

WCAT Appeal Commissioners' Code of Conduct

Purpose of the Code

1. The Code sets out the standards of conduct governing the professional and ethical responsibilities of Appeal Commissioners of the Nova Scotia Workers' Compensation Appeals Tribunal. It is intended to establish reasonable, minimum expectations in typical situations and does not anticipate all possible circumstances. Appeal Commissioners must also consider any legislative or professional responsibilities they may be under in addition to this Code.

Application of the Code

2. It applies to the Chief Appeal Commissioner and all full-time or part-time Appeal Commissioners. "Appeal Commissioner" is used to include all Appeal Commissioners unless otherwise specifically differentiated. Where certain responsibilities of the Chief Appeal Commissioner have been delegated, "Chief Appeal Commissioner" should be taken to include any designates.

3. The Code applies from the commencement of a term of appointment and throughout any renewals and includes responsibilities after completion of a term of appointment.

4. The Code may be amended to reflect the developing experience of the Tribunal.

General Guidelines

5. The Tribunal's mandate is to hear and decide appeals and applications, pursuant to the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended. The Tribunal depends on its Appeal Commissioners to ensure that its decisions are impartial, fair, and just, and are perceived as such.

6. Appeal Commissioners will conduct themselves personally and professionally so that public confidence in the integrity, and impartiality of the Tribunal is maintained and enhanced.

7. Appeal Commissioners will act in accordance with all applicable laws and will not commit or condone an unethical or illegal act or invoke another to do so.

8. Appeal Commissioners should act in a transparent and accountable manner, both personally and professionally.

9. Appeal Commissioners should not identify themselves as members of the Tribunal on social media sites, with the exception of professional sites such as LinkedIn. When posting comments on social media, Appeal Commissioners must be mindful that their comments could reflect negatively on the Tribunal and they must not comment on any matter pertaining to the Tribunal unless they have obtained prior authorization from the Chief Appeal Commissioner.

10. Any conflict between the private interests of an Appeal Commissioner and their official duties and responsibilities shall be resolved in favour of the public interest.

Standards of Conduct

11. Appeal Commissioners must adhere to the rules on pecuniary conflict of interest established from time to time by the Legislature and/or adopted by the Executive Council.
12. To reduce the risk of conflicts occurring, Appeal Commissioners are required on appointment or when seeking re-appointment to reaffirm their commitment to compliance with the Code.
13. Appeal Commissioners shall not adjudicate in any proceeding, or participate in Tribunal discussions of any matter, in which they, or a close family member or associate, have a significant financial interest.
14. Appeal Commissioners shall not adjudicate in any proceeding or participate in Tribunal discussions with respect to any matter, if they have a personal interest in it or a close personal relationship with a participant, witness or representative. For example: hearing a neighbour's appeal or hearing an appeal where the representative is related to the Appeal Commissioner.
15. Appeal Commissioners will not adjudicate an appeal involving a party with whom they were formerly in a significant professional relationship until twelve months have passed since the termination of the relationship.
16. Appeal Commissioners shall not adjudicate any proceeding in which the outcome may have an impact on any other legal proceeding in which they have a significant personal interest.
17. Appeal Commissioners shall refrain from commenting publicly on: an issue currently under consideration in a proceeding before the Tribunal; a prior decision of the Tribunal; or a colleague's conduct. All media inquiries regarding the Tribunal shall be referred to the Chief Appeal Commissioner.
18. Appeal Commissioners shall not knowingly permit their names to be publicly associated with any point of view on any appealable workers' compensation issue, other than through publication of their decisions.
19. Appeal Commissioners shall not act as consultants, agents or representatives for any participants in cases before the Tribunal or the Workers' Compensation Board. Appeal Commissioners shall not have any responsibility or role in the management, preparation or advocacy of any workers' compensation board files, nor may they appear as expert witnesses.
20. Appeal Commissioners shall not accept money, awards or gifts which could be seen to be connected to their adjudicative responsibilities. Appeal Commissioners may accept an honorarium for a speaking or teaching engagement, and the Chief Appeal Commissioner should be advised of any such honorarium. Any other gifts should either be returned or referred to the Chief Appeal Commissioner.
21. Appeal Commissioners shall not take improper advantage of confidential information obtained through official duties to obtain a personal benefit. This would not, in most cases, include contributions to professional educational activities.

