

**REPORT OF THE UNIVERSITY OMBUDSPERSON
FOR THE PERIOD 1 JUNE, 2007 TO 31 JULY, 2008**

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Executive Summary

This is my first annual report as University Ombudsperson. I report on the handling of complaints during the period 2007-08, on notable examples of systemic issues I have been concerned with during the same period, and on the reorganization of the Office and other matters arising from a review conducted in 2006. I also report on the current status of recommendations made by the Acting Ombudsperson in his report of October, 2007.

The report illustrates how in many instances the Ombudsperson can function as a catalyst for improvement in processes and procedures through informal discussion, without need of formal investigation and recommendations. I am pleased to say that once the difficulties experienced by members of the University have been pointed out to them, most administrators are quick not only to address the individual case, but to take steps to improve the way in which things are being done.

The report contains four recommendations: 1) on the need for continuing reminders to faculty and staff about obligations under the *Freedom of Information and Protection of Privacy Act*; 2) on the need for a review of the *Code of Behaviour on Academic Matters*; 3) on informing the Academic Board of the time taken to dispose of allegations of academic offences; and 4) to the Executive Committee of Governing Council on the period of retention of the Ombudsperson's records.

Report of the University Ombudsperson for the Period July 1, 2007 to June 30, 2008

I began my part-time appointment as University Ombudsperson on July 1, 2007. I feel privileged to have been invited to serve the University in this role, and am pleased to submit this report on the activities of the Office during the first year of my three-year term.

Garvin De Four joined the staff of the Office on December 10, 2007 in the position of full-time Case Officer, bringing with him his valuable experience as an early resolution officer and as a member of an investigative team at Ombudsman Ontario. The Case Officer position was created in response to the recommendation of the committee of Governing Council that reviewed the Office in 2006. Ms Linda Collins continues to provide very able administrative/secretarial support on a part-time basis. She has been remarkably patient and unfailingly helpful through the many changes affecting the Office over the past two years.

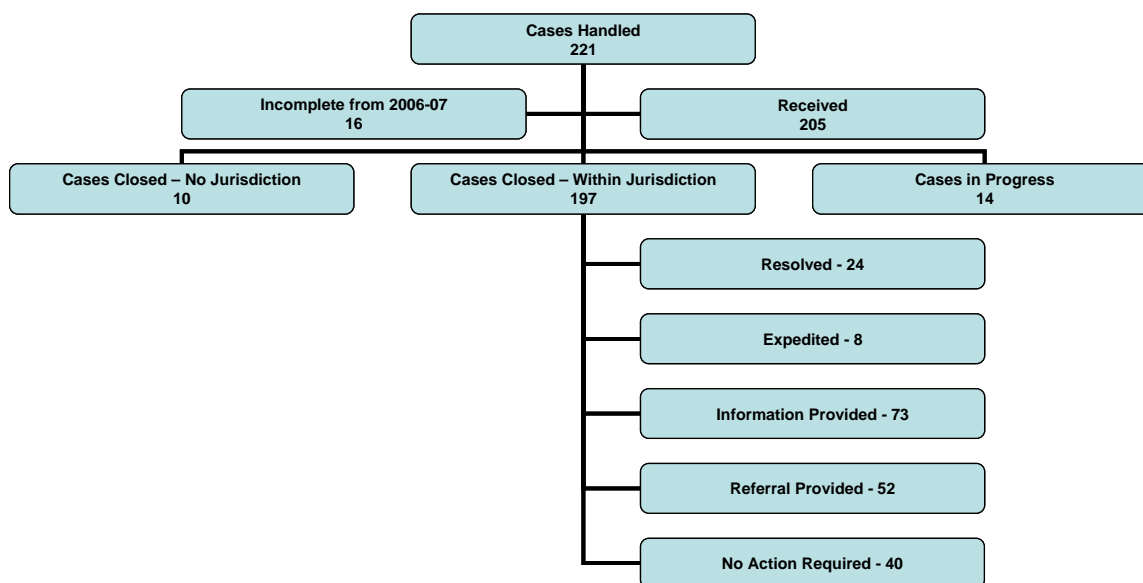
A major objective of the reorganization was to enable the Ombudsperson to devote more attention to systemic issues that come to her attention. Systemic issues are those that potentially affect many members of the institution, not only the individual complainant. Such issues are generally most effectively addressed through a review of policies, through improved guidelines for policy implementation, or through changes in processes or procedures.

This report will contain three sections: 1) Handling of Complaints, 2) Systemic Issues and 3) Other Activities of the Office. In the first section, some changes have been introduced in the way in which statistical information is presented, and certain key statistics for 2006-07 have been recast to the new format to enable comparison. The second section highlights a number of issues that illustrate how the Ombudsperson can function as a catalyst for improvement in processes and procedures through informal discussion, without need of formal investigation and recommendations. In the third section, some matters dealt with arise directly out of the recommendations of the review.

Handling of Complaints

During 2007-08, 221 cases were handled by the Office, which compares closely with 217 in 2006-07. Of the total, 16 were carried over from 2006-07. The disposition of these 221 cases as of June 30, 2008 is shown in Figure 1. The pattern of outcomes is quite consistent with past years.

Figure 1: DISPOSITION OF COMPLAINTS AND ENQUIRIES 2007-08



Although a substantial number of cases are dealt with by referral, a not insignificant amount of time still may be required to obtain information from the complainant about the nature of the concern and to find out exactly which office or individual can address it. Although the complainant will then take the next step, we sometimes offer further assistance, if needed, by providing an introduction.

