



COLLEGE OF THE NORTH ATLANTIC

OPERATIONAL POLICY

TOPIC: SEXUAL VIOLENCE

Policy No.	PO-002	Division	President's Office
Related Procedure	PO-002-PR	Board Policy Ref.	GP-GR-803 & GP-RR-901
Related Policies	HR-403 HR-414 SS-201	Effective Date	October 17, 2023

1. PURPOSE AND SCOPE

The Sexual Violence Policy (hereafter known as the Policy) outlines the rights and responsibilities of all College of the North Atlantic (CNA) community members to ensure mutual respect, dignity, and fairness. The Policy also defines sexual violence and provides a detailed Procedure to ensure consistency.

The purpose of the Policy is to eliminate, where possible, or otherwise minimize the risk through:

- educating the CNA community;
- providing means of reporting sexual violence;
- addressing sexual violence in a timely, coordinated, consistent and fair manner; and
- outlining informal and formal resolution options.

This Policy applies to all CNA community members (see Definitions).

The Policy applies to incidents of sexual violence that occur, in whole or part, on CNA premises or at any location, or event related to work and/or study, including but not limited to:

- travel, training activities, information sessions, conferences, field work, off-campus learning, work placements, studies abroad, and other learning opportunities as part of CNA programs;
- email or on other electronic communication technology or other mediums such as social media, text messaging, etc.;
- CNA sponsored and sanctioned events, social activities, or functions; and
- behaviour that adversely impacts the CNA learning and working environment or CNA's reputation.

When it appears that a concern is outside the scope of this Policy or is one that should be more appropriately dealt with under another policy or procedure, CNA reserves the right to determine the best approach to deal with the concern.

It is understood that temporary / interim measures are separate and independent from sanctions delivered under the Employee Discipline Policy or the Student Code of Conduct in relation to the outcomes of a complaint under this Policy. Temporary / interim measures are not an indication of guilt or findings.

Nothing in this Policy precludes any CNA community member from exercising their rights under a collective agreement or the Newfoundland and Labrador [Human Rights Act, 2010](#).

This Policy applies to an alleged act of sexual violence even if:

- the complainant is pursuing processes external to CNA, including:
 - reporting to police;
 - initiating a civil proceeding; or
 - making a complaint to the applicable human rights commission.
- the alleged act of sexual violence is the subject matter of an investigation and adjudication by a provincial regulatory body.

2. POLICY

All CNA community members share a collective responsibility for fostering a respectful college environment, including bystanders who witness acts of sexual violence. CNA, in collaboration with the CNA community, is responsible for fostering an environment that eliminates, where possible, or otherwise minimizes the risk of sexual violence as all CNA community members are entitled to carry out their duties/studies and related activities in a respectful environment. All CNA community members have a duty to ensure this requirement is met in accordance with the standards established by the Policy.

All CNA community members are entitled to a safe and accessible resolution process for complaints under the Policy. The principles of justice, fairness, integrity, and impartiality will be applied in any resolution and/or investigation of situations that arise under the Policy to ensure that the rights, responsibilities, and obligations of all CNA community members are respected.

CNA will inform all CNA community members of the Policy and promote a respectful college environment.

Sexual violence in any form will not be tolerated.

3. DEFINITIONS

Bystander	An individual who is not the subject of sexual violence but who has witnessed or is otherwise aware of behaviour which contravenes the Policy. Bystanders have a responsibility to take appropriate action and report the behavior to someone in authority.
College Environment	Includes, but is not limited to CNA premises, facilities, programs, policies, faculty, administration, students, and educational/work experiences that employees, students, and others interact with in the workplace and educational settings.
College of the North Atlantic Community	<p>A CNA community member under this Policy includes, but is not limited to:</p> <ul style="list-style-type: none"> • <i>Affiliates</i>: any individual working in collaboration with CNA for a business or academic purpose or an external community member, including all CNA graduates and alumni. • <i>CNA Board of Governors</i>: individuals forming the governing body of CNA. • <i>Employees</i>: any individual who is currently employed by CNA or provides services to CNA under an employment contract. This includes all employees, regardless of status, as well as current employees who are on a leave of absence (i.e., paid/unpaid). • <i>Students</i>: any individual registered in CNA programs or otherwise participating in CNA courses, programs, events, and activities. This includes prospective students and recently accepted student applicants. • <i>Visitors</i>: any individual visiting a CNA property and/or facility. • <i>Volunteers</i>: any individual performing work for CNA in an unpaid capacity.
Complainant	Any CNA community member who has filed a complaint under this Policy alleging an experience of sexual violence. A CNA community member, upon filing a complaint, is referred to as the 'complainant'.
Complaint	A statement of allegation concerning any form of sexual violence by a complainant seeking recourse under this Policy.

