

Policy Title:	SEXUAL MISCONDUCT POLICY	Area of Responsibility: SENIOR VICE PRESIDENT, HUMAN RESOURCES & FACILITIES SERVICES
Policy Section:	HUMAN RESOURCES	
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Sexual Misconduct Policy (Bill 26)

1. Purpose

St. Clair College is committed to preventing and addressing all forms of Sexual Misconduct as defined by this Policy.

The primary purpose of this policy and its related procedure is to both prevent, through training and education, and to outline the process to respond to acts of Sexual Misconduct initiated, instigated, and/or perpetrated by College employees towards students. The policy also ensures that students affected by Sexual Misconduct are supported and accommodated.

2. Policy Statement

St. Clair College is committed to challenging and preventing Sexual Misconduct and creating a safe space for any student who has been affected by Sexual Misconduct. The College is expected to be a safe and positive space where students feel able to work, learn and express themselves in an environment free from Sexual Misconduct. It is understood that any act of Sexual Misconduct perpetrated by a College employee is legal grounds for discipline, including dismissal, the latter of which will prevent the re-hiring of the employee.

All reports of Sexual Misconduct will be fully investigated in a manner that ensures due process. We recognize that Sexual Misconduct can occur between individuals regardless of sexual orientation, gender, and gender identity or relationship status as articulated in the Ontario *Human Rights Code*. We also recognize that individuals who have experienced Sexual Misconduct may experience emotional, academic or other difficulties.

Where the alleged perpetrator of sexual misconduct is not an employee of the College, please refer to the Sexual Violence Policy.

We are committed to:

- **Support:** inclusive trauma-informed and culturally inclusive response and support from trained counselors, therapist and the Sexual Violence Prevention Team; assisting those who have been affected by Sexual Misconduct 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.
- **Listen:** ensuring that those who disclose that they have been subject to Sexual Misconduct are supported, and that their right to dignity and respect is protected throughout the process of disclosure, investigation and institutional response.
- **Compassion:** treating individuals who disclose Sexual Misconduct with compassion.
- **Safety:** the College will take every reasonable step to protect the safety and security of all parties who have been affected by Sexual Misconduct.
- **Response:** ensuring that supports and resources are readily available to those impacted by Sexual Misconduct, and that appropriate procedures for investigation and adjudication of a complaint are in place in accordance with College policies, standards, and applicable collective agreements, which ensure fairness and due process.
- **Education and Training:** on Sexual Misconduct prevention, including discussion around appropriate employee/student relationships, will be offered to all staff and students. This will include addressing harmful attitudes and behaviours, and how to identify and prevent Sexual Misconduct.
- **Culture:** creating a campus atmosphere in which Sexual Misconduct will not be tolerated.
- **Continuous Improvement:** monitoring and updating our policies and protocols to ensure that they remain effective and in line with other existing policies and best practices and all applicable legislation.

3. Application and Scope

This policy applies to all students in respect of their interactions with all employees, including contracted employees, of the College.

When employees interact with students, they are in a position of trust and power, thus creating a power differential. These relationships must not jeopardize the effective functioning of the College by the appearance of either favoritism or unfairness in the exercise of professional judgment. In relationships with students, the employee is expected to be aware of his/her professional responsibilities and to avoid perceived or actual conflicts of interest, favoritism or bias. **Please refer to the Employee-Student Relationship Policy.**

The College will respond to and investigate all allegations of Sexual Misconduct towards a student involving an employee of the College. This includes behaviour that occurs on or off College property, and behaviour observed or carried out through an electronic, online or social media platform, including by text, audio, video or images.

4. Definitions

“Complainant/ Student” is the term used in this policy to refer to a full time or part time student who has experienced Sexual Misconduct by an employee of the College. The term “student” will be used throughout this policy.

“Respondent/Employee” is the term used in this policy to describe an individual employed (unionized or non-unionized) by the College, which includes, administrators, faculty and support staff, whether in a full time, part time or contractual capacity, alleged to have committed an act of Sexual Misconduct.

“Sexual Violence Prevention (SVP) Team” is a group of College Administrators who support and oversee the process and policies related to Sexual Violence (as governed by the Sexual Violence Prevention and Reporting Policy) and Sexual Misconduct.

The Human Resources SVP Lead meets with those affected by Sexual Misconduct, and presents the supportive resources, the investigatory process and applicable policies.

