



Office of the
Ombudsperson for Students
ANNUAL REPORT 2013



OFFICE OF THE OMBUDSPERSON FOR STUDENTS ANNUAL REPORT 2013

INTRODUCTION

I am pleased to present the fifth annual report of the Office of the Ombudsperson for Students.

This five-year point marks a transition for the Office in different ways. Still in its infancy, especially in relation to other Canadian university ombuds offices, we are steadily becoming part of the campus landscape and the rhythm of campus life. In 2013, more students consulted with us and we worked with a broader range of faculty and staff to collaborate on initiatives and policies that impact students.

We also opened an office on the Okanagan campus in August, 2013 to ensure that ombuds services were equally accessible across our two main campuses. As detailed later in this report, the uptake of ombuds services at the Okanagan campus was quick with 40 new cases between August and December 2013.

We will need to continue to develop, evolve and adjust our services to the changing needs and priorities of UBC. Transitions can be tricky. We certainly see this with students who are facing a critical point in their academic programs and with faculties and units that might be addressing a challenging issue. Opportunities and the time to explore options and find the appropriate supports to move to the next step are critical. Re-defining and re-shaping what was and moving into fresh new spaces can often be exciting and intimidating at the same time. Connecting and sharing those spaces with others, like-minded and otherwise, is a way to successfully manage transitions. The more perspective we bring to the table, the better chance we have to find creative pathways towards resolution.

In the spirit of transitions, I would like to express my heartfelt thanks to Prof. Stephen Toope for his constant support and encouragement for the work that we do. I have no doubt when I say that without his leadership this office would not have been established with the mandate that it has. In the coming year, we will be welcoming a new president, Dr. Arvind Gupta, with whom we will have the privilege of continuing to enhance and ensure the effective delivery of ombuds services.

I express my sincere thanks also to the Deputy Vice-Chancellor, Deborah Buszard, for her leadership and energy to create an ombuds office on the Okanagan campus. Maria Mazzotta, the Okanagan Ombuds Officer, has been working closely with Prof. Buszard and members of the Okanagan campus community to build this new office in a way that fits the needs of the Okanagan campus.

Maria and Joy Coben, Vancouver Ombuds Officer, are the faces of the Ombuds Office for students and they model and deliver our message of fairness, transparency and compassion. The satisfaction surveys consistently indicate students' appreciation for their effective and constructive approach.

Finally, my gratitude to the Ombuds Advisory Committee whose composition has changed over the years, but with some original members who have stayed on as solid and wise advisors to the Office. Bringing a breadth of views, experience and knowledge bases, the Committee continues to guide me in the future direction and goals of the Office.

Respectfully submitted,

Shirley Nakata
Ombudsperson for Students

WHAT WE DO

The mandate of the Ombuds Office is to ensure that students are treated fairly in every aspect of their university life. An advocate for fairness, but not for the individual student or the University, the Ombuds Office works with students and the University community to promote fair policies, processes and outcomes.

UBC has an array of resources to support and guide students through adversity and difficult situations and it has even more policies and procedures for students to access when they believe that a process or a decision has been unfair or wrong. In most student consultations, we explain and refer students to these resources and policies. Listening, exploring options and providing a sounding board for students' concerns and reactions are pre-requisites for effective referrals. Each interaction is unique depending on the particular student and the issues presented. Common in all conversations is our objective to help students respond constructively to the current situation and to build their capacity to deal with future challenges.

In some cases, student concerns are precisely about the resources that are intended to help them and the policies and procedures that exist to provide avenues for relief. In such situations, we help students articulate their concerns, identify pathways towards constructive resolution and coach them to effectively and respectfully communicate their issues in a way that repairs, maintains and builds relationships. Where patterns or trends emerge, our Office will work with the responsible faculty or unit and share any recommendations we might have for improvements.

The Ombuds Office has no authority to overturn decisions or to direct actions. Informal resolution is the dominant modus operandi, although the Office can conduct formal investigations as a last resort and make recommendations regarding an academic or administrative unit's processes or decisions. The organizational structure for the Ombudsperson to report to the President is to ensure independence and accessibility to the executive structure if and as needed.

While our jurisdiction is limited to students, our work with faculty and staff on skills and policy development, as well as on individual cases, is key to achieving our objectives. The role of "hub" or "convenor" is one which our Office strives to fulfill. Bringing perspectives and voices to a common table to share experiences, identify improvements and work collectively on hard issues is one of our core activities as we believe it creates critical opportunities to reach our individual objectives more effectively, in a cohesive and integrated way. We are much stronger when we are in step with each other and mutually support each other's work.

