



Yukon  
Ombudsman

# Yukon Association of Educational Professionals complaint

## Investigative Report



## Yukon Association of Education Professionals complaint

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Pursuant to section 11 of the *Ombudsman Act*  
Authority: Yukon Association of Education Professionals

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### Yukon Ombudsman

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## Summary

The Ombudsman received a complaint regarding the Yukon Association of Education Professionals (the “Authority”). The Complainant alleged that the Authority’s appeal process was unfair.

This complaint was investigated as a formal investigation due to its systemic nature and the significant impact the appeal process has on those using the process.

Our investigation uncovered a problematic appeals process which was compounded by a lack of training and a limited pool of individuals to hear an appeal. These problems include an unfair delay in having the Appeal heard, unfair practices in the conduct of the Appeal, and the nomination of people who did not have sufficient training to conduct the Appeal.

As a result of our investigation, we make five recommendations to the Authority. These recommendations are intended to assist the Authority in carrying out its work in a more fair and efficient manner.

The five recommendations made to the Authority include amendment of the Policy Manual and By-Laws, appropriate training for the Executive Committee, and the re-hearing of the Appeal (defined below). The recommendations, provided in more detail in the [recommendations section](#), have timelines ranging from three to six months from the date of this report.

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## History of Complaint to our Office

On June 27, 2024 –

The Complainant filed an Ombudsman complaint with our office (the “Complaint”).

On July 23, 2024 –

The Complaint was accepted by the Ombudsman. The matter was opened as a Formal Investigation (“FI”)

On July 24, 2024 –

The Ombudsman sent an opening letter and Notice to Produce Records (“NTPR”) to the Authority.

September 22, 2024, to October 17, 2024 –

The Ombudsman conducted four interviews of key Authority staff and volunteers.

## Jurisdiction

The authority of the Ombudsman to investigate a Complaint is set out in ss 12(1)(a) of the *Ombudsman Act* (the “Act”). The authority of the Ombudsman to delegate an investigation to an investigator is set out in s. 30 of the Act.

## Statutes Cited

*Education Act*, RSY 2002, c.61

*Ombudsman Act*, RSY 2002, c.163

*Teaching Profession Act*, RSY 2002, c.215

## Documents Cited

[Bylaws of the Yukon Association of Education Professionals](#) – Amended March 2024

[YAEP Policy Manual](#) – Update May 2024.

[Fairness by Design: An Administrative Fairness Assessment Guide](#), Canadian Council of Parliamentary Ombudsman (2022)

## Explanatory Note

All sections, subsections, paragraphs, and the like that are mentioned in this investigation report (the “Report”) refer to the Act, unless otherwise stated.

References to specific emails will only identify third parties outside the Authority by a letter, such as ‘X’, ‘Y’ or ‘Z’, as the case may be, for privacy protection purposes.

The 2022 Canadian Council of Parliamentary Ombudsman publication *Fairness by Design: An Administrative Fairness Assessment Guide* (“Fairness by Design”) is adopted by all provincial and territorial Ombuds in Canada. It is a fairness assessment tool to determine whether a program decision-making process is administratively fair in design and delivery.

This Report will avail itself of [Fairness by Design](#) to investigate the issues and reach conclusions.

## I Background

### Legislation, Organization, and Procedures

#### Legislation

[1] In 1987, the Legislative Assembly passed the *Teaching Profession Act*, creating the Yukon Teacher’s Association (the “YTA”). The *Teaching Profession Act* was amended in 2022 to change the name of the YTA to the Yukon Association of Education Professionals (the “YAEP”).

[2] The Authority serves as a legislatively created body which engages in collective bargaining on behalf of its members. In addition, the Authority is the governing body of teachers and education professionals in the Yukon, with the statutory power to license.

[3] The Authority works within the framework of the *Teaching Profession Act*, the *Education Act*, and its [collective bargaining agreement](#). The *Education Act* was passed in 2002 and last amended in April of 2024.

[4] This Report will focus on the fair exercise of disciplinary powers granted to the Authority pursuant to sections 5, 12, 13, and 14 of the *Teaching Profession Act*.

### **Organization**

[5] The Authority is headed by an Executive Committee which consists of nine (9) members. Among them are the President, Vice President, a Past President, the Treasurer.

