

Society of Ontario Adjudicators and Regulators

Code of Professional and Ethical Responsibilities For Members of Adjudicative Tribunals

A Model - October 1996

Preface

This model Code of Professional and Ethical Responsibilities for members of adjudicative tribunals was adopted by the SOAR Board of Governors in October 1996.

The Model Code's principal authors were:

- Kathy Laird, Vice Chair, Pay Equity Hearings Tribunal and (Human Rights) Board of Inquiry
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The Code was the product of an extensive consultative process over the course of two years. Drafts of the document were widely distributed for comment amongst SOAR members and an early version was the subject of workshop discussion at SOAR's November 1995 Conference of Ontario Boards and Agencies.

SOAR regards the Code as a "living" document that will be amended periodically in response to experiences with its application. Users are invited to provide SOAR with any comments or suggestions for improving the document in the future.

S.R. Ellis, Q.C.
SOAR President
October 31, 1996

This model Code delineates, in a generic fashion, the professional and ethical responsibilities of members of adjudicative tribunals. An attempt has been made to include provisions which address a range of institutional frameworks. However, given the wide variety of settings in which tribunals are called upon to adjudicate, it is recognized that not all provisions in the Code will prove to be appropriate for all

tribunals or in all circumstances. It is intended that this Code will serve as a model which can be adapted to fit the particular legislative mandate and institutional culture of each individual tribunal.

Purpose of Code

Application of Code

Conflict of Interest

Definitions

Rules of Conduct

Procedural Protocol

Conflict of Interest Affecting Tribunal Chair

Conduct of Hearing

Decision-Making Responsibilities

Collegial Responsibilities

To Other Members

When Sitting as a Hearing Panel

To Tribunal Chair

To Tribunal

Representative Members

Part-Time Members

Political Activities

Post-Term Responsibilities

Appendices

*A. Excerpt from Management Board of Cabinet Guidelines, Establishment and Administration of Agencies: A Manager's Guide, 1991.**

B. Sample Undertaking

C. Sample Guidelines on Decision Quality

*D. Management Board of Cabinet: Political Activity Rights for Crown Employees, 1994.**

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Purpose of Code

1. The purpose of this Code is to establish rules of conduct governing the professional and ethical responsibilities of tribunal members. The rules cover the primary areas of member responsibility, that is, the conduct of hearings and decision-making, as well as the institutional responsibilities of members to colleagues, the tribunal chair, and to the tribunal itself.
2. The Code has been developed in recognition of the fundamental and over-riding responsibility of all tribunal members to maintain the integrity, competence and effectiveness of the tribunal as a whole. The rules are intended to assist members by establishing appropriate standards of conduct in typical administrative justice circumstances. It is recognized, however, that the Code cannot anticipate all possible fact situations in which members may be called upon to exercise judgement as to the appropriate standard of conduct. Some circumstances will require that the rules in the Code be adjusted to reflect a different standard of conduct, whether more or less onerous. In each case, it remains the responsibility of each individual member to consider the appropriate standard and to conduct him/herself in an ethical and professional manner.

Application of Code

3. The rules in this Code apply to all members of the tribunal: the chair, vice-chairs, members including representative members, whether full-time or part-time. For simplicity, the term “adjudicator” is used to include all adjudicative positions unless otherwise specifically differentiated. Where certain responsibilities of the tribunal chair have been delegated to a designate, the term “chair” in this Code should be taken to include such designates.
4. The Code governs the conduct of members from the commencement of the term of appointment. Also included are the continuing responsibilities of members after completion of their term.
5. The Code may be amended from time to time to reflect the developing experience of the tribunal.

Conflict of Interest

Definitions

6. A conflict of interest is any interest, relationship, association or activity that is incompatible with the adjudicator’s obligations to the tribunal. A ‘conflict of interest’ is defined for the purpose of this Code to include both pecuniary and non-pecuniary conflicts.

7. A pecuniary conflict of interest will exist where an adjudicator 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 adjudicator, or of a family member or other person with whom the adjudicator has a close relationship, personal or professional.

8. A non-pecuniary conflict of interest will arise where an adjudicator has an association, relationship or non-financial interest or activity that is incompatible with his/her responsibilities as an impartial decision-maker and as a member of the tribunal. The relationships, interests or activities of a close family member or close associate may raise a potential conflict for an adjudicator if they will be affected beneficially or detrimentally by the determinations of the tribunal.

9. A conflict of interest, as defined above, is incompatible with neutral adjudication. Where the circumstances surrounding a proceeding raise a possible conflict of interest on the part of a tribunal member, the test as to whether or not the member should be disqualified from adjudicating in the matter is whether or not the facts could give rise to a reasonable apprehension of bias in the mind of a reasonable and informed person.