The proportion of cases that required contact with offices or persons other than the complainant was more than double that of the previous year (30% compared with 12% in 2006-07). Complex cases typically require ongoing conversations with the complainant, and may (with the consent of the complainant) involve extended discussion with various offices.

Only one complaint led to a formal investigation resulting in a report. Two members of the University brought forward a complaint about the decision by the University Administration to permanently withdraw permission for firearms to be kept or used at Hart House or any of its facilities. This decision arose from a recommendation from the committee that reviewed Hart House during 2005-06, and that also recommended the appointment of the next Warden. The Ombudsperson's report on the investigation was delivered, as specified by her terms of reference, to the Vice-President Business Affairs and the Vice-President and Provost, with copies to the President and to the Chair of Governing Council. It contained two recommendations, provided here as Appendix A, along with the administrative response to them.

The Office strives to be responsive to clients. In over 80% of cases the time from approach to an initial response was less than 48 hours. Where face-to-face meetings were

required, in over two-thirds of cases the first appointment was within a week. Closure was achieved within a month in two-thirds of cases, within a week in over 40%. A number of complex and more difficult cases engaged the Office for many months.

In the past, the Ombudsperson's report has included a breakdown of the number of complainants by campus. Although suggestive of differences among the three campuses in access to the Office, these data do not provide the best possible basis for comparison. First, the raw frequencies need to be interpreted in light of the size of the population on each campus. Second, the St. George student population, which accounts for a large part of the caseload, includes many who are registered in a variety of professional programs, both graduate and undergraduate.

This report will provide information (both in raw form and as a percentage of enrolment) separately for undergraduate and graduate students.

Undergraduate data are broken down by academic division, allowing a more meaningful comparison of the use of the office by University of Toronto Mississauga (UTM) and University of Toronto Scarborough (UTSC) undergraduate students with that by students in the Faculty of Arts and Science at St. George, and also enabling a comparison of arts and science students with those in various professional programs.

Graduate student data are reported by Divisions in the School of Graduate Studies (SGS). Students who are enrolled in graduate degrees offered conjointly with the Toronto School of Theology have access to the services of the Office, but do not come directly under SGS, so are reported separately from any Division.

Undergraduate Students

The caseload for undergraduate students, including those in professional programs, is shown by academic division in Table 1. The total number, 97, is down from 2006-07 (121). This caseload as a proportion of total undergraduate enrolment is 0.2%. Although the proportion varies somewhat among the divisions, in light of the small numbers in many units these variations would be better evaluated over a longer period of time.

The matters that most frequently brought undergraduates to the Office were academic problems such as with classes or teaching, difficulties with academic standing and denials of petitions or appeals, allegations of academic offences, and problems with administrative policies and procedures. These were followed by fees/financial aid and grading disputes or concerns.

Table 1: 2007-08 UNDERGRADUATE CASE LOAD

<i>First Entry</i>		
Arts & Science	42	(0.2%)
UTM	17	(0.2%)
UTSC	8	(0.1%)
App. Science. & Eng.	14	(0.3%)
Music	1	(0.2%)
Physical Ed. & Health	1	(0.2%)
TYP	1	(1.0%)
 <i>Professional</i>		
Dentistry	0	
Law	0	
Medicine	1	(0.1%)
Medicine Postgraduate	0	
Nursing	2	(0.2%)
OISE/UT	2	(0.2%)
Pharmacy	0	
Pharmacy Residents	0	
<hr/>		
Total	97	(0.2%)

Graduate Students

The caseload for graduate students, including both doctoral stream and professional masters programs, is shown by the four Divisions of the School of Graduate Studies in Table 2. The total number, 72, is up from 2006-07 (49). This caseload as a proportion of total graduate enrolment is 0.6%; that is, graduate students are approximately three times more likely than undergraduates to use the services of the Office. There is some variation in caseload among the Divisions. Because this information has not been reported in the past, it remains to be seen whether or not these variations are consistent over a longer period of time.

Table 2: 2007-08 GRADUATE STUDENT CASE LOAD

Division I	Humanities	9	(0.5%)
Division II	Soc. Sci.	25	(0.6%)
Division III	Phys. Sci.	15	(0.7%)
Division IV	Life Sci.	14	(0.4%)
TST		3	(10.0%)
<hr/>			
Total		72	(0.6%)

The matters that most frequently brought graduate students to the Office were academic issues such as termination or lapsed status, fees/financial aid, and harassment/discrimination or interpersonal disputes, these usually involving a supervisor. Addressing these issues frequently involves providing policy interpretation or advice.

Graduate students who are experiencing difficulties in their relationship with their supervisors feel highly vulnerable. Although the School of Graduate Studies provides advice on how students can proceed to address disputes with their supervisors, students that come to the Office often feel reluctant to follow the course of action suggested without prior discussion with a neutral party. They may perceive that the Associate Chair for Graduate Studies in their department, and/or the Chair, are personal friends of the supervisor, and worry that their concerns will be discounted at best; they may even fear that the situation will be aggravated if they seek help from departmental administrators. Typically, they do not seek intervention from the Ombudsperson, wanting rather to ensure that their understanding of the relevant policies and of the standards of conduct expected of supervisors is correct. They also want help to identify and explore available courses of action, and potential outcomes if any of these are followed. After discussion, they may express confidence that they can address the situation without further assistance. In highly sensitive situations, particularly those that raise questions about the ethical conduct of the supervisor, they may be advised that they can also seek assistance from the Vice-Dean Students at SGS. Some troubling issues are nevertheless not addressed, because the complainant concludes that the risk is too great.

