

OMBUDS OFFICE

TERMS OF REFERENCE

McMaster University is committed to the just, fair and equitable treatment of each and every member of the University community. In keeping with this commitment, the University joined with the McMaster Student Union (MSU) in 1998 to support the development of a jointly funded Ombuds Office.

1. MANDATE

The mandate of the Ombuds Office (hereinafter referred to as “the Office”) is twofold in nature. First, the Office is to provide an independent, impartial and confidential process through which members of the University may pursue the just, fair and equitable resolution of any university-related matter involving or relating to students. Secondly, the Office is to make recommendations, where appropriate, for changes in MSU and University student-related policies and procedures and to promote discussion on student-related matters of institution-wide concerns.

2. PRINCIPLES

Ombuds Offices are founded on a number of general principles including independence, impartiality, confidentiality, informality, the ability to investigate, and accessibility. These principles are reflected in the structure and operation of the Office.

3. STRUCTURE

3.1 The Office is jointly funded and supported by both the University and the MSU.

3.2 The Ombudsperson reports directly to the President of the University and the President of the MSU and is otherwise independent of all existing administrative structures.

3.3 The Ombudsperson is supported by an Advisory Committee with the purpose of advising on and assisting in fulfilling the mandate of the Office¹.

3.4 The Ombudsperson interacts with the University Secretary and the MSU for administrative support purposes (day-to-day operations).

4. CONFIDENTIALITY

4.1 The Ombudsperson² shall meet with persons or groups on a confidential basis and shall not intervene without their written or e-mail consent. The provision of proof of consent is not a precondition of the Ombudspersons’ inquiries or investigations.

4.2 Notwithstanding the foregoing, the Ombudsperson is not required to maintain confidentiality in cases involving the commission of a serious crime or where there is an imminent risk of physical harm or abuse.

¹ See Advisory Committee Terms of Reference below.

²The word “Ombudsperson” as used in these Terms of Reference, is intended to cover not only the Ombudsperson, but also other staff who may be authorized from time to time to carry out certain functions of the Office.

4.3 The Ombudsperson shall ensure the confidentiality of all records maintained in the Ombuds Office and shall develop a suitable record retention policy.

4.4 The Ombudsperson shall not be required to give evidence before a University tribunal about anything that they may have learned in the exercise of their duty. The University will endeavour to protect the Ombudsperson from subpoena by others both inside and outside the University.

5. JURISDICTION

5.1 Who may bring concerns to the Office:

The Ombuds Office may receive any student-related inquiry or concern regarding the University and/or a student association (MSU, GSA, MAPS) from any McMaster student, staff or faculty member. At the Ombudsperson's discretion, concerns may also be received from former students in respect of matters arising out of their former student status and from University applicants whether accepted or not at the time of the initial contact.

McMaster faculty or staff may bring student-related issues to the Ombuds Office

5.2 Protection from Reprisals

Members of the university community have the right to seek the assistance of the Ombuds Office in relation to student matters without reprisal or threat of reprisal from any other University member or Office. Any individual or body found to make such reprisals or threats will be subject to disciplinary action.

5.3 Initiate Investigations

The Ombudsperson may initiate inquiries or investigations on their own initiative as provided in Section 6.4.

5.4 Collective Agreements

The Ombudsperson shall not intervene in any matter covered by a collective agreement, unless all parties consent to the Ombudsperson's informal involvement.

5.5 Legal Matters

The Ombudsperson shall not intervene if a matter is currently pending in a legal forum. In the event that both parties have retained a solicitor, the Ombudsperson may only intervene if both parties and their solicitors' consent. The Ombudsperson may always provide information pertaining to University policies and procedures.

5.6 Refusal to Intervene

The Ombudsperson may refuse to intervene or may withdraw from a case where:

- (a) the concerns are deemed to be unjustified;
- (b) the request for intervention is made in bad faith or is otherwise considered by the Ombudsperson to be frivolous or vexatious in nature;
- (c) the Ombudsperson deems that their intervention is not necessary having regard to the circumstances and /or;

(d) the person or group has recourse to another individual, group, or University authority likely to correct the situation within a reasonable time and the Ombudsperson deems it advisable to exhaust this avenue before involving the Ombuds Office.

The Ombudsperson shall explain to all the relevant parties the reasons for the Ombudsperson's refusal to intervene or decision to withdraw from a case.³

6. FUNCTIONS

The Ombudsperson performs a variety of functions including; providing information, referring inquiries to the appropriate individuals or Offices, offering advice, intervening to facilitate a resolution, making inquiries, investigating concerns, recommending fair resolutions to individual cases and publishing reports on University wide issues.

6.1 Information and Referral

The Ombudsperson shall act as a source of general information and referral on matters pertaining to University policies, procedures and resources affecting students.

