

FAIRNESS BY DESIGN

An Administrative Fairness
Self-Assessment Guide



OMBUDSPERSON
BRITISH COLUMBIA

Special Report No. 52 | December 2022
to the Legislative Assembly of British Columbia

As an independent officer of the Legislature, the Ombudsperson investigates complaints of unfair or unreasonable treatment by provincial and local public authorities and provides general oversight of the administrative fairness of government processes under the *Ombudsperson Act*. The Ombudsperson conducts three types of investigations: investigations into individual complaints; investigations that are commenced on the Ombudsperson's own initiative; and investigations referred to the Ombudsperson by the Legislative Assembly or one of its Committees.

The Ombudsperson has a broad mandate to investigate complaints involving provincial ministries; provincial boards and commissions; Crown corporations; local governments; health authorities; colleges and universities; schools and school boards; and self-regulating professions and occupations. A full list of authorities can be found in the *Ombudsperson Act*. The Office of the Ombudsperson responds to approximately 8,000 enquiries and complaints annually.

Under the *Public Interest Disclosure Act* the Ombudsperson investigates allegations of wrongdoing from public sector employees and former employees in or relating to a public body covered by the Act as well as allegations of reprisal.

Our Public Authority Consultation and Training Team offers educational webinars, workshops and individual consultation with public bodies to support fairness and continuous improvement across the public sector.

For more information about the B.C. Office of the Ombudsperson and for copies of published reports, visit www.bcombudsperson.ca.



OMBUDSPERSON
BRITISH COLUMBIA

December 2022

The Honourable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Special Report No. 52 *Fairness by Design: An Administrative Fairness Self-Assessment Guide* to the Legislative Assembly.

The report is presented pursuant to section 31(1) of the *Ombudsperson Act*.

Yours sincerely,

Ombudsperson
Province of British Columbia



Our office is located on the unceded traditional lands of the Lək̓ʷəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the Indigenous Peoples within what we now call British Columbia. We honour the many territorial keepers of the lands and waters where we work.



MESSAGE FROM THE OMBUDSPERSON

Public service organizations aim to carry out the myriad functions they perform in society effectively, efficiently and fairly. The public, and Ombudspersons across Canada and around the world, expect certain specific fairness standards to be met when services are delivered. These standards include clear information and explanations for decisions, assurance that procedures and policies are followed, respectful treatment and timely action if mistakes are made to name a few. These are some of the key pillars of administrative fairness – pillars that are critically important to embed into policies and programs not only at the delivery stage, but from the outset when approaches to service delivery are being designed.

In order to ensure public bodies are meeting standards of fairness, in 2019 the Canadian Council of Parliamentary Ombudsman comprised of Canada's provincial and territorial parliamentary Ombuds, issued the first edition of *Fairness by Design: An Administrative Fairness Self-Assessment Guide*. This practical self-assessment tool allows organizations to critically examine both existing and future procedures and practices to strengthen principles of fairness before problems occur. There are many benefits of taking the time to assess fairness within organizations including increasing public confidence, reducing the number of complaints a public body may receive and enabling the resolution of issues more quickly and efficiently, saving both time and money.

And now in 2022 this second edition includes enhanced resources including practical tools such as a fairness assessment checklist, quick references to fairness standards and more information about how to apply an equity lens when developing policies and practices. The goal of this guide is to empower public bodies to look deeply at fairness within their own organizations and identify areas where they can do better.

I would like to thank my Ombuds colleagues across Canada for their insight and input in collaboratively creating this tool that will be available to public organizations in British Columbia, and across Canada. And thank you as well to public bodies in British Columbia for their feedback on the first version of this tool. Using this updated resource will ensure that fairness is being widely promoted in our provincial and territorial public systems. The public is better served as a result.

Sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

FAIRNESS BY DESIGN

An Administrative Fairness
Assessment Guide

2022



Canadian Council of
Parliamentary Ombudsman

Conseil canadien des
ombudsmans parlementaires

A Message from the CCPO

This Fairness by Design guide is an assessment tool that can be used by public organizations across Canada to ensure they have fair decision-making processes and are fair in the design and delivery of their programs. The guide was developed by the Canadian Council of Parliamentary Ombudsman (CCPO). The CCPO is comprised of provincial and territorial Ombudsman (Ombuds) whose mandate is to ensure people are treated fairly in the delivery of public services.

Public organizations can use this guide to ensure their policies, programs and practices are consistent with administrative fairness standards. By following these fairness standards when reviewing or developing public programs, policies and procedures, those who deliver public services are more likely to achieve fair administration and excellence in service delivery. The CCPO encourages all public organizations to regularly review their policies using these fairness standards and invites proactive engagement and consultation with our offices to help build fairness into the design of their programs.

The first edition of this guide was issued in 2019. We are pleased to share this updated and revised second edition.

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INTRODUCTION

Using this Guide

How can you ensure your organization delivers its programs and services fairly and meets the public's expectation they will be treated fairly? You can do this by building fairness into your policies and programs from the start by designing your systems to support fairness in decision making and service delivery. Existing programs should also be evaluated regularly to ensure fairness.

This guide can be used to assess the fairness of your organization's systems, policies and practices. Fairness assessment requires a critical examination of existing and proposed systems and policies, taking steps where needed to revise processes to ensure they are administratively fair. This includes assessing whether your organization is meeting fairness obligations set out in your governing legislation, provincial and territorial Ombuds legislation and administrative law fairness principles, and also meeting broader societal fairness standards.

This guide provides seven fairness standards your organization can use to evaluate and ensure you are meeting your fairness obligations. Included in the guide are examples of what these standards look like in action and two practical resources to support you in implementing these fairness standards: a fairness self-assessment checklist and a one-page overview of the fairness standards.

As you evaluate your organizational framework using this guide, we invite you to think critically about the areas in your organization where gaps may result in unfairness, and use the guide and two resources provided to help identify those gaps and seek improvement where needed.

