

Administrative decisions

Process and Records

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Administrative law

- Administrative law applies to any governmental or quasi-governmental authority that has powers derived directly or indirectly from statute. ie. Liquor Licensing Board, OMB, professional discipline bodies etc.
- These authorities have in common the power to make rules and decision that affect people.



Administrative Hearings

- Administrative hearing processes were developed over time as a more efficient alternative to the court system; expertise in specific areas.
- For example, under provincial legislation certain tribunals have been established to decide matters such as the issuance of liquor licenses, changes to municipal building zones.
- These legislatively established tribunals must follow hearing processes established by legislation
- Administrative tribunals not established by provincial legislation are not required to follow the same hearing processes although many use similar processes as a matter of good standards.



Administrative decisions

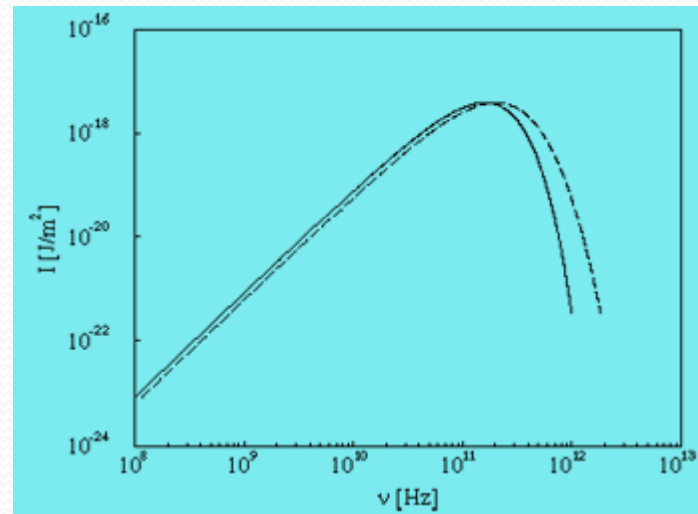
- Not every administrative decision requires a hearing; required by statute or not – University of Guelph Act vs. some other act
- Statutory Powers and Procedures Act
- Every administrative decision requires fairness



Administrative decisions

- What is considered fair might depend on:
 - existing policies and procedures
 - what's at stake?
 - opportunity for input
 - how much discretion is held by the decision-maker?
 - existing avenues of appeal

Procedural spectrum





Academic process

- Jurisdiction (calendar, Senate by-laws)
 - Over whom: Current student, graduated student, non-student?
 - Limitation Periods
 - Who can make the decision? (Academic Review subcommittee (undergraduate); Admissions & Progress Committee (graduate); Associate Dean Academic (academic misconduct); Chair or Director (Methods & Criteria); Senate Committee on Student Petitions; all based on Senate-approved policy)
 - What kind of decision?



Natural Justice/Procedural Fairness

- Right to be heard
 - Adequate notice
 - Right to know the case
 - Right to bring evidence
- Right to an impartial hearing – issues of conflict or bias



Hearing Process

- Who is involved?
 - The hearing committee
 - The parties
 - Legal counsel (?)
- Committee
 - Chair of Committee
 - Committee members
 - Bias & conflict
 - Conduct of Committee
 - neutrality
 - confidentiality



The Hearing Process

- Hearings are open to the public unless closed
- Disclosure
- Burden of Proof
- Evidence
 - Relevance and weight
 - Examination and cross-examination
- Findings
- Penalty (precedence)
- Recording of decision:
 - Discussion
 - Order
 - Reasons
 - Indication of vote



Appeals

Internal

- Right of appeal?
- On limited grounds or de novo?

External

- Judicial Review – test is whether the decision was unreasonable given the evidence before the tribunal?
- Test is not whether the court thinks it would have made the same decision
- On matters of academic decisions, courts have traditionally left that decision to academics but will get involved if there are procedural concerns.



Records

- Definition of Record
 - Recorded information (including letters, documents, emails, photograph, voicemail, etc.)
- Collection, Use and Dissemination (by University)
- Sharing of information within the University
- Request for access to “personal information”: FIPPA
- Personal notes in a file

Principles

ACCESS

- Individuals can request access to their own personal information at the University
- Individuals can request access to records at the University (under FIPPA, not PIPEDA)
- Exemptions should be limited and specific

versus

PRIVACY

- Individual has right to “control” collection, use, disclosure of their own personal information
- University must protect private information from third-parties

FIPPA Exemptions - examples

Mandatory

- Third-party Information —s.17(1)
- Personal Privacy—s.21

Discretionary

- Advice/ Recommendations—s.13(1)
- Law Enforcement—s.14(1)
- Economic and Other Interests—s.18
- Educational tests—s.18(1h)
- Solicitor-Client Privilege—s.19
- Danger to Safety or Health—s.20
- Information to be published—s.22