

Office of the
Ombudsman

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Defining Fairness in Local Government



Acknowledgements

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Disclaimer

The definitions in this book are commonly held definitions within the ombudsman field of practice but do not constitute an exhaustive legal interpretation.

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SIX THINGS

TO KNOW ABOUT YOUR OMBUDSMAN

1 WE RESPECT YOUR CONFIDENTIALITY

2 WE ARE INDEPENDENT

3 WE LOOK INTO YOUR COMPLAINTS

4 WE ARE AN OFFICE OF LAST RESORT

5 WE ADVOCATE FOR FAIRNESS

6 WE OFFER INFORMATION SESSIONS



Intervening in the interests of fair treatment sounds simple. It's not. Each one of us knows what we mean when we say we have a right to be treated fairly. But I suspect 50 people might well provide 50 different definitions.

It is always easier for us to understand fairness when we are at the receiving end than when we are at the dealing end. Let's just say fairness depends on the circumstances and means different things to different people at different times.

An ombudsman looks at fairness in a number of ways.

Substantive fairness concerns the fairness of the decision itself.

Procedural fairness is about how the decision is made – the steps followed before, during and after the decision.

Equitable fairness has to do with how people are treated. Equity starts out with the principle that we are not all the same. We understand that fairness, in the inclusive notion of equity, means people and groups are treated differently so that they have access to equitable results.

That is how I approach my role as the City of Toronto's Ombudsman.

This book was first published in 2010 to help Toronto's Public Service understand the new role of city ombudsman in local government. It has been updated by popular demand to help public servants in their work and the public at large to understand their rights and responsibilities.

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City of Toronto Ombudsman



How People Contact Us



by mail



visit the office



by email or online
complaint form



contact us
by phone



in communities



Why a book on fairness?

Defining Fairness explains ombudsman principles of fairness that the Toronto Ombudsman and her staff use to evaluate complaints about the decisions, actions or omissions of those who work for the City of Toronto and its agencies, boards, commissions and corporations.

When the conduct or decisions of city government and its public servants fail public expectations, citizens and residents have a variety of options they can pursue. They can use the internal complaint mechanisms, pursue their rights of appeal or legal action, or complain to the Integrity Commissioner or Lobbyist Registrar. They can complain to the Auditor General about various financial matters, including fraud and waste. They can complain to the Ombudsman about issues of administration.

Every time a member of the Toronto Public Service makes a recommendation or decision, or delays in doing so, some person or group of people is affected. Those individuals or organizations may disagree with a recommendation or decision and complain about it.

When we investigate complaints from members of the public, we assess the fairness of all aspects of the administration of city government, including its processes, policies, practices, regulations and decisions, using the criteria set out in this document.

Defining Fairness is intended to assist City of Toronto public servants in understanding their rights and responsibilities as they relate to fairness. It is also intended to create a shared understanding of how the Ombudsman views fairness and conducts business so that we can all work effectively together when addressing complaints.

THE CITY OF TORONTO AND THE OMBUDSMAN

The City of Toronto has broad legal autonomy to govern its own affairs. It must exercise this responsibility, however, within constraints. There is the Canadian Charter of Rights and Freedoms, extensive jurisprudence, even international standards to which Canada must subscribe. This means the City has an obligation to offer administrative fairness and equity in all its transactions.

People expect to be treated fairly in their dealings with government. Frequently it is also a requirement of law. Most of all, fairness reduces disagreements, generates public trust and creates confidence in government.

The City of Toronto has a responsibility to provide services that are fair and equitable to all of its people as individuals and as communities. Fulfillment of this responsibility must always be with the public interest uppermost in mind.

The *City of Toronto Act, 2006* created the Ombudsman of the City of Toronto as an independent and impartial investigator of the public's complaints about the administration of city government, including most of its agencies, boards, commissions and corporations.

The Ombudsman's function is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of city government.

“We work with the public and the administration to find solutions, not just to individual complaints, but by pointing to changes that will prevent similar problems in the future.

We provide individuals with an alternative to the courts.

We protect City employees from unfounded complaints.

We provide advice and make recommendations to improve City policies and processes.”

Toronto Ombudsman and staff

The Ombudsman deals with administrative fairness. In other words, she looks at whether decisions were arrived at fairly. The concept is based on the recognition of natural justice and procedural fairness to ensure that decisions of administrative bodies are arrived at fairly. Ombudsman fairness is procedural, substantive and equitable and is about achieving justice with respect to administrative complaints.

The Ombudsman is an independent officer of City Council. Appointed by a two-thirds majority of Council, the Ombudsman is at arm's length from the Toronto Public Service with a five-year term, renewable once. The Ombudsman can only be removed by Council for cause by a two-thirds majority vote.

The Office of the Ombudsman is a place of last resort for residents and citizens to turn to when all else has failed. The office looks at problems when the public service's procedures and processes have not resolved the complaint.

The ombudsman concept involves the public, on the one hand, and the public service, on the other. The Ombudsman is squarely in the middle – impartial – with no vested interest in the outcome of a complaint except to ensure that the City's public service treats the public fairly.

The Ombudsman and her staff are advocates for fairness.

The Office of the Ombudsman works with all people of Toronto, the City's public service, and with City Council to improve the quality of public service and accountability to the residents of Toronto.

Defining fairness

Fairness depends on the circumstances and means different things to different people at different times.

- *Is it fair that a main road is ploughed before my street is?*
- *Is it fair that residents were not notified about an issue that affected them?*

Everyone has their own view of fairness. It can be based on a deeply felt conviction or an intuitive understanding of what is unfair. Who hasn't at some time said or heard "but that's not fair"?

