Office of the Ombudsperson 2015 Annual Report
In 1965, John Mynott, an elected member of the SFU Student Society, introduced the concept of the Ombudsperson to the University. Little did he know at the time that he was establishing the very first Ombudsperson at an academic institution in North America. Prior to this introduction the role of an Ombudsperson was still a relatively new concept in North America with only a few provincial offices operating in the early 1960s. SFU is internationally recognized as being the first university in North America to introduce the concept of an Ombudsperson to post-secondary education. Today there are 32 Canadian post-secondary institutions providing Ombuds services for students, with many more at colleges and universities in the United States, South America, Asia and Europe. In May 2015, the office celebrated the 50th year that this service has been offered to students at SFU. To mark this anniversary, Ombudspersons from across North America – representing universities, colleges, the private sector, provincial and municipal offices – attended a three-day conference at SFU’s Wosk Centre for Dialogue.
RECOMMENDATIONS:

1. The key document that outlines instructors’ expectations for a student in a course is the course outline. Departments need to review this annually to ensure that the content is consistent with applicable polices. Course materials and the grading scheme and assignment deadlines should also be clear.

2. The University should develop conflict resolution training for staff and faculty to address the unique challenges of dealing with post-secondary students.

3. The university should develop training for managers, directors and chairs on the application of fairness and discretionary decision-making.

4. Recommend adopting a “duty of care” framework to help support supervisor/graduate student relationships. This framework has been adopted by the University of Toronto and is being discussed at other post-secondary institutions in Canada. In many relationships where a clear power differential exists in our society, the law has applied the framework of a fiduciary in order to protect the rights and interests of the party with less power, the beneficiary. This “duty of care” is essentially an obligation to conform to a certain standard of conduct for the protection of another against an unreasonable risk of harm. Given the power imbalances present in many professional relationships, such as doctor-patient, lawyer-client, teacher-student, graduate students-faculty, our courts have imposed a fiduciary duty on the professional to act in the best interests of, and only in the best interests of, those in their care. The value of such a framework is that it could provide a set of commonly held and understood reference points that establish the ground rules and expectations on the part of both the University and the student to their mutual benefit.
From January 5, 2015 to December 21, 2015, a total of 440 students have sought the services of the Ombudsperson. This represents an increase of 47 cases over the same period in 2014.

Undergraduate students – 377
Graduate students – 63

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Change</td>
<td>5</td>
</tr>
<tr>
<td>Cheating and Plagiarism</td>
<td>2</td>
</tr>
<tr>
<td>Unsatisfactory Progress Report</td>
<td>9</td>
</tr>
<tr>
<td>Withdrawal under extenuating (WE)</td>
<td>4</td>
</tr>
<tr>
<td>Funding Issues</td>
<td>9</td>
</tr>
<tr>
<td>Fees</td>
<td>3</td>
</tr>
<tr>
<td>Supervisory Concerns</td>
<td>31</td>
</tr>
</tbody>
</table>

According to the Association of College and University Ombudspersons (ACCUO) most offices in Canada report an annual caseload of approximately 1% of the total student population. SFU’s annual caseload is consistent with the national average. We have seen a significant increase in the number of students seeking assistance since 2009. We believe that this increase is linked to a greater awareness of how the office helps students combined with an increase in the number of referrals to the office.

Caseload per year

<table>
<thead>
<tr>
<th>Year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>227</td>
<td>302</td>
<td>332</td>
<td>364</td>
<td>353</td>
<td>393</td>
<td>440</td>
</tr>
</tbody>
</table>

Combined Graduate and Undergraduate
Enrollment status

- Undergraduate - International: 14%
- Graduate: 10%
- Undergraduate: 70%
- PDP: 2%
- Graduate - International: 4%

Type of service offered / requested

- Intervention - Clarifying/Coaching: 31%
- Information: 11%
- Intervention - Shuttle Diplomacy: 25%
- Advice & Referral: 24%
- Direct Mediation: 9%
Consultations per student

The chart above only includes the actual number of meetings and does not include time spent investigating the student’s concern. Cases where students have 10+ consultations with the office generally involve multiple issues that may intersect with other offices such as the Human Rights Office, Student Conduct, Security, Health and Counselling or the Centre for Students with Disabilities.

