevention of sexual violence, harassment and discrimination, including racism.

2. PREVENTION

In Chapter 3, we described two initiatives that were implemented at the Max Rady College of Medicine, which in our view are very successful initiatives that should be adapted for use across the UM.¹⁸⁰ The two programs are briefly summarized below:

a. Speak Up Button

The Speak Up Button facilitates the reporting of bullying, discrimination and sexual violence at the Max Rady College of Medicine. As we noted in Chapter 3, measures are needed to simplify the disclosure of sexual violence and other mistreatment so that survivors/victims have a real choice to make in deciding whether to report. The Max Rady College of Medicine introduced “Speak Up” buttons to make it easier and generally more accessible for students to bring forward complaints on mistreatment including allegations of bullying, discrimination and sexual violence.¹⁸¹ The concept is to encourage students to bring issues to the forefront early so that they can be responded to quickly. It is estimated that there are about 40 to 50 incidents at the Max Rady College of Medicine being reported a year.¹⁸² While students are encouraged to self-identify so that complaints can be responded to quickly, anonymous and third-party complaints are permitted as well. We regard this program as a highly successful initiative and recommend it be adapted for use across the UM.

Recommendation 15

The “Speak-Up Button” initiative and website at the Max Rady College of Medicine be adapted for use elsewhere across the UM.

¹⁸⁰ Chapter 3, D.1 and 3.D.2.

¹⁸¹ The details of the initiative are set out on their webpage. University of Manitoba Max Rady College of Medicine, “SPEAK UP: Report an incident”, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/medicine/reporting.html>.

¹⁸² Sources: Associate Dean, Professionalism and Associate Dean, Student Affairs PGME, Rady College of Medicine.

b. Model of Escalating Behaviour

In Chapter 3, we described this model that is used at the Max Rady College of Medicine.¹⁸³ The model sets out a process for guiding interventions in responding to behaviour, which was previously detailed. It has been successfully implemented in the Max Rady College of Medicine and we think it conveys a very useful depiction of progressive responses to escalating behaviour, with an emphasis on early remedial training where this is appropriate. The model would be used in conjunction with advice from HR.

Recommendation 16

The Model of Escalating Behaviour successfully used at the Max Rady College of Medicine be adapted for use elsewhere across the UM. The model would be used in conjunction with advice from HR.

c. Role of Deans

We previously articulated the view that Deans can and should play an important role in monitoring and addressing inappropriate behaviour in its early stages. While their engagement and leadership is encouraged on a variety of prevention initiatives, it is particularly critical for Deans to “walk the hallways” and make themselves aware of areas that may require their early attention and informal intervention. They play an integral role in responding to issues early; in the words of one of the people we interviewed, at the “pre-red-flag” stage. While we set out later in this Chapter an overview of the respective roles of Deans, along with other roles at the UM, in our view a specific recommendation on the role of Deans at the “pre-red-flag” stage is appropriate.

Recommendation 17

Deans play an important role in making themselves aware of areas that may require their early attention and informal intervention. Accordingly, we recommend that Deans have early discussions, provide guidance and consider remedial measures, where appropriate.

E. CLEAR RULES AND CLEAR CONSEQUENCES

One of the hallmarks of an effective sexual violence strategy is to have “consistent messaging” and to “reinforce consistent standards and norms across multiple levels and contexts.”¹⁸⁴ In light of the UM being highly siloed and stratified, it is not surprising that some standards and norms are not clearly framed and understood.

¹⁸³ Chapter 3.D.2.

¹⁸⁴ Centers for Disease Control and Prevention “Preventing Sexual Violence on College Campuses: Lessons from Research and Practice” (April 2014) at 12-13, online: NCCP Safety <https://www.nccpsafety.org/assets/files/library/Preventing_Sexual_Violence_on_College_Campuses.pdf>.

In this section of our Report, we review the current sexual violence policies and recommend changes to the policies as set out below. In recommending these changes, we are guided by five overarching principles:

1. The policies should be easy to understand and follow;
2. There should be clear consequences for breaches;
3. The policies should reflect the norms and ideals of a safe and secure learning environment;
4. Diversity and its impact on sexual violence (intersectionality) should be a core principle identified in the policies; and
5. The policies should be drafted with a view of reducing barriers to the reporting of sexual violence, which is significantly underreported.

Our analysis starts with a review of whether there should be any changes with respect to the policies governing sexual relationships between faculty and students. As we previously noted, the UMFA collective agreement requires that changes to UM policy that “effect a general change in terms or conditions of employment” of UMFA members require UMFA’s approval. Consultations within the UM will be required before the Board of Governor approves any change to the current policies. As we also previously noted, relationships between faculty and students are currently governed by the Conflict of Interest Policy and the recently developed Guide on Intimate Relationships between University Employees and Students.¹⁸⁵

1. INTIMATE OR SEXUAL RELATIONSHIPS WITH STUDENTS

Policies governing intimate or sexual relationships between faculty and students have been the focus of many university administrations across North America, with sweeping changes being made to these policies in the United States and more recently in Canada. In this section of our Report we refer to the current UM policy, to the changes proposed by the Policy Advisory Committee and recommend further changes to the current UM policy as detailed below.

As mentioned at the outset of our Report, we conducted interviews with a number of members across the UM, including students, faculty, and senior administration. Everyone we interviewed who expressed a view on this issue said that they believed that an intimate or sexual relationship between a faculty member and student was wrong where the faculty member has academic authority over the student. The primary reason cited by those who responded was the power imbalance that exists in such relationships, placing the student in a vulnerable position. This vulnerability was seen as particularly untenable in the context of a teacher/student relationship, which is built upon a foundation of trust.

Noting that the current provisions are “buried” in a conflict of interest provision, one of the persons we interviewed had this to say about the current approach:

¹⁸⁵ Sexual Assault Advisory Committee, “Draft Policy” (Winnipeg: University of Manitoba, 2018).

I think it needs to be clear in the policy, not just embedded within, you know, a series of conflicts, conflict of interest. . . . We certainly are no way near where we need to be in terms of making that [the policy] clear and I believe that the responsibility is on faculty and staff; not saying that students are powerless because I think that's insulting to them but they are in terms of power dynamic, they are the subordinate in that aspect so I do think that the responsibility is on faculty and staff to be aware and I don't think that we do a very good job making faculty and staff aware of their responsibilities.

While we encountered no dissent on the position that intimate or sexual relationships between faculty and students are unwise and fraught with complications, the debate continues on the UM campus as to how best to address these relationships in university policy-making. Should these relationships be banned in UM policy or is it better to discourage them from happening short of an outright ban?

As mentioned above, the current formal response to this question at the UM is found in its Conflict of Interest Policy and the recently approved Guide on “Relationships between University Employees and Students”.¹⁸⁶ Referring to the “inherent power imbalance”, the new Guide advises that intimate relationships between employees and students are “strongly discouraged and should be avoided”. The existence of the relationship must be disclosed “immediately” by an employee in writing to the head of their unit in accordance with the steps set out in the Conflict of Interest Procedures.¹⁸⁷ We note that neither the Guide nor the Conflict of Interest Policy or Procedures says that a breach of the Policy gives rise to disciplinary consequences. In other words, both documents stop short of saying what happens if the relationship is not disclosed. Nor is there any requirement of an annual review or update of current conflict of interest declarations.¹⁸⁸

Looking at undergraduate students at the UM, we note that one aspect of their vulnerability relates to the fact that many full-time undergraduate students are barely on the cusp of the age of majority. Specifically, as noted in Chapter 1, the median age of first-year incoming students is 18 and the average median age of full-time undergraduate students is 21.¹⁸⁹ While age is a general factor of vulnerability, another factor relates to whether students are located in small and professional faculties, Graduate Studies as well as in competitive athletic teams (Bison Sports). Students in these areas are generally more vulnerable because the available options relating to courses or programming are limited, and the bond developed with faculty members or coaches relevant to their field of interest is often intensive and insular owing to the length and specialized nature of their study or sport. There is also the added vulnerability raised by the UM Climate Survey study: of those who

¹⁸⁶ University of Manitoba, “Relationships Between University Employees and Students”, online: University of Manitoba <<http://umanitoba.ca/student/media/Relationships-Between-Employees-and-Students.pdf>>.

¹⁸⁷ University of Manitoba, “Relationships Between University Employees and Students”, online: University of Manitoba <<http://umanitoba.ca/student/media/Relationships-Between-Employees-and-Students.pdf>>.

¹⁸⁸ In an UM Audit Services Report on Values and Ethics, it was noted that a declaration is only required when the conflict of interest is identified. “As circumstances can change over time, it would be desirable for the COI policy to be discussed periodically.” (University of Manitoba Audit Services, “Report on Values and Ethics” (July 2017) at 9.) We make a recommendation to address this limitation later in this Chapter of our Report.

¹⁸⁹ Further details in Chapter 1.A.1.

participated in the UM Climate Survey, graduate students were more likely to experience sexual harassment by faculty.¹⁹⁰

This situation is not unique to the UM as there are well-documented experiences in North America involving graduate students and athletes.¹⁹¹ In a recent American report involving the largest survey of its kind, it was found that one in ten female graduate students at elite universities in the United States have been sexually harassed by a faculty member, and other smaller studies over several decades have reported even higher numbers.¹⁹² The same report found that women graduate students in the United States are harassed by faculty about three times as much as women undergraduates.¹⁹³

The particular vulnerability of graduate students has been explained in the following terms:¹⁹⁴

The fact of power differentials is not unique to graduate students, but it accentuates the risks of harassment given the insular academic communities that doctoral graduate students inhabit and the close relationships they have with some faculty. Consequently, in the contemporary environment, faculty sexual harassment significantly ruptures the bonds of professional ethics and responsibility that are essential preconditions both for academic freedom and for equality.

A higher incidence of sexual harassment at the UM graduate student level is supported by the recent UM Campus Climate Survey on Sexual Violence: A Final Report.¹⁹⁵ Of those UM students who participated in the survey, those who were graduate students were most likely to experience sexual

¹⁹⁰ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019), Introduction & Executive Summary.

¹⁹¹ See, e.g., the report of Athletics Canada (the governing body for track and field in Canada) relating to a lifetime ban of two high profile track coaches out of the Ottawa Lions Track and Field Club for sexual violence involving nine male athletes and for the sexual harassment of a female athlete. The victim impact statements starting at p. 217 of the Report are particularly compelling. Found at <<https://athletics.ca/wp-content/uploads/2019/05/In-Plain-View-Report.pdf>>.

¹⁹² Nancy Chi Cantalupo; William C. Kidder, “A Systematic Look at a Serial Problem: Sexual Harassment of Students by University Faculty”, 2018 Utah L. Rev. 671 (2018), at 674, n. 7, citing David Cantor et al., Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct 29 (Oct. 2017), <<https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf>>.

¹⁹³ Nancy Chi Cantalupo & William C. Kidder, “A Systematic Look at a Serial Problem: Sexual Harassment of Students by University Faculty”, (2018) 2018:3 Utah L Rev 671 at 674 n 7, citing: David Cantor et al., “Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct” 29 (Oct. 2017) <<https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf>>.

¹⁹⁴ Nancy Chi Cantalupo & William C. Kidder, “A Systematic Look at a Serial Problem: Sexual Harassment of Students by University Faculty”, (2018) 2018:3 Utah L Rev 671 at 680.

¹⁹⁵ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019).

harassment by faculty/staff members.¹⁹⁶ Further, the same survey found that those participants who were graduate students (26.5%) were more likely to be aware of incidences of sexual violence when the perpetrator was a UM faculty or staff member (26.5%) as compared to professional or second-degree undergraduate students (14.3%) or general undergraduate students (6.6%).¹⁹⁷ The survey quotes a female graduate student who commented as follows:¹⁹⁸

I would like to say that I just started feeling very unsafe dealing with my graduate supervisor as he is... insisting on us to meet every now and then, even during the evenings ... and during weekends... I feel he likes to see me just for the sake of harassment. It might be sexual harassment but I don't really know. I am very concerned and I do not even know what can I do now?

The vulnerability of graduate students at the UM was highlighted in our interviews with members of the UM community. One spoke of the “power dynamics with a supervisor” and the degree of dependence of graduate students on their advisors, especially those who are also international students who were described as “very, very vulnerable”. The vulnerability of graduate students was linked to a power imbalance: “advisors seem to have a great deal of control over their [the students’] lives, if they choose to claim that control.” Another person we interviewed put it in the following way: “. . . if you are also the advisor and I’m overworking you but I’m going to see if you get a graduate degree or not, you have to be a very brave soul to say you know what, you’re actually overworking me.”

As a result of our assessment that graduate students at the UM are, as a group, at least as vulnerable in their relationships with faculty as other students, we do not recommend that the UM adopt a policy specifically targeting faculty relationships with undergraduate students, as some universities have done, most notably Harvard.¹⁹⁹ In our view, the UM policy on faculty-student relationships should apply equally to all students and should target those relationships where faculty has academic authority over a student.

But what is the better policy, to ban sexual relationships between faculty and students they supervise or to discourage these relationships from happening short of an outright ban, as is currently the case? We have heard and read a number of arguments in support of the current approach:

¹⁹⁶ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 9.

¹⁹⁷ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 48.

¹⁹⁸ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 48.

¹⁹⁹ Harvard University, “Sexual and Gender-based Harassment Policy and Procedures for The Faculty of Arts and Sciences, Harvard University” (13 January 2016), online: Harvard <https://www.fas.harvard.edu/files/fas/files/fas_sexual_and_gender-based_harassment_policy_and_procedures-1-13-16.pdf>. Page 8 specifically states that “No FAS Faculty member shall request or accept sexual favours from, or initiate or engage in a romantic or sexual relationship with, any undergraduate student at Harvard College. Faculty members are defined as ladder, non-ladder, and visiting faculty.”

- Students and faculty are adults who should make their own decisions about sexual relationships
- We can't help who we fall in love with
- Students and faculty should be able to have sex with anyone they choose
- Policy bans will force faculty-student sexual relationships underground

In our view, these arguments do not fully consider or at least outweigh the vexing issue of consent in the context of the power imbalance between faculty and students they supervise. One academic has explained the problem as follows:²⁰⁰

Sexual advances that are welcome are not unlawful. The difficulty with this rule, however, is even more obvious. How is one to know? Whether a professor's advances are welcome is determined by the perception of the student- she decides whether the advances are welcome to her. From the very outset, a professor may misinterpret a young student's awe or casual "brown-nosing" to be an invitation to flirt. If she does not welcome romantic attention, and she makes her feelings clear, in most cases the professor will not yet have acted unlawfully if he then desists. But a student can often reasonably claim that she thought it better not to offend. Her response may therefore be ambiguous or misleading. It is possible that a professor, especially an optimistic one, will continue to misinterpret the signals until it is too late. In sum, student behavior that appears to be welcoming may, in fact, be motivated by fear.

