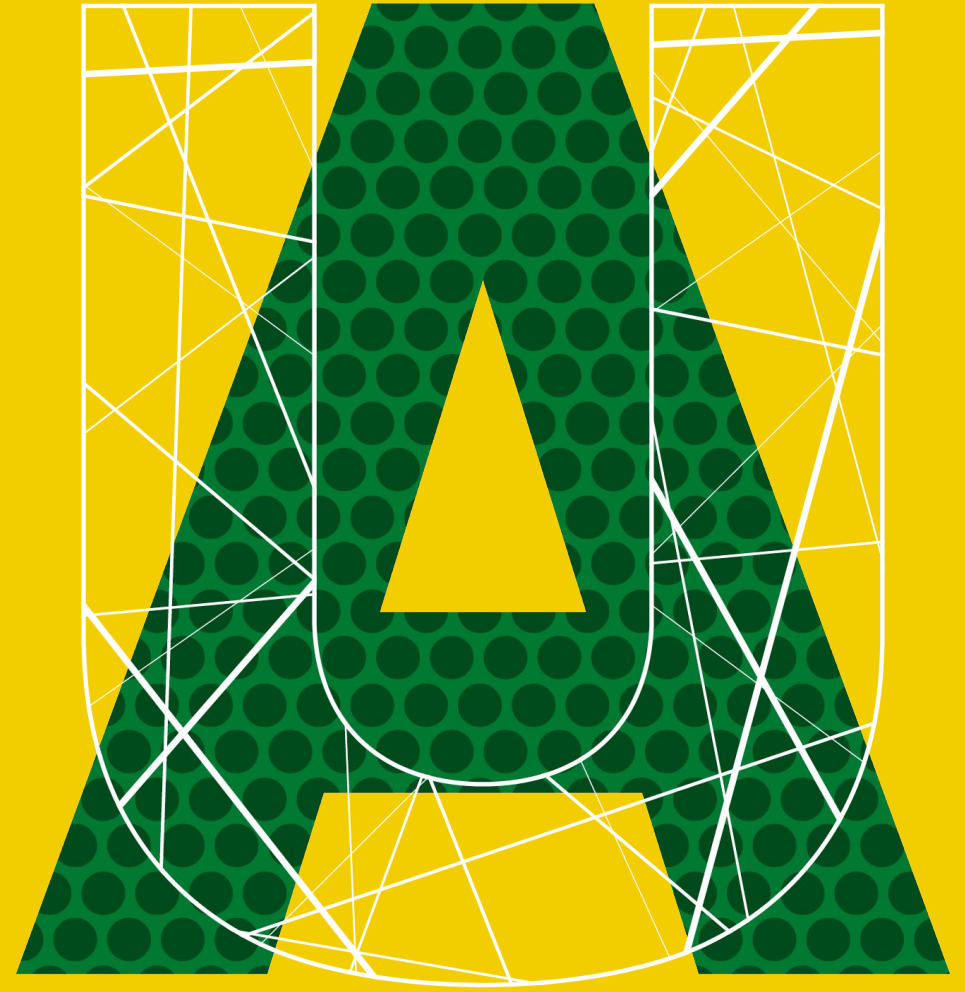


LEGAL SERVICES AT THE UNIVERSITY: OFFICE OF GENERAL COUNSEL 101



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Legal Services at the University: Office of General Counsel 101

