

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

OCTOBER 10, 2018 - 9:00am
The Law Society of Manitoba Classroom
200-260 St. Mary Avenue, 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 Shannon Carson]

- 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

[Colin Robinson Laura Diamond Elliot Leven Sherri Walsh]

- 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)