

**RABBINICAL COUNCIL OF VICTORIA GUIDELINES TO COMPLAINTS
PROCESSES
December 2016**

These guidelines are applicable to dealing with complaints against members of the RCV and complaints regarding the advancement of the purpose of the RCV. The guidelines are drawn from the best practices expected of an organisation such as the RCV and its role in the community as an institution of the community. Generally in these guidelines reference is made to a decision-maker. The decision-maker is usually the Committee of Management of the RCV. However, the decision-maker may be anyone engaged in making a decision under the terms of the RCV Constitution. These guidelines are modelled on procedures commonly used by courts of law to achieve what is often referred to as *natural justice*.

WHAT IS NATURAL JUSTICE?

Natural justice is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision. The RCV considers it highly likely that a decision-maker who follows a fair procedure will reach a fair and correct decision.

NATURAL JUSTICE DOES NOT APPLY TO EVERY RCV DECISION

1. The rules of natural justice do not need to be followed in all RCV decision-making.
2. It applies to decisions that negatively affect an existing interest of a person or member.
 - 2.1. For instance, natural justice would apply to a decision to discipline a member; to impose a penalty; or to publish a statement that may damage a person's reputation.
 - 2.2. Natural justice also applies where a person has a legitimate expectation to natural justice in the context of a Rabbinical Council and its role as an institution in the community.
3. Natural justice protects legitimate expectations as well as legal rights.
4. It is less likely to apply to routine administration and policy-making.
5. The rules of natural justice broadly require:
 - 5.1. lack of bias;
 - 5.2. proper inquiry into the matter;
 - 5.3. a hearing appropriate to the circumstances; and
 - 5.4. evidence to support a decision.

THE HEARING RULE

1. A critical part of natural justice is 'the hearing rule'.

2. Fairness demands that a person be told the case to be met and given the chance to reply before RCV makes a decision that negatively affects a right, an existing interest or a legitimate expectation.
3. Hearing the other side of the story is critical to good decision-making.
4. In line with natural justice, the person concerned is entitled:
 - 4.1. To a reasonable opportunity to consider their position and reply.
 - 4.1.1. However, what is reasonable can vary according to the complexity of the issue, whether an urgent decision is essential or any other relevant matter that is appropriate in the circumstances.
 - 4.2. To receive all relevant information before preparing their reply.
 - 4.2.1. The case to be met must include a description of
 - (a) the possible decision;
 - (b) the criteria for making that decision; and
 - (c) information on which any such decision would be based.
 - 4.2.2. It is most important that any negative information the RCV has about the person is disclosed to that person.
 - 4.2.3. A summary of the information is sufficient – the original documents and the identity of confidential sources do not have to be provided.
 - 4.3. For the person's reply to be received and to receive genuine consideration of any submission before the decision is made.
 - 4.3.1. The decision-maker needs to be fully aware of everything written or said by the person, and give proper and genuine consideration to that person's case.

APPLICATION OF NATURAL JUSTICE TO AN INDIVIDUAL WHO MAY BE NEGATIVELY AFFECTED BY RCV DECISIONS.

1. Regardless of whether a person is a member of the RCV or not, if a person is going to be negatively affected by a RCV decision, RCV will require the decision-maker to follow the rules of natural justice before reaching a conclusion.
2. The case to be met must be put to the person.
 - 2.1. This may be done by sending a letter or providing a copy of a draft report, or it could be a summary of the issues being considered by the decision-maker.
 - 2.2. It is not necessary for the person to receive copies of all original documents or the identity of confidential sources be revealed.

3. In putting the case to the person a real chance to reply to the case to be met must be provided together with details of the process, timetable and the manner in which the person should make submissions (either in writing or orally).
4. The type of hearing should be proportional to the nature of the decision.
 - 4.1. For instance, if the consequences of the proposed decision are highly significant, a formal hearing process may be warranted.
 - 4.2. In contrast, if the matter is relatively straightforward, a simple exchange of letters may be all that is needed.
5. Generally, in any oral (or face-to-face) hearing, it is reasonable to allow the person to bring a friend or lawyer as an observer.
 - 5.1. The RCV will consider allowing this on a case-by-case basis.
6. This and other procedural issue will be dealt with in the notice putting the case to the person.
7. For example the notice may invite the person to:
 - 7.1. deny the allegations;
 - 7.2. provide material that the person believe disproves the allegations;
 - 7.3. explain the allegations or present an innocent explanation; and
 - 7.4. provide details of any special circumstances the person believe should be taken into account.
8. The person must have the chance to give his or her response before the decision is made, but after all important information has been gathered.
 - 8.1. This is so that the person can be given all the information they should have to meet the natural justice requirements and to and be aware of the issues being considered by the decision-maker.
9. The decision-maker must have an open mind (be free from bias) when reading or listening to what the person has to say.

