



**Report of the Inquiry into
Allegations of Employer
Misconduct at the
Memorial University of
Newfoundland
and
Eastern Health Corporation**

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PART A

Description of Mandate and Overview of Investigation

1-1. Brief description of precipitating incident

In 2002, Dr. Gavin Stuart, at that time the head of oncology at the University of Calgary, was invited to Newfoundland and Labrador to consult on a patient of a former student of his, Dr. Lesa Dawson, an oncologist at the H. Bliss Murphy Cancer Centre in St. John's and Assistant Professor in the Faculty of Medicine at Memorial University. A few days later Dr. Cathy Popadiuk, another gynaecologic oncologist in the same institutions, was called by Dr. Don Tennent, her administrative superior in her roles both as a faculty member at Memorial and as a clinical oncologist in the cancer clinic. During this call, we are told that Dr. Tennent angrily reported on a phone conversation that he had with a Chair of an oncology department elsewhere in which the Chair accused Dr. Popadiuk of being a negative and disruptive influence in the department and in bringing the reputation of the department into disrepute. The chair has been identified as Dr. Gavin Stuart who followed up his phone conversation with Dr. Tennent by writing a letter in which he reiterated his accusations. The letter was wide-ranging, asserting that Dr. Popadiuk did poor research, gave bad public presentations, was ruining the reputation of Memorial University, was impacting on the retention and recruitment of new physicians, was teaching incorrectly, and that her clinical practice was inappropriate. According to Dr. Popadiuk these accusations were made even though Dr. Stuart was a virtual stranger with whom she had had minimal contact either before or during his brief visit to St John's.

After receipt of the letter from Dr. Stuart, there followed a chain of events that increasingly marginalized Dr. Popadiuk: she was increasingly left out of critical discussions, her office was moved away from the clinic, and she was stripped of an administrative post (Associate Dean-Student Affairs) and even lost support staff. Unbeknownst by her, a review of her clinical practice was undertaken. This review appears not to be in keeping with any ongoing peer review guidelines and so appears to be directed at her specifically. In any event, according to our information, the report was done without her input and though it vindicated her clinical practice and presented a conclusion that her therapeutic approach is a

valid option for patient care, the report has not been made public or even given to her until months after its completion.

Dr. Popadiuk claims that the precipitating incident and the subsequent chain of events can be traced to differences in opinion on the best manner in treating certain cancers: Dr. Popadiuk favours the use of chemotherapy before surgery, whereas, as she heard from her Dean among others, her lesser use of surgery is not the preferred mode of treatment by her colleagues. It should be noted that the treatment Dr. Popadiuk favours is a legitimate treatment for some specific patient populations that has been employed for well over a decade and which generates continued interest in medical journals examining its more general applicability (e.g., Covens, 2000, Dorff, T. & Garcia, A., 2004, Jacobs et al, 1991, Schwartz, 2001, Singh et al, 2001). Dr. Popadiuk argues that her approach to therapy and the personal attack on her by Dr. Stuart and the reactions to this attack by her employers has led to a history of professional harassment and bullying, has violated her academic freedom and has damaged her professional reputation in the relatively small community of gynaecological oncologists in Canada.

1-2. Mandate

In order to examine the validity of Dr. Popadiuk's claims, and to see whether there are systemic problems for medical staff at the Memorial University of Newfoundland and its affiliated Health Centers, the Canadian Association of University Teachers (CAUT) struck a special panel to investigate, with the following mandate:

- to investigate allegations of violations of academic freedom and faculty rights in the Faculty of Medicine at Memorial and at its affiliated health care institutions;
- to determine whether the university and its affiliated health care institutions have treated Members of the faculty of medicine in a manner that is unfair, unreasonable or inequitable;
- to determine whether there were breaches of or threats to academic freedom; and,
- to make any appropriate recommendations.

The following three people were appointed to the special panel of inquiry:

Dr. Lori J. West, MD, DPhil, FRCPC

Professor of Paediatrics, Surgery & Immunology

Director of Heart Transplantation Research

Faculty of Medicine and Dentistry

Canada Research Chair in Cardiac Transplantation.

University of Alberta

Dr. Philippe DeWals, MD, PhD

Director

Department of Social and Preventive Medicine

Faculty of Medicine

Laval University

And as chair,

Dr. Albert N. Katz, PhD, FCPA

Grievance Officer, University of Western Ontario Faculty Association

Chair and Professor, Department of Psychology

The University of Western Ontario

1-3. Scope of Investigation

The members of the panel examined the following documentary evidence: letters, emails and other correspondence between Dr. Popadiuk and her employers, unsolicited documents sent to us after the panel was made public, documents produced by CAUT and by the Memorial University of Newfoundland (MUN), including policies on Academic Freedom, Harassment in the Workplace, dispute resolution processes, mandate of an ombudsperson, affiliation agreements between MUN and its affiliated health centers, and published reports on the relations between Academic Medical Faculties and Associated clinics. The panel visited St John's November 6-7, 2006 and interviewed members of the Faculty of Medicine at MUN, clinicians in the Eastern Health Corporation and officials in the Department of Health and Community services from the Government of Newfoundland and Labrador.

1-4. Limitation

Despite repeated requests, the administrative personnel at both the Memorial University of Newfoundland and at Eastern Health Corporation refused to cooperate with our investigation. Indeed, when we visited St John's and invited interested participants to schedule meetings with us, we were shown a posting had been circulated informing people that the inquiry was not being supported by the employer. Several people who had scheduled meetings with us then cancelled and some who did meet with us spoke only when we could guarantee anonymity. Dr Stuart, by now Dean of Medicine at the University of British Columbia, was invited to respond to a set of written questions. He agreed to do so in principle but, because he was being sued by Dr. Popadiuk, we understand that he consulted first with his lawyers who, he informed us, advised him not to respond to our questions. Regrettably therefore, our report does not have the benefit of insights that might have been provided either by Dr. Stuart, the past or current Dean of Medicine or by the Clinical Chief, Department Head and others who served in the past or currently serve directly in supervisory roles in academic activities, including the treatment of gynaecologic cancers, as well as teaching and clinical research in the field.

PART B

Overview of the Administrative and Salary Structures, and the Academic and Clinical Climate/Culture

2-1. History of Memorial University, the Medical Faculty and attendant health centers

The Memorial University of Newfoundland (MUN) has its genesis (and received its name) as a college dedicated to Newfoundlanders who lost their lives in active service in the First World War. The college opened in 1925 with 55 students. The College was elevated to University status in 1949 soon after the province confederated with Canada (with a student body of just over 300) and awarded its first degrees in 1950. By 1961 enrolment was 1,400, and today the University is the largest in Atlantic Canada, with an enrolment of about 17,000 students.

The Faculty of Medicine of MUN, one of 17 Canadian medical schools, is relatively new. It was established in 1967, the first medical students were admitted in 1969 and by 1971 there was a program of graduate studies leading to the degrees of M.Sc. and PhD.

The Faculty of Medicine operates with three broad divisions, Basic Medical Sciences, Community Health and the Division of Clinical Disciplines (the last consists of faculty members in departments specializing in anaesthesia, family medicine, genetics, medicine, obstetrics and gynaecology, oncology, pathology, paediatrics, psychiatry, radiology and surgery). The physical structure of the Health Sciences Centre is intended to facilitate interaction between researchers in basic medical sciences, clinical disciplines, community medicine and allied health workers in the hospital, university and community. Clinical research facilities are located adjacent to basic research units; consequently a move from such quarters would be inconsistent with the interactive goals of the Faculty and Eastern Health.

The Faculty of Medicine is housed within the Health Sciences Centre in St. John's, a large facility which includes also the adult and women's hospital, the Janeway Children's Hospital and the H. Bliss Murphy Cancer Centre among other medical and health provision facilities. The various health care facilities were, until

recently, administrated separately. However in 2005 several health care organizations were merged into the Eastern Health Corporation to create the largest integrated health network in Newfoundland and Labrador, serving a regional population of more than 290,000 in all of the communities on the Avalon, Burin and Bonavista Peninsulas.

2-2. Implications for hiring and retaining faculty

Affiliation between a Faculty of Medicine and attendant clinical centers (through the Eastern Health Corporation) has advantages for both settings. The presence of a large and vibrant medical Faculty associated with clinical settings allows for the recruitment of physicians interested in pursuing research and teaching within an academic environment whereas the clinical settings permit these same physicians to keep their surgical and clinical skills up to date, provides a clinical teaching environment and allows the physicians to earn additional income. These attractive features are especially important in a place such as Newfoundland and Labrador where there are special difficulties in recruiting and keeping physicians (see Mathews, Rourke and Park, 2006). Because of these personnel difficulties, there is an aggressive program in Newfoundland and Labrador to encourage post-graduate medical students to perform part of their training in other academic institutions and then to return to the province. As one Departmental head told us this has led to what he called the “Island effect” in which too many of the faculty and clinicians have been trained at Memorial. It appears that this “effect” might emphasize the differences between those “from away” and those who are home grown, with a tendency to marginalize the former. Hiring that emphasizes place of birth or of training runs the risk also of nurturing intellectual inbreeding and conformity, and, over the long run, mediocrity. A disproportionate number of people willing to talk to us about problems that they have or are experiencing were people born and educated out of Province.

The hiring of additional physicians within a specialty is governed by need and resources as determined jointly by the Ministry, The Faculty of Medicine and the Eastern Health Corporation. Arguably, the assessment of need and the policy of encouraging the hiring of Newfoundlanders have had an impact on the situation that Dr. Popadiuk has faced. The current assessment is that the amount of clinical

work in the field of gynaecological oncology is too low for three full-time specialists at the Eastern Health Corporation and so with the hiring of Dr. Popadiuk, followed some time later by the hiring of Dr. Dawson (a native of the Province) the service needs of the Province was filled. Nonetheless, there was a subsequent hire in the specialty, Dr. Power, also a native of the Province who had trained in Calgary, again with Dr. Stuart. There is the appearance at least of a *prima facie* case that the marginalization of Dr. Popadiuk was, in part, generated by the lack of work for three specialists and a wish to have her skills employed elsewhere. Indeed, at various times after receipt of the letter from Dr. Stuart, Dr. Popadiuk has reported that she was asked by her Dean if she would consider transferring from the treatment of cancers to palliative care, or whether she was interested in returning to her home Province of Ontario.