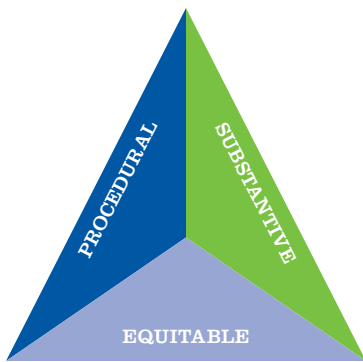
Fairness can be culturally specific. It is shaped by a person's life experience, values, ethics, expectations and a host of environmental factors.

Fairness, in the context of public servants' duties and obligations, is much more than just a fair hearing or a provision of service. It is about providing information that is easily found, accessed and understood. It is about treating the public with dignity and respect and providing an open, accountable and timely service. Last but not least, it is about providing well reasoned decisions to the public about the actions taken.

The Ombudsman looks at three aspects of fairness: substantive, procedural and equitable.

SUBSTANTIVE FAIRNESS

Substantive fairness concerns the fairness of the decision itself. Decision-making is a process that begins at the first point of contact with the public. From clarifying the issues to gathering data and assessing the facts, the public servant is building the information that will influence the decision.



PROCEDURAL FAIRNESS

Procedural fairness concerns how the decision is made – the steps to follow before, during and after a decision is made. This is about process.

The concept of procedural fairness has been developed through the courts to ensure that decisions of administrative bodies are arrived at fairly. The standards of procedural fairness are fluid and flexible. What is procedurally fair will depend on the nature of the decision to be made, the relationship between the administrative body and the individual, and the effect that a decision has on that individual's rights. The Ombudsman and her staff are subject to procedural fairness principles. In light of this, they observe administrative fairness in their practices.

Procedural fairness includes the duty of fairness, which gives the member of the public the right to know that an adverse decision is going to be made, the right to respond to the decision-maker and the right to an unbiased decision. At a minimum, procedural fairness requires:

- clear communication
- proper notice
- opportunity to present their case
- clear reasons for the decision
- timeliness
- proper records.

EQUITABLE FAIRNESS

Equitable fairness has to do with how we treat parties to a complaint. It is about making sure that people are treated fairly, not necessarily identically.

To some, there appears to be a conflict between fairness, as understood in a conventional sense of equality, as opposed to an inclusive model of equity. It can be a deeply held belief that treating people fairly relies on treating everybody the same and allowing the result to emerge. Treating everyone the same, (i.e. equally and trying to be fair) absolves any further responsibility. Treating people differently is thought to be discriminatory or unfair.

In fact, treating people differently to provide access to the same result is key. To intend to be fair is important but it is the result that matters.

Being inclusive is critical if we are going to remove barriers to service and achieve equitable service delivery with results that are fair to everyone.

Equitable fairness explicitly takes into account the person's social location — that means factors such as education, literacy level, ethnicity, creed, culture, language, age, geographic location, family status, gender, sexual orientation, socio-economic status and disability. Should a member of the public show any of these disadvantages, public servants should make efforts to redress any imbalance this disadvantage creates.

“To treat everyone the same may be to offend the notion of equality. Ignoring differences may mean ignoring legitimate needs. Ignoring differences and refusing to accommodate them is denial of equal access and opportunity.”

Judge Rosalie Abella, Report of the Commission on Equality in Employment, 1984

DEFINING PRINCIPLES UNDER WHICH THE OMBUDSMAN OPERATES

Administrative fairness

Administrative fairness means that decisions are arrived at fairly. The concept is based on the recognition of natural justice and procedural fairness. Ombudsman fairness is procedural, substantive and equitable and is about achieving justice with respect to administrative complaints.

Principles of administrative fairness include:

- the right to know the complaint against you
- adequate notice
- sufficient information
- right to representation
- reasons for decision.

Administrative unfairness

The Ombudsman only becomes involved in complaints where there is alleged inappropriate or incorrect application of law, policy, practice, procedure or process.

Examples of administrative unfairness include:

- unreasonable delay
- incorrect action or failure to take any action
- failure to follow established procedures
- failure to provide adequate information
- misleading or inaccurate statements
- inappropriate or incorrect application of policy, procedure or practice.

Confidentiality

Confidentiality is maintained throughout the complaint process to protect the interests of the complainant, the respondent and any others involved in an ombudsman inquiry or investigation.

The Ombudsman and her staff are obliged to preserve confidentiality with respect to all matters that come to their knowledge in the course of their duties.

Confidentiality is distinguished from anonymity. It is fundamental that an individual complained about be informed of the allegations.

The Ombudsman is exempt from the *Municipal Freedom of Information and Protection of Privacy Act, 2006*, which means the Ombudsman's office is not subject to freedom of information requests about its complaint handling.

Disclosure

The Ombudsman may disclose in any report such matters that in her opinion ought to be disclosed to establish grounds for conclusions and recommendations.

Due process

Due process involves respecting the rules of procedural fairness. This entails providing all sides to a dispute:

- a fair opportunity to be heard
- an opportunity to fully respond to a complaint made by the “other side”
- reasonable notice
- a fair length of time to prepare or respond
- clearly defined, unbiased reasons for decisions.

Impartiality

The Ombudsman and her staff are impartial investigators of complaints. The office is an advocate for administrative fairness.

Maladministration

Maladministration can involve acts, omissions, decisions and recommendations that result in inefficiencies, improprieties, poor service and bad management.

Multiple

Multiple complaints occur when many individuals complain about a particular policy, practice, procedure, rule or law.

Natural justice

The rules of natural justice consist of the right to a fair hearing and an absence of bias. Natural justice is the minimum standard of fairness from which a decision-maker operates. If a decision-maker has to decide questions of law or fact and the decision will directly affect the person’s rights or legitimate expectations, the decision-maker has a duty to observe the principles of natural justice.

