How Does a Tribunal Write a Reasonable Decision?
On Aspect: Collecting the “Relevant Evidence” in Regulatory Proceedings

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• “The oral and written statements and information and any actual things produced in a proceeding, anything which may be used to prove a fact or support an assertion.”

• “[...] in simple terms, evidence is something that is logically capable of establishing a fact that is needed in order to make a proper decision.”
“Evidence is relevant where it has some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would be in the absence of that evidence.”


“The information which is offered must be capable, assuming that it were true, of logically establishing some fact which an agency needs in order to accomplish its mandate.”

Meaning of “Relevance”

- “Not every piece of evidence must be directed to every specific point in issue. A party must be allowed to build its case, certain parts are **background**, other parts **fill in gaps**. The evidence as a **whole** is to be considered. No piece should be dismissed simply because it is a piece.”
  - Teganya v. Canada (Citizenship and Immigration), 2012 FC 42 (CanLII).

- “It is a mistake to confuse **relevance** with **sufficiency**. Evidence [...] comes in **piece by piece**. The entire case cannot be built all of a sudden: **A brick is not a wall**”
Generally speaking, a court may properly take judicial notice of facts that are either:

(1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or

(2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy

• The rule of judicial notice is **less restrictive for an administrative tribunal**. The requirement is that the procedure be fair: thus, the **information must be disclosed** by the administrative body.

• **Adjudicators may not use their own knowledge or experience to enhance or substitute the evidence.**
  - Dennis v. British Columbia (Supt. of Motor Vehicles), 2000 BCCA 653 (CanLII).
• A Board is **not bound by the formal “rules of evidence”** prescribed for trial in a Court. These rules do not necessarily serve the purpose of an administrative Tribunal.

• **Why?** A Board is **master of its own procedure** and may be able to deal with matters **more expeditiously** than can be done in a formal hearing.

• **Caveat:** It must be remembered that the **rules of evidence** were developed by the courts to **avoid unfairness**.
Obligation: Duty to be fair:

- “The rules of procedural fairness entitle the parties to adduce evidence, permitting them to defend their positions. Moreover, the public interests underlying many administrative tribunal warrant a reduced procedural code. Parties may usually present witnesses, introduce documents or adduce other evidence, as long as the evidence submitted is relevant.”

• “Refusing to hear relevant and admissible evidence is a breach of the rules of natural justice. It is one thing to adopt special rules of procedure for a hearing, and another not to comply with a fundamental rule, that of doing justice to the parties by hearing relevant and therefore admissible evidence.”

• “[…], the tribunal must not abuse its discretion by basing its decision on insufficient or no evidence, nor on irrelevant considerations.”
• Quebec Appeal Court held that the Commission des lésions professionnelles (CLP) exceeded his jurisdiction by refusing to consider an **extra-judicial admission**
  – *MPI Moulin à papier de Portneuf inc. c. Sylvestre*, 2013 QCCA 889 (CanLII).

• Grievance arbitrator refused to admit **evidence that could have proved that the dismissal was for lack of funds**. Supreme Court decided that the evidence was relevant.
• Commission des lésions professionnelles (CLP) held that the **criminal record** of the employee is a relevant fact which bears upon the credibility of a witness.

• Failure to allow **cross-examination** constituted an impairment of the petitioner's right to procedural fairness. Issue raised was not only relevant but also **central to the case**.
Thank You All !