



Policy

On

Intimidation and Harassment

Postgraduate Medical Education

Memorial University of Newfoundland

May 2006

Postgraduate Medical Education Policy on Intimidation and Harassment

POLICY STATEMENT

The Faculty of Medicine of Memorial University values the dignity and self-esteem of every staff member, patient, volunteer and student and promotes a respectful workplace. Every member of the medical community associated with the Faculty has the right to study, work and conduct his or her activities in an environment free of unlawful and/or inappropriate discrimination and harassment.

The Faculty of Medicine is committed to providing and maintaining such an environment through its policies and regulations. The Faculty will ensure that individuals who believe that they have been subjected to harassment and intimidation by a member of the university community, are able to register complaints with the assurance of prompt action and without reprisal. Complaints regarding an individual who is not a member of the university community will be referred to the appropriate authority. All complaints will be handled with sensitivity and in the strictest confidence which is consistent with a fair and appropriate resolution of the issue. The Faculty will exercise care to protect and respect the rights of both the complainant (*the person or persons making the complaint*) and the respondent (*the person or persons against whom the complaint is made*).

It should be borne in mind that concerns will continue to occur across our broad and complex teaching systems. Problems involving harassment or intimidation should always be dealt with at the lowest possible level. Individuals who face a problem may wish to choose a confidant with whom they are comfortable. This could be a Chief Resident, another staff member or mentor, a site director or even another peer. Often resolution can occur without the problem being referred to the more formal University mechanisms. If an immediate and local approach can solve matters, this is to everyone's advantage.

However, for the more difficult, complex, or persistent situations or where the complainant or respondent cannot involve himself/herself in an informal resolution, a formal resolution process is available.

No person shall retaliate against another for bringing forward a complaint of harassment or for being involved in the complaint process. Retaliation is defined as behavior which interferes with an individual's work or academic performance or creates an intimidating work or academic environment. The Faculty of Medicine considers retaliation or the threat of retaliation at any stage to be a serious offence because it prevents potential complainants, witnesses, administrators, or others from acting on their concerns. Proceedings under this policy are confidential. A breach of confidentiality by any individual with respect to a complaint may also constitute interference or retaliation.

STATEMENT OF LEGAL OBLIGATION TO ACT

The Faculty of Medicine promotes a work environment free from harassment. Complaints will be addressed promptly and appropriate action taken. In the event the University does not have the necessary jurisdiction, the complaint will be forwarded to the appropriate authority subject to the consent of the complainant and the requirement of the law. A person who has knowledge of harassment occurring and has the authority to prevent or discourage it and fails to do so may also be liable.

CONFIDENTIALITY

In order to ensure a fair investigation procedure, complaints are investigated and handled in a manner such that the identities of the complainant and the respondent are kept confidential to the extent consistent with a thorough investigation.

Absolute confidentiality however, is not guaranteed. For example, the respondent must be made aware of the allegations made against him/her and witness(es) must know who the complainant and respondent are during the conduct of an investigation. The investigation will be handled with as much discretion as is consistent with obtaining the information needed to make a decision on the complaint.

All records of complaints, including notes of meetings, interviews and results of investigation are to be kept confidential and not released except where disclosure is necessary for discipline, or other internal or external investigative procedures such as Human Rights investigations or legal action. All documentation of the complaint, the investigation and the outcome of the investigation will be kept in a confidential file in the office of the investigator.

FALSE ALLEGATIONS

The university does not condone false allegations of harassment. All complaints of harassment are serious. Therefore anyone who deliberately files a false allegation will be subject to discipline.