Benefits of fairness assessment

- ☐ **Demonstrates a commitment to fairness, which can increase public confidence in your organization**
- ☐ **Supports fair decision making and service delivery by your organization**
- ☐ **Gives your organization's employees confidence they are treating the public fairly**
- ☐ **May reduce complaints, improve stakeholder satisfaction and improve staff morale**
- ☐ **May enable public bodies to resolve issues more quickly and efficiently, saving time and money.**

What is Fairness?

Although we all may have an instinctive sense of what fairness is, it can be a difficult concept to define, and there are often different views of the requirements of fairness in any particular case.

In this guide, we focus on the three aspects of fairness shown in the Fairness Triangle below.



Fair Process

Public organizations must follow fair decision-making processes when making decisions that directly impact a person, group of people or organization. This includes meeting the duty of procedural fairness owed to those impacted by a decision. The duty of procedural fairness has two key elements:

1. **Right to be heard:** Those directly impacted by a decision should have an opportunity to understand and meaningfully participate and be heard in the decision-making process.
2. **Right to an impartial decision maker:** The decision maker must have an open mind, be unbiased and not prejudge the decision they will make.

Fair Decision

Public organizations must make fair decisions. Fair decisions follow the applicable rules, consider the individual circumstances and case, are equitable and reflect a fair exercise of discretion. Your organization should ensure it has policies and processes that support making fair decisions.

Fair Service

Public organizations must treat people fairly. Fair service is about how people are treated when they access public programs and services. It includes ensuring your organization provides respectful, accessible and responsive service and is accountable to the public it serves.

FAIR PROCESS STANDARDS

Fairness Standard 1: Participation and Being Heard

Overview

As part of your organization meeting its duty of procedural fairness, ensure that your decision-making processes provide opportunities for individuals to meaningfully participate and be heard when you are proposing actions or making decisions that impact them.

Why participation and being heard matter

Decisions made by public organizations can significantly impact people: This means people affected by a decision should be given information so they can understand the decision being made and meaningfully participate in the decision-making process.

Necessary to making a fair and informed decision: Decision makers need to hear from and gather all relevant information from those impacted by their decisions to make a fair and informed decision.



1.1 Advance notice of an action or decision

- ☐ As part of your organization's decision-making processes, ensure that people and organizations are notified in advance when a decision will be made that will directly impact them.
- ☐ Establish the following for your organization's decision-making processes:
 - Process to ensure those impacted by the decision are notified about it, including how far in advance of the decision this notice should be provided. This time period should be consistent with any notice period set out in legislation.
 - Process for providing notice when urgent decisions must be made. Advance notice may not be possible in urgent circumstances, but must still be provided when required by law. Where advance notice is not possible, the person should be notified as soon as possible about the decision.

How much notice?

The length and nature of notice given before a decision is made will depend on the decision being made.

Generally, the greater the impact and importance of the decision to those affected, the more advanced notice is required and the more information about the decision and decision-making process should be provided.



1.2 Adequate information about the decision being made and the decision-making process

- As part of your organization's decision-making processes, ensure those impacted by a decision are provided understandable information about the following:
- the nature of the decision to be made
 - the decision-making criteria
 - the decision-making process that will be used to make the decision
 - information about what evidence and information the person should provide so an informed decision can be made

In Action: Ensuring participation in the decision-making process

A student applying for a government student loan calls with questions about her application. The agent she speaks to explains to her the basics of the application process, including the eligibility criteria, what information and evidence she needs to provide to establish her eligibility and timelines for applying, and directs her to their website to learn more.

The student now better understands the eligibility criteria for funding and what steps she needs to take to provide the information necessary to determine her eligibility for a student loan.

1.3 Opportunity to be heard

- Decision-making processes should include an opportunity for those directly impacted by the decision to be heard and present their information, evidence and views in support of their position. The extent of the opportunity to be heard provided is flexible and variable and depends on the circumstances of the decision being made and the impact and importance of the decision to those affected by it. The opportunity to be heard provided may include:
- providing access to the information and evidence the decision maker will rely on to make the decision, particularly where it may lead to an unfavourable decision. This is so the person may prepare and provide a response to this information.
 - providing an opportunity to respond to the information and evidence the decision maker is considering, and provide any supplemental or contrary information relevant to the decision.

In Action: Providing an opportunity to be heard

A decision whether to grant a special event permit by a local government generally requires providing the permit seeker a chance to submit written information explaining how they meet the permit requirements.

A disciplinary decision at a correctional centre that may result in an incarcerated person being held in separate confinement requires a formal disciplinary hearing.

1.4 Communicate and document reasons for decisions

- Develop policies and procedures that ensure decisions are clearly communicated to those impacted by them. This includes providing those impacted by the decision an explanation of the decision that is understandable and meaningful to them. See section 4.1 and 4.3 of this guide for more on how to make and communicate fair and reasonable decisions.

Why explain decisions?

- It helps people understand how and why decisions are made. This can support people to accept decisions and also allows them to determine if they wish to appeal the decision.
- It gives the decision maker a chance to check their reasoning and ensure they have made an informed, evidence-based decision and their reasoning is clear and complete.

- Reasons should be documented in accordance with statutory obligations and any organizational requirements.
- Develop template documents to assist staff to effectively communicate reasons for decisions. Reasons should generally include an understandable explanation of:
 - **The issue being decided**
 - **The facts based on the information and evidence considered:** this includes documenting what information was gathered and considered and any findings of fact made. It also includes demonstrating that those impacted by the decision were listened to and their information and evidence was considered when making the decision

In Action: The importance of reasons

A small business owner applies for a wage subsidy so they can hire an extra employee during their busy tourist season. They receive an email about a week later that says:

“We regret to inform you that you are not eligible for a wage subsidy this year because you do not meet the eligibility criteria. Thank you for applying.”