Rules of Conduct

10. An adjudicator must adhere to the rules on pecuniary conflicts of interest established by the Government of Ontario in the Directives and Guidelines manuals developed by Management Board of Cabinet. The guideline on Conflict of Interest in Establishment and Administration of Agencies: A Manager's Guide is attached as *Appendix A*. This guideline can be found in the manual entitled *Management Board of Cabinet Guidelines*.

11. To minimize the likelihood of conflict of interest situations arising, each adjudicator is required to complete the undertaking attached as *Appendix B*.

12. An adjudicator shall not adjudicate in any proceeding, or participate in tribunal discussions of any matter, in which the adjudicator, or a family member or close associate, has a significant financial interest.

13. An adjudicator shall not adjudicate in any proceeding, or participate in tribunal discussions with respect to any matter, if he or she believes that his/her impartiality may be affected by a personal interest or by a relationship with one of the parties or a representative.

14. An adjudicator will not normally be eligible to conduct a hearing involving a party or representative with whom he or she was formerly in a significant professional relationship until a period of [twelve] months has elapsed from the termination of the relationship. A significant professional relationship would include employment, solicitor/client or partnership/association in a law firm.

15. An adjudicator will not normally be eligible to conduct a hearing involving a party or representative with whom he or she has a close personal relationship. For example, an adjudicator should consider disqualifying him/herself from a hearing if counsel for one of the parties is a close friend. The appropriate response will vary depending on the facts, but in every case, the particular circumstances of the relationship, and the position of the other parties should be considered carefully.

16. An adjudicator shall not adjudicate in any proceeding in which the adjudicator, or a close family member or associate, has had any prior involvement.

17. An adjudicator shall not adjudicate in any proceeding in which the outcome may have an impact on any other legal proceeding in which the adjudicator has a significant personal interest.

18. An adjudicator shall refrain from publicly taking a partisan position in respect of an issue currently under consideration in a proceeding before the tribunal.

19. An adjudicator shall not be involved in a business regulated by the tribunal and in particular, shall not own shares in a company likely to appear before the tribunal or likely to be directly affected, beneficially or detrimentally, by tribunal decisions.

20. An adjudicator shall not accept money, awards or gifts from persons who may be, or have been, affected by a tribunal decision. Where a gift is, or may be perceived to be, offered because of membership in the tribunal, the tribunal chair must be advised forthwith. A member will normally be allowed to accept a small token gift offered as an honorarium for a speaking engagement. Other gifts should be returned immediately or delivered to the chair for prompt action.

21. An adjudicator shall not appear before the tribunal as an expert witness or as an agent or representative for a party.

22. An adjudicator shall not act as a professional or legal consultant in the preparation of a case before the tribunal or in any matter relating to the work of the tribunal.

23. An adjudicator must not take improper advantage of information obtained through official duties, and not generally available to the public, to obtain a personal benefit. This would not, in most cases, include contributions to professional educational activities, such as public conferences.

24. An adjudicator shall ensure that government property is used only for officially approved activities.

25. An adjudicator shall not use tribunal letterhead for personal business, or use tribunal cards for any reason not related to tribunal responsibilities.

Procedural Protocol

26. It is the responsibility of each adjudicator to consider and actively inquire into any circumstance which might suggest a possible conflict of interest or raise a perception of bias in respect of any of his/her responsibilities. The adjudicator may at first be the only person in a position to recognize a possible conflict or an issue of bias. As soon as a potential conflict, or grounds for a perception of bias, is identified, an adjudicator should take appropriate steps as outlined below forthwith.

27. Where an adjudicator has a potential conflict of interest in respect of a matter before the tribunal, but not assigned to the member for adjudication, the adjudicator will refrain from participation in any discussion of the matter, and will absent him/herself from such discussions, until the tribunal chair has been advised of the circumstances. If the adjudicator becomes aware of the potential conflict during a tribunal meeting, he or she must absent him/herself from the relevant portion of the meeting. If minutes of the meeting are being recorded, the adjudicator should ask that his absence be noted and that the relevant portion of the minutes be deleted from any copy distributed to him/her.

28. Where an adjudicator declares a direct pecuniary conflict of interest in respect of a matter before the tribunal (and not before the particular adjudicator), the tribunal chair is required by Management Board of Cabinet Directives (Directive 6-1-2) to record the declared conflict in the tribunal minutes and to notify the minister responsible of the nature of the conflict.

