



McGill

Memorandum

Office of the Deputy Provost (Student Life and Learning)
James Administration Building, Room 621
Tel: 398-3109 – Fax: 398-4768

TO: Senate

FROM: Morton J. Mendelson, Deputy Provost (Student Life & Learning)

SUBJECT: Terms of Reference for Ombudsperson for Students

DATE: January 6, 2009

DOCUMENT #: D08-33

ACTION REQUIRED: ☐ INFORMATION ☐ DISCUSSION ☒ APPROVAL / DECISION

ISSUE: Approval of the Ombudsperson for Students terms of reference

BACKGROUND & RATIONALE:

The attached proposed terms of reference were formulated, considering the recommendations made by an ad-hoc Advisory Committee regarding the Mandate of McGill's Ombudsperson for Students and taking into account wide consultation in the McGill community (see below).

The terms of reference were brought to Senate for consultation on November 5, 2008. The attached terms of reference are almost identical to the previous version brought to Senate. The only material revision is the addition of the word "preferably" in paragraph 2.1 Appointment.

The proposed revisions to terms of reference are intended to update and clarify the role of the Ombudsperson for Students.

The revisions are consistent with the principles determined by the International Ombudsperson Association and the Association of Canadian College and University Ombudspersons (ACCUO).

MOTION OR RESOLUTION FOR APPROVAL:

The terms of reference are being brought to Senate for approval.

Be it resolved that Senate recommend to the Board of Governors the adoption of the new terms of reference for the Ombudsperson for Students.

PRIOR CONSULTATION:

Senate (November 5, 2008)
Provost, Associate Provost (Policies and Procedures)
Interim Ombudsperson for Students
MAUT, Legal Services
Student Associations (SSMU, MACES, PGSS, MCSS)

NEXT STEPS: Approval by the Board of Governors

APPENDICES: Proposed terms of reference

D08-33 APPENDIX A

OMBUDSPERSON FOR STUDENTS

1. Terms of Reference

- 1.1 The mandate of the Ombudsperson for Students (OFS) shall be to:
- (i) provide an independent, impartial and confidential process through which a student may seek the just, fair and equitable resolution of any university-related concern where normal non-adversarial administrative channels for addressing such matters are inappropriate in the circumstances or prove ineffective;
 - (ii) where appropriate, review University policies, guidelines and procedures affecting students and make recommendations for change normally to the relevant University administrative officer;
 - (iii) where appropriate, promote discussion of University-wide student related concerns.
- 1.2 “Student” means a person who is, or within the past twelve months was, registered in the University as a student, whether or not as a candidate for a degree, diploma or certificate.

2. Appointment

- 2.1 The Board of Governors, on the recommendation of a joint Senate/ Board Committee one-quarter of whose members shall be students, shall appoint the OFS preferably from among members of the tenured academic staff of the University who are well respected by both students and other members of the McGill community.

3. Terms of Appointment

- 3.1 The appointment of the OFS shall be half time for a non-renewable term of five years.
- 3.2 During the term of the appointment, the OFS shall not hold other than a half-time academic appointment in addition to his or her appointment as OFS.
- 3.3 The OFS shall be independent of all existing institutional administrative structures while acting within the mandate of the position.
- 3.4 To further ensure the independence of the OFS:
- (i) the salary of the OFS shall initially be shared equally by the unit in which the OFS holds an academic appointment and by the University;
 - (ii) the OFS shall be subject to academic salary policy and receive as annual merit increases the merit increase allocated by the unit in which the OFS holds an academic appointment, prorated for a half-time position, and the greater of:
 - (a) the prorated increase; or
 - (b) 50% of the University’s average academic merit.
 - (iii) the OFS shall be provided with a separate office, appropriate secretarial support, and dedicated full service telephone and internet facilities;
 - (iv) the OFS shall be provided with a reasonable budget to support the mandated functions of the position.

4. Functions

General:

4.1.1 The OFS may:

- (i) discuss an issue with students who prefer to consult a neutral party;
- (ii) advise students on their rights and responsibilities within the University context;
- (iii) provide guidance to students on institutional policies and procedures;
- (iv) assist students in identifying the various informal and formal administrative channels available for addressing an issue that may become the object of a complaint;
- (v) assist students in accessing non-adversarial administrative channels available for addressing particular issues; or
- (vi) help resolve an issue for students who, having utilized established non-adversarial administrative channels, have reasonable grounds for believing that the procedures, rules or criteria used to reach a decision were inappropriate or inadequate.

4.1.2 The University shall render all reasonable assistance to the OFS in the performance of the mandate of the position and in particular shall provide the OFS with timely and reasonable access:

- (i) to appropriate University authorities;
- (ii) subject to the laws governing the protection of private and confidential information, to the files, records and other documents needed to fulfill the functions of the mandate as herein described.

Concerning Individual Student Complaints:

4.2.1 The OFS shall only accept complaints from students who personally present their complaints (see <http://www.mcgill.ca/ombudsperson>).

4.2.1.1 The OFS shall inform a third party seeking to initiate complaints on behalf of a student of this policy and request the third party to advise the student to contact the OFS personally.

4.2.2 The OFS is vested with the sole discretion to determine:

- (i) whether a student's complaint warrants intervention by the OFS;
- (ii) the nature and scope of the intervention, keeping within the framework of this mandate; and
- (iii) when to discontinue the intervention.

4.2.2.1 On the written request of a student, the OFS shall provide written reasons for not initiating or for discontinuing an intervention regarding the student's complaint.

