

FREDERICK A. LAUX, Q.C., MEMORIAL LECTURE

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I. REMARKS ABOUT FREDERICK A. LAUX, Q.C.

I am honored to give the Frederick A. Laux, Q.C., Memorial Lecture to this distinguished audience of leading municipal law practitioners.

Fred Laux was a dominant force in the planning law field for over forty years. His text, *Planning Law and Practice*, is frequently cited by the Court of Appeal of Alberta. I referred to it in two 2017 judgments — *Springfield Capital Inc. v. Grande Prairie (City)*¹ and *Liquor Stores Limited Partnership v. Edmonton (City)*.² Justice Russell Brown of the Supreme Court of Canada had Fred's book within arm's reach when, as a member of the Court of Appeal of Alberta, he had to resolve a permission-to-appeal application under the *Municipal Government Act*.³ Justice Brown wanted to know what Professor Laux had to say on the subject under review. This is high praise.

Fred belonged to a very select group of lawyers. He was both a leading member of the academy and a leading member of the bar. Mr. Laux practiced law for over fifty years. Justice Dennis Thomas, commenting on Professor Laux's ability as a practicing lawyer, noted that Fred had "a tremendous grasp of the subject matter" and "brought real value to the field [of municipal law]." William Shores, Q.C., of Shores Jardine LLP, observed that Fred was incisive, practical, and had the ability to simplify issues. David Phillip Jones, Q.C., reported that "clients loved [Fred]" and that many knew Fred as "Mr. Planning Law in Alberta." Timothy Christian, Q.C., a former dean of the Faculty of Law at the University of Alberta, recalled that Fred "acted for developers, ordinary citizens and municipalities."

In 2002, the Law Society of Alberta and the Canadian Bar Association awarded Mr. Laux their Distinguished Service Award for his contribution to legal scholarship.

Faculty members and students alike admired Professor Laux.

Students recognized that Fred had mastered planning law and understood that they had to apply themselves to do well in his class. Professor Percy, also a former dean, described Professor Laux as a "demanding teacher." Bill Shores said that he loved Fred as a professor. Fred was counsel to Shores Jardine LLP after he retired from the University — 2003 to 2016. Bill Shores described his long-time colleague as the firm's "beloved curmudgeon."

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¹ 2017 ABCA 12, 58 MPLR (5th) 205 at para 47 [*Springfield Capital*].

² 2017 ABCA 130, 64 MPLR (5th) 43 at para 38, n 17 [*Liquor Stores*].

³ RSA 2000, c M-26.

Faculty members held Fred in high regard. Tim Christian opined that “Fred was one of the most brilliant lawyers I ever met. He had a steel trap memory and an advanced logic processor.”

Fred was the acting dean before Professor Frank Jones became the dean.

Professor Laux earned a master of laws degree from Harvard University. Dean Wilbur Bowker recruited Fred to join the Faculty.

Fred was the silver medallist for the class of 1964.

II. MY TOPIC

Section 687(2) of the *Municipal Government Act* states that an appeal board “must give its decision in writing together with reasons.”⁴

I believe that there is a need to enhance the quality of the explanations that subdivision and development appeal boards provide for their decisions.⁵ In *Bergstrom v. Beaumont (Town)*, I opined that the “Board should make an effort to express itself more fully. The devotion of more effort to the reasons component of the Board’s decision would produce a more compelling explanation and reduce the likelihood that the losing party would seek permission to appeal.”⁶

This belief is based on my experience as a justice of the Court of Appeal of Alberta hearing appeals or permission-to-appeal applications against decisions of the subdivision and development appeal boards. I have read enough board decisions to satisfy myself that my opinion is not unfounded.

Members of subdivision and development appeal boards should not feel slighted by the fact that I think this group of hardworking and dedicated citizens could produce better reasons.

In 2015, I made a similar comment about the work product of judges who sentence criminals:

Sentencing judgments frequently feature modest, if any, analytical dimensions. Many sentencing decisions are nothing more than a conclusionary statement following the recital of sentencing purposes and principles. A reader never knows what impact the various principles had on the outcome. The same can safely be said for the sentencer.⁷

⁴ *Ibid*, s 687(2).

⁵ The opinions expressed in this lecture are my own. They may or may not reflect the opinions of the other members of the Court of Appeal of Alberta.