Nor do the arguments in favour of the *status quo* consider the broader toxic impact that such relationships can have on workplaces or, indeed, on other students. As one academic administrator explained: "[r]elationships would create a bias, either good or bad, that I feel would inevitably interfere with the professor's ability to treat the entire class fairly."²⁰¹ They have the potential to create unfair impressions of the student's work by others who assume that the student's achievements were obtained by virtue of the relationship. A ban would be tailored to the timeframe during which academic supervision occurs. The temporal nature of the ban is explained in the following terms by one of the persons we interviewed:

When you talk to anybody outside the University they'll say "What are you thinking?" and really, you know what it means is you wait... If it's a relationship that is meant to be, wait a year, wait three or four months. I know people who have dated students but they've waited until the [academic] relationship ended. I think we are living in a bit of a bubble on that question [of ban versus disclosure].

When the Policy Advisory Committee reported, the prevailing practice of Canadian post-secondary institutions was to regulate relationships through conflict of interest provisions. However, a closer examination of policies today suggest that the tide could be shifting. Earlier this year McGill University adopted a policy banning sexual relationships between faculty and students they

²⁰⁰ Richard Carlson, "Romantic Relationships between Professors and their Students: Morality, Ethics and Law" (2001) 42:1 S Tex L Rev (2001) 493 at 498.

²⁰¹ Sophia Savva, "What are U of T's policies on student-professor relationships?" (27 September 2018), online: The Varsity <<https://thevarsity.ca/2018/09/27/what-are-u-of-ts-policies-on-student-professor-relationships/>>.

supervise²⁰² and other universities are said to be considering it.²⁰³ Locally, as earlier reported, Red River College has a policy that bans intimate relationships between student and teaching staff and its sexual violence policy provides that consent cannot be obtained by an individual who is in a position of trust, power or authority.²⁰⁴

University policies are important tools for creating “community level norms to guide individual behavior”.²⁰⁵ It is our view that university policies should clearly reflect the norms and ideals of a safe and secure learning environment for all students. In its recent report involving a climate review of the Department of English at Concordia University, an inquiry panel headed by Maître Pierrette Rayle, formerly of the Quebec Court of Appeal, had this to say on their preferred approach towards intimate or sexual relationships between faculty and students:²⁰⁶

We believe that, even when the conflict of interest can be adequately managed, there is no place for any romantic or sexual relationship between an instructor and his or her student. The potential for abuse or seriously damaging misunderstandings are far too frequent and serious.

We agree with the panel’s conclusion and recommend that the UM adopt a ban with all students where the teaching staff has academic authority over the student, with clear disciplinary consequences for those staff who do not adhere to the policy. We note that in the new McGill policy, the minimum disciplinary sanction is set to be suspension without pay unless the facts warrant a less severe sanction.²⁰⁷ A similar penalty should be set out in the UM policy. In particular, we recommend the following:

²⁰² McGill University, “Policy Against Sexual Violence” (28 March 2019), online: McGill <https://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf>.

²⁰³ Joshua Azizi, “UBC considers ban on faculty-student relationships” (10 May 2016), online: The Ubyyssey <<https://www.ubyssey.ca/news/student-prof-romance-ban-maybe/>>;

Sophia Savva, “What are U of T’s policies on student-professor relationships?” (27 September 2018), online: The Varsity <<https://thevarsity.ca/2018/09/27/what-are-u-of-ts-policies-on-student-professor-relationships/>>.

²⁰⁴ Red River College, “Conflict of Interest Policy” (April 2019) at s 4.3(c), online: RRC <<https://cpb-ca-c1.wpmucdn.com/www.rrc.ca/dist/1/69/files/2018/07/P3-Conflict-of-Interest-149prao.pdf>>; banning “sexual relationships with a student for the duration of the time such a power imbalance exists.” In Red River College “Sexual Violence Policy” (12 November 2018) at s 2 (definitions), online: RRC <<https://cpb-ca-c1.wpmucdn.com/www.rrc.ca/dist/1/69/files/2018/11/G5-Sexual-Violence-28724jd.pdf>>, states that consent “cannot be obtained by an individual who is in a position of trust, power or authority”.

²⁰⁵ Sarah McMahon, Leila Wood et al, “Campus Sexual Assault: Future Directions for Research” (2019) 31:3 Sexual Abuse 270 at 283.

²⁰⁶ Pierrette Rayle, Alain Reid & François Rabbat, “Climate Review of the Department of English of Concordia University: A Path Forward” (March 7, 2019) at 5, online: Concordia University <<http://www.concordia.ca/about/administration-governance/office-provost-vp-academic-affairs/climate-review/report.html>>. While the panel personally favoured a ban, they stopped short of recommending one in their report on the basis that the Government of Quebec had not supported this approach in the relevant legislation.

²⁰⁷ McGill University, “Policy Against Sexual Violence” (28 March 2019) at s 8.1(ii), online: McGill <https://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf>.

Recommendation 18

The UM Board of Governors adopt a policy banning intimate or sexual relationships between teaching staff and the students that they supervise. “Teaching staff” includes every person delivering any component of an academic program (faculty member, a sessional employee, an academic appointment, teaching and research assistants), librarians and coaches and coaching assistants of UM athletic teams.

Recommendation 19

The policy would apply to all students of the UM including undergraduate, professional and graduate students.

Recommendation 20

The policy set out clear consequences for staff who are governed by the policy and do not adhere to it, involving at least suspension without pay.

2. PARTICULAR ASPECTS OF STUDENT VULNERABILITY

a. Intersectionality

When examining sexual violence, harassment and discrimination on campus, we need to consider an intersectional framework since not every person’s experience will be the same. An individual’s experience is shaped by many factors including, for example, their sexual orientation, race, religion, Indigenous identity, disability and whether they are cisgender or trans. These multifaceted aspects of diversity create overlapping and interdependent systems of discrimination or disadvantage that affect one’s identity, experience and perspective.

This is what is meant by the principle of intersectionality, namely, that many of us have multiple aspects of identity that together creates “something unique and distinct from any one form of discrimination standing alone.”²⁰⁸ Intersectionality means approaching and responding to an individual on the basis of the confluence of their different identities.²⁰⁹

The Sexual Violence Policy proposed by the UM Policy Advisory Committee would contain a brief statement on intersectionality. Section 1.2 currently states that: “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

²⁰⁸ Quoting from the Ontario Human Rights Commission, “An introduction to the intersectional approach”, online: OHRC <<http://www.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims/introduction-intersectional-approach>>.

²⁰⁹ So, for example, the principle of intersectionality would recognize and treat a gay man who is disabled differently than a gay man.

will be affected by many factors.”²¹⁰ For the reasons that follow, we recommend a few changes to the proposed Sexual Violence policy with respect to intersectionality, as set out below.

The idea that policies and practices responding to sexual violence should be sensitive to the diverse spectrum and background of students is supported by the UM Campus Survey results.²¹¹ In terms of general outlook, while the vast majority of students who responded to the survey reported being happy at the UM (83.7%), trans, two spirit and non-binary identified students were less likely to feel so (66.7%).²¹² Student perceptions of safety differed by gender and gender identity. Male students (94.5%) were more likely than female (86.3%) and trans, two spirit and non-binary (82.1%) students to feel safe on campus.²¹³ Less than half of trans, two spirit and non-binary identified students (46.2%) agreed that if “a crisis happened on campus, UM administrators would handle it well,” as compared to the overall average (67.9%).²¹⁴ In addition, while most students (70.8%) agreed that “there is a good support system on campus for students going through a difficult time”, only 50% of trans, two spirit, and non-binary identified students agreed.²¹⁵ While four out of five (79.5%) students agreed that the UM would take a report of sexual violence seriously, that figure was significantly less for Indigenous female students (61.6%), who were the least likely to agree with this statement.²¹⁶

Intersectionality also factors into UM students’ experiences involving sexual victimization. Of those who responded to the survey, female students (68.5%) and trans, two spirit and non-binary students (65.2%) were more likely than male students (26.8%) to have experienced an incident of sexual harassment where they were made to feel uncomfortable by comments or gestures of a sexual nature.²¹⁷ A significant difference was also observed between heterosexual (53.0%) and sexual minority (73.3%) students.²¹⁸ On sexual assault, female (37.6%) and trans, two spirit, and non-binary (36.4%) were more likely to have experienced sexual assault than male students (12.2%).²¹⁹ Moreover,

²¹⁰ University of Manitoba, “Relationships Between University Employees and Students”, online: University of Manitoba <<http://umanitoba.ca/student/media/Relationships-Between-Employees-and-Students.pdf>>.

²¹¹ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019).

²¹² Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 22.

²¹³ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 23.

²¹⁴ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 27.

²¹⁵ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 28.

²¹⁶ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 74.

²¹⁷ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 34.

²¹⁸ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 34.

²¹⁹ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 37.

female LGBTQ students were more likely to experience sexual assault (48.9%) than female heterosexual students (35.1%), and male sexual minority students (29.4%) were more likely to have experienced sexual assault than male heterosexual students (10.5%). The Report also reveals differences in the incidence of sexual assault according to a student's racialization and country of origin.²²⁰

As a result of the role that intersectionality plays in shaping the prevalence of sexual victimization and the perception of UM's responses and supports to survivors/victims, we believe that intersectionality needs to be a critical aspect in shaping the UM policies and practices relating to a safe and secure campus. We note that this position on the central importance of intersectionality is supported by UMSU. In their proposed revised Sexual Violence Policy, a more robust role for intersectionality is proposed by UMSU.²²¹ Research is at an early stage as to how intersectionality should affect UM practices in responding more effectively to sexual victimization. However, our interviews involving UM community members suggest, for example, that Indigenous students are more likely to be interested in restorative justice processes than proceeding through the formal mechanism of a complaint. Research also suggests (as we discussed previously in this Chapter) that training needs to be contextualized according to the socio-cultural background of the learner. Further, we believe that trauma-informed services that are culturally sensitive to a survivor's/victim's background, perceptions and experience are integral components of an effective response; "insensitive reactions to survivor/victim disclosures of sexual violence can deepen their traumatic response".²²² We note that there is no current requirement for investigators appointed by the UM to have trauma training and in the next Chapter we recommend that a requirement be implemented.

Recommendation 21

The preamble to the UM Sexual Violence Policy acknowledge that while sexual violence affects all members of the UM community, sexual violence and its consequences may disproportionately impact those members who experience intersecting forms of systemic discrimination on such grounds as, for example, Indigenous identity, disability, ethnicity, racialization, sexual orientation and gender identity and expression. Further, we recommend that the preamble acknowledge that this principle of intersectionality²²³ should be reflected in how trauma-informed services are delivered, and that they should be delivered in a manner that is culturally sensitive to a survivor's/victim's background, perceptions and experiences.

²²⁰ Specifically, Asian (35.8%), White (34.1%), and Indigenous (33.0%) students were more likely to report experiencing sexual assault since attending the UM, followed by 21.4% of South Asian, 20.5% of Southeast Asian, 18.8% of Black African or Caribbean, and 13.1% of other racialized students (at 37).

²²¹ "University of Manitoba Sexual Violence Policy - Stakeholder Recommendations", s 2.6(d) (provided by M Sarah Bonner-Proulx, Vice-President, Advocacy, UMSU), March 20, 2019.

²²² Sarah McMahon, Leila Wood et al, "Campus Sexual Assault: Future Directions for Research" (2019) 31:3 Sexual Abuse 270 at 282.

²²³ This is what is meant by the principle of intersectionality, namely, that many of us have multiple aspects of identity that together creates "something unique and distinct from any one form of discrimination standing alone." Intersectionality means approaching and responding to an individual on the basis of the confluence of their different identities. See Chapter 5.E.2.a for a more detailed description, with sources.

b. Alcohol and Drugs

The UM Campus Survey suggests that students continue to misunderstand the concept of consent in Canadian law and specifically that when a person is incapacitated by alcohol or drugs, there is no consent in law to sexual activity. The Survey found that, while almost three-quarters (72.9%) of students who responded to the survey strongly disagreed with the statement “If a woman is sexually assaulted while she is drunk, she is at least somewhat responsible for letting things get out of control,” 12% did agree. Males (23.7%) were more likely to agree than females (7.4%).²²⁴ The UM Sexual Violence Policy should contain an express provision that consent cannot occur where a person is rendered incapacitated by alcohol or drugs.

The UM Campus Survey also pointed to concerns that sexual violence may go unreported because of the role alcohol or drug consumption plays in survivors/victims believing that they were blameworthy. The Report refers to the comment of a student (unreported gender identity) who commented that: “Residence sexual assault happens so often to so many people but because there is the perception that when a woman is drunk it is her fault, it goes unreported.”²²⁵ Many sexual violence policies today explicitly recognize that persons can be hesitant to report sexual violence because they were under the influence of alcohol or drugs and explicitly protect those from discipline who come forward in good faith to make a disclosure or report of sexual violence.²²⁶ The proposed Disclosures and Complaints Procedure would contain a provision that protects a person affected by alcohol or substance use at the time of an incident from disciplinary sanction (s. 2.16). We recommend that the UM Sexual Violence contain such a provision as well.

Recommendation 22

The Sexual Violence Policy contain a provision, which clarifies that consent cannot occur where a person is rendered incapacitated by alcohol or drugs.

Recommendation 23

The Sexual Violence Policy contain a provision which recognizes that some individuals may be hesitant to come forward to disclose or report sexual violence because they were under the influence of alcohol or drugs at the time the sexual violence occurred. Further, we recommend that the Policy state that the UM will provide the survivor/victim with supports and information about disclosing and reporting regardless as to whether alcohol or drugs was used when the sexual violence occurred and that no disciplinary consequences for violations of UM policies for alcohol or cannabis use will be imposed on a person acting in good faith who makes a disclosure or report of sexual violence.

²²⁴ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 53-54.

²²⁵ Sexual Violence Steering Committee, *The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report*, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019) at 56.

²²⁶ See, e.g., McGill University, “Policy Against Sexual Violence” (28 March 2019) at s 5, online: McGill <https://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf>.

