



FAIRNESS IS EVERYONE'S CONCERN:

**A Sampling of Practices and Resources on
Cultivating Fairness**

from your Ombuds Community

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Opening Comments and Acknowledgments

Inspired by former and current executive and many other members of the Association of Canadian College and University Ombudspersons (ACCUO/AOUCC), this Fairness Guide was conceived as one of many ways to recognize the 50th anniversary of the first ombudsman in a Canadian post-secondary institution. As information flowed in from members regarding how they practice and promote fairness in their offices, it became obvious that this project could first be used to demonstrate the wide array of fairness practices used by our members in their daily work. It is hopeful that this may lead to another piece to guide post-secondary institutions to look at their policy-making and decision practices through an ombuds lens of fairness. There is also need to develop a similar sampling of fairness practices used by ACCUO members at French-speaking institutions. Finally, ombudspersons are constantly updating their resources; thus, it is important to frequently check various postsecondary ombuds websites to remain up to date.

As project lead of the ACCUO Best Practices Sub-Committee, I sought information from our members. The breadth of knowledge and expertise offered by our members is in part garnered from contact with colleagues at the Forum of Canadian Ombudsmen, and postsecondary ombuds offices in the United States, Mexico, Europe, and Australia. I also gathered a small number of resources to look at the concept of fairness, how it is promoted, practiced, and applied in our daily ombuds work. Members of the University of Alberta Office of the Student Ombuds: Brent Epperson, Graduate Ombudsperson; Marc Johnson, Undergraduate Ombudsperson; and Bashir Mohamed, Student Ombudsperson, assisted in the collection of resources, formatting and editing at every stage. Shirley Nakata, University of British Columbia, and Martine Conway, University of Victoria, provided revisions to their original contributions. Finally, Jennifer Meister, Western University, offered positive and critical editorial guidance, and then so generously offered to proofread and design the final product.

A special thanks to Jeff Cain, Assistant Ombudsman for the Ombudsman Saskatchewan, who helped us gain permission to use and adapt the Ombuds Fairness Triangle in this guide; he also provided the important Lynn Smith reference on procedural fairness at postsecondary institutions. The Fairness Triangle concept has been adapted for use in postsecondary institutions across Canada. Another important guide is the Administrative Fairness Checklist, developed by Nora Farrell, Ryerson University and subsequently adapted for use by ACCUO-member institutions.

This is just the beginning of a sample of resources and thought-provoking commentary on fairness. It is designed to encourage reflection on our practices and to inform discussion with our colleagues. It may also serve as a source of inspiration to consistently improve our best practices. The document is meant to serve as a guide on the ACCUO website for ombuds or others who want to become informed on how ombuds in higher education look at fairness.

In my academic discipline of study – Anthropology – the concept of fairness is core to human survival. Early bands and tribes could not have survived without following principles of reciprocity and caring for the whole. Elders and stewards guided community conduct through moral suasion to ensure the preservation of their culture, their land and environment for future generations. They also promoted fairness to maintain peaceful co-existence with their neighbours. This notion of fairness promotes respectful relations in large-scale societies today, and is essential in the ombuds role. As noted on the Simon Fraser University Ombuds Website: “Fairness and respect are everyone’s concern”.

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May 2015*

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Fairness -

As Discussed at the ACCUO Western Regional Meeting, November 2014¹

Fairness is fundamentally about process. The way you do something or convey a decision is an area of ombuds expertise. For example, imagine a student asks: Why should I pay this fee if I don't use the service? The department has no guided process and just says: No; it's the policy. The student complains about lack of process and the department administrator contacts you for help. You review the way the message was conveyed, and help the administrator reframe the message. The student is then told: You pay this fee because you are part of this community, and fees are part of the greater good for the whole community. The student feels heard and understands his contribution. You follow up with a recommendation for an appeal mechanism.

Fairness is very context-dependent. The ombudsperson tries to avoid conflicts of interest. People know you and trust your advice. For ombudspersons, practicing fairness requires us to understand the perspectives of students and postsecondary institutions, and helping to ensure that students and the institutions understand one another.

The fairness guide serves as a tool that individual offices can take forward to their administration and show how we practice fairness, and how we can help to promote fair practices on our campuses. These discussions could be placed on our websites, in our promotional materials, our annual reports, and adapted to talks and workshops we give on campus.

Our perception of fairness is nuanced and affected by our moral development from teen years to adulthood. There is a universal sense of fairness. We know inside what it means when a student says it feels unfair. If we myopically focus on administrative fairness, we miss an important aspect. We need to have fairness conversations on campuses. We can start these conversations with students and faculty. "Think of a situation in your life that you thought was unfair. Why do you think it was unfair? As a facilitator, I reflect on a personal situation to start the dialogue. I adapt the "triangle" to talk about the questions around administrative, procedural and relational (also sometimes called "equitable") fairness.

We as ombudspersons need to be attuned to the language of where we work. Advancing fairness in the postsecondary context requires us to master the vernacular of our institutions, learning and operating within the idiomatic realities that shift over time and between faculties and departments. What overarching policy narratives inform the language we use? What language framing metaphors are employed to justify policies and sometimes disempower or disregard individuals or groups? We recognize a need to position fairness in a language that everyone can understand. Yet, advocating for fairness requires us to frame our arguments with strategic attention to the driving policy forces of the day, reframing and re-appropriating terms and objectives. The fairness document needs to focus on relational language to provide the link between the perception of fairness and administrative fairness. In the ombuds world, we promote the notion that it is good management to be fair.

We are the ones who take a step back, look at the big picture, and tie the pieces together. While decision makers are often looking outside for precedent, we reflect on how things are done, how they are communicated, and examine where silos and gaps exist. We cannot make the same assumptions as decision makers because we do not start from the same place.

We look for ambiguity in policy and procedure documents. We empathetically listen to student views on policy impacts. We question the perception and the interpretation of the language. Students often read university policies to gain broader understanding; however, university policies sometimes exclude valuable information.

In contemplating the fairness of policies, ombudspersons consider different paradigms. The moral piece pertains to the perception of having been wronged; there is interplay between administrative fairness and the relational (perception of) fairness. It is explaining how the decision was made that can help one understand that the decision they do not like is still the right one. Ombudspersons evaluate fairness through different paradigms and help institutional stakeholders understand, preserve, and advance fairness.

ACCUO Standards of Practice and the Concept of Fairness²

In June 2012, ACCUO members voted to adopt standards of practice for ombuds in Canadian colleges and universities. In view of the diversity of structures and practices described above, the ACCUO Standards of Practice (2012) are “a guide for the establishment of policies and procedures in ombudsperson offices, while taking into account distinct institutional contexts” (p.1). The preamble provides the following description: The standards of practice for ombudsmen in higher education focus on fairness, equity and respect. The ombudsperson builds capacity to help make the institution accountable to its own values and mission statement. In working with individuals, the ombudsperson facilitates fair resolutions that build trust and fortify the relationship between individuals and the institution (ACCUO Standards of Practice, 2012, p.1).

Given the emphasis on building accountability, trust and relationships - in particular through fairness- let us clarify the meanings of fairness. Ombudsman Saskatchewan (2012) articulates the dimensions of fairness as a triangle: “procedural” fairness (how a decision is made), “substantive” fairness (the decision itself), and “relational” fairness (how a person is treated). Nora Farrell, ombudsperson at Ryerson University, provides a fairness checklist that can be used in colleges and universities (2002). Similarly, in her first annual report as ombudsperson at the University of British Columbia, Shirley Nakata discusses a “fairness policy” with dimensions of “compassion, accountability and community” (2009).

Returning to the ACCUO Standards of Practice (2012), the document identifies four principles: independence (sect. 1), impartiality (sect. 2), confidentiality (sect. 3) and accessibility (sect. 4). The ombudsperson provides information (e.g. about procedures, rights, responsibilities) and advice (e.g. in analyzing problems, reframing issues or developing options) (sect. 5); the ombudsperson uses conflict resolution methods or investigative techniques to intervene when appropriate (sect. 6); the ombudsperson may provide recommendations in “case-specific or systemic matters” (sect. 7); finally, the ombudsperson produces annual reports (sect. 8), and remains well-informed with regards to service quality (sect. 9).

