Régie de l'énergie Québec

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National Roundtable on Administrative Law – May 27, 2017

Speaker: M[e] Simon Turmel, Commissioner – Régie de l'énergie

Date: March 31st, 2017

Object: Procedural Fairness & Right to Be Heard
Recent Practical Cases

Reminder

Standard of Review for Procedural Fairness

- "[...] *the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be "**correctness**".*"

  Mission Institution v. *Khela*, 2014 SCC 24, par. 79.

- Where a party alleges a breach of the rules of procedural fairness, the court does not need to engage in a detailed assessment of the appropriate standard of review. **Failure to provide appropriate procedural fairness will result in the decision being set aside**.

  Moreau-Bérubé v. *New Brunswick (Judicial Council)*, [2002] 1 SCR 249; *Canada (Citizenship and Immigration)* v. *Khosa, 2009 SCC 12; Ellis-Don Ltd.* v. *Ontario (Labour Relations Board), 2001 SCC 4*.

Relevant Factors to Determining the Content of Procedural Fairness

- In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, the Supreme Court of Canada set out **five factors** to be considered in determining the duty of procedural fairness owed in a particular situation:

  i. The **nature of the decision** being made and the process followed in making it.
  ii. The **nature of the statutory scheme** and the terms of the statute pursuant to which the body operates.
  iii. The **importance of the decision** to the individual or individuals affected.
  iv. The **legitimate expectations** of the person challenging the decision.
  v. The **respect for the agency's choice of procedure**.

Recent Practical Cases

Duty to Give Formal Notice

- *VX5 Technologies inc.* c. *Ambassade Bitcoin*, 2016 QCCS 5765.

  In that case, the Tribunal proceeded in absence of the respondent. The Applicant wants to amend his application, by increasing the amount of damages claimed (translation):

  > "*[26]* ***Holding a trial without one's adversary holds a clear advantage: the tribunal hears only one point of view, without contradiction***. [...]
  >
  > *[27] But holding a trial without the adversary has at least one clear drawback: leeway for altering allegations and conclusion of pleadings is considerably restricted.*
  >
  > [...]
  >
  > *[34] From a practical standpoint, the respondent* ***must know to what condemnation he is exposed, according to the statement of procedural acts notified to him****. He can then decide whether or not to defend himself and to let the plaintiff proceed in his absence.*
  >
  > *[35] The plaintiff cannot then take advantage of the respondent's choice of not participating in the trial, and modify his findings and to claim,* ***without the knowledge of the defendant, more than he was informed of****.*
  >
  > *[36] At least, if the plaintiff considers it necessary to modify his findings to make them more costly for the respondent, he* ***must have the trial adjourned and notify the respondent of his modifications before resumption of the trial****."*

- *Coulas* v *Ferus Natural Gas Fuels Inc*, 2016 ABCA 332

  Ms Coulas leaves to appeal a decision of the Alberta Energy Regulator (the Regulator) denying her application for a regulatory appeal of a decision granting a licence to Ferus Natural Gas Fuels Inc, which operates a liquid natural gas processing plant in Alberta.

  Ms Coulas' residence is within 1.5 kilometres of the Ferus Facility, has a number of concerns, the majority of which deal with the noise impact of the plant. The Ferus Facility came into operation after being granted the necessary permits by the County to build and operate the plant.

  Ferus required a licence to operate. While Ferus' application identified that Ms Coulas had previously "expressed major concerns" related to its facility, **Ferus did not provide her with personal notice of its application as specified by the Regulator**. As required by the *Responsible Energy Development Act*, the Regulator gave public notice of the Ferus application on its website.

The Regulator held:

> "[...]. ***In my view, it is arguable that there may be a significant natural justice flaw in a procedure that would grant the licence, and deny an appeal of same, without notice or affording a full hearing on either issue, particularly considering this applicant lives in very close proximity to the Ferus Facility****. Whether or not that licence was retroactive in the sense that the Ferus Facility was already operating does not seem to procedurally, nor fairly, determine the issue. For these reasons, leave to appeal is granted on the issue of procedural fairness and natural justice.*"

Duty to Disclose Relevant Information

- *Young* v. *Central Health*, 2016 NLTD(G) 145.

  Confronted with an allegation of professional misconduct, Dr. Young resigned as a member of the medical staff of Central Health. Once his suspension period was served, Dr. Young reapplied. For different reasons, Central Health rejected the application.

