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**DISCRIMINATION AND HARASSMENT POLICY**

**Approved by:** Board of Directors

**Responsible Offices**: Human Resources Unit

Approved: March 22, 2007 **Responsible Officer(s**): Chief Administrative Officer

Revised: November 25, 2016

#### Preamble

The Northern Ontario School of Medicine (NOSM) is committed to creating a climate of inclusiveness, responsiveness, understanding and respect for the dignity and worth of every person in order to create the best possible environment for working, learning and research.

NOSM is, therefore, committed to protecting the right to work, learn and conduct research in an environment free from prohibited discrimination and harassment consistent with its obligations under the Ontario Human Rights Code and the Occupational Health and Safety Act.

NOSM is also committed to vigilance in protecting academic freedom, including the rights of freedoms of expression, inquiry and research and recognizes that academic excellence and academic freedom can only be achieved when there is freedom to work, teach, research and learn in an environment in which discrimination and harassment are not tolerated.

The purpose of this policy is to promote awareness of the rights and responsibilities entailed in these commitments, to prevent discrimination and harassment, and to provide procedures for addressing complaints.

In accordance with Provincial Statute, NOSM shall investigate and deal with all complaints or incidents of workplace harassment in a fair, respectful and timely manner.

#### Principles

The Ontario Human Rights Code provides that every person has a right to freedom from discrimination and harassment because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, receipt of public assistance, family status or disability.

The Ontario Human Rights Code and the Occupational Health and Safety Act define “harassment” as engaging in a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome.

The Ontario Human Rights Code also provides a right to freedom from sexual harassment and sexual solicitation or advance as well as a right to freedom from reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

The Occupational Health and Safety Act further defines “workplace sexual harassment” as,

(a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or

(b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

The emerging concept of psychological harassment recognized in the Quebec Act Respecting Labour Standards provides a right of personal dignity and integrity in the workplace.

**3.0 Policy**

The NOSM Board of Directors believes that all members of the School community have the right to work, learn and research in an environment free from discrimination and harassment. To provide an environment that creates the desired climate of inclusiveness, responsiveness, understanding and respect free from prohibited discrimination and harassment, it is NOSM policy that:

* 1. Scope and Application

This policy applies to all NOSM administration, faculty, staff, and members of the Board of Directors, visitors, guests, volunteers and third-party contractors while they are acting in a capacity defined by their relationship with the School.

Students will be responsible to follow the policy of the university that they are registered with. In addition, students are referenced under Section 3.5 – Shared Responsibility.

This policy is not restricted to conduct within NOSM offices and buildings, but also applies to all activities that occur in the capacity of a person’s relationship with NOSM, wherever these activities may occur. The focus in determining application of the policy involves consideration of whether the prohibited behaviour negatively impacts on NOSM, including the working and learning environment, work relationships, performance or achievement of NOSM’s mission and vision.

Nothing in this policy will limit or amend the provisions of any Collective Agreement in force at NOSM.

Any reasonable action taken by an employer or supervisor relating to the management and direction of employees or the workplace is not workplace harassment.

* 1. Discrimination or Harassment

Discrimination, harassment, and workplace sexual harassment/ sexual solicitation contrary to the Ontario Human Rights Code and the Occupational Health and Safety Act are prohibited and will not be condoned. The School will act diligently in accordance with its obligations to create and maintain an environment free from discrimination and harassment.

* 1. Psychological Harassment

Psychological harassment--meaning any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, bullying, actions or gestures--that is known or ought reasonably to be known to be unwelcome and that affects an individual’s dignity or psychological or physical integrity and that results in a harmful environment for the individual is prohibited and will not be condoned. The School will act diligently in accordance with its obligations to create and maintain an environment free from psychological harassment.

* 1. Reprisal

Every person has a right to claim and enforce their rights under the Ontario Human Rights Code and the Occupational Health and Safety Act or this Policy, including the right to institute and participate in complaint proceedings or to refuse to infringe the rights of another person without reprisal or threat of reprisal for so doing.  Any reprisal or threat of reprisal may constitute a breach of the Ontario Human Rights Code or the Occupational Health and Safety Act and/or be considered a breach of this Policy and may result in disciplinary action.

