

2023 OMBUDS' ANNUAL REPORT & RECOMMENDATIONS

Celebrating 45 years!

Angus Shaw, Ombudsperson University of Victoria
Volume 27 Issue 1

[Alt-text]: Background image of single arbutus tree on ridge with ocean in background. Office of the Ombudsperson for the University of Victoria logo in white: silhouette of a flying dove in a triangle surrounded by a an incomplete circle.

TABLE OF CONTENTS

Table of Contents	2
Welcome Letter	3
Meet Your New Ombudsperson	4
Role of the Ombudsperson	5
Benefits of an Ombudsperson	5
2023 By the Numbers	7
Yearly Caseload	7
Long-term Yearly Caseload	7
Appointments Per Visitor	8
Modality	8
Service User's Status	9
Non-Student Service Users	9
Nature of Inquiry for all Service Users	10
Nature of Inquiry for Graduate Students	10
Service Users by Faculty of Division	12
Mode of Discovery	12
Demographics	13
Feedback Survey	13
Fairness 101	15
Trial by surprise	17
Participation Rights in Misconduct Processes	17
Recommendation #1	19
Forced Fit	20
The Procrustean Urge to Fetter One's Own Discretion	20
Recommendation #2	23
In conclusion	24

[Alt-text]: Ombuds' Logo in white. Two silhouettes of a blue and pink leaf with text inside one for the leaves reading: "An extremely helpful and important resource, I'm very pleased with my experience and am grateful for their guidance on matters." 2023 Visitor.

WELCOME LETTER

On behalf of the Office of the Ombudsperson at the University of Victoria (the “Office”), I am pleased to present the 2023 Annual Report. This report covers the calendar year of 2023 and spans the work of three individual Ombudspersons. As the staff of the Office transitioned, the work towards fairness did not stop. In fact, I am pleased to report that the 2023 caseload surpassed that of 2022.

The purpose of this report is to inform you, the reader, of the day-to-day operations of the Office and to illuminate the opaque territory of the Ombudsperson’s work.

There is another purpose, too, which draws on the Ombudsperson’s unique position on campus that encourages the vulnerable to speak up about mistreatment. From this flows the Ombudsperson’s duty to illuminate unfairness on behalf of those who lack power or fear reprisal. This function is perhaps most obvious here — in this report — where the the voices of the many can coalesce into succinct recommendations aimed at the decision-makers who can make a difference. That decision-maker may be you.

I urge you to use the data and perspectives presented here to examine practises and hold yourself and others accountable to the principles of fairness that are the foundation of a healthy and functional administrative body. This report can provide you with data to drive decisions, act as an objective report of issues, or as a catalyst for difficult conversations about fairness.

I would like to sincerely thank the former Ombudspersons and my partners: the UVSS, the GSS, the Ombudsperson Advisory Committee, and the University of Victoria (“UVic”). I would also like to thank the courageous visitors to the Office who almost unanimously desired to make UVic a better place.

Respectfully submitted,

[Alt-text]: Signature of Angus Shaw in black handwritten letters

Angus Shaw, Ombudsperson
On behalf of the Office of the Ombudsperson

MEET YOUR NEW OMBUDSPERSON

[Alt-text]: Headshot of Angus Shaw looking directly into the camera, white male-presenting person with reddish hair and glasses wearing a green suit jacket with a white t-shirt in front of a waterfall.

At the beginning of September 2023, I joined UVic as the Ombudsperson. During my time here, I have received scores of warm welcomes and gracious offers to collaborate. In line with UVic’s reputation, I expected to find an equitable and fairness-centred spirit on campus — and I was not disappointed! Thank you. I appreciate the hard work that has gone into creating such a great place to study, work, and live.

By way of introduction, I am new to Victoria and have roots in Vancouver and southern Alberta. I hold degrees in International Relations, German Studies, and Law. I have a background in litigation, accessible legal service, and higher education student advocacy. I am thrilled to bring my skills and my enthusiasm for fair process to bear at UVic.

Although the Office has housed many Ombudspersons over its 45 years, I must highlight the work of both Annette O’Hara and Maureen Campbell, both of whom worked unwearied in the pursuit of fairness in 2023 and ensured I had a vibrant and productive Office to assume. I am immensely grateful.

I am thankful and honoured to work and live on the land of the Lək^wəŋən (Songhees and Esquimalt) Peoples. I acknowledge and respect the Lək^wəŋən and W̱SÁNEĆ Peoples whose historical relationships with this land continue to this day. I will work hard to be worthy of this honour.