3. INTIMATE OR SEXUAL RELATIONSHIPS BETWEEN EMPLOYEES INVOLVING POWER DIFFERENTIALS

Where UM employees are involved in an intimate or sexual relationship that involves power differentials (*e.g.*, an employee reporting to their supervisor), the employee with power must currently disclose that relationship immediately to the head of their unit. Typically, when this happens and the relationship is reported, a change is made in the reporting relationship so that the employee with power is removed from any supervisory relationship with respect to the other employee. If the employee fails to disclose the conflict of interest, the Guide states that “they may face disciplinary action”.²²⁷

In our view, relationships between UM employees involving a power differential should continue to be governed by the Conflict of Interest Policy and the new Guide pertaining to “Relationships between University Employees Involving Power Differentials”. This situation, while serious, is distinguishable from that involving an intimate or sexual relationship between teaching staff and students where the academic integrity of the institution is at risk and concerns exist over perceived favouritism from other students.

According to UM practices, a declaration of a conflict of interest is required when the conflict is identified and should be done “immediately”. In the Climate Review of the Department of English of Concordia University: A Path Forward,²²⁸ the three-member panel recommended a clear timeline for reporting, specifically proposing the disclosure within two business days of the conflict of interest arising. So that the requirements are clear to everyone, we believe that a clear timeframe is preferable over a requirement to disclose “immediately” and would recommend two business days following the lead of the Concordia panel. In our view, it would also be a good idea to stipulate that there will be clear consequences if the disclosure and/or timeframe are not adhered to.

It would be a good idea to also have regular prompts sent on an annual basis to UM employees, so that all conflicts – including those involving relationships between employees – can be reviewed, updated and continue to be managed.²²⁹ We understand that a similar recommendation has previously been made by the UM Audit Services in their *Values and Ethics Final Audit Report*.

Recommendation 24

Relationships between UM employees involving power differentials continue to be managed under the Conflict of Interest Policy and the recent Guide on “Relationships between University Employees Involving Power Differentials”.

²²⁷ University of Manitoba, “Relationships Between University Employees Involving Power Differentials” at 1, online: University of Manitoba <<http://umanitoba.ca/student/media/Relationships-Between-Employees-Power-Differentials.pdf>>.

²²⁸ Pierrette Rayle, Alain Reid & François Rabbat, “Climate Review of the Department of English of Concordia University: A Path Forward” (March 7, 2019), online: Concordia University <<http://www.concordia.ca/about/administration-governance/office-provost-vp-academic-affairs/climate-review/report.html>>.

²²⁹ This could be done in the context of an Annual Review process.

Recommendation 25

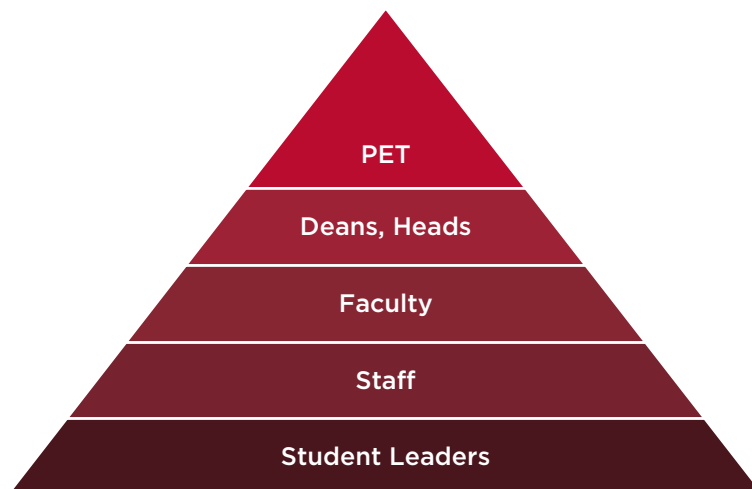
The Guide on “Relationships Between University Employees Involving Power Differentials” be amended to require disclosure within two business days of the conflict of interest arising. Further, we recommend that there be clear consequences if the disclosure and/or timeframe are not adhered to.

Recommendation 26

The UM institute a regular annual process for each employee to review and update their conflict of interest declarations in writing, which would be approved by their supervisor. Further, we recommend that this process be incorporated into the annual performance review done for each UM employee.

F. DISTINCT ROLES AND RESPONSIBILITIES FOR A SAFE AND SECURE LEARNING AND WORK ENVIRONMENT

While everyone in the UM community has a role to play in preventing and responding to sexual violence, harassment and discrimination, there are specific responsibilities that are unique to positions and teams at the UM relating to sexual violence, harassment and discrimination, diversity and anti-Indigenous racism. To help clarify respective roles and responsibilities in this area, we set out a basic framework below:



ROLE OF PET (PRESIDENT AND EXECUTIVE TEAM):

- sets the tone for UM action, leading the vision of a more inclusive and respectful culture at UM involving zero tolerance for sexual violence, harassment and discrimination;
- conveys consistent messaging & reinforces consistent standards and norms across multiple levels and contexts;
- sets clear expectations and the consequences of non-compliance;
- prioritizes the implementation of the recommendations in this Report; and
- allocates sufficient resources for implementing the recommendations.

ROLE OF DEANS AND DEPARTMENT HEADS:

- play a significant preventative role, promoting education & training plans & workshops for faculty;
- “walking the halls”; responsible for identifying and ensuring a response to early red flags, with advice and support from HR;
- appropriately respond to disclosures;
- make faculty and students aware of opportunities to attend campus-wide training and workshops; and
- conduct annual performance reviews with each member of the faculty or unit including the review of learning plans to prevent sexual violence and racism, promote diversity and Indigenous cultural knowledge and awareness.

ROLE OF FACULTY AND TEACHING STAFF:

- provide survivors/victims with appropriate accommodations following STATIS review;
- develop and implement learning plans to enhance understanding of relating to sexual violence, harassment and discrimination, including racism, diversity, and Indigenous cultural knowledge and awareness;
- appropriately responds to disclosures;
- participate in faculty and university-wide training on diversity, anti-Indigenous racism and effective responses to sexual violence, harassment and discrimination; and
- look for ways to enhance diversity, Indigenous learning and a respectful learning and work environment.

ROLE OF LEADERS OF STUDENT ORGANIZATIONS:

- promote awareness of issues and training programs targeting students;
- identify issues of concern from the student body to PET;
- through contacts with leaders from other university student organizations, help UM identify best practices and innovations; and
- provide critical feedback on UM's policies, practices and preventative measures.

Recommendation 27

All members of the UM community understand and actively fulfill their particular and distinct role in preventing sexual violence, harassment and discrimination from arising and building a safe and secure learning and work environment.

The foregoing is intended only as an outline of a few of the many roles at the UM that help to support a safe and secure learning and work environment. The essential work of others, like the UMSS who respond promptly to safety threats at both main campuses and who help to deter behaviour that poses risks to others, must not be forgotten and should be included in a more detailed and in-depth description of the numerous distinct roles that all play a critical part.

G. SHARED ACCOUNTABILITIES FOR A SAFE AND SECURE LEARNING AND WORK ENVIRONMENT

As previously mentioned, we found leaders of a safe and secure learning and work environment at every level of the UM community (administration, faculty, non-academic community, student leaders). However, participation and engagement should be expected from everyone; all members of the UM community are responsible for a safe and secure learning and work environment.

Our vision of shared accountability was well-expressed by one of the faculty members we interviewed. When we asked the question of who shoulders primary responsibility for a safe and secure learning and work environment at UM, this person responded: “I think primary responsibility rests with every single person on this Campus.” We could not say it better. In another interview, the principle of shared accountability at the university-wide level was well-expressed in the following assessment: “[T]here are times when we can be sixteen faculties and then there are other times when we need to be one University.”

But how best to embed the responsibility so that members of the UM community play an active role in building a safe and secure learning and work environment by at least participating in training sessions? We have considered whether to make training mandatory for all members of the UM community including faculty. While we sympathize with the end goal of those who advocate for mandatory training (that training is undertaken by everyone, even by those who don’t want to take it), we are persuaded that mandatory training is not the best solution. To quote from an American article on the effectiveness of mandatory training:²³⁰

[W]e know from a large body of organizational research that people react negatively to efforts to control them. Job-autonomy research finds that people resist external controls on their thoughts and behavior and perform poorly in their jobs when they lack autonomy. Self-determination research shows that when organizations frame motivation for pursuing a goal as originating internally, commitment rises, but when they frame motivation as originating externally, rebellion increases.

We were advised that it is the practice at the UM for everyone to have a written performance review at least once a year and tracking is done with the goal of achieving a 100% target across the university.²³¹ Why not then adjust the performance review process to include questions and topics for comment on how the person being reviewed has enhanced a safe and secure learning and work environment at the UM? The template would contain specific topics for the person to respond to along the following lines: Have they completed or what are their plans to complete the sexual violence training modules? What other workshops have they attended or other work have they done to enhance a safe and secure learning and work environment at the UM? Have they attended a workshop, started a dialogue or done research on Indigenous cultural awareness or the development of a TRC framework for their area?

²³⁰ Frank Dobbin & Alexandra Kalev, “Why Doesn’t Diversity Training Work? The Challenge for Industry and Academia” (2018) 10:2 *Anthropology Now* 48. While the subject of the article is on diversity training, the findings on the lack of effectiveness of externally imposed training have broader application.

²³¹ Source: Director, Human Resources Client Services.

The idea is for everyone to account for the work that they have undertaken to respond to sexual violence, harassment and discrimination, including racism, as well as work relating to the enhancement of diversity, Indigenous cultural awareness and a respectful workplace. These features would become part of a person's annual learning plan. The template would also contain questions to ensure that conflicts of interest are reviewed and updated in accordance with the recommendations made elsewhere in this Report. We note that some of the questions we have just suggested are already included in the annual performance review form that the Provost is using this year with her direct reports. We see no reason why all annual performance reviews should not include similar questions and recommend so below.

Recommendation 28

The annual performance review templates be revised to include questions similar to the ones we have identified in our Report relating to what activities have been undertaken during the past year to enhance a safe and secure learning and work environment at the UM.

As we expressed, we think shared accountability forms the basis for the implementation of individualized learning plans to enhance a safe learning and work environment across the UM. UM employees also generally share an accountability under the law relating to disclosure; namely, when disclosure of sexual violence is made to an employee at the UM, a legal obligation generally arises for that employee to bring forward these concerns when they occur. The details of this legal obligation and its application are set out in the next Chapter of our Report.

CHAPTER 6: A FAIR, TIMELY AND EFFECTIVE FRAMEWORK

A. INTRODUCTION

In Chapter 5, we focused on the recommendations associated with “front end” prevention to address sexual violence, harassment and discrimination at the UM. To meet the goal of having a safe learning and work environment, the implementation of a comprehensive prevention framework at the UM should remain the administration’s top priority. While we hope that the implementation of the recommendations in the preceding Chapter will significantly diminish the incidence of sexual violence, harassment and discrimination, we also harbour no doubt that circumstances will continue to arise that will ultimately result in the laying of a formal complaint. When that happens, it is critically important for all concerned to have a framework that reflects a fair, timely and effective process. In this Chapter, we set out our recommendations with that objective in mind.

B. THE COMPLEXITY OF THE STRUCTURE AND DELIVERY MODEL

To identify the fundamentals of the framework, we first look to the current organizational structure of the UM. In our view, the organizational structure at the UM is highly siloed, stratified and complex. This assessment will come as no surprise to anyone working at the UM. We note that one of the first observations made in the UM strategic plan progress report is that the UM “is a highly complex, decentralized organization with wide-ranging activities at multiple locations.”²³²

That description of the UM as a whole applies with equal force to the particular areas that we have examined within our mandate. Multiple offices reporting to three separate Vice-Presidents are involved in providing supports, resources, accepting disclosures and complaints and delivering programs to enhance education and preventative measures. There is a lack of clarity and mutual understanding of roles, leading some to feel insecure and unsupported in their work. A way forward is needed to clarify, distil, and promote coordination and we identify recommendations below with that objective in mind.

The structural complexity of the UM is compounded when one considers the “No Wrong Door” approach that is the current model with respect to the disclosure of sexual violence. The “No Wrong Door” model for disclosing is survivor-centric, allowing anyone who has experienced sexual violence to make decisions on where and to whom they may disclose. In addition to those working at various offices providing support services to survivors/victims (these were identified in Part IV of our Report) and OHRCM where formal and informal complaints can be filed, a survivor/victim of sexual violence

²³² University of Manitoba, “Taking Our Place: University of Manitoba Strategic Plan Sharing Our Progress” at ii, online: University of Manitoba <<https://umanitoba.ca/admin/president/media/UM-Strategic-Plan-Progress-Report.pdf>>.

or racism, for example, may disclose their experience to virtually anyone at the UM. That there is confusion on the part of many who either make or receive a disclosure as to the next steps in the process is to be expected.

There are benefits to the “No Wrong Door” model – chiefly its accessibility, and we note that the model has been widely implemented elsewhere, *e.g.*, the Government of Manitoba. However, the model has had the effect of complicating the handling of sexual violence issues and ensuring that there is appropriate follow-up in every case. To be a fully effective and successful model, the “No Wrong Door” model is dependent upon a “yes” answer to each of the following two questions:

1. *In addition to understanding the range of options and supports, does the survivor/victim understand the difference between disclosure and filing a complaint?*
2. *Does the UM faculty or staff member that they have confided in have sufficient training to understand the process and provide enough guidance and support to the survivor/victim with respect to possible next steps?*

The results of the Climate Survey suggest that very few students are aware of the procedures for reporting, possibly as a result of the broad variety of disclosure points.²³³ Fortunately, however, a “yes” answer to the second question can diminish the adverse impact of a “no” response to the first question. A well-trained faculty or staff member can ensure that a survivor/victim is provided with enough correct information that – either directly, or by referral to another office – they come to appreciate the difference between disclosure and filing a complaint, along with learning about the sexual violence supports that are available to them.

To ensure that every member of the UM community has sufficient understanding and awareness of the process and content for adequately responding to sexual violence disclosures is “a tall order”, particularly in light of the complexity of the process and structure.²³⁴ And yet, without any further adjustments, the current system is dependent upon an almost universal understanding within the UM community of the basic elements of the sexual violence response system.

C. SEXUAL VIOLENCE RESOURCE CENTRE

This is why we believe the UM should create a Sexual Violence Resource Centre at the Fort Garry campus. The core purpose of the Centre would be to act as a “central hub”, helping survivors/victims to navigate the process and available supports and ensure that there is appropriate follow-up. The Centre would serve as a single point of contact for all members of the UM community affected by sexual violence. The Centre could also help to facilitate the broader coordination among the multiple

²³³ *Sexual Violence Steering Committee, The University of Manitoba Campus Climate Survey on Sexual Violence: A Final Report, Tracey Peter, Don Stewart et al, (Winnipeg: University of Manitoba, January 2019).*

²³⁴ *This is particularly the case at the Fort Garry campus as a result of multiple offices involved in the delivery of services. The system is simpler at the Bannatyne campus. This is because Student Services at the Bannatyne campus is essentially a “One Stop Shop” (Source: Executive Director, Student Support).*

offices delivering services to survivors/victims. It would help alleviate the impact under the current multiple office delivery system of, as one person we interviewed described it, survivors “getting pinballed from one office to another”, without understanding the system or their choices.

