

THE PRINCIPLES OF NATURAL JUSTICE

(Source: Canadian Common Law)

What are the rules of natural justice?

The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. A word used to refer to situations where audi alteram partem (the right to be heard) and nemo iudex in parte sua (no person may judge their own case) apply. The principles of natural justice were derived from the Romans who believed that some legal principles were "natural" or self-evident and did not require a statutory basis. These two basic legal safeguards govern all decisions by judges or government officials when they take quasi-judicial or judicial decisions.

Three common law rules are referred to in relation to natural justice or procedural fairness.

The Hearing Rule

This rule requires that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker.

To ensure that these rights are respected, the deciding authority must give both the opportunity to prepare and present evidence and to respond to arguments presenting by the opposite side.

When conducting an investigation in relation to a complaint it is important that the person being complained against is advised of the allegations in as much detail as possible and given the opportunity to reply to the allegations.

The Bias Rule

This second rule states that no one ought to be judge in his or her case. This is the requirement that the deciding authority must be unbiased when conducting the hearing or making the decision. Additionally, investigators and decision-makers must act without bias in all procedures connected with the making of a decision.

A decision-maker must be impartial and must make a decision based on a balanced and considered assessment of the information and evidence before him or her without favouring one party over another. Even where no actual bias exists, investigators and decision-makers should be careful to avoid the appearance of bias. Investigators should ensure that there is no conflict of interest which would make it inappropriate for them to conduct the investigation.

The Evidence Rule

The third rule is that an administrative decision must be based upon logical proof or evidence material. Investigators and decision makers should not base their decisions on mere speculation or suspicion. Rather, an investigator or decision maker should be able to clearly point to the evidence on which the inference or determination is based. Evidence (arguments, allegations, documents, photos, etc..) presented by one party must be disclosed to the other party, who may then subject it to scrutiny.