



# **THE DOCTRINE OF FAIRNESS THE RULES OF NATURAL JUSTICE AND THE PRINCIPLES OF DUE PROCESS**

## **1. DOCTRINE OF FAIRNESS**

This concept, often referred to as procedural fairness, is not a separate standard from the rules of natural justice; it is the heart of natural justice. Where a board or decision maker acts in an “administrative” capacity, there exists an obligation to act fairly, which is something less than the formal procedures referenced to the traditional natural justice.

Farley (1986) describes the relationship of these concepts to the decision-making process:

In essence, the rules require that a person whose rights or legitimate expectations may be affected by a decision be given an adequate opportunity to state his case and be heard by an unbiased decision maker. The doctrine of procedural fairness arguably encompasses the rules of natural justice and makes them applicable to all types of decisions which reflect rights of legitimate expectations whether the decision is judicial in nature or merely administrative. (p 41)

Gall (1983, pp 288-290) references two Supreme Court of Canada rulings that found the doctrine of fairness applicable not only to judicial and quasi-judicial decisions, but also to administrative decisions. Generally, the courts did not distinguish between the concepts of natural justice and fairness because the elements of each depend upon the nature of the case and the seriousness the impact upon the individual. The point of consideration, in each case, was that the tribunal must treat the aggrieved person fairly.

## **2. NATURAL JUSTICE**

McCurdy (1986) defines Natural Justice in the following manner:

Natural justice comprises the rules to be followed by any person or body charged with the duty of adjudicating upon disputes between or upon the rights of others. The chief rules are to act fairly, in good faith, without bias and in a judicial temper and to give each party an opportunity to adequately state his case. (p 4)

## **3. BASIC PREMISES OF NATURAL JUSTICE**

The two basic premises of natural justice are that:

- (a) An opportunity for a fair hearing should be given to those affected by a decision, and
- (b) The decision maker should not be biased.

#### **4. FAIR HEARING**

In respect of a fair hearing, Anderson (1981) offers the following basic rights as prepared by the Ontario Attorney General:

- (a) The right to reasonable notice of time and place of the hearing.
- (b) The right to reasonable information of any allegation respecting the good character, propriety of conduct and competence of a party of such matters are in issue.
- (c) Right to a public hearing unless public security and intimate financial or personal matters are involved.
- (d) The right to be represented by a lawyer or an agent.
- (e) The right to call and examine witnesses and to cross-examine other witnesses.
- (f) The right to protection against self-incrimination respecting the use of evidence in any subsequent civil or criminal proceedings (as far as the province can grant that right).
- (g) The right to reasonable adjournments of a hearing.
- (h) The right to a written decision, with reasons upon request. (pp 10-11)

#### **5. FUNDAMENTAL PRINCIPLES OF DUE PROCESS PROTECTION**

The fundamental principles of due process protection which generally operate in a dismissal hearing are set out by Munnely (1979) as follows:

- (a) The right to notice (including a statement of reasons) so the teacher can be informed of the impending subject of review and can choose what action to take with reference to it.
- (b) The right to a hearing.
- (c) The right to a personal presence at the hearing.
- (d) The right to counsel, including the privilege of raising issues and setting up a defense and the right to confront and cross-examine witnesses.
- (e) The right to introduce evidence.
- (f) The right to protection against arbitrary rulings and the right to fairness and impartiality.
- (g) The right to proof of damage.
- (h) The right to a review by an appeal tribunal.

#### **6. IMPLICATIONS OF ALBERTA LAW**

The *Education Act* requires that boards act reasonably in exercising any rights under the Act. This has been upheld as a requirement to provide fairness and natural justice in employment matters.