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The Austrian Student Ombudsman, “student rights” and  
“student obligations” in the Austrian Higher Education Area:  
Between soft administrative control and proactive synte-gration

**Paul Herfs**

Ombudsing at Canadian universities  
through the eyes of a Dutch ombudsman

**ENOHE**  
**(European Network of Ombudsmen**  
**in Higher Education)**

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## Imprint

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The **European Network of Ombudsmen in Higher Education (ENOHE)** is an informal network of academic ombudsmen in Europe. The network consists of ombudsmen at higher education institutions and individuals affiliated with institutes of higher education who are interested in ombudsman practice ([www.enohe.net](http://www.enohe.net)).

The **Office of the Austrian Student Ombudsman (OASO)** performs the following tasks:

- it is dealing with complaints about shortcomings in the performance and services of higher education institutions
- it keeps direct communication lines with representatives of the Austrian universities (public and private), the universities of applied sciences, the teacher training universities, and with interest groups or representative bodies such as the Austrian Union of Students or other relevant organizations and groups.
- it reports directly to the Minister and to the Parliament with annual reports.

The inquiries and complaints submitted to the OASO are examined and efforts are made, together with the respective institutions, to find solutions to problems or to remedy acute shortcomings. The OASO runs its own web site where students are informed about the most frequent topics and where a collection of internet links refers them on to other important internet sites.

Apart from students, the OASO can also be consulted by faculty members, parents and partners of students. In cases which cannot be directly settled by the institutions concerned, the OASO tries to provide assistance through mediation. Further important tasks of the OASO are to report to the Minister of Science, Research and Economy and to the parliament, and to come up with position papers and statements on draft laws on higher education.

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**Paul Herfs**  
**Ombudsing at Canadian Universities through the Eyes**  
**of a Dutch Ombudsman<sup>1</sup>**

**“I do not put faith in institutions, but in individuals all over the world who think clearly,  
feel nobly and act rightly. They are the channels of moral truth.”<sup>2</sup>**

**Rabindranath Tagore**

## **Abstract**

The ombudsman of Utrecht University in the Netherlands made a study trip to Canada in the spring of 2016. He visited 12 universities in order to gather best practices at the offices of Canadian ombudspersons. The major principles namely independence, impartiality and confidentiality were described. Also the funding of the offices of the ombudspersons and the target groups of ombudspersons are drawn. After having spoken with Canadian ombudspersons comparisons were made between the work of Canadian and Dutch ombudspersons. It appeared that there are more differences than similarities. An important similarity is that in both countries governments are not proactively advancing the value of ombudswork for students, staff and faculty by recommending that ombudspersons be established on all campuses.

## **Introduction**

In the spring of 2016 the ombudsman at Utrecht University in the Netherlands made a study trip to Canada. He made a comparison between ombudsing<sup>3</sup> at universities in Canada and the Netherlands<sup>4</sup>. His research found out that ombudsing in Higher Education in Canada is far ahead with regard to ombudsing at Dutch universities.

The board of Utrecht University made this extraordinary study trip possible<sup>5</sup>. Paul Herfs visited ombudspersons at 12 Canadian universities all through the country. He started in Montréal, in central Canada and ended his trip in Victoria on Vancouver Island at the western edge of the country some 3700 kilometers away. The aim of the study trip was to gather best practices at the offices of Canadian ombudspersons.

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<sup>1</sup> Published in: The Journal of California Caucus for College and University Ombuds, Volume XIII, 2016

<sup>2</sup> This maxim was found on a memorial stone near the Ombuds office of the University of British Columbia.

<sup>3</sup> In this article we will use the word “ombudsing” in describing the work of the ombudsperson. The majority of the ombudspersons I visited did not use the title ombudsman or ombuds. Therefore I will use the title “ombudsperson” in this article.

<sup>4</sup> Higher Education in the Netherlands is organized in two major streams. There are 34 Universities of Applied Sciences (in total 445.000 students) and 14 (research) Universities (in total 260.000 students).