An internal review done at the UM last fall reviewed the situation at U15 member universities and found that five have some form of sexual assault centre.²³⁵ Of the five U15 institutions offering sexual violence centres, two are staffed by University employees (McGill Office for Sexual Violence Response, Support, and Education; U of T Sexual Violence Prevention and Support Centre), three are staffed and supported by students (Dalhousie Student Union Survivor Support Centre; UBC Alma Mater Society Sexual Assault Support Centre; Sexual Assault Centre of the McGill Students Society), and one has core University staff and trained student volunteers (U of A Sexual Assault Centre). The student-led centres at these universities offer services to students, while the university-led centres focus on students but also provide services to the wider university community.

In our view, the Sexual Violence Resource Centre at the UM should be university-led with a focus on supporting students but with services that are available to the wider UM community. To enhance access, the Centre should be centrally located on the Fort Garry campus and to ensure that everyone can discreetly access the Centre’s offices, we suggest that the Centre be located within a larger building. The Centre should keep anonymized aggregate data on the number and types of inquiries it receives. The development of a more detailed mandate, along with a plan to design and staff the Centre should begin as soon as possible and the UM should provide updates to the UM community on progress relating to its launch.

Recommendation 29

The UM establish a Sexual Violence Resource Centre at the Fort Garry campus.

Recommendation 30

The Centre would serve as a single point of contact for all members of the UM community affected by sexual violence. It would be the “central hub”, helping survivors/victims to navigate the sexual violence process, providing information on available mechanisms of support, ensuring that there is appropriate follow-up. The Centre would also help to facilitate the broader coordination among the multiple UM offices delivering services to survivors/victims.

Recommendation 31

The Centre would be university-led with a focus on supporting students but with services that are available to the wider UM community. We recommend that the Centre be centrally located on the Fort Garry campus and located within a larger building and that it maintain anonymized aggregate data on the number and types of inquiries it receives. We further recommend that the development

²³⁵ *The Executive Director, Student Support developed a document proposal for a Sexual Violence Resource Centre for the UM. The document that was developed, and which was provided to us, is the source of the description of the Centres at the five universities identified in this section of our Report.*

of a more detailed mandate, along with a plan to design and staff the Centre, begin as soon as possible and that the UM provide updates to the UM community on progress relating to its launch.

D. BRINGING DISCLOSURES FORWARD

When a disclosure of sexual violence, harassment or discrimination is brought to the attention of a person in a supervisory role, there may be a legal obligation to act on it.²³⁶ In fact, the recently enacted Government of Manitoba policies make clear that if a complaint of sexual harassment comes to the attention of a supervisor, they must document it and report it immediately to HR. This is to enable them to appropriately respond and follow up on complaints.²³⁷

In the UM context, the obvious and established place to seek advice and report that concern is to the OHRCM. The UM's toolkit, which outlines the supports available, the processes to be followed, the steps to be undertaken and the necessity for confidentiality, is a useful resource. It is comprehensive and can be modified as policies or personnel change. The OHRCM has a website which provides detailed information for those seeking advice.²³⁸

We believe that the establishment of the Sexual Violence Centre should significantly decrease the number of disclosures that are made at the UM that do not result in a formal complaint. However, we also think that the UM should adopt a policy that would require anyone in a supervisory or management position at the UM who receives a disclosure of sexual violence to document this in a form to be sent to a central office. That central office, in our view, would be the OHRCM.²³⁹ The form used by the Government of Manitoba could help guide the development of a form to be used at the UM.²⁴⁰ Like the form used by the Government of Manitoba, the UM form should include a section to be completed for anonymous disclosures.

As discussed in Chapter 2, the UMFA Collective agreement prohibits anonymous reports being part of the employee personal file and further states that anonymous complaints not be used for any evaluative or disciplinary purposes. As a consequence, the desire for anonymity by a survivor/victim may create challenges in properly addressing the stated concern.

²³⁶ *The Human Rights Code, CCSM c H175 at s 19(1): No person who is responsible for an activity or undertaking shall (a) harass any person who is participating in the activity or undertaking; or (b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.*

²³⁷ *Manitoba Civil Service Commission, "Principles and Policies for Managing Human Resources" (6 March 2019) online: Manitoba <<https://www.gov.mb.ca/csc/policyman/respect.html>>.*

²³⁸ *University of Manitoba Office of Human Rights and Conflict Management, "Resources", online: University of Manitoba <http://umanitoba.ca/human_rights/resources.html>.*

²³⁹ *An alternative central office to the OHRCM would be the newly established Sexual Violence Centre. However, the Centre may not be the better solution because its role is much broader than that of OHRCM. The latter focuses on complaints.*

²⁴⁰ *Government of Manitoba, "Disclosure of Inappropriate Conduct form", online: Manitoba <https://www.gov.mb.ca/csc/respect/pdf/complaint_form-disclosure_of_inappropriate_conduct.pdf>.*

One possible solution to this is for the information to be held in the OHRCM until such time as there is sufficient information brought forward to warrant an investigation. At that time it would be shared with the faculty and HR. This may also address the troubling problem of rumours. If rumours and unsubstantiated complaints are brought to the OHRCM, this office would have the ability to address it either informally or formally with the respondent depending on the circumstances. It may provide an opportunity for the University to fulfill its responsibilities for a safe learning and work environment, while being fair to those involved. It will adhere to its collective agreements by keeping separate from the personal file unsubstantiated complaints. The OHRCM would be able to track information and until disclosed to the faculty member it would not be used for evaluative or disciplinary purposes. This is consistent with the provisions of the UMFA collective agreement.

Recommendation 32

The UM adopt a policy that would require anyone in a supervisory or management position at the UM who receives a disclosure of sexual violence to document this in a form to be sent to the OHRCM. Further, we recommend that the UM form include a section to be completed for anonymous disclosures.

E. PRELIMINARY OBSERVATIONS

Before turning to discuss the improvements that we think should be made to the formal complaint process, we have three preliminary observations to make with respect to sexual violence investigations.

The first relates to addressing the point critics of the current system have made that universities should not be in the “business” of investigating and handling complaints of sexual violence, but should defer these roles to the police and the court system. We note that the Government of Manitoba’s Post-Secondary Sexual Violence Policy Guide – Promoting Awareness and Prevention²⁴¹ makes the following statement in relation to whether post-secondary institutions should investigate disclosures or reports of sexual violence:²⁴²

The Act does not require institutions to investigate disclosures or reports of sexual violence. Institutions are strongly discouraged from establishing tribunals or quasi-judicial committees to make a determination as to the complaint’s validity. It is not necessary to establish guilt/innocence in order to activate a response protocol and provide the complainant/survivor with reasonable accommodation. Quasi-judicial committees or investigative processes can be harmful to the complainant/survivor and should only be considered in extreme situations and should be developed with significant input from law enforcement and experts.

²⁴¹ Government of Manitoba, “Manitoba Post-Secondary Sexual Violence Policy Guide”, online: Manitoba <https://www.edu.gov.mb.ca/docs/sexual_violence/guide.pdf>.

²⁴² Government of Manitoba, “Manitoba Post-Secondary Sexual Violence Policy Guide” at 3, online: Manitoba <https://www.edu.gov.mb.ca/docs/sexual_violence/guide.pdf>.

While the Government of Manitoba has made it clear that processes that address the validity of a complaint are optional for post-secondary institutions to implement, we believe that the UM should continue to have available a formal complaints process which incorporates the investigation of sexual violence complaints. Our reasons for reaching this conclusion are well-expressed by the authors of a recent national report entitled *Our Turn: A National, Student-led Action Plan to End Campus Sexual Violence*.²⁴³

University sexual violence policies are intended to provide a different form of redress for survivors of sexual violence. They are structured to be less onerous on the survivor, with shorter timelines and alternative, campus-level remedies - such as the removal of the perpetrator from campus residence, temporary bans from certain spaces, and in some cases expulsion.

The authors of the Our Turn Report also point out that those who suggest that the criminal law process should be the exclusive mechanism to test the validity of sexual violence complaints “discount the realities of sexual violence survivors within the criminal justice system”, referring to a Globe and Mail article, which revealed that on average, police in Canada reject one in five sexual assault claims as baseless.²⁴⁴ We would also point out that Statistics Canada, in characterizing sexual assault as an underreported crime, concluded that more than eight in ten (83%) sexual assault incidents in Canada were not reported to the police.²⁴⁵

The standard of proof for UM investigations which result in a civil or arbitral process is on the balance of probabilities and does not rise to a standard of proof required for criminal charges, which is proof beyond a reasonable doubt. The lower standard is appropriate for UM investigations and discipline. The investigative process at the UM may in some circumstances be faster in moving from complaint, to investigation, and finally to consequences, when appropriate, than a similar criminal charge; thus providing for a more timely resolution for all parties.

We would add two further interrelated points in support of our view that the UM should continue to maintain a formal complaints process. The first is that the continuation of a formal complaints process at the UM does not preclude a survivor/victim from pursuing the criminal justice process should they wish to do so. From our review, it is clear that the process followed by UM offices that provide advice and support to survivors/victims is to identify the choices that survivors/victims have in pursuing redress including that of the criminal justice process as an alternative or as an additional process for them to pursue. At the same time if a concurrent charge of sexual assault has been issued the criminal process may overtake the investigation being done at the UM. If this occurs the UM HR and/or Staff Relations office and the OHRCM in conjunction with UMFA and the individual charged may have to

²⁴³ The Report is available at: National Our Turn Committee, “Our Turn A National, Student-Led Action Plan to End Campus Sexual Violence” (11 October 2017) at 17, online: SSMU <https://ssmu.ca/wp-content/uploads/2017/10/our_turn_action_plan_final_english_web.pdf?x26516>.

²⁴⁴ The Report is available at: National Our Turn Committee, “Our Turn A National, Student-Led Action Plan to End Campus Sexual Violence” (11 October 2017) at 17, online: SSMU <https://ssmu.ca/wp-content/uploads/2017/10/our_turn_action_plan_final_english_web.pdf?x26516>.

²⁴⁵ Shana Conroy & Adam Cotter, “Self-reported sexual assault in Canada, 2014” (11 July 2017) at 16, online: Statistics Canada <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2017001/article/14842-eng.pdf?st=xvyB3fjn>>.

consider the impact of a concurrent UM investigation. This may result in the imposition of interim measures while the charges work their way through the criminal justice system.²⁴⁶

The second point flows from the first and that is, we believe that survivors/victims should have the right to be informed and to exercise choices on the selection of available options for redress including that of a university-initiated process or a criminal justice process, or both. Accordingly, we recommend that:

Recommendation 33

The UM continue to have available a formal complaints process for the redress of sexual violence, harassment and discrimination at the UM.

The second preliminary point we wish to make is that, while the UM needs to make available a formal complaints process, this should be part of a comprehensive survivor-centred approach. Ideally, this approach goes hand in hand with early intervention and some flexibility towards finding solutions that may involve less formality but potentially be more effective for parties, depending upon the circumstances.

At the UM, the OHRCM and the Indigenous Student Centre have each used creative approaches in responding to survivor's/victim's concerns in addressing discriminatory behaviours, with some success. This practice of finding processes that, in appropriate circumstances, may be more responsive to what is needed to repair the harm and restore relationships should not only continue but be encouraged.

In this regard, the concept of restorative justice has its place in the range of responses available and its process of engaging all parties may have an outcome that enjoys the greatest likelihood of success in modifying behaviour. The example of restorative justice we described in Chapter 3 involving the Indigenous Student Centre's use of a Sharing Circle to address a question of discrimination is instructive. Unfortunately, these strategies will not work in all circumstances and may be inappropriate in some.²⁴⁷ The survivor/victim and/or the respondent may also not wish to engage in those processes, in which case the UM may need to clearly and proactively address an offending behaviour through a formal complaints process.

²⁴⁶ *St. James-Assiniboia School Division and St. James-Assiniboia Teachers' Association, 2014 CarswellMan 331, (2014) 244 L.A.C. (4th) 361 at para 36.*

²⁴⁷ *In Coordinating Committee of Senior Officials, "Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims" (27 December 2018), online: Canadian Intergovernmental Conference Secretariat <<http://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/>>. For example, the following observation was made on the suitability of restorative justice (RJ) in the field of sexual assault: "RJ processes must provide for an increased and meaningful role of survivors, families, and communities in ensuring accountability of the offender or repairing the harm and restoring relationships that have been damaged as a result of a sexual assault. In many cases this may not be possible."*

Recommendation 34

The current practice within the OHRCM and the Indigenous Student Centre of using mediation, restorative justice and alternative measures to repair harm to the survivor/victim in appropriate cases be encouraged.

Our third preliminary observation we would make before addressing measures to improve the formal complaints process is to observe that, on the whole, the formal complaints process works well. While one can identify improvements, our recommendations are about refining the process, as opposed to identifying wholesale changes to fundamentally alter the framework.

The focus of what follows, therefore, is on identifying recommendations for those circumstances where informal approaches, mediation and alternative justice resolutions have failed or are inappropriate, and a formal complaint has necessitated an investigation, with the possibility of disciplinary consequences.

F. LIMITATION PERIODS FOR FORMAL COMPLAINTS

In this section, we address whether the UM should continue its current policy to require formal complaints to be filed within one year “after the alleged Breach, or where a continuing contravention is alleged, no later than 1 year after the last alleged instance of the Breach” (s. 2.17 of the current RWLE and Sexual Assault Procedure). The proposed Disclosures and Complaints Procedure would extend this limitation period to two years. In both the current and proposed Procedures, this limitation period can be extended if “in the discretion of the HRCMO, extenuating circumstances would warrant an extension of time” (s. 2.15 of current RWLE and Sexual Assault Procedure and s. 2.34 of proposed Disclosures and Complaints Procedure). The proposed Disclosures and Complaints Procedure makes a point of stating that there is no limitation period for “disclosing” sexual violence.

We would note the following succinct points on the use of limitation periods:

- Limitation periods discourage late reporting
- They may also discourage, rather than encourage, the reporting of sexual violence as survivors/victims of sexual violence do not report incidents as quickly as other victims of assault²⁴⁸
- Permitting complaints to take place indefinitely may result in allegations years after the event and at a time when the parties are no longer members of the UM community
- There are no limitation periods in other UM policies, such as the Responsibilities Of Academic Staff With Regard to Students (ROASS), Responsible Conduct of Research and Conflict of Interest Policies
- There is no limitation period for sexual assaults in *The Limitation of Actions Act*²⁴⁹

²⁴⁸ Statistics Canada, *From arrest to conviction: Court outcomes of police reported sexual assault in Canada, 2009 to 2014*, Catalogue No 85-002-X (Ottawa: Statistics Canada, 26 October 2017).

