

Whatever Happened to “Quick, Cheap and Uncomplicated”?

Best Practices for Improving Administrative Justice in Saskatchewan



May 22, 2008

Saskatchewan Ombudsman Kevin Fenwick

Lecture for guests of the Johnson-Shoyama Graduate School of Public Policy (University of Regina and University of Saskatchewan) and the Saskatchewan Institute of Public Policy

Based on Ombudsman Saskatchewan report *Hearing Back: Piecing Together Timeliness in Saskatchewan's Administrative Tribunals*



OUR OFFICE / WHO WE ARE

Offices in Regina & Saskatoon

Staff

- 2 Admin Assistants
- 3 Complaints Analysts (CAs)
- 8 Ombudsman Assistants (OAs)
- 2 Deputies
- 1 Legal Counsel
- 1 Ombudsman
- 1 Communications Director
- 1 Office Manager
- 1 Executive Admin Assistant

independent
impartial
fair



WHAT WE DO

Promote fairness in the provision of provincial government services:

- Take complaints about unfairness in provincial government services.
- Provide an independent, impartial and objective view of government's delivery of those services.
- Educate the public and government about fairness and the role of our office.



WHAT WE DO

Take complaints about unfairness in provincial government services.

Complaints about provincial government:

- ministries
- agencies
- boards
- commissions
- Crown corporations

But not:

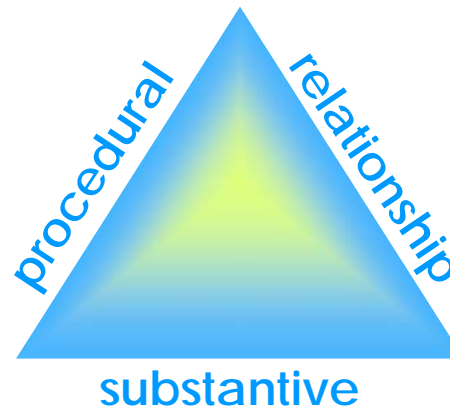
- the federal government
- the courts
- decisions of Cabinet
- school boards
- the police
- municipal governments
- band councils
- private companies
- individuals



WHAT WE DO

Provide an independent, impartial and objective view of government's delivery of those services.

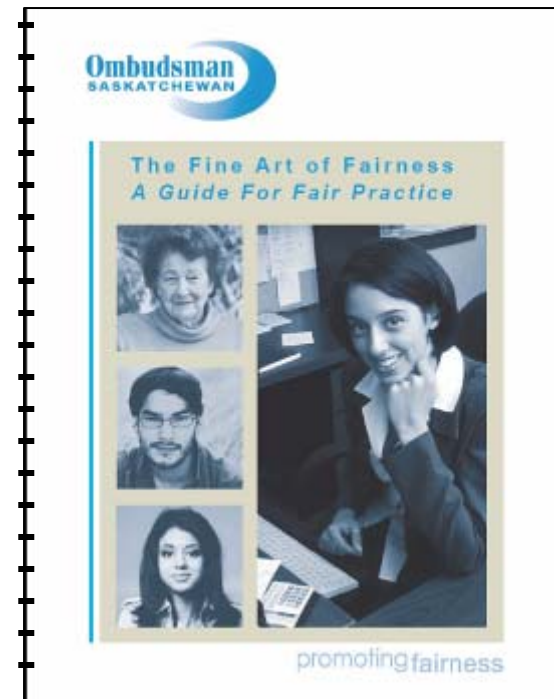
- Individual complaints and systemic investigations
- ACR = appropriate complaint resolution
- Proactive fairness lens
- End result more important than who gets credit
- “Raising the bar” = letting government know when they could have done better
- Fairness triangle



WHAT WE DO

Educate the public and government about fairness and the role of our office.

