CARSWELL

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN CANADA

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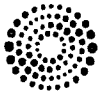

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intended purposes.[6] Nevertheless, because the giving of reasons provides some transparency to the decision-making process,[7] today the duty to provide reasons has not been limited to adjudicative decision-making.[8]

B. THE DUTY TO GIVE REASONS

1. At Common Law

§ 12:37 Reasons and the Duty of Fairness

Prior to 1999, the common law did not impose a general duty on administrative tribunals to give reasons for their decisions.[1] Rather, it was said that reasons were only required where legislation so provided, either expressly or impliedly.[2] However, in *Baker v. Canada (Minister of Citizenship and Immigration)*,[3] the Supreme Court of Canada stated that a decision for which no reasons were given could be held to have been made in breach of the duty of fairness.

The Supreme Court in a subsequent decision went on to ap-

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understand reasons).

[6]The cost-benefit concerns are ably marshalled by MacDonald and Lametti, "Reasons for Decision in Administrative Law", [1989] 3 *Canadian Journal of Administrative Law and Practice*, at p. 123.

[7]*Anstead v. Joint Medical Professional Review Committee* (2005), 265 Sask. R. 209 (Sask. Q.B.) at para. 58.

[8]Contemporaneously, the duty to give reasons has been found in the context of both criminal and civil cases: **e.g. *R. v. Sheppard***, 2002 SCC 26. **And see** D.J.M. Brown, Civil Appeals (Toronto: Thomson Reuters Canada Ltd., looseleaf), topic 13:4110.

[Section 12:37]

[1]***Northwestern Utilities Ltd. v. Edmonton (City)***, [1979] 1 S.C.R. 684; **and see e.g.** *Bell Canada v. C.E.P.*, [1999] 1 F.C. 113 (FCA); *Kirkfield Park & Arthur Parks Residents' Assn. v. Winnipeg (City)* (1996), 107 Man. R. (2d) 259 (Man. C.A.); *Kutsogiannis v. Assn. of Regina Realtors Inc.* (1998), 168 Sask. R. 168 (Sask. C.A.); *N.A.P.E. v. Newfoundland (Treasury Board)* (1998), 521 A.P.R. 108 (Nfld. S.C.). **Compare *Blanchard v. Control Data Canada Ltée***, [1984] 2 S.C.R. 476 at p. 500, where Lamer J. stated that the decision of a tribunal that was required by statute to provide reasons, would be set aside for breach of the rules of natural justice if the reasons given were hopelessly inadequate, or, presumably, non-existent.

[2]E.g. see *dicta* in *Gardner v. Canada (Attorney General)* (2005), 339 N.R. 91 (FCA) at para. 25, leave to appeal to SCC ref'd [2005] S.C.C.A. No. 480.

[3]*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 43.

ply the same five factors for determining the content of the duty of fairness generally *vis-à-vis* the specific requirement of post-decisional reasons, namely:

> (1) the nature of the decision and the decision-making process employed by the public organ; (2) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party challenging the decision; and (5) the nature of the deference accorded to the body . . .[4]

In particular, the degree to which the decision-making process affords participation to the parties, the extent to which an adverse decision affects the lives of the individuals concerned[5] and the existence of a right of appeal, all point to reasons being required.[6] For example, it has been held that reasons are required for a minister's opinion that an individual is a danger

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[4]***Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*** (2004), 241 D.L.R. (4th) 83 (SCC) at para. 5 (refusal of zoning amendment); **see also *Suresh v. Canada (Minister of Citizenship and Immigration)***, 2002 SCC 1 at para. 126 (danger opinion).

[5]***Baker v. Canada (Minister of Citizenship and Immigration)*** (1999), 174 D.L.R. (4th) 193 (SCC) at p. 220; **and see e.g.** *Khan v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 438 at para. 37 (consequences of refusing new evidence particularly severe for applicant); *Dunne v. Memorial University of Newfoundland*, 2012 NLTD(G) 41 at para. 20 (Senate's reversal of committee's recommendation to rescind suspension of student); *Ralph v. Canada (Attorney General)* (2010), 410 N.R. 359 (FCA) at paras. 26, 27; *MacKinnon v. Nova Scotia (Registrar of Motor Vehicles)* (2007), 263 N.S.R. (2d) 9 (NSSC) (loss of driver's licence meant loss of livelihood); *Cotton v. College of Nurses of Ontario* (2008), 238 O.A.C. 270 (Ont. Div. Ct.) (no reasons given for ordering intrusive medical examination; decision quashed); *Craig v. Bighorn (Municipal District No. 8)* (2006), 49 Admin. L.R. (4th) 165 (Alta. Q.B.) (removal of dogs); *P.S.A.C. v. Canada (Treasury Board)* (2005), 35 Admin. L.R. (4th) 287 (FC) (human rights complaint affecting thousands); *Megens v. Ontario Racing Commission* (2003), 64 O.R. (3d) 142 (Ont. Div. Ct.) (licence revocation); *Lee v. College of Physicians and Surgeons of Ontario* (2003), 231 D.L.R. (4th) 335 (Ont. Div. Ct.) (professional misconduct; reasons necessary).

[6]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 77; ***Baker v. Canada (Minister of Citizenship and Immigration)*** (1999), 174 D.L.R. (4th) 193 at paras. 35*ff* (SCC); *Euston Capital Corp. v. Saskatchewan Financial Services Commission* (2008), 307 Sask. R. 100 (Sask. C.A.) (no reasons given for penalties imposed); *Rankin v. Alberta Curling Federation Appeals Committee* (2005), 262 D.L.R. (4th) 484 (Alta. Q.B.) (decision quashed since there was no basis for review); *C.P. v. Ontario (Criminal Injuries Compensation Board)* (2004), 193 O.A.C. 124

to the public, and thus liable to be deported without a right of appeal on the merits despite a previous recognition as a refugee.[7] Similarly, a council was required to give reasons for its exercise of discretion in applying a zoning by-law.[8] Where rates are to be set at a level that is "just and reasonable", an absence of reasons will leave the public bereft of confidence that they were just and reasonable.[9] However, since a reasons requirement will normally only be imposed with respect to administrative action that is subject to more than a minimal duty of fairness,[10] it will not apply to decisions of a "legislative" nature,[11] or where an elected regulatory body acts like a legis-

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(Ont. Div. Ct.); **see also** *Boyle v. Workplace Health, Safety & Compensation Commn. (New Brunswick)* (1996), 455 A.P.R. 43 (NBCA), **apl'd** *Boudreau v. New Brunswick (Workplace Health, Safety and Comp. Commission)* (2008), 338 N.B.R. (2d) 198 (NBCA). **Compare** *5174229 Manitoba Ltd. v. Manitoba Liquor Control Commission* (2011), 269 Man. R. (2d) 56 (Man. Q.B.).

[7]***Suresh v. Canada (Minister of Citizenship and Immigration)***, 2002 SCC 1 at para. 126; *Gonzalez v. Canada (Minister of Citizenship and Immigration)* (2000), 6 Imm. L.R. (3d) 33 (FCTD), reversing in effect the pre-*Baker* decision in *Williams v. Canada (Minister of Citizenship and Immigration)*, [1997] 2 F.C. 646 (FCA). **See also** *Azadi v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1163; *Ragupathy v. Canada (Minister of Citizenship and Immigration)* (2006), 350 N.R. 137 (FCA). **But see** *Rahaman v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1800 (FCTD) (*Baker* limited to humanitarian and compassionate applications concerning issue of Canadian-born children), aff'd (2002), 211 D.L.R. (4th) 455 (FCA).

[8]*Eagle's Nest Youth Ranch Inc. v. Corman Park (Rural Municipality) No. 344*, 2013 SKQB 218 (applying *Baker* factors, reasons required for declining application).

[9]*New Brunswick (Attorney General) v. Dominion of Canada General Insurance Co.* (2010), 327 D.L.R. (4th) 728 at para. 35 (NBCA), foll'd *New Brunswick (Attorney General) v. Pembridge Insurance Co.* (2011), 328 D.L.R. (4th) 718 (NBCA).

[10]E.g. *Responsible Electricity Transmission for Albertans Assn. v. Alberta (Minister of Infrastructure)*, 2013 ABQB 162 (no reasons required in consenting to commencement of construction of electrical transmission line).

[11]E.g. *Island Timberlands LP v. Canada (Minister of Foreign Affairs)*, 2009 FC 258 at para. 33 (decision of a policy nature; reasons not required), aff'd 2009 FCA 353. **See also** *League for Human Rights of B'Nai Brith Canada v. Canada*, 2009 FC 647 at para. 42 (Governor-in-Council did not have obligation to provide reasons for order-in-council passage), aff'd (2010), 409 N.R. 298 (FCA). **And see** §§ 7:38 to 7:40; 7:41. **Compare** *Craig v. Bighorn (Municipal District No. 8)* (2006), 49 Admin. L.R. (4th) 165 (Alta. Q.B.) (refusal of bylaw amendment partly administrative and partly legislative; reasons mandated).

lature,[12] or where no individual interests are adversely affected,[13] or where a preliminary procedural decision is made, such as refusing to hold an oral hearing,[14] or where an official is merely performing an administrative function.[15]

§ 12:38 Drawing Adverse Inferences From an Absence of Reasons

Although today the absence of reasons, *per se*, may constitute a breach of the duty of fairness,[1] some courts have inferred a substantive error from their absence. For example, such an adverse inference was drawn from a minister's refusal to explain the basis of disallowance of an expense to be deducted for tax purposes,[2] and from an absence of reasons as to why an Attorney General opposed an application to extend a lot

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[12]E.g. *Trinity Western University v. Law Society of Upper Canada*, 2015 ONSC 4250 (Ont. Div. Ct.) at para. 50 (convocation of benchers), referring to *Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5 at para. 29 (municipal council passing a by-law), aff'd 2016 ONCA 518, aff'd 2018 SCC 33. **And see** *Ontario Lottery and Gaming Corp. v. Mississaugas of Scugog Island First Nation*, 2019 FC 813 at paras. 93–4 (approval of the Fee Law by the Commission is a component of a law-making process).

[13]E.g. *Dickhout v. British Columbia (Police Complaint Commissioner)* (2011), 31 Admin. L.R. (5th) 96 (BCSC) (police officer's rights not determined by decision to hold public inquiry; reasons not necessary), **and see** §§ 7:51, 7:52.

[14]E.g. ***Black v. Advisory Council for the Order of Canada***, 2012 FC 1234 at para. 86, aff'd 2013 FCA 267. **Compare** *Canada (Attorney General) v. Kucman*, 2012 FC 367 at para. 24; *Canada (Attorney General) v. Sarahan*, 2012 FC 52 at para. 20 (decision to grant leave to appeal required reasons).

[15]E.g. *Hailu v. Canada (Solicitor General)* (2005), 27 Admin. L.R. (4th) 222 (FC) (removals officer).

[Section 12:38]

[1]***Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)***, 2011 SCC 62 at para. 22. **And see e.g.** *Hill v. Oneida Nation of the Thames Band Council*, 2014 FC 796 at para. 134; *First Nations Child and Family Caring Society of Canada v. Canada (Attorney General)*, 2012 FC 445 at para. 220, aff'd 2013 FCA 75. **Compare** *Canadian National Railway Co. v. Gibraltar Mines Ltd.*, 2019 FC 1650 at para. 31 (*Canada Transportation Act* does not require reasons for dismissing application in the circumstances).

