

25. Requests for Clarification or Correction of Orders and Decisions

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

Clarification or Correction of Arbitrator's Order or Decision

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation)¹ give arbitrators the power to clarify a decision or order, correct a typographical, arithmetical or other similar error, or deal with an obvious error or inadvertent omission in the decision, order or reasons.

Clarification of an arbitrator's order or decision under the Legislation² may be requested if a party is unclear about or does not understand the arbitrator's decision, order or reasons. "Clarification" allows the arbitrator to explain, but not to change, the decision. Clarification involves making the order or decision more clear or plain to the understanding, and the removal of any complexity, ambiguity, or obscurity (Oxford English Dictionary, ed. Vol. 1, 1993).

The Legislation also allows the arbitrators to correct a typographical, arithmetical or other similar error³. This provision allows the arbitrator to change the decision or order, to correct typographical, mathematical or other minor errors.

Finally, the Legislation allows an arbitrator to correct an obvious error or inadvertent omission⁴. This provision allows an arbitrator to reopen an order or decision to provide relief that might otherwise only be available to a party under the *Judicial Review Procedure Act*.

An "obvious error" is a mistake which is immediately and clearly apparent to the arbitrator upon re-reading the evidence or reviewing the arbitrator's own notes. An obvious error does not include a different interpretation or assessment of facts or law applicable to the hearing or a change of mind about the outcome of the hearing or the arbitrator's decision.

An example of an "obvious error" would be if the evidence was that the couch was white and the arbitrator misread the evidence of colour and found it was red. The arbitrator could correct this error and any findings based on the error. An obvious error includes a circumstance where the arbitrator made a clear and unequivocal mistake by misreading the Legislation.

An "inadvertent omission" is a matter which the arbitrator would have addressed in the decision but failed to address because of an oversight. If the arbitrator has failed to dispose of a matter that was part of the application, and the matter is one that the

1 *Residential Tenancy Act*, s. 78; *Manufactured Home Park Tenancy Act*, s. 71

2 RTA, s. 78(1)(b); MHPTA, s. 71(1)(b)

3 RTA, s. 78(1)(a); MHPTA, s. 71(1)(a)

4 RTA, s. 78(1)(c); MHPTA, s. 71(1)(c)

25. Requests for Clarification or Correction of Orders and Decisions

Jan-04

arbitrator is permitted to deal with under the Act, the arbitrator may amend the order or decision to properly deal with the omission.

An arbitrator will not exercise a power to clarify or correct a decision or order unless the arbitrator considers it just and reasonable to do so in all the circumstances.

Process and Time Limit to Apply:

An arbitrator may clarify or correct an order or decision on the arbitrator's own initiative, or at the request of a party.

A request for clarification or correction of an error or omission must be made by a party within 15 days after the decision or order is given. The 15 day time limit does not apply to a request to correct a typographical or arithmetical error, or to a clarification or correction of an obvious error issued on the arbitrator's own initiative. In determining whether to correct an order or decision on his or her own initiative, the arbitrator will consider the amount of time that has passed since the original decision was given, and the effect on the other party and any third parties who may have already acted upon the arbitrator's decision.

An arbitrator reviewing a request for clarification or correction will make his or her decision without delay, and generally within 30 days after the written request is submitted to the Residential Tenancy Office.

A request to an arbitrator for a clarification or correction may be made without notice to any other party; however the arbitrator may require that the other party be given notice. Advance notice of a request, or the holding of a hearing if one is deemed by the arbitrator to be necessary to observe natural justice requirements, would occur only in very exceptional circumstances.