Reports from college and university ombuds offices show that the majority of inquiries and complaints are resolved informally by providing information or by problem-solving. Investigations are generally conducted in an informal, non-adversarial manner. In an effort to improve fairness and equity at the individual and systemic levels, Canadian academic ombuds offer a spectrum of practice using a range of tools appropriate to the situation and to institutional context (Adapted from Martine Conway presentation at CCCUO Asilomar November 2013).

What is Fairness?

Ombudsman Saskatchewan promotes and protects fairness in the design and delivery of government services. But what does that mean? What is fairness anyway?

What is fairness? Fairness is not always simple and it does not always mean that everyone gets the exact same thing. There are many situations, relationships and events that come into play. Sometimes generally accepted principles of fairness will apply; sometimes the law will apply. Although there is no single answer, there are some basic principles and practices that can help to describe fairness.

Three Aspects of Fairness: The Fairness Triangle¹

- Was the person given sufficient information to know what was required?
- Was the person given an appropriate forum to present his or her views?
- Did government take the time to listen?
- Did government provide reasons for its decisions?
- Was the decision delivered within a reasonable time?
- Was the decision-maker unbiased?



- Was government approachable?
- Was confidentiality respected?
- Was the government agency honest and forthright?
- Was an apology offered if a mistake was made?

- Did government have the legal authority to make the decision?
- Was the decision based on relevant information?
- Was the decision oppressive or unjust?
- Was the decision wrong in fact or law?

How does the Ombudsman promote and protect fairness? One way is by taking complaints about unfair service in provincial government ministries, agencies, boards and Crown corporations. The Ombudsman is independent and can make recommendations to government to correct an unfairness. The office uses coaching, negotiation, mediation and investigation to help resolve complaints. Ombudsman Saskatchewan offers workshops about fair practices and can also meet with government to provide a fairness perspective (also called the "fairness lens").

1. Developed from the concept of the satisfaction triangle, in: Moore, Christopher (2003). *The Mediation Process: Practical Strategies for Resolving Conflict* (3rd ed.). San Francisco: Jossey-Bass Publishers

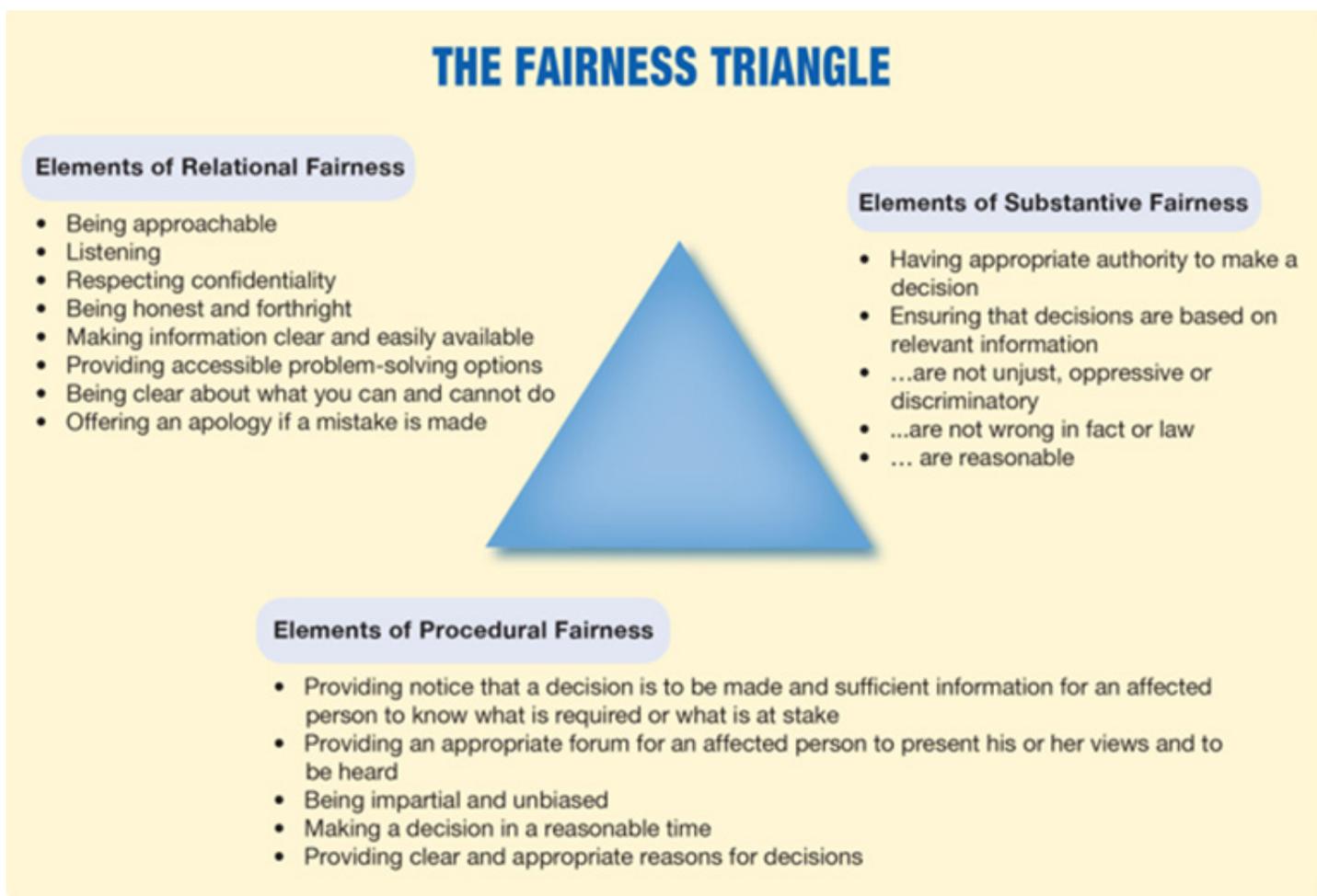
Fairness Triangle Adapted for Use at Post-Secondary Institutions³



University of Victoria Office of the Ombudsperson Logo

What is Fairness?

Students, staff, faculty or administrators may use the Fairness Triangle (adapted from the Ombudsman Saskatchewan What is Fairness? Triangle) whether they are decision makers or affected persons.



© Ombuds office at the University of Victoria, ("Because Fairness Matters") adapted from the Ombuds Saskatchewan fairness triangle ("Promoting Fairness")

Determining Fairness: Just Follow the Triangle⁴

How do we explain fairness to students when they come to us and say “It’s not fair”? I am addressing how our job in this office is to move beyond a student’s perception of fairness and objectively look at what is fair. I am including the Fairness Triangle from Ombudsman Saskatchewan because it provides clear questions aimed at determining fairness. Merriam-Webster dictionary defines the word fair as “marked by justice, honesty, and freedom from bias.” Retrieved from: <http://www.merriam-webster.com/dictionary/fair> Ombudsman Western Australia. (2009, May) Students approach ombudspersons when they receive grades they do not understand or sanctions they do not believe they deserve. When students come to us, we look beyond the dictionary definition and evaluate situations based on principles of administrative fairness and natural justice. Simply put, we try to ensure that the University’s processes have been followed, that the decision is free from bias, and that everyone involved in the process has been heard.

The Fairness Triangle of the Saskatchewan Ombudsman has become the de facto method of evaluating fairness in organizations across Canada. The triangle focuses on the three aspects of fairness – Procedural, Relational, and Substantive. Some organizations and institutions have even adapted it for their own use, and many ombudspersons provide courses on applying fairness principles in their day-to-day work and to management in their organizations. For example, the ombudsperson at Fanshawe College has developed this kind of Preventative Ombudsing course to aid decision makers at the College.

Challenges in Applying the Triangle⁵

Institutions face unique contextual challenges in the effort to apply the fairness triangle. For example, the one element of Procedural Fairness that continues to be problematic at Western University is timeliness. Specifically, are decisions delivered within a reasonable time? While the majority of decisions are delivered well within a three-week window, during the 2013/14 academic year, there were two decisions that came to the attention of the ombuds office that took over a month to be made. In fact, one decision took 16 weeks. In instances such as this, we as ombuds suggest that the student bring the issue of timeliness to the decision maker. There may be extenuating circumstances that impact the timeframe to make a decision, but the decision maker needs to inform the student of those circumstances.

It is Relational and Substantive Fairness that tend to be more subjective, and cases falling in these areas tend to take the most time and consideration.

