

The Ombuds Lens of Fairness and the Fairness Triangle



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UNIVERSITY OF ALBERTA
OFFICE OF THE STUDENT OMBUDS

Ombuds Promote Fair Practices on Campus

“The Ombuds Lens of Fairness and the Fairness Triangle” explores the essential role ombuds play on campuses; they use a special lens to examine the complex nature of fairness.

An Ombuds Lens of Fairness is important in ensuring fair decision-making processes; understanding the impact of these decisions; administering these decisions in a consistent, clear and timely manner; and explaining fully and compassionately, how and why they were made. It focuses on doing the right thing, promoting and sharing best practices.

The Fairness Triangle is a communication tool to help the parties reflect on the various aspects of fairness or unfairness as they were experienced and/or applied in making decisions.



- ❖ An ombudsperson is an advocate for systemic fairness;
- ❖ a specialist in conflict resolution processes; and
- ❖ a teacher of empowerment to resolve conflict informally, whenever possible.
- ❖ An ombudsperson uses a perspective of both an ethic of care and an ethic of rights.

How do our clients express unfairness?

No one listened to me. It was as though anything I said was irrelevant. I felt they had already made up their minds and thought they knew what was best for me.

They said I had to receive the same treatment as everyone else even though my circumstances were entirely different.

I felt that when I explained my circumstances that it was clear it was either not understood or held against me.

I was not provided any information about what I could present, and what my rights were to appeal.

I did not receive any advice on who to contact for help, and they also did not explain there was a deadline.

They just said read the policy online; when I asked for clarification, I felt they were rude to me. They said it is written clearly so I should be able to understand it.

I felt bullied, and that the person knew that if I complained, they could give me a lower grade or label me as a troublemaker. I was too scared to appeal further.

So what is Fairness?

It is what we experience as being fair. This varies as we are not all the same.
“Fairness is not sameness; it is cultural”. (Shirley Nakata, UBC Ombuds).
“Fairness depends on the circumstances and means different things to different people at different times” (Fiona Crean, Ombuds Hydro One)

Ombuds see 4 dimensions to fairness.

Substantive – Was the decision fair? Was all relevant information taken into account?

Procedural – Was the process fair? Was all information given to the parties? Were their voices heard?

Relational – Was I treated fairly (perception of fairness)? Was I respected?

Equitable - Was I on a level playing field (to reduce power differentials)?

Using the Fairness Triangle to Explain Fairness

- ❖ The Fairness Triangle was created by the Saskatchewan Ombudsman, and is based on the Satisfaction Triangle used by Christian Moore (2003) in [The Mediation Process: Practical Strategies for Resolving Conflict](#) (3rd ed) San Francisco, Jossey-Bass Pub.
- ❖ Adapted by the University of Victoria and other institutions, the Triangle is being used to promote fairness conversations on campus.
- ❖ The original Fairness Triangle examines how we **perceive** and **experience** fair and unfair treatment; it explores the **substantive**, **procedural**, and **relational** aspects of fairness.
- ❖ Ombuds recognize that some may be blocked to fairness due to intentional or unintentional barriers (such as university policies) that are based on systemic inequities that marginalize them. These inequities have been reinforced by inequalities such as racism, sexism, and ableism. Thus **equitable** fairness must be tied to the Fairness Triangle. Fiona Crean (2016) cites Judge Rosalie Abella, Canada. In The Report of the Commission on Equity in Employment: “To treat everyone the same may be to offend the notion of equality. Ignoring differences may mean ignoring legitimate needs. Ignoring differences and refusing to accommodate them is denial of equal access and opportunity”.
- ❖ Fairness is relative and universal; it is cultural and shifts in context; we must always look for systemic inequities and marginalization in our casework.

