KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 187**

Date: **2025 10 31**
Docket: KBG-SA-01069-2023
Judicial Centre: Saskatoon

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BETWEEN:

DR. CARI McILDUFF

APPLICANT

- and -

THE UNIVERSITY OF SASKATCHEWAN, UNIVERSITY SECRETARY AND CHIEF GOVERNANCE OFFICER and THE UNIVERSITY OF SASKATCHEWAN RCR HEARING BOARD

RESPONDENTS

Counsel:

Jane M. Basinski	for the applicant
Robert J. Affleck	for the respondents

JUDGMENT — ELSON J.
October 31, 2025

Introduction

[1] This application for judicial review follows from decisions taken pursuant to an academic research policy at the University of Saskatchewan [University]. The policy is known as the "Responsible Conduct of Research Policy" [Policy]. As its name

suggests, the purpose of the Policy is to set and enforce standards for the responsible conduct of research at the University.

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[2] In September 2022, a complaint was filed pursuant to the Policy, asserting that the applicant had plagiarized, without attribution, certain passages from a colleague's published works. In keeping with the Policy's procedures, the complaint was addressed by a tribunal, described as the Hearing Board, specifically established to conduct hearings into alleged breaches of the Policy. In a written decision, incorporated in its formal report, the Hearing Board found that the applicant breached the Policy in the form of plagiarism and misrepresentation. After an unsuccessful appeal attempt from that decision, the applicant now seeks judicial review from the decisions of both the Hearing Board and the office holder who dismissed her appeal. Summarily described, the asserted grounds for the application include multiple breaches of procedural fairness, errors of law, errors of mixed fact and law, and unreasonableness.

[3] I am persuaded that the application must be allowed and the Hearing Board's decision set aside. While I find no evidence of procedural unfairness, I do find that the Hearing Board's decision does not meet the requirements of a reasonableness review. I make no ruling on the applicant's unsuccessful appeal.

Jurisdiction and Authority of the Hearing Board

[4] As in any judicial review of a tribunal's decision, it is important for the reviewing Court to address the source and scope of the subject tribunal's jurisdiction and authority. Invariably, this will require consideration of the tribunal's home statute as well as any relevant directions made pursuant to that statute.

[5] In the present case, the home statute is *The University of Saskatchewan Act, 1995*, SS 1995, c U-6.1 [*University Act*]. Section 6 of the *University Act* provides

the University with certain *exclusive* powers, one of which relates to academics and research. In this regard, s. 6(1)(a) reads as follows:

> **Exclusive powers of university**
> **6**(1) Subject to the other provisions of this Act, the university has the exclusive power to:
>
> (a) formulate and implement its academic and research programs, policies and standards;

[6] Under s. 52 of the *University Act*, the University of Saskatchewan Council [University Council] was continued from the preceding legislation. The responsibilities and powers are set out in ss. 60 and 61 of the *University Act*. In the context of the present application, s. 60 and the relevant provisions of s. 61 read as follows:

> **Responsibilities of council**
> **60** The council is responsible for overseeing and directing the university's academic affairs.
>
> **Powers of council**
> **61**(1) The council may:
>
> ….
>
> (p) subject to subsection (2), establish any committees that it considers necessary;
>
> (q) subject to subsection (2), delegate any of its powers to any committee of the council;
>
> ….
>
> (u) make bylaws respecting any matter over which it has responsibility; and
>
> …

[7] On June 17, 2021, the University Council approved the Policy, which became effective as of July 1, 2021. The expressly stated purpose of the Policy, articulated in section 1.0, reads as follows:

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> To set forth the standards for responsible conduct of research and the procedures to assess allegations of a breach of those standards for all those involved in any capacity in all research conducted at the University of Saskatchewan.

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[8] Under section 6.0, the Policy identifies a non-exhaustive list of breaches, two of which are “plagiarism” and “misrepresentation in a funding application or related document”. For the sake of brevity, I will identify the second of these breaches simply as “misrepresentation”. These breaches are respectively defined in subsections 6.0 d and j. With only the relevant part of the misrepresentation definition, these definitions are as follows:

> d. *Plagiarism*: presenting and using another’s published or unpublished work, including theories, concepts, data, source material, methodologies or findings, including graphs and images, as one’s own, without appropriate referencing and, if required, without permission.
>
> …
>
> j. *Misrepresentation in a Funding Application or Related Document*
>
> > i. providing incomplete, inaccurate, or false information in a funding application or related document, such as a letter of support or progress report;
> >
> > …

[9] In relation to the framework for dealing with allegations of a Policy breach, there are 21 defined terms that pertain to it. They are included in s. 3.0, which is the Policy’s definition section. The meaning for some of these terms are self-evident; others less so. For this application, I think the definitions of five terms deserve mention. In alphabetical order, these terms are “Allegation”, “Hearing Board”, “Inquiry”, “Investigation” and “Procedures”. Of note, one might discern the rather curious distinction between an inquiry and an investigation, with the latter term denoting a decision-making function. The respective definitions read as follows:

> **"Allegation"** means a declaration, statement, or assertion communicated in writing to the University or one of the Agencies to the effect that there has been, or continues to be, a breach of one or more University or Agency policies, the validity of which has not been established.
>
> …
>
> **"Hearing Board"** means a committee established by University Council pursuant to section 61 of *The University of Saskatchewan Act, 1995* to conduct hearings into alleged breaches of this Policy for the purpose of determining the validity of an allegation.
>
> **"Inquiry"** means the process of reviewing an Allegation to determine whether the Allegation is responsible (as defined below), the particular policy or policies that may have been breached, and whether an Investigation is warranted based on the information provided in the Allegation.
>
> **"Investigation"** means the process of examining an allegation, collecting and examining the evidence related to the allegation, providing both Complainants and Respondents with an opportunity to be heard at a hearing before a Hearing Board and making a decision as to whether a breach of the Policy has occurred.
>
> …
>
> **"Procedures"** means the Procedures for Addressing Allegations of Breaches of the Responsible Conduct of Research Policy.

