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52nd Annual Refresher: Family Law

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Principles of Natural Justice

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PRINCIPLES OF NATURAL JUSTICE

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Secondary Duties Arising from Case Law1

TWO PRIMARY DUTIES UNDER THE RULES OF NATURAL JUSTICE

The rules of natural justice place two primary duties on decision makers who enjoy a judicial or quasi-judicial role;

1. The duty to give those persons who are subject to a decision a reasonable opportunity to present their case (aka. The right to be heard), and
2. The duty to listen fairly to both sides and to reach an unbiased decision. The key to natural justice is to ensure that decision-making processes are transparent, impartial, evidence-based and fair.

SECONDARY DUTIES ARISING FROM CASE LAW

Through their interpretation of the rules of natural justice, the Courts have recognized a number of secondary duties that fall under these primary duties. These secondary duties include the following;

1. Notice of the Hearing
 - The persons who are subject to a decision must be provided with sufficient prior written notice of the hearing, setting out the facts on which the decision maker will base their decision, the allegations that have been made, what the hearing will entail, and the possible effects of the decision.
2. Preparation for the Hearing
 - The parties must be given all information that the decision maker will rely on to make his or her ruling.
3. The Hearing
 - Everyone affected by the decision has a right to a fair hearing.
 - (a) Structure of Hearing
 - Although the hearing may take the form of an oral hearing, or may proceed entirely by way of written submissions, the decision maker must ensure that the form that the hearing takes is appropriate for the specific circumstances of the case.
 - (b) Presentation of Evidence
 - The parties must be allowed to submit any evidence that is relevant to the matters set out in the notice of hearing, however, the decision maker is entitled

to weigh the probative value of evidence and to exclude evidence that they deem to be irrelevant.

- (c) Assistance/Representation by Counsel
- (d) The right to call witnesses
- (e) The right to appropriate adjournments
- (f) Re-opening the Inquiry
 - Any requests by the parties to re-open the inquiry must be heard and given fair consideration.

4. The Decision

- (a) Full Consideration of the Evidence
 - The decision maker must have heard all of the evidence prior to making their decision.
- (b) Based on the Evidence
 - The decision maker must base their decision substantially on the evidence submitted at the hearing.
- (c) Reasons
 - The decision maker must provide the parties with the reasons for their decision.
- (d) Avoid Unreasonable Delay
 - The parties are entitled to a hearing and a decision within a reasonable period of time.

5. Reasonable Apprehension of Bias

- The parties are entitled to a hearing and decision that is free of any reasonable apprehension of bias arising from any of the following:
 - The interests or relationships of the decision maker;
 - The attitude of the decision maker;
 - The decision maker hearing an appeal of a decision they rendered