The small business owner is frustrated and feels unfairly treated because they don't understand why their application was found ineligible. They spent several hours on their application and believe they are eligible.

The reasons provided are not adequate because they do not explain how the decision maker made their decision. The reasons should have explained what the eligibility criteria for the wage subsidy were and how the person's information was considered when determining they did not meet the criteria. It should also have informed the person of any appeal or review options.

- **The decision-making criteria:** this includes referring to the applicable law or policy and any other rules used to make the decision
- **An explanation of how the law or policy was applied to the facts:** this includes how the decision-making criteria were applied to the facts to reach the decision. This may include discussing how evidence was weighed and relevant considerations in the decision-making process, and why more weight may have been given to one piece of evidence and why other evidence may have been given less weight or rejected
- **The conclusion or decision reached**
- **Any review or appeal options**



1.5 Timely decisions

- ☐ Establish a clear and reasonable time frame in policy for your organization's decision-making processes. The time frame may be found in legislation, but in the absence of legislated time frames, clear service standards for decision making should be established in your organization's policy or other guidance documents.
- ☐ Establish a process for addressing and responding to delays in decision making. This should include informing those impacted by the delay of the reason for the delay, any steps being taken to address it and when they can expect to receive the decision.

In Action: Tribunal timelines

A tribunal has to appoint a new decision maker unexpectedly so this delays a decision being made by three months. The tribunal notifies the parties to the hearing process of the delay and reasons for it. The tribunal also reviews its practices to determine if steps can be taken to reduce the likelihood of this occurring in the future.



1.6 Adequate appeal or review mechanism

- ☐ Ensure there are avenues available for people to seek a review of a decision they disagree with.
- ☐ Information about your organization's appeal or review process should be clearly explained to the person when the decision is made, including the grounds or basis for appeal, any applicable time limits for requesting an appeal or review, and any other requirements for seeking review of the decision.
- ☐ Develop processes that ensure staff provide clear and meaningful reasons for appeal or review decisions and consistently document the rationale for their decisions. These reasons should include information about any additional internal or external appeal or review options that may be available.

What is an appeal or review?

- An appeal or review process may be formal or informal and provides a way to check that decisions made are fair and reasonable.
- When a person impacted by a decision disagrees with it, they generally should be able to request the decision be reviewed and submit supporting information about why they think the original decision was wrong or unfair.
- A decision maker who was not involved in making the original decision then determines whether there are any procedural or substantive errors that warrant reconsidering or changing the original decision, or asking the original decision maker to make a new decision.

In Action: Appeal granted

A person's application to be registered by their professional college was denied. When the person reviewed the decision, she believed the decision did not consider specific evidence she provided of her professional credentials and experience.

She successfully appealed the decision. On appeal, the decision maker noted that the original decision maker did not appear to have reviewed all of the person's evidence and on review, the evidence demonstrated the person met the requirements to be registered by her professional college.



1.7 Training on procedural fairness

- ☐ Provide staff with regular training in procedural fairness, standards for documenting and communicating reasons, and other topics relevant to ensuring meaningful participation for those affected by your decisions.

Fairness Standard 2: Impartiality and Integrity

Overview

Public bodies are responsible for ensuring employees understand the requirement to be impartial, act with integrity, and exhibit the highest standards of ethical conduct in the delivery of public programs and services. Public sector employees are expected to provide advice, deliver services and make decisions in a manner that is free from personal interest, preference or prejudice.

Why integrity and impartiality matter

Supports public confidence in your organization's decisions:

When the decision maker is and appears to be impartial, unbiased and free from any conflict of interest, this supports public and individual confidence in and acceptance of decisions.

Supports making fair decisions: Decision makers who act with integrity and impartiality are more likely to make fair decisions based on relevant facts and evidence and in accordance with the applicable rules. These decisions are less likely to be seen as arbitrary or based on irrelevant grounds.



2.1 Conflict of interest policy and training

- Establish a conflict of interest policy to prevent, manage and mitigate perceived, potential and actual conflicts. This includes a process for assessing, responding to and resolving concerns raised by the public about conflict of interest on the part of staff.
- Ensure all employees receive training on the conflict of interest policy and periodically review and sign off that they understand the expectations with regard to declaring a conflict.

2.2 Impartiality and bias policy and training

- Develop a process in policy for assessing and responding to concerns raised by the public about bias or lack of impartiality on the part of staff who are making decisions or delivering services. Establish procedures for assessing, responding to, resolving and mitigating such concerns.
- Provide staff who make decisions that directly impact people with training on impartiality and unconscious/implicit bias. This includes the obligation to assess, disclose and respond appropriately to issues of actual or perceived bias on their part.

Conflict of interest is different than bias

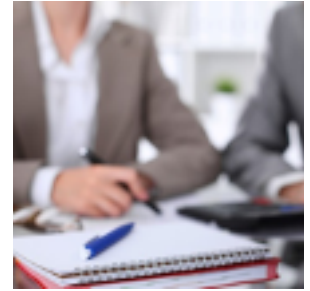
The element of financial or personal gain is what distinguishes conflict of interest from bias.

A conflict of interest arises when an individual's duty to act in the public interest is or may be affected by their personal or financial interest. Where a decision maker identifies a clear conflict of interest in a matter under consideration, they must declare this and refrain from influencing or participating further in the decision-making process.

Bias has been defined by the courts as "a leaning, inclination, bent or predisposition towards one side or another or a particular result" (*Wewaykum Indian Band v. Canada*, 2003 SCC 45 at para 58). Bias is the idea that at the outset, before gathering all the information and evidence required to make an informed decision, the decision maker is already leaning one way or another in terms of the decision they will make. If a decision maker determines they have a bias (actual or perceived) that impacts their ability to be impartial, they should step aside and another decision maker should make the decision.