  Dr. Young sought judicial review of the decision denying him medical privileges with Central Health. He claimed that he was denied procedural fairness during the decision process **because information relied upon by the decision maker was not disclosed (negative references and notes from phone calls to prior employer) and because he was not given a reasonable opportunity to respond to the evidence against him**.

  On judicial review, the court concluded that there was a breach of the duty of procedural fairness for the following reason:

  > "*[51] The Application for Appointment to Medical Staff requires each applicant to give names and contact information for three references and the last employer, and consents for disclosure of personal information from these contacts. Relying on the signed consents, the Second Respondent communicated with five individuals, including three referees chosen by Dr. Young, the Chief Administrative Officer of the hospital in Hornepayne, Ontario where Dr. Young had previously been employed, and the Chief of Staff of that prior hospital.* ***Some of the information obtained during these communications was highly prejudicial and was relied upon by the Second Respondent in rejecting Dr. Young's application. In the current context, with a mid-point duty of procedural fairness, the decision-maker was obliged to share this prejudicial evidence with Dr. Young and afford him the opportunity to be respond (either in writing or in person) before making a final decision****.*"

- *Kozul* v. *Canada (Employment and Social Development)*, 2016 FC 1316.

  Mr. Kozul and DSM Aluminium Contracting Ltd applied under the Temporary Foreign Worker Program for a Labour Market Impact Assessment in order to hire a copper sheet metal worker as a temporary foreign worker. In their application, they cited their inability to find a suitable candidate within the region and, as a result, indicated their intention to hire a temporary foreign worker.

The Officer of the Temporary Foreign Program advised the applicants that a positive opinion could not be issued because they had not demonstrated sufficient efforts to hire Canadians and because the employment of a foreign national was not likely to fill a labour shortage. The Officer consulted various sources of information regarding the labour market for copper sheet metal workers.

The application raises one issue: "**whether the Applicants were denied procedural fairness by the Officer's failure to afford the Applicants an opportunity to address certain extrinsic evidence upon which she relied in not issuing a positive opinion". The Federal Court found that the Applicants were denied procedural fairness** for the following reason:

> "*[10] While the duty of procedural fairness owed in this case may be at the low end of the spectrum, this is not to say that the duty is non-existent.* ***There is a duty to disclose extrinsic evidence if it may impact the outcome of a decision****.* [...].
>
> [...]
>
> *[12] In this case, the Officer's* ***reliance upon websites*** *which are generally accessible to members of the public for information about the labour market for sheet metal workers was not unfair. An officer's reliance upon information gleaned from websites has been found to be fair and not an improper resort to extrinsic evidence in several decisions of this Court* [...].
>
> *[13] However, in the circumstances of this case, it was unfair that the information the Officer obtained from speaking with Mr. Stuart was not conveyed or disclosed to the Applicants before she issued the negative LIMA opinion.* ***This information directly challenged the Applicants' view as to the existence of a labour shortage for experienced copper sheet metal workers****.* ***Denying the Applicants an opportunity to comment upon or offer evidence to contradict the undisclosed information from Mr. Stuart was unfair.***"

Duty to Consider all Relevant Evidence

- *Hefnawi v. Health Care Practitioners Special Committee for Audit Hearings,* 2016 BCSC 226.

Dr. Hefnawi was sued by the *Billing Integrity Program* of the Ministry of Health which issued notices seeking recovery of approximately 1 M$. Dr. Hefnawi requested a hearing. The panel refused to admit into evidence an affidavit prepared by Dr. Hefnawi, who was outside the country, because the jurat had not been properly completed by either a Commissioner for taking affidavits or a Notary Public.

The Supreme Court of British Columbia concluded that "***the Panel's refusal to receive the evidence of Dr. Hefnawi is an inexcusable breach of its common law duty of procedural fairness***":

"*[68] […] While the Panel may have been justifiably exasperated by Dr. Hefnawi's failure to attend the hearing, by tactics designed to delay, and by applications it considered "scurrilous", the effect of the Panel's refusal to entertain Dr. Hefnawi's explanation was a decision on the merits without the benefit of any evidence whatsoever from Dr. Hefnawi himself.*

[69] ***The stakes at play in the hearing before the Panel were very significant****; the sums sought by the Committee, including surcharges and interest,* ***exceeded $1 million****. Dr. Hefnawi was essentially being* ***accused of fraud****. His* ***professional reputation*** *was at stake, as was his ability to earn a living as a podiatrist entitled to remuneration payable under MSP.* ***These stakes militated in favour of procedural patience rather than asperity in the circumstances****.*

