

DECISION WRITING BEST PRACTICES – TOP 10 TIPS

Foundation of Administrative Justice Presentation for the
Saskatchewan Administrative Tribunals Association 7th Annual Conference
"Practical Skills for Modern Tribunals"

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Who is FOAJ?

- ▶ not for profit society founded in 1998
- ▶ dedicated to education for administrative tribunals, their members, staff and clients
- ▶ only Certificate in Tribunal Administrative Justice™
- ▶ over 5,500 people across Canada have taken one of the Foundation's public or custom courses

FOAJ's Course Offerings

- ▶ Principles of Administrative Justice (2 days)
- ▶ Interpreting legislation (2 days or online)
- ▶ Evidence (2 days)
- ▶ Decision Making (2 days or online)
- ▶ Decision Writing (2 days)
- ▶ Effective Hearings (2 days)
- ▶ Presenting Cases (2 days)
- ▶ Case Management Practices (1 day)
- ▶ Investigations (2 days)
- ▶ Single Adjudicator (1 day)
- ▶ Cultural Competencies (1 day)
- ▶ Charter of Human Rights (2 days)

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“Decision Writing is Easy...you just stare at the page until blood pops out on your forehead.”

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Why Reasons?

- ▶ reasons demonstrate transparency, accountability and quality of decision making
- ▶ can be a requirement of statute
- ▶ requirement of procedural fairness

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Top Ten Tips

- ▶ #1 Structured Decision Making
- ▶ #2 Break apart the section
- ▶ #3 What parts of a decision do you need?
- ▶ #4 Proximity Principle – like chapters in a book
- ▶ #5 Point First
- ▶ #6 Write like a human being
- ▶ #7 Writing about the evidence
- ▶ #8 Transition Sentences
- ▶ #9 Editing and Constructive Feedback
- ▶ #10 Own your decision

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#1 Structured Decision Making

- (i) identify the issues or questions to be decided
- (ii) break apart the section
- (iii) sort the evidence under the legal tests
- (iv) weigh the evidence to reach a finding of fact
- (v) repeat for each of the legal tests and issues

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#2 Break apart the section

s. 362(1) The following property is exempt from taxation

- (k) Property held by a religious body and used chiefly for religious education, divine service or public worship.

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----- Property
----- held by
----- a religious body
and
----- chiefly used for
----- religious education
----- divine service
or
----- public worship

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#3 What parts of a decision do you need?

- ▶ does your legislation contain mandatory language?
- ▶ templates – the pros and cons
- ▶ what order makes sense?
- ▶ let the headings help you

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- ▶ Cover Page / Recitals
- ▶ Introduction
- ▶ Preliminary Matters
- ▶ Questions the Board must Decide / Issues
- ▶ Legislation
- ▶ Summary of the parties' positions
- ▶ Findings of Fact
- ▶ Reasons
- ▶ Conclusion and Order(s)
- ▶ Signature, Date , Addendums

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#4 Proximity Principle–like chapters in a book

- ▶ each issue is written up separately
- ▶ use the headings to help you "*Did the contractor breach the Building Code?*"
- ▶ re–state the issue, the legislation, parties' positions, findings and reasons for each issue

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#5 Point First

- ▶ put the conclusion first before you explain how you reached your conclusion
- ▶ context before supporting detail
- ▶ avoid writing like a mystery novel focusing on the details up front and leaving the reader hanging to the end
- ▶ the reader shouldn't have to figure it out

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Example of a paragraph written “point first”

We find the weight of the evidence supports the probability that the worker's right shoulder symptoms occurring on October 8, 2015, are causally related to the performance of his work duties with the employer. This is supported by the following:

- (a) the daily visit log from the employer's company nurse which shows*;
- (b) the Assessment Forms from the employer's health services office indicate*; and
- (c) the report from Dr. Smith, who states*"

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#6 Write like a human being

- ▶ use ordinary day-to-day language
- ▶ good writing and the reader feels smart – bad writing and the reader feels dumb
- ▶ what are you going to call the parties?
- ▶ people don't talk about their motor vehicles – they talk about their cars
- ▶ they don't talk about where they are employed – they talk about where they work

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#7 Writing about the evidence

- ▶ the same words you use to evaluate the evidence during decision making are the words you can use in your reasons to write about the evidence

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- ▶ external and internal consistency
- ▶ degree of detail a witness recalls
- ▶ witness is a direct observer or participant
- ▶ parts of a witnesses' testimony can be reliable
- ▶ a witnesses' testimony can be credible – as opposed to the witness being credible
- ▶ comparison of qualifications of competing experts
- ▶ comparison of the methods used by competing experts

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#8 Transition Sentences

- ▶ help build the bridges from one concept to the next
- ▶ help your reader follow your logic
- ▶ are especially useful for quotations and legislation – transition into and out of the quote

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The first sentence in bold type is the transition sentence into the quote from the Act and the second sentence in bold type is the transition sentence out of the quote.

"The overall question we have to decide is whether the meeting rooms at the Providence Renewal Centre are exempt from taxation. **In order to decide this we must consider whether the criteria in s. 362(1)(k) of the *Municipal Government Act* have been met.** Section 362(1)(k) states "Property held by a religious body and used chiefly for religious education, divine service and public worship is exempt from taxation." **At issue in this case is the meaning of the phrase "used chiefly".**

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#9 Editing and Constructive Feedback

- ▶ should me more that looking for typos
- ▶ consider developing a Decision Feedback Sheet which would include: overall organization?, how is legislation used?, are the issues clearly defined?, are the positions of the parties accurate?; can you tell which evidence was persuasive to the board and which evidence was not?; are there findings of fact?; are there only conclusions without explanations "why"?

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THE PSYCHOLOGICAL POWER OF THE HUMAN MIND

According to a research at Cambridge University, it doesn't matter in what order the letters in a word are, the only

important thing is that the first and last letter be in the right place. The rest can be a total mess and you can still

read it without problem. This is because the human mind does not read every letter by itself, but the word as a whole.

Amazing huh?

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#10 Own your decision

- ▶ if you are writing as a single adjudicator "I find"
- ▶ if you are writing for a panel "We find ..."
- ▶ front end loading or back end loading

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Concluding Remarks

- ▶ let yourself succeed – pick one thing and work on that
- ▶ thank you for the opportunity to be part of the conference

QUESTIONS ARE WELCOME

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