2-3. Administrative Implications

There are implications that arise from the governance structure that is necessary in coordinating the work of the Faculty of Medicine and the work of the Eastern Health Corporation. In essence one can conceptualize three categories of employees: those hired to work solely as faculty in the Faculty of Medicine, those hired as clinicians solely with Eastern Health Corporation and those with joint appointments to both organizations. The salary and administrative structures for the first two categories of employees are fairly straightforward. For instance, if fully employed within the Faculty of Medicine, one is paid by the University, is governed by the rights and obligations outlined in the Collective Agreement between the Faculty Association and the University, enjoys specifically mandated Academic Freedom and has a single administrative hierarchy with whom to interact. However, those with joint appointments are in a much more poorly defined work environment. Salary and workload are split between the two organizations; the jurisdiction of issues is sometimes unclear, as is the protection assumed under Academic Freedom. Jurisdictional ambiguity becomes especially problematic when conflict arises because it may not be clear which conflict resolution process is applicable and to whom one would go for redress. For example, in the Popadiuk case, the initial responses from each institution to our attempts to engage administration at Memorial University and in Eastern Health

Corporation was that the nature of the complaint was such that it fell within the purview of the *other* institution.

Despite the complexities noted above, one should not underestimate either the positive synergistic and symbiotic relations that exist between the academic and clinical components or the attendant problems that come with a dual structure (for the latter, see Welch et al, 2004). Some of these problems can and are addressed by formal agreements between the medical Faculty and the clinical settings. In Newfoundland there have been several such affiliation agreements over the years, with the most recent coming in 2004 (Appendices A, B-1 and B-2). The incorporation of a number of separate clinical settings into one administrative structure, Eastern Health Corporation, also provides a special opportunity to develop a single unified code rather than the piecemeal approach that had been the situation beforehand. However, examination of the Affiliation Agreement that held jurisdiction when the conflict with Dr. Popadiuk began (see Appendix B-1) is mute with regard to issues related to conflict resolution. This failure is especially surprising given recent efforts at Memorial University to address harassment policies for medical students and in establishing an Ombudsperson in the Faculty of Medicine. On direct questioning the Ombudsperson responded in writing as follows (emphasis that of the Ombudsperson):

My job as Ombudsperson with the Faculty of Medicine at Memorial University is to "function as an additional communication conduit for *students and residents* to express concerns when they feel they cannot go through the usual channels. When I took on this position, I was under the impression that I was an Ombudsperson for medical students and residents. Upon receiving your question, I reviewed my job description and it clearly states that I am to act for the *students and residents*. There is no mention in the description that I would act for staff physicians.

We sought evidence that alternative conflict resolution structures or processes were in place for clinical staff under employment by Eastern Health Corporation. The most recent Affiliation Agreement (2004; Appendix A) does have a section on "Priorities and Conflict Resolution" [Principle V]. It reads:

Despite the overlapping of mandates, it is recognized that the respective priorities of each organization may differ. In event of a conflict where there is a significant impact on the delivery of patient care, the Health Care policies shall prevail. Every effort

shall be made to resolve disagreements amongst the individuals closest to the issue. In the event that this is not achieved, such matters shall be referred to the appropriate leaders within each Faculty/School and Clinical program or liaison committee, where one exists. In the event that a satisfactory resolution cannot be found at this level the matter shall be referred to the respective President/CEO or delegate of each organization for resolution.

Recognition of the need for a conflict resolution process is an advance over the earlier Affiliation Agreements but, nonetheless, the statements in the current manifestation fail even the most primitive tests for ensuring procedural fairness. Moreover, despite the adoption of this principle, none of the people that we interviewed were aware of it or of any conflict resolution mechanism through which they could have their complaints adjudicated. Several did mention that there is a Medical Staff Association but that it was ineffective in this role.

2-4. Types of problems that would benefit from a procedurally fair and transparent conflict resolution process

Without being exhaustive, the following issues were raised in interviews or indicated in documents as problematic within the context of this investigation.

- *Conflicts between Academic Head and Clinical Chief within a discipline:* When different people serve those roles, conflicts can arise, and in our interviews we were provided with one such case. The problem included allegations of unprofessional and non-collegial conversations, undercutting of authority, and harassment.
- *Conflicts over appropriate method of patient treatment or medical education:* As noted with the case of Dr. Popadiuk, the appropriate avenues to express complaints or appeal decisions are not well defined. The current approach would be to approach one's clinical chief or academic head and attempt to resolve it informally. This route is not available if the complaint is with that person. Presumably one could then go further, and attempt to resolve the issue with the next step of the administrative hierarchy, though again this route is not available if the complaint is with a decision of that administrator, nor is there an apparent appeal process if one is still dissatisfied with the decision.

- *Conflicts over who has jurisdiction:* As noted above, this problem is especially problematic for joint appointees. As members of the Faculty of Medicine, a joint appointee is governed and protected by the Collective Agreement between the employer (The “University”) and the Faculty Association (MUNFA). The Agreement would have clear grievance procedures, explicit written protection from violations of Academic Freedom or harassment. Ambiguities arise with the line between duties protected by the Collective Agreement and those excluded: duties as a member of the Faculty of Medicine of Memorial University are *explicitly* protected whereas no clear written protection is afforded employees of Eastern Health Corporation. The problem is exacerbated when the conflict is with one’s clinical chief and that person also serves as one’s academic head because disputes that arise in one domain might be expressed also in the other. For instance, a person might be “punished” for conflict with a clinical chief when that chief, wearing his/her hat as academic discipline head, might oppose promotion or delay some other benefit available under the Collective Agreement; conversely, a conflict that arises in the academic sphere might be “punished” by cuts to access to the Operating Room, or other clinical opportunities within Eastern Health Corporation. Presumably these specific problems would be less likely to be expressed if different people served as discipline head and as clinical chief though, as noted above, this split can give rise to other problems, including disputes between the head and the chief and a less smooth coordination of shared responsibilities.
- *Resolving problems in the clinical setting within Eastern Health Corporation:* In addition to the problems described above there is an additional, sometimes insidious, issue that can arise. Clinical work through Eastern Health Corporation can be paid through salary or through fee-for-service. If one is paid by fee-for-service, then limits to clinical patients or to the Operating Room, have a direct impact on earnings. This gives the clinical chief the potential to exercise a very powerful control mechanism to discourage dissent and disagreements with a decision that she or he makes.

PART C

The Popadiuk Case

3-1. A short chronology

August 1998

Dr. Popadiuk is hired as an Assistant Professor in The Faculty of Medicine at Memorial University and in a clinical setting, subsequently amalgamated with Eastern Health Corporation

2000- 2002

The documents we received would indicate that Dr. Popadiuk was considered to be a productive and contributing colleague in both her teaching and research functions. There were no indications to indicate inadequate academic or professional conduct.

March 2002

There is documentary evidence that there was a disagreement between Dr Popadiuk and Dr. Lesa Dawson with respect to a set of clinical trials for the treatment of ovarian cancer. The rules of the clinical trials group mandate that only one set of trials can be made available to the same patient population. Dr. Popadiuk had a set of trials approved. The conflict arose when a set of trials initiated by Dr. Stuart, and favoured by Dr. Dawson, required the use of the same patient population as required for the tests approved for Dr. Popadiuk.

April 23, 2002

Dr. Popadiuk is subjected to angry phone call from Dr. Tennent in which she is informed that a chair of an oncology department has made serious claims regarding her performance.

April 25.2002

In a letter to Dr. Tennent, Head of ObG at the Health Care Corp at St John's (and sent also to Dr. Gardiner, Medical Director of the Newfoundland Cancer Treatment and Research Foundation), Dr, Gavin Stuart alleges that Dr. Popadiuk talked to people regarding the appropriateness of his coming from Calgary to

assist Dr. Lesa Dawson and, among other points in the letter, makes several serious allegations, notably that Dr. Popadiuk:

- i. failed to attend NCIC Gynaecological Site Committee Meetings;
- ii. at those meetings “at least two nationally recognized oncologists” approached him wanting to know why Dr. Popadiuk publicly discouraged surgery for women with advanced ovarian cancer, contrary to standard practice and risks propagation of incorrect advice; and
- iii. was aware of aspects of patient care that would be considered “grossly improper”

These are serious allegations which Dr. Popadiuk claims are completely false or misleading. For instance the NCIC is an organization that depends on physicians volunteering to participate, in which attendance is not evaluated and which does not pay for travel to the meetings unless one is an executive committee member, which was not the case of Dr. Popadiuk. Moreover, Dr. Popadiuk maintains that she does not discourage surgery. Rather she encourages surgery in the correct context and neoadjuvant chemotherapy where appropriate. As such she does not understand where the hearsay claims from two anonymous oncologists originated. It is unclear how Dr. Stuart could make the claim that Dr. Popadiuk’s clinical care was improper. As noted earlier in the report, Dr. Popadiuk had had minimal contact with Dr. Stuart before these accusations were made and so he would have had no direct knowledge of her practice or patients. This especially problematic accusation led Dr. Popadiuk to retain legal counsel, both from the CMPA and, with their encouragement, an independent, second lawyer.

August 2002

In an email to Dr. J. Church of MUNFA, Dr Popadiuk writes that her Dean suggests she change her academic career focus and move into palliative care and suggests she step down from co-chair of the Human Investigation Committee. Her Dean, when she was out of country, called an emergency meeting “behind my back” (as she writes) to announce that she was stepping down from Human Investigation Committee.

September 2002

In a further email to Dr. Church, Dr. Popadiuk writes that since the receipt of the letter by Dr. Stuart, she was no longer listed as an expert for public educational sessions.