22. Appeal Commissioners should respect the use and treatment of public funds and ensure that Tribunal property is used only for officially approved activities.

Conduct of the adjudication

23. Appeal Commissioners shall approach every appeal with an open mind and shall avoid doing or saying anything that could cause any person to think otherwise. Appeal Commissioners must not make assumptions based on general characterizations or attach labels to people that invite stereotypical assumptions about their behavior or characteristics.

24. Appeal Commissioners should be fully prepared for hearings.

25. Appeal Commissioners should conduct hearings in a transparent, orderly, impartial, respectful, and fair manner.

26. Appeal Commissioners must comply with the rules of natural justice and procedural fairness.

27. Appeal Commissioners shall listen carefully to the submissions of the participants and their representatives.

28. Appeal Commissioners shall show respect for the hearing process itself, through their demeanor, timeliness, dress, and conduct.

29. Appeal Commissioners should be aware and respectful of social and cultural differences. In the course of their duties, they should act in a manner that promotes an appreciation of diversity and should avoid comments, expressions, gestures or behavior which may reasonably be interpreted as showing insensitivity to or disrespect for anyone or have the potential to call into question their commitment to equality and their ability to be impartial.

30. Appeal Commissioners shall make every effort to ensure that all participants treat each other with courtesy and respect.

31. Appeal Commissioners shall allow participants reasonable latitude to present their case without interruption, subject to the obligation to control the hearing for relevance and fairness.

32. Appeal Commissioners shall endeavor to conduct hearings expeditiously, preventing unnecessary delay, while ensuring that all participants have a fair opportunity to present their case.

33. Appeal Commissioners shall endeavor to ensure that the hearing room and the process is accessible and barrier-free for all participants, representatives, and witnesses.

34. Appeal Commissioners shall attempt to ensure that participants who are self-represented are not unduly disadvantaged at the hearing. While an Appeal Commissioner cannot act as counsel to the self-represented party, it is appropriate to explain clearly the procedure to be followed in an oral hearing. In the course of the hearing, the Appeal Commissioner may outline relevant evidentiary and procedural rules.

35. Appeal Commissioners shall not, in the absence of exceptional circumstances, communicate directly or indirectly with any participant, witness, or representative in respect of a proceeding, except in the presence of all participants and their representatives. If such communication occurs, Appeal Commissioners shall advise all participants of the communication as soon as possible. Correspondence and telephone calls regarding released decisions should be referred to the Chief Appeal Commissioner.

36. Appeal Commissioners shall refrain from having meals or other significant social interaction with a participant, representative, or witness where it may give rise to a reasonable apprehension of bias.

37. Appeal Commissioners should follow current Tribunal procedures and practice unless the circumstances in a case justify some variation.

Conflict of Interest

38. A conflict of interest is any interest, relationship, association or activity that is incompatible with the Appeal Commissioner's obligations to the Tribunal. Conflicts of interest include pecuniary and non-pecuniary conflicts.

39. A pecuniary conflict exists where an Appeal Commissioner has a significant 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 Appeal Commissioner, or of a family member or other person with whom the Appeal Commissioner has a close personal or professional relationship.

40. A non-pecuniary conflict arises where an Appeal Commissioner has an association, relationship or non-financial interest or activity that is incompatible with the responsibilities of an impartial decision-maker. The relationships, interests or activities of a close family member or close associate may raise a potential conflict if they will be affected by the Tribunal's determinations.

41. In assessing a potential conflict of interest or allegation of bias, Appeal Commissioners should consider:

- whether they feel personally satisfied about their ability to act impartially; and if so,
- whether the facts could nevertheless give rise to a reasonable apprehension of bias in the mind of a reasonable and informed person.