- Fair Practice workshops
- Public education
- Increased contacts and consultation in the north



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THE PURPOSE OF TRIBUNALS

*A quick, cheap and uncomplicated
alternative to the courts*

- Resolve disputes between:
 - citizens and government
 - citizens and citizens



WHY?

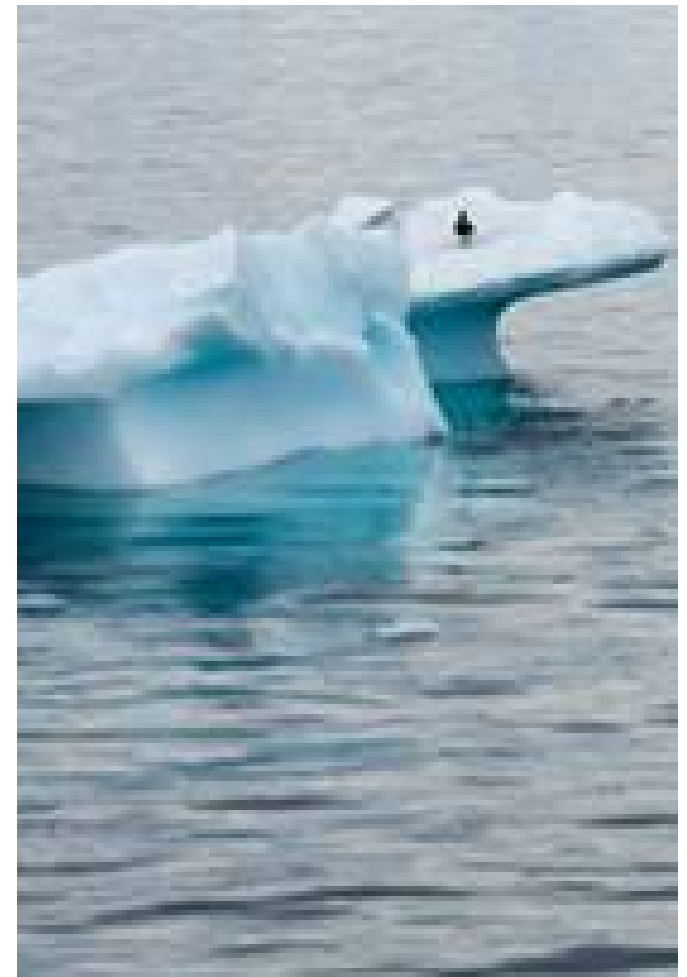
Complaints pointed to more complex issues beneath the surface

On the surface...

- decisions taking a long time
- stress of waiting
- money often at stake

Below the surface...

- lack of resources
- lack of procedural accountability
- overly exacting procedural requirements
- too little flexibility
- tribunal members with varying levels of skills and knowledge
- illness or job change of tribunal members

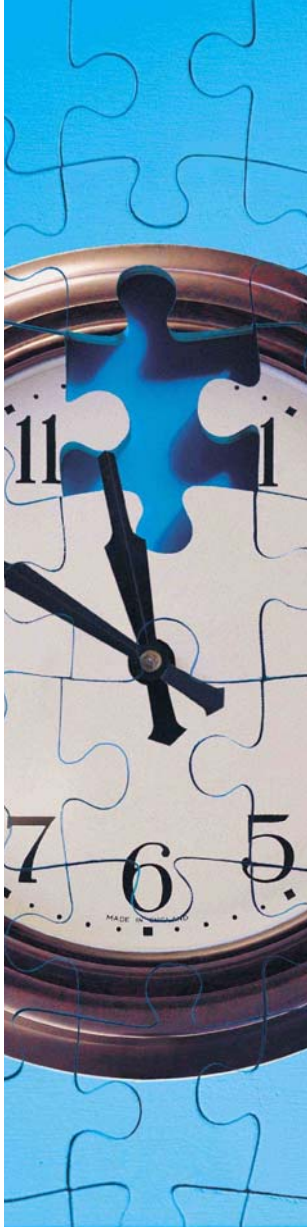


WHY?

