

1.0 Mission of the Employment and Assistance Appeal Tribunal

The mission of the Employment and Assistance Appeal Tribunal (Tribunal) is to provide an independent and impartial appeal process that is community based and delivers timely and fair decisions reviewing determinations of the Ministry of Social Development and, for the child care subsidy program, the Ministry of Children and Family Development.

In carrying out its mission, the Tribunal is guided by the following principles:

- Fairness
- Impartiality
- Timeliness
- Accessibility
- Accountability
- Transparency
- Objectivity
- Discretion

Through adherence to these principles, the Tribunal achieves its goals of independence in decision making, excellence in service, and efficiency in administration.

1.1 Purpose of the Code of Conduct

The purpose of this Code of Conduct (Code) is to:

- establish rules of conduct that govern the professional and ethical responsibilities of Tribunal members,
- identify the criteria against which members' performance will be assessed for purposes of identifying training needs and making recommendations respecting re-appointment, and
- promote public confidence in the integrity and competency of the Tribunal, and the independence and credibility of the Tribunal and its members.

The Code is based on the fundamental principle of a fair hearing and recognizes the requirement of independence in adjudicative decision making.

1.2 Scope

The Code covers the role and responsibilities of Tribunal members to the Tribunal, to the public trust, and to the parties when hearing appeals. Specifically, the Code deals with:

- the role and authority of Tribunal members,
- the responsibilities of members to the Tribunal,
- preparation and timeliness,
- conduct during hearings,
- collegiality in decision making,
- roles during decision writing, and
- duties of panel chairs.

The Code may be amended to reflect the continuing development of the Tribunal.

2.0 Roles and Authority of Tribunal Membership

The Chair of the Tribunal, appointed by the Lieutenant Governor in Council, acts as the chief executive officer of the Tribunal and is responsible for its overall management and the appointment of panels to hear appeals. The Chair reports to the Minister annually on the performance of the Tribunal and consults with the Minister respecting appointments to the Tribunal. One or more Vice-Chairs may be appointed.

Members of the Tribunal are appointed by the Minister for a set term. Members exercise the authorities of membership only while serving as members of a panel in the course of an appeal. Tribunal members are expected to act honestly and in good faith and to comply with this Code and with the practices and procedures of the Tribunal. Tribunal members must never speak publicly about any matter related to the Tribunal or its work in a public setting or to the media.

3.0 Responsibilities to the Tribunal

The Tribunal is composed of members from throughout the province. To ensure consistency of service and treatment of parties it is important that any member who observes any conduct of a colleague that they reasonably believe is in breach of this Code or which may threaten the integrity of the Tribunal bring it to the attention of the Tribunal Chair. The Tribunal operates through its members, and the Tribunal Chair needs the assistance of all members to ensure the public trust is upheld.

Members have a continuing responsibility in relation to the following:

Confidentiality – Members must not divulge confidential information obtained as a result of their appointment unless legally required to do so.

Participation – Members are expected to attend and participate in orientation and training opportunities and in periodic meetings arranged by the Tribunal.

Knowledge – Members are expected to acquaint themselves with the orientation and training materials provided prior to being appointed to a panel to hear an appeal, and to maintain current knowledge of the Tribunal’s jurisdiction and mandate, its governing legislation, and its policies and procedures. Members are to update their copy of the legislation to ensure it is current.

Disclosure – Members are to disclose to the Tribunal Chair any matters that could have an adverse impact on the public perception of the Tribunal, including an actual or potential conflict of interest with respect to the performance of his or her duties and obligations as a member of the Tribunal. Potential conflict of interest with respect to a particular appeal is normally dealt with between the Appeal Coordinator and the panel member. The Tribunal Chair can appoint an alternate member to avoid the potential conflict.

Judgment – Members are expected to exercise good judgment regarding appropriate conduct at all times, including on matters or in situations not specifically mentioned in this Code.

Performance – Members agree to participate in performance evaluations and development programs aimed at improving individual competence in relation to the duties performed for the Tribunal.

4.0 Preparation for and attendance at hearings

Preparation – Members must be fully prepared for hearings. Members must review and become familiar with the material and evidence provided in the appeal package prior to the hearing. This is an unconditional requirement. If a member is unable to properly prepare for a hearing for any reason, s/he should notify the Tribunal Chair and withdraw from the panel well in advance of the hearing.

Timeliness and attendance – Members must be present and ready to proceed prior to the scheduled time of the hearing, remain in attendance throughout the proceeding and be available during the decision making and decision writing processes. Ideally, members will arrive 10 – 15 minutes before the scheduled hearing start time.

4.1 Conduct during the Hearing

It is essential that the work of the Tribunal and each of its appeal hearings be conducted in a manner which ensures that the appeal process is fair to the parties, and conforms to the legal requirements set out in the applicable legislation.

The following matters are of general applicability and are intended to promote the reality and appearance of impartiality and fairness. This is essential to retain the trust and respect of appellants, the Ministry, and the public in the Tribunal’s work.

The right to be heard – This is the foundation right governing the work of the Tribunal. All parties must be given a full and fair opportunity to present their case, ask questions of witnesses and present relevant evidence to an

impartial panel which will decide the appeal on the basis of the legislation and the evidence.

Maintain appropriate professional distance - Members must maintain an appropriate professional distance from parties, their advocates or representatives and witnesses by avoiding casual, social or private conversations or spending time with parties before, during or after the hearing or adjournments, and by avoiding any other behaviour that may give an impression that a personal or social relationship exists that could give rise to a reasonable apprehension of bias.

Communications - Members must not communicate directly or indirectly with any party, advocate or representative or witness in respect of a proceeding, except in the presence of all parties and their advocates or representatives.