Fairness in Higher Education – Understanding the Interplay between Procedural, Substantive, and Relational Fairness⁶

Office of the Student Ombuds, University of Alberta

Decision-making in higher education intersects with several different categories of fairness: Procedural, Substantive, and Equitable (also called Relational) (Crean, 2010). There are different components within each category to which decision makers should adhere in student cases.

Procedural fairness (also referred to as the rules of natural justice) speaks to the processes that administrators should follow. Questions a decision maker may want to address include:

- Was the student made aware of all the information that will be considered in the decision?
- Did the student have a reasonable opportunity to present his/her side (this is not necessarily verbal, but any relevant documents the student submits for consideration)?
- Is this decisional process taking place in a reasonable time frame (avoiding abrupt decisions and unreasonable delays)?
- Can the decision maker maintain both impartiality and the reasonable perception of impartiality?
- Has the student been provided with supports to understand the process?
- Was the student afforded and informed of the right to appeal (Hamilton 2009)?

Substantive fairness denotes the fairness of the decision. Decision-makers should ensure that they are taking all relevant information into account. The rationale for the decision should be clearly and adequately explained to the applicable parties. The decision should not be oppressive to particular groups (e.g. religious affiliations, ethnicities, genders, sexual orientations, etc.) The decision must comply with applicable laws of the jurisdiction (Crean 2010; Hamilton 2009).

Equitable/Relational fairness refers to respect for the individual(s) that the decision may impact. Some points for decision makers to consider are consistency of respectful communication, adherence to confidentiality, and the maintenance of access to supports. Treating everyone fairly is not merely treating her or him the same. Instead, it is a matter of levelling the playing field to ensure that everyone has access to the same quality of advice and support in decision-making processes, accounting for social location and power differentials (Crean, 2010). Equitable fairness is perhaps the most subtle and complex type of fairness. In Appendix 2 (pages 23-24), there are two anecdotal case examples to illustrate equitable fairness.

Fair or Unfair? – The Rules of Natural Justice or Procedural Fairness⁷

The Ombudsperson can investigate and make recommendations in the interests of fairness.

The rules of natural justice (or procedural fairness) determine what is considered fair in an administrative structure. The basic components of natural justice are:

- 1) The right to know the case against you;
- 2) The right to an impartial decision maker;
- 3) The opportunity to be heard;
- 4) The right to a decision and the rationale for that decision.

The Role of the Ombudsman is to engage community members in a discussion about general fairness and effective dispute resolution principles.

Making Decisions Fairly - In the course of my work I am often asked how I determine that decisions are made fairly. My practice is to refer the questioner to the 'Administrative Fairness Checklist for Decision Makers' (provided on the following page)

What Does 'Natural Justice' Mean?

'Natural justice' is a concept that was developed in England in the 19th century to define the rules for decision-making. The concept of natural justice has evolved over time and is now often described as 'procedural fairness' or just 'fairness'. The U.S. concept of 'procedural due process' has a similar meaning. As a result, the terms natural justice, procedural fairness, and fairness are often used interchangeably.

The two basic components of natural justice are:

1. That the person affected by a decision:
 - will receive notice that his or her case is being considered;
 - will be provided with the specific aspects of the case that are under consideration so that an explanation or response can be prepared; and
 - will be provided with the opportunity to make submissions (written or oral) relating to the case;

2. That the decision maker(s) will be unbiased: To be unbiased is to be and to be seen as objective or impartial about the matter you are considering. According to Farrell, the best way for decision makers to be unbiased is: To understand bias: consider if you have a firmly held, favourable or negative opinion about a matter or an individual. If you cannot be objective about a matter that is within your purview, you should remove yourself from the decision-making process. If you are part of a committee of decision makers, each member must feel free to make his or her own decision. Therefore, each member of the committee making a decision must be free of influence from other committee members, free from outside third parties, or free from the influence of those who have appointed them. Sometimes bias is alleged because it is believed that the decision maker knows too much about someone's case history or knows the people involved too well. A well-informed decision maker is not biased if she or he has an open mind and is open to persuasion by the information provided through the decision-making process.

Administrative Fairness Checklist for Decision Makers

I – Prior to Decision Being Made

Fairness Standard			
The individual affected is aware of:	When Advised?	By Whom?	How?
the fact that a decision will be made			
why a decision is necessary			
how the decision will affect him/her			
the information that will be considered and any specific criteria to be used in making the decision			
the current rules that will be used in arriving at a decision			
Has the individual who is affected by the decision been provided with:	How was the opportunity provided e.g., meeting, written submission?	Who provided the opportunity?	When was the opportunity provided?
the opportunity to present his/her point of view on the matter			
the opportunity to respond to the information presented by others which will be considered by the decision maker			

II – While the Decision is Being Made

Fairness Standard	Yes	If “no,” why?
Has an adequate & proper review of all relevant information been conducted i.e., have all important facts been obtained, documented and considered before the decision is made?		
Has the decision been reached objectively, with due respect for relevant facts, and without bias?		
Has accommodation been made for new and/or changed circumstances during a period of delay or while the decision is being made?		
Has care been taken to require and use only that information which is relevant to the decision?		
Has the decision been made in a manner which is consistent with previous decisions on similar matters, by relying on existing policies, guidelines, procedures and rules?		
If discretion is exercised, can any inconsistency with previous decisions on similar matters be justified and explained?		

III – After the Decision has Been Made

Fairness Standard	Yes	If “no,” why?
Have adequate reasons been provided to explain how and why the decision was made?		
Has the decision been written in plain language?		
Has the decision been provided to anyone personally affected?		
Has a proper record of the process used been kept and will it be kept on file for a reasonable period of time?		

(Assembled by Nora Farrell, Ombudsperson, Ryerson University, November 2002)

What does Fairness Mean?⁸

Everyone knows what it feels like when we are treated unfairly. It is somewhat more difficult to explain what we might expect from a fair process or decision. You might feel fairly treated if you received:

- Information that a decision might affect you and the criteria on which the decision will be made;
- Notification of the information on which the decision maker is going to base her or his decision;
- The chance to provide your side of the story to the decision maker;
- A response within a reasonable timeframe.

These basic rights are part of what the law calls the principles of procedural fairness and they have grown out of an acknowledgement by the courts that individuals have a right to be treated fairly by an agency that has the power to make decisions that might affect them.

In addition to the above, fairness also includes:

- Having a decision maker who is unbiased and objective;
- Accessible and easy-to-understand information about the process leading to the decision;
- Having a decision that is supported by objective evidence;
- Receiving information on possible avenues of appeal if you are unsatisfied with the decision.

Fairness does not require that everyone be treated the same. It will depend on the nature of the situation, the decision level, and how it might impact the individual. Fairness does not necessarily mean you will get the outcome you wanted; however, it does mean that certain steps should be consistently followed. You should have a chance to be heard and treated with respect throughout institutional decision-making processes.

Fairness is not Sameness⁹

Consistency is a core requirement of fairness. It is essential that we do not allow irrelevant factors to influence decision-making and that we do not apply one rule to one individual in a particular fashion and then differently to another.

However, consistency does not mean that we should equate fairness with sameness. The equivocation of sameness to fairness is a fundamental misunderstanding. Fairness has never required the identical treatment and application of 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 according to the broader purpose and goal that a particular rule or process was intended to achieve when it was created.

Universities operate according to a complex system of policies, rules and procedures. Policies 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 a discrimination-free environment, 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 that has little or 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. As for the too-often cited phrases that “it wouldn’t be fair to everyone else” and “if I do this for you, I’d have to do it for everyone,” I would emphasize that no rule or law was ever intended to produce the same result for every individual. If that were the case, then there would be little use or demand for our adjudicative systems. The written words of rules and procedures must be infused with common sense, compassion and attention to individual circumstances in order to produce outcomes that fit that individual. They must also be consistent with the broader goals the rule was intended to meet and the mission and values of the institution.

Fairness is Cultural¹⁰

“Culture” broadly understood includes those characteristics of an individual that inform their understanding and experience of the world around them. It includes what has traditionally been synonymous with culture, like ethnicity and race, but also encompasses gender and gender/sexual identity, age and generation, socio-economic class, disability, political beliefs, religion, and combinations of all of the above. Culture is the lens through which we see and experience all that is around us. It therefore has a profound impact on how we see others and behave towards them. All conflict is cultural to a certain degree, so when students come to us about the interpersonal struggles they have experienced – with their peers, supervisors, instructors or preceptors – we try to facilitate self-reflection to better understand what has happened and to support more effective future communications

Similarly, the cultural lens through which students view the world may affect their expectations of the university. When expectations do not correlate with lived experience, frustration and disaffection can grow quickly.

