



What's Fair?

Government Decisions and Your Rights



Office of the
Ombudsman



Public Legal Education
and Information Service
of New Brunswick

This booklet was produced by the Office of the Ombudsman in partnership with Public Legal Education and Information Service of New Brunswick.

The New Brunswick Ombudsman's Office has one central mission: to ensure that all New Brunswick citizens are treated with administrative fairness by government and its agencies. Under the **Ombudsman Act**, the Office of the Ombudsman strives to guarantee that individuals are served in a consistent, fair and reasonable manner by New Brunswick Government organizations.

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Introduction

There are many government programs and services to benefit individuals or groups. In delivering these programs and services, public employees make many decisions every day. These decisions sometime result in conflict or disagreement between individuals and government departments or agencies. The purpose of this booklet is to offer information to individuals and businesses on

- Provincial Government Decisions
- How to Ensure People Are Treated Fairly
- How Decisions are Made by Governments
- How to Assess the Fairness of a Decision
- Your Right To Appeal or Challenge A Government Decision
- The Role of the Office of the Ombudsman
- The Role of the Courts in Reviewing a Decision
- Other Resources and Contact Information

This booklet explains the role of the Ombudsman's Office, but it is not a detailed guide to registering a complaint with the Office of the Ombudsman. It describes the options available if you wish to contest or challenge a government decision. It also explains when it may be appropriate to file a complaint with the Office of the Ombudsman. This booklet is for educational purposes only and is not a replacement for legal advice.



Provincial Government Decisions

What authority do governments have to make decisions that affect people's rights, privileges or interests?

The authority for governments to make decisions comes from laws and regulations. These laws also set out how those decisions are to be made. The government must follow rules and processes that ensure proper and fair procedures for making a decision.

Who has the authority in government to make decisions?

The person or body making the decision must have the legal right to do so. If they do not, then their decision may not be valid. In most cases, this means that there must be a law or regulation which gives them the authority. If a decision-maker's authority or the government policies or procedures go beyond what the law allows, a court may find them invalid. To find out if a particular decision was made properly you should begin by looking at whether the person or department making the decision had the power to do so.

Treating People Fairly

Are decision-makers required to treat people fairly when they access services, programs or benefits?

Yes. Since administrative decisions made by a government may directly affect the rights, privileges or interests of an individual, the decision-maker must follow the “**rules of procedural fairness**”.

What are the rules of procedural fairness?

The rules of procedural fairness were first developed by courts to ensure fair trials. Now, these rules also apply to the process of government decision-making. This is called administrative law. The two key elements of procedural fairness are:

- a decision-maker must “hear the other side”, and
- a decision-maker must be free from bias.

How Decisions are Made by Governments

As explained above, government decision-makers must give you the right to be heard and they must make their decision without any bias. The amount of procedural fairness required by law may differ from situation to situation. It often depends on the type of decision-making power involved (discretionary, non-discretionary or court-like).

The table below shows the three ways that government decisions are made and the rights of the individuals in each situation.

Type of government decision-making	Rights of the individual
(I) Decisions made on preset conditions or criteria	
When government decision-makers must follow pre-established or fixed criteria, they are making non-discretionary decisions . For example, when an individual applies to government for a benefit or a license the requirements for eligibility are set out in the laws or regulations.	You have the right to have a particular benefit or service if you meet the requirements. If you believe you have met the conditions set out by the law but you have been denied a benefit you may appeal to the department that is responsible for the decision. If you are not satisfied with the outcome of your appeal, you may raise your concerns with the Ombudsman and request an investigation.

Type of government decision-making

Rights of the individual

(2) Decisions made on a case-by-case basis

When government decision-makers have widely set boundaries under the authority of a law or regulation to decide if a person is eligible for a program, they are making

discretionary decisions. This is usually done on a case-by-case basis.

You have the right to expect decision-makers who make discretionary decisions to respect the rules of procedural fairness and to make decisions which are fair and justified. Discretionary decisions are more likely to lead to conflict than decisions based on fixed criteria.

(3) Decisions made by court-like boards and tribunals

Decisions can also be made by specialized boards or tribunals known as “**administrative tribunals**”. These are court-like bodies that settle disputes on specific laws or government programs. For example, the Family Income Security Appeal Board hears disputes about income assistance decisions involving individuals and the Department of Family and Community Services. The Labour and Employment Board hears many types of work-related disputes.

When you challenge a law or specific government program, often there will be a process where you can hear the case against you and present your side of the case. You have the right to make arguments before a decision-maker decides the case. This is called an “adversarial process.” To ensure the decisions made are fair the administrative tribunals tend to use procedures which resemble the court process.



Assessing the Fairness of a Decision

The following Fairness Checklist should help you decide if you have been treated fairly.