March 2003

Documentary evidence suggests that the clinical approach of Dr. Popadiuk regarding the use of chemotherapy before surgery is being audited. As worded, the audit was of the complete department but the bulk of the charts examined were of Dr. Popadiuk's cases.

May 2003

Lawyers from the Health Corp claim the audit covers services provided by all other gynaecological /oncologists providing services for the period July 1, 1997-June 30, 2002. It should be noted that except for a very short period of time, Dr. Popadiuk was the only person still at the Health Centre and thus the only one audited; there does not appear to be any mechanism for a regular periodic audit process. Dr. Popadiuk was never given the opportunity to talk directly to the evaluators nor did they speak to her regarding their findings after they completed their review.

May/June 2003

A letter indicates an audit had been done and that patient care was appropriate. A subsequent letter (June 2, 2003) from Evan Simpson (VP-Academic at MUN) states, "with respect to the main sustentative assertion in Dr. Stuart's letter to Dr. Tennent, you have been completely exonerated." (Dr Popadiuk did not receive a copy from Dr. Tennent until Oct 2003)

June 2003

There are discussions regarding changes in the academic and professional roles of Dr. Popadiuk, including her becoming Medical Director of the Provincial Cervical Screening Programme. She is told that in order to take the position she would be required to give up half of her clinical practice. She recognized that if she accepted she would be in a position of having the Directorship altered or eliminated any time the government saw fit. [In December she declines the

position and subsequently learns that the person who did take the position was allowed to keep her complete practice.]

June 25, 2003 and onward

Some of the concerns noted above regarding clinical trials come to a head. In November 2002 reports were received of the deaths of some Canadian patients in trials for which Dr. Popadiuk was the principle investigator. It should be noted that the trials in Newfoundland were carried out by all the gynaecological oncologists at the Cancer clinic and not by Dr. Popadiuk alone. On notification of this news, Dr. Popadiuk requested that all Standard Adverse Event (SAE) reports for the study be pulled and reviewed to see what the problems might be, and reports that she was shocked to be informed that there were no SAE reports filed with the Human Investigation Committee (HIC). The HIC wrote to the NCIC asking for the SAEs; the NCIC subsequently reported that there were no unexpected adverse drug reactions and were only going to send out reports that were drug-related.

The response of the sponsor was not acceptable to the HIC ethics committee and so a teleconference was held between the co-chairs of HIC and Dr. Stuart and Dr. Dawson (the last two as executive members of the Gyne Site committee for NCIC). We have been told that at this virtual meeting, Drs Stuart and Dawson agreed to send the SAE reports to the HIC. The HIC waited for several months for these reports. Because of the failure to receive the reports, the trial for which Dr. Popadiuk was the named investigator was cancelled.

October 2003

A third person is hired in gynaecologic oncology (one can note that in his 2002 letter, Dr. Stuart had mentioned this possibility)

Dec 31, 2003

The Promotion and Tenure Committee of the Faculty of Medicine recommends promotion of Dr. Popadiuk to Associate Professor, with a note: "The P&T committee was concerned that your application did not come with a recommendation from your chair."

August 2004

We are advised that Dr. Popadiuk is informed that she will no longer be a member of the gynaecological/oncology team consisting of Drs. Power and Dawson and that she will have to refer her patients to this team while she is on sabbatical and that her office will be relocated (from the Cancer Clinic to the Women's Health Center).

September and October 2004

Documents indicate that Dr. Popadiuk objects to being moved, especially to an office rejected by Dr. Power, the most junior of the gynaecological/oncologists.

October 8, 2004

Dr. Popadiuk and Dr. Kao are approved for a CIHR grant. Dr. Kao expresses his concern that the move in office will seriously curtail her contribution to the project. Dr. Popadiuk claims that the move compromised access to patient data and her ability to do CIHR funded research and work with collaborators. Dr. Popadiuk's office is moved in February 2005.

November 2004

CAUT sets up an independent panel of inquiry.

Recent Developments

Since the panel was set up there have been some additional issues. Despite requests from Dr. Popadiuk to her Dean, there was continued resistance to moving her back to the cancer clinic. Moreover, she was removed, over her objections, as Associate Dean-Student Affairs, arguably without the appropriate procedures being followed, and her secretarial support diminished so that she now shared a secretary with two other clinicians, secretarial support less than found with the two more junior gynaecological/oncologists.

Some of the people involved in the case are no longer in their positions. Dr. Tennent resigned from his role as Clinical Chief and more recently as Academic chair. His retirement is imminent. The Dean, Dr. Bowmer, also retired and has taken a position at the Royal College of Physicians and Surgeons in Ottawa.

There is now a change in leadership. The new clinical chief is Dr. Kum and there is a new leader of the Cancer care program. Under this regime, Dr.

Popadiuk has had her office returned to the clinic and with the pregnancies of her two more junior colleagues; Dr. Popadiuk has again taken a more active role in the clinical practice of the cancer clinic. Moreover, her research program has been reinvigorated: in the last year she has received two grants for her work in cervical cancer screening with new markers and has been appointed to important Boards responsible for overseeing the direction of research funding.

Despite the recent, more positive turn of events for Dr. Popadiuk, the process by which accusations about her were evaluated and handled leads much to be desired. And the problems in that process have not been rectified. The events detailed here suggest that without structural changes the processes used against Dr. Popadiuk can be used against her, or against other people in other circumstances in the Medical School and Eastern Health

3-2. Scope of concerns

There are several disturbing elements to the chronology described above. Serious accusations were made by Dr. Stuart about Dr. Popadiuk, and there then followed a set of actions that can only be described as disciplinary or punishing. We have not seen evidence to support the validity of the claims that were made by Dr. Stuart. With respect to procedural fairness, Dr. Popadiuk was not given the opportunity or venue to refute the claims, or the actions that followed from them. She was treated rudely by her discipline head/clinical chief, Dr. Tennent. An investigation was taken of her clinical performance, though she was not given the procedural fairness one would expect of an investigation; she was not even told the results of the vindication until some time after the investigation had been completed. She has been prevented in disseminating the results of that audit, which would support her arguments for additional choices in clinical practice for certain types of cancers. She was marginalized, her work in the clinic made more difficult by move of her office from the cancer clinic and cut in secretarial support and, with the move, her ability to do research seriously compromised.

Given this pattern, we distinguish between the accusations made by Dr. Stuart and the reaction to these accusations by her employers. One can appreciate that Dr. Stuart's position and standing in the oncology community might have pressured authorities at Memorial and Eastern Health to act quickly. Nonetheless the responsibility of the employer is to ensure that their employees are accorded

fair treatment and procedural fairness when such serious accusations are made. The conduct of Dr. Stuart is beyond the mandate of this panel to investigate. It is our understanding that Dr. Popadiuk is pursuing remedy through the courts. Consequently, we will not address the letter of Dr. Stuart further.

We will examine the adequacy and appropriateness of the response by her employer. Recall that as a joint appointee, Dr. Popadiuk in effect has two employers: the Memorial University of Newfoundland and the Eastern Health Corporation.

3-3. Has the Academic Freedom of Dr. Popadiuk been violated?

The origin of the idea of Academic Freedom arose from the recognition that society had a legitimate interest in higher education but that some means was required to limit society from interfering directly with those of the academic community itself. Academic Freedom marks the boundary of society's legitimate interest in the affairs of the academic community. Academic Freedom is not violated by mere criticism of one's actions or words (which would be covered by Academic Freedom as well) but would be violated if a person, group or agency that has power or authority over an individual were to use that authority to limit the expression of that individual.

The CAUT Policy Statement on Academic Freedom is a general statement that reflects and incorporates basic understanding of the concept (see Appendix C). The essence of Academic Freedom is described as including: "the right, without restriction by prescribed doctrine, to freedom of teaching and discussion; freedom in carrying out research and disseminating and publishing the results thereof; freedom in producing and performing creative works; freedom to engage in service to the institution and the community; freedom to express freely one's opinion about the institution, its administration, or the system in which one works; freedom from institutional censorship; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies."

The Faculty of Medicine of Memorial University of Newfoundland

We sought evidence to indicate whether there were violations of Academic Freedom within the mandate covered by employment at the Memorial University

of Newfoundland. Documentary evidence indicates that the Academic Head might have used his authority to delay the Promotion and Tenure of Dr. Popadiuk. There were suggestions also that Dr. Popadiuk was asked by Dean Bowmer to change her field of study or to move elsewhere. These are all *prima facie* indications that Dr. Popadiuk's academic freedom was threatened.

On the other hand, it must be noted that Dr. Popadiuk was granted tenure, even at the height of the dispute and was not hindered from obtaining a grant with Dr. Kao. Moreover, whatever conversations that Dr. Popadiuk had with her superiors, they did not lead to any formal move on their parts to force any changes in job description or in forcing her to move from the Province.

On direct questioning whether she changed her teaching as a result of the actions of her superiors, including comments from her Dean, she wrote: *"I did not change my teaching approach. And I have numerous evaluations from students etc that I am a very good teacher. I did however change my approach to patient care in the months between March and November 2003 while I waited for the secret report with no feedback or info given"*. The secret report to which she refers is the audit of her clinical performance. She states further: *"At a discipline meeting earlier in my career here, I was criticized for not doing more surgery for the residents. Furthermore, the fact that this secret report that completely vindicated my practice and presented a conclusion that my practice is a valid option for patient care, was kept private, confidential and secret, meant that I cannot share it with the residents for teaching."* The latter is a *prima facie* case of institutional censorship and an instance of a breach of her academic freedom.

In summary, although the working environment may have been made unpleasant by some of her colleagues and some of her superiors, it appears that Dr Popadiuk was not prevented from teaching her preferred approach to the treatment of gynaecological cancers nor was her freedom to engage in scholarly activities prevented by her employer in the Faculty of Medicine. There are no indications that she could not share empirical studies or other scholarly work with the residents she taught on any topic of interest, including those that indicate the benefits in reducing the size of cancers before operating or in engaging in discussions on treatment options, including those that she favours. However, the resistance by the employer to release the contents of the audit that vindicated her clinical practice can be seen as an instance of institutional censorship, and hence a violation of her academic freedom. There are suggestions in her answers to our

questions that she might have altered her clinical practice by not pursuing as vigorously as she may have wanted her preferred approach to certain cancer treatments.

