



Schedule A

NOVA SCOTIA HUMAN RIGHTS COMMISSION

Guidelines for Professional Conduct for Board of Inquiry Panel Members¹

1.0 PREAMBLE

The Board of Inquiry (BOI) is an independent administrative tribunal and has full jurisdiction to hear, determine and deal with all complaints of discrimination referred by the Commissioners.

Section 34 (1) of the Human Rights Act states that a board of inquiry shall conduct a public hearing and has all the powers and privileges of a commissioner under the Public Inquiries Act.

Panel Members (Members) are directed in this task by the principles and criteria contained in the legislation and by Board of Inquiry policies. Panel members will participate in establishing, maintaining, and enforcing high standards of conduct and act to promote and preserve the integrity and responsible independence of the BOI.

The *Guidelines for Professional Conduct* (Guidelines) have been developed to reflect the standards of conduct appropriate to officials who have responsibility for making decisions independently, fairly, objectively, impartially and without bias.

¹Adapted from the BC Human Rights Tribunal Code of Conduct.

2.0 OBJECTIVES

- 2.1. The Guidelines establish the standards of conduct that govern the professional and ethical responsibilities of Panel Members of the board of inquiry as decision-makers of a quasi-judicial administrative tribunal.
- 2.2 The Guidelines aim to promote the highest standards of conduct by Human Rights Panel Members, in order to maintain and enhance public confidence in the integrity, independence, impartiality, and effectiveness of the Human Rights BOI.
- 2.3 Members are expected to comply with the standards of conduct set out in the Guidelines. Although the Guidelines cannot anticipate every possible situation, in all cases, Members are expected to act honestly and in good faith, in a professional and ethical manner.

3.0 APPLICATION

- 3.1 These Guidelines address Members' responsibilities to the BOI itself, including colleagues and staff, to the parties who appear before them, to the Human Rights Commission, and the public.
- 3.2 These Guidelines govern Members' conduct from the commencement to the completion of their term of appointment and outlines their continuing responsibilities after the completion of their term.
- 3.3 The Guidelines are intended to supplement, and should be read in conjunction with, any applicable conduct requirements that are established and set out in the *Public Inquiries Act* or other legislation, guidelines, codes, policies or other instruments. The Guidelines should also be read in conjunction with any applicable conduct requirements that are established from time to time by professional regulatory bodies.

4.0 BIAS AND CONFLICT OF INTEREST

- 4.1 Members shall carry out their BOI duties in a neutral and impartial manner. A Member shall not participate in any BOI proceeding or discussion in which the facts may give rise to a reasonable apprehension of bias or conflict of interest on the part of the Member.

- 4.2 A reasonable apprehension of bias exists when a reasonable, well-informed person could have a reasonable perception that the existence of a personal attitude, interest (either pecuniary or non-pecuniary), relationship or association could impair the Member's ability to discharge their duties to the Tribunal fairly, impartially or without bias.
- 4.3 Members shall arrange their personal or professional activities, employment or business affairs so as to minimize the likelihood of conflicts arising that may affect their neutrality or give rise to an allegation of reasonable apprehension of bias.
- 4.4 A Member is responsible for identifying and disclosing to the Chief Judge, at the earliest possible opportunity, circumstances which may give rise to a reasonable apprehension of bias or conflict of interest in respect of any of their responsibilities.
- 4.5 Where it has been determined, prior to a settlement meeting, pre-hearing conference, preliminary application, or other preliminary process, or an oral hearing on the merits of a complaint, that a reasonable apprehension of bias or conflict of interest may exist, the Member shall not deal with the complaint.
- 4.6 Where a Member becomes aware, during a Hearing, of a possible conflict of interest or of facts which may give rise to a reasonable apprehension of bias and the circumstances are unknown to the parties or their representatives, the Member shall:
- Advise the parties immediately and hear submissions and decide on that issue; or
 - recess the Hearing to consider the seriousness of the conflict and determine whether, in the circumstances, it is appropriate to inform the parties and to hear submissions and decide on that issue; and
 - shall advise the Chief Judge if resignation takes place.
- 4.7 Where an allegation of conflict of interest or bias is raised by a party during a Hearing, the Member shall:
- resign from the proceeding if, given the nature of the alleged conflict or bias, the Member considers that this would be appropriate; or
 - hear submissions from the parties with respect to the alleged conflict or bias, and then decide on that issue; and
 - shall advise the Chief Judge if resignation takes place.
- 4.8 A Member shall not accept money, awards or gifts from persons who may be or who have been affected by a BOI decision. A Member shall normally be allowed to accept a gift offered as an honorarium for a speaking engagement.