Impartiality - The appeal process must be fair and reasonable and must accord with the rules of natural justice. Members must be impartial and exercise independence of thought. Members must not be influenced by improper considerations. Evidence of bias, or even a reasonable apprehension of bias, by a panel member will void the hearing and the resulting decision.

Keeping an open mind - Members must not prejudge the appeal until all the evidence has been presented and arguments by the parties have been made. Only then can members properly deliberate on the merits of the appeal.

Respect - Members demeanour, behaviour, and language should reflect respect and courtesy to all parties at hearings. Members must listen patiently and carefully to the views, evidence and submissions of the parties, witnesses and advocates. Sensitivity to the culture and heritage of the parties, witnesses, and advocates or representatives is essential, as is understanding and encouragement for appellants representing themselves.

Attentive listening - Members must carefully listen to or read the information presented and the arguments made by the parties as they explain their respective positions on the appeal. The parties should be given the opportunity to present their positions without interruption. If what the party is saying is not clear, the panel may ask questions to clarify the party's position.

Questioning - It is important that aggressive or intimidating questioning be avoided. Members must ensure their questions are asked in a reasonable manner and are focused on understanding the position of the party. Such questioning may disclose that the party's position is inconsistent, conflicts with other information or is not credible. After a party has finished presenting their position or asking a witness questions, the other party may ask questions directly to the party or the witness. Then, the members may ask questions of the party or witness. The panel chair must be vigilant to exert control over this questioning to prevent bullying, repetitive or non-relevant questions, intimidation or other coercive behaviour while at the same time permitting questions which are probing and challenging.

Procedures - Members are to conduct the hearing in accordance with the *Employment and Assistance Act* and Employment and Assistance Regulation and the practices and procedures established by the Tribunal. The panel chair must recess the hearing if a short break is required by any member or participant.

4.2 Evidence

The panel may only accept and consider information and records that were before the minister when the decision was made or oral or written evidence in support of the original records and information (*Employment and Assistance Act*, section 22). Written submissions and documents tendered as evidence at the hearing are to be recorded on either the Submission at Hearing – Appellant or Submission at Hearing – Ministry form (indicating whether the evidence tendered was admitted and the reasons for that decision). The nature of the evidence tendered and whether it was admitted by the panel is also to be noted in the decision.

4.3 Deliberations

In the course of deliberating and decision making, members must:

- Be guided by the requirements of the law;
- Avoid arriving at any final judgment, conclusion or decision on an issue until all panel members have had an opportunity to provide input;
- Deliberate as a panel and each member of the panel must participate fully in the decision making discussions, including the determination of:
 - the facts of the case,
 - the legislation that applies to those facts, and
 - how the legislation applies to those facts;
- Demonstrate the same respect and courtesy to fellow members during deliberations as shown to the parties during the hearing, listening patiently and carefully to their views and arguments;
- Take personal responsibility to come to a decision according to his or her own conscience and the applicable law. A member may not delegate this obligation or allow their decision to be dictated by another. Provision is made for majority decisions because consensus is not always possible.

4.4 Decision Writing

All members of a panel must participate in the drafting of the written decision (which may include a dissenting opinion) to the extent of agreeing in point form on the findings of fact, the applicable law, and the reasoning supporting the decision. The final draft of the decision may be typed or written by the panel chair without the other members present.

- Members must have the opportunity to review and comment on the final draft decision prior to the panel chair forwarding it to the Tribunal. This can be done in person, by telephone, or by fax or email.
- Where email is used, only Part E – Summary of Facts and Part F – Reasons for Panel Decision will be exchanged and care must be taken that they contain no identifying information.

- Members must sign the decision form at the hearing or at a later time. In all cases the members must review and agree to the draft decision before it is sent to the Tribunal;
- The written decision must follow the format set out in section 87 of the Employment and Assistance Regulation;
- All appeal records and documents, both hardcopy and electronic, must be kept in a confidential and secure manner. All hardcopy material (including the appeal record, draft decisions, members' notes and any material provided by the parties at the hearing) must be returned to the Tribunal with the appeal records, and all electronic material must be deleted;
- Appeal records and other documents must be returned to the Tribunal within five (5) business days of the panel making its determination.

4.5 Obligations of Panel Chairs

The panel chair is to ensure s/he and other members of a panel adhere to the Code and take any necessary steps to ensure compliance, including:

- Following the Conduct of Hearing guideline set out in the Legislation and Guidelines binder, section 3.2.5, "Introduction by Panel Chair";
- Adjourning the hearing to consult with the members on procedural or legal issues as required. All discussion of procedural or substantive issues must take place in private without the parties present;
- Ensuring that the requirements above, 4.1 to 4.4 are met;
- Identifying or clarifying any procedural issues, including acceptance of evidence, consideration of former Tribunal decisions or court decisions, adjournments requests, and objections raised by a party;
- Dealing with aggressive or rude behavior and safety concerns;
- Ensuring the proper procedure is followed if a conflict of interest or a matter of bias is identified that may disqualify a member from participating in a hearing;
- Deciding any question of practice or procedure that arises during a hearing and is not provided for in the regulations or in the practices and procedures of the Tribunal (Employment and Assistance Act, s. 22(6));
- Ensuring all members comport themselves with dignity and in keeping with the provisions of this Code and bringing breaches by a member to the attention of that member and the Tribunal Chair;
- Maintaining order at a hearing and attempting to complete hearings within the time allocated;
- Facilitating the discussion between panel members regarding the disposition of the case;
- Maintaining liaison with the Appeal Coordinator regarding adjournments, or other issues arising during a hearing;
- Ensuring that decisions are completed and submitted in a timely and complete manner.