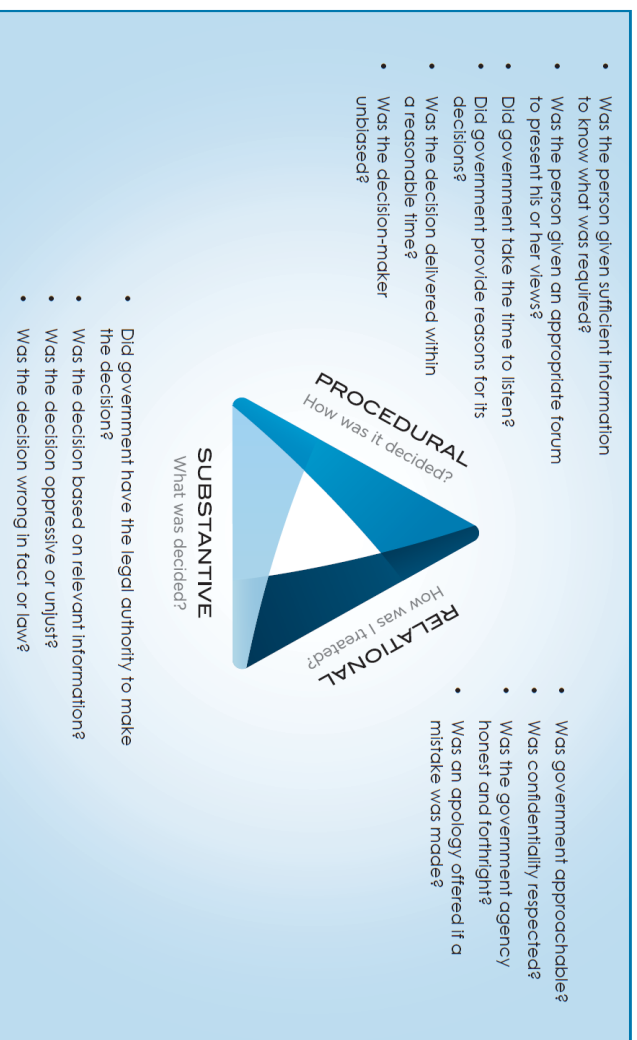


What is Fairness?

Ombudsman Saskatchewan promotes and protects fairness in the design and delivery of government services. But what does that mean? What is fairness anyway?

What is fairness? Fairness is not always simple and it does not always mean that everyone gets the exact same thing. There are many situations, relationships and events that come into play. Sometimes generally accepted principles of fairness will apply; sometimes the law will apply. Although there is no single answer, there are some basic principles and practices that can help to describe fairness.

Three Aspects of Fairness: The Fairness Triangle

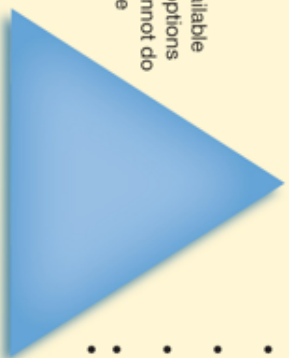


The U Victoria Fairness Triangle

THE FAIRNESS TRIANGLE

Elements of Relational Fairness

- Being approachable
- Listening
- Respecting confidentiality
- Being honest and forthright
- Making information clear and easily available
- Providing accessible problem-solving options
- Being clear about what you can and cannot do
- Offering an apology if a mistake is made



