



THE UNIVERSITY OF WINNIPEG

SEXUAL MISCONDUCT PROTOCOL

March 18, 2015

Statement of Commitment

The purpose of this document is to establish a working, learning and living environment at the University of Winnipeg that is free from Sexual Misconduct - which includes (1) sexual harassment, (2) stalking, and (3) sexual assault and the threat of sexual assault - through uniform guidelines to promote and foster a safe climate.

The University of Winnipeg will provide assistance and support to those members of our campus community who have experienced sexual misconduct, secondary victims, those accused of sexual misconduct, and all others involved in a sensitive, consistent, and timely manner through various available support services – on campus and in the community.

The University of Winnipeg will develop educational strategies aimed at raising awareness of and preventing sexual misconduct. Sexual misconduct of any type will not be tolerated, and as such, The University of Winnipeg will take action needed to address behavior that violates this standard of conduct. The Advisory Committee on Sexual Misconduct at The University of Winnipeg will track and report aggregate (non-identifying) information to the public, on its website.

Principles

The University of Winnipeg “is committed to and actively supports equal opportunity, equity, social justice, mutual respect, diversity and the dignity of all people. The University recognizes that every member of the University community has the right to participate, learn and work [and live] in an inclusive and respectful work and learning environment that promotes equal opportunities and prohibits discrimination and harassment. The University does not condone behaviour that is likely to undermine the dignity or productivity of any of its members, and prohibits any form of discrimination or harassment, whether it occurs on University property or in conjunction with University related activities. The University and all members of the University community, particularly those in leadership roles, share the responsibility of establishing and maintaining a climate of respect within this community and of addressing any situation(s) in which respect is lacking.” (Respectful Working and Learning Environment Policy, [RWLE] the University of Winnipeg.)

The University seeks to create an environment in which individuals who experience sexual misconduct have access to resources and reporting options that support and encourage the reporting of sexual misconduct.

We will provide ongoing education and training to staff, faculty and students and our security services about sexual misconduct, and responding to the disclosure of sexual misconduct.

Retaliation against anyone who reports an incident of sexual misconduct, brings forward a complaint or who in anyway participates in an inquiry or investigation of sexual misconduct is also strictly prohibited. It is the responsibility of The University of Winnipeg to make inquiries into reports of sexual misconduct of any form and to conduct investigations, where appropriate, consistent with the RWLE Policy and Procedures.

Scope

This Sexual Misconduct Protocol, under the Respectful Working and Learning Environment Policy (RWLE) and the related guidelines apply to anyone who is an employee or student of the University engaged in duties or activities having a substantial connection to the University, on or off campus. Collectively, all individuals and locations associated with the University of Winnipeg are referred to as the campus community.

This Protocol is not intended to discourage or prevent individuals from exercising any other legal rights they may have pursuant to any other law, including the right to file a complaint with the Manitoba Human Rights Commission or to pursue criminal charges.

Defining and Recognizing Sexual Misconduct

Sexual Misconduct is a broad term used to encompass unwelcome conduct of a sexual nature that is prohibited by the University of Winnipeg. The term sexual misconduct includes, but is not limited to, behaviors often described as sexual harassment, stalking, and sexual assault and the threat of sexual assault. It is a violation of the RWLE Policy to commit these acts or to attempt to commit them, as well as a violation of applicable federal and provincial laws. Sexual misconduct can occur in any sex or gender configuration, regardless of sex and gender identity. Sexual Misconduct may vary in its severity and consists of a range of behaviors including, but not limited to, the following categories:

- A. Sexual Harassment**
- B. Stalking**
- C. Sexual Assault and the Threat of Sexual Assault**

A. Sexual Harassment

The Manitoba Human Rights Code and the University of Winnipeg's RWLE Policy prohibit sexual harassment. The Manitoba Human Rights Code and the RWLE defines sexual harassment as:

- a series of objectionable and unwelcome sexual solicitations or advances;

- a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to have known it was unwelcome, or:
- a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- direct proposition of a sexual nature and/or subtle pressure for sexual activity - whether they involve physical touching or not - that is unwanted and unreasonably interferes with a person's work, academic or educational environment;
- sexual epithets or jokes; written or verbal references to sexual conduct; sexualized comment(s) on an individual's body/appearance; comments about an individual's sexual activity, experiences, deficiencies, or prowess; regardless of the means of communication (verbal, written, email, text messages, social media, etc.);
- leering, whistling, sexual gestures, suggestive or insulting comments, threats, or innuendos of a sexual nature;
- unwanted physical contact such as touching, hugging, brushing against a person's body, impeding or blocking movements;
- gender harassment, including sexist statements and behavior that convey insulting, degrading, or sexist conduct or behaviours;
- persistent and unwanted requests for dates; unwelcome and inappropriate letters, telephone calls, email, texts, graphics, and other communications or gifts;
- direct or implied threats that indicate that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;
- the display of inappropriate sexually oriented materials in a location where others can view them
- sexual exploitation - occurs when a person takes non-consensual, unjust, or abusive sexual advantage of another, for his/her own advantage or benefit, such as photographing or taping someone (via audio, video or otherwise) involved in sexual activity or in a state of undress, without their knowledge or consent; or disseminating such a recording without a person's consent