6.2 Advice

The Ombudsperson shall provide advice to students, staff and faculty to help resolve student-related concerns and to assist individuals in generating and evaluating options and determining an appropriate course of action. The Ombudsperson shall encourage individuals, where appropriate, to approach the other party or Office in a dispute directly and to act on their own behalf in resolving concerns.

6.3 Intervention

In cases where the Ombudsperson deems it is appropriate and with the consent of one of the individual(s) involved, the Ombudsperson may intervene to attempt the resolution of a concern. Normally the Ombudsperson will intervene following the completion of informal procedures and prior to the commencement of more formal procedures. Once a formal procedure has been commenced the Ombudsperson shall not intervene except in cases of serious procedural irregularities. This will not prohibit the Ombudsperson from continuing to offer advice and assistance to the party(ies) without becoming directly involved in the process. The method of intervention remains at the discretion of the Ombudsperson. Any intervention shall be directed at obtaining a resolution in a timely and efficient manner, at the lowest level possible within the organization.

6.4 Inquiries and Investigations

The Ombudsperson may, at their discretion, and with the consent of one of the individual(s) involved, or on their own initiative, conduct an informal inquiry or a more formal investigation concerning matters that they feel warrants such treatment.

After concluding the inquiry or investigation, the Ombudsperson shall evaluate the merits of the concern and notify the parties of their findings. When the Ombudsperson concludes that a concern is not substantiated, the findings will be explained to the individuals involved. Otherwise, the findings may form the basis of a case specific recommendation and/or a recommendation involving policy and/or procedures, as outlined below.

6.5 Case specific recommendations

³ The Ombudsperson is not required to provide reasons to parties outside of the University community.

The Ombudsperson may bring such findings to the attention of those in authority and may make recommendations with a view to remedying an individual situation. The Ombudsperson shall inform the relevant authority of the scope of their inquiry or investigation and the authority may, in the case of an informal inquiry, request that the Ombudsperson conducts a more formal investigation and report back their findings. To the extent that the recommendation(s) are not acted upon, the Ombudsperson may seek relief from a higher authority or, as a final resort, bring the matter to the general attention of the University community.

6.6 Recommendations involving policy and procedures

The Ombudsperson may bring to the attention of those in authority any policies, rules or procedures that appear unclear, inequitable or unfair. The Ombudsperson may suggest changes to existing policies, rules or procedures or offer advice on the development of new policies, rules or procedures.

6.7 Publishing Reports

The Ombudsperson shall publish an Annual Report containing; statistical information on the number and type of cases handled by the Office, highlights of any general trends identified in the caseload, and recommendations, as necessary. The report shall be provided, for information purposes, to the Senate and the Student Representative Assembly and shall be widely distributed within the University community. The Senate Executive and the MSU Board of Directors shall ensure that the appropriate administrators consider and respond to the recommendations contained in the report.

6.8 Ombudsperson to have access to information to fulfill functions

In order to fulfill the functions of the Office, the Ombudsperson shall have broad access to all members of the University community and all University and MSU files, records, reports and information, as reasonably required, and in accordance with any applicable laws and the University's "Guidelines on Access to Information and Protection of Privacy" and applicable MSU policies.

6.9 Prohibited Functions

Although the Ombudsperson is authorized to function in the widest possible context and with minimum of constraints, the Ombudsperson shall not:

- (a) act as an advocate of any party during the investigation of a concern although after hearing from all parties the Ombudsperson may act as an advocate for the fair and just resolution of a case;
- (b) have a judicial function, that is, will not make binding decisions in any cases, although the Ombudsperson may, where appropriate make recommendations;
- (c) make, change or set aside University policies and procedures although recommendations may be made for their improvement;
- (d) be a voting member of any committee, hiring board or council of the University or the MSU or any other body on campus although the Ombudsperson may act as a consultant;
- (e) accept notice on behalf of any party, including the University.

7. OTHER RELATED DOCUMENTS

The Procedural Guidelines are available on request.

8. REVIEW

8.1 These Terms of Reference shall be reviewed periodically by the Ombudsperson and the Advisory Committee. Any proposed revisions shall be forwarded to the Senate, the Board of Governors, and the Student Representative Assembly.

PROCEDURAL GUIDELINES FOR THE OMBUDS OFFICE

1. Accessibility

The Ombudsperson shall make every effort to ensure that the Office is accessible to students and shall undertake, whenever possible, to inform the student community of the existence of the Office and its function.

The Ombuds Office shall have flexible Office hours to ensure that the services of the Ombudsperson are available to the entire University community.

2. Case management

The Office shall normally function on a first come, first served basis. However, cases that are particularly time sensitive or critical in nature may assume priority at the Ombudsperson's discretion. All cases shall be processed as expeditiously as possible.

In the event that a period of one month should elapse, during which the Ombudsperson is unable to contact a visitor to the Office, the Ombudsperson may consider the case to be withdrawn.