29. Where an adjudicator becomes aware, prior to accepting an appointment to adjudicate a particular matter, or prior to commencing the hearing, that circumstances exist that suggest a possible conflict of interest on the part of the adjudicator, or that may raise a perception of bias, he or she shall inform the tribunal chair forthwith. If the chair determines that the circumstances are insignificant, the adjudicator may continue with the hearing unless he or she decides that the issue should be placed before the parties for submissions at the commencement of the hearing.

30. Where an allegation of conflict of interest or bias is raised by a party during a hearing, the adjudicator may:

- resign from the proceeding forthwith if he or she considers this to be appropriate in any event, given the nature and circumstances of the alleged conflict (for example, if the adjudicator recognizes an actual pecuniary conflict);
- 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.

31. Where the adjudicator 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 adjudicator may:

- advise the parties forthwith of the possible conflict and hear submissions on the issue; or

- recess the hearing to consider the seriousness of the possible conflict and whether it is appropriate to inform the parties of the circumstances and hear submissions.

32. Circumstances which may raise a conflict of interest, or a perception of bias, should be disclosed to parties and representatives as soon as known unless the adjudicator determines, upon reflection, that the potential issue is trivial and of no significance. An adjudicator may wish to consult tribunal counsel or the chair before making this determination.

33. Once the adjudicative process has begun, determinations on issues of conflict of interest or reasonable apprehension of bias are for the adjudicator to make. However, given that allegations of conflict and bias affect the credibility and integrity of the tribunal as a whole, an adjudicator whose neutrality is challenged should inform the tribunal chair of the nature of the allegations made.

34. Where a party before the tribunal has made submissions challenging the neutrality of an adjudicator, it will be advisable in most cases for the adjudicator to release a **written** decision on the allegation of bias or conflict of interest.

Conflict of Interest Affecting Tribunal Chair

35. Where the chair 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 this Code for adjudicators will be followed with appropriate adjustments.

36. Where the chair determines that he or she has a possible conflict of interest or a potential bias in respect of a matter before the tribunal, which he or she is not adjudicating, the chair will instruct tribunal staff that all communications regarding the matter are to be directed to a designated vice-chair. The file will be marked "No Access to Tribunal Chair". All decisions regarding the choice of hearing panel, the scheduling and conduct of the hearing, and the release of the decision will be made without the participation of the chair.

37. The chair will not participate in any panel consultations or discussions of substantive or procedural determinations in respect of a proceeding for which a conflict of interest exists. If the matter is on the agenda for a tribunal meeting, the chair will state the conflict and absent him/herself from that part of the meeting. The minutes will record the chair's declaration of conflict and absence, and the portion of the minutes dealing with that matter will be recorded separately and not communicated to the chair.

Conduct of the Hearing

38. An adjudicator shall approach every hearing with an open mind with respect to every issue, and shall avoid doing or saying anything that could cause any person to think otherwise.

39. An adjudicator shall listen carefully and with respect to the views and submissions of the parties and their representatives. 40. An adjudicator shall show respect for the parties, representatives, witnesses, and for the hearing process itself, through his/her demeanour, timeliness, dress and conduct throughout the proceeding.

41. An adjudicator must demonstrate a high degree of sensitivity to issues of gender, ability, race, language, culture and religion which may affect the conduct of a hearing. Such issues may, for example, affect the affirmation/swearing-in of witnesses, the scheduling and time of the hearing day, the attire of the participants, among other things. In considering the demeanour of a witness in the context of an assessment of credibility, the adjudicator should recognize that he or she may not be familiar with cultural norms affecting the manner of the witness.

42. An adjudicator shall endeavour, in accordance with the guidelines and procedures established by the tribunal, to ensure that the hearing room and process is accessible and barrier-free for all parties, representatives and witnesses.

43. An adjudicator shall endeavour to conduct all hearings expeditiously, preventing unnecessary delay while ensuring that all parties have a fair opportunity to present their case.

44. An adjudicator shall avoid undue interruption and interference in the examination and cross-examination of witnesses. It is permissible for an adjudicator to question a witness in order to clarify the evidence, but unnecessary leading questions should be avoided. An adjudicator should not show undue impatience or a negative attitude towards a witness.

45. An adjudicator should avoid unnecessary interruptions in the submissions of a party or representative. Interruptions may be necessary to clarify a submission or to ensure the relevance of a particular argument.

46. An adjudicator shall attempt to ensure that parties who are unrepresented are not unduly disadvantaged at the hearing. While an adjudicator cannot act as counsel to the unrepresented party, it is appropriate to clearly explain the procedure to be followed in the hearing. In the course of the hearing, the adjudicator may, in clear and simple language, outline for the party the relevant evidentiary and procedural rules which have a bearing on the conduct of the proceeding.

47. An adjudicator 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. Telephone calls to the adjudicator should be referred to the registrar or tribunal counsel. Correspondence to or from a party or counsel should be handled by

the registrar or tribunal counsel and forwarded by the tribunal to all parties and representatives not already copied.

