

	DOCTORS NOVA SCOTIA
Section:	BOARD POLICY
Subject:	<b>RESPECTFUL WORKPLACE POLICY</b>
Approved by Board:	May 2019

## 1. POLICY

This policy applies to members of Doctors Nova Scotia (DNS) serving on the DNS Board of Directors (the Board) or committees.

DNS is committed to providing a positive work environment where all individuals are treated with respect and dignity. Everyone has the right to work in a professional atmosphere which promotes equal opportunities and prohibits harassment, sexual harassment and discrimination (offensive behavior).

Offensive behavior affects the workplace and the well-being of individuals and will not be tolerated. DNS encourages reporting of all offensive behavior, regardless of who the respondent may be. Any allegation of offensive behavior will be taken seriously and dealt with promptly.

## 2. DEFINITIONS

### 2.1 Complainant

A person who has made a complaint under this policy, whether formal or informal, alleging that offensive behaviour has occurred.

### 2.2 Committees

Committees include standing committees of the Board, joint committees with external stakeholders and ad hoc committees.

### 2.3 Discrimination

Discrimination, as it relates to this Policy, means any action, behavior or attitude, whether intentional or not, which has the effect of or potential to impose burdens, obligations or disadvantages on an individual not imposed on others based on that person's:

Age	Gender Expression
Race	Physical or mental disability
Colour	An irrational fear of contracting an illness or disease
Religion	Ethnic, national or aboriginal origin
Creed	Family status
Marital status	Political belief, affiliation or activity
Sexual orientation	Source of Income
Gender Identity	Sex (including pregnancy & pregnancy related illness)
That person's association with protected groups or individuals.	

## **2.4 Harassment**

Derogatory (e.g. condescending, insulting, belittling) or vexatious (e.g. aggressive, angry, antagonistic) conduct or comments that are known or ought reasonably to be known to be offensive or unwelcome and include actions or comments that are directed at no person in particular but that create an intimidating, demeaning or offensive work environment. Bullying is a form of harassment.

## **2.5 Workplace Bullying**

Bullying is usually seen as acts or comments that could 'mentally' hurt or isolate a person in the workplace. Sometimes, bullying can involve negative physical contact as well. Bullying usually involves repeated incidents or a pattern of behaviour that is intended to intimidate, offend, degrade or humiliate a particular person or group of people. It has also been described as the assertion of power through aggression. *(Definition taken from the Canadian Centre for Occupational Health & Safety).*

## **2.6 Investigator**

A person appointed by the Review Committee to investigate through fact finding complaints of offensive behaviour. The investigator may be internal or external at the discretion of the Review Committee.

## **2.7 Within a Reasonable Time**

Reasonable time is that amount of time which is fairly necessary, conveniently, to do whatever is required to be done, as soon as circumstances permit. Reasonable time is interpreted in light of the nature, purpose, and circumstances of each case.

## **2.8 Respondent**

A person against whom an allegation of offensive behavior is made through the formal or informal complaint process.

## **2.9 Review Committee**

The Review Committee consists of the Chair of the Board or committee, President and Chief Executive Officer (CEO). If any member of the Review Committee is the respondent or the complainant, he/she will be replaced by another member of the Board Executive Committee.

## **2.10 Sexual Harassment**

Sexual harassment is any unwelcome or unwanted conduct of a sexual nature (verbal, visual or physical) including but not entirely restricted to behaviors that create an intimidating or detrimental work environment or lead to job-related consequences.

Examples of sexual harassment may include, but are not limited to:

- unwanted sexual advances;
- fondling, hugging, kissing, patting, etc.;
- demands for sexual favours in exchange for favourable treatment or continued employment;
- unwanted repeated sexual jokes, flirtations, advances, or propositions
- unwelcome and uninvited letters, phone calls or messages sent by electronic mail
- verbal abuse of a sexual nature
- graphic, verbal commentary about an individual's body
- repeatedly asking someone out who is not interested
- leering, whistling, inappropriate touching, pinching, assault, coerced sexual acts

- suggestive, insulting, obscene comments or gestures
- condescension or paternalism which undermines self respect
- telling lies or spreading rumours about a person's sex life
- display in the workplace of sexually suggestive objects or pictures

### **2.11 Offensive Behaviour**

Offensive behavior means harassment, sexual harassment and/or discrimination.

### **2.12 Workplace**

Any place occupied by employees or DNS Board or committee members and includes (but is not limited to) the DNS offices; meetings, training events; conferences; business travel; work-related social gatherings or any other location where DNS activity is conducted.

## **3. RESOLUTION OPTIONS**

The following resolution options are available. Subject to clause 3.5, election of one option does not supersede or eliminate the ability to proceed by way of one of the other options.

### **3.1 Individual Action/Proactive Personal Response**

DNS encourages individuals who feel they are being subjected to offensive behaviour to address it promptly and directly with the respondent, if possible. Making the respondent aware of the impact of the offensive behaviour may positively change the respondent's behaviour, bringing the matter to a mutually agreeable end.