CANADIAN MEDICAL ASSOCIATION CODE OF ETHICS

Fundamental Responsibilities:

1. Consider first the well-being of the patient.
2. Practice the profession of medicine in a manner that treats the patient with dignity and as a person worthy of respect.
3. Provide for appropriate care for your patient, even when cure is no longer possible, including physical comfort and spiritual and psychosocial support.
4. Consider the well-being of society in matters affecting health.
5. Practice the art and science of medicine competently, with integrity and without impairment.
6. Engage in lifelong learning to maintain and improve your professional knowledge, skills and attitudes.
7. Resist any influence or interference that could undermine your professional integrity.
8. Contribute to the development of the medical profession, whether through clinical practice, research, teaching, administration or advocating on behalf of the profession or the public.
9. Refuse to participate in or support practices that violate basic human rights.
10. Promote and maintain your own health and well-being.

GUIDELINES OF CONDUCT FOR AN EDUCATIONAL ENVIRONMENT

An ethical code of conduct should at all times:

1. Treat residents/other trainees with respect regardless of their level of training, race, creed, religion, color, gender, sexual orientation and field of study.
2. Refrain from the intimidation and harassment of residents/other trainees in any fashion – emotional, physical or sexual.
3. Teach the knowledge, skills, attitudes and behaviour and provide the experience that the resident requires to become a physician in his/her chosen career.
4. Supervise residents/other trainees and allow them responsibility as is appropriate to their level of training and commensurate with their ability.
5. Demonstrate to residents/other trainees the rational basis for clinical decision-making from investigation to diagnosis and to treatment, based on the best evidence available.
6. Assess carefully and accurately on appropriate criteria, the resident's/other trainee's abilities and provide timely oral and written feedback to the resident.
7. Support and facilitate remedial teaching when it is necessary.

The educational environment we want to foster and support in Postgraduate Medical Education at Memorial should:

1. Encourage faculty-resident/other trainee respect
2. Encourage the spirit of collegiality and fairness
3. When problems arise, ensure that justice occurs.

DEFINITIONS

Harassment

Harassment is defined as improper and unwelcome conduct or comment made by a person who knows or should reasonably know that such conduct or comment would offend, humiliate or degrade another person.

This behaviour:

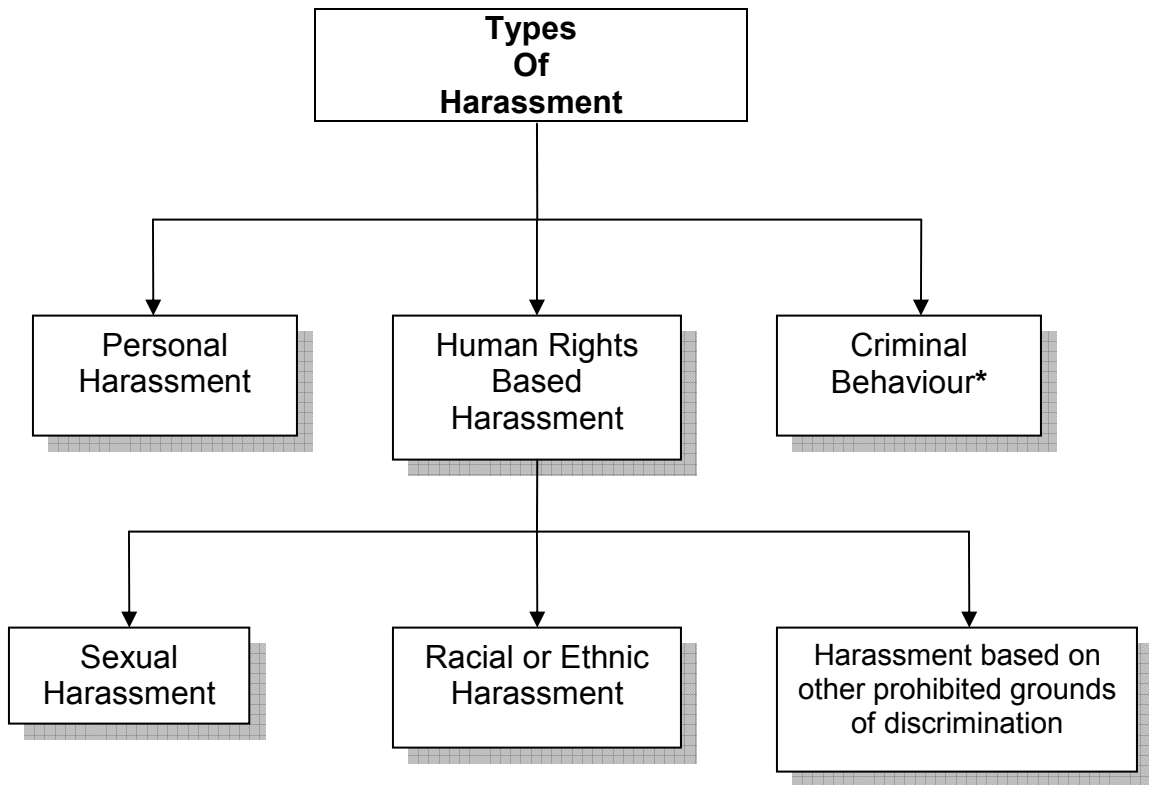
- i. is directed at, and is offensive to, the individual concerned, and;
- ii. endangers an individual's work/learning and or well being, or;
- iii. undermines work/learning performance or threatens the economic livelihood of the individual concerned, or;
- iv. constitutes an abuse of authority whereby an individual uses his/her authority or position with its implicit power to undermine, sabotage, or otherwise interfere with or influence the learning and career of another.

