

**Northwest Territories & Nunavut
Workers' Compensation
Appeals Tribunal**

Members' Code of Conduct

Table of Contents

| | |
|---|----------|
| 1.0 PURPOSE..... | 2 |
| 2.0 DEFINITIONS..... | 2 |
| 3.0 APPLICATION OF THE CODE..... | 3 |
| 4.0 ADMINISTRATION OF THE CODE..... | 3 |
| 5.0 RESPONSIBILITIES AND CONDUCT OF MEMBERS | 3 |
| CONFLICT OF INTEREST..... | 3 |
| BIAS..... | 4 |
| PROCEDURAL PROTOCOL..... | 5 |
| GENERAL RULES OF CONDUCT..... | 6 |
| DURING HEARINGS..... | 7 |
| DURING DECISION-MAKING | 7 |
| 6.0 AVOIDING CONFLICTS AND BIAS - STANDARDS OF CONDUCT | 8 |
| 7.0 MEMBERS' RESPONSIBILITIES..... | 9 |
| 8.0 MEMBERS' POST TERM RESPONSIBILITIES..... | 9 |

1.0 Purpose

This Code sets out the standards and principles of conduct governing the professional and ethical responsibilities of Members of the Appeals Tribunal as well as staff members of the Northwest Territories and Nunavut Workers' Compensation Appeals Tribunal.

This Code recognizes the fundamental and overriding responsibility of Tribunal Members to contribute to and maintain the integrity, competence and effectiveness of the Tribunal. The Code is intended to assist Members by establishing appropriate standards of conduct in typical administrative justice situations. However, the Code cannot anticipate all possible circumstances. Members are responsible for considering the appropriate standards and conducting themselves in an ethical and professional manner at all times.

2.0 Definitions

- a) "bias" means a lack of neutrality or impartiality on the part of a decision-maker regarding an issue to be decided. Bias of the decision-maker can be real or merely perceived.
- a) "conflict of interest" means any interest, relationship, association or activity that is incompatible with the Member's obligations to the Appeals Tribunal and includes both pecuniary and non-pecuniary conflicts.
- b) "Code" means the Code of Conduct for Appeals Tribunal Members.
- c) "family member" means any individual that a Member knows to be related to the Member by blood, adoption or marriage and includes a common law spouse or partner and any person who, although not related by blood or adoption stood or stands in the position of parent, child, grandparent or grandchild to the Member.
- d) "Member" means those individuals appointed by the Northwest Territories and Nunavut Ministers responsible for the Workers' Safety and Compensation Commission pursuant to section 118 of the *Workers' Compensation Act* (Northwest Territories & Nunavut).
- e) "Party" means a party to an appeal.
- f) "pecuniary conflict of interest" means a Member has a financial interest that may be affected by the resolution or treatment of a matter before the Appeals Tribunal. The financial interest may be that of the Member, or of a family member or other person or company/organization with whom the Member has a close relationship, personal or professional.
- g) "non-pecuniary conflict of interest" means a Member has an association, relationship or non-financial interest or activity that is incompatible with their

responsibilities as an impartial decision-maker and as a Member. The relationships, interests or activities of a close family member, close associate or organization may raise a potential conflict for a Member if they will be affected beneficially or detrimentally by the determinations of the Appeals Tribunal.

3.0 Application of the Code

1. This Code applies to all Members of the Tribunal and the Tribunal's staff members. For simplicity, the term Member is used to include all Members unless otherwise specifically differentiated.
2. This Code governs the conduct of Members from the time they are appointed until the completion of any continuing responsibilities after the end of their original term and any renewals.
3. Each Member is responsible to the Chairperson for adherence to this Code. The interpretation and enforcement of the rules are within the authority of the Chairperson.
4. This Code may be amended from time to time in order to reflect the developing experience of the Tribunal.

4.0 Administration of the Code

5. The Chairperson will administer the Code for the Appeals Tribunal and will issue instructions as necessary for the implementation of the Code.
6. The Chairperson may issue supplementary instructions which modify but do not detract from matters dealt with in this Code, provided that the supplemental instructions are not more permissive than this Code.
7. The Minister will administer this Code with respect to the Chairperson.
8. Any questions regarding the interpretation or applications of this Code are to be directed to the Chairperson.

5.0 Responsibilities and Conduct of Members

Conflict of Interest

9. Conflict of interest may be real, perceived, or potential.

10. A conflict of interest arises when a Member participates in a Tribunal decision despite the existence of an interest, relationship, association or activity that may be incompatible with the Member's obligation to render independent and impartial decisions. Conflicts of interest can include either pecuniary or non-pecuniary conflicts.
11. A pecuniary conflict of interest exists where a Member has a financial interest that may be affected by the resolution or treatment of a matter before the Tribunal. The financial interest may be that of the Member or of the Member's family member or other person with whom the Member has a close personal or professional relationship.
12. A non-pecuniary conflict of interest can arise where a Member has an association, relationship or non-financial interest or activity that is incompatible with the responsibilities of an impartial decision-maker and where the outcome of the Tribunal's decision may result in benefit to the Member's interest. The relationships, interests or activities of a close family member or close associate may raise a potential conflict if they will be affected by the Tribunal's determinations.

