

PART VII

DECISION MAKING

1 Introduction

Every decision of the Land and Titles Court:

- is in accordance with the opinion of the majority of members present;
- is in writing;
- shall include reasons for the decision;
- is to be pronounced in open Court, and each party is entitled to a true certified copy;
- shall be drawn up under seal of the Court and the hand of the President or Deputy President and Judges and Assessors who concur with the decision.

2 Principles Governing Decision Making

There are four principles which collectively translate into the general duty to act fairly:

- Judges must act lawfully.
- Affected parties have a right to be heard.
- Judges must be free from bias.
- The decision must be reasonable.

The principles are intended to ensure:

- the fair, unbiased and equal treatment of all people; and
- the exercise of any discretion only on reasoned and justified grounds

Adhering to these principles does not guarantee that the Court has made a good decision. It does mean, however, that it is likely to have followed a process that is designed to introduce many of the relevant and critical factors, and exclude prejudice and irrelevant material and considerations.

You must act lawfully

This principle is concerned with what the governing legislation or rules require (jurisdiction and procedure).

There are several aspects to the principle of lawfulness. The Court must:

- act within the authority of the law;
- take into account all the relevant considerations and ignore irrelevant considerations;
- not abdicate its discretionary power. Only the members of the panel can make the decision.

Affected parties have a right to be heard

- A party affected by a decision must have a full and fair opportunity to be heard before the decision is made.
- The purpose of this principle is to ensure that the Court considers all relevant information before making its decision.

You must be free from bias

- Judges should not allow their decision to be affected by bias, prejudice or irrelevant considerations.
- They must not have an interest in the matter from which it might be said that they are biased.
- It is not necessary to show actual bias, the appearance of bias is sufficient.
- Bias might be inferred where there is a relationship to a party or witness, a strong personal attitude that will affect a Judge's decision, or a financial interest in the matter.

The decision must be reasonable

- This principle relates to the substantive outcome rather than the process followed. The decision itself must be reasonable in the particular circumstances.

3 Consequences of a Breach of the Principles

If these principles are not adhered to, your decision may be reviewed on appeal.

There are other consequences of breaching the principles. These include:

- undeserved expense, hardship and emotional turmoil for the aggrieved party;
- a loss of faith in the system of justice by the aggrieved party;
- on-going problems from a perpetual litigant;
- wider problems relating to the public's confidence in the Court system.

4 An Approach to Decision Making

4.1 Deliberations

At the conclusion of the formal hearing, the panel sets forth to perform their collective duty to discuss the evidence produced by parties and make a finding of facts.

This is the last important opportunity for the members of the Court to ensure absolute adherence to the underlying judicial principles of conducting a fair hearing, and ultimately to arrive at a just and reasonable decision.

The role of the Chair to manage the proceedings in any hearing continues until after the final decision of the Court has been duly pronounced.

It goes without saying that the Chair will have to ably demonstrate good leadership qualities, professionalism and an impartial attitude.

Where disagreement on any aspect is apparent, sufficient and fair opportunities should be given to each panel member to give reasons in support of his/her view. Note that the right to be heard is not only for parties and witnesses to a hearing, but is extended equally to members of the Court. Every Judge and Assessor hearing a case has an equal voice.

Panel members must work in partnership and with understanding and open minds. No one panel member must strive to overpower or force his/her opinion on other panel members.

During deliberations, they must remind themselves throughout that it is their collective duty to uphold and defend judicial independence, not as a privilege of judicial office, nor a test for professional superiority, but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial Judges.

4.2 A Structured Approach

Decision making is a process of applying particular facts to the relevant law and custom and usage. The way to do this is to employ a structured approach.

There are three tasks involved:

- to be clear with what the Court is being asked to do;
- to determine what the facts of the case are; and
- to make your decision, according to the law.

4.3 Decision Making Checklist

Figure 7 provides a checklist of issues to be considered at each step of the decision making process.