If informal attempts to resolve these issues in "good faith" are unsuccessful, or if an individual prefers to proceed with a complaint without addressing it directly with the respondent, a more formalized complaint processes set out in this policy may be used.

### **3.2 Informal Complaint**

If the complainant successfully resolves the complaint in an informal manner, s/he will submit a confidential written report to the Chair of the Board or committee, including the nature of the complaint and a summary of how the matter was resolved.

### **3.3 Formal Complaint**

Formal resolution of a complaint consists of a formal investigation wherein the findings are based on an objective assessment of the evidence enough to determine, on the balance of probabilities, if the behaviour complained of was offensive. The burden of proof will rest with the complainant.

### **3.4 Mediation**

Mediation is available to the parties as an alternative dispute resolution mechanism and may be triggered by either party as outlined:

#### **3.4.1 Consent of Both Parties**

Mediation offers the possibility of the parties resolving the issue themselves, which may be the most desirable manner for a complaint resolution; however, it requires the consent of both parties. The role of the mediator is to be neutral and to assist the parties to come to an agreement; to advise, warn, and suggest possible solutions; and to diffuse volatile situations. The mediator will be agreed to by both parties.

#### 3.4.2 Notification of Either Party to Elect Joint Mediation

During the investigation process, either the complainant or the respondent may notify a member of the Review Committee in writing that she/he is prepared to resolve the matters in dispute through mediation. If no such notice is given, then it shall be presumed that mediation will not take place.

#### 3.4.3 Notification to Remaining Party re Mediation

On receipt of notice in writing from either party, that they are willing to attempt mediation, a member of the Review Committee or the Investigator will immediately deliver such notice to the other party.

#### 3.4.4 Agreement to Terms of Mediation

An agreement on mediation and the appointed mediator shall be written and signed by the complainant, respondent and members of the Review Committee. The Mediator shall be responsible for arranging the mediation. If an agreement in writing is not signed within an appropriate and agreed upon period of time, mediation shall cease, and the matter shall be referred back to the Review Committee.

#### 3.4.5 Time Frame for Mediation

The mediation shall be completed within 15 working days of the agreement for mediation. If it is not completed within that period, unless a specific time frame extension is agreed to by all parties in writing, the mediation shall be presumed to have failed.

#### 3.4.6 Successful Mediation

If mediation is successful, the agreement between the complainant and the respondent shall be written and signed by each along with the mediator. The proposed agreement shall be referred to the Review Committee for its review. The Review Committee may approve or reject the mediated settlement. In the event it rejects the mediated settlement, a new Review Committee will be appointed by the Executive Committee of the Board of DNS and the new Review Committee will proceed to determine the matter in accordance with this policy.

#### 3.4.7 Failed Mediation

If the mediation fails, the mediator shall notify in writing the parties and the Review Committee. Such a notification shall be delivered to the Review Committee within three days of the date on which mediation failed.

#### 3.4.8 Records of Mediation

All mediation records will be kept in the same confidential manner as are the investigative reports.

### **3.5 Election by DNS**

Withdrawing a Complaint: If a complainant decides that he/she does not wish to pursue the complaint, DNS may conclude that it is in the best interest of the association to investigate the allegation via any of the resolution options and proceed to do so. The full cooperation of the complainant is expected.

Election Routes: The method by which an investigation will proceed may be influenced by the wishes of the complainant, but DNS may nonetheless proceed in a different manner at its discretion.

#### **4. REPORTING A COMPLAINT**

4.1 Anyone who feels s/he has been subjected to offensive behaviour, or anyone who has witnessed such behaviour is expected to report the matter to the Chair of the Board or committee without fear of retaliation.

4.2 All complaints should be directed to the Chair of the Board or Committee; however, if the Chair is a respondent or complainant, or if there are circumstances which prevent reporting the matter to the Chair, complaints can be directed to another member of the Review Committee.

4.3 The report must be written and include detail of the events as they occurred and what efforts were made to resolve the matter. Further information may be required as the resolution of the matter proceeds.

4.4 When possible, complaints should be made no later than 30 days from the date of the violation. Consideration will be given to exceptional circumstances that would prevent the complainant from making the complaint within 30 days. When too much time passes it is often difficult to get an accurate account of the details.

4.5 Any individual who believes s/he has been or currently is being subjected to offensive behaviour is encouraged to maintain a record of the objectionable conduct in order to effectively prepare and corroborate their allegations.

4.6 The decision to make a complaint rests with the complainant. However, once the complaint has been made it cannot be withdrawn without the consent of DNS as per clause 3.5.

4.7 Nothing in this policy prohibits the complainant their right to report the incident to the police or any other form of authority including the Nova Scotia Human Rights Commission.

4.8 If any written complaints are received by persons other than those named within this policy, those persons will immediately forward any and all documentation to the Chair of the Board or committee and notify the complainant that he/she has done so.

#### **5. FORMAL COMPLAINT**

5.1 Any complaint not resolved by parties themselves, through mediation or informal intervention, will proceed to a formal investigation.

5.2 The Chair of the Board or committee will inform the respondent of the complaint, provide him/her with a copy of the complaint and explain that:

- an investigation will ensue within a reasonable time;
- a copy of the policy and procedures is available with instructions, if necessary; and
- he or she may seek independent legal advice if desired.

