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# CRT Employees & Members Involved with Disputes

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### Purpose

The purpose of this policy is to establish procedures for handling disputes in which a CRT employee or member is a party or a witness or otherwise involved. The intent is to ensure that:

- a) the employee or member does not receive special treatment;
- b) the employee or member does not have access to documents or records related to the dispute beyond the access available to a non-employee or member;
- c) there is no conflict of interest because of the employee or member's role with the tribunal;
- d) the employee's or member's privacy is protected as much as reasonably possible, by limiting other employees' and members' involvement with, and knowledge of, the dispute to situations where that involvement or knowledge is required for dispute resolution; and
- e) there is no interference with procedural fairness.

The policy also defines conflict of interest, with the intent that employees and members will be able to determine when they have a conflict or may be perceived to have a conflict with a party to a dispute, and distance themselves appropriately.

### Application of this Policy

This policy will apply to all instances in which an employee or a member is:

- a) involved directly in a dispute, as a party, representative, support person or witness, or
- b) indirectly involved through a close friend, relative or associate.



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It also applies to govern the conduct of CRT employees and members who interact with employees and members involved in a dispute or a dispute file. This policy also applies to contractors and to former tribunal members.

### Conflict of Interest

- A conflict of interest arises where an employee or member has direct or indirect interest which conflicts, might conflict, or might be perceived to conflict with the interests of the CRT. A conflict of interest may also arise when the employee or member receives a benefit or might be perceived to receive a benefit because of their position with the CRT.
- A conflict of interest may take several forms. It may be financial or non-financial. It may be direct or indirect. It may be professional or family related.
- A conflict of interest may arise from directorships or other employment; interests in business enterprises or professional practices; share ownership; beneficial interests in trusts; existing professional or personal associations with the CRT; professional associations or relationships with other organizations; personal associations with other groups or organizations; or family relationships.
- In most cases to which these policies and procedures apply, a conflict of interest may arise when a CRT employee or member becomes involved in a CRT dispute as a party, representative, support person, or witness or personally knows a party, representative, support person, witness or expert witness in a dispute.
- To avoid actual or perceived conflicts of interest, employees or members should avoid voluntary situations that may result in the employee or member being involved as a party or witness in a CRT strata dispute. In particular, employees and members should not act as an expert witness to any CRT dispute.
- Every employee and member of the CRT must disclose any duty or interest that might conflict with his or her duty or interest to the CRT.



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## **Employees' and Members' Obligation**

Each employee or member has the obligation to immediately advise the Registrar (employees) or the Chair (members) upon any of the following events:

- Prior to filing an application for dispute resolution: The employee or member should not wait until after filing the application to advise the Registrar/Chair.
- Receipt of a Dispute Notice: Upon being served with a Dispute Notice naming the employee or member as a respondent.
- Receipt of a request to act as a witness or summons to appear or produce documents.
- Becoming aware of a conflict of interest or perceived conflict of interest with respect to a dispute file. This includes when a close friend, relative or associate is involved with a CRT dispute.
- After accepting an offer of employment by the CRT or an appointment as a member, when there are pre-existing potential conflicts. This will not affect the offer or the employment of the employee or member, but will give the CRT the opportunity to ensure that appropriate privacy and protection measures are put into place prior to the start date of the new employee or member.



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## Procedure where an employee is a party, support person or witness

1. Employee advises Registrar that you are or know a party, support person, representative, or a witness in a dispute or that you are required to produce documents. If the dispute is withdrawn or settled prior to adjudication, you should immediately advise your supervisor.
  - a. Contact the Registrar via email to advise that you are a party or know a party who is involved in a dispute.
  - b. If you are or know the support person, respondent, witness or have been summoned to produce documents, provide the Registrar with the dispute number.
  - c. If you are a respondent, advise whether you intend to file a counterclaim.
  - d. If you are not involved in the dispute but your close friend, relative or associate is, do NOT discuss the dispute with them before it is resolved and do NOT access the dispute file.
2. Registrar (or delegate to Director or Manager) requests that an Intake Team Lead process the dispute.
  - a. Save the employee's email to the dispute file in a sub-folder entitled: Employee Party Policy.
  - b. Add "LTD ACCESS" to dispute file name.
  - c. Add Dispute Note in DRS indicating role of employee and instructing that only senior staff deal with the dispute.
  - d. Instruct Facilities and Assets Assistant to submit AAR-Account access request through ServiceNow to restrict the employee's or member's access to the dispute folder on the LAN. Save the completed service request in the dispute file Employee Party Policy sub-folder.



