

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 community may pursue the just, fair and equitable resolution of any university-related concern. Secondly, the Office is to make recommendations, where appropriate, for changes in University policies and procedures and to promote discussion on 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 A Management Committee composed of the Associate Vice-President (Student Affairs) and the VP Education of the MSU shall assist the Ombudsperson in the day-to-day operation of the Office.

4. CONFIDENTIALITY

4.1 The Ombudsperson *shall meet with persons or groups on a confidential basis and shall not intervene without their express written, or e-mail, consent.

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.

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 he/she may have learned in the exercise of his/her 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 University-related inquiry or concern from any member of the

*The 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.

University community, including all faculty, staff and students. From time to time, there may be students in collaborative programmes who are specifically excluded from using the services of the Ombudsperson. At the Ombudsperson's discretion, concerns may also be received from former students and previously employed staff and faculty in respect of matters arising out of their former student status or University employment. Concerns may also be received, at the discretion of the Ombudsperson, from University applicants whether accepted or not at the time of the initial contact.

5.2 Protection from Reprisals

Any member of the University community has the right to seek the assistance of the Ombuds Office 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 investigations on his/her 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 his/her 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.

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, 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 for students, staff and faculty on matters pertaining to University policies, procedures and resources.

6.2 *Advice*

The Ombudsperson shall provide advice to students, staff and faculty to help resolve 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 her/his discretion, and with the consent of one of the individual(s) involved, or on his/her own initiative, conduct an informal inquiry or a more formal investigation concerning matters that s/he feels warrant such treatment. After concluding the inquiry or investigation, the Ombudsperson shall evaluate the merits of the concern and notify the parties of her/his findings. When the Ombudsperson concludes that a concern is not substantiated, s/he shall explain her/his findings 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*

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 his/her 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 as to her/his 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".

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 and Terms of Employment for the Office are available on request.

8. REVIEW

8.1 These Terms of Reference shall be reviewed periodically by the Ombudsperson and the Management Committee. Any proposed revisions shall be forwarded to the Senate 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 the entire University community and shall undertake, whenever possible, to inform the 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;
- (b) meeting directly with the other party(ies);
- (c) facilitating communication between the parties;
- (d) reviewing any relevant University record;
- (e) making informal inquiries into a matter;
- (f) utilizing a form of shuttle diplomacy;
- (g) facilitating a meeting between the parties;
- (h) mediating a dispute;
- (i) formally investigating a claim and;
- (j) offering recommendations for a fair resolution

3. Records

The Ombudsperson shall maintain suitable records of complaints, findings and recommendations. It is the responsibility of the Ombudsperson to ensure that these records are kept secure. These files shall be accessible only to the Ombudsperson and members of the staff of the Ombuds Office. Materials received from visitors to the Office shall be deemed to be the property of the Ombuds Office.

4. Retention of Records

Each file and record will be maintained for a period of seven years and one day from the date on which the Ombudsperson deems the case to be completed. At the end of this period the file or record shall be 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, or the Courts.

5. The Management Committee

The Ombudsperson shall meet three times a year, or more often if appropriate, with a Management Committee composed of the Associate Vice-President (Student Affairs) and VP Education of the MSU. This Committee shall provide guidance, advice and direction to the Ombudsperson on the performance of his/her duties. The Committee shall do so, without becoming involved in the substance of cases and

subject to the confidentiality rules governing the Office. In addition the Committee shall advise and assist the Ombudsperson in the day-to-day operation of the Ombuds Office including the following:

- (a) helping to establish an annual operating, and when necessary, a capital budget for the Office which will contain provisions for salary and benefits, office expenses, promotion, professional development and access to legal counsel;
- (b) making recommendations on administrative matters, including how to increase the visibility of the Office and improve its' effectiveness;
- (c) assisting the Ombudsperson in maintaining the independence and impartiality of the Office;
- (d) organizing a review of the Office as may be directed from time to time;
- (e) reviewing and commenting on the Annual Report and ensuring its' wide distribution;
- (f) establishing procedures for hiring staff for the Office, if required, and managing any employment-related issues;
- (g) acting as a resource for the Office;
- (h) planning for the future of the Office.

The Management Committee shall also be responsible for recommending a temporary Ombudsperson to the President of the University and the President of the MSU in the event that the Ombudsperson is unable to perform the duties of the Office.

TERMS OF EMPLOYMENT OF THE OMBUDSPERSON

1. Nature of Appointment

The Ombudsperson is a McMaster University Professional Management position jointly appointed and funded by the McMaster Student Union and the University and reporting to the President of the University and the President of the MSU. The Ombudsperson shall be subject to all the usual rights and responsibilities of a University employee in a Professional Management position. The Ombudsperson shall have official observer status at University Senate and should have the right to speak before the Student Representative Assembly (SRA).

2. Appointment

The Ombudsperson shall be appointed jointly by the President of the University and the President of the MSU on the recommendation of a selection committee. The selection committee shall be representative of the University community and shall include students, staff and faculty.

3. No Other Employment

The Ombudsperson shall devote full time attention to the Office and shall not hold or maintain any other Offices or engage in any other occupation that would interfere with the performance of the duties of the Office.

4. Term

There shall be a probationary period for new appointees of one year. Upon successful completion of the probationary period, the Ombudsperson shall serve for subsequent terms of between two and five years, as determined jointly by the President of the University and the President of the MSU. The Ombudsperson shall be advised, three months prior to the end of any term, whether the term will be renewed for a further period. The Ombudsperson shall notify the parties within one week of such notification of his/her intentions, to ensure that there is sufficient time for a replacement to be sought, if required.

6. Performance Reviews

The Ombudsperson shall be subject to personal performance reviews by the President of the University and the President of the MSU on a regular basis. The President of the University and the President of the Student Union may delegate this responsibility to the Management Committee, as they see fit. Prior to determining whether to renew the Ombudsperson's term, there will be consultation with the University community. The functioning of the Ombuds Office shall also be subject to periodic review as determined by the President of the University and the President of the MSU.

7. Complaints

If a member of the McMaster community believes that the Ombudsperson has committed a procedural or substantive violation of these Terms of Reference s/he may submit a written complaint, detailing the alleged violation, to the President of the University and the President of the MSU. The complainant must be a party to the matter in question and no complaint shall be considered while a case is on going. The President of the University and the President of the MSU (or if they are personally involved, the Provost and the Speaker of the Student Representative Assembly) may personally investigate the matter or may jointly select one or more members of the University community to investigate the matter, and report back to them as to his/her/ their findings. The Ombudsperson shall be provided a fair opportunity to answer any allegations. Following the investigation, the President of the University and the President of the MSU shall, acting jointly, take whatever action they deem appropriate including requesting further investigation, dismissing the complaint if it has been successfully answered, or taking appropriate discipline action, up to and including dismissal for cause.

8. Conflict of Interest

In the event of an actual or perceived conflict of interest, the Ombudsperson shall inform the parties concerned and shall ensure that the parties are aware of other possible methods of resolving the conflict. In appropriate cases, another member of the University community may be requested to assume the role of Ombudsperson, for the purposes of this individual case and shall, in such role, be governed by The Terms of Reference for the Office.

9. Termination

During the term of the Ombuds appointment (excluding any probationary period) the Ombudsperson may only be dismissed for just cause including, but not limited to, breach or neglect of duties. The President of the University and the President of the MSU may determine if just cause exists for dismissing the Ombudsperson prior to his/her completion of the term.