The Health Centre (Eastern Health Corporation)

The evidence we examined indicates a *prima facie* case that Dr. Popadiuk was prevented, discouraged or hindered by her employer (Eastern Health Corporation) in engaging in certain clinical activities in violation of her Academic Freedom. We recognize that the Eastern Health Corporation is only partly an academic setting and, to date, as with other Canadian University-connected health centers, academic freedom-rights have not been explicitly extended to the affiliated clinical settings of Memorial University.

The issue of Academic Freedom for clinical faculty working in clinical settings has been the subject recently of a CAUT Task force: "*Defending Medicine: Clinical Faculty and Academic Freedom*" (Welch et al, November 2004). We refer readers to that document. Among the indices of Academic Freedom for clinical faculty discussed in the *Defending Medicine* document are the following:

- a work environment where respect for Academic Freedom is an intrinsic part of institutional culture, where Academic Freedom rights are declared and protected in both policy and employment contract language and inform the actions and decision making of administrators and academic staff alike.
- access by academic staff to independent dispute resolution systems bound by the rules of natural justice and procedural fairness.
- the presence of independent and adequately funded representative organizations through which academic staff can enforce their Academic Freedom rights.

None of these characteristics can be found in the affiliation agreement or in the working conditions at the Eastern Health Corporation. One can contrast this lacuna with language found in the Affiliation Agreement between the University of Saskatchewan and the District Health Board, discussed below (see Welch et al, 2004, p.14).

The failure to extend Academic Freedom rights to the health centers comprising the Eastern Health Corporation or to health centers in general is surprising considering the Fundamental Responsibilities listed as guiding ethical principles of physicians by the Canadian Medical Association. These principles are:

1. Consider first the well-being of the patient.
2. Treat all patients with respect; do not exploit them for personal advantage.
3. Provide for appropriate care for your patient, including physical comfort and spiritual and psychosocial support even when cure is no longer possible.
4. Practice the art and science of medicine competently and without impairment.
5. Engage in lifelong learning to maintain and improve your professional knowledge, skills and attitudes.
6. Recognize your limitations and the competence of others and when indicated, recommend that additional opinions and services be sought.
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 wellbeing.

It is our position that these guidelines cannot be adequately met without an environment of “curiosity, critical inquiry, keen observation and precise expression” or “respect for what is still unknown, a desire to improve that which is not good enough and a disciplined experience in problem solving, development and quality control,” (from the Affiliation Agreement in place at Saskatchewan).

The evidence indicates that the climate at Eastern Health Corporation may not always have provided the support required for an adequate expression of the ethical responsibilities of individual physicians. Indeed one can argue that Dr.

Popadiuk, by supporting an empirically-supported alternative option for clinical care, and when resisting efforts to marginalize her activities, was acting in the best ethical tradition of her profession.

3-4. Has Dr. Popadiuk and other staff, been treated in an “unfair, unreasonable and inequitable manner” (as per our mandate)?

The Faculty of Medicine recognizes that harassment, unfair, unreasonable and inequitable activities might occur as evidenced by the recent appointment of an Ombudsperson and a recent policy on intimidation and harassment for postgraduate trainees (see Appendix D). It is informative to see what types of activities are considered inappropriate in that latter document. Under definitions we find:

Harassment is defined as: any unwelcome comment or conducts which:

- endangers an individual’s work/learning and or well-being;
- undermines work/learning performance or threatens the economic livelihood of the resident;
- 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.

Moreover, when exceptions are listed such as those that fall under normal supervisory activities, expression of this duty “will be carried out in an appropriate and judicious manner and that any feedback given will be constructive and communicated confidentially in a respectful non-threatening/intimidating manner”.

Under ‘Types of Harassment’ the document describes Personal Harassment:

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

- creates an intimidating, hostile or offensive environment
- interferes with an individual’s ability to carry out his/her responsibilities

- can affect an individual's learning and career opportunities

Applying the same standards accorded to medical trainees at Memorial University to Faculty members in the same institution one can conclude that Dr. Popadiuk experienced a pattern of harassment that extended over a period of years: she was placed in an intimidating, hostile environment, has been discouraged by her superiors in carrying out acceptable treatment options she deemed best for her patients, has had her clinical work accessed in a manner that denied her natural justice and has had verbal interactions with her superiors that were given in a non-constructive manner.

It should be noted that we heard allegations that Dr. Popadiuk's experience *was not unique*. In our interviews we heard various other people tell us about events in which they had been marginalized, treated without respect, have had their livelihood threatened (by cuts to operating and clinical time necessary in fee-for-service situations) and have had their authority undermined or sabotaged by people in authority. The cancellations of scheduled interviews when people learned that our investigation was not supported by the employer, and the insistence by some who did speak to us that their identity be kept anonymous suggests a climate of fear and intimidation that might be widespread.

PART D

Conclusions and Recommendations

4.1 Conclusions

Our mandate was to investigate and on the basis of this investigation to (a) determine whether Memorial University and its affiliated health care institutions of the Eastern Health Corporation have treated members of the Faculty of Medicine in a manner that is unfair, unreasonable or inequitable and (b) determine whether there were breaches of or threats to Academic Freedom.

We conclude that there is a *prima facie* case for harassment of individuals that extends to more than one department in the Faculty of Medicine. These cases involve interactions between department heads or clinical chiefs and people in their departments, and between department heads and clinical chiefs in the same department. The experience of Dr. Popadiuk is an example of one such case of harassment. We conclude therefore that a “chilly” and uncomfortable work environment, including harassment, was created for some in the Faculty of Medicine. There is no evidence that any harassment or intimidation is authorized by the institutions involved but, at the same time, there does not appear to be any active plan or mechanism to ensure that such does not occur. The question of whether Academic Freedom was breached in the Faculty is less clear. Dr Popadiuk was promoted during the most acute phase of her conflicts with superiors and there do not appear to be impediments in what she can teach. However, there are indications also in the case of Dr Popadiuk of institutional censorship and a suggestion that her Academic Head held up her (eventually successful) file for promotion. Thus, regrettably, one cannot assert categorically that there have been no violations of academic freedom in the faculty of medicine.

We turn next to the Eastern Health Corporation. We recognize the special requirements necessitated by the delivery of responsible medical treatment and the absence of explicit protection of academic freedom in the Affiliation Agreement. However, failure to have a written statement of academic freedom does not lessen the obligation of the employer to ensure that this freedom is expressed. Moreover, breaches of academic freedom in clinical settings have special consequences for people jointly appointed to a Faculty of Medicine

whenever one's academic research program is tied closely to one's clinical duties. In the case of Dr. Popadiuk the internal audit of her clinical performance and the absence of any evidence contrary indicate that responsible medical treatment was being delivered. Our conclusion is there are instances of behaviours by people in position of power in the clinical setting in Eastern Health Corporation that should be characterized as violations of Academic Freedom.

We also conclude also that there is a need for procedures embodying the principles of natural justice to resolve conflicts between staff physicians, between staff physicians and their department head or clinical chief, and between department heads and clinical chiefs. These procedures should ensure:

- procedural fairness in decision-making, including the right of appeal
- that the complainant is given a full and fair opportunity to present their case to the decision-maker and has full access to the substance of an accusation, and the evidence given as support for that accusation
- that complaints be investigated, adjudicated and communicated in a timely manner
- that a rational connection is provided between the evidence presented and the conclusions reached by the decision-maker
- that the decision maker is impartial and is not in a conflict of interest relation with any of the parties in a dispute; when such conflict exists or can be seen to exist, there must be an alternate decision-maker available
- that processes already in place be observed
- that there be no evidence of bad faith or consideration of irrelevant factors in the decision-making process
- that the decision-maker communicate how he or she considered and assessed the arguments and evidence

It can be seen that almost all of these principles of natural justice were missing in the treatment of Dr. Popadiuk, were missing also in other reports that we heard in our interviews and are not present in the conflict resolution process outlined in the latest affiliation agreement.

We were also cognizant of the special problems and opportunities afforded the Faculty of Medicine and the Eastern Health Corporation by employing people born and trained (in part) in Newfoundland and Labrador. The statistical evidence

is that it is easier to recruit and to retain qualified physicians in Newfoundland and Labrador if they are native to that province, and there are, of course, clear operational needs to ensure the province has the medical education and services that it requires and deserves. There is no evidence that the people hired under the current regime were not appropriately qualified or provide poor service to the province. However, we did note the concerns sometimes expressed, which we share, that hiring people from a limited pool, even a pool of talented people, will, in the long run, tend towards uniformity of thinking that will be detrimental to the education of students, the reputation of the Faculty and patient well-being. The hiring of two home-grown gynecological oncologists trained in the same schools (and in fact with the same mentor in Calgary) appear, on face, to be a contributing factor in the denigration of treatment options favored by Dr. Popadiuk and in her subsequent marginalization.

