

## WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

### Members' Code Of Professional and Ethical Responsibilities

#### Purpose of the Code

1. This Code sets out the standards of conduct governing the professional and ethical responsibilities of Members of the Workplace Safety and Insurance Appeals Tribunal. The standards cover the primary areas of Member responsibility - the conduct of hearings and decision-making - as well as the institutional responsibilities of members to their colleagues, the Tribunal Chair, and the Tribunal itself.
2. The Code recognizes the fundamental and overriding responsibility of Tribunal Members to maintain and enhance the integrity, competence and effectiveness of the Tribunal. The Code is intended to assist members by establishing appropriate standards of conduct in typical administrative justice situations. However, the Code cannot anticipate all possible circumstances. Members are responsible for considering the appropriate standards and conducting themselves in an ethical and professional manner.

#### Application of the Code

3. This Code applies to all Members of the Tribunal: the Tribunal Chair, Vice-Chairs and Representative Members, whether full-time or part-time. For simplicity, the term Member is used to include all Members unless otherwise specifically differentiated. Where certain responsibilities of the Tribunal Chair have been delegated to a designate, the term "Tribunal Chair" should be taken to include any designates.
4. The Code governs the conduct of Members from the commencement of their term of appointment and includes continuing responsibilities after completion of their original term and any renewals.
5. The Code may be amended from time to time to reflect the developing experience of the Tribunal.

#### General Guidelines

6. The Tribunal's mandate is to make final decisions on the merits and justice pursuant to the *Workplace Safety and Insurance Act*. The Tribunal depends on its Members to ensure that its decisions are impartial, fair and just, and are perceived as such.
7. Members shall conduct themselves so that public confidence in the integrity, objectivity and impartiality of the Tribunal are maintained and enhanced.
8. Any conflict between the private interests of a Member and his or her official duties and responsibilities shall be resolved in favour of the public interest.

## Definition of Conflict of Interest

9. A conflict of interest is any interest, relationship, association or activity that may be incompatible with the Member's obligations to the Tribunal. Conflict of interest includes pecuniary and non-pecuniary conflicts.
10. A pecuniary conflict of interest exists where a Member has a 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 Member, or of a family member or other person with whom the Member has a close personal or professional relationship.
11. A non-pecuniary conflict of interest arises where a Member 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.
12. In assessing a potential conflict of interest or allegation of bias, Members should consider:
  - Whether they feel personally satisfied about their ability to act impartially?
  - If they do, could the facts nevertheless give rise to a reasonable apprehension of bias in the mind of a reasonable and informed person?

## Standards of Conduct

13. Members must adhere to the rules on pecuniary conflicts of interest established from time to time by the Government through Management Board of Cabinet. The current guidelines on Conflict of Interest in *Establishment and Administration of Agencies: A Manager's Guide* are attached as Appendix A. This guideline can be found in the manual entitled "Management Board of Cabinet Guidelines."
14. To minimize the likelihood of conflict of interest situations arising, Members are required on appointment or re-appointment to complete the undertaking attached as Appendix B.
15. Members 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.
16. Members 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 one of the parties or a representative. For example: hearing a neighbour's appeal or hearing an appeal where the representative is the Member's aunt.
17. Members shall not conduct a hearing involving a party or representative with whom they were formerly in a significant professional relationship until twelve months have elapsed since the termination of the relationship. For example: employment, solicitor/client and partnership/association relationships.