Because the Ombudsperson is rarely asked to intervene in these disputes and hence has heard only one side of the story, it is difficult to offer evaluative comments with any confidence. However, a recurring theme is a concern about a perceived conflict of interest on the part of the supervisor in his/her direction of the student's research.

Academic and Administrative Staff

Seven complaints were brought forward by academic staff. Five were from St. George and two from UTSC, one of the latter involving two complainants. In 2006-07, there were 10, all from St. George.

Fifteen complaints came from administrative staff members. Thirteen were from St. George and one each from UTM and UTSC, compared with 10 in 2006-07, all from St. George.

Because of the small numbers and the very individual circumstances involved it is not possible to offer any general description of the nature of the complaints. In some instances, we have been consulted about conflict with peers or other members of the institution as distinct from complaints against managers or administrators. Staff members do have access to advice and grievance procedures through their unions and associations, and this may account in part for the limited demand for services from this Office.

Others

The Office was approached on 29 occasions by individuals who were not members of the University or who, if former members, brought concerns that did not arise out of their period of active participation as a member. This compares with 27 in 2006-07. Although the Ombudsperson has no jurisdiction to intervene in these cases, the matters brought forward frequently warrant consideration by appropriate University administrators, or occasionally by non-University authorities. Whenever possible, the Office provides assistance in the form of referral and/or information, which may sometimes entail research by a member of the Office.

A number of approaches to the Office from persons who are not members of the University have, through redirection to the appropriate administrator, resulted in improvements in processes, particularly those relating to admissions (an example of such a case is described in the next section, under the heading *Fees*). These constructive responses contribute to the University's ability to correct problems that induce negative perceptions in the external community.

Systemic Issues

Accommodation for Graduate Students with Disabilities

Some casework highlighted the special challenges for graduate students with disabilities, and for their supervisors, in the context of their research activities. In doctoral stream programs, progress in research is central to success. Failure is devastating to the student, and also may be a bruising experience for the supervisor. While this is true for all graduate students, it is particularly unfortunate if failure might have been avoided by a better shared understanding of the accommodations that can reasonably be provided and that are necessary for success.

As they enter this phase of their university studies, students with disabilities are generally quite experienced in and knowledgeable about the accommodations they need in courses, and they often feel they no longer need the same level of assistance in negotiating the arrangements as they did when beginning their undergraduate programs. However, they may be significantly less familiar with the expectations that prevail in research in their disciplines. For example, they may not be prepared for the intensity of interaction with other members of a research team and the lengthy hours that are the norm in many lab-based disciplines. Hence they may be much less well equipped to negotiate appropriate accommodations in relation to their research activities.

While supervisors may be quite sympathetically disposed to meeting the needs of such students, they may not fully understand the implications of specific disabilities, especially those often referred to as "invisible". Until now, little or no assistance has been available to supervisors who have concerns about the performance of such students. They cannot discuss the problem with the student's disability advisor unless specifically invited to do so by the student. For their part, disability advisors may not fully understand the research

environment in all of the many disciplines in which the students they advise might be engaged.

Given these circumstances, two-way conversations between student and supervisor and between student and disability advisor may not result in a fully informed and mutually shared understanding of the accommodations that are appropriate and reasonable.

The number of students with disabilities who advance to graduate studies is likely to increase markedly in the coming period as a natural consequence of earlier diagnosis of disabilities and improvements in the services available to such students in schools and in their undergraduate programs. This expectation underlines the need to find better ways to address the issues that arise in providing accommodations relating to research.

Enquiries by the Ombudsperson into individual situations led to informal discussions in the spring of 2008 with the School of Graduate Studies and with Accessibility Services about the larger issues. It was proposed that a partnership between these two units might be the key to enhancing support to graduate students with disabilities. It was also particularly suggested that more support and advice needs to be available to supervisors of students with disabilities, and that this kind of assistance could benefit students indirectly.

In the course of these discussions, we became aware of the Report of the ODA Working Group at SGS, which was delivered in June 2006. We learned that SGS was now actively planning to establish a fund to assist students with disabilities; however, the development of a comprehensive response to the recommendations of the Report had been delayed because of organizational changes in the administration at SGS.

As at the time of writing this report, SGS has committed to developing a broadly-based strategy for assisting students with disabilities. A staff member has been designated as the key person at SGS to develop and implement the strategy, and to act as liaison with Accessibility Services. The strategy will focus on improved communications and advice for students, and also on information and advice for graduate coordinators and supervisors. Discussions are under way with the Director of Accessibility Services and her counsellor/advisors about a policy and procedure for the proposed SGS disability bursary and to begin planning for improving services to graduate students. As a first step, a presentation will be made to Accessibility Services staff about research environments in all four Divisions of SGS. Both units are committed to pursuing these issues in a concerted way and will continue to work together in 2008-09.

Freedom of Information and Protection of Privacy Act

Despite the promulgation of information about FIPPA and the dissemination of excellent advice to instructors from the Provost's Office about the handling of grades and assignments, a number of breaches of privacy came to the attention of the Office in the course of the year. These came principally through complaints from students.

