

The Art and Science of Fairness

Nov. 22, 2017

LTO Series at

Ryerson University

Presenter: Nora Farrell, Ombudsperson at RU



What is “fairness”?



<https://www.youtube.com/watch?v=meiU6TxysCg>



Fairness is:

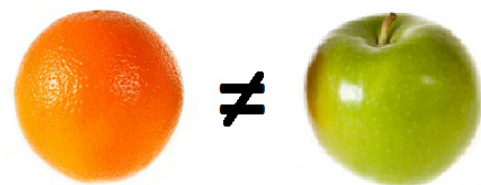
- Always dependent on context
- Treating people differently if their circumstances are different from one another
- Treating people the same if they are identically situated
- Understanding the difference between equity and equality





Fairness is *context-specific*

Fairness \neq Sameness



RU Academic Plan

“...the University strives to always manifest fairness, transparency and accountability in its processes of decision-making, administration and governance.”

“Our Time to Lead, Academic Plan 2014 – 2019”

Online: <http://www.ryerson.ca/provost/academic-plan/>



“A University should be a just society”

- People should deserve what they get

- People should get what they deserve

Source: Barry Schwartz, Swarthmore College

Dorwin P. Cartwright Professor of Social Theory and Social Action

Emeritus Psychology

Online: <https://www.youtube.com/watch?v=VZ7hwUc8R60>





The University's Perspective...

(as envisioned in Policy 134 and Policy 152)

- Ryerson University is committed to promoting academic success and to ensuring that students' academic records ultimately reflect their academic abilities and accomplishments.
- The University expects that academic judgments by its faculty will be fair, consistent and objective, and recognizes the need to grant academic consideration, where appropriate, in order to support students who face personal difficulties or events.
- The Academic Appeals process reflects decision-making in an academic environment and, as such, cannot be equated to decision-making in the judicial system. The principles of natural justice and fairness will apply to all decisions made...

The principles of natural justice



Component One:
The right to be heard
(audi alteram partem)

The person who is affected by the decision:

Receives notice (is told) that the issue, problem, concern, request is being considered

Is provided with the specifics of what information is being considered and

Has a fair opportunity to tell their side of the story and to respond to what others have said or written



Component Two:
The right to an unbiased decision-maker
(nemo iudex in causa sua)

Strive for impartiality by recognizing your biases and managing them

Maintain an open mind and be willing to consider any good idea, be open to persuasion

Make your own decision independently



Test for Bias (some examples)

- Conscious bias
- Unconscious bias
- Implicit bias
- Anchor bias
- Confirmation bias
- Prejudgment
- Personal connection
- Overlapping roles
- External influence
- Institutional bias



How do we measure fairness?



**Ombudsman
Saskatchewan**



**Public Interest
Disclosure
Commissioner**

The Fairness Triangle: Substantive



SUBSTANTIVE

What was decided?

- The decision-maker must have the authority to make the decision.
- The decision:
 - must be reasonable
 - must be based on reasoning that the people affected can understand
 - cannot require anyone to do something illegal
 - cannot discriminate improperly
 - cannot be oppressive, unreasonable or unjust
 - cannot be made for an improper purpose
 - cannot be based on irrelevant grounds

The Fairness Triangle: Procedural



- The person who will be affected by a decision is given:
 - advance notice that a decision will be made.
 - access to the information that will be considered.
 - a meaningful opportunity to state or present their case.
 - an opportunity to challenge any information that might be used against them in a decision.

The Fairness Triangle: Procedural (Continued)



- The decision-maker must:
 - be thorough
 - be free of bias
 - be honest
 - consider relevant information
 - give reasons that are meaningful and understandable

The Fairness Triangle: Relational



Be courteous, timely, clear and direct.

Take the time to listen.

Be approachable.