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- e. Advise the applicable Intake Team Lead, Managers and Directors of the dispute and ensure they are familiar with their role under this policy. Have the Intake Team Lead take ownership of the dispute in DRS.
  - f. If the employee is filing a claim or a counterclaim, ask them to email the dispute number to the Intake Team Lead immediately after it is filed so the Intake Team Lead can arrange for someone to process the claim or counterclaim.
  - g. If the employee is responding to a claim, request that the employee give the response directly to the Intake Team Lead or advise the Intake Team Lead when it has been submitted.
  - h. If an employee has been ordered to produce documents in relation to a dispute, instruct the employee to give the documents directly to the Intake Team Lead.
  - i. If the employee has been requested to act as a witness or has been summonsed as a witness, advise the TDP Team Lead that the employee is a witness and review the requirements of this policy and procedure document with the TDP Team Lead.
  - j. If the employee has been requested to act as a witness or has been summonsed as a witness, advise the TDP Team Lead that the employee is a witness and review the requirements of this policy and procedure document with the TDP Team Lead.
  - k. If the employee is not personally involved in the dispute, but a close friend, relative or associate is, do not proceed further with this procedure. Instead:
    - Review this policy with the employee;
    - Advise their immediate supervisor; and
    - Instruct the employee to not access the dispute file.



3. Registrar (possibly Chair if member involved) confirms expectations in writing.
  - a. Send the employee an email and request the employee confirm that they understand their role and the restrictions placed upon them with respect to accessing the dispute file and contacting any case manager assigned to the dispute.
  - b. The email must include the following:
    - The dispute number;
    - The employee role in the dispute;
    - Their responsibility to not discuss the dispute with other CRT employees or members while the dispute is open;
    - The restrictions on their access to the dispute records at any time;
    - A copy of this policy; and
    - A copy of the Code of Conduct for CRT Participants;
    - See the template in Appendix A
  - c. Save the email in the dispute file's Employee Party Policy sub-folder.
  - d. Contact the employee's supervisor, advise of the dispute and the date of filing and ask the supervisor to order a SHIELD report from [AppSupport@crtbc.ca](mailto:AppSupport@crtbc.ca) every 30 days.
  - e. If determined necessary, arrange to meet with employee and explain their obligations under this policy, to ensure they understand. Remind the employee of the generally applicable rules and policies, including that they:
    - Are prohibited from contacting a TM, including the Chair, about a dispute;



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- Must comply with the Code of Conduct for CRT Participants;
  - Must not discuss the dispute with other employees or members, unless that is done as part of the dispute resolution process;
  - Are not to use CRT or government assets or work time to deal with the dispute.
4. Supervisor acquires reports showing DRS user access. If the employee reports that the dispute has been withdrawn or settled prior to adjudication, order a final Shield report and advise the Registrar.
    - a. At the time the dispute is moved to facilitation, ask the Team Lead, Business Application Support to request a Shield report from [PDDtech@gov.bc.ca](mailto:PDDtech@gov.bc.ca). If the Team Lead is unavailable, make the request directly of PDDtech.
    - b. If the report shows the employee has accessed the DRS record, submit the report to the Registrar.
    - c. Save the report in the dispute file's Employee Party Policy sub-folder. The title should indicate the date range of the report (eg., Shield report – June 1 – 30)
  5. Team Lead processes the application using the workaround process, adapting the procedure as required to ensure documents are sent directly to the Team Lead.
    - a. If the employee is the party applying for dispute resolution, process the application as usual.
    - b. If the employee is a respondent, process the Dispute Response as usual.
    - c. If the employee is filing a counterclaim, process the counterclaim dispute as usual.
    - d. When the claim has been processed and is ready for facilitation, advise the Registrar.



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6. Registrar, as soon as reasonably possible (as soon as contact information is available), advise the other party in the dispute of the employee's role in the dispute.
    - a. Using the template text in Appendix B, notify the other party in the dispute that a CRT employee is involved in the dispute.
    - b. Save the email and any subsequent communications with the parties in the dispute file's Employee Party Policy sub-folder.
  7. Registrar selects appropriate Case Manager.
    - a. Working with the Director of Case Management, select an appropriate Case Manager. Ideally, the Case Manager should not work in the same office as the employee and should be someone with whom the employee has had limited contact and is not personally close to.
    - b. Advise the Case Manager of the details of the employee's direct or indirect involvement in the dispute.
  8. Case Manager reassuring the other party.
    - a. If the other party to the dispute expresses concern that the employee may receive special treatment as a result of their employment with the CRT, review with the party the steps that have been taken to ensure the process remains fair and impartial.
    - b. If the other party requires further reassurance, escalate to the Registrar.
  9. TDP Team Lead confirming there is no inappropriate access and advising when TDP is completed.
    - a. When the dispute has completed the TDP process, advise the Registrar that it needs to be referred to a tribunal member.
    - b. Advise the Director of Case Management that the dispute has completed TDP.