⁶ 2016 ABCA 221, 53 MPLR (5th) 28 at para 61, n 27 [*Bergstrom*].

⁷ *R v Ryan*, 2015 ABCA 286, [2016] 2 WWR 437 at para 79.

I repeated the same message in 2016:

[Sentencing judgments] often recite the applicable *Criminal Code* sentencing purposes and principles and record the facts that establish the physical and mental elements of the offence before the sentencer declares the sentence as if the preceding discussion makes it self-evident that this is a just sanction. Regrettably, most of the time this premise is not valid.⁸

Even highly regarded and distinguished labour arbitrators are asked to go back to the drawing board and try again to adequately explain the basis for their proposed disposition. In *United Food and Commercial Workers, Local 401 v. XL Foods Inc. (Calgary Beef Plant)*, the Court of Appeal stated that the arbitrator “failed to adequately explain why he concluded that the company, on August 6, 2011, was not obliged to provide its plant employees with termination pay without any credit being given for the four-week working notice period.”⁹

Boards make decisions that affect property interests of those who appear before them. The uses that a property owner may make of property have a great impact on the value of the property and the character of the neighbourhood in which the property is located. Section 1(a) of the *Alberta Bill of Rights* states that an individual has the “right ... to [the] ... enjoyment of property, and the right not to be deprived thereof except by due process of law.”¹⁰ The *Canadian Bill of Rights* makes the same declaration.¹¹ Property rights are of fundamental importance in a state whose well-being is dependent on free enterprise.

A 1989 decision of Alberta’s Public Service Employee Relations Board emphasizes the important role reasons play in a system based on the rule of law — *Alberta Mortgage and Housing Corp. v. Alberta Union of Provincial Employees*:

42. Most would agree that the presence of convincing reasons increases the likelihood a determination will meet with general acceptance. Reasons ensure, to the degree possible, that a decision will be a product of the rule of law, not of unprincipled biases and misconceptions, and demonstrate the commitment the adjudicator has to his assigned task.... In our experience, if a line of thought is suspect, the printed page increases the likelihood many times that the defect will be detected.

43. It is the mark of a good arbitrator that the loser knows why he lost. Disputants do not expect a forensic lottery when they ask a third party to help them resolve their differences. Accordingly, the arbitrator must clearly articulate why a given result was reached. This cannot be done if the decision maker is unable to give well-written reasons for his or her award.

44. An arbitrator must state in clear and concise language the facts, the issues presented by the facts and the principles of law which give the facts legal significance. The reader, whether lawyer or layman, should be able to understand why one side prevailed.¹²

⁸ *R v Vigon*, 2016 ABCA 75, 612 AR 292 at para 62.

⁹ 2016 ABCA 31, 394 DLR (4th) 489 at para 48 [*United Food*].

¹⁰ RSA 2000, c A-14, s 1(a).

¹¹ SC 1960, c 44, s 1(a).

¹² (1989), 2 PSERBR 973 at 982–83. See also *Flannery v Halifax Estate Agencies Ltd* (1999), [2000] 1 All ER 373 at 377–78 (CA); *Soulemezis v Dudley (Holdings) Pty Ltd* (1987), 10 NSWLR 247 at 279 (CA).

It is not unusual for the party dissatisfied with a board's decision to complain that the board failed to comply with section 687(2) and give reasons for its decision. The common reply is an admission that the explanation could be better but is good enough to qualify as reasons. This was the case in the last permission-to-appeal application that I heard — *Liquor Stores*.¹³

There are very sound practical reasons why a statutory delegate should invest the time needed to fully explain why it proceeded as it did. A statutory delegate records some of them in a 1991 decision:

We feel strongly the obligation to explain clearly and completely why we did something so that our readers, including the judges of superior courts, will be able to assess for themselves, without any further assistance, the correctness of our decision. Tribunals which take the trouble to do this in effect act as their own advocate.

