The Solution is in the Room

Fairness, Proportionality and Participation in Tribunal Dispute Resolution

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Foundation of Administrative Justice
New Horizons: Legal Issues for Tribunals
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What are the desired outcomes from the point of view of:

- Those who run tribunals;
- Those appearing before them;
- Taxpayers and society
KEY MESSAGES

Tribunals: excellent service
Participants: quick resolution at reasonable cost
Taxpayers and society: cost effective access to justice

These outcomes are aligned
What are key attributes of the best tribunal processes?

- Fairness
- Proportionality
- Participation
KEY MESSAGES

**Fairness:** Rules of Fairness (Natural Justice)

**Proportionality:** Timely, and Effective use of financial, human and other resources

**Participation:** Collaboration between parties to narrow issues and explore mutually acceptable solutions.
What are the parameters?

Fairness
How do you ensure proportionality and participation?
Old: The Classic “ADR” Continuum

CONSENSUAL

Negotiation
Facilitation
Mediation
Conciliation

NON-CONSENSUAL

Settlement Conference
Trial Conference
Med-Arb
Arbitration
Adjudication

+ Control over the process and the outcome -
New: Triage and Streaming

- Information
- Negotiation
- Mediation
  - Interest based
  - Evaluative
- Settlement conference

Triage: Counsel, Parties Tribunal

RESOLUTION

- Trial conference
- Med-arb
- Arbitration
- Adjudication
- Other?
KEY MESSAGES

Participative opportunities may lead to:

- resolution of an issue instead of progressing to a hearing,
- more proportionate process
What systems can we build to “embed” proportionality and participatory principles in our work?
Solutions and Services 1

Pathways to Solutions:
- Prevention
- Self-service
- Assessment and streaming
- Advice and resolution
- Formal claims
- Hearings

Problems to be solved 100%

Transformed Services:
- Education and Information
- Self help tools
- Assessment tools
- ADR and diversion options
- E-business services
- E-resolution services

2% ?
15% ?
100% ?
Solutions and Services 2

Solutions:

Prevention
- Early information
- Early education

Self-service

Assessment and streaming
- Statutory decision-makers
- Advocacy community
- Tribunals

Advice and resolution
- ADR specialists
- Tribunal staff
- Tribunal members

Problems to be solved

100%

15%

2%

Services:

Online information
- Open data on cost, delay, client satisfaction

Self help tools:
- ODR

Assessment tools:
- e-Filing
- Intelligent e-forms

ADR and diversion options:
- Peer support, Advocates, etc.
- Early Neutral Evaluators
- Mediators, Med-Arb

e-Business services
- Shared e-payment
- Shared business intelligence

e-Resolution services:
- Written / Paperless hearings
Measuring Outcomes

What are your key measures?

- Fairness
- Proportionality
- Participation
KEY MESSAGES

How will you know if you have been successful in:

- Maintaining Fairness?
- Promoting Efficiency?
- Ensuring effective Participation?
Conclusion: What shifts are required?

<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
</tr>
</thead>
<tbody>
<tr>
<td>managing cases to hearing</td>
<td>managing cases to resolution</td>
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<tr>
<td>formal adversarial dispute resolution</td>
<td>informal collaborative dispute resolution</td>
</tr>
<tr>
<td>bricks and mortar</td>
<td>virtual service delivery</td>
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<tr>
<td>costly downstream crisis intervention</td>
<td>upstream dispute prevention and mitigation</td>
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<tr>
<td>programming based on anecdotal understanding</td>
<td>information-based decision-making and evidence-based service delivery</td>
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<tr>
<td>service delivery, planning and IT in silos</td>
<td>integrated services, coordinated planning and IT</td>
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<tr>
<td>discrete and disconnected business intelligence systems</td>
<td>a single business intelligence environment</td>
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Do decision-makers have the authority to require proportionality and participation?
KEY MESSAGES

Tribunals are Masters
In Their Own House
Sharing our best practices:

“Tell us a story!”

- On-ramps
- Off-ramps
- Fairness protections
- Efficiencies
- How you measure outcomes
If you have any questions, contact:

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If you have any difficult questions, contact:

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KEY MESSAGES

Rules of Fairness *(Natural Justice)*

- Right to be heard
- Right to know the case to be met
- Right to participate
- Right to a neutral decision-maker