An individual will not to be penalized or disciplined for reporting an incident or for participating in an investigation involving workplace harassment.

* 1. Shared Responsibility

All members of the NOSM community, including members of the board, administration, faculty, staff, students, visitors, guests, volunteers and third-party contractors, have a shared responsibility to ensure compliance with this policy and its procedures to create and maintain an environment that is free from harassment, discrimination and psychological harassment.

All members of the NOSM community are individually responsible for ensuring that their own behaviour is appropriate, respectful and consistent with this policy, that prohibited behaviour is not condoned and that they respond in a timely and cooperative manner to requests for information relating to complaints. Workers are encouraged to report any incidents of workplace harassment to the appropriate person.

Supervisors, both academic and staff, have a particular responsibility to strive to create an environment free from harassment and discrimination in their area(s) of management. That responsibility includes awareness of what constitutes discrimination, harassment and psychological harassment, delivering proactive education, monitoring the environment in their area(s), knowledge of complaint procedures and responding to prohibited behaviour immediately and effectively.

* 1. Prevention and Remediation

Prevention and remedial measures will be the main focus of addressing discrimination, harassment and psychological harassment.

* 1. Informal resolution

Informal resolution and mediation shall be the fundamental tools for achieving both the educational and remedial goals of this policy. The objective of informal resolution and mediation is to secure a reasonable settlement which is consistent with the spirit and intent of this policy. NOSM will encourage the use of informal processes to address discrimination, harassment or psychological harassment except where the nature of the matter necessitates a more formal process.

* 1. Disciplinary Action

Individuals found to have violated the Ontario Human Rights Code, the Occupational Health and Safety Act and/or this policy may be subject to disciplinary action up to and including termination of employment.

All individuals outlined in 3.1 of this policy, including but not limited to supervisors, managers, and employees are expected to adhere to this policy, and will be held responsible by NOSM for not following it.

* 1. Confidentiality

All individuals involved in a report of discrimination, harassment or psychological harassment are expected to make every attempt to respect the confidential nature of information related to the report to the extent practical and appropriate in the circumstances.

It is recognized that some disclosure may occur to parties to a reported complaint, including witnesses, in compliance with NOSM’s obligation to address reports.

Information provided about an incident or about a complaint will not be disclosed except as necessary to protect individuals, to investigate the complaint or incident, to take corrective action or as otherwise required by law.

Exceptions to the principle of confidentiality may be made in the event of suspected imminent danger, health and safety considerations or where required by law.

* 1. Vexatious Complaints

A vexatious complaint is a complaint that is intended to annoy or to damage the reputation of a respondent. This concept is not to be confused with a complaint made in good faith that is found to be without merit. A vexatious complaint is contrary to the spirit and intent of this policy and may be subject to disciplinary action.

* 1. Reasonable Person Test

The identification of conduct or comments as contrary to this policy will be made according to an objective analysis process described as the “reasonable person test.” The reasonable person test examines how a reasonable person, a person with ordinary intelligence and judgment whose conduct is guided by societal standards, in the context of the circumstances regarding the complaint, would assess the facts.

* 1. Fairness

This policy will be administered with a spirit of fairness to all involved parties. This spirit of fairness includes the complainant’s right to report issues and seek a remedy, the respondent’s right to know the allegations and the identity of the complainant, and the rights of both parties to a fair and impartial process.

* 1. Alternative Processes

Nothing in this policy prevents a person from seeking a remedy under alternative processes otherwise available, including filing a complaint with the Ontario Human Rights Commission, or the Ontario Ministry of Labour grievance/arbitration procedure or other proceedings in law.

In the event that circumstances giving rise to a complaint under this policy results in proceedings before the Human Rights Tribunal of Ontario or under investigation by the Ontario Ministry of Labour, civil actions, criminal charges, or grievance arbitration proceedings then the procedures outlined in this policy and procedure will be suspended pending conclusion of the other proceedings.