[10] The last listed definition refers to a document said to support the Policy. This document is entitled "Procedures for Addressing Allegations of Breaches of the University of Saskatchewan Responsible Conduct of Research Policy" [Procedures]. The Procedures, which is attached to the Policy, sets out procedures for both an inquiry and an investigation. It also stipulates the process for an appeal from a Hearing Board decision.

[11] Where an allegation has passed the inquiry stage such that an investigation is required, the matter will come before the Hearing Board. The

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Procedures sets out the role of the Hearing Board in s. 4.0 g, h, and i. These provisions read as follows:

> g. The role of the Hearing Board is to examine the Allegation, collect and examine the evidence related to the Allegation, make a decision as to whether a breach of this Policy has occurred including the severity of the breach and if so, make recommendations in accordance with sections 4.1 b and 4.1 c of these Procedures.
>
> h. The Hearing Board is not bound to observe strict legal procedures or rules of evidence but shall establish its own procedures, including but not limited to determining what evidence it will hear and/or accept. Further, and without limitation, the Hearing Board may:
>
> i. ask questions of the Complainant and Respondent;
> ii. ask questions of witnesses;
>
> iii. request and examine any documents, data, records, or equipment they deem relevant to the Allegation;
>
> iv. arrange for the testing of physical evidence relevant to the Allegation.
>
> i. The Hearing Board will conduct the hearing in accordance with the principles of procedural fairness, and the following requirements must be followed in the Investigation:
>
> i. a University Member against whom an Allegation is made is to be treated as being innocent until it has been established, on the balance of probabilities and before a Hearing Board of impartial and unbiased decision-makers, that they have committed a breach of the Policy;
>
> ii. Respondents must be informed of the details of the alleged breach, including having access to all documentary and other evidence relevant to the alleged breach;

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> iii. Respondents who are alleged to have caused or contribute to a breach must be given an opportunity to respond to the Allegations;
>
> iv. the Respondent, Complainant and witnesses have a right to be advised and /or accompanied by an Advocate at the hearing. The Advocate may speak as an advocate on behalf of the Respondent or Complainant, but the Hearing Board expects that it will hear directly from the Complainant and/or Respondent wherever possible. This right is subject to the provision that the names of any Advocates are provided to the Chair at least five (5) working days prior to the hearing;
>
> v. while strict rules of evidence do not apply, appropriate weight must be given to evidence based on its credibility and reliability;
>
> vi. if one or both of the parties chooses not to appear at the hearing, the Hearing Board may proceed to make its decision based on the material and information already gathered;
>
> vii. while it is generally intended that all of the evidence from the witnesses will be gathered and shared with the parties prior to the hearing, the chair has the discretion to allow witnesses to present their evidence at the hearing if the fairness of the process requires it. The chair may also adjourn proceedings to allow a party an appropriate opportunity to respond to new evidence;
>
> viii. the chair has authority to extend the Investigation timelines when necessary in the circumstances to conduct a fair process. The chair may also permit any and all of the participants to the hearing to appear by way of telephone or videoconference.
>
> [Emphasis added]

[12] Section 4.1 of the Procedures addresses the decision of the Hearing Board, which is to be included in a report to the Associate Vice-President Research or

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Senior Administrator. The section does not stipulate mandatory requirements for the Hearing Board's decision. That said, at s. 4.1 b, it recommends that the Hearing Board's report contain the following:

a. the full allegation of a breach of the Policy;

b. a list of Hearing Board members and their credentials;

c. a summary of the complainant's position including reference to relevant witnesses and/or evidence put forward;

d. a summary of the respondent's position, including reference to relevant witnesses and/or evidence put forward;

e. a determination of whether a breach of the Policy occurred;

f. if a breach has occurred, the extent and seriousness; and

g. recommendations of changes to procedures or practices, if any, to avoid similar situations in the future.

[13] Section 5.0 of the Procedures recognizes the right of appeal from a decision by the Hearing Board. This right is extended to both complainant and respondent. That said, the grounds for an appeal are limited to four. As prescribed by s. 5.0 b, the available grounds are:

a. that the decision maker(s) had no opportunity or jurisdiction to reach the decision it did;

b. that there was a reasonable apprehension of bias on the part of one or more of the decision makers;

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c. that the original Hearing Board made a fundamental procedural error that seriously affected the outcome;

d. that new evidence has arisen that could not reasonably have been presented at the initial hearing and that would likely have affected the decision of the original Hearing Board.

[14] Section 5.0 stipulates two stages for the appeal. At the first stage, the matter is to be addressed by the University Secretary, who is obliged to review the record of the original hearing and determine whether any of the stated grounds for appeal are valid. If the University Secretary concludes that there are no valid grounds for an appeal, it must be dismissed. If it is determined that there may be valid grounds, the appeal will proceed to an Appeal Board established by the University Council.

Background Facts Prior to Hearing Board Decision

[15] The background facts described herein are drawn from the Certified Record of Proceedings [Record]. Among other things, the Record includes the complaint, the Hearing Board's decision, the University Secretary's decision, the subject documents and the Policy. The applicant also filed an affidavit in support of her application. I will address the admissibility of that affidavit later in this judgment.

[16] A basic background is described in introductory paragraphs of the Hearing Board's decision. In 2022, both the applicant and the complainant, Dr. Danette Starblanket, worked in a research lab within the College of Medicine, then known as the "Cultural Safety Lab" [Lab] and which was also closely associated with an entity known as the "Morning Star Lodge". The Lab focussed on community-based research into Indigenous health and wellness. As I discerned from the information provided to the Hearing Board, most of the community-based research has been conducted by a group or "team" of researchers in the Lab. The complainant had been hired as a member

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of the research group in 2017 while the applicant was hired three years later in 2020. Their positions were not within the scope of any collective bargaining unit.

[17] The narrative for the complaint against the applicant begins with the complainant's involvement in a project a few years before the complaint was filed. According to her evidence before the Hearing Board, the complainant had worked on a project in 2018 and 2019 with a Saskatchewan tribal council. The project was designed to assess whether access to technology had an impact on health and wellness outcomes for older Indigenous people with dementia. In 2022, the complainant said that she had learned that the applicant was seeking some editing help with a publication coming out of her post-doctoral work. The complainant offered to review it. When she did, she concluded that the document contained passages from her 2018/2019 works without attribution, including outlined concepts and methodologies that were identical to her earlier work.