Case distribution by faculty

<table>
<thead>
<tr>
<th>Faculty</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Sciences</td>
<td>14</td>
</tr>
<tr>
<td>Communication, Art and Technology</td>
<td>37</td>
</tr>
<tr>
<td>Education</td>
<td>14</td>
</tr>
<tr>
<td>Science</td>
<td>86</td>
</tr>
<tr>
<td>Business Administration</td>
<td>9</td>
</tr>
<tr>
<td>Applied Science</td>
<td>108</td>
</tr>
<tr>
<td>Arts and Social Sciences</td>
<td>172</td>
</tr>
<tr>
<td>Total</td>
<td>440</td>
</tr>
</tbody>
</table>
Method of initial contact

- Email: 54%
- Phone: 26%
- Drop in: 20%

How did students hear about the office?

- Referral from staff or faculty: 68%
- Other student: 14%
- Poster, Social Media, Advertising: 9%
- Website: 4%
- Other: 5%

Case distribution by campus

- Vancouver: 29
- Surrey: 43
- Burnaby: 368
RECOMMENDATIONS:

Recommendation 1:
Maintain Consistency of Course Outlines Across Platforms

A number of students have raised concern that there can be discrepancies between the online course syllabus and the one handed out in class. This can lead to confusion as to course requirements, assignments and grading information and clear expectations. Departments should ensure that only one version of the course is posted as the official course syllabus and that this version is consistent across multiple platforms. It also important to ensure that sessional instructors are provided with correct information and course details.

Recommendation 2:
Develop Staff Conflict Resolutions Skills

Under GP 18 the University has a clear process to deal with harassment and discrimination. The University’s underlying principles also include fostering a culture of inclusion, diversity and respect. These principles can be useful in addressing issues of workplace civility on campus. However, there is no clear training for faculty and staff that addresses conflict resolution and appropriate conduct. Each year we hear from a number of students who feel that they have been treated disrespectfully (or worse) by a graduate supervisor, or university employee. The President has outlined a need to create a “supportive and healthy work environment” that we believe should include conditions that promote a healthy campus like respect, civility and fairness.

We recommend that an orientation program be developed for newly appointed managers that covers building and nurturing a healthy environment where staff and faculty exhibit a commitment to fair treatment, good conduct and respect. There is a need to provide clear and consistent competencies, knowledge, and skills that differentiate superior performance and that are the foundation of achievement within a particular role. Many continue to view these as “soft” skills that are not as important as technical abilities needed to do the job. However, linked to performance expectations for managers this will in turn encourage managers to seek out any training they may need to improve their performance. As an example Canvas does provide an existing platform that could be used to deliver a module on conflict resolution. Regardless of what approach the University decides to pursue, I would encourage continued emphasis on supervisory training opportunities as a recognized method of conflict prevention.
CONFLICT COACHING AND THE OMBUDSPERSON

In a complex organization like a university students can sometimes feel left out in the cold with concerns or complaints no matter how responsive and well-meaning staff or processes are. This is partially the result of the sheer size and scale of the organization. A problem that seems to an individual to be taking over or blocking progress in their life may seem like just another “problem” to an overwhelmed staff member. As such, small questions that are mishandled can grow into major stumbling blocks.

Conflict resolution is a very large part of the role of the Ombudsperson. At the core of our practice is an attempt to balance two difficult principles: determining “truth” and assigning “accountability” while at the same time attempting to smooth relationships and promote the harmonious resolution of issues. In the case of the latter a large part of the services provided by the Office involves conflict coaching - Engaging students in discussions of power and emotional dynamics, promoting different perspectives and fostering more awareness of the complex ways the system works. Students often want simple answers to questions that are essentially nuanced and require complex answers or solutions. Managing expectations and guiding students through the process of how to resolve conflict is key to how we operate.

