

Natural justice and procedural fairness

The principles of natural justice exist as a safeguard for individuals in their interactions with the state. These principles stipulate that whenever a person's "rights, privileges or interests" are at stake, there is a duty to act in a procedurally fair manner.

The principles of natural justice concern the general manner in which a decision is made. Essentially, procedural fairness does not concern the correctness of the decision. Rather, principles of natural justice help to ensure that the decision maker followed the proper procedure in arriving at their decision. The principles of natural justice and procedural fairness are based on the theory that the substance of a decision is more likely to be fair if the procedure through which that decision was made has been just.

While the principles of natural justice embody several important rules of procedural fairness, the **twelve most common rules** are the following:

Notice

The applicant must be given adequate notice of the nature of the proceedings and of the issue to be decided.

Disclosure

Depending on the nature of the case, all evidence to be used against an applicant must be disclosed.

Opportunity to present one's case

The applicant must be provided with an opportunity to present whatever evidence they wish to be considered.

While the right to be heard generally implies a hearing, it does not always mean an oral hearing. Submissions can be made in writing. This procedure is known as a file hearing.

It should be noted that where the credibility of the individual is at issue, the principles of natural justice and procedural fairness usually require an interview or an oral hearing.

In both oral and file hearings, certain rules must be observed before making a decision.

Opportunity to respond

When the decision maker is in possession of evidence not presented by the applicant, they must allow the applicant an opportunity to know and respond to that evidence.

While a citizenship officer is not always required to draw perceived contradictions to the applicant's attention, there may be instances where a failure to do so results in a breach of procedural fairness. For example, if a contradiction is so critical as to be decisive in the applicant's case, it is good practice to put the contradiction to the applicant and allow them an opportunity to respond.

Duty to consider all of the evidence

The decision maker is required to consider all of the relevant evidence and information pertaining to a specific case.

Right to counsel

In some cases, fairness will dictate that the applicant be granted the right to counsel.

Right to an interpreter

In some cases, fairness will dictate that the applicant be granted the right to an interpreter.

In connection with an applicant's right to be heard, a language interpreter may be used to assist an applicant during most interactions with the Department during the citizenship process (notable exceptions include hearings for language or knowledge requirements).

An interpreter should be used when an applicant has had the language requirement waived or when they are not clearly able to understand, read, or speak one of Canada's official languages during the citizenship process.

Legitimate expectation

Where an applicant has been assured by the Department that a particular procedure will be followed, the individual is entitled to that procedure.

Right to impartial decision maker and freedom from bias

Procedural fairness is violated when the decision maker is biased or their conduct or statements raise a reasonable apprehension of bias.

An applicant has the right to a fair and impartial hearing and a fair and impartial decision maker. Decision makers must not allow personal beliefs or interests to influence their decisions. The application must be studied impartially and without regard to what the decision maker considers to be a good citizen. The applicant does not have to prove that the decision maker was biased. The mere possibility of bias may be enough to show bias.

If the *Citizenship Act* or Regulations give officers complete authority to make a decision, they must clearly exercise that authority. Officers may, of course, take advice before making a decision. However, it should be plain to applicants that officers have used their authority to decide freely. The record of decision should also indicate that, after weighing guidance among all relevant factors, officers came to their own conclusion. If officers tell applicants that a decision on their case is a result of advice from a superior or headquarters, or of information in program delivery instructions, they restrain their discretion and are violating two other principles of procedural fairness, namely whoever hears must decide, and applicants must have the opportunity to disabuse decision makers of their concerns.

The following are **examples of situations that may show bias**:

- commenting on a question before the hearing;
- prior involvement in the case;
- a relationship between the decision maker and one of the parties;
- marked hostility toward one of the parties;
- possibility of financial benefit from the outcome of the proceedings.

Institutional independence and requirement that the person who hears the case must decide

The decision maker must be independent. Institutional independence requires that the person entrusted with making a decision have sufficient decision-making independence for there to be a perception of independence and impartiality.

There is a general requirement that the person who hears the case is the only person that should make a final determination on the case.

There is one exception that is frequent in government: one person reads, hears and evaluates all of the pertinent information and then submits a report to another official who makes the decision. This exception is permitted as long as the decision maker takes all of the information into account. An example of this is found in the citizenship process for an adult grant of Canadian citizenship where an officer cannot make a positive assessment with respect to the residence requirement. In these cases, the file is referred to a citizenship judge. Citizenship officers gather information, administer citizenship tests, and then provide the objective and material evidence to a citizenship judge for an assessment and decision on the residence requirement.

Delay

The premise is that unreasonable delay may cause prejudice toward the applicant and may therefore breach procedural fairness.

Right to reasons

The right to reasons exists particularly where the applicant has a right to make an appeal or to seek judicial review regarding a decision on a case and needs to know the reasons for the decision in order to properly prepare for the appeal or judicial review. The reasons must be sufficiently clear, precise and intelligible to enable the individual to understand the basis of the tribunal's decision.