

## COLLEGE POLICY

| <b>Sexual Violence Prevention</b>                        |  |
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| <b>Policy ID:</b>  | #3-343   |
| <b>Manual Classification:</b>                            | Section 3 – Human Resources  |
| <b>Approved by Board of Governors:</b>                   | <i>Original:</i> March 25, 2016  |
| <b>Revision Date(s):</b>                                 | December 14, 2016  |
| <b>Effective Date:</b>                                   | Replaces March 2016  |
| <b>Next Policy Review Date:</b>                          | August 2019  |
| <b>Administrative Contact for Policy Interpretation:</b> | <ul style="list-style-type: none"> <li>• Vice-President Human Resources and Student Services</li> <li>• Vice-President Finance and Administration</li> </ul> |
| <b>Linked to Operating Procedure:</b>                    | #3-343 OP <i>Sexual Violence Prevention</i>  |

**Policy Statement**

Sexual assault and sexual violence are unacceptable and will not be tolerated. Fleming College is committed to preventing sexual violence and creating a safe space for everyone in our College community. The College is expected to be a safe and positive space where members of the College community feel able to work, learn and express themselves in an environment free from sexual violence.

All reported incidents of sexual violence will be responded to in a manner that ensures procedural fairness. This policy's intention is to make individuals feel safe and enable them to make a report in good faith about sexual violence that they have experienced or witnessed.

We recognize that sexual violence can occur between individuals regardless of sexual orientation, gender, gender identity or relationship status as articulated in the Ontario Human Rights Code. We also recognize that individuals who have been affected by sexual violence may experience emotional, academic or other difficulties.

**Purpose**

This document sets out our policy and response procedure to sexual violence and ensures that those who experience sexual violence are believed and their rights respected; that the College has a process of fact finding that protects the rights of individuals; and holds individuals who have committed an act of sexual violence accountable.

**Scope**

It is the responsibility of all members of the College community to uphold the principles of this policy.

This policy and related operating procedure will apply in cases concerning students, employees, contractors and third party service providers as well as governors, volunteers or visitors of Fleming College:

1. occurring within or affecting people or property within the physical boundaries of the College;
2. occurring on or affecting College owned or controlled property, including student residences;
3. occurring with the use of computer and telephone systems, and College and private vehicles being used for college business or for travelling between work and study locations;
4. at a College-sponsored event;
5. occurring off-campus which are likely to have an impact on the working, living and/or learning environment at the College.

Incidents occurring off campus which have no or little likelihood of any impact on the working/learning/living environment at the College would be pursued by individuals through the regular external processes.

Reports by students regarding harassment or discrimination on the basis of any prohibited ground under the Ontario Human Rights Code may be addressed by College Policy #3-311, *Harassment and Discrimination Prevention*. Students who wish to make reports regarding inappropriate behaviour by students that is not on the basis of any prohibited ground, and is not related to sexual violence, are referred to College Policy #5-506, *Student Rights and Responsibilities*.

Issues related to other violent or threatening behaviour are addressed through College Policy #4-420, *Violence Prevention*.

## Definitions/Acronyms

**College Community:** Any person who studies, teaches, conducts research at or works at or under the auspices of the College, or student governments and includes, without limitation, employees or contractors; appointees (including volunteer board members); students, visiting scholars and any other person while they are acting on behalf of or at the request of the College.

**Complainant:** The person who reports a policy infraction, in this case, a person who reports sexual violence that they have been affected by.

**Respondent:** A person who is responding to a report of a policy infraction. In this case, a person who is responding after being named in a report of sexual violence.

**Sexual assault:** A criminal offence under the *Criminal Code of Canada*. Sexual assault is any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim and involves a range of behaviours from any unwanted touching to penetration. Sexual assault is characterized by a broad range of behaviours that involve the use of force, threats, or control towards a person, which makes that person feel uncomfortable, distressed, frightened, threatened, or that is carried out in circumstances in which the person has not freely agreed, consented to, or is incapable of consenting to.

**Sexual violence:** Any sexual act(s) 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. Instances of sexual violence covered by this policy include those that occur in person, through a third party, or online.