5.0 CONDUCT OF A PRELIMINARY PROCESS AND HEARING

- 5.1 Members shall maintain their objectivity and impartiality in the conduct of all BOI proceedings and shall refrain from conducting themselves in a manner that might suggest a lack of objectivity or impartiality.
- 5.2 A Member who conducts a settlement meeting shall not deal with the complaint either directly in a preliminary process or hearing, unless the parties agree in writing that they consent to the Member hearing the complaint and are represented by counsel or have received independent legal advice.
- 5.3 A Member hearing a complaint shall not act as a mediator on that case unless the parties agree in writing that they consent to the Member mediating the complaint and are represented by counsel or have received independent legal advice.
- 5.4 While maintaining the required impartiality and neutrality, it is appropriate for a Member to explain to unrepresented parties the procedure to be followed in the Hearing and, in the course of the oral Hearing, to outline for the unrepresented party the relevant evidentiary and procedural rules which govern the conduct of the Hearing.
- 5.5 A Member shall not communicate directly or indirectly with any party, representatives or witness at any stage of the proceedings, except in the presence of all parties and/or their representatives or unless the correspondence is copied to all the parties and/or their representatives.
- 5.6 A Member shall not have, in the course of a Hearing, any significant social interaction with a party, representative or witness unless all parties and representatives are present and there is no discussion with respect to the subject matter of the Hearing.

6.0 DECISION-MAKING RESPONSIBILITIES

- 6.1 Members shall make each decision according to the true merits of the case, on the basis of evidence presented in that Hearing and the applicable law. Members shall apply the law to the evidence in good faith and to the best of their ability in accordance with natural justice and procedural fairness. Members shall not be influenced by partisan interest, public opinion or fear of criticism.
- 6.2 In exercising their independent judgment in each case, Members shall give due consideration to previous BOI jurisprudence and the need for a degree of consistency in the interpretation of the law.

6.3 A Member shall render a decision and issue written reasons within a reasonable time after the conclusion of the Hearing and in accordance with any time limits set out in the *Human Rights Act* and/or its regulations.

7.0 **RESPONSIBILITIES TO THE BOARD OF INQUIRY**

7.1 A Member shall not comment publicly on or discuss in private, outside the BOI, any aspect of a complaint that is before the BOI.

7.2 Members shall respect the confidentiality of the BOI's decision-making processes. Except as required by law, a Member shall not divulge confidential information obtained in the course of their duties, other than information which is generally available to the public.

7.3 A Member shall not use information which is not generally available to the public, and which the Member has obtained through their BOI duties, to obtain a personal benefit or a benefit for a person with whom the Member has a relationship or association. This would not, in most cases, include a Member's contributions to professional educational activities such as public conferences.

8.0 **EXPERTISE/PROFESSIONAL DEVELOPMENT**

8.1 Members have a responsibility to maintain a high level of professional competence and expertise required to fulfill their duties and responsibilities. It is vitally important that Members continue to develop and enhance their adjudicative skills, knowledge and professional competency throughout their mandate.

8.2 Members are expected to actively pursue the enhancement of their professional competence and knowledge individually and collegially, recognizing that knowledge about human rights law is constantly evolving.