“Sexual Misconduct” is defined as:

- Physical sexual relations with a student, touching of a sexual nature of the student or behaviour or remarks of a sexual nature toward the student by an employee of the College where,
 - (i) the act constitutes an offence under the *Criminal Code* (Canada),
 - (ii) the act infringes the right of the student under clause 7(3)(a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or
- Any conduct by an employee of the institution that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance, or
- A personal relationship between an employee and a student, or failure to disclose such relationship, that violates the Employee-Student Relationship Policy where a sexual relationship is initiated or pursued.

"Disclosure" is the act of a student and/or employee disclosing information in order to receive support and services. Information about Sexual Misconduct may be presented to a member of the College Community or a member outside of the general public.

Alternatively, they can reach out to the Sexual Violence Lead (SV Lead - see Resources), to discuss options on reporting and supports.

College employees who receive disclosures are obligated to report the incident to the Sexual Violence Lead. The College is obliged to investigate such disclosures, even if the student does not want to participate. This reporting is required to assess risk and to enable the College to comply with the *Ministry of Training, Colleges and Universities Act*.

If the Sexual Violence Prevention (SVP) Lead (or designate) believes there to be a risk to the safety of the Student and/or the College Community, the College, where appropriate, will notify the police. The SVP Lead and CRO will use the following conditions as a guide to determine the risk and corresponding need to report:

1. An individual is at imminent risk of self-harm;
2. An individual is at imminent risk of harming another person; or
3. There are reasonable grounds to believe that others in the College or wider community may be at risk of harm (i.e., more than one report identifying the same individual).

" **Sexual Misconduct Report**" is a written allegation of a violation of this policy made by a student, member of the College community or a member of the general public and is provided to the Associate Vice President, Human Resources, Office Administration & Facilities Services or to the College Resolution Officer. The College must investigate any allegation brought to their attention. The College is obligated to inform an employee of allegations made against them.

Making a Sexual Misconduct Report does not prevent the student from also reporting the incident to the police. A Sexual Misconduct Report shall be on the form prescribed by this policy and shall include the items listed below. The Student, member of the College community or member outside of the College community can write the report themselves or request the assistance of a scribe to take notes as they verbally outline the incident. The Student, member of the College community or member outside of the College community will be requested to sign the Sexual Misconduct form or formally acknowledge in writing (and the scribe's notes where a scribe is utilized) to confirm that the contents of the Sexual Misconduct form and the scribe's notes have been reviewed and are an accurate statement of the facts of the incident. The form should include a detailed statement of facts by the student, as well as a list of any witnesses that the student may want to have the investigator interview.

"**Formal Police Report**" refers to the process of reporting a crime (e.g., sexual assault, criminal harassment) to the police who will conduct an investigation that may result in criminal charges. This type of report cannot be made anonymously.

"**Third Party Report**" is the act of sharing information regarding an incident of Sexual Misconduct, whether it was something witnessed, shared or disclosed to them, with any member of the College Community. In the event of a Third Party Report, the College will contact the student and schedule a meeting to review the policy, options, actions and supports.

"**Interim Measures**" are restrictions placed on an individual's rights and privileges in order to ensure the safety of the College Community and provide time for the College to determine its response and conduct an investigation. The College may impose interim measures immediately, prior to a full investigation. Examples of such measures may include, but are not limited to:

- Restricting access to certain parts of campus,
- Communication ban issued to both parties,
- Developing and supporting a Safety Plan,
- Moving the student to another section, if the student makes such a request,
- Leave of absence in accordance with employment law, collective agreements, and/or College policies.

"Procedural Fairness" is achieved by informing employees of all allegations and evidence against them, and by giving them reasonable notice of the time, place and nature of the meeting where they can respond to the allegations. It also involves providing students and employees with information about the College's investigation and decision-making processes and ensuring that outcomes are determined by an impartial decision maker. During the investigative process, this will also involve a requirement on the Investigator to provide all parties and witnesses with a copy of any notes of interviews taken to allow the individual the opportunity to correct any errors, add any missing details, and finally, confirm the accuracy of the notes. Upon request, the Investigator shall produce these notes to the Senior Vice President, Human Resources & Facilities Services.

"Confidentiality" is the term used in this policy to refer to the College's responsibility and obligation to ensure that any private and personal information provided in a Sexual Misconduct report and/or investigation of Sexual Misconduct is collected, used, maintained and secured appropriately. The College will make every effort to maintain confidentiality of all persons involved in a disclosure or report of Sexual Misconduct, including the student, employee and witnesses. All persons participating in the process are required to maintain confidentiality with respect to information provided in the course of the disclosure, reporting, assessment and/or investigation of an incident of Sexual Misconduct. Failure to adhere to the requirement of confidentiality may lead to discipline in accordance with College policies and/or Collective Agreements.