This office views conflict through a communication lens. Most conflict is socially constructed and influenced by a context that creates a foundation for relationships. This is especially noticeable when dealing with conflict between a graduate student and their supervisor. Previous social interaction, history, organizational culture and power dynamics are all meanings they have given to actions and elements in their situation. Many of the students we see have attached meaning to interactions, “my supervisor hates me” or “the system is fixed, and totally biased”. Conflict coaching helps the individuals involved understand such interpretations that can lead to conflict and possible reinterpretations.

We also place an emphasis on the transformative aspects of conflict. Rather than strictly looking at “interests” there is an emphasis on empowerment or self-strength and recognition of other perspectives. Students often come to the office with the expectation we will act as their lawyer or advocate and resolve the conflict for them. However, as an impartial office we cannot be seen as advocating for one perspective
or side. Seeing conflict as a transformative learning opportunity for students helps locate us in an educational role, we are impartial guides, teaching students how to resolve the conflict themselves. Solutions often require a commitment to get outside of one’s comfort zone and try new approaches.

The following is an outline of a typical meeting with a student.

1. **Preparatory conversation:** Clarifies the role of the office and process limits as well as ensuring that the student understands this before continuing.

2. **Discovering the story:** Each session starts with the student “telling their story” to promote their own processing of the issue and provide the ombudsperson with the basic detail needed to be helpful.

3. **Exploring perspectives:** Invites reflection on emotions, assumptions, identity and fairness in light of power dynamics to get a better sense of the situation, explores assumptions, clarifies definition of academic integrity, and what options are available. What is the emotional experience of conflict? Angry, depressed, scared? How do these affect the student’s view of possible options and actions? What are the consequences of challenging authority in this situation, real or perceived? Works through various scenarios and possible outcomes.

4. **Crafting the story:** Encourages the student to articulate their desired resolution given the facts of the situation.

5. **Enacting the story:** Moves to clarify the policy and procedural assumptions, possible next steps. Time to explore the viability of interacting directly with the instructor and preparing them for the conversation.

Conflict resolution as a transformative process provides a model through which the Ombudsperson can use crisis or conflict as teachable moments. The student can “think out loud” in a confidential environment without being judged. The vast majority of conflicts are best handled at the lowest level. The process is informal and provides the student with a space to explore their thoughts, feelings and options surrounding a situation. Coaching the student can assist in developing knowledge, skills and techniques so that the students can appropriately and effectively take action on their own. It also provides an opportunity to teach the student how institutional processes and resources can empower them if they actively engage with and take ownership over their role in the resolution process.
Recommendation 3: Provide Training on Procedural/ Administrative Fairness and Discretionary Decision-Making

Given our observations described above, there is an opportunity for the University to provide training for decision-making and procedural fairness. All faculty and staff would benefit from having a solid foundation in the principles of administrative fairness and sound decision-making. There are a number of tools developed by provincial Ombuds offices to guide decision makers through the process of making clear and fair decisions.

RIGIDITY IN RULE INTERPRETATION AND APPLICATION

_We cannot rely on a structure of a priori rules to relieve us of our responsibility for treating each other with compassion and understanding._
- Roderick MacDonald, Dean of McGill Law School

Consistency is, of course, a fundamental tenet of fairness. People expect rules to be applied in a consistent and impartial manner, without favour to any party or to the idiosyncrasies of the case. However, there is a tendency for some to view fairness as treating everyone exactly the same. This inflexible application of the rules approach to consistency can actually undermine and end up working against its primary purpose – fairness. Sometimes, perhaps more often than one would hope, we go a bit overboard and rules and procedures are applied to the “letter of the law” losing sight of the “spirit of the law”. The reason we hear for a rigid application of a rule is that doing otherwise, i.e. looking at the circumstances as a whole and taking into account relevant factors, would be unfair to others. When a rule is applied rigidly without regard to individual circumstance, compassion and common sense, it becomes a barrier that frustrates the purpose for which it was imposed in the first place. In short, fairness does not mean treating everyone the same.

