



## OFFICE OF THE UNIVERSITY OMBUDSMAN ANNUAL REPORT SEPTEMBER 1, 2016 TO AUGUST 31, 2017

### **Introduction**

The Office of the University Ombudsman was established in July 2014. This report covers the period from September 1, 2016 ending August 31, 2017.

The Office provides independent, impartial and confidential advice. The Office also may facilitate the informal resolution of concerns and complaints in support of university policies and procedures, in accordance with best practices in organizational conflict management. Persons who, acting in good faith, have filed a complaint or sought the assistance of the Office of the Ombudsman or participated in an investigation/inquiry or made an effort to resolve a problem must be able to do so without fear of reprisal.

The University Ombudsman is Harry Smith. Accountable to the Board of Trustees through the Audit and Risk Committee, the University Ombudsman is an independent, impartial and confidential resource for students, staff and faculty to find information and receive guidance, consultation, and advice about their university-related concerns and answers about university policies, procedures, and decision-making structures and systems. As an advocate for fairness, the Ombudsman may work informally to facilitate resolutions to problems and conflict, and investigate complaints of unfairness that may lead to recommendations for change.

The Ombudsman publishes an Annual Report provided, for information purposes, to the Board of Trustees, the Senate, the Principal, the AMS and the SGPS.

### **Role of the University Ombudsman**

The Ombudsman interacts with all levels of administration including Associate Deans, Deans, the Provost, Vice-Provost (Student Affairs), the Principal and Vice-Principals, University counsel and external lawyers, Student Wellness Services (formerly HCDS), and Campus Security to provide expert advice and recommendations on a wide variety of complex matters related to those and other portfolios. All activities within the Office of the Ombudsman shall be free of influence by any element of University administration, including matters of case/investigation, selection, scope, procedures, frequency, timing, or report content.



The University Ombudsman was contacted by the following:

<b>NUMBER OF CASES</b>	
Arts and Science	41
Education	1
Commerce	9
FEAS	4
Law	2
Health Sciences	13
Graduate	18
BISC	1
Residences	1
Athletics	9
<b>ADDITIONAL CONTACTS AND SUPPORT</b>	
Administration	175
Faculty	47
Staff	33
Non-Academic Misconduct	30
External	65

Support by the Office of the University Ombudsman is query or complainant driven. All students responding to notices of academic and non-academic misconduct or seeking to understand routes of appeal are provided with the Office of the University Ombudsman's contact information pursuant to Section 12 of the Queen's University Senate Policy on Student Appeals, Rights and Discipline (SARD).

#### **Office of University Ombudsman in Relation to Student Wellness**

In many instances, the Office of University Ombudsman may be viewed as an effective problem solving resource, a humanizing factor in what to some may feel like an impersonal environment. The Office of the University Ombudsman can offer the member of the university community social and emotional support through working with each person to resolve the



