


Making Reasons Reasonable

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Agenda

- Why reasons are important
- What's needed to make a strong decision
- Assessing and organizing the evidence
- Constructing the reasons

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Who is in the room?

- Using your clicker, please indicate whether you are a(n):
 - A. Investigator
 - B. Person or member of a committee that decides which cases go to hearing
 - C. Decision maker (member of board, tribunal, panel, etc. but not responsible for writing decisions)
 - D. Decision writer
 - E. Staff member/lawyer providing support

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Why Reasons are Important

- Telling the parties
- Statutory Obligations
- Natural Justice
- Precedent
- Credibility and Legitimacy of the Process
- Improved Decisions

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Starting with the right information

- Dealing with “He said, she said”
- Asking the difficult questions
- Access to information and privacy issues
- Reluctant witnesses

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How do you deal with reluctant witnesses?

- A. Issue a subpoena and question them at the hearing.
- B. File a complaint against them for unprofessional conduct.
- C. Find someone else - the reluctant witness may not tell the truth.
- D. Cajole, beg, plead, etc. till they talk.

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Analyzing the Data

Analysis is not about gathering and collating relevant evidence, rather it asks the question 'what does this mean - what is it telling us?'

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Deductive Reasoning

- Fact based:
 - Licensee "A" managed a fund; money was taken from the fund; no other person had access to the funds.
- Given the evidence we know this to be true:
 - Licensee "A" took the money.

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Inductive reasoning

- Critical thinking
- Analysis of the evidence
 - Licensee "A" states she has no knowledge of where the money went
 - Witnesses overheard Licensee "A" state that she was having financial problems

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Weighing the Evidence

- Burden of proof
- Preponderance of evidence/balance of probabilities



No/insufficient evidence Preponderance of evidence Beyond a reasonable doubt

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Who Are Reasons Written For?

- The Parties (complainant and respondent)
- Membership/licensees
- Members of other committees
- Review and Appellate Bodies
- The Courts
- The Public

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When Should Reasons be Written?

- As soon as is reasonably possible
- When you have considered all the evidence
- When you are adequately prepared

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Adequate Reasons

Show:

- WHY
 - or HOW
 - or upon WHAT EVIDENCE
- the conclusion for a decision is reached.

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Moll v College of Alberta Psychologists, [2011] ABCA 110

Expertise in a health professional field does not necessarily translate into expertise in writing decisions. Nevertheless, there is a minimum standard these bodies must satisfy in the reasons given for their decisions.

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Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), [2011] 3 SCR 708

- Reasonableness is concerned with justification, transparency and intelligibility
- If the reasons allow the court to understand why the tribunal made its decision and to determine whether the outcome falls within the range of reasonable outcomes the criteria are met

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Wachtler v. College of Physicians and Surgeons of Alberta, 2012 ABCA 145

The question is whether the reasons reveal how and why the decision was made, and whether the decision is transparent, logical and within the range of possible legal outcomes in the circumstances.

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Preliminary Matters

- Identify:
 - Who you are.
 - What your responsibilities are.
 - What provisions of the legislation are applicable.

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Evidence

- Make sure the evidence is accurately stated.
- Easiest way is to list a chronology of events.
- Don't forget documentary evidence.

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Findings of Fact

- Facts must arise from the evidence.
- Findings of fact should not be contradictory.
- The findings of fact provide the basis for your analysis and ultimate decision.

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Assessing Credibility

- Often, the evidence may be contradicting “He says” vs. “She says”.
- Conflicting evidence crucial to your decision must be resolved.
- Provide a basis for your finding (the Hearing Tribunal prefers the evidence of...because...).

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Appropriate Standard to be Met

“Every ... practitioner must bring to his/her task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. He/she is bound to exercise that degree of care and skill which could reasonably be expected of a normal prudent practitioner of the same experience and standing, and if he/she holds himself/herself out as a specialist, a higher degree of skill is required of him/her than of one who does not profess to be so qualified by special training or ability.”

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Determine whether the standard was met

- Once the standard for professional conduct has been established, determine whether, based on the finding of facts, that standard has been met.
- If breached, does it constitute unprofessional conduct? (Sussman)

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Specific Determinations for Each Allegation

- “We find [name of investigated member] displayed a lack of judgment when he used a butter knife for the procedure.”

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Sanctions

- Protection of the public
- Deterrence
- Rehabilitation
- Fairness
- Integrity of the profession

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Practical Basics

- Language
- Form
- Overwriting
- Notes
- Panel Discussion
- Editing

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