<sup>5</sup> The author thanks the Board of Utrecht University for their permission to make this study trip possible and the confidence in their ombudsman.



The data for this research among offices of the ombudsperson were collected at the following Canadian universities. The year for the establishment of each of these offices is added for historical context.

Table 1: Universities visited and years the Ombuds Offices were founded

University	Foundation year	Ombuds Office
Université de Montréal in Montréal	1988	
McGill University in Montréal	1987	
Concordia Université in Montréal	1971	
Laval Université in Quebec City	1981	
University of Ottawa in Ottawa	2010	
University of Toronto in Toronto	1976	
Ryerson University in Toronto	1997	
MacMaster University in Hamilton	1980	
University of Alberta in Edmonton	1972	
University of Calgary in Calgary	2010	
University of British Columbia in Vancouver	2009	
University of Victoria on Vancouver Island	1978	

There is no legal obligation at the federal level, the provincial level, or by the university itself to appoint an ombudsperson. Nevertheless about 25% of all universities appointed ombudspersons. Student demands laid the basis of the appointment of an ombudsperson. In 1965, students at Simon Fraser University in Vancouver appointed the first ombudsperson on a Canadian (and North American) university campus. Today the Simon Fraser ombudsperson operates as: “..... an advocate for fairness in general for the benefit of all students and the university community as a whole. The community is committed to the fair and just treatment of each and every member of the University.”<sup>i</sup>

### Cornerstones of practice of the ombudsperson

Ombudspersons operate according to three core principles: independence, impartiality and confidentiality. What is the significance of these conditions?

1. Confidentiality: all information the ombudsperson receives from a person who brings a concern or complaint forward will not be shared with third parties unless permission from that person was given to do so. The fact that somebody visited an ombudsperson is also protected information.
2. Impartiality; the information the ombudsperson receives will be regarded with the utmost objectivity. The ombudsperson is not an advocate for the individual bringing forward the complaint. The ombudsperson is also not an advocate or apologist for the institution.
3. Independence; the ombudsperson operates independently of all other administrative structures within the university.



Most ombudspersons are members of the Association of Canadian College and University Ombudspersons (ACCUO/AOUCC) and of the Forum of Canadian Ombudsman<sup>6</sup> (FCO). ACCUO members subscribe to “Standards of Practice”<sup>ii</sup> and the FCO members subscribe to “Ethical Principles for Ombuds”<sup>iii</sup>. The Standards of Practice describe not only the above mentioned principles but also provide information on functions and responsibilities of the ombudsperson. For instance on intervention policies (access to information pertaining a particular case; conflict resolution including shuttle diplomacy and mediation; investigation), recommendations to the appropriate authorities, submitting an annual report, submitting special reports, etc.

On the ACCUO site, information can be found on how to set up an ombudspersons office, standard clauses for terms of reference, information on the fairness guide, etc.

In 2015 the 50<sup>th</sup> anniversary of the establishment of the first ombudspersons role in Canada was celebrated. In the Newsletter of the Forum of Canadian Ombudsman Nora Farrell (President of FCO and Ombudsperson Ryerson University) and Lorne Sossin (Dean Osgoode Hall Law School, York University) stated<sup>iv</sup>: “Ombudspersons exist because we all know that, even with best of intentions, an unhindered bureaucracy can lead to unfair treatment of citizens, residents, taxpayers and customers. An ombudsman may not be the first place people turn to solve their problems, but it is the invaluable last resort for those who feel they have nowhere left to turn.”

### **Funding of the Office of the Ombudsperson**

At most universities the ombuds offices are funded by the student unions and the board of the university. Democratization played a decisive role on the starting point of offices of the ombudsperson. At Concordia University in Montreal a computer riot<sup>7</sup> in 1969 was the immediate cause for the creation of the Ombuds Office. “The Ombuds office was established in 1971 to resolve problems not settled through existing university channels, or those which simply don’t fit existing procedures.”<sup>v</sup> At most universities, except for management and confidential staff, every student, every staff member and faculty are automatically members of a union. Canadian university communities are therefore very much unionized. The extent of unionization gives more (Canada) or less (Netherlands) power in dealing with the university administration. In most Canadian universities the student unions played a key role in lobbying for the establishment of Ombuds offices. As a result, there is a big difference between Canada and the Netherlands with regard to the role the unions play in both countries. In the Netherlands not even 10% of staff and faculty is unionized, while among students this number is even smaller.

