



## SENATE

**AGENDA ITEM:** Senate Planning and Governance Committee:  
Report of the Dalhousie University Faculty of Medicine, Canadian Association of University Teachers (CAUT)-Recommendations Review Committee

**ACTION REQUIRED:** This item is presented to the Senate for discussion.

### BACKGROUND:

The Report of the Dalhousie University Faculty of Medicine CAUT Recommendations Review Committee is attached and was discussed by the Senate Planning and Governance Committee on June 14, 2017.

The members of the Faculty of Medicine Recommendations Review Committee are:

- Tetteh Ago, Department Head and Professor, Department of Radiation Oncology
- Keith Brunt, Assistant Professor, Department of Pharmacology (Faculty Council representative)
- Stephen Couban, (chair) Professor, Department of Medicine
- Allen Finley, Professor, Department of Anesthesia
- Diane Gorsky, Associate Dean, Operations and Policy, ex officio
- Krista Jangaard, Vice President, Medicine & Academic Affairs, IWK Health Centre
- Paul Hong, Associate Professor, Department of Surgery (Faculty Council representative)
- Lynn Johnston Professor, Department of Medicine
- Andrew Lynk, Chief, Department of Pediatrics
- Christy Simpson, Department Head and Associate Professor, Department of Bioethics
- Andrew Stadnyk, Professor, Departments of Pediatrics & Microbiology & Immunology

## **Report of the Dalhousie University Faculty of Medicine CAUT Recommendations Review Committee**

The Dean of the Faculty of Medicine struck a committee called the CAUT Recommendations Review Committee in January, 2017. The terms of reference were provided to the Committee by the Dean (Appendix 1). The Committee was composed of the following individuals:

Tetteh Ago	Department Head and Professor, Department of Radiation Oncology
Keith Brunt	Assistant Professor, Department of Pharmacology (Faculty Council representative)
Stephen Couban (chair)	Professor, Department of Medicine
Allen Finley	Professor, Department of Anesthesia
Diane Gorsky	Associate Dean, Operations and Policy, ex officio
Krista Jangaard	Vice President, Medicine & Academic Affairs, IWK Health Centre
Paul Hong	Associate Professor, Department of Surgery (Faculty Council representative)
Lynn Johnston	Professor, Department of Medicine
Andrew Lynk	Chief, Department of Pediatrics
Christy Simpson	Department Head and Associate Professor, Department of Bioethics
Andrew Stadnyk	Professor, Departments of Pediatrics & Microbiology & Immunology

The Committee met on 7 occasions (January 16, January 23, January 30, February 6, February 27, March 13 and March 20, 2017) to review the recommendations of the CAUT report and to prepare responses to those recommendations. As part of those meetings, the Committee also met with Jasmine Walsh (Director, Academic Human Resources, Dalhousie University), Laura Neals (Assistant Vice-President, Human Resources, Dalhousie University), Darrell White, Senior Associate Dean and David Anderson, Dean.

All members of the Committee participated in the deliberations of the Committee and have reviewed the final report. The report represents the consensus of the Committee and consists of two sections: Section A includes the responses of the Committee to each recommendation of the CAUT report; Section B includes several recommendations that the Committee wishes to make to the Dean and the Faculty.

## Section A

1. “that a new Affiliation Agreement between Dalhousie University and Nova Scotia Health Authority be negotiated to establish an equal partnership as a more appropriate foundation for their joint activities”

The Committee acknowledges that Dalhousie University has associations with multiple health authorities in the Maritimes. The Committee specifically reviewed the affiliation agreements between Dalhousie University and the Nova Scotia Health Authority (NSHA), the IWK Health Centre and Horizon Health. It was noted that all the affiliation agreements were similar and were focused towards learners. In some areas such as education, the university had precedence in assessing and resolving issues. In other areas, such as patient welfare, the health authorities had precedence. It was particularly noted that for those clinical Department Heads/Chiefs who are accountable to both the Health Authority and the University, this could present specific challenges and/or potential conflicts of interest in addressing issues that involve both clinical practice and academic activities.

