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

• 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.
• 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.
• 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.
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!

<table>
<thead>
<tr>
<th>Document Description</th>
<th>Dept Responsible</th>
<th>Signing Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of land (except gifts of land) $&lt;100,000</td>
<td>V-P (Facilities and Operations)</td>
<td>AV-P (Facilities and Operations)</td>
</tr>
<tr>
<td>Acquisition of land (except gifts of land) $100,000 - $1 million</td>
<td>V-P (Facilities and Operations)</td>
<td>V-P (Facilities and Operations)</td>
</tr>
<tr>
<td>Acquisition of land (except gifts of land) $1 million - $5 million</td>
<td>V-P (Facilities and Operations)</td>
<td>V-P (Facilities and Operations) and V-P (Finance and Administration)</td>
</tr>
<tr>
<td>Acquisition of Land (except gifts of land) &gt;$5 million</td>
<td>V-P (Facilities and Operations)</td>
<td>President and V-P (Facilities and Operations)</td>
</tr>
</tbody>
</table>
  | Sale of Land                  | V-P (Facilities and Operations)         | President and V-P (Facilities and Operations) May require prior approval from Lieutenant Governor in

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

**Next:** note the Responsible Department & Signing Authority.

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