Each year we receive inquiries and provide advice to a number of faculty, staff, parents and members of the public. In 2013, there was a slight increase in the number of faculty and staff who reached out to our Office for consultation about non-student related concerns. While we are unable to take complaints from individuals other than students, we provide information and referrals and explore options to assist any person who contacts us.

“ Thank you so much for your listening ear and non-judgemental support. It really made a difference in turning over a new leaf and feeling comfortable in my decision to walk away from this situation...”



WORKING WITH THE UNIVERSITY COMMUNITY

ASSOCIATE DEANS' ROUNDTABLE

Students describe issues and concerns that reveal that each faculty does things in their own way, for better or worse. We created an informal roundtable series for Associate or Assistant Deans of each faculty to share their experiences, resources and ideas about common student challenges. The goal is to learn from one another, exchange ideas and identify any systemic issues which could benefit from a joint recommendation or action of all faculties. The Roundtable meets three to four times a year and invites guest speakers where there are current issues or topics that might impact all faculties.

The group has created a document called “Responding to Suspicions of Academic Misconduct: Guidelines for Instructors” that contains a set of best practices for faculty members to follow when they suspect academic misconduct. It will be distributed within the faculties, with any modifications necessary to meet the needs of an individual department or program.

EQUITY & DIVERSITY CONSULTATION

The University launched a consultation process about the equity and diversity structure at UBC. With Nitya Iyer, a human rights lawyer and former UBC Law Faculty member, our mandate was to produce a report summarizing the feedback received from the University community and make recommendations about structural changes.

FAIRNESS REVIEW OF FACULTY PROCEDURE

I conducted a review of the academic misconduct process followed by a Faculty, with the consent of the Faculty and the student who complained that the process was flawed. In finding that no unfairness had occurred, I made several recommendations relating to improvements that could ensure more robust, transparent and effective processes for the Faculty to follow in future cases. The Faculty is currently working to implement each of the recommendations that included developing templates and workshops, establishing clear and accessible information on their website and building a secure repository for academic misconduct cases.

ALMA MATER SOCIETY - GRADUATE STUDENT SOCIETY - OMBUDS OFFICE DIALOGUES

We met monthly with the AMS Advocate and Ombudsperson, and the GSS Advocates to discuss trends, processes and specific issues that were challenging for one or more of our offices. These conversations assist each of us to not only help individual students better but also identify systemic issues that require working constructively and proactively with other units. They also create the space to build understanding of the similarities and differences between undergraduate and graduate student issues, and the advocacy and ombuds practices of our offices.

GSS - FACULTY OF GRADUATE & POST-DOCTORAL STUDIES - OMBUDS OFFICE DIALOGUES

We also met regularly with representatives from the GSS and FGPS on issues of concern and relevance for graduate students. Topics ranged from protocols for students returning from leaves to supervision issues. This collaboration and sharing of different perspectives on issues helps us to ensure that we are responding to graduate student issues in a multi-dimensional and cohesive manner. A continuous feedback loop of information, ideas and insights among our three offices enables us to support graduate students, graduate programs and the University.

CAMPUS OMBUDS

The AMS Ombudsperson and the Ombuds Office have continued a collaborative and cooperative working relationship since this Office's inception. Since that time, we have reached out to other ombuds on campus and convened a campus ombuds group that includes student ombudspersons from the Faculty of Law and the Sauder School of Business. The Ombuds Office will provide orientation and training to incoming student ombudspersons each year.

STUDENT REPRESENTATIVES ORIENTATION WORKSHOP

Students taking on roles where they will be advising or representing students were invited to spend a day meeting and hearing from various key offices on campus relating to student life. Representatives from Access & Diversity, Senate Appeals, Counselling Services, International Student Development, President's Advisory Committee on Student Discipline and Housing came to speak about their respective roles and functions on campus.

ST JOHN'S COLLEGE STUDENT ACADEMIC COMMITTEE WORKSHOPS

The Ombuds Office and FGPS collaborated with the St John's College Student Academic Committee to create and deliver a series of workshops for graduate students on topics such as funding, conflict management and career development.



REFLECTIONS & OBSERVATIONS

We learn a great deal, not only from our interactions with individual students, but also from our work with various members of the University community, faculty and staff members alike. From these interactions, we can pull information together to understand particular issues and challenges within the context of the University as a whole, pulling our view up from the micro to the macro to see the broader environmental influences and the clustering of issues that can help advance effective systemic change.