Limitation periods exist in many laws. The purpose of them is to ensure that there is a timely investigation and pursuit of complaints and the respondents can get on with their lives without the “sword of Damocles” hanging over their heads indefinitely. The courts have recognized that delay impacts the quality of the evidence, which acts as an incentive to a survivor/victim to bring a claim in a timely fashion.²⁵⁰

The existing one-year limitation period in the RWLE and Sexual Assault Procedure, noted above,²⁵¹ is consistent with the limitation period imposed in *The Human Rights Code* for bringing complaints.²⁵² The two-year limitation period recommended by the Policy Advisory Committee would only apply to formal complaints and would remove this limitation period for disclosures.

There is widespread acknowledgment of the reluctance of those impacted by sexual violence to bring forward their complaints in a timely way or at all. This delayed reporting is likely linked to the same reasons that render sexual assault one of the most underreported crimes in Canada. Research attributes this “to a wide range of reasons, including the shame, guilt and stigma of sexual victimization, the normalization of inappropriate or unwanted sexual behaviour, and the perception that sexual violence does not warrant reporting.”²⁵³

In the criminal law context, the Supreme Court of Canada has stated that the standard jury instruction should address the delay in reporting sexual assault as follows:²⁵⁴

A trial judge should recognize and so instruct a jury that there is no inviolable rule on how people who are the victims of trauma like a sexual assault will behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the abuse. Reasons for delay are many and at least include embarrassment, fear, guilt, or a lack of understanding and knowledge. In assessing the credibility of a complainant, the timing of the complaint is simply one circumstance to consider in the factual mosaic of a particular case. A delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant.

The Limitation of Actions Act sets out the limitation periods for a variety of actions, including civil assault and torts. However, in the context of sexual assault, the Act was amended in 2002 to remove the limitation period for sexual assault or assaults that occur in the context of a power imbalance.²⁵⁵

²⁴⁹ *The Limitation of Actions Act, CCSM c L150 s 2.1.*

²⁵⁰ *Novak v Bond [1999] 1 SCR 808 at para 64.*

²⁵¹ *University of Manitoba, “Respectful Work and Learning Environment; Sexual Assault Procedure” (1 September 2016) at s 2.1(i)(iii), online: University of Manitoba <https://umanitoba.ca/admin/governance/media/Respectful_Work_and_Learning_Environment_RWLE_Policy_-_2016_09_01.pdf>.*

²⁵² *The Human Rights Code, CCSM c H175.*

²⁵³ *Statistics Canada, From arrest to conviction: Court outcomes of police reported sexual assault in Canada, 2009 to 2014, Catalogue No 85-002-X (Ottawa: Statistics Canada, 26 October 2017) (citations omitted in quote), at 1.*

²⁵⁴ *R v DD, [2000] 2 SCR 275 at para 65.*

²⁵⁵ *The Limitation of Actions Act CCSM c L150.*

Interestingly, there is no limitation period for investigating misconduct in many of the other UM policies and procedures that intersect with the issues of sexual violence, harassment and discrimination. We refer to the UM's Violent or Threatening Behaviour Policy and Procedure, the Student Discipline Bylaw, the Student Non-Academic Misconduct and Concerning Behaviour Procedure and the Conflict of Interest Policy and Procedure.

As we noted in Chapter 1, many universities across Canada have taken a flexible approach to allowing complaints relating to sexual violence,²⁵⁶ noting that the ability of the institution to respond to complaints that are brought late will be impacted by the passage of time, and must be assessed in light of the respondent's right to procedural fairness.

Recognizing that survivors/victims of sexual violence may be reluctant to come forward, a limitation period would only serve to discourage complaints. While delayed reports of sexual violence, harassment and discrimination may increase the likelihood of missing or unknown information and diminish the availability of evidence, we do not think that this concern should justify a limitation period being imposed. It may, however, cause challenges in proving an allegation on the balance of probabilities which is the standard of proof that is applied in investigations.

The proposal to create a distinction between having no limitation period for disclosures but having a limitation period for formal complaints (as recommended in the proposed RWLE and Sexual Violence Policies and the corresponding Disclosures and Complaints Procedure), is confusing and needlessly complex in our view.

We therefore recommend that:

Recommendation 35

The limitation period contained in the current RWLE and Sexual Assault Procedure be removed entirely and a clear statement encouraging early reporting and why this is desirable be substituted.

G. THE TIMEFRAME FOR INVESTIGATIONS

Currently, the rules provide that an investigation should be conducted within 90 working days as described in Chapter 2 of the Report.²⁵⁷ Extensions can be granted for up to 30 days at a time so long as the request is reasonable. As we earlier observed, 90 working days can be a lengthy timeframe for the preparation of an investigative Report for all concerned. Certainly, it should be a sufficient amount of time to complete almost all investigations other than some university-instituted ones involving multiple survivors/victims. While we agree that the procedure should allow for extensions (and 30 days maximum seems a reasonable number), we are concerned that the 90-day timeframe – coupled with the right to apply for extensions – may have the effect of removing the sense of urgency from the investigator.

²⁵⁶ Chapter 1.D.2.

²⁵⁷ Chapter 2.D.4.

In response to a similar concern, we note that UMSU has suggested that a clause be added that would impose upon the OHRCM a responsibility to “at all times strive to complete an investigation within a timeline of no more than 90 days”.²⁵⁸ We support a similar proposal that would impose an obligation on OHRCM to strive to oversee the completion of an investigation within the original 90 working day timeframe.

Recommendation 36

There should be no changes to the current timeframe for completing an investigation where a formal complaint is filed, but we recommend that the RWLE and Sexual Assault Procedure impose an obligation on OHRCM “to at all times strive to oversee the completion of an investigation within a timeline of no more than 90 working days.”

H. TRAUMA TRAINING FOR INTERNAL AND EXTERNAL INVESTIGATORS

Trauma training is increasingly being advocated for those investigating sexual violence complaints. While traditional investigative interviews are framed to elicit factual details, research suggests that this may not be the most effective method to elicit information from a survivor/victim of trauma. Persons impacted by trauma may react or respond in surprising ways. Trauma may also impact the accuracy of their recall. Further, the interview itself can re-traumatize survivors/victims and witnesses. Having training and experience in trauma informed investigations will enhance the truth-seeking exercise.²⁵⁹

A criticism of trauma-based investigations is the concern that it suggests that an uncritical assessment of the survivor/victim underpins the investigation thereby creating a bias to the survivor’s/victim’s story. A properly trained investigator should find that, by using trauma- informed investigation techniques, they are better able to draw out information from all witnesses, including survivor/victim and the respondent. Increasingly, trauma-informed investigative techniques are being advocated in all investigations²⁶⁰ but particularly those involving sexual violence.²⁶¹

²⁵⁸ “University of Manitoba Sexual Violence Policy - Stakeholder Recommendations”, s 2.17 (provided by M Sarah Bonner-Proulx, Vice-President, Advocacy, UMSU), March 20, 2019.

²⁵⁹ R Edward Geiselman & Ronald P Fisher, *Interviewing Witnesses and Victims. Investigative Interviewing: Handbook of Best Practices* (Toronto, ON: Thomson Reuters, 2014).

²⁶⁰ Bob Acton, “Six steps for the best practice method for HR professionals” (24 January 2019), online: CPHR Alberta <<https://www.cphrab.ca/psychological-trauma-and-workplace-investigations>>.

²⁶¹ Coordinating Committee of Senior Officials, “Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims” (27 December 2018), online: Canadian Intergovernmental Conference Secretariat <<http://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/>>;

The Policy Advisory Committee noted that the practices of the OHRCM have always been trauma-informed, but made recommendations as part of their review that investigations not include the cross-examination of survivors/victims. However, the manner of questioning in order to draw out truth is more nuanced than simply excluding cross-examination. We believe that a recommendation that investigators be trauma-informed and have such training would meet the goals of both sensitivity and truth finding.

We understand that the internal investigators at the UM have trauma-based investigation training. It is unclear if any of the external investigators currently have this training. The UM should require this training to be one of the qualifications of the external investigators it retains. Recognizing that there is a small pool of experienced investigators in Manitoba, it may be necessary to implement this recommendation over a period of time so that on-going investigations and those immediately pending occur without unreasonable delay. We recommend that:

Recommendation 37

The UM require that its internal and external investigators have trauma-based investigation training with a goal of having all of its investigators trained. Recognizing that there is a small pool of experienced investigators in Manitoba, it may be necessary to implement this recommendation over a period of time so that on-going investigations and those immediately pending occur without unreasonable delay.

I. ADDRESSING THE LEGALLY-IMPOSED LIMITATIONS ON TRANSPARENCY

In Chapter 4, we discussed the limitations in provincial legislation on what can be disclosed to the parties and what can be publicly revealed. These limitations apply both to the public disclosure as well as to the disclosure that may be made to a survivor/victim and to the respondent.

A clear policy statement on what can be reported to the survivors/victims as well as the respondents may help in enhancing transparency on the limits of what can be disclosed. The work done by the Policy Advisory Committee and its recommendations in the proposed RWLE and Sexual Violence Policies address this. However, we think that should be enhanced by making it clear that the disclosure practices have been drafted in consideration of the relevant legislative restrictions relating to transparency.

Confidentiality is important to an investigation. It protects the privacy of the survivor/victim as well as the respondent. It aids an investigation by ensuring potential witnesses are not influenced by discussions about an investigation, which may occur by virtue of communications between or about the parties involved. At the conclusion of an investigation, the need to comply with legislation

Lori Haskell & Melanie Randall, "The Impact of Trauma on Adult Sexual Assault Victims Justice Canada" (2019), online: Justice Canada <https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf>.

protecting privacy and the provisions of the collective agreements must be considered and balanced with the need for some transparency and communication with the parties.

The current practice where breaches have been found to have occurred is to provide the report in confidence to the survivor/victim and to the respondent, redacted to limit disclosure of personal information.

A clear policy statement on what can be reported to the survivors/victims as well as the respondents may help in being transparent on the limits of what can be disclosed. The recommendations in the proposed RWLE and Sexual Violence Policies address this but should be enhanced by making it clear that the disclosure was drafted in consideration of the relevant legislative restrictions.

Recommendation 38

The UM clearly identify its policy with respect to the sharing of the investigation report and outcomes. At minimum, where a breach has been found, we recommend that the survivor/victim be told generally that appropriate education and/or disciplinary steps have been taken and, further, advised of any conditions or measures that relate specifically to the survivor's/victim's safety.

J. THE PUBLICATION OF “LESSONS LEARNED” FROM AFTER-ACTION REVIEWS

In Chapter 5, we recommended that after-action reviews should take place after an investigation. Where “lessons learned” occur from an after-action review and improvements are made to the process, these should be summarized and included in the OHRCM annual report to enhance transparency and public communication on issues relating to sexual violence, harassment and discrimination. Similarly, if an after-action review identifies issues associated with policy interpretation, this could instigate a policy review addressing the relevant issues.

Recommendation 39

Any “lessons learned” flowing from “after-action reviews” (Recommendation 11) be published in the OHRCM annual report to enhance transparency and public communication on issues relating to sexual violence, harassment and discrimination. Further, if an after-action review identifies issues associated with policy interpretation, this could instigate a policy review addressing the relevant issues.

Wherever possible, disclosure of information arising from investigation reports should be conveyed to the UM community in a manner that permits “lessons learned”.

K. OUR OBSERVATIONS ON THE INVESTIGATIVE PROCESS

Investigations of sexual violence, harassment, and discrimination are done both internally and externally. We had the opportunity to review a number of investigation reports prepared by three

different external investigators. Because of the very limited use of internal investigations, our research did not include a review of such investigations.

Best practices in investigations, particularly with respect to allegations of sexual violence, require that the person receiving the initial complaint and providing support to the survivor/victim not be the same person as the investigator. This will present challenges if the OHRCM is the first contact for a survivor/victim. This is currently being managed through the OHRCM ensuring that survivors/victims are referred to supports such as student counselling services and through the use of external investigators. This concern would be addressed through the creation of a Sexual Violence Centre.

The approach taken to the external investigations we reviewed met all of the standard expectations for an investigation. They appeared accurate, objective and fair, approached the investigations with good faith, and were thorough, well documented and were generally timely.

The investigators met with survivors/victims and witnesses and gave the respondents an opportunity to reply to the allegations made against them. The investigators reviewed the applicable policies and provided their findings supported by the facts. Because of the limited number of reports that we reviewed, it is challenging to draw firm conclusions from our research. Nevertheless, it would be appropriate to implement a post-investigation review with a goal of identifying any lessons which can be learned from it. The review should be considered in the context of previous recent reviews in order to determine if trends or common issues can be discerned.

We recommend that:

Recommendation 40

The UM implement a post-investigation review with a goal of reviewing investigation reports over the course of a number of years to identify any lessons learned and to determine if any trends or common issues can be discerned.

L. BEST PRACTICES ON INTERVIEW QUESTIONS AND REFERENCES

In Chapter 2, we discussed the current environment and the role of the HR consultants. We were advised that they are not actively involved in the hiring and interviewing of UMFA members. However, HR has developed a Manager's Toolkit that includes information on asking for references and guidance on creating an interview template. We were told that questions in job interviews relating to a prospective employee's experience or knowledge of respectful learning and work environment issues and the person's history involving past discipline are "not done". We note that there is no legal or policy reason not to ask about this in an interview of a prospective employee. Given the importance to the UM of having a respectful and inclusive learning and work environment, asking these questions will send a message to prospective employees of the importance the UM places on these issues. These general questions could be incorporated into the interview template available from HR.

If the prospective employee responds by acknowledging past discipline, it would be appropriate to follow up to determine the details about this, including obtaining consent of the person to obtain further information directly from the past employer. It should be emphasized that past discipline will not necessarily be a bar to employment. Rather, it may - depending on the issues, circumstances and follow up with references - serve to reassure and enhance the fact that the prospective employee has learned from and understands better than others how important these issues are to a safe and secure learning and work environment.

The HR consultants should be consulted with respect to the general type of questions to be asked in interviews to ensure consistency and compliance with human rights legislation. These should be included in the interview template. HR need not attend all interviews but they are well placed to enhance best practices and generally advise the faculties with whom they consult. In considering whether there should be a policy with respect to employment references, we note that references may be both given by employees of the UM with respect to current or former employees of the UM and may be sought by the UM with respect to prospective employees. Faculty members will frequently be asked to give references to those with whom they work. These requests are important in supporting career advancement, whether it is about an employee finding a new position or obtaining scholarships, fellowships, grants and other aspects of professional recognition and advancement. References are also important to the reputation of the UM as it enables alumni to seek and obtain other positions.

