



**THE APPEAL COMMISSION**  

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THE WORKERS COMPENSATION ACT OF MANITOBA

# ***CODE OF CONDUCT***

***for***

# ***APPEAL COMMISSIONERS***

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## **1 Preamble**

- (1) The Appeal Commission's mandate is set out in its Mission and Values.

### ***Mission***

- (2) The Appeal Commission's mission is to ensure workers and employers continue to receive a full and impartial hearing of appeals in accordance with fairness and the rules of natural justice and that decisions of the Appeal Commission are a fair reflection of the facts of the case and the governing legislation.

### ***Values***

- (3) *Quality Assurance*

The Appeal Commission maintains a consistent and high level of professional conduct, knowledgeable decision-making, and accountability, while respecting differing and shared values and perspectives.

- (4) *Public Integrity*

The Appeal Commission is, and is seen to be, an independent body with integrity and a rational decision-making process.

- (5) *Responsive to Change*

The Appeal Commission evolves in a proactive and creative manner by assuring a process of consultation and consensus around desired change.

- (6) *Interdependence*

All appeal commissioners are committed to a high standard of professionalism in their duties to conduct fair and impartial hearings under *The Workers Compensation Act* and its regulations. As well as their individual responsibilities to become knowledgeable in the matters before them, the commissioners have individual and collective responsibilities to one another to ensure an atmosphere of mutual respect, tolerance of individual differences and opinions, freedom from pre-determined bias and a commitment to look for objective truth and sound decision-making.

- (7) *Respectful Work Environment*

Appeal commissioners interact with staff and colleagues in a manner which promotes mutual respect as well as clarity and understanding of respective roles.

## **2 General**

### ***Purpose of the Code***

- (1) The Appeal Commission is committed to foster and maintain 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 Appeal Commission's members.

### ***Application of the Code***

- (2) This Code applies to all members of the Appeal Commission 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 the Appeal Commission and where applicable, to the member's private life; and
  - (b) continue, with respect to issues of confidentiality, after a member ceases to be a member of the Appeal Commission.

### ***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 Appeal Commission'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 Appeal Commission and that inspires public confidence in the Appeal Commission.
  - (e) Members will fulfil 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 Chief Appeal Commissioner; or,
- (b) if the circumstance relates to the conduct of the Chief Appeal Commissioner, to the Deputy to the Minister responsible for *The Workers Compensation Act*, or the Deputy's designate.

### ***Discipline***

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

## **3 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 Appeal Commission;
  - (b) the statutes, regulations and rules of law that govern the Appeal Commission; and,
  - (c) the Appeal Commission's policies, procedures and guidelines.

### ***Professional Development***

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

### ***Conducting Hearings***

- (4) Members are fully prepared to conduct the business before them, by having reviewed and become familiar with all available 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 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”. If a party contacts a member of the hearing panel directly, the member should refer the party to the Registrar. 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 cause any person to think otherwise.
- (14) Members will decide each matter free from bias, prejudice and conflicts of interest. (See **6 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 reasons 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) 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 in public on the decision of another member, or of that member`s conduct during a hearing.

### ***Written Decisions***

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

## **4 Respect and Collegiality**

### ***Scope***

- (1) Members will treat other members, Appeal Commission 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 not engage in disrespectful behaviour toward any person. Disrespectful behaviour includes:
- (a) offensive or inappropriate remarks, gestures, material or behaviour;
  - (b) inappropriate jokes or cartoons including racial or ethnic slurs;
  - (c) grouping or isolating (for example, based on race or ethnic origin);
  - (d) yelling;
  - (e) belittling;
  - (f) reprimanding in front of others;
  - (g) aggressive or patronizing behaviour;
  - (h) embarrassing or humiliating behaviour;
  - (i) discrimination as defined under *The Human Rights Code*;
  - (j) sexual harassment;
  - (k) damaging gossip or rumours;
  - (l) unwarranted or unwelcome physical contact; and,
  - (m) covert behaviour, (for example, inappropriately withholding information, undermining, underhandedness).

### ***Conducting Hearings***

- (4) 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*.
- (5) Members will be sensitive to issues of gender, ability, race, sexual orientation, language, culture and religion which may affect the conduct of the hearing.

## **5 Confidentiality**

### ***General***

- (1) Members will respect the confidentiality of information received in the performance of their duties.

- (2) Members must take reasonable precautions to ensure the security of information in their possession. Unauthorized persons (including family members and members of the general public) must not have access, whether accidental or intentional, to the information. Members must securely dispose of information once a matter has concluded or return the information to the Appeal Commission for destruction.
- (3) A member's duty of confidentiality continues after that member ceases to be a member of the Appeal Commission.
- (4) In appropriate circumstances, members may disclose to the public general non-confidential information about the Appeal Commission and its procedures.