TRANSITIONS

I would characterize many students who come to the Ombuds Office as being at a point of *transition*, faced with unexpected shifts and developments in what they had anticipated would be an uneventful journey in their undergraduate or graduate programs. Transitions can present themselves in many forms: failed courses, allegations of misconduct, interruptions due to medical or personal circumstances, withdrawals, poor relationships with peers, instructors, staff and supervisors. The moves from high school to university, from their homes to a new country, from one model of learning to another are also significant transitions for many of our students.

“Thanks for your concern.
You make me feel so warm
in a foreign country.”

We have a tendency to focus our energies on rules, procedures and supports leading up to an adverse decision against a student. Once a decision is made, there is often little to aid and guide the student to move beyond that outcome to either get back on track with their academic program or choose a different path. A disciplinary decision, a withdrawal from a program, eviction, or a decision that there is no further funding can all place students at a crucial juncture where having the appropriate resources and guidance can make the difference between a downward spiral or a new start.

An undergraduate student has a failed year and is required to take a year off. She does not understand what this means and what she should do during this year. She is worried about telling her parents and wonders whether she could get through the year without letting them know. She wants to continue her program but has been told that she will likely find it difficult to graduate if she returns.

Our Office assists students to work with the faculties and units they need to identify, choose and align themselves on different pathways for successful transition. Some might characterize this as hand-holding or coddling. I would say that to the extent that we have admitted a student to this University, we continue to have a shared responsibility in outcomes, the good and the bad. Our reputation as a top-ranked university must surely be based not only on those students who achieve academic success but also in how we respond to those who struggle with challenges both within and outside of their control.

A graduate student has been suspended for four months for academic misconduct. His supervisor has told him that she will no longer be his supervisor and that he will have to find a new supervisor once he finishes his suspension. He does not know how to go about finding a new supervisor, what information he must or should share with faculty members about his discipline and how much time or help he will have to confirm a new supervisor and perhaps a new research topic.

“No matter what the outcome, the whole process will be the way I learn to improve communication skills in a real life problem.”

Some transitions, and the bridges to move through them, are simply an exercise in choosing the best among a set of relatively undesirable options. But while we may not be able to alter the final outcome, we may be able to help students understand why they got to where they are, prioritize or re-prioritize their goals and shift their perspectives. These are opportunities for us to help strengthen students’ resilience and enhance their toolkits to deal constructively with challenges they might face in the future.

Clear rules and fair and respectful processes contribute significantly to a student’s ability to transition beyond a difficult outcome and move forward with their lives. In conjunction with other resources available to students like counselling and academic advising, we should be able to construct a safety network for students to *succeed*, in the broadest sense of that word, that is not limited to graduating with honours or even graduating at all. For most students, they experience UBC as a whole, not in the compartmentalized, unit-by-unit way in which we often operate. Successful transitions require us to work as one institution: if we close one door, we can help students find other open ones, on campus and off.

FAIRNESS ≠ SAMENESS

Consistency is a core requirement of fairness. That we are not influenced by irrelevant factors or apply one rule to one individual in a particular fashion and then differently to another is essential. Sometimes, perhaps more often than I would hope, we go a bit overboard and rules and procedures are applied to the “letter of the law” losing sight of the “spirit of the law”. The reason we hear for a rigid application of a rule is that doing otherwise, i.e. looking at the circumstances as a whole and taking into account relevant factors, would be unfair to others.

This is a fundamental misunderstanding of fairness. 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 keeping in mind the broader purpose and goal that a particular rule or process was intended to achieve when it was created.

Our university operates by a complex and complicated system of policies, rules and procedures. They 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.

An international undergraduate student was retroactively withdrawn from all of her Term 1 courses due to a medical condition. As a result, she was no longer enrolled in the required minimum number of credits and was cut off from essential student services in early December even though she was registered to return to full-time studies in January.

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 which 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;



it is often harder and takes more out of us to carefully consider the person in front of us and make a substantively fair and equitable decision.

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 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 so that they 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.

A FIDUCIARY RELATIONSHIP – A DUTY OF CARE

No one learning, teaching or working in a university setting is unaware of the power differential that exists within various individual and institutional relationships. Power imbalances arise in so many different contexts and in complex ways, but they manifest most notably and sometimes profoundly in the graduate student-supervisor relationship.