18. Members shall not adjudicate in any proceeding in which they, or a close family member or associate, have had any prior involvement.
19. Members shall not adjudicate in any proceeding in which the outcome may have an impact on any other legal proceeding in which they have a significant personal interest.
20. Members shall not act as consultants, agents or representatives in cases before the Tribunal or the Workplace Safety and Insurance Board (WSIB) or in connection with any matter relating to the Tribunal's work. Members may not have any responsibility or role in the management, preparation or advocacy of any workplace safety and insurance files, nor may they appear as expert witnesses.
21. Members shall not accept money, awards or gifts which could be seen to be connected to their adjudicative responsibilities. Members may accept an honorarium as an expression of courtesy for a speaking or teaching engagement and the Chair should be advised of this. Any other gifts should either be returned or referred to the Tribunal Chair. The Tribunal Chair may require a gift to be held by the Tribunal or given to charity or be subject to such other action as the Chair may determine.
22. Members must not knowingly permit their names to be publicly associated with any point of view on any appealable workplace safety and insurance issue, other than through publication of their reasons for decisions.
23. Members may provide information to the public about the Tribunal's practice and procedures and the Tribunal's released decisions.
24. Members must not take improper advantage of confidential information obtained through official duties, to obtain a personal benefit.
25. Members shall ensure that government property is used only for officially approved activities. For example: Tribunal letterhead is used for Tribunal-related matters.

### **Conduct of the Hearing**

26. Members shall approach every hearing with an open mind with respect to every issue, and shall avoid doing or saying anything that could cause any person to think otherwise.
27. Members shall listen carefully to the views and submissions of the parties and their representatives.
28. Members shall show respect for the parties, representatives, witnesses, and the hearing process itself, through their demeanor, timeliness, dress and conduct.
29. Members must be sensitive to issues of gender, ability, race, sexual orientation, language, culture and religion which may affect the conduct of a hearing.
30. Members shall endeavor to conduct hearings expeditiously, preventing unnecessary delay while ensuring that all parties have a fair opportunity to present their case. For example:

Members may limit repetitive or irrelevant questions. Questions from Members may be necessary to clarify evidence or submissions or to ensure their relevance.

31. Members shall attempt to ensure that unrepresented parties are not unduly disadvantaged at the hearing. For example: it is appropriate to explain the hearing procedure or what is relevant to the issue in dispute.
32. Members who are aware of information that may be relevant to a case must share the information with the parties. Members on a Panel must first share such information with their colleagues so that a Panel decision may be made as to the relevancy of the information and the need to share it with the parties.
33. Members shall not communicate directly or indirectly with any party, witness or representative in respect of a proceeding, except in the presence of all parties and their representatives. Before a decision is released, telephone calls and correspondence should be referred to the Tribunal Counsel Office. Correspondence and telephone calls regarding released decisions should be referred to the Tribunal Chair's Office.
34. Members shall not, in the course of a hearing, have meals or other significant social interaction with a party, representative or witness, except if all parties and representatives are present and there is no discussion of the subject-matter of the hearing.
35. Members should apply current Tribunal procedures and practice unless the circumstances in a particular case justify some variation.

### **Procedural Protocol for Determining Conflict or Bias Issues**

36. It is the responsibility of each Member to consider and inquire into any circumstance which might suggest a possible conflict of interest or perception of bias. The Member may at first be the only person in a position to recognize this. As soon as such a possibility is identified, the Member should take appropriate steps as outlined below.
37. Where a Member becomes aware, before the hearing, of circumstances that suggest a possible conflict of interest or perception of bias, the Tribunal Chair should be informed if time permits. The Chair, in consultation with the Member, will decide whether it is necessary to appoint a replacement Member. If the Chair determines that the circumstances are insignificant, the Member may continue with the hearing unless the Member decides that the issue should be placed before the parties for submissions at the commencement of the hearing. If the Member is on a Panel, the Panel will decide whether the issue should be raised at the commencement of the hearing.
38. Once the adjudicative process has begun, the Members 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 Tribunal Chair should be informed of the nature of any allegations.
39. Circumstances which may raise a conflict of interest, or a perception of bias, should be disclosed to parties and representatives, unless the potential issue is insignificant or too

remote. A Member or Panel may wish to consult Counsel to the Chair or the Tribunal Chair before making this determination.