4-2. Recommendations

The Panel recommends the following:

1. *That a copy of this Report is made available to stakeholders and interested parties.*

Although the work of the Panel was not supported by either the administration of Memorial University of Newfoundland or the Eastern Health Corporation, we had made it clear to them from the onset that we hoped to provide recommendations that would be helpful and of use to both institutions. It is in that spirit that we offer these recommendations. Accordingly we recommend that copies be sent to the:

- Dean of the Faculty of Medicine
 - Chief Operating Officer of the Eastern Health Corporation
 - President, Memorial University of Newfoundland
 - Department Heads, Faculty of Medicine
 - Clinical Chiefs, Eastern Health Corporation
 - President, Memorial University Faculty Association
2. *That an apology be issued to Dr. Popadiuk immediately by her employers at Memorial University and Eastern Health Corporation acknowledging that she has been treated unfairly.*

3. *That the audit of Dr. Popadiuk's clinical practice (appropriately anonymized) be no longer identified as privileged under the "Evidence Act" so that she can share it with whom she wishes.*
4. *That a dispute resolution process be set up in a timely fashion that meets the concerns for natural justice described in 4-1 and, where appropriate, complies with the Collective Agreement between MUNFA and MUN. That once ratified, these procedures are disseminated in the Faculty of Medicine and the Eastern Health Corporation and a copy be sent to MUNFA.*
5. *That a harassment policy be developed in a timely manner appropriate for staff physicians; that this policy be distributed to all physicians and faculty both in the Faculty of Medicine and in Eastern Health Corporation.*
6. *That staff physicians in the Faculty of Medicine and Eastern Health Corporation have access to the office of an Ombudsperson (we note that it may be possible to extend the mandate of the current Ombudsperson position to meet these concerns).*
7. *That the Memorial University of Newfoundland and the Eastern Health Corporation engage in a review of the Affiliation Agreement to ensure that (a) jurisdiction of complaint and conflict resolution is more clearly mandated, and (b) the enshrinement of statements affirming the core principles of Academic Freedom, as appropriate to the particular demands of clinical care.*

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List of Attachments

Appendix A: Most recent Affiliation Agreement between MUN and clinical settings

Appendices B-1 and B-2: Earlier Affiliation Agreements between MUN and clinical settings

Appendix C: CAUT Statement on Academic Freedom

Appendix D: Memorial Faculty of Medicine Policy on Intimidation and harassment for postgraduate trainees

APPENDIX A: AFFILIATION AGREEMENT - 2004

AFFILIATION AGREEMENT

Health Care Corporation of St. John's and
Memorial University of Newfoundland

March 22, 2004

PRINCIPLES DOCUMENT

SECTION 1: PREAMBLE

The Health Care Corporation of St. John's (Health Care) and the health sciences related faculties of Memorial University of Newfoundland (Memorial) exist in a strategic partnership to excel in providing clinical care (including complex/specialized care), educating the next generation of health professionals and researching new and exciting opportunities aimed at enhancing our understanding of health and health care delivery.

SECTION 2: PRINCIPLES OF AGREEMENT

This Affiliation Agreement guides how both organizations, will interact with one another to further the health status of people, particularly in Newfoundland and Labrador. It consists of established Principles that both organizations commit to supporting. In turn, the respective faculties at Memorial, in conjunction with Health Care, will elaborate on these Principles, in Faculty/School-Specific Agreements and in the Research Specific Agreement that guide day-to-day relationships.

Principle I: Mandates

Health Care and Memorial recognize the value of working together for the benefit of fulfilling their respective mandates. An environment of high quality clinical care is necessary for excellence in health sciences education and research and an environment of high quality education and research is necessary for excellence in clinical care.

Principle II: Joint Consultation and Support

Both organizations will ensure, to the extent that resources permit, the availability of facilities, equipment, staff and services to fulfill their respective mandates and to meet and/or exceed the recognized standards for accreditation.

Memorial and Health Care agree to consult one another on matters of mutual interest and to maintain an open relationship in their dealings with one another. If it is anticipated that a decision/change in one organization may impact the services of another, then consultation shall take place prior to any change being implemented. This consultation shall occur on a day-to-day basis between appropriate officials of Memorial and Health Care and via any established liaison committees that may be established from time to time to enhance this collaboration.

Principle III: Student Placements

Health Care shall permit students from Memorial into appropriate clinical or other service areas for the purpose of receiving instruction and subject to any limitations that may be imposed. Such students shall be subject to any and all policies and regulations of Memorial and Health Care.

Memorial shall be responsible for the planning and supervision of all academic programs as may be set out in the Faculty/School-Specific Agreements established in consultation with Health Care.

Memorial shall provide insurance coverage for the activities of students while functioning within any of the facilities of Health Care and each student shall obtain individual insurance where required.

Principle IV: Joint Staff Appointments

Recognizing their overlapping mandates, both organizations recognize the value of having staff jointly appointed. Where applicable each Faculty/School-Specific Agreement will provide for how these appointments shall occur. Remuneration for such joint appointments will be determined by mutual agreement.

Principle V. Priorities and Conflict Resolution

Despite the overlapping of mandates it is recognized that the respective priorities of each organization may differ. In the event of a conflict where there is a

significant impact on the delivery of patient care, the Health Care policies shall prevail

Every effort shall be made to resolve disagreements amongst the individuals closest to the issue. In the event that this is not achieved, such matters shall be referred to the appropriate leaders within each Faculty/School and Clinical Program or liaison committee, where one exists. In the event that a satisfactory resolution cannot be found at this level the matter shall be referred to the respective President/CEO or delegates of each organization for resolution.

SECTION 3: FACULTY-SPECIFIC AGREEMENTS

Both organizations may approve, at the executive levels, the establishment of Faculty/School Specific Agreements to address the relationship specifically between a faculty at Memorial and Health Care.

Faculty and School-Specific Agreements currently

exist for: - Faculty of Medicine

- School of Pharmacy

- School of Nursing

SECTION 4: RESEARCH-SPECIFIC AGREEMENT

Both organizations recognize the overlap in pursuing health related research and in the value of the joint pursuit of it. AH research involving patients and/or for which publication of the findings is likely, shall require approval by the Human Investigation Committee of Memorial/Health Care and all research that may draw on the resources of Health Care, shall require approval of the Research Proposal Approval Committee of Health Care.

A Research-Specific Agreement shall exist to address this dimension of the relationship and shall be considered part of this Affiliation Agreement. Proceeds from such research shall be shared as provided for in the Research-Specific Agreement.

SECTION 5: ENTIRE AGREEMENT

Faculty/School-Specific Agreements along with the Research-Specific Agreement shall be included as appendices to this Agreement and shall constitute the entire Affiliation Agreement between the parties hereto provided however, that nothing will prohibit the parties from amending this Agreement by mutual agreement.

SECTION 6: EFFECT

This Agreement comes into force on the date of signature and will remain in force until terminated pursuant to the Section 7: Termination of this Agreement provided that the terms and conditions of this Agreement are reviewed on a regular basis, but in any event, not less than every five (5) years.

SECTION 7: TERMINATION

This Agreement shall continue in force, until terminated by either party following the provision of twelve (12) months written notice, delivered either personally, by courier or by certified mail to:

President
Memorial University
St. John's

CEO
Health Care Corporation of St. John's
St. John's

APPENDIX B-1

AFFILIATION AGREEMENT OF 1993

THIS AGREEMENT made at St. John's, in the Province of
Newfoundland, this day of A.D.-1993.

BETWEEN: **MEMORIAL UNIVERSITY OF NEWFOUNDLAND,** a
body

corporate, constituted by and continuing under and
by virtue of
The Memorial University Act, Revised Statutes of
Newfoundland,
1970, Chapter 231

(hereinafter called "the University")

of the one part

AND: **THE GENERAL HOSPITAL CORPORATION,** a
body

corporate, constituted by and continuing under and
by virtue of The
General Hospital Corporation Act-, Statutes of
Newfoundland, 1968,
NO. 47.

(hereinafter called "the'Hospital")

of the other part

WHEREAS the University and the Hospital share the following common goals:

1. The provision of quality patient care and service to the community;
2. The development and maintenance of high standards in health

education;

3. The conduct of health sciences research with the aims of adding to human knowledge and improving methods for the promotion of health and prevention and treatment of disease.

AND WHEREAS the University accepts, within the limits of its financial resources, the commitments and responsibilities toward health education and research to be carried on in the Hospital which are hereinafter provided or which may be recommended from time to time through a Joint Liaison Committee;

AND WHEREAS the Hospital accepts, within the limits of its financial resources, the commitments and responsibilities toward health education and research which are hereinafter provided or which may be recommended from time to time through a Joint Liaison Committee;

AND WHEREAS it is in the interest of both the University and the Hospital that clinical teaching at the undergraduate, graduate and continuing education levels be carried on in the Hospital;

AND WHEREAS the University has recognized the Hospital as an affiliated teaching Hospital of the University;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants hereinafter contained the parties hereto have each agreed with the other as follows:

- 1 The Hospital will establish appropriate facilities to enable students to attend clinical areas of the Hospital or other units for the purpose of receiving instruction at such periods as may be determined from time to time PROVIDED THAT all students will be subject to any and all Hospital and University regulations.
- 2 The University will be responsible for the planning and supervision of all academic programs, as set out in Appendices "A," "B," and "C," which Appendices form part and parcel of this Agreement.
- 3 With respect to Clause 2 above, the Hospital will be responsible for its

internal organization and administration.

4 The University will provide, under its Canadian Universities Reciprocal Insurance Exchange Policy, insurance coverage for all undergraduate and graduate students in attendance at the Hospital and will provide a copy of such insurance policy to the Hospital.

5.1 The University and the Hospital will establish a Joint Liaison Committee, which Committee will include the following permanent members:

The Chairperson of the Board of Trustees of the Hospital, who will chair the Committee;

The Executive Director of the Hospital;

The Medical Director of the Hospital;

The Chief of Staff of the Hospital;

A representative of the Board of Regents of the University;

The Dean of Medicine of the University;

The Associate Dean for Professional Affairs of the University.

5.2 The Director of the School of Nursing and the Director of the School of Pharmacy of the University and the Assistant Executive Director responsible for Nursing Services and the Assistant Executive Director responsible for Pharmacy of the Hospital will be adjunct members of the Joint Liaison Committee and will attend such meetings as the Chair deems necessary.

5.3 All members, except those appointed by virtue of their offices, shall be appointed annually and will not ordinarily serve for more than three consecutive years.