Systemic issues

Systemic, sometimes referred to as adverse impact, issues can be seen in the treatment of groups. A systemic issue involves a practice, policy, procedure, rule or law that appears neutral in its intent and fair in its form and application, but has the effect of discriminating against a group of people who share a common attribute not shared by the majority group. Intent is of no consequence. The effect of the policy or practice is what is at issue.

System-wide

System-wide refers to a practice, policy, procedure, rule or law that is applied consistently across an organization or to a group of people.

Transparency

All relevant parties have full information about the process and the steps being taken to address or investigate a complaint.

DEFINING CONCEPTS THE OMBUDSMAN USES TO MAKE DECISIONS

Contrary to law

Administrative conduct may be considered contrary to law if it appears to be inconsistent with relevant laws, a violation of administrative fairness or other legal principles developed by the courts, or a failure to comply with the findings or order of a court or tribunal.

Unreasonable

A decision, recommendation, act or omission can be defined as unreasonable if it:

- is inconsistent with other decisions that involve similar facts or circumstances
- has been made without an obvious relationship to the facts or evidence
- has a contrary effect to what was intended or permissible
- results from a refusal to use discretion where the facts or evidence call for its exercise
- cannot be rationally and fairly explained.

A process used to reach a decision can be described as unreasonable if:

- there is delay in taking any required action
- there is a lack of common courtesy
- no reasons are given
- the organization has not communicated appropriately with the complainant
- the decision made is inappropriately punitive or needlessly reaches beyond the circumstances of the case
- there is an unfair, irrational, illogical or untenable interpretation of criteria, standards or laws
- any inconsistent treatment is not explained
- procedures, alternatives and available appeals are not adequately explained
- any other matter is raised that, in the context of the case, cannot be rationally and fairly explained.

Unjust decision or recommendation

A decision, recommendation, act or omission is unjust if it:

- is contrary to the principles of equity, fairness or equality or is characterized by arbitrary behaviour
- violates well established, known and accepted policies or procedures
- shows negligence, or the absence of proper care or attention, where no compensation or acknowledgment of the negligence has been provided.

Unjust is usually considered to be stronger than unreasonable and may constitute a moral wrong and be seen as unconscionable in some situations. It may also involve a basic principle of fairness where there is no such consideration of fault.

Oppressive act or omission

An act, omission, decision or recommendation can be oppressive if:

- it involves excessive use of authority
- authority is used to intimidate or subject someone to cruel or unjust hardship, or to impose unreasonable conditions
- it inflicts harm or injury
- it overburdens a person seeking relief or access to any process
- it imposes requirements on a person that are out of proportion to the effect of the act or decision required
- it has an effect that is punitive, harsh or harassing
- it is characterized by behaviour of officials that is heavy-handed or offensive.

It is the effect, not the intent that matters in determining whether “oppressive” can be applied.

Improperly discriminatory act

An act, omission, decision or recommendation can be improperly discriminatory when:

- there is a failure to treat similarly-situated persons equally where there is no justifiable or appropriate reason not to do so
- a distinction is applied that is not authorized by law or there is a failure to make a distinction that is authorized by law
- there is an apparent violation of a basic right protected by law
- an otherwise reasonable decision or act adversely affects an individual or group of individuals for no good reason.

The term discriminatory may also describe situations where an act, omission, decision or recommendation is based on a rule of law, legislative provision or practice that is equally and uniformly applied but has the effect of discriminating against a specific group.

Mistake of law

Mistake of law applies to situations where an organization has full and correct knowledge of the facts but incorrectly applies or interprets a law, regulation or common law rule or principle, resulting in an improper decision or action.

This term overlaps with “contrary to law” but may be more appropriately used where the law has been misinterpreted.

Mistake of fact

Mistake of fact occurs when a decision or recommendation is based on information that is factually in error or been misinterpreted, leading to a decision that is inappropriate or wrong. It can also happen when important facts have been omitted or ignored.

Improper exercise of discretionary power

Improper exercise of discretionary power can be applied when a decision, recommendation, act or omission is based on otherwise proper policies and procedures but is used to achieve an improper purpose. This can occur when the intent of the policy or procedure is ignored or disregarded in order to cause a particular outcome, or when there is an improper exercise of discretion. Such a finding will focus on the outcome, not the process, such as an unauthorized purpose leading to personal gain, influence or bias. It may be necessary to establish intent to support a finding of improper purpose.

Wrong

An act, omission, decision or recommendation can be found to be wrong if:

- it clearly departs from a policy, process, or procedure
- the investigation turns out new facts that were unavailable or unknown previously and that cast doubt on the correctness of the original act, omission, decision or recommendation
- it is based on an erroneous interpretation of the facts
- it is the result of carelessness on the part of an employee or the organization.

Wrong can also be applied to fit specific circumstances. A situation may develop in which no one individual action in a complex set of circumstances can be pointed to as unjust or unreasonable but the net result is just not right, that is to say, it is wrong.

Individuals often say something is wrong even though they may find it difficult to explain precisely what is not right.

“Wrong” may also overlap with “contrary to law” or with “mistake of fact.” It could include “morally wrong,” although such a finding might be more appropriately termed “unjust.”

For public servants – Working for fairness

Your job is to interpret policy where it exists. Policy should not make the decision for you. That's your job! There may be a good reason to make an exception, so make sure you canvas that carefully in the context of fairness. The better the decision-maker understands the decision they have to make and the process to follow, the more likely the decision will be reached fairly. Is the decision-maker able to adequately explain the decision? If not, it is probably flawed.

City of Toronto public servants wear many hats when performing their job duties. Each of those aspects requires fairness.

The challenge for municipal decision-makers lies in being aware of which requirements you must meet in each decision-making function and then meeting those requirements in a way that is appropriate to the context.

Being aware of the context in which your decision is made helps you make better decisions and respond to criticism and challenges if, or when, someone takes issue with your decision.

