

Responsibility: CEO of CINDE

This Policy applies to: All members of the Canadian Institute for Non-destructive Evaluation (CINDE) community including: executives, governors, administrators, faculty, staff, students, contractors, suppliers of services, individuals who are directly connected to any CINDE initiatives, volunteers, and visitors.

1. Purpose and Intent

All members of the CINDE community have a right to a work and study in an environment that is free from any form of sexual violence. This document sets out our policy and response protocol to sexual violence and ensures that those who experience sexual violence are believed and their rights respected, that CINDE has a process of investigation that protects the rights of individuals and holds individuals who have committed an act of sexual violence accountable.

2. Policy Statement

We are committed to reducing sexual violence and creating a safe space for anyone in our CINDE community who has experienced sexual violence. CINDE is expected to be a safe and positive space where members of the CINDE community feel able to work, learn and express themselves in an environment free from sexual violence.

All reported incidents of sexual violence will be investigated to the best of the administration's ability and in a manner that ensures due process. No individual should feel uncomfortable about making a report in good faith about sexual violence that he or she has experienced or witnessed.

We recognize that sexual violence 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 violence may experience emotional, academic or other difficulties.

We are committed to:

2.1. assisting those who have experienced sexual violence by providing detailed information and support, including provision of and/or referral to counselling and medical care, and appropriate academic and other accommodation;

2.2. ensuring that those who disclose that they have been sexually assaulted are believed, and that their right to dignity and respect is protected throughout the process of disclosure, investigation and institutional response;

2.3. treating individuals who disclose sexual violence with compassion recognizing that they are the final decision-makers about their own best interests;

2.4. ensuring that on-location (internal) investigation procedures are available in the case of sexual violence, even when the individual chooses not to make a report to the police;

2.5. engaging in appropriate procedures for investigation and adjudication of a complaint which are in accordance with CINDE policies and standards, and that ensure fairness and due process;

2.6. ensuring coordination and communication among the various departments who are most likely to be involved in the response to sexual violence on location;

2.7. engaging in public education and prevention activities;

2.8. providing information to the CINDE community about sexual violence on location;

2.9. providing appropriate education and training to the CINDE community about responding to the disclosure of sexual violence;

2.10. contributing to the creation of a learning atmosphere in which sexual violence is not tolerated; and,

2.11. monitoring and updating our policies and protocols to ensure that they remain effective and in line with other existing policies and best practices.

3. Reporting and Responding to Sexual Violence

3.1. Members of the CINDE community should immediately report incidents where they are subject to, witness or have knowledge of sexual violence, or have reason to believe that sexual violence has occurred or may occur.

3.2. Persons in a position of authority, including persons directing the activities of others, shall take immediate action to respond to or to prevent sexual violence from occurring.

3.3. Where CINDE becomes aware of incidents of sexual violence by a member of the CINDE community or against a member of the CINDE community, which occur on or off CINDE property and that pose a risk to the safety of members of the CINDE community, CINDE shall take all reasonable steps to ensure the safety of the CINDE community.

4. Complaint Process and Investigations

A complaint of sexual assault or any other kind of sexual violence can be filed under this Policy by any member of the CINDE community.

CINDE will seek to achieve procedural fairness in dealing with all complaints. As such, no sanction and/or disciplinary action will be taken against a person or group without their knowledge where there is an alleged breach of this Policy. It is intended that accused individuals be given reasonable notice, with full detail of the allegations and provided with an opportunity to answer to the allegations made against them.

4.1. Right to Withdraw a Complaint

A complainant has the right to withdraw a complaint at any stage of the process. However, CINDE may continue to act on the issue identified in the complaint in order to comply with its obligation under this Policy and/or its legal obligations.

4.2. Protection from Reprisals, Retaliation or Threats:

It is contrary to this Policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a complainant or other individual for:

- having pursued rights under this Policy or the Ontario *Human Rights Code*;
- having participated or cooperated in an investigation under this Policy or the Ontario *Human Rights Code*; or
- having been associated with someone who has pursued rights under this Policy or the Ontario *Human Rights Code*.

Anyone engaged in such conduct may be subject to sanctions and/or discipline.

4.3. Unsubstantiated Complaints

If a person, in good faith, discloses or files a sexual violence complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed and no record of it will be placed in the complainant's or respondent's file. However, disclosures or complaints that are made to purposely annoy, embarrass or harm the respondent are considered frivolous, vexatious, or bad faith complaints and may result in sanctions against the complainant and/or discipline.

