



LAW SOCIETY
of ALBERTA

Effective Decision Making

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Caucusing

- Identify the issues and what needs to be decided
- Review the citations, opening and closing statements, & evidence before the panel
- Each member participates & all members are equal in the decision making process

Caucusing

- Oral decision, or reserve and issue written decision?
- Consider:
 - who will write first draft
 - timeline
 - how & when discussion of draft will occur

Reasons

- Reasons serve the following purposes:
 - ensure a disciplined approach
 - foster better decision making
 - reduce arbitrary or capricious decisions
 - demonstrate fairness & transparency
 - reinforce public confidence
 - acknowledge evidence & submissions
 - allow assessment of whether to appeal
 - provide basis for appellate review

Reasons are Not Conclusions

Example:

- Under the former *Planning Act*, a development appeal board was given discretion to approve certain non-conforming developments if they did not adversely affect the amenities of the neighbourhood.
- A decision concluding that the proposed development did not adversely affect the amenities of the neighbourhood was set aside - there were no reasons provided for that conclusion.

Effect of Inadequate Reasons

- Until recently, was treated as a breach of procedural fairness
- Since 2011, the adequacy of reasons is considered in combination with the outcome.
- Is the decision as a whole reasonable?

Effect of Inadequate Reasons

- The standard of review for the adequacy of reasons is reasonableness, not correctness
- If inadequate reasons make the decision as a whole unreasonable, the decision will be set aside

Previous Decisions Not Binding

- Administrative decision-makers are not bound by precedent
- Previous decisions are a guide
- Departures from previous decisions should be explained

No Extraneous Matters

- Decision should not
 - address matters which were not in front of the Hearing Committee
 - reprimand the investigated lawyer for matters on which there is no finding of misconduct
 - wish either the investigated lawyer or the complainant “good luck” in future

Other Considerations

- Is it necessary to reproduce an agreed statement of facts *verbatim* in the decision?
- Is it necessary to list all of the exhibits in the body of the decision?
- Number the paragraphs in the decision.

Model Template for Decisions

- LSA Hearing Committee decisions (since 2008) can be found on CanLII at <http://www.canlii.org/en/ab/abls/>.
- See *Law Society of Alberta v. Ter Hart*, [2004] L.S.D.D. No. 25
- LSA template may be customized as circumstances require