2.3 Independence of reviews and appeals

- Establish a review or appeals policy that ensures that an independent decision maker is assigned to conduct any review or appeal of a previous decision. For the review of a decision to be fair and seen to be fair, it is important that the person reviewing the decision was not involved in the original decision. This supports an unbiased and objective fresh second look at the matter that is not influenced by the original decision maker.



2.4 Ethical and professional conduct

- Ensure that your organization has systems and policies in place that promote ethical and professional conduct by your staff and organization, and that these expectations are clearly communicated to all employees. This includes training staff in the ethical standards that are expected in your organization.
- Develop and regularly review a code of conduct policy that sets out the expectations for ethical conduct in your organization and creates a shared understanding of the standards your staff are expected to apply in their work. Ensure all employees in your organization review and sign off that they understand these standards of conduct.
- Develop systems to identify, disclose, investigate, record and monitor any code of conduct or ethical concerns or incidents of ethical misconduct that may arise. Ensure these systems comply with public interest disclosure legislation in your province or territory.

FAIR DECISION STANDARDS

Fairness Standard 3: Lawful and Fair Rules

Overview

Ensure your organization establishes and follows lawful and fair rules and decision-making criteria.

Why lawful and fair rules matter

Having fair rules and criteria is necessary to make fair decisions:

Unfair rules and decision-making criteria lead to unfair decisions and outcomes. The rules that are used to make a decision must be fair for the decision itself to be fair.

For rules to be fair they must be lawful: Fairness requires following the law. To ensure fairness, your organization's rules, including policies and decision-making processes, must be consistent with and follow any applicable laws.



3.1 Meet legal requirements

- Ensure compliance with the laws that apply to your programs, services, and decision-making processes, including any governing legislation, administrative law, human rights legislation and the *Canadian Charter of Rights and Freedoms*. To ensure compliance with the law, seek legal, policy and any other advice as necessary. Consider and ensure the following:
 - **Policies and rules must be lawful:** All rules, including policies, procedures and eligibility criteria, must be consistent with the legislation that your program or service operates under, including its intended purpose.
 - **Explain legislative framework:** Ensure policies and procedures explain the legislative framework that your program or service operates under and any legal requirements that must be met.
 - **Define the decision maker and the scope of their legal authority:** Make sure your policies and procedures identify who has legal authority to make specific decisions or take certain actions within your organization. This includes ensuring there is a process in place for the delegation of statutory decision-making power, and clearly outlining the scope and limits of that authority.
 - **Policy should not restrict discretionary power granted by legislation:** Ensure rules and eligibility criteria set out in policy are not more restrictive or burdensome than the governing legislative scheme. See section 4.2 of this guide for more on the fair use of discretion.
 - **Decision-making processes must be procedurally fair:** Decision-making processes must be designed to meet the duty of procedural fairness discussed in the Fair Process section of this guide.

In Action: Unlawful eligibility criteria

A public organization is offering grants to support homeowners to increase the energy efficiency of their homes. The legislation setting out the grant eligibility criteria says the homeowner must submit a quote for the work to be done. In practice, the organization also requires homeowners to submit a history of any other energy efficiency grants they previously received and has adopted a practice of denying applicants who have received a similar grant within the previous two years. The public organization is acting outside its legal authority by imposing an eligibility criterion not required by the legislation.

3.2 Fair rules and decision-making criteria

□ Your program's rules and decision-making criteria must be fair and just. Fair rules and decision-making criteria are:

- **Not arbitrary:** Your organization's decisions and actions should be reasonably tied to the rules, criteria and standards that apply in order to avoid appearing arbitrary.

To be arbitrary is to decide randomly, based on personal opinion or preference, or without regard to applicable rules or standards. Rules and criteria must provide a clear basis for decision making that is logical, understandable and meets the program objectives. When the legislation or policy sets out rules or criteria to apply, these should generally be applied consistently so that similar cases are treated in a similar way.

- **Not oppressive or unreasonably burdensome:** People should not experience unreasonable, burdensome requirements to access your organization's services or benefits.

A rule is oppressive if it overburdens a person seeking access to a process or legal entitlement, imposes unreasonable requirements on a person, is punitive or onerous, or results in an exercise of power by the public body that places the person at an unreasonable disadvantage.

- **Not improperly discriminatory:** Ensure your organization's rules are not improperly discriminatory. When delivering public services, to achieve the purposes of the program or service, public organizations are sometimes required to discriminate, in the sense of making distinctions between different people.

Making distinctions between people becomes *improperly* discriminatory when it distinguishes between people based on personal characteristics (e.g. race, disability or religious belief) in a manner that is contrary to human rights legislation.

Improper discrimination also occurs when the discriminating criteria is not reasonably required to meet the overall purpose of the legislation, program or service.

In Action: Improperly discriminatory

Student loan programs typically only provide funding to applicants who can prove they are registered in post-secondary education. This is an example of reasonable or proper discrimination because it is necessary to achieve the program's purpose of supporting students to attend post-secondary education and it does not exclude people based on personal characteristics protected under human rights legislation.

If the eligibility criteria for a grant intended for all low-income students in a province or territory had the effect of excluding students with a disability from being eligible for the grant, this would be considered improper discrimination. This is because the objective of providing grants to *all* low-income students is not being achieved and the exclusion of students with a disability may be contrary to human rights legislation.

Fairness Standard 4: Reasoned Decisions

Overview

Ensure that your organization has policies and procedures in place that support staff to make informed and well-reasoned decisions.

Why making reasoned decisions matters

Supports fair use of a public organization's power to make decisions that impact people: With this power comes the requirement for decision makers to make well-reasoned decisions that are justifiable, transparent and understandable to those impacted by the decision.



4.1 Framework to support well-reasoned decisions

- Develop policy and guidelines that clearly explain the decision-making steps that should be followed when making decisions on behalf of your organization. This includes:
 - the legislation, policy and other rules to follow when making the decision
 - guidance on how to interpret and follow these rules
 - the scope of decision-making power and how to act within this power
 - the information and evidence that must be gathered to make an informed decision, and
 - how to fairly and equitably consider each individual case and circumstance when making a decision.
- Provide decision makers with the training necessary to make fair and reasonable decisions. This should include knowledge of all relevant legislation, policies and rules and any technical or sector-specific knowledge or expertise required to make a fair decision.



