

CANADIAN LACROSSE ASSOCIATION

**THE DUTY OF ADMINISTRATIVE TRIBUNALS
TO GIVE REASONS FOR A DECISION —**

HOW TO DRAFT REASONS

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by

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In considering an appeal from a decision of a CLA tribunal, e.g., Transfer Review Committee, Discipline Committee, and Appeals Committee, the body reviewing the decision will have to determine whether the decision was reasonable.

The leading case on this is *Dunsmuir v. New Brunswick*, 2008 SCC 9, where the Supreme Court of Canada said at paragraph 47:

47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Adequacy of reasons is dealt with in *Dunsmuir* with the requirement that reasons be justified, transparent, and intelligible. Further, with regard to the adequacy of reasons, I refer to the recent decision of the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. In that case, the Court held that the adequacy of reasons is not an independent ground of review; however, a reviewing body can consider as part of its general examination of the reasonableness of the decision whether the decision-maker provided an adequate basis to allow the reviewing body to understand why the decision-maker made its decision. The Court stated in *NLNU* at paragraphs 15 and 16 as follows:

15 In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

16 Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent

element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

What this means is that the reviewing body may consider the record that was before the original decision-maker to ascertain if the decision is supported by the evidence in the record and that the outcome is therefore reasonable within the definition described in *Dunsmuir*. In addition, if the reasons of the original decision-maker do not permit the reviewing body to understand why the decision-maker made the decision, it may then not be possible to determine whether the decision falls within the range of acceptable outcomes and that is one factor to be taken into account in determining the reasonableness of the whole decision.

By record, I mean all of the documents that were before the tribunal below and the record of the hearing which should be the audio recording.

There is no strict format or style of reasons for decision but I would suggest the following component parts:

- A. Introduction — Here you should provide a brief summary of what led to the hearing and what the issues were at the hearing.
- B. Dealing with the issues on an issue-by-issue basis, set out the evidence and/or arguments that were made by the parties.
- C. Analysis — Explain your analysis as to how and why you arrived at your decision, considering the evidence and/or arguments that were presented.
- D. Appeal — If the parties have an avenue of appeal from your decision, state what it is.