Detailed reasons ensure that the fate of a tribunal's decision is in its own hands and not those of the party which happened to prevail before the tribunal. Counsel for the side defending the tribunal's decision will probably serve as an able champion but the best insurance against an ineffective defence is an understandable explanation of the thoughts which lead the tribunal to its decision.¹⁴

There are several important features of the architecture of the *Municipal Government Act* decision-making model that merit mention.¹⁵ First, the *Act* gives the subdivision and development appeal boards all the power necessary to hear and resolve appeals from decisions of the development authority. Second, the *Act* grants municipalities the jurisdiction to appoint persons to the subdivision and development appeal boards whom it believes will be good representatives of the community's interest. "The Legislative Assembly of Alberta must have confidence that the members of subdivision and development appeal boards have the skills and experience necessary to carry this significant burden and make decisions that are both rational and fair."¹⁶ Third, the Legislative Assembly of Alberta has created a decision-making structure that bestows on the Court of Appeal a limited role.¹⁷ The *Municipal Government Act* contemplates that the province's subdivision and development appeal boards will make most of the important land use decisions. These statutory delegates are responsible for resolving all questions of fact and questions of mixed fact and law, as well as questions of law not described by section 688(3) of the *Municipal Government Act*. Section 688(3) assigns to the Court of Appeal primary decision-making responsibility only for questions of law that are of sufficient importance to merit a further appeal and have reasonable prospects of success.

¹³ *Supra* note 2.

¹⁴ *Koloff v United Nurses of Alberta* (1991), 2 PSERBR 1368 at 1427.

¹⁵ *Springfield Capital*, *supra* note 1 at paras 31–35.

¹⁶ *Ibid* at para 31.

¹⁷ *Ibid* at para 32.

III. STRATEGIES TO IMPROVE THE BOARD'S REASONS

There are four strategies that those interested in the land use decision-making process may employ to effect this result.

First, every subdivision and development appeal board hearing an appeal should have a member of the Law Society of Alberta or a person with a law degree on it. Most lawyers have the skills required to produce a better explanation for the board's decision than is now produced.

Second, if this is not possible, every subdivision and development appeal board that has a panel without a lawyer on it hearing an appeal should have access to legal counsel retained by the board to assist it in preparing its reasons. This is not a suggestion that the board's legal counsel make the board's decision. This would be improper. The board members must make the decision. Rather, this is a suggestion that boards without a lawyer in their midst ask legal counsel to review their decisions to make sure that they accurately set out the issue the appeal presents and the relevant facts that they have found, and that they answer in a coherent way the question the appeal presents.

Third, counsel who appear before subdivision and development appeal boards should provide boards with written argument that is in a format that boards could easily adopt as their own.

Fourth, an education program should be established to assist board members to acquire the writing skills they need to communicate more effectively why they came to their conclusions.

I will now discuss each of these strategies.

IV. APPOINT MORE LAWYERS TO BOARDS

A legal education increases the likelihood that a person responsible for making a decision that affects the vital interest of a person will be able to identify the important issues that a set of facts and legal norms present, to resolve the issues rationally, and to explain why he or she came to the conclusion that he or she did.

I have made this point elsewhere in strong terms. In *Alberta v. McGeedy*, I complained about the work product of three non-lawyers:

The conduct of the Appeal Board demonstrates such disregard for fundamental legal principles that it can only be explained by the fact that its members are not legally trained. From the perspective of a person with legal training its conduct is incomprehensible. The level of disbelief is probably at a level a surgery patient and operating room staff would display if a heart surgeon dressed in hunting gear enters the surgery suite with his hunting dog and a bag of dead ducks, without scrubbing or taking any of the other precautions necessary to ensure a sterile environment.¹⁸

¹⁸ 2014 ABQB 104, [2014] 7 WWR 559 at para 33.

A legal education is a valuable attribute of a decision-maker. In *Buffalo Trail Public Schools Regional Division No. 29 v. Alberta Teachers Association*, I stated that “[f]irst rate labor arbitrators ... are, almost without exception, outstanding lawyers or law professors who have good judgment and the ability to fully explain the bases for their conclusions.”¹⁹

What percentage of those who sit on Alberta’s subdivision and development appeal boards are lawyers?

Before answering this question, I note that the *Municipal Government Act* does not fetter in any way who a municipal corporation may appoint to a subdivision and development appeal board. Section 627(1)(a) of the *Act* declares that “[a] council must by bylaw ... establish a subdivision and development appeal board.” It does not stipulate the qualifications of a board member. Nor does it state that a member must be a lawyer or that a board must have at least one lawyer as a member.

Edmonton’s *Subdivision and Development Appeal Board Bylaw* allows Council to appoint any person it wishes to the Subdivision and Development Appeal Board. Section 6 of the Edmonton bylaw provides that “[t]he Board will be comprised of up to 30 Members appointed at the pleasure of Council for terms of one year.”²⁰

My review discloses that there are 28 current members of Edmonton’s Subdivision and Development Appeal Board. Seven, or 25 percent, are lawyers.

