

**PROPOSAL FOR A GRIEVANCE PROCESS**  
**16<sup>th</sup> December 2004**

**Report of the Subcommittee on Grievance Process to Faculty Council**  
**Faculty of Medicine, Dalhousie University, Halifax, Nova Scotia, August 2004**

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**INTRODUCTION**

At the request of Faculty Council, a subcommittee was struck consisting of the above members to review the processes available for managing grievances expressed by faculty. Faculty Council requested this review because there seemed to be an increase in the number of and severity of conflicts between faculty administration and members of faculty, many of which were increasingly being addressed through recourse to lawyers. Faculty Council was unsure as to the degree to which grievance processes were available for faculty to address grievances at an earlier and more flexible and informal and less adversarial and expensive stage.

**BACKGROUND INFORMATION**

**Multiplicity of appointments of the members of Faculty of Medicine**

Some members of the Faculty of Medicine have tenured or tenure-track appointments. Some of these members of the Faculty are members of the Dalhousie Faculty Association (DFA) and are members of the DFA bargaining unit. Others are members of the DFA but are not members of the DFA bargaining unit. Still others are neither members of the DFA or the DFA bargaining unit.

Some members of the Faculty of Medicine do not have tenured or tenure-track appointments but rather have continuing appointments with periodic review (CAPR). None of these members are members of the Dalhousie Faculty Association bargaining unit although some are members of the Dalhousie Faculty Association.

Some members of the Faculty of Medicine also have appointments as members of the medical staffs of either the Capital Health District Authority or the IWK Health Centre. While not employees of these institutions, these members depend on their privileges for access to patient care, and this affects access to clinical material for the teaching and research which is often the total part of their academic endeavors

as members of the University. Loss of privilege ordinarily equates to loss of appointment as a member of the medical staff, and this has a direct bearing on the member's University appointment: section 10(h) of the Affiliation Agreement between Dalhousie University and the CDHA reads:

“Where Dalhousie terminates the academic appointment held by a Capital Health medical staff member or affiliate medical staff member, or where Capital Health or the Provincial Appeal Body terminates or changes the category of a Capital Health medical staff member or an affiliated medical staff member who is also a Dalhousie faculty member, such termination or change in category will ordinarily result in the termination of the corresponding appointment, subject to the terms and conditions of the appointment or contract, as the case may be, and subject to Capital Health rules and regulations and Dalhousie regulations and policies.”

### **Existing availability of grievance processes**

All documents having a bearing on employment or conditions of employment for faculty were reviewed. These include: the DFA Collective Agreement, the Guidelines for Continuing Appointment with Periodic Review, the Senate Regulations concerning Tenure and Appointment 1987, and the affiliation agreements between Dalhousie University and the IWK Health Centre.

#### *a. Members of the DFA bargaining unit*

There is a full grievance process available to members of the Faculty of Medicine who are members of the DFA bargaining unit through the Collective Agreement.

#### *b. Members of faculty who are not members of the DFA bargaining unit*

For members of the Faculty of Medicine who are not members of the DFA bargaining unit, there are no adequate grievance processes.

Within the two affiliation agreements (between Dalhousie University and the IWK Health Centre and the Capital District Health Authority) and the Guidelines for Continuing Appointment with Periodic Review, there is no description of a process for managing grievances other than those involved with tenure, promotion, and dismissal. None of these documents address or recite the important principle of academic freedom.

The only document that specifically addresses grievances more broadly is Regulations Concerning Appointments, Tenure and Promotion of Dalhousie University (1987). Section 7 defines a grievance process available in the following circumstances:

“When a member of staff, academic or not, believes that he or she has been given less than fair treatment in any matter relating to any of the roles assigned him or her by the university and

procedures for settling the matter are not expressly provided by regulations of the university, he or she should discuss the matter directly with the party or bodies concerned.”

