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**Signing Authority Frequently Asked Questions**

1. [What is the scope of the Signing Authority Policy and Procedure?](#_What_has_changed)
2. [What is a Legal Document?](#_What_are_my)
3. [Who is authorized to sign legal documents on behalf of the College?](#_What_are_my_1)
4. [Who is authorized to sign a lease agreement?](#_Who_is_authorized)
5. [Why is the College required to comply with Minister’s Binding Policy Directive, Banking, Investments and Borrowing?](#_Why_is_the)
6. [What are the main requirements of the College in order to comply with the Minister’s Binding Policy Directive, Banking, Investments and Borrowing?](#_What_if_I)
7. [How is it determined when an agreement requires Ontario Finance Authority approval?](#_How_is_it)
8. [What agreements require pre-approval by a Finance Department Administrator?](#_What_agreements_require)
9. [What is the timeline for obtaining Ontario Finance Authority approval?](#_What_is_the)
10. [What is a contingent liability?](#_What_is_a)
11. [What clauses should be added to agreements to limit the liability of the College and protect the Crown?](#_What_clauses_should)
12. [What if the other party to the agreement does not agree to add clauses to limit College liability and protect the Crown?](#_What_if_the)
13. [What should I pay attention to when signing or reviewing a legal agreement?](#_What_should_I)
14. [What additional items should I be looking for when signing or reviewing a legal document for the purchase of goods or services?](#_What_additional_items)
15. [What steps are required prior to entering into an agreement related to the purchase of goods and services?](#_What_steps_are)
16. [How do I determine if a legal document for the purchase of goods or services is within my signing authority and who is authorized to sign OECM agreements?](#_How_do_I)
17. [When I am an administrator on call, what conditions are required to sign a legal document in excess of $24,999.99 before tax?](#_When_I_am)
18. [Who is required to complete an annual attestation letter?](#_Who_is_required)
19. [What does the annual attestation letter include?](#_What_does_the)
20. [What are the responsibilities of the Vice Presidents and the Executive Director regarding the filing of contracts?](#_Will_a_claim)
21. [Who is the Document/Contract Administrator?](#_Who_is_the)
22. [If I am the Document/Contract Administrator on a contract with a third party, what steps are required?](#_If_I_am)
23. [What responsibilities do I have as the Document/Contract Administrator?](#_What_responsibilities_do)
24. [What if I sign a Legal Document, Banking Transaction or Investment Transaction that I do not have delegated authority to sign?](#_What_are_the)
25. [When and how is signing authority sub-delegated?](#_When_and_how)
26. [How do I sign a legal document if I am a sub-delegate?](#_When_would_an)

# What is the scope of the Signing Authority Policy and Procedure?

The Signing Authority Policy and Procedures #4-417 apply to all employees of the College and covers the following:

* Legal Documents
* Banking transactions and
* Investment transactions

 [Return to Top](#_top)

# What is a legal document?

The definition of a legal document is very broad. It is generally a document between at least two (2) parties that creates an obligation, legal commitment or undertaking on behalf of the College. Legal documents include but are not limited to the following:

* Academic and Research contracts and agreements
* Commercial contracts and agreements
* Funding proposals, agreements and reporting
* Memorandum of understanding
* Lease/rental agreements
* Sale agreements of services and goods
* Employment agreements
* Bursary and endowment agreements
* Donor receipts
* Agreements to purchase and Purchase Orders
* Purchase or sale of investments
* Authorization of payment from bank account.

[Return to Top](#_top)

# Who is authorized to sign legal documents on behalf of the College?

The Signing Authority Policy #4-417 authorizes the Board Chair, Board Vice-Chairs and the College President to sign any and all legal documents. As well, it authorizes the President to further delegate signing authority to additional positions through the operating procedure.

Appendix A of the operating procedure #4-417 OP identifies positions that have limited signing authority delegated by the President. **If your position is not listed in the appendix, you must not sign any legal documents on behalf of the College**, unless you are a Sub-Delegate within the applicable time-period. [Return to Top](#_top)

# Who is authorized to sign a lease agreement?

The only positions authorized to enter into a lease agreement are:

* + President, and
	+ Vice President Corporate Services

[Return to Top](#_top)

# Why is the College required to comply with Minister’s Binding Policy Directive, Banking, Investments and Borrowing?

The college as a crown agency is required to comply with all Minister’s Binding Policy Directives.

This policy directive sets out requirements all colleges must comply with when entering into any financial arrangement, financial commitment, guarantee, indemnity or similar transactions that will increase, directly or indirectly, the indebtedness or the contingent liabilities of Ontario.

