

**Content of a Decision:
What Do Reasons Include –
Guiding Principles
For Administrative Decision-Makers**

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Content of a Decision: What do Reasons Include?

Purpose of written reasons:

- 1) Parties have a right to know why the decision was made.
- 2) To allow for meaningful appellate review.

Content of a Decision: What do Reasons Include?

Written reasons must:

- Allow meaningful appellate review; and
- Meet the parties “functional need to know” why decision was made.

(Hill v. Hamilton-Wentworth Regional Police Services Board)

Content of a Decision: What do Reasons Include?

“Functional need to know” test recognizes that there will be different degrees of reasons (depending on nature/purpose of administrative tribunal or the nature of the question that arises).

Content of a Decision: What do Reasons Include?

The Alberta Court of Appeal recently recognized the essential elements to written reasons:

- Intelligibility
- Accountability
- Reviewability

(Maitland Capital Ltd. v. Alberta Securities Commission)

Content of a Decision: What do Reasons Include?

Minimum requirement of content of reasons will be context-specific.

Content of a Decision: What do Reasons Include?

Standards of review:

- Correctness
- Reasonableness

Content of a Decision: What do Reasons Include?

Correctness:

- No deference given to the tribunal below
- Generally questions of law and jurisdiction

Content of a Decision: What do Reasons Include?

Reasonableness:

- Deference is given to tribunal's decision
- Generally applied to tribunal's findings of facts and reasons for decision

Case Study No. 1

Law Society of Upper Canada v. Neinstein

- A lawyer subject to discipline hearing for allegations of sexual harassment
- Central issue was credibility

Case Study No. 1 – Law Society of Upper Canada v. Neinstein

Findings of tribunal for accepting evidence of complainant

- The complainant gave her evidence in a forthright manner;
- She withstood cross-examination well;

Case Study No. 1 – Law Society of Upper Canada v. Neinstein

Cont.

- There was independent evidence, as noted, which corroborated her version of relevant events;
- Although there was contradictory evidence as to the layout of the lawyer's office and related matters, that evidence was not material to a finding of whether sexual harassment took place.

Case Study No. 1 – Law Society of Upper Canada v. Neinstein

The Court of Appeal held:

“It can be fairly said that Mr. Neinstein, on a reading of the Hearing Panel’s reasons, would have absolutely no idea what, if anything, the Hearing Panel made of his evidence, and that of his supporting witnesses.”

Case Study No. 1 – Law Society of Upper Canada v. Neinstein

The Court of Appeal held that the reasons were so deficient as to constitute an error of law.

The Court of Appeal remitted the matter to a different tribunal for a new hearing.

Case Study No. 2

Dodd v. Alberta (Registrar of Motor Vehicle Services)

- Registrar suspended Mr. Dodd's license for a period of six months.

Case Study No. 2 – Dodd v. Alberta

Findings of the Board:

- The appellant failed to give his undivided attention to the driver examinations he conducted;
- The appellant failed to test a critical competency component in a Class 5 advance road test;

Case Study No. 2 – Dodd v. Alberta

Cont.

- During a road test the appellant failed to notice the client run a red light and fail to stop at a stop sign;
- The appellant falsified information on a driver examination checklist; and

Case Study No. 2 – Dodd v. Alberta

Cont.

- The appellant has a history of non-compliance and lesser forms of disciplinary actions have failed to have the appellant comply with the driver examiner procedures manual.

Case Study No. 2 – Dodd v. Alberta

Reasons of the Board:

- The board finds the 6 months suspension imposed by the Registrar is well within the Registrar's authority granted by the *Traffic Safety Act*;
- The Board finds the violations investigation carried out by the Special Investigation Unit was very thorough and the evidence presented by the Registrar very credible and not in dispute by the appellant;

Case Study No. 2 – Dodd v. Alberta

Cont.

- Driver examinations are the only requirement Alberta Transportation imposes on drivers to ensure they know the rules of the road and are capable of safely operating a motor vehicle. The testing requirement must ensure this. Any deviation from the testing requirements puts the public at risk; and
- In view of the above, the appeal is dismissed and the six months suspension of the Appellant's Driver Examiner License is upheld.

Case Study No. 2 – Dodd v. Alberta

The Court of Queen's Bench on judicial review was critical of the findings that Mr. Dodd falsified information.

The Court also found there was no analysis of Mr. Dodd's two main submissions.

Case Study No. 2 – Dodd v. Alberta

The Court held the Board failed to meet the duty of fairness required to provide adequate reasons. It quashed the decision and remitted the matter back.

Case Study No. 3

Guttman v. Law Society of Manitoba

- Lawyer pleading guilty to unprofessional conduct.
- The issue was the penalty to be imposed.
- The Committee disbarred Mr. Guttman.

Case Study No. 3 – Guttman v. Law Society of Manitoba

Mr. Guttman advanced mitigating evidence:

- Letters from colleagues about the stresses in his life at the time of the misconduct.

The evidence was rejected by the Committee.

Case Study No. 3 – Guttman v. Law Society of Manitoba

The Court of Appeal held there was a complete absence of any rationale for the rejection of the evidence.

Case Study No. 3 – Guttman v. Law Society of Manitoba

- The Court of Appeal applied the standard of reasonableness.
- The Court allowed the appeal and substituted the order of disbarment with a 1 year suspension.

Tips to Avoid Review

- The decision must not only state the “what” but also the “why”;
- Both sides of the evidence must be reviewed – there should be an assessment of the evidence presented by both parties;
- If the evidence is rejected, the decision-maker must provide reasons for doing so;

Tips to Avoid Review

- Where credibility is an issue, there must be more than cursory and generic statements about findings of credibility;
- If one party is found credible, the decision should still address why the other party was found not to be credible;
- The decision-maker must address in its reasons all of the arguments or submissions advanced by the parties;

Tips to Avoid Review

- The decision-maker must state why it rejects the unsuccessful party's submissions or arguments;
- In assessing a penalty against a party, the decision must link the findings of fact to the penalty imposed;
- It may be prudent to review past penalties imposed by the tribunal in similar cases.

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