[6] The Executive Committee also includes the following standing committee Chairs: Employment Relations, Policy, Professional Development, Membership, and Public Relations.

[7] The Executive Committee of the Authority employs a number of staff, including an Executive Director, Office Manager, Legal Counsel, Bookkeeper, and Employment Relations Advisors.

[8] All other members of the Authority are volunteers except for the President, Executive Director, Professional Development Chair, and Office Manager.

### **Procedure**

[9] The Authority's procedures are set out in their by-laws, which are expanded upon in the Authority's Policy Manual (the "Policy Manual").

[10] As part of our Investigation, we set out to determine whether the practices, processes, and procedures employed by the Authority in hearing the Complaint align with the *Teaching Profession Act*, the Authority's by-laws, and its other guidance documents.

[11] As the scope of the Complaint was limited to portions of an appeal regarding a decision about a complaint of harassment, this Report will focus only on the practices, processes and procedures used in the hearing of such an appeal.

[12] The procedure for handling of a complaint of harassment is set out over four pages (78 to 82) of the Authority's Policy Manual. The procedure involves four substantive stages: 1) reporting of a complaint; 2) investigation of a complaint; 3) decision making; and 4) appeal.

[13] Complaints are to be made to the Chair of the Finance Committee. A deadline of 30 days from the incident is indicated but it may be extended at the discretion of the Finance Committee.

[14] A complaint must be reported in writing, state the name of the complainant(s), and alleged harasser(s). The Policy Manual provides that as much information as possible must be given in the written complaint including documentation of incident(s), nature and location of the harassment complained of, dates, proposed witnesses, and a statement as to the effect that the alleged harassment has had on the complainant(s).

[15] Importantly for the purposes of this Report, where a complaint of harassment is made against more than one member of the Finance Committee, a complainant is instead required to make their complaint to the Chair of the Ethics Committee.

[16] In the event the Chair of the Ethics Committee receives a complaint as described above, they shall constitute an “independent investigative committee” to handle the complaint.

- 1) For the purposes of such a complaint, an independent investigative committee will follow the same procedure for investigation, decision making, and appeal as set out for the Finance Committee below.

[17] Once a complaint is received, the Finance Committee will investigate the matter. The matter may be investigated by the Finance Committee itself, or they may retain an independent investigator to conduct the investigation.

- 1) Prior to conducting such an investigation, the Finance Committee may, if agreed to by the parties, conduct a mediation.
  - a. If mediation is conducted, the mediator must produce a mediation report and provide copies to the committee.
  - b. In the event that the matter remains unresolved twenty (20) calendar days after the receipt of the mediator’s report, the Finance Committee must begin investigation.



[18] The Finance Committee must, within thirty calendar days of receipt of a complaint, give notice of the complaint to any person(s) named in the complaint and commence investigation of the same.

[19] Should a party fail to respond to the inquiries of the Finance Committee or an investigator, Finance Committee will be entitled to make findings in the absence of such answers.

[20] There is no timeline for the investigation of a complaint outlined in the Policy Manual or the Authority's By-laws, however it does state that an investigation is to be completed "as soon as is reasonably possible while observing natural justice with respect to the parties."

[21] After the conduct of an investigation, Finance Committee will make a determination as to whether the complaint is substantiated. If so, the Finance Committee may either determine and implement disciplinary action(s) or form an additional committee to make recommendations to the Finance Committee as to appropriate disciplinary action(s).

[22] Appeal is available to any party who is "dissatisfied with the determination of the Finance Committee or IIC."

[23] Such an appeal is to be made, in writing, to the Executive Committee within twenty calendar days of a decision regarding the harassment complaint.

[24] In the event that member(s) of the Executive Committee have a real or perceived conflict of interest, the Executive Committee may either exclude the member(s) implicated or create an independent panel to hear the appeal.

[25] A final and binding decision on the appeal is to be made by the Executive Committee or the independent panel within twenty calendar days.

[26] Having described the Authority and its harassment complaint procedure generally, we now turn now to a description of the events leading to a complaint to our office.