[18] Although the complaint does not say when the complainant reviewed the applicant's work, evidence received by the Hearing Board suggests that it occurred in March 2022, or earlier. Further to this chronology, I note that the Hearing Board also heard evidence that, in May 2022, a decision had been made not to renew the complainant's contract. Her complaint was not filed until September 6, 2022. The Record, including the Hearing Board's decision, does not reveal any explanation why five months had passed between the discovery of the suspected plagiarism and the filing of the complaint.

[19] The complaint was completed on a form for allegations of Policy breaches. On it, the complainant characterized her allegation as one of plagiarism and misrepresentation in a funding application. In the summary of her allegation, the complainant wrote the following:

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In 2018 and 2019 I successfully applied for CABHI (Centre for Aging and Brain Health Innovation) and AGE-WELL funding in my role as Research Co-Lead at the Morning Star Lodge Lab, based out of the University of Saskatchewan. In 2020 Ms. Cari McIlduff began working for the lab with Dr. Carrie Bourassa as a post doc. In February 2022 I asked Cari to share her post doc paper with me (attached as Appendix A) and I was shocked to see that her paper copied a large amount of work that I had done for the lab in 2018 and 2019. The brief background of the work in question is as follows: In May 2018 I applied for a CABHI grant (Appendix B) and submitted an abstract for the project to an AAIC (Alzheimer's Association International Conference) in July 2019 (Appendix C). I reported on the work to the funding agent (Appendix D) as per the funding agreement. In October 2019 I did a poster presentation on the research project (Appendix E). In 2019 I co-authored a publication on the research project (Appendix F). This work was done with other research assistants at Morning Star Lodge. I have highlighted the areas on the Appendices where there is plagiarism and copying. I believe Cari has taken the work done by the lab and claimed it as her own, she has reworded it in some places and altered it in other places without giving proper acknowledgement. Although she references it early in her paper, she has given no indication of how she uses the work done previously through the lab. She has copied the research work's concept, theory, and methodology but has put her own "spin" on these. She has copied the concept of Indigenous participants' health and technology use, the theory of barriers to access to technology and cultural appropriateness, the research methodology of using pre-loaded tablets/apps/internet access and interviews/education workshops. She has made some minor changes such as using urban rather than rural participants, using MECC, and focusing on health generally rather than dementia specifically. Cari's research objectives stated in her paper (Appendix A) are "to learn from Indigenous older adults about what they need, how competent they are/feel in using technology to meet these needs and increase access to and engagement with culturally safe technology for Indigenous older adults specific to their overall wellbeing and health care", research that had already been done in 2018/19.

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[20] Although the details of an inquiry are not included in the Record, there is no doubt that the complaint proceeded to the investigation stage before the Hearing Board. That hearing took place on January 27, 2023.

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[21] In advance of the hearing, the chairperson of the Hearing Board wrote to both the complainant and the applicant in an email message. The date of the message is not shown. In the message, the chairperson provided the parties with specific instructions and attached a document which she said outlined the relevant sections of the Policy regarding procedures before the Hearing Board. The chairperson also invited the parties to consult the Policy to ensure familiarity with all aspects of the process relating to allegations of a breach of the Policy. As for any other information either party considered pertinent to the investigation, the chairperson advised the parties that they were responsible for assembling relevant materials and ensuring that they reached the Responsible Conduct of Research Specialist [support officer] by 4:00 P.M. on January 19, 2023.

[22] The hearing proceeded as scheduled and the Hearing Board's report, containing its decision, followed thereafter. Although there is no date shown on the report, later documents suggest the decision was rendered on or about March 8, 2023.

Hearing Board Decision

[23] For the sake of brevity, I will not recite the Hearing Board's decision in its entirety. Instead, I will break it down somewhat and, in doing so, describe some of the Hearing Board's observations about the information/evidence it received.

[24] Excluding the recommendations and concluding paragraphs, the Hearing Board's decision comprises 51 paragraphs. Unlike many court and tribunal decisions, the decision is not broken down under specific headings. Accordingly, in my description I will try to construct a reasonably accurate breakdown of the decision.

[25] After the first seven introductory paragraphs, which included brief references to relevant provisions of the Policy, the next seven paragraphs described the complainant's submissions to the Hearing Board. As described in the decision, these submissions included argument and unsworn information. In her submissions, the complainant described her history with the Lab, including her role in overseeing its operations after its leader went on leave. She described the Lab as a "mentoring lab", meaning that there was an expectation that new members would receive considerable guidance and support.

[26] In keeping with this spirit, the complainant told the Hearing Board that she offered to look at a publication the applicant was working on, which arose from her post-doctoral work. She said she understood the applicant was looking for some editing help for her project. When the complainant reviewed the applicant's work, she discovered that it contained passages from her own work without attribution. She said she also discovered outlines of concepts and methodologies that were identical to the complainant's earlier work.

[27] Appendix 11 of the Record consists of copies of documents with passages highlighted in yellow. Although the Hearing Board did not make specific references to these documents or identify a specific analysis that it made of the documents, I understand the complainant had submitted them before the hearing to support her complaint. As I viewed them in the Record, they consisted of the impugned document authored by the applicant as well as the two documents prepared by the complainant, namely, a 2018 grant application and a 2019 abstract. I understand that the highlighted passages purport to identify the plagiarized and/or misrepresented text.

[28] The complainant also told the Hearing Board about two efforts she made to address her concerns internally within the Lab. First, she said she sent an email message to the applicant in March 2022. Given the context of the Hearing Board's

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discussion about this message, I presume that it pertained to the complainant's concerns about the applicant's work. The Hearing Board noted that the applicant was on medical leave at the time of the message and did not respond to it.

