

CPTA
SYMPOSIUM
2021



Crafting your best submissions

Caroline Mandell

TRADITIONAL STRUCTURE

Overview (general issue)

Evidence/Facts

- chronological or by witness

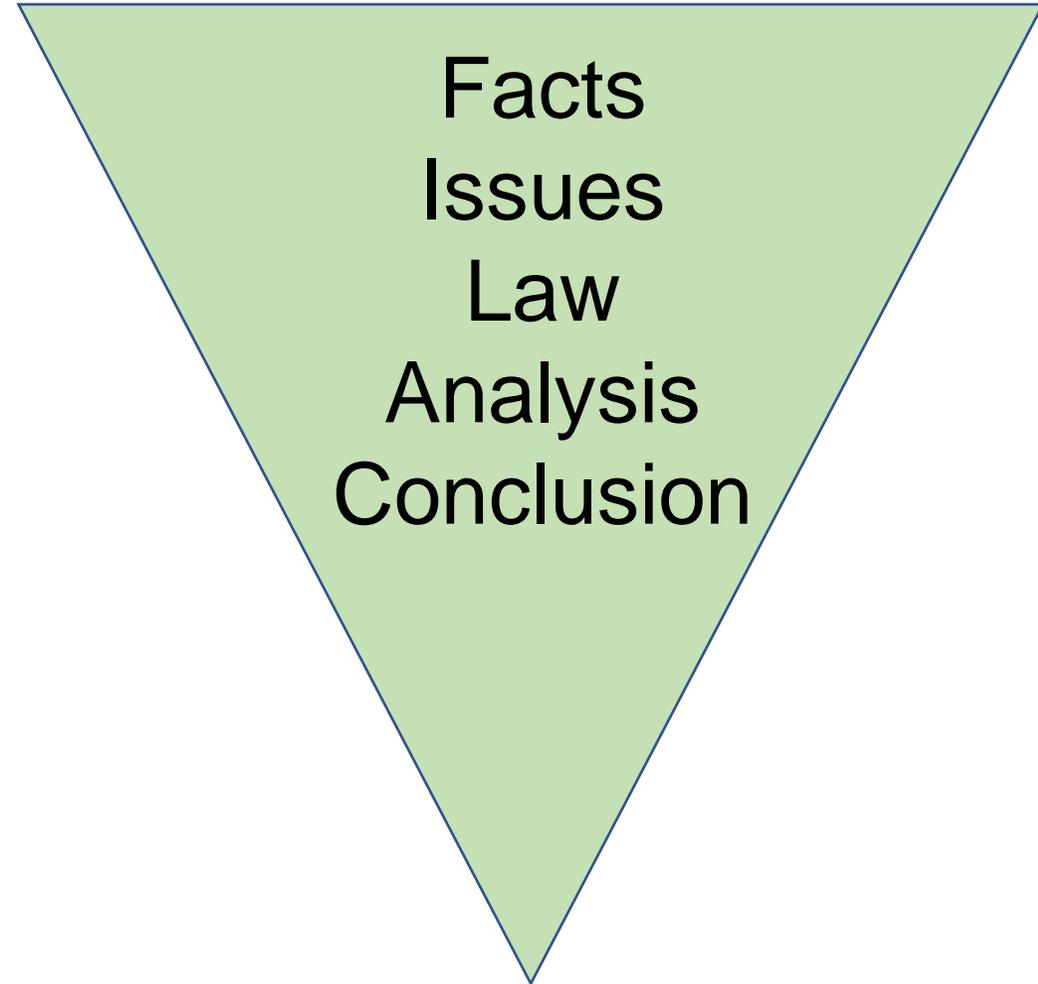
Law

Issues (specific)

Analysis

- Facts again
- Law again
- Discussion

Conclusion





CONTEXT BEFORE DETAILS

ISSUE-DRIVEN STRUCTURE

INTRODUCTION

- What is this case about?
- What are the deep issues?
- Conclusion

ANALYSIS

Issue 1: Descriptive heading

- Relevant legal framework
- Relevant facts/submissions
- Findings
- Law applied to the findings
- Conclusion on this issue

