

**CODE OF CONDUCT
FOR MEMBERS OF THE
CANADIAN HUMAN RIGHTS TRIBUNAL**

PREAMBLE

WHEREAS the *Canadian Human Rights Act* provides for the establishment of a Canadian Human Rights Tribunal made up of a Chairperson, a Vice-chairperson and an additional number of appointed members, and WHEREAS such members of the Tribunal recognize both the importance of the protection of human rights and the importance of the integrity, impartiality and independence of the Canadian Human Rights Tribunal, a Code of Conduct governing Tribunal Members is hereby established to ensure that the following principles are respected.

APPLICATION

In the application of these principles, it must be recognized that members of the Tribunal have been appointed because of their experience, expertise and interest in, and sensitivity to, human rights. It must also be recognized that, in some cases, these are part-time appointments and that part-time members will at the same time continue with their full-time occupation and activities. Finally, it must be recognized that the Chairperson is the chief executive officer of the Tribunal, and has the authority under the *Canadian Human Rights Act* to recommend that the Minister of Justice take remedial or disciplinary measures in respect of a Member.

The foregoing is taken into account in the procedures to provide safeguards for the decision-making of the Tribunal, set out below.

INTERPRETATION

In this Code of Conduct:

"Act" means the *Canadian Human Rights Act*, and, in respect of the proceeding, also includes the *Employment Equity Act*, where Members have been appointed under the latter statute;

"Chairperson" means the Chairperson of the Canadian Human Rights Tribunal established pursuant to s. 48.1 of the *Canadian Human Rights Act*;

"Commission" means the Canadian Human Rights Commission established pursuant to section 26 of the *Canadian Human Rights Act*;

"Member" is a person appointed to the Canadian Human Rights Tribunal, on a full time or part time basis, pursuant to s. 48.1 of the *Act*;

"Member's corporate interests"

(i) in the case of a part-time Member, are based on the activities and objectives of the corporation, partnership, association or other type of entity with which the Member is employed or affiliated, including any organizations closely related to it such as subsidiaries.

(ii) in the case of a full-time Member, are based on the activities and objectives of the corporation, partnership, association or other type of entity with which the Member was previously employed or affiliated, including any organizations closely related to it such as subsidiaries.

"Member's private interests"

(i) in the case of a part-time Member, means regular employment, assets, income, liabilities, and activities other than work for the Tribunal; and

(ii) in the case of a full-time Member, means assets, income, liabilities and activities other than work for the Tribunal.

"Minister" for the purposes of the *Employment Equity Act*, means the member of the Queen's Privy Council for Canada so designated by the Governor in Council pursuant to s. 3 of said *Act*.

"Participant" in respect of a proceeding, includes a party, counsel to a party, or witness.

"Party"

in respect of a proceeding pursuant to the *Canadian Human Rights Act*, means the complainant, the person against whom the complaint was made or the Commission, and may include any other interested party given notice pursuant to s. 50 of the *Canadian Human Rights Act*.

in respect of a proceeding pursuant to s. 28 of the *Employment Equity Act*, includes the Commission and the employer;

in respect of a proceeding pursuant to s. 39 of the *Employment Equity Act*, includes the Minister and the employer.

"Proceeding" means:

- a) an inquiry under s. 50 of the *Canadian Human Rights Act*;
- b) a request or application under s. 28 of the *Employment Equity Act*; or
- c) a review under s. 39 of the *Employment Equity Act*;

"Registrar" means the Registrar of the Canadian Human Rights Tribunal referred to in s. 48.8 of the *Canadian Human Rights Act*;

"Tribunal" means the Canadian Human Rights Tribunal established pursuant to s. 48.1 of the *Canadian Human Rights Act* and includes any statutory functions granted to it by the *Employment Equity Act*.

PRINCIPLES

All Members of the Canadian Human Rights Tribunal, including the Chairperson and the Vice-Chairperson, are Governor in Council appointees and as such are subject to the Principles of the *Conflict of Interest and Post-Employment Code for Public Office Holders*, set out below (hereinafter *Public Office Holder Code*). Full-time Members are also subject to the Compliance Measures contained in the *Public Office Holder Code*.

