COLLEGE POLICY

Policy No. & Title:	**P-211 Providing References**
Policy Sponsor:	Vice President, People & Culture and Career Services
Reference Cmtee:	Policy & Procedure Committee
Effective:	2023-07-01
Next Review:	2026-10-31

Purpose

The purpose of a reference is to obtain information from a third party, providing a factual check on a job applicant's employment or academic history, qualifications, and experience. Additional information normally sought for a job applicant will also include length of employment, job title, brief details of responsibilities and reason for leaving. References for job applicants may also be used to check factual evidence of such factors such as timekeeping, qualifications, sickness absence, general performance and development. In the interest of good practice, references should contain opinion based on fact as to the applicant's suitability for the job or course on offer.

Within this context, this policy established guidelines and principles regarding the provision of references for employees and students.

Scope

This policy applies to all College students, employees, delivery partners, affiliates, volunteers, and contractors.

Definitions

N/A

Legal Background

- There is no common law duty on an employer to provide references for a serving or past employee or student. However, referees are under a legal obligation to use due care when compiling references to ensure that they are based on accurate information.
- If a reference contains a false or unsubstantiated statement and was given with malice intended to damage the reputation of the individual, a civil action for defamation or malicious falsehood may result. If the referee gives a reference that falsely attributed qualities, or other material factors, which were known to be untrue, an action alleging deceit could arise. The referee may have a legal liability to the prospective employer.
- Liability may also come about through carelessness either as to matters of fact or in the formulation of opinion. If the new employer or the subject of the reference suffers from a negligent misstatement made by the referee, then the new employer will have grounds to bring an action against the referee for negligence.

- The College will normally be liable for the consequences of a negligent or defamatory reference given by an employee, unless it can establish that the reference was given outside the course of employment. If providing a reference in the context of your employment with the College, *i.e.,* references on behalf of students or other employees, you also have a duty of care to the College to act reasonably and within the law.
- All reference information should be treated as confidential. A failure to do so may mean that the defamation defense of 'qualified privilege' is lost. The People & Culture department is available to vet employee references, which in the view of the author may present issues under the terms of the guidance.
- A copy of the reference must be placed in the former or current employee's personnel filein the People & Culture department. Where necessary, advice should be obtained from the People & Culture department when drafting a reference, to prevent problems arising.
- The two principal aims of a reference are:
    - To confirm facts – to verify the accuracy of statements made in an application, *e.g.,* job title, job content, job experience and training *etc*.
    - To provide opinions – to give the referee's opinion as to the job applicant's suitability for the post/course in question.

POLICY

General

1) The College endorses providing references regarding the employment of current or past College members and students, when requested by another employer.
2) Reference requests for College members that have been terminated must be forwarded to the Head of People & Culture for response.
3) The College adheres to the Personal Information Protection and Electronic Documentation Act (PIPEDA), and as such, all references shall be given knowing the individual can and may have sight of the reference at some stage. Therefore, personal data must be given on the strength of explicit consent of the individual.
4) If an employee receives a request for a reference, but they are unable or unwilling to give a reference, the employee must ensure the request for the reference is passed on to the People & Culture department for response.
5) If the referee is challenged about a reference, they must never admit liability. The matter should be referred to the People & Culture department.
6) Copies of the reference(s) will be kept in the employee's personnel file in the People & Culture department.
7) References should not include anything the referee would not be prepared to show the individual they are writing about or justify in detail if challenged.

Written References

8) All correspondence must be clearly marked 'Private and Confidential'.
9) The reference must be true, accurate and complete. Please contact the People & Culture department to check employee information.
10) Avoid emotive, highly coloured language.
11) Referees must not selectively refuse references to certain employees.
12) The reference must be objective, fair, and balanced; the content should not give an overall unfair or misleading impression.
13) The referee must not make unqualified statements if they are not aware of the facts, or they are not qualified to make a statement.
14) Only include information that is fact. For example, only agreed recorded absence should be referred to when confirming sick absence rates.
15) Referees should take particular care when asked for a reference for an employee who they have no knowledge of (for example if their supervisor/line manager is absent or has left the College). Referees should not give opinions which are not their own.
16) Ensure that opinions are based on verifiable facts. Referees may be asked to express an opinion on issues about which they have limited knowledge. Whilst it is best to avoid making subjective comments, not saying anything could be easily misconstrued. It may be necessary to say, for example, "I know of no reason which would lead me to question x's honesty." Make sure your opinions are clearly stated as opinions, are based on fact, and that you are qualified to give such opinions.
17) Ensure any negative comments included in the reference have been discussed with the individual of the reference. Consider showing the member the reference before it is sent. This is an effective practice to ensure the above points have been observed.
18) The following liability clause statement should be included in the reference to indicate to the recipient they rely on the reference at their own risk. Please note this clause will not guarantee protection against an action for libel or negligence and is merely included as a safeguard:
    "This reference is given to you in strict confidence, without liability on the part of the College or the writer, for the purpose of [insert reason*, e.g.,* to assist in the selection of the post of…/attend the course on] and may be used only for that purpose. The reference may not be disclosed to third parties who are not involved in (insert reason, *e.g.,* the selection process *etc.*) without the written consent of the writer."
19) Review a reference after it is written, but before it is sent.

Verbal References

Note: The same guidelines for written references apply to references given verbally.

20) Referees must where possible, avoid giving verbal references since the information given may be amended, distorted, or translated according to the perceptions of the enquirer. The person receiving a verbal reference is likely to make a note according to what they understood the referee to say or mean, so his/her reference may be written down, but the referee will not control the manner in which it is expressed.

21) If you must give a telephone reference, where possible, ask the enquirer what information they require and then arrange a time to call them back. This will assist the referee in verifying the *bona fide* nature of the caller and will ensure the referee has time to prepare their response to avoid unintentionally making rash statements.
22) Where a verbal reference is given on behalf of the College, the employee giving the reference must not make statements that they would not be willing to make in writing. Telephone or verbal references requests should be declined other than in exceptional circumstance, since information given this way may be misinterpreted.
23) Do not disclose any information if asked to give an unsolicited reference (for a person who hasnot, to your knowledge, cited your name as a referee).
24) Disclosure of information or data in the form of a reference should only take place on specific request from the individual whose information or data are being referenced.

Related Policies
C-405 Privacy
P-205 Confidentiality

Supporting Documents/Forms
Personal Information Protection and Electronic Documentation Act (PIPEDA), 2000

Special Note: There is no associated Procedure with this Policy