

Making a Case for Fairness in Policy Development

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promoting fairness

- Advocate for fairness
- Promoters of best practices
- Proactive change agent



- Focus on individual complaints and resolving individual disputes
- Alternative dispute resolution mechanisms were added
- Systemic reviews added into the service continuum
- Increased educational role; training for public officials in dispute resolution and procedural fairness



- Moved away from reactive enforcement role of “correcting the wrong” - to proactive consultative role of promoting best practices
 - Through “fairness consultations” we provide assistance to government agencies by offering our “fairness lens” when a government program is in its policy or program development stage
 - We also have produced “best practices” guides for administrative fairness- specifically for our provincial administrative tribunal system



Our tools:

- The fairness triangle
- Fair practices training
- The model of cooperative influence



Fairness Triangle



- Marc Hertogh (January 2001). Coercion, Cooperation, and Control: Understanding the Policy Impact of Administrative Courts and the Ombudsman in the Netherlands. *Law & Policy*, 23, 1, 47-67. doi: 10.1111/1467-9930.00102.



Three Assumptions

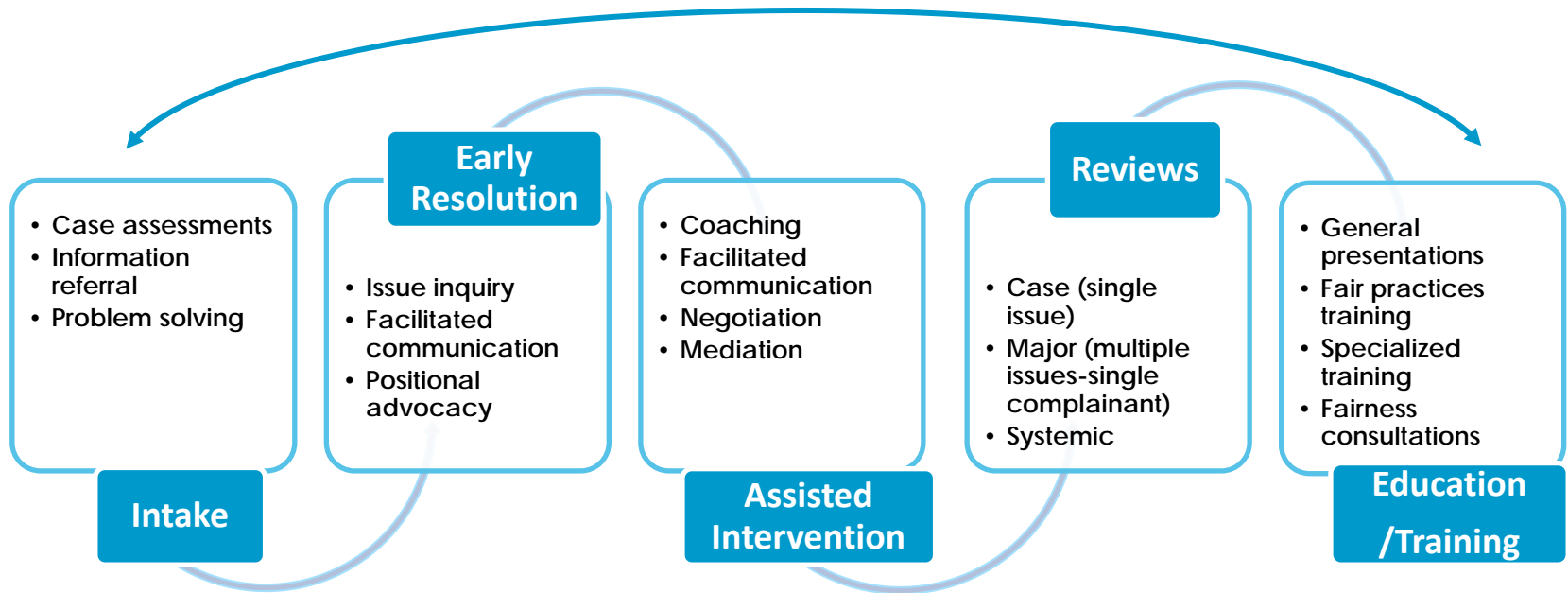
1. Separate subsystems each with their own “language, reality and rationality”
2. Positive outcome is achieved through open communication
3. Influence is effective when communicated in the language of those who are to be influenced



Coercive Control and Cooperative Influence

Characteristics	Coercive Control (Courts)	Cooperative Influence (Ombudsman)
Central Goal	Effect change through imposed decisions with potential sanctions for non-compliance	Effect change through negotiation and consultation
Central Quality	Authoritarian	Consultative (interactive)
Nature of decision	Binding (obligatory)	Recommendation (advisory/facilitating)
Relationship	Vertical	Horizontal
Orientation	Reactive	Proactive