The path to a good decision does not always follow a straight line. You do not always have the luxury of considering each of the three aspects of fairness separately or sequentially, nor is the distinction between procedural, substantive or equitable fairness always clear.

What is important to remember is that the things you can and need to do to achieve fairness are also the tests and standards that others will apply when assessing the fairness of your actions and decisions. Although fairness can be subjective, it can be measured by the courts, the Ombudsman, the media and ultimately the court of public opinion.

Delay also adversely hurts the public service. The longer it takes to act or make a decision, the more difficult it is to remember the context and details of the issue. This makes you rely more on notes and gives rise to a greater possibility of mistakes. The first step in dealing with delay is figuring out the reason for it.

Substantive fairness concerns the fairness of the decision itself. Decision-making is a process that actually begins at the first point of contact with the public. From clarifying the issues to gathering data and assessing the facts, you are building the information that will influence your decision.

- Was there legal authority to make the decision?

Does the relevant law give the decision-maker the authority to make the decision?

- Was the decision based on a proper review of all relevant information?

It is very important that only information relevant to the decision is collected and used. This includes legislation, policies and procedures. It is also important that all relevant information be available.

- Was the decision-maker biased?

Ask yourself: Is my decision influenced by how I feel about the person affected by the decision? Would I make the same decision for someone else?

If someone feels poorly treated then the chances are they will not believe they were dealt with fairly. In this scenario sometimes people will complain even without being able to point to any specific inequitable, procedural or substantive unfairness. When that happens it is much more difficult to resolve the problem. People who feel they have been listened to and heard are better able to accept decisions that may not be in their favour.

- Were existing policies, guidelines, procedures and rules followed consistently?

Inconsistencies need to be justified and explained.

- Did the decision create an unnecessary obstacle for the person affected?

A decision should not impose a condition that may be unrealistic or impossible to meet. For example, if someone's safety is involved, the decision may be reasonable. If there is no safety issue, the decision may be unreasonable.

WORKING FOR PROCEDURAL FAIRNESS

Procedural fairness concerns how the decision was made – the steps to follow before, during and after a decision is made. This is about the processes that are followed leading up to a decision being made.

Procedural fairness includes the duty of fairness, which provides the member of the public with the right to notice that an adverse decision is going to be made, the right to respond to the decision-maker and the right to an unbiased decision. At a minimum, procedural fairness requires the following:

Clear communication

All decisions and relevant documents should be in plain language that people can understand and that is appropriate to them and their circumstances. Do not use jargon or legalistic language.

Policies and procedures should be clear and there must be accurate, complete and understandable information about the service.

Proper notice

The decision-maker should give adequate, proper and timely notice in plain language to anyone personally affected by the decision.

The notice should say:

- a decision is going to be made
- why a decision is necessary
- how the decision will affect him or her
- what information the decision-maker will consider and what criteria they will use in making the decision
- what the current rules, procedures or requirements are for receiving submissions
- how long the process should take.

Opportunity to present their case

All affected individuals must have a chance to make their case and respond to any facts the decision-maker considered.

Clear reasons for the decision

All decisions must provide reasons and outline the appeal process.

Providing clear and comprehensive reasons for your decision can make it difficult for people to read motives into your decisions. It makes it harder to argue that you have not considered their views or speculate about why you decided one way or another. If people know you have heard and understood them, they are more likely to respect your decision and less likely to challenge it, even if they do not like it.

Timeliness

Make decisions within a reasonable time. Let the person know if the process will take longer than originally stated or reasonably expected.

Any delays should be explained. The organization should accept responsibility for any unnecessary delays and for dealing with the consequences.

New or changed circumstances should be taken into account when there has been a delay, including allowing the individual to provide further information.

Proper records

A reliable record of the process used and decisions reached should be kept for a reasonable time. In some cases the time required to keep the record may be prescribed in law.

A public servant gives X, Y and Z ten days to respond to a request for information. X and Y are native English speakers. Z uses English as a third language, and at that, never in a business context. Some would say it is unfair to give Z the same number of days as X and Y, because Z has to go through more steps – getting the help of a friend, family or even a translator.

Or, let's say native English speaker A, who has made a complaint has significant post-secondary education and works as a public servant. By contrast, B, who is also a native English speaker, has a Grade 10 education and never writes as part of their work. If the public servant were to treat everyone the same, then it is likely that A's written submissions would be better organized and more persuasive than that of B – just because A has experience in that kind of writing.

WORKING FOR EQUITABLE FAIRNESS

Equitable fairness has to do with how we treat parties to a complaint. It is about making sure we treat people fairly, not necessarily identically.

Treating people differently to provide access to the same result is key. To intend to be fair is important, but it is the result that matters.

Being inclusive is critical if we are going to remove barriers to service and achieve equitable service delivery with results that are fair to everyone.

Questions to ask when considering whether a process or decision was equitably fair

- Did you treat the person with sensitivity? Did you respond flexibly to the circumstances of their case?
- Did the process take into account such issues as gender, race, ethnicity, age, sexual identity, geography, language, disability of the individual to ensure equal access to services and treatment?
- Did you consider issues such as power, vulnerability and marginalization?
- Was your organization approachable?
- Did you treat the individual impartially?
- Did you listen to the individual and treat them with respect?
- Did the process take into account the individual's needs, circumstance and social location?

Equitable fairness is about how the person or group was treated in the process, how the person or group feels about the process itself and what happened as an outcome.

KNOWING YOUR ROLE AND FUNCTION

Understanding the job you have to do (the decision you have to make) and the process you must or should follow is an excellent foundation for making decisions fairly. Identifying the source of your authority to make the decision is also important. City Council or the municipal by-law that gives you the authority to make the decision may also provide a detailed map to making the decision.

UNDERSTANDING THE IMPACT ON THE PUBLIC

Fair decision-makers understand the impact of their decisions on those affected by the decisions. This includes understanding how those affected will perceive the decision.