In other hierarchical relationships that exist in our society, the law has applied the framework of a fiduciary in order to protect the rights and interests of the party with less power, the beneficiary. In professional relationships like doctor-patient, lawyer-client, teacher-student, our courts have imposed a fiduciary duty on the professional to act in the best interests of, and only in the best interests of those in their care. The courts have been willing to expand the notion of the fiduciary beyond professional relationships where the fiduciary has some scope for the exercise of discretion or power, in a unilateral way to affect the beneficiary’s legal or practical interests and the beneficiary is particularly vulnerable to the fiduciary’s exercise of that discretion or power.¹ In fact, there is an Alberta court decision where a supervisor was found to owe a fiduciary duty to his graduate student, though in the facts of that case, the court held that the supervisor did not breach those duties.²

A 5th year international Ph.D. student is having difficulty receiving guidance from his supervisor who is mid-way through her sabbatical. The supervisor is travelling and there have been months without any contact. The student has approached his grad advisor, the department head and other faculty members, but they have told him he needs to wait for his supervisor’s return.

There is a compelling argument that a faculty member who undertakes to supervise a graduate student fits within the criteria set out above. Beyond the economic or financial interests of the graduate student, there are significant “human and personal interests”³ at stake that ought to be protected because, as in other relationships upon which fiduciary obligations have been imposed, vulnerability, trust, influence and dependence exist to shape the graduate student-supervisor relationship.

The fiduciary framework is primarily intended to prevent exploitation of the beneficiary by virtue of the power held by the fiduciary. Those powers have been described to include the powers of reward, coercion and expertise.⁴ Practically speaking, graduate students fear reprisal in the form of negative references, barriers to progress or continued funding, adverse impact on career options, etc. In addition, few graduate students have a simple, singular relationship with their supervisors.

1 *Frame v. Smith*, [1987] 2 S.C.R. 99, 42 D.L.R. (4th) 81

2 *Plews v. Pausch*, 2006 ABQB 607

3 *Supra*, footnote 1 at page 143

4 Stone, A. (1971). “Legal Education on the Couch.” 85 Harv L. Rev. 392

Many also have employment relationships directly or indirectly connected to their supervisor that could potentially give rise to perceptions of and actual bases for conflicts of interest.

A graduate student works in a lab managed by her supervisor's spouse. The lab manager regularly yells at students and insists that they work through weekends. The student feels her research is suffering but is fearful of complaining.

It has been suggested that while an enforceable, legal framework of a fiduciary might be applicable to the graduate student-supervisor relationship, it may be more pragmatic and pedagogically useful to consider the fiduciary framework as more informative of best practices.⁵ What the fiduciary framework could provide is an outline of broadly stated minimum requirements that can be filled in by the University, faculty, department and each supervisor to meet specific needs and goals. The value of such a framework is that it could provide a set of commonly held and understood reference points that establish the ground rules and expectations on the part of both the University and the student to their mutual benefit. While various guidelines and practices will exist among departments and individual faculty members, a fiduciary framework could help us all in presenting an explicit set of guidelines for our interactions which will be of particular help when challenges arise. Beyond the individual relationship in which fiduciary obligations can arise, as an institution we also need to ask when and under what circumstances might there be a fiduciary obligation on the broader University community to act in the interests of the student when individual fiduciary duties have not been fulfilled.

⁵ Mackinnon, K. (2007). "The Academic as Fiduciary: More than a Metaphor?" Canadian Legal Education Annual Review, 1, 115-144.



OMBUDS OFFICE ACTIVITIES

THE OKANAGAN OMBUDS OFFICE

The Ombuds Office at the Okanagan campus was warmly received when it opened in August, 2013 and has continued to receive the campus' support and cooperation as it settles into the community there. Maria Mazzotta, Ombuds Officer, has a joint report to the Deputy Vice-Chancellor, Deborah Buszard, and the Ombudsperson.

The focus of the office for this first year is to introduce the ombuds resource, our mandate and role to students, faculties and staff. Our objective is to ensure that the Ombuds Office is truly a system-wide resource for UBC, with constant and consistent connection and exchange between the two campus offices. Attentive to variations and differences between the Okanagan and Vancouver campuses, we will be building on our collective and shared experiences and goals to enhance service delivery that is meaningful and responsive at each site.

