

Manitoba Council of Administrative Tribunals Inc.  
New Tribunal Member Training Program

**WEDNESDAY, OCTOBER 5, 2016 - 9:00am**  
**The Law Society of Manitoba Classroom**  
**219 Kennedy Street, Winnipeg**

**Role of Tribunals - (1 ½ hrs) – 9:00am – 10:30am**

*[Denis Guénette Mark Stonyk]*

- Define tribunals
  - structure
  - purpose
  - importance and impact on society
  - expectations
  - legitimacy
  
  - types of tribunals
    - affecting individual rights and privileges
    - affecting public interest
    - combination of individual rights and public interest
    - inquiry vs. adversarial
      - fundamental differences
      - similarities
  
- Role of Tribunal member
  - qualifications
    - experience is expertise
    - importance of common sense
    - lawyers not required
  - duties
  - independence
  - knowledge of legislation
  
- Role of chair/presiding officer
  
- Independence, Accountability and Ethical Conduct
  - codes of conduct
  - confidentiality
  
- Role of Tribunal staff
  
- Records, Access to Information, Privacy and Administrative Boards and Tribunals

**10:30 am – 10:45 am** COFFEE BREAK

*\*\*PRESENTERS SUBJECT TO CHANGE\*\**

**Conduct of Hearing - (2 ½ hrs) – 10:45 am – 12:15pm - Cont'd After Lunch – 1:00pm – 2:00pm**  
*[T. David Gisser Sacha R. Paul Garth Smorang]*

- Procedures
  - statute, regulations, rules of procedure
- Types of hearings
  - oral
  - written
- Purpose of hearing
  - make decision
  - appeal from a decision
  - inquiries into issues to create recommendations or rules
- Fair hearing
  - elements required for conducting fair hearing
- Natural Justice
  - defined
  - elements of natural justice – main rules
    - 1) listen to both sides
      - each side must have an opportunity to present its full case
      - each side must know all that you are considering
      - each side must have an opportunity to respond to the other side
      - don't meet with only one side
      - phone calls from interested parties, including government people
    - 2) don't be judge in your own case
      - consider real or potential conflicts
      - appearances not necessarily reality
    - 3) she/he who hears case must decide it
  - examples of when and how rules apply
- Panel members role during hearing
  - how much involvement in general
  - ask questions when unclear
  - no leading questions
  - no questions showing opinions
  - no questions showing conclusions
  - listen intently
  - be respectful
  - don't be intimidated by parties, counsel, or other tribunal members
- Panel members relationship with chair
  - take guidance
  - show some solidarity in public
  - be direct and open in private

- What does it look like to the parties?
  - decorum in general
  - interaction with other parties, counsel
  - discussions between panel members at hearing
- Test of fair hearing
  - at end of hearing do parties feel listened to
  - do you understand the issues
- Unrepresented Parties
  - help but do it publicly
  - be careful of apprehension of bias
- Evidence
  - difference between evidence and argument
  - types of evidence
    - oral
    - affidavit
    - documents
    - video or audio
    - transcripts
    - judicial notice
    - expert evidence
- Issues relating to evidence
  - difference between “court” and “tribunal” evidence
  - relevance
  - admissibility
  - procedures for receiving and evaluating evidence
  - concept of weight of evidence
- Burden of proof
- Standard applied in most tribunals - Balance of probabilities
- Hearsay evidence
  - defined
  - dangers of
  - benefits of
- Oral evidence
  - impairment provides misperceived realities
  - omission of facts (conscious and unconscious)
  - commission of untruths (involuntary and voluntary)
- Credibility
  - how to assess
  - when to use

**12:15pm – 1:00pm** LUNCH (to be provided by MCAT Inc.)

**(Conduct of Hearing Session Continued After Lunch – 1:00pm – 2:00pm)**

**Post Hearing / Decision Making - (1 ½ hrs) – 2:00pm – 3:30pm**

*[Jennifer Goldenberg Colin Robinson Laura Diamond Elliot Leven]*

- Decisions
  - consistency
  - written
  - plain language
  
- Post hearing meeting
  - role of chair
    - facilitate consensus
    - encourage participation of all members
  
  - role of members
    - ask questions, seek clarification
  
- Making the Decision
  - independence of thought
    - don't be swayed by feelings towards parties
    - don't be swayed by concerns about general government policy
    - hard cases make bad law – the importance of not being swayed by sympathy
    - justice is more than technical legal concepts – the importance of not simply being swayed by the cold law
    - dissent is available
  
- Elements of a good decision
  
- Role of Courts in Overseeing Tribunals
  
- Role of Ombudsman

**Closing Remarks/Session Wrap Up (3:30pm – 3:45pm)**