"Accommodation" is the provision of individualized support or alternative means of fulfilling academic or employment responsibilities for all parties involved in the Complaint. . The arrangement of accommodations recognizes the experience of the parties and how that may affect participation in academics or workplace duties. Students who are impacted will work with a Student Services counsellor to create a formal accommodation plan.

5.0 Procedure

All students of the College Community who have been affected by Sexual Misconduct instigated by an employee are encouraged to disclose their experience to a trusted member of the College Community, the SVP Lead or the College Resolution Officer as soon as they are able to do so. Students will be able to receive supports, services or accommodations.

Amnesty from College Sanctions: The College recognizes that some individuals may be hesitant to disclose or report Sexual Misconduct that occurred in situations where they were drinking while underage or using illegal drugs. A student or other members of the College Community who discloses or reports Sexual Misconduct will not be subject to College sanctions for violations of College policies related to their use of alcohol and/or illegal drugs at the time of the incident.

Anonymous Reports: Individuals who experience Sexual Misconduct may choose to disclose to College staff anonymously (i.e., without providing their name or personal information). The College will provide individuals who make anonymous disclosures with information on supports, services, accommodations, interim safety measures, and other available options.

5.1 Obligation to Report:

College employees, governors, volunteers, appointees, suppliers, contractors, etc. who witness or have knowledge of Sexual Misconduct have an obligation to make a Third-Party Report immediately. All members of the College Community can make these reports in person, by phone, or by emailing Security Services, the SVP Lead.

5.2 Overall Safety:

Where the College becomes aware of incidents of Sexual Misconduct by an employee, which occur on or off College property and that pose a risk to the safety of members of the College community, the College shall take all reasonable steps to ensure the ongoing and future safety of the College community and shall immediately initiate an investigation.

5.3 Right to Withdraw a Report

A student 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 and to ensure ongoing and future safety of the College community.

5.4 Protection from Reprisals, Retaliation or Threats

It is a violation of this Policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a student or other individual for:

- Having pursued rights under this Policy;
- Having participated or co-operated in an investigation under this Policy; or
- Having been associated with someone who has pursued rights under this Policy.

The College will take all reasonable steps to protect students from reprisals, retaliation and threats. This may entail, for example, advising the employee in writing of their duty to refrain from committing a reprisal. The College may also address the potential for reprisals by providing an accommodation to the student appropriate in the circumstances.

5.5 Unsubstantiated Reports

If a person, in good faith, discloses or files a Sexual Misconduct report that is not supported by evidence gathered during an investigation, the complaint will be dismissed. Records associated with the investigation and the results of the investigation will be kept on file as appropriate. Parties involved may still access and/or inquire further about support services.

5.6 Frivolous, Vexatious or Bad Faith Reports

Reports that are found to be frivolous, vexatious, or bad faith complaints, that are made purposely to annoy, embarrass or harm the employee, may result in sanctions and/or discipline against the student.

5.7 Limits of Confidentiality

The College will restrict access to all information provided in the disclosure/formal report and subsequent investigation to those with legitimate need for such access and will provide education and training to those who are regularly involved in receiving disclosures and the administration of reports.

However, confidentiality cannot be assured in circumstances where:

- The College determines that a risk to an individual or the College Community exists.
- A Sexual Misconduct Report has been made under this policy and the Employee must be informed of the details of the Report as part of the investigation and in keeping with procedural fairness; and/or
- Reporting is required by law.

In such circumstances, only information as is necessary will be released.

5.8 Non-Disclosure Agreements

An agreement between an institution and any person, including a collective agreement or an agreement settling existing or contemplated litigation, that is entered into on or after July 1, 2023, shall not contain any term that, directly or indirectly, prohibits the institution or any person related to the institution from disclosing the fact that a court, arbitrator or other adjudicator has determined that an employee of the institution has committed an act of sexual abuse of a student of the institution, and any such term that is included in an agreement is void.

Notwithstanding the foregoing, an institution may enter into an agreement that contains a term as described above if the student requests that the institution do so, provided that:

1. the student has had a reasonable opportunity to receive independent legal advice;
2. there have been no undue attempts to influence that student with respect to the request;
3. 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
4. the agreement is of a set and limited duration.