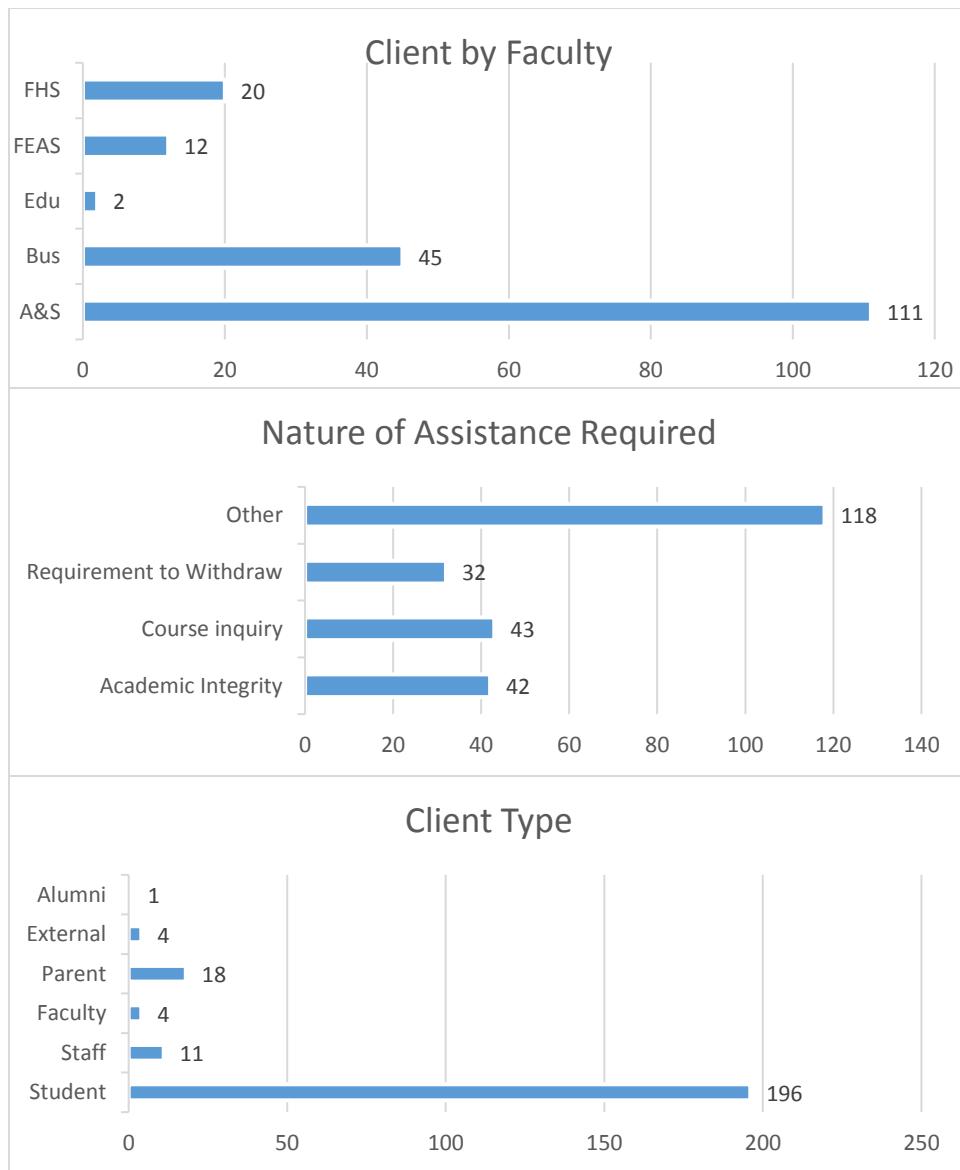
immediate problem and potentially to develop a more adaptive approach to handling issues.<sup>1</sup> Of course, it is important to recognize when someone also might benefit from meeting with Student Wellness Services or other university counselling supports.

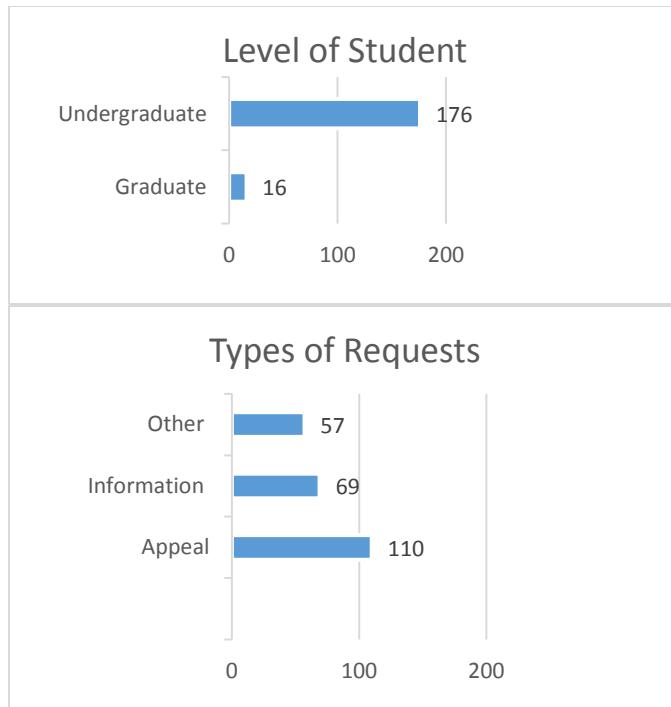
### **Role of the Associate, Policy and Appeals**

The Associate, Policy and Appeals is Gail MacAllister. Reporting to the University Ombudsman, the Associate, Policy and Appeals provides a range of confidential advice and support to members of the University community in relation to academic appeals procedures and dispute resolution and is responsible for the co-ordination and administration of grievance and complaint procedures provided for students.

