



**Alberta Human Rights
and Citizenship Commission**

**Code of Conduct
for
Alberta Human Rights & Citizenship
Commissioners**

Prepared by the Alberta Human Rights & Citizenship Commission
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INTRODUCTION

The people of Alberta have a right to fairness, competence and quality decision-making when they appear before a human rights panel.

This Code of Conduct for commissioners is based on the oath of office that commissioners take at the beginning of their term of office (refer to Appendix A). In that oath, commissioners commit themselves to act honourably and conscientiously, independently and without bias or conflict of interest.

When members of an administrative tribunal accept an appointment, they also accept limitations on some of their activities. Commissioners must not be biased, and must never create the appearance of bias.

This code is a living document, which will be amended from time to time as new concerns arise.

COMMENTARY

The primary objectives of this Code of Conduct are to:

- Provide guidance to commissioners on appropriate standards of conduct; and

- Provide anyone appearing before human rights panels an understanding of the standards of conduct that apply to commissioners.

The Code of Conduct does not stand alone. It is complementary to and supports the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A.2000, c.H-14, (the “Act”) and the Commission’s bylaws and procedures.

The Code of Conduct constitutes an important element of the accountability framework within which the panels operate. The Code is founded on the recognition that the conduct of commissioners must be governed by the requirements of fairness, integrity and independence in decision-making.

This Code articulates principles derived in part from the goals of administrative law. The principles also address the vital matters of collegial responsibility, personal conduct, bias, conflict of interest and obligations upon the expiry of a commissioner’s term.

SUMMARY OF PRINCIPLES

1. Fairness

Commissioners should ensure that proceedings are conducted in a manner that is transparent and fair.

Commissioners should ensure that all parties understand the hearing process, even if they are represented.

Commissioners must 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 they are biased in favour of one of the parties.

2. Panel Process

Commissioners should communicate clearly during hearings so that all parties understand the process, whether or not they are represented.

Commissioners will make all reasonable efforts to ensure the proceedings will not impede the parties.

3. Timeliness

Commissioners must:

Be diligent in fulfilling all their commitments to the work of the Commission.

Keep hearings moving at a reasonable pace, without sacrificing fairness, and prevent parties from repeating themselves or introducing irrelevant material.

Issue their decisions within 60 days of the hearing, unless there is a notification advising of an extension of the time period.

4. Quality and consistency

Commissioners should be fully prepared for a proceeding.

Commissioners ensure that their panel decisions meet Commission standards for decision quality.

Commissioners recognize the importance of consistency in the exercise of their independent decision-making authority.

5. Expertise

Commissioners have a duty to maintain and advance their professional competence.

It is up to each commissioner to meet a high standard of decision-making and writing skills and to stay knowledgeable about the field of human rights law.

6. Minimizing costs

Parties are encouraged to resolve issues before them without a formal hearing.

Commissioners ensure that proceedings are streamlined to the extent possible without sacrificing fairness.

7. Courtesy and integrity

In a panel hearing, commissioners ensure that each person who appears before them is treated with dignity and respect.

Commissioners must not tolerate unprofessional or contemptuous language or conduct among the parties, witnesses or counsel.

Within the community and business world, commissioners should ensure that their actions and comments maintain and enhance the integrity of the commission and the decision-making process.

8. Collegiality

Commissioners should foster a collegial working environment. They nurture good working relationships with other commissioners by encouraging the sharing of experiences, knowledge and views.

9. Impartiality

Commissioners must 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 they are biased in favour of one of the parties.

In the conduct of panel proceedings, commissioners' decisions are based on an application of the relevant law to the evidence presented in each case and not on irrelevant considerations.

Commissioners must avoid conflicts of interest.

10. Limitations on outside activity

Commissioners must avoid any outside activities that could create a conflict of interest or reasonable appearance of bias.

11. Duty to report

When commissioners find themselves in a situation that could affect their ability to be impartial or could harm the commissioner's reputation, they have a duty to report this potential conflict immediately to the chief commissioner.

