

Ensuring Procedural Fairness in Decision-Making

Giving Reasons

There is an obligation on local and provincial governments to ensure procedural fairness in their administrative decision-making. With the authority to make decisions comes the responsibility to ensure they are made fairly, particularly when these decisions affect the rights or interests of individuals.

As we see every day in our work, people are more likely to accept even an unfavourable decision if they understand how that decision was reached. People also want to be satisfied that only relevant factors were taken into account by the decision-maker. They want to feel heard by the decision-maker and have an opportunity to respond to information which the decision-maker may have available from other sources.

The practical explanation for requiring reasons from decision-makers is provided by Justice Stratas in three parts¹:

"Adequate explanations lead often to more thinking, better thinking, and, thus, better decision-making. This is because administrative decision-makers, while they write up adequate explanations for their decisions, often discover gaps or flaws in their reasoning or the need for more submissions."

"Adequate explanations tell affected persons that the administrative decision-maker took on board their key arguments and rejected them for certain reasons: this vindicates the interests served by procedural fairness."

"Adequate explanations further the transparency, legitimacy and accountability of administrative decision-makers to the parties before them, other regulatees, reviewing courts, and the wider public..."

¹ See generally *Canadian National Railway Company v. Canada (Transportation Agency)*, 2025 FCA 184 at para. 46 and cases cited therein.

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Best Practices for Decision-Makers to be able to Give Reasons for their Decisions:

1. Ensure a good understanding of the relevant legislation that applies.

The question our office will always ask is “what legal authority did you rely on to make that decision?” This may come from a statute, regulations, a Minister’s Order or in the context of municipal work, a bylaw or motion. The decision-maker has to be able to point to the source of that legal authority.

2. Never use the explanation that “we have always done it that way”.

There needs to be the ability on the part of the decision-maker to point out why it was done that way, based on the statutory framework involved.

We encourage decision makers to have a copy of their legislation at hand and to regularly reread the provisions, to avoid any drift away from the wording in the legislation and to consider the words in the context of the particular, individualized circumstances before them.

3. Consider any discretion that exists and whether or not it should apply.

Legislation can not address every situation that may arise so the legislative framework generally sets out criteria to apply and discretion to deal with each situation that may arise. When discretion exists for the decision-maker, it is important that they are able to explain what consideration they gave to exercising that discretion and why they did or did not exercise it.

Our office often deals with situations that require an individualized response, given particular factors or personal needs. The existence of discretion and how it was or was not exercised will be factors we examine closely.

4. Ensure that information provided by the person affected by the decision is considered.

Decision-makers have to assess any relevant information that they have available to make their decision. If they reject particular pieces of the information provided to them by the person affected, it is important that there are clear reasons given as to why that information was rejected.

5. Give the person affected by the decision an opportunity to respond to information received from other sources.

If the decision-maker has before them any relevant information from other sources that they are considering in their decision, then the person affected by the decision must be made aware of that information and have an opportunity to provide their perspective on it.

6. Use accessible language – simple words that connect the dots

The truly challenging part of providing good reasons is in connecting the information provided and relied on to the statutory criteria through an analysis that is simply stated. Ask yourself the question – “Would anyone with no knowledge of this situation be able to understand how the decision was made simply by hearing or reading the reasons?”