[2]E.g. *Wright's Canadian Ropes Ltd. v. Minister of National Revenue*, [1946] S.C.R. 139.

boundary.[3] And in other settings, courts have inferred from the *absence* of reasons that a board did not have jurisdiction,[4] that the matter in issue had been overlooked,[5] that the decision was based on irrelevant considerations,[6] or that it was made on the least supportable basis.[7] However, although the Supreme Court of Canada has cautioned that reviewing courts must be circumspect in drawing such an inference, since every piece of evidence need not be adverted to in a tribunal's reasons,[8] it has also noted that "a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the

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[3]*Acro Pace Projects Ltd. v. Reg. of New Westminster Land Title District* (1982), 35 B.C.L.R. 315 (BCSC).

[4]E.g. *Construction & General Labourer's Union, Local 1097A v. Schurman (M.F.) Construction Ltd.* (1985), 168 A.P.R. 353 (PEITD), aff'd (31 March 1988), Doc. GDC-5828 (PEICA).

[5]E.g. *Magonza v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 14 at para. 92 (failure to explain away significant evidence supporting the contrary conclusion). **See also** Zhang v. Canada (Minister of Citizenship and Immigration), 2019 FC 870 at para. 22; *Canada (Minister of Citizenship and Immigration) v. Kornienko*, 2015 FC 85 at para. 29; *Ponniah v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 190 at para. 18; *Leon v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 406 at para. 17; ***Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*** (1998), 157 F.T.R. 35 (FCTD) at para. 17 ("the more important the evidence that is not mentioned specifically and analysed in the reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding 'without regard to the evidence"); *Holt v. Bathurst (City)* (2006), 298 N.B.R. (2d) 312 (NBQB); *Osagie v. Canada (Minister of Citizenship and Immigration)* (2005), 268 F.T.R. 187 (FC) (significant evidence not addressed); *Almrei v. Canada (Minister of Citizenship and Immigration)* (2005), 262 F.T.R. 7 (FC) (no reference in reasons to important evidence). **Compare** *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (FCA) (issue never raised before tribunal, so trial judge wrong to quash decision on this basis).

[6]E.g. *Keating v. Canada (Minister of Fisheries and Oceans)* (2002), 49 Admin. L.R. (3d) 145 at para. 71 (FCTD); *Dallinga v. Calgary (City)*, [1976] 1 W.W.R. 319 (Alta. C.A.).

[7]E.g. *Tarmac Canada Inc. v. Hamilton-Wentworth (Regional Municipality)* (1999), 48 C.L.R. (2d) 236 at para. 12 (Ont. C.A.); *Jack v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1189 at para. 8 (FCTD); *Nunavut Tunngavik Inc. v. Canada (Minister of Fisheries and Oceans)* (1998), 162 D.L.R. (4th) 625 at para. 64 (FCA).

[8]***Newfoundland and Labrador Nurses' Union v. Nfld. and Labrador***, 2011 SCC 62 at paras. 16–8. **Compare** ***Delta Air Lines Inc. v. Lukacs***, 2018 SCC 2 at para. 27 (reasons still matter).

parties may call into question whether the decision maker was actually alert and sensitive to the matter before it."[9]

§ 12:39 Discharging the Duty to Give Reasons

The principal concern underlying the reluctance of the Court to impose a duty to give reasons on an administrative decision-maker from which the legislature has not *required* reasons is that this might delay decision-making, increase the workload of agency staff, escalate costs, and unduly expose administrative action to legal challenges by the disgruntled. However, the Supreme Court of Canada in *Baker* addressed these concerns by stating that, when it applies, the duty to give reasons may be discharged without the necessity for formal or "archival" reasons of the kind more typically associated with the courts and the more "judicialized" of administrative tribunals.[1] Nor will the use of a "template" for reasons necessarily establish a lack of independent judgment, or in other ways derogate from

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[9]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 128.

[Section 12:39]

[1]***Baker v. Canada (Minister of Citizenship and Immigration)*** (1999), 174 D.L.R. (4th) 193 (SCC) at pp. 218, 220. **See also** *Hristova v. CMA CGM (Canada) Inc.*, 2019 FC 1611 at para. 2 (decision just sufficient to satisfy minimum requirements for reasons); *Smith v. New Brunswick (Department of Public Safety)*, 2012 NBCA 41 at para. 14 (reasons not required where Commission follows investigator's report in dismissing complaint); *5174229 Manitoba Ltd. v. Manitoba Liquor Control Commission* (2011), 269 Man. R. (2d) 56 (Man. Q.B.) (reasons apparent from record); *Veryamani v. Canada (Minister of Citizenship and Immigration)* (2010), 379 F.T.R. 153 (FC) (CAIPS notes form part of reasons) at para. 28; *Gallo v. Canada (Minister of Public Safety and Emergency Preparedness)* (2010), 378 F.T.R. 288 (FC) (delegate could adopt analyst's reasons); *Clifford v. Ontario Municipal Employees Retirement System* (2009), 93 Admin. L.R. (4th) 131 (Ont. C.A.) at para. 43; *United States of America v. Kissel* (2008), 89 O.R. (3d) 481 (Ont. C.A.) (Minister of Justice's surrender decision does not require formal reasons, especially since fugitive did not make any submissions); *Forestall v. Toronto Police Services Board* (2007), 72 Admin. L.R. (4th) 299 (Ont. Div. Ct.) (police board adopted chief's report; reasons adequate); *Oberländer v. Canada (Attorney General)* (2004), 241 D.L.R. (4th) 146 (FCA) (Governor in Council decision to revoke citizenship may be contained in Minister's Report thereto); ***Sketchley v. Canada (Attorney General)*** (2004), 243 D.L.R. (4th) 679 (FC), (due to brevity of tribunal's reasons, investigator's report accepted as basis of decision to reject human rights complaint), aff'd (2005), 263 D.L.R. (4th) 113 (FCA), foll'd *Coupal v. Canada (Attorney General)* (2006), 46 Admin. L.R. (4th) 123 (FC).

the duty to give reasons.[2] Likewise, copying verbatim portions of a party's submissions is permissible unless it gives rise to an apprehension that the decision-maker did not address the evidence and the issues and did not render an impartial, independent decision.[3] And in the context of investigation of human rights complaints, the requirement for reasons may be met by considering the investigator's report.[4] Likewise, where the Governor in Council is to act on the basis of a report from the National Energy Board, the report together with the decision satisfies any requirement to provide reasons.[5] However, reasons must be given in a timely manner,[6] although some courts have required that a request for written reasons be made and refused, before a breach of fairness will be found.[7] As well, it has been held not to be appropriate for reasons to be filed after

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[2]*United States of America v. Bennett*, 2014 BCCA 145 at para. 45 (while "boilerplate" language may not be ideal, it can be efficient and does not necessarily have a sinister connotation); *Petrowski v. Horse Racing Alberta*, 2013 ABQB 267 at paras. 19–20; *Canada (Minister of Citizenship and Immigration) v. Abdul* (2009), 353 F.T.R. 307 (FC) (use of boilerplate reasons by Immigration Appeal Division upheld in circumstances). **Compare** *Sbayti v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1296 at paras. 55–60 (boilerplate acceptable but the specific issues must be addressed); *Olah v. Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 899 at para. 15 (use of boilerplate signified failure of officer to address issues); *Li v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 15 at para. 14 (boilerplate reasons were not responsive to the circumstances); *Blackwood v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 567 at para. 39 (boilerplate reference to "special circumstances" led to inference that evidence not addressed).

[3]*Csikja v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 909 at para. 10, referring to *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 at para. 36.

[4]***Sketchley v Canada (Attorney General)***, 2005 FCA 404 at paras 37–8, aff'g ***Sketchley v. Canada (Attorney General)*** (2004), 243 D.L.R. (4th) 679 (F.C.). **Compare** *Bergeron v. Canada (Attorney General)*, 2013 FC 301 at paras. 31–2 (cannot accept investigator's report as supplementing reasons where the reference to it is in error), aff'd 2015 FCA 160.

[5]***Tsleil-Waututh Nation v. Canada (Attorney General)***, 2018 FCA 153 at paras. 479–80.

[6]E.g. *C.U.P.E., Local 1289 v. Civic Centre Corp.* (2006), 54 C.C.E.L. (3d) 247 (Nfld. & Lab. S.C.) (six-year delay in provision of reasons following request for them breached procedural fairness). **See also** *Shirazi v. Canada (Minister of Citizenship and Immigration)* (2000), 194 F.T.R. 58 at para. 6 (FCTD); *Brunet v. Canada* (2007), 365 N.R. 192 (FCA) (seven-month delay in written version of oral reasons "simply unacceptable".

[7]E.g. *United States of America v. Kissel* (2008), 89 O.R. (3d) 481 (Ont.

the fact of a challenge based on inadequate reasons.[8] Moreover, reasons provided once a judicial review application is commenced may not be accepted as part of the record.[9] And while written reasons need not be given simultaneously with an oral decision, they must be consistent with it.[10]

§ 12:40 Reasons and the "Reasonableness" Standard

In addition to the requirement of reasons as an aspect of fairness, the Supreme Court has added "justification", "intelligibility" and "transparency" as criteria for determining the reasonableness of a decision.[1] It stated:

A court conducting a review for reasonableness inquires into the

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C.A.) (no request made); *Za'rour v. Canada (Minister of Citizenship and Immigration)* (2007), 321 F.T.R. 120 (FC) (no request made); *Marine Atlantic Inc. v. Canadian Merchant Service Guild* (2000), 258 N.R. 112 (FCA) (request must be made and refusal before breach of duty of fairness found for failure to give reasons); *Singh v. Canada (Minister of Employment and Immigration)* (1983), 6 Admin. L.R. 5 (FCA). **See also** *Obidigbo v. Canada (Minister of Citizenship and Immigration)* (2008), 329 F.T.R. 205 (FC) (no request for translation of reasons from French to English, so no breach found).

[8]E.g. *Lai v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 646 at para. 57. **See also** *Montano (Litigation guardian of) v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 33 (filing of officer's notes after applicant's memorandum a breach of fairness).

[9]*Qin v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 147 at para. 18 (affidavit of visa officer supplementing reasons struck). **See also** *CSWU, Local 1611 v. British Columbia (Information and Privacy Commissioner)*, 2015 BCSC 1471 at paras. 46–7, ref'g to *Sellathurai v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2008 FCA 255 at para. 46 (affidavit of decision-maker expanding reasons not admissible); *Phan v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 1203 at paras. 24–5. As to the contents of the administrative record generally, **see** § 6:53 to 6:73. As to the delivery of reasons following a notice of appeal, **see** D.J.M. Brown, Civil Appeals (Toronto: Thomson Reuters Canada Ltd., looseleaf), topic 13:4130.

[10]*Sinnathamby v. Canada (Minister of Citizenship and Immigration)* (2005), 29 Admin. L.R. (4th) 65 (FC) (conflict between oral and written reasons); *Vilches v. Canada (Minister of Citizenship and Immigration)* (2002), 301 N.R. 28 (FCA); *Irripugge v. Canada (Minister of Citizenship and Immigration)* (2000), 182 F.T.R. 47 (FCTD); *Islamaj v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1169 at para. 24 (FCTD) (oral and written reasons must be consistent).

[Section 12:40]

[1]***Dunsmuir v. New Brunswick***, 2008 SCC 9. **See further** §§ VII to VIII.

> 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.[2]

Although at one time the Court indicated that insufficiency of reasons ought not to provide a "stand-alone" basis for judicial intervention,[3] and notwithstanding that the Court in *Vavilov* stated that "the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker,"[4] the Court in *Vavilov* has also made it clear that, if the reasons themselves do not justify the conclusion reached, the decision will be unreasonable on that ground alone.[5] Moreover, *Vavilov* has reaffirmed that reasons are the primary focus for determining whether a decision is *justified*, as well as meeting the *Dunsmuir* concerns of "justification, transparency and intelligibility."[6] And although the Supreme Court had indicated that whether a set of reasons lacks "justification, transparency or intelligibility" is to be assessed on the standard of reasonableness and

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[2]***Dunsmuir v. New Brunswick***, 2008 SCC 9 at para. 47. **And see** ***Canada (Attorney General) v. Igloo Vikski Inc.***, 2016 SCC 38 at para. 18.