Complex issues indicated a need for best practices.

Current Situation

- 55 administrative tribunals in Saskatchewan
- Inconsistent practices
- Different levels of organization



HOW?

Methodology

- Representative sample of six organizations
- Interviews
- Two departments
- Draft, circulate, feedback,
- Change & rewrite
- Table

Our focus broadened because of what we saw and what the tribunals told us.

Automobile Injury
Appeal Commission

Labour Relations Board

Highway Traffic Board

Office of Residential
Tenancies

Saskatchewan Human
Rights Tribunal

Workers' Compensation
Board

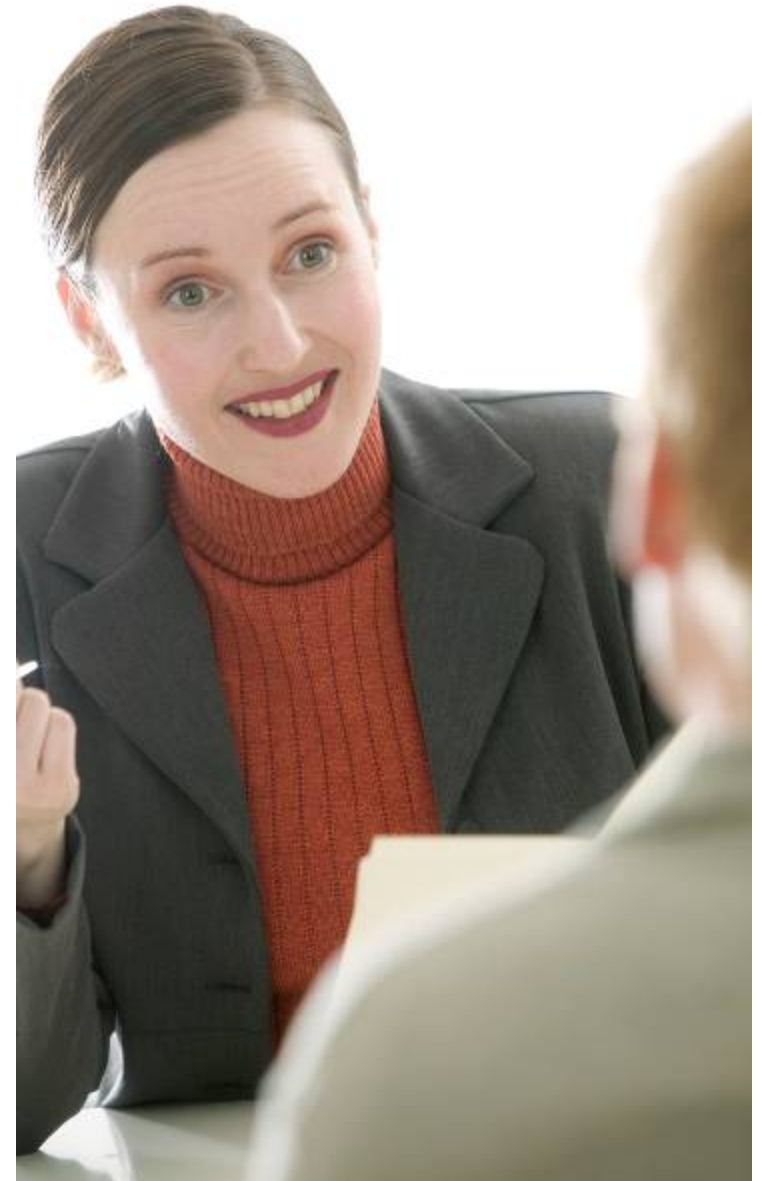


WHAT?

Best Practices

Categories

- Efficient and Consumer-Friendly Processes
- Development of Timelines
- Board Composition and Function
- Balance Accountability and Independence
- Co-ordination of the Tribunals



WHAT?