6 Subject to the approval of the Board of Directors of the Hospital and the Board of Regents of the University, the Joint Liaison Committee will have the following powers and duties:

(1) to meet at least quarterly to consider matters of joint concern to the two parties and to report thereon with recommendations to both parties;

- (2) to review this Agreement from time to time and to make recommendations for any desirable changes to both parties;
 - (3) to carry out the duties assigned to the Joint Liaison Committee in this Agreement; and
 - (4) to exercise such other powers as may be conferred upon it from time to time by the _____ University and the Hospital acting concurrently.
-
7. The Hospital _____ in accordance with its procedures and practices, and the University, in accordance with its procedures and practices, will jointly appoint all staff engaged in academic activities governed by this Agreement, as hereinafter prescribed in Appendices "A," "B," and "C."
 8. The Hospital will have sole responsibility for promotions in rank affecting the staff of the Hospital, except as specified in Clause 8 of Appendix "A."
 9. The Hospital and the University will provide remuneration for such appointees as prescribed in Appendices "A," "B," and "C."
 10. The Hospital and the University may from time to time agree upon procedures, guidelines and policies to accomplish the objectives of this Agreement, which procedures, guidelines and policies, once approved by the Board of Directors of the Hospital and the Board of Regents of the University, will form part of this Agreement.
 11. This Agreement and the several Appendices appended to it constitute the entire Agreement between the parties hereto PROVIDED HOWEVER that nothing will prohibit or prevent the parties from amending or modifying this Agreement and/or the Appendices attached hereto PROVIDED THAT such amendment or modification is in writing and executed by each of the parties hereto.

12. This Agreement may be terminated by either party following the expiration of twelve (12) months from the date of notice of cancellation, PROVIDED THAT such notice will be given in writing and will be either served personally, delivered by courier or sent by certified .mail, postage prepaid with return receipt requested, addressed to either party as follows:

To the University:

Memorial University of Newfoundland St.
John's, Newfoundland A1C 5S7

Attention: Vice-President (Academic)

To the Hospital:

The General Hospital Corporation
300 Prince Philip Drive
St John's, Newfoundland
A1B 3V6

Attention: Executive Director

13. This Agreement comes into force on the date of signature and will remain in force until terminated pursuant to section 12 PROVIDED THAT the terms and conditions of this Agreement must be reviewed NO LATER THAN five (5) years from the date of the signing of this Agreement.

IN WITNESS THEREOF the corporate name and seal of each of the parties hereto has been affixed in the presence of their duly authorized officers on the day and year first before written.

APPENDIX "B"

This Appendix forms a part of the Affiliation Agreement between Memorial University of Newfoundland ' and The General Hospital Corporation and relates in particular to the Hospital and the School of Nursing of the University.

1. Planning and Supervision of Nursing Teaching;

The School of Nursing of the University is responsible for the planning and supervision of all its educational programs in any certificate, diploma, undergraduate and/or graduate instruction in nursing.

2. Clinical Practice of Nursing Students;

The Hospital will make available facilities to enable students to attend the clinical units of the Hospital for the purpose of receiving instruction at such hours daily and for such periods as may be determined from time to time, having in view both the interests of the patients and the need for nursing training PROVIDED THAT students will be subject to both Hospital and University regulations while in the Hospital AND FURTHER PROVIDED THAT, in case of conflict of regulations, students will be governed by the Hospital regulations.

3. Clinical Practice of Nursing Faculty;

The Hospital recognizes that it is important for nursing faculty to maintain and augment their clinical skills through practice and the Hospital may make available facilities to enable instructors to attend the clinical units of the Hospital for the purpose of receiving instruction at such hours daily and for such periods as may be determined from time to time, having in view both the interests of the patients and the need for nursing training PROVIDED THAT faculty will be subject to both Hospital and University regulations while in the Hospital.

4. Orientation to Policies, Procedures and Clinical Units;

The Hospital will provide orientation to policies, procedures and clinical units for nursing faculty of the University at a mutually convenient time and will keep the University informed of major changes in the use of clinical units to facilitate effective planning.

5. Goals of Educational Programs;

The University will familiarize the Nursing Administration of the Hospital (or other personnel, where appropriate,) with both the programs and the goals of educational program(s).

6 Research:

The School of Nursing endorses research as an important objective and will seek opportunities to carry out projects in collaboration with appropriate Hospital personnel PROVIDED. THAT such projects are governed by the policies of the Hospital and endorsed by the Human Investigation Committee of the Hospital.

7 Appointment by the Hospital:

The power of appointment of nursing staff to the Hospital resides with the Hospital and such appointments will be made in accordance with the employment practices of the Hospital.

8 Appointment to the Faculty of Nursing:

The power of appointment to the University School of Nursing resides in the University and such appointments will be made in accordance with the employment practices of the University.

9 Joint Appointment:

9.1 In selected instances involving significant benefit to patient care as well as to the teaching program, a faculty member may be jointly appointed by the Hospital and the University.

9.2 The University will follow the procedure for the appointment of faculty members outlined in the collective agreement negotiated between Memorial University of Newfoundland and Memorial University of Newfoundland Faculty Association.

9.3 The University will notify the Joint Liaison Committee of the name of the recommended candidate for the position and, upon approval by the

Joint Liaison Committee, will recommend the candidate to the appropriate administrative officers of the Hospital and the University.

9.4 The University and the Hospital will share the expenses of the salary, the office space and the clerical support of any such joint appointee.

9.5 The University will provide remuneration on a per lecture basis, if required, for any adjunct or clinical appointee.

9.6 Notwithstanding anything to the contrary in this Article, the parties agree that if a recommendation made pursuant to this Article is not accepted by the Hospital, that candidate will not be appointed by the University and if a recommendation made pursuant to this Article is not accepted by the University, that candidate will not be appointed by the Hospital, PROVIDED THAT in the event that the parties fail to agree on a candidate an alternate candidate will be recommended in accordance with the procedures set forth in this Article.

APPENDIX "C"

This Appendix forms a part of the Affiliation Agreement between Memorial University of Newfoundland and The General Hospital Corporation and relates, in particular, to the Hospital and the School of Pharmacy of the University.

1 Planning and Supervision of Pharmacy Teaching:

The School of Pharmacy of the University is responsible for the planning and supervision of all its educational programs in any certificate, diploma, undergraduate and/or graduate instruction in pharmacy.

2 Clinical Practice of Pharmacy Students:

The.. Hospital will make available facilities to enable students to attend the clinical units of the Hospital for the purpose of receiving instruction at such hours daily and for such periods as may be determined from time to

time, having in view both the interests of the patients and the need for training PROVIDED THAT students will be subject to both Hospital and University regulations while in the Hospital AND FURTHER PROVIDED THAT, in case of conflict of the regulations, students will be governed by the Hospital regulations.

3. Clinical Practice of Pharmacy Faculty:

The Hospital recognizes that it is important for pharmacy faculty to maintain and augment their clinical skills through practice and the Hospital may make available facilities to enable instructors to attend the clinical units of the Hospital for the purpose of practice at such hours daily and for such periods as may be determined from time to time, having in view both the interests of the patients and the need for training- PROVIDED THAT faculty will be subject to both Hospital and University regulations while in the Hospital.

4. Orientation to Policies, Procedures and Clinical Units:

The Hospital will provide orientation to policies, procedures and clinical units for pharmacy faculty of the University at a mutually convenient time and will keep the University informed of major changes in the use of clinical units to facilitate effective planning.

5. Goals of Educational Programs:

The University will familiarize the Director of Pharmacy of the Hospital (or other personnel, where appropriate,) with both the programs and the goals of educational program(s) .

6. Research:

The School of Pharmacy endorses research as an important objective and will seek opportunities to carry out projects in collaboration with appropriate Hospital personnel PROVIDED THAT such projects are governed by the policies of the Hospital and are endorsed by the Human, Investigation Committee of the Hospital.

7. Appointment by the Hospital:

The power of appointment of pharmacy staff to the Hospital resides with the Hospital and such appointments will be made in accordance with the employment practices of the Hospital.

8 Appointment to the Faculty of Pharmacy:

The power of appointment to the University School of Pharmacy resides in the University and such appointments will be made in accordance with the employment practices of the University.

9 Joint Appointment:

9.1 In selected instances involving significant benefit to the teaching program, a faculty member may be jointly appointed by the Hospital and the University.

9.2 The University will follow the procedure for the appointment of faculty members outlined in the collective agreement negotiated between Memorial University of Newfoundland Faculty Association.

9.3 The University will notify the Joint Liaison Committee of the name of the recommended candidate for the position and, upon approval by the Joint Liaison Committee will recommend the candidate to the appropriate administration officers of the Hospital and the University.

9.4 The University and the Hospital will share the expenses of the salary, the office space and the clerical support of any such joint appointee.

9.5 The University will provide remuneration on a per lecture basis, if required, for any adjunct or clerical appointee.

9.6 Notwithstanding anything to the contrary in this Article, the parties agree that if a recommendation made pursuant to this Article is not accepted by the Hospital, that candidate will not be appointed by the University and if a recommendation made pursuant to this Article is not accepted by the University, that candidate will not be appointed by the Hospital, PROVIDED THAT in the event that the parties fail to agree on a candidate an alternate candidate will be recommended in accordance with

the procedures set forth in this Article.