Workplace harassment may consist of one or a series of repeated instances and includes, but is not limited to personal harassment, sexual harassment, harassment based on gender and sexual orientation, racial or ethnic harassment and assault.

Harassment does not include:

- i. the correction, grading, assessment or appropriate criticism of any student's academic efforts, even if they are adverse or if the student does not agree;
- ii. insistence on academic excellence or a reasonable quality of academic performance;
- iii. the free academic study, discussion and debate of controversial topics in an academic environment, including topics that may be offensive to groups or individuals;
- iv. personality or interpersonal conflicts or jealousies;
- v. normal exercise of supervisory responsibilities including tutorials, work assignments, performance evaluation, training, counseling and/or discipline essential to achieving efficiency of daily organizational operations;
- vi. situations that involve appropriate disciplinary action, either as permitted by Collective Agreements or through the process approved by the Student Discipline Committee of Council of the University;
- vii. situations that involve appropriate directions of the university/healthcare corporation in compliance with existing Collective Agreements;
- viii. the statement of any opinion by a person who has been legitimately asked to state their opinion.

There is an expectation, however, that these duties will be carried out in an appropriate, timely and judicious manner and that any evaluation given will be constructive and communicated in a respectful manner.



* Sometimes, personal and human rights-based harassment can involve behaviour that is criminal.

1. Personal Harassment

Personal harassment is any unwelcome comment or conduct either obvious or subtle which:

- i. creates an intimidating, hostile or offensive environment, and;
- ii. interferes with an individual's ability to carry out his/her responsibilities, or;
- iii. can affect an individual's learning and career opportunities.

Examples of personal harassment include but are not limited to:

- i. insulting, critical or demeaning remarks about a person or group of people;
- ii. spreading unfounded or misinformed rumors that unjustly damage a colleague's reputation;
- iii. comments about a group's or individual's moral or intellectual ability
- iv. slurs, gestures, name-calling, innuendoes, or taunts;
- v. refusing to work with, or have contact with, an individual because of his/her social background;
- vi. negative comments about the general unsuitability of a particular group for the work they do.

Personal Harassment is not:

- i. minor disagreements over style, process or things that could be dealt with in the workplace by communicating and working things out;
- ii. the use of appropriate workplace discipline;
- iii. "petty" acts or foolish words, where the harm, by any objective standards, is fleeting. Nor for no intent to harm, unless there has been a **heedless disregard for the rights of another person** and it can be fairly said "**you should have known better**" (Arbitrator Laing) British Columbia v. B.C.G.E.U. (1995), 49 L.A.C. (4TH) 193.