Between August and December 2013, key activities of the Okanagan Ombuds Office included:

Presentations to or meetings with:

- Deans' Council
- Office of the Provost
- Associate Dean, Students and Curriculum, IKBSAS
- School of Engineering Leadership Team and Faculty Council
- Faculty of Creative and Critical Studies Leadership Team
- Faculty of Health and Social Development Leadership Team
- Faculty of Medicine, Southern Medical Program
- College of Graduate Studies
- Acting Chief Librarian
- Centre for Teaching and Learning
- Okanagan Sustainability Institute
- VOICE Project
- UBC Students' Union Okanagan Executive, Board, and Staff
- AVP Students' Management Team and Units
- EDUC and EAP 104 classes
- UBCO Senate
- AVP Finance and Operations
- Management Forum
- UBCV Equity & Inclusion Office
- Director, Intercultural Understanding Strategy Development
- UBCO Campus Programmers Meeting
- Campus Security

Participation in:

- Create
- Graduate Students Orientation
- New Faculty and Staff Orientation Fair
- Parents' Conference
- Adjunct Faculty Orientation

The Vancouver Ombuds Office delivered presentations and workshops to or at events held by:

- Arts Advising Conference
- Science Advising
- Counselling Services
- Engineering faculty and staff - Navigating the Academic Misconduct Process
- Law School Orientation - Respectful Dialogue Panel
- Graduate Student Society Executive

The Vancouver Ombuds Office participated in the following orientation events and fairs:

- New Staff and Faculty Orientation
- Graduate Students Orientation
- Imagine
- Social Work Equity Open House
- WinterConnections - an orientation event for first year international graduate students
- Speakeasy Orientation

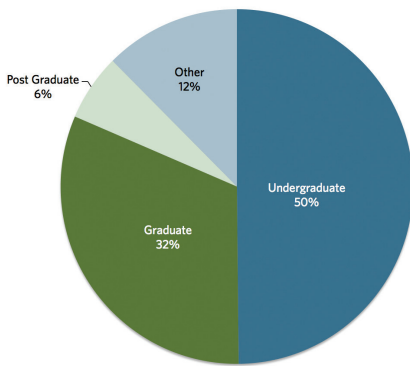
The Ombuds Office is a member of and/or actively involved in the following professional associations:

- Association of Canadian College and University Ombudspersons
- Forum of Canadian Ombudsman
- NorthWest Ombuds Group
- California Caucus of Colleges and University Ombuds
- BC Academic Ombuds Group
- Steps Forward