What is a decision?

A decision is an outcome, action, or response by a public organization that directly impacts one or more people or organizations.

Decisions include administrative decisions made by public sector employees under specific legislation, as well as other decisions such as how to respond to a complaint or assess a general service request.

There are generally greater fairness requirements for administrative decisions, but fairness principles should be applied for all decisions where those decisions directly impact people or organizations.

4.2 Fair use of discretion

- Provide staff training and guidance on exercising discretion fairly.
- Policies and guidelines may be adopted to support decision makers to exercise their discretionary power. However, these policies and guidelines must not fetter or restrict the exercise of the full discretionary power granted to the decision maker by legislation and must not be more rigid than or contrary to any legislation that applies. Where applicable, staff should be informed of expectations to seek supervision or to consult with senior staff regarding the exercise of discretionary power.

What is discretion?

Discretion is the element of choice in decision making. It requires using professional judgment and expertise to decide based on the individual case and circumstances and in accordance with any applicable legislation. Exercising discretion fairly requires decision makers to make decisions:

- consistently with any legislation that applies. This includes being consistent with goals and purpose of the legislation and the purpose for which the discretionary power was granted
- independently based on the merits of the case or situation. This includes avoiding adopting policies and practices that lead to a rigid, one-size-fits-all approach to decision making that restricts or fetters the decision maker's discretionary power
- in good faith. The decision must not be based on any improper intent or hidden motive, or be made to achieve a purpose unrelated to the decision-making criteria in the applicable legislation
- based on relevant considerations and not on any extraneous or irrelevant considerations that are not set out in the decision-making criteria

In Action: Fettered discretion

A tribunal's legislation says it may establish non-binding guidelines for its hearing process. It also provides that tribunal members who hear cases may do anything they consider necessary to provide a fair hearing to participants. The tribunal's guidelines state hearings are held in-person.

About two months before a hearing, one of the participants requests the hearing be held by video because they have moved and do not have funds to travel to attend the hearing. The tribunal member denies the request saying the guidelines require the hearing to be in-person. The tribunal member may be fettering their discretion because they have deferred to the guidelines rather than considering the participant's request in light of their authority to do what they consider necessary to provide a fair hearing.

4.3 Reasonable decisions

- Ensure your organization's policies support staff to make reasonable administrative decisions. Administrative decisions generally must meet the legal test of reasonableness set out in administrative law.¹ Reasonable administrative decisions are justifiable, transparent and intelligible to those impacted by them.
 - **Justification:** Considering the legislation and other rules that apply and the particular facts and context of the matter being decided, the reasons given for the decision should justify the outcome.
 - **Transparency:** The reasoning and chain of analysis used to make the decision should be clear to those impacted by the decision.
 - **Intelligible:** The decision can be understood by those impacted by it.

Decision makers should demonstrate given the circumstances and facts of the case and the rules that apply that both the reasoning used to reach the decision and the outcome itself are reasonable.

Legal advice should be obtained to ensure decision makers are supported to make decisions that meet the legal test of reasonableness (or correctness, where applicable) in the context of your organization's decision-making framework.

Ensure decision makers demonstrate justification for decisions

A common pitfall in decisions is a lack of justification for how a decision maker reaches their conclusion on a matter. This can happen when the decision maker relies too much on implied reasoning, and fails to identify how they got from one step to the next in their chain of analysis. One way to avoid this is to ensure decision makers show their thinking when communicating decisions by clearly explaining how the information and evidence gathered was considered in the context of the rules that apply.

In Action: Reasonable decisions

A person who receives income assistance applied for a crisis supplement to pay her heating bill. Because of a late spring cold snap, her bill was unexpectedly \$75 more than usual. She received an email from the government ministry stating: "Your request for a crisis supplement has been reviewed. In your circumstances, we have decided you do not meet the eligibility criteria for a crisis supplement and your request is denied."

This is not a reasonable decision because the decision maker did not provide justification for the decision and did not provide a transparent and understandable explanation of the decision. The decision maker should have provided the person a transparent and understandable explanation of how and why the decision was made. This includes explaining the decision-making rules and criteria and how these were applied to the information and evidence the person provided about their specific circumstances to reach the decision.

¹ In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 441 D.L.R. (4th) 1, the Supreme Court of Canada determined reasonableness is the presumptive standard for reviewing administrative decisions. It also found courts should use correctness as the standard of review in certain situations.

