

Notes for Remarks

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The Optimal Internal Complaints System

Thank you for the kind invitation. I am delighted to be here to talk about optimal human rights programs. I'd like to focus my remarks on best practice in designing and running corporate complaints programs in a general sense before we address the specifics of a human rights scheme within an organization.

Your invitation is timely as I work with the City of Toronto's administration to help them in making sure their internal complaint systems are robust, accessible and clear to the public. The litmus test for individuals about the value of a service - private or public sector - is how well things work when a problem arises. That's why retail companies spend so much time telling you how great their "returns" policy is even before you buy the product. Because things do go wrong. Plain and simple. People understand that...what they don't understand is why it seems difficult to fix them.

Before I embark on setting out principles of good complaint handling, I ask your indulgence in taking a side road to briefly describe my role at the City so that we can draw on one another's experience in our subsequent discussion. I have been appointed as the City of Toronto's first Ombudsman, an Officer of City Council, reporting directly to it. The position was established by the Ontario Legislature through the *City of Toronto Act 2006*. This legislation provides the investigative powers, authority and jurisdiction for our work.

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 the City, its agencies, boards, and commissions. I can initiate an investigation on my own motion when it is in the public interest to do so. Examples of this might include systemic or system-wide problems. City Council may also refer issues to me for investigation and subsequent recommendations.

The Ombudsman concept involves the public, on the one hand, who calls upon us for assistance, and government on the other, which must be accountable and prepared for public scrutiny. So we are squarely in the middle. The process used by the Ombudsman means both parties must deal with the same set of facts. If early-on, the public service agrees it may have acted improperly, a lengthy investigation may not be necessary - the parties can then agree on a resolution which is acceptable to them.

I have learned that time spent at the outset in making sure an issue is clearly identified and stated reaps great benefits in each succeeding step. We will take responsibility to determine which issues are straightforward and capable of prompt resolution, and which are more appropriately dealt with by thorough investigation and formal processes. The informal approach is likely to be productive only if we can answer these questions in the affirmative: is there flexibility? Is there a feeling of urgency? Is there willingness to compromise?

So I digress. Back to principles of good complaint handling! Every scheme has to have its own standards and processes that meet the needs of the people and organizations that use them. That said there are key values that should be consistent across the board, whether in the public or private sector: independence of judgement, confidentiality, accessibility, accountability, proportionality, effectiveness, fairness and impartiality. Getting it right is probably the first order of business.

What do I mean by this? To be effective and have credibility, a program has to have clear jurisdiction and reporting relationships, demonstrable independence and authority, be knowledgeable about its work and have adequate powers. The elements would include good internal planning processes, published values, objectives and work plans. These help the scheme to be seen as consistent and rigorous in its approach to its mandate.

An optimal complaints program requires strong and effective leadership. That means senior managers must own both the complaint handling policy and the process. They must ensure effective governance arrangements underpin and support the complaint system. Senior executives need to give priority to complaint handling and develop a culture that values complaints in a way to make things right and improve service. It is essential to explain why the scheme exists and what it can do so that potential complainants and respondents know what to expect.

Behind this and at the core of a 'best practice' program is education. Clarity about what can be achieved and what is possible is critical to an understanding of the program you run. If you can't help someone, providing realistic alternatives is important.

It takes courage to complain. Most of us, especially those of us who are marginalized or front line workers, do not come forward easily and when we do, we want the problem fixed; we don't want it dragged out in a public forum. Staff should be properly equipped, supported and authorized to put things right and to do so quickly where something has gone wrong. Complaint handling can be difficult and complainants are not always courteous to staff. There should be clear guidelines to support staff in dealing with complainants who exhibit unacceptable behaviour and access to advice if required.

So in getting it right we need clarity of purpose, leadership, clear objectives, clear communications and well articulated processes that are consistent and transparent to the public. Iterative and formal evaluation that includes complainant feedback is part of a program's best practice...an element too often left for another day.

The next area I would look at is what I'd call the accessibility imperative which includes flexibility, openness and transparency. To meet this bar requires that the complaints program is well publicised, free to use, open and available. Openness

and transparency in relation to what the program does, how it does it and what results it achieves is fundamental to accountability. That also increases public confidence in the scheme. Transparency has its risks in that weaknesses can be exposed but being open to public scrutiny is a hallmark of accountability and good governance. So publishing your internal policies and procedures is important. The organization itself should be referring potential complainants and making it as easy as possible for people to access the program.

A complainant's personal circumstances and social location cannot create a barrier to service. It cannot but it often does. A complaints program must do more than just meet the legal requirements of accessibility. It must in fact treat its complainants with equity, finding them where they are in order to achieve an equal and fair result.

In dealing with complaints, all programs will be faced with choices: choices on the kind of process to apply, the resources for the task and the kind of resolution, if appropriate, to be considered. This involves an assessment of the complaint and a response to it. Some complaints may be straightforward and solved through informal means, shuttle diplomacy or some form of mediation. Others may be complex or systemic in nature requiring extensive investigation. The depth of the effort, whether investigative or early resolution in nature - and the time taken must be proportional to the seriousness of the allegation. However, the standards, quality of review or investigation should remain constant. Procedures should be in place to assure quality and audit processes.

We know that it is better for both the complainant and the organization to resolve problems as quickly as possible – and we should do so wherever appropriate. That said everything we do needs to be well documented and analysed. Natural justice and due process must be observed, including appropriate opportunities to comment on facts and conclusions.

Final determinations have to be done in such a way that that enables everyone concerned to understand the evidence, the application of rules and policies and the reasons for any conclusions reached. Complainants must be told whether decisions can be challenged or the service they received can be complained about.

Providing fair remedies is an integral part of good complaint handling. Redress should be proportional to the degree and nature of the failure or injustice suffered. It is essential that complainants are given realistic expectations about what you can achieve in the program. In many cases, an early apology can lead to quick resolution. Apologising is not an invitation to litigate or a sign of organizational weakness. Sometimes remedial action is required. Are you in a position to orchestrate a financial redress?

Remedies sometimes have to take into account any injustice or hardship resulting from pursuing the complaint as well as from the original dispute. It's also important to consider the future consequences of outcomes, for example, the impact on relationships within the organization for the complainant and others.

Good complaint handling is not just about providing the complainant with a remedy. It is also about making sure that feedback and learning contribute to service improvement. Learning from complaints is a powerful way to improve public service. It enhances the reputation of the public body and increases the trust among the people who use the service.

Achieving service improvement is predicated on relationships with the organization that are respectful, even handed and trustworthy. Such relationships have not only to be worked at but nurtured through education and an abiding fairness in our approach to all complaint handling. This means being as responsive to the organization as the complainant. It means being impartial until all the evidence is established and only then advocating for change or redress. Crusaders in my experience don't work successfully within public service bodies!

By way of a concluding comment, I would say that the optimal program must report to the most senior executive, with the organization's leadership championing the program as the right thing to do and part of good business. Education and its concomitant service improvements must be continuous. That means learning and evaluation are an integral part of the program. The scheme itself must be, on the one hand, confidential in its content but on the other hand, completely transparent in its processes.

In the final analysis it's about results so the program's success is predicated on highly skilled staff, adequate funding and appropriate authority. Thank you for listening. Let's begin our discussion now.