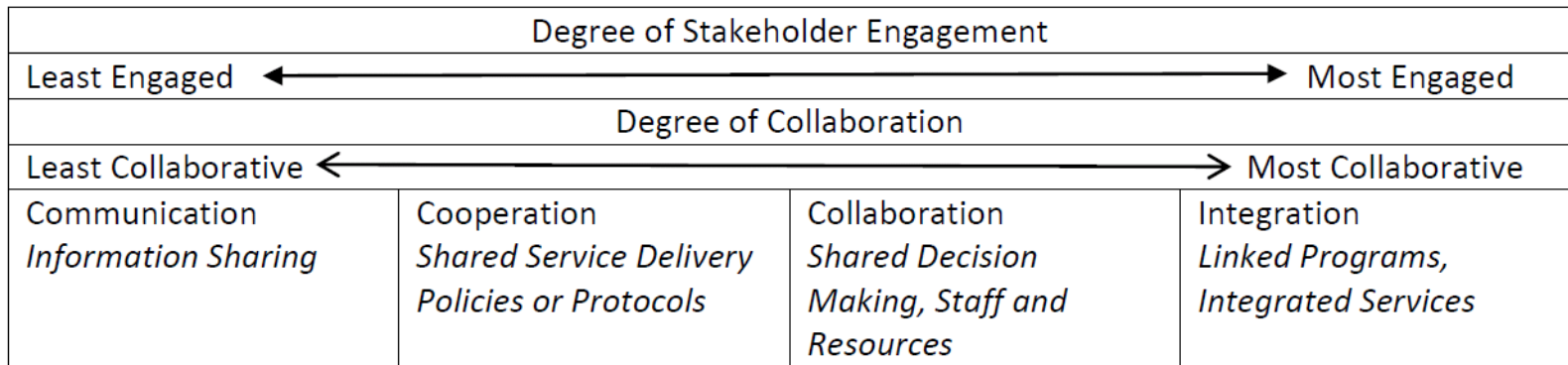




Appropriate Dispute Resolution



The Continuum of Collaborative Relationships



- Adapted from Nova Scotia Health Research Foundation. Collaborative Service Delivery Jurisdictional Review. January 2012.



- Active involvement at an early stage, or at the ground level, with the systems we oversee
- Address fairness at the foundational level of programs and policies
- Work with government in a way that addresses individual issues and impacts systemic change



- Opportunity to apply our “fairness lens” to policy before it is put in place
- Promotion of fair practices by working with government to build fairness into the policy development process, policy frameworks and specific policy content of government agencies
- Policy consults evolved out of and works through systemic reviews



My Brother's Keeper

A Review of Electronic Control Devices in Saskatchewan Correctional Centres
Housing Male Inmates



Timeline

June 26/07

Department purchases 6 X26 TASERs; expected "go-live" date Jan. 2008

Sept. 4/07

Inmate shot with TASER; Department begins internal investigation

Nov. 16/07

Ombudsman notified of incident & findings



- We reviewed Ministry's internal review of the incident
- We asked broad policy questions:
 - Why introduce TASERs?
 - Was there enough evidence to support the decision?
- We chose not to address whether TASERs should be introduced into correctional centres



- Literature and legislative reviews
- Ministry documents
- Corrections use-of-force policies across Canada
- Use-of-force expert and ECD trainer
- 27 key person interviews, including:
 - The inmate
 - Deputy Minister & Assistant DM
 - Corrections management and staff
 - Union
 - Police experts
 - TASER distributor



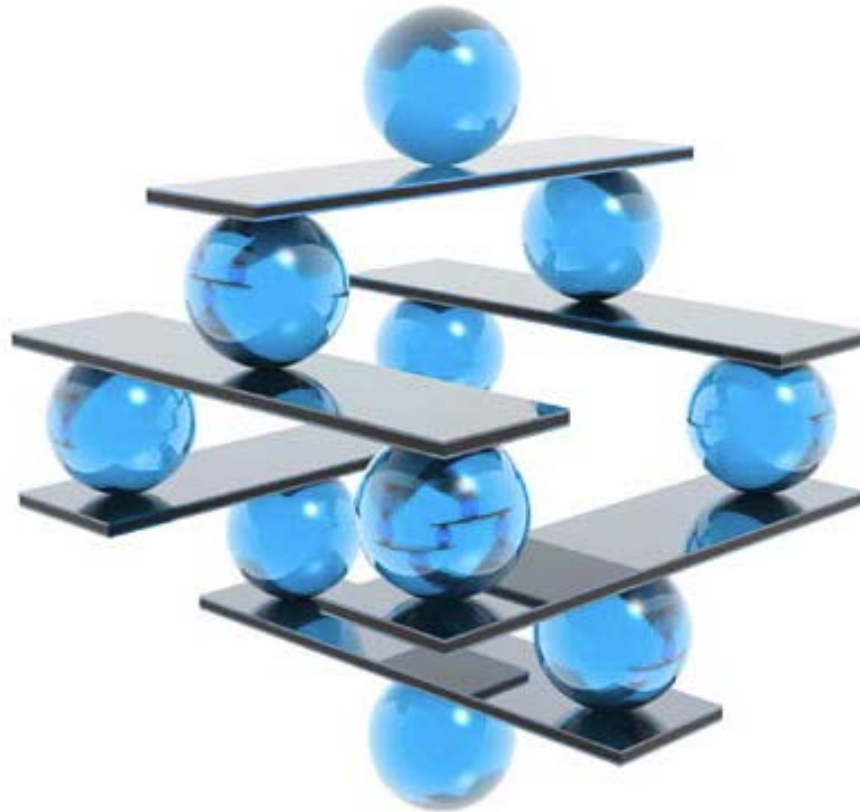
Public Policy Development: The Missing Steps