Without asking any party to change or “fix” their worldviews, we can do better to raise awareness about what the University’s rules are, the standards of service we can and wish to deliver and the social norms of different cultures and how they might manifest in situations where credibility and veracity need to be tested.

Ombuds Training and Practitioner Resources on Fairness

ACCUCO has a list serve for members across Canada to question a number of concerns about casework and fair practices. Responses from colleagues are expedient, often within a few hours to a few days within the work-week. Members can learn typical practices, gaps in practices, and best practices to recommend to their institutions. Typical Questions include (but are not limited to): duty to accommodate issues; religious accommodation; residence fees; problems that arise in supervisory disputes and supervisory transfer for graduate students, and appeals processes.

Ombudspersons are in a unique position to contribute to educate students, faculty, and staff on the concept of fairness, natural justice and guidelines in academic and administrative decision-making, including the composition and adjudication of panels. In addition to building fairness toolkits, campus conversations and workshops on campus, there is potential to develop and/or deliver courses collaboratively on fairness. Fairness workshops are also offered at FCO and ACCUCO conferences. Finally, there is the FCO/Osgoode Essentials for Ombuds Certificate offered annually in Toronto (see <http://www.ombudsmanforum.ca>)

Practitioner Resources: ACCUCO/AOUCC Standards of Practice; Creating an Ombuds Office; Sample Clauses; Toolkit. <http://www.uwo.ca/ombuds/accuo.htm>

Nora Farrell, Ryerson University Ombudsperson, Administrative Fairness Checklist: questions to consider before, while and after a decision is made. <http://www.ryerson.ca/content/dam/ombuds/documents/Administrative%20Fairness%20checklist.pdf>

Shirley Nakata, University of British Columbia Ombuds Office Checklist, The Fairness Checklist: summarizes fairness practices in an organization, including: making information available, treating people with courtesy, respecting privacy, responding in a timely manner, decision-making, appeals and reviews. <http://www.ombudsman.bc.ca/home/fairness-checklist>

Shirley Nakata, University of British Columbia Ombuds Office (2009). Annual Report – Promoting a Spirit of Fairness. Retrieved January 15, 2013 from <http://ombudsoffice.ubc.ca/files/2010/06/2009ARCFinal.pdf>

The Ombudsman Saskatchewan’s Workbook, The Fine Art of Fairness. For more information about fairness and the ombudsman, see the article by Ombudsman Saskatchewan. (2012). What is fairness? Retrieved October 27, 2012 from <http://www.ombudsman.sk.ca/uploads/document/files/what-is-fairness-feb-2012-en.pdf>

Ombudsman Saskatchewan. Practice Essentials for Administrative Tribunals. http://www.ombudsman.sk.ca/uploads/document/files/omb-tribunal-guide_web-en-1.pdf

The Office of the Fairness Commissioner Ontario – substantive, procedural, relational fairness http://www.fairnesscommissioner.ca/index.en.php?page=about/four_principles

<http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Procedural-fairness-guidelines.pdf>

<http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Procedural-fairness-guidelines.pdf>
Guidelines Procedural Fairness Natural Justice Ombudsman Western Australia Rev2009

Journal Articles on Fairness

Ariel Avgar. “The Ombudsman’s Ability to Influence Perceptions of Organizational Fairness: Toward a Multi-Stakeholder Framework,” in Journal of the International Ombudsman Association, Volume 4, No. 1, 2011 pp. 7 – 17.

This article explores the ombuds role in enhancing fairness in the workplace: procedural, distributive, and interactional fairness. The ombuds can play a role in ensuring that the needs of stakeholders are taken into consideration to ensure a fairness culture in the workplace.

http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/JIOA-4%281%29_0.pdf

Howard Gadlin “I was just thinking about Fairness,” in Journal of the International Ombudsman Association, Volume 4, No. 1, 2011 , pp. 39 – 44.

Using a university student example, Gadlin questions how do stay neutral and not become advocates when we see an unfair outcome. He explores ways in which we can argue for fairness without arguing for the student?

http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/JIOA-4%281%29_0.pdf

Christopher Honeyman, “Fairness and Self-Evaluation,” in the Journal of the International Ombudsman Association, Vol 4, #1 2011, pp.45-62.

This article addresses the question of how we know if and when we’re being fair, and proposes a scale for assessment of fairness.

http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/JIOA-4%281%29_0.pdf

David A Hannah. “Student/Institution Legal Relationships in Colleges and Universities in the Common Law Provinces of Canada: An Analysis of the Case Law from 1982 to 1994.”

Doctoral thesis (unpublished) Bowling Green State University, Bowling Green, USA, 1996.

Chris LaHatte. “ICANN Ombudsman, What is This Thing Called Fairness?”

The paper examines the concept and origins of fairness, the subject of fairness and proportionality, and refers to a number of articles on fairness

www.icann.org/en/help/ombudsman/proportionality-fairness-08apr14... · PDF file

http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/JIOA-4%281%29_0.pdf

Christine McKee and Maury Stephenson. “Natural Justice and University Appeal Procedures for Students”,

Presented at ACCUO, University of Alberta, Edmonton” published in CCCUO 15th Asilomar conference proceedings. November, 1988

Gerald Papica. “The Ombudsman’s Guide to Fairness”, in Journal of the International Ombudsman Association, Vol 4, #1 (2011), pp.26-34.

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<https://www.cacuss.ca/resources/publications/monograph3.htm>

This article focuses on the relationship between the student and the postsecondary institution; and elements of procedural fairness at hearings (natural justice and due process), the right to be heard, and the right to an unbiased decision.

Reading Resources on Fairness in Graduate Student Supervision¹¹

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Appendix One: Resources that Ombuds have developed to promote fairness



Ombuds User Survey: Fair Practice¹³

Person University provides an ombuds user survey that indicates whether those served by the Ombudsperson feel they have been treated fairly. Here are the questions in the Ombuds User Survey.

1. Was it easy to connect with the Office of the Ombudsperson?
2. Was the role of the Office of the Ombudsperson explained to you clearly?
3. If you asked that your name not be released, was your concern handled in a confidential manner by the Ombudsperson's office?
4. Did the Ombudsperson office staff demonstrate impartiality (eg:objectivity, even handedness) in reviewing your concerns?
5. What were your expectations at the time of initial consultation with the Office of the Ombudsperson?
Choose the answer that best applies to your situation:
6. Did the Ombudsperson staff handle your concern fairly?
7. Was your concern dealt with efficiently?
8. Were you treated with respect?
9. If you had another concern or complaint would you contact the Office of the Ombudsperson again?
10. How would you rate your experience with the Office of the Ombudsperson?

Toolkit Tips for Graduate Students¹⁴

More often than not, questions or problems have simple solutions if they are dealt with early. The University has a wide range of resources to help you. Take the time and work to build strong connections with other students and faculty in your department. If one day you find yourself in a difficult situation having a strong support network of friends and colleagues can be very helpful. If you don't have a supervisor yet, or if you have questions your supervisor cannot answer, the Graduate Advisor in your department might be able to point you in the right direction. Who to turn to: Your instructor; The Department Chair; The Graduate Advisor; The Graduate Students' Society (Association or Union); The Dean of Graduate Studies; Health and Counselling; The Human Rights Office; The Office of the Ombudsperson.