APPENDIX B-2
AFFILIATION AGREEMENT OF 1987

THIS AGREEMENT made this 24th day of MARCH A.D. 1987

BETWEEN

THE MEMORIAL UNIVERSITY OF
NEWFOUNDLAND, a body corporate
constituted by and continuing under and by
virtue of The Memorial University Act, Chapter
231, R.S.N. 1970, (hereinafter referred to as "the
University")

of the one part

AND

THE NEWFOUNDLAND CANCER
TREATMENT AND RESEARCH
FOUNDATION
a body corporate established by Section 3 of the
Cancer Treatment and Research Foundation
Act, 1971, S.N. 1971, Number 63, (hereinafter
referred to as "the Foundation").

of the other part

AFFILIATION AGREEMENT

WHEREAS the University, in the year 1967, had established a School of Medicine;

AND WHEREAS the Foundation has, by virtue of Section 4 of The Cancer
Treatment and

Research Foundation Act, 1971, the duty to establish and conduct a program of diagnosis of, treatment of and research in cancer, including inter alia:

- (a) the coordination of facilities for the treatment of cancer;
- (b) the establishment, maintenance and operation of, or assisting in, the establishment, maintenance and operation of research, diagnostic and treatment centres in general hospitals or elsewhere;
- (c) the laboratory and clinical investigation of problems relating to cancer;
- (d) the adequate reporting of cases of cancer and the recording and compilation of data relating to cancer;
- (e) the education of the public in the importance of early diagnosis and treatment of cancer;
- (f) the providing of assistance for undergraduate and postgraduate studies relating to cancer;
- (g) the training of technical personnel to assist in the examination, diagnosis, treatment and study of cancer;
- (h) by voluntary means, the correlation and coordination of the work and studies of all agencies, clinics or persons in the province that have like objects or purposes in view or that may be carrying on similar or related work or study;
- (i) the providing and awarding of funds for research and training fellowships.

AND WHEREAS the Foundation operates the Newfoundland Cancer Clinic (hereinafter referred to as "the Clinic") as an institution concerned with the care of patients suffering from cancer and other malignant diseases (hereinafter collectively referred to as "cancer").

AND WHEREAS in recognition of the close and cordial relationship that exists between the University and the Foundation and, further, of the common goals of both organizations with respect to:

1. The provision of excellent patient care and community services.

2. The development and maintenance of high educational standards in medicine, nursing and allied health sciences.
3. The conduct of bio-medical research with the aim of adding to human knowledge and improving methods for the treatment and prevention of disease.

AND WHEREAS it is in the interest of both the University and the Foundation that clinical teaching at the undergraduate, graduate and continuing education levels should be carried on in medicine and allied fields in the Clinic.

AND WHEREAS the University has Faculty and students (graduate and undergraduate) in various health sciences disciplines and is anxious to avail itself of the facilities of the Clinic for educational and research purposes.

AND WHEREAS the University and the Foundation are agreed that it is in the interest of both that the Clinic be affiliated with the University.

WITNESSETH THAT IN CONSIDERATION of the premises and of the mutual covenants, agreements, provisos and the stipulations hereinafter contained, it is agreed that from and after the 24th Day, March 1987 that the University and the Foundation be, and they hereby are, affiliated upon the terms and conditions hereinafter set forth:

1. The University and the Foundation hereby agree that reference shall be made to the bylaws of the Foundation to determine staff classification, such as Active Medical Staff, Senior Medical Staff, etc. All other definitions may be ascertained by reference to the bylaws of the Foundation or by reference to appropriate University documents.
2. The Clinic is recognized as an affiliated teaching unit of the University.
3. The University has a statutory responsibility to develop programs of study, training and research for students attending the

University and will advise the Foundation of programs relevant to the Foundation. Where appropriate, the University shall seek the assistance of the Foundation in developing such, programs of study, training and research for students attending the University. The Foundation, in cooperation with those responsible for continuing medical education, may develop programs of study, training and research for medical practitioners. The Foundation, in conjunction with the University, will develop appropriate educational programs for students participating in the clinic. While students are in the clinic, they shall be subject to the Clinic regulations as well as the regulations of the University.

4. The Clinic shall make its facilities available to enable students to attend the clinic for the purpose of receiving instruction at such hours daily and for such periods as may be determined from time to time, having in view both the interest of the patient as well as the needs of training. Students shall be subject to the Clinic Regulations, as well as those of the University while in the Clinic.
5. The Clinic, as a whole, will be regarded as a teaching unit in which the care of the patient is the function of the team of staff physician - resident - intern - clinical clerk, or as appropriately comprised for other health disciplines.
6. The medical staff and/or heads of the department or programs will have joint University and Clinic appointments and will be jointly appointed by such bodies.
Such appointments will be made in accordance with established procedures and guidelines of both the Foundation and the University.
7. The Foundation shall ensure that all Clinic appointees will provide such clinical teaching as the Foundation and the University may agree upon. Any problems on matters of this nature may be referred to the Joint Liaison Committee.

8. Appointments to the Clinic Medical Staff shall be in accordance with the Medical Staff By-Laws of the Foundation. Changes in rank within the Clinic shall be the ultimate responsibility of the Foundation.
9. The power of appointment to the Faculty of Medicine resides in the University. The power of appointment of medical staff to the Clinic shall reside in the Foundation.
10. The Foundation is considered to be the employer of the Director of the Clinic and, accordingly, may, following consultation with the University, dismiss for cause, or with notice, in appropriate circumstances. However, the University reserves the right to continue or discontinue any contractual arrangement that it may have with the Director.
11. The Clinic shall remain responsible for its internal organization and its administration, except as specified in this Agreement. It will endeavor to maintain those high standards that are consistent with good medical care, good medical teaching, good scientific research and progressive health care administration.
12. The Faculty of Medicine of the University is responsible for planning and supervision of medical teaching on the advice of the Professor and Chairman of the discipline concerned, the Dean of Medicine and the Director of the Clinic. They will decide from time to time the extent to which the teaching unit may best be used for undergraduate and/or graduate instruction. The selection and scheduling of residents, interns and clinical clerks and the administration of their teaching program shall be the responsibility of the Faculty of Medicine of the University, in consultation with the Director of the teaching unit.

13. The Foundation, in conjunction with the University, as appropriate, may develop educational programs for the public or for health workers in the field of oncology. Similarly, in collaboration with the University, the Foundation may establish research programs and laboratories which by negotiation may include jointly appointed and funded personnel.

14. A Joint Liaison Committee shall be constituted as follows:
 - (a) The Chairman of the Foundation.
 - (b) One member representing the University Board of Regents.
 - (c) The Dean of the Faculty of Medicine, or an alternate nominated by him.
 - (d) A representative of the Advisory Medical Board of the Foundation.
 - (e) The Director of the Clinic or an alternate nominated by him
 - (f) The Executive Director of the Foundation, or an alternate nominated by him.
 - (g) The Chairman of the Joint Liaison Committee shall be the Chairman of the Foundation. Members other than the Chairman, the Dean, the Director of the Clinic and the Executive Director shall be appointed annually but shall not ordinarily serve more than three (3) years consecutively.

15. The Joint Liaison Committee shall be advisory in function and shall meet at least once a year or may meet at the request of either the University or the Foundation. The Joint Liaison Committee shall recommend on:
 - (a) Matters of joint concerns to the two institutions and report thereon with recommendations to both the Board of Regents of the University and the Members of the Foundation.

- (b) Changes in the Statutes relating to, and the by-laws of, the Clinic and the University to ensure the effective operation of this Agreement.
 - (c) Desirable changes in this Agreement following periodic review.

- 16. The position of Senior Consultant shall be reserved for those professors and chairmen of disciplines in the Faculty of Medicine which have a counterpart in the Clinic. However, such positions shall not be open to those professors who are either the Director of the Clinic or Head of a Clinic department.

- 17. The operation of the clinical service shall be the responsibility of the Department Head and not that of the Senior Consultant. The Senior Consultants will be kept informed of the work of the Department and will have such access to the clinical and research areas as may be required for the supervision of teaching and stimulation of research.

- 18. Terms and Conditions and provisions of this Agreement shall apply to the clinical departments and programs and such other departments or programs as may from time to time be created.

- 19. Additional teaching units may be established from time to time to function on the basis of this Agreement, subject to the mutual agreement between the Dean of Medicine of the University and the Director of the Clinic, as well as the approval of the Foundation and the University.

- 20. The Dean of Medicine shall appoint a faculty member (either clinical or research) to be a member of the Research Committee of the Foundation.

21. All full-time salaried medical staff (excluding locums) of the Foundation who have major privileges in any of the teaching hospitals affiliated with the University will be given an appropriate appointment in the University's Faculty of Medicine in accordance with the established employment policies and procedures of the University.
22. Cross appointments of physician-staff in the field of oncology are governed by the following:
 - (a) If an appointee is to be employed by the University, the Foundation will be consulted during the search and represented on any search committee and upon appointment by the University will be given appropriate staff privileges in the Newfoundland Cancer Clinic, in accordance with the Medical Staff By-Laws of the Foundation.
 - (b) If an appointee is to be employed by the Foundation or if a Director of the Clinic is to be selected, the University will be consulted during the search and will be represented on any search committee and, upon appointment by the Foundation, the appointee will be given an appropriate faculty appointment in the University in accordance with the University's established employment practices and procedures.
23. It is agreed that all appointments of health professional staff including technical and research support staff will be subject to the following:
 - (a) An employee of the University or of the Foundation may, by mutual agreement of the two institutions, be permitted to undertake responsibilities within the alternate institution.
 - (b) As may be appropriate and with agreement of the employing institution, the alternate institution may assign

a title of designation to the employee undertaking functions on behalf of the alternate institution.

- (c) Both the University and the Foundation agree that, where an employee of the Foundation or the University is permitted to undertake responsibilities within the alternate institution, that the employee remains subject to the employment policies and procedures of the primary institution. However, such an employee is subject to the day-to-day operational policies of the alternate institution while fulfilling his/her responsibility within that institution.

24. The University and Foundation may enter into a shared arrangement as follows:

- (a) If a University appointee is to undertake substantial responsibilities for the Foundation such that reimbursement to the University is appropriate, the University may contract a portion of the appointee's time to the Foundation in recognition of which the Foundation may reimburse the University on a monthly basis pro rata.
- (b) If a Foundation appointee is to undertake substantial responsibilities for the University such that reimbursement to the Foundation is appropriate, the Foundation may contract a portion of the appointee's time to the University in recognition of which the University may reimburse the Foundation on a monthly pro rata.
- (c) Arrangements made under Clauses 6, 22, 23, and 24 (a) and (b) of this Agreement shall be initiated by an exchange of letters between the Dean or Director of Medicine, Pharmacy, or Nursing of the University, and the Executive Director of the Foundation or his designate. Any such letter will include details of reimbursement, portion of time contracted, and duties required.