When it seeks to hire new employees, references will be important to the UM. Policies that seek to inhibit the exchange of information will likely not be found to be helpful if it leads to a lack of reciprocity or an environment where the ability to obtain references on prospective employees was diminished. While a policy which strictly regulated the giving of references and placed limitations on it would likely be unworkable, it would nevertheless be prudent and advisable for anyone in a management position at the UM to check with HR and/or Staff Relations before giving a reference and be educated on what they may appropriately say. This may not resolve all potential pitfalls. As we have seen, the UM may be constrained from providing information to others about investigations and discipline. As such it is important to emphasize that there may be times when, in responding to a request for a reference, the UM simply cannot and should not say anything about a current or former employee.

Given all the constraints which may limit what can be said in a reference, the best policies surrounding the giving of references should be based on educating managers on what is appropriate to convey and to encourage communication with HR for advice and direction when in doubt.

Recommendation 41

The UM enhance the training provided by HR to faculties by identifying common best practices relating to hiring, including guidance on interview questions and asking for and providing employment references.

M. CLARIFYING THE RESPECTIVE MANDATE AND ROLES OF OHRCM AND HR

There is no process or criteria to decide if a complaint should be investigated under the RWLE and SA Procedures or by HR. During our review, we had difficulty in understanding the respective roles and the relationship between the OHRCM and HR; how they interrelate; where and how they collaborate; and who should assume the lead for particular aspects of a matter concerning the alleged violation of the RWLE and Sexual Assault Policies and related Procedure. If a formal complaint is filed and an investigation follows, it clearly belongs to the OHRCM to handle the complaint. Otherwise, as one person put it, the file is handled by “whoever happens to be at their desk”.

The implementation of the recommendations in the last two Chapters of this Report will require close collaboration between these two units and, as such, a clear understanding of who will assume the lead and ultimately be primarily accountable is essential. We recommend that:

Recommendation 42

The UM identify and communicate to the UM community a clear understanding of the delineation of the respective responsibilities of the OHRCM and HR with respect to sexual violence, harassment and discrimination.

N. ONGOING REVIEW

Our advice and recommendation at the outset of Chapter 5 was that the UM set up an Implementation Committee to oversee the implementation of the recommendations in this Report, and related matters. Similarly, we believe that the effective implementation of the recommendations in this Report would be best achieved if there is on-going review of the subject matter of this Report. We therefore recommend that:

Recommendation 43

A follow-up review be conducted – whether by an independent review body or members of the UM community – in five years’ time to assess the degree of success achieved in preventing or significantly diminishing the actual incidence of sexual violence, harassment and discrimination and in assessing how fair, timely and effective the framework is in responding to disclosures and complaints of sexual violence, harassment and discrimination, and to make further recommendations for improvement.

APPENDIX A

TERMS OF REFERENCE

Miller / Van Iderstine

Review of University of Manitoba Practices related to Discrimination, Harassment and Sexual Violence

Every individual should be able to learn, work, and live in an environment that is free from all forms of discrimination, harassment, and sexual violence. To that end, the University is committed to promoting and maintaining a culture of safety, respect, consent, and prevention among all of its community members, and is also committed to appropriately addressing complaints of discrimination, harassment and sexual violence.

On September 5, the President announced that a Review would be undertaken of the University's practices relating to discrimination, harassment, and sexual violence (the Review). The University has recognized the need to take proactive steps to ensure a safe learning and work community. As such, the University is seeking this Review in order to identify the effectiveness of our practices and areas in which they might be improved.

A number of steps have been taken to support these commitments through resources, education and policy review and development, including those detailed in the Schedule. This includes review of the existing Respectful Work and Learning Environment (RWLE) and Sexual Assault Policies and their Procedure, which involves significant consultations with the University community and stakeholder groups that began October 2018.

In order to complement this work and avoid duplication, this Review will be informed by the current RWLE and Sexual Assault Policies and Procedures with a focus on the University's education and prevention practices and the practices followed once a formal complaint has been made.

REVIEW OBJECTIVES:

1. The Review will include a clarifying statement regarding the legal framework in which the University operates when addressing complaints of discrimination, harassment, and sexual violence, including the University's legislative obligations, obligations related to collective bargaining agreements, additional contractual obligations, and privacy and confidentiality obligations.
2. The Review will include an assessment of current practices related to:
 - a. the coordination of awareness, education, and prevention efforts, including how we build and promote a culture of respect and consent across the University;
 - b. receiving and investigating complaints of discrimination, harassment, or sexual violence as governed by the RWLE and Sexual Assault Procedures; and

- c. communication with the complainants, the respondent and witnesses, during and after an investigation.
3. The Review will also include an assessment of current practices relating to ancillary issues flowing from a complaint and investigation, namely:
 - a. a change in the employment status of a respondent during an investigation, including interim measures or the severing of the employer/employee relationship;
 - b. determination of appropriate discipline based on the potential outcomes of an investigation;
 - c. the content of letters of employment, letters of reference and communication with potential future employers; and
 - d. public communication related to an investigation, the findings of an investigation, and the imposition of any disciplinary measures.
4. The Review will identify gaps, best practices and opportunities for improvement with respect to the above (Recommendations).
5. At the end of the Review, the Reviewers will provide a report to the University outlining Recommendations arising from the Review.

TIMELINE:

The target date for completion of a final report is May 31, 2019. Should a significant delay to the completion of the process become necessary, the Reviewers will provide a written update report to the President by May 15, 2019.

THE SCHEDULE: Steps already taken by the University of Manitoba to address discrimination, harassment, and sexual violence through resources, education and policy review and development

- Expanded services from the Office of Human Rights and Conflict Management, including a dedicated Human Rights & Sexual Violence Advisor for the Bannatyne campus;
- Making support services available from University resource units, including Student Support Case Managers, Student Advocacy, the Health and Wellness Office and University Health Services;
- Expanded services from the Student Counseling Centre, providing free, confidential crisis support and trauma counselling to students on both campuses, including urgent crisis counselling and emergency triage services;
- Access to a Sexual Assault Counsellor from the Klinik Community Health Centre available one day per week;
- Review of the existing Respectful Work and Learning Environment (RWLE) and Sexual Assault Policies and their Procedure, which includes significant consultations with the University community and stakeholder groups which began October 2018 (new versions of the Policies and their Procedure expected in mid-2019);

- New Student Orientation sessions that include training on consent and sexual violence;
- Student Residences orientation presentations on 'Staying Safe in Residences';
- "Bringing in the Bystander", an evidence-based sexual assault prevention training program for student leaders, residence staff, and other groups by request;
- Consent Culture Workshops offered to students and student leaders by the University of Manitoba Student Union;
- Healthy U, a peer-based outreach program with community-based activities on sexual violence across campus;
- New Faculty Orientation and New Academic Administrators Orientation sessions on the Respectful Work and Learning Environment and Sexual Assault policies;
- New Faculty Workshops and Academic Administrator Workshops on sexual harassment, sexual assault and responding to disclosures;
- Enhanced education opportunities for students, faculty members and staff, through the development of unit-level educational initiatives;
- Additional by-request training sessions for community members including staff, faculty members, and students on topics such as sexual harassment, sexual assault, consent, discrimination, personal harassment, respectful workplaces, and responding to disclosures; and
- A two-day Retreat for Senior Administrators (2017) focused on equity, diversity and inclusion with specific sessions on responding to allegations and disclosures of sexual harassment and assault, and creating a climate free from harassment.

APPENDIX B

GLOSSARY OF TERMS

ACRONYMS

EDI – Equity, Diversity and Inclusion

EFAP – Employee & Family Assistance Program

FIPPA – *The Freedom of Information and Protection of Privacy Act* (Manitoba)

HR – Human Resources

HRAC – Human Rights Advisory Committee

HRCMO – Human Rights and Conflict Management Officer

LRA – *The Labour Relations Act* (Manitoba)

OHRCM – Office of Human Rights and Conflict Management

PHIA – *The Personal Health Information Act* (Manitoba)

Policy Advisory Committee – University of Manitoba Respectful Workplace & Learning Environment & Sexual Assault Policy Advisory Committee

RWLE – Respectful Workplace and Learning Environment

RWLE Policy – Respectful Workplace and Learning Environment Policy

RWLE & Sexual Assault Procedure – Respectful Workplace and Learning Environment & Sexual Assault Procedure

SAS – Student Accessibility Services

SCC – Student Counselling Centre

STATIS – Student/Staff Threat Assessment Triage, Intervention, and Support

UM – University of Manitoba

UMFA – University of Manitoba Faculty Association

UMSS – University of Manitoba Security Services

DEFINITIONS

Complaint: means a complaint to the OHRCM of sexual violence, harassment and/or discrimination under the RWLE and Sexual Assault Procedure.

Disciplinary Action: includes discipline, corrective action, and/or penalty imposed on a respondent after a breach of the RWLE or Sexual Assault Policy has been found.

Discrimination: means differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit, differential treatment of an individual or group on the basis of any protected characteristic under *The Human Rights Code*, differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any protected characteristic under *The Human Rights Code*, or failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any protected characteristic under *The Human Rights Code* (which is the definition of discrimination included in *The Human Rights Code*).

Harassment: means objectionable, abusive or unwelcome conduct based on a protected characteristic under *The Human Rights Code* that creates a risk to the health of an individual; or severe conduct that could reasonably cause an individual to be humiliated or intimidated and is repeated, or in the case of a single occurrence, has a lasting, harmful effect on the individual, and that affects the individual's psychological or physical well-being. This includes all forms of harassment, including personal harassment or bullying, harassment connected to a protected characteristic under *The Human Rights Code*, and sexual harassment (including unwelcome sexual solicitations or advances and reprisal or threat of reprisal for rejecting sexual solicitations or advances). This definition is based on the definitions of harassment included in the *Workplace Safety and Health Regulation* and *The Human Rights Code*.

Respondent: means the individual who is accused or alleged to have breached the RWLE or Sexual Assault Policy.

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 sexual assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation (which is the definition of sexual violence included in *The Advanced Education Administration Act* and incorporated in the proposed Sexual Violence Policy).

Survivor/Victim: means any person who has experienced sexual violence and who may have brought forward a complaint of a breach under the RWLE or Sexual Assault Policy. The use of the term

“survivor” and “victim” throughout this Report is consistent with other policies and resources that we have reviewed and is not in any way intended to suggest that the outcome of any investigation is predetermined.

APPENDIX C

SELECTED BIBLIOGRAPHY

LEGISLATION

The Freedom of Information and Protection of Privacy Act, CCSM c F175

The Human Rights Code, CCSM c H175

The Labour Relations Act, CCSM c L10

The Personal Health Information Act, CCSM c P335

The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended), SM 2016, c20.

The Workplace Safety and Health Act, CCSM c W210

The Workplace Safety and Health Regulation, MR 217/2006

Government of Manitoba, “Manitoba Post-Secondary Sexual Violence Policy Guide”, online: Manitoba <https://www.edu.gov.mb.ca/docs/sexual_violence/guide.pdf>

CASE LAW

Bannister v General Motors of Canada Ltd., 1998 CarswellOnt 3318

Bell v Ladas, 1980 CarswellOnt 2157

Budge v Thorvaldson Care Homes Ltd., 2002 CarswellMan 463

Cabiakman c. Industrielle Alliance, cie d'assurance sur la vie, 2004 SCC 55

Calgary (City) and CUPE, Local 709 (Schmaltz), Re, 2017 CarswellAlta 308

Cavaliere v Corvex Manufacturing Ltd., 2009 CarswellOnt 3199

D’Heilly v Neufeld, 2005 CarswellMan 558

Dodds v 2008573 Ontario Inc., 2007 HRTO 17

Foerderer v Nova Chemicals Corp., 2017 ABQB 349

Garland and Tackaberry, Re, 2013 CarswellMan 435

Gonsalves v Catholic Church Extension Society of Canada, 1998 CarswellOnt 3317

Janzen v Platy Enterprises Ltd., 1989 CarswellMan 158

Jones v Amway of Canada Ltd., 2001 CarswellOnt 5753

Lethbridge College v Lethbridge College Faculty Assn., 2007 CarswellAlta 1839, aff’d 2008 ABQB 316

Mahmoodi v Dutton 1999 BCHRT 56, aff'd 2001 BCSC 1256

Manitoba and M.G.E.U., Re, 1996 CarswellMan 683

Manitoba v M.G.E.U., 2001 CarswellMan 686

M.G.E.U. v Manitoba Lotteries Corp., 2002 CarswellMan 610

Novak v Bond, 1999 CarswellBC 1207

Okanagan University College v Okanagan University College Faculty Assn., 1997 CarswellBC 3215

Ontario (Ministry of Transportation) and OPSEU (Louis), Re, 2014 CarswellOnt 7676

Ontario Jockey Club v Mutual Employees' Assn., S.E.I.U. Local 528, 1977 CarswellOnt 762

Payne v Bank of Montreal, 2013 FCA 3

Phillips Cables Ltd. v U.S.W.A., Local 7276, 1974 CarswellOnt 1384

Pierro v Hospital for Sick Children, 2016 ONSC 2987

Potter v New Brunswick (Legal Aid Services Commission), 2015 SCC 10

R v DD, [2000] 2 SCR 275

Ryerson University and RFA (2018.18), Re, 2018 CarswellOnt 18961

St. Amant Inc. and M.G.E.U. (T.A.W.O.), 2010 CarswellMan 873

St. James-Assiniboia School Division and St. James-Assiniboia Teachers' Assn. (MTS), Re, 2014 CarswellMan 331

University of British Columbia and UBCFA (Galloway), Re, 2018 CarswellBC 2841

Vancouver Coastal Health Authority and H.S.A. (B.J.), 2018 CarswellBC 1320

Woodstock (City) v C.U.P.E., Local 1146, 2010 CarswellOnt 8106

SCHOLARLY WORKS

Adams, Caroline; Gadlin, Howard, "The University Ombuds: A Valuable Resource in Addressing Campus Sexual Assaults", *Dispute Resolution Magazine*, 21 Disp. Resol. Mag. 4 (2014-2015)

Bailey, Nora R., "Ivory Towers: A Dangerous Facade: A Survey of Federal Laws Regarding Campus Sexual Assaults and Recommendations for Further Protections for Survivors", *Widener Journal of Law, Economics & Race*, 9 Widener J.L. Econ. & Race 1 (2018)