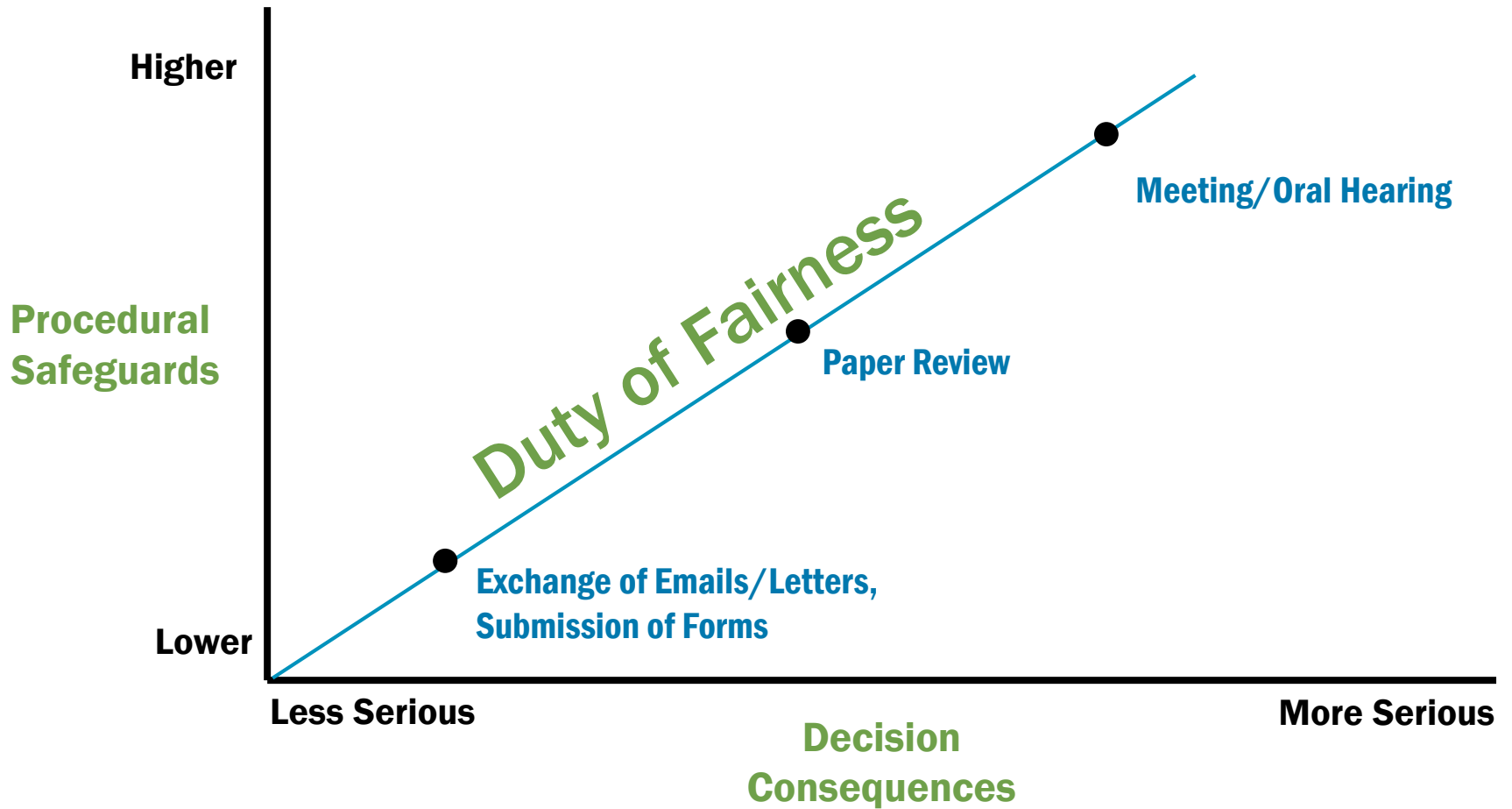
Respect confidentiality.

Be honest and forthright.

Be clear about what you can and cannot do.

Apologize if you make a mistake.

Levels of Procedural Protection



The fair exercise of discretion

In exercising discretion decision-makers have the opportunity to demonstrate flexibility, responsiveness and creativity as is appropriate to the situation under review. At the same time the decision-maker must also guard against acting arbitrarily or unjustly.

Michael E. Manley-Casimir, "A Case Study of Discretion in School Discipline" in *Administrative Discretion in Education*, eds., Michael Manley-Casimir & Alesha D. Moffat (Calgary: Brush Education Inc., 2012) at p.49.



The fair exercise of discretion

Requirements:

- **Act** in good faith and for a proper purpose;
- **Decisions** should reflect the values espoused by the University or of the profession involved, not personal values



The fair exercise of discretion

Requirements:

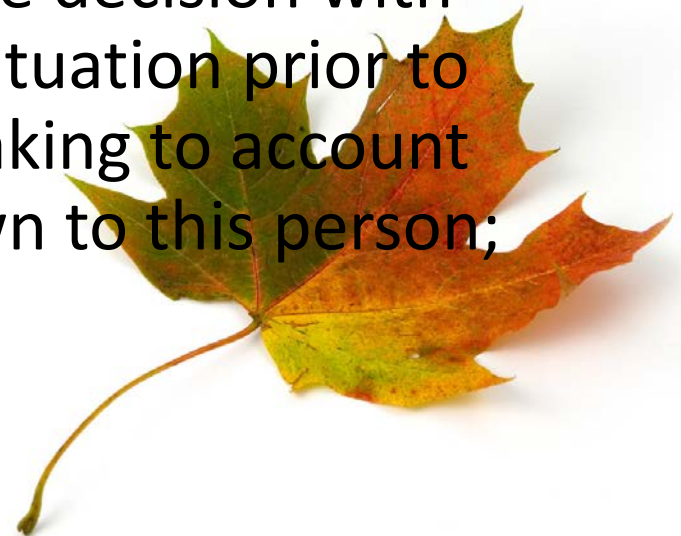
- **Comply** with any relevant law (e.g. *Ontario Human Rights Code*) or policy (e.g. Academic Consideration and Appeals Policy, Course Management Policy, etc.) that applies.
- **Consider** only relevant information and ignore irrelevant material;
- **Determine** what grounds or guidelines will be used to make the decision;



The fair exercise of discretion

Requirements:

- **M**ake decisions based on supporting evidence (if available);
- **G**ive proper consideration to the merits of the case;
- **P**rovide the person affected by the decision with the opportunity to speak to the situation prior to making your decision if you are taking to account evidence that is not already known to this person;



The fair exercise of discretion

Requirements:

- **Make an independent and unbiased decision;**
- **Once the decision is made, reasons must then be provided to those affected by the decision.**

- **BTW, you can not ‘fetter’ your discretion.**

“GUIDELINES Exercise of discretion in administrative decision-making” (October 2009) online: Ombudsman for Western Australia <www.ombudsman.wa.gov.au>. See “How should decision-makers exercise discretionary powers?” and “Ten key steps to be considered when exercising discretion”. c



Exercise in dyads

Discussion between Faculty member and Director



Next steps:

- What area are you going to work on in order to increase your ability to exercise your discretion fairly.



Comments, Questions?