Sincerely yours,

[Alt-text]: Signature of Angus Shaw in black handwritten letters

Angus Shaw, BA, JD (he/him)

[Alt-text]: Silhouette of a blue leaf with text inside reading: “Angus's advice has been tremendously helpful to me because his suggestions are well-organized and easy to comprehend.” 2023 Visitor

ROLE OF THE OMBUDSPERSON

The Office is an independent, impartial, and confidential resource for all members of the UVic community for student-related fairness questions. The Ombudsperson provides information, guidance, coaching, case review, and investigation. The Ombudsperson focuses on resolving conflicts at the lowest possible level and finding resolutions that reduce overall harm. The Ombudsperson may make recommendations on individual or systemic issues and seeks to ensure that the principles of fairness and natural justice are observed. The Ombudsperson is not an advocate for any one person or for UVic, but for fairness in general.

The Office is staffed by one full-time Ombudsperson. The Office is funded by contributions from students and UVic. The Ombudsperson reports to the Ombudsperson Advisory Committee with representation from many parts of the UVic community. The Ombudsperson is guided by the Terms of Reference for the Office of the Ombudsperson and principles drawn from the Association of Canadian College and University Ombudspersons.

[Alt-text]: Blue circle outlining the text: “Mission: A university community that values fairness”.

BENEFITS OF AN OMBUDSPERSON

People with grievances are often disillusioned and singularly-focused on resolution to the detriment of work and mental health. Most essentially, an Ombudsperson can address these grievances, help move towards resolution, and assist individuals to improve their wellbeing.

An Ombudsperson deflects, deescalates, and often prevents conflicts from occurring. After receiving the Ombudsperson’s advice, people’s concerns are often more focused, directed to the appropriate person, and occasionally resolved altogether. An Ombudsperson’s services can save staff and faculty time, money, and allows them to focus on their jobs. Providing a trained and reasoned voice in a conflict can help all involved avoid or lessen trauma. In addition, the Ombudsperson works to educate university decision-makers on fairness principles and best practises in order to proactively avoid grievances in the first place.

A healthy Ombudsperson Office is also an overt signal that our institution values fairness. This increases the reputation of UVic by showing that we are not afraid of being held to account to our shared values and principles.

**[Alt-text]: Individual pink boxes outlining the three words:
Independent, Impartial, Confidential.**

2023 BY THE NUMBERS

People who seek assistance from the Ombudsperson arrive with an issue or problem. If the problem is appropriate for the Ombudsperson's service, then a file is created (a "Case").

Yearly Caseload

This chart shows the total number of Cases added to the caseload each year. As expected, the 2023 caseload was healthy (357) and in-line with 2022 (327), 2021 (418), and 2020 (413). Remarkably, the 2023 caseload exceeded the 2022 caseload by 30 Cases despite the Office being staffed by a part-time Ombudsperson for several months.

[Alt-text]: Bar graph in green showing 2023 had 357 cases, 2022 had 327 cases, 2021 had 418 cases, and 2020 had 413 cases.

Long-term Yearly Caseload

This chart shows the total number of Cases added to the caseload each year since 2006. 2010 saw the highest caseload with around 450 Cases and 2022 had the lowest caseload in this period with 326 Cases. Overall, caseload numbers have been relatively consistent with expected variances.

[Alt-text]: Line graph in green showing approximate caseload since 2006 to 2023. The number is high at around 400 to 425 cases between approximately 2006 to 2011. Drops in 2012 to just over 350 cases, and then holds steady between 350 to just over 400 until 2020. At 2020 to 2021, the numbers rise to just under 425 and drop to the lowest point at 2022 at 325. 2023 shows a slight rise to just over 350.

People can receive assistance from the Ombudsperson in a variety of ways: by booking an appointment, dropping in, or requesting information over email or phone (“Service Users”). Individuals can also find relevant information on uvicombudsperson.ca, where preliminary information and guides are available.

[Alt-text]: Orange rounded square box with text: “In 2023: 314 Appointments were completed by the Office”

[Alt-text]: Orange rounded square box with text: “In 2023: 3329 Unique individuals visited uvicombudsperson.ca”

Appointments Per Visitor

The majority of Service Users who booked an appointment (“Visitors”) attended an appointment only once (81.4%). A significant number of Visitors sought assistance multiple times (18.7%), usually showing that issues are either ongoing or changing. Some Service Users chose not to book an appointment and are not represented in this chart. Four Visitors had more than six appointments and one Visitor had more than ten appointments.