Confidential Disclosure	CNA community members may disclose sexual violence, as defined by this Policy, in a confidential manner to a CNA Guidance Counsellor or EAP Counsellor for the purpose of receiving confidential support and advice.
Consent	Voluntary agreement to engage in sexual activity (as defined by the <u>Criminal Code of Canada</u> and subject to change by legislation and interpretation by the courts).
General Disclosure	CNA community members may disclose sexual violence, as defined by this Policy, to other CNA community members who are not a CNA Guidance Counsellor or EAP Counsellor. This type of disclosure initiates a duty to respond for employees which may lead to a formal complaint and a subsequent investigation as required by the <u>Newfoundland and Labrador Occupational Health and Safety Regulations, 2012</u> .
Head of Campus	A CNA campus/site administrator, including: <ul style="list-style-type: none"> • Senior Campus Director for campuses that have more than one Campus Director; • Campus Director or Campus Manager for campuses that only have one Campus Director/Manager; • Senior Manager Administrative Services; and • Administrator of non-campus buildings (e.g., administrative sites).
Human Resources (HR) Representative	A CNA employee who provides guidance and support to CNA employees who are complainants, respondents, bystanders, or witnesses under this Policy.
Investigation	The systematic and objective examination of facts relevant to a sexual violence complaint. An investigation may involve interviewing and obtaining signed statements from complainants, respondents, and witnesses, as well as a review of relevant documentary evidence.
Investigator	A trained CNA employee or external person who is engaged by the relevant representative to complete the formal resolution (investigative) process.
Natural Justice	The principles of natural justice include the right to a fair and timely hearing (where all parties are given the

opportunity to present their case and to respond to the evidence against them) and the right to a fair process (where a decision is reached in a manner that is untainted by bias and where reasons for the decision, the evidence relied upon and the results are given in writing).

Parties	Refers to the complainant(s), respondent(s), and witness(es) to a complaint.
Procedural Fairness	Includes the right to be heard, the right to be treated without bias, the right to be informed of allegations being made and to be provided with an opportunity to respond to them, and the right to information regarding the status of a complaint.
Respondent	Any CNA community member against whom a complaint of sexual violence is made under this Policy.
Sexual Violence	<p>An act of violence, physical or psychological in nature, that threatens to intimidate, coerce, or engage in an unwelcomed behaviour of a sexual nature, without the person's consent. Includes in-person and digital/cyber actions. This violence takes different forms including, but not limited to, sexual harassment and sexual assault. Acts of sexual violence can also include, but are not limited to:</p> <ul style="list-style-type: none">• distribution of intimate images without consent;• coercion of another person's sexuality by physical or psychological intimidation;• stealthing - removal of or failure to use a condom during intercourse without consent;• denial of another person's sexual decision-making rights; and• retaliation or threats by an individual as a result of their sexual advances not being accepted. <p>• Sexual Harassment – Is contrary to the Newfoundland and Labrador <i>Human Rights Act, 2010</i>, as amended (the "Human Rights Act") and may be contrary to the <i>Criminal Code</i>. It is a course of unwelcome, humiliating, and/or embarrassing comments of a sexual nature, persistent or abusive sexual solicitation or advances directed at an individual based on sex, sexual orientation, gender identity or gender expression, by another individual or group who</p>

knows, or ought reasonably to know, that this attention is unwelcome; any solicitation or advance which is known, or ought reasonably to be known to be unwelcome, humiliating and/or embarrassing made by an individual who is in the position to confer or deny a benefit; a single incident, or a series of incidents; and /or any reprisal or threat of reprisal, for refusing to comply with an implied or expressed sexual solicitation or advance.

Sexual harassment also includes but is not limited to:

- stalking or unwanted and repeated direct or indirect communication, including emails, gifts, letters or notes;
 - indecent exposure;
 - voyeurism;
 - display of sexually suggestive pictures, posters, objects or graffiti;
 - unwanted behaviours or comments that fetishize perceived personal characteristics such as gender, sexuality, ethnicity, and/or race, age, or size etc.; and
 - any of the behaviours described here when these behaviours are displayed or communicated on any form of social media or other electronic media.
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- Sexual Assault – Is illegal under Canada’s *Criminal Code* and can include any form of physical and or psychological violence and refers to any form of sexual contact without consent. Sexual assault includes, but is not limited to, unwanted kissing, fondling, touching, disrobing, any kind of intercourse or other forms of penetration, that is done onto the CNA community member without their consent. It also includes inducing intoxication, impairment, or incapacity for the purpose of making another person vulnerable to non-consensual sexual activity.