5. Confidentiality

Confidentiality is particularly important to those who have disclosed sexual violence. The confidentiality of all persons involved in a report of sexual violence must be strictly observed, and CINDE does its best to respect the confidentiality of all persons, including the complainant, respondent, and witnesses.

However, confidentiality cannot be assured in the following circumstances:

- an individual is at imminent risk of self-harm;
- an individual is at imminent risk of harming another; and/or
- there are reasonable grounds to believe that others in CINDE or wider community may be at risk of harm.

In such circumstances, information would only be shared with necessary services to prevent harm, and the name of the victim would not be released to the public.

Where CINDE becomes aware of an allegation of sexual violence by a member of the CINDE community against another member of the CINDE community, CINDE may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with CINDE's legal obligation and/or its policies to investigate such allegations. In such cases, certain CINDE administrators will be informed about the reported incident on a "need to know" and confidential basis, but not necessarily of the identities of the persons involved.

6. Defining Sexual Assault and Sexual Violence

Sexual assault: A criminal offence under the *Criminal Code* of Canada. Sexual assault is any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim and involves a range of behaviours from any unwanted touching to penetration. Sexual assault is characterized by a broad range of behaviours that involve the use of force, threats, or control towards a person, which makes that person feel uncomfortable, distressed, frightened, threatened, or that is carried out in circumstances in which the person has not freely agreed, consented to, or is incapable of consenting to.

Sexual violence: A broad term that describes any violence, physical or psychological, carried out through sexual means or by targeting sexuality. This violence takes different forms including sexual abuse and sexual assault.

Consent: The voluntary agreement to engage in the sexual activity in question. It is the act of willingly agreeing to engage in specific sexual behaviour, and requires that a person is able to freely choose between two options: yes and no. This means that there must be an understandable exchange of affirmative words which indicates a willingness to participate in mutually agreed upon sexual activity. It is also imperative that everyone understands the following:

- Silence or non-communication must never be interpreted as consent and a person in a state of diminished judgment cannot consent.
- A person is incapable of giving consent if she/he is asleep, unconscious or otherwise unable to communicate.
- A person who has been threatened or coerced (i.e. is not agreeing voluntarily) into engaging in the sexual activity is not consenting to it.
- A person who is drugged is unable to consent.
- A person is usually unable to give consent when she/he is under the influence of alcohol and/or drugs.

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- A person may be unable to give consent if she/he has a mental disability.
- The fact that consent was given in the past to a sexual or dating relationship does not mean that consent is deemed to exist for all future sexual activity.
- A person can withdraw consent at any time during the course of a sexual encounter.

It is the responsibility of the initiator of sexual activity to obtain clear and affirmative responses at all stages of sexual engagement.

Consent as defined in the *Criminal Code*:

Consent: The voluntary agreement to engage in the sexual activity in question. No consent is obtained, where

- a) the agreement is expressed by the words or conduct of a person other than the complainant;
- b) the complainant is incapable of consenting to the activity;
- c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
- d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Other Relevant Terms

Acquaintance sexual assault: Sexual contact that is forced, manipulated, or coerced by a partner, friend or acquaintance.

Age of consent for sexual activity: The age at which a person can legally consent to sexual activity. In Canada, children under 12 can never legally consent to sexual acts. Sixteen is the legal age of consent for sexual acts. There are variations on the age of consent for adolescents who are close in age between the ages of 12 and 16. Twelve and 13 year-olds can consent to have sex with other youth who are less than 2 years older than themselves. Youth who are 14 and 15 years old may consent to sexual involvement that is mutual with a person who is less than 5 years older. Youths 16 and 17 years old may legally consent to sexual acts with someone who is not in a position of trust or authority.

Coercion: In the context of sexual violence, coercion is unreasonable and persistent pressure for sexual activity. Coercion is the use of emotional manipulation, blackmail, threats to family or friends, or the promise of rewards or special treatment, to persuade someone to do something they do not wish to do, such as being sexual or performing particular sexual acts.

Drug-facilitated sexual assault: The use of alcohol and/or drugs (prescription or non-prescription) by a perpetrator to control, overpower or subdue a victim for purposes of sexual assault.

Stalking: A form of criminal harassment prohibited by the *Criminal Code* of Canada. It involves behaviours that occur on more than one occasion and which collectively instill fear in the victim or threaten the victim/target's safety or mental health. Stalking can also include threats of harm to the target's friends and/or family. These behaviours include, but are not limited to non-consensual communications (face to face, phone, email, social media); threatening or obscene gestures; surveillance; sending unsolicited gifts; "creeping" via social media/cyber-stalking; and uttering threats.

