

Society of Ontario Adjudicators and Regulators

First Principles of Training

CANADIAN COUNCIL OF ADMINISTRATIVE TRIBUNALS

DISCUSSION PAPER
ON
FIRST PRINCIPLES and GOALS
for the TRAINING and CONTINUING EDUCATION
of TRIBUNAL ADJUDICATORS
June 3, 1999

I. PURPOSE

.... As a result of this pervasive growth, the impact of administrative agencies on the lives of individual Canadians is great and likely surpasses the *direct* impact of the judiciary.^[1]

In recent years, with the growth of the administrative justice system and the courts' increasing deference to Tribunals expertise, it is imperative that tribunal members receive adequate administrative justice training and skills development for conducting fair hearings and making clear decisions. Developing and maintaining tribunal members' competence and expertise through training and continuing education is essential to gain and keep the public's confidence in administrative tribunals.

This paper sets out the common goals and principles for training tribunal adjudicators as approved by the Canadian Council of Administrative Tribunals (CCAT). These goals and principles are based on experience gained in federal and provincial jurisdictions. It is hoped this paper will promote a discussion of adjudicators' training needs among provincial and federal organizations involved in their appointments.

The statement of goals and principles identify the generic training needs of tribunal adjudicators in a generic way, based upon the experience gained in provincial and federal jurisdictions. In this way it is hoped that a framework for discussion will be established.

II. STATEMENT OF PRINCIPLES

There is a considerable body of work which describes the training needs of tribunals. Upon review, some basic principles are revealed:

1. In the administration of justice, the public is entitled to high quality service by qualified and independent adjudicators.
2. To maintain the independence and credibility of the administrative justice system, tribunal adjudicators need to be trained to ensure that they are qualified and competent to perform their duties.
3. Through training, adjudicators can maintain the expertise, skill, competence and knowledge needed to retain public confidence.
4. Through training, adjudicators can learn the fairness, accessibility, timeliness, quality, consistency, transparency, courtesy and cost-effectiveness needed in their decision-making.
5. Training needs to be flexible so that it is delivered in a way that is most effective for the learner. For subjects that are tribunal-specific, they are best delivered by the tribunal. For some subjects common to all tribunals, such as principles of administrative justice, generic training may be most efficient. This also provides consistency in practice.
6. All adjudicators should participate in an orientation program shortly after appointment to receive the essential knowledge and skills they will need in their positions.
7. Training should be ongoing to maintain and support adjudicators and staff expertise and competence.
8. Governments' appointing authorities should have the obligation to provide the funding to achieve the training goals set out in this paper.

BACKGROUND ON FIRST PRINCIPLES and GOALS for the TRAINING AND CONTINUING EDUCATION OF TRIBUNAL ADJUDICATORS

This section describes the current status of training for tribunal adjudicators at provincial and federal levels.

PROVINCIAL \ REGIONAL TRAINING INITIATIVES

A. BRITISH COLUMBIA

1. *Foundations of Administrative Justice Course*

In 1997, the British Columbia Council of Administrative Tribunals (BCCAT) with assistance from the Canadian Centre for Management Development (CCMD) and the Society of Ontario Adjudicators and Regulators (SOAR) and support from the Provincial

Government of British Columbia developed a two-day course entitled *Foundations of Administrative Justice*. The course objective is to provide new tribunal members with a better understanding of their role and responsibilities, with a focus on conducting fair hearings and writing clear, well-reasoned decisions. The course is delivered by teams of instructors in a format emphasizing interactive learning and practical exercises.

Since the launch of the course, in September 1997, it has been delivered in British Columbia on 16 occasions to more than 270 tribunal members. Teams of *Foundations* instructors have been trained by BCCAT instructors in the Yukon, Alberta, Saskatchewan and Manitoba, with support from CCAT. *Foundations* courses are being planned or now underway in those jurisdictions.

2. Annual Education Conference

BCCAT's annual education conference provides a professional development opportunity for tribunal members and staff.

3. Other administrative justice training initiatives

BCCAT recognizes that beyond generic administrative justice training, each tribunal has a responsibility to train new appointees with respect to their particular legislation and the established practice and procedures for that tribunal. Tribunals who have sponsored instructors for the *Foundations* program report that the skilled instructors have enhanced that tribunal's in-house training capacity. Ongoing skills-based training, especially in the areas of conducting hearings and writing decisions, is also an essential component of tribunal training. BCCAT co-operates with those organizations that deliver skills training courses, such as the Canadian Institute for the Administration of Justice (CIAJ) and the Continuing Professional Education Institute (CPEI).