- Identification of the issue
- Assessment of the problem
- Review of the human effects of TASERs
- Consultation
- Performance monitoring and evaluation



Achieving the Right Balance

A Review of Saskatchewan's Conflict of Interest Policy
Respecting the Provincial Public Service Sector



Timeline

June 3/11

A public servant submits a request for outside employment in order to run for elected office. The request was denied.

April 11/12

Ministerial request to review the policy

April 23/12

Public servant files complaint with our office



- We reviewed the Ministry's decision-making process on the individual complaint
- We asked broad policy questions:
 - Is the COI policy fair?
 - Does the policy effectively identify and respond to COI?
- We did not attempt to create policy for government, rather we provided a guide to what should be in the policy



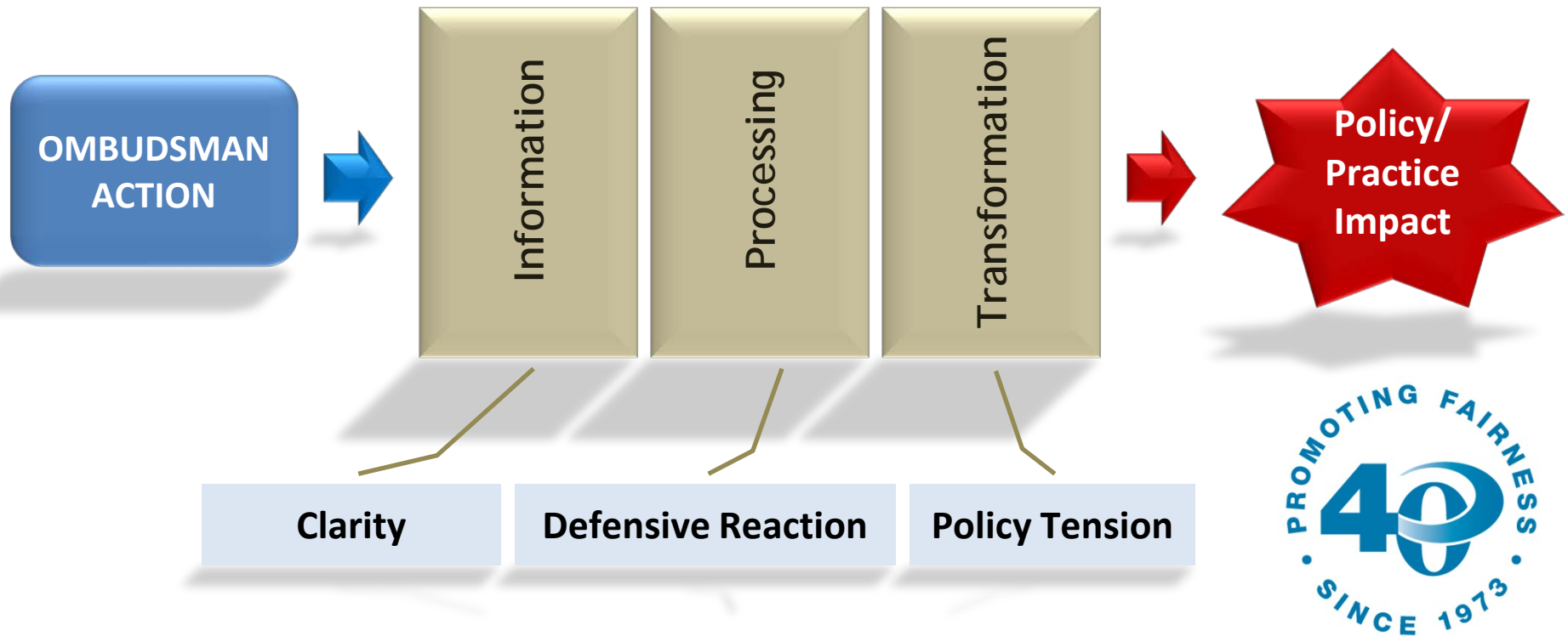
- Literature and legislative review
- A review of all PSC policy documents and training materials related to the policy
- Cross jurisdictional review of COI public sector policies
- The creation of a best practices model
- Interviews of eleven key persons



Public Policy Development: The Missing Steps

- Identification of the issue
- Assessment of the problem
- Review of best practices in public sector COI policy
- Consultation
- Performance monitoring and evaluation





- Time consuming
- Resource intensive
- Perception of bias - maintaining independence
- Initial engagement



- “What a great idea”
- Builds in procedural fairness in the review process
- May produce long term impact



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Thanks for Listening!