

COLLEGE POLICY

Sexual Violence Prevention	
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Manual Classification:	Section 3 – Human Resources
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Administrative Contact for Policy Interpretation:	<ul style="list-style-type: none"> • Vice President Student Experience • Vice-President Human Resources
Linked to Operating Procedure:	#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 promotes procedural fairness. The objective of this Policy 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.

The College recognizes that while sexual violence can impact all members of the community, sexual violence may disproportionately affect certain individuals or groups who experience intersecting forms of systemic discrimination or barriers on grounds including but not limited to those protected under the *Ontario Human Rights Code*, such as: gender identity and expression, sexual orientation, race, creed, Indigenous identity, ethnicity, disability or socioeconomic status. The College further recognizes that individuals who have experienced sexual violence may experience emotional, mental health, work, academic or other difficulties.

In addition, the College recognizes that members of the College community will engage from time to time with minor children and other vulnerable persons who may be particularly at risk with respect to sexual violence. The College acknowledges that additional duties and responsibilities may apply in these cases, over and above those generally applicable under this Policy and the related Operating Procedure.

Purpose

This document, along with the associated Operating Procedure (#3-343-OP), set the College's Policy and response procedure with respect to sexual violence. The objective is to ensure that those who experience sexual violence are believed and their rights are respected when they report sexual violence and/or seek support; that the College has a process of fact-finding that protects the rights of individuals; and that the College 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, visitors of Fleming College or others:

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 using computer and telephone systems, and College and private vehicles being used for College business or for travelling between work and study locations;
4. occurring at College-sponsored events, including while on placement, co-op or College-related trips;
5. occurring with respect to secondary school students involved in dual credit programs and/or attendees of summer camps and similar programs for children and young people;
6. 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. Supportive services will still be provided in these instances.

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

Age of consent for sexual activity: The age at which a person can legally consent to sexual activity. In Canada:

- Children under 12 cannot consent to sexual acts
- 12 and 13 year-olds can consent to sexual activity with youth who are up to 2 years older
- 14 and 15 year-olds can consent to sexual activity with a person who up to 5 years older
- Subject to these specific “close in age” exceptions, a person must be at least 16 years old to legally consent to sexual activity
- No person under the age of 18 is able to consent to being in sexualized pictures or videos

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, visitors 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 named in a report of sexual violence as a person who engaged in sexual violence.

Sexual assault: 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 activity.

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, by telephone, and 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 can choose freely and enthusiastically, at multiple stages, to engage 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 may be 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, psychological, 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 any or 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 over them, 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, capable 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 or otherwise incapable of giving consent to sexual activity.

Workplace Sexual Harassment:

- a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

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

General Principles

1. The College is 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 creating an environment in which those who disclose an experience of sexual violence are believed and their right to dignity and respect is protected throughout the process of disclosure and institutional response;
- 1.3 educating the College community about sexual violence, 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 kindness, dignity, respect, and 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 promote sensitivity 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 that acknowledges the complex issues of intersectionality, with the intention of preventing a culture of sexual violence on campus;
- 1.9 providing information to the College community about the College's sexual violence policies and procedures;
- 1.10 providing appropriate education and training to the College community about responding to disclosures 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 College 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 College who 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 to 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). When reporting an incident, the survivor's name will be kept anonymous if the survivor has not given express consent to disclose. Members of the College community 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 sexual violence and 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. There are two types of internal reports, one is a documentation of the experience (no associated fact-finding process), while the other is a formal report with a fact-finding process. The decision-making power is with the survivor about whether they would like to report 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).

Notwithstanding any other provision of this Policy or the Operating Procedure, the College and/or an individual who becomes aware of or witnesses sexual violence shall comply with any specific legal obligation to report sexual violence to an external third party which may be applicable (for example, where the person subject to sexual violence is under 16 years of age or is a vulnerable person). Where such a report is made, the third party may assume responsibility for responding to the report, including but not limited to the conduct of any fact finding process required.

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

The College will promote procedural fairness in dealing with all internal 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 before any sanction or disciplinary action is imposed. In rare situations where a risk of conflict of interest may arise if the College investigates a report of sexual violence, an external investigation may be considered.

- 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 obligations under this Policy and/or its other 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 reporting or dispute resolution procedure – for example, to make a report to the police (if the circumstances warrant this), to launch a civil lawsuit, to complain to the Human Rights Tribunal of Ontario or 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 (including grievances and complaints to the Human Rights Tribunal) are commenced in respect of a formal 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 Operating Procedure. Where there is an ongoing police investigation or other external investigation, the College will cooperate with the investigation. This will often involve the College pausing its process to allow the police or other third party to do their investigation. The College will resume its 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, identify witnesses, and be notified about the outcome of any determination or appeal decision. The Complainant 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, identify witnesses, and be notified about the outcome of any determination of findings and/or appeal decision.

Complainants and Respondents may attend meetings with a (non-participating) support person. The College will consider 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 will still question and expect direct answers from Complainants and Respondents.

3.5 Burden of Proof: A report of sexual violence must be substantiated based on the “balance of probabilities” standard (which means that it must be more likely than not that incident(s) of sexual violence prohibited under this Policy occurred). This is consistent with the burden of proof required by civil law and is different from the burden of proof of “beyond a reasonable doubt” required by criminal law.

3.6 Unsubstantiated or Vexatious/Bad Faith Reports: If a person, in good faith, discloses sexual violence or files a sexual violence report and a finding is made, following the fact-finding process, that a policy violation has not been substantiated on the “balance of probabilities” standard, the report will be dismissed and identified as unsubstantiated.

Disclosures or reports that are found, following the fact-finding process, to be vexatious or bad faith reports (that is, they are made purposely to annoy, embarrass, harass or harm the Respondent) may result in sanctions and/or discipline against the Complainant.

3.7 Record Keeping: All records resulting from formal Sexual Violence Prevention reports will be kept in a secure central registry and will not be a part of the academic or employment record of the persons involved. Keeping these records will be the responsibility of the Administrator of the Sexual Violence Prevention Policy, under the direction of the Vice President Student Experience. Access to these records will be restricted to authorized 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 employment or student file of either party. Where the report is substantiated, or where an individual has made a report that is later found to have been vexatious or made in bad faith, and sanctions or disciplinary action has been imposed as a result, a letter regarding the same will be placed in the employment file or student file of the individual subject to sanctions or disciplinary action.

Once each year, an individual may appeal to the Vice-President Human Resources and/or Student Experience to have the letter on file removed. The decision of whether the letter will be removed 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 maintained, and the College will 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 to ensure they understand their obligation to respect confidentiality. The College 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 or vulnerable person;
- there are reasonable grounds to believe that others in the College or wider community may be at risk of harm;
- disclosure is required to comply with a specific legal obligation to make a report to a third party or otherwise required by law.

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 obligations 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 be informed 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, and ensuring those persons with managing, supervising, and leadership responsibilities are aware of their obligations under the Policy and are able to implement its requirements. Content will be tailored to the audience and relevant to their roles and responsibilities in responding to and addressing sexual violence.
- 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 • Board approval of policy March 25, 2015

Full review
- policy renamed

April through August
2016

Required as a result of new legislative requirements
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policy Dec 14, 2016

Policy Review and
Revision

Summer / Fall 2019

Required as a result of legislative requirements
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