The Committee also noted that the current affiliation agreements did not address dispute resolution related to academic issues of the faculty (for example, it does not address which resolution process should be followed if there was a disagreement). Although Article 13 of the affiliation agreements is entitled “Dispute Resolution”, this Article is solely focused on disputes related to the affiliation agreements themselves, not disputes related to academic or clinical issues or faculty.

Finally, the Committee could not specifically evaluate the issue of equality of the “partnership” between Dalhousie University and the Nova Scotia Health Authority. The Committee notes that Dalhousie University and the Health Authorities are separate legal entities and are therefore not a legal partnership, although they have relevant common goals and may therefore be partners with respect to these common goals. (See Section B, Recommendation 1)

2. “that a formal Policy on Variation of Privileges be established to deal with the rare occasions when there is an actual or imminent danger of harm to patients, staff, students and/or the general public”

The Committee reviewed the Medical Staff Bylaws of the NSHA and the IWK Health Centre. Both sets of bylaws clearly address the issue of variation of privileges to deal with the notably rare occasion when there is an actual or imminent danger of harm to patients, staff, students and/or the general public (presumably where the danger results from the actions of a privileged member of the medical staff). Interested parties should be directed to these existing policy references.

3. “that performance concerns that do not relate directly to such imminent danger of harm should be dealt with according to a newly formulated Discipline Policy that provides the protections of natural justice and procedural fairness”

The Committee found a concerning lack of clarity about how non-clinical performance issues are managed within the Clinical Departments.

The Committee reviewed both the Medical Staff Bylaws of the NSHA and the IWK Health Centre and the Dalhousie University Academic Staff Grievance Process. In addition, Committee members met with Jasmine Walsh (Director, Academic Human Resources, Dalhousie University) on two occasions to better understand the genesis and intent of the Academic Staff Grievance Process.

For individuals who are privileged with one or more Health Authority, performance concerns are generally addressed either by the Medical Staff Bylaws or the associated institution’s Code of Conduct. As outlined in the Affiliation Agreements, this even holds in the situation where there is no immediate threat of danger – so these can be used to deal with documented (i.e., not malicious or based in rumour) inappropriate behaviors . There is procedural fairness built in to these newer processes to protect the individual. The Committee reviewed the IWK Health Centre Code of Conduct and found it to also provide the protections of natural justice and procedural fairness. The Committee wanted to review the NSHA Code of Conduct but this document was not made available to the Committee. We understand that the NSHA Code of Conduct is either under review or in development. The current lack of a current functional Code of Conduct for the largest health authority in the region is a grave concern to the Committee and should be remedied expeditiously.

For individuals with Dalhousie faculty appointments who are members of the Clinical Departments and who are not privileged according to the Medical Staff bylaws, and for medical, dental, health professional and scientific staff about whom there may be concerns not relevant to the Medical Staff bylaws, the Committee understood that the Dalhousie University Academic Staff Grievance Process would apply.

The Committee considered a number of examples of concerns that may not be relevant to the Medical Staff bylaws. For example, issues related to research animal care would not directly fall within the purview of the Medical Staff bylaws. Similarly, a member of the medical, dental, health professional and scientific staff may write a report that is critical of a current clinical or non-clinical process related to a department. If there is disagreement about the contents of this report, how would this be resolved within the clinical departments?

The Committee reviewed the Dalhousie University Academic Staff Grievance Process in detail and found it to be generally sound and robust. However, two areas of concern were identified. Firstly, the existence of the Medical Staff Bylaws and the Academic Staff Grievance Process implies that clinical and academic concerns can be dealt with separately. At a practical level, academic and clinical concerns are often difficult to separate and, in clinical medicine, are in fact

often naturally related. Moreover, the line of authority for addressing clinical and academic issues often involves the same individuals (ie. Head/Chief). Therefore, the Committee feels that there is considerable risk that a clinical concern may have academic implications and that an academic concern may have clinical implications by virtue of this blurred “chain of authority