[70] ***The Panel was wrong in concluding that the affidavit could not have been considered because it had not been sworn as required by the Evidence Act****. The Panel had already acknowledged in its earlier procedural decision that* ***it was not necessarily bound by the technical Rules of Evidence****. Neither the commission nor the Panel itself had issued any pre-hearing guidelines or directions imposing limits on the content or presentation of evidence, whether by Dr. Hefnawi or any other witness. While the Panel considered the affidavit defective because it was not sworn as required by the Evidence Act, it failed to consider s. 67 of the Evidence Act which permits reception in evidence of affidavits containing defects in a jurat or irregularity in form.*

[71] ***It was open to the Panel, as counsel for Dr. Hefnawi suggested at the time, to receive the defective affidavit subject to a properly sworn version being submitted at a later date or, indeed, simply admitting the document as an unsworn statement to be given whatever weight the Panel considered appropriate****. Since, as the Panel itself stated, "Hefnawi must know that his evidence would turn on credibility" [sic], it was open to the Panel to make receipt of the evidence conditional upon Dr. Hefnawi presenting himself before the Panel within a reasonable period of time for cross examination by counsel for the Committee.*"

Duty of the Court & Self Represented Party

- *Malton* v *Attia*, 2016 ABCA 130.

The appellants, a lawyer and his law firm, were sued by their former clients for negligence in conducting a trial on their behalf in a lawsuit against the inspector of a house they had purchased. The respondents were self-represented.

The trial judge found the appellants negligent and awarded them $519 000 in damages, including $10 000 in punitive damages. The judge also ordered the appellants to pay a further $25 000 in punitive damages to the *Legal Aid Society of Alberta*, which was not a party to the action.

The appellants appealed those decisions and argued that the manner in which both decisions were made was **procedurally unfair**; **specifically, that the trial judge made findings and drew conclusions adverse to the appellants without giving them an adequate opportunity to respond**. The Court of appeal of Alberta held that:

*"[31] The role of a trial judge can be especially challenging when one or both parties appearing before the judge is **self-represented**.* […] *In Williams, this Court went on to note that promoting equal justice can mean that judges **provide information** about the law and evidentiary requirements to self-represented parties.* […].

*[32] **There is a balance to be struck**. While affording self-represented litigants "leeway" in court, judges must never lose sight of the fact that **both sides are entitled to a fair trial**. Judges must guard against **descending into the arena** from the bench and advocating for the self-represented litigant:* […].

[…]

*[39] This appeal raises several aspects of this fundamental principle of fairness. For example, courts have emphasized the requirement **that lawsuits be decided within the boundaries of the pleadings. Basing a decision on an issue not raised in the pleadings "deprives the defendant of the opportunity to address that issue in the evidence at trial**":*

[…]

*[40] It is also fundamentally unfair to **deprive a party of the right to respond when findings of misconduct may be made against him**.*

[…]

[42] The appellants say that the trial judge fell into these errors at various points in her dealings with the parties and in rendering her judgment both in the trial decision and costs award, and that these errors deprived the appellants of a fair hearing. We agree that there are several instances where the appellants were not given an adequate opportunity to know and meet the case against them, and where the trial judge stepped outside her appropriate role as impartial adjudicator. As such, the appellants were not afforded a procedurally fair trial. […]."

- *Boulangerie Repentigny inc.* et *Goudime*, 2016 QCTAT 792.

This decision concerns the judge's duty of assistance provided for in the *Loi sur la justice administrative* (*An Act respecting administrative justice*). In this case, the employer raised a preliminary exception to the worker's (Mr. Goudime) claim for an industrial accident. The preliminary exception, raised on the day of the hearing, concerned the time limit for filing the complaint with the CSST, which was outside the statutory time limit.

The **Tribunal administratif du Québec criticized the trial judge for not informing the worker of the impact of this preliminary exception**, if it was allowed and the possibility for the latter to present a reasonable ground for non-compliance with the deadline.

The Tribunal administratif du Québec noted that: (translation)

"[121] […], *the first administrative judge **did not provide adequate assistance** to the worker on a decisive aspect of the file, or even the main aspect, and that the **right to be heard** by the latter was therefore not respected.*

*[127] Thus, **at no time*** [...] ***were any explanations given to the worker** [...]regarding the consequences of a favorable reception, if any, of this preliminary application ... as to what the worker must explain and demonstrate* [...].