Baker, Katharine K., "Campus Misconduct, Sexual Harm and Appropriate Process: The Essential Sexuality of It All", *Journal of Legal Education*, 66 J. Legal Educ. 777 (2016-2017)

Behre, Kelly Alison, "Ensuring Choice and Voice for Campus Sexual Assault Victims: A Call for Victims' Attorneys", *Drake Law Review*, 65 Drake L. Rev. 293 (2017)

Boning, Anna L., "A Higher Burden of Proof in University Adjudication of Sexual Harassment Brings Justice for Accused and Victims", *Charleston Law Review*, 11 Charleston L. Rev. 419 (2017)

- Brake, Deborah L., "Back to Basics: Excavating the Sex Discrimination Roots of Campus Sexual Assault", *Tennessee Journal of Race, Gender, & Social Justice*, 6 Tenn. J. Race Gender & Soc. Just. 7 (2017)
- Buzuvis, Erin E., "Title IX and Procedural Fairness: Why Disciplined-Student Litigation Does Not Undermine the Role of Title IX in Campus Sexual Assault", *Montana Law Review*, 78 Mont. L. Rev. 71 (2017)
- Cacchio, Jennifer, Title IX and the Constitution: Equal Protection Violations and Sexual Harassment, *UMKC Law Review*, 86 UMKC L. Rev. 627 (2017-2018)
- Campbell Quick, James; McFadyen, M. Ann, "Sexual Harassment: Have We Made Any Progress?", 22 *Journal of Occupational Health Psychology* No. 3, (2017)
- Cantalupo, Nancy Chi, "Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Violence", *Loyola University Chicago Law Journal*, 43 Loy. U. Chi. L.J. 205 (2011-2012)
- Cantalupo, Nancy Chi, "Decriminalizing Campus Institutional Responses to Peer Sexual Violence", *Journal of College and University Law*, 38 J.C. & U.L. 481 (2011-2012)
- Cantalupo, Nancy Chi, "The Civil Rights Approach to Campus Sexual Violence", *Regent University Law Review*, 28 Regent U. L. Rev. 185 (2015-2016)
- Cantalupo, Nancy Chi; Kidder, William C., A Systematic Look at a Serial Problem: Sexual Harassment of Students by University Faculty, *Utah Law Review*, 2018 Utah L. Rev. 671 (2018)
- Cantalupo, Nancy Chi; Kidder, William C., "Mapping the Title IX Iceberg: Sexual Harassment (Mostly) in Graduate School by College Faculty", *Journal of Legal Education*, 66 J. Legal Educ. 850 (2016-2017)
- Carlson, Richard, "Romantic Relationships between Professors and their Students: Morality, Ethics, and Law", *South Texas Law Review*, 42 S. Tex. L. Rev. 493 (2001)
- Carmody, Moira, "Preventing Adult Sexual Violence through Education", *Current Issues in Criminal Justice*, 18 Current Issues Crim. Just. 342 (2006-2007)
- Chanda, Rajib, "Mediating University Sexual Assault Cases", *Harvard Negotiation Law Review*, 6 Harv. Negot. L. Rev. 265 (2001)
- Coetzee, S. A., "Law and Policy Regulating Educator-on-Learner Sexual Misconduct", *Stellenbosch Law Review*, 23 Stellenbosch L. Rev. 76 (2012)
- Coletta, Kristen N., "Sexual Harassment on Social Media: Why Traditional Company Sexual Harassment Policies Are Not Enough and How to Fix It", *Seton Hall Law Review*, 48 Seton Hall L. Rev. 449 (2017-2018)
- Curcio, Andrea A., "Institutional Failure, Campus Sexual Assault and Danger in the Dorms: Regulatory Limits and the Promise of Tort Law", *Montana Law Review*, 78 Mont. L. Rev. 31 (2017)
- Davis, Wendy, "From Campus to Courtroom", *ABA Journal*, 103 A.B.A. J. 54 (2017)
- Franklin, Talcott J.; Taylor, Dennis C.; Beytagh, Ann, "Addressing Conflicts of Interest in the Context of Campus Sexual Violence", *Brigham Young University Education and Law Journal*, 2017 BYU Educ. & L.J. 1 (2017)

- Geiselman, R. Edward; Fisher, Ronald P., "Interviewing Witnesses and Victims", *Investigative Interviewing: Handbook of Best Practices* (Toronto, ON: Thomson Reuters, 2014)
- Greenspan, Jane, "The Benefits of Using External Adjudicators for Campus Sexual Assault Proceedings", *Woman Advocate*, 24 *Woman Advoc.* 14 (2018)
- Hickson, Gerald B. et al, "A Complementary Approach to Promoting Professionalism: Identifying, Measuring, and Addressing Unprofessional Behaviours", *Academic Medicine*, 88:11 (2007)
- Hunter, Hillary, "Strike Three: Calling out College Officials for Sexual Assault on Campus", *Texas Tech Law Review*, 50 *Tex. Tech L. Rev.* 277 (2017-2018)
- Kaplan, Margo, "Restorative Justice and Campus Sexual Misconduct", *Temple Law Review*, 89 *Temp. L. Rev.* 701 (2016-2017)
- Kilcoyne, John, "The Politics of Policies: Responding to Sexual Harassment on Campus", *Canadian Labour & Employment Law Journal*, 3 *Canadian Lab. & Emp. L.J.* 33 (1994-1995)
- Lewis, Michelle, "University Adjudication of Sexual Assault: How Affirmative Consent Can Help Close the Gap", *Southwestern Journal of International Law*, 23 *Sw. J. Int'l L.* 351 (2017)
- Lopes-Baker, Aliza; McDonald, Mathew; Schissler, Jessica; Pirone, Victor, "Canada and United States: Campus Sexual Assault Law & Policy Comparative Analysis", *Canada-United States Law Journal*, 41 *Can.-U.S. L.J.* 156 (2017)
- Martin, Sheilah L., "Some Constitutional Considerations on Sexual Violence against Women", *Alberta Law Review*, 32 *Alta. L. Rev.* 535 (1994)
- Mawdsley, Ralph D., "Sexual Harassment in Schools", *Update on Law-Related Education*, 18 *Update on L. Related Educ.* 39 (1994)
- McCoy, Sidney E., "The Safe Campus Act: Safe for Whom: An Analysis of Title IX and Conservative Efforts to Roll Back Progressive Campus Sexual Misconduct Reform", *Penn State Law Review*, 122 *Penn St. L. Rev.* 763 (2017-2018)
- McGlynn, Clare; Westmarland, Nicole; Godden, Nikki, "I Just Wanted Him to Hear Me: Sexual Violence and the Possibilities of Restorative Justice", *Journal of Law and Society* 39 *J.L. & Soc'y* 213 (2012)
- McMahon, Sarah; Wood, Leila et al, "Campus Sexual Assault: Future Directions for Research" *Sexual Abuse* 31:3 (2019)
- Migler, William J., "An Accused Student's Right to Cross-Examination in University Sexual Assault Adjudicatory Proceedings", *Chapman Law Review*, 20 *Chap. L. Rev.* 357 (2017)
- Moorman, Anita M.; Osborne, Barbara, "Are Institutions of Higher Education Failing to Protect Students: An Analysis of Title IX's Sexual Violence Protections and College Athletics", *Marquette Sports Law Review*, 26 *Marq. Sports L. Rev.* 545 (Spring 2016)
- Napolitano, Janet, "Only Yes Means Yes: An Essay on University Policies regarding Sexual Violence and Sexual Assault", *Yale Law & Policy Review*, 33 *Yale L. & Pol'y Rev.* 387 (Spring 2015)
- Pappas, Brian A., "Out from the Shadows: Title IX, University Ombuds, and the Reporting of Campus Sexual Misconduct", *Denver Law Review*, 94 *Denv. L. Rev.* 71 (2016-2017)

- Reich, J. Brad, "When Is Due Process Due: Title IX, the State, and Public College and University Sexual Violence Procedures", *Charleston Law Review*, 11 Charleston L. Rev. 1 (2017)
- Rice, Kelly, "Understanding the Implications of the 2011 Dear Colleague Letter: Why Colleges Should Not Adjudicate on-Campus Sexual Assault Claims", *DePaul Law Review*, 67 DePaul L. Rev. 763 (2017-2018)
- Robey-Phillips, Emily A., "Federalism in Campus Sexual Violence: How States Can Protect Their Students When a Trump Administration Will Not", *Yale Journal of Law and Feminism*, 29 Yale J.L. & Feminism 373 (2017-2018)
- Rubinfeld, Jed, "Privatization and State Action: Do Campus Sexual Assault Hearings Violate Due Process", *Texas Law Review*, 96 Tex. L. Rev. 15 (2017-2018)
- Schultz, Vicki, "Open Statement on Sexual Harassment from Employment Discrimination Law Scholars", *Stanford Law Review Online*, 71 Stan. L. Rev. Online 17 (2018)
- Senn, Charlene Y. et al, "Efficacy of a Sexual Assault Resistance Program for University Women", *New England Journal of Medicine*, 372 N. Engl. J. Med. 2326 (2015)
- Shultz, Vicki, "Reconceptualizing Sexual Harassment, Again", *Yale Law Journal Forum*, 128 Yale L.J. F. 22 (2018)
- Storch, Joseph; Stagg, Andrea, Missoula: "Jon Krakauer's Story of College Sexual Violence That Is Both Complex and Entirely Common", *Journal of College and University Law*, 42 J.C. & U.L. 451 (2016)
- Tinsey, Allison M., "Remarks on Campus Sexual Assault", *University of Richmond Law Review*, 51 U. Rich. L. Rev. 67 (2016-2017)
- Weiner, Merle H., "Legal Counsel for Survivors of Campus Sexual Violence", *Yale Journal of Law and Feminism*, 29 Yale J.L. & Feminism 123 (2017-2018)

APPENDIX D

SUMMARY OF CURRENT MANITOBA LAWS GOVERNING THE THREE AREAS OF OUR MANDATE

THE SEXUAL VIOLENCE AWARENESS AND PREVENTION ACT (ADVANCED EDUCATION ADMINISTRATION ACT AND PRIVATE VOCATIONAL INSTITUTIONS ACT AMENDED)

This Act²⁶² requires the UM and other post-secondary institutions in Manitoba to implement a stand-alone sexual violence policy that raises awareness of sexual violence; addresses issues related to consent; includes provisions respecting the prevention and reporting of incidents of sexual violence; addresses sexual violence training; and establishes complaint procedures and response protocols.²⁶³ The Act requires the sexual violence policy to be developed in consultation with students; be culturally sensitive and reflect the perspectives of those most vulnerable to sexual violence; and be easily accessible. Students and others within the UM community must be informed of the services and procedures that are in place on sexual violence; the UM's activities; and the results of those activities must be publicly reported.²⁶⁴

The Government of Manitoba's Manitoba Post-Secondary Sexual Violence Policy Guide was created to assist post-secondary institutions in developing their sexual violence policies.²⁶⁵

The UM has addressed its obligations under this legislation in its Sexual Assault Policy and its proposed revised Sexual Violence Policy. Furthermore, the OHRCM releases an annual report on its activities under the RWLE and Sexual Assault Policies in accordance with the reporting requirements under this legislation and UM's own policies.

THE HUMAN RIGHTS CODE

The Human Rights Code is Manitoba's provincial human rights law, which protects individuals in Manitoba from discrimination and harassment based on a protected characteristic. It is a violation of this legislation to discriminate with respect to any service, accommodation, facility, good, right,

²⁶² *The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended)*, CCSM c A63.

²⁶³ *The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended)*, CCSM c A63 at s 2.2(3).

²⁶⁴ *The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended)*, CCSM c A63 at s 13.1(2).

²⁶⁵ Government of Manitoba, "Manitoba Post-Secondary Sexual Violence Policy Guide", online: Manitoba <https://www.edu.gov.mb.ca/docs/sexual_violence/guide.pdf>.

license, benefit, program, privilege or any aspect of an employment or occupation, unless based on bona fide and reasonable requirements.²⁶⁶ It is a further violation for any person who is responsible for an activity under this legislation to harass any person who is participating in the activity, or to knowingly permit or fail to take reasonable steps to terminate the harassment of any person who is participating in the activity by another person who is participating in the activity.²⁶⁷ Where an employee contravenes this legislation while acting in the course of their employment, the employer is also responsible for the contravention, unless it did not consent to the contravention, took all reasonable steps to prevent it, and thereafter took all reasonable steps to mitigate or avoid the effect of the contravention.²⁶⁸

The UM has addressed its obligations under this legislation in its RWLE Policy and RWLE and Sexual Assault Procedure (for example, see sections 1.1(b), 2.3, 2.6 and 2.7(b) of the RWLE Policy and sections 1.1(d), and 2.4 to 2.10 of RWLE and Sexual Assault Procedure).

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)

FIPPA outlines an individual's right to access records held by public bodies - including the UM - and regulates how public bodies manage personal information. Personal information is recorded information about an identifiable individual, including the individual's name, contact information, age, gender, ancestry, personal health information, and information about the individual's education, employment or occupation.²⁶⁹ A public body can only disclose personal information for the reasons listed in FIPPA, including if the individual the information is about has consented to its disclosure; in accordance with legislation that authorizes or requires the disclosure; for the purpose of managing or administering personnel; and where such disclosure is necessary to protect the mental or physical health or the safety of any individual or group of individuals.²⁷⁰ Any disclosure must be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.²⁷¹ Further, the use of personal information that's in the public body's custody or under its control must be limited to those employees who need to know the information to carry out the purpose for which the information was collected.²⁷² A public body must refuse to disclose personal information to an individual who has applied for its disclosure if such disclosure would be an unreasonable invasion of a third party's privacy, including when the personal information relates to the third party's employment or educational history, or if such disclosure could reasonably be expected to threaten or harm the mental or physical health or the safety of another person, result in serious harm to the applicant's mental or physical health or safety or threaten public safety.²⁷³

²⁶⁶ *The Human Rights Code, CCSM c H175 at ss 13(1) and 14(1).*

²⁶⁷ *The Human Rights Code, CCSM c H175 at s 19(1).*

²⁶⁸ *The Human Rights Code, CCSM c H175 at s 10.*

²⁶⁹ *The Freedom of Information and Protection of Privacy Act, CCSM c F175 at s 1(1).*

²⁷⁰ *The Freedom of Information and Protection of Privacy Act, CCSM c F175 at s 44(1).*

²⁷¹ *The Freedom of Information and Protection of Privacy Act, CCSM c F175 at s 42(2).*

²⁷² *The Freedom of Information and Protection of Privacy Act, CCSM c F175 at s 42(3).*

²⁷³ *The Freedom of Information and Protection of Privacy Act, CCSM c F175 at ss 17(1), 17(2) and 24.*

The UM has addressed its obligations under FIPPA in its Sexual Assault Policy and RWLE and Sexual Assault Procedure (for example, sections 2.2(c) and 2.16 of the Sexual Assault Policy and sections 2.63 to 2.70 of the RWLE and Sexual Assault Procedure). Further, the UM's Access and Privacy Policy and Procedure highlight the UM's commitment to complying with FIPPA (for example, sections 2.2, 2.3, 2.5 and 2.7(d) of the Access and Privacy Policy and sections 2.8, 2.9 and 2.11(a) of Access and Privacy Procedure).