48. An adjudicator shall not make public comment, orally or in writing, on any aspect of a matter before the tribunal. An adjudicator shall not discuss in private, outside the tribunal, any aspect of a matter before the tribunal.

49. An adjudicator shall not, in the course of a hearing, have meals or other significant social interaction with a party, representative or witness, except if all parties and representatives are present and there is no discussion with respect to the subject-matter of the hearing.

Decision-Making Responsibilities

50. An adjudicator shall make each decision on the true merits and justice of the case, based on the law and on the evidence.

51. An adjudicator shall apply the law to the evidence in good faith and to the best of his/her ability. The prospect of disapproval from any person, institution, or community must not deter an adjudicator from making the decision which he or she believes is correct based on the law and the evidence. Adjudicators must be prepared to go where the evidence and law fairly takes them.

52. An adjudicator is responsible for ensuring that all decisions are rendered promptly. Written reasons should be prepared without undue delay.

53. An adjudicator shall not ignore relevant tribunal decisions on a question at issue before them. Where previous decisions are relevant and are not followed, the decision must explain the reasons for the departure clearly and respectfully. Due weight must be given to previous tribunal jurisprudence and the need for a degree of consistency in the interpretation of the law.

54. An adjudicator is responsible for ensuring that decisions are prepared in accordance with tribunal guidelines on form, language and length, and meet tribunal standards with respect to the quality of written decisions. See *Appendix C* for Sample Guidelines on Decision Quality.

55. An adjudicator shall endeavour to use clear and accessible language in decision-writing and shall endeavour, in accordance with tribunal guidelines on service equity, to ensure that decisions are available in a format which meets the special needs of the parties.

56. An adjudicator shall never communicate with the media regarding a decision of the tribunal. All inquiries from the media shall be referred to the tribunal chair or counsel.

Collegial Responsibilities

To Other Members

57. An adjudicator shall, through his/her conduct, endeavour to promote collegiality among tribunal members and with tribunal staff.

58. An adjudicator will make him/herself available on a timely basis for consultation or caucus discussions initiated by a member on any policy, legal or procedural issue.

59. In discussions and consultations with other tribunal members, an adjudicator will conduct him/herself in a manner which demonstrates respect for the views and opinions of colleagues.

60. An adjudicator will not comment publicly on a decision of a colleague, or on the manner in which another member has conducted him/herself during a hearing.

When Sitting as a Hearing Panel

61. When sitting as a hearing panel, adjudicators will comply with the tribunal's statutory or policy guidelines governing the respective roles of the presiding member and the other members in the conduct of a hearing and in making interim rulings on procedural and substantive questions.

62. Where the tribunal has no set policy for the conduct of a hearing panel, the panel should discuss in advance their mutual expectations with respect to matters such as dealing with objections, questions to witnesses, and panel caucusing.

63. When, during a hearing, a presiding adjudicator becomes aware of a difference of opinion among members of a hearing panel on a procedural or substantive issue affecting the conduct of the hearing, he or she should call a recess to allow the panel to discuss the issue and reach a decision on how to proceed.

64. All members of a hearing panel must make themselves available on a timely basis for discussions with their panel colleagues on the conduct of the proceeding and on the substance of the determinations to be made. When a draft decision is provided to a hearing panel member for comments, he or she should respond at the earliest opportunity.

65. A member of a hearing panel will consider carefully the reasons of colleagues where there is a difference in their proposed determinations on an interim or final decision. However, an adjudicator should not abandon strongly held views on an issue of substance, either for the sake of panel unanimity or in exchange for agreement on any other point.

66. In circumstances where a member of a hearing panel is unable, after discussion and careful consideration, to agree with the proposed decision of a majority of the panel, he or she shall prepare, in a timely fashion, a reasoned dissent.

To Tribunal Chair

67. Each member is responsible to the tribunal chair for adherence to this Code. The interpretation and enforcement of the rules are matters within the authority of the chair. It is recognized that failure to comply may result in the chair recommending against reappointment of a member.

68. An adjudicator will make him/herself available to meet with the tribunal chair on a timely basis when requested to do so.

69. An adjudicator will inform the tribunal chair forthwith of any basis on which an allegation of bias or conflict might be raised with respect to any activity, interest or relationship of the adjudicator.

70. When an adjudicator becomes aware of conduct of a colleague that may threaten the integrity of the tribunal or its processes, it is the duty of the adjudicator to advise the tribunal chair of the circumstances as soon as practicable.

71. Where an adjudicator has decided to accept an offer of employment outside the tribunal, he or she will inform the tribunal chair of the decision at the earliest opportunity.