When making a decision, you need facts and evidence. But you must also hear from those who will be affected by your decision.

Why is this person here? What do they want us to do?

Does the person understand the decision you are making, your jurisdiction and the options available to you as a decision-maker? If not, explain this right away.

Is the person complaining about the substance of the decision or the process?

Is the complaint about the decision itself or about how the decision was made? It can be helpful to clarify and separate these two concerns. It is better to identify a possible procedural defect at the beginning rather than after a decision has been made.

Is the complaint based on wrong information or a lack of information?

Identify any additional information that can be shared or correct any misinformation.

Did the person have the right information? Did someone give them bad information or not enough information? Find out and give them any additional information or correct any misinformation.

The more the public understands your responsibilities and the value of your service, the more confidence they have in your decision-making.

A resident relies on advice from the City when preparing an application for a home improvement grant. He is subsequently declared ineligible by the City. In defending its decision to disqualify the applicant, the City looked only at the program criteria. It did not consider the role staff may have played by providing incorrect information to the resident. In other words, it didn't look at all the relevant information before reaching a decision.

If you are considering whether you have treated someone fairly, ask yourself how you would feel if you were in their shoes.

MAKING YOUR DECISION

Questions to ask before making the decision

- Am I hearing all sides of an argument? If not, the arguments that have not been considered may surface after the decision is made.
- Is there someone I have not heard from who will be affected by this decision? If yes, how did this happen? Did the individual understand the impact of the decision?
- Do I have all of the relevant facts? If not, what else do I need?
- Do I need more information?
- What do I need to consider in making this decision? Beyond the impact on an individual or the public in general, what must I consider as a requirement of law, policy or procedure?
- Am I basing my decision on fact and law or on feelings and opinions? Are the feelings and opinions expressed supported by relevant facts? Decision-makers must separate fact from feeling and understand the extent to which each is influencing the decision.

Provide a written decision with reasons

Providing a written decision with reasons to everyone affected by the decision is a critical component of fairness. The decision with reasons lets people know their views were considered. The decision must be in plain language and accessible.

If you are not able to explain your decision, then you know the decision is probably flawed.

WORKING WITH THE OMBUDSMAN

The Ombudsman's goal is to work with the Toronto Public Service to improve the quality of public service. Cooperation is the key.

When the Ombudsman's office calls, be straightforward. Don't duck. Don't try to defend. Just set out the facts and the policies and be helpful. Create a culture in your organization that values the work of the Ombudsman.

Designate an Ombudsman contact person in your organization and let us know who it is — someone we can call who has the authority to get things straightened out and to educate staff.

Make sure your internal complaint system is robust, accessible and clear to the public.

FAIRNESS CHECKLIST

Information and communication

- Is information available in a format everyone understands? Does it use plain language? Can someone ask for it in a different format such as audiotape or disc?
- During the first contact, do you explain the services and role of the organization?
- Is the purpose of the form clear? Are the questions in plain language? Do you give them copies of forms and statements they have signed?
- Are the letters you write clear and in plain language? Are they timely?
- Can someone leave you a voice mail message? Do you return calls within standard business norms (one business day, for example)? Is that time on your recorded message?
- Is your location physically accessible?
- Do you have a way to record information that can be used later to evaluate and improve performance or programs?
- Are the appeal and complaint processes clear and well known?

Before a decision is made

- Does the person know a decision is being made?
- Is the decision needed? Why?
- Is there time for the person to present their position and information?
- If others have presented information the decision-maker is using, is there a time for the person to respond?
- How will the decision affect the person?
- What information do you consider in reaching the decision?
- What criteria do you use to make the decision?
- What rules, policies or practices do you use in arriving at the decision?
- Are you making the decision in a reasonable timeframe?

While making the decision

- Have you taken all the facts into account and reviewed all information carefully?
- Have you been careful to ensure you have used only the relevant information?
- Is the process you are using to reach a decision the same as the process you have used on similar issues?
- Is the process inclusive? Does it take into account differences and your duties under the Ontario Human Rights Code?
- Have you provided for special needs or circumstances?
- If delay has occurred, have you thought about potential changes in circumstances or information?
- Have you made the decision objectively, considering all the facts?
- Have you thought about the potential for bias?
- Is this decision consistent with similar ones?
- Can you explain and justify any differences with decisions on similar issues?

After the decision is made

- Are you giving the person the reasons for how and why the decision was made?
- Are you doing it in a way that the person understands?
- If written, is the decision in plain language?
- Have you taken into account any legal obligations?
- Have you given the decision to everyone affected?
- Have you filed a full record of the process?
- Will the record be kept for a time in keeping with organization standards?
- Have you told the person of their right to any appeals, review or complaint process?
- Are the complaint procedures written clearly and easily available?

For members of the public - Seeking fairness

The Ombudsman reviews complaints to determine if individuals have received fair and equitable treatment. The Office works informally and promotes flexible approaches to dispute resolution. The Ombudsman also formally investigates where warranted, particularly with systemic, system-wide or complex issues.

The Ombudsman's authority comes from the City of Toronto Act and the City of Toronto Municipal Code, Chapter 3. The Ombudsman has a broad mandate to look at complaints about the administration of city services. This mandate has been defined by the courts as "everything done by government authorities in the implementation of government policy."

Section 3-32 of the City of Toronto Municipal Code, Chapter 3, defines the Ombudsman's jurisdiction:

The Ombudsman may investigate any matter where the Ombudsman believes on reasonable grounds that a person or body of persons has been adversely affected in his, her or its personal capacity by a decision, recommendation, act or omission made in the course of implementing City policies and administering City services by:

- a) A City division
- b) A contracted service provider
- c) A local board (restricted definition)
- d) A City-controlled corporation identified by Council.