In one case an instructor had announced to a large class that all students enrolled in the course in the past year who came from a particular program had failed; there were only three such students and all were known to those from the same program who were enrolled in the class to which the announcement was made. In another case, an instructor requested a note-taker for a student with a disability, naming the student to the whole class. In another, a program publicly posted course results for all students in a way that made it possible to identify individuals.

Recommendation 1

That faculty and staff continue to be reminded regularly of their responsibilities and of best practices under FIPPA, and of the seriousness of breaches of privacy.

Fees

Among the complaints about fees-related matters were a number from international students. Given the level of tuition fees for international students, particularly in deregulated and privatized programs, a significant amount of money can be involved. It is therefore particularly important that information relating to fees and their payment be clear and easy to find. In looking into the concerns brought to the Office, we found that this was not always the case. Some examples of issues that came to our attention are described below.

Certain categories of international students are eligible for an exemption from the higher fees, but must apply before a strictly enforced deadline. Although reference is made to this provision in various materials available to students and prospective students, our experience was that the eligibility criteria and procedures to follow could be difficult to locate and understand.

One exempt category is that of convention refugee (protected person). However, the admissions package being sent to successful applicants from this group contained the standard letter for international students specifying the higher fee, including a fee for health insurance that protected persons do not pay. A representative of an external agency that assists refugees brought to the attention of the Office that recipients found this information confusing and discouraging. Although some sought and received clarification that this letter did not apply to them, there was a concern that others might not have accepted the offer believing that they could not afford to do so. When this concern was drawn to the attention of the University Registrar, it was ascertained that the Ontario Universities Application Centre now provides a coding that would permit the identification of this group. As a result, correct information will be provided in the admissions package in future.

In another case, an individual international student realized only at the end of her first year in a deregulated program that she was in one of the exempt groups, although her status had been disclosed at the time she applied and was admitted. She applied successfully for the exemption for her second year of study, and also sought a refund of

the difference between the international and domestic fee for her first year. This latter procedure was not available to the University, and she was advised, rather, to apply for a bursary that could effectively ameliorate the financial impact of the higher fee. The Manager of Student Accounts subsequently addressed the systemic issue by modifying material sent out by her office so as to ensure that international students who might be eligible for a fee exemption are alerted in a timely way to the information they need.

A final example involves the University's policy of protecting continuing students from tuition fee increases exceeding 5% annually. The commitment is not unlimited; rather, the policy states that it "will last for the normal length of a full-time program of study", and these are the words that have been used in the past on the schedules provided for students.

An international student in a deregulated co-op program who entered in Fall 2003 was shocked to find that her tuition fee had increased dramatically (by 31%) in her final study session, taken in Summer 2007. This had happened because the protection was withdrawn at the end of the Winter Session four years after her initial enrolment. The University's interpretation of *normal* is the number of Fall + Winter sessions ("academic years") it takes to complete the program by successfully completing the *normative* course-load of five full-course equivalents (FCE), which corresponds to the factor used for reporting full-time equivalents to government for students in programs offered by the arts and science divisions. Students, however, may not be familiar with this meaning of the word *normal*, and in this case the student argued that she had not taken an unusually long period of time to complete.

The co-op office reported that only about 25% of students in this program, all of whom are required to be full-time, graduate within four academic years; hence, this period of time for completion is not the *norm*. This is because the typical course-load actually carried by full-time students in this and many other programs offered by arts and science divisions is below the normative load. For the purposes of assessing both tuition program fees and incidental fees, this student's division defines full-time as a course-load of 1.5 FCE or more in any session (Fall, Winter, or Summer). Hence, while it is indeed quite possible to complete the coursework together with the work placements for the program in 11 consecutive sessions (Fall, Winter and Summer), as many as 16 sessions *could* be needed (i.e., requiring in excess of five calendar years) by a student who satisfies the criterion of full-time in every study session undertaken.

This student's individual situation was remedied through the awarding of a bursary.

Informal discussions relating to the systems issues were held with the administration of the academic division and with the Vice-Provost Budget and Planning and his staff. The division decided to interpret the "normal" length of time under the fee commitment policy for the completion of co-op programs as five academic years, as was already the practice for the Professional Experience Year offered by certain other divisions. The Vice-Provost undertook a review of the University web site describing the fee level commitment, and has since revised it to lay out very clearly the session in which the

commitment ends for *each* undergraduate and graduate program, depending on the year in which a student first enrolled. All tuition postings refer to this page. These measures should ensure that in future all students will understand correctly how long their fee protection will last.

It is gratifying that when matters such as those described above have been brought to the attention of the relevant administrators, the response has invariably been very constructive.

Off-Campus Activities: Policy Development

In my Interim Report of September 28, 2007, I referred to the interest expressed by former Ombudsperson Mary Ward in the creation of a Safety Abroad Policy. In its response, the Administration reported that the Safety Abroad Office had created a *Safety Abroad Manual* providing extensive assistance and best practices for the guidance of students studying abroad. The earlier intention to introduce a Safety Abroad Policy had been reconsidered and replaced by a plan to develop a more general policy for off-campus activities, both domestic and international.

The Office of the Vice-President and Provost reports that a working group has been active during 2007-08 and is preparing a draft *Policy on Off-Campus Safety*, which will state the principles that govern off-campus activities under University sponsorship. Specific guidelines will be established wherever they are needed to cover different types of activities. Pending public exposure and eventual approval of a proposed *Policy*, the Vice-President and Provost will remind PDAD&C of the importance of safety in off-campus activities.