42. It is the responsibility of each Appeal Commissioner to consider and actively inquire into any circumstance which might suggest a possible conflict of interest or raise a perception of bias. As soon as a potential conflict or grounds for a perception of bias is identified, the Appeal Commissioner should immediately take the steps outlined below.

43. Where an Appeal Commissioner becomes aware, before the hearing, that circumstances exist that suggest a possible conflict of interest or perception of bias, the Chief Appeal Commissioner should be informed if possible. The Chief, in consultation with the Appeal Commissioner, will determine whether it is necessary to re-assign the appeal. If not, the Appeal Commissioner may decide to place the issue before the parties for submissions. If the Appeal Commissioner is on a

Panel, the Panel will decide whether the issue should be raised at the commencement of the hearing.

44. Once the adjudicative process has begun, Appeal Commissioners are responsible for determining issues of conflict of interest or reasonable apprehension of bias. However, given that allegations of conflict and bias affect the credibility and integrity of the Tribunal as a whole, the Chief Appeal Commissioner must be informed.

45. Circumstances which may raise a conflict of interest or a perception of bias should be disclosed to parties and representatives, unless the Appeal Commissioner determines that the potential issue is trivial. An Appeal Commissioner may wish to consult the Chief Appeal Commissioner before making this determination.

46. Where conflict of interest or bias is raised or discovered during a hearing, Appeal Commissioners may:

- (a) resign from the proceeding immediately if the Appeal Commissioner considers it appropriate to do so, or
- (b) hear or arrange for submissions from the parties.

47. If Appeal Commissioners decide that neither a conflict of interest nor a reasonable apprehension of bias exists, the hearing will continue in the ordinary course. In a Panel hearing, the concerned Appeal Commissioner shall accept the Panel's decision on the issue and continue to serve on the Panel unless they have significant doubt about their ability to be impartial.

48. Where a party has challenged the neutrality of an Appeal Commissioner, it is advisable in most cases for the Appeal Commissioner to release a written decision on the allegation of bias or conflict of interest.

49. Where an Appeal Commissioner has a potential conflict of interest in respect of a matter before the Tribunal, but not assigned to them, they will not participate in any discussion of the matter until the Chief Appeal Commissioner has been informed of the circumstances. If the Appeal Commissioner becomes aware of a potential conflict during a Tribunal meeting, they will leave that portion of the meeting.

Conflict of Interest Affecting the Chief Appeal Commissioner

50. Where the Chief Appeal Commissioner 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 they are adjudicating, the procedure for Appeal Commissioners will be followed with appropriate adjustments.

51. Where the Chief Appeal Commissioner determines they have a possible conflict of interest or a potential bias in respect of a matter before the Tribunal that they are not adjudicating, they shall instruct Tribunal staff that all communications regarding the matter are to be directed to a designated alternate.

52. The Chief Appeal Commissioner shall not participate in any consultations or discussions of substantive or procedural determinations in respect of a proceeding for which a conflict exists. If

the matter is on the agenda for a Tribunal meeting, the Chief Appeal Commissioner will state the conflict and leave that part of the meeting. The minutes will record the declaration of conflict and absence, and the portion of the minutes dealing with that matter will be recorded separately and not communicated to the Chief Appeal Commissioner.

Decision-Making Responsibilities

53. Appeal Commissioners shall make each decision on the real merits and justice of the case, based on law and the evidence before them.

54. Appeal Commissioners shall apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval from any person, institution, or community must not deter Appeal Commissioners from making the decision which they believe is correct based on the law and the evidence.

55. Appeal Commissioners are responsible for ensuring that decisions are rendered in a timely fashion and in accordance with s. 246 and s. 252 of the *Workers' Compensation Act*. The parties must be notified in writing of an extension prior to the expiry of the 60-day time limit.

