

HR712: Sexual Misconduct by an Employee Towards a Student

Policy Title: Sexual Misconduct by an Employee Towards a Student
Policy Number: HR712
Owner: Belonging, People and Culture
Approved by: College Executive Team
Effective Date: July 1, 2023

Reference: *Bill 26, Strengthening Post-secondary Institutions and Students Act, 2022*
Criminal Code (Canada)
Ontario's Human Rights Code, R.S.O. 1990, c. H.19
Labour Relations Act, 1995
Colleges Collective Bargaining Act, 2008

Links to Other Policy: CR306: Sexual and Gender-Based Violence Prevention Policy
CR1211: Workplace Violence Prevention Policy
HR709: Workplace Harassment, Discrimination & Bullying

BACKGROUND

St. Lawrence College is committed to making our resources fully accessible to all persons. This document will be made available in alternative format upon request.

Definitions:

College Records

The employment file of an Employee, or other formal record held in the Belonging, People and Culture department of the College, in hard copy and/or electronic, including information in the Human Resources Management System.

Complainant

A Student, or another person, who submits a complaint or reports a sexual misconduct by an Employee towards a Student.

Consent

The explicit, ongoing, informed, and voluntary agreement to engage in physical contact or sexual activity. Consent cannot be given by someone who is incapacitated (such as by drugs or alcohol), unconscious, or otherwise unable to understand and voluntarily give consent to. For the purpose of this Policy, consent cannot be considered to be given by a Student to an Employee who is considered to be in a position of power and authority over the Student.

Criminal Code (Canada)

The *Criminal Code* is a federal law that includes definitions of most of the criminal offences that the Parliament of Canada has enacted. It is often updated as society evolves and to improve the Canadian criminal process.

Employees

The Employment Standards Act (ESA) defines an Employee as including: “a person, including an officer of a corporation, who performs works for an employer for wages; a person who supplies services to an employer for wages; a person who receives training from a person who is an employer, as set out in subsection (2); or a person who is a homemaker; and includes a person who was an employee.”

Person Disclosing

A person other than the complaining who discloses an incident of sexual misconduct by an Employee towards a Student.

Person Receiving the Disclosure/Complaint

A representative of the College Employee Relations and Workforce Ability unit of the Belonging, People and Culture department.

Retaliation/Reprisal

Retaliation and reprisal will have the same meaning under this Policy and means any adverse action against another person in relation to a disclosure of formal complaint of Sexual Misconduct. Retaliation and reprisal include attempting to take or threatening to take any adverse action against anyone involved in a process relating to this Policy. Retaliation and reprisal can take many forms including but not limited to threats, intimidation, pressure, harassment, violence or threats of violence or harm to others, any conduct that would discourage a person from participating in this Policy.

Student

Any person who is actively enrolled or pre-enrolled in a course or program at the College, at the time of an alleged incident under this Policy

Sexual Misconduct

Sexual Misconduct, within the meaning of *Bill 26, Strengthening Post-secondary Institutions and Students Act, 2022*, means:

- a) Physical sexual relations with a Student, touching of a sexual nature of the Student or behaviour or remarks of a sexual nature towards the Student by an Employee, direct or indirect, 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 Ontario's *Human Rights Code*, or
 - (iii) the act constitutes sexual misconduct as defined in this Policy, or contravenes this Policy or any other policy, rule or other requirement of the College respecting sexual relations between employee and students, or
- b) any conduct by an Employee of the College that infringes the right of the Student under clause 7 (3) (b) of the Ontario's *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

Section 7(3)(a) & (b) of the Ontario Human Rights Code (the "Code")

7(3) Every person has a right to be free from,

- a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or,
- b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

Purpose:

St. Lawrence College is committed to ensuring all members of the College community have the right to work, live, study and socialize in an environment that is free from any form of Sexual Misconduct. This policy specifically addresses Sexual Misconduct between an Employee and a Student of the College.

Scope:

This policy applies to all Employees of the college and has specific applications concerning Sexual Misconduct by an Employee toward a Student and the consequences for such misconduct. Sexual or romantic relationship between a Student and an Employee who is in a position to exercise direct or indirect power or authority over that Student, academic or otherwise, or who may confer, grant, deny or have influence of the Student's academic progress is prohibited. This policy should be read in conjunction with other policies identified as links to this policy.

POLICY STATEMENTS

- 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 misconduct.
- It is understood that any act of Sexual Misconduct perpetrated by a College Employee will result in discipline, up to and including dismissal from employment.
- Examples of Sexual Misconduct under this policy may include, but is not limited to:
 - touching of a sexual nature of the Student.
 - behaviour or remarks of a sexual nature.
 - physical sexual relations with the Student.
 - Harassing surveillance, also known as “stalking” of a sexual nature, either in person or by way of telephone calls, texts, letters, e-mail, social media, or other forms of written or electronic communications.
 - Sexual solicitation or advances.
 - Sexual assault, including any unwanted act of a sexual nature.
 - Sexual harassment, including any unwanted remarks, behaviours, or communications of a sexually orientated nature and/or a course of unwanted remarks.
 - Sexual violence, including any sexual act or act targeting a Student's sexuality, gender identity or gender expression, whether physical or psychological in nature that is committed, threatened, or attempted against a Student.