Code of Behaviour on Academic Matters

In reviewing the reports of past Ombudspersons, I noted that timeliness in the administration of the *Code of Behaviour on Academic Matters* (and in the handling of appeals) had been raised repeatedly, dating at least from 1991-92.

In my Interim Report of September 28, 2007, I referred to the recommendation by Ombudsperson Mary Ward in her report of October 2007 concerning an administrative review of the *Code*. The Administrative response reiterated information provided earlier about the administrative review undertaken by the Office of the Vice-President and Provost during 2006-07. It also described various efforts to promote academic integrity, including workshops and materials provided by the Office of Teaching Advancement to raise the awareness of faculty and students and to help the academic divisions with the prevention of offences, along with sessions offered by the Office of the Vice-President and Provost to assist those responsible for administering the *Code*.

The issue of timeliness came to my attention dramatically in a case in which the time between the date of the alleged offence and the hearing by the University Tribunal was four years and five months. Although the specific circumstances of this case were quite

unusual and the combination of events is unlikely to recur, a review of what happened is instructive.

One factor in the delay seems to have been personnel issues in the divisional office which had created a large backlog of cases. As well, the student's reaction to the laying of the charge was very troubling to some of those who dealt with the case. Unfortunately, well-intentioned but ultimately ineffectual responses to this behaviour, although intended to provide help to the student, led to a confused situation in which there were many misunderstandings about who was dealing with the matter. In fact, no-one was actually in touch with the student and at the same time no steps were being taken to set a hearing date.

The stalemate ended only when the student applied to receive a degree. Although quite far from completion of the requirements at the time of the offence, the student had managed to complete sufficient courses during the four years that had passed since the allegation had been made by the instructor, and furthermore did not now need a credit for the course in which the offence had occurred.

Although this was a third offence, the sanction imposed was a three-year suspension. It seems likely that the extremely long delay was among the mitigating factors that influenced the Tribunal's decision. Hence, the University's failure to bring the case to a timely conclusion seems ultimately to have worked to the benefit of the student. Not only that, the handling of this case significantly undermines the perception of the University's commitment to academic integrity and to the resolution of allegations of offences in a timely way.

Despite the unique features of this case, it did impress on me that many things can potentially go wrong in the administration of processes provided under the *Code*. While timeliness was among the issues addressed in the administrative review undertaken in 2006-07, no information on how long it actually does take to deal with cases was readily available. Accordingly, I reviewed the reports of 30 Tribunal cases that were sent to the Academic Board over recent years, noting the time from the commission of the offence to the date of the hearing. Being conscious that cases can become more complex in the course of an investigation of the original allegation, and that the uncovering of additional suspected offences can result in delay, I made a conservative calculation of elapsed time by using the date of the last (i.e., most recent) offence whenever the charge contained multiple offences.

The time taken from the commission of the offence to the Tribunal hearing was less than a year in only four of the 30 cases (13%), and exceeded 2 years in eight cases (27%). Most cases took one to two years (60%). The mean was 1 year 8 months. Even when two outliers that took more than 4 years were discarded, the mean was 1 year 6 months. In addition, the student may not receive the written decision and the statement of reasons until several months after the hearing is held. Far from seeing improvement during the period reviewed, I found that the average time taken for the disposition of the allegations

gets longer for the later cases. Such lengthy periods for the disposition of cases give cause for grave concern.

No comparable information about time taken is currently available for cases that are disposed of at the divisional level.

While several Tribunal reports make clear that an accused student had been a significant cause of delay, whether by failing to respond to communications or by being unavailable for reasons such as being out of the country, such references are not typical, and there is good reason to think that delays can and do occur in the University's handling of such matters at all stages of the process; such delays occur both before and after the case is forwarded to the Provost's Office.

I would suggest that the goal should be to dispose of cases at the divisional level within 3 months of the detection of the offence, ideally less. I also suggest that it should be exceptional rather than the norm for cases requiring a Tribunal hearing to take more than nine months in all.

Various measures have recently been taken to try to reduce the times involved.

For example, Judicial Affairs is about to introduce a new scheduling method for Tribunal hearings that will provide for hearings to be held each week. Currently, over 40 cases are open in a year, so theoretically the backlog that has been experienced in the past could be eliminated using this method. However, success depends on the University taking advantage of all or most of the scheduled dates, which is apparently not the current experience. Many accused students are represented by Downtown Legal Services and the defence counsels, who are students in the Faculty of Law, turn over every 4 months. Unless the hearing occurs promptly, further delays are occasioned by the need to brief new defence counsel. I understand that the University often has difficulty finding a date on which all witnesses can appear. However, in some cases, this problem might be solved by scheduling a hearing over two periods, which should be easier to accomplish in the new scheduling arrangement.

As another example, the Office of the Vice-President and Provost has advised divisional offices that if accused students fail to respond within a reasonable time to requests for a meeting with the Dean's Designate, the case should be forwarded to the Vice-Provost Academic even if the offence would warrant a sanction within the range available at the divisional level. Where this has been tried, a communication from the Provost's Office has generally produced a response from the student. When this response includes an admission of guilt, the matter can be referred back to the decanal level. However, it appears that some divisions remain reluctant to use this approach for minor offences, especially if the student is no longer actually enrolled in courses. Without an admission of guilt, the Dean's Designate cannot impose a sanction and such "cold cases" remain unresolved.