[3]***Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)***, 2011 SCC 62 at para. 14. **But see** ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at paras. 96, 98. **See further** § VII.

[4]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 122.

[5]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at paras. 86, 102–3. **See also** *Romania v. Boros*, 2020 ONCA 216 at para. 30.

[6]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at paras. 81, 85–6. **See also** e.g. *Scarborough Health Network v. Canadian Union of Public Employees, Local 5852*, 2020 ONSC 4577, 2020 CarswellOnt 10555 (Ont. Div. Ct.) at paras. 11 and 28 (interest arbitration decision did not meet standards of justification, intelligibility or transparency); *Okojie v. Canada (Citizenship and Immigration)*, 2020 FC 948, 2020 CarswellNat 4295 (F.C.) at paras. 51-58 (lack of justification); *Wood-Tod v. British Columbia (Superintendent of Motor Vehicles)*, 2020 BCSC 155 at paras. 35–6; *A.B. v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 562 at para. 25; *Manan v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 150 at paras. 24–5; *Williams v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 8 at para. 23.

not correctness,[7] it seems clear that that does not mean that the reasons themselves are to be reviewed by that standard; rather, they are to be used as the basis for assessing the reasonableness of the tribunal's decision.[8] In any event, although the court may do so,[9] a reviewing court is not obliged to seek out its own basis to justify the decision.[10] Moreover it does not have *carte blanche* to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result.[11] Rather, the enquiry ought to be to determine whether the flawed reasoning

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[7]***Newfoundland and Labrador Nurses' Union v. Nfld. and Labrador***, 2011 SCC 62 at paras. 15–8. **See also e.g.** *Air Canada Pilots Assn. v. MacLellan*, 2012 FC 591 at para. 20. **Compare** *Renner v. Regina (City)*, 2018 SKQB 326 at para. 25 (whether the RAB's failure to give reasons for its decision breaches the duty of procedural fairness is reviewable on the standard of correctness).

[8]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at paras. 81–6. **And see** *Canada (Minister of Citizenship and Immigration) v. Davoodabadi*, 2019 FC 350 at para. 24; *Barker v. Ontario (Information and Privacy Commissioner)*, 2017 ONSC 7564 (Ont. Div. Ct.) at para. 41, rev'd 2019 ONCA 275; *Eastern Regional Integrated Health Authority v. Newfoundland and Labrador Assn. of Public and Private Employees*, 2012 NLTD(G) 53 at paras. 33–4. **See also** e.g. *Leblanc v. Canada (Attorney General)*, 2019 FC 959 at para. 34 (absence of reference in reasons a badge of unreasonableness); *Waldock v. State Farm Mutual Automobile Insurance Co.*, 2019 ONSC 6105 (Ont. Div. Ct.) at para. 69; *Gowan v. New Brunswick (Minister of Environment)*, 2018 NBQB 212 at para. 32 (decision lacks transparency and therefore is unreasonable).

[9]***Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.***, 2016 SCC 47 at paras. 36–40 (board did not give reasons as to its authority to raise an assessment where that power was expressly conceded by party).

[10]***Kane v. Canada (Deputy Head—Service Canada)***, 2012 SCC 64 at para 9. **See also** *Fanshawe College v. OPSEU*, 2013 ONSC 595 (Ont. Div. Ct.) at para. 7; *Korolove v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 370 at paras. 45–6; *Nouhi c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2013 FC 73 at para. 10 (court has some discretion to supplement reasons). **Compare** *Nagy v. Canada (Attorney General)*, 2013 FC 137 at para. 21 (when applying the standard of reasonableness, where it can court required to find support for the decision in the record).

[11]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 96; *Kenyon v. British Columbia (Superintendent of Motor Vehicles)*, 2015 BCCA 485 at para. 40, referring to ***A.T.A. v. Alberta (Information & Privacy Commissioner)***, 2011 SCC 61 at para. 54; foll'd *MacNeil v. British Columbia (Superintendent of Motor Vehicles)*, 2017 BCSC 1710 at para. 20; *Chen v. British Columbia (Superintendent of Motor Vehicles)*, 2016 BCSC 1646 at paras. 22–3. **See further** *A.B. v. Canada (Minister of*

or finding, or the absence of reasons,[12] is so central or fundamental to the ultimate decision that the decision cannot rationally stand.[13]

2. Statutory Requirements

§ 12:41 Introduction

Nowadays, the enabling statutes under which adjudicative tribunals operate often require that reasons for decision be given,[1] as do the general statutory codes of administrative procedure in Ontario, British Columbia and Alberta. The obliga-

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Citizenship and Immigration), 2020 FC 562 at para. 29; and §§ V et seq.

[12]E.g. *Bank of Nova Scotia v. Randhawa*, 2018 FC 487 at paras. 64–5 (no reasons explaining award of increased costs). **See also** *Yankson v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1608 at para. 28 (rejection of some evidence without explanation not reasonable).

[13]E.g. *Otte v. Regina (City)*, 2020 SKQB 182, 2020 CarswellSask 362 (Sask. Q.B.) at paras. 51-60 (lack of reasons makes it impossible for Court to perform its appellate function); *Mohammad v. Canada (Minister of Citizenship and Immigration)*, [2020] F.C.J. No. 439 at para. 40 (decision failed to account for key evidence); *Begum v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 162 at para. 30 (problematic reasoning constituted fatal flaw); *United Steel v. Georgia-Pacific*, 2020 ONSC 1560 (Ont. Div. Ct.) at paras. 47–51, 69; *Radzevicius Estate v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2020 ONSC 319 (Ont. Div. Ct.) at paras. 22, 42 (minor error was not fundamental flaw); *Mattar v. National Dental Examining Board of Canada*, 2020 ONSC 403 (Ont. Div. Ct.) at paras. 44–51 (gap in decision); *Khan v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 438 at paras. 32–9 (decision that new evidence was inadmissible was not reasonable); *Odden v. British Columbia (Superintendent of Motor Vehicles)*, 2016 BCSC 2394 at para. 65, ref'g to *Kenyon v. British Columbia (Superintendent of Motor Vehicles)*, 2015 BCCA 485 at para. 55; *Rohl v. British Columbia (Superintendent of Motor Vehicles)*, 2017 BCSC 326 at paras. 26ff (improper adverse inference was central to reasoning of adjudicator). **See also *Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 98.

[Section 12:41]

[1]E.g. *Ashurwin Holdings Ltd. v. British Columbia (Residential Tenancy Act, Dispute Resolution Officer)*, 2012 BCSC 1408 (s. 77(1) of the *B.C. Residential Tenancy Act*); *Smith v. Canada (Chief of the Defence Staff)* (2010), 363 F.T.R. 186 (FC) (*National Defence Act*); *Yan v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1153 (*Citizenship Act*); *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1120 (s. 169 of *Immigration and Refugee Protection Act* triggered by refusal to reopen claim); *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461 (B.C. Employment and Assistance Regulation); *Weekes (Litigation guardian) v. Canada (Minister of Citizenship and Immigration)* (2008),

tion may be conditional on a request being made and where that is so the request can be made either before the decision is rendered[2] or afterwards, provided that any delay does not render the exercise futile.[3] Indeed, a tribunal may have no legal authority to place time-limits on the period for requesting reasons, where the provision providing for reasons on request is contained in a statute which itself contains no time-limits.[4]

§ 12:42 The *Statutory Powers Procedure Act*

In Ontario, section 17 of the *SPPA*[1] provides:

> A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party.

Of course, if no request is made, then the absence of reasons cannot be pointed to as a basis for impugning the decision.[2] Nor are reasons necessary if a tribunal decides merely to grant

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80 Admin. L.R. (4th) 197 (FC) (s. 169 of *Immigration and Refugee Protection Act*); *Canada (Minister of Human Resources Development) v. Quesnelle* (2003), 49 Admin. L.R. (3d) 309 (FCA) (*Canada Pension Plan Act*); *Perron v. Canada (Minister of National Revenue)* (2003), 3 Admin. L.R. (4th) 211 (FCA) (*Employment Insurance Act*); *Tran v. Canada (Minister of Citizenship and Immigration)* (2003), 228 F.T.R. 265 (FCTD) (danger opinion); *Jaworski v. Canada (Attorney General)* (2000), 255 N.R. 167 (FCA) (*R.C.M.P. Act*); *King v. Canada (Attorney General)* (2000), 261 N.R. 93 (FCA), aff'g (2000), 182 F.T.R. 226 (FCTD) (Veterans Review and Appeal Board).

[2]*Singh v. Canada (Minister of Employment & Immigration)* (1983), 6 Admin. L.R. 5 (FCA); **see also** *Marine Atlantic Inc. v. Canadian Merchant Service Guild*, [2000] F.C.J. No. 1217 (FCA).

[3]E.g. *Bau v. Canada (Minister of Employment & Immigration)* (1987), 11 F.T.R. 186 (FCTD) (reasons requested after four-year delay).

[4]E.g. *Cardona v. Canada (Minister of Manpower & Immigration)* (1978), 89 D.L.R. (3d) 77 (FCA); *Alvarez v. Canada (Minister of Immigration)* (1978), 22 N.R. 85 (FCA).

[Section 12:42]

[1]*Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 17 [as am. 1994, c. 27, Sch.] (App. Ont. 2). Section 18 [as am. 1994, c. 27, s. 56(34)] goes on to require a tribunal to give a copy of its final decision and the reasons, where they have been given, to every participant. And s. 20(f) provides that the decision and reasons for decision shall be included as part of the record of the tribunal. As to the decision-making powers to which the *SPPA* applies, **see** § 8:7 to 8:22.

[2]*Stoangi v. Law Society of Upper Canada (No. 2)* (1979), 100 D.L.R. (3d) 639 (Ont. Div. Ct.); *Leung v. Ontario (Criminal Injuries Compensation Board)* (1995), 24 O.R. (3d) 530 (Ont. Div. Ct.). **See also** § 12:39.

a reconsideration hearing.[3] On the other hand, the fact that reasons are volunteered, rather than made in response to a request, does not immunize them from review for error of law.[4]

§ 12:43 The *Administrative Procedures and Jurisdiction Act*

Alberta's *Administrative Procedures and Jurisdiction Act* also provides that reasons be given, but that obligation is not conditional upon a request being made.[1] Specifically, section 7 provides that:

> When an authority exercises a statutory power so as to adversely affect the rights of a party, the authority shall furnish to each party a written statement of its decision setting out
>
> (a) the findings of fact upon which it based its decision, and
>
> (b) the reasons for its decision.[2]

However, it has been held that the fact that reasons for dismissing a preliminary motion were given only when the final decision was rendered did not invalidate the decision on the preliminary motion.[3]

§ 12:44 The *Administrative Tribunals Act*

Sections 50 to 52 of British Columbia's *Administrative Tribunals Act*[1] deal with tribunal decisions. Final decisions must be in writing and be accompanied by reasons; each party

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[3]*Barnes v. Ontario (Social Benefits Tribunal)*, [2009] O.J. No. 3096 (Ont. Div. Ct.) at para. 35.

[4]*Rockcliffe Park Realty Ltd. v. Ontario (Ministry of the Environment)* (1975), 10 O.R. (2d) 1 (Ont. C.A.).

[Section 12:43]

[1]But see *Inter-Meridian Investing Ltd. v. Alberta (Assessment Appeal Board)* (1997), 4 Admin. L.R. (3d) 244 (Alta. C.A.) (any requests must be timely).