3. Forms of Intervention

The method of intervention remains at the discretion of the Ombudsperson but may include:

- (a) requesting that a University official meet with a member of the University community; meeting directly with the other party(ies);
- (b) facilitating communication between the parties;
- (c) reviewing any relevant University record;
- (d) making informal inquiries into a matter;
- (e) utilizing a form of shuttle diplomacy;
- (f) facilitating a meeting between the parties;
- (g) mediating a dispute;
- (h) formally investigating a claim and;
- (i) offering recommendations for a fair resolution

4. Records

The Ombudsperson shall maintain suitable files for records of complaints, findings and recommendations. It is the responsibility of the Ombudsperson to ensure that these records are kept secure with access restrictions in place for both paper and digital files. These files shall be accessible only to the Ombudsperson and members of the staff of the Ombuds Office. The Ombuds Office shall be deemed the custodian for its own records and will be responsible for the retention, storage and disposition of the files.

5. Retention of Records

Each file will be maintained for a period of seven years from the date on which the file was active. Once files have met the retention requirement, they shall be securely destroyed. However, no destruction of the file or record will take place if the Ombudsperson is aware of any proceeding arising from the case that is still pending before a University tribunal, any outside tribunal, the Courts, or Access to information Request under FIPPA.

6. The Advisory Committee: Terms of Reference

The Committee shall meet several times a year in order to provide advice and assistance in fulfilling the mandate of the Office, including the following:

- (a) provide advice and guidance to the Ombuds on issues related to the mandate;
- (b) act as a sounding board for the Ombuds;
- (c) review and provide feedback to the Ombuds on the annual report and assist the Ombuds in distributing it widely within the McMaster community;
- (d) make recommendations to the Ombuds on how best to promote and enhance the visibility of the Office;
- (e) review the financial and resource requirements of the Office to ensure the Ombuds has adequate support to fulfil their mandate and make recommendations to the MSU President and the President of the University as appropriate;
- (f) recommend to the MSU President and McMaster President, a hiring committee for the Ombuds position when needed, and, if necessary, a temporary Ombuds should the position become vacant;
- (g) in consultation with the Ombuds and the President of the MSU and the President of the University, organize and oversee regular reviews of the Office, normally every two to five years, and make recommendations as appropriate;
- (h) investigate complaints made about the Ombudsperson and make recommendations as appropriate;
- (i) assist the Ombuds in maintaining the independence and impartiality of the Office, as well as in accessing relevant individuals and information as necessary to fulfill the mandate.

The Committee shall do the above without becoming involved in the substance of cases and subject to the confidentiality rules governing the Office.

The Advisory Committee shall be composed of eight (8) voting members:

- (a) McMaster President (or delegate) Delegated to the University Secretary (co-Chair)
- (b) MSU President (or delegate) (co-Chair)
- (c) Three (3) members from the MSU (SRA or non-SRA)
 - a. To be appointed by the MSU President or delegate and approved at SRA.
 - b. At least one member will be a current member of SRA.
- (d) Three (3) members from the University
 - a. To be appointed by the McMaster President or delegate and approved at Senate.
 - b. At least one member will be a current faculty memberSenator.
- (e) When possible, membership of the committee will be for two years. If the position becomes vacant within two years of a member joining the committee, a new member may be appointed to fill the position.
- (f) Membership on the committee is renewable after two years.

The Ombudsperson shall be a non-voting member of the committee and may be accompanied, at their discretion, by an Ombuds staff member.

Procedures

- (a) All meetings shall be held in closed session.
- (b) One member of the Advisory Committee shall be the notetaker for all meetings. If that member is absent for a meeting, the co-Chairs may designate another individual to take notes.
- (c) Agenda items and any accompanying documents are to be submitted to at least one (1) co-Chair a minimum of five (5) days in advance of meetings.
- (d) Quorum shall be four (4) voting members, including both co-Chairs, one (1) representative from the University and one (1) representative from the MSU.
- (e) Any member of the Advisory Committee who has a conflict of interest with regard to any matter on the agenda must refrain from comment and vote on that matter.

- (f) In the case of a tie, a motion before the committee shall fail.
- (g) The Advisory Committee shall periodically review its own terms of reference and that of the Ombudsperson. This will be done after the first year of operation and on an as needed basis from that point forward. Any changes to the terms of reference for the operations of the Committee or the Office of the Ombudsperson will require:
 - a. Notice of recommended changes to be provided at least two weeks in advance of a meeting called for the purpose of reviewing the terms of reference.
 - b. Two thirds (2/3) majority of the sitting members of the committee. Six (6) votes, as there are eight (8) voting members of the committee, must be in favour in order for changes to be made to the terms of reference.
 - c. Any changes to the terms of reference of the Ombuds Office, including the Advisory committee shall be subject to approval of the SRA, Senate, and Board of Governors.