



# CIAJ | ICAJ

2016 National Roundtable on Administrative Law  
Table ronde nationale 2016 en droit administratif

Friday, May 27, 2016 | Ottawa

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

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# Meaning of “ Evidence ”

- *“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.**”*
  - Daphne A. Dukelow, *The Dictionary of Canadian Law*, 4<sup>th</sup> Edition, Carswell.
- *“[...], in simple terms, evidence is **something that is logically capable of establishing a fact that is needed in order to make a proper decision.**”*
  - Robert W. Macaulay & James L.H. Sprague, *Practice & Procedure before Administrative Tribunals*, Volume 2, Carswell, p. 17-3.



# Meaning of “Relevance”

- **“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.”**
  - David M. Paciocco, *The Law of Evidence*, 6<sup>th</sup> Edition, Irwin Law, 2007, p. 28.
  - Also: Ronald J. Delisle, Lisa Dufraimont, *Canadian Evidence Law in a Nutshell*, Carswell, 2009, p. 7. *R. v. J. (J.-L.)*, [2000] 2 S.C.R. 600.
- **“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.”**
  - Robert W. Macaulay & James L.H. Sprague, *Practice & Procedure before Administrative Tribunals*, Volume 2, Carswell, p. 17-22.
  - *Gentles v. Gentles Inquest (Coroner of)* [1998] O.J. No. 3927.



# 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).
  - Robert W. Macaulay & James L.H. Sprague, *Practice & Procedure before Administrative Tribunals*, Volume 2, Carswell, p. 17-21.
- “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**”
  - Ronald J. Delisle, Lisa Dufraimont, *Canadian Evidence Law in a Nutshell*, Carswell, 2009, p. 7.



# Evidence & Judicial Notice

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**

– *R. v. Find*, [2001] 1 S.C.R. 863, 2001 SCC 32, 48.



# Evidence & Judicial Notice

- 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.
  - David P. Jones & Anne S. de Villars, *Principles of Administrative Law*, 5<sup>th</sup> edition, Toronto, Carswell, 2009 , p. 307-308.
  - *Huerto v. College of Physicians & Surgeons Huerto v. College of Physicians and Surgeons (Sask.)*, 1996 CANLII 4920 (SK CA).
- 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).



# Rules of evidence

- 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 it’s 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**.



# Duty to be fair

## 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.**”*

– Guy Régimbald, *Canadian Administrative Law*, 1<sup>st</sup> Edition, Markham, 2008, p. 265.





# Duty to be fair

- “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.”
  - *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 S.C.R. 471, 495.
- “[...], the tribunal must not abuse its discretion by basing its decision on **insufficient** or no **evidence**, nor on **irrelevant** considerations.”
  - David P. Jones & Anne S. de Villars, *Principles of Administrative Law*, 5<sup>th</sup> edition, Toronto, Carswell, 2009 , p. 305.



# Cases

- 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.
  - *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 S.C.R. 471.



# Cases

- 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.
  - *Beudet et Abeilles Service de conditionnement inc.*, 2014 QCCLP 1350 (CanLII) / cf.: *R. v. Corbett*, [1988] 1 SCR 670.
- 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**.
  - *Djakovic v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2010 BCSC 1279.



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**Thank You All !**

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