Survivor: A survivor is anyone who has experienced sexual assault. Individuals might be more familiar with the term "victim". We use the term survivor because having experienced sexual assault means you've survived something — not that you've been victimized by it.

SEXUAL ASSAULT AND SEXUAL VIOLENCE PROTOCOL

1. If You Have Experienced Sexual Violence

If you have experienced sexual violence, please call CEO, Glenn Tubrett at 416-471-4933 or Accounting Supervisor, Debbie Luey at 905-387-1655, Ext. 223 and they will assist you by providing all the resources and support you need. If you want to speak to someone directly, please go to Glenn Tubrett or Debbie Luey.

It is often difficult to disclose and report incidents of sexual violence. It is entirely up to you if you choose to report the incident; however, we strongly encourage you to do so. A number of other resources are available to you, including:

1. Sexual Assault Centre (SACHA) - 905-525-4162
2. Hamilton Police Services - 905-546-4925
3. Canadian Association of Sexual Assault Centres (CASAC) - 1-866-863-0511

Anyone who has experienced sexual violence has the right to:

- be treated with dignity and respect,
- be believed,
- be informed about on- and off- CINDE services and resources,
- decide whether or not to access available services and to choose those services they feel will be most beneficial,
- decide whether to report to Mohawk campus security, CINDE CEO and/or local police,
- have an on-site investigation with the institution's full cooperation,
- have a safety plan, and

- have reasonable and necessary actions taken to prevent further unwanted contact with the alleged perpetrator(s).

2. If You Would like to File a Formal Complaint

The list of options above can also assist you with filing a complaint. If the alleged perpetrator is another member of the CINDE community, you may file a complaint under this Policy.

Individuals who have experienced sexual violence may also wish to press charges under the *Criminal Code*. Mohawk College Security can also assist you with contacting the local Police.

3. What to Do if You Witnessed Sexual Violence

If you witness sexual violence, please call Glenn Tubrett, CEO, at 416-471-4933 or Debbie Luey at 905-387-1655 Ext. 223, and they will assist you by providing all the resources and necessary support. If you want to speak to someone directly, please go to Campus Security within Mohawk College.

A number of other resources are available to you, including:

- Hamilton Police Services 905-546-4925
- Sexual Assault Centre (SACHA) - 905-525-4162
- Canadian Association of Sexual Assault Centres (CASAC) - 1-866-863-0511

If a member of faculty or staff of CINDE becomes aware of an allegation of sexual violence against another member of the CINDE community, the faculty or staff is required to report the alleged incident to CEO immediately.

4. What to Do if Someone Discloses Allegations of Sexual Violence

A person may choose to confide in someone about an act of sexual violence, such as a student, instructor, teaching assistant, coach, or staff from housing, health, counselling or security. An individual who has experienced sexual violence may also disclose to staff or faculty members when seeking support and/or academic accommodation. A supportive response involves:

- listening without judgement and accepting the disclosure as true;
- communicating that sexual violence is never the responsibility of the victim;
- helping the individual identify and/or access available on- or off-campus services, including emergency medical care and counselling;

- respecting the individual's right to choose the services they feel are most appropriate and to decide whether to report to the police, CEO of CINDE at 416-471-4933 or Accounting Supervisor, Debbie Luey at 905-387-1655 ext 223;
- recognizing that disclosing can be traumatic and an individual's ability to recall the events may be limited;
- respecting the individual's choices as to what and how much they disclose about their experience; and
- making every effort to respect confidentiality and anonymity.

If disclosure is made to faculty or staff by a student seeking support or academic accommodation, the faculty or staff should refer the student to the CEO, and work with the CEO to ensure that the student receives all necessary academic and other accommodations.

As indicated above, if faculty or staff of CINDE becomes aware of an allegation of sexual violence against another member of the CINDE community, the faculty or staff is required to report the alleged incident to CEO immediately.

5. Communicating with Individuals who have Experienced Sexual Violence

Sensitive and timely communication with individuals who have experienced sexual violence and their family members (when an individual consents to this communication) is a central part of the CINDE's first response to sexual violence. To facilitate communication, CINDE will:

- Ensure that designated staff members in the Technical and Admin department who are knowledgeable about sexual violence, are responsible for advocacy on location on behalf of staff, students or any other member of the CINDE community who have experienced sexual violence;
- Ensure designated staff members respond in a prompt, compassionate, and personalized fashion; and
- Ensure that the victim is provided with reasonable updates about the status of CINDE's investigation of the incident when such investigations are undertaken.