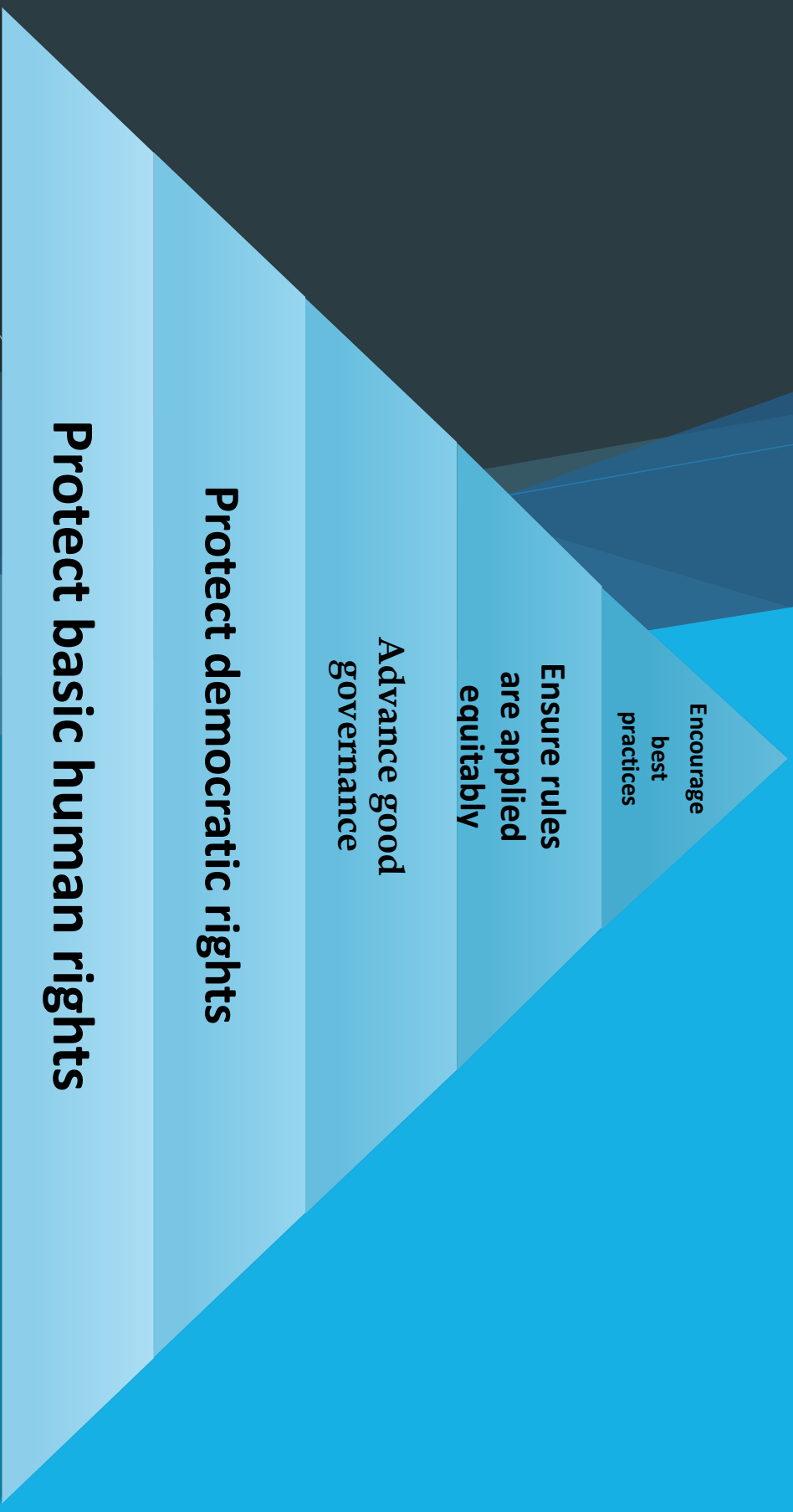
Elements of Substantive Fairness

- Having appropriate authority to make a decision
- Ensuring that decisions are based on relevant information
- ...are not unjust, oppressive or discriminatory
- ...are not wrong in fact or law
- ... are reasonable

Elements of Procedural Fairness

- Providing notice that a decision is to be made and sufficient information for an affected person to know what is required or what is at stake
- Providing an appropriate forum for an affected person to present his or her views and to be heard
- Being impartial and unbiased
- Making a decision in a reasonable time
- Providing clear and appropriate reasons for decisions

The Equitable Fairness Pyramid – Fiona Crean, Ombudsman, Hydro One Canada



Protect basic human rights

Procedural and administrative principles do not act in a vacuum. Power inequities must always be acknowledged.

Case Study to Test for Fairness

An international student is charged with academic misconduct (plagiarism). During the investigation, the student does not refute any of the evidence presented by the investigator (Associate Dean) because in that student's culture, it is not respectful to disagree with authority figures. The investigator does not explore the student's background, only presenting the "facts" as given by the instructor, and does not ask many questions to gain an understanding of the student's perspective. The student is shaking and remains quiet. After receiving notification of a heavy sanction for the misconduct (two months later), the student visits the ombuds to see what can be done. The appeal deadline has passed.

- ❖ As we go through the different kinds of fairness charted below, we explore how the student experienced fairness and unfairness in the investigation. We can use the Fairness Triangle in our conversation with the student to reflect on their situation. When reviewing the Fairness Triangle with the decision-maker they can look at how they could have improved the process by gaining more information about the student's situation; in this way, the university can develop best practices around fairness.
- ❖ Ombuds can also use checklists to review how decisions are made. The second one, the Administrative Fairness Checklist developed by Nora Farrell (Ryerson ombuds) some years ago, is another way to talk to decision-makers.

Procedural Fairness: Due Process	Substantive Fairness: Decision	Relational Fairness: Respect	Equitable Fairness: Recognizing Difference
Was the student given sufficient information to know the gravity of this situation?	Did the decision maker have the authority to make the decision?	Was confidentiality ensured throughout the process?	Was the social background/social location* of the student factored?
Was the student offered access to assistance throughout the process?	Was the decision based on the relevant information?	Was the student treated with respect throughout the process?	Was the process inclusive?
Was the student given the opportunity to present his case?	Did the decision apply the appropriate rule/policy?		Were the student's needs accounted for?
Were the proper processes followed before rendering a decision?	Was the decision oppressive and unjust (inconsistent with previous decisions of a similar nature)?	Was the information presented to the student in a way that he could understand?	Was the social background/social location of the student factored, eg, class, ethnicity, gender?
Was the decision-maker unbiased?	Was the rationale for the decision explained to the student?	Was an apology offered if a mistake was made?	Were issues of power or marginalization considered?
Was the decision rendered within an appropriate timeline?		Was the decision maker approachable and did the student feel heard?	

