

Manitoba Council of Administrative Tribunals Model Code of Conduct

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APPENDIX

Declaration

Manitoba Council of Administrative Tribunals Model Code of Conduct

This Model Code of Conduct prescribes a general set of rules of conduct for members of administrative tribunals. It is intended that this Code will serve as a model which can be adapted to the particular circumstances of each tribunal.

1 General

Purpose of the Code

- (1) The [name of tribunal] is committed to fostering and maintaining the highest standards of professionalism and conduct among its members. This Code establishes rules of conduct governing the legal, professional and ethical responsibilities of the tribunal's members.

Application of the Code

- (2) This Code applies to all members of [name of tribunal] from the dates of their appointment.
- (3) The duties and responsibilities in this Code:
 - (a) apply to a member's conduct as a member of [name of tribunal] and where applicable to the member's private life; and
 - (b) continue on issues related to confidentiality, after a member ceases to be a member of the tribunal.

Guiding Principles

- (4) These principles are meant to guide the decisions and conduct of members. In all circumstances:
 - (a) Members will conduct themselves with impartiality and integrity.
 - (b) Members will uphold and act in accordance with the tribunal's mandate.
 - (c) Members will place the public interest above their own private interests.
 - (d) In both their private and public lives, members will act in a manner that enhances the reputation and credibility of the tribunal and that inspires public confidence in the tribunal.
 - (e) Members will fulfill their duties in good faith and to the best of their ability.

Duty to Report

- (5) If a member becomes aware of any circumstance that contravenes, or may reasonably be perceived to contravene, this Code, the member will bring that circumstance to the attention of:
 - (a) the Chair; or,
 - (b) if the circumstance relates to the conduct of the Chair, to the Deputy Minister or Assistant Deputy Minister responsible for the tribunal, or to an external official that the Deputy Minister has authorised to hear such matters.

Discipline

- (6) Members who violate any provision of this Code will be subject to discipline, up to and including dismissal from office.

2 Standards of Service***General***

- (1) Members will provide the public with a professional level of service by conducting themselves with patience, attentiveness, courtesy, respect and discretion.
- (2) Members will be familiar with:
 - (a) the role and mandate of the tribunal;
 - (b) the statutes, regulations and rules of law that govern the tribunal; and,
 - (c) the tribunal's policies, procedures and guidelines.

Professional Development

- (3) Members will make reasonable and ongoing efforts to improve their knowledge and skills in order to fulfill their duties as members.

Conducting Hearings

- (4) Members will be fully prepared to conduct the business before them, by having reviewed all available hearing documents and background materials before the hearing.

- (5) Members will act expeditiously and without unreasonable delay.
- (6) Members will follow the applicable rules of procedure, and ensure proceedings are conducted in an open and fair manner.
- (7) Members will ensure the hearings are reasonably accessible to the parties.
- (8) Members will maintain a professional distance from the parties, their counsel or representatives, and the dispute itself.
- (9) Members will only communicate with the parties “on the record”, unless there are very exceptional circumstances. If a party contacts a member of the hearing panel directly, the member should refer the party to the Secretary. Correspondence to or from a party or their representative should be forwarded by the hearing panel to all of the parties.
- (10) Members will, at all times, treat all participants in a public hearing with respect, courtesy and consideration.

Decision-Making

- (11) Members will decide each matter based on its merits and on the justice of the case.
- (12) Members will apply the law to the evidence in good faith and to the best of their ability.
- (13) Members will approach each matter with an open mind with respect to every issue and will avoid doing or saying anything that could reasonably cause any person to think otherwise.
- (14) Members will decide each matter free from bias, prejudice and conflicts of interest. (See **5 Impartiality**, below.)
- (15) When deciding a matter, members will not be influenced by unauthorized outside interests such as media or other public opinion, expectations of the parties or the government, or fear of criticism.

Discussion and Debate

- (16) Members of a hearing panel will make themselves reasonably available to discuss and determine procedural and substantive issues with their colleagues. They are free to disagree with one another, in private, and to discuss and debate the merits of the case with candour.

- (17) Members of a hearing panel will carefully consider the analyses of their colleagues. When expressing disagreement or dissent, they should do so in a respectful and professional manner with a view to facilitating a productive discussion of the issues.
- (18) Members should not feel compelled to abandon strongly-held views for the sake of unanimity of the panel or in exchange for agreement on any other point.
- (19) If a member disagrees with a decision of the hearing panel after discussion and careful consideration, that member may prepare a reasoned and respectful dissenting opinion. However, members will not comment publically on the decision of other members, or on any member's conduct during a hearing.

