



# COLLEGE OF THE NORTH ATLANTIC

## OPERATIONAL POLICY

### TOPIC: SEXUAL VIOLENCE

<b>Policy No.</b>	PO-002	<b>Division</b>	President's Office
<b>Related Procedure</b>	PO-002-PR	<b>Board Policy Ref.</b>	GP-GR-803 & GP-RR-901
<b>Related Policies</b>	HR-403 HR-414 SS-201	<b>Effective Date</b>	September 23, 2024 (R1)

### 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 in Procedure).

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. 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.

### 4. 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.

## 5. 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, where an informal resolution requires the respondent's voluntary participation. 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.

## 6. 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*.

## **7. 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.

## **8. 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

## **9. 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.

## **10. PROCEDURE**

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

**Approval History**

Approved by President

October 17, 2023

Revision 1

September 23, 2024