To Tribunal

72. An adjudicator shall maintain a high level of expertise in adjudication and procedural issues, as well as in the relevant law in the area of specialty of the tribunal.

73. An adjudicator will make every effort to comply with the policies, procedures and standards established for the tribunal. This will include, for example, rules regarding permissible expenditures, documentation of expenses, travel and accommodation, as well as procedural rules and practice directions governing the conduct of proceedings.

74. Upon appointment to the tribunal, a full-time adjudicator will review with the tribunal chair all organizational memberships, and will resign from membership in organizations having a partisan interest in issues that may come before the tribunal.

75. Where an adjudicator questions the appropriateness of any policy, procedure or standard, he or she will raise that issue with colleagues and the tribunal chair in the appropriate forum.

76. An adjudicator will not publicly criticize the decisions, procedures or structures of the tribunal.

77. An adjudicator will make him/herself available to participate, as assigned, in non-hearing related functions and activities, such as training new members, participating in committees, developing tribunal procedures and policies.

78. An adjudicator shall not divulge confidential information unless legally required to do so, or appropriately authorized to release the information.

79. An adjudicator shall not engage in conduct that exploits his/her position of authority.

Representative Members

80. A representative member will comply with the policy of the tribunal with respect to the role of representative members in the conduct of proceedings.

81. A representative member will ensure that the issues and concerns of the represented community are understood and fairly considered by the tribunal, both in the context of specific decisions, and in the development of the general policies and procedures of the tribunal.

82. A representative member will comply with the policies of the tribunal with respect to membership in organizations within the represented community and participation in educational events or meetings within the represented community.

Part-Time Members

83. A part-time adjudicator who engages in another profession, occupation or business shall not allow those activities to undermine the discharge of his/her responsibilities as a tribunal member.

84. A part-time adjudicator shall arrange other professional, employment or business affairs in such a way as to minimize the likelihood of conflicts arising which may affect his/her neutrality or give rise to an allegation of bias.

Political Activities

85. The political activities of tribunal members are governed by the Public Service Act (R.S.O. 1990, c. P.47) as amended by the Public Service and Labour Relations Statute Law Amendment Act (S.O. 1993, c. 38) and subsequent amendments. Members with specific questions should in every case consult the statute. Attached as Appendix D is an information package prepared by Management Board of Cabinet in September 1994 entitled Political Activity Rights for Crown Employees.

86. As Crown employees, all tribunal members, whether full-time or part-time, are prohibited from engaging in political activity in the workplace and from associating their positions with political activity. There is also a general prohibition in the statute against engaging in political activity that would place the employee in a position of conflict with the interests of the Crown.

87. Political activity is defined in the statute (s. 28.1) as “anything in support of or in opposition to a federal or provincial political party”, and “anything in support of or in

opposition to a candidate in a federal, provincial or municipal election”. Also defined as political activity is public comment outside the scope of one’s own duties on matters directly related to those duties, where the matters commented upon are dealt with in the policies of a federal or provincial party or in the public positions taken by a federal or provincial candidate.

88. Full-time chairs, vice-chairs and members are in the restricted category under the legislation. Persons in the restricted category are entitled to engage in specified political activities: they may vote in an election, contribute to a political party or candidate, be a member of a political party, and attend all-candidates meetings. Full-time members are not permitted to post candidate/party signs on their lawns, to attend riding association meetings, to canvass or campaign for a candidate, or to solicit funds for a candidate/party. There is a partial exception with respect to municipal elections: full-time members wishing to campaign on behalf of a municipal candidate, or wishing to be a candidate in a municipal election or to hold municipal office, may apply to the Lieutenant Governor in Council for approval and a leave of absence.

89. Full-time members are prohibited from commenting publicly (other than in a hearing or decision) on an issue related to tribunal responsibilities if the issue is dealt with in the policies of a federal or provincial party or the public position of a candidate.

90. Part-time members are not in the restricted category under the statute and, accordingly, have wider rights to engage in political activity, including the right to attend riding association meetings, to post election signs and to campaign or canvass on behalf of a candidate/party.

91. Part-time members can solicit funds on behalf of a candidate/party or run as candidates in a provincial and federal election but only while on a leave of absence granted expressly for political activity by the Lieutenant Governor in Council.

92. Part-time members, as unrestricted Crown employees, can make public comment on issues within tribunal responsibility in certain limited circumstances. (See Political Activity Rights for Crown Employees (*Appendix D*). The comments must not be made in the workplace. The comments must not conflict with the interests of the Crown unless the member is on a leave of absence granted expressly for political activity. Further, the comments must not be associated with the member’s position at the tribunal, except to the extent necessary to identify the member’s position and work experience for campaign purposes.