40. Where an allegation of conflict of interest or bias is raised by a party or disclosed by a Member during a hearing, Members may:
  - resign from the proceeding if this is considered appropriate in any event, given the nature and circumstances of the alleged conflict (for example, an actual pecuniary conflict); or
  - hear or arrange for submissions from the parties.
41. If Members decide that a conflict or reasonable apprehension of bias does not exist, the hearing will continue in the ordinary course. In a Panel hearing, the concerned Member shall accept the Panel's decision on the issue and continue to serve on the Panel unless, notwithstanding the Panel's decision, the Member remains personally satisfied that there is in fact a significant doubt as to his or her ability to be impartial in the case.
42. Where a party has made submissions on bias or conflict of interest, the written decision should deal with the allegation of bias or conflict of interest, especially if the submissions have been rejected.
43. Where a Member has a potential conflict of interest in respect of a matter before the Tribunal, but not assigned to the Member, the Member will not participate in any discussion of the matter until the Tribunal Chair has been advised of the circumstances. If the Member becomes aware of the potential conflict during a Tribunal meeting, he or she must leave for that portion of the meeting. If there are minutes, the Member should ask that the absence be noted in the minutes and any discussion of the issue be deleted from the Member's copy.
44. Where a Member declares a direct pecuniary conflict of interest in respect of a matter before the Tribunal but not before the Member, the Tribunal Chair is required by Management Board of Cabinet Directives (Directive 6-1-2) to record the declared conflict in the Tribunal minutes and to notify the Minister responsible of the nature of the conflict.

### **Conflict of Interest Affecting Tribunal Chair**

45. Where the Tribunal Chair 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 he or she is adjudicating, the procedural protocol will be followed with appropriate adjustments.
46. Where the Tribunal Chair determines that he or she has a possible conflict of interest or a bias in respect of a matter before the Tribunal, which he or she is not adjudicating, the Chair will instruct Tribunal staff that all communications regarding the matter are to be directed to the Alternate Chair or Tribunal Executive Director. The file will be marked "No Access to Tribunal Chair". All decisions regarding the choice of Member, the scheduling and conduct of the hearing, and the release of the decision will be made without the participation of the Tribunal Chair.

## Decision-Making Responsibilities

47. Members shall make each decision on the merits and justice of the case, based on the law and the evidence before them.
48. Members 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 Members from making the decision which they believe is correct based on the law and the evidence. Members must be prepared to go where the evidence and law fairly take them.
49. Members are responsible for ensuring that decisions are rendered in a timely fashion. *The Workplace Safety and Insurance Act* provides that decisions are to be released within 120 days of completion of the hearing process unless an extension is permitted.
50. Members should not ignore relevant Tribunal decisions. Where previous decisions are relevant and are not followed, the decision must explain the reasons for the departure clearly and respectfully. When a preponderance of support for a particular view has become clear, in deciding whether or not to follow that view, due weight should be given to the previous Tribunal jurisprudence and the system's need for reasonably consistent treatment of cases and predictability of outcomes.
51. Members are responsible for ensuring that decisions reasonably accord with Tribunal guidelines on form and the Tribunal's *Hallmarks of Decision Quality*. See Appendix C for the *Hallmarks of Decision Quality*.
52. Members shall participate in good faith in the Tribunal's procedures for enhancing decision quality and consistency. A copy of the *Guidelines for the Review of Draft Decisions* is attached as Appendix D.
53. Members shall not communicate with the media about Tribunal decisions. All media inquiries regarding the Tribunal shall be referred to the Tribunal's General Counsel.

## Collegial Responsibilities

### To Other Members

54. Members shall, through their conduct, endeavor to promote Tribunal collegiality.
55. Members will make themselves available on a timely basis for consultation or caucuses.
56. Members will conduct themselves in a manner which demonstrates respect for the views and opinions of colleagues.
57. Members will not comment publicly on a decision of a colleague, or on the manner in which other Members have conducted themselves during hearings.