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[29] The other effort the complainant spoke of involved an attempt to speak with Dr. Anne Leis, the then Head of the Department of Community Health and Epidemiology, who had temporarily taken on the oversight role for the Lab. In this regard, she told the Hearing Board that she attempted to make an appointment with Dr. Leis but was unable to do so before her contract ended

[30] After the complainant's submissions, the next 12 paragraphs in the decision describe the applicant's submissions. In presenting these submissions, the applicant was assisted by two witnesses, Dr. Leis and Karen LaRocque, described as the Traditional Knowledge Keeper at the Morning Star Lodge.

[31] As described by the Hearing Board, the applicant's submissions began with her saying she was sorry if the complainant felt she had been unresponsive to her concern. The applicant explained that she had just returned from sick leave when the complainant contacted her (presumably referring to the email message the complainant had sent), and that she did not have an opportunity to respond before the complainant left the Lab later that spring.

[32] The Hearing Board then noted that, after the applicant described her history with the Lab, her submission focused on three points. On the first point, the applicant said she understood the complainant's 2018 project was part of a larger research project which, in turn, was part of the overall work that the team was doing in the Lab. The Hearing Board noted that the applicant said she alluded to the complainant's work early in each document, but that she saw the complainant's contributions and her own contributions as part of the Lab's work.

[33] In relation to the second point, the applicant told the Hearing Board that opportunities to comment on and edit her application for funding were available to all members of the research team, including the complainant. In this regard, she saw the complainant as a "mentor and advisor" to the research team and, as such, she was ready to receive her advice. The applicant added that the complainant did not give her any indication that there was anything wrong with either the grant application or the paper.

[34] According to the Hearing Board, the applicant's third point emphasized the "distinctive culture" in the Lab where the premise behind the research "… was that the results should belong to the community, and the community should be closely involved in the design of the research and in deciding how the results would be used." The Hearing Board's final observation about the applicant's position on this point appears at the end of the last full paragraph on page 4 of the decision. It reads as follows:

> She said she recognized that Dr. Starblanket had conducted important research, and her own project was intended to build on this in order to see whether the approach could be used in different settings to produce useful results. She acknowledged that she was building on earlier work, but she said there was a culture of sharing in the lab from which she and others benefited. She said she thought Dr. Starblanket was exaggerating her own contributions to the body of research that the lab was building up.

[35] Dr. Leis and Ms. LaRoque also joined in the applicant's submissions. Both witnesses expressed positive opinions about the community-based Indigenous research that was conducted in the Lab. The Hearing Board noted Ms. LaRoque's observation about how well the research team in the Lab had come together to have a better understanding about how to carry on community-based research. I take particular note of one observation the Hearing Board made about Ms. LaRoque's opinion on the researchers' collective effort. In this regard, the Hearing Board wrote the following at page 5 of its decision:

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> She said that in her view, the research in the lab is a collective effort; less attention should be paid to individual researchers who do the writing, and more prominence should be given to the community partners who are involved in the projects.

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[36] After having heard the participants in the hearing, including a question and answer session with its members and closing comments from the parties, the Hearing Board deliberated and eventually issued its report, containing its decision. Its findings and conclusions are set out at pages 7 and 8 of the report and read as follows:

> The hearing board considered the documentation that had been provided, as well as the statements made by the complainant, the respondent and the witnesses at the hearing. Because of the way that Dr. Starblanket characterized the substance of her complaint, and because the representations from both parties rested on similar arguments in relation to the publication and the funding application, the hearing board determined that they would discuss both allegations together during their deliberations.
>
> The complainant and the respondent both described the work of the lab in similar terms. They saw the objective of the lab as that of formulating a new approach to Indigenous community-based research. In this research framework, the representatives of the Indigenous communities where research projects were proposed would be involved through their CRACs (Community Research Advisory Committees) in designing and implementing the projects. They would also maintain ownership of the data and the results of the research, and would be asked to endorse any dissemination of the results, including academic publications and conference or poster presentations. To ensure that they were conducting their work in ways that were consistent with the aspirations and traditions of the Indigenous partner communities, the researchers in the lab were committed to collaboration and collective decision-making, and to seeking assistance from Indigenous cultural advisors and Elders.
>
> On the other hand, both parties also acknowledged that there were well-established academic principles and conventions that researchers are expected to adhere to when they are giving formal accounts of their work through publications or other vehicles such as the grant application that was at issue here.

Neither of them seemed to be suggesting that observing these principles would be inconsistent with their intention to create more authentic partnerships with Indigenous communities, and to give those communities a central role in the research process, as long as consent was sought to proceed with a publication or a research project.

Though Dr. Starblanket was critical of the absence of Indigenous researchers and students in the lab, the essential question she raised in her complaint was not whether Dr. McIlduff was sufficiently attentive to the practices of the lab with respect to authentic community partnerships, but whether she met the expectations of the academic community with respect to the proper attribution of the work of other researchers in her own work.

Both Dr. Starblanket and Dr. McIlduff recognized in their submissions to the hearing board that individual researchers build on the work of researchers who went before them. It is common for researchers to use a concept or a methodology from earlier work to investigate whether that concept can be pushed further, or that methodology can be used in different contexts.

Dr. McIlduff's defence to the allegations in the complaint was twofold. She argued that the collective ethos of the lab meant that researchers did not have such a strong sense of individual ownership of research projects as they might in a different kind of research setting; they were all working together in pursuit of common research goals, and freely shared their insights and research plans.

As her second line of defence, Dr. McIlduff argued that she had properly credited Dr. Starblanket for her earlier work in both her publication and her funding application. As Dr. Starblanket had not worked directly on the research project or done any writing on the publication, she was not listed as an author. Dr. McIlduff noted, however, that she had generally stated at the beginning of both the paper and the funding application that she was building on earlier work; Dr. McIlduff cited a publication on which Dr. Starblanket was listed as an author, and also cited her role in data analysis.