Know the Rules of the Game - As a graduate student, you have to balance several roles that might be new to you. You are a student, perhaps a Teaching Assistant (TA), researcher or instructor. It is important that you familiarize yourself with some of the general university policies especially if you are a TA or instructor. You will have various roles to fill as student, researcher and/or instructor. Consult the SFU calendar for general policies and procedures. The Dean of Graduate Studies website is also an excellent resource <http://www.sfu.ca/dean-gradstudies/>

Give Yourself Tools for Solving Problems - Here's a website from a US university with tips on problem solving: http://www.its.caltech.edu/~ombuds/html/grad_index.html In addition, the following website contains articles on a variety of topics of interest to graduate students, http://www.campus-adr.org/Student_Center/tips_student.html

Tips for Building a Relationship with your Supervisor

- Think of your relationship with your supervisor as a partnership and give yourself tools to keep it healthy; always look for ways to keep the lines of communication open.
- Talk to a potential supervisor and to her/his students before starting to work together; get to know the person's work in the field and her/his working style.
- Know what your own preferences or needs are in terms of research area, supervision and feedback, what is your potential supervisor's style? Is that a good fit?
- Get to know your department administrative support staff and treat them with consideration and respect.
- Think of your relationship with faculty members, especially those with whom you want to continue to work, as partnerships, and take the initiative to keep these relationships productive.
- Early in your relationships within the department, meet in person to establish expectations about progress, feedback, and deadlines. Also discuss how and how often you will communicate. It is a good idea not to rely only on email. Establish expectations about the subject matter, progress, feedback, and deadlines; clarify what is flexible and what is not.

- Discuss how you will communicate. Try to establish regular meetings.
- Follow in-person meetings with an email or written note to confirm or clarify expectations, deadlines, and agreements.
- Clear up miscommunication right away, don't let things become bigger problems.
- Keep your emails and notes about your meetings.
- Make sure you keep in contact and inform your supervisor of circumstances beyond your control that may affect your performance, for example illness or family emergency.
- It pays off to resolve things early and constructively!

Ombuds Fairness Toolkits¹⁵

The University of British Columbia Ombuds Office continues to expand its Fairness Toolkits, an online resource for students, staff and faculty on topics ranging from having difficult conversations to preparing for a senate appeal. This brief guide is intended to provide University community members with guidelines on ways to constructively and effectively navigate and address problems or prevent them from occurring. Here are some examples from the UBC Annual Ombuds Reports:

(i) Fairness Toolkit: Meetings – Shift your Attitude

During your time at university, you may need to meet with a professor to discuss a grade or decision that dissatisfied you. Or perhaps a professor or other faculty member may request that you attend a meeting to discuss your performance, your professionalism, or a particular incident. Your approach to the meeting and the attitude you exhibit during the meeting can strongly influence the outcome. Meetings can be a good opportunity to seek information, gain understanding of procedures and expectations, and to demonstrate your commitment and motivation. To help ensure the most effective discussions, keep these tips in mind.

(ii) Fairness Toolkit: Create Better Learning Opportunities

At times you will have an instructor who is not a good match for you, whether it be a personality clash, a difference of opinion, or any number of reasons. You may feel that Professor X is impolite, abrupt, too serious, unclear, or random. Simply put, you don't like Professor X. However, does that mean that you cannot learn the course material? The key to success in a course where you are not experiencing a good fit with the professor is a matter of separating liking & learning.

Step 1: Evaluate - Identify the professor's unique style: Narrow down the aspect that troubles you. For example: Communicating with students (e.g. She doesn't listen to me).

Assessing your performance (e.g. He marks unfairly). Providing feedback and assistance (e.g. He only criticizes me; it's not helpful). Organizing course materials or class time (e.g. We never know what to expect). Dealing with student requests (e.g. The last time I asked for help, I just got in more trouble). What do you control? What is outside your control? Remember, you can't change anyone, but you can change how you experience the situation.

Step 2: Act - Take Control of the Experience. Control your learning experience by changing the way you "think" about your instructor. Change the "way" you experience your instructor. Adapt your behaviour and attitude. Adaptive Behaviours include: Body language - Be positive and alert. Avoid eye rolling, yawning, texting. Participation—Ask questions and offer answers. Smile—Be friendly and open. Arrive early for class – Show interest. Sit up front. Be engaged and be prepared (e.g. do the readings. Cooperate—Are you a positive group member? Adaptive Attitudes: Seek to understand, not criticize. Be generous with your tolerance/understanding. Realize some instructors have little teaching experience and/or formal training. Look around. How are other students responding?

Step 3: Reflect - Talk about your goals. Ask for advice. Be respectful. Accept constructive criticism. Get to know your instructor. Compliment your instructor. What is going on now? Why is this happening? How can things be done better? Can you take what you learned from this experience and apply it to future similar situations? Will you look for opportunities to expand your repertoire of experiences?

(iii) Fairness Toolkit: Fairness Checklist for Decision Makers

Basic rules of fairness apply to good decision-making. “Procedural fairness” encompasses fundamental and common-sense concepts that decision makers should incorporate in their processes. The extent to which each concept applies will depend on both the nature and seriousness of the outcome of the decision. A decision that results in a student’s suspension from the university will require adherence to the highest levels of procedural fairness, compared to a decision that results in a student paying a late fee. The following concepts of fairness within a university setting can guide you to establish best practices.

- Access to Information - Are your unit’s physical facilities accessible and easy to find? Is information about your unit’s policies, procedures and applicable deadlines sufficiently detailed, accessible and written in plain language? Can students access information about your unit and its policies and procedures in different ways – website, phone, email and print material?
- Responses to Inquiries - Has your unit established guidelines about acceptable timeframes to respond to telephone, email and in-person inquiries? Are response times monitored?
- Notice of Proceedings - If your unit’s decision may adversely affect a student, is she or he given adequate and clear notice of the proceeding and potential outcomes? Does your unit have clear and accessible rules about the steps in such proceedings?
- Disclosure - Does your unit adequately inform the student about the information that will be considered by the decision-maker? Are there reasonable and adequate timelines for that information to be provided to the student before the decision is made?
- Opportunity to Respond - Is the student given an adequate opportunity to respond and to provide her or his side of the story? Are there steps to ensure that the decision maker is provided with the entirety of the student’s response?
- Impartiality - Do decision makers in your unit understand their duty to be unbiased and objective so that students perceive the process to be fair? Are there guidelines for decision makers to maintain impartiality?
- Timeliness - Does your unit provide students with timely decisions? Are there guidelines that indicate when decisions should be made and communicated to students? If delays occur or are expected, are students notified?
- Reasons - Does your unit provide adequate reasons for its decisions and communicate them clearly to students? Is there a template for decision makers to use that prompts them to provide reasons for each decision?
- Consistency - Are decisions affecting students made consistently with reference to established criteria? At the same time, do decision-makers give consideration to the unique facts and circumstances in individual cases? Are previous decisions and reasons maintained so that decision makers can have access to them?
- Appeals - Does your unit provide the student with information on how to appeal the decision and where she or he can obtain further details about appeal processes?
- Training - Are decision makers in your unit provided with training and support for their decision-making responsibilities? Do they receive education about procedural fairness in general? Would your unit benefit from a workshop to review your processes and answer some of the example questions asked here?

Checklist: How to Make a Complaint¹⁶

Lucie Allaire, Ombudsperson, University of Ottawa

Pick your battles: Be selective. It takes time and energy to pursue a complaint and you should ask yourself whether it is worth the effort.

Stay objective and have a clear goal: Clearly identify the issue(s) you are facing. Organize the facts and identify clearly what you are aiming for. Write a draft of your complaint. Think about what you hope to achieve.

Consult: It can be easy to get caught up in the complaint without realizing that it is unclear or unreasonable; sometimes it helps to get a reality check. Ask another person such as the Ombudsperson to have a look at it before you submit it.

Keep records Save everything. Keep copies of all official documents you send and receive. Document everything that is or could be important. In case of doubt, keep track of it. If you receive information over the phone, keep a note of the phone call and the name of the person you spoke to. Ask about applicable policies or regulations. Summarize in writing your understanding of advice received in a conversation; check back with the person to ensure you have the same understanding.

Stay organized: Make your complaint as soon as possible after the event. Stay on top of deadlines. Make sure you complain to the right department. If applicable, create a timeline of the events and continue to log create a timeline of the events and continue to log

Be cooperative: Cooperate fully with the person who is handling the complaint. Provide all of the information you have, read any letters or documents that are sent to you, let the person know if you need more time.

Keep your emotions in check: Be assertive without getting aggressive. Do not use threatening language; avoid blame and personal attacks. Getting angry and rude will not resolve your problem. Be careful with emails, use appropriate etiquette; for instance, text written in capital letters comes across as shouting.

Remain open to other possibilities: Making a complaint always comes with the possibility that you may not be able to reach your intended goal. Don't let it take over your life and put it in perspective. Have a backup plan in case it is not successful, and remain open to considering some unexpected possible solutions to your problem. Consult a trusted source to assess other options.

