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**CASE SUMMARY: THAT’S REASONABLE,
RIGHT? THE STANDARD OF REVIEW
REGARDING QUESTIONS OF PROCEDURAL
FAIRNESS MET BY AN ADMINISTRATIVE
DECISION MAKER IS NOT CORRECTNESS, BUT
RATHER WHETHER THE STANDARD OF
FAIRNESS REQUIRED BY THE COMMON LAW
HAS BEEN MET**

The standard of review regarding questions of procedural fairness met by an administrative decision-maker is whether the standard of fairness required by the common law has been met. This standard of review is not properly characterized as correctness. On appeal from a reviewing body’s decision that the lower decision-maker met the appropriate level of fairness required by the common law, the appropriate standard of review is reasonableness.

Administrative law – Decisions reviewed – University Committees – Judicial review – Procedural requirements and fairness – Standard of review – Reasonableness – Correctness – Remedies – Declaratory relief – Charter relief – Universities – Students – Policies

Andres v. Governors of the University of Lethbridge, [2021] A.J. No. 960, 2021 ABQB 551, Alberta Court of Queen’s Bench, July 16, 2021, S.L. Bercov J.

The appellant Dr. Andres entered into the Master of Counselling Program (the “Program”) at the University of Lethbridge in the summer of 2015. Dr. Andres eventually raised concerns with the Program with various individuals, including a lack of instructor presence in online sessions, a lack of meaningful feedback on assignments, and unclear, inconsistent grading criteria. The University attempted to address those concerns, but Dr. Andres remained unsatisfied and continued to express concerns using “increasingly strong language” and accusations against Faculty members, including accusations of instances of abuse and trauma.

The University Calendar requires students to withdraw for failure to meet the University’s Standards of Professional Conduct. It does not provide who determines such a failure. In May 2017, one of the instructors in the Program sent a letter to the Dean asking for Dr. Andres to be removed for failure to meet the Standards of Professional Conduct. The instructor also asserted it would be unethical for Faculty members to continue to instruct Dr. Andres given her allegations of abuse and trauma.

Dr. Andres was informed about the letter. The Dean arranged a meeting with her, and she was advised she could bring an advocate. On June 19, 2017, a meeting took place over the phone between Dr. Andres, the instructor who wrote the letter, and two other Faculty members. The next day, the Dean informed Dr. Andres by letter that a decision had been made by the Dean, the Assistant Dean, and the instructors present for the meeting. They had decided her time with the Program should conclude.

Dr. Andres appealed that decision according to the appeal process set out in the University's Calendar. She appealed to the Graduate Programs in Education Committee, and that appeal was dismissed. She next appealed to the School of Graduate Studies Executive Committee who held a hearing de novo. That appeal was dismissed.

Dr. Andres appealed that decision to the Alberta Court of Queen's Bench. She argued that a required withdrawal amounts to constructive expulsion, entitling her to the procedural fairness provisions for an expulsion, including notice and the right to a hearing before the Discipline Committee. She argued the Faculty had violated her right to procedural fairness, and that the decision upholding her withdrawal was unreasonable because the reasons provided no justification.

The parties disagreed on the standard of review regarding procedural fairness. The court clarified the standard of review for questions of procedural fairness is whether the standard of fairness required by the common law has been met. The standard of review is not correctness. The court further clarified that the decision under review in this case was that of the Graduate Studies Committee, which found Dr. Andres was not denied procedural fairness by the Faculty decision. On appeal from the Graduate Studies Committee decision, the standard of review was reasonableness. The Faculty's decision only becomes relevant in considering the reasonableness of the Graduate Studies Committee's decision that the Faculty's decision was reasonable.

The court held that the burden is on an appellant to show a decision is unreasonable, and that reasonableness is a standard of deference. The court must look at the reasons given by the administrative decision-maker and the record to determine whether the decision is justifiable, transparent, and intelligible. A decision should not be set aside for a minor misstep. The flaw must be sufficiently central to render the decision unreasonable. Individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm.

In this case, the court found the Graduate Studies Committee's decision to be unreasonable because it failed to engage in the critical issue of what level of procedural fairness is owed to a student of the Program who is required to withdraw.

The court further found the Graduate Studies Committee's decision that Dr. Andres was required to withdraw was unreasonable as the reasons given were deficient, and lacked justification. Further, the Graduate Studies Committee determined the hearing would be held de novo from the prior hearing before the Graduate Programs in Education Committee, without reasons given, and went on to review the Faculty decision on a standard of reasonableness. On a hearing de novo, the standard of review is correctness. The court held that approaching a decision using the wrong standard of review is not a minor misstep, and the Graduate Studies Committee's decision was not reasonable. The court remitted the decision back to the Graduate Students Committee for reconsideration.

This case was digested by [Mollie A. Clark](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Mollie A. Clark at mclark@harpergrey.com.