

Best Practices for Administrative Tribunals

Are the administrative tribunals in your municipality following best practices? How would they fare in an ombudsman review?

Every day, administrative tribunals make decisions that affect the lives of ordinary people. For example, there are tribunals that hear matters about building plans, car insurance settlements, rental conflicts, human rights complaints, agricultural standards, municipal finances, or conservation disputes, just to name a few. Administrative tribunals may be called boards, commissions, panels, or appeal committees. They exist at all levels of government: municipal, provincial, and federal. Some tribunals conduct hundreds or even thousands of hearings each year.

These tribunals exist to resolve disputes quickly and efficiently. Ideally, they provide a faster, less formal, more flexible, and more specialized decision-making process than the court system.¹ But how can you tell if they are doing a good job?

Ombudsman Review

In some provinces, people who believe a tribunal has been unfair to them can take their complaints to the provincial ombudsman. This is the case in Saskatchewan, where Ombudsman Kevin Fenwick received complaints about delays in decision making at several administrative tribunals. For example, “Mandy” took a

matter before a Saskatchewan tribunal. She attended two hearings and then waited 16 months before receiving the written decision.

Rather than pursue Mandy’s case and others individually, Fenwick decided to take a broader look at the tribunal system. At the time of the review, there were over 50 tribunals in his jurisdiction, and the ombudsman’s team used six tribunals as a representative cross-section.

During the review, the team found that delays in decision making were just the tip of the iceberg. In fact, the tribunals themselves pointed this out. Under the surface was a mass of issues, including: a lack of public accessibility, a lack of support for people preparing for a hearing, and several human resource issues like hiring, training, and performance management.

The tribunals were committed to providing good service, but there were roadblocks. Saskatchewan’s administrative tribunal system had developed in an ad hoc manner and had not evolved into a coordinated system. As a result, there was no set standard of best practices, leaving the public to face a confusing array of processes from one tribunal to another.

Best Practices Identified

The Saskatchewan Ombudsman identified best practices for all administrative tribunals and, based on these, made 27

recommendations. At the same time, Fenwick also recognized that tribunals vary greatly in size, resources, and mandate, and that there would be some tribunals that would not be able to meet every recommendation. There were some larger-scale recommendations for governments and tribunals to consider as a group, and some that tribunals could implement on their own.

In December 2007, the ombudsman released his report titled *Hearing Back: Piecing Together Timeliness in Saskatchewan’s Administrative Tribunals*. Since then, the recommendations that tribunals can implement on their own have been accepted, while the larger-scale recommendations are still under consideration by a government committee.

What can municipal tribunals across Canada learn from the Saskatchewan Ombudsman’s review? Consider these 15 best practices, based on the report:

1. Parties have access to information that will help them understand the tribunal’s process – Do people know how to prepare for the hearing? If they don’t, they may try to present too much information, not enough, or the wrong kind. This slows down the process and makes it more difficult for tribunal members to come to a timely decision – and it’s frustrating for the parties. Nip these problems in the bud by helping people understand what is needed. Make experienced staff available,

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1 Jessie Horner, *Canadian Law and the Canadian Legal System*. Toronto, Ontario: Pearson Education Canada (2006), p. 318.

and provide information in various forms, such as written, audio, video, and internet. Consider providing an orientation meeting for parties who do not know what to expect.

2. Publications and proceedings are in plain language – Make sure as many people as possible will be able to understand the written and spoken information. This includes brochures and letters, the hearing itself and the written decision. Avoid or explain jargon.

3. Parties have access to Appropriate Dispute Resolution (ADR) – Also known as Alternate Dispute Resolution, processes such as mediation or negotiation can resolve some issues at the outset.

4. Pre-hearing meetings are available to parties – In some cases, it is a good idea to meet with parties ahead of time to confirm that they are ready for the hearing. This meeting or the orientation meeting can also be a time to discuss ADR options.

5. Parties can opt for hearings and reviews conducted by telephone, in writing, or electronically – When appropriate – and if your legislation allows for it – consider alternatives to face-to-face hearings. These can save time and money spent on travel and some parties may prefer them.

6. Hearings are conducted with an appropriate level of formality (or informality), while following a standard set of basic procedures – The level of formality or informality should match the type of hearing, the type of argument that can be presented, and the significance and impact the decision will have on the applicant.

7. When the process is formal or complex, parties should have access to assistance – Most people who come before a tribunal are not lawyers. It is not fair to let these consumers sink or swim on their own, and without help they may slow down the process. Make sure they know where they can go for help. Conversely, it is just as bad to “lawyer up” unnecessarily, since members may feel that they have to take more time writing more formal or complicated decisions.

8. Timeliness for hearings and decision writing are established, appropriate, and met – This may seem obvious, but it must be said. These deadlines should be based on the nature and complexity of the cases.

9. Hiring and firing are non-political – Hiring should be based on merit, not political appointment. Minimum requirements are a selection panel, a job description, and an open competition. Tribunal members’ jobs should last for a defined number of years and firing should be tied to performance only.

10. Tribunal members operate within a performance management system – This may be a given for most jobs, but it isn’t always the case for tribunal members. It should be. Performance management builds in accountability for work quality and timeliness. Performance reviews can be the responsibility of the chair, or they can be done as peer reviews among members.

11. Tribunal members have access to training – Orientation and ongoing training are essential, especially in tribunals where members are hired based on their

subject matter expertise. They might not have experience in conducting hearings or writing decisions.

12. Each tribunal has the resources to do its work – Some tribunals have trouble recruiting good quality members because they can’t afford them. Part-time members who are underpaid may focus on their “day jobs” and tribunal duties can languish. Tribunals also need the appropriate amount of support staff, along with adequate office space and IT systems.

13. Tribunals use an effective case management system – It is vital to track (electronically if possible) the tribunal’s cases and decisions, and the amount of work it takes to complete them.

14. Tribunals report publicly on their work – If tribunals are to operate effectively, they need the public confidence that comes from accountability. Public annual reports are a good way to do this.

15. Tribunals are able to communicate with government in a way that will enable them to function properly, while maintaining their independence – Set up operating agreements to define the kinds of communications that will (and will not) take place between government and the tribunal. That way, the government will have the information it needs from a fund-granting perspective and the public can be assured that the tribunal is indeed independent.

A follow-up article will take a look at a training manual designed just for tribunals and share the perspective of one municipal tribunal that served as reviewers. [MW](#)

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