**Sexual consent:** The voluntary and explicit agreement to engage in the sexual activity in question. It is the act of willingly agreeing to engage in specific sexual behaviour, and requires that a person is able to freely choose enthusiastically, at multiple stages, in a mutually agreed upon sexual experience. This means that there must be an understandable exchange of affirmative words, acts or gestures which indicates a willingness to participate. It is also imperative that everyone understands the following:

- Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgment cannot consent.
- A person is incapable of giving consent if they are asleep, unconscious or otherwise unable to communicate.
- A person who has been threatened or coerced (i.e. is not agreeing voluntarily) into engaging in the sexual activity is not consenting to it.

- A person who is drugged is unable to consent.
- A person is usually unable to give consent when under the influence of alcohol and/or drugs (including prescription medication and over the counter medications that may interact with other drugs and/or alcohol).
- A person may be unable to give consent if they have an intellectual, developmental or physical disability preventing them from fully understanding the sexual acts.
- The fact that consent was given in the past to a sexual, dating, or domestic relationship does not mean that consent is deemed to exist for all future sexual activity.
- A person can withdraw consent at any time during the course of a sexual encounter.
- A person is incapable of giving consent to a person in a position of trust, power or authority, such as, a faculty member initiating a relationship with a student who they teach, or an administrator in a relationship with anyone who reports to that position.
- Consent cannot be given on behalf of another person.

It is the responsibility of the initiator of sexual activity to ensure clear and affirmative responses are communicated at all stages of sexual engagement. It is also the initiator's responsibility to know if the person they are engaging with sexually is a minor.

For more information on related terms, please see Administrative Operating Procedure #3-343 OP, *Sexual Violence Prevention*.

## **General Principles**

### **1. We are committed to:**

- 1.1 assisting those who have been affected by sexual violence by providing choices, including detailed information and support, such as provision of and/or referral to counselling and medical care, information about legal options, and appropriate academic and other accommodation;
- 1.2 ensuring that those who disclose an experience of sexual violence are believed, and that their right to dignity and respect is protected throughout the process of disclosure, fact finding and institutional response;
- 1.3 educating about, and addressing harmful attitudes and behaviours (e.g. adhering to myths of sexual violence) that reinforce that the person who experienced sexual violence is somehow to blame for what happened;
- 1.4 treating individuals who disclose sexual violence with compassion recognizing that they are the final decision-makers about their own best interests;
- 1.5 ensuring that on-campus (internal) fact finding procedures are available in the case of sexual violence, even when the individual chooses not to make a report to the police;
- 1.6 engaging in appropriate procedures for fact finding and adjudication of a report which are in accordance with College policies, standards and applicable collective agreements, and that ensure fairness and procedural fairness;
- 1.7 ensuring coordination and communication among the various departments who are most likely to be involved in the response to sexual violence on campus;
- 1.8 engaging in public education and prevention activities on the topic of sexual violence and bystander intervention;

- 1.9 providing information to the College community about our sexual violence policies and procedures;
- 1.10 providing appropriate education and training to the College community about responding to disclosure of sexual violence;
- 1.11 contributing to the creation of a campus atmosphere in which sexual violence is not tolerated; and
- 1.12 monitoring and updating our policies and procedures to ensure that they remain effective and in line with other existing policies and best practices.

## **2. Reporting and Responding to Sexual Violence**

- 2.1. Any employee at Fleming Community that becomes aware of, or witnesses an incident of sexual violence has a responsibility to report that behaviour to their Supervisor, via the online report form, to College Security and/or the Police as appropriate for the circumstances. Other members of the College community are strongly encouraged to report sexual violence incidents they witness or have knowledge of, or where they have reason to believe that sexual violence has occurred or may occur. In all instances, the survivor should be advised that a report will be made, and they will first be given the opportunity to make the report themselves (with or without employee support). If the employee is reporting an incident, the survivor's name will be kept anonymous if the survivor has not given express consent to disclose. Members who have been affected by sexual violence are encouraged to come forward to report as soon as they are able to do so.
- 2.2 Persons in a position of authority, including persons directing the activities of others, shall take immediate action to respond to, or to prevent sexual violence from occurring.
- 2.3 Where the College becomes aware of incidents of sexual violence that pose a risk to the safety of the College community, the College shall take all reasonable steps to ensure safety as a matter of priority.