Post-Term Responsibilities

93. An adjudicator is prohibited from appearing 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, whichever is later.

94. An adjudicator who, having ceased to be a full-time member of the tribunal, continues on a per diem basis in respect of certain ongoing proceedings, shall continue to be bound by the restrictions and obligations of these rules, including the responsibility of maintaining confidentiality.

95. An adjudicator shall not take improper advantage of past office after ceasing to be a member of a tribunal.

Appendix A

Establishment and Administration of Agencies: A Manager's Guide

Conflict of Interest

The provision of guidance regarding conflict of interest is a normal practice in both the public and the private sector. However, for the government and any organization associated with it, an understanding of conflict-of-interest rules is especially important.

PRINCIPLES

Three key principles need to be recognized.

1. A member of an agency's managing board should not use information obtained as a result of his or her appointment for personal benefit.
2. A conflict-of-interest situation should be declared at the earliest opportunity.
3. No member should divulge confidential information obtained as a result of his or her appointment or election unless legally required to do so.

DEFINING CONFLICT OF INTEREST

Conflict of interest normally relates to a direct pecuniary interest of the appointed or elected member, either personally or through the member's family.

Direct pecuniary interest should be interpreted as an individual interest rather than one that is common to a class of persons. That is to say, it is not considered a conflict of interest if a large segment of the population, including the member, will benefit from a decision to which the member is a party. However, there is conflict of interest if the member or his or her immediate family could benefit personally from a decision while a larger group of people could not.

Immediate family should be interpreted to include the spouse, parents or children of the appointed or elected member.

SUGGESTED PRACTICES

Declaration of conflict

Any member of an agency who has a conflict of interest in a matter under consideration by the agency should disclose the nature of that conflict to the head or chairperson at the first opportunity and refrain from any further participation in the discussion.

The chairperson or designate should record in the minutes any declared conflict of interest on the part of the member and notify the minister of the nature of the conflict.

Quorum

When a declaration of conflict of interest has been made, the chairperson should ensure that a quorum - a majority of members unless the constituting instrument makes any other specific provisions - remains to consider and make a recommendation on the matter.

If there is an insufficient number of remaining members to make a quorum, the chairperson should refer the matter to the responsible minister.

The minister should deal with the composition of the board so as to enable a decision by the board on the matter in question. This may entail making a temporary appointment or deferring the matter to a subsequent meeting when a sufficient number of members will be present.

Penalties for noncompliance

If a member fails to declare a conflict of interest - unless this failure is the result of a bona fide error in judgment - the minister, with the approval of the Lieutenant-Governor, may revoke the appointment and appoint a new member to the agency in question.

If the contravention has resulted in a personal gain, or in a financial loss to the agency, the government may disqualify the person from further government appointments and require restitution of the funds in question.

RESPONSIBILITIES

Conflict of interest is primarily a matter of personal responsibility and integrity.

However, both ministers and agency heads are responsible for ensuring that all the appointed and elected members of every agency are made aware of the need to declare any conflicts of interest and of the penalties that may result from failure to do so.

Ministers are specifically responsible for taking any necessary actions when either there are insufficient remaining members to form a quorum or any penalty for noncompliance needs to be considered.

Agency heads are specifically responsible for recording any conflicts and keeping the minister informed of such matters.

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Appendix B

(Sample only)

UNDERTAKING

TO: _____
(Name of Tribunal)

I, _____ have been appointed as a member of the
_____ (the "Tribunal"), pursuant to the
provisions of the _____ (R.S.O. 1990, c.),

and have read and understand the Code of Professional and Ethical
Responsibilities established by the Tribunal for its members.

I undertake to comply fully and to the best of my ability with the
provisions of the Code, and any subsequent amendments.

I understand that my failure to comply with the Code in a
substantial way may result in a recommendation of revocation
of my appointment.

Dated at _____, this _____ day of _____,
199__ .

Appendix C

Guidelines on Decision Quality

The following guidelines are established by the _____ (the “tribunal”) as general indicators of a quality decision. Adjudicators should have reference to the guidelines in drafting reasons for decisions.