[Return to Top](#_top)

# What are the main requirements of the College in order to comply with the Minister’s Binding Policy Directive, Banking, Investments and Borrowing?

The main requirements of this Minister’s Binding Policy Directive are:

* The Ontario Finance Authority must approve all agreements prior to their execution unless specific exemption criteria are met
* The Chair of the Board of Governors is required to sign an annual attestation letter confirming college compliance with the directive
* An annual report listing all legal agreements entered into during the year must be submitted to the Ministry where they are $1.0 million or greater.

Sections 6 to 10 set out the procedures to ensure these requirements are met.

[Return to Top](#_top)

# How is it determined when an agreement requires Ontario Finance Authority approval?

As the Minister’s Binding Policy Directive can require a significant amount of judgement, sections 7 and 8 in the operating procedure #4-417 direct higher risk agreements to a Finance Department Administrator prior to agreeing to enter into the agreement verbally or in writing. The Finance Department Administrator will review and identify the next steps to be taken.

[Return to Top](#_top)

# What agreements require pre approval by a Finance Department Administrator?

Section 7 and 8 of the Agreements require finance pre approval if they:

* have a value of greater than or equal to $1.0 million or
* contain a contingent liability. or
* are **not** governed under the laws of Ontario, or
* include activities that are **not** undertaken within Canada, (see exceptions in section 8 e of the operating procedure #4-417), or
* have a term great than ten (10) years, or
* are **not** in compliance with all applicable policies of the college and applicable laws and government directives, or
* relate to activities that are **not** permitted under the college objects, or
* if the government of Ontario is responsible for paying any contingent liabilities

[Return to Top](#_top)

# What is the timeline for obtaining Ontario Finance Authority approval?

Ontario Finance Authority approval, according to their policy, takes 90 days. Historically this has been a lengthy labour intensive process that has taken significantly longer than 90 days.

As a result, it is important that you do not agree to enter into an agreement verbally or in writing prior to the Finance Department Administrator review, as the timelines of the third party may not be achievable

[Return to Top](#_top)

# What is a contingent liability?

A contingent liability is a contractual clause requiring payment where there is uncertainty about the amount of the payment and whether the payment will be required.

[Return to Top](#_top)

# What clauses should be added to agreements to limit the liability of the College and protect the Crown?

The sample clauses required in Section 9 of the Signing Authority Administrative Operating Procedure #4-417 that are to be sent to the other party of the agreement to include, if they are not already, are as follow:

**No Indemnities from the College**

Notwithstanding anything else in the Contract, any express of implied reference to the College providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the College, whether at the time of execution of the Contract or at any time during the Term, shall be void and of no legal effect.

The College’s maximum aggregate liability for any and all claims and damages arising out of or related to this Contract, whether arising in contract, tort, strict liability, statute or otherwise shall not exceed the total contract value. The limits of liability are exclusive as to all remedies and the liability cap shall not be increased under any circumstances. The ***“other party to the agreement”*** acknowledges and agrees to this limitation and will arrange for such additional insurance coverage as it may deem necessary.

**No Claims or Recourse against the Crown**

The remedies, recourse or rights of the ***“other party to the agreement”*** shall be limited to the College and to the right, title and interest owned by the College in and to all of its personal property, whether now existing or hereinafter arising or acquired from time to time; and

The ***“other party to the agreement”*** unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in the right of Ontario in respect of the Contract, and agrees that it shall have no remedies, recourse or rights in respect of the Contract against the Crown in the right of Ontario, any Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or members, other than against the College and its assets.

Insurance clauses also reduce the liability of the College. It is important that these are accurate and reviewed by the Administrative Officer in the Vice-President, Corporate Services in all agreements.

**Note: MOU’s do not require the above noted clauses to be included.**

[Return to Top](#_top)

# What if the other party to the agreement does not agree to add clauses to limit the College liability and protect the Crown?

Ultimately, the Board Chair is required to sign an annual attestation to the Ministry, stating that the college has limited the liabilities of the Crown and capped the college exposure as a provision of all contracts where possible. The attestation letter that the President, her direct reports and others are required to sign includes a section that confirms that this occurred.

The Minister’s Binding Policy Directive does not require these clauses be included in all agreements, but that we have made our best efforts to include these clauses, wherever possible in negotiable agreements. As a result, you must document the effort you made to include the clauses and keep it for proof that the request occurred.