### Events leading to the Ombudsman Complaint

[27] On October 13, 2021, the Complainant reported a harassment and retaliation complaint (the "Harassment Complaint") to the Authority.

[28] The Harassment Complaint involved member(s) of the Finance Committee (the “Respondents”) and was therefore made to the Chair of the Ethics Committee.

[29] The Chair of the Ethics Committee then formed an independent investigative committee comprising only of herself (the “IIC”)

[30] Having received the Harassment Complaint, the IIC hired an outside investigator to investigate the complaint.

[31] Tonie Beharrell of Southern Butler Price LLP initiated the investigation on April 13, 2022, and provided a completed investigation report (the “Investigation Report”) to the IIC on November 30, 2022.

[32] The Investigation Report made several findings in relation to the Harassment Complaint. After receipt by the IIC, the Investigation Report was shared with the Complainant and Respondents. The Investigation Report did not make any recommendations.

[33] The parties were then given the opportunity to make representations in light of the Investigation Report.

[34] Having received the Investigation Report and representations from the parties, the IIC issued their decision regarding the Harassment Complaint on June 7, 2023. (the “Decision”)

[35] In the Decision, the IIC adopted the findings of the investigator and based on those findings, concluded that several instances of harassment and/or retaliation had occurred.

[36] Having found instances of harassment and retaliation, the IIC exercised their discretion to impose various disciplinary actions against the Respondents.

[37] Notably, the Decision included a determination that the release of the Investigation Report and/or the Decision would unfairly prejudice the reputation of the Respondent(s) and refused to circulate it to the membership of the Authority on that basis.

[38] By e-mail on July 5, 2023, the Complainant appealed several portions of the Decision (the "Appeal"). The Appeal included concerns regarding the sufficiency of the disciplinary action taken, accusations of bias, and the decision not to release the Decision or the Investigation Report.

[39] In light of the allegations of conflict and bias, the Authority formed a committee to hear the Appeal (the "Special Committee"). The Special Committee was formed during the Authority's October 2023 Annual General Meeting.

[40] The Special Committee originally consisted of a Chair and three other persons however it was eventually reduced to a total of three members.

[41] In November of 2023, the existing members of the Special Committee met briefly, via teleconference, to discuss the Appeal and how to properly adjudicate it. It was determined that the Chair of the Special Committee would attempt to enlist members of the Authority who had previously served on the Ethics Committee.

[42] The Chair of the Special Committee attempted to do so for several months but was ultimately unsuccessful.

[43] In January of 2024 the Special Committee met again via teleconference to discuss the Appeal. The Chair reported that they were unable to recruit additional committee members.

[44] On April 17<sup>th</sup>, 2024, the members of the Special Committee met to deliberate the Appeal. Over a session of approximately eight hours, a consensus was reached in respect of the Appeal, and a decision was drafted (the "Appeal Decision").

[45] Over the intervening eleven months, the Complainant periodically emailed the Authority asking for an update on the Appeal and a timeline as to when it would be completed.

[46] The Complainant received the Appeal Decision on June 5, 2024. The Appeal Decision, which totaled five pages, upheld the relevant portions of the Decision and dismissed the Complainant's Appeal in whole.

[47] On June 27, 2024, the Complainant filed the Complaint with our office.

## II Issues

[48] There are three primary issues for investigation:

- 1) Did any member(s) of the Special Committee have a real or perceived bias or conflict of interest in hearing the Appeal?
- 2) What process was followed in the hearing of the Appeal?
- 3) Did the Authority conduct the Appeal in accordance with principles of procedural fairness?
  - a. Did Authority representatives have sufficient training and/or guidance in the conduct of the appeal?
  - b. Was the Complainant's appeal fairly interpreted?
  - c. Are there sufficient processes in place to instruct the conduct of an appeal?
  - d. Was there a delay in the hearing of the Complainant's appeal and if so, was it unfair?

## III Discussion of the Issues

[49] The issues outlined above are limited in scope to the Appeal Decision and, to the extent possible, do not take into consideration the Decision, the Investigation Report, or the Authority's investigation into the Harassment Complaint.

[50] The issues are evaluated through the lens of fairness and need not raise to the level of a legal standard. The principle of fairness is a flexible and evolving standard which takes into account the actions of the Authority along with the surrounding circumstances.