Recommendations

- 27 in 2 categories:
 - 16 “For Implementation Now”
 - 11 “For Consultation and Implementation”
- Based on best practices, so not always an indication that we saw problems

Example

We recommended that government implement a merit-based appointment system for all tribunal members that includes a selection panel, a job description and an open competition. This does not mean that existing members or chairs are incompetent; it means we think government can do a better job of the hiring process.

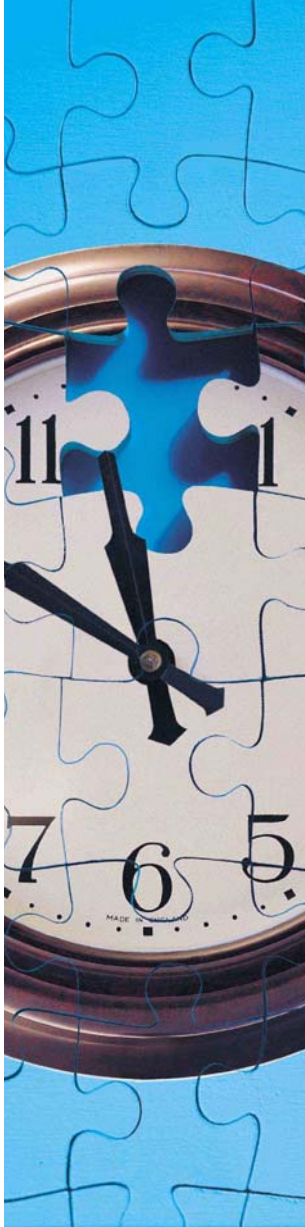


WHAT?

Recommendations

One size does not fit all...

- Every tribunal is different
- Recommendations may be applied differently in different situations



WHAT NOW?

- Roll-out to justice, tribunals, and others
- Feedback positive in Saskatchewan and across Canada

Now our role is to monitor...



RECOMMENDATIONS

For Implementation Now

#1 – Each tribunal **make information about itself, its procedures, and its expectations available to consumers.** This information should be accessible through direct contact with experienced staff members and in a variety of formats, such as written, audio, video, and Internet.

#2 – Tribunals **provide their public materials and their decisions in plain language.**



RECOMMENDATIONS

For Implementation Now

#3 – Tribunals **offer orientation**, in meeting format where appropriate, **to acquaint users with the process**. Information provided to individuals at orientation should outline all their options including:

- any access to an appeal within the tribunal system.
- any access to an appeal or judicial review in the court system.
- any access to other dispute resolution services available.

#4 – Tribunals **offer Appropriate Dispute Resolution (ADR)** as an option to the hearing process.



RECOMMENDATIONS

For Implementation Now

#5 – Tribunals **include** within their public information provided to users, **information on the available Appropriate Dispute Resolution (ADR) options.**

#6 – Tribunals **provide pre-hearing meetings** when appropriate.

#7 – Tribunals who also use pre-hearing meetings for mediation purposes have a policy that **the member who sits on the pre-hearing meeting shall not be the member that hears the case**, unless both parties consent.



RECOMMENDATIONS

For Implementation Now

#8 – Tribunals, when appropriate, **offer alternatives to face-to-face hearings**, such as written hearings, telephone hearings, and hearings by video conferencing.

#9 – Tribunals **adopt the principles of the Saskatchewan Law Reform Commissions' "Model Code of Procedure for Administrative Tribunals."**

#10 – To supplement the "Model Code of Procedure for Administrative Tribunals," **each tribunal adopt additional policy and procedural guidelines specific to its own needs** and formalize these in writing.



RECOMMENDATIONS

For Implementation Now

#12 – Tribunal members who write decisions **receive training in decision writing** that will assist them in writing timely decisions at an appropriate level for the subject matter and the user.

#13 – Government and tribunals work together to **implement policy timelines within which hearings must be held and decisions must be made**. The timelines must be readily available to consumers. In the event a timeline is breached, the decision-maker must provide the parties with the reason for the breach and a new timeline for rendering the decision.