When sitting as a Panel

58. When sitting as a Panel, Members should ensure a general understanding about matters such as dealing with objections, questions to witnesses, and caucusing.
59. When a Vice Chair becomes aware of a difference of opinion on an issue affecting the conduct of the hearing, the Vice Chair should call a recess to allow the Panel to discuss the issue and reach a decision on how to proceed.
60. Pre- or post-hearing searches for expert or other evidence shall not be conducted or requested by a Member without prior Panel approval. This does not prevent a Member from obtaining the technical background necessary for a reasonable understanding of technical reports. For example: medical dictionaries may be consulted.
61. All Members of a Panel must make themselves available on a timely basis for discussions. Comments on draft decisions should be provided at the earliest opportunity and, in any event, no later than two weeks from receipt of the draft.
62. A Member should carefully consider other Members' reasons when there is a difference in proposed determinations. However, a Member 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.
63. Where a Member 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 Tribunal Chair

64. Members are responsible to the Tribunal Chair 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 Tribunal Chair's authority.
65. Members will make themselves available to meet with the Tribunal Chair on a timely basis when requested to do so.
66. A Member shall immediately inform the Tribunal Chair of any basis on which an allegation of bias or conflict might be raised with respect to any activity, interest or relationship of the Member.
67. When a Member becomes aware of conduct of a colleague that may threaten the integrity of the Tribunal or its processes, it is the duty of the Member to advise the Tribunal Chair of the circumstances as soon as practicable. [Note: The 1993 Code states that the Member may inform the Tribunal Chair.]
68. Where a Member has decided to accept an offer of employment outside the Tribunal, the Member shall inform the Tribunal Chair at the earliest opportunity.

### Responsibilities to the Tribunal

69. Members shall maintain a high level of expertise in adjudication and procedural issues, as well as in the relevant law.
70. Members will make every effort to comply with the Tribunal's policies, procedures and standards. This includes rules regarding permissible expenditures, documentation of expenses, travel and accommodation, as well as applying procedural rules and practice directions unless particular circumstances warrant a variation.
71. Where a Member questions the appropriateness of any policy, procedure or standard, the Member should raise that issue with colleagues and the Tribunal Chair in the appropriate forum.
72. Members shall not publicly criticize the decisions, procedures or structures of the Tribunal.
73. Members will make themselves reasonably available to participate in non-hearing related functions and activities, such as training new members, participating in committees, and developing Tribunal procedures and policies.
74. The Tribunal adjudicates issues which require Members to have access to personal and other confidential information the publication of which might be embarrassing or prejudicial to parties or their families or associates. Therefore, except as legally required (and in that case only after reasonable advance notice to the Tribunal Chair), Members shall not disclose any information or document that comes to their knowledge or into their possession by reason of their position with the Tribunal, other than information or documents which are available to the public. Members must also protect the confidentiality of information or documents in their possession for the purposes of any case.
75. Members must not disclose confidential Tribunal information.
76. Members shall not engage in conduct that exploits their position as Members.
77. A part-time Member who engages in another profession, occupation or business shall not allow those activities to undermine the discharge of adjudicative responsibilities and shall arrange other professional employment or business affairs so as to minimize the likelihood of conflicts.
78. The political activities of Members are covered by the *Public Service Act*. Members with specific questions should consult the statute.
79. Members shall not belong to partisan organizations which specialize in workplace safety and insurance issues.

### **Representative Members**

80. In addition to the general obligation to ensure decisions are reached on the merits and justice under the *Workplace Safety and Insurance Act*, representative members will ensure that the

issues and concerns of their community are understood and fairly considered by the Tribunal, in specific cases and in the development of general policies and procedures.

81. Representative members are encouraged to avail themselves of opportunities to keep themselves aware of their communities' views or concerns and to communicate relevant views or concerns to the Tribunal.
82. Representative members may acquire or retain membership in any organization devoted to the interests of workers or employers generally (including workplace safety and insurance interests where these are part of other general interests) and may attend the public functions of such organizations. However, high-profile roles such as those involving executive responsibility shall be declined.
83. Representative members shall refrain from any activity devoted to the development of a worker-members' or employer-members' group position on any substantive or process issue, and the Tribunal Chair and the Vice-Chairs shall refrain from any activity devoted to the development of a panel-chairs' position on any substantive or process issue.
84. Providing they do not disclose confidential information, representative members may informally share with their communities generic information or perspectives that the representative members have acquired in the course of their Tribunal adjudication experience and which may be helpful in their community's partisan, educational or law-development work.
85. A representative member who has an interest in a business regulated by the WSIB shall not participate in cases involving regulatory issues. For example: penalty assessment and classification appeals.