- Intimidation to engage in sexually related content or behaviour or attempting to coerce the Student into a relationship of a sexual nature to gain a reward or preferential treatment.
- When Employees interact with Students, they are likely to be seen or perceived to be 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 their professional responsibilities and to avoid perceived or actual conflicts of interest, favoritism, or bias.
- For the purpose of this Policy, consent cannot be considered to be given by a Student to an Employee who is considered to be in a position of power and authority over the Student.
- The college will provide training and education to employees on sexual misconduct.
- The college will provide support and accommodate Students affected by sexual misconduct.

Prohibited Relationships

- Sexual or romantic relationships are prohibited between a Student and an Employee who is in a position to exercise direct or indirect power or authority over that Student, academic or otherwise, or who may have influence of the Student's academic progress. Efforts by Employees to initiate these relationships are also prohibited. Violations of this policy by an Employee are grounds for discipline, up to and including dismissal.
- Consensual sexual relationships between a Student and an Employee who is not in a position to exercise direct or indirect power or authority over that Student may also be inappropriate. Any Employee who engages in such a relationship must ensure that it does not result in a real or perceived conflict of interest, does not violate this Policy, or raise other issues of professionalism. Such relationships must be disclosed to the Associate Director, Employee Relations and Workforce Abilities.

- 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 any electronic, online, or social media platform, including by text, audio, video, or images.

Investigation Process

- Disclosures or complaints of sexual misconduct of an Employee toward a Student must be reported immediately to the Associate Director, Employee Relations and Workforce Abilities, or another member of the Employee Relations and Workforce Ability Unit.
- The Associate Director, Employee Relations and Workforce Abilities may as appropriate designate an internal or external investigator, as applicable and depending on the nature of the disclosure.
- Investigations of sexual misconduct will take place in accordance with the procedures outlined in **Appendix 1 – Policy HR709: Workplace Harassment, Discrimination and Bullying.**

Disciplinary measures For Sexual Misconduct

- When a report of Sexual Misconduct is found to be substantiated, the Employee will be subject to disciplinary measures, up to and including dismissal from employment:
 - Any level of discipline appropriate to the circumstances in accordance with the Employee Discipline Policy;
 - Being placed on a leave of absence with or without pay;
 - Mandatory Training of the Employee;
 - Receiving a disciplinary letter or letter of expectation;
 - Any other disciplinary measure which the College deems to be appropriate; or
 - Termination of employment for just cause.
- If an Employee is found responsible of an act of Sexual Misconduct toward a Student, the College may discharge or discipline the Employee for that act, and, in accordance with *Bill 26, Strengthening Post-secondary Institutions and Students Act, 2022*:

- the disciplinary measure or termination is deemed to be for just cause for all purposes;
- 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
- despite subsection 48 (17) of the *Labour Relations Act, 1995* and 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 College.

No Terms Shall Prevent Disclosure of an act of Misconduct

- No agreement between the College and any person, to settle an existing or contemplated litigation, or any other agreement will contain any term that, directly, or indirectly, prohibits the College or any person related to the College from disclosing that an allegation or disclosure has been made that an Employee of the College committed an act of Sexual Misconduct toward a Student, and any such term that is included in an agreement is void.
- Exceptions:
 - If the Student requests that the College 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.

No Re-Employment Provisions

- The College will not subsequently re-employ an Employee, and the College's records shall annotate the Employee as ineligible for re-hire if:
 - The Employee is found responsible of an act of Sexual Misconduct toward a Student and the College discharges the Employee for that act; or
 - The Employee is found responsible for an act of Sexual Misconduct towards a Student and the Employee resigns their employment with the College.

- In the unlikely event, that the College has re-employed an individual contrary to the No Re-Employment prescribed above, the College will immediately discharge the Employee.

Legislation Prevails Over Any Terms of Employment or Collective Agreements

- This Policy will apply, as prescribed in Bill 26, despite any term in an employment contract or collective agreement, or any contrary rule or principle of common law or equity.

No Retaliation or Reprisal

- There will be no retaliation and reprisal tolerated against an individual who has made a disclosure or complaint in good faith under this policy. Retaliation and reprisal can take many forms including but not limited to threats, intimidation, pressure, harassment, violence or threats of violence or harm to others, any conduct that would discourage a person from participating in this Policy.

Frivolous, Vexatious or Bad Faith Reports of Sexual Misconduct

- If a person, in good faith, discloses or files a sexual misconduct complaint that is investigated and determined to be not founded, the complaint will be dismissed. Records associated with the investigation and the results of the investigation will be kept on file as appropriate.
- 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 under this policy and/or the Student Code of Conduct and the Complaint Policy.

MONITORING

This policy will be monitored by the Vice President, Belonging, People and Culture.

NEXT POLICY REVISION DATE

This policy will be reviewed every two years

Policy effective date: July 1, 2023

Next Update Due: July 1, 2025

SPECIFIC LINKS

[Bill 26, Strengthening Post-secondary Institutions and Students Act, 2022](#)

[Criminal Code \(Canada\)](#)

[Ontario's Human Rights Code](#)

APPENDIX A AND ATTACHMENTS

Appendix A: Procedure HR712 Sexual Misconduct by an Employee Towards a Student

Attachment A: HR712 Disclosure / Complaint Form: Sexual Misconduct by an Employee Towards a Student