B. Stalking

Stalking is a form of criminal harassment which is prohibited under section 264 of the Criminal Code of Canada. Stalking involves an intentional course of repeated conduct or behavior over a period of time, directed at a specific person, which causes a person to feel alarm, emotional

distress and/or fear, whether or not it is done with the intention of scaring that person, or whether or not it results in physical injury. This Sexual Misconduct Protocol, under the University of Winnipeg's RWLE Policy, prohibits Stalking. Stalking can also include threats of harm to the target's friends and or family. Stalking behaviours include, but are not limited to:

- Non-consensual communications
- Threatening or obscene gestures
- Surveillance and pursuit
- Sending unsolicited gifts
- Unwelcome communications by e-mail, phone, social media (including "creeping" via social media and cyber-stalking);
- Uttering threats

C. Sexual Assault

Sexual Assault is prohibited under Section 271 of the Criminal Code of Canada. Sexual assault occurs when there is sexual activity or sexual touching with any object or body part, of another person without consent, or by force.

What is Consent?

Subsection 273.1 of the Criminal Code defines **Consent** as the voluntary agreement to engage in the sexual activity in question.

Consent is an informed, knowing, and voluntary decision to engage in mutually acceptable sexual activity. Consent is active, not passive or silent. Signals of consent must be part of a mutual and ongoing process, offered freely and knowingly at each level of sexual activity. Consent can be given by words or actions as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity. It is the responsibility of the person who wants to engage in the sexual activity to make sure that he/she has consent from any other person(s) involved. Consent to one sexual act does not constitute or imply consent to a different sexual act. Consent is required regardless of the parties' relationship status or sexual history together. A verbal "no," even if it may sound indecisive or insincere, always indicates a lack of consent. Consent can be revoked at any time, and cannot be assumed from previous consent to similar activities.

Consent can never be given by someone who is incapacitated.

It is a violation of the Sexual Misconduct Protocol of the RWLE Policy (and Provincial and Federal law) to engage in sexual activity with someone you *know* or *should know* is incapacitated, regardless of whether the person appeared to be a willing participant.

Subsection 273.1 (2) of the Criminal Code states that no consent is obtained:

- where the complainant is incapable of consenting to the activity. Consent cannot be given by a person who is incapacitated by alcohol or drugs or who is unconscious or otherwise lacks the capacity to give consent.

Incapacity is a mental or physical state in which a person cannot make a rational, reasonable decision because they lack the ability to understand the consequences of their actions. Incapacity literally means the inability to fully understand what is happening. A person may also be incapacitated because they are unconscious or asleep. A person that is **incapacitated** is unable to consent to sexual activity.

Evidence of incapacitation may include:

1. slurred speech
2. bloodshot eyes
3. smell of alcohol on one's breath
4. vomiting
5. unusual/strange behaviour

Offering drugs, alcohol or other substances to a person, with or without their knowledge, with the intent to impair their ability to withhold consent or their ability to knowingly consent to sexual activity or intercourse/penetration is prohibited sexual exploitation. This type of conduct constitutes sexual exploitation regardless of whether sexual activity or intercourse/penetration actually takes place. A person who, themselves, has consumed alcohol and/or drugs, still has a responsibility to obtain *ongoing* consent for any sexual activity with another person. The use of alcohol or other drugs by the person initiating sexual activity will never be accepted as an excuse for failing to obtain consent.

Consent can never be given by someone who is under the legal age of consent. The legal age of consent is 16. It is a *per se* violation of the Sexual Misconduct Protocol, under the RWLE Policy (and the law) to engage in sexual activity with a person who is under the age of consent, regardless of whether the person was a willing participant in the conduct. The age of consent is **18 years** where the sexual activity "exploits" the young person - when it involves prostitution, pornography or occurs in a relationship of authority, trust or dependency (e.g., with a teacher, coach or babysitter). Sexual activity can also be considered exploitative based on the nature and circumstances of the relationship, e.g., the young person's age, the age difference between the young person and their partner, how the relationship developed (quickly, secretly, or over the Internet) and how the partner may have controlled or influenced the young person.

What is force?

Force may never be used to make someone submit to or to complete sexual activity. Consent cannot be obtained by use of force, which includes coercion. The use of force to cause someone to engage sexual activity is, by definition, non-consensual contact. In the context of sexual misconduct, the term "force" includes the use of any of the following: the use of physical violence and/or imposing on someone physically to gain sexual access to that person; implied

or direct threats of harm to self or others including threats of sexual assault; threats of future harassment; abuse of power or authority; intimidation; and or coercion to overcome resistance. Coercion, in the context of sexual misconduct, is unreasonable and unwelcome pressure for sexual activity, including the use of emotional manipulation, or the promise of certain things to persuade someone to do something they do not wish to do.