BCCAT developed a one-day course on administrative justice issues for tribunal staff, targeted for pilot delivery on March 17, 1999. A one-day seminar/conference on alternate dispute resolution issues for tribunals will be given on June 11, 1999. In 1998, BCCAT launched a customized version of the *Foundations* course for post-secondary education institutions. There is also an initiative to develop a customized version of the course for professional regulatory tribunals targeted for pilot delivery in late June 1999.

B. THE PRAIRIE INITIATIVE

In 1998, during discussions at a CCAT Training Committee meeting, BCCAT offered to assist the Prairie members in establishing the two day "Foundations" tribunal training in the three Prairie provinces. This initiative follows the success of similar programs in British Columbia, Ontario and the Atlantic region.

Initially, the training will be available to all administrative, regulatory and disciplinary tribunals, boards and agencies and will cover teaching the two-day *Foundations of Administrative Justice* course developed by BCCAT.

The Prairie Provinces' first training course to teach *Foundations* was held from December 13 to 16, 1998, in Saskatoon, Saskatchewan. Three instructors from BCCAT (Judith Williamson, Jessie Homer and John Hall) delivered the course, along with David Cruickshank from the Continuing Professional Education Institute. There were nineteen participants.

The first day was devoted to a condensed presentation of the contents of the two-day *Foundations* course by experienced BCCAT Instructors. This involved demonstrations in the role of instructors of segments from each of the four Foundations Sessions. The demonstrations were selected to ensure that participants were exposed to a variety of teaching techniques used to deliver the curriculum such as introducing a session and identifying its objectives, a "brainstorm" exercise, lecture formats using overheads and flipcharts, small group breakout exercises, closing a session and conducting evaluations.

The next day and a half was devoted to giving participants David Cruickshank's "Training for Trainers" seminar. This has been an integral component of tribunal instructor training in British Columbia and elsewhere.

During the afternoon of the third day, the participants were assigned and prepared segments of the Foundations course for presentation on the fourth day. The segments were taken from the first three Sessions and were again selected to allow participants to practice a wide range of teaching techniques. Most of the work involved the participants working in pairs (reflecting the co-teaching model of the Foundations course). Participants received feedback led by the BCCAT instructors.

The *Foundations* course is planned for the Fall of 1999 for tribunal members in Saskatchewan and Manitoba. It has been offered in Alberta in April, 1999.

C. ONTARIO

In November 1993, the Co-ordinating Committee on Agency Reform appointed a Task Force to report on the training and education requirements of agencies and boards. The Task Force found that the following training objectives cited in the report, *Training for Tribunal Members in Canada*^[2] "captured extremely well the long term goals of any provincial training programs for all agency personnel":

1. Members should be able to acquire the knowledge and the skills necessary to fulfil their new duties.
2. Members should be able to become self-sufficient in the performance of their duties for the tribunal.
3. Training should enhance the quality of service provided by the administrative tribunal by reducing delays and costs while improving institutional performance.

4. Professional competence should be promoted through a national [provincial] training program.

5. Excellence in the delivery of services by administrative tribunals should be promoted.

Twenty-two Ontario agencies answered a 1993 needs survey from which the Task Force concluded the following:

- Most agencies rely on attendance at annual conferences organized by SOAR and CCAT for external training.
- A few agencies conduct their own internal training, although on a limited basis.^[3]
- An overwhelming majority of survey respondents indicated that at least some of the training should be organized and delivered from a central point in government.
- Agencies also indicated they are willing to use different and innovative methods for training.
- Most respondents stated that training in substantive issues should remain the responsibility of the agency.
- Mentoring and sharing successful practices are two of the most used methods for training others.
- A majority of agencies advised they had case management systems, alternate dispute resolution processes or other procedures and techniques in place that could be shared with other agencies.
- Few individuals working in agencies attend courses sponsored by the provincial government.
- Most courses offered by staff training sections in ministries or corporately by the Human Resources Secretariat do not meet the needs of agency personnel.
- The survey respondents indicated that the training needs were greatest for Chairs, Vice-chairs, adjudicators and senior staff.