### **Target groups of Canadian ombudspersons**

Nearly all Ombuds Offices began as a service for students. Nevertheless, quite a number of the ombudspersons visited address complaints from staff and faculty as well. Ombudspersons who only respond to complaints from students include PhD candidates and postdoctoral fellows, which is not the case in the Netherlands. PhD-candidates and postdoctoral fellows in the Netherlands are seen as temporarily appointed faculty. Some Canadian Ombudspersons

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<sup>6</sup> The Forum of Canadian Ombudsman is a multi-sector organization with ombudspersons in the public, private, education and non-profit sectors.

<sup>7</sup> The events leading up to the riot began in the spring of 1968, in which six West Indian students accused their biology teacher, Perry Anderson, of racism after they suspected unfair grading.



are able to work with post-doctoral fellows if they are not unionized. As noted earlier, most staff and faculty at Canadian universities are compulsorily unionized. In cases where a staff member or faculty member has issues with their employer, that are covered by a collective agreement, the ombudsperson will not be involved in any way. It is only in situations where union representatives, the employee, the Ombudsperson and the employer agree that the expertise of the ombudsperson can be sought.

In Table 2 the target groups of the ombudspersons of the visited universities are described.

Table 2: Target groups<sup>8</sup> of ombudspersons

University	Students	Staff	Faculty
Université de Montréal in Montréal	+	+	+
McGill University in Montréal	+ <sup>9</sup>	-	-
Concordia Université in Montréal	+	+	+ <sup>10</sup>
Laval Université in Quebec City	+	+	+
University of Ottawa in Ottawa	+	-	-
University of Toronto in Toronto	+	+	+
Ryerson University in Toronto	+	-	- <sup>11</sup>
MacMaster University in Hamilton	+	+	+
University of Alberta in Edmonton	+	-	- <sup>12</sup>
University of Calgary in Calgary	+	-	-
University of British Columbia in Vancouver	+	+	+
University of Victoria on Vancouver Island	+	-	-

### The fairness principle

All ombudspersons strive for fairness; it is the major principle underlying the work of ombudspersons at Canadian universities. Fairness however is not an exclusive principle for ombudspersons. Veronica Kube<sup>vi</sup> stated that: “.... fairness is key to preserving the institution’s academic reputation by upholding the integrity of publications, pursued research and issued degrees”. In fact everything that happens under a university umbrella should be fair.

Fairness is operationalized in the so-called Fairness Triangle. In the fairness triangle<sup>vii</sup> three dimensions can be distinguished:

A: a relational dimension; how the person is treated at every step

B: a procedural dimension; the process used to make the decision

C: a substantive dimension; the decision itself

<sup>8</sup> Some ombudspersons also accept complaints from applicants and alumnae.

<sup>9</sup> McGill ombudsperson also assists post-doctoral fellows

<sup>10</sup> Concordia’s ombudsperson also deals with issues brought forward by alumna.

