



Student Judicial Processes at the University of Saskatchewan

Presentation Notes

Presentation by University Secretary Lea Pennock
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Scope and authority of our judicial processes

The University of Saskatchewan Act

- Council: Academic Discipline and appeals
- Senate: Non-academic Discipline and appeals

Autonomy of a University to develop its own processes

- With reference to the principles of natural justice
- Governed by principles and procedures applicable to other administrative tribunals
- Subject to law (judicial review)

The Role of the Courts: Judicial Review and the Visitor

The *University of Saskatchewan Act* names the Lieutenant-Governor as Visitor, who “may exercise the rights and shall perform the duties of the visitor” :

- Power to address alleged miscarriages of justice
 - Visitor will usually appoint a QB judge to hear the case
 - Courts will be very harsh on institutions that have not followed their own procedures
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Structure of Judicial Processes at the U of S

Council:

- Student Academic Discipline (College)
- Appeals
 - ~ Of academic decisions
 - ~ Of disciplinary actions

Senate:

- Non-Academic Student Discipline
- Appeals
 - ~ Of disciplinary actions

Student hearings: Dramatis Personae

- The Hearing Board
- First Party (“Applicant”)
- Second Party (“Respondent”)
- Witnesses (for both parties)
- Advocates (for both parties)
- Observers

Criminal or administrative charges?

- Some offenses (both academic and non-academic) may also be in violation of the Criminal Code
- These may be referred to the police and courts for consideration
- This should not preclude charging the student internally with an offense:
 - Our community expectations for behaviour are higher than the general public’s
 - Our regulations serve a different purpose
 - Our sanctions are quite different

Principles of Procedural Fairness

Three main principles:

- ★ The right to know the case and be heard (*alti auferam partem*)
- ★ The right for an unbiased decision (*nemo iudex in sua causa debet esse*)
- ★ ‘The person who hears the case must decide the case’

The right to know the case and be heard

- No penalty without a hearing
- Notification in writing
- An opportunity to respond
- Right to appear in person at a hearing

The right to an unbiased decision

- No bias on the board
- Disclosure
- Written Decision
- Right to at least one level of appeal (either party)

‘The one who hears the case must decide the case’

- A decision cannot be delegated to another person
- Staff lawyers or the University Secretary or the Bylaws Committee should not be canvassed for their opinion, though they can give guidance on process and refer to precedents

- Guidelines may exist for penalties but should not limit the scope of a decision-maker; the board must be free to make its assessment and decision.

Procedures for Student Hearing: Before the Hearing

Assumptions:

- Informal resolution has not worked or is not appropriate
 - A formal hearing has been called and appropriate notice given
 - All materials have been shared with both parties and the hearing board
- ☑ Hearing board meets *in camera*
 - ☑ Chair clarifies procedures, including the standard of proof that will be used and the remedies that are available to the board
 - ☑ Chair and board review together the list of those who will attend and rule on any questions
 - ☑ Chair reminds the board of the importance of impartiality: they are there to hear both sides and not as agents of “the university” except in the broadest sense
 - ☑ Both parties are welcomed outside the hearing room and seated in separate areas

Procedures for student hearings: During the hearing

Preliminaries

- Chair invites both parties in, does introductions, explains procedures including how a decision will be reached and communicated
- Chair seeks agreement from both parties that the hearing is properly constituted to hear this case and that appropriate notice has been given on both sides.
- Chair reiterates what the question is that is before the board—e.g. “This is a disciplinary board convened under Section X of the Y regulations, to hear the case of A against B, relating to an allegation of academic dishonesty in [course]”

Suggested order of proceedings (at the invitation of the Chair)

- the appellant or complainant (or representative) gives an opening statement
- the board seeks any required clarification
- the respondent gives an opening statement
- the board seeks any required clarification
- the appellant makes a presentation (including calling any witnesses). Ensure all exhibits are numbered.
- the board questions appellant and witnesses
- the respondent may cross-examine
- the respondent makes a presentation (including calling any witnesses). Ensure all exhibits are numbered.
- the board questions respondent and witnesses
- the appellant may cross-examine
- the appellant/complainant gives a closing statement
- the respondent gives a closing statement

Finally, the Chair makes closing comments. It's good idea to ask "Do you feel you had a fair hearing? Did you have an opportunity to present your evidence? The chair then reminds everyone how/when the decision will be rendered.

Procedures for student hearings: After the hearing

After the hearing

- Board adjourns to consider the evidence *in camera*
- Board should establish in advance how it will decide both the fault and the penalty (consensus, majority, chair votes or not, what to do if a tie)
- Evidence submitted prior to and at the hearing is reviewed
- Secretary may provide information about precedents
- The student's prior record for academic dishonesty should be disclosed only at the point of assessing a penalty

Standard of Proof

- The burden of proof, generally, is on the applicant.
- The standard is not the criminal judicial standard ("beyond reasonable doubt") but the civil standard ("balance of probabilities").

The Decision:

- ☑ One member (or the secretary) should be assigned to draft the decision; this should be reviewed and approved by all members and signed by the Chair before being released to the student.
- ☑ Decision report should be brief but should include
 - The date and time of the hearing and a list of those present
 - Identification of the parties to the dispute
 - An outline of the charges
 - A statement about what was at issue
 - A summary of the findings of fact
 - The positions of the parties (optional)
 - Reasons for accepting or rejecting the main arguments
 - Statement of decision, including any penalty to be imposed
- ☑ Penalty assigned must be within the jurisdiction of the board in accordance with the regulations and possible to implement (check with Registrar)
- ☑ The decision in a case of academic dishonesty must be delivered "not later than 15 days after the hearing board has completed its deliberations".
- ☑ The covering letter should remind the recipient of the possibility of appeal (how, when, what regulation).
- ☑ Ensure appropriate cc's as prescribed by the regulations
 - The student
 - The person who made the allegation
 - The dean of the student's college
 - The head of the department responsible for the course or activity to which the allegation relates
 - The instructor of a course, if the offence involves a course
 - The Registrar

- The University Secretary

The official record:

- ☑ Documentation submitted by both sides in advance of the hearing including the initial letter of complaint or appeal
- ☑ Any additional documentation that the board allowed to be introduced at the hearing
- ☑ Procedures followed and whether if any objections were raised and (if so) nature of each objection and whether it was allowed or denied
- ☑ Reasons for and duration of any recesses
- ☑ The written decision, including
 - The hearing board's governing by-law (Council regulations)
 - The hearing date and location, list of those present, membership of the board and identification of the chair;
 - Names of all parties and their representatives and witnesses appearing at the hearing

Sources:

University Council, *Student Academic Dishonesty Rules (November 1999)* and *Student Appeals in Academic Matters (November 1999)*

University Senate, *Standard of Student Conduct in Non-Academic Matters and Procedures for Resolution of Complaints and Appeals (October 2008)*

Foundation of Administrative Justice, *Introduction to Administrative Justice* course materials (April 2007)

Lynn M. Smith, "Procedural Fairness for University and College Students" *CACUSS Monograph Series*, April 1998

B.M.M. Sawicki, *Conducting University Hearings: Fair Hearing Requirements Manual*, (Canadian Association of University Solicitors), 1997.

For more information, contact:
Lea Pennock, University Secretary
966-4632

lea.pennock@usask.ca

www.usask.ca/university_secretary/