*[135] It is only by reviewing the decision of the first administrative judge that the worker **becomes aware** that she could and should have demonstrated a reasonable cause for delay and that the administrative judge is of the opinion that she has not demonstrated such a motive."*

Duty to Hear Before Deciding an Issue

- *O'Connell, as the registrar of Motor vehicles for the province of New Brunswick* v. *Maxwell, 2016 NBCA 37* (CanLII)

  Mr. Maxwell applied to the Registrar to obtain personalized motor vehicle registration plates, bearing the combination of letters "DUI DR".

  The Registrar received complaints from MADD Canada and MADD Greater Fredericton Area Chapter. The Registrar made the decision to revoke the "DUI DR" licence plates.

  The Registrar spoke with Mr. Maxwell by telephone. During this conversation Mr. Maxwell confirmed "DUI" was intended to mean "driving under the influence". Mr. Maxwell explained to the Registrar that "DUI DR" was an acronym that he had adopted in association with the area of law he practiced.

  According the Court of Appeal of New Brunswick, the application judge was correct in concluding the Registrar acted unreasonably in revoking the personalized license plates:

  "*[44] The nature of this decision, as articulated through the statutory regime, indicates that **less procedural protection is required because the legislature intended for the Registrar to take a more executive or administrative approach**. The factual context reveals that should the Registrar decide in a way unfavourable to Mr. Maxwell, the consequences for Mr. Maxwell are not significant, such as they might be if the context involved employment, education, or immigration. Considering the subject matter of the decision and the minimal impact of the outcome of the decision upon Mr. Maxwell, **the nature of the decision would attract only a minimal amount of procedural protections**.*

  [45] [...] *In this case, the Registrar had no set procedures, the statutory scheme provides no procedure, or **right of appeal** for a decision under section 10, and the Registrar did not communicate procedures for Mr. Maxwell to follow. In effect, the actions of the Registrar gave the appearance the **decision was final** right from the initial communication, and Mr. Maxwell had no right of appeal.*

  *[46] The Supreme Court stated in Baker where the statutory scheme does not provide for an appeal, **more procedural protection is required**. The minimum standard of procedural fairness in Canadian administrative law has long been held, and articulated as, audi alteram partem. The party affected by a decision has the right to know the case against it, and be provided a meaningful opportunity to address it.*

[47] Despite one telephone conversation following the Registrar's decision, ***Mr. Maxwell's opportunity for participation was not meaningful****. The application judge noted, and as is obvious from the exchange of emails, there was no intent to consider Mr. Maxwell's arguments. He was not provided with a* ***copy of the complaint*** *and thus did not have knowledge of the case against him. Rather, this conversation takes on the appearance of a post-decision investigation.* ***In failing to allow Mr. Maxwell to know the case against him and make representations, the Registrar failed to respect the most minimal requirement of procedural fairness****.*

[48] The lack of an appeal provision indicates the courts are to be deferential to the decision-maker's authority. ***However, the absence of a right to an appeal requires the governing authority provide more procedural fairness than if a right of appeal existed****. In conducting this balancing assessment, it is clear that more than minimal procedural protection is owed in this circumstance.*"

- *Journal de Montréal* c. *Laplante*, 2016 QCCS 2602.

The employer submits that **the adjudicator has decided to amend the remedy sought by the Union as part of its deliberations, without the parties being informed**. The Superior Court allowed the judicial review of this decision on the following grounds (translation):

"*[63] In deciding [...] that the remedy should, if necessary, be equivalent to the time "spent by one or more electrotechnicians" on the work carried out by the external firm,* ***without allowing the parties to really put forward their point of view on this issue****, the Adjudicator violates the audi alteram partem rule.*

[64] It is not sufficient in the Tribunal's view, as the Union submits, that it argued before the Adjudicator that the complaint provides that he may make any other appropriate order and had submitted to it decisions confirming its broad powers, ***if the Adjudicator does not inform the parties of his intention to amend the correction appearing in the complaint and that he is not seized of any request to that effect.***

[65] ***If the Adjudicator intended not only to address a new question****, but to modify the remedy sought by the Union, without any request from the Union,* ***he should have clearly informed the parties before rendering his decision so that they could have made their position known****.*"

- *Arsenault* v. *Canada (Attorney General)*, 2016 FCA 179.