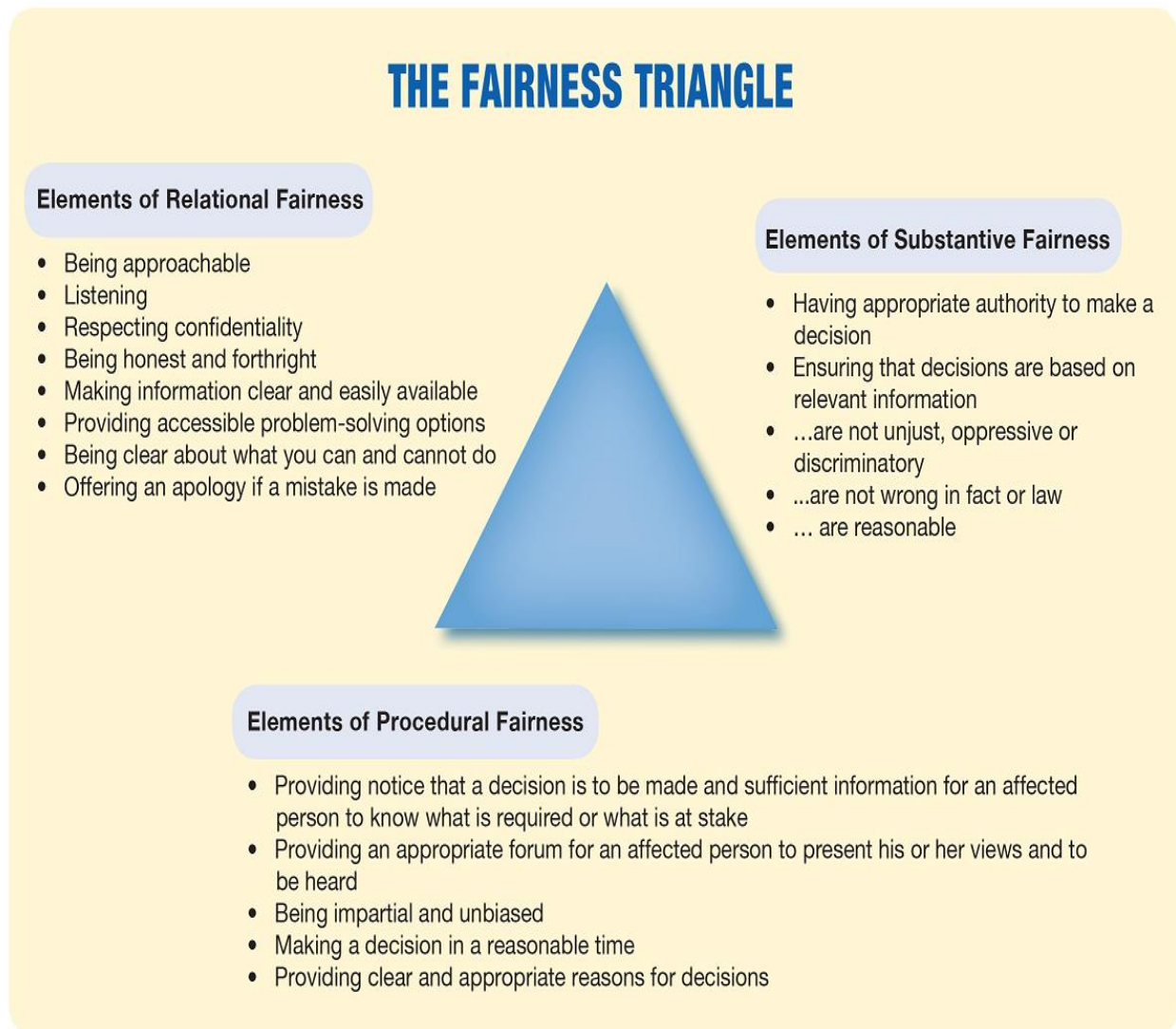
<sup>11</sup> Ryerson’s ombudsperson will discuss issues with staff and faculty if they ask for a meeting after having explained that this Office cannot look into their concerns.

<sup>12</sup> University of Alberta ombudsperson assists post-doctoral fellows too



The fairness triangle (adapted from the Ombudsman Saskatchewan fairness triangle) can be applied in cases of students, staff, faculty or administrators, whether you are making or being affected by a decision. Both decision-makers as persons who are confronted with a decision can make use of the fairness triangle.