Section 21 of Edmonton’s *SDAB Bylaw* allows the board to sit in committees of no less than three board members.²¹

Calgary’s *Subdivision and Development Appeal Board Bylaw*²² is very comparable to Edmonton’s bylaw. Nothing in Calgary’s bylaw requires any member or proportion of its members to have a law degree or be a member of the Law Society of Alberta.

The size of the Calgary board is also roughly the same as Edmonton’s board. Calgary’s bylaw provides that Council must appoint a minimum of 15 board members and cannot appoint more than 25 board members.²³ There are currently 24 Calgary board members. Of these, six are members of the Law Society of Alberta or have law degrees. This again is a one-quarter ratio of lawyers to board members.

The quorum for most Calgary development permit appeals is three. The board may assign up to seven board members to hear an appeal.

¹⁹ 2014 ABCA 407, 588 AR 179 at para 42, n 9. See also *United Food*, *supra* note 9 at para 10:

The community of employers and trade unions entrust this important decision-making task to a cadre of professional arbitrators because they have confidence that this group of lawyers has the legal training required to make rational determinations and the good judgment needed to select a fair outcome from the pool of possible logical solutions.

²⁰ City of Edmonton, by-law 11136, *Subdivision and Development Appeal Board Bylaw* (14 May 2014), s 6 [*SDAB Bylaw*].

²¹ *Ibid*, s 21.

²² City of Calgary, by-law No 25P95, *Subdivision and Development Appeal Board Bylaw*.

²³ *Ibid*, s 3(b).

I do not know if the Edmonton and Calgary administrators attempt to assign a lawyer to each board panel.

My review of the composition of the subdivision and development and appeal boards for most of the other cities of Alberta and the Regional Municipality of Fort McMurray produces this table:

Municipality	Total Board Members	Lawyers
Airdrie	7	0
Brooks	10	1
Camrose	5	0
Chestermere	7	0
Cold Lake	5	0
Fort McMurray	7	0
Fort Saskatchewan	7	0
Grande Prairie	5	0
Lacombe	5	0
Leduc	5	0
Lethbridge	8	1
Lloydminster	4	0
Medicine Hat	6	1
Red Deer	5	3
Spruce Grove	8	2
St. Albert	8	1
Wetaskiwin	5	1
Totals	107	10

There are 107 board members. Ten of these, or 9 percent, are lawyers.

Why do Edmonton and Calgary appoint roughly three times as many lawyers, in percentage terms, to their boards than do their smaller counterparts?

Do boards other than Edmonton and Calgary make decisions fundamentally different than those in Edmonton and Calgary? I do not think so.

Do the members of boards in Alberta's smaller communities have other traits that diminish the importance of the value a legal education represents? I doubt it.

V. GIVE BOARDS ACCESS TO LEGAL COUNSEL

A panel that does not have a member of the Law Society of Alberta or a person with a law degree on it most assuredly would benefit from having access to legal counsel. Counsel may help by ensuring that the panelists understand what questions of fact or law arise and what considerations may or may not be taken into account in resolving the questions the appeal presents.

In *Bergstrom*, I suggested a solution: “The Board accepts the evidence and submissions of Mr. Woodbeck and the other four neighbours. Ms. Bergstrom’s home-based dog-grooming business has adversely affected the amenities and the quality of life of the neighbourhood. Her business has caused excessive traffic, noise and garbage.”²⁴ I did so to dispel the notion that legal input would slow down the decision-making process noticeably and would produce longer decisions. This is not so. An explanation that is both brief and clear is difficult to criticize.²⁵

There is nothing objectionable or inappropriate about board counsel playing a leading role in the drafting of reasons so long as the board members make the decisions and ultimately approve the reasons. Justice O’Brien made this very point in *Young v. Okotoks (Town)*: “The decision is that of the Board — not its solicitors.”²⁶ Board members can no more delegate the decision-making task to board counsel than they could ask their mothers to make the decision for them.²⁷ I note that section 12(3)(g) of Medicine Hat’s *Subdivision and Development Appeal Board Bylaw* assigns the task of preparing a written decision and reasons for the decision to the city clerk.²⁸ This must mean that the city clerk acts at the direction of the board hearing and deciding the appeal.