- (d) The Foundation hereby agrees that it will indemnify and save harmless the University and all its employees acting under contract to the Foundation from all claims, demands, actions or causes of action on account of any loss, damage or injury to persons or property which may occur as the result of the employee's activities. The Foundation further agrees that it remises, releases and forever discharges the University and all its officers, agents or employees, acting officially or otherwise, from all claims, demands, actions or causes to persons or property which may occur as the result of the activities of the employee under contract to the Foundation.
- (e) The University hereby agrees that it will indemnify and save harmless the Foundation and all its employees acting under contract to the University from all claims, demands, actions or causes of action on account of any loss, damage or injury to persons or property-which may occur as a result of the employee's activities.
The University further agrees that it remises, releases and forever discharges the Foundation and all its officers, agents or employees, acting officially or otherwise, from all claims, demands, actions or causes to persons or property which may occur as the result of the activities of the employee under contract to the University.
25. It is the responsibility of the institution that contracts the services of an employee to provide, or to use its best efforts to provide, appropriate Liability Insurance in accordance with the institution's insurance plan to ensure that such an employee is protected.
26. Any and all sections of this Agreement may be subject to changes mutually agreed upon by the University and the Foundation, utilizing the mechanism for review laid down in Section 15 Item (c). The fact that the University has similar agreements with other

institutions shall not negate the right of either party to full review of any Section of this document.

27. This Agreement can be terminated by either party following expiration of twelve (12) months from the date of Notice of Cancellation by either party. Such notice shall be in writing, by registered mail, and shall be directed to either the Dean or Director of Medicine, Nursing or Pharmacy of the University or to the Executive Director of the Foundation, as appropriate.

28. All matters in dispute under this Agreement, other than appointments and dismissals, shall be submitted to arbitration at the instance of either party.

No one shall be nominated or act as arbitrator who is in any way financially interested in the conduct of the work or in the business affairs of either party.

The laws of the Province of Newfoundland shall govern the arbitration.

The award" of the arbitration or arbitrators shall be final and binding upon the parties and this covenant to submit to arbitration is to be construed as an integral part of this Agreement between the parties.

The provisions of The Arbitration Act of the Statutes of Newfoundland shall apply to the arbitration.

Signed at St. John's, Newfoundland, on the 24th day of March A.D. 1987 by:

APPENDIX C

CAUT POLICY STATEMENT ON ACADEMIC FREEDOM

(1) Post-secondary educational institutions serve the common good of society through searching for, and disseminating, knowledge, truth, and understanding and through fostering independent thinking and expression in academic staff and students. Robust democracies require no less. These ends cannot be achieved without academic freedom.

(2) Academic freedom includes the right, without restriction by prescribed doctrine, to freedom of teaching and discussion; freedom in carrying out research and disseminating and publishing the results thereof; freedom in producing and performing creative works; freedom to engage in service to the institution and the community; freedom to express freely one's opinion about the institution, its administration, or the system in which one works; freedom from institutional censorship; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies.

(3) Academic freedom does not require neutrality on the part of the individual. Academic freedom makes intellectual discourse, critique, and commitment possible. All academic staff must have the right to fulfil their functions without reprisal or repression by the institution, the state, or any other source.

(4) All academic staff have the right to freedom of thought, conscience, religion, expression, assembly, and association and the right to liberty and security of the person and freedom of movement. Academic staff must not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through free expression of opinion on matters of public interest. Academic staff must not suffer any institutional penalties because of the exercise of such rights.

(5) Academic freedom requires that academic staff play a major role in the governance of the institution. Academic freedom means that academic staff must

play the predominant role in determining curriculum, assessment standards, and other academic matters.

(6) Academic freedom must not be confused with institutional autonomy. Post-secondary institutions are autonomous to the extent that they can set policies independent of outside influence. That very autonomy can protect academic freedom from a hostile external environment, but it can also facilitate an internal assault on academic freedom. To undermine or suppress academic freedom is a serious abuse of institutional autonomy.

Approved by the CAUT Council, November 2005

APPENDIX D

POLICY ON INTIMIDATION AND HARASSMENT FOR POSTGRADUATE TRAINEES

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 discrimination and harassment.

The Faculty of Medicine is committed to providing and maintaining such an environment through its policies and regulations. The Faculty will not tolerate harassment and intimidation and will ensure that individuals, who believe that they have been subjected to harassment and intimidation, are able to register complaints with the assurance of prompt action and without fear of reprisal. All complaints will be handled with sensitivity and in the strictest confidence which is consistent with a fair investigation. The Faculty will exercise care to protect and respect the rights of both the complainant (the person making the complaint) and the respondent (the person 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 or persistent situations, or where the complainant cannot involve himself/herself in an informal resolution, it is essential to have an approach within the university that is thorough and can produce resolution.

STATEMENT OF LEGAL OBLIGATION TO ACT

The Faculty of Medicine promotes a work environment free from harassment. Complaints will be investigated promptly and appropriate action taken. 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.

It is recognized, however, that absolute confidentiality cannot be 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 contents 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 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 residents who deliberately file 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. Practise 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. Practise 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 medicine 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 ensure that we will:

1. Treat residents with respect regardless of level of training, race, creed, religion, color, gender, sexual orientation, field of study, recognizing that there is a power differential between the teacher and resident.

2. Refrain from the intimidation and harassment of residents 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 and allow them responsibility as is appropriate to their level of training and commensurate with their ability.
5. Demonstrate to residents 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 abilities and provide timely verbal 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 respect
2. encourage the spirit of collegiality and fairness
3. when problems arise, ensure that natural justice occurs.

DEFINITIONS

1. Harassment

Harassment is defined as any unwelcome comment or conduct which:

- i. endangers an individual's work/learning and or well being;
- ii. undermines work/learning performance or threatens the economic livelihood of the resident;
- iii. 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.

Behaviour will constitute harassment when a person knows or ought reasonably know that such behaviour is unwelcome. Workplace harassment may consist of

one or a series of repeated instances and includes, but is not limited to personal harassment, sexual harassment, racial or ethnic harassment, and assault.

Harassment does not include:

- i. day to day management functions such as work assignments and discipline,
- ii. demands for academic excellence or a reasonable quality of work
- iii. the expression of opinions, debate or critique of someone's ideas or work
- iv. personality or interpersonal conflicts or jealousies
- v. chit-chat or good-natured gesturing when both parties find the conduct acceptable
- vi. normal exercise of supervisory responsibilities including tutorials, work assignments, performance evaluation, training, counselling and/or discipline essential to achieving efficiency of daily organizational operations.

There is an expectation however, these duties will be carried out in an appropriate and judicious manner and that any feedback given will be constructive and communicated confidentially in a respectful non threatening/intimidating manner.

Types of Harassment

2. Personal Harassment

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

- i. creates an intimidating, hostile or offensive environment
- ii. interferes with an individual's ability to carry out his/her responsibilities
- 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 rumours 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 or ethnic background
- vi. negative comments about the general unsuitability of a particular group for the work which they do; for example, statements about women's lack of ability in particular areas; or lack of ability based on age

2. Sexual Harassment

Sexual harassment is conduct of a sexual nature directed at an individual or individuals by a person who knows or ought 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 it 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, 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 university.

Sexual harassment is covered by a University-wide policy which may be found at: <http://www.mun.ca/sexualharassment/>

Anyone with a concern regarding sexual harassment should consult that policy. Complaints about sexual harassment cannot be received by the Faculty of Medicine.

3. Racial or Ethnic Harassment

Racial and ethnic harassment is any behaviour 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:

- i. slurs, gesture, 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

4. Assault

Harassment is a broad term, which covers many types of behaviour including those which could be termed “physical attacks”. 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 offences 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 shall 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, Chairperson, Assistant Dean of Postgraduate Medical Studies or the Ombudsperson. A person filing an informal complaint may do so orally or in writing. However, a formal complaint must be submitted in writing, and leads to an investigation.

Depending on the circumstance of the incident, some complaints could be resolved within the discipline. However, the Postgraduate Medical Studies Office is available for any advice and assistance at any stage of the complaint resolution. This Office would encourage that program directors and chairpersons of the discipline make use of the advice of the Postgraduate Medical Studies 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 normally within six (6) months after its occurrence.

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, Chairperson, Assistant Dean of Postgraduate Medical Studies, Ombudsperson or other appropriate individual 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 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. The following are some resources/options available:

- i. Inform the respondent in person or in writing that the behaviour is unwelcome, and that it should be stopped. Perhaps the person you believe harassed you did not realize that the behaviour was offending. This should be done immediately following the incident.
- ii. It is recommended that the complainant keep written notes of times, dates, details, and witnesses.
- iii. Discuss the matter with a senior resident and other colleagues where appropriate.
- iv. Discuss the available options with Residency Program Director, Chairperson, Assistant Dean of Postgraduate Medical Studies, Ombudsperson or other appropriate resource person at the University.

Once a complaint has been made, the complainant agrees to cooperate in any investigation that will be carried out. The Residency Program Director, Chairperson, or Assistant Dean of Postgraduate Medical Studies or other resource person at the university will act as the investigator but shall not normally receive a

complaint concerning an act or omission which occurred more than six months prior to presentation of the complaint.

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 written complaint:

- i. Formal complaints should be made in writing to the Residency Program Director, Chairperson, Assistant Dean of Postgraduate Medical Studies, or Ombudsperson.
- ii. Formal written complaints will be acknowledged in writing within three working days of receipt.
- iii.
- iv. 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. provide both the complainant and the respondent with a copy of the report and allow 10 days for comments.

- d. Outcome of Report

After taking into account the comments, if any, of the complainant and the respondent, the report should be finalized and submitted to the Dean of Medicine for a decision. That decision may involve discipline of the respondent or it may involve an alteration in reporting relationships or other changes such as avoidance of direct supervision.

- 4. Appeals Procedure

If the complainant or respondent is not satisfied with the decision of the Dean, he/she may appeal to the Vice-President (Academic) of the University whose decision shall be final