In summary, Sexual Assault is the act of committing unwanted physical contact of a sexual nature, whether by an acquaintance or by a stranger. Such contact is unwanted when it occurs without the consent of one or both individuals, when one of the individuals is incapacitated or incapable of giving consent, or occurs with the use of force or threats. An “acquaintance” can include close friends, intimate partners, family members, classmates, or can be someone you just met. People who experience sexual assault and those who are accused of sexual assault can be of any sex/gender, sexual orientation and/or sexual identity.

What is Retaliation/Reprisal?

Retaliation or reprisal is an adverse or negative action taken against an individual for raising concerns about conduct that is prohibited by law or policy. Any reprisal or retaliation undertaken in response to a concern brought forward under this Protocol or taken to an external agency (e.g. the Police or the Human Rights Commission) will be considered to be a contravention of the Respectful Workplace and Learning Environment Policy and will be dealt with under the Procedures that implement the policy. Retaliation can include: hostility, intimidation, threats, exclusion, and/or discrimination because of the individual’s complaint or participation in the investigative process.

Glossary of Terms

People who may be involved:

A person who has experienced a form of sexual misconduct is an individual who has stated that another person has sexually harassed, stalked, sexually assaulted or threatened to sexually assault them. Upon disclosure they are to be believed and supported immediately. The individual may refer to herself/himself as a “victim” or “survivor” and others speaking with the person should respect and use the term they use.

Secondary Victims are individuals who can offer empathy and compassion to the person who experienced a form of sexual misconduct, and they themselves may also be significantly affected by the sexual misconduct and they may need support.

Person who received the disclosure is the person to whom the individual who experienced sexual misconduct initially disclosed. This person could be a staff or faculty member, or a student staff member. Their role is to listen with kindness and respect to be aware of this protocol, and to inform the individual of the counselling and support services available on

campus, direct the individual to those resources, and to provide the individual with appropriate information to support them in reporting the sexual misconduct.

A person who is accused of sexual misconduct is a person that is accused of the incident by the person who complains that s/he has experienced the sexual misconduct. If they are a member of the campus community, they will also receive information and support throughout the subsequent process and investigation.

Sexual Misconduct Response Team (SMRT) The Sexual Misconduct Response Team (SMRT) is a small team of senior front line staff members that oversees and coordinates services for individuals who have experienced sexual misconduct, been accused of sexual misconduct, or who are secondary victims. The SMRT is initially comprised of the following positions: Counsellor(s), Director of Campus Living, Director of Student Support Services, Executive Director, Wellness and Student Life, and Director of Security Services. Membership in the SMRT may vary depending on staffing changes at the University. Information will be shared among this team to the extent necessary and in accordance with laws and policies, in order to provide comprehensive, consistent and supportive services to those who experience any form of sexual misconduct. This team is available on a rotating on-call system 24 hours per day to coordinate referrals to the Sexual Assault Crisis Program of Klinik Community Health Centre (where full 24 hour supports are available). The SMRT meets monthly or every two months depending on the frequency of reported sexual misconduct on campus.

Advisory Committee on Sexual Misconduct (ACSM) The Advisory Committee on Sexual Misconduct is a group of people with representatives from senior executive, faculty, staff, the students' association and community advisors who work together to ensure that the response and supports provided to those members of our campus community who experience sexual misconduct are comprehensive, timely, consistent and effective, and that the recommendations to create a culture of trust and safety are carried out. The ACSM provides strategic direction regarding the services offered to those who have experienced sexual misconduct, secondary victims of sexual misconduct and members of the campus community who are accused of sexual misconduct. The Advisory Committee on Sexual Misconduct sets the tone for education and service delivery and provides high level direction for the programs, services, and awareness building at University of Winnipeg. The Advisory Committee on Sexual Misconduct is responsible for reviewing the internal University options available for people who choose to file a complaint of sexual misconduct. They are also responsible for collecting and analyzing statistics of sexual misconduct on campus. ACSM will also review the University of Winnipeg Sexual Misconduct Policy annually or as needed to ensure it is up to date and meets the needs of the University Community. The Advisory Committee on Sexual Misconduct consists of the Vice President, Student Life; Vice President, Human Resources, Audit and Sustainability; Vice President, Academic; University Secretary and General Counsel; Executive Director, Wellness and Student Life; Human Rights and Diversity Officer; Counsellor; Director, Student Support Services; Director, Campus Living; Director, Security Services; two Faculty members; a University of Winnipeg Student Association Representative (UWSA); and a Klinik

Sexual Assault Program representative. Membership may vary slightly depending on the needs of the University. Meetings of the Advisory Committee on Sexual Misconduct take place quarterly, however additional meetings may be called as necessary.