



## Writing Hearing Committee Decisions: 20 Practical Tips

Outline of presentation by James T. Casey, Q.C. and David Jones, Q.C  
to Law Society of Alberta Hearing Committee Members

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1. Use the template
  - Use the Law Society of Alberta’s “Template for Hearing Committee Reports” as a guide and adjust as necessary depending on the circumstances of the case.
  
2. Consider the audiences for the decision
  - There are multiple audiences for the decision.
  - Who is the most important audience?
    - This is open to debate but some say it is the person about to lose.
  - Consider all these audiences when preparing the decision and the questions they may be asking as they review the decision:
    - Investigated lawyer
    - Investigated lawyer’s counsel
    - The Law Society
    - Law Society counsel
    - Complainant
    - Other Hearing Committees
    - Other lawyers
    - The public
    - The media
    - Benchers hearing appeals
    - The Courts
  - Will their questions be answered?
  
3. Initial Preparation to Begin Drafting
  - Review the citations.
  - Review the evidence.
  - Review the arguments advanced by the parties.
  - Carefully delineate the issues.
  
4. Prepare an outline
  - Prepare a detailed outline of the decision prior to commencing drafting.
  - A good outline helps develop a strong structure for the decision.
    - Use headings to assist in structuring decision and enhancing readability.
  - Ensures that no significant issues are missed.
  - Helps avoid duplication.
  - Review the arguments advanced to ensure that all significant arguments are addressed.
  
5. Write while the evidence is fresh
  - Schedule time to write as soon as possible after the completion of the case.
  - The evidence will be freshest and easiest to recollect.

6. Develop a strong opening paragraph
  - A “functional” opening paragraph that describes the process is satisfactory.
  - However, an alternative is to develop a “narrative” style opening paragraph that identifies the participants, very briefly tells the story, and identifies the major issues. A narrative style paragraph can be more powerful.
  - Some adjudicators will follow the opening paragraph with a summary of the decision of the tribunal so that in the opening few paragraphs readers know the outline of the “story”, the parties, the major issues, and the result.
  - The analysis and reasons follow in the body of the decision.
  
7. Use the active voice
  
8. Use plain language
  - Avoid jargon.
  - Simplify sentences.
    - To simplify shorten sentences and consider “DAM”: “death to all modifiers”
  - If technical legal terms must be used, explain meaning where appropriate. Remember not all your audiences are legally trained.
  
9. Be cautious in describing credibility findings
  - Avoid the common mistakes
    - Indicates that accepts witness’ testimony but does not explain why.
    - Rote incantation of “credibility factors” without analysis.
    - Inadvertent reversal of onus of proof.
    - Failure to address inconsistencies in evidence of witness who was believed by Hearing Committee.
    - Over-reliance on demeanour of witnesses.
    - Failure to understand witness may be honest but mistaken.
  
10. Watch your tone
  - The tone of your decision should be respectful and professional.
  - Avoid demeaning comments about legal counsel.
    - Rather than “This argument has no merit whatsoever.” Consider: “We are not convinced by this argument because....”
  - Avoid humour, sarcasm and snide comments.
  
11. Edit, edit, and edit again
  - Edit the decision once and then set the decision aside for a brief period.
  - Return to the decision and review as if you were reading it for the first time.
    - Does the decision read well?
    - Is the reasoning strong?
    - Have all the major issues been covered?
    - Is any part of the decision unclear?

- Check for grammar and spelling.
  - Are there any inaccuracies?
12. Consider privacy issues
- Read the draft through a “privacy” lens.
  - Is there personal, sensitive information in the draft that does not need to be included?
13. Carefully craft any orders made by the Hearing Committee
- Follow the language in the Legal Profession Act.
  - Read the statute to ensure that you have jurisdiction to make the order under consideration.
  - Avoid ambiguous orders.
  - Does the order clearly specify: “Who is to do what? By when? And how do we know whether there is satisfactory compliance?”
14. Ensure the decision is completed in a timely way
- Timeliness is a very important objective of the adjudicative process
  - By the time a hearing starts, there has already been significant delay.
    - Lengthy delays in completing a decision exacerbate the problem.
  - Some lawyer/adjudicators encounter delay because:
    - Very busy practices. Tip: schedule writing time in your calendar when scheduled for a hearing.
    - The desire to write memorable, literary decisions or decisions that may become used as precedents.
    - While the instinct is understandable, a “workmanlike” decision that clearly explains the rationale for the decision is sufficient in most cases in order to avoid undue delay.
    - Ask yourself: Do the parties need a timely result with a decision issued in 90 days or would they rather wait a year or more for a “literary” decision.
  - Some decisions are very long due to the extensive recitation of all the evidence called in the case. Ask yourself: is this particular evidence material to the outcome of the case? If not, then a lengthy recitation of that evidence might not be needed.
  - Most discipline cases (and most legal disputes in general) are resolved based on the facts rather than a point of law.
    - A lengthy exposition of the law is often unnecessary if factual issues are the key matters in dispute.
15. Use “Point First” Writing
- To assist in clarity, state your point or conclusion first before you elaborate on our reasoning.

16. Use the “So What” Technique
  - As you review your draft for clarity ask yourself “So what is the point of the paragraph? So what if it wasn’t included? So what is the purpose?”
  
17. Nomenclature
  - Be deliberate and consistent in your use of nomenclature.
  - Do you want to refer to the “Complainant” or “Investigated Member” throughout the decision? Or do you want to personalize the decision by identifying their role and then using their proper name throughout the decision.
  - If you are using proper names, be consistent. Do not call one person “Ms” or Mr” and another person by just their first or last names.
  
18. “Bring Your Own Device”
  - If you will be using your own computer/laptop to draft, ensure appropriate security. Obtain advice from the Law Society on security/privacy issues.
  
19. Review of draft by Hearing Committee
  - Drafters of decisions can suffer from “decision-fatigue”.
  - Other Hearing Committee Members should review draft with “fresh eyes” asking the following questions:
    - Is it clear?
    - Are there any inaccuracies?
    - Are any major issues missed?
    - Does the decision answer “Why?”
    - Does the decision accurately capture the reasoning of the Hearing Committee?
  
20. Review by Tribunal Counsel
  - Tribunal Counsel can play a very valuable role in reviewing draft decisions.
  - Can make recommendations to strengthen decisions.