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<sup>1</sup> George H. Wolkon and Sharon Moriwaki, "The Ombudsman: A Serendipitous Mental Health Intervention" (1977) 13(3) *Community Mental Health J.* 229. "This paper reinterprets the ombudsman by extending its political impact into the arena of mental health of the individual constituent."





Many student questions or requests for assistance can be addressed within a one-hour meeting, although a follow-up meeting or a review of a draft appeal document/supporting documents is often requested by students. These requests are often accomplished by email. This works efficiently where the issues are relatively straight-forward and the route of appeal is clearly set out. Several cases were more complex and required multiple meetings with the student involved and with related parties in an effort to monitor/manage a situation or to avoid a more formal dispute resolution process.

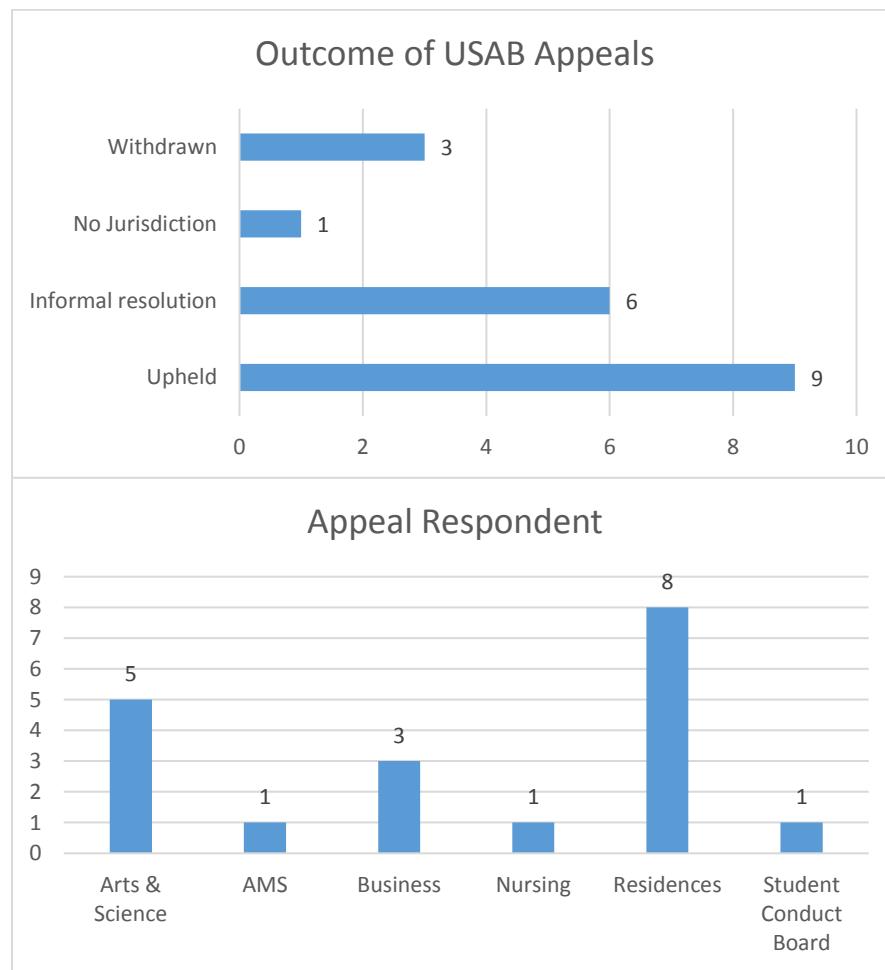
The Associate, Policy and Appeals also provided policy interpretation and guidance to respondents to appeals regarding the process for the University Student Appeal Board.