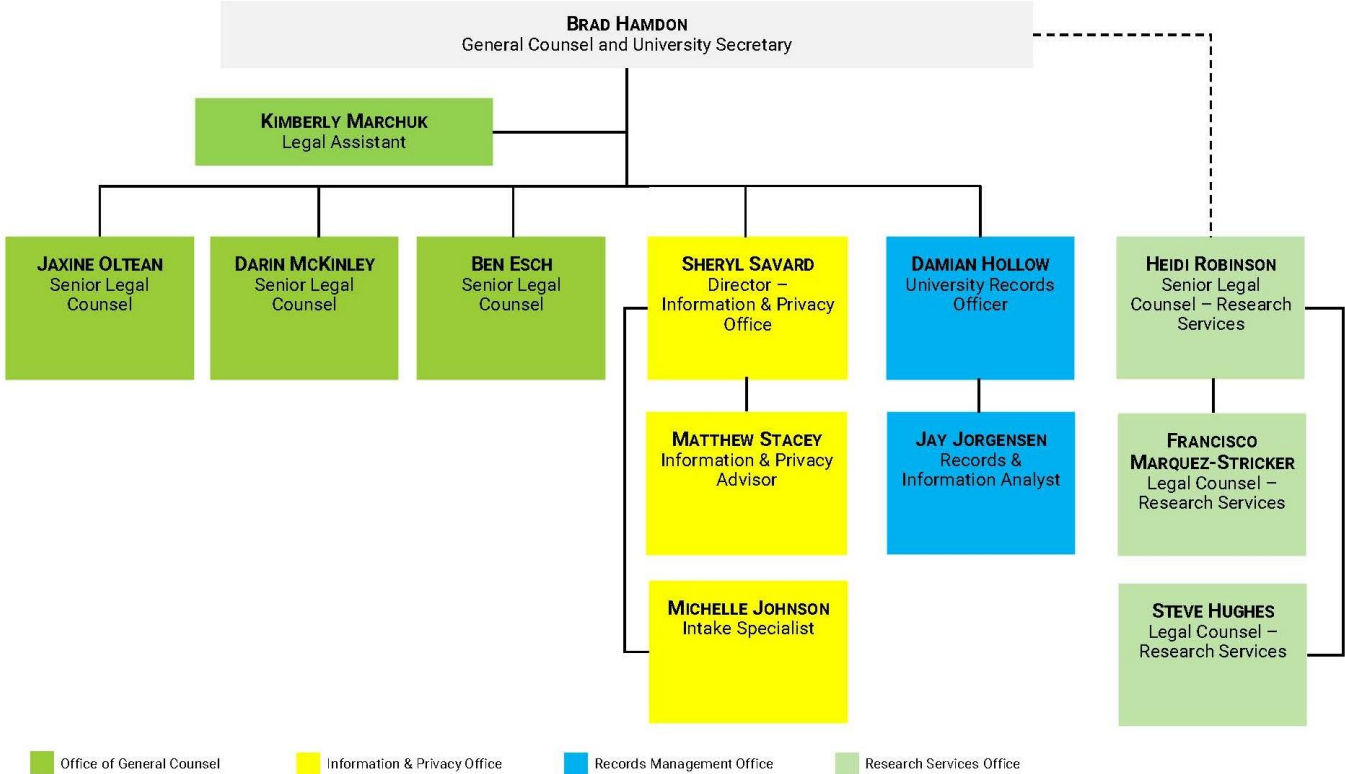
Purpose of this Presentation

- Who We Are & What We Do
- Review of Key Policies & Procedures
 - [Contract Review & Signing Authority Policy](#)
 - [Retention of External Legal Counsel Procedure](#)
 - [Legal Hold Procedure](#)
- Questions

Office of General Counsel Org. Chart



Office of General Counsel
March 2023



Office of General Counsel

- We deal with all legal matters for the University, including: contract reviews, litigation matters, labour and employment issues.
- Our role is to provide legal advice to the units on campus. It is an advisory role, not a decision making role - unless we are dealing with situations where there appears to be a breach of the law.

Office of General Counsel

- We often work through other support units and are not the primary contact.
 - If you have a procurement issue, work through PCM and they will contact the OGC if legal advice is needed;
 - if you have an HR question, work with HRS and they will bring in legal for advice if needed;
 - other such units include Faculty Relations, RSO, UAI.

Contract Review & Signing Authority Policy

- University authority for agreement signing and review:
 - [Contract Review and Signing Authority Policy](#)
 - [Contract Review Procedure](#)
 - [Retention of External Legal Counsel Procedure](#)
 - [Sub-Delegation of Signing Authority Procedure](#)
 - [Schedule "A" – Signing Authority for Contractual Obligations](#)
- The Policy and associated Procedures are all available on UAPPOL.

Contract Review & Signing Authority Policy

- Purpose of the [Contract Review and Signing Authority Policy](#):
 - Policy creates a framework for the review and execution of all agreements entered into by the University;
 - Procedures provide guidance on: when agreements must be reviewed; who is able to seek legal advice for a faculty/department/unit; and
 - Creates an internal control system and audit record.
- **Applies to all “legal contracts” or “legal agreements” entered into by or on behalf of the University.**

Contract Review & Signing Authority Policy

- **What is a “legal contract” or a “legal agreement”?**
 - Any document with an external party that creates legally binding commitments for both/all parties.
 - Can often have various names: Agreement; Contract; Memorandum of Agreement; Letter of Agreement; Letters of Intent.
 - Can include “letters of intent” or “memoranda of understanding” if they create binding legal commitments.

