


Impartiality and Fairness in Administrative Tribunal Decisions

Administrative Justice Essentials
BCCAT Annual Continuing Education conference
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Acknowledging the land we are on



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Agenda for today

1. About the Ombudsperson
2. About Administrative Fairness & Tribunal Decision Making
3. Impartiality & Tribunal Decision Making

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Instructions

Go to www.menti.com

Enter the code
4795 9874



Or use the QR code

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Role of the Ombudsperson: Mandate



Independent voice for fairness and accountability



Hear people's fairness concerns and address the problems we find



Support public authorities to build fairness into their programs and services

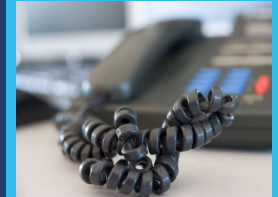
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Case summary

Asking to be heard

- Mateo was a tenant seeking to resolve a dispute with his landlord through a hearing with the Residential Tenancy Branch.
- Mateo requested an in-person hearing because he had difficulty understanding conversations in English over the phone.
- He was told in-person hearings were only available for individuals with medical exemptions.
- Fairness concerns resolved by ensuring all participants can now request other hearing formats and their requests will be considered.

Residential Tenancy Branch (RTB)



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Case summary

Getting the decision

- Anita received an email that her complaint had been assigned to a tribunal member and it would take about 8 weeks to receive a decision.
- Five months later Anita followed up with CRT. She was surprised to learn the decision had been emailed to her several months prior.
- The decision had been received but was in her spam folder and from a generic email address.
- Fairness concerns resolved by changing template letter to include email address decision will be sent from, approximate timeline and link to information about options once decision is made.

Civil Resolution Tribunal



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Role of the Ombudsperson

The *Public Interest Disclosure Act*

BC's whistleblower legislation

Allows public sector employees to safely disclose serious wrongdoing

Provides protection from reprisal (retaliation)



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What is administrative fairness?

The expectation that public organizations provide services to the public fairly.

It includes following fair decision-making processes, making fair decisions, and treating people fairly.



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Administrative fairness is...



Fair decision-making process	<ul style="list-style-type: none"> Impartial and unbiased decision maker Opportunity to participate and be heard Decision (reasons) explained
Fair decision	<ul style="list-style-type: none"> Follow rules and policies Consider individual circumstances and case Based on complete and relevant information
Fair service	<ul style="list-style-type: none"> Good communication & respectful treatment Accessibility, timeliness and transparency Fixing errors and mistakes

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Fairness: a flexible concept

How much, or how little, fairness is required will depend on the situation

- Impact
- Urgency
- Ability to appeal
- Unique circumstances

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Why is administrative fairness important in tribunal decision-making processes?

Public confidence in your organization and its decisions

People feel heard and justly treated

Supports good decision making

Supports effective operations

Helps meet legal requirements

Right thing to do

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3. **Impartiality & Tribunal Decision Making**

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Following a fair decision-making process



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What does it mean to be an impartial decision maker?



Decision maker's state of mind

Open mind

Unbiased

Has not prejudged case

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What does it mean to be an impartial decision maker?

Decisions based on...

- Relevant facts and evidence
- Following the applicable decision-making rules and criteria

Avoid decisions based on...

- Irrelevant or extraneous factors
- Preference
- Bias
- Personal interest

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Factors affecting decision-making

Extraneous factors in judicial decisions

- Parole decision being made experienced judges.
- Decisions made over 3 sessions, with a break between each session.
- Judges were more likely to decide in favour of parole at the beginning of the session then at the end.
- Shows experienced decision-makers can be influenced by factors irrelevant to decision making criteria – such as when they last ate or had a rest.

Source: *Extraneous factors in judicial decisions*, Shai Danziger, Jonathan Levav and Liora Avnaim-Pesso



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What can impact impartiality and perception of impartiality?



Organizational and systemic factors

Policies and procedures
Organizational culture
Organizational structure
Community culture



Decision-maker

Personal experience and background of decision-maker
Professional experience and education background
Familiarity with parties



Hearing process

Format, style and pace of hearing
Self-represented parties
Active versus passive adjudication

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What to do? Impartiality during decision-making process



Consider your perspective



Think about bias



Seek to provide a fair opportunity to be heard

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Consider your perspective



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What is your perspective?



What is my
perspective?



How does this impact
my decision making?

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Think about bias



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Think about bias

Bias

“...a leaning, inclination, bent or predisposition
towards one side or another or a particular result.”

Wewaykum Indian Band v. Canada, 2003 SCC 45

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Think about bias: Reasonable
Apprehension of Bias

A reasonable person, informed
of the circumstances, would
reasonably perceive bias on
the part of the decision maker.



