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| Policy Title: | Sexual Violence Prevention and Response |
| Policy ID: | #3-343 |
| Manual Classification: | Section 3 – Organizational Effectiveness and Human Resources (OEHR) |
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| Contacts for Policy Interpretation: | Executive Vice President, Academic and Student Experience; Vice President, OEHR |

1.0 - Policy Overview

Sexual Misconduct, Violence, and/or Assault 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 strives to be a safe and positive space where members of the College Community are able to work, learn and express themselves in an environment free from Sexual Violence.

The College recognizes that while Sexual Violence can impact all members of the community, Sexual Violence may disproportionately affect individuals or groups who experience intersecting forms of systemic discrimination or barriers on grounds including, but not limited to, 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, physical health, work, academic or other difficulties.

In addition, the College recognizes that members of the College Community will, at times, engage 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.

The College's process for fact-finding in response to reported incidents applies the principle of procedural fairness, intended to protect the rights of individuals.

The College will hold individuals who are found to have committed an act of Sexual Misconduct accountable for their actions.

2.0 - Purpose

This Policy establishes the definitions, scope, and responsibilities relating to the College's obligations to prevent, address, and respond to Sexual Violence within the College Community. This document, along with the associated Operating Procedure (#3-343-OP), set the College's Policy and response procedure with respect to Sexual Violence.

Through this Policy and the associated Operating Procedure, the College communicates its commitment to providing individuals with a safe process through which good faith reports about Sexual Violence or Sexual Misconduct may be made, as well as its commitment to assuring that the rights of those who report allegations of Sexual Violence and Sexual Misconduct will be respected when they make a report and/or seek support from the College.

3.0 - Definitions and Acronyms

The following definitions and/or acronyms used in this Policy and Operating Procedure are defined as follows:

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

- a) Children under twelve (12) years old cannot consent to sexual acts;
- b) Children twelve (12) and thirteen (13) years old can consent to sexual activity with youth who are up to two (2) years older;
- c) Children fourteen (14) and fifteen (15) years old can consent to sexual activity with a person who up to 5 years older;
- d) Subject to these specific "close in age" exceptions, a person must be at least 16 years old to legally consent to sexual activity;
- e) No person under the age of eighteen (18) years old can consent to being in sexualized pictures or videos.

Coercion: In the context of Sexual Violence, Coercion is unreasonable and persistent pressure for sexual activity. Coercion is the use of emotional manipulation, blackmail, threats, intimidation, or the promise of rewards or special treatment, to persuade someone to do something they do not wish to do, such as being sexual or performing sexual acts.

College Community: All persons who study, teach, conduct research at, or work at or under the auspices of the College, or student governments, including, 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: A person who makes a report under this Policy.

Drug-Facilitated Sexual Assault: The use of alcohol and/or drugs (prescription or non-

prescription) by a person to control, overpower or subdue a victim/Survivor for purposes of Sexual Assault.

Rape Culture: A culture in which dominant ideas, social practices, media images, and societal institutions implicitly or explicitly condone Sexual Assault by normalizing, accepting or trivializing Sexual Violence and by blaming Survivors for their experience.

Respondent: A person who is named in a report of Sexual Violence as a person who engaged in Sexual Violence against another.

Sexual Assault: 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 Misconduct: The range of sexual relations directed towards any student without Sexual Consent (as defined by this Policy), from remarks of a sexual nature to touching to penetration that:

- a) Are illegal under the Criminal Code of Canada;
- b) Constitutes Sexual Assault or Violence as defined in this Policy; or
- c) Infringes on the rights of the student under clauses 7(3)(a) and/or 7(3)(b) of the Human Rights Code to be free from, respectively, sexual solicitation or advances and/or free of reprisal or threat of reprisal for the rejection of same.

Sexual Violence: Any sexual act(s) targeting another person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, which is committed, threatened or attempted against a person without the person's consent, and includes Sexual Assault, Sexual Harassment, Sexual Misconduct, 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 including social media.

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, 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.

Survivor: Some who have experienced Sexual Violence may choose to identify as a Survivor. Individuals might be more familiar with the term "victim". We use the term Survivor throughout this Procedure and the Policy where relevant because some who have experienced Sexual Assault believe they have overcome the violent experience

and do not wish to identify with the victimization. It is the prerogative of the person who has experienced these circumstances to determine how they wish to identify.

Under the Influence of Substances (drugs and/or alcohol): When the amount of alcohol or drugs consumed (voluntarily or involuntarily) impacts someone's decision making capacity, awareness of consequences, and ability to make fully formed judgments; this individual lacks the capacity to give consent (to understand the 'who, what, when, where, and why' of their sexual interaction).

Sexual activity with someone who one knows to be or, based on circumstances should reasonably have known to be, mentally or physically incapacitated (by drug or alcohol use, unconsciousness or a blackout) constitutes Sexual Assault.

Some signs that a person may be Under the Influence, where they may not be able to consent are overt and others are more subtle, every person will look different. Some evidence of may include:

- Slurred speech;
- Bloodshot eyes;
- The smell of alcohol on one's breath;
- Shakiness;
- Vomiting;
- Unusual/strange behaviour; and/or
- Unconsciousness.