[Return to Top](#_top)

# What should I pay attention to when signing or reviewing a legal agreement?

When signing or reviewing any legal agreement read the document thoroughly and the main items you should watch for are:

* The legal name of the College should always be used; departments are not legal entities. Our legal name is, “The Sir Sandford Fleming College of Applied Arts and Technology”.
* Be cognizant of what the College is agreeing to carry out in the contract, all terms and conditions must be read and fully understood.
* If there are any areas of the agreement you are unsure can be adhered to by the College, it is your responsibility to ensure the applicable department with the related expertise has appropriately reviewed the section and accepts the terms and conditions.
* There should always be a start and end date
* A termination clause is important to be included
* The contract should reference the laws of Ontario and if they do not, then the risk increases and Ontario Finance Authority approval is required.
* The indemnity clause needs to ensure indemnity for both parties.
* The insurance clauses are included an accurate, if unsure contact the Administrative Officer in the office of the Vice-President, Corporate Services.

[Return to Top](#_top)

# What additional items should I be looking for when signing or reviewing a legal document for the purchase of goods or services?

When signing or reviewing a legal document for the purchase of goods or services, the following are the main items you should watch for:

* You should never enter into a master agreement that has binding terms and conditions for other agreements across the college.
* Automatic renewal clauses should never be accepted
* Ensure we own the Intellectual Property. If we do not, ensure that this is acceptable to the College (example, if we are purchasing website development, it is important the College own the IP)
* Payment terms should be net 30
* Be aware of the currency, if it is not in Canadian dollars, then ensure you know the current conversion to Canadian dollars.
* Understand who is responsible for shipping, customs, brokerage and duty costs and the total cost of each
* Price escalations should not be agreed to; they can often be buried in the fine print
* Ensure the vendor has liability insurance and WSIB coverage if they are coming onto the College site.
* Ensure the items, service, scope of work and specifications are accurate.
* Ensure delivery dates are accurate
* Ensure the Broader Public Sector Procurement Directive are followed. <https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/EN/bps-procurementdirective> and where possible have the supplier provide an all-inclusive price (note hospitality expenses are not allowed).

[Return to Top](#_top)

# What steps are required prior to entering into an agreement related to the purchase of goods and services?

Prior to entering into an agreement related to the purchase of goods and services, the following is required:

* a review by or advice obtained from the Purchasing Department
* the advice provided should be incorporated into the agreement prior to executing the agreement
* ensure that the Purchasing Policy and Administrative Operating Procedure #4-411, including the associated competitive threshold requirements, are followed

[Return to Top](#_top)

# How do I determine if a legal document for the purchase of goods or services is within my signing authority and who is authorized to sign OECM agreements?

The cost of the purchase, currency exchange, shipping and any optional renewal terms in Canadian dollars (reminder automatic renewals should never be included in an agreement) need to be included in the total to ensure the total commitment value is less than your authorized dollar limit before taxes.

The Director, Purchasing is the signing authority for OECM agreements without a value.

[Return to Top](#_top)

# When I am an administrator on call, what conditions are required to sign a legal document in excess of $24,999.99 before tax?

It would be **very rare** that an administrator on call would be authorized to sign a legal document in excess of $24,999.99 before tax.

All of the following conditions have to be met and if they are not, you are not authorized to sign the legal document:

* You must be the administrator on call for the Residence, Physical Resources, Information Technology or the supervisor of the administrator on call, and
* The situation must be an emergency that does not allow time for the Designated Signing Officer (applicable in a non - emergency situation) to execute the legal document without catastrophic consequences resulting to the facilities or individuals, and
* The agreement must be for the emergency purchase of goods or services only, and
* The fully executed document must be sent to the vice-president of your department along with a written rationale as to why there was not sufficient lead time for the Designated Signing Officer (applicable in a non-emergency situation) to execute the legal document.

[Return to Top](#_top)

# Who is required to complete an annual attestation letter?

The President and each of her direct reports is required to complete an annual attestation letter for the period April 1 to March 31, each year.

Additional attestation letters can be required at the discretion of the President or her direct reports.

[Return to Top](#_top)

# What does the annual attestation letter include?

The annual attestation letters are provided to the Chair of the Board of Governors to confirm that Sections 7 to 10 in the Signing Authority Administrative Operating Procedures #4-417 have been complied with. As well, it requires confirmation that all agreements greater than or equal to $1.0 million and those with a contingent liability have been sent to the Director Finance and those that are included in section 8 of the operating procedure #4-417.

[Return to Top](#_top)

# What are the responsibilities of the Vice Presidents and the Executive Director regarding the filing of contracts?

The Vice Presidents and the Executive Director of Marketing and Recruitment are responsible for a centralized or decentralized filing system for all legal documents within their area of responsibility, other than those related to the purchase of goods or services. As well, they are responsible for the electronic tracking spreadsheet, which is to include the fields identified in Section 14 of the operating procedures #4-417, so the documents can be easily retrieved and reported.