5.3 The investigator will:

- conduct an investigation by interviewing the complainant, the respondent, witnesses as appropriate and any other individuals who may have information that would be helpful in determining the outcome of the matter;
- provide the complainant and respondent with a verbal briefing of the evidence generated from the investigation to allow them opportunity to refute the information and/or provide supplemental information;
- based on the evidence, determine on a balance of probabilities (i.e. that it is more likely than not) that the offensive behaviour occurred, or not;
- prepare a report and communicates the findings of the investigation to the complainant, respondent and Review Committee. The investigator may include recommendations for resolution of the complaint; and
- return all documentation generated as a result of the complaint to the Chair of the Board or committee.

5.4 The Review Committee has the authority to:

- require further investigation;
- make a decision as to the outcome of the investigation;
- communicate its decision in writing to the complainant and the respondent; and
- reconsider its decision where either the complainant or the respondent produces new evidence which could not reasonably be introduced at the time of the review, in which case the Review Committee may reconsider its decision, render a new decision or instruct the investigator to continue investigating the complaint.

## **6. DISCIPLINARY MEASURES**

Where the Review Committee makes a finding of offensive behaviour, the respondent will be subject to disciplinary action as deemed appropriate by the Review Committee. The discipline for infractions will be measured by the severity of the offensive behaviour.

The Review Committee reserves the right to impose one or more of the following disciplinary measures:

- Written apology from the respondent;
- Written warning to the respondent; or
- Removal from the Board or committee.

Note: Although the association's ability to discipline a "non-employee" harasser is limited by the degree of control that DNS may have over the alleged harasser, that should not deter an individual from making a complaint.

## **7. FINDING OF NO OFFENSIVE BEHAVIOUR**

If the Review Committee makes a finding that no offensive behaviour occurred, or there is insufficient evidence to support the complaint, the decision will be communicated to the complainant and respondent in an appropriately sensitive manner.

## **8. CONFIDENTIALITY**

The need for confidentiality to protect the reputation of the complainant, the respondent, and DNS is of utmost importance. Any and all discussions and access to documents will be limited to those who must take part to fulfill the association's duty to investigate and will be undertaken in accordance with DNS' confidentiality policy. Any allegation of offensive behaviour will be investigated within a reasonable time and in a confidential manner to protect the privacy of all persons involved. Confidentiality will be

maintained throughout the investigation process to the extent practical and appropriate under the circumstances, and as permitted by law.

Confidentiality applies to everyone, including staff preparing reports. All persons involved in the handling of offensive behaviour complaints will hold all such information in the strictest confidence in accordance with the association's confidentiality policy. DNS will discipline anyone who is responsible for breaching confidentiality or spreading gossip and rumors which hinder an effective investigation.

Note: While DNS encourages individuals to keep written notes in order to accurately record offensive behavior, if a lawsuit develops from the complaint, all written notes may not be considered privileged information and will likely have to be shared as a part of the litigation disclosure process.

## **9. FALSE OR FRIVOLOUS ACCUSATIONS**

DNS recognizes that the question as to whether a particular course of conduct constitutes offensive behaviour requires a factual determination. False accusations of such behaviour can have serious effects on innocent persons and damage the reputation of the association. If an investigation results in a finding that the complainant falsely accused another person of offensive behaviour knowingly or in a malicious, negligent or reckless manner, the complainant will be subject to the same disciplinary action provided for offenders.

## **10. PROTECTION AGAINST RETALIATION**

Retaliation against a complainant, witness, respondent or any other person involved in an investigation is another form of offensive behaviour. Accordingly, Board and committee members will not in any way retaliate against any individual concerning a reported incident of offensive behaviour. Retaliation is a serious violation of this policy and should be reported immediately. Any person found to have retaliated against another for reporting offensive behaviour will be subject to the same disciplinary action provided for offensive behaviour of offenders. If the person who commits the act of retaliation and the respondent are the same person, the disciplinary action will be more severe than that which would be imposed solely for the offensive behaviour.

## **11. RECORD KEEPING**

### **11.1 Safeguarding Records:**

If a complaint is not pursued, or if a complaint has been resolved informally, all documentation relevant the complaint will be held in a confidential file in the CEO's office for a period of two (2) years to allow for monitoring of potential patterns of offensive behaviour by a particular individual. If two (2) years have passed with no further incident, the documentation may be destroyed.

### **11.2 Maintaining a Written Record of a Formal Complaint**

DNS shall maintain a complete written record of each complaint and how it was investigated and resolved. As stated previously, all records shall be maintained in a confidential manner.

### **13. CONCLUSION**

DNS has developed this policy to ensure that all its Board and committee members can work in an environment free from offensive behaviour. To that end, the association is undertaking the following:

- ensuring that all Board and committee members are familiar with and can easily access this policy; and
- ensuring that any complaint received will be investigated and appropriately resolved.

*Note: DNS will periodically review this policy and make any changes deemed necessary to ensure its compliance with all applicable laws.*