1. **Ethical Standards**

Members shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of the Tribunal are conserved and enhanced.

2. **Public Scrutiny**

Members have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

3. **Decision-Making**

Members, in fulfilling their official duties and responsibilities, shall make decisions in the public interest within the meaning of the *Act* and with regard to the merits of each case.

4. **Private Interests**

Members should not have private interests, other than those permitted pursuant to the *Public Office Holder Code* and this Code of Conduct, which would be affected particularly or significantly by decisions or actions in which they participate.

5. Public Interest

On appointment to office, and thereafter, Members shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such conflict does arise between the private interests of a Member and the official duties and responsibilities of that Member, the conflict shall be resolved in favour of the public interest.

Members shall only accept assignments or appointments to individual cases where the Member does not have a real, potential or apparent conflict of interest. If, in the course of a proceeding, such a conflict does arise between the private interests of a Member and the official duties and responsibilities of that Member, the conflict shall be resolved in a favour of the public interest.

6. Gifts and Benefits

In the performance of their duties, Members shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the Member.

It is recognized that there may be some social functions to which Members are invited by virtue of their official duties. However, Members must exercise prudence in accepting such invitations, and if in doubt, they should consult the Chairperson before accepting the invitation, as well as the Ethics Commissioner in such case as it might give rise to a concern under the *Public Office Holder Code*.

A disclosure to the Ethics Commissioner and a Public Declaration is required, in accordance with the *Public Office Holder Code*, where the total value of gifts, hospitality or other benefits exceeds \$200.

Nothing in this section permits the acceptance of gifts, hospitality or benefits which could influence, or reasonably give the appearance of influencing, a Member in the discharge of his or her official duties. Such gifts, hospitality or benefits shall be declined and the offer thereof shall be reported to the Chairperson or Registrar.

7. Preferential Treatment

Members shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any persons by the Tribunal.

In particular, Members shall not assist private entities or persons in their dealings on human rights or employment equity issues where this would result in preferential treatment to any person by the Tribunal, the Commission or the Minister.

8. Insider Information

Members shall not knowingly take advantage of, or benefit from, information obtained in the course of their official duties and responsibilities, and that is not generally available to the public.

9. Government Property

Members shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

No member shall use or sanction the use of the Tribunal's premises, equipment, supplies, services or "coat of arms" logo for personal or non-official purposes, without the express permission of the Registrar.

10. Post-Appointment

Members shall not act, after their term has expired, in a way that takes improper advantage of their previous office.

In particular, no former Member shall appear as counsel for a party before the Tribunal for one year following the later of (a) the end of the Member's term; (b) the discharging of the member's last adjudicative function under the Act.

11. Fundraising

Members are not to personally solicit funds from any person, group, organization or corporation where such fundraising could place them in a position of obligation incompatible with their public duties.

REPORTING

12. Confidential Reports

Full-time Members are bound by the confidential reporting requirements contained in sections 9(1) and 18(1) of the *Public Office Holder Code*.

As soon as reasonably practicable after appointment to the Canadian Human Rights Tribunal, Part-time Members shall make a confidential report in writing to the Registrar setting out any corporate or private interests that they consider might place them in a real, potential or apparent conflict of interest. The report should include any corporate/private interests that Part-time Members consider might place

them in a conflict situation consistent, where applicable, with the principles of solicitor/client privilege. The report should not make reference to the value of any interests held.

13. Members should update their confidential reports whenever changes in their circumstances warrant it and review them annually.
14. Before accepting an assignment or appointment to an individual case, Members should review their private and corporate interests to ensure that no conflict exists. If conflict is found to exist, the Member shall decline the assignment or appointment.
15. **Registrar's Role**

The Registrar of the Tribunal, in consultation with the Chairperson, is responsible for advising Members concerning appropriate measures to resolve situations where a real, potential or apparent conflict of interest may arise with respect to private and corporate interests of a Member under this Code of Conduct. Members are responsible for consulting the Ethics Commissioner in relation to the application of the *Public Office Holder Code*. The Registrar may also consult with the Office of the Ethics Commissioner on any matter associated with the application of this Code of Conduct.