## **3. Reporting and Fact Finding Process**

A report of sexual assault or any other kind of sexual violence can be filed under this Policy by any member of the college community. The decision making power is always with the survivor about whether they would like to disclose to anyone. If they choose to, they also decide which type of report they would like to make. This includes the choice to file an informal, formal and/or police report (see Administrative Operating Procedure #3-343 OP, *Sexual Violence Prevention* for more information).

Measures to ensure the emotional and physical safety of the survivor can and will be made (see Accommodations section 6 of Administrative Operating Procedure #3-343 OP, *Sexual Violence Prevention*).

The College will seek to achieve procedural fairness in dealing with all reports. As such, no sanction and/or disciplinary action will be taken against a person or group without their knowledge where there is a reported breach of this Policy. Respondents will be given reasonable notice, with full details of the report, and provided with an opportunity to answer to the report(s) made against them.

- 3.1 Right to Withdraw a Report: A complainant has the right to withdraw a report at any stage of the process. However, the College may continue to act on the issue identified in the report in order to comply with its obligation under this Policy and/or its legal obligations. If this is the case, the complainant always has the right to decide to no longer participate.

3.2 Protection from Reprisals, Retaliation or Threats: It is contrary to this Policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a complainant or other individuals for:

- having pursued their rights under this Policy;
- having participated or co-operated in a fact finding process under this Policy; or
- having been associated with someone who has pursued rights under this Policy.

The College takes reasonable steps to protect persons from reprisals, retaliation and threats. This may entail, for example, advising individuals in writing of their duty to refrain from committing a reprisal and sanctioning individuals for a breach of this duty. The College may also address the potential for reprisals by providing an accommodation appropriate in the circumstances.

3.3 Multiple Proceedings: This policy does not preclude a complainant from initiating an alternative report procedure, for example, to use the police process (if the action warrants), launch a civil lawsuit, complain to the Human Rights Tribunal of Ontario, the Ministry of Labour, or to access the grievance procedures outlined in their collective agreements and the terms and conditions of their employment.

Where criminal and/or civil proceedings are commenced in respect of the report of sexual violence, the College shall conduct its own independent investigation into such reports, and make its own determination in accordance with this policy and its related procedure – as long as a formal college report has been made. Where there is an ongoing police investigation, the College will cooperate with local police. This would likely involve the College pausing their process to allow the police to do their investigation. The College will resume their process at the earliest time available.

3.4 Rights of the Complainant and the Respondent: The person who reports an experience of sexual violence (Complainant) has the right to provide supporting documents, call witnesses, and be notified about the outcome of any determination or appeal decision. The complainant also is protected from any questions about their manner of dress, sexual history, private counselling, or academic records.

The respondent has the right to provide supporting documents, call witnesses, and be notified about the outcome of the determination of findings and/or appeal decision. The respondent also has the right to only have a report substantiated based on a balance of probabilities (which means that it is either more likely or not likely that the incident(s) of sexual violence occurred as defined within the procedure). This is consistent with the burden of proof required by civil law and is different from the beyond a reasonable doubt burden required by criminal law.

Complainants and respondents may attend meetings with a (non-participating) support person. The College considers requests to attend meetings with additional support persons and with legal or other representation on a case-by-case basis, with a view to promoting a fair and expeditious process. The College may still question and expect direct answers from an individual who is being supported.

3.5 Unsubstantiated or Vexatious Reports: If a person, in good faith, discloses or files a sexual violence report that is not supported by evidence gathered during the fact finding process, that report will be dismissed.

Disclosures or reports that are found, following the fact finding process, to be frivolous, vexatious or bad faith reports, that is, made to purposely annoy, embarrass or harm the respondent, may result in sanctions and/or discipline against the complainant.

3.6 Record Keeping: All records resulting from formal Sexual Violence Prevention reports will be kept in a secure central registry, and are not a part of the academic record. Keeping these records will be the responsibility of the Administrator of the Sexual Violence Prevention Policy, under the direction of the Associate Vice-President Student Services. Access to these records will be restricted to appropriate College employees as per the Colleges' Access to Privacy Policy, or as may be required by law. All records will be kept according to College Policy #6-603, *Data Record Retention and Disposition*.