Student Services
Representative

A CNA employee who provides guidance and support to students and other CNA community members (i.e., visitors, affiliates, contractors or volunteers) who are

	complainants, respondents, bystanders, or witnesses under this Policy.
Support Person	Provides support to complainants, respondents, and witnesses during interviews. Bargaining-unit members may bring their union representative as their support person.
Temporary / Interim Measures	Temporary, non-disciplinary adjustments to the living, learning, and working environments of a CNA community member that may be put in place once a complaint is received to safeguard the environment of a complainant, respondent, and/or witness. Temporary / interim measures may include, but are not limited to, a student residence relocation, class schedule changes, academic accommodations, temporary work location reassignment, work scheduling changes, no contact orders, and restrictions on access to campus or parts of campus, etc.

4. CONSENT

CNA advocates a culture of mutual consent whereby consent to any sexual activity is ongoing, freely given, informed, and can be withdrawn at any time. <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/def.html>

When the incident of sexual violence involves a person under the age of 18 years, the incident must be reported to the proper authorities pursuant to the *Children, Youth and Families Act*.

Position of Power, Trust or Authority

Pursuant to Section 18 of the Newfoundland and Labrador *Human Rights Act, 2010*, a person who is in a position to grant or deny a benefit or advancement to another person shall not engage in sexual solicitation or make a sexual advance to that person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome. A person who is in a position to grant or deny a benefit or advancement to another person shall not penalize, punish or threaten reprisal against that person for the rejection of a sexual solicitation or advance.

Employees have a responsibility to notify their supervisor or HR about relationships where there is a power imbalance and/or that may present a conflict of interest.

5. CONFIDENTIAL/GENERAL DISCLOSURES AND COMPLAINTS

Confidential disclosures and general disclosures regarding incidents of sexual violence may be made by a CNA community member (i.e., complainant, witness, bystander), under this Policy.

Complaints regarding incidents of sexual violence may be made by a CNA community member (i.e., complainant, witness, bystander), but can only be made with respect to sexual violence perpetrated by a CNA community member against another CNA community member.

Disclosures and complaints are made in accordance with the related Procedure.

CNA community members who disclose or submit a complaint about sexual violence will be:

- treated with compassion, dignity, and respect;
- provided with non-judgmental support;
- provided with timely safety planning support; and
- informed about internal and external support services and resources.

6. COMPLAINT OF SEXUAL VIOLENCE

a. Complaint Process

Any CNA community member seeking to resolve issues of sexual violence at CNA can contact the Student Services Representative (for students, visitors, affiliates, contractors, or volunteers) or the HR Representative (for employees) to submit a complaint, as outlined in the Procedure. Complaints can also be submitted by bystanders and witnesses. Anonymous complaints are permitted under this Policy but CNA has limited ability to act on anonymous complaints.

CNA community members, as decision-makers, are allowed to determine whether or not to pursue legal and/or internal avenues of resolution and whether or not to seek out supports and temporary / interim measures.

b. Rights and Responsibilities of Complainants, Respondents, and Witnesses

Complainants

Complainants have the right:

- to make a complaint to CNA;
- to be notified of their options for resolution of a complaint;

- to be accompanied by a support person of choice (at their own expense) during interview(s), provided the person is not a witness to the complaint and provided the person is not in a potential conflict of interest position by virtue of involvement;
- to access confidential support through a CNA Guidance Counsellor or EAP Counsellor; and
- not to be subject to retaliation for the reason of having made a complaint under the Policy.

It is the responsibility of complainants:

- to submit a complaint within twelve (12) months following the last incident of sexual violence;
- to follow all requirements of the Policy;
- to cooperate with all those responsible for dealing with the informal resolution and/or investigation of the complaint; and
- to maintain confidentiality throughout the process.

Respondents

Respondents have the right:

- to be informed that a complaint has been filed;
- to be presented with the complaint and afforded an opportunity to respond;
- to be accompanied by a support person of choice (at their own expense) during interview(s), provided the person is not a witness to the complaint, and provided the person is not in a potential conflict of interest position by virtue of involvement;
- to access confidential support through a CNA Guidance Counsellor or EAP Counsellor; and
- not to be subject to retaliation for having a complaint made against them under the Policy.