The issue raised by this case is presented as follows:

"*[13]* [...] ***whether the Adjudicator had,*** **[...],** ***a duty to apprise the parties that he was considering an interpretation of clause 17.03 of the collective agreement that neither party had contemplated****? Was there a duty to afford the applicants an opportunity to make submissions and adduce evidence to challenge his interpretation of the collective agreement in view of the fact that it was not raised at the hearing and ran counter to the parties' mutual understanding that the grievor was entitled to 22 hours of compensation under clause 17.03(a)?*

The opinion of the Federal Court of Appeal is that:

> "*[32]* [...] ***the Adjudicator's failure to give notice to the parties that he was contemplating an interpretation of clause 17.03(d) that negated their joint understanding of clause 17.03(a) constituted a breach of procedural fairness***."

Duty to Hear the Motion to Dismiss Before Proceeding to the Merit

- *Giroux c. Gauthier*, 2016 QCCS 724.

In this case, Dr Giroux, orthopedist, is prosecuted by the syndic of the Collège des Médecins [College of Physicians] for deontology matters.

The disciplinary committee of the Collège des médecins refused to rule on two preliminary motions raised by Dr. Giroux prior to the hearing on the merits. Judicial review concludes as follows (translation):

> "*[49]* […], *the Tribunal is of the view that the Board's decision* ***seriously violates*** *both the audi alteram partem rule and the plaintiff's right to make full answer and defense. By its decision, the committee* ***is forcing the plaintiff to present his defense before his motion for dismissal is decided on the merits****. Now, the plaintiff is entitled to know if the complaint lodged against him is valid before he is required to present his defense against it.*"

- *X (Re)*, 2016 CanLII 49177 (CA CISR).

> "*[33] I have reviewed the RPD Member's reasons and the transcript of the RPD [Refugee Protection Division] hearings in its entirety. [...] In my own assessment of the transcript of the oral hearings and the RPD Member's final decision, I find the RPD Member did err in law* ***by not rendering a decision assessing evidence*** *that is central to the appellant's refugee claim. In my view, natural justice and procedural fairness do* ***require that the RPD provide all parties a decision on the admissibility of crucial evidence in order to conduct a fair hearing****. It is clear that the RPD Member failed to give such a decision.*"

Duty to Give Reasons

- *Centre hospitalier de St. Mary* c. *Bolduc*, 2016 QCCS 3464.

The Adjudicator had to determine whether the complaint lodged by the Union on March 7th, 2014 was past the prescription time limit according to terms and conditions of the Collective agreement (translation):

> "*[25] Although testimonial and documentary evidence related to the question of prescription was submitted to the Adjudicator for two days on this particular issue,* ***his enumeration of the relevant facts in the Arbitral award is surprisingly brief and laconic****.*
>
> […]

*[32] The Tribunal retains from the position of the CHSM that the Adjudicator did **not justify** his decision in the Arbitral award in order to understand how and why he concluded that the Letter of December 3rd, 2013 constituted a decision of the Employer and that in addition, it was a final decision on his part. How could he reasonably come to such a conclusion? In fact, **the Adjudicator comes to this conclusion without any explanation that allows the reader to understand his intellectual journey**.*

[…]

*[44] The Arbitral award is undoubtedly surprisingly **laconic** in view of the extent and nature of the evidence administered over some two days of hearings, which dealt exclusively with the question of prescription. But he cannot come to the conclusion that there is a **total absence of motivation** on the part of the Adjudicator, thereby violating the principles of natural justice to such an extent that it leads to the nullity of the Arbitral award.*

*[45] Rather, it is a case of **insufficient motivation** which led the Tribunal to examine the Arbitral award in terms of its **reasonableness**.*

[...]

*[95] Ultimately, the Court considers that the Sentence suffers from **insufficient motivation** of such importance that it does not have the character of reasonableness which it should have had. In fact, the Arbitral award is, on balance, a form of refusal by the Adjudicator to deal with the question of prescription to be determined in light of the evidence he administered for two days of hearing and had decisive elements to consider.*

[96] The Tribunal recognizes that the Adjudicator did not have to analyze each and every one of the parties' arguments and that the implicit has a place in the drafting of a decision. The implicit must not, however, be such that the reader must have a crystal ball to try to guess how the decision-maker could come to a conclusion of importance."