- c. Review submissions and, if feasible, evidence, to check for any indications that the party is a CRT employee.
  - i. If any references are found, ask the applicable party to remove them, unless relevant to issues

### 10. Registrar informs Chair.

- a. Advise the Chair that the dispute involves an employee, to enable the Chair to select an appropriate tribunal member to hear the dispute. Ideally, the member should be someone with whom the employee has had limited contact.

### 11. Registrar actions if employee has inappropriately accessed dispute files.

- a. If the Shield record shows the employee has accessed the DRS record or if the employee has somehow managed to access the dispute file on the LAN, the issue should be referred to the employee's supervisor to explore disciplinary action.
- b. The Registrar should report the inappropriate access to the Chair, who will determine whether the CRT should consider refusing to resolve the dispute given the inappropriate access.

\*Where the employee involved in a dispute is the Registrar, the Chair will act as the Registrar for the purposes of this policy.



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## Procedure where a tribunal member is a party, support person or witness

1. Tribunal member advises the Chair that you are a party, or know a party, support person, representative, or a witness in a dispute, or that you are required to produce documents in a dispute.
  - a. Contact the Chair via email to advise that one of these circumstances apply:
  - b. If you are a respondent, advise whether you intend to file a counterclaim.
  - c. If you are not involved in the dispute but your close friend, relative or associate is, do NOT discuss the dispute with them during the dispute resolution process.
2. Chair advises Registrar of potential conflict.
  - a. Advise Registrar that member is a party, or knows a party, support person, representative, or is a witness in a dispute, or is required to produce documents in a dispute.
  - b. Provide dispute number.
  - c. Direct Registrar to notify the other parties and ensure the potential conflict is flagged on the dispute file and in DRS.
  - d. Discuss with Registrar which of the above procedures, applicable to employees involved with disputes, should apply to the member's involvement.
3. Chair determines whether a preliminary escalation is appropriate.
  - a. Reviewing the claim and the tribunal member's role, determine whether to escalate the dispute for a decision on whether the CRT should refuse to resolve it under s. 11 of the CRTA due to a likely perception of bias.
  - b. If an escalation is not required, direct the Registrar to send to the parties the letter template in Appendix B.



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- c. If an escalation is appropriate, direct the Registrar to send the parties the letter template in Appendix C.
  4. Registrar advises the other party in the dispute of the tribunal member's role in the dispute.
    - a. Send the parties the letter template in either Appendix B or C, depending on the direction from the Chair.
    - b. Save the email to the appropriate sub-folder in the dispute file.
    - c. Direct the Intake Team Lead to add notation to dispute to dispute records, indicating potential conflict and member name.
    - d. If escalating, proceed to Step 4. If not escalating, proceed to step 6.
  5. Registrar assigns TDP Team Lead to manage written arguments for escalation.
    - a. Direct the Intake Team Lead to move the dispute to the TDP Team Lead.
    - b. Advise the TDP Team Lead and their Manager and Director to review this policy to confirm they are familiar with their roles.
  6. TDP Team Lead takes ownership of dispute and collect written argument.
    - a. Take ownership of the dispute.
    - b. Guide the parties through the TDP process on this question: As a tribunal member is a [party/witness/support person/representative] in this dispute, is there a reasonable perception of bias? If so, should the CRT refuse to resolve this dispute under CRTA s. 11(1)(a)(i)?
    - c. When written arguments are complete, advise the Chair that the dispute is ready to be assigned.
    - d. Go to step 7.



7. Chair assigns a Case Manager.
  - a. Working with the Director of Case Management, assign a Case Manager to the file who does not know the member.
8. Chair assigns a Tribunal Member.
  - a. If adjudication or an escalation regarding potential refusal to resolve the dispute is required, assign the decision to a member with whom the potentially conflicted member has had limited contact and is not personally close to.
  - b. This may require use of a part-time member.

### Guiding Principles for Policy

#### **A. Employees and members cannot receive or appear to receive favourable treatment when they are involved in CRT disputes.**

If an allegation is made that an employee or member involved in a dispute has received favourable treatment, the CRT will provide this policy to the person making the allegation or to the inquiring body (e.g., the Ombudsperson or the Court) together with confirmation that the steps outlined in this procedure have been followed throughout the process.