It is the responsibility of respondents:

- to follow all requirements of the Policy; and
- to maintain confidentiality throughout the process.

Witnesses

Witnesses have the right:

- to be accompanied by a support person of choice (at their own expense) during interview(s), provided the person is not a witness to the complaint, and provided the person is not in a potential conflict of interest position by virtue of the person's involvement;

- to access confidential support through a CNA Guidance Counsellor or EAP Counsellor;
- to receive a copy of their own statement; and
- not to be subject to retaliation because of participation as a witness.

It is the responsibility of witnesses:

- to follow all requirements of the Policy; and
- to maintain confidentiality throughout the process.

c. Resolution Options

The resolution processes, as outlined in the Procedure, will be explained to the complainant prior to selection of a resolution process. The complainant may choose to proceed through informal resolution options or a formal resolution process. Informal resolution refers to mechanisms by which complaints can be resolved by means other than investigation, whereas formal resolution refers to an investigative process which involves an impartial third-party determining whether there has been a breach of the Policy.

Informal Resolution Options

The relevant representative will advise the complainant of informal resolution options to resolve the sexual violence complaint. The complainant will choose their preferred resolution option; however, an informal resolution option will not be implemented without the agreement of the respondent. Informal resolution options may include but are not limited to:

- I. Impact Statement: The complainant may choose to communicate to the respondent, either in person, through recording, or in writing, to advise that the respondent's behaviour is objectionable, unwanted and unwelcome and that the behaviour must stop immediately. The relevant representative can support the complainant with this intervention and communication;
- II. Notification: The relevant representative directly notifies the respondent, on behalf of the complainant, that their behaviour is objectionable, unwanted and unwelcome and must stop immediately;
- III. Facilitated Discussion: The complainant may request that the relevant representative, or another agreed upon party (e.g., a Campus Manager or Executive Member) facilitate a discussion between themselves and the respondent. The representative, or other agreed upon party, will first meet individually with the complainant and respondent to assess readiness and provide

information on the process. If appropriate, a facilitated discussion will be scheduled;

- IV. Education: The relevant representative arranges educational opportunities for the respondent and others, as necessary;
- V. Apology: A written or verbal apology from the respondent acknowledging the sexual violence, the end of the behaviour, and any remediation or restorative activities that will be completed; and
- VI. Other processes or interventions of a restorative, educational or remedial nature as necessary.

Selection of the informal resolution option does not prevent complainants from later deciding to pursue a formal resolution option or vice versa.

Formal Resolution (Investigation)

The complainant may choose to pursue resolution through a formal investigation which involves an impartial third-party investigator(s) determining whether there has been a breach of the Policy. The investigation process is conducted following the principles of procedural fairness and natural justice. Selection of the formal resolution option does not prevent complainants from later deciding to pursue an informal resolution option or vice versa.

d. Timelines

Complaints should be submitted within twelve (12) months following the last incident of sexual violence. However, timelines within this Policy and related Procedure, can be extended at the discretion of the representative, when requested in good faith and where it is not believed to prejudice the complainant or respondent.

Bargaining-unit employees should also consult their respective collective agreement and, where there is a conflict in timelines, the collective agreement shall prevail.

The complainant and respondent will be advised in writing of the reasons for any delay and the impact on the timelines.

e. Support Person

The complainant, respondent, and witnesses may be accompanied by a support person of their choosing (at their own expense) when attending meetings regarding a complaint, provided the support person is not a witness to the complaint and provided the support person is not in a potential conflict of interest position by virtue of involvement. The support person shall not interfere with the proceedings in any way. The support person's primary role is to provide support to the person during interviews.

Bargaining-unit employees are entitled to union representation as outlined in their respective collective agreements.

Support persons shall maintain the confidentiality of all information pertaining to the complaint and/or resolution process.

CNA will not be responsible for the cost of legal counsel and/or other representation retained by any party.

f. Retaliation

No CNA community member shall retaliate against another for making a disclosure, for bringing forward a complaint or for being involved in any process under this Policy, including as a witness. Retaliation at any stage may result in disciplinary action as per the Employee Discipline Policy and the Student Code of Conduct.

A breach of confidentiality by a CNA community member with respect to a complaint may also constitute retaliation.

g. Conflict of Interest

CNA community members are subject to and must comply with CNA's Conflict of Interest Policy and Procedure.