12. Post-service conduct

After ceasing to be a commissioner, a former member will:

Abide by the commission's rules governing post-service conduct,

Not take improper advantage of past office,

Not appear before a human rights panel as a representative, expert witness or consultant for a 24 month period when that appearance would compromise the ability of the panel to fulfill its obligation to provide services and perform statutory functions in an impartial, lawful, unbiased and just manner, and

Continue to observe obligations of confidentiality after leaving office.

Principles of Conduct

1. FAIRNESS

Commissioners should ensure that proceedings are conducted in a manner that is transparent and fair.

Commissioners should ensure that all parties understand the hearing process, even if they are represented.

Commissioners must 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 they are biased in favour of one of the parties.

Human rights panels have a duty to act fairly.

At a minimum, fairness refers to a person's right to know the case against them, the right to respond and the right to an unbiased hearing, conducted in accordance with the principles of natural justice.

Fairness requires that the process be easily seen and understood.

The commissioner should ensure that the parties understand the process and its potential implications for them. While a commissioner cannot act as counsel to the unrepresented party or parties, it is appropriate to explain clearly the procedure to be followed.

Transparency also requires that a panel's decisions be clear. Whether the decision is oral or written, brief or comprehensive, the parties should be able to understand the panel's reasons and the logic used in making the decision.

Fairness requires that commissioners must be impartial and independent of any improper influences.

Commissioners should never be in a conflict of interest or demonstrate bias.

A party's claim of bias on the part of a decision-maker may form the grounds for an application for judicial review or an appeal on the basis that the party's rights to natural justice have been infringed.

Some of the situations in which bias or the apprehension of bias can occur are outlined below.

Relationship Bias

There may be actual bias or an apprehension of bias where there is a previous or existing relationship between a panel member and someone involved in the proceeding.

Informational Bias

There may be an apprehension of bias where a commissioner demonstrates possession of information gained through prior involvement with a person or an issue and that information is relevant to the proceeding.

Attitudinal Bias

An apprehension of bias may arise in a situation where a commissioner has expressed a general view about legislation, a policy or an issue relevant to the proceeding before the panel.

Procedural Bias

The manner in which proceedings are conducted may reveal actual bias or give rise to an apprehension of bias. The commissioner's role in the hearing process is that of an impartial decision-maker. The parties' confidence in the commissioner's ability to maintain this role and conduct a fair hearing is eroded when the commissioner shifts from neutral role to one that intervenes in the adversarial process and that may be perceived as partisan.

Where the question of bias comes to the attention of a commissioner prior to the hearing, he or she should bring this to the attention of the chief commissioner. After reviewing the circumstances, the chief commissioner may decide whether the commissioner should continue to be assigned to the hearing.

After the hearing commences, where a question of bias arises, it is the responsibility of the panel to decide the question of bias.

In a case where a sitting commissioner realizes that there may be a question of bias, the commissioner should give very serious consideration to withdrawing, unless he or she is satisfied either that the allegation is without foundation or is being made frivolously or with an improper purpose.

If the commissioner does not withdraw, the question of bias must be disclosed, first to any other panel members, and then to the parties in the hearing. The panel may hear submissions on the question, and determine whether there is an actual bias or perception of bias, and determine the consequence if any are found.

A conflict of interest arises when a commissioner's private or personal interest takes precedence over or competes with their responsibilities as an appointed commissioner.

Conflict of interest may be real, perceived or potential.

Financial Bias

Financial interests may lead to conflict of interest when a commissioner or related person is in a position to, either directly or indirectly:

Personally benefit financially or avoid financial loss as a result of an action or decision in addressing a matter before the panel, or

Use for personal benefit information that has been obtained in the course of conducting proceedings in a matter before the panel.

Conflict of interest may also occur in situations involving accepting gifts and hospitality. Even circumstances involving trivial gifts may give rise to a perception of conflict and, consequently, prudence would counsel against acceptance.

2. PANEL PROCESS

Commissioners should communicate clearly during hearings so that all parties understand the process, whether or not they are represented.

Commissioners will make all reasonable efforts to ensure the proceedings will not impede the parties.

Panel processes should be as informal and non-confrontational as the law and subject reasonably permit.

Commissioners should consider the atmosphere of the room and general comfort.

An interpreter may be provided where required.

