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[See table of contents](#)

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Article abstract

How might an ombudsperson respond to an equity concern? Using a real-to-life case study about student / faculty conflict brought to a university ombudsperson, we consider the value of a fairness lens that an ombuds can bring to EDI ethical discussions.

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ÉTUDE DE CAS / CASE STUDY

Equity, Diversity, and Inclusion (EDI) Case Study: Where Does the Ombuds Fit?

Julie Boncompain^a, Heather McGhee Peggs^b, Brent Epperson^c

Résumé

Comment un ombudsman pourrait-il répondre à un problème d'équité? À l'aide d'une étude de cas réelle portant sur un conflit entre un étudiant et un membre du corps professoral soumis à un ombudsman universitaire, nous examinons la valeur d'une lentille d'équité qu'un ombudsman peut apporter aux discussions éthiques sur l'EDI.

Mots-clés

ombudsman, justice, équité, diversité, inclusion, résolution des conflits, gestion des conflits

Abstract

How might an ombudsperson respond to an equity concern? Using a real-to-life case study about student / faculty conflict brought to a university ombudsperson, we consider the value of a fairness lens that an ombuds can bring to EDI ethical discussions.

Keywords

ombuds, fairness, equity, diversity, inclusion, dispute resolution, conflict management

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INTRODUCTION

Many leaders struggle to effectively adapt to conflicts and tensions in Equity, Diversity, and Inclusion (EDI) conversations. An ombuds¹ can help by examining EDI challenges through an administrative fairness lens. Ombuds offer independent, confidential, and impartial spaces where people can share concerns about decisions and professionalism.

Unlike formal complaint processes, ombuds provide informal, cost effective and timely options that support healthy organizational cultures through early and collaborative resolution. As a “one stop shop” for addressing individual and systemic issues and living up to institution-wide commitments to EDI, the ombuds office is dedicated to complaint management. Ombuds are trained to listen effectively and empathetically to complex, high-stakes, and emotional conflict stories. Ombuds help complainants and leaders see EDI debates in a new light, to understand individual and institutional roles and responsibilities, and to implement fair and equitable solutions. Ombuds' recommendations are non-binding. We achieve organisational buy-in through consultation and fair process.

This case study considers a realistic equity-related concern that could be brought to an ombuds in a higher education context.

CASE STUDY: CALLING OUT NURSING

Tensions run high in the Faculty of Nursing (the “Faculty”). Nursing's long-standing Student Advisory Working Group (“SAWG”) provides student input on non-academic initiatives. Twice a year, SAWG attends the full Faculty Council meeting. Both SAWG and the Faculty recently published commitments to EDI, referencing the *Nursing Code of Conduct*.

During the *in-camera* portion of the last council meeting, a SAWG representative interrupted the discussion about the Faculty's proposed *Shared Student Office Space (SSOS) Policy*. The SSOS Policy defines a set of expectations for students with respect to use and maintenance of shared university offices spaces, including hours and permitted use (e.g., scent-free space, including food odors; food preparation allowed on site; alcohol/bar service requirements; people responsible for waste disposal, etc.). They demanded that: “the SSOS policy be thrown out because it discriminates against BIPOC [Black, Indigenous, Persons of Colour] students.”

SAWG emphasised the policy sections that placed limits on food preparation and odours, which they derided as “anglocentric” and “indicative of the institutional racism that pervades the Faculty of Nursing.” The Chair (who is also the Associate Dean) acknowledged that there had not been any consultation with SAWG and agreed to open the floor for discussion. The debate escalated into yelling, defensiveness, and personal attacks. The Chair abruptly ended the meeting early saying: “I am appalled

¹ Within higher education, “ombuds” (also referred to as ombud, ombudsman, ombudsperson) is perhaps the most common titles for an independent and impartial complaints resolution service, however, others such as “commissioner” or “integrity officer” may be more common within health care or the private sector, while providing complaint resolution services of a similar nature. We focus on the academic ombuds role in this case study.

by SAWG's unfounded accusations of systemic racism in the Faculty – we were talking about a single policy – the SSOS. I am adjourning this meeting as I see no benefit to this disrespectful mud-slinging.”

Without permission of the attendees, the debate was anonymously live tweeted. A debate rages on social media and has affected faculty / student interactions. Various faculty members describe SAWG as “aggressive” and “insulting.” One faculty member asked: “How did debate about a policy that prioritizes the health of those who suffer from allergies or odor sensitivities devolve into an EDI debate?” SAWG members decry faculty members as “racists” and “bullies.” One student commented: “There is no excuse for a ‘white bread’ policy that limits foods like curries and fish. There is no attention to the safety or feelings of BIPOC students under a policy that is blind to different culinary traditions.” In addition, some attendees mention no longer feeling “safe” attending council meetings.

CASE ANALYSIS: HOW MIGHT AN OMBUDS APPROACH THESE EDI CONCERNS?

It may initially appear that each side is focused on ways to “win” the SSOS/EDI policy argument and condemn each other's behaviour rather than build an effective policy and maintain relationships. With issues of fairness and equity that affect not only individuals (e.g., SAWG/Faculty collaboration), but the entire Faculty (e.g., potential negative impact across administration, teaching, and research), any solution that is imposed, rather than developed collaboratively, is likely unsustainable (1,2). This is a case that could benefit greatly from a multi-partial, third-party evaluation. The Ombuds role can be pivotal in coordinating a collaborative problem-solving approach.