5.9 English as a Second Language

Any person involved in this process as party or witness, for whom English is a second language, may communicate in their native language for any purpose provided for in this policy, including providing written evidence, argument or in person interviews. In the case of written submissions, the College shall have all documentation submitted officially translated into English at the College's expense. In the case of verbal communications, the College shall retain an official translator, at the College's expense, to translate the conversation from the person's native language to English and from English to the person's native language.

Where the student or employee has elected to communicate in their native language, the written decision following the initial investigation or any decision on appeal/grievance, shall be officially translated by the College into the party's native language, at the College's expense, prior to forwarding the decision to

the respective party.

6.0 Formal Complaint Process, Investigation and Adjudication

Once a Sexual Misconduct Report has been filed, as defined by this policy, it shall be forwarded forthwith to the to the Human Resources SVP Lead, or designate, who shall review the Report, and within five (5) business days, retain an external Investigator with expertise in investigating cases of Sexual Misconduct to investigate the Report.

The employee will be notified in writing of the investigation by the Human Resources SVP Lead or designate and will be given a reasonable period of time to submit a written response to the Report. The notification to the employee will include:

- A redacted copy of the Report, if warranted.
- An outline of any interim measures implemented, if any.
- An indication that the employee has the right to remain silent and not participate in the investigation; however, the investigation of the allegations in the Report will proceed in the absence of the participation or response, and a decision will be made based on the information and evidence gather by the Investigator conducting the investigation; and
- Information regarding available support services (i.e. EAP services).

The Investigator will conduct an investigation, which will generally include the following:

- Receipt and review of the Report and the written response from the employee.
- Interviews of the student, the employee and any witnesses.
- Preparation of a written summary of information obtained through interviews.
- Receipt and review of any additional documentation determined to be relevant to the investigation.
- Preparation of a written investigation report to be submitted to the College Resolution Officer setting out the Investigator's factual findings and a determination of whether the allegations of sexual misconduct set out in the Report have been established, based on a balance of probabilities.

The Investigator will have regard to the following general principles and guidelines in conducting the Investigation:

- The investigation shall be completed in a confidential manner and will adhere to the principles of procedural fairness.
- Within five (5) business days of receiving the Sexual Misconduct Report, the Human Resources SVP Lead or Investigator shall notify the student and employee that the Investigator has been appointed to investigate the Report and will outline the general investigative steps of the investigation.
- The student may have legal counsel (at their cost) and/or a support person present during their interview.
- The employee may have legal counsel (at their cost), union representation, and/or a support person present during their interview.
- The Investigator conducting the interview shall provide a copy of their interview notes to the student and the employee (separately), as well as to all witnesses, for their review and to ensure the accuracy of the information obtained by the Investigator during the

interview.

- The standard for determining whether the alleged Sexual Misconduct occurred shall be on the balance of probabilities.
- The Investigator shall complete the investigation and issue an investigation report to the College Resolution Officer no later than thirty-five (35) business days from receiving the Sexual Misconduct Report. In extenuating circumstances, this time period can be extended. In such circumstances, the Investigator shall advise the Vice President, Human Resources, Safety, Security and Facilities Management of the reason for the extension.

7.0 Upon Receipt of Investigative Report:

The College Resolution Officer shall provide the Senior Vice President, Human Resources & Facilities Services with a copy of the investigative report. The Senior Vice President, Human Resources & Facilities Services shall then:

- (a) Determine that there has been no finding(s) of Sexual Misconduct; or
- (b) Determine that there is insufficient or a lack of credible evidence to substantiate that the Sexual Misconduct occurred; or
- (c) Determine that there has been a finding(s) of Sexual Misconduct.

This analysis shall be assessed on a balance of probabilities (i.e. it is more likely than not that Sexual Misconduct occurred) and shall be completed within five (5) business days. Senior Vice President, Human Resources & Facilities Services shall then direct the College Resolution Officer to provide the parties with the findings of the investigation in writing within forthwith.

8.0 Sexual Misconduct Sanctions:

If an employee commits an act of Sexual Misconduct against a student, the College may discharge or discipline the employee for that act, and,

- (a) the discharge or disciplinary measure is deemed to be for just cause for all purposes;
- (b) the employee is not entitled to notice of termination or termination pay or any other compensation or restitution as a result of the discharge or disciplinary measure; and
- (c) despite subsection 14 (17) of the *Colleges Collective Bargaining Act, 2008*, and despite any provision of a collective agreement or employment contract specifying a penalty for the infraction, no arbitrator, arbitration board or other adjudicator shall substitute any other penalty for the discharge or disciplinary measure imposed by the institution.