## Ombudsman Complaint

### *Issue One – Bias and/or Conflict of Interest*

[51] The Complainant alleged that due to the lack of transparency from the Authority on which members made up the Special Committee, the members of the Special Committee were biased against them.<sup>1</sup>

[52] The Complainant also alleged that the legal counsel that the Special Committee sought legal advice from, was biased against them.<sup>2</sup>

[53] Bias has been defined by the courts as “a leaning, inclination, bent or predisposition towards one side or another or a particular result” (*Wewaykum Indian Band v. Canada*, 2003 SCC 45 at para 58).<sup>3</sup>

[54] Bias is the idea that at the outset, before gathering all the information and evidence required to make an informed decision, the decision maker is already leaning one way or another in terms of the decision they will make.

[55] If a decision maker determines they have a bias (actual or perceived) that impacts their ability to be impartial, they should step aside, and another decision maker should make the decision.

[56] Our investigation found no such evidence of bias. The Chair of the Special Committee had very limited interaction with the Complainant and was not involved in the harassment complaint.

[57] The Chair of the Special Committee did not discuss the appeal with any Executive Committee members, or individuals outside of the Special Committee.

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<sup>1</sup> Standard 2.1 of Fairness by Design.

<sup>2</sup> Standard 2.2 of Fairness by Design.

<sup>3</sup> Standard 2.2 of Fairness by Design page 10

[58] The other members of the Special Committee became part of the Authority after the Complainant made the harassment complaint and was no longer employed by the Authority. The members of the Special Committee did not discuss the appeal with any Executive Committee members, or individuals outside of the Special Committee.

[59] There was no evidence that any of the members of the Special Committee has a personal interest in the outcome of the appeal.

### **Conclusion**

[60] Issue 1 is unsubstantiated.

### *Issue Two – Procedure Followed*

[61] A major issue facing this Investigation was simply attempting to determine the actual process followed by the Authority in the hearing of the Appeal.

[62] While a broad timeline is set out in the Background section above, this issue is concerned with the details of the formation of the Special Committee and deliberations between members of the Special Committee.

[63] After receiving the Appeal from the Complainant, the Authority instituted a process to hear the Appeal. This involved forming the Special Committee with instructions to act independently in the hearing of the Appeal.

[64] The Authority first selected the Chair of the Special Committee. The Chair was selected because of their experience as a school administrator, the fact that they had limited prior contact with the Complainant and had no involvement in the Harassment Complaint.

[65] The Chair of the Special Committee then selected three other members of the Executive Committee to form the Special Committee. Only two of the members that were selected ended up participating in the Appeal deliberations.

[66] The Chair of the Special Committee and the remaining two members of the Special Committee did not meet in person to discuss the Appeal until April 17, 2024.

[67] The Special Committee members were provided instruction by the Chair and copies of the Harassment Complaint Investigation Report, the Decision, and the Complainant's Appeal.

[68] The Special Committee members retired to separate parts of the building and examined the documents independently to draw their own conclusions regarding the Appeal. The Special Committee members limited examination of the Investigation Report to sections referenced in the Decision and searched for the words provided in the Complainant's appeal submission, such as "false allegations."

[69] The Chair testified that they refrained from discussing or deliberating on the Appeal with the other members of the Special Committee during their deliberations. They (the Chair) would have acted as a "tiebreaker" in the event the other two members of the Special Committee were unable to come to a consensus.

[70] After reviewing and examining the various documents, the two other members of the Special Committee reconvened with the Chair and began deliberations.

[71] A consensus was reached in respect of the Appeal, and the Appeal Decision was drafted by the Chair of the Special Committee. In total, the document review, discussion, and drafting put into the determination of the Appeal Decision was approximately eight hours.

[72] For the reasons that follow, our investigation finds that the procedure followed by the Authority to make the Appeal Decision was unfair to the Complainant.

[73] The Chair of the Special Committee and Special Committee members were not adequately familiar with the contents and context of Investigation Report. During interviews, Special Committee members stated that they did not read the Investigation Report in its entirety.

[74] It is our view that devoting just one eight-hour session was not adequate for the Special Committee to familiarize themselves with the issues raised in the Appeal, the Decision, and the Investigation Report.