1. A decision should be written in clear and concise language, without undue use of complicated language, repetitive wording, legal terms or jargon.
 2. At the outset, a decision should:
 - identify the parties and the application(s) before the tribunal;
 - state the issue(s) in dispute, the question(s) to be decided and the authority of the decision-maker to decide.
 3. The findings of fact and credibility should be clearly stated, with reference to the evidence relied upon to make those findings.
 4. The decision should briefly and fairly summarize the relevant submissions of the parties on issues of law, and should not overlook any submissions which are reasonably supported by the facts.
 5. The reasoning of the panel should be set out in a straightforward manner, avoiding confusing or lengthy discussion of irrelevant issues.
 6. The decision should specifically refer to, and cite, the statutory law upon which it relies, including excerpts when the precise language of the statute is important.
 7. The decision must conform with applicable statutory and common law, and should, whenever possible, contribute appropriately to the development of an internally coherent body of tribunal jurisprudence.
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Appendix D

Political Activity Rights for Crown Employees

Political activity rights for Crown employees previously outlined in sections 11 to 16 of the Public Service Act have been amended by Part III of the Public Service and Labour Relations Statute Law Amendment Act (Bill 117). Part III replaces those sections of the PSA. These provisions cover all Crown employees.

What has Changed?

For the first time political activity is defined in the legislation. This should help reduce confusion about what is or is not covered by the law. The new legislation also provides all Crown employees with the right to grieve any discipline, adverse consequence or threat of discipline or adverse consequence resulting from the lawful exercise of political activity rights or from the choice not to exercise those rights.

As was the case under the previous Public Service Act provisions, there is a two tier system of rights – restricted and unrestricted. Fewer employees fall into the restricted tier and the political activity rights of both tiers are expanded.

What is Political Activity?

Political activity includes:

- activity in support of or in opposition to federal or provincial political parties;
- activity in support of or in opposition to candidates in federal, provincial or municipal elections;
- public comment outside the scope of one's duties about things which relate directly to those duties and are dealt with in the positions or policies of a federal or provincial political party or in the publicly expressed positions of a candidate in a federal or provincial election.
- Political activity also refers to nomination or candidacy for political office at any level of government.

Who is in the Restricted Category?

The restricted category includes deputy ministers and those with deputy rank or status, members of the OPS Senior Management Group, full time heads, vice-chairs and members of agencies, boards and commissions and commissioned officers and detachment commanders of the OPP. Note: a decision has been made to amend the definition of the restricted category to include employees classified as Crown Counsel 5's. These employees were included in the restricted category under the old legislation and should have been included when the legislation was amended.

Who is in the Unrestricted Category?

All other Crown employees are in the unrestricted category including the remainder of the OPP.

General Restrictions

All employees continue to be precluded from engaging in political activity in the workplace or public political activity while in uniform. All Crown employees are prohibited from engaging in political activity that conflicts with the interests of the Crown except employees in the unrestricted category who are on an unpaid leave of absence granted for political activity purposes. The details of the conflict of interest rules for

public servants are in section 15 of the Public Service Act Regulation 977. No employee can associate his/her position with political activity except while on an unpaid leave of absence for political activity purposes and then only to the extent necessary to identify their position and work experience for campaign purposes. Employees will continue to be governed by the oath of secrecy at all times.

Right Not to Engage in Political Activity

The new provisions entitle Crown employees to decline to engage in political activity and to protection for declining.

Municipal Elections

Rights of the Restricted Category

The only activities that restricted employees can engage in are those that are described in the legislation.

Employees in this category are entitled to engage in the following activities during a municipal election:

- vote
- contribute money to candidates
- attend all-candidates meetings
- seek and hold municipal office with the approval of their deputy minister. The approval is granted if the deputy minister is of the opinion that the political activity does not conflict with the interests of the Crown or interfere with the performance of the employee's duties.

Leaves of Absence

Restricted category employees may seek approval from their deputy minister for a leave of absence without pay for the purposes of seeking nomination, standing as a candidate or assisting in the campaign of another in a municipal election.

The leave will begin not earlier than 60 days prior to polling day and does not continue after polling day. Days are calendar days.

Rights of the Unrestricted Category

Unrestricted employees are entitled to engage in political activity without restriction subject only to the exceptions outlined in the legislation.

During a municipal election their rights include:

- voting
- contributing money to candidates
- attending all-candidates meetings
- posting election signs
- canvassing and soliciting funds

In addition to the general restrictions, section 28.4 of the legislation provides the following limitation:

- A Crown employee can seek nomination, stand as a candidate or assist in a municipal campaign without taking a leave and may hold the office as long as there is no conflict with interests of the Crown and the activity would not interfere with performance of the employee's duties.

Leaves of Absence

Unrestricted employees may seek a leave of absence without pay for the purpose of participating in a municipal election. The following outlines the rules related to those leaves of absence:

- Employees may request a leave of absence without pay for the purposes of being a candidate or campaigning on behalf of another in a municipal election. The leave will begin not earlier than 60 days prior to polling day and does not continue after polling day. Days are calendar days.
- The employee must apply for the leave of absence to his/her deputy minister who shall grant the application.

