

fairness

Let's face it, whenever we are affected by the decisions of another person we want to be treated fairly. We want the other person to take into account our views and beliefs, as well as the views of others, and to arrive at a decision that is not based on bias or prejudice, but is arrived at impartially, openly, honestly and in an informed manner.

There is probably no time when we demand fairness more than when we have been accused of something. And, certainly, whenever we get punished for something, the idea of whether we deserved punishment or the type of punishment that we got, always seems to creep into our minds. In other words, if we're going to be punished, we want to be treated fairly. In this discussion, we are going to focus on the issue of fairness in the discipline process.

First, we want to introduce you to two concepts related to the idea of fairness when dealing with people who can punish you:

1. **DUE PROCESS** Is found in criminal law, and requires the government and its agents (police, prosecutors, judges, etc.) to treat you fairly and observe your rights during the course of an investigation, arrest and trial. An example of a due process

right is section 11d from the *Charter*.

11. Any person charged with an offence has the right...
 - d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

2. **PROCEDURAL FAIRNESS** Is found primarily in administrative law, and requires government agents who make decisions to treat you fairly during the decision-making process. For example, you might expect procedural fairness if you are appealing a decision of the Motor Vehicle Branch.

Suppose someone at the Motor Vehicle Branch decided to take away your licence because they feel that you are a menace

behind the wheel. You would want, and expect, to have an opportunity to appeal that decision and to present your side of the case, and that the person hearing your appeal would be unbiased.



Which type of fairness is more likely to come up in school situations? Why?

1 detentions

Because decisions by schools don't usually involve you going to jail to hit rocks with a sledgehammer, issues of procedural fairness are more likely to come up. However, schools can send you to their very own version of "the big house"—the detention hall.

The good news is: you have the right not to be held without good reason:

9. Everyone has the right not to be arbitrarily detained or imprisoned.

The bad news is: while technically detention hall does involve a deprivation of liberty (yours), through the command of a government agent (your teacher), it is unlikely that the Courts will be sympathetic to your case. This is because being sent to detention hall does not carry huge legal consequences.

Another thing to think about before you try to claim this right is whether your detention was actually justified. One of the things that the Courts are interested in is whether a detention is “arbitrary”, meaning that someone was detained without a good reason. For example, if you are stuck in the principal’s office after school for gluing someone’s hair to a desk, it is unlikely that anyone will think the detention was arbitrary.

2 suspension

Another form of discipline that students can receive is a suspension from school (this is not to be confused with professional days or spring vacation). The school board’s powers to suspend students can be found in section 85(2) of the *School Act*, which allows boards to set their own rules regarding suspensions. If you are suspended, you and your parent(s) or guardians should be notified immediately of the reasons why and the length of the suspension. You should also be notified of any rules or regulations regarding appealing the suspension.

Something to think about: When you’re in school, what does being treated fairly mean? It means:

- Having policies and rules that clearly state what is and is not allowed
- Having policies and rules that clearly state what the

punishment is for misconduct

- Rules should be related to educational goals and purposes
- Each student should have a copy of the rules and policies that he or she is expected to follow.

If you're being disciplined in school, it means:

- Being able to tell your side of the story
- Receiving punishment that is not more serious than the misconduct
- Having a right to appeal decisions of teachers and school staff.

3 appeals

When a government agent makes a decision that affects you, fairness demands that you should have some means of appealing it. Under section 11 of the *School Act*, you can appeal decisions of school board employees that affect you. This also includes lack of action in situations where a decision should be made.

To start an appeal, you must:

1. contact your school board for information on its appeal process.
2. notify the board of your desire to appeal as soon as possible. Most decision-making bodies require appeals to be filed within specified time limits. The *School Act* requires notification of an appeal within "reasonable time" limits; however, a board could define reasonable as anywhere from thirty days to a year.

If you believe that a school board was not fair in deciding your appeal, you can complain to the provincial Ombuds Office. It is the

Ombudsperson's job to ensure that government processes are fair. This office can review school board decisions in cases where a board refuses to re-hear an appeal, and the following criteria apply:

1. new information regarding the matter under appeal has arisen and/or
2. it can be clearly shown that the decision was inconsistent with the principles of administrative fairness and natural justice.

* case study the cell phone menace

facts: The principal of Ravi's school implements a new policy: no one is ever allowed to bring pagers and cell phones to class. The principal is very serious about eliminating these "noisy menaces"; anyone who violates this new policy will be suspended for a day. Unfortunately for Ravi, who has been off sick for a week and is not aware of the policy, his cell phone goes off in the middle of Socials.

Consider the following questions:

1. Should Ravi be suspended for a day? Why or why not?
2. Do you feel that the punishment is equal to the "crime"?
3. If Ravi and his parents feel that this decision isn't fair, what actions could they take?