The survey respondents identified the following training courses as having the highest priority:

Chairs/Vice Chairs

administration (finance, human resources, etc.)
administrative law

administrative justice policy issues
judicial review
media relations
policy making
funding, costs
Charter issues

Adjudicators

rule of law
natural justice
administrative law
writing decisions and reasons
pitfalls - problems encountered by beginners
statutory interpretation
practice and procedures in hearings
rules of evidence

Senior Staff

general orientation to government
administration (finance, human resources, etc.)
preparing for a hearing
pre-hearing conferences

The Task Force recommended that a comprehensive and centralized training program be developed for the agency sector. It concluded that an Education Co-ordinator working with and receiving direction and support from a committee of experienced and knowledgeable personnel from the agency sector was the best option to develop successful training programs.

As a result, in 1994, SOAR, supported by the Ontario Ministry of the Attorney General, established an Education Centre and developed an *Orientation Training Program* for new tribunal members across the Ontario administrative justice system. This program offers a general orientation to the structure of government and the legal system, administrative law and fairness, ethical and professional responsibilities, evidence, decision writing, as well as a four-day intensive hearing skills program. The *Orientation Training Program* is now known as the *SOAR Adjudicator Training Program* and is offered twice a year in Toronto or more often as needed.

The Ontario administrative justice system is currently being reformed. In its April 1998 report, *Everyday Justice*, the Ontario government's Agency Reform Commission identified eight common goals essential to agencies' effective and efficient performance offering quality service:

1. **Fairness:** Providing service and performing statutory functions in an impartial, lawful, unbiased and just manner.
2. **Accessibility:** Providing information and services that are simple and easy to use.
3. **Timeliness:** Performing tasks within established time frames based on reasonable expectations.
4. **Quality and Consistency:** Producing accurate, relevant, dependable, understandable, and predictable information and results, with no errors in law or fact.
5. **Transparency:** Using policies and procedures that are clear and understandable to everyone involved.
6. **Expertise:** Possessing and using the skill, knowledge and technical competence required to discharge all statutory responsibilities and maintain public confidence.
7. **Optimum Cost:** Providing services at a cost based on best practices and which is cost effective for everyone involved.
8. **Courtesy:** Demonstrating respect to everyone who comes into contact with the agency.

D. QUEBEC

The government of Quebec through legislation has imposed a requirement on organizations to allocate 1% of their budget towards training by accredited training institutions or trainers. This accreditation is done by the province of Quebec on a recurring basis. If the budget allocated is not used towards training, a penalty is imposed the next year through budget reductions.

1. ENAP'S Training Program

At the request of the Quebec Executive Council Ministry, and with assistance from the Forum of Presidents of Administrative Tribunals, the "Ecole nationale d'administration publique" (ENAP) administers a Program of Integration and Training for Members of Adjudicative Bodies.

Aimed at newly appointed tribunal members, the program addresses various topics, including:

- orientation to government;
- status of tribunal members;

- the hearing process;
- principles of statutory interpretation;
- Charter issues;
- the decision writing process;
- tribunal governance.

Long-standing members of adjudicative bodies, agency chairs, staff from the Ministry of Justice, lawyers from private practice, as well as teaching staff from ENAP deliver the five-day program when requested by tribunals.

2. CJAQ training initiatives

One of the primary reasons for creating the Conférence des juges administratifs du Québec (CJAQ) in 1986 was to promote the expertise, skill and knowledge adjudicators need to discharge their duties.

Conference members and non-members can receive the training at three to four seminars provided annually in Montreal and Quebec. A training session also takes place during the CJAQ annual convention.

The seminars usually address specific topics or those of an advanced nature, although some generic training in the principles of administrative justice is periodically offered. Some of the specific topics covered include issues relating to cultural communities and administrative justice, the Internet and administrative justice, and recent decisions of the Supreme Court of Canada dealing with administrative justice and *Charter* issues.

3. The TAQ's training program

On April 1, 1998, the Tribunal administratif du Québec (TAQ) was created, merging various adjudicative bodies into one single tribunal. It decides on actions against government agencies in a wide range of matters set out in the *Loi sur la justice administrative*. The Tribunal is composed of some 100 members discharging their duties within four separate divisions: social affairs, property matters, economic matters and protection of the environment.