Advocate effectively: Be clear, concise, relevant, and rational when presenting your case. Ask questions until you understand what happened and why. Anticipate the kinds of questions you may receive. Make it easy for the reader to understand your written complaint, perhaps using numbered lists and headings. Make it also easy for the reader to see the merit of your point of view. Provide the relevant supportive documentation (and keep the originals)

Appendix Two: Examples of Relational (Equitable) Fairness in Higher Education¹⁷



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Case 1: Suzie (domestic undergraduate student accused of cheating)

Suzie's case exemplifies substantive and relational (equitable) fairness, wherein decision makers went beyond the minimum requirements of procedural fairness.

Suzie is an undergraduate student who suffers from a severe anxiety disorder. She takes her exams with special accommodations in place. After arriving early for the exam, in order to perform her pre-exam routine to calm anxiety, she discovers that the exam forms are on their way, but they are going to be late. This heightens her anxiety and prevents her from performing her pre-exam routine.

The exams arrive 15 minutes late. After beginning the exam, Suzie receives a text message from her father, wishing her good luck on the exam. Suzie realizes that her phone is on her person, and panics. This catches the eye of the proctor. She is accused of cheating and even though she is permitted to finish the exam, she is not in the mental state to do so. This case is sent to the Associate Dean of the faculty. After the investigation, Suzie is exonerated of the academic misconduct charge. The associate dean realizes the impact this has had on Suzie and instructs Suzie's home faculty to allow her to rewrite her exam.

Case 2: Alejandra (international graduate student recommended for withdrawal, making simultaneous professional misconduct complaint)

Alejandra's case exemplifies substantive and relational (equitable) fairness, wherein decision makers went beyond the minimal requirements of procedural fairness.

Alejandra is an international graduate student. After two semesters, Alejandra has not met the minimum GPA requirements of her faculty. Her supervisor has decided to sever the supervisory relationship and her department has recommended to the faculty of graduate studies that she be required to withdraw from the university. However, Alejandra is involved in an interpersonal conflict with a supervising laboratory technician in the department where she works as a research assistant. Alejandra feels that the conflict impacted her academic performance and had previously reported her concerns to her supervisor and department chair; however, the supervisor remained unwilling to continue to supervise her. Alejandra plans to appeal the requirement to withdraw on humanitarian grounds. Simultaneously, Alejandra is pursuing a professional misconduct complaint against the laboratory technician for harassment. In keeping with the collective agreement of graduate student research assistants, Alejandra is only entitled to one month's salary after her supervisor terminates the contract. Alejandra makes the case that, as an international student living on a fixed income, terminating her pay is an unfair act. It would essentially require her to withdraw by other means and undermine her ability to appeal her case or pursue her human rights complaint. Upon consideration of Alejandra's case, the associate dean of the faculty responsible for her research assistantship contract decides to pay her for an additional four months, enabling Alejandra to remain in Canada until her appeal and professional misconduct complaint are resolved. Simultaneously, the faculty of graduate studies in which Alejandra is registered decides to delay the decision on the recommendation that Alejandra be required to withdraw, permitting her to look for a new potential supervisor and to transfer, as the professional misconduct complaint proceeds.

Case 3: Michael (domestic undergraduate student appeal of de-registration – recommendation made)

Michael's case exemplifies procedural, substantive, and relational fairness.

When applying to the university, students must disclose all previous post-secondary studies. In discussion with Michael, staff realized that his application had not disclosed attendance at one institution where he had one term of incomplete courses. They sent him the relevant Calendar statement indicating that potential consequences can range from loss of transfer credit to de-registration or cancellation of admission. They asked Micheal for transcripts and for a written statement of explanation.

Michael's situation was unusual in that he had documentable and compelling extenuating circumstances relating both to the period of incomplete courses and to the time of the admission application to the university. It was also unusual in that the institutional decision-making process continued over a period of several months, in part because the student needed time to document what had happened.

Staff used relational fairness tools: verbal information about what to include in a statement, reminders and time extensions. Procedurally, however, the critical step of notification to the student had become confused, seriously impacting the fairness of the substantive outcome. Michael understood that he had to write an explanation, but when the file was referred to the relevant committee for a decision, Michael did not receive clear written notification of several key aspects of his case: the fact that this was an appeal process; the name of the committee; the seriousness of the decision to be made (including possible consequences such as de-registration); or the grounds of appeal that the committee could consider. As a result, the student's submission did not focus enough on points that would provide grounds for appeal, and the appeal was subsequently denied. The student was de-registered late in the term. As the student sought to understand and appeal the decision further, written reasons for the committee's decision were also significantly delayed.

After a re-submission, with guidance from the ombudsperson, the student was granted the appeal and allowed an extension to complete the term. Given the seriousness of potential consequences and the "paper only" nature of the process, the ombuds office made recommendations for reviewing the communication templates regarding this type of appeal in order to provide both appropriate notification and written reasons.

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Questions on Matters of Fairness for Postsecondary Ombuds Cases

Procedural Fairness

Was the student given sufficient information to know what was required?

- 1) Was the student given an appropriate forum to present his/her views?
- 2) Did the administrator take the time to listen to the student's concerns?
- 3) Did the administrator provide reasons for his/her decisions?
- 4) Was the decision delivered within a reasonable time?
- 5) Was the decision maker unbiased?

Relational and Substantive Fairness

- 1) Was the decision maker approachable?
- 2) Was the student given an appropriate forum to present his/her views?
- 3) Was confidentiality respected within the purviews of PIPPA?
- 4) Was the office concerned, honest and forthright?
- 5) Was an apology offered if a mistake was made?
- 6) Did the decision maker have the authority within University policies to make the decision?
- 7) Was the decision based on relevant information?
- 8) Was the decision oppressive or unjust?
- 9) Was the decision wrong in fact or according to policy?

Appendix 3: Resources for the Fairness Triangle Dialogue

Understanding Fairness: Tips Discussing Fairness & Using the Fairness Triangle in Dialogues¹⁹

This brief summary is not meant to replace procedural guidelines and training for tribunal or appeal committee members. These bodies should develop guidelines and orientation for their members that are adapted to the nature and level of decisions to be made. See the “further reading” section for additional information.

The basic elements of procedural fairness are: 1) the right to be heard; 2) the right to an unbiased decision.

What does this mean in practice? The two basic elements are applied differently depending on the seriousness of the issue to be decided and depending on the level at which it is being decided. Procedural safeguards must increase according to the seriousness of issues and consequences, and according to the level of decision-making. At a very low level, people may rely on written policy and verbal interactions; many administrative decisions are made based on the exchange of written information; some decisions require a written hearing; at the highest levels, fair procedure may require an oral hearing, representation by an advocate (and) cross-examination of witnesses.

Providing notice - The *right to be heard* also implies the *right to notice*. “Notice should contain sufficient information that the student is informed of the pending decision, what impact a decision may have, a time frame for response, and to whom a response or query should be submitted. Notice should be clear so that the student must know the case and have an opportunity to respond” (Smith, CACUSS Monograph p.5).

For example, in practice, in a disciplinary situation, the student must be able to understand the issues or behaviours of concern, the regulation(s) or standard(s) that is alleged to have been violated, the potential implications or penalties, and any other grounds (e.g. procedural grounds, documented extenuating circumstances) that decision makers may consider.

Providing an opportunity to be heard *before* a decision is made - The student should have an opportunity to be heard *before* a decision is made and must have an opportunity to be heard *before* a final decision is made.

Making and communicating decisions in a reasonable timeframe - Delay in itself can lead to substantial unfairness. It is important to establish reasonable timelines for the decision and communication process (with the possibility of extending deadlines where needed). If delay occurs nonetheless, it is important to inform the student and mitigate negative impacts.

Making an unbiased decision - Bias can be individual, e.g. conflict of interest. It may also be related to the decision maker’s other roles within the institution (e.g. involvement at a prior stage). Overlapping roles are not automatically indication of apprehension of bias, but whether they are indicative of bias may depend on the nature of the issues, the importance of the stakes and/or the level of decision-making (including whether or not there is further avenue of appeal).

Standard of proof - The standard to be applied depends on the nature of the decision to be made (e.g. administrative, disciplinary). For example, some administrative decisions are made on a standard of the “balance of probabilities.” A disciplinary decision would require a higher level of “proof,” such as “compelling evidence”.