Statistical information on the number, nature and type of reports will be kept and reports will be filed annually by the Administrator of the Sexual Violence Prevention Policy. This information may be shared with the Ministry of Advanced Education and Skills Development in accordance with Schedule 3, section 17.7 of Bill 132 *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, 2016.

Where the report has not been substantiated, no reference will be placed in the personnel or student file of either party. When an individual has made a report that is later found to have been vexatious or made in bad faith, and discipline has been imposed, a letter regarding the same will be placed in his/her personnel file or student file.

Once each year, an individual may appeal to the Vice-President Human Resources and/or Student Services to have the letter on file removed, a decision which is at the discretion of the College.

#### 4. Confidentiality

Confidentiality is particularly important to those who have disclosed sexual violence. The confidentiality of all persons involved in a report of sexual violence must be strictly observed, and the College does its best to respect the confidentiality of all persons, including the complainant, respondent, and witnesses. The College will do this by restricting access to information for individuals without a need for such access, and by providing education and training to those who are regularly involved in the administration of reports and complaints. We will treat individuals who disclose sexual violence with compassion, recognizing that they are the final decision-makers about their own best interests.

However, confidentiality cannot be assured in the following circumstances:

- an individual is at imminent risk of self-harm;
- an individual is at imminent risk of harming another;
- there is a concern about the safety or welfare of a child; and/or
- there are reasonable grounds to believe that others in the College or wider community may be at risk of harm.

In such circumstances, the confidentiality of all persons involved in a report of sexual violence must be strictly observed, and the College does its best to respect the confidentiality of all persons, including the complainant, respondent, and witnesses. In such a case, the complainant has the right to choose not to participate in any investigation that may occur.

Where the College becomes aware of a report of sexual violence by a member of the College community against another member of the College community, the College may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with the College's legal obligation and/or its policies to investigate such reports. In such cases, certain College administrators will be informed about the reported incident on a "need to know" and confidential basis, but not necessarily of the identities of the persons involved.

## 5. Publication and Training

The College will ensure awareness of this policy by:

- 5.1 Making the policy available to any existing and new members of the College. The full document will be posted on the Fleming website.
- 5.2 Providing training to all employees, ensuring those persons with managing, supervising, and leadership responsibilities are aware of their obligations under the policy and are able to implement its requirements.
- 5.3 Providing training to employees and student groups on the process for responding and addressing incidents of sexual violence, including specifics on bystander intervention.

## 6. Development and Approval of this Policy

- 6.1 The development of the current and future iterations of this policy will be reviewed in consultation with representatives of faculty, staff and student governing bodies for the provision and consideration of input from a diverse selection of Fleming College Community members. This policy will be reviewed every three years in accordance with review guidelines articulated in Bill 132 Schedule 3 of the Ministry of Training, Colleges and Universities Act.

### Related Documents

- *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016* and O.Reg. 131/16, *Sexual Violence at Colleges and Universities*
- Administrative Operating Procedure #3-343 OP, *Sexual Violence Prevention*
- College Policy #5-506, *Student Rights and Responsibilities*
- Administrative Operating Procedure #5-506 OP, *Student Rights and Responsibilities*
- College Policy #4-420, *Violence Prevention*
- Administrative Operating Procedure #4-420 OP, *Violence Prevention*
- College Policy #3-311, *Harassment and Discrimination Prevention*
- Administrative Operating Procedure #3-311, *Harassment and Discrimination Prevention*
- College Policy #4-412, *Safety*
- College Policy #6-601, *Information and Communication Technology Appropriate Use Policy*
- College Policy #6-603, *College Data Record Retention and Disposition*
- Academic Collective Agreement
- Support Staff Collective Agreement
- Ontario Human Rights Code
- Occupational Health and Safety Act
- Residence Community Standards (in Student Handbook)

### Appendices

N/A

### History of Amendments/Reviews:

| Section(s)                      | Date                         | Comments   |
|---------------------------------|------------------------------|--|
| New policy                      | created 2015                 | Framework endorsed by Committee of Presidents<br>• Board approval of policy<br>(Resolution BoG March 25-2015 #6)     |
| Full review<br>- policy renamed | April through August<br>2016 | Required as a result of new legislative requirements<br>• Board approval of policy<br>(Resolution BoG Dec14-2016 #1) |