Each division of the TAQ also has its own training program tailored to its specific needs. For example, the Social Affairs division offers an Alternate Dispute Resolution Program.

By virtue of section 75 of the Act, the chair of the Tribunal has the obligation to promote the ongoing training of its members by setting up the appropriate structures and providing the necessary financial resources, professional and technical support, and appropriate time to achieve that goal.

The training committee of TAQ looks to the common needs of members of all four divisions. It focuses specifically on the administrative justice knowledge and skills needed by members to appropriately discharge their duties.

The committee identifies members' training needs, plans and organizes training sessions, and evaluates the results. They strive to promote coherence, quality, accessibility, flexibility, and efficiency.

The sessions proposed for 1999 will address topics such as ethics, rules of evidence, decision writing, and specific statutory mandates.

The TAQ training committee is keeping informed of training programs by ENAP, CJAQ, CCAT and others to ensure appropriate training efforts are coordinated across organizations.

4. Other training initiatives

Several tribunals conduct their own internal training, addressing topics of specific concern to their members, such as issues relating to their particular statutory mandates, policies and procedures. For example, la Commission de liaison professionnelle (CLP) has an extensive internal training program.

E. INITIATIVES IN THE ATLANTIC PROVINCES

As a result of interest expressed by a number of heads of federal and provincial tribunals, the Veterans Review and Appeal Board, a federal tribunal located in Charlottetown, Prince Edward Island, agreed to coordinate the delivery of a two-day course for members of administrative tribunals.

This course is available to all administrative, regulatory and disciplinary tribunals, boards and agencies, federal or provincial, located in all four Atlantic provinces. It consists of a slightly modified version of the two-day "*Foundations of Administrative Justice*" course developed by BCCAT.

The objective of this course is to provide newly appointed board members an opportunity to receive basic administrative law training with a focus on conducting hearings and delivering decisions.

The course has been given twice in Charlottetown in November 1997 and 1998. On each occasion, the course was fully booked with 20 participants. It will be offered again in November 1999. Depending on interest and demand, the course could eventually be offered in French, in other locations and more than once a year.

Nova Scotia

A report of the Law Reform Commission of Nova Scotia identified the need for training of tribunal members in Nova Scotia. As a result, a training program was set up by the N.S. Department of Justice, the Workers' Compensation Appeals Tribunal and the Law Reform Commission of Nova Scotia, using the BCCAT *Foundations* materials. Four courses have been given to date. Two teams of trainers give the course on a rotational basis and plans are to give two courses a year, as needed. All new tribunal members in the Province of Nova Scotia are expected to take the course.

NATIONAL INITIATIVES

1. Canadian Council of Administrative Tribunals (CCAT)

The Council of Canadian Administrative Tribunals (CCAT) is a national organization representing members and staff of administrative tribunals in federal, provincial and territorial jurisdictions. Among its stated aims, CCAT provides opportunities for training and professional development. A standing Training Committee of the Board of Directors pursues this by organizing a component of the CCAT annual conference on training that provides a forum for tribunal members and staff to hear from leaders in administrative law and to exchange experiences. The Committee also actively supports developing regionally-based training programs.

In January 1998, the Training Committee sent out 1300 questionnaires to agencies across Canada to survey views of tribunal members and Chairs on training issues. There were 160 respondents, 50 of whom were Chairs of agencies. These Chairs represent over 450 full-time members and 473 part-time members of tribunals and boards.

Over 97% of respondents considered training to be extremely important for all tribunal members. Nearly 90% of the responding agencies provide new member training. Almost 70% have some budget for training. Other major findings of the survey included the recognition that training was being done *ad hoc* and needed more resources.

The survey respondents identified the following training needs:

High Importance

conduct of a hearing

fairness and natural justice

decision-making

administrative law

Medium Importance

computer skills

mock hearings

gender/cultural sensitivity

structure and function of government

evidence

ethics

conflict of interest

statutory interpretation

The respondents identified the following as ongoing training needs:

High Importance

Medium Importance

decision-making

structure of government

decision-writing

culture/gender sensitivity

administrative law

fairness and natural justice

evidence

conduct of a hearing

ethics

conflict of interest

statutory interpretation

2. The Canadian Centre for Management Development

The Canadian Centre for Management Development (CCMD) created the Training Program for Tribunal Members in 1995 and 1996 to develop hearing room skills, a specific need identified by the Federal Tribunal Chairs, Justice Canada and the Privy Council Office. At that time, while most tribunals had some form of in-house training program covering their legislative mandate and procedure, only the very large tribunals had comprehensive training programs. The absence of a training program available to all members at reasonable cost was not just a problem at the federal level, but reflected the situation in most jurisdictions with the exception of Ontario where SOAR was offering a program.