Ombuds reframe issues, listen actively, target underlying interests and needs, challenge perceptions, and highlight commonalities to reveal various layers in conflict stories (3). We explore what happened, individual roles (e.g., hero, victim, villain, bystander), feelings, perspectives, policies or processes, and available campus supports. We might ask:

- What are your interests / needs?
- Are these the same on personal (e.g., student) and professional (e.g., SAWG representative) levels?
- Do you see any common concerns or interests? (e.g., creating an effective SSOS Policy; living up to institutional/personal commitments to EDI; good relationships between SAWG & faculty; feeling “safe” in Faculty Council meetings)

Ombuds work aligns with restorative practices that focus on repairing harm and restoring trust and respect.² We work with complainants to bring them from the past (“what happened to me”) to the present (“how this affects me”) to the future (“what I'd like to happen”) by asking questions such as:

- What are your top priorities/goals moving forward? What do you think others' priorities/goals might be?
- What are some possible solutions?
- What are the institutional commitments and priorities?

The sense of “what is fair” varies from person to person. An ombuds would determine if the principles of natural justice and administrative fairness have been respected before, during, and after the Faculty Council Meeting. We would examine *procedural or process elements* by reviewing resources and gathering information from the complainants, including:

- Did individuals feel they had an opportunity to be heard and respond?
- What information did they have about faculty and university policies (e.g., Nursing Code of Conduct, SAWG/Faculty commitments to EDI) and procedures (e.g., how decisions are made about new policies, student input), and are they fair? (not unjust, discriminatory, or unreasonably burdensome)?

In terms of *substantive fairness*, referring to the decisions made, ombuds might consider:

- Did the Chair's decision accord with Faculty Council policies or protocols? Did it take into account relevant information about the circumstances?
- What about the SAWG representative's decision to raise the SSOS policy at the meeting?

Ombuds would look at *relational fairness*, referring to how individuals were treated:

- Are there areas for clarification? (e.g., meaning of words such as “bullying,” “anglocentric,” “racist”?)
- Was the meeting behaviour respectful and aligned with Faculty policies/institutional commitments?

While every conflict is unique, an ombuds is trained to see the bigger picture and to identify trends by examining previous matters and applying institutional knowledge. Leaders cannot manage EDI in a discrete silo.³ Each ombuds is unique in scope of mandate and operations. For example, some offices regularly conduct comprehensive fairness investigations and make written recommendations, while others frequently provide oral recommendations. In all cases, dialogue is a necessary precursor to engaging in informal problem-solving or decision-making and must precede ombuds' advice or recommendations.

² We recognize the parallels to and deep roots of “restorative” practices or concepts in Indigenous cultures and systems of justice (4). We further acknowledge that the claims of contemporary Western restorative justice practitioners to take inspiration from Indigenous methods have been frequently criticized by Indigenous scholars (5,6). For our purposes we feel it is important to note that restorative approaches broadly speaking – whether of Indigenous origin or Western (re)adaptations – have become important tools in the ombuds profession.

³ If a silo is pierced, the grains disburse everywhere. EDI conflicts can similarly spill across the institution and affect many individual interactions and systemic operations, for example, the allegations by SAWG of institutional racism within the Faculty of Nursing.

For example, in this case, ombuds might:

- Engage in shuttle diplomacy⁴ to try to facilitate an agreement to stop debating the SSOS policy over social media.
- Recommend participation in a voluntary process such as mediation or a restorative circle.⁵
- Consult in the revision and/or development of student/faculty consultation protocols or policy language to ensure fair process.
- Coach individuals on how to restart discussions on their own (e.g., request a special Faculty Council meeting to resume discussions).
- Advise complainants on how to escalate concerns through formal institutional (or external) avenues.
- Advise that the ombuds will commence a formal investigation and make written recommendations.
- Recommend that the Faculty offer training for Nursing students, staff, and faculty, aligned with EDI commitments.

CONCLUSION

This case illustrates that ombuds can provide helpful insights on fairness and equity and so contribute to expanding the range of resolution options for leaders and complainants facing EDI concerns.

QUESTIONS TO FRAME AN ETHICAL DISCUSSION

1. If this case came to you as a leader, would you consider this a matter of *fairness*, and would you have referred the individuals to the ombuds (if your institution has one)?
2. Would you have any concerns in becoming personally involved in trying to resolve this issue if you had not been at the Faculty Council Meeting? What if you had?
3. In what ways might you try to balance power and perceptions of power? Are there some concerns that are more important than others? Why or why not?
4. Is there a way to create a safer space for a direct and respectful conversation? How might you get the parties to “come to the table” for that conversation?
5. What are some of the benefits of the SAWG representative having raised this issue at the Faculty Council Meeting? Why do you think they raised the issue of systemic racism when talking about a single policy (SSOS)?
6. Is it possible to be fair in situations where there are competing or intersecting concerns, rights, our responsibilities to accommodate?

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⁴ A process in which a facilitator moved back and forth between parties to try and facilitate a resolution to a particular issue or many issues.

⁵ Depending on the resources / mandate of the office, this might be facilitated by the ombuds or by an external mediator / facilitator.