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From: Pointon, Craig (IRCC/IRCC)
Sent: October 7, 2024 5:03 PM
To: CPCE-Edmonton All Users Group
Subject: Procedural fairness - A MUST READ
Attachments: Guidance on request letters and the use of IELTS

Importance: High

Colleagues,

This email is directed at all decision makers (officers) but I would encourage you all to review it as the information is useful for all. I have been over this *ad nauseum* but wish to put it one final time in writing as errors continue to persist. Errors of this nature **cannot** continue. If you have questions regarding any of the principles discussed in this email, please speak with your supervisor.

As adjudicators, you have a duty to act fairly and an obligation to follow the principles of natural justice. These principles date back to Aristotle and the Greeks and contain rules that are so fundamental that they need not be codified in law. Essentially, there are two main principles:

- 1) ***Audi alteram partem*** – the duty to be given a reasonable opportunity to present ones case; and
- 2) ***Nemo judex in causa sua debet esse*** – the duty to reach a decision that is unbiased.

Within each of these principles, there are specific duties which exist. I'll spare you the Latin but in short:

- The right to be heard and right to reasons: which includes knowing the case to be made and the right to a decision.
- The rule against bias (fair and impartial decision-making): which includes **bias in law** (i.e. you have a personal/professional relationship with the individual or attitudinal bias (i.e. when bias is shown in behaviour) and **institutional bias**.
- Processing without undue delay: Any delay must be explainable.
- Legitimate expectation: when assurances have been provided that a particular process will be followed, the individual is entitled to that procedure (e.g. client is told they have 14 days to provide a document).

The one I would like to focus on is the right to be heard. The right to be heard does not just include a right to present ones case but includes a right to know the case to be made. Translated into a common-sense example, if your friend calls you and leaves you a message telling you to come over for dinner with no further information, and you arrive later that day at 19:00, they cannot be mad at you for not coming for dinner at 17:00 – you did not know – they did not tell you.

Translated into examples in decision making at CPC-E, you cannot refuse a person because they did not submit a document that they were never asked for or told to provide. For example, a person must demonstrate to an officer that they meet the requirements of the Labour Market Impact Assessment (LMIA), say for example, for language. However, nowhere on the LMIA or in any of our guides or on any website does it say that they must provide a language test. Therefore, you cannot refuse them for not providing a language test.

You could refuse them if the evidence they submitted in support of their ability to communicate in the language required on the LMIA is insufficient and you are not satisfied that they meet this requirement. But you can't just refuse them for not having provided an IELTS because you never told them they had to provide one. You could ask for an IELTS and then if they don't provide it, refuse them. But you can't refuse them if you don't ask them for a document (see my previously instructions from January 2024 attached which should have been forwarded to you. If not, they are attached, and you have them now).

I have seen this error time and time again in various areas of our decision making and it cannot continue. We have an obligation to act fairly. We can refuse outright for many things – any of the things listed in our guide or on our website – but we can't refuse an applicant because they didn't submit their application on blue paper unless we tell them that they must submit their application on blue paper; it's unreasonable otherwise.

I wish to be clear: this does not mean that you cannot refuse an application because you are not satisfied that they meet the requirements of the LMIA for language. This means that you cannot refuse a person for not having submitted IELTS results if you never asked for them. Clients are informed that they must provide evidence of their ability to perform the functions of the job which include meeting the requirements of the LMIA. For language, you must assess the information the client has submitted in support of their ability to communicate in the required language (*if applicable*) and render a decision based on what was submitted.

More information on procedural fairness can be found [here](#).

If you have any questions, please make sure to speak with your supervisor.

Craig Pointon

(he, him | il, lui)

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