

FAIRNESS FACTS

THE ESSENTIALS OF PROCEDURAL FAIRNESS

Procedural fairness is an important aspect of administrative fairness.

Decision makers in public organizations have a duty of procedural fairness when making a decision that directly impacts a person or group of people. This duty comes from Canadian case law¹ and the area of law known as administrative law.

The two parts of the duty of procedural fairness are:

1. the right to participate and be heard in the decision-making process
2. the right to an impartial decision maker

How to provide an opportunity for people to participate in the process:

1

Provide advance and reasonable notice of the decision to allow the person impacted to prepare a response.

2

Share information about how the decision will be made.

- the rules and criteria (e.g., legislation and/or policy) being used
- any information needed from the person to make the decision
- information relevant to the decision that you have already gathered, especially if it may be adverse to the person's interests.

3

Provide an opportunity to be heard so those impacted can tell their side of the story and present their case. They should have the chance to challenge the evidence being used to make the decision. It is important to be trauma-informed, ensure cultural safety, consider the unique circumstances of those impacted, and to demonstrate flexibility when providing the opportunity to be heard.

4

Offer clear and meaningful reasons for your decision, including explaining the applicable rules used. The reasons provided should demonstrate the voices of those impacted were heard and considered.

5

Provide any information on how to review or appeal, including specific time limits.

¹ See *Nicholson v. Haldimand-Norfolk (Regional Municipality) Commissioners of Police*, [1979] 1 S.C.R. 311 and *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643.

Be an impartial decision maker

- be impartial about the issues being deciding and those impacted
- use applicable criteria and information and evidence relevant to the decision. Evidence and information that is not relevant should not influence the decision
- have an open mind, be free from bias and don't prejudge



How much procedural fairness is owed?

The level of procedural fairness owed is flexible and depends on the situation. Generally, the greater the impact on the person or group, the more procedural fairness is required.

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