### ***Communication with Media***

- (5) Members must not communicate with the media regarding:
  - (a) a matter that is currently before the Appeal Commission; or,
  - (b) a matter that may end up before the Appeal Commission in the future.
- (6) Enquiries from the media or the public regarding any matter, including a matter that has already been decided will be referred to the Chief Appeal Commissioner or the Registrar.

## **6 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 the Appeal Commission 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 members 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 Appeal Commission 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. Where appropriate, such declarations may be made at the outset of the member's tenure.
- (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 Appeal Commission, both during and after their tenure on the Appeal Commission. This includes a prohibition against using such confidential information for their own private purposes.

***Notice to Chief Appeal Commissioner 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 Chief Appeal Commissioner.

***Where Member Has Not Been Assigned to the Hearing Panel***

- (11) If a member has a conflict of interest on a matter before the Appeal Commission, 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 Appeal Commission, the member will notify the other members of the hearing panel and the Chief Appeal Commissioner and withdraw from the panel immediately.
- (13) If a member assigned to the hearing panel subsequently becomes aware of a potential conflict of interest, the member will advise the Chief Appeal Commissioner immediately. The Chief Appeal Commissioner will consider the matter and decide on whether the member may continue on the panel. The Chief Appeal Commissioner 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 notify the other members of the hearing panel and the Chief Appeal Commissioner and withdraw from the proceeding immediately;
  - (b) if the member considers there is no conflict of interest or if there is an allegation of perceived conflict of interest, the member will notify the other members of the hearing panel and the Chief Appeal Commissioner immediately. The Chief Appeal Commissioner will consider the matter and decide on whether a conflict of interest exists. The Chief Appeal

Commissioner may ask the panel to hear submissions from the parties with respect to the alleged conflict before making a decision.

- (c) if the Chief Appeal Commissioner decides a conflict of interest exists, the member will withdraw from the panel; and
- (d) if the Chief Appeal Commissioner 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 Chief Appeal Commissioner.

***Conflicts of Interest Affecting the Chief Appeal Commissioner***

- (16) If the Chief Appeal Commissioner has a conflict of interest with respect to a matter in which the Chief Appeal Commissioner is not a member of the hearing panel:
  - (a) the Chief Appeal Commissioner will instruct Appeal Commission staff to direct all communications on the matter to a designated Presiding Officer;
  - (b) the Chief Appeal Commissioner will not have access to the Appeal Commission's files on the matter;
  - (c) the Chief Appeal Commissioner 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 Chief Appeal Commissioner will not participate in, or be present during, any panel consultations or procedural decisions on the matter.
- (17) If the Chief Appeal Commissioner is a member of the hearing panel, the procedures set out in (14) 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 Appeal Commission.

***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 as 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 Appeal Commission's practices, procedures and enabling legislation.

***Examples of Bias***

- (22) Some examples are:
- (a) 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.
  - (b) 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.
  - (c) An apprehension of bias may arise where a member expresses a predetermined view on an issue relevant to the proceeding.
  - (d) 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 Chief Appeal Commissioner at the earliest opportunity. After reviewing the circumstances the Chief Appeal Commissioner 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:
  - (a) If the member recognizes the existence of an actual bias or reasonable apprehension of bias, the member will immediately withdraw from the panel.
  - (b) 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:
    - (i) the panel may hear submissions from the parties with respect to the alleged bias, consider the submissions, and decide whether a bias exists;
    - (ii) 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;
    - (iii) if the panel decides a bias exists, the member will withdraw from the proceeding; and
    - (iv) if the hearing panel decides 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 section 44 of *The Civil Service Act* of Manitoba, 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 Appeal Commission.
- (29) Former members must not appear before the Appeal Commission 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.

## **7 Appeal Commission Resources**

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

## **8 Definitions**

- (1) In this Code, these definitions apply unless the context requires otherwise:
  - (a) "Appeal Commission resources" means the Appeal Commission's assets, equipment, facilities, personnel and other resources.
  - (b) "Code" means this Code of Conduct.

- (c) “former member” means a person who was a member of the Appeal Commission but is no longer a member.
- (d) “hearing” includes matters decided on written submissions alone.
- (e) “hearing panel” means the group of members responsible for hearing and deciding a matter.
- (f) “matter” means a case, hearing or other proceeding before the Appeal Commission.
- (g) “member” means any member of the Appeal Commission, including :
  - (i) the Chief Appeal Commissioner;
  - (ii) any Presiding Officer; and,
  - (iii) any Appeal Commissioner.
- (h) "party" or "parties" includes an individual or organization determined to be a person who has a direct interest as defined in Regulation 279/91, *Appeal Commission Rules of Procedure*, and representatives of individuals and organizations appearing before the Appeal Commission.
- (i) “representative” means any person authorized to represent a party to a matter before the Appeal Commission.
- (j) “Registrar” means the senior administrative person to the Appeal Commission;
- (k) “written decision” means any decision, order or ruling in writing including any supporting reasons.

December 18, 2014

The Appeal Commission:

R. Alan Scramstad  
Chief Appeal Commissioner