[2]*Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3, c. 4, s. 7 (App. Alta. 4), cons'd in *Lone Pine (Committee) v. Alberta (Natural Resources Conservation Board)* (2005), 380 A.R. 378 (Alta. C.A.).

[3]*Westcoast Transmission Co. v. Husky Oil Operations Ltd.* (1980), 109 D.L.R. (3d) 698 (Alta. C.A.).

[Section 12:44]

[1]*Administrative Tribunals Act*, S.B.C. 2004, c. 45, ss. 50–52 (App. BC. 8).

and intervenor must be sent a copy unless impracticable, in which case publication is permitted. Where the payment of money is ordered, the principal sum and interest must be set out.

3. Constitutional Guarantees

§ 12:45 Generally

Despite its recent inclusion in the duty of fairness at common law, a requirement of reasons may also comprise one of the principles of fundamental justice guaranteed by section 2(e) of the *Canadian Bill of Rights* and section 7 of the *Canadian Charter of Rights and Freedoms*. For example, the *Charter* has been invoked to strike down a bylaw which provided that reasons for a decision need not be given.[1] As well, the absence of a duty to give reasons was one of the features of a statutory scheme for regulating the number and location of physicians in British Columbia that caused it to violate the principles of fundamental justice.[2] Moreover, where reasons were contemplated by a directive issued by the Commissioner of Penitentiaries, it was stated that although not in itself having the force of law, the directive was an adaptation of both procedural fairness and section 7 of the *Charter*, and consequently a failure to give reasons invalidated the decision.[3]

On the other hand, there was some authority prior to the extension of the duty of fairness to include a reasons requirement, that neither the *Charter* nor the *Canadian Bill of Rights* obliged decision-makers to provide reasons for their decisions. Thus, the Nova Scotia Court of Appeal has held that where the basis of an administrative decision is clear, section 7 of the *Charter* does not require that written reasons be given.[4] And the Federal Court of Appeal had gone further, holding that nei-

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[Section 12:45]

[1]*D & H Holdings Ltd. v. Vancouver (City)* (1985), 15 Admin. L.R. 209 (BCSC).

[2]*Wilson v. British Columbia (Medical Service Commn.)* (1988), 53 D.L.R. (4th) 171 at pp. 195–97 (BCCA), leave to appeal to SCC ref'd (1988), 92 N.R. 400(n).

[3]*Lee v. Canada (Correctional Services)*, [1994] 1 F.C. 15 at pp. 26–27 (FCTD).

[4]E.g. *Khaliq-Kareemi, Re* (1988), 227 A.P.R. 388 (NSCA), leave to appeal to SCC ref'd (1989), 242 A.P.R. 269(n).

ther section 7 of the *Charter* nor section 2(e) of the *Canadian Bill of Rights* imposes a reasons requirement.[5] In contrast, the Supreme Court of Canada has held that the guarantee of judicial independence and impartiality contained in section 11(d) of the *Charter* includes a constitutional duty on the government to give reasons before it may validly reject the recommendations of an independent commission on judicial remuneration and benefits.[6]

C. ADEQUACY OF REASONS

§ 12:46 Generally

Where reasons are required by law, a decision-maker must give reasons that not only do not contain a misstatement of the law or other legal error,[1] but are *adequate*.[2] For example, they must be "sufficiently clear, precise and intelligible" to enable

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[5]*Williams v. Canada (Minister of Citizenship & Immigration)*, [1997] 2 F.C. 646 at p. 675 (FCA), leave to appeal to SCC ref'd (Oct. 16, 1997).

[6]***Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island***, [1997] 3 S.C.R. 3; **and see *Provincial Court Judges' Assn of New Brunswick v. N.B. (Minister of Justice)***, 2005 SCC 44, motion for reconsideration denied 2005 SCC 59. **But see,** *Aalto v. Canada (Attorney General)* (2009), 95 Admin. L.R. (4th) 243 (FC), aff'd (2010), 405 N.R. 225 (FCA) (notwithstanding minister's failure to give reasons for rejecting Special Advisor's report on prothonotaries' remuneration, overall deteriorating economic conditions justified rejection of it).

[Section 12:46]

[1]E.g. *Alberta (Provincial Court Judges Assn.) v. Alberta* (1999), 16 Admin. L.R. (3d) 154 (Alta. C.A.). **See also** *Thibeault v. Saskatchewan Apprenticeship and Trade Certification Commission*, 2020 SKQB 192, 2020 CarswellSask 379 (Sask. Q.B.) at paras. 43-44 (Appeal Committee decision finding applicant engaged in fraud constituted error in law); *Resource Development Trades Council of Newfoundland and Labrador v. Muskrat Falls Employers' Association Inc.*, 2020 NLCA 32, 2020 CarswellNfld 236 (N.L. C.A.) at para. 65 (decision conflated two distinct applications for judicial review); *Fodor v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 218 at para. 52 (decision imported requirements from one section of *Act* into another); *Szabo v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1422 at para. 11.

[2]E.g. *Otte v. Regina (City)*, 2020 SKQB 182, 2020 CarswellSask 362 (Sask. Q.B.) at paras. 51-60 (lack of reasons makes it impossible for Court to perform its appellate function); **and see** *The Association of Professional Engineers of Ontario v. Rew*, 2020 ONSC 6018, 2020 CarswellOnt 15273 (Ont. Div. Ct.) at para. 65 (despite being prolix, and difficult to summarize, reasons were adequate); *Hristova v. CMA CGM (Canada) Inc.*, 2019 FC 1611, [2019] F.C.J. No. 1516 at para. 2 (decision just sufficient to satisfy minimum

the individual to know why the tribunal decided as it did.[3] That is, the reasons must set out the chain of reasoning and the findings of fact on which the decision is based in such a way as to serve the purposes for which the reasons requirement was imposed.[4] Thus, courts have assessed the adequacy of the reasons by asking whether the losing party was able to understand why the case was lost and to assess whether there were grounds to challenge the decision,[5] whether the reasons

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requirements for reasons); *Cycles Lambert Inc. v. President of the Canada Border Services Agency*, 2015 FCA 45 at para. 19 (where there are reasons, the duty of procedural fairness has been met and the issue becomes whether the reasons allow the reviewing court to understand why the tribunal made its decision).

[3]*Schulz v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 717, 2020 CarswellNat 2536 (F.C.) at paras. 18 and 21-22 (decision capable of multiple interpretations; does not demonstrate reasonable application of legal test to evidence); *Williams v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 8 at para. 22 (exercise of public power must be justified, intelligible and transparent to the individuals subject to it); *Weldemariam v. Canada (Public Safety and Emergency Preparedness)*, 2020 CarswellNat 1591, 2020 CarswellNat 1592, 2020 FC 631 at para. 33; *Mohr v. Strathcona (County)*, 2020 CarswellAlta 860, 2020 ABCA 187 at para. 23 (conclusions had to be explained by way of reasons so that applicants could understand decision); *Mitzel v. Alberta (Law Enforcement Review Board)* (2010), 13 Admin. L.R. (5th) 161 at para. 29 (Alta. C.A.) (board acknowledged reasons inadequate on critical point); *Vancouver International Airport Authority v. P.S.A.C.* (2010), 320 D.L.R. (4th) 733 at paras. 19*ff* (FCA) (no basis for decision discernible); *Clifford v. Ontario Municipal Employees Retirement System* (2009), 93 Admin. L.R. (4th) 131 (Ont. C.A.), citing ***R. v. R.E.M.***, [2008] 3 S.C.R. 3 (reasons to be assessed functionally; path to decision must be clear); *Yan v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1153 (reasons confusing; articulation of test applied necessary); *Zeliony v. Red River College* (2007), 222 Man. R. (2d) 156 (Man. Q.B.) (applicant given no idea what "new information" relied on to lead to rescission of re-admission to college).

[4]E.g. *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232 at paras. 35–7.

[5]***Northwestern Utilities Ltd. v. Edmonton (City)***, [1979] 1 S.C.R. 684; **see also** *Wall v. Independent Police Review Director*, 2013 ONSC 3312 (Ont. Div. Ct.) at para. 48 (reasons inadequate where the "why" of the decision not supplied). aff'd 2014 ONCA 884; *Euston Capital Corp. v. Saskatchewan Financial Services Commission* (2008), 307 Sask. R. 100 (Sask. C.A.) ("failure to provide reasons for decision hollows out and defeats the right of appeal" at para. 44); *Coady v. Royal Newfoundland Constabulary Public Complaints Commission* (2007), 266 Nfld. & P.E.I.R. 61 (Nfld. & Lab. S.C.) (reasons inadequate); *Dwyer v. Canada* (2003), 309 N.R. 163 (FCA) (reasons adequate), foll'g ***R. v. Sheppard***, [2002] 1 S.C.R. 869.

enabled the reviewing body to test the validity of the decision[6] or to show curial deference,[7] and whether the reasons made it clear that the party's representations were considered,[8] whether the relevant points or criteria were considered,[9] and whether due weight was given to the important individual interests affected by the decision.[10]

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[6]E.g. *Mohr v. Strathcona (County)*, 2020 CarswellAlta 860, 2020 ABCA 187 at para. 23 (conclusions had to be explained by way of reasons so that decision could be reviewed); *Friesen Dental Corp. v. Director of Companies Office (Manitoba)* (2011), 262 Man. R. (2d) 197 (Man. C.A.) (conclusory reasons "not susceptible to effective appellate review") at para. 99; *S.J. v. Toronto Catholic School Board* (2006), 214 O.A.C. 39 (Ont. Div. Ct.) (while reasons "dangerously close to being inadequate", sufficient information to enable party to appeal); **see also** *Correa v. Ontario Civilian Police Commission*, 2020 ONSC 133 (Ont. Div. Ct.) at paras. 32-35 (Commission decision engaged in proper analysis to determine whether Hearing Officer's reasons permitted meaningful appellate review); ***Monsanto Co. v. Canada (Commissioner of Patents)***, [1979] 2 S.C.R. 1108 at para. 19.

[7]E.g. *Springfield (Rural Municipality) v. Manitoba (Labour Board)*, 2012 MBQB 65 at para. 16 (not fatal that not all arguments addressed); *Johnson v. British Columbia (Workers' Compensation Board)* (2011), 22 Admin. L.R. (5th) 91 at paras. 46–52 (BCCA); *BCE Nexxia Inc. v. Canada (Commissioner of Corrections)*, 2002 FCA 9 (claim to deference weakened by inadequate reasons); *IBM Canada Ltd. v. Hewlett-Packard (Canada) Ltd.*, 2002 FCA 284 at para. 27; *Whitehouse v. Sun Oil Co.* (1982), 22 Alta. L.R. (2d) 97 at para. 11 (Alta. C.A.).

[8]E.g. *Thapachetri v. Canada (Citizenship and Immigration)*, 2020 CarswellNat 1495, 2020 CarswellNat 2193, 2020 FC 600 at paras. 20–2 (decision failed to grapple with key issue); *Lee v. Canada (Correctional Services)*, [1994] 1 F.C. 15 (FCTD); *Sherman v. Alberta (Securities Commn.)* (1991), 120 A.R. 1 (Alta. C.A.).

[9]*Ahmed v. Canada (Citizenship and Immigration)*, 2020 FC 777, 2020 CarswellNat 2706 (F.C.) at paras. 38-45 (failure to consider additional submissions); *Turner v. Canada (Attorney General)*, 2012 FCA 159 at paras. 41–2, ref'g to *Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (FCA) at para. 22. **And see** e.g. *Schulz v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 717, 2020 CarswellNat 2536 (F.C.) at paras. 18 and 21-22 (decision capable of multiple interpretations; does not demonstrate reasonable application of legal test to evidence); *Ghirme v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FC 805 at para. 27.

