



Northern Ontario
School of Medicine

DISCRIMINATION AND HARASSMENT PROCEDURE

Date: January 17, 2007

Responsible Offices: Human Resources Unit
Responsible Officer(s): NOSM Chief Administrative Officer

1.0 Enforcement

This procedure provides the means to enforce the Discrimination and Harassment policy.

1.1 Scope and Application

NOSM students, administration, faculty, staff, residents, members of the Board of Directors, visitors, guests, volunteers and third-party contractors may utilize this procedure to exercise rights under the Discrimination and Harassment Policy.

This procedure may be utilized by individuals or groups and may involve complaints against one or more individual(s), as well as the School and its various academic and administrative units.

1.2 Third Party Complaints

Although most complaints will be made by persons who are the direct recipients of the reported harassment, psychological harassment or discrimination, persons who are not the direct recipient, but whose working, learning or research environment is adversely affected by the conduct, may also utilize this procedure to exercise their rights.

1.3 NOSM Complaints

NOSM, through its responsible authorities, may initiate or continue a complaint (even if the complaint has been withdrawn) in the following circumstances:

- cases deemed sufficiently serious;
- to ensure a safe working, learning and research environment;
- where the respondent has prior substantiated complaints; or
- where there is evidence of a pattern of conduct.

Where NOSM continues an action or initiates a complaint the Chief Administrative Officer, Vice Dean, Associate Dean or Division Head will act as the complainant on behalf of NOSM.

1.4 NOSM or NOSM Academic or Support Unit Complaints

In the case of complaints against NOSM the Chief Administrative Officer, as the NOSM representative, will act as respondent. In the case of complaints against one of NOSM's academic or administrative units the relevant Vice Dean or Associate Dean, as the unit representative, will act as respondent.

2.0 Early Informal Resolution Process

The objective of early informal intervention is to resolve any situation or conflict as soon as possible in a fair and respectful manner and to prevent situations from escalating to the point where filing a formal complaint is necessary. Every effort should be made to resolve problems early, with open communication and in a cooperative manner.

An allegation of harassment is serious. If a person working for NOSM believes that he or she has been harassed, the following actions should be taken:

1. A person who feels offended (complainant) by the actions of another person (respondent) is encouraged to make it known to the respondent as soon as possible in an attempt to resolve the problem.
2. If the complainant feels comfortable, she or he should do so directly, either in person or in writing.
3. It is recognized that it may not always be possible for someone to communicate directly about discrimination or harassment with the respondent. If the complainant feels uncomfortable, she or he should do so with help from an advisor who may be a manager, a person in authority they trust, a union/association representative or the Director Human Resources.
4. The advisor can provide the complainant advice as to how to proceed, may help the complainant initiate a conversation, or may be able to approach the person accused of harassment to let them know that there has been a complaint, provide a copy of this policy, communicate NOSM standards of behaviour, and seek a commitment that future behaviour will be consistent with this policy. The advisor may use problem resolution mechanisms such as coaching, counseling and facilitation.
5. All discussions and other forms of communication between an advisor and a complainant or respondent and all discussions and other forms of communications in the course of informal resolution, other than terms of any agreed resolution, shall not be used in subsequent stages of the complaint proceedings under this policy and procedure or for any other hearing in any other forum unless required by law.

3.0 Formal Resolution (Complaint) Process

If informal resolution is not successful in resolving the problem, or is not desired by either party, the complainant has the right to file a complaint with the Director of Human Resources.

3.1 Filing a complaint

The complainant will submit a complaint in writing to the Director of Human Resources or delegate. Complaints shall be in writing, signed and dated, and set out the circumstances of the alleged discrimination, harassment or psychological harassment, the name(s) of the respondent(s), the nature of the allegation(s), a description of the incident(s), and, if applicable, the names of witnesses.

Where the respondent(s) are unknown to the complainant or where the complaint is of a systemic nature the complainant should consult with the Director of Human Resources regarding submission of the complaint.

Complainants are encouraged to come forward in as timely a manner as is comfortable, keeping in mind that the more time passes, the more difficult it is to investigate and address the complaint.

Complaints will not be considered if submitted more than six (6) months after the alleged incident, or most recent related episode in a series of incidents, save and except in exceptional circumstances where the delay was incurred in good faith and no substantial prejudice will result to persons affected by the delay.

3.2 Processing of the complaint

Upon receipt of the complaint the Director of Human Resources or delegate will acknowledge receipt to the complainant within two (2) working days. In the case of complex complaints submitted when the Director of Human Resources or an appropriate delegate is not available time limits will be extended to ensure correct processing of the complaint.

The Director of Human Resources will, through the appropriate senior leadership officer, ensure that the complainant is safe and will enact interim measures, if necessary, while a complaint is being resolved, investigated, or decided. Interim measures may include, but are not limited to, temporary reassignment, alteration of reporting, transfer to another department or altering responsibilities for instruction/assessment. Interim measures will be non-punitive and do not reflect a judgment of the merits of a complaint or the credibility of the parties. The objective will be to seek the least disruptive interim options that respond to identified needs and are appropriate in the circumstances.