We have consulted the web sites of a number of other large Canadian universities to see how they deal with academic offences. We note a variety of practices that might be considered for adoption here, some of which would require a revision of the policy itself, as distinct from its administration.

For example, the GWR designation provided in our *Code* prevents a student from graduating until the matter has been resolved, but does not prevent the student from enrolling in further courses in the meantime. At least one other university puts the student on academic “hold” until the allegations are disposed of. The “hold” device is used by University of Toronto if students owe money, and surely might be considered appropriate if they are failing to meet their obligations to comply with procedures under the *Code*. Another institution provides for a “paper review”, rather than an interview at the local level, with a provision for appeal if the student is dissatisfied with the disposition of the case. A number of institutions allow for the imposition of a sanction at the local level without an admission of guilt if the evidence is clear and compelling, together with an appeal provision.

We have also talked with a number of the larger academic divisions about their perspective on the current process. Those we have spoken with all feel pressure to increase staff and/or the number of Dean’s Designates as the number of cases continues to rise. They would also like to devote more energy to promoting integrity within the division. Many have a number of suggestions to make about possible improvements to the *Code* itself, its interpretation, or its administration, in order to improve the efficiency of the process. These include among many others: expansion of the range of sanctions available to the Dean’s Designate, revision of the Provost’s guidelines for the use of sanctions, a code to be used on transcripts when a course is failed because of an academic offence, guidance in the handling of cases where psychiatric factors are perceived to be involved, and allowing departments in multi-departmental divisions to handle more cases.

During the past year it has also come to my attention that some members of the teaching staff are reluctant to pursue cases under the *Code* because they perceive the process as cumbersome and lengthy. Some apparently turn a blind eye to offences on the part of their students, which is itself an offence under the *Code*. Others deal summarily with the matter outside the required procedures. For example, I have seen a case where an instructor simply asserted in comments on a paper that this work was not the student’s own, without adducing reasons for this belief and without giving the student an opportunity to respond; further, the instructor assigned a penalty despite having no authority to do so. The comment on the student’s paper made clear that the instructor was not ignorant of the proper procedure.

A study of academic misconduct in Canadian institutions (Christensen Hughes & McCabe, 2006) surveyed students, faculty, and teaching assistants of 10 universities and one degree-granting college in relation to their perceptions of what constitutes academic misconduct, and their behaviour. There was a high degree of agreement among survey participants on what constituted cheating and on the seriousness of various offences.

The study found that 53% of undergraduates and 35% of graduate students reported having engaged in one or more instances of serious cheating on written work, while 18% of undergraduates and 9% of graduate students reported having engaged in one or more instances of serious test cheating behaviour. I do not know whether the University of Toronto participated in the study, nor whether the results of the survey are representative of the behaviour of our students. However, it is highly probable that the actual incidence of academic offences is considerably higher than the number of cases where an offence is detected and dealt with under the provision of the *Code*. In 2005-06 (the most recent year for which a report on academic discipline is available) 886 undergraduates (7% of enrolment) and 17 graduate students (<0.2% of enrolment) were found to be offenders under the *Code*.

Christensen Hughes and McCabe also found that 46% percent of faculty and 38% of TAs reported having ignored an incident of suspected cheating, the main reason being lack of evidence or proof. However, other reasons included lack of support from administration, lack of time to pursue suspected case, and the trivial nature of the offence, or, on the part of TAs, that they were told to ignore it by a faculty member or they did not want to deal with it. The majority of faculty and TAs reported a perception that the likely penalty for students convicted of cheating was too mild.

Clearly, the challenge in any review or revision of the *Code of Behaviour on Academic Matters* is to achieve an appropriate balance between fairness to the accused and procedures that are not so cumbersome that they discourage their use. It would not be appropriate for me to recommend changes to the policy and procedures on the basis of my consultations and enquiries. However, these do lead me to feel that it may be time to go further than an administrative review.

Although the above discussion has focussed on the section of the *Code* that deals with offences by students, a full review of the policy and procedures would include the section that deals with offences by faculty members. Although much less frequently used, this section needs to be brought up to date. In particular, it would be highly desirable to reflect upon the relationship between the procedures provided under the *Code* and those of the *University of Toronto Framework to Address Allegations of Research Misconduct*, relating to the *Policy on the Ethical Conduct of Research*. As well, clarification of the routing of allegations is needed: One case was handled by the department chair and then by the dean on a campus other than that where the faculty member's primary appointment was held, contrary to the provisions of the *Code*. Also, the implications, if any, of the separation of the appointment of the graduate chair in arts and science disciplines from that of chairs of departments on each of the three campuses for the routing of allegations relating to a faculty member's role in the graduate program should be considered.

Whether or not a review of the *Code* is undertaken, it would be highly desirable that the Academic Board be informed annually not only of the number and type of offences, but also of the length of time required for the disposition of cases. Some of the divisional offices that handle large numbers of offences have indicated that they already have the necessary information in their data bases to generate such a report. Others may have to

generate manual reports until such time as they are able to add the necessary information to their data bases, so some sensitivity to the work generated by such a requirement would be necessary if my recommendation (3 below) is accepted.

Recommendation 2

That a review of the Code of Behaviour on Academic Matters be undertaken.

Recommendation 3

That reports to the Academic Board by the Vice-President and Provost on Academic Offences include statistical information about the time taken to dispose of allegations both for cases disposed of at Tribunal and for those disposed of at the divisional level.

