

Attachment A

Excerpt from: *Report of the University Ombudsperson for the Period 1 June, 2007 to 31, July 2008*, pp. 19-20.

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.