Bias

13. The test was first stated in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369:

...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. . . . [The] test is "what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude."

14. Some examples of situations where actual bias or the apprehension of bias may exist include:
 - Relational Bias – where there is a previous or existing relationship between the Member and someone involved in the hearing. The relationship may be pecuniary, organizational, or personal.
 - Informational Bias – where a Member demonstrates possession of information gained through prior involvement with a person or issue and that information is relevant to the hearing.
 - Attitudinal Bias – where the Member has expressed a general view about legislation, a policy or an issue relevant to the hearing.
 - Procedural Bias – where the Member's conduct at hearing is not impartial and becomes partisan. This includes private communications with only one of the parties.

Procedural Protocol

15. In assessing whether a potential conflict of interest or an apprehension of bias might exist, Members should consider:
- Whether they feel personally satisfied about their ability to act impartially; and
 - If they do, could the facts nevertheless give rise to a reasonable apprehension of bias in the mind of a reasonable and informed person?
 - Members must err on the side of caution in making decisions about a potential conflict of interest or apprehensions of bias.
16. It is the responsibility of each Member to consider and inquire into any circumstances that might suggest a possible conflict of interest or apprehension of bias. The Member may at first be the only person in a position to recognize this. As soon as such a possibility is identified, the Member should take appropriate steps as outlined below.
17. Where the question of bias or conflict of interest comes to the attention of the Member prior to the hearing, he or she should bring this to the attention of the Chairperson as soon as possible. After reviewing the circumstances, if the Chairperson determines that the circumstances are insignificant, the Member may continue to be assigned to the hearing unless they decide that the issue should be placed before the parties for submissions at the commencement of the hearing.
18. Where an allegation of conflict of interest or bias is raised by a party or disclosed by a Member during a hearing, Members may, where appropriate:
- withdraw from the proceeding as a result of the nature and circumstances of the alleged conflict (for example, an actual pecuniary conflict);
- or
- hear submissions from the parties with respect to the alleged conflict and reserve to consider the submissions;
- or
- schedule a time for submissions on the allegation of conflict, render a decision and continue where no bias or conflict is found.
19. Where a Member becomes aware during a hearing of a possible conflict of interest, or of facts which may give rise to a perception of bias and the related circumstances are unknown to the parties, the Member shall:
- advise the parties forthwith of the possible conflict and hear submissions on the issue;

- recess the hearing if necessary, to enable the parties to make submissions on the issue; and
 - rule on the alleged conflict before proceeding.
20. A Member shall consult Tribunal Counsel or the Chairperson before making a determination to continue in a proceeding where there has been an allegation of conflict or bias.
 21. Once the appeal process has begun, determinations on issues of conflict of interest or reasonable apprehension of bias are for the Member to make. However, given that allegations of conflict and bias affect the credibility and integrity of the Appeals Tribunal as a whole, a Member whose neutrality is challenged should inform the Chairperson of the nature of the allegations made.
 22. Where a Party has made an allegation of an apprehension of bias or conflict of interest, the written decision must address the allegations if the submissions have been rejected.
 23. Where the Chairperson becomes aware of a possible conflict of interest, or of facts which may give rise to a perception of bias, with respect to a matter which he or she is adjudicating, the procedural protocol established in the Code for Members will be followed with appropriate adjustments.

General Rules of Conduct

24. Members shall conduct themselves so that public confidence in the integrity, objectivity and impartiality of the Tribunal and its decisions is maintained and enhanced.
25. Members must be unbiased and free from conflict of interest.
26. Members are expected to behave with dignity and respect in their relationships with other Members, parties involved in appeals, and the public.
27. Members have an obligation to act fairly in the conduct of adjudicative proceedings.
28. Members should make all reasonable efforts to ensure that the proceedings are accessible and barrier – free for all parties, representatives, witnesses, and observers, if any.
29. Members should take all reasonable steps to ensure that proceedings are concluded in a timely manner.
30. Members should be fully prepared for a proceeding.
31. Members should recognize the public interest in consistency and predictability in the exercise of their independent decision-making authority.

32. Members should ensure that proceedings are conducted in a manner that is transparent and seen to be fair.
33. Members should maintain a level of professional competence and knowledge required to discharge their obligations and duties.
34. Members should approach every proceeding and every issue arising in a proceeding with an open mind, and avoid doing or saying anything to cause any person to think otherwise.