The hearing board concluded that, as Dr. McIlduff herself acknowledged, working in a collaborative research environment or pursuing research in partnership with Indigenous

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> communities does not relieve an academic researcher who presents work for publication or funding support of the obligation to give sufficient credit to other researchers who have developed a theory or concept, outlined or used a methodology, or used particular language to describe their work. Being meticulous in this respect gives readers or future researchers a clear understanding of the development and the impact of a line of research.
>
> **The hearing board found that Dr. McIlduff did not exercise sufficient care in her paper and her funding application to point to specific language, concepts or methodologies that were drawn from the earlier work of Dr. Starblanket. In this respect, she did breach the RCR Policy in the form of plagiarism and misrepresentation.**
>
> Although failures to adequately attribute Dr. Starblanket's work are pervasive through the contested documents, the hearing board did not find that there was an intent to be deceptive on the part of Dr. McIlduff. We see the failures rather as the result of blurring the lines between the desired culture of collaboration and sharing in the lab, and the conventions applicable to academic dissemination and publication, which were considered by both the complainant and the respondent to be appropriate in some circumstances.
>
> [Emphasis in the original]

[37] Having made these findings, the Hearing Board went on to make the following recommendations:

> 1. That the journal in which Dr. McIlduff's paper appeared, the *Healthcare Management Forum*, be approached to publish a corrigendum of the paper specifying more clearly reference to language, concepts or methodologies that were drawn from Dr. Starblanket's work. In addition, it would be appropriate if the corrigendum made appropriate reference to the work of any others who were involved in the development of the research program of which Dr. McIlduff's paper was a part. Dr. O'Connell and Dr. Bourassa, for example, were Principal Investigators on grants that supported the work of the lab, and their research design, language or proposed methodologies may have

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found their way into the work of Dr. Starblanket or Dr. McIlduff.

2. That the members of the Morning Star Lodge, in consultation with the communities where they conduct research, develop a protocol to articulate and clarify the principles that will govern attribution and authorship when they disseminate their work.

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The Appeal to the Appeal Board

[38] The applicant attempted to launch an appeal of the Hearing Board's decision to the Appeal Board. As earlier noted, the right of appeal first calls for a review by the University Secretary. The applicant's grounds of appeal, in general terms, asserted the following:

(a) That there was a reasonable apprehension of bias on the part of one or more of the decision-makers;

(b) That the Hearing Board made fundamental procedural errors that seriously affected the outcome; and

(c) That new evidence has arisen that could reasonably have been presented at the initial hearing and that would likely have affected the decision of the Hearing Board.

[39] As the applicant's appeal does not factor in my decision on the outcome of this judicial review, I will not discuss it in detail. I simply note that the applicant attempted the appeal on the above-described general grounds. The University Secretary concluded that none of the three grounds of appeal met the validity requirements specified in the Procedures. Accordingly, the appeal was dismissed without a hearing. Of note, this exercise did not engage a reasonableness review.

Affidavit of the Applicant

[40] The applicant deposed an affidavit that was served and filed in this proceeding. As I discussed with counsel at the hearing of this application, the admissibility of that affidavit must be addressed.

[41] The matter of filing affidavits in judicial review proceedings has surfaced as a rather vexing issue for judges of this Court. In my experience, too many parties ignore the long-standing general rule related to extrinsic evidence in judicial review. This rule stipulates that, subject to limited exceptions, evidence on judicial review is restricted to the record that is presented to the reviewing court pursuant to the applicable procedural rule of that court. See *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at paras 19 and 20, 428 NR 297; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 86. In Saskatchewan, the "record" for a judicial review is that which is properly presented pursuant to Rules 3-57 to 3-59 of *The King's Bench Rules*.

[42] A helpful description of the nature of the limited exceptions to the general rule appears in *Saskatchewan (Workers' Compensation Board) v Gjerde*, 2016 SKCA 30 at para 44, 476 Sask R 121 [*Gjerde*], In *Gjerde*, Ryan-Froslie J.A. identified four types of exceptions. Slightly paraphrased, these exceptions are: (1) evidence that provides general background (as opposed to evidence on the merits) in circumstances where such information might assist the reviewing judge; (2) evidence that may bring possible procedural defects to the attention of the reviewing court, which defects are not otherwise found in the record; (3) evidence to highlight the complete absence of evidence before the tribunal when making a particular finding of fact; and (4) to "elucidate the record" upon which the administrative body's reasons were based, provided that the circumstances are appropriate to receive such evidence. See also the

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helpful review of authorities conducted by Krogan J. in *Chaboyer v Saskatchewan*, 2021 SKQB 200 at paras 14 to 45.

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[43] It is not acceptable, however, for a party in a judicial review proceeding to file affidavit evidence simply to revisit the merits of the case or to present additional evidence that, with reasonable diligence, could have been presented to the tribunal at the time of the hearing. Where such evidence is presented, it will either be struck or simply ignored.

[44] Turning to the applicant's affidavit, it consists of 26 substantive paragraphs and many exhibits, most of which are part of the Record. Of the 26 paragraphs, I have determined that 14 of them do not fall within any of the limited exceptions described in *Gjerde*. They are paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 25, 26, and 27. As presented, these paragraphs either improperly supplement the Record or address matters that are part of the Record.

[45] The other substantive paragraphs purport to address the applicant's contention that the Hearing Board denied her procedural fairness. I will reference some of those paragraphs when addressing that issue.

Procedural Fairness – Applicable Law and Analysis

Standard of Review

[46] Unlike judicial review on the substance of a tribunal's decision, challenges based on questions of procedural fairness do not require a specific standard of review assessment. Simply stated, they are to be judged on a standard of correctness. This has been made clear in a number of authorities, including *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 79, [2008] 1 SCR 190 [*Dunsmuir*], where the Supreme Court of Canada held that questions of procedural fairness are rooted in common law

principles “that transcend the standard of review analysis”. See also *Saskatoon Co-operative Association Limited v Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, 2016 SKCA 94, 484 Sask R 157 and *United Food and Commercial Workers, Local 1400 v Prairie Pride Natural Foods Ltd*., 2022 SKKB 274 at para 58, aff’d 2024 SKCA 84.

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[47] In *Oberg v Saskatchewan Board of Education of the South East Cornerstone School Division No. 209*, 2020 SKQB 96 at para 20 [*Oberg*], McCreary J. (as she then was) added to this observation. There, she bluntly noted that the right to procedural fairness is absolute and cannot be made fair by a correct outcome. Failure to apply a correct process “renders the decision *void ab initio*, or invalid from the outset.”

