

Executive Summary

Administrative tribunals were initially created to provide an affordable, effective and timely alternative to government bureaucracy and the courts. Since the mid-1900s, they have become an integral part of Canadian government. The government of Saskatchewan funds over 300 boards, commissions and agencies, and we have identified 55 as administrative tribunals for the purposes of this report.

In large part, administrative tribunals have lived up to their mandate, but they are not without their problems. One of the primary criticisms the Ombudsman hears about administrative tribunals is the amount of time it takes them to render their decision after the final hearing. In many instances the decisions are about matters that are of substantial significance for the people involved: entitlement to compensation, evictions, whether they will be found guilty of discrimination, or whether they will get their job back, to name a few.

For example, "Mandy" believed her union failed to represent her adequately. She brought the matter before the Labour Relations Board and participated in two hearings, four months apart: one in June 2003 and one in October 2003. Sixteen months later, she still had no decision from the Labour Relations Board and contacted our office. The Board rendered a decision in April 2005, two years after the initial hearing. The nature of Mandy's issue caused her and her family a lot of stress. Added to her stress was the helplessness she felt when she discovered that the Board was not constrained to render a decision within a timeline and did not seem to be accountable to anyone for the time it was taking.

As the Ombudsman began a system-wide review of timeliness of decision-making, it became apparent that the issue was complex. While assessing the timeliness of a particular tribunal's decision-making, one might well ask the simple question, "Why is it taking so long?" Research for the answer, however, was not simple and often pointed to multiple factors.

It is generally accepted that a tribunal system should provide quality decisions in a timely manner. There are, however, many factors that influence the ability of tribunals to render timely decisions. An individual's understanding about how to prepare and what to expect, the timelines that are in place (if any), the processes the tribunal uses, the resources available to the tribunal, and the tribunal's internal and external accountability all come into play and can influence the timeliness of decision making.

Our inquiry focused on these larger issues and the structures in place that support and/or hinder the work of administrative tribunals to render timely decisions. We selected six tribunals that provided a representative cross-section of various roles and functions of the majority of operational tribunals across Saskatchewan. The six were: the Human Rights Tribunal, the Automobile Injury Appeal Commission, the Labour Relations Board, the Highway Traffic Board, the Office of Residential Tenancies, and the Workers' Compensation Board.

We took a best practices approach in our evaluation of the tribunal system and made 27 recommendations based on the best practices we identified.

Best Practices

This report focuses on timeliness and consequently discusses only those best practices that are connected to the issue and support timely decision making. Drawing on experience and research in the common law jurisdictions of Canada, the United Kingdom, Australia and New Zealand, we identified the following best practices related to timeliness.

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Best Practices Related to Efficient and Consumer-Friendly Processes

- Consumers have access to information that will help them understand the process.
- Publications and proceedings are in plain language.
- Orientation meetings are made available to consumers.
- Consumers have access to appropriate dispute resolution (ADR).
- Pre-hearing meetings are available.
- Tribunals provide consumers the opportunity to opt for hearings and reviews conducted by telephone, in writing, or electronically.
- Hearings are conducted with an appropriate level of formality (or informality), while following a standard set of basic procedures.
- When the process is formal or complex, consumers should have access to assistance.
- There is an appropriate balance between timeliness and the potential need for appeals, judicial review, or ombudsman review.

Best Practices Related to Development of Timelines

- Timelines for hearings and decision writing are established, are appropriate and are met.

Best Practices Related to Board Composition and Function

- The number of members and the mix of full-time and part-time members are appropriate for the tribunal's caseload and mandate.
- Tribunal members are appointed based on merit.
- Members have security of tenure.
- Member compensation is commensurate with responsibility.
- Tribunal members have access to training.
- Each tribunal has sufficient resources to effectively discharge its mandate.
- Tribunals use an effective case management system.

Best Practices Related to the Balance between Accountability and Independence

- Tribunal members operate within a performance management system.
- Tribunals publicly report on their work.
- Tribunals are able to communicate with government in a way that will enable them to function properly, while maintaining their independence.

Best Practices Related to the Coordination of the Tribunals

- Systems supporting tribunals operate in a coordinated fashion that promotes the efficient and effective use of resources.

Findings

The Ombudsman's review found that the administrative justice system in Saskatchewan, as in most other jurisdictions, developed ad hoc, and to date has not evolved into a co-ordinated or rationalized system. As a result, the system does not function in compliance with an agreed-upon set of best practices, which leaves individuals facing a variety of boards, commissions and agencies, each operating with its own set of policies and procedures designed to meet its unique mandate. Many of the problems this situation creates – 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 to administrative tribunal operations.

Recommendations

The 27 recommendations are steps administrative tribunals in Saskatchewan need to take to align themselves with best practices related to timeliness. There are two levels of recommendations connected to successful implementation:

- There are recommendations that should be implemented promptly and independently by each tribunal within the current administrative justice system. These recommendations are flagged throughout the report as "for implementation now."
- There are recommendations that likely require consultation between government and tribunals. Many of these recommendations would be easier to implement within a co-ordinated administrative tribunal system. These recommendations are flagged throughout the report as "for consultation and implementation."

We identified 55 administrative tribunals across the province and we recognize that there will be varying degrees of compliance with these best practices and recom-

mendations. Some will need to make more changes than others and some will be well on their way to aligning their procedures with recognized best practices. We strongly encourage all tribunals to implement these recommendations, individually and as a system, so the citizens of Saskatchewan will have access to more effective and efficient redress of the wide array of issues these tribunals oversee.

Final Thoughts

While there may be valid explanations for why some decisions are delayed, these are seldom acceptable to the people who have to wait. People rightfully believe they are entitled to timely decisions and while the definition of "timeliness" can be debated, there comes a point in any case when all can agree the threshold has been exceeded. The challenge many tribunals face today is to finding a balance that weighs the competing interests of responsibly managing limited resources and delivering timely decisions. In this regard, it is our belief that the Ombudsman and the administrative tribunals are working to the same end.

Our sincere thanks to the people who told us about the delays they experienced. We understand that many, if not all of them have now received the decisions they were seeking and we hope that, because of their willingness to raise the issue, those who take matters to administrative tribunals in the future will have better experiences.

During this inquiry we encountered open co-operation and communication from all six tribunals examined. We believe it is our mutual hope that this inquiry and the recommendations made will point the way to improved timeliness of decision making – an outcome that, if achieved, will significantly alter and enhance fairness for tribunal users.