THE PERSONAL HEALTH INFORMATION ACT (PHIA)

PHIA establishes rules for persons and organizations (i.e., trustees) that collect and maintain personal health information, including public bodies such as the UM, with respect to the collection, use, disclosure, maintenance and destruction of such information. Personal health information is recorded information about an individual that relates to their health, the provision of health care to the individual, or the payment of health care provided to the individual.²⁷⁴ Pursuant to PHIA, a trustee may use personal health information only for the purpose for which it was collected and shall not use or disclose it for any other purpose unless it meets a limited exception as set out in the legislation, including if the individual the personal health information is about has consented to the use and if use or disclosure of the information is necessary to prevent or lessen a serious or immediate threat to the health or safety of the individual the information is about or another individual, or public health or public safety.²⁷⁵ Every use and disclosure by a public body of such information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.²⁷⁶

The UM has addressed its obligations under PHIA in its Sexual Assault Policy and RWLE and Sexual Assault Procedure (for example, sections 2.2(c) and 2.16 of the Sexual Assault Policy and sections 2.63 to 2.70 of the RWLE and Sexual Assault Procedure). Further, the UM's Access and Privacy Policy and Procedure highlight the UM's commitment to complying with PHIA (for example, sections 2.2, 2.3, 2.5 and 2.7(d) of the Access and Privacy Policy and sections 2.8, 2.9 and 2.11(a) of Access and Privacy Procedure).

Manitoba's privacy legislation significantly impacts the UM's ability to balance its obligations with respect to maintaining the privacy of those who are involved in a disclosure, complaint and/or investigation process and being accountable and responsive to the public as a public body regarding its ability to maintain a safe learning and work environment. To date, the UM has managed to maintain its obligations with respect to privacy well, to the detriment of its obligations of transparency as a public body.

²⁷⁴ *The Personal Health Information Act, CCSM c P33.5 at s 1(1).*

²⁷⁵ *The Personal Health Information Act, CCSM c P33.5 at ss 21 and 22.*

²⁷⁶ *The Personal Health Information Act, CCSM c P33.5 at s 20(2).*

THE *WORKPLACE SAFETY AND HEALTH ACT* AND THE *WORKPLACE SAFETY AND HEALTH REGULATION*

The *Workplace Safety and Health Act* (Manitoba) sets out obligations on employers, supervisors and employees with respect to the maintenance of a safe and healthy work environment, including the obligation of employers to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all of their workers.²⁷⁷ The *Workplace Safety and Health Regulation* (Manitoba) sets out specific obligations on employers with respect to the development, content and implementation of workplace harassment and violence prevention policies, including the requirement that the harassment prevention policy include the statement that the employer must ensure, so far as is reasonably practicable, that no worker is subjected to harassment in the workplace and that the employer will not disclose the name of the complainant or an alleged harasser or the circumstances related to the complaint to any person except where disclosure is necessary to investigate the complaint or take corrective action with respect to the complaint or required by law.²⁷⁸

The UM has addressed its obligations under this legislation in its RWLE Policy, RWLE and Sexual Assault Procedure and Violence or Threatening Behaviour Policy and Procedure (for example, see sections 1.1(b), 2.3, 2.6 and 2.7(b) of the RWLE Policy, sections 1.1(d), and 2.4 to 2.10 of RWLE and Sexual Assault Procedure and sections 2.20-2.23, 2.26 and 2.27 of the Violence and Threatening Behaviour Procedure).

²⁷⁷ *The Workplace Safety and Health Act, CCSM, c W210 at s 4(1).*

²⁷⁸ *Man Reg 217/2006 at ss. 10 and 11.*

APPENDIX E

LIST OF REPORTING OPTIONS AND POST-INCIDENT SUPPORTS AVAILABLE TO UM STUDENTS AND EMPLOYEES

- The OHRCM promotes a respectful learning and work environment by promoting, supporting and administering the RWLE and Sexual Assault Policies and the RWLE and Sexual Assault Procedure. The OHRCM, Human Rights Counsel, Human Rights and Conflict Management Advisor, Conflict Management Advisor and Confidential Intake Officer are all housed at the OHRCM.²⁷⁹
- The SCC offers a wide variety of services at both campus locations to help students with difficulties that may arise during their time at the UM, including professional and confidential counselling and groups and workshops addressing difficulties with anxiety, depression, coping and relationships, including urgent crisis counselling and emergency triage services. The SCC is the UM's primary resource for mental health on campus and the provision of mental health resources. Since September 2018, a Sexual Assault Counsellor from the Klinik Community Health Centre works out of the SCC one day a week to provide additional support.²⁸⁰
- The Employee & Family Assistance Program (EFAP) is a 24-hour service that offers immediate, confidential and free help and counselling to UM employees and their immediate families on a variety of issues, including the individual's well-being, relationship management, workplace challenges, addictions and health. In addition, the EFAP provides legal and financial support services. The EFAP is managed by a third-party provider that offers confidential and personalized support. Strict confidence and anonymity is maintained by the EFAP and no personal information about the individual's use of EFAP services is released to anyone without the written, informed, and voluntary consent of the individual, unless there is reason to believe that the individual or others are at risk or in danger.²⁸¹

²⁷⁹ University of Manitoba Office of Human Rights and Conflict Management, online: University of Manitoba <http://umanitoba.ca/human_rights/>.

²⁸⁰ University of Manitoba Student Affairs, Student Counselling Centre, online: University of Manitoba <<http://umanitoba.ca/student/counselling/services.html>>;

University of Manitoba News, "Educating Our Community on Sexual Violence" <online: University of Manitoba <<http://news.umanitoba.ca/educating-our-community-on-sexual-violence/>>.

²⁸¹ University of Manitoba Human Resources, Compensation and Benefits, Employee & Family Assistance Program, online: University of Manitoba <http://umanitoba.ca/admin/human_resources/staff_benefits/eap/EFAP.html>;

University of Manitoba News, "Employee & Family Assistance Program Offers Wide Range of Confidential Services" <online: University of Manitoba <<http://news.umanitoba.ca/employee-family-assistance-program-offers-wide-range-of-confidential-services/>>.

- UM employees can approach the UM's HR Department, including the HR Consultant or HR Advisor assigned to the employee's faculty or administrative unit.
- UM employees and students can approach the Dean or a faculty member in the faculty in which they work or study.
- UMSS delegates and coordinates various agencies that may need to be involved, both internally and externally, in the event of an emergency on campus. UM employees and students can also approach UMSS as their first point of contact, and in most circumstances it's students who are approaching UMSS with a complaint regarding another student. UMSS may, depending on the circumstances, implement a safety plan for that individual, refer the matter to STATIS, and/or refer the individual to the SCC or OHRCM. UMSS issues a monthly newsletter that outlines the number and types of complaints and incidents that it received over the past month (including the type of incident, number of individuals involved and location of the incident).²⁸²
- Crisis Services, which offers 24/7 support for students and employees in crisis, including the Klinik Crisis Line and the Crisis Response Centre and Mobile Crisis Service, which offers a range of mental health crisis response services. The Crisis Response Centre is located on Bannatyne Avenue.
- Student Support Case Management, which was recently integrated with Student Advocacy, offers support to students who are experiencing personal, academic or financial distress and need support due to unexpected events. This office assists the student by ensuring that the student understands their rights and responsibilities under the relevant UM policies, assisting in the creation of documentation, including a wellness and support plan, and directing them to on or off campus resources as appropriate. The case management team is located at the UM's Fort Garry campus.²⁸³
- Chaplains' Association, which offers spiritual care for students and employees, including open door counselling service on all religious and personal issues and seminars and programs on current religious, social and ethical issues. The Chaplains' Association is located at the UM's Fort Garry campus.²⁸⁴
- UM Health Services, which offers comprehensive health care for both physical and mental health issues at the UM's Fort Garry campus.²⁸⁵

²⁸² *University of Manitoba Security Services, online: University of Manitoba*
<<http://umanitoba.ca/campus/security/>>.

²⁸³ *University of Manitoba Student Affairs, Mental Health and Wellness Supports, online: University of Manitoba*
<<http://umanitoba.ca/student/mental-health-wellness-supports.html>>.

²⁸⁴ *University of Manitoba Student Affairs, Mental Health and Wellness Supports, online: University of Manitoba*
<<http://umanitoba.ca/student/mental-health-wellness-supports.html>>.

²⁸⁵ *University of Manitoba Student Affairs, Mental Health and Wellness Supports, online: University of Manitoba*
<<http://umanitoba.ca/student/mental-health-wellness-supports.html>>.

- Health and Wellness offers the services of a professional health educator/registered nurse to students for confidential and individual information on health and personal well-being. Healthy U peer health educator programming is also available by request on such matters as stress, coping and maintaining physical health. These services are available at the UM's Fort Garry campus.²⁸⁶
- Recreation Services, which offers active living opportunities for UM students at both campus locations, the purpose of which is to create positive social interaction and health lifestyles for students.²⁸⁷
- Indigenous Student Centre, which offers support to Indigenous students, including academic student advisors, cultural support and elder referrals and programs, fireside chats and sharing circles, full moon ceremonies and one-on-one, couple and group counselling sessions. A psychologist spends one day a week at the Centre, and there are one to two Elders available to assist as an advisor or counsellor.²⁸⁸
- Ongomiizwin Indigenous Institute of Health and Healing, which provides leadership and advance excellence in research, education and health services in collaboration with First Nations, Metis and Inuit communities. Its work is guided by Knowledge Keepers and Elders and helps to achieve health and wellness of Indigenous peoples.²⁸⁹
- The Sexual Violence Steering Committee is an institution-wide body with representatives from various stakeholder groups within the UM community, including students, faculty, and administrators. The Committee guides the planning, implementation and evaluation of assault and sexual violence prevention, education and response initiatives at the UM.²⁹⁰
- STATIS is a team of professionals committed to promoting a safe and respectful learning and work environment for the campus community. A report can be made to STATIS regarding a threatening or disruptive incident, a pattern of concerning behaviour, or any other concern

²⁸⁶ University of Manitoba Student Affairs, *Mental Health and Wellness Supports*, online: University of Manitoba <<http://umanitoba.ca/student/mental-health-wellness-supports.html>>.

²⁸⁷ University of Manitoba Student Affairs, *Mental Health and Wellness Supports*, online: University of Manitoba <<http://umanitoba.ca/student/mental-health-wellness-supports.html>>.

²⁸⁸ University of Manitoba Student Affairs, *Indigenous Student Centre*, online: University of Manitoba <<http://umanitoba.ca/student/indigenous/>>.

²⁸⁹ University of Manitoba, *Rady Faculty of Health Sciences, Ongomiizwin*, online: University of Manitoba <http://umanitoba.ca/faculties/health_sciences/indigenous/institute/background.html>.

²⁹⁰ University of Manitoba News, "Educating our community on sexual violence", online: University of Manitoba <<http://news.umanitoba.ca/educating-our-community-on-sexual-violence/>>; University of Manitoba, *Sexual Violence Steering Committee Terms of Reference*, online: University of Manitoba <<http://umanitoba.ca/student/media/SVSC-Terms-of-Reference-Final.pdf>>.

under the UM's Violent or Threatening Behaviour Policy, Sexual Assault Policy, RWLE Policy or Student Non-Academic Misconduct and Concerning Behaviour Procedure.²⁹¹

- SAS provides support and advocacy for students with disabilities, including mental health disabilities and acts as a liaison between students, faculty, staff and service agencies. The SAS is located at both the Fort Garry and Bannatyne campus.²⁹²
- UM employees who are members of a union/association can discuss their concerns/complaint with their union/association directly.
- UM employees and students can, at any time, contact the police and/or file a human rights, civil or workplace safety and health complaint or claim.

²⁹¹ University of Manitoba Student Affairs, Student Support Case Manager, "STATIS – Student/Staff Threat Assessment Triage, Intervention, and Support" online: University of Manitoba <<http://umanitoba.ca/student/case-manager/statis/index.html>>.

²⁹² University of Manitoba Student Affairs, Student Accessibility Services, "About Us" <<http://umanitoba.ca/student/accessibility/about-us.html>>.

ABOUT DONNA MILLER, Q.C.

Donna Miller, Q.C., was the first woman in Manitoba to become clerk of the province's Executive Council and the first woman to serve as Deputy Minister of Justice and Deputy Attorney General of Manitoba. Prior to assuming these roles, she was the lead counsel in many constitutional cases before the Supreme Court of Canada. She has an LL.M. in Constitutional Law from Osgoode Hall Law School (York University), an LL.B. from the University of Manitoba and a B.A. from the University of Winnipeg. She was an instructor in constitutional law for many years at the Faculty of Law, University of Manitoba. She was appointed an Honourary Life Bencher of the Law Society of Manitoba. Donna is a member of the Board of Directors of the Max Bell Foundation and sits on the Board of Trustees of the United Way of Winnipeg. She has been married to Marc Monnin for over forty years and is a proud mother and grandmother.

ABOUT HELGA VAN IDERSTINE

Helga Van Iderstine is a partner at MLT Aikins LLP. Her advocacy practice includes all aspects of litigation from appearing in all levels of Court including inquests and Public Inquiries, to all aspects of regulatory/administrative law – from health law, privacy, personal injury and human rights to professional regulation, public utilities and pipelines. Helga received the MBA Pro Bono Award for her work on the Families First Team – a project related to the issue of missing and murdered Indigenous women. She served as President of the Law Society of Manitoba and has been involved in numerous Law Society committees. Former chair and current member of the Law Society Complaints Investigation Committee, Helga also sat on the Judicial Nominations Committee for the Manitoba Provincial Court. Her diverse community service has included providing pro bono representation to Project Neecheewam at the Inquest into the death of Tracia Owens to roles as 2017 Board Secretary for the Canada Games, Executive Board Member for Red River Exhibition Association, and currently serving as a Trustee of the Royal Manitoba Theatre Centre. She has taught in the Law Society of Manitoba's Bar Admission and CPLED courses in the area of advocacy.