[75] The fair conduct of an appeal can take many forms and not all need to be time-intensive however, at a minimum, it would have been reasonable for the members of the Special Committee to have prepared for the April 17<sup>th</sup> meeting by reviewing all of the relevant material before hand. <sup>4</sup>

[76] As will be discussed below, the methodology of searching the Investigation Report for terms, such as “false allegations” did not allow the Special Committee to understand the context of the Investigation Report and determine the central points of the Appeal. <sup>5</sup>

## **Conclusion**

[77] Issue two is substantiated.

### *Issue Three – Procedural Fairness*

[78] The Canadian Charter of Rights and Freedoms guarantees that every person is entitled to procedural fairness in their dealings with government and quasi-governmental agencies such as the Authority.

[79] The Complainant alleges that their right to procedural fairness was breached by the Authority in a number of ways. Our investigation uncovered additional related concerns.

## **Guidance and Training**

[80] During the course of interviews and review of documents, it became clear that the primary criteria by which members of the Special Committee were selected was to avoid any possibility of conflict in the hearing of the Complainant’s Appeal.

[81] What also became clear over that period is that the members of the Special Committee were brand new appointees to the Executive Committee, who had never sat on an administrative board before, much less an appeal board.

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<sup>4</sup> Standard 1.6 of Fairness by Design.

<sup>5</sup> Standard 1.7 of Fairness by Design.



[82] In addition, the members of the Special Committee were effectively barred from communicating with senior leaders in the Authority regarding the Appeal. Ostensibly to again avoid and potential for conflict of interest or bias allegations.

[83] This combination of factors left the members of the Special Committee in an unenviable position. Cut off from leadership, without training on even the basics of administrative fairness, principles of investigations, report/decision writing, or administrative law.

[84] The Chair of the Special Committee was advised by the Authority that it would not allow access to the Authority's general counsel. The Chair was required to retain counsel on their own and submit costs for reimbursement. This represented a barrier to accessing legal counsel who might have provided further guidance on the conduct of an appeal.

[85] During interview, the Chair of the Special Committee advised that they received information from a lawyer on the conduct of an appeal. The instructions, totalling two (2) pages of notes were received once over the course of a one (1) hour phone call in December of 2023.

[86] Given the lack of available expertise on the part of the potential nominees, we asked both leadership and the Special Committee members if the Authority at any point considered hiring an outside adjudicator to hear the appeal and make recommendations.

[87] All parties interviewed advised that the Authority had not considered doing so, though the reasoning for why varied between them.

[88] We find that the lack of appropriate knowledge on the part of the persons tasked to conduct the Appeal constitutes an unfairness not just to the Complainant, but also to the members of the Special Committee.

[89] This lack of training and requisite knowledge is the undercurrent to the following three sections. While not an excuse for the Authority, we find that there was no maliciousness to the failure to follow principles of procedural fairness, simply a lack of knowledge and training.<sup>6</sup>

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<sup>6</sup> Standard 1.7 of Fairness by Design.

## Interpretation of the Appeal

[90] The Complainant is not a lawyer or other legal professional. As an unrepresented litigant, the Authority ought to interpret an appeal with an eye to give voice to all concerns raised by an appellant. Access to legal counsel should not be a prerequisite for being meaningfully heard.

[91] The relevant portion(s) of the Appeal email submitted by the Complainant are as follows:

1. *I [the Complainant] appeal the decision that there is no evidence of an ongoing concern. There is evidence to the contrary in Ms. Beharrell's findings and in the documentary evidence provided. Further I [the Complainant] disagree with the fact that the conduct was aimed at one person (myself) means that it is not of concern to the YAEP membership as a whole. All members of the YAEP need to feel confident in the ethics of the Executive, and confident that any complaints they bring forward will be dealt with responsibly and without fear of retaliation.*
2. *I [the Complainant] appeal the decision not to issue a retraction to the YAEP membership of the false allegations against me:*

*The YAEP Harassment Policy article 2(e)((i)(b) states that disclosure is needed in order to "take corrective action"*