Contract Review & Signing Authority Policy

- **What is the difference between a contract and an MOU?**
 - A Memorandum of Understanding (MOU) is normally a document that **DOES NOT** (and is not intended to) create legally-binding commitments.
 - Rather, it creates an understanding about a desire to work together and work towards a legally-binding contract (like a “relationship umbrella”).
 - MOUs should expressly state they are not legally binding **OR** state what aspects of it are intended to be binding.
 - However, it is not sufficient to say that an MOU is not binding if it (in fact) creates binding obligations.

Contract Review & Signing Authority Policy

The University is a single legal entity

- All legal contracts/agreements should be in the formal name of the University:

The Governors of the University of Alberta

- May add “as represented by [faculty/unit name]” to better outline administrative responsibility;
- Faculties and units cannot enter into agreements in their name; and
- One faculty/unit within the University cannot enter into a legally binding contract with another faculty/unit within the University.

Who Can Sign Agreements?

- Policy tasks the **Responsible Department** with oversight of the review and execution of the contract.
- Policy also identifies a **Signing Authority** for each type of contract.
- The Signing Authority is delegated this power by the Board of Governors.

Who Can Sign Agreements?

- Schedule "A" of the Policy identifies types of contracts, the responsible department and the signing authority. Always start here!

A. Acquisition or Disposition of Land and Space Leasing
 Contracts / documents that involve easements, leasing, sale or purchase of real property.

Document Description	Dept Responsible	Signing Authority
Acquisition of land (except gifts of land) < \$100,000	V-P (Facilities and Operations)	AV-P (Facilities and Operations)
Acquisition of land (except gifts of land) \$100,000 - \$1 million	V-P (Facilities and Operations)	V-P (Facilities and Operations)
Acquisition of land (except gifts of land) \$1 million - \$5 million	V-P (Facilities and Operations)	V-P (Facilities and Operations) and V-P (Finance and Administration)
Acquisition of Land (except gifts of land) >\$5 million	V-P (Facilities and Operations)	President and V-P (Facilities and Operations)
Sale of Land	V-P (Facilities and Operations)	President and V-P (Facilities and Operations) May require prior approval from Lieutenant Governor in

Next: note the Responsible Department & Signing Authority.

Resp. Dep't then consults the **Contract Review Procedure** for who needs to review/approve before signature.

Start here: determine which part of Schedule applies by **TYPE** of contract (categories A-P) and **CONTENTS** (match to examples in applicable table)

Who Can Sign Agreements?

- Some agreements might not fit well within a specific category – In these instances, the Office of General Counsel can assist in interpreting the Policy and Schedule “A”.
- **The signing authority is responsible for ensuring all appropriate reviews and approvals are in place before signing the contract.**
- The signing authority can sub-delegate execution of a contract to another position where appropriate.
- Sub-delegation must occur in accordance with the [Sub-Delegation of Signing Authority Procedure](#).

Who Can Sign Agreements?

- Key aspects of the [Sub-Delegation of Signing Authority Procedure](#).
 - Should be to a University “position” and not a specific person;
 - Can be temporary (specific start/end date) or permanent;
 - Must be in writing (see form attached as [Schedule “B” to Procedure](#));
 - Delegating authority’s office should maintain a record of the sub-delegation;
and
 - No further sub-delegation can occur.

Agreement Review Process

- When should a legal agreement be reviewed?
 - [Contract Review Procedure](#) sets out the process by which agreements are reviewed prior to execution.
 - Office of General Counsel (OGC) and Risk Management and Insurance (Risk) must review **“all contracts of sufficient importance, regardless of value, and all contracts where there is potential for significant or uncertain liability to flow to the University”**.
 - Information and Privacy Office (IPO) must review contracts where a third party may have access to personal information collected by the University.
 - Some contracts may also require review by other departments: Financial Services, Trademarks, Faculty Relations are examples (see [Contract Review Procedure](#) for more information).