3. TIMELINESS

Commissioners must:

Be diligent in fulfilling all their commitments to the work of the Commission.

Keep hearings moving at a reasonable pace, without sacrificing fairness, and prevent parties from repeating themselves or introducing irrelevant material.

Issue their decisions within 60 days of the hearing, unless there is notification advising of an extension of the time period.

One of the reasons human rights panels were created was to provide the public with a more expeditious alternative to the courts in obtaining everyday justice.

Commissioners must listen carefully to the views and submissions of the parties and their representatives, and keep the hearing flowing at a reasonable pace.

The panel chair sets out the schedule the panel intends to maintain and abides by this schedule as much as possible. This includes establishing starting times, daily finishing times, timing and duration of lunch and other breaks, number of hours set aside for the hearing, adjournments and the order in which evidence is to be heard.

Written reasons should be prepared without undue delay so that the parties are not kept waiting. Ideally, the panel should reach a decision, prepare its reasons, and issue the final decision within 60 days.

4. QUALITY AND CONSISTENCY

Commissioners should be fully prepared for a proceeding.

Commissioners ensure that their panel decisions meet Commission standards for decision quality.

Commissioners recognize the importance of consistency in the exercise of their independent decision-making authority.

Parties have a right to expect that the panel is prepared and competent to hear the matter before them.

Commissioners should make every effort to be familiar with any documentation filed before the proceeding. Where appropriate, commissioners should make a preliminary attempt to identify the relevant issues prior to the hearing without prejudging those issues and without closing their minds to the fact that issues may change or evolve during the hearing.

In panel hearings, the presiding commissioner must maintain control over the proceedings to ensure that parties have an equal and fair opportunity to present their case, that the hearing unfolds promptly and efficiently and that the public interest is well served.

Due weight should be given to previous panel decisions and the need for a degree of consistency in the interpretation of the law. This means that similar fact situations should, over time, lead to similar results.

While it is important for a panel to have procedures that promote consistency, these should not constrain independent decision-making. Commissioners should also be responsive to the facts of the individual case.

In reaching decisions, commissioners are not obliged to follow the precedents established in previous panel decisions. Nonetheless, where previous decisions are relevant and are not followed, the decision should explain the reason for the departure clearly.

5. EXPERTISE

Commissioners have a duty to maintain and enhance their professional competence.

It is up to each commissioner to meet a high standard of decision-making and writing skills and to stay knowledgeable about the field of human rights law.

Human rights panels have significant responsibilities to the parties, the public, and the administration of the social justice system. Panel members are entrusted with the power to make decisions that have a significant impact on people's lives.

Commissioners need to develop and maintain specialized skills as well as knowledge of adjudication and procedural issues, relevant case law, technical issues and panel rules of practice and procedure. Commissioners should take steps to stay current on emerging issues, trends, and judicial decisions pertaining to the area of human rights. They may review relevant case law and attend training courses offered by the commission or through other administrative-tribunal organizations.

Commissioners should work together with the chief commissioner to identify areas for their professional development.

6. Minimizing costs

Parties are encouraged to resolve issues before them without a formal hearing.

Commissioners ensure that proceedings are streamlined to the extent possible without sacrificing fairness.

The adjudicative process should be both efficient and fair. Parties before a panel should have their problems resolved fairly, at the earliest possible time, and at the least possible cost. By minimizing costs, commissioners serve parties, the commission and the public in general.

Adjudication is more efficient and less costly when the parties are able to reduce the number of issues to be adjudicated. Commissioners can reduce the use of resources and enhance the quality of panel processes by:

Holding pre-hearing conferences or using other dispute resolution processes,

Shortening hearings by identifying preliminary issues and addressing or resolving them early in the process,

Minimizing the number of adjournments,

Being prepared for pre-hearings and hearings, and

Issuing oral decisions where appropriate.

Over time, commissioners may find opportunities to streamline Commission rules and procedures based on their experience. These observations should be communicated to the chief commissioner.

7. COURTESY AND INTEGRITY

In a panel hearing, commissioners ensure that each person who appears before them is treated with dignity and respect.

Commissioners must not tolerate unprofessional or contemptuous language or conduct among the parties, witnesses or counsel.