The Ombudsman's powers

The Ombudsman has the power to enter premises, review documents and require people to give evidence under oath. Neither the Ombudsman nor her staff can be called to testify in court or disclose information unless there is an allegation that the Ombudsman has made a mistake in law.

Own motion investigations

The Ombudsman may initiate her own investigation to look at an issue, generally of a system-wide or systemic nature. The Ombudsman would normally do so when the issue is in the public interest. She may also conduct an investigation at the request of City Council.

Office of last resort

The Ombudsman's office is one of last resort, meaning that a person or group must first use the internal complaint mechanism of the organization. There are two exceptions to this rule:

- where delay has occurred and the Ombudsman decides to handle the complaint, having regard for all the circumstances
- where requiring someone to exhaust the internal complaint mechanism would cause undue hardship or be unreasonable in the circumstances.

The Ombudsman's office is where you go after you have tried to get the City to fix the problem.

Personally affected

The Ombudsman can only investigate complaints from individuals who are personally affected. The definition of person has been broadly defined by the courts to include an organization or agency that might have been affected in its capacity.

WHAT THE OMBUDSMAN'S AUTHORITY COVERS

The Ombudsman's authority covers the divisions of the City of Toronto and its contracted service providers, agencies, boards, commissions and corporations. This list is subject to change.

City divisions and services

311 Toronto	Major Capital Infrastructure Coordination Office
Accounting Services	Municipal Licensing & Standards
Affordable Housing Office	Office of Emergency Management
Children's Services	Parks, Forestry & Recreation
City Clerk's Office	Pension, Payroll & Employee Benefits
City Manager's Office	Policy, Planning, Finance & Administration
City Planning	Public Health
Corporate Finance	Purchasing & Materials Management
Court Services	Real Estate Services
Economic Development & Culture	Revenue Services
Emergency Medical Services	Shelter, Support & Housing Administration
Employment & Social Services	Social Development, Finance & Administration
Engineering & Construction Services	Solid Waste Management Services
Environment & Energy	Strategic Communications
Equity, Diversity & Human Rights	Strategic & Corporate Policy
Executive Management	Toronto Building
Facilities Management	Toronto Office of Partnerships
Finance & Administration	Toronto Water
Financial Planning	Transportation Services
Fire Services	Waterfront Secretariat
Fleet Services	
Human Resources	
Information & Technology	
Internal Audit	
Long-Term Care Homes & Services	

Agencies, boards, commissions and corporations

519 Church Street Community Centre	Property Standards Committee
Applegrove Community Complex	Ralph Thornton Community Centre
Business Improvement Areas	Rooming House Licensing Commission
Cecil Street Community Centre	Scadding Court Community Centre
Central Eglinton Community Centre	Sign Variance Committee
Committee of Adjustment	Sony Centre for the Performing Arts
Community Centre 55	St. Lawrence Centre for the Arts
Eastview Neighbourhood Community Centre	Swansea Town Hall Community Centre
Exhibition Place	Ted Reeve Community Arena
George Bell Arena	Toronto Atmospheric Fund
Harbourfront Community Centre	Toronto Centre for the Arts
Heritage Toronto	Toronto Community Housing Corporation
Larry Grossman Forest Hill Memorial Arena	Toronto Licensing Tribunal
Leaside Memorial Community Gardens Arena	Toronto Parking Authority
McCormick Playground Arena	Toronto Transit Commission
Moss Park Arena	Toronto Zoo
North Toronto Memorial Arena	William H. Bolton Arena
	Yonge-Dundas Square

COMPLAINING TO THE OMBUDSMAN

Our office's service standards and policies guide our work and our conduct. We take our standards very seriously and if you ever feel that one of us is not abiding by them, you can complain to the Director of Investigations or to the Ombudsman.

The principles that guide us:

- the right to complain is fundamental to a democracy
- all complainants must be treated with respect
- the content of their complaint must dictate the resources allocated to it
- unreasonable conduct does not mean there is not a valid complaint.

HOW WE WILL TREAT YOU

You can expect us to:

- be respectful and professional
- listen actively
- be open and accessible
- be impartial
- be accountable, transparent and ethical in all our communications
- understand that people may be frustrated, upset and angry about their problem
- be clear about our timelines and communicate when we can't meet them
- clarify your role and ours
- establish what you can expect from us and what we expect from you
- own the complaint – this means the Ombudsman's Office decides how to address the complaint.

We expect you to:

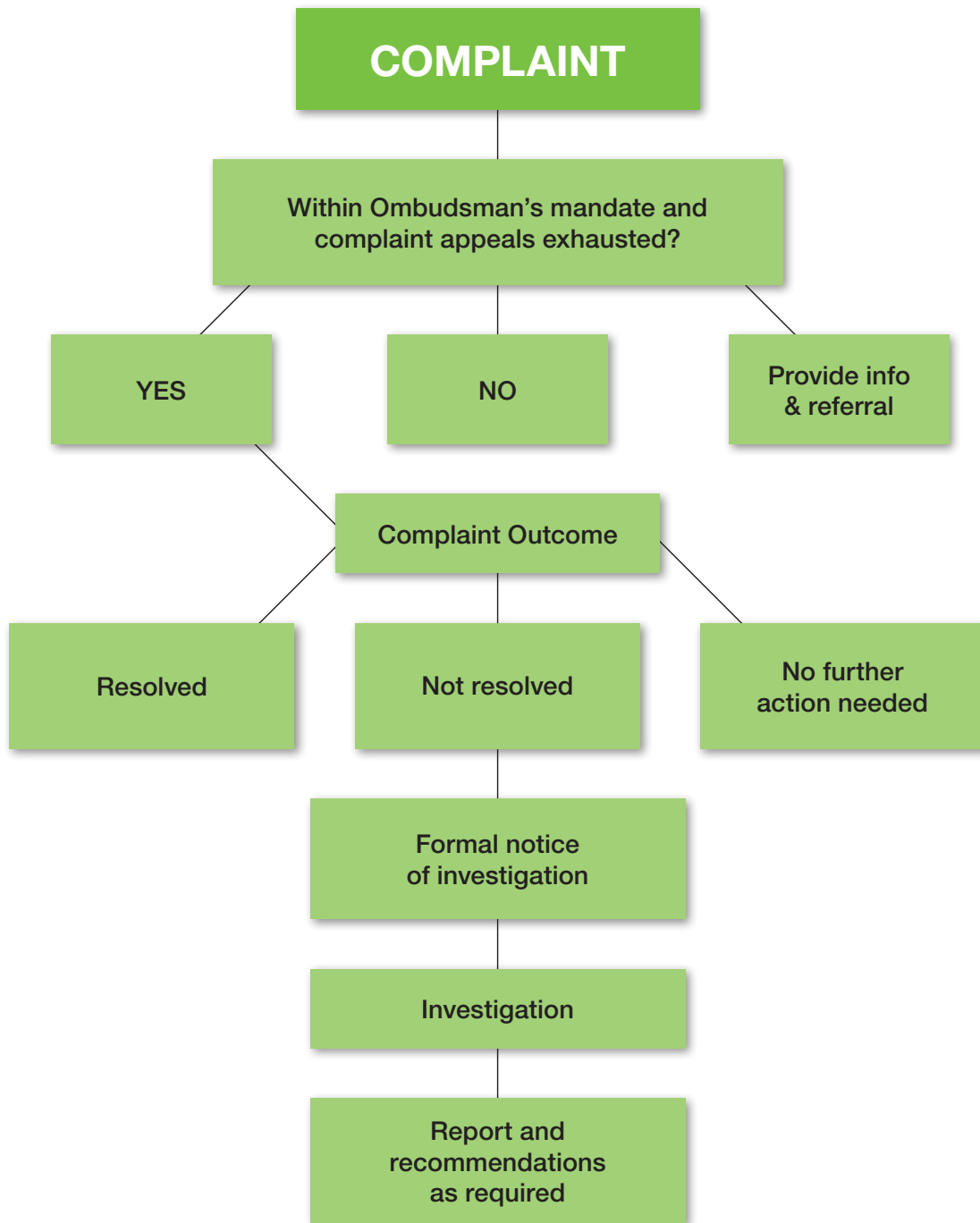
- be respectful
- listen actively
- be as complete as possible in telling us your complaint and give us all the documents
- let our questions guide you
- own the issue – this means you can take the matter to any venue you wish, for example, a court or the media.

WHAT HAPPENS WHEN YOU CONTACT THE OMBUDSMAN

Intake staff screen all complaints and inquiries to determine first whether the Ombudsman has jurisdiction. If the Ombudsman does not have jurisdiction, staff may give you a referral, tell you about appeal options or give you any other relevant information. They will also give you advice on how to present your concerns to the appropriate public servant or service unit.

If the Ombudsman has jurisdiction, intake staff decide if the issue can be resolved using informal resolution techniques. If a resolution takes more than a few days or weeks or the issue is complex and does not meet the criteria for early resolution, intake staff may refer the complaint to an ombudsman investigator.

Complaint Process



Note: Examples of no further action would include situations where the public service has acted reasonably or where the Ombudsman's staff consider that given the circumstances there is nothing further to be done.

EARLY RESOLUTION FOR MANY COMPLAINTS

The Ombudsman's office tries to resolve a complaint without a formal investigation using a variety of dispute resolution techniques¹. This works where:

- you have provided enough details so that inquiries can be made
- the complaint is straightforward
- the situation is urgent (someone is at risk of losing housing, social benefits or their livelihood)
- the complainant and decision-maker are receptive to the approach
- there is no impact on the long-term implementation of the service and the resolution fits within the existing policies and procedures
- there is a reasonable chance of timely resolution.

INVESTIGATION FOR COMPLEX OR SYSTEMIC COMPLAINTS

If a complaint cannot be resolved through early resolution, the Ombudsman's office may conduct a formal investigation. An investigation is conducted when:

- the complaint is complex
- the complaint involves multiple issues
- the issues are systemic or system-wide
- site visits, interviews, reviews of documents are needed
- the complaint is so egregious that the matter could only be addressed through an investigation.

The Ombudsman may decide to conduct an investigation on her own motion. She can also stop an investigation if the complaint can be resolved.