[Alt-text]: Pie graph showing once equals 81.4%, twice equals 12.3%, and three plus equals 6.4%.

Modality

Notably, around 62% of Visitors chose a modality that was not in-person. 100% of survey participants said they were satisfied with the modality options provided by the Office.

[Alt-text]: Pie graph showing in-person equals 37.9%, online equals 42.0%, and phone equals 20.1%.

Service User's Status

The Office has an open-door approach, as the Terms of Reference for the Office of the Ombudsperson outline that the Office is intended to serve all members of the UVic community. All are free to speak to the Ombudsperson and receive assistance. However, the Ombudsperson's advice is confined generally to student-related issues. In practice, the vast majority of Service Users are undergraduate (77%) or graduate students (18%).

[Alt-text]: Pie graph showing undergraduate equals 77%, graduate equals 18%, and non-student equals 5%.

Non-Student Service Users

5% of Service Users are members of the UVic community that are not students. Of this 5%, 39% are staff, 39% are faculty, and 22% are others who have a connection to UVic, such as parents or local residents. Service Users seeking assistance about issues unrelated to students are often referred to an appropriate resource.

[Alt-text]: Pie graph showing staff equals 39%, faculty equals 39%, and other equals 22%.

When booking an appointment, Visitors mark the nature of their inquiry, their faculty, and how they found out about the Ombudsperson (“Mode of Discovery”). For phone or drop-in Service Users, the Ombudsperson collects this information manually. A Service User can seek assistance for multiple issues or have a complex issue that falls under multiple categories.

Nature of Inquiry for all Service Users

Academic Concessions continue to claim the top spot in line with 2021 and 2022. Academic Integrity cases have risen from 26 in 2022 to 52 in 2023 — a notable increase. Many involve students feeling unfairly treated or that there was not sufficient evidence. Many expressed concerns about the validity of Artificial Intelligence (“AI”) detectors. In multiple cases, it was not disclosed to students how instructors detected AI, which left students unable to properly defend themselves.

[Alt-text]: Vertical 2-D bar graph in green showing academic concessions 13.3%, faculty/staff misconduct 13.1%, academic integrity 11.3%, grading/evaluation 10.2%, requirements/waivers 7.4%, tuition/fees 7.2%, course delivery 6.5%, academic accommodations 5.9%, graduate supervision, 5.9%, required to withdraw 4.1%, non-academic misconduct 3.9%, registration 3.1%, housing 2.8%, practicum 2.2%, interpersonal conflicts 2.0%, and admissions 1.1%.

Nature of Inquiry for Graduate Students

Supervisory issues are the overwhelming reason for a graduate student to visit (31%). Unfairly, the student often bears the brunt of the consequences from a conflict with their supervisor. It is common that graduate students are afraid of repercussions for speaking up or insisting on their rights, such as requesting to transfer to another supervisor. It is therefore essential to be vigilant of the imbalanced power dynamic and disproportionate ramifications of conflict. It is the duty of all that hold a supervisory position to act fairly towards their students and in consideration of this imbalance.

[Alt-text]: Vertical 2-D bar graph in orange showing supervision 31.0%, faculty/staff misconduct 17.2%, academic integrity 8.0%, tuition/fees 8.0%, course delivery 4.6%, housing 4.6%, academic concessions 3.4%, grading/evaluation 3.4%, requirements/waivers

3.34%, non-academic misconduct 3.4%, academic accommodations 3.4%, required to withdraw 2.3%, registration 2.3%, practicum 2.3%, and interpersonal conflict 2.3%.

Service Users by Faculty of Division

These statistics reflect Service Users' home faculties or divisions. The Faculty of Social Sciences claimed the top spot with the Faculties of ECS and Science following second and third. Some faculties and divisions are not represented on this chart either because there were no Service Users or to protect anonymity.

Over-representation or under-representation relative to the faculty or division's population could indicate either a healthy referral culture or an environment where the services of the Ombudsperson are not broadly known or appreciated. In other instances, they may reflect broader concerns, for example, in appeal procedures or the unfair fettering of discretionary decisions.

[Alt-text]: Horizontal 2-D bar graph in green showing social sciences 64, Engineering and Computer science 51, science 43, education 19, humanities 18, human and social development 17, business 11, law 10, medical sciences 10, and fine arts 4.