Written Decisions

- (20) Members will render decisions and prepare any written decisions in a timely manner.
- (21) Members will write decisions using clear, concise, accessible and bias-free language.
- (22) At a minimum, written decisions:
 - (a) identify the parties before the tribunal;
 - (b) identify the issues in dispute;
 - (c) state the authority of the tribunal to decide the issues in dispute;
 - (d) briefly and fairly summarize the relevant submissions of the parties;
 - (e) clearly identify any findings of fact or credibility;
 - (f) identify the laws and principles that apply in the circumstances;
 - (g) apply the laws and principles to the evidence; and,
 - (h) concisely state the tribunal's ruling, order or disposition of the matter.
- (23) Members will make their decisions available in a format that reasonably accommodates any special needs of the parties.

3 **Respect and Collegiality**

Scope

- (1) Members will treat other members, tribunal staff, the parties to a matter, witnesses and members of the public with courtesy and respect.

Respectful Work Environment

- (2) Members will promote and maintain a safe, professional and respectful work environment at all times.
- (3) Members will comply (with necessary modifications) to the Civil Service Commission's Respectful Workplace Policy.
- (4) Members will not engage in disrespectful behaviour toward any person. Disrespectful behaviour includes:
 - offensive or inappropriate remarks, gestures, material or behaviour;
 - inappropriate jokes or cartoons including racial or ethnic slurs;
 - grouping or isolating (for example, based on race or ethnic origin);
 - yelling;
 - belittling;
 - reprimanding in front of others;
 - aggressive or patronizing behaviour;
 - embarrassing or humiliating behaviour;
 - discrimination as defined under *The Human Rights Code*;
 - sexual harassment;
 - damaging gossip or rumours;
 - unwarranted or unwelcome physical contact; and,
 - covert behaviour, (for example, inappropriately withholding information, undermining, underhandedness).

Conducting Hearings

- (5) Members will treat the parties to a matter equally and will not unreasonably discriminate on the basis of the characteristics identified in *The Human Rights Code*.
- (6) Members will be sensitive to issues of gender, ability, race, sexual orientation, language, culture and religion which may affect the conduct of the hearing.

4 Confidentiality

General

- (1) Members will respect the confidentiality of information received in the performance of their duties.
- (2) A member's duty of confidentiality continues after that member ceases to be a member of the tribunal.
- (3) In appropriate circumstances, members may disclose to the public general and non-confidential information about the tribunal and its procedures.

Communication with Media

- (4) Members must not communicate with the media regarding:
 - (a) a matter that is currently before the tribunal; or,
 - (b) a matter that may end up before the tribunal in the future.
- (5) Inquiries from the media or the public regarding any matter, including a matter that already has been decided, will be referred to the Chair or to the tribunal's secretary or legal counsel.

5 Impartiality (Bias, Conflicts of Interest, Etc.)

General

- (1) Members have an obligation to carry out their duties in an impartial manner. They also have an obligation to their tribunal to carry out their duties in a manner that avoids conflicts of interest. They have an obligation to the parties who appear before them to comply with the requirements of procedural fairness and natural justice, which includes an obligation to hear and decide matters before them in an unbiased manner.

- (2) Not only must they objectively strive to conduct themselves in a manner that will meet these obligations, they must be reasonably perceived to have done so. That is, would an objective third party, reasonably informed of the relevant facts, conclude that the member has a conflict of interest; or conclude in a hearing context that there is a real possibility the member may not be able to hear and decide the matter before him with an open mind?

Conflicts of Interest

- (3) Members must avoid any situation where their own personal and/or business/occupational/professional interests, or the interests of their immediate family, could impair their objectivity, or provide them or their immediate family with personal or private gain through the performance of their duties.

Definition of Conflict of Interest

- (4) A conflict of interest is any situation, circumstance, activity, association or relationship that is incompatible with a member's obligations to the tribunal and includes placing themselves in a situation in any official matter where a private or personal interest (financial or otherwise) for themselves or persons with whom they are in a close personal or family relationship could put into question the member's ability to exercise his or her duties independently, impartially and objectively;

Definition of Perceived Conflict of Interest

- (5) A perceived conflict of interest is any situation, circumstance, activity, association or relationship that would cause a reasonable and fully-informed member of the public to believe that a member has a conflict of interest with respect to a particular matter.

Duty to Avoid Conflicts of Interest

- (6) Members will take every reasonable step to avoid actual, potential and reasonably perceived conflicts of interest.
- (7) A member shall declare any real or potential conflicts of interest as soon as the member is aware of them. Such declarations should be made at the outset of the member's tenure, and when required thereafter by relevant changes in circumstances. (See attached form).
- (8) A member will not hear or decide any matter which creates a conflict of interest for that member.

Duty Not to Use Confidential Information

- (9) Members shall respect the confidentiality of information received in the performance of duties, as well as the confidentiality of the deliberations of the tribunal, both during and after their tenure on the tribunal. This includes a prohibition against using such confidential information for their own private purposes.

