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CASE SUMMARY: SASKATCHEWAN COURT OF APPEAL HOLDS UNIVERSITY OF SASKATCHEWAN COUNCIL WAS BOUND BY THEIR OWN INTERNAL REGULATIONS AND FAILURE TO FOLLOW THE REGULATIONS IN THIS INSTANCE LEAD TO A FINDING OF A DENIAL OF PROCEDURAL FAIRNESS

The Court of Appeal held that the University of Saskatchewan Council was bound by their own internal regulations. Failure to follow the regulations in this instance lead to a finding of a denial of procedural fairness.

Administrative law – Decisions reviewed – University Appeal Board – University Committees – Jurisdiction – Suspension – Plagiarism – Judicial review – Appeals – Procedural requirements and fairness – Universities – Student discipline

Akpan v. University of Saskatchewan Council, [2021] S.J. No. 407, 2021 SKCA 129, Saskatchewan Court of Appeal, September 29, 2021, P.A. Whitmore, L.M. Schwann and B. Barrington-Foote JJ.A.

This was an appeal by a nursing student of a decision dismissing her application for judicial review of an Appeal Board decision upholding the Academic Integrity Committee's (the "Committee") decision to expel her for plagiarism.

In the appellant's final year of the nursing program, she submitted a paper describing her clinical learning experience. She acknowledged that she did not properly cite works that she referred to in her paper. The Committee imposed the expulsion without having been provided with a record of any sanctions previously imposed by other university hearing or appeal boards for similar academic misconduct. This was required by the Regulations on Student Academic Misconduct. The chambers judge held that failure to comply with this section was not a fundamental procedural error. The issue in the appeal was whether the chambers judge erred in finding that this was not a fundamental procedural error.

It was held that despite the regulations were binding and the phrase "will provide" placed a requirement on the university secretary to give the hearing board decisions that had been made in similar scenarios. However, it was made clear that these decisions were not binding.

The appeal was allowed in part and the determination of sanction was returned to the Committee. The Committee's decision to impose a sanction without having been provided with a record of previous sanctions imposed by the University in similar cases as stipulated in the Regulations on Student Academic Misconduct amounted to a breach of the duty of fairness. The appellant had been denied the right to a fair hearing.

This case was digested by [Deanna C. Froese](#), 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 Deanna C. Froese at dfroese@harpergrey.com.