This is a fundamental misunderstanding of fairness. Fairness has never required that all cases and situations be treated with an identical application of the rules. This approach is supported by the way courts have shaped equality rights in Canada: differential treatment does not always result in inequality and treating everyone the same can in fact create and perpetuate inequality. It is essential that rules and processes be applied with a knowledge of the broader purpose and goal that a particular rule or process was intended to achieve when it was created.
Rules, policies and procedures are only the starting point in a decision-making process. They should not, as former Dean of McGill Law School Roderick MacDonald states above, determine the outcome without applying the core values. SFU has articulated these values in numerous documents and statements over the years; these values include respect, diversity, equity, excellence and integrity.

Policies, rules and guidelines are essential for the smooth operation of any organization. Rules must be clear, accessible and logically related to the University’s mission. They must also be sufficiently detailed to ensure that an individual understands what constitutes a violation and the consequences for the same. Further, rules can and should be interpreted and applied in a way that confirms our commitment and relationship to the wider community. This must also reflect common core values. Many times there are options if we simply allow ourselves to look for them.

Hard decisions have to be made and serious consequences will result in some cases. But the expression and experience of fairness are not limited simply to the outcome in any given case. The way in which we apply a rule, the considerations and good intent we convey during the process and how we help people accept the decision and transition through to the next step make a vital difference to preserving the investment made by both students and the University in each other.

SFU operates by a complex and complicated system of policies, rules and procedures. They cannot be created or applied without due regard to the fundamental legal principles that must underlie all of them. Fairness as a legal concept, in addition to other laws and legal principles that include the duty to accommodate and the right to an environment free of discrimination, must inform the content of our rules and procedures and the decisions that we make.

Counterbalancing against complexity is the importance of common sense. What strikes us as most unfair are those situations where a sterile and so-called “neutral” application of a rule produces a bizarre outcome which has almost no bearing to the purpose for which that rule was created. The constituent elements of procedural fairness – the rights to reply, have reasonable notice, receive reasons and timely proceedings – are intended to ensure that not only a right decision is made, but more importantly, a wise one. It is expedient to make mechanical and technically correct decisions.
Decision makers should ask the following:

1. Determine what cohorts of rules apply.
2. Determine if those rules account for facts.
3. Explain reasons and the basis for departing from the rules is required.
4. Emphasize that decision is based on objective principles and standards.
5. Always craft a detailed explanation that outlines the reasons for a decision.

**Recommendation 4: A Duty of Care**

Power differentials tend to be an inevitable part of large and complex organizations. Learning, teaching or working in a university setting involves being part of a complex system set within a number of individual and institutional relationships. Within the university power differentials manifest most notably, and sometimes profoundly, in the graduate student-supervisor relationship.

*The Canadian legal system recognizes a multitude of special relationships in which one party is required to look after the best interests of the other in an exemplary manner.*

In many relationships where a clear power differential exists in our society, the law has applied the framework of a fiduciary in order to protect the rights and interests of the party with less power, the beneficiary. This “duty of care” is essentially an obligation to conform to a certain standard of conduct for the protection of another against an unreasonable risk of harm. In professional relationships like doctor-patient, lawyer-client, teacher-student, our courts have imposed a fiduciary duty on the professional to act in the best interests of, and only in the best interests of those in their care.

The courts have been willing to expand the notion of the fiduciary beyond professional relationships where the fiduciary has some scope for the exercise of discretion on or power. Especially when this power can be applied in a unilateral way to affect the beneficiary’s legal or practical interests and the beneficiary is particularly vulnerable to the fiduciary’s exercise of that discretion or power. In fact, an Alberta court decision where a supervisor was found to owe a fiduciary duty to his graduate student, though in the facts of that case, the court held that the supervisor did not breach those duties.
There is a compelling argument that a faculty member who undertakes to supervise a graduate student fits within the criteria of a fiduciary duty. Beyond the economic or financial interests of the graduate student, there are significant “human and personal” interests at stake that should be protected. As in other relationships with fiduciary obligations, graduate students are in a position of vulnerability as they are dependent on their supervisors for references, funding, and research opportunities – all of which can have a significant influence in the graduate student’s academic and career trajectory. In addition, the graduate student-supervisor relationship is shaped by trust, influence and dependence.