6. Roles and Responsibilities of the CINDE Community

While everyone on location has a role to play in responding to incidents of sexual violence, some CINDE members will have specific responsibilities which include:

- Faculty, staff and administrators to facilitate academic accommodations and other academic needs of those who have experience sexual violence;
- Human Resources to assist with any incidents relating to staff; and
- Security to assist with investigations and gathering evidence, to implement measures to reduce sexual violence on location, and to collaborate with local police where appropriate.

7. How Will CINDE Respond to a Report of Sexual Violence?

Where a complaint of sexual violence has been reported to CINDE, CINDE will exercise care to protect and respect the rights of both the complainant and the respondent. CINDE understands that individuals who have been the victims of sexual violence may wish to control whether and how their experience will be dealt with by the police and/or CINDE. In most circumstances, the person will retain this control. However, in certain circumstances, CINDE may be required to initiate an internal investigation and/or inform the police of the need for a criminal investigation, even without the person's consent, if CINDE believes that the safety of other members of the CINDE community is at risk.

A report of sexual violence may also be referred to the police, or to other community resources at the complainant's request, where the persons involved are not members of the CINDE community or in circumstances where CINDE is unable to initiate an internal investigation under this Policy.

7.1. Where the Respondent is a Student

Sexual violence is a violation of CINDE's policy. It is considered a serious offence and will be addressed in a manner which is consistent with other serious offences.

7.2. Where the Respondent is a member of Faculty or Staff

Sexual violence is a violation of CINDE's policy. Allegations against faculty and staff will be addressed in accordance with the procedures set out in this Policy, and in any applicable collective agreement, and/or other CINDE policies. If the complaint is sustained following an investigation, the CINDE will decide on the appropriate disciplinary actions consistent with any applicable collective agreement and/or policies regarding discipline.

7.3. Where the Respondent is not a Student, Faculty or Staff

Contractors, suppliers, volunteers or visitors who attend on CINDE location will be subject to complaints if they engage in prohibited conduct. Where a complaint against the respondent is substantiated, CINDE will take appropriate action.

All contractual relationships entered into by CINDE will be governed by a standard contract compliance clause stating that contractors must comply with this Policy and the Ontario *Human Rights Code*, including co-operating in investigations. Breach of the clause may result in penalties, cancellation, or other sanctions.

7.4. Multiple Proceedings

Where criminal and/or civil proceedings are commenced in respect of the allegations of sexual violence, CINDE shall conduct its own independent investigation into such allegations, and will make its own determination in accordance with its policies and procedures. Where there is an ongoing criminal investigation, CINDE will cooperate with the local police.

8. Other Resources and Supports Available to You

Ontario Help site provides up to date resources and links to valuable avenues of support.

<https://www.ontario.ca/page/lets-stop-sexual-harassment-and-violence>

9. Related Policies, Procedures and Protocols

CINDE Employee Policy Handbook:

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APPENDIX

Use of the term “Rape” in the context of Sexual Violence

This policy refers to the offence of sexual assault to align with the current offence contained in the *Criminal Code*. The word “rape” is no longer used in criminal statutes in Canada. The term was replaced many years ago to acknowledge that sexual violence is not about sex but is about acts of psychological and physical violence. The term “sexual assault” provides a much broader definition and criminalizes unwanted behaviour such as touching and kissing as well as unwanted oral sex and vaginal and anal intercourse. Although the term no longer has a legal meaning in Canada, the term rape is still commonly used.

DISPELLING THE MYTHS AND MISCONCEPTIONS ABOUT SEXUAL ASSAULT

| Myth | Fact |
|---|---|
| It wasn't rape, so it wasn't sexual violence. | As outlined above, sexual assault and sexual violence encompasses a broad range of unwanted touching. Any unwanted sexual contact is considered to be sexual violence. A survivor can be severely affected by all forms of sexual violence, including unwanted fondling, rubbing, kissing, or other sexual acts. Many forms of sexual violence involve no physical contact, such as stalking or distributing intimate visual recordings. All of these acts are serious and can be damaging. |
| Sexual assault can't happen to me or anyone I know. | Sexual assault can and does happen to anyone. People of all socioeconomic and ethnic backgrounds are victims of sexual assault. Young women, Aboriginal women and women with disabilities are at greater risk of experiencing sexual assault. |
| Sexual assault is most often committed by strangers. | Someone known to the victim, including acquaintances, dating partners, and common-law or married partners, commit approximately 82 per cent of sexual assaults. |
| Sexual assault is most likely to happen outside in dark, dangerous places. | The majority of sexual assaults happen in private spaces like a residence or private home. |
| If an individual doesn't report to the police, it wasn't sexual assault. | Just because a victim doesn't report the assault doesn't mean it didn't happen. Fewer than one in ten victims report the crime to the police. |
| It's not a big deal to have sex with someone while he/she is drunk, stoned or passed out. | If a person is unconscious or incapable of consenting due to the use of alcohol or drugs, he/she cannot legally give consent. Without consent, it is sexual assault. |
| If the person chose to drink or use drugs, then it isn't considered sexual assault. | This is a prominent misconception about sexual assault. No one can consent while drunk. Some people drink to lose their inhibitions. If you're going to be drinking with a sweetheart and maybe hooking up later while drunk, discuss boundaries ahead of time, but know that consent can't truly be given in advance. |