The remainder of the policy describes two processes. The first (7.2.1) is confined to matters “related to academic policy or practice”, whereby the member may “carry the matter before Senate” which may decide on the matter or defer to a special committee.

This process was perceived by the subcommittee to be poorly defined, too limited in scope, and lacking in protections relating to, for example, procedural fairness. It also appears vulnerable to the claim that actions taken in the context of the CDHA or IWK and framed in terms of “patient care” are not subject to these processes. Not surprisingly, given these weaknesses, it appears never to have been used.

The other process starting with section 7.3.1 determines that if the grievor fails to reach satisfaction by discussion with “the next higher administrative officer”, the grievor must ultimately appeal to the President of the University. Only then may he/she request the President submit the matter to the University Hearing Committee. Nowhere in this process is there a formal opportunity for peer counseling or independent advice or for an independent adjudication of the grievance. This process was perceived by the subcommittee to be far too intimidating and poorly defined to encourage an early, efficient, and constructive resolution of a grievance. It would in many cases persuade the grievor that legal counsel was required for his or her interests to be protected and due process to be realized.

### *c. All members of the Faculty of Medicine*

Finally, there is a University Ombudsperson whose role is not defined in any of the grievance processes outlined above, and was initially assumed by the subcommittee members to be available primarily for students. However, in the Office of the Ombudsperson Terms and Conditions it is clear that:

“the office may receive a complaint (excluding grievances falling within the scope of a Collective agreement grievance procedure) from any member of the University Community, past or present, including students, faculty members, staff members, or administrators ... provided that the complaint relates to Dalhousie University or the Dalhousie Community”.

Despite this apparently broad statement of Terms and Conditions, the University Ombudsperson is, and has been for several years, a student (graduate or undergraduate), and the office is funded by the Office of Student Services. It is difficult to see how this body could have sufficient information and authority to deal with faculty grievances in the Faculty of Medicine.

### **The policy gap**

This multiplicity of kinds of appointments and the linkage of kinds of appointments to various kinds of grievance processes makes it extremely difficult to assess who has what kinds of protections and who

has adequate protections. The concern of the subcommittee was not with those faculty members who are members of the DFA and the DFA bargaining unit but rather with those who are not members of the DFA bargaining unit as they are not protected by the provisions laid out in the Collective Agreement. The Committee was particularly concerned about those members of the Faculty who are not members of the DFA bargaining unit and have appointments at the CDHA or the IWK. They are particularly vulnerable with respect to the lack of adequate grievance processes in the Faculty of Medicine.

Clearly a less formal peer-based process is required if a grievor is to be given the opportunity to discuss a grievance and feel that a competent and independent opinion has been offered to him/her. A process should therefore be defined which offers advice and counseling to members of the Faculty of Medicine which depends on peer-discussion within the faculty below the level of the Dean. If these processes do not result in satisfaction, the grievor still has recourse to the processes described in the relevant documents described above.

In addition, a formal grievance process is needed to ensure procedural fairness and natural justice in addressing grievances and to protect academic freedom and research integrity for all members of the Faculty of Medicine (regardless of the nature of their appointment) if the less formal process fails to resolve the grievance.

## **Conclusion**

There is currently no adequate process for the management of grievances for most members of the Faculty of Medicine. There is no mechanism for informal resolution of grievances, and no identified member of faculty to whom a faculty member with a grievance might turn for advice or counsel. There is no formal procedure sufficiently accessible and meaningful to a grievor who seeks resolution without resort to an adversarial position. The lack of such processes forces the faculty member and the person(s) with whom that individual has a grievance into a position of conflict, often out of all proportion to the nature of the initial grievance. Furthermore, the lack of such processes results in the loss of an opportunity for faculty to address and correct issues of structure which allow these unhappy events to occur. The Office of the Ombudsperson no doubt provides a useful function to address grievances in some circumstances, but it appears to be inappropriately and inadequately staffed and resourced to fulfill this function for faculty members in the Faculty of Medicine.