Mode of Discovery

The majority of Visitors found out about the Office from friends or family. Referral from the UVic website took second place. Notably, referral by faculty saw a rise from 9% to 12% this year. Conversely, referral by staff saw a fall from 25% to 14%.

Unrepresented in these statistics are the many potential Service Users who are unaware of the Office. A strong referral culture is essential to ensuring these individuals can take advantage of the services of the Ombudsperson.

[Alt-text]: Horizontal 2-D bar graph in orange showing friend or family 52, UVic website 49, staff 37, faculty 31, search engine 19, advertising 18, UVSS 11, and other 39.

DEMOGRAPHICS

Service Users are asked a series of voluntary demographic questions. The resulting demographic information is presented here for the purposes of celebrating the diversity of the Office's Service Users and to identify under-representation or over-representation of fairness complaints by certain groups. The below percentages are calculated from those who chose to provide answers to at least one demographic question. Those who declined to answer any questions are omitted from these calculations.

[Alt-text]: Eight blue circles with white text inside of them reading: 28% Registered at CAL, 36% Person with a Disability, 20% International Student, 17% 2SLGBTQIA+, 15% Visible Minority, 8% Indigenous, 3% Person with a Dependant, 15 Languages spoken.

[Alt-text]: Pie chart showing ages 19 to 24 equals 52%, ages 18 or less equals 7%, and ages 25 or above equals 41%.

FEEDBACK SURVEY

Visitors are asked to fill out an anonymous survey after an appointment, some of the answers to which are shown here. Please note that these statistics only encompass the tenure of the current Ombudsperson in 2023. Overall, feedback was overwhelming positive for the entirety of 2023.

[Alt-text]: A white circle outlined in pink with the words "100% Rated experiences as excellent".

[Alt-text]: Three green circles with white text inside of them. The first indicating that 100% of participants strongly agreed with the statement "I was treated in a helpful, polite, and efficient manner." The second indicating that 100% of participants strongly agreed with the statement that "communication was timely and adequate". The third indicating that 100% of participants chose yes when asked if the Ombudsperson's services were accessible to them?

[Alt-text]: Three green and orange pie charts. The first indicating that 83% of participants answered yes to the question of if expectations were met and 17% answered no. The second indicating that 83%

strongly agree and 17% agree with the statement “I trust the ombudsperson to maintain my confidentiality.” And the third indication that 83% strongly agree and 17% agree with the statement “I was given relevant, accurate, and adequate information.”

FAIRNESS 101

Each decision that impacts a student made by faculty or administration is an exercise of power. This power flows from the state where UVic derives its power as an institution. This authority should not be used unfairly. Each decision-maker must follow a set of standards, so that their decisions are legally compliant and in alignment with UVic's commitments to fairness (See, for example, Policy GV0200: Policy on Human Rights, Equity and Fairness.) Below is an adapted set of standards from BC's Office of the Ombudsperson (https://bcombudsperson.ca/assets/media/Quick-Tips_FBD_standards-overview.pdf). If followed, this set of standards can help UVic decision-makers come to fairer decisions.

Participation & Being Heard

- Provide notice that a decision will be made and how.
- Share adequate details about allegations.
- Provide an opportunity to be heard.
- Ensure decisions are timely.
- Provide appeal options.

Impartiality & Integrity

- Ensure you haven't already made up your mind and you are ready to listen.
- Ensure there is no conflict of interest.
- Avoid using irrelevant information.
- Ensure there is an independent decision-maker for appeal.

Reasoned Decisions

- Balance all available evidence.
- Ensure decisions are contextual and based on individual circumstances.
- Be logical and coherent in decisions — and do so in writing, if appropriate.

Lawful & Fair Rules

- Comply with legal requirements and UVic policies.
- Put forethought into rules and criteria — contact the Ombuds for help.

Equity & Respect

- Consider mental-health impacts.
- Consider diverse experiences.
- Use an equity lens and seek diverse perspectives in design of decision-making processes.

Accessibility & Privacy

- Ensure the decision-making process is flexible and responsive to diverse needs.
- Protect sensitive information.

Accountability

- Have an effective complaint process.
- Use complaints to improve service.
- Support apologies when warranted (https://bcombudsperson.ca/assets/media/Quick-Tips_FBD_standards-overview.pdf).