Basing decisions on relevant information - Decisions must be based on all relevant information. At the notification stage, the decision-maker needs to take care to inform the student of relevant grounds for consideration (e.g. procedural, extenuating circumstances,) and to provide an opportunity to address those grounds before a decision is made.

Providing reasons - After the decision, the decision maker must inform the student in writing of the reason (s) for the decision, especially where an adverse decision is made.

Providing information regarding any further avenue of appeal - The communication informing the student of a decision must include information about any further avenue for resolution or appeal.

Fairness for Everyday Practice²⁰

DEFINING FAIRNESS: When we interact with an organization, a business, a governmental service, we get a sense of how fair that institution is according to:

- How we are being treated;
- How a decision is made;
- The decision itself.

FAIRNESS MAY:

- mean different things to different people
- be applied differently at various levels of decision-making (e.g. a review or appeal process will typically have more rigorous procedural safeguards)
- lead to different outcomes under different sets of circumstances.

TO DEFINE FAIRNESS, WE MAY CONSIDER:

- People's **expectations and needs** as they relate to our services/function;
- **Legal obligations** related to the services/function we provide;
- **Policies and regulations** our institution has adopted;
- **Standards and service orientation** we have adopted (to resolve problems and make decisions);
- Other?

PEOPLE FEEL SOMETHING IS NOT FAIR WHEN:

- They are not given an opportunity to present input or information;
- They don't have access to the criteria for how decisions are made;
- They have no opportunity to consult independently;
- Their own concerns are ignored or turned against them;
- Their story is considered irrelevant or dismissed;
- They feel that the decision makers have already made up their minds;
- They are treated differently than someone else;
- They are treated the same as someone else when their circumstances are different;
- They are given no reason for the decision;
- There is not clear information about how to appeal or contact the next level of decision-making;
- Other?

Fairness in Practice Conversations²¹

Martine Conway facilitates sessions with students and staff at the University of Victoria about how they experience fairness, using the fairness triangle in her discussion. She reviews the ways in which students experience fairness and reviews scenarios that staff submit. She focuses primarily on the importance of relational fairness in communication. She also examines procedural safeguards and discretion in making appropriate substantive decisions. She helps staff focus on building healthy workplaces. The fairness triangle may also be useful when looking at policy changes, and examining decision-making.

Case Examples from the Ombuds Annual Report, April 2014, illustrates the three aspects of fairness.

1) Academic Concession - Advice - Relational Fairness

An Associate Dean referred an international student to the ombuds office after denying his request to drop courses. The initial request had not provided adequate documentation for the course withdrawals. However, after a full discussion in the ombuds office, it was clear that the student's spouse had become seriously ill during this period of time. The student was the only caregiver, which had affected class and exam attendance. With guidance from the ombudsperson, the student provided a clarifying statement and documentation about the nature and severity, timeframe and impact of his spouse's medical condition. The Associate Dean reversed the decision and granted the request to drop the courses.

In this situation, the decision initially appeared to be procedurally correct. However, it is important to ask oneself whether and how a process offers a student an appropriate opportunity to present her or his case. The student's difficulties in articulating the situation were increased by differences in language, expectations and culture. The use of relational fairness tools (referral, listening, probing for extenuating circumstances, informing) provided information that established clear grounds for a very different substantive outcome.

2) Accommodation for a disability – Student Coaching – Substantive Fairness

A student with a serious anxiety disorder came to the office to discuss her situation in a course. The student had developed strategies and resources to manage due dates, and exams in ways that minimized triggers for her condition. She was having difficulties doing so for one class in which the evaluation included potential quizzes of uncertain length, and assignments that were soon due and had not been outlined. This was now impacting her ability to focus in other courses. The ombudsperson met with the student to provide feedback and coaching on what to expect from a course syllabus, what can be clarified separately, how to relay her questions as a request for accommodation where needed, and how to approach the instructor or department. The student later reported that the problem was resolved. The situation had raised questions of substantive fairness as it did not provide an equitable basis for full participation. The solution presumably also led to an improved process and experience for all students in the class.

3) Appeal of de-registration – Recommendation Made - Procedural Fairness

When applying to the University of Victoria, students must disclose all previous post-secondary studies. A student came to the office after being de-registered late in the spring term, following a decision by the Senate Committee on Admission, Re-registration and Transfer (SCART). The committee makes decisions on paper appeals (without hearings). The student's case had been referred to the committee after staff realized, in discussion with the student, that his application had not disclosed attendance at a previous institution where he had one term of incomplete courses. This student's situation was unusual in that he had documentable and compelling extenuating circumstances relating both to the period of incomplete courses and to the time of the admission application to the University. It was also unusual in that the institutional decision-making process continued over a period of several months, in part because the student needed time to document what had happened.

In the first email contact, staff had quoted the Calendar entry including possible consequences, which may range from loss of transfer credit to de-registration or cancellation of admission. They had asked the student for a written statement of explanation and missing transcript. They then followed up with time extensions and reminders. They also provided verbal information about questions to address in the statement (especially explanation for non-disclosure). In this situation, staff had used relational tools that could have led to sufficient understanding of the situation and its extenuating circumstances on review of the file. Procedurally, however, the critical step of

notification to the student had become confused, seriously impacting the fairness of the substantive outcome. The student understood that he had to write an explanation, but when the file was eventually referred to the committee for a decision, the student did not receive clear written notification of: the nature of the appeal process and name of the committee; the seriousness of the decision to be made, including possible consequences; and the appeal grounds the committee could consider.

As a result, the student's submission did not focus enough on points that would provide grounds for appeal, and the appeal was denied. As the student sought to understand and appeal the decision further, written reasons for the committee's initial decision were also delayed. After a re-submission, with guidance from the ombudsperson, the student was granted the appeal. Given the seriousness of potential consequences and the "paper only" nature of the process, the ombuds office made recommendations for reviewing the communication templates regarding this type of appeal, to provide both appropriate notification and written reasons. Admission Services sought input from the ombudsperson and went beyond the recommendation when they reviewed and updated all templates for admission cases referred to SCART.

Relational fairness tips

Listen to understand, rather than to respond. This will give you useful information to base next steps or a decision on. It also builds trust and reciprocal respect even if you disagree with the other person.

- Inquire (rather than accuse or defend) by asking relevant probing and clarifying questions and gathering relevant information.
- Provide clear information by using plain language as much as possible, explore any extenuating circumstances, consider appropriate exceptions, and identify options or referrals.

For example: You're a student and you disagree with a grade you received. Avoid assumptions such as: "This grade is completely unfair! Jon didn't write as well as I did but got a higher grade!"

Consider:

- "I think my grade is inconsistent with the quality of work I put into the project."
- "What are the criteria for grading?"
- "Can you give me feedback on my work?"
- "In this section, I demonstrated my understanding of the relevant concept. Could you reconsider the mark for this section?"
- If needed, ask: "What is the procedure for reviewing a grade?"

Procedural fairness tips

- Procedural fairness has two basic components: **the right to be heard** and **the right to an unbiased decision**. An important aspect to the "right to be heard" is appropriate notification so the person can understand the concerns and relevant criteria, such as policy, before responding.
- Consult as needed with other services or resources.
- Identify the relevant policy or procedure, consider the grounds (criteria) and follow the steps and timelines.
- Procedural requirements increase with the seriousness of the issue, the potential consequences, and/or the level of decision-making.
 - For example, for a late penalty on a paper, the instructor assigns (or does not assign) the penalty based on the course outline and, if applicable, any relevant information that the student provides.
 - This is less serious than a plagiarism issue with a potential failing grade. Here, the student is given written notification of the allegation, access to information about the specific concerns and an opportunity to respond. The Chair or Dean communicates the decision in writing, including the reason(s) for the decision.
- If you are the decision-maker and the situation is not resolved at your level, refer the person to the next step in the process. If you believe a decision affecting you is not fair, ask an administrator or the ombudsperson about next steps in the process.

For example: You are an instructor, and a student disagrees with a grade and a late penalty. Avoid dismissing the student's concerns, such as, "All grades are final. Please refer to the course outline."