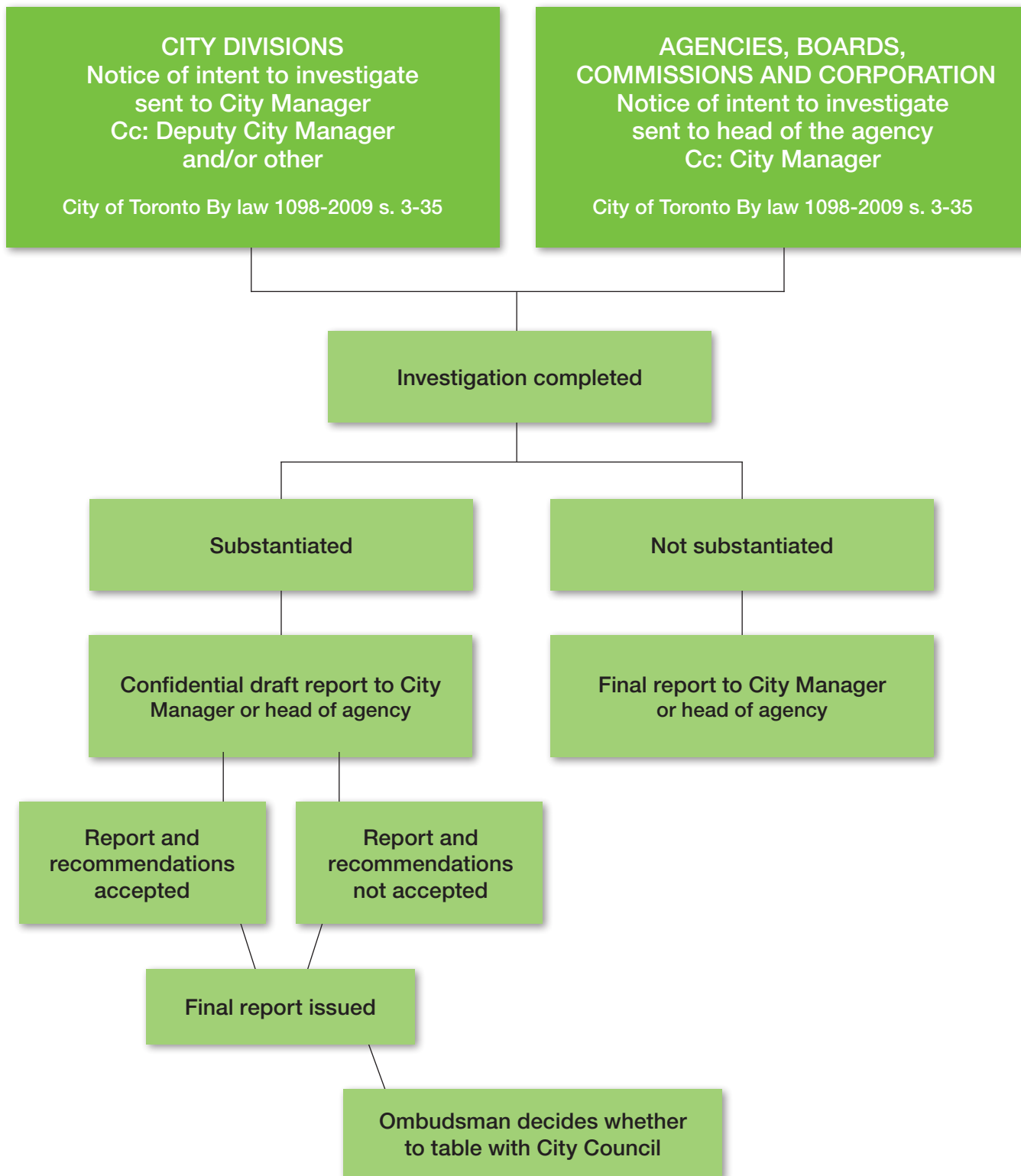
The investigation starts when the Ombudsman notifies the City Manager or head of the relevant agency, board, commission or corporation in writing. This provides details and a clear statement of what the complaint is about and gives notice to the senior executive.

During the investigation, Ombudsman investigators identify and interview witnesses involved in the complaint and review relevant legislation, documents, files, policies and procedures. They may also look at similar situations and will conduct related research to see how these issues have been handled and to see if any of these experiences could be used by the city to address the matter under investigation.

The Ombudsman considers issues of substantive, procedural and equitable fairness. She may also consider time, staff and funding constraints where relevant. The Ombudsman shows appropriate respect for the expertise of decision-makers, including consideration of all relevant law, policy, procedure and practice.

¹Early resolution techniques—shuttle diplomacy, mediation, negotiation, and conciliation— give you a chance to be heard and to identify and clarify issues. In most cases, the process allows everyone to reach satisfactory conclusions including a better understanding of the issue from each other's perspective.

Investigation Protocol



Ombudsman's decision

The Ombudsman must either support a complaint and make recommendations to correct the action or provide the complainant with a thorough and reasonable explanation for her conclusion that the complaint cannot be supported.

A complaint can only be supported after a thorough investigation if the Ombudsman concludes that the action or decision is:

- contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- based wholly or partly on a mistake of law or fact
- based on the improper exercise of a discretionary power
- wrong.

Reporting requirements

At the end of an investigation, the Ombudsman must:

- inform the complainant in writing of the results
- inform the other affected parties in writing of the results
- recommend any measures she deems necessary to rectify the matter.

When the Ombudsman makes recommendations to the organization, they can review the findings and adopt the recommendations first. The Ombudsman's recommendations can be made public depending on various factors including public interest.

The Ombudsman tables an annual report with Toronto City Council. That report is available to the public. The Ombudsman may also table investigation reports for Council's consideration along with special reports on other matters.

It is expected that Council will take the steps necessary for the Ombudsman's recommendations to be implemented.

WHEN THE OMBUDSMAN DECLINES TO INVESTIGATE

The Ombudsman may refuse to investigate a complaint or to continue an investigation when she believes that:

- the complainant has not used other adequate remedies under the law or existing administrative practices
- the subject matter of the complaint is trivial
- the complaint is frivolous, vexatious or not made in good faith
- the complainant cannot demonstrate sufficient personal interest in the complaint
- having regard to all the circumstances of the case, no further investigation is needed
- if more than one year has elapsed since the complainant learned of the facts that are the basis of the complaint, unless there are exceptional circumstances that justify the delay such as serious illness.

RESTRICTIONS WHEN DEALING WITH A PERSON WHO IS BEING ABUSIVE

Sometimes a person can make unjustified demands, be rude and argue unreasonably, or make personal attacks on Ombudsman staff.

Although you do have the right to complain, we all must adhere to certain standards of conduct.

The Ombudsman's office will impose restrictions on an individual when someone:

- shows persistent rudeness, profanity, abuse or threats to Ombudsman staff
- threatens physical harm to staff or other parties or damages property
- is physically or psychologically violent.

Deciding to restrict access to the office and services is a last, extreme, resort. The restrictions could include allowing communication only by telephone or letter, having meetings off site only, or refusing further service.



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