#### **B. Employee and members should not be disadvantaged in the dispute resolution process because of their employment or appointment.**

While the procedure to process the dispute will vary when an employee or member is involved, the CRT will take steps to ensure the employee or member has full opportunity to engage in every step of the process to the same degree they would if they were not an employee or member and to protect the employee's and member's privacy to the extent reasonably possible. This will include instructing employees who deal with the dispute to exercise discretion so that other uninvolved employees are not aware of the employee's or member's status as a party.



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**C. The CRT and particularly the tribunal members must be impartial and free from perceived or actual conflicts of interest.**

It is likely that all CRT employees will recognize each other's names, but a mere knowledge that a party is employed in the same organization is likely not sufficient to create a conflict of interest. However, if an employee or member who is directly or indirectly involved in a dispute and a tribunal member have interactions beyond simple work-related communications, this may give rise to a perceived conflict of interest and the tribunal member should not hear the employee's or member's dispute.

## **Employee and Member Restrictions**

### **A. Request for or provision of advice**

- While it is not inappropriate to discuss issues prior or subsequent to a formal dispute, employees and members directly or indirectly involved in disputes may not request legal or other advice or opinions from CRT employees or members during the dispute process and may not discuss their dispute with colleagues, except as required to process and facilitate the dispute.
- Other employees and members may not provide legal or other advice or opinions to co-workers directly or indirectly involved in disputes currently before the CRT.

### **B. Employee or Member Communications**

- CRT employees and members must not, at any time before, during or after a dispute, communicate with parties or witnesses to the dispute using their CRT email address or using CRT or government letterhead.
- CRT members and employees must not communicate with other members or employees, except as required to participate in the dispute resolution process and only using the same communication channels available to other parties to the dispute (email, CRT Account, mail).



### **C. Accessing documents or records related to the dispute**

- Employees must not use the CRT's internal database and records (DRS, SharePoint, LAN) or external databases (BC Expresspay, BC Online, myLTSA) to investigate potential or current parties that they are or may be conducting business with for any personal matters.
- Employees and members who are involved in disputes may access dispute information and participate in dispute resolution activities by logging into a personal CRT portal account, if they are a named party. Otherwise, they may not deal with the dispute file in any way or access the information in the dispute file. This includes but is not limited to:
  - Providing information to the other party
  - Accepting an application or response from the other party
  - Process payments
  - Accepting or uploading evidence
  - Dealing with a correction to the file
  - Viewing CRT email boxes for emails related to the other party
  - Viewing the file in DRS/LAN/SharePoint
  - Viewing any tracking files

### **D. Involvement in dispute during work hours**

- Employees and members are not permitted to engage in dispute-related activities during work hours, with the following exceptions:
  - Discussing with the Registrar or Chair the precautions the employee or member is required to take to prevent a conflict.



- Delivering documents to the Team Lead, where appropriate.
- When dispute-related activities such as a hearing are scheduled to take place during work hours, the employee or member should arrange with their supervisor to take time off as required.
- Supervisors will make reasonable accommodations to allow employees to take leave or rearrange their work schedules as required to participate in the dispute resolution process.

### **E. Commenting on the knowledge or proficiency of a CRT employee**

- Employees and members involved in CRT disputes may not under any circumstances comment on the qualifications or skills of tribunal members, case managers, facilitators or other employees involved in processing the dispute.
- If the employee or member has concerns about the conduct of another employee or member, the employee or member should take those concerns in strictest confidence to the Registrar or Chair.

## **Employee and Member Expectations**

### **A. Discretion**

- Employees and members involved in the dispute should not speak with other CRT employees about the dispute, whether to request advice or to provide updates. Employees and members also should be discreet in their communications with non-CRT employees, including any updates on social media.
- CRT employees and members who become aware that a colleague is involved in a dispute should not discuss the matter with the colleague or with others. If a CRT employee inadvertently receives evidence or other documents related to a dispute involving an employee or member, they should immediately give those documents to the Team Lead or Registrar.



**B. Professionalism**

- Throughout the dispute resolution process, employees are expected to act honestly and in good faith, in a professional, ethical and transparent manner and in keeping with the Standards of Conduct for BC Public Service Employees.

**References**

[Standards of Conduct for BC Public Service Employees](#)

[Code of Conduct for CRT Participants](#)



## APPENDIX A

### Letter Template to Employee

I understand that you are the applicant/respondent to dispute [dispute number].