Notice to Chair of a Conflict of Interest

- (10) If a member becomes aware of an actual or potential conflict of interest before or during a hearing, the member will immediately notify the Chair.

Where Member Has Not Been Assigned to the Hearing Panel

- (11) If a member has a conflict of interest on a matter before the tribunal, but which has not been assigned to that member:
- (a) the member will not participate in, or be present during any discussions on, that matter; and,
 - (b) the members of the hearing panel will not disclose any confidential information on the matter to the member who has the conflict of interest.

Where Member Has Been Assigned to the Hearing Panel

- (12) If a member, assigned to the hearing panel, subsequently becomes aware of an actual conflict of interest on a matter before the tribunal, the member will disclose the conflict of interest to the other members of the panel and will withdraw from the panel immediately.
- (13) If a member, assigned to the hearing panel, subsequently becomes aware of a potential conflict of interest [including after the hearing has concluded but prior to a decision having been made], the member will advise the tribunal chair immediately. The Chair will consider the matter and decide on whether the member may continue on the panel. The Chair may ask the panel to hear submissions from the parties with respect to the alleged conflict before making a decision.

When a Party Alleges a Conflict of Interest

- (14) When a party to a matter alleges a member of the hearing panel has a conflict of interest:
- (a) If the member agrees that there is a real conflict of interest, the member will immediately notify the Chair and withdraw from the proceeding;

- (b) if the member considers there is no conflict of interest or if there is an allegation of perceived conflict of interest, the hearing panel will hear submissions from the parties with respect to the alleged conflict, consider the submissions and decide whether a conflict of interest exists. Once the member has made his or her disclosures, the member will not participate in the panel's discussion/determination as to whether there is a conflict of interest;
- (c) if the hearing panel decides a conflict of interest exists, the member will withdraw from the panel; and
- (d) if the hearing panel decides no conflict of interest exists, the member will continue with the hearing.

Decisions regarding an alleged conflict of interest should generally be made in writing.

Where a Member Appears Unaware of, or Has Failed to Disclose a Possible Conflict of Interest

- (15) If a member of a hearing panel becomes aware of a possible conflict of interest relating to another member which has not been disclosed, the member will bring this to the attention of the other member. If the other member fails to take the appropriate action under the Code, the member shall bring the matter to the attention of the Chair.

Conflicts of Interest Affecting the Chair

- (16) If the Chair has a conflict of interest with respect to a matter in which the Chair is not a member of the hearing panel:
 - (a) the Chair will instruct tribunal staff to direct all communications on the matter to a designated Vice-Chair or, if there is no Vice-Chair, to a designated member;
 - (b) the Chair will not have access to the tribunal's files on the matter;
 - (c) the Chair will not participate in, or be present during, decisions on the selection of the hearing panel, the schedule for the hearing, the conduct of the hearing, and the release of the decision; and,
 - (d) the Chair will not participate in, or be present during, any panel consultations or procedural decisions on the matter.

- (17) If the Chair is a member of the hearing panel, the procedures set out in (13) above are to be followed.

Administrative Bias

- (18) Members will avoid participating in a hearing where they may be subject to any bias that could impair or impugn the independence, integrity or impartiality of the tribunal.

Definition of Bias

- (19) Bias is a notable lack of neutrality or impartiality on the part of a panel member regarding an issue before the panel. A biased decision-maker is one who is predisposed to decide a case based on considerations extraneous to the evidence, applicable law, policy or argument made in the case.

Reasonable Apprehension of Bias

- (20) A reasonable apprehension of bias exists where a reasonable observer, aware of all of the relevant facts, would have a real concern as to the member's ability to determine an issue with an open mind. A reasonable apprehension of bias may be detrimental to the hearing process as actual bias.
- (21) Whether or not there is a reasonable apprehension of bias will be determined by the situation and the nature of the tribunal, including its practices, procedures and enabling legislation.

Examples of Bias

- (22) Some examples are:
- Actual bias or an apprehension of bias may exist where there is a previous or existing relationship between a member and a party to a proceeding. The bias could be either in favour or against a party.
 - An apprehension of bias may exist where a member demonstrates possession of information not generated in the course of the proceeding itself which appears to have been gained through a prior involvement with a party or an issue relevant to the proceeding.
 - An apprehension of bias may arise where a member expresses a predetermined view on an issue relevant to the proceeding.
 - Actual bias or an apprehension of bias may arise from the manner in which proceedings are conducted. This may include a lack of impartiality or fairness in the proceedings.