APPLICATION OF NATURAL JUSTICE TO THE INVESTIGATIONS SUB-COMMITTEE

1. Investigations are conducted in the complete discretion of the Investigative Sub-Committee and will be conducted in such a manner as will allow the Investigative Sub Committee to be as fully informed as reasonably possible in a timely manner.
2. In investigating a matter or preparing a report for a decision-maker, the investigators must consider the requirements of natural justice at every stage of the investigation.
3. Natural justice is an essential part of a proper investigation and benefits all parties.
4. Acting according to natural justice can assist the investigation by providing:

- 4.1. An important means of checking facts and identifying major issues.
- 4.2. Comments made by the subject of the complaint that can expose weaknesses in the investigation.
- 4.3. Advance warning of areas where the investigation report may be challenged.
5. Depending on the circumstances, natural justice will require investigators to:
 - 5.1. Inform those involved in the complaint of the main points of any allegations or grounds for negative comment against them.
 - 5.1.1. How and when this is done is up to the investigators, depending on the circumstances.
 - 5.2. Provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise.
 - 5.2.1. It is important to weigh all relevant circumstances for each individual case before deciding how the person should be allowed to respond to the allegations or negative comment.
 - 5.2.2. In most cases it is enough to give the person opportunity to put their case in writing.
 - 5.2.3. In others, however, natural justice requires the person to make oral representations.
 - 5.2.4. The investigators' decision will often need to balance a range of considerations, including the consequences of the decision.
 - 5.3. Hear all parties to a matter and consider submissions.
 - 5.4. Make reasonable inquiries or investigations before making a decision.
 - 5.4.1. A decision that will negatively affect a person should not be based merely on suspicion, gossip or rumour.
 - 5.4.2. There must be facts or information to support all negative findings.
 - 5.4.3. The best way of testing the reliability or credibility of information is to disclose it to a person in advance of a decision, as required by the hearing rule.
 - 5.5. Only take into account relevant factors.
 - 5.6. Act fairly and without bias.
 - 5.6.1. If, in the course of a hearing, a person raises a new issue that questions or casts doubt on an issue that is central to a proper decision, it should not be ignored.
 - 5.6.2. Proper examination of all credible, relevant and disputed issues is important.

- 5.7. Conduct the investigation without unnecessary delay.
- 5.8. Ensure that a full record of the investigation has been made.
- 6. Of course, wherever there is a requirement to apply particular procedures in addition to those that ensure natural justice, the terms of that statutory or constitutional obligation must also be followed.
- 7. RCV recommends that whenever it is proposed to make adverse comment about a person, natural justice should be provided to that person before the report is presented to the final decision-maker.
 - 7.1. While this should be done as a matter of best practice, there is no requirement that all the information in the investigator's possession needs to be disclosed to the person.
 - 7.1.1. However given RCV's role as an institution in the community, in rare cases, such as a serious risk to personal safety, natural justice requirements may need to be circumvented due to overriding public interest.
 - 7.1.2. If the investigator believes this circumstance exists, the investigator must seek expert advice and document it before recommending that the RCV take steps to circumvent the natural justice requirement due to overriding public interest.

APPLICATION OF NATURAL JUSTICE TO THE DECISION-MAKER

- 1. If the decision-maker is making a decision that will affect the rights, interests or legitimate expectations of a person, the decision-maker must comply with the rules of natural justice.
- 2. Among the other requirements set out in these guidelines this means that the decision-maker must ensure:
 - 2.1. the individual is allowed a fair hearing (or verify that the individual has been granted a fair hearing) that is neither too early or too late in the decision-making process; and
 - 2.2. the decision-maker is unbiased.
 - 2.2.1. This includes ensuring that from an onlooker's perspective there is no reasonable perception of bias.
 - 2.2.2. For example, personal, financial or family relationships, evidence of a closed mind or participation in another role in the decision-making process (such as accuser or judge) can all give rise to a reasonable perception of bias.
 - 2.2.3. If this is the case, it is best if possible for the individual decision-maker to remove himself from the process and ensure an independent person assumes the role of decision-maker.

3. If the decision-maker is relying on a briefing paper that summarises both sides of the case and makes a proposal, it is often a good idea to disclose a draft of the briefing paper to the person who is the subject of the paper, even though a hearing has earlier been held.
4. In all instances engaging the requirements for natural justice, the investigators and the decision-makers, while not bound by formal legal rules of evidence, may be required to use the civil standard of proof which requires 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

“... it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal...the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.”

5. In other words, the more serious the allegation or complaint, the higher the degree of probability that is required before the investigator or decision-maker can be reasonably satisfied as to the truth of that allegation or the affirmation of the complaint.

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