Consider:

- “Please come to my office hours (or make an appointment or send me an email) so I can hear your concerns and we can resolve this.”
- If the concerns are purely about the grade, your process would include steps such as providing feedback and considering any relevant grade change; possibly giving suggestions for improvements or referring the student to academic resources. If the student still disagrees with the grade, referring them to the relevant grade review policy.
- If the student is concerned about a late penalty, you would consider the course outline in light of relevant regulations and extenuating circumstances. For example, you may need to consider an appropriate concession or accommodation such as an extension, or refer the student to the official academic concession process if the work cannot be completed during the term, etc.

Substantive fairness tips

- Good relational and procedural components contribute to substantively fair decisions.
- If a decision is being made about you, ask yourself what information the decision-maker needs to receive from you that is relevant to the issue.
- If you are the decision-maker, ask yourself the relevant questions to make sure that you base the decision on complete and accurate information and that you take into account the context and circumstances.

Consider:

- Do I need to consult with another person or office?
- Have I gathered all the relevant information?
- Is there a policy?
- What criteria do I need to consider?
- Is there a legal or equity principle to apply?
- Are there extenuating or other circumstances to take into account?
- Am I the right person to make this decision? Am I bringing this to the right person?

Fairness in Practice: Campus Conversations²²

This can be used as a discussion guide for fairness facilitator workshops

Objectives:

- Explore how people experience fairness and unfairness
- Reflect on the relational, procedural and substantive elements of fairness
- Share best practice for integrating a fairness lens into all aspects of

Suggested steps: participants (staff, departments, student unions etc.):

- Submit scenarios to be included in the discussion
- Brainstorm what “fair” and “not fair” looks and feels like
- Use the fairness triangle to identify, understand and integrate fairness ideas when discussing a variety of situations relevant to their work and activities on campus
- Share best practice ideas about how to better integrate fairness into their work and study environments

Discussion and debrief: common themes include the:

- Importance of relational fairness to establish rapport and identify extenuating circumstances or exceptions
- Role of procedural safeguards for proper decision-making or reconsideration of a case
- Place of discretion in making appropriate substantive decisions
- Links between the adoption of fairness tools and the development of a healthy workplace where civility, participation, diversity and respect are valued
- Use of the triangle when contemplating policy or systems change to ensure meaningful input from affected parties before and during decision-making

Understanding Fairness at the University of Manitoba²³

The University of Manitoba strives to create a “fair and equitable environment in which to work and learn.” If a student feels they have been treated unfairly by the U of M, there are several mechanisms, supports and services available to help provide a resolution.

To decide which mechanism/support/service is the best option for a given student, it is helpful to understand how fairness works at the U of M. Administrative staff at the U of M has authority to make decisions about, and to hear complaints from, students. Examples of administrative staff include: Department Heads, Directors, Deans and Associate Deans. There are also discipline and academic committees at the U of M which make decisions and hear complaints. Whichever administrative staff makes a decision or hears a complaint, complete fairness requires **substantive fairness**, **procedural fairness**, and **relational fairness**.

- **PROCEDURAL FAIRNESS** relates to the steps taken by administrative staff before and after making a decision or responding to a complaint. Procedural fairness requires the provision of:

NOTICE: The student who is the subject of an academic or discipline matter must be given advance notice that the matter is under consideration. The student needs to know what issue(s) is/are being considered, and be provided with a reasonable amount of time to prepare any submission for the decision maker's consideration. Similarly, a student who makes a complaint must be notified of the process and (in most cases), be advised of the outcome(s).

INFORMATION: Students must have access to the information that will be considered when a decision is made. This information helps the student formulate their position or response when communicating with the administrative staff.

RIGHT TO RESPOND: The student who is subject to a decision must be given a meaningful opportunity to have their opinion heard or otherwise considered. In the same way, a student making a complaint must be given the opportunity to communicate their concerns fully. Depending on the situation, the student is able to state their case at a meeting, hearing, or through written submission.

IMPARTIALITY: The administrative staff must be impartial and unbiased (without a personal interest in the outcome of the decision or complaint).

REASONS: The administrative staff must give meaningful reasons for the decision or the complaint outcome. The reasons must be understandable to the student. Reasons for a decision or complaint outcome should demonstrate the administrator has fully and fairly considered the issues. The reasons explain the “why” behind a decision or outcome. Reasons are part of a formal decision or outcome letter to the student.

- **SUBSTANTIVE FAIRNESS** relates to the fairness of the decision itself. For example, substantive fairness requires:

AUTHORITY: The administrative staff in question must have the authority under U of M policies to make the decision or respond to the complaint.

FREEDOM FROM PREJUDICE: The decision or outcome cannot discriminate against the student on any of the prohibited grounds listed in the Manitoba Human Rights Code or the Charter of Rights and Freedoms, such as marital status, race, religion, sexual orientation, or disability.

CLARITY OF REASONING: The rationale behind the decision or outcome must involve clear reasoning, and must be understandable to the student and anyone else affected by it.

- **RELATIONAL FAIRNESS** relates to how the affected student feels about the process, the decision, or the complaint outcome. Sometimes called the “soft” side of fairness, it requires the following:

ATTENTION: The administrative staff takes the time to listen to the point of view and evidence submitted by the student.

APPROACHABILITY: The administrative staff must be approachable and easy to communicate with interpersonally regarding the decision or complaint processes.

MAINTENANCE OF CONFIDENTIALITY: The administrative staff must respect student confidentiality during and after the process, as allowed for by the relevant policies/procedures involved.

HONESTY: The administrative staff must remain honest and forthright in their dealings with students and others affected by decisions made about students. Administrative staff also cannot mislead a student about what they have the power/authority to do.

ACCOUNTABILITY: Administrative staff should offer apology if they make a mistake during or after the decision or complaint process.

FREEDOM FROM RETALIATION: “Academic staff members shall not retaliate against a student who has filed a complaint, whether the complaint was substantiated or unsubstantiated (Responsibilities of Academic Staff with Regard to Students, Section IV, 7, 1)

Sections on the three types of fairness (above) adapted and used with permission from the Manitoba Ombudsman’s “Achieving Fairness: Your Guide to Dealing with Government.” Thanks to Brandy Usick, Director, Student Advocacy and Accessibility, University of Manitoba for giving ACCUO the permission to add this information to the Fairness Guide. The information was a team effort of the Student Advocacy and Accessibility Office at the University of Manitoba.

Footnotes

¹ Summary of Discussion on Fairness at ACCUO Western Regional Meeting 2014

² Martine Conway, University of Victoria, uvicombudsperson.ca

³ Martine Conway, University of Victoria, uvicombudsperson.ca

⁴ Jennifer Meister, Western University, 2013 Annual Report_Adapted www.uwo.ca/ombuds/AR2013-14.pdf

⁵ *ibid*

⁶ Brent Epperson and Marc Johnson, Office of the Student Ombuds, University of Alberta

⁷ Nora Farrell, Ryerson University, from Ryerson Ombudsperson, 2005- 2006 Annual Report and Administrative Checklist 2002

⁸ Shirley Nakata, University of British Columbia, adapted Ombuds Annual Report, 2013 ombudsoffice.ubc.ca

⁹ *ibid*

¹⁰ *ibid*

¹¹ Jay Solman, Ombudsperson, Simon Fraser University, adapted from www.sfu.ca/ombudsperson

¹² Because ... College Matters. Camosun College Office of the Ombudsman brochure

¹³ Nora Farrell, Ryerson University, www.ryerson.ca/ombuds

¹⁴ Jay Solman, Simon Fraser University, from www.sfu.ca/ombudsperson

¹⁵ Shirley Nakata, UBC, adapted ombudsoffice.ubc.ca

¹⁶ Lucie Allaire, University of Ottawa, www.uottawa.ca/ombudsperson/

¹⁷ Brent Epperson and Marc Johnson, University of Alberta, 2015

¹⁸ Frances Bauer 06/99, Updated 05/2006 poster www.uwo.ca/ombuds/student/fair.html

¹⁹ Martine Conway, University of Victoria, uvicombudsperson.ca 2013

²⁰ *ibid*

²¹ *ibid*

²² *ibid*

²³ University of Manitoba Student Affairs, Student Advocacy, www.umanitoba.ca/student/advocacy/understanding-fairness.html

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Produced in recognition of the 50th anniversary
of the first ombudsman in a Canadian post-
secondary institution.

www.uwo.ca/ombuds/assoc.htm
May 2015