


INSTITUTIONAL PERSPECTIVE LEGAL LANDSCAPE

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Legal Landscape

Outline

1. Research Integrity
 2. Natural Justice
 3. Investigating Research Misconduct
 4. Trends
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What is Research Integrity?

NIH Definition

- use of honest and verifiable methods in proposing, performing, and evaluating research
- reporting research results with attention to adherence to rules, regulations, guidelines
- following commonly accepted professional codes or norms


Honesty, Accuracy, Efficiency, Objectivity



Why does it Matter?

UHN Responsible Conduct of Research Policy

*“Each member of the research community has a responsibility to foster intellectual honesty and integrity and to be vigilant regarding the conduct of research, whether his or her own or others. **It is essential that research personnel maintain the highest standard of public trust and integrity.**”*




Responsibility for Research Integrity

- To maintain public confidence in research, everyone has a role to play:
 - Researchers
 - Supervisors/Mentors
 - Administrators
 - Public (social media, blogs – e.g., PubPeer, Retraction Watch)

Natural Justice


Basic premise in law:

- Individuals should not be penalized by decisions affecting their rights unless they are afforded Natural Justice
(e.g., due process, procedural fairness)
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What is “Natural Justice”?

1. Rule against bias
2. Right to a fair hearing
 - Context dependent (*Baker v. Canada Immigration*)
 - Nature of decision
 - Statutory scheme under which decision-maker operates
 - Importance of decision to the person affected
 - Legitimate expectations of person affected

1. Rule Against Bias

- Applies to anyone acting judicially or quasi-judicially
 - i.e., decision-making that affects individual rights
 - Should not act if decision-maker may be, or may reasonably be suspected to be, biased
 - Decision-maker must be impartial
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2. Right to a Fair Hearing

- Individual affected:
 - Has right to counsel
 - Must receive notice of hearing
 - Must be given particulars of case against them
 - Must be given fair opportunity to be heard and answer case against them
 - Must be given reasons for decision
 - Must have right of appeal

Investigating Allegations of Research Misconduct

UHN “*Responsible Conduct of Research Policy*”

- 2-Step process
 - Inquiry – allegations outlined
 - Unbiased Investigation Committee
 - Respondent has right to counsel
 - Respondent has right to be heard
 - Respondent receives draft reasons for decision with right to comment
 - Respondent receives final report of IC
- Sanction decision by EVPs Research and Quality
- Right of Appeal to CEO (final decision-maker)

Is CEO's decision really *final*?

Judicially reviewable decisions ...

- Matters that are “*coloured with a public element, flavour or character sufficient to bring it within the purview of public law*”?
- “*where a matter has a very serious, exceptional effect on the rights or interests of a broad segment of the public*”

e.g.,

NO – Setia v. Appleby (2013)

YES – SA v. UHN (2016)

Trends

- Internet and social media – greater and more timely scrutiny of published material
- Broader dissemination of information (e.g., Snowden)
- Greater scrutiny of institutional decisions by Courts
- Confidentiality concerns in FOI era – affects willingness of witnesses and/or investigators to participate in process



- Loss of public confidence in the integrity of research