If there is ever any question, the initiator of sexual activity (regardless of their level of sobriety) should always err on the side of assuming a party to be Under the Influence of substances to the point of diminished judgement, rather than risking committing Sexual Assault.

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.

Workplace Sexual Harassment: Engaging in a course of vexatious comments 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. This includes making a sexual solicitation or advance where the person making the solicitation or advance can 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. Please see [College Policy #3-311 Harassment and Discrimination](#) for more information regarding Workplace Sexual Harassment.

4.0 - Scope

It is the responsibility of all members of the College Community to uphold the principles of this Policy. This Policy and the 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 which occur:

- a) Within, or affecting people or property within the physical boundaries of the College;
- b) On, or affecting College owned or controlled property, including student residences;
- c) Using computer, online platforms and telephone systems including mobile devices, and College and private vehicles being used for College business or for travelling between work and study locations;
- d) At College-sponsored events, including while on placement, co-op or College-related trips;
- e) 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;
- f) Off-campus and are likely to have an impact on the working, living and/or learning environment at the College.

This Policy does not apply to incidents occurring off-campus which have no or little likelihood of having an impact on the working/learning/living environment at the College. Incidents not covered by this Policy should be pursued by accessing and collaborating with the appropriate community support options (i.e., law enforcement, hospital, counselling). The College will still offer support services to members of the College Community who are affected by incidents which are not covered by this Policy.

5.0 - General Principles

The College is committed to:

- a) Assisting those who have been affected by Sexual Violence by offering choices, detailed information, and support regarding, among other things, provision of and/or referral to counselling and medical care, information about legal options, and appropriate academic and other accommodation;
- b) Creating an environment in which those who disclose an incident of Sexual Violence are believed and their right to dignity and respect is protected throughout the process of disclosure and institutional response;
- c) 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;
- d) 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;
- e) Ensuring that on-campus (internal) fact-finding procedures are available where incidents of Sexual Violence occur, even when the individual chooses not to make a report to law enforcement;

- f) Engaging in appropriate procedures for fact-finding and adjudication of a report that are in accordance with College policies, standards and applicable collective agreements and which promote sensitivity and procedural fairness;
- g) Ensuring coordination and communication among the various departments who are most likely to be involved in the response to Sexual Violence on campus;
- h) Engaging in public education and prevention activities on the topics of Sexual Violence and bystander intervention which acknowledge the complex issue of intersectionality, with the intention of preventing a culture of Sexual Violence on campus;
- i) Providing information to the College Community about the College's Sexual Violence policies and procedures;
- j) Providing appropriate education and training to the College Community about responding to disclosures of Sexual Violence;
- k) Creating and contributing to a campus atmosphere in which Sexual Violence is not tolerated;
- l) Monitoring and updating College policies and procedures to ensure that they remain effective and in line with other existing policies and best practices.

5.1 – Consent

It is the responsibility of the initiator of sexual activity to ensure that Sexual Consent is given by the other participant(s) to ensure clear, capable and affirmative responses are communicated at all stages of sexual engagement.

It is 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.

It is also imperative to understand the following regarding Sexual Consent:

- a) Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgment cannot consent;
- b) A person is incapable of giving consent if they are asleep, unconscious or otherwise unable to communicate;
- c) A person who has been threatened or coerced (i.e., does not agree voluntarily) into engaging in the sexual activity is not consenting to it;
- d) A person who is drugged is unable to consent;
- e) 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);
- f) 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;
- g) The fact that consent was given previously to a sexual, dating, or domestic relationship does not mean that consent is deemed to exist for any or all future sexual activity;
- h) A person can withdraw consent at any time during the course of a sexual encounter;

- i) 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;
- j) Consent cannot be given on behalf of another person.

5.2 - Employee Misconduct

Sexual Misconduct as defined by this Policy by any employee towards any College student is strictly prohibited. Staff engaging in such Sexual Misconduct may face disciplinary action, up to and including termination.

In accordance with the *Ministry of Training, Colleges, and Universities Act*, employees who are terminated or resign over acts of Sexual Misconduct directed towards students as defined by this Policy may not be rehired at any time by that College.

6.0 – Reporting and Fact-Finding Process

6.1 – Any employee at Fleming College who becomes aware of, or witnesses, an incident of Sexual Violence has a responsibility to report that behaviour to the appropriate resources as outlined in this Policy's linked procedure OP #3-343.

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). The Survivor's name will be kept anonymous if the Survivor has not given express consent to disclose.

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.

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.

6.2 – A report of Sexual Assault or any other kind of Sexual Violence can be made under this Policy by any member of the College Community. 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 (see [College Operating Procedure #3-343 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 agency that receives the report will assume responsibility for responding to the report, including but not limited to the conduct of any fact-finding process required.

6.3 – Measures to ensure the emotional, psychological and physical safety of the Survivor are protected can and will be made (see Section 6 - Accommodations of the linked [College Operating Procedure #3-343 Sexual Violence Prevention](#)).