Several times throughout the year, parents of students in receipt of a sanction make the initial contact with the Associate, Policy and Appeals. Parents are given policy information and an outline of the support offered to the student. No specific student information is released to parents. However, it is helpful to discuss the process and service offered by the Office of the University Ombudsman should the student wish to receive support or advice. In each case, the student ultimately sought the support of the Associate directly.

### **University Student Appeal Board**

The University Student Appeal Board received 19 appeals between July 1, 2016 and August 31, 2017. Chair Nicholas Bala (Faculty of Law) heard 7 cases. Chair David Freedman (Faculty of

Law) heard 5 cases of which one case was determined to be outside the jurisdiction of the Board and did not go to a hearing. Three cases were withdrawn by the appellants as they chose not to proceed. One case was an AMS matter over which the USAB did not have jurisdiction. The Board reviewed or heard cases from Residences, Nursing, Arts and Science, Commerce, and the Non-Academic Student Conduct Board.



### University Dispute Resolution Advisors

There are 6 members of faculty appointed by the Senate to serve as University Dispute Resolution Advisors: Michael Blennerhassett (Health Sciences), Gordon Dueck (Arts and Science), Tony Noble (Arts and Science), Patrick Oosthuizen (Mechanical Engineering), Kate Robotham (Business), and Christopher Ward (Health Sciences). The Ombudsman and Associate, Policy and Appeals provide training to the University Dispute Resolution Advisors



and provide guidance to them on an as-needed basis to aid in the fulfillment of their responsibilities when assisting students.

During the period of this report there were 33 referrals to University Dispute Resolution Advisors and they supported students at Academic Integrity meetings, USAB hearings, Board of Studies hearings, and meetings with Wellness Services (formerly the Disability Services Office).

Subsection 5(b) of the Senate Policy on Student Rights, Appeals and Discipline states the function of the University Dispute Resolution Advisor is:

to provide information and advice to students who are facing adverse academic decisions or other difficulties related to their academic program at Queen's. Dispute Resolution Advisors are invaluable resources for providing students with information and advice about Queen's policies and procedures. Advisors promote the informal resolution of academic and non-academic discipline-related concerns by helping students to identify and evaluate options for resolution.

It is the right of the student to have a dispute resolution advisor at any meeting during any stage of a dispute or appeal.

### **Academic Integrity**

The University Secretariat Office initiated a request to the Chairs of Senate Committee on Academic Procedure (SCAP) and Senate Committee on Academic Development (SCAD) that the existing Senate policy on *Academic Integrity - Requirements of Faculties and Schools*, be re-examined to determine what, if any, modifications or updates might be needed. This policy was approved by Senate in 2008 and last revised in 2011. SCAP and SCAD created a joint ad hoc working group that included membership from each committee to re-examine the existing policy. In 2017, the final policy recommendations were submitted to Senate, through SCAD.

The Working Group concluded that although significant progress has been made since 2006 in terms of the development of academic integrity policies, procedures, and practices, there are still areas for improvement including:

- Lack of progress particularly in areas of awareness and education
- An increasing lack of coordination among Faculties and Schools
- The limited sense of forward-looking direction in developing and enhancing the culture of academic integrity
- Lack of risk management in the area of academic integrity



During the reporting period September 1, 2016 ending August 31, 2017, issues relating to academic integrity (AI) that came through the Ombuds Office included:

- Use of multiple classrooms for the same exam and close proximity of students while writing exams resulting in allegations of academic misconduct later deemed unfounded
- Challenges for faculty trying to be available for questions from students and moving between classrooms where exam was being written
- Concerns regarding approach to AI investigations and tone of discussion regarding alleged AI violation
- Faculty unwilling to use Senate procedure to address AI or not addressing AI issues
- Complexity of applicable academic regulations relating to certificate and/or online courses

The space made available through the Queen's Innovation and Wellness Centre, once construction is completed, will alleviate some of these problems. With the creation of the AI Subcommittee and AI Roundtable, these issues again will have a place for discussion, the opportunity to consider and develop policy, and to coordinate procedures and practices. Seeking to ensure AI policies are administered on a consistent and equitable manner across the university should address some of the current confusion and challenges created through cross-faculty course offerings and certificate programs. The University Ombudsman will participate at Subcommittee and Roundtable meetings as an observer.

