



Guidelines for Reasons Review and Decision Quality Standards

(Disponible en français)

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These Guidelines for Reasons Review and Decision Quality Standards were implemented to provide transparency and consistency with respect to Tribunals Ontario’s policy and procedures regarding written reasons review and quality standards.

These Guidelines recognize the important principle that Tribunals Ontario members are independent in their decision-making. They also recognize Tribunals Ontario’s interest in the quality and consistency of its members’ decisions. The production of high-quality decisions enhances public trust and confidence in Tribunals Ontario’s constituent bodies and adjudicators.

Purposes

The purposes of these Guidelines are as follows:

- **To preserve independent decision-making.** Tribunals Ontario recognizes that any reasons review process must respect the adjudicative independence and autonomy of tribunal members. Member independence relates to being free from improper influence such that members may decide all adjudicative matters before them according to their conscience. Tribunals Ontario acknowledges that members come from different personal and professional backgrounds, and that some members may join Tribunals Ontario without legal training. For that reason, the reasons review process described below is intended to respect members’ adjudicative independence while, at the same time, help ensure that all adjudicative decisions are intelligible, well-reasoned, and legally sound.
- **To foster high-quality decisions.** These Guidelines are intended to promote, maintain, and enhance the general quality, consistency, and coherence of members’ decisions. Consistency and predictability are hallmarks of administrative justice and fairness. Further, parties who appear before adjudicative tribunals expect that like matters will be treated alike, and that a tribunal’s members will be consistent in their interpretation of law, policies, and



rules. These Guidelines attempt to provide a systemic approach to help members issue high-quality and consistent decisions, as well as foster continuous improvement in adjudicative quality. In doing so, these Guidelines are intended to enhance public confidence in Tribunals Ontario's bodies.

- **Provide a resource to members.** Written reasons are the primary means by which an adjudicative tribunal communicates with the parties and public. Thus, reasons should be clear, responsive, well-reasoned, supported by the evidence, and form part of an intelligible, cohesive body of jurisprudence. These Guidelines are intended to help Tribunals Ontario members discharge their mandates fairly, efficiently, and in accordance with the law, including by helping them to articulate the rationale for their decisions. Likewise, draft decision review during the orientation and training period for new members is intended to assist them in developing their knowledge and writing skills. Lastly, the decision review process may also help identify topics for member training or professional development, whether individually or as a group.
- **Enhance service to the public.** Tribunals Ontario recognizes the public's interest in quality and consistency in decision-making. Individuals affected by members' decisions are more likely to feel they were treated fairly and appropriately when they are given clear and legally sound reasons for a decision. For that reason, members should strive for excellence, including facilitating access to justice through the clear communication and consistent application of the law in their decisions. In addition to enhancing public trust, this will allow the public to rely on existing jurisprudence when structuring their personal and business affairs, including whether to initiate or continue matters before Tribunals Ontario's bodies.

Reasons Review Process¹

Voluntary process

Tribunals Ontario's reasons review process is optional and voluntary. This is in accordance with the fundamental principle that the power to decide any case rests with the member to which it has been assigned. For that reason, it is up to the member assigned to any given case to request a review of their draft reasons.

The training of new members is an exceptional circumstance. The review of draft reasons during this period is intended to assist new members with developing their understanding of the legislation and jurisprudence that their tribunal applies. Therefore, during their training period, new members will be required for a limited time to submit their draft decisions for legal review as part of their ongoing legal training, unless their member

¹ For the purposes of the process outlined below, a reference to a member includes any adjudicator assigned to a case, regardless of their formal title.



manager suggests otherwise.² Legal Services may provide a global assessment of a new member's draft and/or final decisions and reasons to a member manager which may be used for the purposes of performance appraisal during a new member's training.

A member manager may also identify experienced members who need remedial training. Members in remedial training are also expected to use Legal Services' reasons review service unless their member manager suggests otherwise. With respect to experienced members in remedial training, Legal Services may provide general comments about members' draft reasons to a member manager. These comments may be used to determine future professional development needs, but will not be used for performance appraisal purposes.