[10]***Baker v. Canada (Minister of Citizenship and Immigration)***, [1999] 2 S.C.R. 817 at para. 43; **see also e.g.** *Mohammad v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 473 at para. 42; *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 203 at para. 29 (no explanation for not accepting opinion evidence); *Jack v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1189 at paras. 8–9 (FCTD)

However, in view of the several purposes served by a requirement of reasons and the range of decision-makers subject to the duty, it is difficult, if not impossible, to formulate a more specific test of "adequacy." It will almost always depend upon the context.[11] Nevertheless, the courts have offered some general guidance. For example, it has often been said that it is insufficient for decision-makers merely to state their conclusions, or to recite simply that they have considered the parties' representations. In the words of the Supreme Court of Canada:

> It is not enough to assert, or more accurately, to recite, the facts that evidence and arguments led by the parties have been considered. That much is expected in any event . . . . The failure of the [Public Utilities] Board to perform its function under s. 8 [now s.7] included most seriously a failure to set out the 'findings of fact upon which it based its decision' so that the parties and a reviewing tribunal are unable to determine whether or not, in discharging its functions, the Board has remained within or has transgressed the boundaries of its jurisdiction . . . Brevity in this era of prolixity is commendable and might well be rewarded by a different result herein but for the fact that the order of the Board reveals only conclusions without any hint of the reasoning process which led thereto.[12]

As well, the courts have regularly interpreted a statutory duty to give reasons as including an obligation to set out any findings of fact, and the principal supporting evidence on which the decision was based.[13] Indeed, at one time, courts typically assumed reasons to be complete, and they would infer from the

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(best interests of children).

[11]E.g. ***Newfoundland and Labrador Nurses' Union v. Nfld. and Labrador***, 2011 SCC 62 at para. 18; *Canad Corporation of Manitoba Ltd. v. Winnipeg (City)*, 2018 MBQB 137 at paras. 34–5 (municipal councils and committees provide the context for determining adequacy); *Gardner v. Canada (Attorney General)* (2005), 339 N.R. 91 (FCA) at paras. 29–31 (given the submissions and response reason for not referring matter to HRC tribunal clear), leave to appeal to SCC ref'd [2005] S.C.C.A. No. 480. **See further** §§ VII to VIII.

[12]***Northwestern Utilities Ltd. v. Edmonton (City)***, [1979] 1 S.C.R. 684 at pp. 706–7.

[13]E.g. *Patel v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 77 at paras. 17–22 (decision not responsive to facts); *Nanyanzi v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1535 at para. 59 (Board's reasoning regarding central aspect of claim flawed); *Gomes v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 506 at paras. 56, 67, 83 (decision failed to make explicit findings on key issues); *Nova Scotia (Department of Community Services) v. P.S.* (2006), 242 N.S.R. (2d) 274 (NSSC) (no

failure to deal with a particular point that the tribunal had overlooked it, which resulted in the decision being set aside.[14] Moreover, although the Supreme Court has said that reasons need not refer to every piece of evidence or every argument,[15] in *Vavilov* it observed that "[w]here a decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility."[16]

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findings of fact made, as legislation required); *Tran v. Canada (Minister of Citizenship and Immigration)* (2003), 228 F.T.R. 265 at para. 14 (FCTD); **see also** *Canadian Natural Resources Ltd. v. Campbell*, 2018 SKCA 67 at para. 35 (reasons must demonstrate that the Board considered the important features of the relevant evidence so as to allow the parties to understand how, why or on what basis it reached its conclusion); *St. John's (City) v. 10718 Nfld. Inc.*, 2018 NLSC 194 at para. 87; *Manitoba Provincial Judges' Assn. v. Manitoba*, 2012 MBQB 79, aff'd 2013 MBCA 74; *Alberta Provincial Judges' Assn. v. Alberta* (1999), 177 D.L.R. (4th) 418 (Alta. C.A.).

[14]***Macdonald v. R.***, [1977] 2 S.C.R. 665 at p. 673; **see also** ***Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*** (1998), 157 F.T.R. 35 (FCTD) at para. 17. **And see** § 12:46 to 12:48.

[15]***Newfoundland and Labrador Nurses' Union v. Nfld. and Labrador***, 2011 SCC 62, *per* Abella J. at para. 16. **See also** *Sherstobitoff v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2019 BCSC 1659 (B.C. S.C.) at paras. 82*ff*; *Bonnybrook Park Industrial Development Co. Ltd. v. Canada (National Revenue)*, 2018 FCA 136 (F.C.A.) *per* Stratas J.A., dissenting, at paras. 75-86; *New Brunswick Police Commission v. Smiley*, 2017 NBCA 58 (N.B. C.A.) at paras. 21*ff*.

[16]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 98. **See also** *Ahmed v. Canada (Citizenship and Immigration)*, 2020 FC 777, 2020 CarswellNat 2706 (F.C.) at paras. 38-45 (failure to consider additional submissions); *Schulz v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 717, 2020 CarswellNat 2536 (F.C.) at paras. 18 and 21-22 (decision capable of multiple interpretations; does not demonstrate reasonable application of legal test to evidence); *JE and KE v. Children's Aid Society of the Niagara Region*, 2020 ONSC 4239, 2020 CarswellOnt 9771 (Ont. Div. Ct.) at paras. 41 and 102 (decision unreasonable where court misapprehended or failed to account for significant evidence); *Williams v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 8 at para. 24; *Romania v. Boros*, 2020 ONCA 216 at para. 30; *Thapachetri v. Canada (Citizenship and Immigration)*, 2020 CarswellNat 1495, 2020 CarswellNat 2193, 2020 FC 600 at paras. 20–2 (decision failed to grapple with key issue); *Sadiq v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 267 at paras. 17–20 (decision ignored contradictory evidence central to issue in dispute); *Weldemariam v. Canada (Public Safety and Emergency Preparedness)*, 2020 CarswellNat 1591, 2020 CarswellNat 1592, 2020 FC 631 at para. 74; *Salmonid Assn. of Eastern Newfoundland v. Newfoundland and*

§ 12:47 Adequate Reasons

Whether reasons are regarded as adequate will be determined in light of all the circumstances.[1] Accordingly, some courts have expressed the test as being whether the reviewing "Court can discern the 'why' of the decision from the record and whatever reasons have been given."[2-3] But where that is not possible, a reviewing court should not go on and speculate or substitute its reasoning for that of the administrative decision-maker.[4] Indeed, in the words of the Federal Court of

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Labrador (Minister of Municipal Affairs and Environment), 2020 NLSC 34 at para. 98 (in accordance with analysis in *Vavilov* decision not reasonable).

[Section 12:47]

[1]E.g. *KIK Custom Products Inc. v. Canada (Border Services Agency)*, 2020 FC 462 at paras. 61–9, 76 (reasons, including post-decision correspondence with applicant, were reasonable); *P.S.A.C. v. Canada (Attorney General)* (2005), 357 N.R. 139 (FCA) (tribunal adopted investigator's report; reasons adequate); *Boutilier v. Nova Scotia (Human Rights Commission)*, 2018 NSSC 166 at para. 54 (a screening decision under s. 29(4) of the *Human Rights Act* does not require extensive reasons); *Gismondi v. Ontario (Human Rights Commission)* (2003), 169 O.A.C. 62 (Ont. Div. Ct.) (short reasons for dismissal of human rights complaint sufficient, given screening function and fact of discretion not to proceed with every complaint). **Compare** *Canadian Natural Resources v. Bennett & Bennett Holdings Ltd.* (2008), 436 A.R. 256 (Alta. Q.B.) (insufficient reasons did not automatically render tribunal's conclusion unreasonable, given expertise), leave to appeal granted 2008 ABCA 440.

[2-3]***British Columbia (Securities Commission) v. McLean***, 2011 BCCA 455 at para. 26, app'ld in *Atco Lumber Ltd. v. Kootenay Boundary (Regional District)*, 2014 BCSC 524 at paras. 64–5. **See also** *Hristova v. CMA CGM (Canada) Inc.*, 2019 FC 1611, [2019] F.C.J. No. 1516 at paras. 40–4 (reasons are just enough to understand why complaint was dismissed); *Whyte v. Halifax (Regional Municipality)*, 2019 NSSC 238 at para. 19, ref'g to *Casino Nova Scotia v. Nova Scotia (Labour Board)*, 2009 NSCA 4; *Szybunka v. Edmonton (City) Police Service*, 2018 ABQB 164 at para. 61 (reference to earlier decision used to supplement reasons); ***Layman v. Layman Estate***, 2016 NLCA 13 at paras. 25–6.

[4]***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 96; ***Lloyd v. Canada (Attorney General)***, 2016 FCA 115 at para. 24, foll'd *Tung v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FC 917 at paras. 14–16; *2251723 Ontario Inc. (c.o.b. VMedia) v. Rogers Media Inc.*, 2017 FCA 186 at para. 26; *Demyati v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 701 at para. 19; *Velez v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 290 at para. 27 (no "dots on the page" to connect); ***Kabul Farms Inc. v. R.***, 2016 FCA 143 at paras. 34–5; *Komolafe v Canada (Citizenship and Immigration)*,

Appeal, "[A] reviewing court that cannot review an administrative decision for reasonableness must quash the decision."[5]

Accordingly, neither the form[6] nor the length of the reasons is determinative. Thus, reasons that have been characterized as "terse and perfunctory,"[7] brief,[8] skimpy,[9] short,[10] succinct,[11] laconic,[12] "manifest[ing] some deficiencies"[13] and even "lamenta-

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2013 FC 431 at para 11; specifically adopted in ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at para. 97.

[5]***Sharif v. Canada (Attorney General)***, 2018 FCA 205 at para. 356.

[6]*Chapman v. Canada (Minister of National Revenue)* (2002), 221 F.T.R. 126 (FCTD) (Minister of National Revenue's financial documents and correspondence constituted sufficient reasons; no request for disclosure had been made); *Proulx v. Canada (Public Service Staff Relations Board)*, [1978] 2 F.C. 133 (FCA). **See also** § 12:39.

[7]E.g. *Jeffrey v. Canada (Minister of Citizenship and Immigration)* (2006), 46 Admin. L.R. (4th) 241 (FC) ("terse"); *Jaworski v. Canada (Attorney General)* (2000), 255 N.R. 167 (FCA); *Balasingam v. Canada (Minister of Citizenship & Immigration)* (1995), 115 F.T.R. 241 (FCTD) ("boiler plate" reasons adequate). **See also** *Green v. Nova Scotia (Human Rights Commission)* (2010), 292 N.S.R. (2d) 246 (NSSC) at para. 24, aff'd 2011 NSCA 47.

[8]*Radzevicius Estate v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2020 ONSC 319, [2020] O.J. No. 252 (Ont. Div. Ct.) at para. 47 (explanation brief but sufficient); *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 89; *Russell (Town) v. Manitoba*, [2011] 9 W.W.R. 641 (Man. C.A.) at para. 31; *Calgary (City) v. Calgary Firefighters Assn.* (2010), 488 A.R. 159 at para. 31 (Alta. Q.B.) ("briefer than would be preferred"); *Jacobs Catalytic Ltd. v. I.B.E.W., Local 353* (2008), 91 O.R. (3d) 20 (Ont. Div. Ct.) (notwithstanding that reasons brief and "poorly tailored," adequate for labour relations purposes), rev'd on basis tribunal *functus* 2009 ONCA 749; ***Lake v. Canada (Minister of Justice)***, 2008 SCC 23 (analysis of critical factors "brief" but adequate), foll'd *Hills v. Provincial Dental Board of Nova Scotia* (2009), 307 D.L.R. (4th) 341 (NSCA).