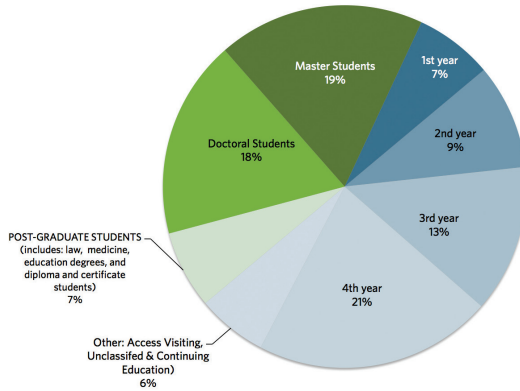


OMBUDS OFFICE STATISTICAL INFORMATION - VANCOUVER

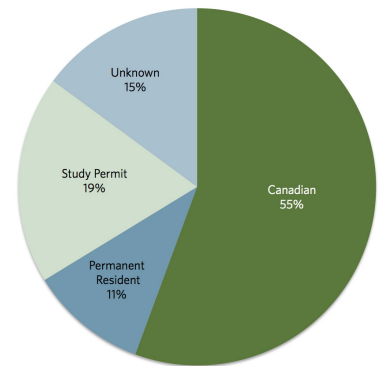
STUDY LEVEL



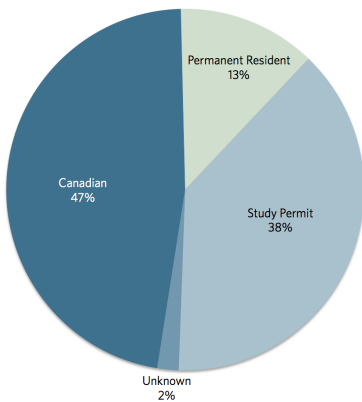
YEAR OF STUDY



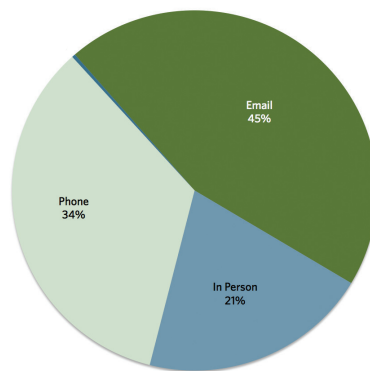
STATUS OF VISITORS - ALL



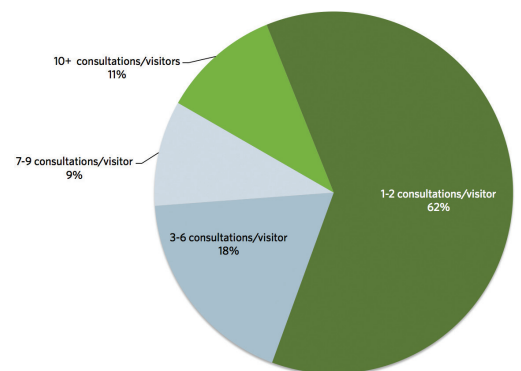
STATUS OF VISITORS - GRADUATE STUDENTS



INITIAL MODE OF CONTACT

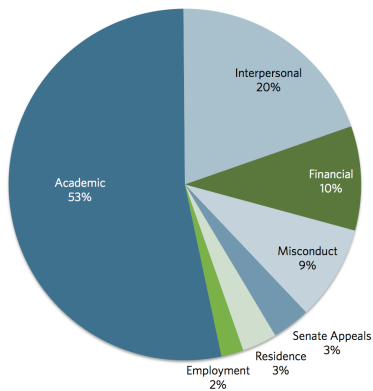


NUMBER OF CONSULTATIONS PER VISITOR

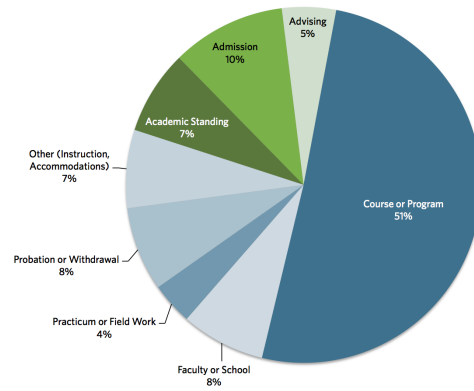


OFFICE OF THE OMBUDSPERSON FOR STUDENTS