16. Notwithstanding the previous section, it is recognized that a conflict may not be readily apparent at the time of assignment or appointment, but become subsequently known. In such situations, the Member may declare the interest to the participants and decide, after the receipt of submissions from the parties, the appropriateness of continuing as a Member on the case.

GENERAL RESPONSIBILITIES

17. All Members must recognize and accept their fundamental role in the fulfillment of the objectives of the *Act* and undertake to carry out their responsibilities as Tribunal Members in a way that will promote the integrity, impartiality and independence of the proceedings. To that end, every Member and former Member shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity, independence and impartiality of the proceedings are preserved.
18. Full-time Members recognize that, apart from the arrangement of their private and corporate interests so as to avoid a conflict of interest, they cannot accept outside employment or otherwise engage in outside activities which compromise their full-time commitment to public office. Full-time Members who engage or have

engaged in outside activities (including employment) are subject to ss. 15-18 of the *Public Office Holder Code*.

RESPONSIBILITIES TO THE PROCESS

19. Independence and Impartiality

A Member:

- a) shall be independent and impartial, shall act in a fair manner and shall avoid creating an appearance or an apprehension of bias;
- b) shall not be influenced by self-interest, outside pressure, political consideration, public clamour, loyalty to a political party or fear of criticism;
- c) shall not use Member's position on the Tribunal to advance any personal or private interests. A Member shall avoid actions that may create the impression that others are in a special position to influence the Member;
- d) shall avoid entering into any relationship, or acquiring any financial or personal interest, that is likely to affect the Member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias with respect to the proceeding or proceedings over which he or she has jurisdiction.

20. Maintenance of Confidentiality

A Member or former Member

- a) shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of the proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another;
- b) shall not, in respect of a proceeding, disclose any Order or Decision before its issuance;
- c) shall not at any time disclose which Members are associated with majority or minority opinions unless that disclosure was made by all Members assigned or appointed to the case or made by the Tribunal as a whole; and,

- d) shall not at any time disclose the deliberations of Members, or any Member's view, except as required by law.

CONDUCT

21. A Member:

- a) who accepts an assignment or appointment in respect of a proceeding shall be available to perform, and shall perform, his or her duties thoroughly and expeditiously throughout the proceeding;
- b) shall comply with the provisions of the *Act* and all applicable rules established under the *Act*;
- c) shall not deny any other Members assigned or appointed to the proceeding the opportunity to participate in all aspects of the proceeding, and shall consult with other Members so assigned or appointed before the issuance of a decision or reasons therefore;
- d) shall consider only those issues raised in the proceedings and those issues necessary to a decision and shall not delegate the duty to decide to any other person;
- e) shall only communicate with a participant in a proceeding in the presence of all parties and/or their counsel. Notwithstanding the foregoing, the Chairperson may, from time to time, confer with counsel or parties frequently involved in Tribunal proceedings to discuss matters unrelated to any specific proceeding for the purposes of addressing general operational or administrative concerns arising from the functioning of the Tribunal;
- f) shall not communicate matters concerning actual or potential violations of the Code of Conduct unless the communication is to the Chairperson, the Registrar or the parties as provided for in paragraph 16, or is necessary to ascertain whether the Member has violated, infringed or may violate the Code of Conduct.
- g) shall in all proceedings conduct themselves in a manner that is courteous, patient, fair and respectful to all participants and observers, their language, customs, rights, opinions, and beliefs, while ensuring that the proceedings are orderly and efficient. Members shall require similar conduct of others present;

- h) shall not, outside of his or her statutory function, publicly comment on a decision, proceeding or provision of the *Act*. Members shall refer all media inquiries to the Registrar;
- i) shall not do anything which might bring the Tribunal, or its administration into disrepute.

22. Certification

Members must, as soon as practicable after appointment to the Tribunal, certify to the Registrar that they agree to comply with the provisions of this Code as a condition of being assigned or appointed to individual cases.

Member's Signature

Date

Member's Name

Chairperson's Signature (witness)
Shirish P. Chotalia

Date