[9]*Canada Mortgage and Housing Corp. v. Calgary (City)* (1998), 11 Admin. L.R. (3d) 216 at para. 25 (Alta. C.A.). **See also** *Fairmount Developments Inc. v. Nova Scotia (Minister of Environment and Labour)* (2004), 713 A.P.R. 41 at para. 13 (NSSC).

[10]*T. Eaton Co., Re* (1993), 105 D.L.R. (4th) 455 (NSCA).

[11]*Spurrell v. Newfoundland (Human Rights Commission)* (2003), 50 Admin. L.R. (3d) 137 (Nfld. & Lab. S.C.).

[12]*Doucette v. Canada (Minister of Human Resources Development)* (2004), 245 D.L.R. (4th) 63 (FCA).

[13]*Marriott Corp. of Canada v. C.U.P.E.* (1995), 80 O.A.C. 389 (Ont. Div. Ct.).

bly sparse,"[14] have nonetheless been held to be adequate, as have reasons that "could have been more specific."[15] Furthermore, one appellate court has cautioned that reasons for a decision should be read as a whole, together with the authorities referred to and submissions made,[16] and that specific phrases or sentences which may appear incorrect cannot necessarily be used to impugn the entire decision.[17]

However, the tribunal must set out its reasoning process[18] in words that are intelligible.[19] And while that obligation does not

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[14]*Tsai v. Canada (Human Rights Commn.)* (1988), 91 N.R. 374 at para. 9 (FCA), leave to appeal to SCC ref'd (1989), 101 N.R. 157(n). **See also** *Lone Pine (Committee) v. Alberta (Natural Resources Conservation Board)* (2005), 380 A.R. 378 (Alta. C.A.) ("somewhat sparse"); *Winnipeg School Div. No. 1 v. Winnipeg Teachers' Assn. of Manitoba Teachers' Society* (2007), 217 Man. R. (2d) 104 at para. 39 (Man. Q.B.).

[15]*Taher v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1433 at para. 14 (FCTD).

[16]*Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 at para. 37, and paras. 144–6 *per* Rowe J. (dissenting as to the adequacy of the reasons).

[17]*Enbridge Gas Distribution Inc. v. Ontario (Energy Board)* (2006), 41 Admin. L.R. (4th) 69 (Ont. C.A.), leave to appeal to SCC ref'd [2006] S.C.C.A. No. 208.

[18]***Northwestern Utilities Ltd. v. Edmonton (City)***, [1979] 1 S.C.R. 684 at paras. 44–6; **see also** *The Real Canadian Superstores v. United Food and Commercial Workers Union Local 1400*, 2020 SKCA 102, 2020 CarswellSask 406 (Sask. C.A.) at paras. 36-37, 44-46, 55-56 and 69 (arbitrator turned his mind to all of the significant issues); *Weldemariam v. Canada (Public Safety and Emergency Preparedness)*, 2020 CarswellNat 1591, 2020 CarswellNat 1592, 2020 FC 631 at para. 74; *Nanyanzi v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1535 at para. 59 (Board's reasoning regarding central aspect of claim flawed); *Canada (Minister of Citizenship and Immigration) v. Gharbi*, 2017 FC 1141 at para. 7; *Gabor v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 168 at para. 23; *Yahie v. Canada (Minister of Citizenship and Immigration)* (2008), 337 F.T.R. 59 at para. 34 (FC) (decision lacked "jurisprudential grounding and relevant analysis"); *Fountain v. British Columbia College of Teachers* (2007), 67 Admin. L.R. (4th) 268 (BCSC) (no line of analysis leading from evidence to conclusion reached); *Canada (Minister of Citizenship and Immigration) v. Savard* (2006), 292 F.T.R. 10 (FC) (reasoning process not set out); *Harley v. British Columbia (Employment and Assistance Appeal Tribunal)* (2006), 54 Admin. L.R. (4th) 309 (BCSC) (reasoning process not set out), foll'd *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461; *Canada (Minister of Human Resources Development) v. Chhabu* (2005), 35 Admin. L.R. (4th) 193 (FC) (reasoning process not set out respecting tribunal's determination of "residence in Canada"); *Kalin v. Ontario College of Teachers*

require it to refer to all of the evidence and all of the arguments put forward by the parties,[20] or expressly to state the standard of proof applied,[21] or specify the relevant sections of a statute,[22] decision-makers should address the principal issues raised,[23] resolve conflicts in the evidence in relation to material

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(2005), 254 D.L.R. (4th) 503 (Ont. Div. Ct.) (no reasoning process with respect to admission of evidence or refusal of adjournment); *Alemu v. Canada (Minister of Citizenship and Immigration)* (2004), 257 F.T.R. 52 (FC) (reasoning absent on key issues).

[19]***Blanchard v. Control Data Canada Ltée***, [1984] 2 S.C.R. 476 at para. 74. **See also** *Euro Railings Ltd. v. Canada (Minister of Employment and Social Development)*, 2015 FC 507 at para. 12; *Canada (Minister of Citizenship and Immigration) v. Safi*, 2014 FC 947 at para. 56; *Somasundaram v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 1165 at para. 43; *Canada (Minister of Citizenship and Immigration) v. ElKoussa*, 2012 FC 13 at para. 21 and *Canada (Minister of Citizenship and Immigration) v. AlShowaiter*, 2012 FC 12 at para. 16, refg to ***Canada (Minister of Citizenship and Immigration) v Jeizan***, 2010 FC 323, [2010] FCJ no. 373 at para. 17 (reasons are "adequate when they are clear, precise and intelligible and when they state why the decision was reached").

[20]E.g. ***Newfoundland and Labrador Nurses' Union v. Nfld. and Labrador***, 2011 SCC 62 at para. 16; **see also** *Radzevicius Estate v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2020 ONSC 319, [2020] O.J. No. 252 (Ont. Div. Ct.) at paras. 22, 42 (minor error was not fundamental flaw); *Szybunka v. Edmonton (City) Police Service*, 2018 ABQB 164 at para. 57 (presumption of regularity that decision-maker considered all relevant factors); *Franchi v. Canada (Attorney General)* (2011), 418 N.R. 357 (FCA) at para. 41; *Placide v. Canada (Minister of Citizenship and Immigration)* (2009), 359 F.T.R. 217 (FC) at para. 44; *Barrington v. Institute of Chartered Accountants of Ontario*, 2011 ONCA 409 at para. 114; *Hills v. Provincial Dental Board of Nova Scotia* (2009), 307 D.L.R. (4th) 341 (NSCA); *Clifford v. O.M.E.R.S.* (2009), 93 Admin. L.R. (4th) 131 (Ont. C.A.) at para. 29.

[21]*V. (K.) v. Alberta (College of Physicians and Surgeons)* (1999), 173 D.L.R. (4th) 431 at para. 30 (Alta. C.A.).

[22]*United Bro. of Carpenters, Local 579 v. Northland Contracting Inc.* (2004), 721 A.P.R. 81 at para. 23 (Nfld. & Lab. S.C.), rev'd on other grounds 2006 NLCA 11; *Lethbridge (City) v. Daisley* (2000), 150 A.R. 36 at para. 36 (Alta. C.A.); *K.E. Roessler Construction Co. v. Thiessen*, [1976] 4 W.W.R. 529 at para. 21 (Man. Q.B.).

[23]*O'Grady v. Bell Canada*, 2015 FC 1135 at paras. 37–8. **See also** *Romania v. Boros*, 2020 ONCA 216 at para. 30; *Thapachetri v. Canada (Citizenship and Immigration)*, 2020 CarswellNat 1495, 2020 CarswellNat 2193, 2020 FC 600 at paras. 20–2 (decision failed to grapple with key issue); *Mohr v. Strathcona (County)*, 2020 CarswellAlta 860, 2020 ABCA 187 at para. 23 (Board's conclusions had to be explained); *Langevin v. Air Canada*, 2020 FCA 48 at para. 19 (failure to elaborate on key point unfortunate but decision as a whole reasonable); *Oria-Arebun v. Canada (Minister of Citizenship and*

facts,[24] provide a review of the evidence and set out the basis on which their conclusions were reached,[25] including their findings on important questions of fact.[26] Moreover, where cred-

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Immigration), 2019 FC 1457 at para. 58 (no analysis on pivotal point); *Reynosa v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 1058 at para. 19 (key evidence to counter danger finding not acknowledged); *Francois v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 748 at para. 16 (decision-makers must demonstrate that they took care to focus on the particular circumstances of the individual child or children affected); *Li v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FC 451 at para. 25, referring to ***Kanthasamy v. Canada (Minister of Citizenship and Immigration)***, 2015 SCC 61 at para. 39 (best interests of child must be specifically addressed).

[24]*Kirby v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCSC 1625 at para. 32 (where there are unresolved conflicts in evidence that pertain to the central finding they must be addressed); *Mackenzie v. British Columbia (Superintendent of Motor Vehicles)*, 2017 BCSC 2392 at para. 63, aff'd 2018 BCCA 354; *Lajho v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 980 at para. 15; *Gauder v. British Columbia (Superintendent of Motor Vehicles)*, 2016 BCSC 142 at para. 41, referring to *Petrov v. British Columbia (Superintendent of Motor Vehicles)*, 2015 BCCA 486 at para. 34.

[25]Some recent examples of failure to do so include: *Yankson v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1608 at para. 44 (key determinations made based on irrelevant or minor details without analysis of substance of evidence); *Patel v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 77 at paras. 17–22 (decision not responsive to facts); *Sutherland v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 1212 at para. 28 (no mention of the mental health impact on the applicant); *Mora Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 750 at paras 57–9; *College of Physicians and Surgeons of Ontario v. Beitel*, 2013 ONSC 1599 (Div. Ct.) at para. 33 (conclusion formulaic); *Jakutavicius v. Canada (Attorney General)* (2011), 30 Admin. L.R. (5th) 30 (FC) (decision neither justified nor intelligible) at paras. 32*ff*.

[26]E.g. ***Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*** (1998), 157 F.T.R. 35 (FCTD) (important medical report not referred to; decision quashed); **see also e.g.** *Ahmed v. Canada (Citizenship and Immigration)*, 2020 FC 777, 2020 CarswellNat 2706 (F.C.) at paras. 38-45 (failure to consider additional submissions); *Edom v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FC 958 at para. 29 (no reference in reasons to evidence that did not support IAD's findings); *Ayeni v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1202 at para. 27, ref'g to *Magonza v. Canada (Citizenship and Immigration)*, 2019 FC 14 at paras. 32*ff* ("insufficiency" conclusions in the context of refugee law must be explained); *Torres v. Canada (Citizenship and Immigration)*, 2019 FC 150 at para. 27; *Federated Co-Operatives Ltd. v. Wheatland (County)*, 2018 ABQB 637 at para. 109, rev'd 2019 ABCA 513 (error in application of reasonableness standard); *Orliczki v. Canada (Minister of Citizenship and Immigration)*,

ibility is in issue, a clear explanation for accepting or not accepting the evidence of a witness will normally be necessary.[27] Similarly, for a "no credible basis" finding to be made, the reasons should evidence that the appropriate analysis was conducted.[28] And a failure specifically to address probative evi-

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2017 FC 1033 at paras. 15–19; *Abdollahi v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 972 (no reference to evidence that contradicted the officer's findings unreasonable); *Rutter v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2015 BCSC 862 at para. 69 (no reasons for dispensing with independent medical opinion in face of conflicting medical evidence); *Yurtal v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 949 at paras. 33–4; *Saeedi v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 146 at para. 33; *C.U.P.E., Local 8 v. Intercare Corporate Group Inc.* (2010), 492 A.R. 358 (Alta. Q.B.) (important inconsistencies in evidence not resolved); *Canada (Minister of Citizenship and Immigration) v. Iyile*, 2009 FC 700 (no indication why adjudicator departed from previous findings on issue in question), citing *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, [2004] 3 F.C.R. 572 (FCA); *Murray v. Saskatchewan Veterinary Medical Assn.* (2008), 301 D.L.R. (4th) 482 at para. 47 (Sask. Q.B.) (only "summary reasons on pivotal evidence ruling" vitiated decision), aff'd 2011 SKCA 1; *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461; *Shooters Sports Bar Inc. v. Ontario (Alcohol and Gaming Commission)* (2008), 238 O.A.C. 9 (Ont. Div. Ct.) (not clear why key testimony ignored); *Johnstone v. Canada (Attorney General)* (2007), 306 F.T.R. 271 (FC) (no reasons given by human rights commission for coming to different conclusion than investigator), aff'd 2008 FCA 101.

