

Session 6: Considerations in Stakeholder Relationships and Consultation

Moderator: Lori Coleman, Health Boards Secretariat

Speakers: Katherine Laird, Human Rights Legal Support Centre
Laura Pettigrew, Office of the Ombudsman of Ontario
Gary Yee, SJTO-Social Benefits Tribunal

Gary Yee: The Relationship Between Tribunals and Stakeholders

When it comes to stakeholder relationships and consultation there are two key differences between tribunals and the government. First, the tribunal must keep in mind the importance of judicial independence. Second, the tribunal must be impartial and not treat stakeholders differently.

Tribunals come under attack often. People expect a tribunal to be independent and free from pressure while responding to their needs. A tribunal cannot explain or defend its decisions because those decisions should speak for themselves. As a result, it is important to build a good reputation with the public, the media and government groups to withstand the hard times and the scrutinized decisions. Goodwill can go a long way in engaging support from stakeholders.

It is not proper for a tribunal to directly solicit support. The test for any tribunal decision is: if this decision made the front page, could we handle it? Provided that the tribunal has built up goodwill with its stakeholders, it would never need to directly solicit support if and when the tribunal came under scrutiny.

Information from stakeholders is invaluable. Consultation is always a good thing, but a step beyond regular consultation is needed when the tribunal is undergoing change. This process is not simply about getting stakeholder feedback. It is also about gaining their support, managing their expectations and working together to accomplish the tribunal's goals.

As government directions flow down through legislation, many tribunals put in place a consultation committee with stakeholder representatives. In the case of the Social Benefits Tribunal, stakeholders on its advisory committee include government counsel and representatives from legal clinics on behalf of appellants. Ninety percent of appellants are represented by clinics at this tribunal. It would have been more difficult to consult if there was a large constituency of unrepresented stakeholders.

The Social Benefits Tribunal encountered difficulties when it began to schedule its hearings two months after appeals were brought. The two-month timeframe appeared to be too quick for medical evidence to be adduced. Since the tribunal did not want to be lenient in granting adjournments, it met with stakeholders to discuss the issue. The parties came to an agreement on timeframes and the tribunal strived to be transparent and informative throughout. While there were some glitches in the transition process, the goodwill and relationship-building enabled the tribunal to achieve its goals.

In Mr. Yee's experience in the immigration context, it is difficult to consult with unrepresented stakeholders. However, it is still possible to get a committee together with seasoned counsel for all sides who will give good-faith feedback. That does not change

the fact that you would still need feedback from elsewhere and sometimes clinics can fill your needs. At the IRB, staff attempted to fill the void by also engaging non-profit organizations such as the Canadian Council for Refugees.

Katherine Laird: *Stakeholder Perspectives: Tribunal Counsel, Affected Party and Support Representative*

Ms. Laird has had the unique position of being part of stakeholder consultations in three capacities. She was tribunal counsel in one instance, and an affected party at the Rental Housing Tribunal in another. Lastly, and currently, Ms. Laird is at the Human Rights Legal Support Centre.

Consultation is valuable because issues that are important to the tribunal are also important to stakeholders. Namely, clear expectations and effective processes matter to all those involved. The tribunal must decide on a mechanism for consultation that works and that the tribunal has resources to manage.

1. Acting as Tribunal Counsel

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) had a stakeholder advisory group before opening its doors. At the time, the Workers' Compensation Appeal Tribunal (WCAT) advisory group had non-lawyer representatives, unions, legal clinics, injured workers, the Ministry of Labour, etc. There were ground rules and the parties were aware that the committee was only advisory and not a decision-making body. At one point, the committee set up a mock hearing day and tried the process with real players. The set-up gave stakeholders the opportunity to understand the role of tribunal counsel.

By 1991, WSIAT had a new and more manageable committee. WSIAT now sends out a newsletter to stakeholders which sets out changes such as new form information, based on a list of contacts. In addition, the committee is able to have regional meetings at centres across the province, in conjunction with the hearing set-up procedure, on occasions when processes change.

2. Being an Affected Stakeholder

At the Rental Housing Tribunal, tenants are usually respondents and they are typically represented by legal clinics. The Rental Housing Tribunal chose co-chairs of the stakeholder consultation committee. They selected one chair from the landlord representatives and one chair from the tenant group. There were also community organizations and clinics represented on the committee. As a tenant, Ms. Laird had side meetings to prepare arguments with fellow tenants on why they supported or did not support language used in proposed forms. It was her observation that stakeholders believe these processes are worthwhile when they see that they are being listened to.

3. Participating in Human Rights Consultations

The Human Rights Tribunal needed three sets of new rules. It did the consultation mostly through its website, but was also willing to meet. The Ministry of the Attorney General had done a broader consultation and the agencies went on the road before the

release of the rules. The agencies were interested in explaining the new process and how they were achieving access.