I am aware of only a few cases that discuss the appropriate role counsel to a statutory delegate may play in the drafting of reasons.

In addition to Justice O’Brien’s judgment in *Young*, there are two other Alberta decisions that warrant consideration.

The first is Justice Harradence’s 1980 opinion in *Murray v. Rockyview (District No. 44)*.²⁹ He was not troubled by the fact that the solicitor for the Development Appeal Board was the primary drafter of the board’s decision. The board members instructed the solicitor. The board members made the decision.

The second is *Carlin v. Registered Psychiatric Nurses’ Association*,³⁰ a 1996 decision of Justice Binder. This case dealt with the decision of a Conduct and Competency Committee of the Registered Psychiatric Nurses’ Association dismissing a challenge to its jurisdiction to process a complaint against the applicant. It was obvious that counsel had prepared the reasons that were signed by the committee members. Justice Binder held that “it is proper

²⁴ *Supra* note 6 at para 61, n 27.

²⁵ The Hon Justice Michael Kirby, “On the Writing of Judgments” (1990) 64 *Austl LJ* 691 (“[b]revity, simplicity and clarity are the watchwords for effective judicial writing” at 708).

²⁶ 2013 ABCA 54, 7 MPLR (5th) 244 at para 12 [*Young*].

²⁷ *Canadian Pacific Ltd v Town of Carlyle*, [1987] 4 WWR 232 (Sask CA) (“[t]he obtaining of [legal] advice [from its solicitor] and recommendation does not amount to the delegating of the decision-making power. If the board retains the decision-making power in its own hands, the decision made by it is proper” at 251–52); *Khan v College of Physicians and Surgeons of Ontario* (1992), 94 DLR (4th) 193 (Ont CA) [*Khan*] (“the body charged with the responsibility of making the particular decision ... [must make] that decision after a proper consideration of the merits” at 223); *Venczel v Ontario Ass’n of Architects* (1989), 74 OR (2d) 755 (Div Ct) (“[w]hile the Discipline Committee is empowered by s. 35(3) of the Architects Act to obtain the advice of counsel, the committee cannot abdicate to counsel its obligation to conduct the hearing” at 756); David Phillip Jones & Anne S de Villars, *Principles of Administrative Law*, 6th ed (Toronto: Carswell, 2014) (“[a] tribunal cannot delegate any of its obligations to conduct the hearing or make the final decision to its own counsel” at 349).

²⁸ City of Medicine Hat, by-law No 3009, *Subdivision and Development Appeal Board Bylaw*, s 12(3)(g).
²⁹ 1980 ABCA 242, 27 AR 80 at para 8.

³⁰ [1996] 8 WWR 584 (Alta QB).

for counsel to ... [a]ssist the hearing tribunal in preparing and even drafting the reasons for the decision of the tribunal.”³¹

Justice Twaddle, of the Manitoba Court of Appeal, held in *Snider v. Association of Registered Nurses* that a statutory delegate obliged to provide reasons “is ... entitled to have its lawyer assist in the task.”³²

Justice Doherty, of the Ontario Court of Appeal, acknowledged in *Khan* that “consultation with counsel ... is to be encouraged.”³³

VI. TAILOR WRITTEN ARGUMENT TO MEET THE BOARD’S NEEDS

Counsel can do much of the heavy lifting that a decision-maker must undertake to decide cases.

Members of the Court of Appeal very much appreciate when counsel file facts that clearly state the issues the appeal presents, provide answers with supporting reasons, and record the relevant facts in some logical order, usually chronological. A judge’s primary job is to answer the questions a case presents. I said this in *Mudrick Capital Management LP v. Lightstream Resources Ltd.*:

When a court is asked to make an important decision in a timeframe that is measured in hours it, of necessity, relies heavily on counsel.... While it is always desirable, it is especially so in real-time litigation, that counsel precisely state the question presented for the court’s determination, formulate the analytical framework that applies, marshal the relevant facts, and explain, in summary fashion, what his or her client wants and why his or her client’s interests should prevail.³⁴

This is a time-consuming process. But the client will derive a very substantial benefit from the investment.

There is no reason to believe that members of subdivision and development appeal boards will not react positively to well-written briefs that contains passages that may be adopted in their entirety into a board’s reasons.