Second, with respect to the Academic Staff Grievance Process, and in contrast to the process available to members of the DFA (regardless of tenure), the Committee feels that there is the potential for less support for the individual identified to have performance concerns because the individual’s academic head is often also their clinical chief. Furthermore, in contrast to issues involving students, for example, there appears to be no “arm’s length” individual or ombudsman involved or so identified. (See Recommendation 2)

4. “that a formal Grievance Policy be established for prompt, final, and binding resolutions of disputes that arise concerning the application, administration, or interpretation of the Bylaws, policies, rules and regulations”

The Committee restricted itself to a review of the NSHA and IWK Health Centre Medical Staff Bylaws, the IWK Health Centre Code of Conduct and the Dalhousie University Academic Staff Grievance Process. As previously noted, the NSHA Code of Conduct was not available to the Committee despite multiple attempts to obtain it. The IWK Health Centre Code of Conduct clearly addresses collegiality and professionalism but does not specifically address academic freedom.

The Committee notes that the Health Authority Medical Staff Bylaws are provincial legislation over which the Faculty of Medicine has no authority. Each of the reviewed documents has explicit descriptions about how disputes are to be resolved with associated timelines that acknowledge the concept of timeliness. The Committee cannot specifically address whether the processes are actually timely in their execution. Separately, the Committee also specifically notes that the Academic Staff Grievance Process is relatively new, untested at this time and is not governed by legislation. It is the Committee’s opinion that the Academic Staff Grievance Process should satisfy the need for a formal grievance policy for academic issues not pertaining directly to the aforementioned clinical privileges for the relevant faculty and staff in Dalhousie’s Clinical Departments. (See Recommendation 3)

5. “that medical staff/Dalhousie faculty have contractual protections similar to those of other Dalhousie faculty, and in particular that all Continuing Appointments with Periodic Review (CAPR) be converted into tenure-stream appointments”

The Committee noted that since these recommendations were made, the CAPR process is no longer in effect and it has been replaced by the CAAACD (Continuing Appointment with Annual

Academic Career Development) process (2014). To further inform its deliberations on this issue, the Committee met with Dr Darrell White, Senior Associate Dean, who had chaired a Working Group addressing clinical and non-clinical appointments in the Clinical Departments of the Faculty of Medicine.

The Committee acknowledges that most members of the Clinical Departments do not have tenure. The Committee cannot make a recommendation about whether members of the Clinical Departments should have tenure. This is a decision for the Dean and the Faculty of Medicine.

However, regardless of whether clinical and non-clinical faculty in the Clinical Departments have tenure, the Committee felt that it is essential that these same faculty members have access to a timely and robust dispute resolution process particularly in regards to academic freedom such as the process available to members of the Dalhousie Faculty Association. One method of having access to a timely and robust dispute resolution process might be that all faculty members be in a tenure-track or tenured appointment. However, tenure would come with additional obligations both for the individual and the University and it is not clear if all clinical faculty or staff would indeed fulfill these obligations. Second, tenure does not in and of itself confer access to a dispute resolution process for members outside the Dalhousie Faculty Association bargaining unit.

An alternative would be to have access to a timely and robust dispute resolution process separate from tenure. The Committee felt that the Academic Staff Grievance Process might represent such an alternative if it were appropriately structured and vetted. As noted previously, the Committee has two major concerns with the Academic Staff Grievance Process. First, it remains untested at this time. Second, the circumstances under which it comes into effect (rather than or in addition to the Medical Staff bylaws) remain unclear and undefined.

6. “that medical staff/Dalhousie faculty have representation by an organization that is formally recognized by both the Nova Scotia Health Authority and Dalhousie University, and that has enforceable representation rights and the resources to be effective”

The Committee learned that physicians and dentists are excluded from representation by a union such as the Dalhousie Faculty Association according to current provincial legislation. They therefore cannot be represented by the Dalhousie Faculty Association. They are represented by the Medical Staff Association of their respective health authority and by their provincial physician or dental associations (eg, Doctors Nova Scotia in Nova Scotia). The Committee did not examine whether the medical staff associations of the health authorities and the provincial physician or dental associations had enforceable representation and/or the resources to be effective, particularly in regard to issues related to academic freedom. However, the Committee noted that the responsibilities of some Medical Staff Associations have been significantly curtailed in the new structure of the Health Authorities and their activities and influence have therefore been diminished in recent years. It was noted that the MDAS at the IWK Health Centre is well represented in the discipline process as a proportion of members for the Hearing

Pool are directly nominated by the MDAS itself. However, it was not clear to the Committee whether other medical staff associations have the resources and expertise to appropriately represent their members.

