TLAB Training

Some Judgement Writing Tips Gleaned from a Review of a Solid Decision

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Drafting a solid and well-written decision is no easy task. There are many elements to good writing – and writing judgements is no exception. What appears below is a review of a generally well-written judgement. In order to fully appreciate the comments which follow you will need to read the judgement yourself:

McArdle v. Toronto (City) **[2015] OMBD No. 576**

Hopefully, what follows below with help reveal a few real-world examples of what good judgement writing looks like and entails.

THE CASE

Case Summary:

The proponent sought 1) to shift the boundary between two adjacent properties by 2 feet in order to have two acceptable lots for building two detached houses; and 2) if the consent was approved, variances to deal with the dimensions of the proposed homes, with respect to side-setbacks, side wall heights, etc.

In front of the Committee of Adjustment the proponent was successful with respect to the consent, but unsuccessful with respect to all of the variances sought.

The proponent appealed the denied variances; a community association (Teddington Park Residents Association Inc. – "TPRA") appealed both the consent and the variances (despite, curiously, agreeing with the Committee's decision on the variances).

At the hearing the TPRA representative (head of the Association) raised several alleged procedural issues and moved to "dismiss" the proponent's appeal for non-compliance with the Act. These procedural issues arguments were taken under advisement and, after a delay to allow the TPRA representative to craft arguments concerning the merits (she had not anticipated the matter going any further) the merits of the appeals were heard.

In the end, after listening to and considering all of the evidence, the OMB ruled in favour of the proponent on all issues.

TAKEAWAYS FROM THIS JUDGEMENT

The Introduction is Fulsome

Within the Introduction the Member references the Planning Act's Sections 45 and 53. The parties are introduced and the manner by which the matter came before the OMB is nicely outlined. The reader immediately knows where this appeal came from, and, what the OMB is tasked with determining.

A second section further breaks down the history of the proponent's plans, details the subject property and situates that property in the broader context of the neighbourhood.

A third section lays out the applicable tests pursuant to Section 45 and 53 of the Planning Act and applicable Official Plan Policies. The reader instantly knows the law and the "measuring stick" against which the consent and variances will be measured.

The Analysis is Fulsome and Deals with the Evidence and Issues

The analysis section of this judgement methodically deals with all of the issues before the OMB, starting with the procedural issues raised by the TPRA representative, and, working its way to the variances at issue. A review of the evidence presented by the parties is undertaken and the reasons for the Member's decisions on all of the issues are solidly laid out (see, for example, paras. 64-71).

The Concluding Section ("Order") is Clear and Concise

The Member concludes the judgement with a clear section detailing the order that will issue from the Board. The reader is able to easily understand the outcome of the process and what is required and permitted by the law.

WHERE IS THERE ROOM FOR IMPROVEMENT?

The Judgement is Long

Although the judgement is very well crafted it is long. Sometimes a lengthy judgement is required. However, if one looks at judgements as a whole, over the last 60 or so years, there is a clear tendency in judgements to say too much – to cover and state every single thing said, every piece of evidence presented and every argument made.

While a judge or tribunal member must deal with the evidence and give fulsome reasons for his or her decision(s), long and sometimes wholly unnecessary paragraphs can mar the overall readability, intelligibility, accessibility and quality of the judgement. In other words, oftentimes "long ≠ good".

For instance, paragraph 70, and paragraphs 112 and 113, and several other paragraphs in this judgement, could have been shorter, more succinct, or – in some cases - entirely eliminated, without any diminution in the quality of the final product. For example, paragraphs 67 and 68 read:

> Next, although the Act does not define the word "owner", analyses of title have never been an integral part of the Board's evidence trail. One reason is that the Act does not specify that such analyses are even part of the Board's function.
>
> Another is that, pragmatically, the Board's longstanding approach has been to ask whether the applicant had a sufficient interest in the property on which to base the application. In practice, and depending on the circumstances, this could include predecessors in title, successors in title, mortgagors, mortgagees, and parties acting under the authority of assignments.
>
> (97 words)

Instead, the Member could have been more direct, economical and clear in his drafting:

> The Act does not define the word "owner"; all that is required is that person X have sufficient interest in the property, which, in the matter before the Board, it so finds.
>
> (32 words)

The revised paragraph is direct and to the point, is three times shorter than paragraphs 67 and 68, and more clearly delivers the Member's finding with respect to the ownership/signature issue raised by the appellant.

Predetermination or the Appearance thereof

Judges and Members are required to make findings and determinations based upon the facts and evidence presented by the parties, in accordance with the law, the adjudicative body's rules, and, the rules of natural justice. The determination of the issue of costs is no exception.

In paragraph 122 of the judgement the Member says the following:

> …there were shortfalls in Ms. Denny's presentation…[S]he apparently felt she could not let the matter lie…For the sake of transparency, the Board advises that it would have reservations about an application for costs against Ms. Denny in this case.

The Member's statement, concerning the issue of a possible, future, costs application gives the impression of having already been decided. An application for costs after such a statement has been made may be tainted by an appearance of predetermination. "Did the Member listen to my arguments and consider the points I raised concerning the issue of costs, or, was the Member's mind already made up, closed up and walled off, before my application for costs was even filed?" This is not the impression the parties or the public should be left with. The legitimacy of the process and the reputation of the adjudicative body is at stake.

Ideally, and given that the issue of costs had not yet even been raised, the Member would simply have avoided the subject entirely – apart from perhaps indicating to the parties that should one of them wish to raise costs he could be spoken to on that issue.

CONCLUSION

One does not learn how to become a good writer simply by reading – but it sure helps! Reading well-crafted judgements will help you evaluate what works, and what doesn't and allow you to onboard some of the best practices and devices used by other tribunal members and judges.

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