*My removal constituted Prohibited Reprisals and a breach of the Occupation Health and Safety Act (McBride Report Dec 2, 2022). It has been determined by the YAEP's investigator Mrs. Tonie Beharrell as well as the Ethics Chair [redacted], that my removal from office on the implementation of the bylaw process used to remove me from office constituted retaliation. This is an affront to the YAEP's democratic process. YAEP bylaws are not meant to be retaliatory in nature and this action compromises the integrity of our Association.*

*Allegations were made against me and shared with all of the YAEP membership, YAEP PD Committee, Yukon Education, to my respected colleagues, and to my leadership teams that I engaged in wrongdoing and "**gross misconduct wholly incompatible with continuing to hold office in the Association.**" This is incorrect and has now been deemed as retaliatory by OHS (Occupational Health and Safety), the Ethics Chair, and Investigator Tonie Beharrell. I am requesting that a statement/apology be made on behalf of the YAEP Executive to all YAEP members and Yukon Education and Members of the PD Committee to indicate that I have not engaged in any wrongdoing and to "take corrective action" as per the YAEP Harassment Policy 2(e)(i)(b).*

*Additionally, there is an email from [Redacted] in my employee file at the Public Service Commission sent to senior Yukon Government management in November of 2021*

*indicating that I had been removed as PD Chair. I would like this letter retracted from my file.*

*In November of 2021, [redacted] has also advised the entire membership in November 2021 by way of email that I was removed according to YAEP bylaw 8.5. This needs to be corrected. [Original emphasis] [Original emphasis]*

[92] The Appeal email is obviously earnest but lacks a certain amount of structure and legal precision with regard to the specific findings and portions of the Decision which are being appealed.

[93] Part of the email is simply the Complainant expressing their frustration with the situation. Detailed analysis is required to extract the relevant information.

[94] As such, a certain amount of interpretation was required by members of the Special Committee in determining the scope of the Appeal.

[95] From the email re-produced above, the Special Committee determined the scope of the Appeal to be as follows:

- 1) "I appeal the decision that there is no evidence of an ongoing concern"; and
- 2) "I appeal the decision to issue a retraction to the YAEP membership of the false allegations made against me."

[96] In our opinion, this is an unfairly narrow interpretation of the issue(s) laid out by the Complainant in the Appeal email.

[97] When read in conjunction with the Decision and the Investigation Report, the Appeal email discloses at least a half-dozen grounds of appeal. These issues range from substantive questions regarding the findings of the ICC to new issues not presented at the time the Decision was heard. In no way limiting the issues that could be raised in the appeal, this office identified questions surrounding the application of evidence, the weighing of reputational damage, the threshold required for disclosure, and the ICC's interpretation of the purpose of discipline.

[98] For clarity, this office takes no position on what the outcomes of these grounds of appeal would be, simply that they can be reasonably extracted from the Complainant's email if read with an eye to giving voice to the Complainant's concerns.

[99] Regardless of concerns in the actual execution of the Appeal (discussed below), the Special Committee impaired its ability to conduct a meaningful review of the Decision by artificially limiting its scope.

[100] The narrowly read interpretation of the email by the Special Committee is procedurally unfair and a breach of the right of the Complainant to be heard during the Appeal process.

[101] In addition to narrowly interpreting the scope of the Appeal, the Special Committee went a step further and contained their investigation to the, already narrowed, precise wording used in the Appeal. In response to the second ground discussed in para 78, the Special Committee responds:

*We find that the Decision Document [the Decision] does not indicate that any allegations were false. Therefore, there can be no retraction.*

*We searched the Document [the Decision] for the words “false allegation” and “false allegations” and could find none.*

*It may be the opinion of the Appellant [the Complainant] that there were false allegations, but that is not supported by the Document [the Decision] or the Investigation Report [the Investigation Report] provided to the Ethics Committee Chair.<sup>7</sup>*

[102] During interviews, members of the Special Committee acknowledged that they did not read the entire Investigation Report and only accessed the sections specifically referenced in the Decision.

[103] At a minimum, a thorough reading of the Investigation Report and the Decision was required to assess whether any allegation made against the Complainant was determined to be false.