During Hearings

35. Members shall show respect for the parties, representatives, witnesses, and the hearing process itself, through their demeanour, timeliness, dress and conduct.
36. Members must be sensitive to issues of gender, ability, race, sexual orientation, language, culture and religion, which may affect the conduct of a hearing.
37. Members shall conduct hearings expeditiously, prevent unnecessary delay and ensure that all parties have a fair opportunity to present their case.
38. Members may take steps to ensure that unrepresented parties are not unduly disadvantaged at the hearing. For example: it may be appropriate to explain the hearing procedure or what is relevant to the issue in dispute.
39. Members shall not communicate directly or indirectly with any party witness or representative in respect of a proceeding, except in the presence of all parties and their representatives.

During Decision-Making

40. Members shall make each decision on the true merits and justice of the case, based on the law and on the evidence.
41. Members shall apply the law to the evidence, in good faith and to the best of their ability. The prospect of disapproval from any person, institution, or community must not deter Members from making the decision they believe is correct based on the law and the evidence.
42. Members shall not ignore relevant Tribunal decisions on a question at issue before them. The Tribunal recognizes that each matter must be decided on the merits and justice of the case and that the Tribunal is not bound to follow any previous decision as a precedent. However, the Tribunal also recognizes the need for a degree of consistency in the interpretation of the law. Therefore, where previous decisions are relevant and are not followed, the decision must explain the reasons for the departure clearly and respectfully.

43. Members shall ensure that decisions are prepared in accordance with Tribunal guidelines on form and language and meet the Tribunal standards with respect to the quality of written decisions.

6.0 Avoiding Conflicts and Bias - Standards of Conduct

44. Members are bound by the NWT *Conflict of Interest Act* and/or Nunavut *Conflict of Interest Act*. The Act deals with direct and indirect pecuniary interests.

45. Members shall not adjudicate in any proceedings, or participate in Tribunal discussions of any matter where they have a conflict of interest including:

- in which they, or a close family member or associate have a significant financial interest.
- if they have a personal interest in it or a close personal relationship with one of the parties or a representative. For example: hearing a neighbour's appeal or hearing an appeal where the representative is the Member's relative.
- in which they, or a close family member or associate have had any prior involvement.
- in which the outcome may have an impact on any legal proceeding in which they have a significant personal interest.

46. Members shall not act as consultants, agents or representatives in cases before the Tribunal or the Workers' Safety and Compensation Commission in connection with any matter relating to the Tribunal's work. Members may not have any responsibility or role in the management, preparation or advocacy of any workplace safety and insurance files, nor may they appear as expert witnesses.

47. Members must not knowingly permit their names to be associated with any point of view on any appealable workplace compensation issue, other than through publication of their reasons for decisions.

48. Members must not take improper advantage of confidential information obtained through official duties, to obtain a personal benefit.

49. Members must not say anything about the proceedings or the parties nor do any action that could raise an apprehension of bias. Not only verbal or written comments but also the personal behaviour of Board members and staff could be the subject of scrutiny if allegations of bias are raised.

50. The staff members of the Appeals Tribunal have the same duty of procedural fairness that is applicable to the members and must also guard their words and actions to avoid an apprehension of bias. Members and staff must be prudent in

making any comments on matters before the tribunal. Not only verbal or written comments but also the personal behaviour of Tribunal members and staff could be the subject of scrutiny if allegations of bias are raised.

7.0 Members' Responsibilities

51. Members shall not publicly criticize the decisions, procedures or structures of the Tribunal.
52. The Tribunal is bound by the N.W.T. *Access to Information and Protection of Privacy Act*. The Tribunal adjudicates issues that require Members to have access to personal and other confidential information, the dissemination of which might be embarrassing or prejudicial to parties or their families or associates. Therefore, except as required by that statute, Members shall not disclose any information or document that comes to their knowledge or into their possession by reason of their position with the Tribunal, other than information or documents which are available to the public. Members must also protect the confidentiality of information or documents in their possession for the purpose of an appeal procedure.
53. Members must not disclose confidential Tribunal information.
54. Members shall not communicate with the media about the Tribunal's decisions. All media inquiries regarding the Tribunal shall be referred to the Chairperson.
55. The political activities of Members are not covered by the *Public Service Act* although the political activities of the Tribunal's staff members (as public servants) are. Therefore, Members with specific questions about their political activities should consult the Chairperson.

8.0 Members' Post Term Responsibilities

56. A Member shall not appear before the Tribunal as a representative, expert witness or consultant until six months after ceasing to be a Member or after the release of any outstanding decisions in which the Member participated, whichever is later. The Tribunal Chair may vary these restrictions in appropriate circumstances.
57. A Member who, having ceased to be a member of the Tribunal, continues on a per diem basis in respect of certain ongoing proceedings, shall continue to be bound by the Code as it relates to those proceedings.
58. A Member shall not take improper advantage of past office after ceasing to be a Member.
59. Members continue to be bound by their obligations of confidentiality regarding any matter arising while they were Members.