Matters Arising from the Report of the Acting Ombudsperson 2006-07

Two recommendations were made by the Acting Ombudsperson, Professor Ian McDonald, in his report for 2006-07 that were not commented on in the Administrative Response. My understanding of the current status of the recommendations is briefly reported here.

1. *that the University explore the possibility of issuing diplomas at times other than the annual Convocations in cases where a student has completed the requirements for a degree and needs the diploma as proof of it;*

Currently, diplomas are issued only in March, June, and November. The feasibility of issuing diplomas on a continuous basis, or, failing that, at more frequent intervals, is being considered and a response to the recommendation should be forthcoming early in 2008-09 following consultation by the University Registrar with the academic divisions.

2. *that the University examine its policies governing the assessment and refund of incidental fees, particularly as they apply to part time students.*

In his report, the Acting Ombudsperson provided an example that gave rise to a concern about potential unfairness, viz., in at least some divisions, students who wish to drop from full time to part time status must do so within the period in which a 100% refund of fees would be available or they remain liable for full-time incidental fees.

The Vice-Provost Budget and Planning has set up a committee to examine various aspects of how tuition and ancillary fees are assessed for part-time students, and reports that it will review the issues raised by the Acting Ombudsperson.

Other Activities of the Office

Retention of Case Files and Access to Confidential Records

Currently, section 6 of the terms of reference for the Office of the University Ombudsperson contains the following provisions:

- 6.1.** The Ombudsperson shall maintain suitable records of complaints, findings and recommendations and these shall be accessible only to the Ombudsperson and members of the staff of the Office of the Ombudsperson.
- 6.2.** 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 the period of seven years and one day, the file or record may be destroyed; however, no destruction of the file or record will take place while any proceedings are pending in the University, the Courts or any outside tribunal and until after all rights of appeal are exhausted or times of appeal have expired.
- 6.3.** The Ombudsperson shall not release any information regarding personal and personnel records, unless written permission has been received from the affected persons for releasing the information.

The committee that reviewed the Office in 2006 discussed the appropriate length of the period for retention, but concluded that further advice should be taken before any decision for change. As noted by the review committee, some university ombudspersons do not keep any files, and those at other institutions who do so keep them for much shorter periods of time, usually only a year or two.

During this past year, the Office has consulted the Director of the University's Freedom of Information and Protection of Privacy Office on this matter. He advises that the potential benefit of retaining a record for future reference needs to be weighed against the risk of breaching confidentiality if accessed by an unauthorized person—the longer the period of retention, the greater the risk, notwithstanding that the Ombudsperson's files are kept in locked metal cabinets inside a locked room.

The former Ombudsperson, who had served for eight years and handled approximately 2500 cases, told the review committee that the current seven-year retention period had been very helpful to her in two particularly complex investigations. During 2007-08, I likewise found it helpful in a few cases to have access to the records kept by the Interim Ombudsperson and/or the former Ombudsperson; however, in no case did this involve records that were more than two years old.

It was decided to undertake a review of the files of all cases where an individual with a prior record of contacting the office had approached the Ombudsperson in the last three years (2005-06 through 2007-08). During the three-year period studied, the Office was newly approached 55 times by 42 complainants who had had at least one previous contact (6 persons had had two or more). In 65% of cases, the individual returned within one year, 87% within two years, 93% within three years, and 98% within four years (i.e., the time elapsed was more than four years in only one of 55 instances). Not all of these returns involved the same matter; in particular, among seven returns after more than two

years, only three related to the same matter. One of these was a request under FIPPA for the contents of the file, and the other two required no intervention on the part of the Ombudsperson on either occasion.

This review suggests that there is a very low probability that a matter once closed will be reopened more than two years later, and that the period of retention could be shortened to two or three years after closure of the file without materially jeopardizing the ability of the Ombudsperson to respond to a subsequent complaint. A three year period of retention would be quite conservative in that it is at least one full year longer than applies to ombudspersons at any other North American university or college that we are aware of. At meetings of ombudspersons' associations both in Canada and the U.S., colleagues have expressed surprise that our retention period is so long.

Second or subsequent complaints about different matters should in any case be considered on their merits, without reference to earlier events. Even for the same matter, if significant time has elapsed since the initial consideration, there could be advantages to taking a completely fresh look. Also, keeping a lengthy record of the interaction of individuals with the Office might compromise, or be seen to compromise, the neutrality that is an essential feature of the work of the Ombudsperson. Neutrality and confidentiality are critical features of the role, and are the reasons that other university and college ombudspersons in North America keep very limited records or even none at all.

Arising out of the adoption by Governing Council of the recommendations of the review committee in 2006, the Executive Committee is authorized to approve amendments to section 6 of the Ombudsperson's terms of reference.

Recommendation 4

That the Executive Committee take the matter of the period of retention of the Ombudsperson's records under advisement and amend section 6.2 of the Terms of Reference to shorten the period from seven years to three, along with adding clarifying clauses to sections 6.1 and 6.3 (as underlined below) relating to access to the records, so that section 6 would then read as follows.

6.1. The Ombudsperson shall maintain suitable records of complaints, findings and recommendations and these shall be accessible only to the Ombudsperson and members of the staff of the Office of the Ombudsperson who need those records to perform their official duties.

6.2. Each file and record will be maintained for a period of three years and one day from the date on which the Ombudsperson deems the case to be completed. At the end of the period of three years and one day, the file or record may be destroyed; however, no destruction of the file or record will take place while any proceedings are pending in the University, the Courts or any outside tribunal and until after all rights of appeal are exhausted or times of appeal have expired.