If an employee commits an act of Sexual Misconduct against a student and the College discharges the employee for that act or the employee resigns from their employment, the College shall not subsequently re-employ the employee.

If the College determines that it has re-employed such an individual, the College shall discharge the employee and the clauses as noted above in (a), (b) and (c) above shall apply.

Where discipline is imposed, it may include:

- Mandatory training at the employee's expense;
- Letter of Discipline; or
- Suspension for a stated period of time.

8.0 Appeal and Grievance

A finding involving an employee subject to a collective agreement may be pursued through the applicable grievance and arbitration process. The process shall be dictated by the collective agreement and 8.1 and 8.2 shall have no application.

8.1 Requesting Permission to Appeal (student employee)

The student may request an appeal of any finding made by the external agency or person and/or any sanction imposed, by requesting permission in writing, addressed to the Senior Vice President, Human Resources & Facilities Services, within five (5) business days of receiving the written notice of the investigative findings.

The Senior Vice President, Human Resources & Facilities Services shall grant permission to appeal if the student can establish, on the balance of probabilities, at least one of the following grounds:

- There is new information that is likely to change the outcome; or
- There is evidence of a procedural error or bias in the process.

If the request for permission is denied by the Senior Vice President, Human Resources & Facilities Services, there is no further right of appeal, and the matter shall be considered as concluded.

8.2 Appeal Panel

If the request for permission is approved by the Senior Vice President, Human Resources & Facilities Services, the matter, including the entire record of the evidence and the report of the Investigator, shall be forwarded to an Appeal Panel, for the purposes of conducting an appeal of the original decision. The employee will be advised of the student's intent to appeal the decision.

The Appeal Panel shall consist of three (3) College Administrators appointed by the President. The President may appoint herself/himself to the Appeal Panel. The Appeal Panel shall select one person to act as the Chair of the Appeal Panel. The Appeal Panel may, in its discretion, retain external legal counsel for the purpose of providing legal counsel and assistance to the Appeal Panel.

In recognition of the potential uniqueness of each situation, the Appeal Panel shall have full discretion to establish an appeal process and timeline for each appeal. Appeal proceedings shall be conducted in accordance with the principles of procedural fairness. The employee and the student will be provided an opportunity to provide a written response to the appeal.

Appeal hearings will be completed in person; both the employee and the student shall have the right to

appear before the Appeal Panel (separately) to make oral submissions and call relevant evidence, as the Appeal Panel may consider appropriate. The Appeal Panel may utilize alternative methods of conducting an appeal hearing to avoid traumatization of any party. Appeal Panel hearings shall be closed and not open to the public due to the confidential nature of the issues and the impact on the participants.

The Appeal Panel will determine if, on the balance of probabilities, the original decision should be revised based on the following considerations:

- Was the original investigation fair and unbiased?
- Were material mistakes made in the investigation that require correction?
- Were findings made by the Investigator reasonable and supported by the evidence?
- Was College policy correctly applied to the findings that were made and the sanctions that were imposed?
- Has any new evidence been presented that could impact the outcome of the investigation?

The Appeal Panel will consider all information, documents, evidence and submissions provided in the appeal proceedings.

The Appeal Panel will issue a written appeal decision within a reasonable time period. Copies of the appeal decision will be provided to the employee and the student.

The decision of the Appeal Panel shall be final and there is no further right of appeal.

9.0 Administration

9.1 Information Storage and Security

The College Resolution Officer will collect, maintain and secure all pertinent information gathered through the process and subsequent investigations. Information will remain confidential. Aggregate data about the number of reports, investigatory findings, sanctions and appeals received annually will be shared with Senior Administration at the end of each academic year.

The Sexual Misconduct Policy, reporting information and internal and external supports shall be posted on the College website, www.stclaircollege.ca/svp as a resource for students and employees to access information on sexual misconduct.

9.2 Resources

- Bill 26 – Strengthening Postsecondary Institutions and Students Act, 2022.
- Policy 3.1 Health and Safety Policy
- Policy 7.1 Code of Student Rights and Responsibilities
- Policy 5.15 Respectful Work and Education Place Policy
- Policy 3.17 Workplace Violence Prevention and Reporting Policy
- Policy 3.34 Sexual Violence Prevention and Reporting Policy
- Code of Conduct and Conflict of Interest
- Employee-Student Relationships Policy