Within the community and business world, commissioners should ensure that their actions and comments maintain and enhance the integrity of the commission and the decision-making process.

Standards for conduct within the panel hearing

Commissioners should conduct their hearings with respect and professionalism for all the participants.

Commissioners should limit comments at the hearing to what is necessary to make the parties comfortable, as these could otherwise be perceived or interpreted as biased, derogatory or offensive.

Standards for conduct outside the panel hearing

Commissioners should not engage in any conduct that may, or may be perceived to, constitute an abuse of their office or to confer an improper benefit of the office. Examples include making use of agency resources for personal purposes or using the prestige of office for improper personal gain.

Panels are usually entrusted with personal, confidential and important information that should not be divulged outside legal requirements. In order to avoid inadvertent disclosure of any such information, and to avoid the appearance of having done so, commissioners should take care to make sure they adhere to the confidentiality requirements of the Commission. Commissioners should ensure discussion of such information does not occur in a public place where it can be overheard. Any inquiries or questions from the media should be referred to the panel chair.

8. COLLEGIALITY

Commissioners should foster a collegial working environment. They nurture good working relationships with other commissioners by encouraging the sharing of experiences, knowledge and views.

Adjudication in the human rights panel process relies on the fact that the commissioners have expertise in human rights. This expertise is enhanced by ongoing collegial discussion and exchanges of views and information among commissioners as they carry out their daily responsibilities.

Commissioners conducting a hearing are obliged to base their decision only on the evidence, law and policy presented in the course of that hearing. They may nevertheless discuss general policy and law issues with their colleagues to improve their understanding of the field or their hearing skills, and to enhance the ability of the commission to release consistent and well-reasoned decisions.

Commissioners should foster effective relations with commission hearing staff and should recognize the contributions of staff to the work of the Commission.

Commissioners should demonstrate respect for the views and opinions of colleagues, and should not criticize their colleagues in public.

Commissioners should be available for commission meetings as well as meetings with colleagues on panel business. Commissioners should try to be available for mentoring or other similar arrangements to assist new commissioners in their orientation and training.

A commissioner is required to follow the procedures in the Procedural Manual for Panel Hearings.

A commissioner should immediately bring to the attention of the chief commissioner any circumstance or change in circumstance relative to that commissioner that may have an adverse impact on the public perception.

9. IMPARTIALITY

Commissioners must 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 they are biased in favour of one of the parties.

In the conduct of panel proceedings, commissioners' decisions are based on an application of the relevant law to the evidence presented in each case and not on irrelevant considerations.

Commissioners must avoid conflicts of interest.

Commissioners must 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 they are biased in favour of one of the parties. It is important that there be no lack of public confidence in the impartiality of the panel. In determining whether a tribunal was impartial, the court would look at the impression that would be given to other people. If the reasonable person would think that in the circumstances there was a real likelihood of bias, then the panel chair or member must not sit on the panel. There must not be circumstances where a reasonable person would think it likely or probable that the panel chair or member would favour one side over the expense of the other.

In the conduct of panel proceedings, commissioners' decisions are based on an application of the relevant law to the evidence presented in each case, and not on irrelevant considerations. The panel is not bound by the strict rules of evidence and may admit hearsay evidence if it is relevant to the matter before it. The panel will give it whatever weight is appropriate in the circumstances.

The panel obtains information in the best way it can. The panel will give a fair opportunity to those who are parties to the hearing for balancing, correcting, contradicting and cross examining, where possible, any relevant evidence.

Commissioners must avoid conflicts of interest. The law is clear that anyone with a personal or pecuniary interest in the outcome of the case must not sit as a panel chair or panel member.

10. LIMITATIONS ON OUTSIDE ACTIVITY

Commissioners must avoid any outside activities that could create a conflict of interest or reasonable appearance of bias.

When members of an administrative tribunal accept an appointment, they also accept limitations on some of their business, community or political activities.

In the case of a political activity, commissioners must consider whether an independent, reasonable person would think that the activity would affect the ability of the commissioner to be impartial and objective.

This may depend on the type of political activity; the level of involvement of the official in this activity; the nature of the organization where the person holds office; the position and level of the public office holder; and the ability of the commissioner to continue to fully carry out their work with the Commission.