[104] This lack of context is particularly problematic as in the Decision, the Chair of the Ethics Committee accepts the findings of the Investigation Report in full.<sup>8</sup>

[105] Neither this office nor the tenants of administrative fairness hold any authority to the standard of perfection. Even on the sliding scale of fairness, a word search does not constitute a fair appeal process.

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<sup>7</sup> The Appeal Decision at pg. 4.

<sup>8</sup> The Decision at pg. 25.

[106] Therefore, it is not possible for the Special Committee to accurately state “that [false allegation] is not supported by the Document [the Decision] or the Investigation Report.”

### **Sufficiency of Existing Process(es)**

[107] The process(es) established by the Authority’s Policy Manual, which govern the handling of violence and harassment complaints, are set out above in Section 1 - from paragraphs 13 to 26.

[108] The relevant section is found at 8(b) of the Policy Manual and simply states that:

*The Executive Committee, excluding all individuals involved in the complaint process, shall discuss the appeal and make a final and binding decision withing 20 calendar days of receipt of the appeal.*<sup>9</sup> [Emphasis added]

[109] Beyond this excerpt, no other instruction is given in the conduct of an appeal. Nor does the Policy Manual outline possible grounds of appeal, as it does for ethics complaints.<sup>10</sup>

[110] If the Executive Committee were staffed by full time, experienced, long tenured members this might be sufficient instruction to allow for the institutional knowledge of the Authority to properly conduct an Appeal.

[111] Instead, the majority of the members of the Executive Committee are volunteers, elected on two-year terms, with varying backgrounds and experience when it comes to the conduct of an appeal.

[112] This issue was compounded by the factors laid out in the section above on training and guidance. The members of the Special Committee found themselves cut off from the rest of the Executive Committee (with regard to this issue), with no training, no guidance, and no policy and procedures to fall back on.

[113] Fair rules and decision-making criteria are a hallmark of fairness.<sup>11</sup> Without such criteria, decisions can be arbitrary and lack internal consistency.

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<sup>9</sup> Policy Manual at pg. 82.

<sup>10</sup> Policy Manual at pg. 77.

<sup>11</sup> Standard 3.2 of Fairness by Design.

[114] As such we find that the lack of established policy or procedure with regard to appeals on the part of the Authority constitutes an unfairness to the Complainant.

### **Delay**

[115] The Complainant's email regarding the Appeal was sent July 5, 2023, and a decision in the Appeal was issued on June 5, 2024. This is a period of approximately eleven months.

[116] The Policy Manual of the Authority states that a "final and binding" decision on an appeal is to be made "within twenty (20) calendar days."

[117] Meeting legal requirements is a fundamental aspect of fairness<sup>12</sup> and the Special Committee failed to meet the times set out by the Authority. This constitutes unfairness. Appellants, and any other person subject to the rules of the Authority, ought to be able to rely on the By-Laws and Policy Manual to govern the conduct of the Authority in the exercise of its legislated powers.

[118] For more clarity, even if the Authority's Policy Manual and/or by-laws were more permissive with regard to the timeline for an appeal to be heard, over a year would still be an unacceptable delay.

[119] Members of the Special Committee who were interviewed advised that a number of factors contributed to the length of time it took to reach a decision on the Appeal. These included an attempt to recruit more experienced members to join the committee, the volunteer nature of their position, and their relative lack of expertise on the topic.

[120] A note must be made about a position put forward by various members of the Authority – being that a portion of the delay was attributed to the timing of the Appeal. The Appeal was filed in July, which is a month during which school is not in session. Accordingly, many members of the Authority book vacation and are generally unavailable for professional duties during this time.

[121] Without deciding on the reasonableness of an office being non-functional for a quarter of the year, what is clear is that if complaints and/or complaint appeals will not be processed during the summer months, this ought to be reflected in the By-Laws/Policy Manual.

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<sup>12</sup> Standard 3.1 of Fairness by Design.

[122] Regardless of the specific choices made by the Special Committee it is incumbent on the Authority first, to ensure that its internal timelines are being met, and second, to ensure that the appropriate resources are being assigned to the Appeal. If volunteer members of the Special Committee are unable to meet reasonable deadlines, then it must engage outside help.

[123] As such we find that the delay experienced by the Complainant in processing the Appeal is unfair.<sup>13</sup>

## **Conclusion**

[124] Issue three is substantiated.