Ms. Laird describes the role of the Human Rights Legal Support Centre (HRLSC) as akin to legal aid. When she recently engaged in a strategic planning initiative there, the exercise had to be done with very limited resources. They used Survey Monkey questions, which they sent to a broad range of groups, and managed to received approximately 45 out of 70 responses. To allow for less structured feedback, the HRLSC included space to allow for more input and undertook to respond to those comments. It was a challenge, but the organization managed to address it.

Laura Pettigrew: Assessing the Tribunal - Stakeholder Relationship

As an employee of the Office of the Ombudsman of Ontario, Ms. Pettigrew discussed her experiences in assessing the tribunal-stakeholder relationship and how her office has turned to new innovative ways of reaching out to the public.

In 2007, the Ombudsman investigated a tribunal that dealt with victim injury compensation. At that time, it was found that there was a disconnect between participants and the tribunal. The tribunal had few resources and had gone into survival mode by requiring very formal adherence to its rules. Once the Ombudsman had completed his investigation, he gave recommendations which included the creation of an advisory committee. Since that time, the tribunal got more funding, training and assistance to deal with the backlog. The lesson was that when dealing with the public, the tribunal needs to get a stakeholder perspective.

In the past, the Ombudsman's office also reviewed local health consultation institutions. When there is a decision to reorganize health services in a particular region, the applicable statute mandated community engagement and planning. Since community engagement is not a defined term, different groups had different perceptions of how to consult. For instance, one could state that asking people's opinions in a grocery store line was consulting with the public. As a result, the Office of the Ombudsman developed best practice principles to deal with community engagement processes. The best practice guidelines included:

- a. Consult at the earliest possible stage – stakeholders should feel that they have a chance to impact change. This better informs the product and helps to obtain buy-in.
- b. Be clear on expectations – make sure that questions are made in context.
- c. Have a broad consultation – ensure that affected groups are properly represented.
- d. Document feedback – there should be a record of information conveyed and obtained during the consultation.
- e. Explain why choices were made – once the decision is final, explain the reasoning and clarify the rules, practices, etc. to avoid dissatisfaction or confusion amongst stakeholders.

Recently, the office of the Ombudsman has decided to use various modes of social media to reach stakeholders including Facebook, Twitter and YouTube. Websites can be used as mechanisms to allow for continuous feedback from stakeholders. Complaints prove to be a fruitful way of bringing attention to policies that need review. Once

stakeholders express themselves, the process begins to analyze and consider whether there is a better method of proceeding.

Panel Discussions

1. The Unrepresented Stakeholder

Ms. Coleman described the rationale and strategy invoked when the Health Boards Secretariat was re-evaluating its rules. At first, the Secretariat considered sending a letter to every applicant that was currently before it to request feedback. However, the situation of current applicants had the potential of providing skewed results. Some applicants might be concerned that their answers could affect the status of their applications. Further, those applicants whose applications had recently been determined might be dissatisfied with the decision. In either instance, applicants might respond in a manner that reflects concern or frustration rather than a fair assessment of the process itself. Eventually, the Health Boards Secretariat put a notice on its website directed to stakeholders. This strategy to gather stakeholder feedback resulted in a thoughtful response.

An alternative strategy, proposed by Mr. Yee, is to use “push technology” like email lists. “Push technology” gives people information instead of requiring individuals to look for it themselves. By asking people to sign up for email notices, tribunals can form a database that can be used to facilitate future communications. Ms. Laird concurred that this is a method that may be used by tribunals to disseminate important information, such as the revision of rules.

2. Policy on Social Media and Stakeholder Consultation

When using social media to reach out to stakeholders, it is imperative to consider having a stakeholder consultation policy. Ms. Laird admitted that there are concerns with using social media in the sense that it maybe difficult to continuously respond to various web accounts. In Ms. Pettigrew’s experience, the Office of the Ombudsman had not felt any inefficiencies in that regard. However, Mr. Yee acknowledged that circumstances are different for a tribunal that wished to use social media as a method of connecting with stakeholders.

There are always concerns about who would be empowered to represent the organization in communicating with the public on a regular basis. Ms. Pettigrew was able to confirm that the Ombudsman himself writes his own tweets and that Facebook updates are normally monitored by communication staff. She stated that her office normally uses these methods for communication out, but not necessarily a lot of discussion or incoming commentary. For inquiries on personal cases, individuals are contacted offline.

Once the decision is made to use a web resource, it is important that the website be kept updated. Sometimes websites are already backdated. One caution from the audience was that some tribunals currently receive 200 emails per day. Each organization must assess on a case-by-case basis if the advantages of expanding their web presence will actually be achieved.