³¹ *Ibid* at 605.

³² [2000] 4 WWR 130 at 133.

³³ *Khan*, *supra* note 27 at 223.

³⁴ 2016 ABCA 401, 43 CBR (6th) 175 at para 65.

Judicial plagiarism is not a sin.³⁵ It is a compliment of the highest order to counsel.³⁶ That a court may do this encourages counsel to carefully draft convincing and careful briefs. As counsel, I always filed written arguments with the hope that segments of it would be adopted by the court. The plagiarist must be smart enough to know what material can be safely used and what cannot be adopted.³⁷

Counsel know their case better than the members of the adjudicative body before whom they appear. They have had the opportunity to consider all the facts, decide which facts are relevant and which facts support their position. They have also had the opportunity to study the law and determine what the governing principles are.

Armed with this knowledge, counsel should be able to reduce the case to a couple of questions the answers to which will resolve the outcome of the dispute. This data bank will also place counsel in the position to draft compelling answers to the key questions on which the case turns.

Let me give you a municipal law example.

Suppose that A owns a lot and a 3500 square foot home in a residential neighbourhood. A applied to the municipal development authority for a development permit. A submits plans that would double the size of the current home. The old structure would be connected to the new structure by a six-car garage. The new structure, like the old structure, has a living room, a kitchen, four bedrooms, each with a full bath, a laundry room, and an outdoor built-in barbeque. The development authority refuses the application on the ground that the proposed development is not a single detached dwelling. A single detached dwelling is the only permitted use in this zone. The land use bylaw defines a single detached dwelling as a residential building containing one dwelling unit and intended as a permanent residence. A dwelling unit, in turn, means a building containing habitable rooms that constitute a self-contained living accommodation unit having sleeping, cooking, and toilet facilities, and intended as a permanent residence. A appeals to the subdivision and development appeal board. The board gives notice to B, C, D, E, and F, homeowners in the immediate vicinity

³⁵ *Cojocar v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, [2013] 2 SCR 357 (“judicial copying is a longstanding and accepted practice” at para 30); *Shin v Kung*, [2004] HKCA 205 (“[o]n principle ... a judge is entitled to accept or reject a party’s case in its entirety. A judge’s total adoption ... of counsel’s submissions *per se* does not imply the lack of independent adjudication” at para 367); *James & Ors v Surf Road Nominees Pty Ltd*, [2004] NSWCA 475 (“[a]doption of one party’s submissions by a judge, and so acknowledged, is one method of providing adequate reasons. It may not be the choice of every judge but it is impossible to say that it necessarily or in this case falls short of the judicial duty to provide reasons” at para 168); *United States v El Paso Natural Gas Co*, 376 US 651 (1964) (“[t]hose findings, though not the product of the workings of the district judge’s mind, are formally his” at 656); Siobhan Morrissey, “A Case of Judicial Plagiarism? Plaintiffs Object to Court’s Liberal Use of Defense Briefs,” ABAJ e-Report (1 August 2003) (“[i]f the legal arguments were good, it would be fine for every single word to be copied from the briefs,” [Professor] Freshman says, “There’s no duty of originality”); Alain Roussy, “Cut-and-Paste Justice: A Case Comment on *Cojocar v. British Columbia Women's Hospital and Health Centre*” (2015) 52:3 *Alta L Rev* 761 (“[c]opying is not a good idea, but if it can help expedite judicial business, go ahead. Don’t carry it to excess though, as it may lead to questions about your impartiality” at 769).

³⁶ Attribution is an even greater compliment. See e.g. *Wenzel Downhole Tools Ltd v National Oilwell Varco, Inc*, 2008 ABCA 395, 440 AR 351 at para 6.

³⁷ Roussy, *supra* note 35 (“when written submissions are drafted in such a way that facts are bent, opposing arguments are twisted, cases are cited to advance propositions for which they do not actually stand, and legal reasoning is sketchy, then those written submissions should simply not be copied” at 769–70). See also *University of Alberta v Chang*, 2012 ABCA 324, [2013] 3 WWR 256 at para 22.

of A's lot. B, C, D, E, and F oppose A. They argue that A's proposed development is not a single detached dwelling. They assert that it is properly characterized as a duplex dwelling. A duplex dwelling means a development consisting of two dwelling units.