Nevertheless, where new members are required to submit their draft decisions for legal review as part of their training, or where experienced members undergo remedial training, any comments provided to a member must respect the member's adjudicative independence. As mentioned below, members are free to decide the matters to which they are assigned according to the own conscience and, thus, should accept or reject as they see fit any feedback, suggestions, or advice they receive.

When review may be helpful

In deciding whether to request a peer or legal review of a draft decision, members should consider their professional, and in some cases legal, responsibility to ensure their decisions reasonably comply with the Decision Quality Standards below. More specifically, a review of draft reasons may be helpful where the draft:

- deals with issues, or is based on reasons, that are complex;
- addresses a novel issue;
- departs from previous tribunal decisions or settled authority;
- may affect a tribunal's policies or practices; or
- raises issues which may be expected to lead to stakeholder or media attention, a reconsideration request, or a judicial review or appeal.

Confidentiality

A decision-maker's notes and draft reasons belong to the member and are protected by deliberative secrecy. Where a decision-maker seeks legal advice regarding draft reasons for a decision, Tribunals Ontario will, subject to any legal requirement

² For the purposes of this policy, a member manager is anyone, usually a Vice Chair, assigned to mentor another member.



otherwise, treat that legal advice as a confidential communication between the decision-maker and Legal Services. Legal Services will not disclose to anyone else the communication between the member and Legal Services. However, the decision-maker may share comments from Legal Services with other members, including member managers, if the decision-maker wishes to do so.

Likewise, any communication between a member and their colleague or member manager about a draft decision is protected by deliberative secrecy. Accordingly, Tribunals Ontario will, subject to any legal requirement otherwise, treat that communication as a confidential communication between the decision-maker and their colleague or member manager.

The specific comments made by any reviewer on draft reasons are not to be used for the purposes of a decision-maker's performance appraisal. However, Legal Services may provide general comments about a new member's draft reasons to a member manager, which may be used for the purposes of performance appraisal during the new member's training period.

Requesting review

Members may always informally seek peer review of draft decisions by their member manager or any other members or legal counsel. However, members may also, and are encouraged to, formally ask for a draft decision to be assigned for review by a peer or legal counsel. This formal practice may vary from tribunal to tribunal. In any event, drafts will be assigned to reviewers based on workload and availability. Requests for review by a particular peer or counsel will be accommodated where reasonable considering the requested individual's workload and availability. Requests for review of a second draft, if requested, will generally be assigned to the reviewer who reviewed the first draft.

Conducting the review

In reviewing a draft decision, the review should be guided by the concerns outlined in the Decision Quality Standards below. These Decision Quality Standards attempt to foster clear, responsive, and rational decision-making based on the parties' cases and applicable law. They should be applied with that goal in mind and need not be applied mechanically.

Any drafts under review will not be shared with any other member or reviewer, unless instructed otherwise by the draft's author. Instead, and as mentioned above, the reasons review process will be treated as a confidential communication between the author and reviewer.

A reviewer's comments regarding a draft decision will be forwarded only to the member or panel who requested the review. After reviewing a draft, a reviewer may suggest that it would be helpful to review a second draft of the decision, or that the member should



seek a review by the tribunal's Legal Services. However, the decision whether to request any further review rests with the member or panel who requested a review of the first draft.

If, during a review, a reviewer encounters an issue that they expect would be of particular interest to the member's colleagues or Associate Chair, they may advise the member who authored the decision. However, the reviewer shall not mention that advice to the member's colleagues or Associate Chair, nor bring the draft to any other member's or the Associate Chair's attention in any manner.

Advice and consultation outside of review process

Reviewers should be available to discuss any question about their review with the member who requested the review. However, a member may decide to consult at any time with any other member, including their Associate Chair, on any issue of law or policy arising from the draft decision. Likewise, members can always seek legal advice from counsel at any time when needed. In such cases, members may want to request that any legal review of their draft decision be conducted by the same counsel.

