

## Notes for Remarks

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### ***Fairness: Our Rights and Responsibilities***

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It is always humbling to be with people who are making democracy work to improve your lives, your neighbourhoods and communities. So often I see situations where people lack power to do this. It is reassuring to see people who have taken up the challenge and have empowered themselves in order to empower and strengthen the lives of those around them.

Swansea surely is a better place because of what you do, and the way you do it. You are simultaneously rendering a service today and building a better tomorrow. None of us can be satisfied with the status quo. None of us can expect change “to just happen”. We must seek change, we must work hard for it. By being here together tonight, we recognize each other as allies in a cause.

We confirm our relationship as members of the same human family, brothers and sisters, aunts and cousins, elders and youth. By being here together, we confirm that we are a community, that we are not isolated in compartments of gender, culture, age, class, race, socio-economic status separating us, robbing us of the gifts each of us have to offer.

I was asked to be here to talk about my work as the first Ombudsman of the City of Toronto. My job is to help the people of Toronto in their right to be treated by the City and its programs and services fairly, courteously, without bias or discrimination.

We are a creature of Ontario legislation, a part of the *City of Toronto Act*. I am independent of the public service reporting directly to City Council. We are here as a place of last resort for residents to turn to when all else has failed, when people have tried to resolve complaints with the City and have been left dissatisfied with their results.

The Ombudsman concept involves the public, on the one hand – who calls upon us for assistance and the civil service on the other hand. We are squarely in the middle – impartial – with no vested interest in the outcome of a complaint except that the public was treated fairly by the City’s civil service. My role is to provide that ‘check and balance’ – to even the playing field between citizens and their government.

The Ombudsman’s services are offered at no cost, and are completely confidential. We are accessible, wanting to be of service especially to those persons who are most vulnerable to mistreatment.

When Ed Gaigalas extended his invitation and asked for a title I said quickly, “Fairness: our rights and responsibilities.”

It is easy for all of us to feel we have a right to be treated fairly, and we each have a pretty good idea of how fairness is supposed to be defined. I suspect that if there are 50 people here, we would get 50 different definitions. But if I ask a different question: How can we ensure in our own relationships that we treat others fairly? You might even find the question offensive. Fair? Of course I’m fair. Always. To everyone. Right.

It is always much 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.

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

A view on fairness can range from an intuitive understanding of unfairness to a deeply held personal conviction or the familiar refrain of "but that's not fair!" Is it fair that a main road is ploughed before the street on which I live? Is it fair that someone is treated differently than others? Even though that person is in circumstances where special treatment is . . . well, is fair?

An Ombudsman looks at fairness in public administration in a number of ways.

First, 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, the person is building the information that will influence their decision. Was there legal authority to make the decision? Was the decision based on relevant information? Was the decision maker biased?

Second, we look at procedural fairness – that is the process by which a decision was reached. Procedural fairness concerns how the decision was made – the steps to follow before, during and after a decision is made.

Procedural fairness is about the processes that are followed leading up to a decision being made.

- Was the complainant given enough information?
- Was the complainant given an opportunity to make his or her case?
- Did the decision maker give reasons why a particular decision was made?

Third, we look at the practice of equity in reaching a decision. Equitable fairness has to do with how we treat parties to a complaint. It is about ensuring that people are treated fairly, not necessarily identically.

- Was the process inclusive?
- Were issues such as power or marginalization considered?
- Was the agency approachable?

We are often told that fairness means treating everyone the same. They say treating people differently is unfair, discriminatory. If some people are more negatively impacted than others, well that's the way the ball bounces!

With that thinking, if we have treated everyone equally, we are relieved of any responsibility for the results – "just doing my job!"

Equitable fairness means that people and groups are treated differently according to their special situations in order that the results are fair and inclusive. While treating people differently may offend the principle of equality, ignoring differences may mean ignoring legitimate needs. Ignoring differences and refusing to accommodate them is a denial of equal access and opportunity. It is in fact discrimination.

To intend to be fair is important, but equity focuses on impact, on the results. Equitable fairness challenges us to move from providing the same service to everyone in the same way and instead providing services differently according to each person's needs, circumstances and social location.

In virtually every interaction, the realities of power and privilege intersect; and the dynamics that flow as a result must be reflected on, acknowledged and accommodated if equitable fairness is to be achieved. People expect to be treated fairly in their dealings with government. It is also often a requirement created by law.

Fairness is about common sense and it is about good business because it reduces disagreements, engenders public trust and creates confidence in those who have the power to make decisions.

Fairness: substantive, procedural and equitable.

*Substantive fairness* concerns the fairness of the decision itself.

*Procedural fairness* concerns how the decision was made.

*Equitable fairness* relates to how the person was treated in the process, how the person feels about the process itself and about the outcome.

It is the Ombudsman's task to evaluate the decisions and actions or omissions of the Toronto public service, its agencies, boards and commissions.

Each complaint is considered on its own merits. The Ombudsman reviews complaints to determine whether individuals have received fair and equitable treatment and whether there are broader systemic issues which must be addressed. If concerns are identified in the course of an investigation recommendations may be made that go beyond the specific issues raised by the complaint.

So yes, each of us has a right to be treated fairly.

The other side of the coin is that each of us has a responsibility to treat others fairly. What does that mean in real life? Everyone personally affected by a decision should be

given adequate, proper and timely notice in plain language by the decision-maker: notice that a decision is going to be made; why a decision is necessary; how the decision might affect the person; what information will be considered, what criteria will be used, what rules, procedures or requirements will be considered.

Anyone personally affected by the decision should be able to present their point of view, and to respond to facts presented by others which will be considered by the decision-maker. Decisions should be reached objectively, with due respect for relevant facts, and without bias. All persons should be treated equitably, with due respect for differences, circumstances and needs.

Existing policies, guidelines, procedures and rules should be followed consistently. Consistencies should be justified and explained. The decision should be provided to anyone personally affected. Adequate reasons to explain how and why the decision was made should be given to anyone personally affected. Anyone personally affected should be appropriately notified of any appeal/objection which can be made against the decision and of any limits to the appeal. The process should be completed in a timely fashion.

There should be sensitivity to the economic reality that people with limited financial or personal resources may be at a disadvantage in presenting their cases. Efforts should be taken to redress any imbalance created by such disadvantage.

All decisions should be in clear, plain language, presented in a courteous, respectful and sensitive manner. That is the challenge for all of us in all of our relationships.

That is fairness seen from both ends of the telescope: being treated fairly as our right, treating others fairly as our responsibility.

I leave you feeling charged by what you are doing at here, by feeling your presence, energy and commitment. I know you will continue to draw strength in your unity, your commitment, long after this AGM is over.

Thank you for your invitation.