* 1. Retention of Files

All documents related to a complaint will be retained in a secure and confidential manner for 7 years in the office of the Director of Human Resources. Records will be disposed of after the 7-year period in accordance with NOSM record disposal policy, unless there is a related complaint in which case the retention period will be extended as required. Retained files may be used to monitor remedial measures and to address reported or suspected patterns of discrimination, harassment or psychological harassment.

* 1. Special Programs

The right to equal treatment without discrimination not infringed by the implementation of a special program designed to relieve hardship or disadvantage, or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights. NOSM reserves the right under the Ontario Human Rights Code to implement such special programs.

**4.0 Definitions:**

These definitions are provided to assist in the interpretation and application of this policy:

“Age” means an age that is eighteen years or more;

“Disability” means

 (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal, or on a wheelchair or other remedial appliance or device,

 (b) a condition of mental impairment or a developmental disability,

 (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

1. a mental disorder, or
2. an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997;

“Discrimination” means differential or unequal treatment of an individual or group of individuals which is based, in whole or in part, on one or more of the prohibited grounds of discrimination. Discrimination has the effect of imposing burdens, obligations or disadvantages on individuals or groups not imposed on others, or limiting access to opportunities, benefits and advantages available to others. Discrimination may be intentional or unintentional. Discrimination may occur as a direct result of policies, practices or rules which may not have a discriminatory intent but result in an adverse impact for a person or group of persons based on a prohibited ground in the Ontario Human Rights Code;

“Family status” means the status of being in a parent and child relationship;

“Marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage and a partner of the same sex;

“Member of the School community” means a member of the faculty, member of the staff, member of the administration, member of the board of directors, a third-party contractor or the student body;

“Psychological Harassment” as defined in 3.3 involves vexatious behaviour. “Vexatious behaviour” means humiliating or abusive behaviour that lowers a person’s self-esteem or causes torment. Examples of vexatious psychological harassment may include (but are not limited to):

* Making rude, degrading or offensive remarks.
* Making gestures that seek to intimidate.
* Engaging in reprisals.
* Discrediting the person: spreading rumours, ridiculing, humiliating, calling into question convictions or private life or shouting abuse.
* Bullying or belittling the person. Bullying is repeated intimidation of others and includes unjustified criticism, humiliation and abuse of authority.
* Preventing the person from personal expression: yelling, threatening, constantly interrupting a person, prohibiting a person from speaking to others.
* Isolating the person: no longer talking to a person at all, denying a person’s presence, distancing a person from others.
* Destabilizing the person: making fun of convictions, tastes and political choices.

Psychological Harassment is not:

* The normal exercise of management rights. Psychological harassment must not be confused with the normal exercise of management rights, including the right to provide direction, to assign tasks and the right to reprimand or impose disciplinary sanctions, provided these rights are not exercised in a discriminatory, humiliating or abusive manner.
* The normal exercise of academic freedom including the communication or expression of thought, opinion or belief which is relevant to academic inquiry, teaching or public discourse providing this freedom is not exercised in a discriminatory, humiliating or abusive manner.

“Record of offences” means a conviction for an offence in respect of which a pardon has not been granted under the Criminal Records Act (Canada) and has not been revoked or an offence in respect of any provincial enactment.

“Third-party contractor” includes vendors of goods and services to NOSM, persons in the community guiding practicum or intern placements, stipendiary clinical faculty and others with similar connections to NOSM.

**5.0 Interpretation**

This policy is modelled on the provisions of the Ontario Human Rights Code and the Occupational Health and Safety Act with respect to discrimination and harassment, and the Quebec Act Respecting Labour Standards with respect to psychological harassment, and will be interpreted and applied in a manner consistent with these laws.

This policy will be reviewed annually.

If an individual needs further assistance, they may contact Human Resources ([hr@nosm.ca](https://www.mynosm.ca/organization/deans_office/ginakennedy/BOARD%20OF%20DIRECTORS/MEETINGS/2015%20MEETINGS/2015Nov%20f2f/Meeting%20Package/hr@nosm.ca)), their respective Union, the Joint Health and Safety Committee **or NOSM’s Employee Assistance Program.**

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