TRIAL BY SURPRISE

Participation Rights in Misconduct Processes

Most people embrace the principles of fairness in theory. The golden rule of ‘treat others as you would like to be treated’ likely accounts for this, however it is not uncommon for decision-makers to act unfairly. Why is this?

Consider the following anonymized scenario developed from a conglomeration of case data. Details have been changed to protect identifying information.

Emily receives an email from her Department Chair with the following: “Your professor has brought to my attention that you may have used generative AI for your final assignment. Please come to my office in two days time to discuss. Please see UVic’s Academic Integrity Policy linked here.”

In the two days that she nervously waits, Emily wonders how to prepare. She really can’t imagine why her assignment has been brought into question. She feels intimidated, so she doesn’t ask for more details. She’s worried she’ll get in more trouble for asking. She is embarrassed too, so she doesn’t ask anyone for support.

During the meeting, the Chair points to the passages that concern him. He prompts Emily to explain why her paper was flagged with “multiple AI detectors”. He presses her to explain how her writing is more sophisticated in this assignment than in her previous assignments. The Chair shows her that he has compared this assignment to her others and, in his opinion, it looks like a different author wrote them. Emily maintains she did nothing wrong, because, in truth, she didn’t use AI to write the assignment. She hasn’t had the time to digest the information the Chair is showing her and she cannot come up with coherent answers on the spot. She’s nervous. She knows what she is saying sounds unconvincing, because she doesn’t have anything to back it up. Emily leaves the meeting feeling overloaded and wishing she could have explained herself better. She didn’t cheat, but it seems like a forgone conclusion now. She knows that it must be a big misunderstanding, but feels like if she speaks out about the unfairness, it will seem accusatory and may worsen the situation. In the end, she stays quiet as the Chair holds her fate in his hands.

Based on the professor's allegations and the fact that he received no logical explanation from Emily, the Chair decides that a fail is warranted.

In this scenario, Emily struggled to articulate a compelling defence under time pressure. This is not because she did something wrong — remember, she did not actually infringe the policy. Her unconvincing defence and ultimate guilty finding were caused largely by an unfair process. The Chair did not provide her meaningful details of the allegations, did not specify exactly what portion of the policy he thinks she broke, and did not acknowledge the vast power differential at play. In fact, he utilized his institutional power to pressure her to respond in the moment, which did not afford Emily a fair opportunity to participate in the process.

[Alt-text]: Silhouette of a blue leaf with text inside reading: “Thank you for your help today! It clarified things for me.” 2023 Visitor

The Chair has denied Emily the opportunity to bring into question the validity of the AI detectors, provide meaningful counter evidence, and seek support appropriate to the seriousness of the allegations. Although these types of scenarios may arise from oversight or overwork, reliance on evidence elicited from an “ambush” is unjust and improper. In sum, the Chair's decision is wrong and Emily feels deeply aggrieved.

This scenario is not uncommon at UVic. As such, I wish to underscore the necessity of ensuring students subject to misconduct decisions are not treated like Emily and are instead given a proper opportunity to participate in the process.

At UVic, a misconduct meeting is often a blend of two concepts. On one hand, a meeting is an interrogation, where information is solicited by asking a student to attend and answer questions. And simultaneously, it is hearing (or trial), where the decision-maker is tasked with balancing both sides of the story and coming to a decision. This is where the student has the chance to explain how the allegations are wrong, or how the situation isn't how it seems on the surface.

Extrapolate further to the world outside of the University and apply this scenario to the court system. Imagine your distress, if you were brought to a criminal trial with no (or very little) foreknowledge of the allegations. This is your only chance to defend yourself and you don't even know what you are alleged to have done. This method, as you can imagine, may save time, but would likely result in the

judge getting it wrong. At a minimum, you would feel that the process was deeply unfair.

The right to participate in a decision making process and tell your side of the story is essential to a fair and just process. Even if a student has committed an act of academic misconduct in actuality, they must be afforded the right to participate. Because without, the process loses both legitimacy and integrity.

In theory, students who experience an unfair process can appeal to a higher authority. In reality, appeal timelines can be prohibitive and the effort required by the student immense. It also requires an additional decision-maker(s) to review. In fact, once the student has been subject to an injustice, the damage is often already done. Distrust, anger, and disillusionment amongst students treated unfairly is common — and an appeal weeks later does little to heal these wounds.