Issue 2

(repeat as necessary)

CONCLUSION

TRADITIONAL STRUCTURE

INTRODUCTION (general issue)

FACTS

- chronological or by witness

LAW

ISSUES (specific)

ANALYSIS

- Facts again
- Law again
- Discussion

CONCLUSION

ISSUE-DRIVEN STRUCTURE

INTRODUCTION

- What is this case about?
- What are the deep issues?
- Conclusion

ANALYSIS

Issue 1: Descriptive heading

- Relevant legal framework
- Relevant facts/submissions
- Findings
- Law applied to the findings
- Conclusion on this issue

Issue 2

(repeat as necessary)

CONCLUSION

General structure of ARB decisions

OVERVIEW

What this case is about

Issues for the hearing

Result

[BACKGROUND]

Information relevant to the entire case (e.g. description of the subject property)

[PRELIMINARY MATTERS]

ANALYSIS

Issue 1: Phrased as a question

Relevant law

Submissions

Finding

Issue 2: Phrased as a question

Relevant law

Submissions

Finding

CONCLUSION

General structure of ARB decisions

OVERVIEW

What this case is about

Issues for the hearing

Result

[BACKGROUND]

Information relevant to the entire case (e.g. description of the subject property)

[PRELIMINARY MATTERS]

ANALYSIS

Issue 1: Phrased as a question

Relevant law

Submissions

Finding

Issue 2: Phrased as a question

Relevant law

Submissions

Finding

CONCLUSION

What are the deep issues?

The actual question(s) the adjudicator must decide.

Uncover the deep issue by asking, *“And what does that turn on?”*

When you can't usefully ask that question anymore, you've uncovered the deep issue.

An example:

Was the current value assessment for the base year evaluation too high?

What does that turn on?

Was the current value assessment for the base year evaluation too high **because** MPAC incorrectly valued the subject properties as lands in transition?

What does that turn on?

Did MPAC incorrectly value the subject properties as lands in transition **because** it didn't consider that the telecommunications infrastructure in the buildings is specific to that site and cannot be relocated?

Another example:

What is the current value of the subject properties?

What does that turn on?

What is the highest and best use of the subject properties?

What does that turn on?

What is the reasonably probable and legal use of vacant land or an improved property that is:

- (i) legally permissible,
- (ii) physically possible,
- (iii) financially feasible, and
- (iv) that results in the highest value?

HEARING PREPARATION CHECKLIST FOR JUDGES & ADJUDICATORS

1. Who are the parties? Who is asking for what, and why?
2. What stage is this proceeding at?
3. What factual issues are not disputed?
4. (If applicable) What is/are the factual issues I need to decide?
5. (If applicable) Do I have all the evidence I need to make the findings requested? If not, what's missing?
6. What legal issues are not disputed?
7. What is/are the legal issues I need to decide?
8. Do I have all the information I need to decide the legal issues? If not, what's missing?
9. What statutory provisions do I need to consider?
10. What case law do I need to consider?
11. (If applicable) What standard of review applies? Do the parties agree on the applicable standard?
12. What questions do I have as I read the materials that I need answered in the hearing?
13. What is my initial impression?

It's as useful to identify what you *don't* need to decide as to identify what you *do*. This will help focus your writing and will save you the hassle of cutting passages where the reader will otherwise reasonably ask, "Why are you telling me this?"

You'll find in the hearing that some "questions" (i.e. things that were unclear as you prepared) are really submissions you don't accept. Distinguish between these in your hearing notes and jot notes to yourself about why you accept or don't accept a submission. You might not remember why you felt strongly about an issue when you return to write it up days or weeks later.

Use different colours or fonts to distinguish between the notes you made for yourself before or during the hearing, and notes of the parties' submissions. For example, when you prepare, highlight important passages from the authorities or the record in yellow. Highlight passages the parties direct you to at the hearing in red.