CCMD provided overall project management and a professional training forum while the Federal Tribunal Chairs provided start-up funding and the expertise to develop and present this program. The Chairs set up a subcommittee to oversee the program's development and the subcommittee established a working group including staff from the National Transportation Agency (now the Canadian Transportation Agency), the Canadian Artists and Producers Professional Relations Tribunal, the Canadian International Trade Tribunal, Justice and CCMD.

The program has three phases. In Phase 1, a package of self-instructional materials is given to new members on appointment. These are studied for a few months to prepare them for Phase 2, a five-day intensive course designed to reinforce what members learn from the self-instructional materials and to focus on developing and practising hearing room skills. The five-day course is structured so that during the first three days participants learn all they need to know to conduct a hearing through discussions and mini-simulations. On the fourth day, members take turns to chair a simulated hearing. The final day completes the process by focussing on decision-making, reason-writing and judicial review and appeals.

Phase 3, which is conducted by the member's board or tribunal, deals with the legislative framework, and procedure particular to their board or tribunal. Phase 3 can take place at any time after a member's appointment since it is independent of Phase 2.

To date, the five day Phase 2 program has been given in the Ottawa-Gatineau area a total of ten times, six in English and four in French. CCMD intends to offer the program in each language twice a year so that no new appointee would have to wait more than six months to complete the course. This has not always been possible due to insufficient numbers, but courses are now scheduled two years in advance in the hope that this will enable chairs to plan their members' schedules to accommodate the course dates. The program is now also open to provincial and territorial members.

3. The Canadian Institute for the Administration of Justice

The Canadian Institute for the Administration of Justice (CIAJ) offers a one-day seminar on *The Hearing Process* and two-day introductory and advanced courses on *The Decisions Writing Process*. Both courses will be offered during 1999 at locations across Canada including Edmonton, Ottawa, Fredericton, Winnipeg, Vancouver and Montreal. These seminars can be tailored to meet the specialized needs of tribunals and professional discipline committees on request.

The Hearing Process is an introductory and/or refresher course on conducting a hearing, principles of evidence as applied in administrative tribunals, issues of independence, impact of the *Charter of Rights and Freedoms* on administrative tribunals, and judicial review.

The Decision Writing Process is offered as both an introductory and advanced course. Both courses address what constitutes reasons for decisions and provide hands-on analysis of the decision writing process.

As well, CIAJ will be offering a one-day program on *Tribunal Governance*. This course, designed for chairs and board members is concerned with management issues and addresses the status of tribunal members, role of tribunal staff, governance issues, and media relations.

Conclusion

This paper has highlighted tribunal training initiatives underway across the country. Recognition has grown in recent years on the importance of training in ensuring a high quality of administrative justice in all jurisdictions.

The various organizations described in this paper have achieved a great deal of momentum in the development of training programs in most jurisdictions and this momentum must be supported and enhanced. Much has been achieved, but more work in this area is essential. It is critical that governments recognize training as a priority and allocate the long term financial resources essential to the training and development of their tribunal members.

The foregoing description highlights the tribunal training initiatives undertaken in a number of provinces, regions, and nationally. The training of tribunal members has clearly picked up an exciting momentum in recent years, due to the hard work of many and the real needs of adjudicators for this training. It is a momentum that must be supported and enhanced. It must be backed by those who impact on appointments and the allocation of budgets. Training must be seen and acted on as the priority it is, one that is fully supported by all who have seen or been part of training in Canada.

[¹] (Lamer, CCAT, "Future Prospects and Possibilities, (1992), 5 CJALP 107 at 108)

[²] Diane Labelle 6 CJALP 2, April 1993

[³] It is the author's impression that the number of tribunals conducting their own internal training has increased since 1993. Internal tribunal training tends to be specific to the statutory mandate and procedures of the particular tribunal. Many tribunals now rely upon the SOAR *Adjudicator Training Program* to provide generic training in hearing skills, administrative law and the law of evidence.

Society of Ontario Adjudicators and Regulators