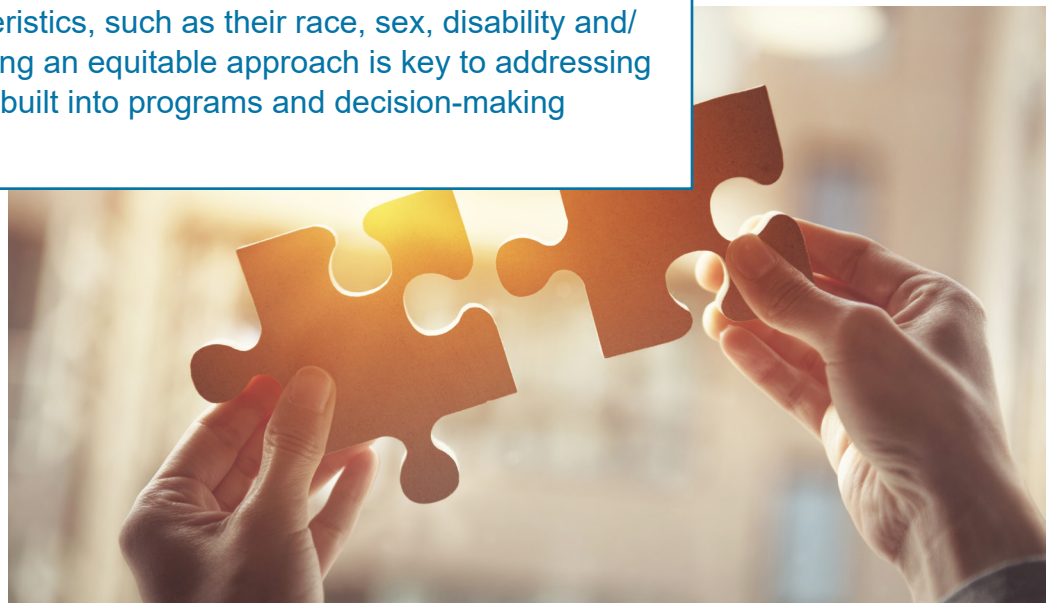
Fairness Standard 5: Equity

Overview

Develop policies and procedures that support equitable programs, policies and decisions that deliver equitable outcomes for all people and groups.

Why being equitable matters

Key to addressing existing inequities in public service delivery and decision making: All people should receive equitable and fair services and outcomes from public organizations. In Canada, institutional and systemic racism, ableism, sexism and other forms of discrimination exist in law, public policy and in our greater society. This means programs and decision-making processes, including those that may appear neutral and fair, may be inadvertently or purposely structured in a way that is inequitable and discriminatory. This leads to less favourable outcomes for certain groups of people because of their personal characteristics, such as their race, sex, disability and/or gender identity. Taking an equitable approach is key to addressing inequities that may be built into programs and decision-making processes.



5.1 Equity lens in program and policy development

- An equity lens should be used when developing or reviewing programs, policy and rules, including decision-making criteria. Using an equity lens requires considering whether people and communities may be unfairly treated differently based on their identity or personal characteristics. It requires your organization to consider whether your programs, policies and decision-making processes, in design or implementation, may intentionally or unintentionally lead to:
 - barriers to people receiving services or benefits
 - people being mistreated or excluded by your services
 - people receiving unfavourable decisions and outcomes based on their identity or personal characteristics
- Review existing eligibility criteria for programs and services to ensure they do not intentionally or unintentionally exclude people or groups or unfairly make it more difficult to meet program or eligibility criteria.
- Take proactive steps to ensure the benefits of your programs and services reach those who may have currently or historically not been treated equitably by your organization. This may include considering whether measures should be taken to address historical and systemic barriers particular groups or communities may face to access your organization's services.

Equity questions to ask

- Will the desired fairness and equity objectives and outcomes be achieved by the program, policy or legislation?
- Is our program and service fair given the circumstances of those groups, individuals or organizations we aim to serve?
- Will the policies or rules being developed unfairly or inadvertently exclude or lead to unfavourable outcomes for certain people or groups based on their personal characteristics?
- Do the eligibility criteria being used to make decisions unfairly advantage or disadvantage certain people or groups based on their personal characteristics?

What is equity?

Being equitable means taking steps to ensure the programs and services your organization delivers do not treat people unfavourably or lead to lesser outcomes because of their personal characteristics.

Why think about equity?

Considering equity in the development of your programs and policies will assist your organization to be fair to those your organization serves and to ensure all people receive the level and type of program and service they are entitled to. The goal should not be to treat everyone the same, but rather treat people according to their needs and circumstances and work to remove any structural barriers that impact people's access to public services.

5.2 Diverse and representative perspectives and approaches

- ☐ Your organization's staff recruitment and retention approaches should support creating and maintaining a diverse workforce. Your organization's staff should reflect the diversity of the population you serve.
- ☐ When revising or building your programs or services, seek input from a diverse range of people and perspectives in your community. The development of fair and equitable programs and services requires hearing from and incorporating the perspectives of the people and groups who use your organization's services.



Why are diverse perspectives important?

Every person has their own unique life experiences that shape their needs and expectations for receiving public services.

The meaning of fairness and justice can be shaped by personal characteristics, circumstances, worldviews and experiences. Hearing from and incorporating the perspectives from a diversity of people and groups will support your organization to deliver more equitable and effective services.

FAIR SERVICE STANDARDS

Fairness Standard 6: Accessibility and Responsiveness

Overview

Your organization's programs and decision-making processes should be accessible and responsive to all people and communities that use them. Establish processes and training programs that support respectful treatment and fair consideration of the needs and circumstances of all people in the delivery of your programs and services.

Why accessibility and being responsive matters

Everyone your organization serves should have timely and easy access to your programs and services: A diverse range of people access public programs and services. This should be accounted for in the design and delivery of your organization's programs and services. Administrative structure and policies should not present barriers to timely and easy access to your organization's services.



6.1 Accessible services and information

- Develop and implement a service model that is accessible to the diversity of people and communities who access your organization's services. This includes:
 - Create accessible, culturally safe and inclusive workspaces and services for your service users and staff.
 - Consider the needs and perspectives of the people who use your organization's services and seek their involvement and input when designing and delivering your service.
 - Ensure your service is accessible to and meets the diverse needs of those your organization serves, particularly those who may face barriers to accessing your service.
 - Minimize any unnecessary regulatory or administrative burdens to accessing your programs and services. It should not take unreasonable effort for members of the public to obtain the services and information they need from your organization.
 - Ensure understandable, plain language information about your programs, policies and decision-making processes is readily available to the people and communities served by your organization. This information should be accurate, complete, clear and understandable, and kept up to date. It should also be available in the languages of your service users. Additionally, translation and interpreter services should be made available in multiple languages, including local Indigenous languages where possible.
 - Offer access to your organization's services in a variety of ways, including online, in-person, by mail, fax and toll-free telephone line. Develop materials that explain your organization's services for people who do not have electronic access to such information (i.e., brochures, pamphlets, fact sheets).