The Nature of Procedural Fairness

[48] The common law principles of procedural fairness in administrative law have had an evolving history, largely inspired by the growth of the regulatory state. Fifty years ago, the application of these principles was preoccupied with questions whether a tribunal’s tasks were judicial, quasi-judicial or administrative in nature. Thankfully, the issue evolved into an approach that set some of these considerations aside and focused on “a general duty of fairness”, reflecting greater regard for the consequences to those who may be adversely affected.

[49] The first case in this evolution is the judgment of the Supreme Court of Canada in *Nicholson v Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 SCR 311 [*Nicholson*], which embraced the perspective in the much earlier House of Lords decision in *Ridge v Baldwin*, [1964] AC 40 (HL). With *Nicholson*, the previous narrow limits of the natural justice rules gave way to the duty of fairness as the applicable organizing principle.

[50] The evolution continued with other authorities, including two judgments authored by L'Heureux-Dubé J., *Knight v Indian Head School Division No. 19*, [1990] 1 SCR 653, and *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 [*Baker*]. Of these two authorities, the judgment in *Baker* stands out and is much more frequently cited. At paras. 23-27, L'Heureux-Dubé J. reviewed the relevant jurisprudence and listed five non-exhaustive factors that will inform the procedural fairness requirements in each case. As summarized by McCreary J. in *Oberg* at para 21, the *Baker* factors are as follows:

> 21 …
>
> (a) The nature of the decision and the process used to make it. The more the process provides for a decision resembling judicial decision-making, the more likely it is that procedural protections closer to the trial model will be required;
>
> (b) The nature of the statutory scheme and the terms of the statute under which the body operates. Greater procedural protections are required when no appeal procedure is provided in the statute or when the decision will finally determine the issue;
>
> (c) The importance of the decision to the individual affected. The greater the impact on the lives of those it affects, the more stringent the procedural protections;
>
> (d) The legitimate expectations for procedural fairness of the person challenging the decision, which is often informed by any policy the public body has in place respecting processes for decision-making; and
>
> (e) The choices of procedure made by the body itself, <u>particularly when the statute gives the decision-maker the ability to choose its own procedures</u>, or when the body has expertise in determining what procedures are appropriate.
>
> [Emphasis added]

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Analysis

[51] In her submissions, the applicant asserted several instances of procedural unfairness in the hearing of this complaint. Much of this was presented in somewhat of an unhelpful "scattergun" approach, premised more on indignation than concisely articulated submissions. I also found that the applicant conflated some of her procedural unfairness submissions with arguments that more appropriately engaged principles of reasonableness review.

[52] After considering these submissions and reviewing the applicant's affidavit, I find that the applicant's assertions of unfairness can be set out in three categories, namely: (1) failure to receive and consider all relevant evidence; (2) affording the complainant rebuttal time in which new evidence and allegations were raised, all without adjourning the matter to allow a response; (3) inability to present evidence about the complainant.

[53] Turning to the first of these categories, the applicant identified a number of concerns, two of which related to her inability to present support letters to the Hearing Board and the absence of evidence from members of Indigenous communities.

[54] While I accept that these concerns are honestly held, I am not persuaded that they establish failures to observe the duty of procedural fairness. At the outset, it must be remembered that s. 4.0 h of the Procedures expressly authorizes the Hearing Board to decide what evidence it will hear and/or accept. As such, its procedures are not governed by the rules of evidence and, as beneficial as it might have been to seek out evidence other than what the parties provided, there is no obligation on the Hearing Board to do so. The Hearing Board's authority to govern its process – and admit or reject evidence as it sees fit – engages a *Baker* factor that, in my view, weighs against finding a breach of procedural fairness.

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[55] The only pause I have in this regard relates to the support letters. According to the applicant's affidavit, she had provided three support letters to the support officer in advance of the hearing. She also deposed that, shortly before the hearing, the support officer told her the letters would not be forwarded to the Hearing Board as they were not relevant. The applicant's affidavit was unclear as to who decided this question. If the Hearing Board made that determination, it would then have come squarely within its authority to do so. On the other hand, if the decision was made by the support officer, the applicant might have a stronger case. Having said all that, the uncertainty in the evidence does not allow me sufficient comfort to make a ruling on the point.

[56] As a final observation on this issue, I should say that I have reviewed all three support letters, which were exhibited to the applicant's affidavit. As helpful and as positive as they were in describing the applicant, I found their probative value to be less than compelling. I very much doubt that their admission would have significantly impacted the outcome.

[57] The second category of the applicant's concerns relates to the Hearing Board affording the complainant rebuttal time during which she raised additional evidence. This matter was also addressed in the applicant's affidavit. The applicant contends that this rebuttal was not included in the agenda circulated to the parties before the hearing.

[58] As obviously concerned about this issue as the applicant is, I am not persuaded that it signifies a breach of procedural fairness. In saying this, I accept that it was open for the Hearing Board to have told the complainant that such additional evidence should not be given. Indeed, I further accept that it probably would have been the correct thing to have done. The central question, however, should not be on what

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the complainant said as much as it should be on what the Hearing Board did with what she said. As I read its decision, there is no indication that the additional evidence played any part in the Hearing Board's deliberations. In the absence of any such indication, I can only conclude that the Hearing Board quite properly ignored it.

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[59] The applicant's third concern surrounds her inability to present evidence or information that related to the complainant. This issue was also raised in the applicant's affidavit, particularly as it related to evidence she wished to present if her appeal was heard. In this context, the applicant's affidavit included information about comments made by the complainant after the Hearing Board rendered its decision.

[60] Respectfully, and without going into details about this evidence, I do not understand how it could factor in a procedural fairness analysis, either in the context of the Hearing Board's decision or in the context of the University Secretary's dismissal of the applicant's appeal. In the consideration of the *Baker* factors, I see no logical pathway that connects any comments made by the complainant to a breach of procedural fairness.

[61] For all of these reasons, I am satisfied that, aside from any other concerns about the Hearing Board's decision, there is no meaningful evidence of a failure to observe the duty of procedural fairness.