Resignation & Reappointment Rights

A Crown employee who is elected to a municipal office which interferes with the performance of the employee's duties or is in conflict with the interests of the Crown shall immediately resign his or her position. An employee who has resigned has the right to be reappointed to any vacant position in the public service for which they are qualified within 3 years of resigning to hold municipal office. Application for reappointment must be made within 12 months after ceasing to be an elected public official. The rights of employees to be placed into vacant positions under a collective agreement or other regulations prevail over the rights to reappointment under this subsection of the legislation.

Provincial and Federal Elections

Rights of the Restricted Category

Members of the restricted group cannot at any time seek office, be a candidate or campaign on behalf of a candidate in a provincial or federal campaign. They can engage in the following activities:

- vote in federal or provincial elections,
- contribute money to political parties and candidates,
- be a member of a federal or provincial political party,
- attend all-candidates meetings.

Rights of the Unrestricted Category

- voting in federal and provincial elections,
- contributing money to political parties and political candidates,
- being a member of a federal or provincial political party,
- holding office in a political party,
- attending all candidates meetings,
- posting election signs,
- attending riding association meetings, and
- canvassing and soliciting funds.

The exceptions to unrestricted political activity for provincial and federal elections are outlined in section 28.1 and 28.4 of the legislation. They are:

- May be a candidate in a federal or provincial election only while on leave of absence granted for political activity.
- If the Crown employee supervises other employees or his/her duties include dealing with members of the public who view these employees as having some power over them, then he/she can solicit funds on behalf of a political party or candidate only while on leave of absence granted for political activity.
- A civil servant may only engage in public comment (as explained in the Questions & Answers that follow) while on leave of absence granted for political activity.

Note: This restriction on public comment applies only to civil servants rather than Crown employees. The reason is that under the previous Public Service Act provisions, it was only civil servants who were restricted from public comment. To extend this restriction to other Crown employees would have removed rights that they had under the old legislation. Civil servants are generally the classified staff of ministries while the term Crown employees refers to civil servants, public servants and employees of agencies, boards and commissions designated under the regulations to Bill 169.

Leaves of Absence

- Unrestricted employees may request a leave of absence without pay for the purposes of seeking nomination in a federal or provincial campaign. The leave shall not continue after the day the employee withdraws from or loses the nomination campaign, or if the employee wins the nomination, after polling day. The requirement to take a leave is not mandatory but employees may wish to be on a leave to pursue certain types of activities during their nomination campaign,

for example, wanting to make public comments that would require a leave, or wanting the freedom to be in conflict with the interests of the Crown.

- Unrestricted employees are required to be on a leave of absence without pay for the purposes of being a candidate. The leave will not begin earlier than the day on which the writ for the election is issued, i.e. the day the election is called, or later than the last day for nomination of candidates under the applicable statute and shall not continue after polling day.
- Unrestricted employees who supervise other employees or who have face to face contact with members of the public and are perceived by those members of the public as persons able to exercise power over them, must be on a leave of absence without pay in order to solicit funds for a federal or provincial party or candidate. The timing of the leave is the same as the leave for purposes of being a candidate.
- They may also request a leave to participate in a federal/provincial campaign in which they are not a candidate. The timing of the leave is the same as the leave for purposes of being a candidate.
- The employee applies for the leave of absence to his/her deputy minister who shall grant the application.

Resignation & Reappointment Rights

An unrestricted Crown employee who is elected in either a federal or provincial election shall immediately resign his/her position as a Crown employee. An employee who has resigned has the right to be reappointed to any vacant position in the public service for which they are qualified within 5 years of resigning. Application for reappointment must be made within 12 months after ceasing to be an elected public official. The rights of employees to be placed into vacant positions under a collective agreement or other regulations prevail over the rights to reappointment under this subsection of the legislation.

Continuous Service

The time an employee spends on a leave of absence without pay will not be counted in determining the length of an employee's continuous service, but service before and after will be deemed to be continuous for all purposes.

Penalty for Contravention of the Act

The legislation now permits a full range of possible disciplinary penalties including suspension and dismissal for contravention of the legislation. Dismissal was the only penalty under the previous Public Service Act provisions.

Grievance Rights

The legislation ensures that all Crown employees have the right to arbitration before a third party arbitrator concerning redress from reprisals or threats related to the exercise of political activity rights or refusal to do so.

- In the case of a Crown employee who is covered by a collective agreement, a grievance can be filed with the Grievance Settlement Board.
- In the case of a Crown employee who is a public servant and who is not covered by a collective agreement, a grievance can be filed to the Public Service Grievance Board in accordance with Regulation 977.
- In the case of a Crown employee who is not a public servant and who is not covered by a collective agreement, a grievance can be filed with the Ontario Labour Relations Board.

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