- Ensure people can use the advocacy or support people and services of their choice when they access your organization's service
 - Conduct regular accessibility audits and reviews of your program and service delivery model to ensure any accessibility barriers are addressed. This should include regular surveys of program users to seek to understand and address any barriers they face to accessing your organization's services.
- ☐ Ensure your organization complies with any accessibility legislation in your province or territory.

6.2 Responsive service

- ☐ Train and support staff to provide responsive and people-centred service. This includes:
- Develop service delivery standards. This includes establishing reasonable timelines for delivering services, making decisions and responding to an enquiry or concern. Clearly communicate these standards to staff and the public who access your services.
 - Provide staff training and education on the service standards, rules and decision-making processes they are expected to follow in their work.
 - Develop policies and procedures that support delivering services in a way that reflects a trauma-informed approach and cultural humility.
 - Clearly and immediately communicate to staff about any policy and procedure changes that impact their work.
 - Support staff to provide timely service and avoid unnecessary delays in program delivery. Ensure any delay is explained to those impacted, including information about when a decision or service is expected to be provided. Efforts should be made to minimize any potential hardship resulting from the delay.
 - Develop policies and procedures that empower staff to respond efficiently and effectively to enquiries, requests and complaints.

Why have service standards?

Clear service standards can help manage expectations of those who are accessing your services, while holding the organization accountable for maintaining timeliness in service delivery. This demonstrates accountability and transparency on the part of the public body providing the service.

- Conduct regular education and training in issues relating to providing respectful, inclusive, accessible services. Training may include: trauma-informed practice, conflict resolution, administrative fairness, respectful communication, dealing with vulnerable persons, cultural humility, cultural fluency, mental health and responding to challenging behavior.

6.3 Indigenous perspectives

- ☐ Collaborate with Indigenous leaders and communities in the development and delivery of your organization's services, and ensure your services are respectful and accessible to these communities.
- ☐ Ensure your programs and services are designed in a manner that reflects and meets the Truth and Reconciliation Commission of Canada's [Calls to Action](#) and the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), along with any provincial or territorial legislation relating to UNDRIP.

6.4 Privacy and information management

- ☐ Ensure your information and records management system complies with the privacy and information management laws in your province or territory. This include ensuring your systems adequately protect personal information held by your organization from a privacy breach. It also includes training staff on their obligations under privacy and information laws and informing staff of their duties to protect personal information in accordance with the requirements set out in the applicable privacy law.



Fairness Standard 7: Accountability

Overview

Demonstrate accountability by developing a robust and accessible complaints process, and by fostering a culture of ongoing quality review and continuous service improvement.

Why accountability matters

Supports public confidence in your organization: Organizations can demonstrate accountability by proactively reviewing and addressing service delivery issues in their programs or policies. This supports public confidence in government and the broader public sector.

Ensures programs or policies that are not functioning well are fixed: Delivering services fairly includes fixing programs and services that are not working well. Accountable public organizations work to improve policies, programs and processes that are unfair, do not function properly, or fail to meet their intended objectives.



7.1 Seek continuous improvement

- Regularly review your organization's processes, including policy, procedures and guidelines to assess how they are functioning. This may include seeking the views of stakeholders on how well your program is operating and what could be improved. Following each review, develop an implementation plan that identifies what actions are to be taken, by whom and any applicable timelines.
- When a program, policy or other aspect of your organization is not functioning well, take steps to address the problem. This may include collaborating with staff and other stakeholders to determine the best solution.
- Keep staff informed of any continuous improvement initiatives, including any policy or practice changes that result from a review of a complaint.



7.2 Develop a complaint process

- Develop a complaint resolution policy and process, and encourage service users to provide feedback on your programs and services by establishing an organizational culture of valuing and welcoming complaints.
- Ensure your complaint process is publicly available and that your service users are made aware of and can easily access it. This includes providing information about how to raise a concern or complaint about your organization and how complaints are assessed.

Why complaints are important

- Complaints are an important form of feedback on how well an organization is doing in terms of its services, systems and staff. An effective complaints resolution process can help to restore trust after something has gone wrong and help organizations improve their services.
- For more information on how to set up a complaint process, refer to the BC Ombudsperson's [*Complaint Handling Guide*](#).

7.3 Track feedback and complaints

- ☐ Develop and implement a system for tracking complaints and compliments to capture feedback about your organization's systems and processes. Track the outcome of complaints and any changes or service improvements made as a result of complaints.
- ☐ Regularly review and share your complaint data internally with a view to seeking improvement in your organization's service delivery.

7.4 Support apologies

- ☐ Develop an apology process or policy that details the procedure to be followed and the events and circumstances in which your organization believes apologies should be given.
- ☐ Provide practical training to staff at all levels of the organization on the importance of apologies, and empower them to apologize when appropriate by providing information about when and how to issue an apology for a service issue identified.

How to give an effective apology

Key features of an effective apology include the 5 Rs:

- **Recognition:** a description and recognition of the wrong and acknowledgment of the harm caused
- **Responsibility:** an acceptance of responsibility for the problem
- **Reasons:** an explanation of the cause of the problem or promise to investigate the cause
- **Regret:** an expression of sincere regret
- **Remedy:** an explanation of what you and your organization are going to do to address the problem

For more information: Refer to the BC Ombudsperson's [*On Apologies Quick Tip*](#)

FAIRNESS SELF-ASSESSMENT CHECKLIST

This checklist can be used by your organization to conduct a self-assessment of the fairness of your programs, policies and decision-making processes. It highlights and links back to the key principles of the *Fairness by Design: An Administrative Fairness Self-Assessment Guide*. The checklist is fillable so you can note whether and how you are meeting each standard using the check boxes and fillable text box below each checklist.