Reasonableness Review – Applicable Law and Analysis

Standard of Review – The Nature of Reasonableness Review

[62] The parties agree that the applicable standard of review this Court must apply in its review of the decision is reasonableness. As articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*],

reasonableness is now regarded as the presumptive standard of review, subject to very limited exceptions. I agree that none of the limited exceptions apply here.

[63] It is important to understand that the reasonableness standard of review is not a vague and abstract concept that focuses solely on a tribunal's conclusion. It is rooted in the analysis earlier articulated in *Dunsmuir*, where the Supreme Court of Canada, at para. 47, emphasized the underlying rationale of administrative law decision-making. In light of that rationale, the Court concluded that a reasonable decision is one that is justified, transparent and intelligible within the decision-making process. Along with these considerations, a reviewing court must concern itself with whether the administrative decision falls within a range of acceptable outcomes that are defensible in respect of both the facts and the applicable law.

[64] In *Vavilov*, the Supreme Court of Canada essentially reaffirmed the reasonableness analysis in *Dunsmuir*, albeit with a somewhat sharpened focus. See *Pierson v Estevan Board of Police Commissioners*, 2020 SKQB 144 at paras 56-60.

[65] In Saskatchewan, a frequently cited summary of the reasonableness review, as drawn from *Vavilov*, was penned by Barrington-Foote J.A. in *Service Employees International Union - West v Saskatchewan Health Authority*, 2020 SKCA 113, 454 DLR (4th) 363. Although the summary appears in a dissenting judgment, both the majority and minority agreed with its contents. From paragraphs 102 -105 of the judgment, the summary reads as follows:

> [102] I agree with my colleagues that the Chambers judge was correct in selecting the reasonableness standard when reviewing the *Award*, and that the issue is whether he correctly applied that standard. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*], the majority confirmed the reasonableness standard requires the reviewing court to answer two questions; that is,

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"whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras. 47 and 74; *Catalyst* [2012 SCC 2, [2012] 1 SCR 5], at para. 13" (at para 99). For analytical purposes, the Court described two kinds of fundamental flaws as a convenient way to discuss the issues that may show a decision to be unreasonable (at para 101). First, is there "a failure of rationality internal to the reasoning process"? Second, is the decision "in some respect untenable in light of the relevant factual and legal constraints that bear on it"? (at para 101). The Court emphasized that in order to justify setting aside a decision, the flaws must be "sufficiently central or significant", not superficial or peripheral (at para 100).

[103] The first category of flaws reflects the principle that a reasonable decision must be based on internally coherent reasoning; that is, reasoning that is both rational and logical. As the majority put the matter, "the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic" (*Vavilov* at para 102). A decision will be unreasonable if it fails to reveal a rational chain of analysis or exhibits an irrational chain of analysis. While administrative decision makers must not be held "to the formalistic constraints and standards of academic logicians", a decision may be unreasonable if it exhibits "clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise" (*Vavilov* at para 104).

[104] As to the second category, "a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision ... Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers" (*Vavilov* at para 105). The relevant constraints depend on the facts. In *Vavilov*, the majority discussed what they characterized as "a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies" (at

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> para 106). The Court cautioned that these elements are not a checklist and vary in significance depending on the context.
>
> [105] I would finally note that reasonableness is a deferential standard and must be sensitive and respectful of the role of the delegated decision maker. It is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). The court's function is to "ensure the legality, the reasonableness and the fairness of the administrative process" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 28, [2008] 1 SCR 190). However, reasonableness review must also be robust. Arbitrators, like other administrative decision makers, do not have free rein in interpreting a collective agreement. To paraphrase *Vavilov* (at para 68), precise or narrow contractual language may limit the number of reasonable interpretations open to the arbitrator, and may limit it to one.
>
> [Emphasis added]

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[66] In this Court, a frequently cited authority on reasonableness review, consistent with the summary described above, is the decision in *Premier Horticulture Ltd. v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-184*, 2020 SKQB 77, 54 CLRBR (3d) 1 [*Premier Horticulture*]. That case also involved a judicial review of a Board decision. In *Premier Horticulture*, Scherman J. summarized the *Vavilov* analysis as it pertained to both standard of review selection as well as the nature of the reasonableness review. The summary of the reasonableness review appears in subparagraphs 7(e)-(o), where my former colleague wrote the following:

> [7] I extract from and summarize from *Vavilov* the principles and directions that I find are applicable to the judicial review at hand. All references are to the majority decision. The pertinent principles and directions are as follows:
>
> …
>
> (e) Reasonableness reviews start with judicial restraint and respect for the distinct role the legislatures have assigned to administrative decision-makers. The aim is to give effect to the legislature's intent and assign certain decisions to administrative bodies while

fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law. See paragraphs 75 and 82.

(f) The reviewing court is to begin its inquiry into the reasonableness of the decision by examining the reasons provided with respectful attention and seeking to understand the reasoning process followed by the decision-maker to arrive at its conclusion. See paragraph 84.

(g) A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker.

(h) Reasonableness is, according to *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law." The reasons must justify the decision reached. See paragraph 86.

(i) The written reasons given by an administrative body must not be assessed against a standard of perfection. What is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review. The review of an administrative decision cannot be divorced from the institutional context in which the decision was made nor from the history of the proceedings. See paragraphs 90 and 91.

(j) The reviewing court is to ask whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision. See paragraph 99.

(k) The burden is on the party challenging the decision to show that it is unreasonable. See paragraph 100.

(l) Before a decision can be set aside on this basis, the

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reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. The court must be satisfied that any shortcomings or flaws relied upon by the party challenging the decision are sufficiently central or significant to render the decision unreasonable. See paragraph 100.

(m) Significantly, at paragraph 102, the court affirms previous statements that reasonableness review is not a "line-by-line treasure hunt for error". The reviewing court must be able to trace the decision-maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived". See paragraph 102.