Consideration of reviewer's feedback

In all cases, any comments provided to a member through the reasons review process or during any consultation must respect the member's adjudicative independence. Members are free to accept or reject as they see fit any feedback, suggestions, or advice they receive. The reasons review process and the ability to consult others is intended to assist members. The process should never be used to dictate adjudicative direction or to induce or change a decision. Ultimately, the decision in any matter must be made by the member to which that matter was assigned.

Where, as a result of a review, a member decides to address an issue or authority not raised at the hearing, the member should consider whether procedural fairness requires that the parties be given an opportunity to make further submissions or submit further evidence.

Full tribunal members' meetings

Lastly, this policy recognizes that, in certain limited circumstances, a member may request to have a draft decision, or an issue raised in a draft decision, discussed at a members' meeting. Such meeting must be held in accordance with the guidance outlined in the Supreme Court of Canada's decision in *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282.

Performance management, targets and evaluations

All members receive regular performances appraisals. Members who fail to meet the quality standards in these Guidelines are performance managed and may not be



recommended for reappointment.

Decision Quality Standards

1. Style, Structure & Clarity³

- a. Is the case identifier or style of cause correct?
- b. Is the decision understandable?
- c. Is the decision written for the intended audience? Does it use plain language and simple, non-technical terminology or, where technical language is necessary, is it clearly defined?
- d. Is the decision free of typographical and grammatical errors?
- e. Are defined terms used consistently throughout?
- f. Have unnecessary spacing and formatting gaps been removed?

Overview/Introduction and Issues

- g. Does the first section or overview accurately summarize the precise issue(s) to be addressed?
- h. Does the introduction provide a guide or roadmap to the rest of the document?
- i. Are the issues stated clearly and used as headings in the Analysis section?
- j. Does the introduction provide appropriate context?

Structure

- k. Does the Analysis section use the Issues statements as sub-headings? Is there a logical flow to the decision?
- l. Does the decision use other headings to organize the information and analysis?

³ Some of Tribunals Ontario's bodies may have a decision writing style guide. Those guides should be followed. This section is not intended to suggest otherwise.



- m. Is there any unnecessary repetition created by the structure?

Paragraphs and sentences

- n. Does each introductory sentence of a paragraph or section accurately reflect the issue to be discussed in the section or the main idea expressed in the paragraph? Does it include a short statement of the conclusion or finding reached?
- o. Does the order of the sentences in the paragraph make sense and assist the reader to follow the analysis?

2. Law

- a. Is the correct version of the statute or regulations applied?
- b. Is the correct legal test explained and applied?
- c. Is the application of the law to the facts consistent with previous decisions dealing with similar facts? If not, does the decision adequately explain the departure from previous decisions, including why previous situations may be distinguishable?
- d. Are citations to legislation and jurisprudence in proper format?

3. Analysis and Reasons

- a. Are the reasons clear and follow an issue-driven approach? Are they responsive to the parties' evidence and submissions?
- b. Is the decision well-reasoned? Do the reasons reflect why a decision or finding was made or are they mostly a description of the evidence with little analysis or connection to findings?
- c. Do the reasons allow the parties and the reader to understand why the facts were found as they were, along with the application of the law to the facts?
- d. Does the decision clearly explain the parties' relevant evidence and submissions?
- e. Does the decision explain why the parties' evidence was accepted, rejected, or given less or more weight?



- f. Does the decision explain why a submission was or was not persuasive?
- g. Does the decision minimize irrelevant personal information? Is the decision's use of personal information necessary to explain the decision?

4. Conclusion and Result

- a. Does the decision explain its conclusion or result?
- b. Is the result clearly articulated?
- c. Does the result mirror the stated issues?
- d. Does the order reflect the tribunal's statutory powers? Is the order clear and unambiguous?

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