## **POST-TERM RESPONSIBILITIES**

86. A member is prohibited from appearing before the Tribunal as a representative, expert witness or consultant until six months after ceasing to be a Member or after the release of any outstanding decisions, whichever is sooner. If the Member is a Vice Chair, the restriction shall apply for six months after the release of any outstanding decision. The Tribunal Chair may vary these restrictions in appropriate circumstances.
87. A Member who, having ceased to be a member of the Tribunal, continues on a per diem basis in respect of certain ongoing proceedings, shall continue to be bound by the Code as it relates to those proceedings. In particular, a member who has ceased to be a member of the Tribunal will complete all outstanding decisions in matters over which he or she has presided in compliance with the timeliness requirement outlined in Article 49. Where a member is incapable of continuing in any matter not yet complete, either during or on the expiry of the term of appointment of the member, he or she will immediately advise the Chair and provide full assistance to the Tribunal to ensure the timely disposition of the appeal.

88. A Member shall not take improper advantage of past office after ceasing to be an Member.
89. Members continue to be bound by their obligations of confidentiality regarding any matter arising while they were Members.

## **APPENDIX A**

Excerpt from Management Board of Cabinet Guidelines: “Establishment and Administration of Agencies: A Manager’s Guide”

### **CONFLICT OF INTEREST**

The provision of guidance regarding conflict of interest is a normal practice in both the public and the private sector. However, for the government and any organization associated with it, an understanding of conflict-of-interest rules is especially important.

#### **PRINCIPLES**

Three key principles need to be recognized:

1. A member of an agency’s managing board should not use information obtained as a result of his or her appointment for personal benefit.
2. A conflict-of-interest situation should be declared at the earliest opportunity.
3. No member should divulge confidential information obtained as a result of his or her appointment or election unless legally required to do so.

#### **DEFINING CONFLICT OF INTEREST**

Conflict of interest normally relates to a direct pecuniary interest of the appointed or elected member, either personally or through the member’s family.

Direct pecuniary interest should be interpreted as an individual interest rather than one that is common to a class of persons. That is to say, it is not considered a conflict of interest if a large segment of the population, including the member, will benefit from a decision to which the member is a party. However, there is conflict of interest if the member or his or her immediate family could benefit personally from a decision while a larger group of people could not.

Immediate family should be interpreted to include the spouse, parents or children of the appointed or elected member.

#### **SUGGESTED PRACTICES**

##### **DECLARATION OF CONFLICT**

Any member of an agency who has a conflict of interest in a matter under consideration by the agency should disclose the nature of that conflict to the head or chairperson at the first opportunity and refrain from any further participation in the discussion.

The chairperson or designate should record in the minutes any declared conflict of interest on the part of the member and notify the minister of the nature of the conflict.

Excerpt from Management Board of Cabinet Guidelines “Establishment and Administration of Agencies: A Manager’s Guide”

## **QUORUM**

When a declaration of conflict of interest has been made, the chairperson should ensure that a quorum - a majority of members unless the constituting instrument makes any other specific provisions - remains to consider and make a recommendation on the matter.

If there is an insufficient number of remaining members to make a quorum, the chairperson should refer the matter to the responsible minister.

The minister should deal with the composition of the board so as to enable a decision by the board on the matter in question. This may enable making a temporary appointment or deferring the matter to a subsequent meeting when a sufficient number of members will be present.

## **PENALTIES FOR NONCOMPLIANCE**

If a member fails to declare a conflict of interest - unless this failure is a result of a bona fide error in judgement - the minister, with the approval of the Lieutenant-Governor, may revoke the appointment and appoint a new member to the agency in question.