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| Myth | Fact |
|---|--|
| <p>If the victim didn't scream or fight back, it probably wasn't sexual assault.</p> <p>If the victim does not fight back, the sexual assault is his/her fault.</p> | <p>When an individual is sexually assaulted he/she may become paralyzed with fear and be unable to fight back. The person may be fearful that if he/she struggles, the perpetrator will become more violent. If the person is under the influence of alcohol or drugs, he/she may be incapacitated or unable to resist.</p> |
| <p>If you didn't say no, it must be your fault.</p> | <p>People who commit sexual assault/abuse are trying to gain power and control over their victim. They want to make it extremely difficult, if not impossible, for their victim to say no. A person does not need to actually say the word "no" to make it clear that he/she did not want to participate.</p> |
| <p>If a woman isn't crying or visibly upset, it probably wasn't a serious sexual assault.</p> | <p>Every woman responds to the trauma of sexual assault differently. She may cry or she may be calm. She may be silent or very angry. Her behaviour is not an indicator of her experience. It is important not to judge a woman by how she responds to the assault.</p> |
| <p>If someone does not have obvious physical injuries, like cuts or bruises, he/she probably was not sexually assaulted.</p> | <p>Lack of physical injury does not mean that a person wasn't sexually assaulted. An offender may use threats, weapons, or other coercive actions that do not leave physical marks. The person may have been unconscious or been otherwise incapacitated.</p> |
| <p>If it really happened, the victim would be able to easily recount all the facts in the proper order.</p> | <p>Shock, fear, embarrassment and distress can all impair memory. Many survivors attempt to minimize or forget the details of the assault as a way of coping with trauma. Memory loss is common when alcohol and/or drugs are involved.</p> |
| <p>Individuals lie and make up stories about being sexually assaulted; and most reports of sexual assault turn out to be false.</p> | <p>According to Statistics Canada, fewer than one in 10 sexual assault victims report the crime to the police. Less than 2% of sexual assault reports are false, the same false reporting rate as for all other major crimes.</p> <p>The number of false reports for sexual assault is very low, consistent with the number of false reports for other crimes in Canada. Sexual assault carries such a stigma that many people prefer not to report.</p> |
| <p>Persons with disabilities don't get sexually assaulted.</p> | <p>Individuals with disabilities are at a high risk of experiencing sexual violence or assault. Those who live with activity limitations are over two times more likely to be victims of sexual assault than those who are able-bodied.</p> |

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| Myth | Fact |
|---|---|
| A spouse or significant other cannot sexually assault their partner. | Sexual assault can occur in a married or other intimate partner relationship. The truth is, sexual assault occurs ANY TIME there is not consent for sexual activity of any kind. Being in a relationship does not exclude the possibility of, or justify, sexual assault. A person has the right to say "no" at ANY point. |
| People who are sexually assaulted "ask for it" by their provocative behaviour or dress. | This statement couldn't be more hurtful or wrong. Nobody deserves to be sexually assaulted. Someone has deliberately chosen to be violent toward someone else; to not get consent. Nobody asks to be assaulted. Ever. No mode of dress, no amount of alcohol or drugs ingested, no matter what the relationship is between the survivor and the perpetrator or what the survivor's occupation is, sexual assault is always wrong. |
| Sexual assault only happens to women | Not true. The majority of sexual assaults are committed against women by men, but people of all genders, from all backgrounds have been/can be assaulted. |
| Sexual abuse of males is rare. | Estimates show that 1 in 8 men will experience some form of sexual violence during their lifetime. Sexual assault/abuse occurs in every economic, ethnic, age and social group. |
| If you got aroused or got an erection or ejaculated you must have enjoyed it. | It is normal for your body to react to physical stimulation. Just because you became physically aroused does not mean that you liked it, or wanted it or consented in any way. If you experienced some physical pleasure, this does not take away the fact that sexual abuse happened or the effects or feelings of abuse. |