[27]Decisions were quashed for failure to explain the basis for rejecting evidence in the following: *Mattu v. Canada (Minister of Immigration Refugees and Citizenship)*, 2017 FC 781 at paras. 25–6; *Rozario v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 1046 at para. 7, *Balachandran v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 800 at para. 14; *Bazelais c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2013 FC 316 at para. 40, ref'g to *Hilo v Canada (Minister of Employment & Immigration)*, [1991] FCJ No 228 (C.A.); *Shamsuzzaman v. College of Physicians and Surgeons of Saskatchewan*, [2011] 8 W.W.R. 1 (Sask. C.A.) (reasons thus inadequate) at paras. 37*ff*; *Yu v. Canada (Attorney General)* (2011), 383 F.T.R. 31 (FC) (no finding made as to credibility; decision quashed); *Megens v. Ontario Racing Commission* (2003), 64 O.R. (3d) 142 (Ont. Div. Ct.) (reasons "utterly fail to grapple with numerous issues of importance as to the credibility of the principal witnesses"). **See also** *Nanyanzi v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1535, [2019] F.C.J. No. 1487 at para. 45 (negative inference regarding applicant's credibility based on flawed evidentiary finding). ***Compare*** *Webber Academy Foundation v. Alberta (Human Rights Commission)*, 2016 ABQB 442 at paras. 102–3 (error not material to overall decision).

[28]*Liu v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 253 at para. 32: see also *Hadi v. Canada (Minister of Citizenship and Immigration)*,

dence that contradicts a tribunal's own findings can constitute an error, rendering the decision unreasonable.[29] The Federal Court has emphasized that a tribunal's "burden of explanation increases with the relevance of the evidence in question to the disputed fact."[30] Of course, generally speaking, when a decision-maker has met these standards, courts will not intervene.[31]

§ 12:48 Inadequate Reasons

The Supreme Court of Canada decision in *New Brunswick (Board of Management) v. Dunsmuir* to the effect that review for reasonableness includes consideration of "justification, transparency and intelligibility within the decision-making

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2018 FC 590 at para. 54.

[29]E.g. *Sadiq v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 267, [2020] F.C.J. No. 242 at paras. 17–20 (decision ignored contradictory evidence central to issue in dispute); *Suntharalingam v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 987 at para. 50; *C.C.F. v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1141 at para. 45; *Tursunbayev v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 504 at para. 74.

[30]***Cepteda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*** (1998), 157 F.T.R. 35 (FC) at para. 17. **See also** *Mohammad v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 473, [2020] F.C.J. No. 439 at para. 40 (decision failed to account for key evidence). *Hernandez Montoya v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 808 at paras. 33–4; *Rarama v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 60 at para 32, ref'g to *Hinzman v. Canada (Citizenship & Immigration)*, 2010 FCA 177 at para. 38 (while reasons do not have to refer to each and every piece of evidence, if the evidence is significant, the omission may be fatal).

[31]*Mackenzie v. British Columbia (Superintendent of Motor Vehicles)*, 2017 BCSC 2392 at para. 43. **And see e.g.** *KIK Custom Products Inc. v. Canada (Border Services Agency)*, 2020 FC 462 at paras. 61–9, 76 (reasons, including post-decision correspondence with applicant, were reasonable); *Huang v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 241 at paras. 23–7 (decision considered all relevant evidence); *Wilson v. Ontario (Provincial Police Service)* (2008), 242 O.A.C. 82 (Ont. Div. Ct.) (notwithstanding that adjudicator's reasons deficient on issue of credibility, appeal commission had fully examined all evidence; decision upheld); *377050 B.C. Ltd. v. Burnaby (City)* (2007), 64 B.C.L.R. (4th) 1 (BCCA) (trial judge wrongly concluded reasons inadequate); *Law Society of Upper Canada v. Neinstein* (2007), 85 O.R. (3d) 446 (Ont. Div. Ct.); *Elite Swine Inc. v. Moosomin (Rural Municipality No. 121)* (2006), 284 Sask. R. 137 (Sask. Q.B.) (reasons, including supplementary reasons, adequate), aff'd 2007 SKCA 38.

process"[1] has led to greater scrutiny of the adequacy of reasons,[2] and has resulted in this consideration being integrated with the application of the reasonableness standard.[3] And the Court in *Vavilov* has also made it clear that, if the reasons themselves do not justify the conclusion reached, the decision will be unreasonable on that ground alone.[3.50] Earlier, reasons had been found to be inadequate where a tribunal merely quoted the language of the statute in arriving at its decision.[4] Likewise, it was held not to be sufficient in connection with the revocation of a permit simply to state that continuing the permit was "not in the public interest."[5] Nor will resort by the decision-maker

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[Section 12:48]

[1]*New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9, at para. 47.

[2]E.g. *Temate v. Canada (Attorney General)*, 2018 FC 1004 at para. 33; *Liu v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 954 at paras. 24–6; *Kotai v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 678 at paras. 18–19; *Singh v. Canada (Minister of Public Safety and Emergency Preparedness)* (2011), 24 Admin. L.R. (5th) 70 at para. 14 (FC) (reasons wholly inadequate); *College of Veterinarians of Ontario v. Hanif* (2011), 277 O.A.C. 1 at para. 47 (Ont. Div. Ct.); *Sapru v. Canada (Minister of Citizenship and Immigration)* (2011), 330 D.L.R. (4th) 670 (FCA) (medical officer's reasons inadequate, and so prevented immigration officer from assessing their reasonableness); ***Halifax (Regional Municipality) v. Canada (Public Works and Government Services)***, 2009 FC 670, rev'd in part (2010), 321 D.L.R. (4th) 638 (FCA) (reasons inadequate respecting one part of valuation), rev'd on other grounds 2012 SCC 29.

[3]E.g. *Canada (Minister of Public Safety and Emergency Preparedness) v. Hamdan*, 2019 FC 1129 at para. 38, ref'g to *Canada (Public Safety and Emergency Preparedness) v. Mohammed*, 2019 FC 451 at para. 23; *Taman v. Canada (Attorney General)*, 2017 FCA 1 at para. 47; *Karkanis, Re*, 2014 ONSC 7018 (Div. Ct.) at para. 72 (where reasons do not meet the justification, transparency, and intelligibility standard, the decision is unreasonable); ***Gamez Blas v. Canada (Minister of Citizenship and Immigration)***, 2014 FC 629 at para. 52.

[3.50]*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 86 and 102-103. See also *Romania v. Boros*, 2020 ONCA 216 (Ont. C.A.) at para. 30.

[4]E.g. ***Canada Metal Co. v. MacFarlane*** (1973), 1 O.R. (2d) 577 (Ont. H.C.J.); *Hannley v. Edmonton (City)* (1978), 12 A.R. 473 (Alta. C.A.); *567687 Saskatchewan Ltd. v. Prince Albert (City)* (1987), 60 Sask. R. 42 (Sask. Q.B.).

[5]*Ahlefend v. Border Conservation & Development Area Authority* (1983), 28 Sask. R. 213 (Sask. Q.B.); **see also** *Euston Capital Corp. v. Saskatchewan Financial Services Commission* (2008), 307 Sask. R. 100 (Sask. C.A.); *Westwood Congregation of Jehovah's Witnesses v. Coquitlam (City)* (2006), 272 D.L.R.

to the common phrase that he "considered all of the evidence" insulate a decision from judicial review.[6] Similarly, a conclusion alone will not do,[7] nor will cutting and pasting "boilerplate" from other decisions,[8] nor will a mere recitation of the

(4th) 675 (BCSC) (council merely stated that all new requests for exemptions would be refused); *567687 Saskatchewan Ltd. v. Prince Albert (City)* (1987), 60 Sask. R. 42 (Sask. Q.B.) ("in the best interest of the community").

[6]*Dinani v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1063 at para. 25. **See also** *Abdillahi v. Canada (Minister of Citizenship and Immigration)*, [2020] F.C.J. No. 441 at para. 32 ("careful review of the application"); *Melendez v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FC 1363 at para. 38 (insufficient and unreasonable to simply and only state that the applicant's submissions had been "reviewed and considered"); *Xie v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1239 at para. 33.

[7]E.g. *Cowan v. Grande Prairie No 1 (County of)*, 2020 ABCA 399, 2020 CarswellAlta 2083 (Alta. C.A.) at para. 9 (reasons entirely conclusory); *Abdillahi v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 422 at para. 32 (decision denying oral hearing was conclusory); *Cerrato v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1574 at para. 26 (decision disregarded certain allegations without analysis or explanation); *Omijie v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 878 at para. 18; *Leahy v. Canada (Minister of Citizenship and Immigration)*, 2012 FCA 227 at paras. 123–4; *Audmax Inc. v. Ontario (Human Rights Tribunal)* (2011), 328 D.L.R. (4th) 506 (Ont. Div. Ct.) at paras. 54–5; *Sussman v. College of Alberta Psychologists* (2010), 16 Admin. L.R. (5th) 211 (Alta. C.A.) ("complete absence of explanation for the finding of professional misconduct") at para. 51; *MacAllister v. Newfoundland and Labrador Chiropractic Board* (2011), 309 Nfld. & P.E.I.R. 272 (Nfld. & Lab. S.C.) at paras. 27*ff*; *New Brunswick (Attorney General) v. Pembridge Insurance Co.* (2011), 328 D.L.R. (4th) 718 at para. 31 (NBCA); *Collard v. Waterford Developments Ltd.* (2011), 28 Admin. L.R. (5th) 128 (BCSC) at para. 17; *Deen v. Certified Management Accountants of Alberta (Complaints Inquiry Committee)* (2011), 25 Admin. L.R. (5th) 166 at para. 15 (Alta. C.A.); *New Brunswick (Attorney General) v. Dominion of Canada General Insurance Co.* (2010), 327 D.L.R. (4th) 728 at para. 28 (NBCA) at para. 28; *Pridgen v. University of Calgary* (2010), 325 D.L.R. (4th) 441 (Alta. Q.B.) at para. 105, aff'd 2012 ABCA 139; *Vancouver International Airport Authority v. P.S.A.C.* (2010), 320 D.L.R. (4th) 733 (FCA); *Johal v. Canada (Revenue Agency)*, 2009 FCA 276 at para. 43 (FCA) (reasons "almost wholly conclusory"); *G.M. v. Nova Scotia (Director of Victim Services)* (2003), 662 A.P.R. 147 (NSCA) (reasons "so insubstantial as to be egregiously erroneous").

[8]E.g. *Cornejo v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 325 at para. 9. **See also** *Samra v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 157, [2020] F.C.J. No. 180 at para. 23; *Goman v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 643 at para. 11; *I.V.S. v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1009 at

types of evidence considered together with a conclusion,[9] nor a failure to provide an analysis in interpreting the relevant legislation,[10] nor a failure to give reasons for the award of compensation under various heads.[11] And where there was a gap in the reasons that precluded the reviewing court from determining the intended conclusion, the decision was set aside.[12] *A fortiori*, where a critical issue is not addressed at all, intervention will likely follow.[13] Moreover, in one case where

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para. 19.