If the contravention has resulted in a personal gain, or in a financial loss to the agency, the government may disqualify the person from further government appointments and require restitution of the funds in question.

## **RESPONSIBILITIES**

Conflict of interest is primarily a matter of personal responsibility and integrity.

However, both ministers and agency heads are responsible for ensuring that all the appointed and elected members of every agency are made aware of the need to declare any conflicts of interest of the penalties that may result from failure to do so.

Ministers are specifically responsible for taking any necessary actions when either there are insufficient remaining members to form a quorum or any penalty for non-compliance needs to be considered.

Agency heads are specifically responsible for recording any conflicts and keeping the minister informed of such matters.



**APPENDIX C**  
**WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL**  
**HALLMARKS OF DECISION QUALITY\***

1. The decision does not overlook relevant issues fairly raised by the facts.
2. The decision makes the evidence base clear; if the decision is based on a mediation or agreement, it records the mediation or agreement.
3. The decision conforms with the applicable law and reflects the Tribunal's commitment to the rule of law. Where the decision is based on a mediation or agreement, it records that the adjudicator is satisfied that the decision accords with the law.
4. The decision uses clear language where possible, conforms reasonably with Tribunal decision formats, and uses technical and legal terminology consistently with other decisions.
5. On issues of law or generic medical issues, the decision does not conflict with previous Tribunal decisions, unless reasons for the disagreement are given. Conflicts may occur during periods of development on contentious issues. Conflicting approaches should not be a feature of the Tribunal's body of decisions over the long term.
6. The decision is part of a body of decisions which, overall, is a reasonably coherent, accessible and helpful resource for understanding and preparing to deal with the issues in new cases and for invoking the important principle that like cases should receive like treatment. Thus, decisions which deal with novel issues or take novel approaches will generally be more detailed than those which apply established caselaw.

\* The *Hallmarks* were first adopted in the Appeals Tribunal's *Statement of Missions, Goals and Commitments* in 1989 and updated in 2000.

**APPENDIX D**  
**WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL**  
**GUIDELINES FOR REVIEW OF DRAFT DECISIONS**

**a) General**

1. The Tribunal's decision draft review process is intended to maintain and enhance the general quality, consistency and coherence of the Tribunal's caselaw.<sup>1</sup> The Tribunal has always recognized that this process must respect the independence and autonomy of adjudicators.
2. In *Consolidated-Bathurst* and *Tremblay*, the Supreme Court of Canada confirmed that fostering the quality and reasonable consistency and coherence of decisions is a legitimate and important institutional role for tribunals<sup>2</sup>. The Court approved internal consultation processes designed to influence, but not to constrain, adjudicators on general legal and policy issues. It also explicitly recognized the importance of adjudicative coherence as a relevant criterion in decision-making.<sup>3</sup>
3. Draft review is one of the Tribunal's processes for fostering the quality, consistency and coherence of its decisions. The review process is the responsibility of the Counsel to the Chair and the Associate Counsel in the Office of the Counsel to the Chair (OCC).<sup>4</sup> Drafts referred for review by adjudicators are reviewed by the Counsel to the Chair and the Associate Counsel against the Tribunal's *Hallmarks of Decision Quality*.<sup>5</sup>
4. Review of a draft decision may be particularly helpful where the draft:
  - (a) addresses a new development or issue that is of particular current, Tribunal-wide interest;
  - (b) raises issues which may be expected to lead to media attention, a judicial review application, an Ombudsman complaint, or a reconsideration request;
  - (c) departs from the approach previously taken in Tribunal decisions;
  - (d) may affect Board policy or practice; or
  - (e) involves a dissent on a significant issue.
5. As an expert appeal body deciding difficult medical and legal issues, the Tribunal is concerned with providing training to its new members. Draft review during the orientation period is intended to assist new Vice-Chairs in the development of their workplace safety and insurance knowledge, writing skills and understanding of the Tribunal's *Hallmarks of Decision Quality*. As part of their training, new Vice-Chairs are required to write at least one mock decision and submit it to OCC for draft review. As a guideline, new Vice-Chairs are

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<sup>1</sup> See the Tribunal's 1990 Annual Report, p. 6.