Misconduct meetings (both interrogation and hearing) take place all around UVic — may it be within the academic departments, residence, or within student support units. Regardless of the setting, whenever a student is subject to a decision as to if they infringed a policy, they must be provided the opportunity to meaningfully participate. To do otherwise, is an injustice.

[Alt-text]: Silhouette of a blue leaf with text inside: “You’ve been a tremendous help through the process. I don’t want to minimize how essential your help has been. Thank you.” 2023 Visitor

Recommendation #1

The Terms of Reference for the Office of the Ombudsperson allow the Ombudsperson to make recommendations to improve fairness on campus. Based on the data and my observations from 2023, I call on all individuals administering misconduct policies or codes of conduct to examine their practices and in so doing ensure any accused student is provided the following:

1. comprehensive and specific details of the allegations being made against them including reference to the infringed policy section or code section;
2. a copy of or access to all evidence being used against them balanced with the privacy needs of a complainant; and
3. enough time to properly consider this information and seek support before being asked to respond.

FORCED FIT

The Procrustean Urge to Fetter One's Own Discretion

Footnote: "Procrustean" refers to an approach that rigidly enforces rules and disregards unique circumstances to the victim's detriment. The term originates from the Greek mythological figure of Procrustes, who would brutally remake his victims to fit the size of a particular bed. The term serves as a cautionary metaphor, as Procrustes disregarded individual differences resulting in harm, which happens in many settings today. See <https://www.merriam-webster.com/dictionary/procrustean>.

The University entrusts many individuals with the power to use their judgement to say Yes or No to student requests, or decide if a student has infringed a policy. This approach acknowledges the obvious: a one-size-fits-all strategy will leave some at a disadvantage. This task is not straightforward. It takes time, resources, sensitivity, technical know-how to balance evidence, and the courage to stand by a decision. Sometimes, decision-makers don't follow through with their duty and unjustly create self-imposed rules to insulate themselves from these pitfalls.

Consider the following anonymized scenario, where a decision-maker limited their own ability to be flexible and thus denied a student the proper consideration their request was owed:

A Chair considers a case where a student is alleged to have plagiarized his final assignment by failing to include some references. The Chair thinks that it was likely a mistake due to a lack of knowledge rather than a calculated action to deceive. The student has a learning difference that impacts his concentration, attention to detail, and stress management. It is his first university course and he is a new arrival to Canada. The student explains how he has visited the Centre for Academic Communication and has spoken multiple times with his professor about how he can avoid this. Given the stress caused by the accusations and the student's remediating actions, the Chair is pretty sure the student won't do something like this again. Despite this, the Chair fails the student's assignment (and, as a result, the course), because the policy states that a fail is normally imposed for instances like this. Additionally, the Chair feels that she cannot be more lenient, because she has imposed this penalty for similar infractions on other students in the past and she may get complaints about differential treatment or inconsistency. In the back of her mind,

she's also worried that she'll have to do the same or at least consider doing the same for every student who has a similar situation and it would be a free-for-all. As a result, the student fails the course and must pay international tuition again. His admission to a future graduate school is now in jeopardy. He's disillusioned and wonders why this couldn't have just been a learning opportunity without the harsh punishment.

[Alt-text]: Silhouette of a blue leaf with text inside: "Your time and patience are greatly appreciated...Thank you once again for all your help." 2023 Visitor

Consider the next scenario with a similar theme:

An academic unit adopts a practice where they deny all waivers (exceptions) for certain requirements with little to no regard to the student's circumstances. Likely, they do this because there are so many requests and they can indisputably justify the denials because of their duty to safeguard the integrity of the program. The person responsible for approving or denying these waivers is also very busy and has more pressing responsibilities. This practice is not publicized despite a waiver form being available on the advising website.

To graduate as planned, a student needs to take two courses at the same time, but one is a pre-requisite for the other. Using the form, the student asks for a waiver. She submits a detailed plan for completion and shares her circumstances in detail. She has a high GPA. The instructor writes a letter of support stating that the student will likely be successful without the pre-requisite knowledge. A few weeks later, the request is denied in a short email with no reference to how the decision was reached or by whom. The student now needs to find housing at the last minute. She also declines a job offer, as her graduation is delayed. She doesn't know what to appeal, because there was no rationale given and an appeal would likely take too long. She feels like the department led her on by posting the pre-requisite waiver form, but then not truly considering her request. She thinks it would have been better to know that she couldn't do it in the first place, so she could have planned accordingly.

