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III.2.(b).(ii)

§105 Despite the content of the audi alteram partem rule varying from case to case, the courts, at times, see an absolute minimum in the necessity for "always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view".[FN1] Converting this to more concrete standards, there is a duty on all decision-makers who are subject to an obligation of procedural fairness to give sufficient notice of the hearing, whether oral or written, and its scope to allow those persons entitled to the benefit of procedural fairness to take full advantage of their right to be heard.[FN2] This involves a duty to give persons who are affected such knowledge of the arguments and evidence presented against their interest as will make their participation in the decision-making process meaningful.[FN3] Beyond these basic considerations of minimum adequate participation in the decision-making process, such claims as the right to give evidence orally, the right to cross-examine, the right to representation by counsel, the right to appear before the ultimate decision-maker, and adherence to the strict legal rules of evidence are claims that may or may not be recognized depending on the court's perception of the nature of the decision-making power in issue.[FN4]

§106 In the vast majority of cases alleging breach of the audi alteram partem rule, the scope of the court's inquiry is a consideration of whether the procedures in fact comply with the tribunal's statutory or common law procedural obligations. In a limited range of cases, the courts use a test more familiar in the domain of bias: Is there a reasonable apprehension that the tribunal may be acting unfairly? This tends to happen if the tribunal to the knowledge of the excluded party gives the impression that it might be taking evidence or receiving submissions or assistance behind that party's back.[FN5]

FN1. *Board of Education v. Rice*, [1911] A.C. 179 at 182 (H.L.), per Lord Loreburn L.C.

FN2. *Fairfield Modern Dairy Ltd. v. Ontario (Milk Control Board)*, [1942] O.W.N. 579; *see also Re McLeod*, [1973] 5 W.W.R. 129 (N.W.T.S.C.) (even if case against someone seems perfectly clear, that person should normally be given right to "argue" his case).

FN3. *Dasent v. Canada (Minister of Citizenship & Immigration)*, [1995] 1 F.C. 720, reversed (1996), 39 Admin. L.R. (2d) 62 (Fed. C.A.); leave to appeal to S.C.C. refused (1996), 206 N.R. 74n (S.C.C.) (citing *Rice*); *Hogan v. British Columbia (Director of Pollution Control)* (1972), 24 D.L.R. (3d) 363 (B.C.S.C.); *Confederation Broadcasting (Ottawa) Ltd. v. Canada (Canadian Radio-Television Commission)*, [1971] S.C.R. 906; *Magnasonic Canada Ltd. v. Canada (Anti-dumping Tribunal)* (1972), 30 D.L.R. (3d) 118 (Fed. C.A.); *Denton v. Auckland*, [1969] N.Z.L.R. 256.

FN4. *See* §107 *et seq.*.

FN5. *Kane v. University of British Columbia (Board of Governors)*, [1980] 1 S.C.R. 1105; *see also* §§182-89.

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