NB Ombudsman Fairness Checklist

To assess the fairness of government decision, consider:

1) You have the right to be heard

(You should be able to answer “YES” to some or all of the following points)

- Did those affected by a decision have a chance to give information and evidence to support their position?
- Were you told that a decision was going to be made which might affect you?
- Were you told what information the decision was based on? (Note: This is called “disclosure”)
- You may have the right to provide oral or written input. (Note: The rule that the decision-maker must “hear the other side” does not always mean a formal hearing must be held each time a decision is made. Giving you the opportunity to have input is often enough to satisfy the rule.)
- You may sometimes have a right to have advance notice of a decision being made. Did you have reasonable time and opportunity to respond effectively to the decision?
- Were decisions made within a reasonable time?
- Once a decision was made, were you told of the outcome of the decision and how it would affect you?
- Were you given reasons for decisions? In some situations procedural fairness requires that the decision-makers provide written explanations of their decisions. Decisions involving complex considerations are more likely to require written reasons. In these cases, providing written reasons helps to ensure fairness and transparency.



2) The decision-maker must be impartial

(You should be able to answer “YES” to the following)

- The decision-maker made decisions that were impartial and appeared to be impartial?
- The decision-makers did not have any personal interest in the outcome of the cases they decided? (Note: This rule mostly applies to court-like decisions.)
- The decision-makers were not connected to the parties involved in the dispute.
- The people involved in a dispute, and the general public, felt that the process and actions of the decision-maker were fair.
- The people affected by the decision did not have concerns about the decision-maker’s ability to make fair decisions? If they did, this undermines confidence in the process.

3) To Assess the Fairness of Appeal, Review, and Complaint Procedures, consider the following:

- At the time of the decisions, were people told of any possible appeal or review procedures?
- Were complaint procedures clearly defined?
- Was the public asked for ideas on improvements in service?

Your Right To Appeal Or Challenge A Government Decision

If you think an action, decision, practice or procedure of the New Brunswick government was unfair, or the law was not correctly applied, you can ask the Office of the Ombudsman to investigate. If you have concerns, the Ombudsman can provide an impartial review or investigation. However, there are several steps in the complaint process you must take before the Ombudsman can become involved.

Step 1 - Ask the department or authority to review its decision.

- If you are unhappy with the outcome of a decision, or the way it was made, the best option may be to start with the people or department that made the decision. For many issues a discussion with the decision-maker or the supervisors will often resolve matters.
- Talking to the department will give you the opportunity to bring to its attention any information it may have overlooked or incorrect information. It is also an opportunity to ask questions so you can better understand how the department came to the decision that was made.
- If you are still dissatisfied with the decision, ask the department if it has an internal review process. If there is a process available you may be able to have your information and the decision reviewed by another person within the department. For example, the Income Assistance program provides an opportunity to have decisions about benefits reviewed internally before proceeding to a more formal court-like process to settle the matter.

Step 2 - Find out if you have the right to appeal to a board, tribunal or court.

- If you cannot resolve the issue with the department or authority that made the decision, ask what steps you should take next. Find out if there is an administrative tribunal or board that will handle complaints in that type of situation.
- If there is an administrative body in place to review your decision, contact the tribunal or board to find out how you should apply to have a review. In some circumstances the law may provide for a tribunal or court to review the decision. When this happens it is called a “statutory right to appeal.”
- The purpose of these administrative tribunals is to provide the public with quick and effective ways to challenge certain types of government decisions. You can find information about some of the administrative tribunals in New Brunswick and contact information on page #11.

REMEMBER: If the law provides for an appeal process you must go through this avenue before you can go to the next steps. If there is no appeal process available **you can contact the Office of the Ombudsman** or ask the court to review the matter.

The Role of the Office of the Ombudsman

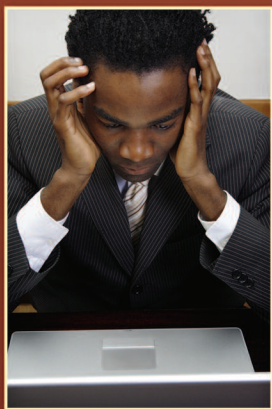
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Is the Office of the Ombudsman separate from government?

Yes. The Ombudsman is appointed by the Legislative Assembly. The Office is not part of government. The Ombudsman has the authority to investigate, without any bias, complaints when the public believes the government has treated them unfairly. For example, the Office of the Ombudsman places great importance on procedural fairness rights.

Who can make a complaint?

Anyone who feels that they have not been treated fairly by the government can file a complaint with the Office of the Ombudsman. You must first use the existing appeal processes, but if you are not satisfied with the appeal processes or results of the department or agency, you may inform the Office of the Ombudsman of your concerns. The Ombudsman's services are free of charge.