2. Human Rights-Based Harassment / Harassment Based on a Prohibited Ground of Discrimination

Human rights-based harassment is abusive and unwelcome conduct towards a person based on that person's sex, sexual orientation, race ethnicity or any other characteristic that is referred to in our Human Rights Code as a prohibited ground of discrimination. Prohibited grounds of discrimination include: sex, sexual orientation, marital status, race/ethnicity, religion, physical/mental disability, age or political opinion. To harass someone based on their membership or presumed membership in a particular group is contrary to human rights legislation.

Four predominant forms of human-rights based harassment are sexual harassment, racial/ethnic harassment, harassment based on sexual orientation and harassment on the basis of a disability. They are described as follows.

2.1 Sexual Harassment

Sexual harassment is conduct of a sexual nature directed at an individual or individuals by a person who knows or ought to reasonably know that such attention is unwanted. Behaviour constitutes sexual harassment when:

- i. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status or academic accreditation, or;
- ii. submission to or rejection of such conduct by an individual is used as the basis for employment or for academic performance, status or accreditation decisions affecting such individual, or;
- iii. such conduct interferes with an individual's work or academic performance, or;
- iv. such conduct creates an intimidating, hostile or offensive work or academic environment.

Such conduct includes, but is not limited to, unwelcome sexual invitations or requests, demands for sexual favours, unnecessary touching or patting, leering at a person's body, unwelcome and repeated innuendos or taunting about a person's body, appearance or sexual orientation, gender-based abusive conduct such as sexist jokes or remarks, suggestive remarks or other verbal abuse of a sexual nature, visual displays of degrading or offensive sexual images, threats of a sexual nature, sexual assault, and any other verbal or physical conduct of a sexual nature.

Sexual harassment may occur during one incident or a series of single incidents which in isolation would not necessarily constitute sexual harassment.

Sexual harassment may occur between individuals of the same sex or between the sexes.

Sexual harassment may occur in the course of work or study or participation in other university activities.

Sexual harassment is covered by a University-wide policy which may be found at: <http://www.mun.ca/sexualharassment/> or by contacting the Sexual Harassment Officer at 737-2015

Anyone with a concern regarding sexual harassment should consult that policy. Complaints about sexual harassment which are received by the Faculty of Medicine will be referred to the University Sexual Harassment Officer in accordance with the above-mentioned University-wide policy.

Sexual Harassment is Not:

Conduct between persons that is based upon full mutual consent where no institutional authority relationship exists.

Mutual attraction or flirtation, a consensual relationship or consensual expression of affection between friends.

2.2 Racial and Ethnic Harassment

Racial and ethnic harassment is any behavior that is taken to show disrespect or cause humiliation to an employee because of his or her race, colour, creed, ancestry, place of origin or ethnic origin.

Racial or Ethnic harassment includes, but is not limited to:

- i. slurs, gestures, name-calling, innuendoes or taunts about an individual's racial or ethnic background;
- ii. similar remarks about other racial groups made in the presence of another;
- iii. unwelcome banter, "teasing" or jokes that are racially insulting or present stereotypical portrayals of racial or ethnic groups;
- iv. displaying racist, derogatory or offensive pictures, materials, or graffiti;
- v. refusing to work with or even have contact with an employee on the job because of his or her racial or ethnic background;
- vi. threats, intimidation, assaults or any use of physical force or violence because of a member's racial or ethnic background.

2.3 Harassment Based on Sexual Orientation

Harassment based on sexual orientation creates a threatening environment for gays, lesbians, or bisexuals who are made to feel that it is unsafe for them to reveal their sexual orientation. It includes any comment, gesture, or action directed at sexual preference or orientation which demeans, threatens, or intimidates a person.