[9]E.g. *Friesen Dental Corp. v. Director of Companies Office (Manitoba)* (2011), 262 Man. R. (2d) 197 (Man. C.A.); *Oakville (Town) v. Read* (2010), 316 D.L.R. (4th) 62 (Ont. Div. Ct.) ("bald conclusion" inadequate) at para. 34, aff'd 2011 ONCA 22; **see also** *Chakanyuka v. Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 313; at para. 10; *Canada (Minister of Citizenship and Immigration) v. Desalegn*, 2016 FC 12 at paras. 16–21; *Gill v. Saskatchewan Government Insurance*, 2013 SKQB 276 at para. 35; *Goulet v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 65 at para. 12; *Johnston v. Canada (Attorney General)* (2010), 5 Admin. L.R. (5th) 171 (FC) at paras. 36*ff*; *Yukon v. McBee*, 2009 YKSC 73 at para. 16; *Casavant v. Saskatchewan Teachers' Federation*, [2005] 6 W.W.R. 31 (Sask. C.A.), foll'd *Sood v. Medical Advisory Committee of the South Central Health District* (2005), 271 Sask. R. 126 (Sask. Q.B.); ***Canada Inc. v. Lemonde*** (2000), 193 D.L.R. (4th) 357 (FCA).

[10]E.g. *Pierson v. Estevan Board of Police Commissioners*, 2020 SKQB 144, 2020 CarswellSask 274 (Sask. Q.B.) at paras. 68 and 78-80 (Tribunal failed to address section of governing legislation establishing evidentiary presumption); *B. (H.S.) v. Alberta (Criminal Injuries Review Board)*, 2014 ABQB 264 at paras. 49–50.

[11]E.g. *Carter v. Northwest Territories Power Corp.*, 2014 NWTSC 19 at para. 136 (no analysis and explanation as to how damages calculated); *Morgan-Hung v. British Columbia (Human Rights Tribunal)* (2011), 17 B.C.L.R. (5th) 191 (BCCA) (failure to explain refusal to award several heads of damages led to quashing of decision). *See also New Brunswick (Superintendent of Pension) v. Blair*, 2009 NBQB 242 at para. 39 (damage award not justified); *Canada (Attorney General) v. Mowat* (2008), 78 Admin. L.R. (4th) 127 at para. 58 (FC) (costs).

[12]*United Steel v. Georgia-Pacific*, 2020 ONSC 1560 (Ont. Div. Ct.) at paras. 47–50; *Ontario (Human Rights Commission) v. Farris*, 2012 ONSC 3876 at paras. 42–7.

[13]E.g. *Pierson v. Estevan Board of Police Commissioners*, 2020 SKQB 144, 2020 CarswellSask 274 (Sask. Q.B.) at paras. 68 and 78-80 (Tribunal failed to address section of governing legislation establishing evidentiary presumption); *Gomes v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 506 at para. 83 (failure to justify decision regarding central issues); *Walker v. Canada (Department of Environment and Climate Change, Deputy Head)*, [2020] F.C.J. No. 223 at para. 10 (failure to address a fundamental

there were two conflicting sets of reasons, and it was impossible to determine which of the two should govern, the decision was set aside.[14] So, too, was a decision that was internally inconsistent.[15] And where two claims have been considered together, the reasons must disclose the basis on which the peculiar facts of each claim were considered.[16] Furthermore, a decision may be set aside if, when required by statute or otherwise[17] to have regard to specified criteria, the tribunal fails in its reasons to relate its decision to the criteria.[18]

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argument); *Marcom Resources Ltd. v. Canada (Minister of Employment, Workforce Development and Labour)*, 2020 FC 182 at para. 20 (silence on key evidence); *Abdi v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FC 733 at para. 93 (reasons did not address *Charter*); *Shirt v. Saddle Lake Cree Nation*, 2018 FC 399 at paras. 41–2; *Jesuthasan v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 142 at para. 25; *Gechuashvili v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 365 at para. 23.

[14] *Arduengo v. Canada (Minister of Employment & Immigration)* (1981), 40 N.R. 436 (FCA); **see also** *Torres Martinez v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 636 at para. 10 (post-decision notes conflicted with reasons); *Reid v. Ontario (Criminal Injuries Compensation Board)*, 2015 ONSC 6578 (Ont. Div. Ct.) at paras. 24–6; *Anjum v. Canada (Minister of Citizenship and Immigration)* (2004), 250 F.T.R. 311 (FC) (several versions given; no authority in tribunal to amend reasons); *Sinnathamby v. Canada (Minister of Citizenship and Immigration)* (2005), 29 Admin. L.R. (4th) 65 (FC) (conflict between oral and written reasons); *Lai v. Canada (Minister of Citizenship and Immigration)* (2000), 188 F.T.R. 113 (FCTD) (statute required reasons to be given to both Minister and applicants; here, reasons differed).

[15] *JE and KE v. Children's Aid Society of the Niagara Region*, 2020 ONSC 4239, 2020 CarswellOnt 9771 (Ont. Div. Ct.) at para. 103 (Board assessed evidence of respondents and applicants according to different standards); *Hasani v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 125, [2020] F.C.J. No. 94 at para. 69 (decision exhibited failure of rationality internal to reasoning process); *Canada (Minister of Public Safety and Emergency Preparedness) v. Begum*, 2019 FC 356 at paras. 19–20; *Sangmo v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 17 at para. 21 (decision is internally inconsistent which rendered it unreasonable).

[16] E.g. *Teva Neuroscience G.P.-S.E.N.C. v. Canada (Attorney General)*, 2009 FC 1155; *Ramnauth v. Canada (Minister of Citizenship and Immigration)* (2004), 247 F.T.R. 239 (FC). **See also** *Ruszo v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 296 at para. 18 (where other decisions reached opposite conclusion incumbent on RPD member to distinguish them).

[17] E.g. *Shane Homes Ltd. v. Chestermere (Town)* (2009), 457 A.R. 161 (Alta. C.A.) (no reference made to statutory criteria); *Muhanna v. Canada (Minister of Citizenship and Immigration)* (2008), 76 Imm. L.R. (3d) 318 (FC)

In addition, reasons have been found to be inadequate when they fail to disclose whether or how the decision-maker took account of an important factor in the exercise of discretion, even though the obligation to consider that factor was implied, not expressed, in the statute.[19]

Failure to give reasons for departing from established jurisprudence may also result in invalidation of a decision,[20] as it will if a Minister departs from a departmental assessment without explaining the basis for doing so in his or her reasons.[21] As well, a decision has been quashed where the reasons did not mention documentary or other evidence "specific to and corrob-

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(not clear which legal test for permanent residence, mandated by jurisprudence, had been applied) at paras. 7*ff*; *Ismeal v. Canda (Minister of Public Safety and Emergency Preparedness)* (2008), 77 Imm. L.R. (3d) 310 (FC) (National Security Guidelines); *New Brunswick (Executive Director of Assessment) v. Findlay*, 2009 NBQB 56.

[18]E.g. *Bhalla v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1638, [2019] F.C.J. No. 1557 (failure to consider compassionate factors); *Dudas v. Canada (Minister of Public Safety and Emergency Preparedness)* (2010), 14 Admin. L.R. (5th) 123 (FC) at para. 41; *Nour v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 805 at para. 42; *BibbyJacobs v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1176 at para. 8; *N.Z. v. Canada (Minister of Citizenship and Immigration)* (2011), 384 F.T.R. 221 (FC); (Gender-Related Guidelines); *Canada (Citizenship and Immigration) v. Zegarac* (2009), 356 F.T.R. 297 (FC) (not clear which test for citizenship residency requirements used); *Canada Post Corp. v. P.S.A.C.* (2010), 399 N.R. 127 at para. 9 (FCA) (equal pay guidelines), rev'd on this issue on basis tribunal's reasons adequate, 2011 SCC 57; *Burge v. Newfoundland Board of Examiners in Psychology* (2005), 743 A.P.R. 59 (Nfld. & Lab. S.C.) (Registrar should have referred to guideline criteria in rejecting application).

[19]***Baker v. Canada (Minister of Citizenship and Immigration)***, [1999] 2 S.C.R. 817; **see also e.g.** *Ariyarathnam v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 162 at para. 57 (only lip service paid to best interest of the child); *Spring v. Canada (Attorney General)*, 2016 FC 87 (decision to refuse a pardon set aside where reasons did not permit understanding of the "why").

[20]E.g. *1909988 Ontario Limited v. North Cowichan (Municipality)*, 2020 BCSC 1666, 2020 CarswellBC 2735 (B.C. S.C.) at paras. 54 and 63-68 (property owners have a right to know why a municipality departs from previous decisions); *Canada (Minister of Citizenship and Immigration) v. Li* (2008), 331 F.T.R. 68 (FC).

[21]*Downey v. Canada (Minister of Public Safety)* (2011), 24 Admin. L.R. (5th) 223 (FC) at para. 11. **See also** *Byblow v. Yukon (Workers' Compensation Appeal Tribunal)*, 2012 YKSC 31 at para. 31 (reasons do not indicate any consideration of Recovery policy in ordering repayment).

orative of" an applicant's allegations."[22] Likewise, where the reasons referenced a statutory provision that did not, in context, make sense, the decision was set aside.[23] And the same result was reached where a professional discipline committee's reasons did not indicate which of two complaints contained in the notice of hearing had been established by the evidence,[24] where there was no indication in the reasons of the extent to which a biased witness' evidence had been influential,[25] and where the reasons failed to address the joint submissions of the parties.[26]

D. AUTHORSHIP

§ 12:49 Preparing the Reasons

The general rule is that the duty to provide reasons cannot be delegated: the reasons given must in substance be those of the decision-maker.[1] However, that is not to say that the tribunal is precluded from seeking the assistance of its legal

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[22]***Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*** (1998), 157 F.T.R. 35 (FCTD) at para. 17; **see also** *X.Y. v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 213 at para. 25; *Cetinkaya v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 8 at para. 66; *Conroy v. Professional Institute of the Public Service of Canada*, 2012 FC 887 at para. 41; *Sarabia v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 29 at para. 10. **And see discussion** in *Koppalapillai v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 235 at paras. 20*ff*, as to when a negative inference can be drawn where the evidence purportedly overlooked is country condition documentation; **and see further** *Greater Sudbury (City) Police Service v. Greater Sudbury (City) Police Service* (2010), 259 O.A.C. 226 at para. 151 (Ont. Div. Ct.); *Guttman v. Law Society of Manitoba*, [2010] 8 W.W.R. 385 (Man. C.A.) at paras. 54*ff*; *Rhodes v. Wakaluk* (2011), 369 Sask. R. 250 (Sask. Q.B.) at para. 18; *Sharif v. Alberta (Appeals Commission for Alberta Workers' Compensation)* (2011), 19 Admin. L.R. (5th) 76 (Alta. C.A.) at para. 15.

[23]*Wright v. Nova Scotia (Human Rights Commission)*, 2017 NSSC 11 at para. 36.

[24]E.g. *Richmond v. College of Optometrists (Ontario)* (1995), 25 O.R. (3d) 448 (Ont. Div. Ct.).

[25]E.g. *Huerto v. College of Physicians and Surgeons (Saskatchewan)* (1999), 178 Sask. R. 52 (Sask. Q.B.).

[26]E.g. *Nguyen v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1843 (FCTD) (joint submissions should only be rejected for good reasons).

[Section 12:49]

[1]E.g. *Central Western Railway Corp. v. Alberta (Surface Rights Board)*