

Information for University Decision-Makers

Procedural Fairness / Natural Justice and Other Considerations

This guide aims to provide some guidance for individuals who administer student appeal processes (named decision-makers throughout the document) about the sorts of things to be considered when making decisions that may impact a student's rights or interests, for example in student disciplinary proceedings, and appeals from academic decisions.



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Procedural Fairness/Natural Justice

These are the rules of procedural fairness or natural justice. They should be understood and applied by all decision-makers at the University.

How the rules of procedural fairness apply in practice will depend on the circumstances of each case.

Questions about the application of these rules may be directed to Harry Smith, University Ombudsman, by phone at (613) 533-6495, or by email at ombuds@queensu.ca, Lisa Newton, Legal Counsel to the University, by phone at (613)533-6095, or by email at lisa.newton@queensu.ca or The Equity Office, by phone at (613) 533-2563 or by email at equity@queensu.ca

1. What is Procedural Fairness?

Essentially, procedural fairness, also called natural justice, requires that a person receive a *fair and unbiased hearing* before a decision is made that will negatively impact on a person's rights or interests. What constitutes a fair and unbiased hearing will vary from case to case according to the circumstances.

2. What are the Rules of Procedural Fairness?

When making decisions that may impact negatively on a person's rights or interests, a decision-maker must:

(a) Follow the relevant University policy or procedure and ensure that you have the authority to make the decision

A decision maker must act within the boundaries of any policy or rule that governs the making of that decision and ensure that prescribed procedures, including any time frames, are followed.

(b) Inform the person of the case against them

A person must be provided with enough details of the allegation or complaint against them or of the impending decision affecting them in order to be able to prepare a defense including:

- The substance of the allegation, accusation, or complaint made against them;
- Information or evidence supporting the allegation;
- The nature of the impending decision and relevant criteria for making the impending decision; and
- Possible penalties that might be imposed.

New evidence or information which might be relevant to a person's response or defence should also be disclosed if it arises after the initial information has been given.

(c) Give the person a right to be heard

A person must be provided with a reasonable opportunity to be heard or to respond to an allegation, complaint or impending decision before a decision is made.

Depending on the circumstances, an opportunity to be heard may include:

- An opportunity to make submissions (orally or in writing);
- An opportunity to give evidence and call witnesses; and
- An opportunity to question or cross-examine persons in relation to any adverse information or material.

(d) Notice

A person must be provided with adequate notice of an impending decision or upcoming hearing.

Where applicable, time frames set out under the relevant University policy or procedure must be followed. Where no specific time frames are stipulated, staff should provide such notice as is reasonable in the circumstances.

Decision-makers should also consider whether there are any obstacles or factors which might hinder a person's ability to respond to an allegation or complaint, or to make a submission on any matter, and make appropriate allowances so that a person's submission or response can be taken into consideration.

In hearings conducted by the University, the decision-maker is not bound by formal rules of evidence. Hearing procedures may be set out in the relevant policy or procedure. Otherwise, they should be reasonable and proportionate to the allegation, complaint or impending decision. As a general rule, where significant consequences will arise from an adverse outcome, more formal hearing processes should be adopted.

Students who are engaged in these processes have the right to the assistance of a Dispute Resolution or Human Rights Advisor or a legal representative, who may participate in the proceeding. Students may appear on their own if they wish, but in serious cases they are encouraged to have representation or assistance.

(e) Not have a personal interest in the outcome of the decision (often called the “rule against bias”)

A decision must be made without bias or the *appearance* of bias.

A person should not be involved in a decision-making process if that person:

- Has strong personal views which might cause a reasonable person to conclude that he or she would be biased against the individual concerned or prefer one outcome over another;
- Has been involved in making an earlier decision relating to the matter at hand;
- Has a conflict of interest due to financial, family, or other personal interests which may prejudice or be seen to prejudice the decision-making process; or
- Is implicated under a separate grievance or complaint by the person affected by their decision.

(f) Act only on relevant information or evidence

Decision-makers must give genuine and proper consideration to the particular merits of a person’s case before reaching their decision, and must not take into account facts or considerations unrelated to the matter at hand when making a decision.

Decision makers may make reasonable inquiries before making a decision if necessary to understand the case before them.

(g) A person should be advised of the decision that has been made and provided with a summary of reasons for the decision

A person should be advised of the decision or outcome in a timely fashion after the decision or outcome is reached.

A person should be provided with a summary of the reasons for the decision or outcome. Knowing the reasons for a decision may be relevant in the circumstance where the person decides to lodge an appeal.

(h) A person should be advised of available avenues of appeal

A person should be advised of avenues of internal appeal that are available in the situation, including any time frames which might apply to the lodging of an appeal.

(i) The decision-maker should maintain a person’s right to privacy and confidentiality

Where it is reasonable in the circumstances to do so, a person’s right to privacy and

confidentiality should be maintained throughout and following the decision-making process.

3. Further Considerations/Human Rights, Accessibility and Educational Equity

The University has an obligation to comply with human rights and disability related legislation. Queen's also has internal policies that reflect human rights related legislation such as the Senate *Harassment/Discrimination Complaint Policy and Procedure* and the Senate *Educational Equity Policy*.

This means when making decisions, decision makers must take into account human rights-related internal policies and legislation.

(a) Human Rights Considerations

The [Ontario Human Rights Code](#) (*Code*) is a provincial law (reflected in the Senate Harassment/Discrimination Policy and Procedure) that gives everyone equal rights and opportunities without discrimination in the social areas of:

- employment
- living accommodation
- goods, services and facilities
- membership in vocational associations and trade unions

The *Code's* goal is to prevent discrimination and harassment because of:

- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed (religion)
- sex (including pregnancy)
- sexual orientation
- gender identity
- gender expression
- disability
- age (18 and over, 16 and over in occupancy of accommodation)
- marital status (including same sex partners)
- family status
- receipt of public assistance (in accommodation only)
- record of offences (in employment only)

Decision makers must take into account these human rights grounds when conducting a hearing or considering appeals. The University is also required to accommodate individuals if it can do so without undue hardship (For example, was a student required to take a test during a religious observance that required the student to be absent from Queen's?)

(b) Accessibility and Educational Equity

The University has legal obligations under the *Accessibility for Ontarians with Disabilities Act*, which further underscores the requirement to accommodate persons with Disabilities. See 'Recognition of existing legal obligations', Section 3, part I:

<http://www.aoda.ca/the-act/#parti> (For further guidance see the Ontario Human Rights Commission's 'Guidelines on Accessibility Education' found here:

http://www.ohrc.on.ca/sites/default/files/attachments/Guidelines_on_accessible_education.pdf

The University also has obligations under the Senate Education Equity Policy which further emphasizes the requirement to consider the circumstances of individuals who are members of groups named under the policy.

<http://www.queensu.ca/secretariat/policies/senate/educational-equity-policy>

Queen's University gratefully acknowledges the Office of the General Counsel, University of Melbourne for kindly giving permission to modify its document, Information for University Decision-Makers: Procedural Fairness / Natural Justice and Other Considerations.

<https://www.unimelb.edu.au/compliance/compliance-materials/Procedural%20Fairness%20in%20decision%20making%20Compliance%20Guide%20April%202011.pdf>