ORGANIZATION:	
BRANCH/SERVICE:	
COMPLETED BY:	
DATE:	

Fairness Standard 1: Participation and Being Heard

Can those directly impacted by our organization's decisions meaningfully participate and be heard in the decision-making process?		
1.1	Do we provide advance notice of actions or decisions to those directly impacted by them?	<input type="checkbox"/>
1.2	Do we give adequate information about the decision being made and the decision-making process?	<input type="checkbox"/>
1.3	Do we ensure those impacted by the decision have an opportunity to be heard?	<input type="checkbox"/>
1.4	Are the reasons for decisions effectively explained and communicated and well-documented?	<input type="checkbox"/>
1.5	Do our policies and processes ensure timely decisions?	<input type="checkbox"/>
1.6	Do we have an adequate appeal or review mechanism?	<input type="checkbox"/>
1.7	Do our staff receive regular training on procedural fairness?	<input type="checkbox"/>
Have we implemented this fairness standard? Describe how below.		

Fairness Standard 2: Impartiality and Integrity

Do we support our staff to act with integrity and be impartial?		
2.1	Have we established a policy that effectively manages any potential or actual conflict of interest and trained staff on the policy?	<input type="checkbox"/>
2.2	Do we have a policy established to ensure impartial and unbiased decision making and have we trained staff on impartiality and bias?	<input type="checkbox"/>
2.3	Do we ensure independent decision makers are used for reviews and appeals of decisions?	<input type="checkbox"/>
2.4	Do we promote and support ethical and professional conduct by staff through our system and policy design, code of conduct and staff training?	<input type="checkbox"/>
Have we implemented this fairness standard? Describe how below.		

Fairness Standard 3: Lawful and Fair Rules

Do we use lawful and fair rules when delivering our organization's services?		
3.1	Does the design and delivery of our programs, services and decision-making processes comply with all applicable laws and legal requirements?	<input type="checkbox"/>
3.2	Do we have fair rules and decision-making criteria for making decisions and delivering our programs and services?	<input type="checkbox"/>
Have we implemented this fairness standard? Describe how below.		

Fairness Standard 4: Reasoned Decisions

Do we have policies, procedures and systems in place to support staff to make informed and well-reasoned decisions?		
4.1	Do our policies, guidelines and training clearly explain the decision-making steps that decision makers should follow to make fair decisions on behalf of our organization?	<input type="checkbox"/>
4.2	Do our policies, processes and training support staff to exercise discretion fairly?	<input type="checkbox"/>
4.3	Do our policies, processes and training support staff to make reasonable administrative decisions?	<input type="checkbox"/>
Have we implemented this fairness standard? Describe how below.		

Fairness Standard 5: Equity

Do our policies, procedures and systems support equitable program and service delivery and equitable decisions and outcomes for all people and communities we serve?		
5.1	Do we use an equity lens when developing or reviewing programs, policies and rules, including decision-making processes and criteria?	<input type="checkbox"/>
5.2	Do we have a workforce that is diverse and representative of the diversity of the population our organization serves? When developing or revising our programs and services, do we seek input from the diverse range of people and communities we serve?	<input type="checkbox"/>
Have we implemented this fairness standard? Describe how below.		

Fairness Standard 6: Accessibility and Responsiveness

Are our programs and decision-making processes accessible and responsive to the people and communities served by our organization?		
6.1	Is our service delivery model accessible to the diversity of people and communities our organization serves?	<input type="checkbox"/>
6.2	Are staff trained and supported to provide responsive and people-centred service?	<input type="checkbox"/>
6.3	Do we work collaboratively with Indigenous leaders and communities in the development and delivery of our organization's services?	<input type="checkbox"/>
6.4	Do we have a privacy and information management system in place that complies with applicable privacy and information legislation and ensures personal information is protected?	<input type="checkbox"/>
Have we implemented this fairness standard? Describe how below.		

Fairness Standard 7: Accountability

Do we demonstrate accountability in the delivery of our organization's program and services?		
7.1	Do we seek continuous improvement by regularly reviewing our programs, policies and processes and by fixing problems and things that are not working well?	<input type="checkbox"/>
7.2	Do we have a complaint resolution policy and process that is accessible and effective?	<input type="checkbox"/>
7.3	Do we track feedback and complaints and use this information to improve our organization's services?	<input type="checkbox"/>
7.4	Do we have an apology process or policy that supports and empowers staff to apologize when warranted?	<input type="checkbox"/>
Have we implemented this fairness standard? Describe how below.		

FAIRNESS STANDARDS OVERVIEW

Standard 1: Participation and Being Heard

- Provide advance notice of a decision
- Give adequate information about the decision and decision-making process
- Provide an opportunity to be heard
- Ensure reasons for decisions are explained and documented
- Ensure decisions are timely
- Have an adequate appeal/review process

Standard 2: Impartiality and Integrity

- Have a conflict of interest policy and training
- Ensure decisions are made impartially and without bias or personal interest or benefit
- Ensure an independent decision maker is used for appeals or reviews
- Ensure high ethical and professional standards

Standard 3: Lawful and Fair Rules

- Comply with all applicable laws and legal requirements when delivering services and making decisions
- Use fair rules and decision-making criteria to make decisions and deliver services

Standard 4: Reasoned Decisions

- Train and support decision makers to make well-informed, reasonable and fair decisions consistent with the applicable rules
- Ensure discretionary power is exercised fairly and reasonably
- Ensure decisions made are reasonable (justifiable, transparent & understandable)



Standard 5: Equity

- Use equity lens in design of programs, policies and decision-making processes
- Seek diverse perspective of communities served in developing and revising programs
- Ensure organization reflects the diversity of the communities the organization serves

Standard 6: Accessibility and Responsiveness

- Ensure service delivery model supports programs and services that are accessible to the people and communities served
- Train and support staff to provide responsive and people-centred service
- Collaborate with Indigenous communities in design and delivery of organization's services
- Meet privacy and information management obligations

Standard 7: Accountability

- Develop a culture of continuous improvement
- Have an accessible and effective complaint process
- Use feedback and complaints to improve services
- Support apologies when warranted



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