Any CNA community member who receives information to carry out their responsibilities under this Policy, shall disclose any actual or potential conflict of interest with respect to a disclosure or complaint in accordance with CNA's Conflict of Interest Policy. In the case of a real/perceived conflict of interest, the CNA community member will discontinue their involvement in the matter and an alternate CNA community member will be appointed, if necessary.

Where the complainant or respondent is aware, or has reasonable grounds to believe, that an undisclosed actual or potential conflict of interest exists with respect to a disclosure or complaint, they shall report the matter to the relevant representative.

h. Right to Withdraw a Complaint

The resolution of a sexual violence complaint is encouraged but it is also recognized that the complainant has a right to withdraw a complaint by informing the relevant representative. Once a complaint has been withdrawn, it will be formally recognized as closed. However, the complaint may still be subject to another form of workplace investigation (e.g., if there is deemed to be a potential risk to other CNA community members or CNA itself).

i. Appeals (Sanctions/Discipline)

Students may appeal sanctions/discipline imposed, as a result of the outcome under this Policy, through relevant sections of the Student Code of Conduct.

Bargaining-unit employees may grieve sanctions/discipline imposed, as a result of the outcome under this Policy, through their respective collective agreement. Employees may also request a review of sanctions/discipline imposed, as a result of the outcome under this Policy, under the Employee Discipline Policy.

j. Records Retention

- Records and information will be managed and protected in accordance with the Records and Information Management Policy.
- Use of information covered by this Policy shall be in accordance with the Policy and the *Access to Information and Protection of Privacy Act, 2015* or as otherwise required by law.
- Following the conclusion of a complaint and/or resolution process and any associated sanctions/discipline, all records created or gathered in relation to the process involving an employee will be maintained by the HR Representative. Records for complaints involving students and/or CNA community members (excluding employees) will be maintained by the Student Services Representative.

7. CONFIDENTIALITY

All persons involved in any process related to this Policy are required to maintain confidentiality. Confidential matters are handled in accordance with the *Access to Information and Protection of Privacy Act, 2015, cA-1.2*, other legislation to which CNA is subject, and CNA policies. Those who are found to have breached confidentiality may be subject to disciplinary action. Nothing in this section shall be construed to prevent a complainant or respondent from seeking legal advice and guidance.

It should be noted that there are limitations to confidentiality; absolute confidentiality cannot be guaranteed as resolution processes must involve others. In addition, when CNA employees become informed of situations involving sexual violence, they are obligated to intervene.

Situations in which confidentiality may not be guaranteed include scenarios where:

- confidentiality would inhibit the effective investigation, resolution, or referral of complaints for sanctions/discipline;

- confidentiality would inhibit a respondent's ability to respond fully to a complaint of sexual violence;
- an individual is at imminent risk of self-harm;
- an individual is at imminent risk of harming another;
- a child or other vulnerable person(s) has been harmed or is at imminent risk of being harmed;
- disclosure is required under the law;
- where there is a legal obligation to act or cooperate in external judicial processes;
- the respondent is a person in a position of trust and/or authority; or
- other significant safety risks exist as determined by CNA.

Information that must be disclosed pursuant to this section will be limited to the least amount of information possible for CNA to fulfill its legal obligation.

Requests for information regarding the investigation are handled in accordance with the Access to Information Request Policy and the *Access to Information and Protection of Privacy Act, 2015*.

8. DUTY TO RESPOND (EMPLOYEES)

An employee that receives a disclosure of sexual violence, as defined within the Policy, has a duty to consult with an HR Representative to:

- assess the risk to safety of CNA community members so CNA can take all necessary steps to ensure the safety of the CNA community; and
- ensure support services (such as internal counselling services, external resources, information on medical care, and temporary / interim measures) are made available to the following, but not limited to, the complainant, bystander, and witness(es) making the disclosure.

9. RELATED POLICIES AND PROCEDURES

Employee Code of Conduct, HR-403
Employee Discipline, HR-414
Records and Information Management, PA-603
Access to Information Request, PA-601
Privacy Breach, PA-602
Sexual Violence Procedure, PO-002-PR
Student Code of Conduct, SS-201-PR

10. POLICY REVIEW

This Policy will be reviewed every two (2) years, or as needed, by a committee of not less than five (5) people appointed by the Associate Vice President (AVP) Student Services. The committee shall include at least two (2) students and two (2) employees. The committee may make recommendations to the

AVP Student Services and the AVP Human Resources for amendments to the Policy.

11. PROCEDURE

The President shall ensure that procedures are developed and implemented in accordance with this Policy.

Approval History
Approved by President October 17, 2023