Within five (5) working days of acknowledged receipt of the complaint the Director Human Resources will deliver a copy of the complaint to the respondent.

The respondent has the right to respond to the complaint, in writing, provided such right is exercised within ten (10) working days from receipt of the complaint. The respondent may acknowledge or deny the complaint in whole or in part, provide additional information or propose a resolution to the complaint.

On receipt of the respondent's written reply, or on the expiry of the time period for the respondent's response, the complainant may accept the reply as full resolution of the complaint or provide written notice to the Director of Human Resources that they wish to proceed to consensual mediation and/or investigation.

3.3 Consensual Mediation

When the Director of Human Resources receives a complaint, he/she will initiate a consensual mediation process, which is the recommended avenue of resolution. Mediation is a voluntary process in which the complainant and respondent meet with a neutral third party (mediator) who is trained to help them develop a solution with which both are comfortable.

Mediation gives the parties the opportunity to discuss the issues raised in the complaint, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement and, ultimately, to incorporate those areas of agreements into resolutions. A mediator does not make findings of fact, resolve the complaint or impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution.

Consensual mediation will require the agreement of the complainant and the respondent to use the following process:

1. The Director Human Resources will review the nature of the complaint to determine whether it is appropriate for mediation. Mediation may not be appropriate where there is a power imbalance and one of the people feels at a disadvantage or feels vulnerable (perhaps because of a difference in age, sex, religion, race, level of authority, or other characteristic). It is also not appropriate when there is a case of severe harassment for which strong corrective action such as termination is likely to be required. In the event of a determination that the complaint is not appropriate for mediation the decision will be communicated to the parties within five (5) working days of the notice to proceed to mediation/investigation.
2. In cases determined appropriate for mediation the Director Human Resources will confirm that both the complainant and respondent consent to the mediation process.
3. If the complainant and respondent agree to mediation the Director Human Resources will appoint a neutral qualified mediator to conduct the process within ten (10) working days of the notice to proceed to mediation/investigation.

4. The mediation process and resolution will be kept strictly confidential by all participants unless the written agreement of the parties contains a specific agreement to the contrary.
5. Where a mediated resolution is reached, the terms of the settlement will be written and the settlement will be signed by the complainant and the respondent. If a potential settlement involves action to be taken by NOSM then NOSM becomes a third party to the mediation and must also agree to the settlement. Signed settlements are binding on the parties. A copy of the mediation agreement is provided to the parties and to the Director of Human Resources and retained in the complaint record.
6. All discussions and other communications in the course of mediation, other than terms of any resolution, shall be considered privileged and shall not be used in subsequent stages of the complaint proceedings under this policy and procedure or for any other hearing in any other forum unless required by law.
7. The mediator is not compellable to give evidence in subsequent stages of the complaint proceedings or any future proceedings regarding information disclosed during the mediation process.
8. The mediation process may be ended by the complainant, the respondent or the mediator at any point in the process.

3.4 Investigation

Where the complaint is not appropriate for mediation, either the complainant or the respondent does not agree to mediation, or no resolution is reached during the mediation process the complaint may be referred to investigation by either the complainant or the respondent submitting a referral to investigation request with the Director Human Resources within ten (10) working days of the conclusion of the mediation process.

A qualified external and unbiased investigator will be appointed within ten (10) working days of the referral by the Director Human Resources.

The appointment of an investigator does not preclude an investigator from mediating the dispute where the parties consent and the investigator deems mediation appropriate. The investigator will be provided a copy of the complaint and any response and will investigate the complaint thoroughly including interviewing the complainant, the respondent, and any relevant witnesses. All employees have a responsibility to co-operate in the investigation.

An investigation will involve:

- gathering all pertinent information from the complainant, respondent and relevant witnesses, considering potential witnesses identified by the complainant or respondent;
- reviewing any relevant documents or physical evidence;
- determining procedural issues regarding the conduct of the investigation consistent with the right to a fair investigation;
- providing the complainant and respondent with particulars of allegations to enable a full response as required in the course of the investigation;
- assessing the evidence including consideration of conflicting evidence, direct knowledge, relationship of witnesses to the complainant or respondent, opportunity for observation, ability to recall, and other relevant factors;
- determining the allegations/issues relating to the complaint and deciding whether, on a balance of probabilities, the reported discrimination, harassment or psychological harassment occurred; and
- recommending appropriate remedies, disciplinary action(s), or other measures; and
- keeping the parties informed about the progress of the complaint.

The investigator will submit a written investigation report to the Dean, or the delegate of the Dean, within three weeks (21 days) of the date of the investigator's assignment or establish a new deadline and provide reasons why a longer period is required. The report will outline who was interviewed, the evidence submitted, and the decision of the investigator regarding whether, on a balance of probabilities, discrimination, harassment or psychological harassment did occur. In cases of substantiated complaints the investigator will also submit recommendations regarding remedies, disciplinary actions or other measures which may be appropriate in the particular case.