### **Non-Academic Misconduct Intake Office**

The Non-Academic Misconduct Intake Office (NAMIO) has a defined role within the Office of the University Ombudsman. NAMIO functions according to the same principles of independence and impartiality when receiving reports of student misconduct from Campus Security and Emergency Services, Residences, Athletics and Recreation, authorized agents, and the Sexual Violence Prevention and Response Coordinator. Following a preliminary assessment by NAMIO of the information reported, the case is referred according to the criteria set out in the Student Code.

The Central Intake Co-ordinator serves as the secretary to the Student Conduct Panel. The Office of the University Ombudsman provided two training sessions to the Student Conduct Panel roster in the fall of 2016.

### **Harassment/Discrimination Complaint Board (H/DCB)**

The Chair of the Harassment/Discrimination Complaint Board (H/DCB) during this period was Professor David Freedman (Faculty of Law). Professor Nick Bala was available as an alternate chair to this Board. The H/DCB did not receive a case during the 2016-2017 reporting period.



The university's *Harassment/Discrimination Complaint Policy and Procedure* was designed to reflect the university's obligations under Ontario's *Human Rights Code*. Queen's recognizes that all members of the university community have the right to be free from harassment and discrimination. The Senate policy on *Student Appeals, Rights and Discipline* (SARD) excludes from the jurisdiction of the University Student Appeal Board (USAB) cases dealt with under the *Harassment/Discrimination Complaint Policy* (SARD subs.18(b)). For some time now boards and tribunals have been able to hear cases that have a human rights component to the case subject matter if the proceeding deals appropriately with the substance of the complaint.<sup>2</sup> And, despite the exclusion set out in SARD, in keeping with this legislative and administrative law development, USAB has been hearing such student academic appeals, when they arise. The SARD policy was reviewed during the summer of 2017. The subs.18(b) exclusion has been removed, and the revised document will come to Senate for approval.

The Ontario *Occupational Health and Safety Act* (OHSA) was amended in 2016 with the passage of Bill 132, the *Sexual Violence and Harassment Action Plan*. As a result, Queen's Human Resources created the *Interim Workplace Harassment and Discrimination Policy*, to ensure the University effectively addresses and responds to reports and complaints of harassment and/or discrimination in the workplace. An "interim" Policy was necessary to ensure that the university was compliant with changes made to the OHSA, which took effect September 8, 2016.

Currently, the *Interim Workplace Harassment & Discrimination Policy* overlaps with other University policies, including the *Harassment/Discrimination Complaint Policy and Procedure*. The University will administer the overlap according to the principles set out in the *Interim Workplace Harassment & Discrimination Policy* at s. 3.2.

Now, given the proposed revision to the *Student Appeals, Rights and Discipline* policy regarding student academic appeals, and the change to provincial legislation requiring that workplace harassment be defined to include workplace sexual harassment, the university's *Harassment/Discrimination Complaint Policy and Procedure* needs to be reviewed. This is necessary for the purpose of eliminating overlap between policies to the extent possible, to avoid confusion regarding which policy is applicable in a given situation, and to ensure that the University effectively addresses and responds to reports and complaints of harassment and/or discrimination. The need to review this policy has been recognized for some time. These more recent developments should serve as the impetus to begin this process.

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<sup>2</sup> *Human Rights Code* R.S.O. 1990, c. H.19 subs. 45.1: The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c. 30, s. 5.



## **Safe Disclosure Reporting and Investigation Policy**

Queen's University's *Safe Disclosure Reporting and Investigation* policy outlines the process to confidentially report concerns about professional or financial misconduct. Although such concerns may be reported to a direct supervisor or university administrator, another option is to contact the University Ombudsman to make a report. It is possible to report concerns about professional or financial misconduct confidentially to the Ombudsman, who is also the Safe Disclosure Officer by direct telephone line at 613-533-2030 or at [ombuds@queensu.ca](mailto:ombuds@queensu.ca). Queen's University also has a variety of channels in place for addressing other more specific concerns at the university but contacting the Ombudsman remains an option if someone is uncertain where in the university to go with an issue or concern.