ANNUAL REPORT 2013

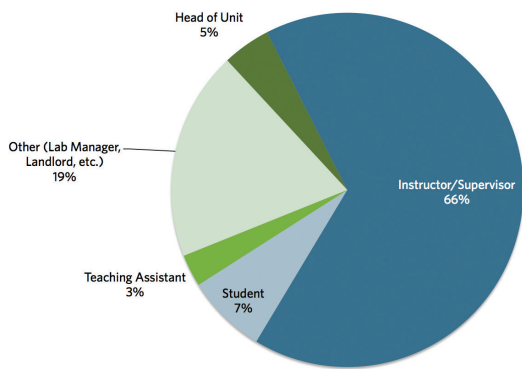
NATURE OF CONCERN - ALL



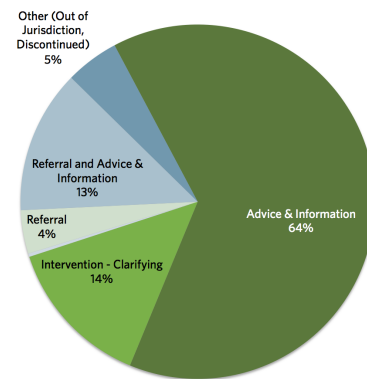
NATURE OF CONCERN - ACADEMIC



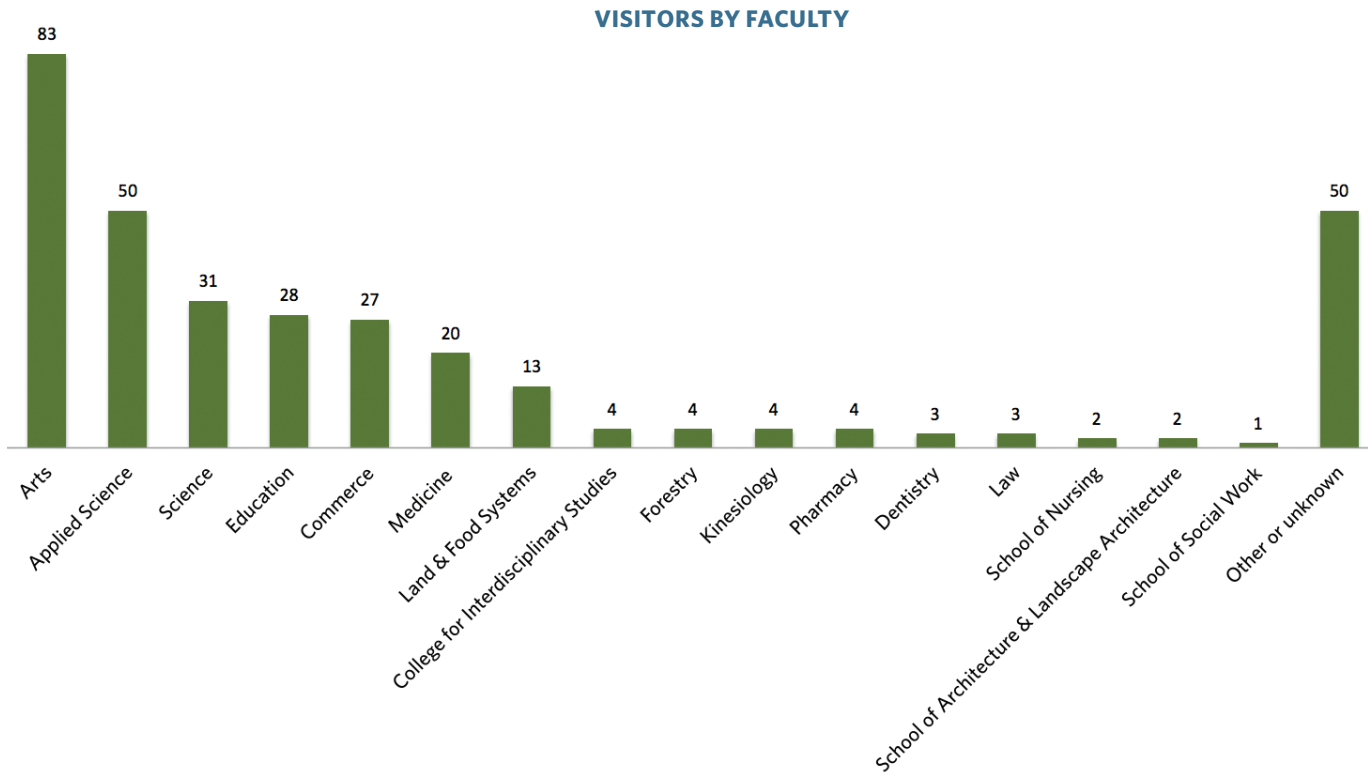
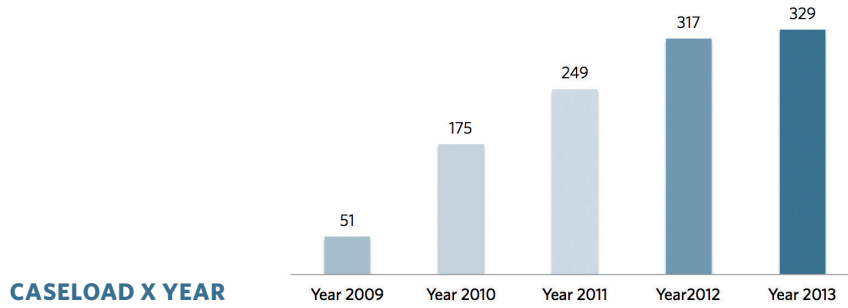
NATURE OF CONCERN - INTERPERSONAL CONFLICT



ACTION TAKEN



OFFICE OF THE OMBUDSPERSON FOR STUDENTS
ANNUAL REPORT 2013

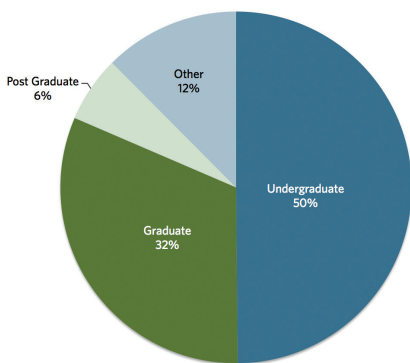


* Other includes staff, faculty, post-doctoral students, parents, unclassified, prospective and access students