3.5 Substantiated complaints

If the investigator decides the complaint is substantiated the Dean, or the delegate of the Dean, will review the investigator's report, determine what action to take and inform both the complainant and the respondent of their determination, in writing, within a week of receipt of the report subject to extension of this time period on notice to the parties. The Dean, or the delegate of the Dean, may arrange meetings with the complainant and/or the respondent to provide an opportunity for input on remedies or disciplinary actions or other measures prior to making a final determination.

In a substantiated complaint remedies for a complainant may include, but are not limited to, any of the following depending upon the relationship of the complainant to NOSM, the nature and severity of the conduct and the relevant circumstances:

- an oral or written apology from the respondent and/or NOSM;
- financial compensation;
- reinstatement or reconsideration of appointments;
- reinstatement of employment benefits, such as sick leave; or
- safety measures.

In a substantiated complaint disciplinary action(s) for respondent(s) may include, but are not limited to, one or more of the following, depending on the relationship of the respondent to NOSM, the nature and severity of the conduct and the relevant circumstances:

- restricted access to facilities or trespass notice;
- letter of disapproval and warning;
- revoking of permits or contracts;
- verbal or written apology;
- mandatory attendance at discrimination/harassment training;
- counseling;
- verbal reprimand;
- written reprimand;
- suspension, with or without pay;
- transfer, if it is not reasonable for the people involved to continue working together;
- modification of responsibilities;
- ordering no contact with the complainant;
- demotion; or
- termination of employment.

Disciplinary action(s) will be consistent with NOSM rules, regulations, policies, collective agreements and applicable laws.

3.6 Appeal, Grievances or Outside Processes

Nothing in this policy shall be construed to remove any rights of appeal or rights to grieve that members of the NOSM community have independent of this policy or to remove any rights to take action against NOSM or members of the NOSM community in other processes within or outside the school.

4.0 General

4.1 Right to Withdraw Complaint

Any person filing a complaint has the right to withdraw that complaint at any point in the process.

4.2 Burden of proof

The complainant has the responsibility for proving his or her allegations of discrimination, harassment or psychological harassment on the balance of probabilities.

4.3 Balance of probabilities

Balance of probabilities means that based on the evidence existence of a fact is more likely than its non-existence, and that the issue to be determined is not only possible, but probable, rather than improbable. If the evidence is such that the allegation is more probable than not, the burden is discharged. If the probabilities are equal, it is not discharged. The credibility of witnesses may be an issue in which credibility must be assessed and findings of credibility made.

4.4 Right of Parties to Support and Assistance

The complainant and respondent are entitled to a representative to provide assistance and support at all stages of these procedures. Members of unions or associations have representation rights as conferred by their collective agreements. Any costs with respect to the representative shall be the responsibility of the party selecting the representative.

4.5 Participation in the process

Due process requires that both the complainant and respondent participate and provide evidence in a timely manner. In cases where either the complainant or respondent does not participate or provide evidence within a reasonable time, the investigation and recommendations process nevertheless may proceed. Any person whose actions or inactions obstruct the application of this policy and procedure or who breaks an undertaking or settlement agreement may be subject to discipline.

4.6 Time Limits and Extensions of Time Limits

Where any time limits are established by this procedure with respect to the processing of complaints the Director Human Resources or the Investigator may extend time limits if the failure to comply is beyond the control of the person seeking the extension or where it is otherwise necessary having regards to the interests of the parties and the principle of fairness.

4.7 Consolidation of Complaints

Where two or more complaints have been submitted against the same respondent(s) the investigator may determine that the complaints be consolidated and addressed together. Similarly, where complaints are brought by a respondent against a complainant, the investigator may determine that these complaints be consolidated and addressed with the original complaint.

4.8 Breach of Settlement

In the event of an alleged breach of the terms of a settlement the complainant or respondent may revive the complaint as set out in the Formal Resolution (Complaint) Process. The Investigator shall have the power to determine whether a breach of terms of settlement has occurred. For purposes of addressing an alleged breach of a settlement and in any subsequent assessment of recommended remedies or responses the complaint, response, settlement agreement and circumstances of the alleged breach will be admissible as evidence in making a decision.

4.9 Conflict of interest

Any person involved with the application of any of the provisions or procedures under this Policy and Procedure shall, on the grounds of conflict of interest or reasonable apprehension of bias, immediately declare any conflict of interest or bias to the NOSM Dean.

Either party to a complaint may object to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias.

The Dean will consider the nature of the conflict and may name a replacement to perform the duties and responsibilities assigned by this Policy and Procedure.

4.10 Collective Agreements

If the complainant and/or respondent are governed by a collective agreement, any and all actions shall be taken in accordance with its terms, including remedies and disciplinary actions where applicable

4.11 Concerns and Complaints about Procedures

General or specific concerns or complaints about the application of these procedures may be addressed to the Chief Administrative Officer.

4.12 Review of Policy and Procedure

Two (2) years after the coming into force of this policy and procedure the Chief Administrative Officer shall appoint a working group, which will include representatives from bargaining units within the School, for the purposes of reviewing the policy and procedure and its operation and submitting recommendations for change. The review will include ensuring that:

- the policy was understood, trusted and used by the School community;
- complaints were dealt with quickly, thoroughly and effectively; and
- there was no retaliation against individuals who filed a complaint or cooperated in the investigation of a complaint.