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Think about bias: Implicit/unconscious bias

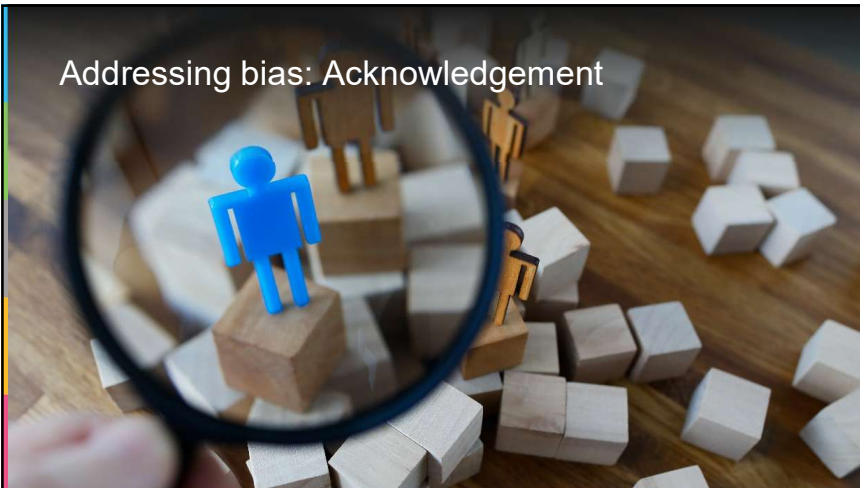
Implicit Bias

Unconscious mental
shortcuts

Favourable and
unfavourable
assessments based on
personal characteristics

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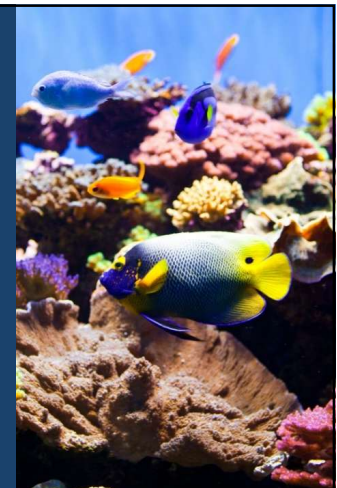
Addressing bias: Acknowledgement



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Addressing bias:
Mindfulness and slowing down

WAIT
What am I thinking?



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Seek to provide a fair opportunity to be heard



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Fair hearing considerations

Has any party indicated (directly or indirectly) they require anything additional to a typical hearing process to be able to meaningfully participate in the hearing process?

Does this barrier or need potentially impact the fairness of the hearing for them?

Balancing human rights, the fairness interests and any possible prejudice to the parties, what reasonable steps might be taken to ensure a fair hearing for the person?

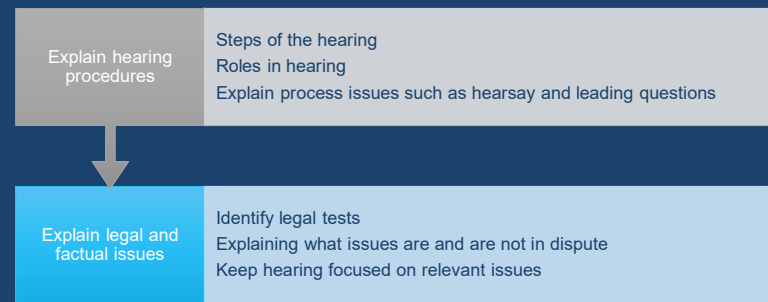
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Impartiality: Ensuring an opportunity to be heard



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Impartiality: Ensuring self-represented parties have an opportunity to be heard



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Impartiality: When making decision

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Ensure decision is based on decision making criteria

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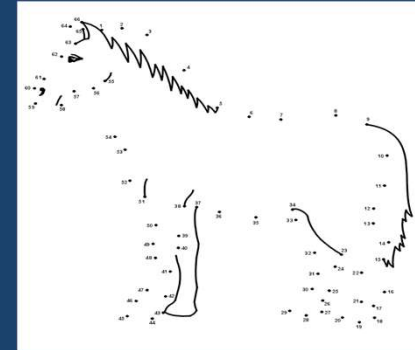
Avoid basing decisions on irrelevant or extraneous factors

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Provide clear and understandable reasons

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Impartiality: Providing clear and understandable reasons



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Impartiality: What can you do?

During decision-making process

- Consider your perspective
- Think about bias
- Ensure parties have fair opportunity to be heard

When making decision

- Ensure decisions are based on decision-making criteria
- Avoid basing decisions on irrelevant or extraneous factors
- Provide clear and understandable reasons

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Thank you joining us

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