The Ombudsperson from the University of Victoria, Martine Conway, explains in her annual report: “A person’s experience of fairness or unfairness is made up of the sum in interactions between that person and the institution. It includes the way the person is treated at every step (relational fairness), the process used to make decisions (procedural fairness) and the decisions themselves (substantive fairness).”<sup>viii</sup>



In the phase of orientation the ombudsperson will give advice on how to proceed. Martine Conway<sup>ix</sup> gives the following examples of fairness tips:

- Inquire (rather than accuse) by asking relevant and clarifying questions → relational fairness
- Provide clear information, explore extenuating circumstances → relational fairness
- Consult with other services if needed → procedural fairness



- Identify the relevant policy or procedures → procedural fairness
- Is the decision based on complete and accurate information? → substantive fairness
- Is there a legal or equity principle to apply? → substantive fairness

Some Canadian Ombudspersons provide training to students, staff and faculty on how to resolve disputes constructively and on how to make decisions fairly.

## Background and training of the ombudsperson

Most ombudspersons hold (at least) a master degree. Sometimes ombudspersons have a law degree, but the diversity in academic degrees (e.g. psychology, liberal arts, English, etc.) is great. For most ombudspersons it is not their first job. They have relevant working experiences in higher education or in other sectors of the civil society. Academic training, knowledge about the ins and outs of university politics and working experiences are relevant for the work of ombudspersons. Many ombudspersons are trained mediators also.

Beginning in 2013, the Forum of Canadian Ombudsman, the national umbrella organization for Ombuds in Canada and the Osgoode Hall Law School of York University Toronto offers an intensive certificate program called “Essentials for Ombuds”<sup>x</sup>. The curriculum contains e.g. the guiding principles of ombudsing (independence, impartiality, confidentiality), early resolution techniques, dealing with difficult complainants, fundamental values (respect, fairness), information gathering and assessment, strategic analysis, presentation to appropriate stakeholders, writing of annual or special reports, etc. The Ombudsperson from Ryerson University is the Program Director (and the President of the Forum of Canadian Ombudsman) and other University Ombudspersons have made presentations for the program. The language of instruction for this program is English. For those ombudspersons who prefer French as the language of instruction, a partnership has been developed by the Forum of Canadian Ombudsman with the University of Sherbrooke in Montreal.

Prior to the availability of this certificate program various Ombuds courses and workshops were offered by FCO and ACCUO. In addition, ACCUO and FCO have co-hosted a national conference every two years for many years which provides specialized training for Ombudspersons working in a wide variety of settings.

In the Netherlands no training for ombudspersons exists. In 2014 Sytske Teppema and Paul Herfs made the first step by filling that gap through writing a handbook for Ombudspersons who work for staff and faculty.<sup>xi</sup>

## Similarities and differences in ombudsing in Canada and the Netherlands

On the basis of the interviews held with Canadian ombudspersons a comparison of the work of ombudspersons in Canada with ombudwork in the Netherlands was made. In Table 3 the similarities between ombudspersons in Canada and the Netherlands are described.

Table 3: Similarities between ombudspersons in Canada and the Netherlands

Canada and the Netherlands
No provincial nor federal legal obligation for



universities to appoint an ombudsperson
A minority of universities have ombudspersons
Some ombudspersons work with students and staff & faculty
Some ombudspersons work with students only
No governmental actions to propagate Ombuds offices at universities
Some ombudspersons hold solitary positions
Ombudspersons are working in accordance with terms of reference
Ombudspersons may address complaints from PhD's who perceive relational problems with supervisors
Sometimes individual or a series of unacceptable incidents are the catalyst for the founding of the office of the ombudsperson

Because of the fact that the name of the position of the ombudsperson in higher education institutions is used in both countries one might expect that the work and the conditions of the work of ombudspersons in Canada and the Netherlands would be quite equal. It appears however that there are more differences than similarities.

In Table 4 the differences between the positions of ombudspersons are described.