The fiduciary framework is primarily intended to prevent exploitation of the beneficiary by virtue of the power held by the fiduciary. Those powers may include reward, coercion and expertise. In our experience, many graduate students do not complain or seek assistance out of fear of reprisal in the form of negative references, informal barriers to research progress or loss of funding, and reputational damage that may impact career prospects or options. This fear is often so pronounced that many students do not want to discuss their concerns with anyone. This can lead to additional stress leading to mental and physical health issues. In addition, few graduate students have a simple, singular relationship with their supervisors. Many also have employment relationships or are indirectly connected to their supervisor in a way that could potentially give rise to perceptions of a conflict of interest.

While an enforceable, legal framework of a fiduciary might be applicable to the graduate student-supervisor relationship, it may not be the best option to address this imbalance. The more practical and pedagogically useful approach might be to consider the fiduciary framework as more informative of best practices.

The value of such a framework is that it could provide a set of commonly held and understood reference points that establish the ground rules and expectations on the part of both the University and the student. Such clarity would be mutually beneficial; while various guidelines and practices will exist among departments and individual faculty members, a fiduciary framework could help us all in presenting an explicit set of guidelines for our interactions which will be of particular help when challenges arise. While such a framework would be helpful it is also equally important that students understand what is expected of them and what is needed is succeed. They have responsibilities to fully participate in establishing and managing expectations with their supervisor.
Beyond the individual relationship in which fiduciary obligations can arise, as an institution we also need to ask when and under what circumstances might there be a fiduciary obligation on the broader University community to act in the interests of the student when individual fiduciary duties have not been fulfilled.

**PROFESSIONAL DEVELOPMENT**

The Ombudsperson attends quarterly meetings with Ombudspersons from the University of British Columbia, the University of Victoria, and Camosun College. These meetings allow university Ombudspersons from other post-secondary campuses across the province to come together and discuss various topics and issues unique to the profession. It is the intention of the group to expand membership to eventually include all post-secondary Ombudspersons from across the province. The Ombudsperson has also started to connect with the Northwest Ombuds Group and the California Caucus of Colleges and University Ombuds. These groups are made up of Ombudspersons in BC, Washington State, Oregon and California. They meet several times a year to provide opportunities for networking and professional development.

The Ombudsperson at SFU is a member of the Association of Canadian University and College Ombudspersons (ACCUO); the International Ombudsman Association (IOA) and The Forum of Canadian Ombudsmen (FCO). In September 2015, the Ombudsperson completed the Certificate program through Osgoode Law School in Ombuds Practice. These associations provide access to a network of international Ombudspersons from universities, colleges, government and the private sector. The associations also provide training opportunities, professional development, networking and research materials. In addition, the Ombudsperson acted as Co-Chair for the joint FCO/ACCUO conference in Vancouver in May, 2015, which was held at the Wosk Centre.
THANK YOU

The mission of the Office is greatly enhanced by the support and cooperation of many individuals who contribute to positive organizational changes at our campuses. In particular we would like to thank the following SFU colleagues:

• Martin Pochurko, Vice President of Finance and Administration;
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• Rummana Khan Hemani, Registrar and Executive Director, Student Enrollment (pro tem)
• Jo Hinchliffe, Associate Registrar;
• Dr. Mitchell Stoddard, Centre for Students with Disabilities;
• Marin Mroz, Director of Health and Counselling;
• Dean Diamond, Academic Integrity and Good Conduct Office;
• Brenda Taylor, Director of the Office of Human Rights and Equity;
• Persia Sayyari, GSS Advocate.

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