Members of the DFA bargaining unit have their own well-described grievance process. Other faculty members (DFA but non-bargaining unit members and CAPR) do not. A new process is therefore needed for members of the Faculty of Medicine who are not members of the Dalhousie Faculty Association or are members of the DFA but not members of the bargaining unit.

## **THE PROPOSED PROCESS**

### **Jurisdiction**

A new process should be made available for members of the Faculty of Medicine (who are not members of the DFA bargaining unit) who have a grievance pertaining to:

- academic freedom;
- their ability to maintain research integrity, and/or their enjoyment of an environment of integrity in the scholarly activity of collaborators, peers and seniors; or
- unfair treatment in any roles assigned to him or her by the university.

Definitions of “academic freedom” and “research integrity” should be included in the policy that establishes the process and should be consistent with the Collective Agreement.

A clear statement should be included in the policy that establishes the process that the new grievance process is not available for those who have access to the grievance process established through the Collective Agreement.

## **Process**

### *a. Informal within the Faculty of Medicine*

The grievor should, where appropriate, first seek to resolve his or her concern through frank and open discussion with all the parties involved. If this discussion does not adequately resolve the concern, or if valid reasons exist for not engaging in such a discussion at this stage, the grievor may consult with a peer advisor.

**Peer advisors** will be appointed by each department of the faculty in sufficient numbers to permit a grievor to select (from the full set of advisors) an advisor who has no immediate involvement in the issue at hand or a conflict of interest. Peer advisors will be preselected by each department by a process of nomination through the departments submitted to the Faculty Nominating Committee and approved by Faculty Council for a term to be determined by Faculty Council. Peer advisors will be of the rank of Associate Professor or Professor. Peer advisors will be oriented and informed by the faculty personnel office instructing them on existing faculty policies on Terms and Conditions of Employment, policies on integrity and scholarly activity, good research conduct, policies on plagiarism, and academic dishonesty. Peer advisors should have successfully completed an intensive training session in conflict/dispute resolution. Peer advisors should also receive training in how to conduct a hearing.

In order for the peer advisor role to be effective, a full and frank discussion of the concerns in question must take place between the peer advisor and the grievor. Therefore peer advisor must be expressly required to not disclose the nature or content of such discussions, unless the peer advisor is: (1) required by law to do so; or (2) the grievor expressly consents to the disclosure. The peer advisor should inform the grievor about limitations respecting confidentiality (e.g., the ability to compel a peer advisor to

appear before a court and give evidence in a civil proceeding).

The peer advisor may assist the grievor in understanding the issues at hand and in directing him or her to the appropriate available resources. If this process fails to result in satisfaction, the grievor may then turn to the faculty ombudsperson.

The **faculty ombudsperson** functions as an independent third party to promote a just and reasonable solution. The ombudsperson will be a senior member of the Faculty who is not a member of the Administration or Executive and who has received orientation and training in terms and conditions of employment policies and other relevant policies of the university. The ombudsperson should have successfully completed an intensive training session in conflict/dispute resolution. The ombudsperson will be nominated by the Faculty Nominating Committee and approved by Faculty Council for a term to be defined by Faculty Council. The ombudsperson should report to Faculty Council on an annual basis. The ombudsperson will be assisted by an assistant ombudsperson who is nominated by a similar process.

The ombudsperson may receive a complaint (excluding grievances falling within the scope of a Collective Agreement grievance procedure and issues primarily related to promotion and tenure, for which a separate appeal structure exists) from any member of the Faculty of Medicine.