Table 4: Differences between ombudspersons in Canada and the Netherlands

<b>Canada</b>	<b>The Netherlands</b>
Training for ombudspersons is available	No training for ombudspersons is available
All ombudspersons work with students	Not all ombudspersons work with students
Ombudspersons are not merely working with staff & faculty	Some ombudspersons work with staff & faculty only
Some ombudspersons combine ombudwork with work as faculty	Ombudspersons do not combine their ombudwork with scientific/academic work
An active network (ACCUO) between ombudspersons exists <sup>xiii</sup>	Only a very small network (VOHO) is available
Ombuds office consists of more than one person	Ombuds office has just one staff member: the ombudsperson
Ombudspersons are perceived as assets for the university community	Ombudspersons are not yet considered as assets (except by the universities who appointed an ombudsperson)
Ombudspersons are "visible" (advertising and outreach is a regular activity)	Ombudspersons are "not visible" (hardly any publicity)
A longstanding tradition in ombudwork	No tradition in ombudwork with the exception of a few universities
Ombudspersons make use of a theoretical framework	Work of Ombudspersons lacks theoretical framework
Position structurally independent of administrative board; often funding from both the student union(s) and university	Position: reports to the administrative board; funding by university only
Ombudspersons are expected to bring	Incidents that have been addressed by the



forward contentious matters and systemic concerns so that the university can address them. Their position is safe	ombudsperson might be the basis of dismissal of the ombudsperson
Awareness of the importance of safety planning and resources for the ombudsperson office (e.g. duress/panic/safety buttons are standard, motion sensors)	No awareness on the vulnerability of ombudspersons in their contact with dangerous people

## Conclusions

Ombudswork in Canada lies ahead of ombudsing in the Netherlands. Only a few universities in the Netherlands have decided to appoint ombudspersons. Some ombudspersons are working with students, some are working with staff and faculty only and some work with students, staff and faculty. Due to the fact that the number of Dutch Ombudspersons lacks critical mass, the possibilities to professionalize ombudswork in the Netherlands are limited. All university positions in the Netherlands are described by the Hay Group<sup>xiii</sup>. However, the position of the ombudsperson is not described in the university standard work on job descriptions.

The position of ombudspersons in both countries are different. Because of the prevalence of funding by two parties the independence of the position of Canadian ombudspersons is stronger than those of the Dutch ombudspersons. Last year for instance a few Dutch ombudspersons were removed from service by their boards because of displeasing activities. At Canadian universities that would have been very unlikely. Legal protection of ombudspersons exercising their duties is very important.

It is remarkable that in both countries governments are not proactively advancing the value of ombudswork for students, staff and faculty by recommending that Ombudspersons be established on all campuses. One would expect that the number of individuals that make use of ombudspersons services in Canada and the Netherlands should be quite convincing for governmental legislation of ombudspersons. At Dutch universities the need for ombudspersons working with staff and faculty is especially large as only a small minority of university personnel is unionized. If problems arise one cannot fall back on any support. University personnel in Canada can fall back on support from either faculty or staff unions.

As long as legislation to appoint ombudspersons in higher education institutions is lacking students, staff and faculty of those HE institutions where no ombudsperson is available are in a detrimental position. Legislation on ombudspersons often remains behind because of the fact that universities (and or unions) can decide themselves if they want to appoint ombudspersons. Boards of universities where ombudspersons are lacking fear to appoint ombudspersons as they are sometimes perceived as threatening to the institution. That opinion however is outdated. Proof of the high value of ombudspersons in higher education institutions can be found on those universities where ombudspersons do their important work in early dispute resolution, training on fairness, as well as fact finding on individual and systemic issues and trends analysis.

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## Note of Thanks

I thank my Canadian colleagues for their support and very hearty welcome. It made my trip to Canada enormously valuable and agreeable. At last I wish to thank Kristen Robillard. She was



the former Ombudsperson at Concordia University in Montréal and the former president of ACCUO/AOUCC. My plan to visit Canadian colleagues has been made possible with help from Kristen Robillard.

Also I want to express my great appreciation to Martine Conway, Nora Farrell and Kristen Robillard for their valuable comments on the draft version of this article.