Administrative Fairness Checklist for Administrators

Nora Farrell, Ombudsperson, Ryerson University, 2002

I - Prior to Decision Being Made

Fairness Standard	When Advised?	By Whom?	How?
The individual affected is aware of:			
the fact that a decision will be made			
why a decision is necessary			
how the decision will affect him/her			
the information that will be considered and any specific criteria to be used in making the decision			
the current rules that will be used in arriving at a decision			
Has the individual who is affected by the decision been provided with:	How was the opportunity provided, e.g. meeting, written submission?	Who provided the opportunity?	When was the opportunity provided?
the opportunity to present his/her point of view on the matter			
the opportunity to respond to the information presented by others which will be considered by the decision-maker			

II - While the Decision is Being Made

Fairness Standard	Yes	If "no", why?
Has an adequate & proper review of all relevant information been conducted, i.e., have all important facts been obtained, documented and considered before the decision is made?		
Has the decision been reached objectively, with due respect for relevant facts, and without bias?		
Has accommodation been made for new and/or changed circumstances during a period of delay or while the decision is being made?		
Has care been taken to require and use only that information which is relevant to the decision?		
Has the decision been made in a manner which is consistent with previous decisions on similar matters, by relying on existing policies, guidelines, procedures and rules?		
If discretion is exercised, can any inconsistency with previous decisions on similar matters be justified and explained?		

III - After the Decision Has Been Made

Fairness Standard	Yes	If "no", why?
Have adequate reasons been provided to explain how and why the decision was made?		
Has the decision been written in plain language?		
Has the decision been provided to anyone personally affected?		
Has a proper record of the process used been kept and will it be kept on file for a reasonable period of time?		

When can we use the Fairness Triangle?

Students, staff, faculty or administrators, whether you are making or being affected by a decision;

In classrooms and online classes;

In our student services;

At department and faculty meetings;

At student group meetings;

At administration (policy-making) meetings;

At Investigative meetings & University hearings;

and many other University-related activities, such as Fairness Day on Campus

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PROCEDURAL FAIRNESS

Assessing prompt and unbiased assessment and having the opportunity to respond

SUBSTANTIVE FAIRNESS

Applying regulations consistently with comprehensive explanation of decisions

RELATIONAL FAIRNESS

Treating all individuals respectfully

EQUITABLE FAIRNESS

Striving for inclusive decision processes

2-702 Students' Union Building
780-492-4689
ombuds@ualberta.ca

At Fairness Day on Campus, our ombuds office and the Alberta Ombudsman enter into discussions with the University Community through a variety of fairness activities to teach the 4 dimensions of fairness.

Procedural Fairness – *“My prof told me not to appeal my final grade as it would be denied.”* Students have the right to question a decision and respond to that decision; they also have a right to a timely decision.

Substantive Fairness – *“When I received the decision, it was just one sentence saying my appeal was denied.”* Decision letters must be comprehensive and outline reasons; greater details are expected at the highest level of appeals and/or when sanctions are more severe.

Relational Fairness – *“When my prof said, you are just a poor student and shouldn't be here, I felt very bad.”* Respectful response and treatment to inquiries is expected; an open and courteous dialogue with the client encourages them to speak with confidence.

Equitable fairness – *“I was told that I could not use my background status as an excuse to get an extension.”* There must be consideration of humanitarian and extenuating circumstances in a decision to ensure the person's location and status are acknowledged and understood.



Using the Fairness Triangle: A Best Practice for Communication and Decision-making

- ❖ The process is inclusive, welcomes a diversity of perspectives, and encourages everyone to participate.
- ❖ The Fairness Triangle emphasizes the importance of creating a climate of healthy dialogue and respect.
- ❖ The Fairness Triangle helps us to develop and share best practices in our university community.

FAIRNESS IN PRACTICE GUIDE



The Office of the
ombudsperson
B.C.'s Independent Voice For Fairness



bcombudsperson.ca/sites/default/files/OMB-FairnessInPracticeGuide-web.pdf

accuo.ca

- resources
- publications
- fairness guides



FAIRNESS IS EVERYONE'S CONCERN:

A Sampling of Practices and Resources on Cultivating Fairness

from your Ombuds Community

Compiling editor - Natalie Sharpe, University of Alberta

May 2015 v. 2

Fairness in Communication

A Relational Fairness Guide.

Veronica Kube May 2016
Office of the Student Ombuds



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