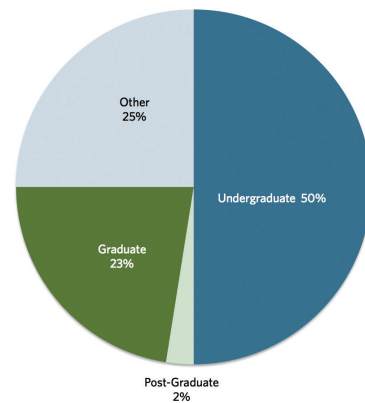
OMBUDS OFFICE STATISTICAL INFORMATION - OKANAGAN

AUGUST - DECEMBER 2013

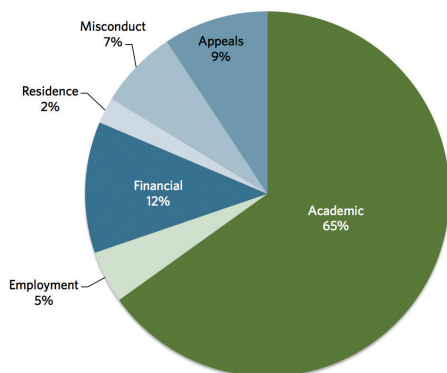
STUDY LEVEL



VISITORS

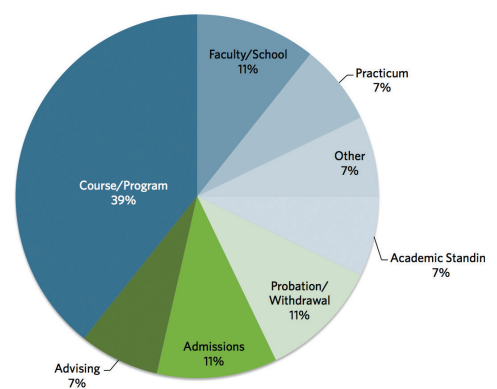


NATURE OF CONCERN - ALL

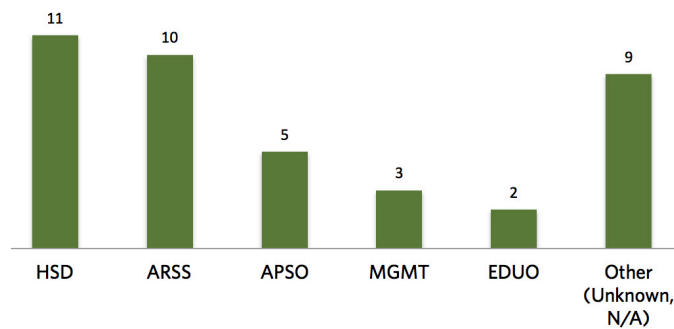


* Some visitors have more than one concern

NATURE OF CONCERN - ACADEMIC



VISITORS BY FACULTY



2013 SATISFACTION SURVEY RESULTS (%)

Sixty-one completed responses were received to the survey.

	% N/A	% STRONGLY AGREE	% AGREE	% DON'T KNOW	% DISAGREE	% STRONG DISAGREE
INFORMATION ABOUT THE OMBUDS OFFICE WAS EASY TO FIND.	1.5	19.4	58.2	4.5	11.9	4.5
THE OFFICE IS CONVENIENTLY LOCATED.	9.1	15.2	47.0	13.6	15.2	0.0
MY INITIAL CONTACT WITH THE OMBUDS OFFICE WAS PROMPTLY ACKNOWLEDGED.	1.5	82.1	14.9	0.0	0.0	1.5
I WAS ABLE TO MEET WITH AN OMBUDS OFFICE REPRESENTATIVE QUICKLY.	9.0	79.1	9.0	0.0	0.0	3.0
I WAS TREATED WITH RESPECT AND COURTESY.	0.0	89.7	7.4	1.5	0.0	1.5
I WAS GIVEN DIFFERENT OPTIONS AND/OR SUGGESTIONS ON HOW I COULD PROCEED.	0.0	77.9	17.6	0.0	2.9	1.5
THE CONSULTATION WITH THE OMBUDS OFFICE HELPED ME TO PURSUE MY CONCERN CONSTRUCTIVELY.	0.0	76.5	19.1	0.0	2.9	1.5
I FELT THAT MY ISSUES WERE TREATED WITH SENSITIVITY, CONCERN AND CONFIDENTIALITY.	0.0	84.8	9.1	0.0	4.5	1.5
THE OMBUDS OFFICE WEBSITE IS EASY TO NAVIGATE AND HAS HELPFUL INFORMATION.	4.5	21.2	42.4	18.2	10.6	3.0
I FEEL BETTER PREPARED TO EFFECTIVELY DEAL WITH SIMILAR SITUATIONS IN THE FUTURE.	0.0	51.5	38.2	7.4	1.5	1.5
I WOULD RECOMMEND THE OMBUDS OFFICE TO A FRIEND.	0.0	83.8	11.8	1.5	1.5	1.5
WITHOUT THE ASSISTANCE OF THE OMBUDS OFFICE, I WOULD POSSIBLY HAVE SOUGHT LEGAL OR OTHER ALTERNATIVES OUTSIDE THE UNIVERSITY.	13.4	14.9	17.9	38.8	11.9	3.0