The Committee acknowledged that non-clinical staff of the Faculty of Medicine Clinical Departments currently do not have representation by an organization formally recognized by their respective Health Authority and Dalhousie University. A potential resolution of this issue is to amend the mandate of the DFA to allow it to represent non-clinical faculty in the Clinical Departments. An alternative approach would be to strengthen the Academic Staff Grievance Process through the addition of a University Ombudsman who would act as an impartial third party, particularly with respect to issues related to academic freedom. (The Committee recognizes that the current Ombudsman for students acts to help students navigate the system, rather than as an advocate).

The Committee felt that the issue of representation of clinical and non-clinical staff in the Clinical Departments is related to but separate from the issue of tenure.

7. “that new national resources be established to assist with defining and assessing clinical practice standards, to provide active support and training to assist individuals and groups to achieve and maintain these standards, to assist with performing practice audits or establishing appropriate panels to perform effective external independent reviews and assessments of clinical practice, and to help with the management and investigation of cases in which there are disputes about practice standards”

The Committee noted that there are local, national and international clinical practice standards in many areas of clinical medicine. Moreover, within the Health Authorities, there exist quality of care committees and initiatives whose mandates include examination of clinical guidelines and their adoption or application. The Committee felt that the investigation and management of cases in which there are disputes about practice standards has always been and remains the purview of the relevant department and/or clinical service and particularly the quality of care committees or initiatives within those departments or clinical services. Given this information, the Committee recommends that no additional actions are required.

8. “that immediate steps be taken to bring reasonable and just closure to the three individual cases that initiated and underpin this Inquiry”

The Committee does not have a mandate to intervene in the one specific case that is currently before the courts. One of the three cases has been resolved. The status of the third case is not known to the Committee and therefore no further action or recommendation can be made by the Committee.

## Section B

Recommendations of the CAUT Recommendations Review Committee

1. Establish a Memorandum of Understanding between the Faculty of Medicine and the Health Authorities

The Committee recommends that there be a Memorandum of Understanding (MOU) between the Faculty of Medicine and the Health Authorities that specifically outlines the roles and responsibilities of each organization to address issues that arise related to faculty academic performance and faculty academic freedom. This MOU should be established now, in order to provide immediate clarifications about the aforementioned roles and responsibilities of the Faculty of Medicine and the Health Authorities. The principles of the MOU should be subsequently incorporated into future Affiliation Agreements, this issue must be addressed in a timely manner and should not await the negotiation of subsequent Affiliation Agreements.

2. Prompt identification when a performance concern about a faculty member may have both a clinical and academic component

The Committee recommends that the Faculty of Medicine and the Health Authorities have a clear, written and widely disseminated process outlining how to proceed when there are performance concerns that may have both clinical and academic components and may be in potential conflict.

The Committee also recommends that the Faculty consider identifying or designating an Ombudsman so as to be available to medical, dental, health professional and scientific staff of the Clinical Departments to help guide these individuals through the processes involved in maintaining their academic freedom when faced with actions that might represent challenges to this academic freedom.

3. Review of the Academic Staff Grievance Process

The Committee recommends that the newly prepared Academic Staff Grievance Process be tested with hypothetical cases, revised if needed, and widely disseminated within the Clinical Departments.

**Report prepared by:**

**Stephen Couban**      Chair      \_\_\_\_\_

**Tetteh Ago**      Committee Member      \_\_\_\_\_

**Keith Brunt**      Committee Member      \_\_\_\_\_

**Allen Finley**      Committee Member      \_\_\_\_\_

**Krista Jangaard**      Committee Member      \_\_\_\_\_

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**Andrew Stadnyk**      Committee Member      \_\_\_\_\_