<sup>2</sup> *Consolidated-Bathurst Ltd. v. International Woodworker's of America Local 2-69* (1990), 68 D. L. R. (4<sup>th</sup>) 524 at pp. 555, 562-563, 567; and *Tremblay v. Quebec (Commissions des Affaires Sociales)* (1992), 90 D. L. R. (4<sup>th</sup>) 609 at pp. 621-623, 624-625.

<sup>3</sup> *Consolidated Bathurst*, per Gauthier, at p. 562:

"A decision-maker may also be swayed by the opinion of the majority of his colleagues in the interest of adjudicative coherence since this is a relevant criterion to be taken into consideration even when the decision-maker is not bound by any *stare decisis* rule.

<sup>4</sup> In accordance with *Quebec Inc. v. Quebec (Régie des Permis d'alcool*, [1996] 35 SCR 919, OCC Counsel are independent from the Tribunal Counsel Office and do not make submissions in individual cases.

<sup>5</sup> These *Hallmarks* were adopted by the Tribunal in 1989 in its "Statement of Missions, Goals and Commitments", and updated in 2000. A copy of the *Hallmarks* is attached to these Guidelines.

asked to submit drafts in their 30 hearings (including both written and oral hearings) for draft review.

**b) Process**

6. In accordance with the fundamental principle that the power to decide rests with Tribunal Members, it is for the Vice Chair or any Panel Member assigned to a case to request review of a draft decision. Where a Panel member requests review of a draft minority or majority decision, it is helpful for Counsel to review both drafts. In deciding whether to refer a draft for review, Tribunal Members should consider their responsibility to ensure that their decisions reasonably comply with the Tribunal's *Hallmarks of Decision Quality*. In particular, decisions should be reasonably consistent with previous cases unless Tribunal Members are satisfied that the prior decisions are distinguishable or wrong and reasons are given.
7. From time to time, the Tribunal Chair or Counsel to the Chair may identify issues that in their view are of particular, current Tribunal-wide interest for the purpose of draft review.
8. Unless a Tribunal Member requests draft review by a particular Counsel, the review will be done by the first available Counsel. Requests for review of a second draft will be referred to the Counsel who reviewed the first draft, unless the person requesting review specifies otherwise.
9. Drafts referred for review will not be shared by OCC Counsel with the Tribunal Chair or with any Tribunal Member other than the referring Member unless otherwise instructed by that Member. OCC Counsel may, however, discuss drafts amongst themselves.
10. OCC Counsel's comments regarding a draft decision will be forwarded to the Tribunal Member who requested draft review. If the Member is part of a Panel, it is the Member's responsibility to bring significant issues to the attention of the other Panel members.
11. After reviewing a draft, OCC Counsel may occasionally suggest that it would be helpful to review a second draft of the decision. The decision whether to request review of the second draft rests with the Member who requested review of the first draft.
12. If, in the course of their work, OCC Counsel encounter a draft that deals with an issue that they expect would be of special interest to the Tribunal Chair, they may advise the adjudicator of this. They shall not, however, mention that advice to the Tribunal Chair nor bring the draft to his or her attention in any other manner.
13. OCC Counsel are available to discuss any legal question with a Tribunal Member, or to provide research assistance, before or after a draft is written. A Tribunal Member is also welcome to consult at any time with any other Member of the Tribunal, including the Tribunal Chair, on any generic issue of law or policy.
14. Where, as a result of OCC draft review (or, indeed, for any reason), Members decide that they must address an issue or an authority that was not in view at the hearing, they should

consider whether natural justice requires that the parties to the case be given an opportunity to make further submissions, or to lead further evidence.

15. OCC Counsel may meet with the Tribunal Chair to discuss released decisions and generic issues and problems.