

ORAL DECISIONS

INTRODUCTION

Board panels give some decisions orally. Normally, they will do so during a hearing on procedural issues, and at the end of a hearing for final decisions. This lets parties know the results right away. Normally the oral reasons are followed by a written decision.

When a panel, Chair or Vice-Chair sitting alone, give oral reasons, it is particularly important to record and communicate the decision accurately in the hearing summary and in all correspondence. This policy describes:

- when panels might give oral decisions; and
- how to record and communicate oral decisions.

GIVING ORAL DECISIONS

The Board normally provides formal written reasons for decision in each case despite the *Administrative Procedures Act*, which requires some tribunals to always provide reasons for decisions, not applying to the Board.

Decisions have two aspects, which apply equally to oral and written decisions.

- **The decision:** This is what the Board actually decides, or orders, on the matters before it.
- **The reasons for the decision:** This is an explanation of why the Board decided the matter a particular way. These reasons may refer to the evidence and how the Board assessed it, or to the legal or policy arguments that influenced the result.

Oral decisions should achieve both these ends. Parties are entitled to know the reason for a particular result even if no legal obligation to give reasons exists. Panels considering an oral decision should consider the following points.

- **The role of the member:** Most Board decisions involve three or more panel members. Exceptions include minor procedural or evidentiary rulings, usually given by the Chair, and cases where the Chair or Vice-Chair sit alone under Section 12. All panel members must participate in the decision-making process, and be seen to be doing so. Panels should retire to consider any significant decision.
- **The appearance of fairness:** Giving oral decisions, without taking enough time to consider arguments properly, appears unfair to the parties, even if the decision is obvious. Panels should be conscious of this appearance of fairness when deciding if, and when, to give an oral decision.

- **The need for dispatch:** Some decisions are urgent. There may be ongoing harm that needs rectification, or a difficult labour relations situation that will worsen with delay. In such cases an oral decision may be the only credible option.
- **The prospect of judicial review or reconsideration:** While a decision may appear urgent, too summary of a decision or inadequate reasons may delay, not expedite, the process. If a party feels the panel gave their arguments too little consideration, they may apply for judicial review or reconsideration. Quick but inadequate reasons for decision rarely save time or effort in the long term. Inadequate reasons or plainly hasty decisions also fare poorly on judicial review. This suggests oral reasons in complex matters should always be thorough, and well reasoned.
- **The labour relations situation:** The decisions about when and how to give a decision, and reasons, should be sensitive to the labour relations situation the parties find themselves in. Also, in some cases, where a decision involves the credibility of one of two parties who must work together, discretion may favour a brief letter decision, after the hearing, instead of an immediate oral ruling.

If oral reasons are appropriate, panels can use several techniques to improve those reasons and make sure they are properly recorded.

- **Adjourn and prepare an outline of the Board's decision:** When the hearing reconvenes, the Chair can give a decision that covers all the important points in a coherent order.
- **Recording the oral decision:** While the Board normally does not record its proceedings, nothing prevents Chairs from recording their oral decisions on a dictaphone. This allows them to transcribe, and then edit them to give a more accurate record of the decision. In such cases, the Chair should tell the parties they are recording and will edit and send out the decision.
- **Adjourn to a future date to give an oral decision.** This is helpful if the issues are complex but urgent. It allows the panel time to organize its thoughts and come to a conclusion without delaying the decision unduly.
- **Give an oral decision with reasons to follow:** This approach is normally used in urgent hearings or in straightforward cases. This process can create difficulties, and sometimes allegations of self-serving reasons, if the parties apply for reconsideration or judicial review before the Board issues its written reasons.
- **An oral interim decision, followed by a formal written (or letter) decision:** An interim decision can give any necessary immediate remedy (based on balance of convenience factors). At the same time, the Board keeps its options open on the final result, which should normally await full deliberation.

RECORDING AND COMMUNICATING ORAL DECISIONS

Oral decisions need to be recorded carefully. Decisions take effect as soon as the Board gives them. Disputes about what the Board decided, or the reasons the Board gave, create embarrassing difficulties for the parties and the Board. Often, a panel will read aloud the decision from a draft of the written decision that will follow.

The Chair or Vice-Chair is responsible for recording the full substance of the Board's decision and reasons. The Chair or Vice-Chair should get a clear view of how the Board dealt with each matter before the panel.

Once a decision has been delivered, the officer must:

- Make sure they understand how the panel dealt with each matter in issue.
- Update the database with the result, with an officer's comment plus the proper disposition and synopsis entry.
- Check with the presiding Chair to see what reasons, if any, to repeat in this confirming correspondence. Resolve any ambiguity with the presiding Chair before sending the letter.
- Find out about any Board directions and carry them out as directed by the panel such as conducting a vote, posting notices, etc.

The panel gives an oral decision in the context of a hearing. Vital facts may be obvious to those present and therefore omitted from the reasons. This can give a misleading impression of what the panel actually decided. Because of this, the Board does not accept them as precedent in argument in future cases. Oral decisions are, however, normally confirmed in a letter decision.