RECOMMENDATIONS

For Implementation Now

#19 – Government and administrative tribunals work together to **provide each tribunal member with initial and ongoing training.**

#22 – Tribunals implement a system of **ongoing performance management**, including annual reviews for all members, including tribunal Chairs.



RECOMMENDATIONS

For Implementation Now

#23 – Tribunals **include** failure to meet timelines in performance management evaluations.

#25 – Tribunals **submit an annual report** to the Minister responsible, and that report be **made public**.



RECOMMENDATIONS

For Consultation and Implementation

#11 – Government, in collaboration with the administrative tribunals, study and consider providing **affordable support services to individuals who are preparing for a hearing** at an administrative tribunal on **complex and significant issues**.

#14 – Government, in consultation with tribunals, ensures the **number of members and the mix of full-time and part-time staff are appropriate** for the tribunal's caseload and mandate.



RECOMMENDATIONS

For Consultation and Implementation

#15 – Government implement a **merit-based appointment system** for all tribunal members that includes a selection panel, a job description and an open competition.

#16 – Government strengthen **security of tenure** for tribunal members and remove provisions in contracts for existing members that allow the member's employment to be terminated prior to the expiry of the term. The only exception to this should be termination for cause.



RECOMMENDATIONS

For Consultation and Implementation

#17 - Tribunal members have **fixed terms with a limited number of renewals.**

#18 - Government, in consultation with tribunals, ensure that **compensation is commensurate with members' responsibilities.**



RECOMMENDATIONS

For Consultation and Implementation

#20 - Government ensure that all administrative tribunals have **adequate resources** to fulfill their mandate and align with best practices.

#21 - Government and tribunals work together to ensure all tribunals have an **electronic case management system**.



RECOMMENDATIONS

For Consultation and Implementation

#24 - Government **provide to Tribunal Chairs the authority and responsibility to conduct performance management of tribunal members.** The performance assessment portion of this responsibility may be conducted through a peer review process.

#26 - Government **improve communication between ministries and tribunals while continuing to protect and maintain the independence of the tribunals.**



RECOMMENDATIONS

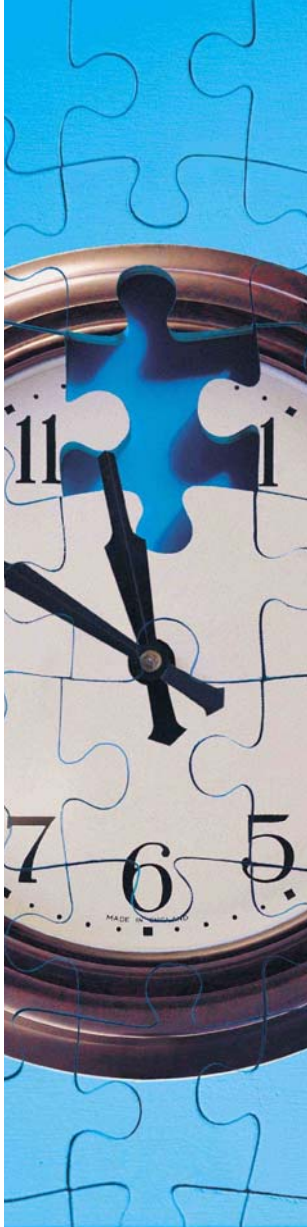
For Consultation and Implementation

#27 - The Government of Saskatchewan **consider options for coordinating the administrative tribunal system** to accomplish the following:

- Facilitate sharing of resources, directing resources to where they are most needed.
- Provide consistency and structure to the system for the benefit of users and members alike.



CONCLUSION



Many problems such as inefficiency, unnecessary complexity and delay have been addressed in other jurisdictions by moving to a more co-ordinated system.

Even without a significantly more co-ordinated system, however, there is still merit in adopting a best practices approach.