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<sup>i</sup> <http://www.sfu.ca/ombudsperson.html>

<sup>ii</sup> [http://www.uwo.ca/ombuds/accuo\\_aoucc/english/SoP.pdf](http://www.uwo.ca/ombuds/accuo_aoucc/english/SoP.pdf). Visited on 15 August 2016.

<sup>iii</sup> [http://www.ombudsmanforum.ca/en/?page\\_id=157/](http://www.ombudsmanforum.ca/en/?page_id=157/). Visited on 15 August 2016.

<sup>iv</sup> N. Farrell & L. Sossin (2015): *Fifty years of fighting for fairness*. Newsletter Forum of Canadian Ombudsman.

[http://www.ombudsmanforum.ca/en/?page\\_id=3524](http://www.ombudsmanforum.ca/en/?page_id=3524). Visited on 15 August 2016.

<sup>v</sup> K. Robillard & J. Boncompain (2015): *35<sup>th</sup> history; Ombuds Office promoting fairness at Concordia University*.

<sup>vi</sup> Kube, V. (2016): *Fairness in communication; a relational fairness guide*. Office of the Student Ombuds. University of Alberta.

<sup>vii</sup> Conway, M. (2016): *Fairness (for students, staff, faculty)*. Retrieved from:

<http://uvicombudsperson.ca/guides/fairness/>

<sup>viii</sup> Ombudsperson (2013): *Annual Report*. University of Victoria. Volume 16; issue 1.

<sup>ix</sup> ACCUO/AOUCC (2015): *Fairness is everyone's concern; a sampling of practices and resources on cultivating fairness*. Produced in recognition of the 50<sup>th</sup> anniversary of the first ombudsman in a Canadian post-secondary institution.

<sup>x</sup> Osgoode Hall Law School (2016): *Essentials for Ombuds; A joint program of the Forum of Canadian Ombudsman and Osgoode Professional Development*. York University Toronto.

<sup>xi</sup> Teppema, S. and Herfs, P.G.P. (2014): *Handboek Ombudsman Personeel Hoger Onderwijs*. Brave New Books.

<sup>xii</sup> ACCUO/AOUCC (2015): *Fairness is everyone's concern; a sampling of practices and resources on cultivating fairness*. Produced in recognition of the 50<sup>th</sup> anniversary of the first ombudsman in a Canadian post-secondary institution.

<sup>xiii</sup> Annex to the Collective Labour Agreement of the Dutch universities (2014): *Functie Ordeningssysteem*. [http://www.vsnu.nl/functie\\_ordeningsysteem\\_ufo.html](http://www.vsnu.nl/functie_ordeningsysteem_ufo.html). Visited on September 21, 2016.

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**Josef Leidenfrost**: Head of the Office of the Austrian Student Ombudsman since 2001, joined the Austrian Ministry of Higher Education in 1988; served as adviser to three ministers in the 1990s and early 2000s on academic internationalization, national and European scholarship programs, and students' rights and duties. Doctorate from the University of Vienna in 1986, 2012 MA in mediation. He is a co-founder of the European Network for Ombudsmen in Higher Education (ENOHE). He is the editor of ENOHE's occasional papers and of the ENOHE News newsletter.



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## ENOHE Occasional Papers

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The ENOHE Occasional Papers are a series of publications intended to inform its readers about current trends, recent developments, and scenarios for the future in the development of academic ombudsmen within European and international higher education.

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Ombudsing as a Contribution to Quality Assurance

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**ENOHE Occasional Paper Nr. 8: Gerlinde Sponholz/Josef Leidenfrost (eds.)**

Curriculum "Good Scientific Practice"

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**ENOHE Occasional Paper Nr. 9: Ewa Gmurzyńska**

Benefits of Dispute Resolution Systems in Organizations; The Example of the University of Warsaw Conflict Resolution System

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**ENOHE Occasional Paper Nr. 10: Maria De Pellegrin/Ian Eisteter/Josef Leidenfrost (eds.)**

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