(n) At paragraphs 105 to 135, the majority decision of the Supreme Court of Canada elaborated upon and gave directions on the application of the principles. It stated that a reasonable decision:

(i) is based on in internally coherent reasons;

(ii) is justified in light of the legal and factual constraints that bear on the decision including:

(A) the governing statutory scheme;

(B) other statutory or common law;

(C) principles of statutory interpretation;

(D) evidence before the decision-maker;

(E) submissions of the parties;

(F) past practices and past decisions of the administrative decision-maker; and

(G) the impact of the decision on the affected individual or party.

(o) Absent exceptional circumstances, a reviewing court will not interfere with an administrative decision-

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> maker's factual findings. In this respect, the Court cited its decision in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235, which established the principle that on appellate or judicial review, findings of fact should only be overturned in circumstances of palpable and overriding error.
>
> [Emphasis added]

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Analysis

[67] In assessing the Hearing Board's decision according to the reasonableness standard of review, I am persuaded that the Court must be mindful of the legal considerations and constraints that are apparent in the Policy. This is particularly so with respect to the Procedures. Section 4.0 g of the Procedures expressly obliged the Hearing Board to decide whether the applicant breached either or both of the two allegations against her. Importantly, s. 4.1 b creates what I would describe as an "expectation by recommendation" that the Hearing Board's written report should include a determination of whether a Policy breach occurred and, if so, the extent and seriousness of the breach. Given the application of the presumptive standard of review, I am satisfied that the Court must consider both the *obligation to decide* and the *expectation to disclose its determination* in the context of the reasonableness principles articulated in *Vavilov*. More particularly, I find that the Court must examine the decision and the reported determination to assess whether they bear the hallmarks of reasonableness and whether they are justified in relation to the factual and legal constraints that apply. Of course, the Court must also assess whether the decision and determination are supported by internally coherent reasoning.

[68] In my view, the specific definitions of plagiarism and misrepresentation play a noteworthy role in this analysis. As I read them, both definitions include specific and essential elements which must be established before the Hearing Board can conclude that the alleged breach occurred. It follows, in my view, that, when

considering the evidence or information it receives, the Hearing Board has two tasks. First, it must make factual determinations from the evidence and information it has received. Second, it must then assess, through an internally coherent and rational chain of analysis, whether the factual determinations so found establish the essential elements in the definition of the breach. To meet the reasonableness principles reflected in *Vavilov*, the Hearing Board's analysis must demonstrate all the hallmark requirements.

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[69] In the present case, and after giving this matter a great deal of thought, I am persuaded that the Hearing Board fell short in meeting the reasonableness principles. More specifically, I am satisfied that the Hearing Board failed to meet the hallmark requirements of justification and transparency and did not explain its decision with the kind of reasoning demanded of it. I will explain my view in the context of the two alleged breaches.

[70] Dealing first with the plagiarism allegation, I begin my comment by acknowledging the Hearing Board's conclusion that the applicant essentially admitted to building on the complainant's earlier work, albeit in the context of a culture where members of the research group shared their work. That said, I am satisfied that such an admission, by itself, is insufficient to establish the breach. I will explain.

[71] My explanation begins first with the definition of plagiarism reflected in the Policy. A reasonable reading of this definition reveals three fairly obvious elements, namely: (1) that the respondent presented or used another's published or unpublished work (including theories, concepts, data, source material, methodologies or findings); (2) that the respondent presented or used the aforementioned work as his/her own; and (3) that the respondent presented or used the aforementioned work without appropriate referencing or without permission, if such permission was required. For a finding of plagiarism, all three elements would have to be established on the balance of probabilities, as required by s. 4.0 i of the Procedures. At the very least, there must be

some demonstration of the Hearing Board having considered these elements in its analysis.

[72] In the present case, the Hearing Board did not make any specific factual determinations about what the applicant presented or used as her own. Indeed, the Hearing Board's decision revealed only a general description of the material in question, without any reference to the precise material alleged to have been plagiarized.

[73] As I make this observation, I acknowledge that the complainant had earlier provided the Hearing Board with copies of both the applicant's work and her own work, which she claimed to have been plagiarized. I also acknowledge that the members of the Hearing Board possess relevant expertise that would allow them to assess the provided material in the context of standards for responsible conduct of research. I find, however, that these acknowledged circumstances do not relieve the Hearing Board of its responsibility to make and disclose both their factual determinations and reasons for finding that plagiarism occurred. Put another way, if the material provided by the complainant persuaded the Hearing Board that plagiarism had occurred, it was obliged to identify the plagiarized material and explain its reasons for the conclusion it made. At the very least, failure to follow such a course demonstrated a lack of transparency.

[74] It also did not make any factual determination as to whether the applicant formally required permission to present or use the work in question. In the context of the culture that the Hearing Board acknowledged to exist at the Lab, this was not an insignificant issue. At the very least, the Hearing Board should first have assessed whether permission was required and, if so, assessed whether such permission could reasonably be inferred, implied, or otherwise understood to have been given.

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[75] Much the same analysis applies to the allegation of misrepresentation. As defined in s. 6.0 j of the Policy, this breach involves two elements, namely: (1) that the respondent provided incomplete, inaccurate, or false information; and (2) that the respondent provided the incomplete, inaccurate, or false information in a funding application or related document. Again, for a finding of misrepresentation, both elements would have to be established or considered in the Hearing Board's analysis.

[76] As in the case of the plagiarism allegation, the Hearing Board did not make any specific factual determinations about these essential elements. Importantly, it did not identify the information that was incomplete, inaccurate or false. Indeed, its references to the specific evidence on this allegation is even more general than it was in relation to the alleged plagiarism.

[77] In the end, I am satisfied that the Hearing Board's decision cannot stand. In my view, it does not, in a transparent way, demonstrate an internally coherent and rational chain of analysis that would support a finding that the alleged breaches occurred.

Conclusion

[78] In the result, the application is allowed. The decision of the Hearing Board is set aside. Further, there shall be an order that, if the complaint is pursued with a new hearing, that hearing shall come before a differently constituted Hearing Board.

[79] The applicant shall have her costs against the University, taxed under Column 3 of the Tariff of Costs.

J.
R.W. ELSON

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