[Return to Top](#_top)

# Who is the Document/Contract Administrator?

The Document/Contract Administrator is an employee in an administrative role within the operating department responsible for the legal document.

[Return to Top](#_top)

# If I am the Document/Contract Administrator on a contract with a third party, what steps are required?

The following steps are to be taken if you are the Document/Contract Administrator:

* 1. Determine if a Document Authorization Form is required by reviewing the tables that are part of [the form](https://department.flemingcollege.ca/budget-services/attachment/291/download).
		1. If a Document Authorization Form is **not** required,
			+ read the legal document to ensure the operational components can be fulfilled and provide the legal document to the Primary Signing Officer to execute the document
		2. If a Document Authorization Form is required,
			+ read the legal document to ensure the operational components can be fulfilled
			+ determine the departments or positions that are required to review the agreement see procedure #4-417 OP, section 12 and the tables on the Document Authorization Form.
			+ complete the Document Authorization Form top section and the name and title of the reviewers
			+ Send the legal document and Document Authorization Form to each reviewer to obtain their signatures or an email confirming their review
			+ Once all of the reviewers have signed or emailed, sign the bottom section of the Document Authorization Form
			+ Provide the completed Document Authorization Form and the legal document to the Primary Signing Officer to execute the document
	2. Obtain all external party signatures, if not already on the legal document
	3. Provide the original signed legal document and Document Authorization Form to the filing department as set out in the tables of the form.

A link to the Flowchart of this process is as follows: [Signing Authority - Legal Document (LD) Process Flowchart](https://department.flemingcollege.ca/budget-services/attachment/292/download)

 [Return to Top](#_top)

# What responsibilities do I have as the Document/Contract Administrator?

As the Document/Contract Administrator, you are responsible to ensure the legal document has been reviewed by the proper department(s) and complies with College directives, policies and operating procedures.

The responsibilities are set out in various sections within the operating procedures, but in summary the responsibilities are:

* internal and external communications
* coordination between internal stakeholders
* ensuring all reviews are carried out based on the content in the legal document, for example, should there be insurance clauses, the Administrative Officer – Finance and Administration in the Office of the Vice-President, Corporate Services would be required to review the document
* ensuring enough lead time is built into the process to allow a minimum of
	+ thirty (30) days for the Document Authorization Form to be completed for all legal documents, except funding agreements
	+ five (5) business days for the authorized signing officer to complete their process
	+ five (5) business days for a funding proposal to be reviewed by the applicable departments
* ensuring the original legal document is provided to the filing department with all required signatures obtained
* the implementation of the legal document, which includes
	+ Ensuring compliance with the terms and conditions
	+ Informing and monitoring departments of the College on a timely basis about specific requirements included in the document that relate to their area of responsibility
	+ Complying with reporting requirements
	+ Ensuring financial reports are prepared/reviewed by the Finance Department
	+ Planning for renewal processes, where applicable and when necessary

[Return to Top](#_top)

# What if I sign a Legal Document, Banking Transaction or Investment Transaction that I do not have delegated authority to sign?

As set out in section 4 of operating procedure #4-417, any person who signs a legal document, banking transaction or investment transaction who is not a designated signing officer, Official Signing Officer or a Sub Delegate within the effective time period, may be held personally liable for the obligation/legal commitment. This may also be considered a breach of an employment contract.

It is best to contact Director, Finance, extension 1202 or Manager, Accounting Operations, extension 1041, if you are unsure if you are authorized to sign a document.

[Return to Top](#_top)

# When and how is signing authority sub-delegated?

The designated signing officers may sub-delegate their signing authority for a short period of time to cover vacations, leaves or other temporary absences. Not all designated signing officers can further delegate their authority. The Vice Presidents and the Executive Director Marketing and Recruitment may select the position they sub-delegate their authority to. All other signing officers are limited to sub-delegation in Appendix D of the operating procedures #4-417.

The process to sub-delegate signing authority by the official signing officer is as follows:

* Review the operating procedure, #4-417 OP, Appendix D to determine the positions they can sub-delegate to for each legal document
* Select a position to sub-delegate, keeping in mind, where signing authority is sub-delegated, responsibility for the executed document remains with the signing officer as well as the person signing as a sub-delegate
* Determine the period of the temporary leave
* Send an email or other written document to the sub-delegate, clearly indicating the legal documents they can sign and the time period covered.

[Return to Top](#_top)

# How do I sign a legal document if I am a sub-delegate?

A sub-delegate is to sign their name on the legal document and include the phrase, “Delegate for, *name of specific signing officer*”.

[Return to Top](#_top)