Right of Representation by Counsel

- *Torres* c. *Commission des lésions professionnelles,* 2016 QCCS 119.

The CSST makes a decision with respect to the "suitable employment" that a worker can occupy following an accident at work. This decision of the CSST is not communicated to the lawyer of Mr. Torres who appeared on the file three months ago.

Mr. Torres, not fluent in French, does not understand the scope of the decision. He consults his lawyer after the 30-day deadline for requesting an administrative review from the CSST. The delay is 12 days.

The application for review is therefore rejected by the CSST. The Employment Injury Commission (CLP), an administrative tribunal of appeal, dismissed the appeal finding that Mr. Torres was negligent.

In judicial review, the Superior Court found that (translation):

> "*[9] The CSST has been unfair to Mr. Torres.* ***The CLP had to intervene and correct this inequity by extending the review period and release Mr. Torres of his fault****. The failure of the CLP to do so renders its decision unfair, and therefore reviewable.*
>
> *[10] Moreover, in view of* ***the social and remedial nature of the scheme****, the vulnerability of the worker and the short time period involved, the rigid interpretation of the CLP's right to extend the review period is unreasonable.*
>
> […]
>
> *[135] In this case, the Tribunal recognizes a limited* ***right of representation by counsel*** *before the CSST for a vulnerable person who faces significant linguistic difficulties, such as Mr. Torres.*
>
> *[136] The right includes the* ***possibility for the attorney to receive a copy of the decisions rendered*** *by the CSST concerning his client in order to allow him to advise him adequately and to request an administrative review, if required.*
>
> *[137] The Tribunal notes the following in support of its determination: the legal nature of the determination of suitable employment that may require legal services; The social and remedial nature of the compensation scheme for occupational injuries; The exceptional significance of the decision for Mr. Torres; Mr. Torres' legitimate expectations that the CSST respects his decision to appoint a public prosecutor and that his attorney can obtain a copy of the decisions rendered.*
>
> *[138] According to section 354 of the Loi sur les accidents de travail et les maladies professionnelles* [Act respecting industrial accidents and occupational diseases], *decisions of the CSST must be "notified to the persons concerned as soon as possible".*
>
> *[139] Since he was represented by counsel, in the case of Mr. Torres,* ***fairness required the CSST to transmit a copy of his decision of January 12, 2015 to his attorney who had appeared on the record****.*
>
> *[140] By failing to transmit to his counsel the decision of January 12, 2015 on the determination of suitable employment, or the corrected decision of February 9, 2015, the CSST was* ***unfair*** *to Mr. Torres.*"

- *L. R.* c. *Tribunal administratif du Québec*, 2016 QCCS 4423.

The Tribunal administratif du Québec (TAQ) has to determine whether the right to be heard of the plaintiff was infringed by refusing to grant an adjournment of the hearing?

In 2009, the *Ministry of Labor, Employment and Social Solidarity* claimed $53 000$ of Ms. L.R.'s financial assistance because she did not declare her status as a "*de facto* spouse". In 2010, she appealed this decision to the TAQ. The hearing is postponed in 2012 and 2013 and finally set for mid-July 2014. At the beginning of July 2014, the lawyer for Madam withdraws from the case, for lack of collaboration with her client to prepare the hearing. It is her third lawyer to withdraw, for lack of collaboration. At the hearing, the TAQ refused the application for postponement.

The Superior Court dismissed the application for judicial review on the following grounds (translation):

> "*[37] The right to be heard is a fundamental right and one of the components of the rules of natural justice.* ***This rule also includes the right to be represented by counsel, but this right is not absolute. A party may waive it, in particular by their actions or negligence.***
>
> […]
>
> *[39] She was duly notified of the hearing dates and the fact that it was fixed peremptorily. She was not able to benefit from the services of her lawyer because of* ***her own negligence****. She testified at the hearing and called a witness. She was not able to summon the eight witnesses announced at the beginning of the hearing, but this difficulty resulted from her choice not to work with her lawyer and to assume that the TAQ would welcome her application for postponement.*
>
> *[40] Mrs. R [...]* ***was negligent in refusing to work with her lawyer in the preparation of the file, knowing that the hearing had been scheduled peremptorily****. In these circumstances, the Tribunal is of the view that the TAQ's refusal to postpone the hearing was justified and does not constitute an infringement of Mrs. R's right to be heard or to procedural fairness."*