Where a Question of Bias is Raised

- (23) The question of bias may be raised by members themselves, or by any party to a proceeding.
- (24) Where the member has raised the issue of his or her own possible bias, this generally occurs prior to the commencement of the hearing. The member notifies the Chair at the earliest opportunity. After reviewing the circumstances the Chair will decide whether the member should continue to be assigned to the proceeding.
- (25) Where there are allegations of bias from one of the parties, after the hearing commences:
- If the member recognizes the existence of an actual bias or reasonable apprehension of bias, the member will immediately withdraw from the panel
 - If the member believes that the allegation is without foundation or is made frivolously or with an improper purpose, it becomes the responsibility of the hearing panel to decide the matter.
 - the panel may hear submissions from the parties with respect to the alleged bias, consider the submissions and decide whether a bias exists;
 - the member may make a submission on the issue of alleged bias, but does not participate in the decision of his colleagues on the issue;
 - if the panel decides a bias exists, the member will withdraw from the proceeding; and
 - if the hearing panel decides no bias exists, the member will continue with the hearing.
 - If the hearing is being conducted by the member sitting alone:
 - the member may hear submissions from the parties with respect to the alleged bias, consider the submissions and decide whether such a bias exists.
 - If the member recognizes the existence of an actual bias or a reasonable apprehension of bias, the member will withdraw and

make the necessary arrangements for a new member to be appointed to hear the matter.

- If the member determines that no bias exists, the member will continue with the hearing.

Political Activities

- (26) Members may engage in political activities to the same extent as employees in the civil service or persons employed by any agency of the government as set out in The Civil Service Act, but only to the extent their activities do not give rise to a reasonable apprehension of bias with respect to the performance of their duties.

Post-Separation Duties

- (27) Former members must not disclose any confidential information they obtained or became aware of in the course of their duties or use such information for their own private purposes.
- (28) Former members must not take improper advantage of their former positions after ceasing to be members of the tribunal.
- (29) Former members must not appear before the tribunal as representatives, expert witnesses or consultants until the later of:
 - (a) 12 months after ceasing to be a member; and
 - (b) the release of all outstanding decisions in which the former member took part.

6 Tribunal Resources

- (1) Members will be good stewards of tribunal resources.
- (2) Members will not spend any money on behalf of the tribunal unless:
 - (a) the member spending the money is authorized to do so; and,
 - (b) the expense is reasonably necessary to advance the tribunal's mandate.
- (3) A member will not conduct or authorize any transaction on behalf of the tribunal if that member has an actual, potential or perceived conflict of interest.

- (4) Members will only use tribunal resources for carrying out their duties as members.

7 Definitions

- (1) In this Code, these definitions apply unless the context requires otherwise:
 - (a) “Chair” means the Chairperson of the tribunal.
 - (b) “Code” means this Code of Conduct.
 - (c) “former member” means a person who was a member of the tribunal but is no longer a member.
 - (d) “hearing” includes matters decided on written submissions alone.
 - (e) “hearing panel” means the member or the group of members responsible for hearing and deciding a matter.
 - (f) “matter” means a case, hearing or other proceeding before the tribunal.
 - (g) “member” means any member of the tribunal, including :
 - (i) the Chair;
 - (ii) any Vice-Chairs; and,
 - (iii) an Acting Chair.
 - (h) “representative” means a lawyer or any other person authorized by law to represent a party to a matter before the tribunal.
 - (i) “Secretary” means the senior administrative person to the tribunal, aka Executive Director, Registrar, etc.;
 - (j) “tribunal” means [*name of tribunal*].
 - (k) “tribunal resources” means the tribunal’s assets, equipment, facilities, personnel and other resources.
 - (l) “written decision” means any decision, order or ruling in writing including any supporting reasons.

DECLARATION

The purpose of this Declaration is to identify, in advance, any possible areas where a member's private affairs might come into conflict with the business of the [tribunal name]. It is to be completed and signed by each member on appointment and will be maintained in confidence by the [tribunal name] Secretary.

Declaration: Please indicate which of the following applies to you:

- _____ 1. To the best of my knowledge, there are no situations in which my personal interests would come into conflict with my duties as a member of the [tribunal].
- _____ 2. I do have personal interests which fall within the realm of the [tribunal]. These are listed on the attached note.

I understand my responsibilities to avoid situations wherein these interests conflict with my duties as a member of the [tribunal] and that, by following these guidelines, I will be able to avoid such conflicts.

If, during my tenure as a [tribunal] member, any situation arises in which my private affairs would come into conflict with my duties as a member of the [tribunal], I will immediately inform the [tribunal] Chair *.

(Signature)

STATEMENT OF UNDERSTANDING

(To be completed by all members of the [tribunal].)

I have read and understand the Code of Conduct for Members of this tribunal and agree to abide by its terms and spirit.

I have completed the Declaration.

Signature

[* If the Chair is completing the declaration it will be forwarded in accordance with 1(5)(b)]