56. Appeal Commissioners should not ignore Tribunal decisions that are relevant to an 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 system's need for reasonable consistency.

57. Appeal Commissioners are responsible for ensuring that decisions accord with Tribunal guidelines on form, and the Tribunal's *Decision Quality Guide* (See Appendix A). Appeal Commissioners may request a review of a draft decision from another Appeal Commissioner or the Chief Appeal Commissioner and should consider whether a review would be helpful where the decision:

- addresses a new development or current issue of Tribunal-wide interest;
- raises issues which may be expected to lead to media interest or an appeal;
- departs from the approach previously taken by the Tribunal;
- could affect WCB policy or practice; or
- involves a dissent on a significant issue.

Responsibilities to Other Appeal Commissioners and Staff

58. Appeal Commissioners will, by their conduct, endeavor to promote Tribunal collegiality and behave in a manner that reinforces the integrity and professionalism of the Tribunal among Appeal Commissioners and staff.

59. Appeal Commissioners will familiarize themselves with and adhere to the *Office Ground Rules for Personal Conduct* (Appendix B).

60. Appeal Commissioners will make themselves available on a timely basis for consultation or caucuses.

61. Appeal Commissioners should share their knowledge and expertise among their colleagues as requested and appropriate.

62. Appeal Commissioners will conduct themselves in a manner which demonstrates respect for the views and opinions of others.

Responsibilities When sitting as a Panel

63. When sitting as a Panel, Appeal Commissioners should ensure a general understanding about matters such as dealing with objections, questions to witnesses, and caucusing.

64. When a Panel Chair becomes aware of a difference of opinion on an issue affecting the conduct of the hearing, the Panel Chair should call a recess to allow the Panel to discuss the issue and reach a decision on how to proceed.

65. Pre-hearing or post-hearing searches for expert or other evidence shall not be conducted by a panel member without agreement of the Panel. This does not prohibit consulting a medical dictionary.

66. All Panel members must make themselves available on a timely basis for discussions. Comments on draft decisions should be provided at the earliest opportunity.

67. A Panel member must carefully consider other Appeal Commissioners' reasons when there is a difference in proposed determinations. However, an Appeal Commissioner 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.

68. Where an Appeal Commissioner is unable, after discussion and careful consideration, to agree with the proposed decision of a majority of the Panel, a reasoned dissent should be prepared in a timely fashion.

Responsibilities to the Chief Appeal Commissioner

69. Appeal Commissioners are responsible to the Chief Appeal Commissioner for compliance with this Code. Aside from conflict and bias issues decided in the course of a hearing, the interpretation and enforcement of the Code are within the Chief Appeal Commissioner's authority.

70. Appeal Commissioners will make themselves available to meet with the Chief Appeal Commissioner on a timely basis when requested to do so.

71. Where an Appeal Commissioner becomes aware of circumstances that may call into question the integrity of the Tribunal or its processes, it is the duty of the Appeal Commissioner to inform the Chief Appeal Commissioner of the circumstances as soon as possible.

72. Where an Appeal Commissioner has decided to accept an offer of employment outside the Tribunal, the Appeal Commissioner shall inform the Chief Appeal Commissioner at the earliest

opportunity.

Responsibilities to the Tribunal

73. Appeal Commissioners must commit the time and effort required for the work of the Tribunal.

74. Appeal Commissioners shall maintain the high level of professional competence and knowledge required to discharge their obligations and duties.

75. Members should remain current in the field by participating in Tribunal discussions and ongoing professional development.

76. Appeal Commissioners should make every effort to comply with the Tribunal's policies, procedures and standards. This rule includes following PSC rules for permissible expenses, as well as applying the Tribunal's Practice Manual, unless particular circumstances warrant a variation.

77. If an Appeal Commissioner questions the appropriateness of any policy, procedure or standard, the Appeal Commissioner should raise the issue with the Chief Appeal Commissioner.