## **IV Conclusions**

[125] Our investigation found unfairness in many aspects of the Authority's handling of the Appeal, excepting that of bias and/or conflict of interest.

[126] On the basis of the discussion above, we have reached the following conclusions:

### **Issue 1 – Bias/Conflict of Interest**

- 1) We uncovered no evidence of bias and/or a conflict of interest between the members of the Special Committee and the Complainant.
- 2) As such, issue one is unsubstantiated.

### **Issue 2 – Procedure Followed**

- 1) Insufficient time and resources were allocated to conducting the Appeal.
- 2) The Authority had no oversight of the Appeal process which may have mitigated delays.
- 3) The abbreviated nature of the deliberations contributed to concerns regarding delay. It is unclear why such a short amount of time could not have been dedicated to resolving the Appeal earlier.

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<sup>13</sup> Standard 1.5 of Fairness by Design

- 4) Lack of structure and instruction to the deliberations of the Special Committee contributed to a shallow analysis of the Appeal.
- 5) Therefore, issue two is substantiated.

### Issue 3 – Procedural Fairness

- 1) The members of the Special Committee were not equipped to meaningfully identify or grapple with the issues raised in the Appeal.
- 2) This was compounded by a lack of written appeal procedures.
- 3) The combination of 1) and 2) lead to significant and unfair delays and fairness issues in the hearing of the Appeal.
- 4) Accordingly, issue three is substantiated.

## V Recommendations

As a result of our investigation, we make the following five recommendations to the Authority:

- 1) Within three months of the date of this Report, determine a reasonable timeframe for the hearing of harassment complaint appeals and amend Authority regulations regarding the same.
- 2) Within six months of the date of this Report, amend the Policy Manual to include detailed instruction for hearing appeals.
- 3) Within six months of the date of this report, the Authority adopt a policy of training for members of the Executive Committee. Such training should include report writing, investigations, and administrative fairness.
- 4) Within three months of the date of this Report, hire a third-party adjudicator to re-hear the Appeal and make recommendations to the Special Committee.
- 5) Within six months of the date of this Report, the Authority adopt paragraph 10(b) of the Ethics Complaint policy in the Policy Manual into the Harassment Complaint Policy.



## Report regarding Investigation of Complaint

[127] We provided the Authority the opportunity to make representations about our draft report and our preliminary recommendations in accordance with section 17. We received representations from the Authority on December 13, 2024, and considered them as part of this report.

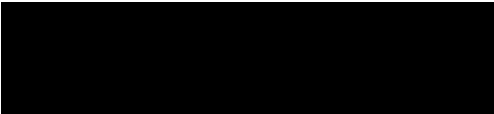
[128] We are reporting the results of our investigation along with our recommendations to the Authority as required under section 23.

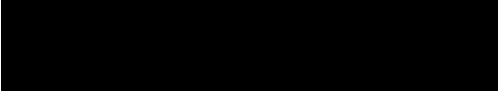
## Report of the Ombudsman if No Suitable Action taken

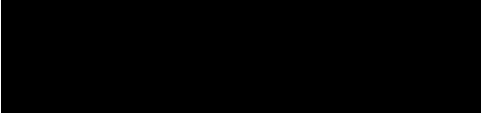
[129] As per section 25, if the Ombudsman comes to the view that no suitable action has been taken within a reasonable time by the Authority in response to the opinions, reasons and recommendations made under section 23, then the Ombudsman may, after considering any reasoned response by the Authority, submit a report to the Commissioner in Executive Council and later to the Legislative Assembly about the matter as the Ombudsman considers appropriate.

## Complainant to be informed if No Suitable Action taken

[130] As per section 26, if the Ombudsman makes recommendations and no action that the Ombudsman believes adequate or appropriate is taken by the Authority within a reasonable time, then the Ombudsman shall inform the Complainant of the recommendations and may make any additional comments that they consider appropriate. In any event, the Ombudsman shall inform the Complainant within a reasonable time about the result of the investigation.

  
Jason Pedlar, BA, MA  
Ombudsman

  
Kelly Hjorth – BA, JD  
Investigator

  
Tyler Symonds  
Investigator

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