Agreement Review Process

- When should a legal agreement be reviewed?
 - [Contract Review Procedure](#) provides some examples of situations where a review should occur:
 - Contracts where annual financial value exceeds \$500,000;
 - Contracts involving the acquisition/disposition of an interest in land;
 - Contracts where foreign law governs;
 - Contracts where there is potential for injury/damage to people, property or the environment;
 - Contracts involving personal information of University students or employees.

Agreement Review Process

- Role of the Responsible Department:
 - All agreements must be reviewed and approved by the Responsible Department before a review is sought by other offices.
 - Responsible Department must ensure all business terms are acceptable.
 - Responsible Department should provide a draft of the agreement to the reviewing offices, including the results of their own review.
 - Responsible Department should **NOT** sign the agreement before seeking a review – arrange for reviews first, then decide whether agreement is acceptable to sign.

Agreement Review Process

- Role of the Responsible Department:
 - Reviewing offices should be engaged as early in the process as possible – we usually require at least 2-3 weeks to review an agreement.
 - Make it clear what you are asking us to review – Are you only concerned with certain sections, or do you need a complete review?
 - The draft Agreement should be provided with the [Cover Sheet and Signature Page](#) (linked in [Contract Review Procedure](#)), which should indicate Responsible Department's approval of business/operational terms

Agreement Review Process

- Role of the Responsible Department:
 - Certain contracts must also be brought to the attention of the appropriate Vice-President. These include:
 - Contracts with an **unusually high risk factor**;
 - Contracts that bring activities of the University under **public scrutiny**;
 - Contracts that involve **any controversial matter**.
 - The Responsible Department must maintain an original signed agreement.

Agreement Review Process

- Exceptions to the application of the [Contract Review Procedure](#).
 - Requirements in the Procedure do not apply where the responsible department is:
 - Research Administrative Services;
 - Technology Transfer Services;
 - Procurement and Contract Management (Finance, Procurement & Planning);
 - University of Alberta International; and
 - Utilities.
 - These departments have their own review mechanisms, which have been vetted by the Office of General Counsel.

Who Can Seek Legal Advice?

- Set out in the [Retention of External Legal Counsel Procedure](#).
 - Sets out the list of positions that can contact the Office of General Counsel in order to seek legal advice.
 - Any retention of **external legal counsel** (legal advice from an outside firm) must be obtained through the Office of General Counsel – Contact us first!

Examples:

- For colleges/faculties, positions include Deans, Vice and/or Associate Deans, General Managers, Chairs, etc.
- For other units, positions will usually include the Director and other specific positions (check the Procedure for more information).

Legal Hold Procedure

- The OGC has responsibility for the administration of the [Legal Hold Procedure](#) published in UAPPOL. This procedure is engaged when any “employee” or “other affiliate” of the University becomes aware of:
 - an existing legal proceeding; or
 - an anticipated legal proceeding.brought against the University of Alberta.

Legal Hold Procedure

- Under the procedure, the term “legal proceeding” is broad.
- This includes:
 - lawsuits;
 - human rights complaints or other complaints or investigations by a statutory board or tribunal;
 - subpoenas or production orders for documents;
 - grievances; and
 - many other kinds of proceedings that will determine rights or compliance with laws.

Legal Hold Procedure

- Persons or organizations aware of an existing or anticipated legal proceeding are obligated to:
 - search and identify;
 - preserve and not alter or delete;
 - collect;
 - produce to University's legal counsel; and
 - disclose.
- recorded information to the parties in the legal proceeding.

Legal Hold Procedure

- What records are captured by the [Legal Hold Procedure](#)?
 - Records in the custody or control of the University are:
 - records produced in the course of carrying out the business of the University; and
 - records created or produced by an employee while carrying out their employment duties.
 - The procedure does **not** capture the personal communications or personal records of an employee.

Legal Hold Procedure

- What to do if you become aware of an existing or threatened legal proceeding?
 - Connect with the OGC asap.
 - The OGC will then:
 - send out a **Legal Hold Notice** to employees and units so they can begin to search, identify and send to our office related records; and
 - review the records and determine which records must be disclosed to the parties in the legal proceeding.

Legal Hold Procedure

- Key takeaways:
 - **Call** our office once aware of an existing or threatened legal proceeding;
 - Start the **search** for records and preserve related records; and
 - Consider **who else** might hold related records.

QUESTIONS?



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