2.4 Harassment on the Basis of a Disability

Harassment on the basis of a disability includes insults, gestures or actions in relation to physical or mental disabilities or conditions that demean, offend, intimidate or embarrass people with mental or physical challenges. Typically, this frequently involves making stereotypical assumptions about the effects or limitations of certain physical or mental disabilities.

3 Criminal Behaviour

Harassment is a broad term referencing a continuum of repetitions and/or serious behaviours. Some harassing behaviors, such as assault, may be criminal. The Criminal Code states that the use of force, or the threatened use of force in circumstances where a victim believes, with good reason, that an individual could carry out the threats, is assault and is a criminal offence. In addition, (a) the use of threats to induce someone to do something, (b) uttering a threat to cause bodily harm or damage to property, and (c) intimidation to compel or prevent someone from doing something which they are legally entitled to do are also criminal offences under the Criminal Code.

Some examples of assault and similar offenses include:

- i. use of violence or threats of violence;
- ii. persistent following of a person from place to place;
- iii. watching a place where a person lives or works;
- iv. sexual assault.

A complaint of a criminal nature should be referred to the police for investigation.

REPORTING PROCEDURE

1. Filing a Complaint

A complaint may be **informal** or **formal**. In both cases, the complaint should be made to the Residency Program Director, Discipline Chair, Assistant Dean of Postgraduate Medical Education or the Ombudsperson. A person filing an informal complaint or a formal complaint *must do so in writing*.

A formal complaint may be withdrawn and informal resolution sought at the recommendation and advice of the investigator with the mutual agreement of the complainant and the respondent.

Depending on the circumstance of the incident, some complaints could be resolved within the discipline. However, the Postgraduate Medical Education Office is available for advice and assistance at any stage of the complaint resolution. This Office will encourage program directors and chairpersons of the discipline to make use of the advice of the Postgraduate Medical Education Office.

Timeliness in filing a complaint protects the rights of both the complainant and respondent. The complaint should be made as soon after the incident as possible, but must normally be made within six (6) months of its occurrence and in the case of sexual harassment, a complaint can be made within 12 months.

2. Informal Complaint

An informal complaint is one that is resolved by direct intervention, for example mediation, with the help of the Residency Program Director, Discipline Chair, Assistant Dean of Postgraduate Medical Education, Ombudsperson or other appropriate individual (hereafter referred to as the **Advisor**) as agreed by the Complainant, Respondent and the Discipline. If an informal complaint is not resolved, the complainant may file a formal complaint.

If a resident/other trainee has experienced problems with intimidation/harassment in the learning environment, he/she should choose to deal with the issue(s) in a way that he/she feels most comfortable. If he/she chooses to try to resolve an issue informally, it is very important to keep track of the intimidating/harassing incidents and what he/she have done to try to stop them.

Use a bound journal and include:

- dates, times, details, gestures, words, etc;
- the names and telephone numbers of possible witnesses;

- your emotional or physical reactions when you were experiencing the problematic behaviours and those you experienced immediately after the intimidating/harassing incidents;
- the actions you have taken to try to resolve the issue which may have included discussions with the alleged harasser, discussions with colleagues, friends, letters to the harasser or administration or any meetings with a counselor.

The following are resources and options available in dealing with an informal complaint:

- I. Inform the respondent in person or in writing that the behavior is unwelcome, and that it should be stopped. Perhaps the person you believe harassed you did not realize that the behavior was offending. This should be done immediately following the incident.
- II. Discuss the matter with a senior resident or other colleague(s) where appropriate.
- III. Discuss the available options with the advisor (Residency Program Director, Discipline Chair, Assistant Dean of Postgraduate Medical Education, Ombudsperson or other appropriate resource person at the University).
- IV. Shuttle Mediation/Third Party Intervention.