78. Appeal Commissioners will make themselves reasonably available to participate in non-hearing related functions and activities, such as training new Appeal Commissioners, participating in committees, and developing Tribunal procedures and policies.

79. Appeal Commissioners shall not divulge confidential information unless legally required to do so, or appropriately authorized to release the information. Appeal Commissioners also have a duty to safeguard the confidentiality of documents, information, and computers.

80. When an Appeal Commissioner accepts an offer of employment outside the Tribunal, the Appeal Commissioner shall make reasonable efforts to complete outstanding decisions.

81. Appeal Commissioners shall not engage in conduct that exploits their position as Appeal Commissioners.

82. A part-time Appeal Commissioner who engages in another profession, occupation, or business, shall not allow those activities to undermine their adjudicative responsibilities and shall arrange other professional employment or business affairs to minimize the likelihood of conflicts.

83. Political activities of Appeal Commissioners are governed by the *Civil Service Act*, R.S.N.S., 1989, c.70. Appeal Commissioners with specific questions should consult the statute.

84. Appeal Commissioners shall not belong to partisan organizations which specialize in workers' compensation matters.

Post-Term Responsibilities

85. An Appeal Commissioner who has ceased to be a member of the Tribunal but has continued

working on a per diem basis for ongoing proceedings, shall continue to be bound by the Code as it relates to those proceedings.

86. An Appeal Commissioner shall not take improper advantage of their past office after ceasing to be an Appeal Commissioner.

87. An Appeal Commissioner shall not represent a party before the Tribunal until at least six months have elapsed since ceasing to be an Appeal Commissioner.

88. Appeal Commissioners continue to be bound by their obligations of confidentiality regarding any matter arising while they were Appeal Commissioners.

I acknowledge that I have read and understand the WCAT Appeal Commissioners' Code of Conduct and agree to conduct myself in accordance with this Code.

Signature of Appeal Commissioner

Signature of Witness

Date

Date

Appendix A - Decision Quality Guide

A well-written decision:

- (1) reflects the Tribunal's commitment to the rule of law by following all applicable laws;
- (2) addresses the issues raised by the participants to the appeal, but not matters irrelevant to the issues to be decided;
- (3) follows the law as interpreted by the Tribunal in previous decisions, unless reasons for the departure are given;
- (4) uses simple and direct language, keeping in mind that its audience includes lay people, untrained in law;
- (5) conforms with Tribunal decision formats and is free of grammar or spelling errors;

- (6) uses technical and legal terms consistently with other Tribunal decisions;
- (7) uses clear reasoning leading to a logical conclusion which resolves the issues. Generally it should set out: the relevant evidence; the rules to be applied; and the application of the rules to the evidence;
- (8) is respectful of participants and previous decision-makers;
- (9) makes and explains necessary credibility findings;
- (10) by a Panel speaks with one voice unless the differing opinions are irreconcilable; and
- (11) contributes to a clear understanding of workers' compensation law and practice in Nova Scotia.

Appendix B - Office Ground Rules for Personal Conduct

Positive employee interaction drives the Tribunal. These rules provide a framework for behaviour that is sensible and appropriate in an office setting. They are a written reflection of the unwritten expectations for professional and personal behaviour.

Respect

- A) acknowledge each other's presence with a smile or a greeting
- B) Engage with coworkers
- C) Be friendly to new employees
- D) Acknowledge the good work of others directly when possible
- E) Don't complain about work at work

Communication

- A) Address issues of conflict promptly. Do so directly with the relevant person and in a calm and polite manner.
- B) Choose face-to-face communication where possible
- C) Be careful of tone in emails given the potential for misunderstanding in this form of communication.

Consideration

- A) Clean up after yourself
- B) Keep loud conversation to a minimum
- C) Be pleasant
- D) Be inclusive in your conversations in common areas

Integrity

- A) Don't initiate or participate in offensive gossip
- B) Don't criticize others directly or indirectly
- C) Don't engage in humour that disparages
- D) Take responsibility for negative behaviour and apologize where appropriate.