Counsel for A's neighbours submit a written brief that contains a part listing the question presented by A's appeal. Here is the question: "A is entitled to a development permit if the proposed development is a single detached dwelling. A single detached dwelling is one dwelling unit. A's proposed development features two distinct self-contained living accommodation spaces connected by a garage with a capacity to house the vehicles of two three-car families. Is A not asking for approval to develop a duplex dwelling?"

Here are two questions Professor Garner, in his leading text, *The Winning Brief*, describes as "uncommonly good":

Under Missouri Law a husband is not required to pay child support if he has no children. Although three children were conceived during the Smiths' marriage, Mrs. Smith once claimed that all were immaculately conceived. Mr. Smith now argues that these statements negate his duty to pay child support. Is he right?

...

Under California and federal law, workplace conversation of a sexual nature is not sexual harassment if the plaintiff invited the interaction. Hannah Ferguson admitted that she routinely confided in Calvin Haskall, the only male among her 12 coworkers, and told him about her sexual activities. She took offence at Haskall's reaction to one story and sued the company for hostile-environment sexual harassment. Is the company liable because of Haskall's conversation?³⁸

I will give one example I like. It comes from *Wall v. Judicial Committee of the Highwood Congregation of Jehovah's Witnesses*:

Rule 3.15(1) of the *Alberta Rules of Court* stipulates that the respondent in a judicial review application must be "a person or body whose decision, act or omission is subject to judicial review."

The Highwood Congregation [of Jehovah's witnesses] is an unincorporated association. It is not incorporated under the *Business Corporations Act* or the *Societies Act*. It has no articles of association or any bylaws. It makes no decisions that have any impact on persons who are not members of the Highwood Congregation. Is it a "person or body whose decision ... is subject to judicial review?"³⁹

An outstanding question displays these features. It contains the applicable legal rule — the major premise. It also incorporates the most important facts — the minor premise. It ends with a concise and clear question that suggests the answer.

³⁸ Bryan A Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts*, 3rd ed (Toronto: Oxford University Press, 2014) at 97, 101.

³⁹ 2016 ABCA 255, 404 DLR (4th) 48 at paras 34–35.

VII. REASON-WRITING SCHOOL

I have reviewed a 2014 training manual updated in March 2015 for members of subdivision and development appeal boards that the Municipal Affairs Ministry prepared.⁴⁰ It covers a range of topics. One of them is “Writing decisions.” Little is said on this subject:

A decision of the SDAB should include the following:

- The evidence that the SDAB considered, and that which it did not. The written decision should refer to the documents it considered in its assessment (including a statutory plan, a land use bylaw, or the Subdivision and Development Regulation).
- The reasons for the decision should be adequate and should include the nature of the issue, findings of fact, and discussion of statutory requirements and applicable planning documents as well as of issues and arguments raised by the parties.
- The decision of the authority ...

...

The SDAB’s reasons must be more than just conclusions.⁴¹

The topic warrants more attention than this.

No doubt there was a demand for a more thorough discussion of this important subject. In June 2014, the Municipal Affairs Ministry published a document entitled “Writing Decisions for the SDAB.” It encourages board members to state the “preferred facts,” to identify the issues, and to clearly state the disposition.⁴²

This document provides some useful guidance.

But I suspect that most board members would benefit from attendance at a reasons writing course offered by a retired judge or a person with similar skills. This course would give the board member an opportunity to draft reasons and to discuss others’ drafts with the assistance of an experienced adjudicator.

There are several ways to proceed.

Each board may present reasons writing 101. A board may retain an expert in reasons writing to spend some time with its members. Or the boards collectively may teach reason writing skills. Or the same organization that prepared the 2014 training manual may wish to take this on.

⁴⁰ Alberta Municipal Affairs, “Subdivision and Development Appeal Board (SDAB) 2014 Training Manual” (updated March 2015), online: <www.municipalaffairs.alberta.ca/documents/ms/SDAB_Manual_Final_March_17_2015.pdf>.

⁴¹ *Ibid* at para 11.8.

⁴² See online: Government of Alberta <www.municipalaffairs.alberta.ca/documents/ms/SDAB_Fact_Sheet_Writing_Decisions_March_18_2015.pdf>.

VIII. CONCLUSION

Mr. Laux argued several matters before me. His presentations were always thoughtful, thorough, and persuasive.

I am pleased that I had the opportunity to deliver a lecture named after such a fine gentleman and scholar.

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