The advisor may provide third party assistance if the complainant is not comfortable speaking privately with the respondent. Such an option may be appropriate for example, in situations that involve misunderstandings due to cultural differences; in helping an individual resolve a simple situation that has the potential to escalate; in clarifying issues that lead to discomfort, particularly when the relationship between the person expressing the concern and the subject of the concern involves a power imbalance; or in instances when the subject of a concern appears to be unaware of the impact of his or her alleged behavior.

If the advisor recommends third party assistance, an informal, confidential, consultation with the subject of complainant's concern would be arranged. During the informal, confidential consultation, the advisor would convey the concerns, advising the subject how the alleged behaviour is experienced as inappropriate and has given rise to concern. The advisor would take no action which could adversely affect the academic, employment or professional interests of the subject of discussion as a result of these informal consultations.

V. Mediation

The advisor may recommend that the complainant and the respondent meet with a mediator to work towards a mutual resolution.

Mediation, often referred to as alternative dispute resolution, is an assisted negotiation – a process in which neutral third parties, the mediators, attempt to facilitate a private discussion in a safe setting which will lead to resolution of a complaint or dispute. It is a non-disciplinary means of resolution, designed to address complaints of harassment quickly and fairly.

Mediation is not appropriate when only one party is committed to the process. Mediation may not be appropriate in circumstances where there have been allegations of physical violence, threats to safety, serious emotional or physical abuse and intimidation.

VI. Awareness Training

The advisor may recommend that a complaint be resolved where appropriate, through the provision of harassment awareness training. This option may be recommended when you express a concern about a workplace or learning environment that is experienced as uncomfortable, intimidating, hostile or offensive.

3. Formal Complaint

If no informal resolution is attempted or if the informal resolution is not satisfactory to the complainant, the complainant has the option to proceed with a *formal complaint*:

- i. Formal complaints should be made in writing to the Residency Program Director, Discipline Chair, Assistant Dean of Postgraduate Medical Education, or Ombudsperson;
- ii. Formal written complaints will be acknowledged in writing within three working days of receipt;
- iii. The written complaint should be made in a timely fashion, i.e., normally within six months of the date of the intimidation/harassment. The complaint should include dates, names of individuals involved, names and contact information of witnesses and a full description of the incident(s).

During a formal investigation process, the Investigator will follow the process below

- i. interview the complainant and take a statement that documents the circumstances accurately and thoroughly (the complainant would be allowed to have a colleague or advisor present);
- ii. take a statement from the respondent that documents the circumstances accurately and thoroughly (the respondent would be allowed to have a colleague or advisor present);
- iii. interview any witnesses and take statements;
- iv. review all facts and prepare a report based on:
 - a) background
 - b) basis of evidence
 - c) details of investigation
 - d) conclusion and assessment
- v. normally start the investigation within 3 working days of receipt of the complaint and will conclude normally within 45 working days;
- vi. provide both the complainant and the respondent with a copy of the report and allow 10 days for comments.

4. Outcome of Report

After taking into account the results of the investigation the report should be finalized and submitted to the Dean of Medicine. If the preponderance of evidence supports the allegations the appropriate remedial action will also be suggested. This action may involve discipline of the respondent or it may involve an alteration in reporting relationships or other changes such as avoidance of direct supervision.

5. Appeals Procedure

If the complainant or respondent is not satisfied with the decision of the Dean of Medicine, he/she may appeal in writing within 30 working days of receiving the copy of the report, to the Vice-President (Academic) of the University. The decision of the Vice-President (Academic) shall be final.

References

1. Canadian Human Rights Act (R.S., 1985, c.H-6)
<http://www.laws.justice.gc.ca/en/H-6/index>
2. Canadian Medical Association Code of Ethics
3. Eastern Health — Harassment in the Workplace (Respectful Workplace)
Draft for Pilot, November 2001
4. Memorial University of Newfoundland: Student Complaints Procedure (May 7, 2002)
5. Memorial University of Newfoundland: Sexual Harassment Policy -
<http://www.mun.ca/sexualharassment/>