The ombudsperson shall assess and investigate all complaints with impartiality. The ombudsperson shall encourage the parties to a complaint and any decision-making authorities involved to resolve the complaint in a just manner having regard to the circumstances. Without restricting the scope of his or her general function and process as defined above, the ombudsperson, in dealing with individual cases, may:

- utilize dispute resolution mechanisms beyond facilitated discussion if agreed to by the parties (e.g., mediation);
- provide information on current procedures by which decision-making authorities may be able to provide redress;
- investigate and offer opinion as to whether existing regulations have been observed;
- recommend to the appropriate Faculty authorities the reconsideration of existing regulations or policies in light of current conditions, existing anomalies or inequities, and make proposals for change, in particular, where a matter in its opinion has not been satisfactorily concluded under existing procedures;
- subject to the requirements of confidentiality, publicize any matter he or she considers to be of general concern to the University Community.

If this process fails to result in satisfaction, the grievor may then request a formal hearing.

Note: written procedures for the ombudsperson should be developed, particularly for the performance of the investigative function (e.g., how will the parties be informed of the results of the investigation, how

will the parties be afforded an opportunity to address the information unearthed during the investigation, under what circumstances (if any) information gathered during the investigation will not be shared with all parties).

*b. Formal within the Faculty of Medicine*

The **Hearing Committee** will be assembled on an ad hoc basis, and will consist of 3 peer advisors. The Committee will be independent of those who have been previously involved in the case. The Committee will hear from all individuals who wish to appear before it provided that the Committee believes they may have relevant information. The Committee may invite individuals it believes may have relevant information to appear before it. The peer advisor and ombudsperson may only appear before the Hearing Committee if authorized to do so by the grievor

The parties will have the right to: receive notice of the hearing; be present throughout the hearing; question the persons who are appearing before the Committee to provide information; make submissions; be represented by counsel; and be provided with all the information on which the Committee will make its recommendations/decision and to answer same. The Committee will make credibility findings where necessary to deal with conflicting information.

The Committee will make recommendations in writing to the Dean on the resolution of the grievance and any institutional changes the necessity of which have become apparent through the course of the grievance process.

The Committee will follow the rules of natural justice and procedural fairness.

Grievances arise from real or perceived injustices and are stressful for all involved and so timelines are critically important. At all stages, whether formal or informal, grievances should be addressed as soon as quickly as possible by the involved parties. The ombudsman or the assistant ombudsman should arrange a meeting with the person(s) the grievance is being made against when requested within a week of being approached by the grievor. The Hearing Committee should conduct hearings and report to the Dean within two weeks of being requested to become involved, unless all parties agree that there is merit in awaiting a specific outcome or event. The Dean should communicate a decision in response to the recommendations of the Hearing Committee to the grievor and person(s) being grieved against within two weeks of receiving them from the Hearing Committee.

Note: written procedures should be developed for the conduct of hearings (including order of proceeding, exclusion of witnesses, dealing with objections, and maintaining a record of the proceedings).

*c. Formal outside the Faculty of Medicine*

If the processes outlined above, which are entirely contained within the Faculty of Medicine, fail to satisfy the grievor, he or she may proceed according to the terms described in Regulations Concerning Appointments, Tenure and Promotion of Dalhousie University (1987). It is not intended that the rights of the grievor as defined by this document be in anyway limited by the process described above.

### **Other matters**

#### *a. Confidentiality and Access to Information*

The terms of reference and procedures for the peer advisors, ombudsperson and Hearing Committee should be drafted to achieve the greatest amount of openness and transparency as possible consistent with the law.

#### *b. Continuing education/communication of ombudsman and peer advisors*

The ombudsperson and faculty peer advisors should meet on a periodic basis for the purpose of continuing education and to review of issues raised by the grievance process.

#### *c. Limitations on timing of grievance*

The process described above may apply to grievances arising from real or perceived injustices which have occurred during the grievor's current or previous employment at Dalhousie University, but not preceding the institution of Continuing Appointment with Periodic Review on January 26<sup>th</sup> 1998.

### **RECOMMENDATION**

The subcommittee recommends to Faculty Council that Faculty Council agree to establish the process outlined in this Report and commission the drafting of terms of reference and written procedures for peer advisors, the ombudsperson and assistant ombudsperson, and hearing committees.