University policies and procedures give some certainty and predictability to people making requests. These policies and procedures may stipulate what the rules are, what is within the decision-maker's jurisdiction, and what factors should be considered — but, eventually, it comes down to an individual to make the call. This power bestowed on a decision-maker is called discretion — and it is granted for good reason.

In a busy academic environment, taking the time and dedicating the resources to exercise one's discretion (i.e. properly consider the circumstances of each case) can be straining. In addition, decision-makers can easily adopt the fallacy that treating every request the same is fairest (This concept is best demonstrated by the dichotomy between equality and equity (substantive equality). See <https://bcombudsperson.ca/assets/media/OMB-FairnessInPractice-ForWEB-Feb18-5.pdf> at page 21.).

Likely in response to these issues, decision-makers can be tempted to fetter their own discretion by creating rigid rules to treat each case the same and, in essence, make the choice for them. This is not confined to the university setting, in fact, fettering discretion is a legal term where a body that is entrusted with discretionary decisions focuses “blindly on a particular policy to the exclusion of other relevant factors.” (*Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470 at para. 62.).

Ombudspersons across the province are attuned to this issue (https://bcombudsperson.ca/assets/media/OMB-Making-Amends_Report_121222_web.pdf). Speaking to the university setting, Shirley Nakata, the University of British Columbia's Ombudsperson for Students, has shared:

Fairness is flexible and context-specific. Cognitive and administrative shortcuts help us to get through the day without being paralyzed by the sheer volume of information we need to assess. However, the proper exercise of discretion requires slowing down and engaging with the facts of each individual case. [...] Zero-tolerance policies (i.e. if x, then y) may sound progressive and efficient, but fail to allow for the proper consideration of relevant factors (https://ombudsoffice-2016.sites.olt.ubc.ca/files/2023/10/2022-Annual-Report-Office-of-the-Ombudsperson-for-Students_Final.pdf).

Failing to consider context and individual circumstances perpetuates injustice. In the scenarios above, the decision-makers did not “slow down and engage

with the facts” and likely missed key information that would have changed a reasonable person’s mind. The students in these scenarios may well have deserved a different outcome. Without a doubt, the students deserved at least proper consideration.

A common area of difficulty arises at UVic around the word normally. Several policies and procedures include this proviso when describing a recommended course of action or outcome. The word normally signals to those reading a policy that UVic wants there to be room for consideration of the circumstances. To those administering a policy, the word normally should signal that it is their duty to fully consider a case and its circumstances when deciding on an outcome — and exercise their discretion when appropriate. Normally has been specifically included in the policies to empower decision-makers to be able to choose another option or be creative in their outcomes. To ignore it, is to act contrary to policy and to UVic’s ethical commitments.

By limiting this essential task of exercising discretion, these errant decision-makers risk undercutting UVic’s commitments to equity, respect, diversity, and cultural sensitivity. They ignore the lived reality of students in favour of expediency or the one-size-fits-all mentality. This is an injustice.

Recommendation #2

Based on the data and my observations from 2023, I recommend each decision-maker reflect, recognize that exercising their discretion is a key aspect to fair process, and exercise that discretion when appropriate.

I recommend that academic units and student support units review their practises and policies that may both fetter discretion or create a rigid rule that does not take into account the unique circumstances of each request or case, especially when this is contrary to policy or the Academic Calendar. If such practises or policies are discovered, consider removing them and replacing them with a more equitable practice. Consider consulting the Ombudsperson when developing these new practices.

IN CONCLUSION

Dear reader,

It is with sincerest thanks that I acknowledge the many individuals who allowed this report to come into being and for the Office to fulfill its mission in 2023.

Looking forward, the Office is well poised to advocate for fairness at UVic into 2024 and beyond. Any comments, feedback, or collaborations are both welcome and appreciated. Do not hesitate to reach out, if you would like to contribute to the building of a community that values fairness.

Sincerely yours,

[Alt-text]: Signature of Angus Shaw in black handwritten letters

Angus Shaw, Ombudsperson

[Alt-text]: Graphic cartoon style representation of two owls one green and pink and the other blue and orange sitting side by side on an orange branch with pink leaves.

[Alt-text]: Green circle with white lettering with the Office of the Ombudsperson for the University of Victoria logo in white: silhouette of a flying dove in a triangle surrounded by a an incomplete circle. Includes also the contact information of the office website: uvicombudsperson.ca, email: ombuddy@uvic.ca, and phone number (250) 721-8357.