An Ad Hoc Committee was formed to review Queen's *Policy and Procedure for Safe Disclosure Reporting and Investigation* and the review is on-going. There was continued consultation throughout the 2015/16 academic year, and the policy was expected to go to both the Board and the Senate for approval early in 2017. However, some work remains and the revised policy has not yet been put forward for approval.

From time to time questions will arise regarding how infrequently the *Safe Disclosure* policy is used. As noted, one answer may be that the university has a variety of channels in place for addressing concerns about professional or financial misconduct without using this policy. Other reasons may include a reluctance to come forward with a disclosure or the assumption that the activity must be other than it appears. A recent paper<sup>3</sup> commissioned by the Office of the Public Sector Integrity Commissioner acknowledges that while most people would agree upholding the highest standards of ethics and integrity is of paramount importance, despite the obvious importance, this is not easy for an organization to achieve. To build a safe environment, one in which dissent is acceptable and encouraged, whistleblowing must become normalized; not heroic or demonic, but part of the fabric of our day-to-day environment.<sup>4</sup>

The Safe Disclosure Annual Report for 2016 – 2017 is submitted as a separate report.

## **Ontario Ombudsman**

The 2016-2017 year was the first full year of Ontario Ombudsman oversight of the 21 publicly assisted universities in Ontario. Mr. Paul Dubé was appointed Ontario Ombudsman beginning April 1, 2016.

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<sup>3</sup> Craig Dowden, "The Sound of Silence: Whistleblowing and the Fear of Reprisal" (2016): <http://www.psic-ispc.gc.ca/eng/about-us/corporate-publications/sound-silence>.

<sup>4</sup> Ibid. at 32. This relates to the intersection between fairness and loyalty, and the strain it creates for individuals (7).



The Ontario Ombudsman received 175 complaints about 19 different universities, and all were resolved through informal inquiries or referrals, without the need for formal investigation.<sup>5</sup> Common complaints related to academic decisions and appeals, fees, admissions and program requirements. “As an office of last resort, we do not replace or redo the work of the university ombudsman or other appeal bodies, but we can review whether the university’s processes and policies were fairly followed.”<sup>6</sup>

The top five Ontario universities, as determined by case volume, had between ten and twenty-seven cases. The Ontario Ombudsman received three complaints<sup>7</sup> relating to Queen’s. As mentioned above, these were resolved through informal inquiries.

The Ontario Ombudsman notes:

In many cases, we were able to refer complaints to the university’s own ombudsman, which exist in various forms at about half of the universities in the province. We encourage all universities to establish independent and impartial ombudsman offices, as well as clear complaint processes.<sup>8</sup>

The existence of Queen’s Office of the University Ombudsman provided the Ontario Ombudsman with an obvious starting point to inquire about each complaint it received, to learn about university policy and procedure, and whether the concerns expressed had been raised with this office. Interaction with staff at the Ontario Ombudsman have been cordial and productive.

The University Ombudsman is a member of the Association of Canadian College and University Ombuds (ACCUO).

The Associate, Policy and Appeals served as an advisor on the selection committee for the Society of Graduate and Professional Students student advisor program.

### **Active Public Relations Campaign and Outreach**

Answering questions and responding to issues or complaints are the ways in which the Office of the University Ombudsman fulfills its mandate. In addition, by receiving and responding to these questions, the university can learn of procedural deficiencies and other concerns raised by the community. This advances the university’s efforts to achieve its strategic objectives, academic mission, and to enhance overall the student life and learning experience. Issues raised

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<sup>5</sup> Office of the Ombudsman of Ontario Annual Report 2016-2017, at 47:

<https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Annual/AR2017-EN-Final.pdf>.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid. Appendix at 71.

<sup>8</sup> Ibid. at 47.