4.2.3 With the written consent of the student filing a complaint, the OFS shall have the discretion to attempt an informal resolution of the complaint through any one or more of the following methods:

- (i) meeting with the parties;

- (ii) facilitating communication and meetings between the parties;
- (iii) making informal inquiries into a matter including reviewing any relevant University record;
- (iv) requesting that a University official meet with a member of the University community; and
- (v) offering recommendations for a fair resolution.

4.2.3.1 In determining the appropriate intervention, the OFS shall be guided by the goal of obtaining a resolution in a timely and efficient manner, at the lowest administrative level possible within the University.

4.2.4 The OFS may make recommendations, normally in writing, regarding a complaint to the appropriate University official and, if appropriate, to that person's superior(s).

4.2.5 The University official receiving the recommendations shall normally respond in writing, outlining the steps, if any, that will be taken to address the issue, or the reasons why the recommendations cannot be implemented.

4.2.6 Subject to the retention schedule outlined in 7.1, the OFS normally shall retain a confidential written summary for each complaint, which respects the confidentiality of the parties, containing a statement of:

- (i) the complaint;
- (ii) the facts;
- (iii) the findings;
- (iv) the recommendations, if any, supported by reasons;
- (v) the response, if any, of the appropriate University official.

4.2.7 The OFS shall deal with student complaints with reasonable promptness and taking into account all information received.

Concerning Systemic Issues:

4.3.1 The OFS may, without receiving a complaint from a student, investigate what may appear to be systemic inadequacies in existing University policies, guidelines, procedures, or practices that may prejudice the rights of students and make recommendations concerning such policies, guidelines or procedures.

4.3.2 The recommendations of the OFS shall be in writing, supported by reasons, and directed to the University official charged with responsibility for the administration of the policy, guideline or procedure at issue.

4.3.3 The University official receiving the report shall respond in writing, outlining the steps, if any, that will be taken to address the issue, or the reasons why the recommendations cannot be implemented.

Concerning Community Education:

4.4 The OFS shall make every reasonable effort to inform the members of the University community of the existence, role and functions of the OFS.

5. Limitation of Functions:

- 5.1 The Ombudsperson exercises no powers that are beyond the legal scope of the University.
- 5.2 The Office of the OFS is not a University “office of notice”, and communication of a complaint or of any other issue to the OFS does not constitute communication to the University.
- 5.3 The OFS shall act solely in an advisory and intermediary role receiving student complaints and trying to facilitate their resolution through a number of non-adversarial means and, to this end, the OFS:
- (i) shall not act as an advocate for any party in any matter;
 - (ii) shall not act as an advisor for a student under the provisions of the *Code of Student Conduct and Disciplinary Procedures*, the *Code of Student Grievance Procedures*; the *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law*; or any other analogous University policy;
 - (iii) may make recommendations only regarding matters that are within the control of the University;
 - (iv) shall not make University policy;
 - (v) shall not replace proper disciplinary, grievance, or other formal channels;
 - (vi) shall not intervene in any matter covered by a collective agreement unless all parties agree to the informal involvement of the OFS.
- 5.5 The OFS shall not, or shall cease to, intervene in a student’s complaint, if the subject matter of the complaint is or becomes the object of:
- (i) proceedings before the Senate Committee on Student Grievances or the Appeal Committee for Student Discipline and Grievance, pursuant to the *Code of Student Grievance Procedures*;
 - (ii) proceedings under the *Code of Student Conduct and Disciplinary Procedures*;
 - (iii) a formal complaint under the *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law*; or
 - (iv) any proceeding external to the University involving the subject matter of the complaint.
- 5.6 The OFS shall not intervene in a student complaint based on matters that occurred more than twelve (12) months prior to the making of the complaint unless the student has a reasonable explanation for the delay in pursuing the matter.

6. Confidentiality

- 6.1 All dealings with, and reports or other documents concerning individual student complaints issued by the OFS are strictly confidential and may be revealed only with the written consent of all the parties, or on a “need-to-know” basis, or where required by law.
- 6.2 The OFS shall respect the confidentiality of any confidential information obtained from any officer of the University or other person.

6.3 The OFS will not be compelled to testify or produce evidence before any University tribunal or in any University proceeding.

6.4 No report or summary thereof prepared by the OFS shall be admissible before any University tribunal or in any University proceeding.

7. Retention of Working Files

7.1 All reports, summaries, records and other documents concerning an individual student's complaint shall be retained by the OFS for a minimum of five (5) years after the closing of the complaint and then destroyed.

8. Protection from Reprisals

8.1 No person who seeks the services of, files a complaint with, or cooperates in any manner with, the OFS shall be subject to reprisals or denied any rights, privileges or benefits because of such actions and shall be entitled to all of the same protections afforded by the *Policy on Safe Disclosure*.

9. Recusal of the OFS

9.1 In the event that the OFS must recuse herself or himself from a complaint or other matter because of a conflict of interest or bias, the position will be assumed by the Dean of Students or delegate.

10. Reports

Annual Report to Senate

10.1 The OFS shall annually provide to Senate a report, including relevant statistics, concerning such matters as:

- (i) the number of inquiries for information, advice or assistance;
- (ii) the general subject matter of such inquiries;
- (iii) the number of complaints;
- (iv) the nature of the complaints;
- (v) the source of the complaints;
- (vi) the resolution or other disposition of the complaints; and
- (vii) other information deemed appropriate by the OFS

Ad hoc Reports

10.2 The OFS may from time to time submit *ad hoc* reports and recommendations to relevant University administrators and, if appropriate, to Senate or its committees concerning systemic issues prejudicial to students.