Potential conflicts or perception of bias arising from outside activities should be discussed with the chief commissioner and counsel for the panel.

11. DUTY TO REPORT

When commissioners find themselves in a situation that could affect their ability to be impartial or could harm the commission's reputation, they have a duty to report this potential conflict immediately to the chief commissioner.

If they feel they may be in a conflict of interest for any reason, or any party attempts to influence their decision, commissioners must discuss the situation with the chief commissioner and accept the chief commissioner's direction.

If they feel that they are under undue influence from any source that could affect their ability to make an independent decision, commissioners must report this to the chief commissioner and the Lieutenant Governor in Council.

12. POST-SERVICE CONDUCT

After ceasing to be a commissioner, a former member will:

Abide by the commission's rules governing post-service conduct,

Not take improper advantage of past office,

Not appear before a human rights panel as a representative, expert witness or consultant for a 24 month period when that appearance would compromise the ability of the panel to fulfil its obligation to provide services and perform statutory functions in an impartial, lawful, unbiased and just manner, and

Continue to observe obligations of confidentiality after leaving office.

It is recognized that commissioners are appointed part-time and for limited terms. Where a former commissioner engages in post-appointment activity that may involve appearances before human rights panels, caution must be exercised in ensuring that such activity in no way compromises the integrity of the Commission or raises an apprehension of bias.

A commissioner must comply with the procedures established for the Commission and should consult with the chief commissioner for guidance on appropriate conduct after the expiry of the commissioner's term. A former commissioner is not normally permitted to appear before the panel as a representative, expert witness or consultant until a minimum of 2 years after ceasing to be a commissioner or after the release of any outstanding decisions, whichever is later.

Appendix A: Alberta Human Rights and Citizenship Commissioner Oath of Office

I, _____, a Commissioner of the Alberta Human Rights and Citizenship Commission appointed pursuant to section 14 of the *Human Rights, Citizenship and Multiculturalism Act* of the City of _____ in the Province of Alberta MAKE OATH AND SAY THAT:

Pursuant to the *Human Rights, Citizenship and Multiculturalism Act* and the duties of a Commissioner provided in the *Act* and Bylaws I will exercise all my powers, duties and functions honourably, faithfully and conscientiously to the best of my ability.

I will exercise my duties in an impartial manner and without bias on the basis of the facts and in accordance with procedural fairness and the rules of natural justice.

I will exercise my duties in an independent manner and will not be subject to any restrictions, improper influences, inducements or pressure either direct or indirect in any capacity from any source.

Where I find myself to be in a conflict of interest for any reason, I will so advise the chief commissioner. Where the conflict of interest arises out of a panel hearing I will withdraw from the panel or where the conflict arises out of discussion at a meeting of commissioners, I will abstain from voting on the issue.

Where any influence or pressure is brought to bear on me, I shall so inform the Lieutenant Governor in Council who has appointed me as a Commissioner.

Sworn/Affirmed Before Me at the City)
of _____ in the Province)
of Alberta this _____ day of _____) _____ Name
2002)

A Commissioner for Oaths in and for
the Province of Alberta

Appendix B: Guidelines on Decision Quality

The Alberta Human Rights and Citizenship Commission accepts the following guidelines as general indicators of a quality decision.

Human rights panel members will:

Write in clear and concise language, without using complicated language, repetitive wording, or without using legal terms unless necessary.

Begin by identifying the parties and state the issues in dispute, the questions to be decided, the authority the *Act* gives to the panel to decide these questions.

State their findings of fact and credibility clearly, referring to the evidence they used to make each of these findings.

Briefly and fairly summarize the relevant submissions of the parties on issues of law, not overlooking any submission that can reasonably be seen as supported by the facts.

Set out the reasoning of the panel in a straightforward way, avoiding irrelevant issues.

Ensure that the panel decision conforms to the *Alberta Human Rights, Citizenship and Multiculturalism Act* and Bylaws.

Refer to and cite the statutory law on which their decision relies, quoting excerpts when the exact wording of the statute is important, and

Ensure that their decisions contribute to the development of an internally consistent body of precedent cases from the commission.