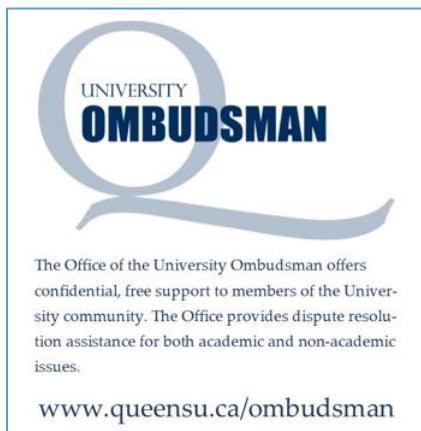
by the university community “need to be cultivated, acknowledged, recognized and ultimately understood and acted upon.”<sup>9</sup> This begins with greater community awareness of the Ombud’s Office through promotion.

In order to access these complaints an ombudsman needs to enjoy the confidence of the community which he or she serves. This necessitates an active and ongoing public education campaign. It is through this campaign that the office will get its casework and it is through this casework that the organization will ultimately be served.<sup>10</sup>

During this reporting period, the Office of the University Ombudsman participated in promotions and outreach to improve awareness of the Office and the assistance it provides.

In September 2016, the Office of the University Ombudsman participated in the frosh week sidewalk sale day (September 8, 2016) to increase awareness in the University community of the confidential services offered. Stress balls, pens, carabiners, lanyards, highlighters and magnets with the logo and URL for the Office of the University Ombudsman were very popular promotional items with students.

The Office of the University Ombudsman continued its outreach throughout the academic year by placing notices in the Queen’s Journal. The following information appeared in the Journal on September 23, 2016, October 24, 2016, November 18, 2016, January 13, 2017, March 3, 2017, and March 24, 2017. Publication dates were chosen based on key academic periods; midterm and prior to examinations in fall term 2016, prior to and following reading week, and at end of term in winter 2017. These corresponded with mark release dates and end of term deadlines for undergraduate students. The Office wanted to ensure that students were aware help and support was available during particularly stressful periods in the academic year.



<sup>9</sup> Creating the Office of the Ombudsman: <http://www.agreeinc.com/ombudsman.html>

<sup>10</sup> Ibid.



Beginning on September 27, 2016, the Office of the University Ombudsman was featured in a three-part series highlighting the role of the Office for the university community; the articles were published on-line and in the print version of the Queen's Gazette. As a result of the three part series on the Office of the University Ombudsman, the Office also received a mention in the Ombuds Blog website.

The Office of the University Ombudsman also provided promotional material for registrants in the Ontario Council for University Lifelong Learning (OCULL), 2016 Annual General Meeting & Professional Development Retreat. The Office used this opportunity to raise awareness of the types of services available to students, faculty and staff at Queen's University.

The Ombudsman attended meetings of the Senate Committee on Academic Procedure as an observer, the Non-Academic Misconduct Subcommittee, the Non-Academic Misconduct Systems Roundtable, the Provost's Implementation Team on Prevention and Response to Sexual Violence, and the Policy Advisory Subcommittee.

The Associate, Policy and Appeals participated in Residences Student Conduct Committee discussions – a non-decision-making body that reviews effectiveness of residence rules and proposes revisions for consideration at the Senate Residence Committee.

### **University Ombudsman Advisory Committee**

The terms of reference for the Office state that the University Ombudsman shall meet at least once per year with the Advisory Committee. The Advisory Committee is comprised of the Secretary of the University as Chair, the Provost or delegate, a faculty member (as chosen by the Senate), University Counsel, the President of the AMS or delegate, and the President of the SGPS or delegate.

The Committee provides guidance, advice, and support to the Ombudsman without becoming involved in the substance of matters and subject to the confidentiality rules governing the Office. The Committee is advisory only and does not have any management authority over the Office of the Ombudsman or its employees. The Committee met on October 13, 2016 and March 6, 2017.

### **Conclusion**

I would like to thank the many faculty members, staff, and senior administrators called upon at various times throughout the year either for assistance or to gather information and clarify circumstances. The cooperation received by the Office of the University Ombudsman often makes it possible to narrow the scope of a dispute, to focus on the main issues in question, and sometimes to resolve disputes without resorting to formal and lengthy procedures.



The service of students, staff and faculty, who participated on Student Conduct Panels, and faculty and student Senators who have given their time to participate as members of the University Student Appeal Board, is appreciated also.

Respectfully submitted,

Harry Smith, LLB, MIR, LLM  
University Ombudsman