6.4 – 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 will be provided with an opportunity to participate in the fact-finding process.

6.5 – 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.

6.6 – 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(s) identified in the report where it is required to comply with obligations under this Policy and/or all other legal obligations. In these cases, the Complainant always has the right to decide to no longer participate.

6.7 – 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:

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

The College will take all 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.

6.8 – Multiple Proceedings:

This Policy does not preclude a Complainant from initiating an alternative reporting or dispute resolution procedure where applicable – for example, to make a report to the police (if the circumstances warrant this), to launch a civil lawsuit, to file a complaint with 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 that 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.

6.9 – Rights of the Complainant and the Respondent

As part of the reporting and fact-finding process, Complainants and Respondents each have the right to provide supporting documents, identify witnesses, and be notified about the outcome of any determination or appeal decision. A Complainant will not be required to answer any questions about their manner of dress, sexual history, private counselling, or academic records as part of the fact-finding process.

Complainants and Respondents may attend their respective 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.

6.10 – Balance of Probabilities

A report of Sexual Violence must be assessed and determined based on the “balance of probabilities” standard. This means that, for a report to be substantiated, 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 in civil proceedings and is different from the criminal burden of proof which requires that allegations be proven “Beyond a Reasonable Doubt.”

6.11 – Unsubstantiated or Vexatious/Bad Faith Reports:

If a person, in good faith, makes a report under this Policy which, following the fact-finding process, is found to be unsubstantiated 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 to have been made in bad faith (that is, they are made purposely to annoy, embarrass, harass or harm the Respondent) may result in sanctions and/or discipline against the Complainant.

7.0 – Confidentiality and Record-Keeping

7.1 - 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 Executive Vice President, Academic and Student Experience. Access to these records will be restricted to authorized College employees in alignment with [College Policy #1-111 Access to Information and Protection of Privacy](#), or as may be required by law. All records will be kept according to [College Policy #6-604 Electronic Information Security](#).

7.2 - Confidentiality

Confidentiality is particularly important to those who have disclosed experiencing 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.

By law, confidentiality cannot be assured in the following circumstances, where:

- a) An individual is at imminent risk of self-harm;
- b) An individual is at imminent risk of harming another;
- c) There is a concern about the safety or welfare of a child or vulnerable person;
- d) There are reasonable grounds to believe that others in the College or wider community may be at risk of harm;
- e) 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.

7.3- Awareness

The College will ensure awareness of this Policy and its procedure for students, staff and the College Community by taking steps to make the documents plainly available to staff and students, and by delivering targeted training to all employees and students on an ongoing basis. See this Policy's linked [College Operating Procedure #3-343 Sexual Violence Prevention](#) for more details.

7.4 - Non-Disclosure:

- a) An agreement between an institution and any person, including a collective agreement or an agreement settling existing or contemplated litigation, shall not

contain any term that, directly or indirectly, prohibits the institution or any person related to the institution from disclosing that an allegation or complaint has been made if required that an employee of the institution committed an act of sexual misconduct toward a student of the institution, and any such term that is included in an agreement is void. Should such a disclosure be required of the College, the confidentiality of the Claimant will be preserved as an utmost priority.

- b) Exception:** An institution may enter into an agreement that contains a term described in subsection (5) if the student requests that the institution do so, provided that,
- the student has had a reasonable opportunity to receive independent legal advice;
 - there have been no undue attempts to influence the student with respect to the request;
 - the agreement includes an opportunity for the student to decide to waive their own confidentiality in the future and the process for doing so; and
 - the agreement is of a set and limited duration.

8.0 – Related Documents

- *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M.19
- *Ontario Human Rights Code* R.S.O. 1990, C. H.19
- *Occupational Health and Safety Act*, R.S.O. 1990, C. O.1
- *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*
- College Policy #1-110, *Honouring the Rights of Indigenous Peoples*
- College Policy #3-311, *Harassment and Discrimination Prevention and Response*
- College Policy #4-412, *Safety*
- College Policy #4-420, *Violence Prevention*
- College Policy #5-506, *Student Rights and Responsibilities*
- College Policy #6-601, *Information and Communication Technology Appropriate Use Policy*
- College Policy #6-603, *College Data Record Retention and Disposition*
- College Operating Procedure #3-311, *Harassment and Discrimination Prevention and Response*
- College Operating Procedure #3-343 OP, *Sexual Violence Prevention*
- College Operating Procedure #4-420 OP, *Violence Prevention*
- College Operating Procedure #5-506 OP, *Student Rights and Responsibilities*
- Academic Collective Agreement
- Support Staff Collective Agreements
- Residence Community Standards (in Student Handbook)

9.0 - History of Amendments/Reviews

| Date | Actions |
|-------------|---|
| March 2016 | Original Policy approved by Board of Governors Framework endorsed by Committee of Presidents |

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| August 2016 | Reviewed with updated legislation |
| December 2016 | Policy Renamed |
| September 2019 | Statutory review per legislation |
| January 2023 | Reviewed and updated to align with changes to legislation |