6.3. Unless otherwise required by law, the Ombudsperson shall not release any information regarding personal and personnel records, unless written permission has been received from the affected persons for releasing the information.

Accommodation of the Office

The addition of a staff member to the Office required considerable ingenuity in reorganizing the use of the limited space allocated to us in the Fields Institute. While we managed to operate under these conditions, the situation was much less than ideal, particularly for our administrative assistant. Fortunately, suitable new space was identified in the McMurrich Building, and our move is scheduled for early fall, once renovations are completed. We believe that this new location, and the signage that will be provided, will address many of the concerns expressed in the review committee's report about the current location. We are grateful for the work done by the Assistant Vice-President, Campus and Facilities Planning and her staff in resolving this problem.

Communications with Members of the University Community

The review committee expressed concern that many members of the University appeared to be unaware of the existence and role of the Ombudsperson's Office, and offered some suggestions about ways to enhance its visibility. So far, a number of steps have been taken towards this end.

At the invitation of the Vice-President and Provost, the Ombudsperson spoke to a meeting of Principals, Deans, Academic Directors and Chairs in the fall.

Noting the special concerns expressed by the review committee about the apparently low visibility of the Office at UTM and UTSC, the Ombudsperson also met with the group of senior administrators at each of those campuses. At UTM, there were follow-up meetings with a number of individual key members of the senior administration. Arrangements were also made for meetings with the entire staff of the Registrars' Offices of both campuses to be held early in 2008-09. All information published about the work of the Office has been reviewed to ensure that it makes very clear that the Ombudsperson is available to all members of the University on their home campuses.

At the invitation of the Graduate Students' Union, the Ombudsperson spoke to a spring meeting of the GSU Council. She also met the President and some members of the Executive of the UTM Students' Union. The Ombudsperson and the Case Officer attended an Arts & Science Student Union recognition event where they met members of the Executive and others. It was suggested to all of the larger student organizations that they consider providing a direct link to the Ombudsperson's website from their own website, and a number of them have followed up on this suggestion. We plan to contact other student societies with this same suggestion. Plans have been made for the Office to participate in Orientation events sponsored by University of Toronto Students Union and by SGS, and we are exploring opportunities for wide exposure to students at both UTM and UTSC at the start of the fall term.

The appointment of the Case Officer provided an opportunity for exposure of the work of the Office. *The Bulletin* ran a story in a January issue, and a page was added to the

Ombudsperson's website introducing all three members of the Office, with a photograph kindly provided by *The Bulletin*.

The website (www.utoronto/ombudsperson) received 1735 hits in 2007-08, an increase of 10% over 2006-07. Both the website and the telephone information line provide information and advice on a variety of issues that commonly arise; this material is reviewed and updated annually. These resources frequently answer questions that might otherwise need to be brought in person to the Office.

We continue to develop plans for increasing our outreach to the University community in the coming year. We will be concerned to find ways of reaching academic and administrative staff as well as students. The objective is not to increase the number of complaints, but to ensure as far as possible that members of the University who experience difficulty in getting complaints addressed are aware of the services provided by the Office. In all communications it is stressed that the Office is independent, impartial, accessible, and confidential.

Professional Development Activities

In the course of the year, both the Case Officer and the Ombudsperson have attended meetings of the Association of Canadian College and University Ombudspersons (ACCUO) and the International Ombudsman Association. These meetings have provided valuable workshop experiences along with opportunities to meet our counterparts at other universities. ACCUO also connects members on a list serve through which a great deal of information about policies and procedures at different Canadian institutions is shared. Contact with the external community of ombudspersons is important in that it improves our ability to examine critically how we are performing the role assigned to us by the University of Toronto.

Respectfully submitted,

Joan Foley
September, 2008

Reference

Christensen Hughes, J. M. and McCabe, D. L. (2006). Academic misconduct within higher education in Canada. *The Canadian Journal of Higher Education*, pp. 1-21.

APPENDIX A

Excerpt from the Report by the University Ombudsperson on Her Investigation in Response to a Complaint Concerning the Withdrawal of an Exemption from the University's *Statement on the Bearing of Firearms*, dated September 28, 2007.

Recommendations

While confidentiality is essential in the discussion of individuals and their performance, most aspects of a review of a unit's work can benefit from openness about the matters under discussion. As a good first step, I recommend the wide dissemination of the terms of reference at the beginning of the committee's deliberations, along with strong and active encouragement by the committee itself to others with an interest in the unit to provide comments, whether positive or negative, about the status quo and potential future directions.

I further recommend that in the conduct of committees that are charged with both reviewing a unit and conducting a search for new leadership, there be a clear delineation between the two parts of the charge. It is important that there be clear understanding among the members as to which matters they may feel free to discuss outside the committee and which they should not.

Excerpt from the Administrative Response to the Ombudsperson's Report of September 28, 2007, dated October 18, 2007.

Comments on Recommendations

The Administration supports the recommendation that there be wide dissemination of the terms of reference of broad reviews such as the one that occurred at Hart House. The current practice is generally to do so, but greater efforts can be devoted to this goal in the future.

Further, the Administration supports the recommendation that in those cases where the review contains a confidential component (such as a review of leadership, or a search) there be a clear delineation of the matters that are open and where community input is sought, and those that must remain confidential and for the exclusive discussion of the review committee. Again, this is generally the practice currently, but improvements can and should be made.