What kinds of decisions can people/organizations ask the Ombudsman to review?

You can ask for a review of New Brunswick government departments, agencies, commissions and boards whose programs and services affect individuals and organizations. Some examples are:

- Decisions about who gets financial assistance
- Decisions about who gets government contracts
- Access to information that you have requested
- The general administration of government
- Concerns about privacy of information

How will the Ombudsman review or investigate my complaint?

When the Ombudsman investigates your complaint it will look at the authority of the decision-maker to make the decision, the impartiality of the decision-maker and whether you have had the opportunity to be heard. After the investigation, the Ombudsman may decide whether an official action or decision was fair. If the Ombudsman finds a decision was not fair, he/she may make recommendations to any level of government, or to the Legislative Assembly. The Ombudsman may make its recommendations public. However, if there is not enough evidence to support the complaint, the Ombudsman may dismiss the complaint. The Ombudsman can only make recommendations for corrective action.



The Role of the Courts in Reviewing a Decision

If you are not satisfied with the ruling of an administrative tribunal or other administrative decision, you have one further option. You may ask the Court of Queen's Bench to review the decision. However, your application for judicial review may or may not be accepted by the Court. The court will consider the application and will allow you to proceed if it appears that your case raises an important legal issue or public concern.

You can ask the court to review the decision even if there is no “statutory right to appeal”. This is because the Court already has the power to review government actions to ensure they are within the law. You would use the court process to challenge the authority of the decision-maker or the conditions and criteria on which the decision is based.

Do I need a lawyer for a court challenge?

Like a complaint to the Ombudsman, judicial review can be a very effective way of challenging a government decision. The court process and law involved in a judicial review is quite complex and most individuals would require the services of a lawyer to go to court. Since this review process is expensive, it may not be an option for many people.

Other Resources and Contact Information

New Brunswick Laws and Regulations

These are available online at www.gnb.ca. Consult the Government of New Brunswick website under the heading “Acts and Regulations”. Some departments may also display their internal policies and procedures on their own websites. You can request other policies and procedures under the **Right to Information Act**.

Administrative Tribunals and Boards in New Brunswick

The following are examples of some of the administrative bodies that deal with government decisions. The summaries have been taken from the bodies' websites.

Family Income Security Appeal Board – The Family Income Security Appeal Board permits clients to seek an independent review of a departmental decision. It is a quasi-judicial, independent tribunal, based on Administrative Law. The Appeal Board is established under the **Family Income Security Act** and Regulations.

You can find information about how to appeal to this board on the Department of Family and Communities services website under “How to Appeal” http://www.gnb.ca/0017/Appeal_boards/how-e.asp or by contacting your local Family and Community Services Office.

Workplace Health, Safety and Compensation Commission – At arm's length from the WHSCC, the Appeals Tribunal is a quasi-judicial administrative tribunal, which respects the rules of natural justice. If a worker, their dependent or an employer is dissatisfied with a decision made by the Workplace Health, Safety and Compensation Commission, they can appeal it through the Appeals Tribunal. The primary responsibility of the Appeals Tribunal is to provide timely, fair, consistent and impartial decisions when resolving appeals of decisions rendered by the Commission.

You can find information about the Appeals Tribunal on the WHSCC website under “Appeals” (www.whscc.nb.ca) or by calling the toll-free line for the Appeals Tribunal at 1-800-222-9775.

Medicare - Insured Services Appeal Committee - You may appeal to the Insured Services Appeal Committee if you do not agree with a decision made by New Brunswick Medicare about your case or the case of an immediate family member. This includes decisions about eligibility, refusal of a claim for services or the amount paid on a claim. Medicare also provides a Client Advocate Service which may be helpful in obtaining information about your rights and resolving disputes. You can learn more about the Client Advocate Services online at www.gnb.ca/0394/appeals-e.asp or by phone at 506-453-4227

Assessment and Planning Appeal Board – This Assessment and Planning Appeal Board is responsible for hearing property assessment appeals, appeals of land use and planning decisions from throughout New Brunswick and hearing appeals of local heritage review Boards decisions under the ***Municipal Heritage Preservation Act***.

For more information, you can contact the Department of Wellness, Culture, and Sport at 506-453-2909.

Other Boards, Tribunals, or Committees.

There are many other boards, tribunals and committees in New Brunswick which review government decisions. If you have questions about your right to appeal or the appeal process ask the department or agency involved about your options.

The Office of the Ombudsman

You can learn more about the mandate of the Ombudsman and the complaint process by visiting their website at www.gnb.ca/0073/index-e.asp or by calling the toll-free number at 1-888-465-1100