This letter is to ensure that you are aware of the CRT's policies regarding staff and members who are involved in CRT Disputes, the most recent version of which I have attached for your reference.

Please remember that you may not discuss the dispute with other CRT employees while the dispute is open. As well, you may not access the dispute file at any time, other than through methods available to other parties to the dispute, including mail, email, and a CRT Account.

As a party to a dispute, you are also required to comply with the Code of Conduct for CRT Participants, which is attached for your reference. I also remind you of the requirements of the [Standards of Conduct for BC Public Service Employees](#).

I request that you read the attached policy documents and confirm that you have done so by sending an email to your manager.

If you have any questions or concerns about the requirements of the policies, please do not hesitate to contact your manager or director.

Sincerely, [Registrar's Name]

Executive Director and Registrar

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## APPENDIX B

### Letter Template to Advise Opposing Party of Employee or Member Involvement

This is to ensure that you are informed that the [applicant/respondent/proposed witness], [insert employee or member name], in CRT dispute [insert dispute #] is [an employee/a tribunal member] of the CRT.

When employees or members are involved in a CRT dispute, the CRT takes the following steps to ensure that all employees or members who deal with the dispute file remain impartial and that the employee or member does not receive any special treatment from the CRT.

- The involved employee or member can only access the dispute file as a party, which means they can only see the same things the other party can see. They do not have enhanced access to the file.
- There are only a few senior employees or members who are permitted to have access to the file.
- The involved employee or member is not permitted to receive advice about their dispute from other employees or members.
- The case manager assigned to facilitate the dispute does not work in the same office as the employee or member and they are not permitted to communicate with each other about the dispute, except through the formal facilitation process.
- If the dispute proceeds to the Tribunal Decision Process, a tribunal member who does not know the employee or member will be appointed to adjudicate the claim.

These steps have been put in place because the CRT wants to make sure that:

- the case manager and adjudicator are impartial, and

- the employee or member does not receive special treatment or different access than the other party.

If you have any questions or concerns about this issue, please do not hesitate to contact me.

[Registrar's Name]

Executive Director and Registrar

## APPENDIX C

### Letter Template to Advise Opposing Party of Preliminary Escalation due to Tribunal Member Involvement

This is to ensure that you are informed that the [applicant/respondent/proposed witness], [insert employee or member name], in CRT dispute [insert dispute #] is a CRT tribunal member.

The CRT has decided that the tribunal should consider whether to refuse to resolve this claim. Section 11(1)(a)(i) of the *Civil Resolution Tribunal Act* (CRTA) gives the CRT the authority to refuse to resolve a claim in certain circumstances:

- (1) The tribunal may refuse to resolve a claim or a dispute within its jurisdiction if it considers that any of the following apply:
  - (a) the claim or the dispute
    - (i) would be more appropriate for another legally binding process or dispute resolution process, or
    - (ii) has been resolved through a legally binding process or other dispute resolution process;

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- (b) the request for resolution does not disclose a reasonable claim or is an abuse of process;
  - (c) issues in the claim or the dispute are too complex for the dispute resolution process of the tribunal or otherwise impractical for the tribunal to case manage or resolve;
  - (d) resolving the claim or the dispute may involve a constitutional question or the application of the [Human Rights Code](#);
  - (e) the tribunal is satisfied that it has been established, on the basis of satisfactory evidence, that the claim or the dispute is beyond the jurisdiction of the tribunal.
- (2) The tribunal may exercise authority under this section
- (a) at the time of considering a request for tribunal resolution, or
  - (b) in the case of a request that has been accepted, at any time before the tribunal makes the final decision resolving the dispute.
- (3) If the tribunal refuses to resolve a dispute under this section, it must notify the person making the request or the parties, as applicable, of the refusal and the reason for the refusal.
- (4) If the tribunal refuses to resolve a dispute under this section after the tribunal proceeding respecting the dispute has started, section 15 *[restrictions in relation to court and other proceedings — when tribunal proceeding starts]* no longer applies in relation to the claims that were to be resolved by the tribunal proceeding.

To make this decision, we will be asking both parties to provide written arguments on the question of whether the CRT should refuse to resolve this claim under section 11 of the CRTA. Our tribunal administrator will be in contact with you shortly to begin the process of collecting your written argument.



After both parties have been given the opportunity to comment on this question, we will assign the dispute to a different tribunal member, who will make a decision. If the tribunal member refuses to resolve the claim, the claim can be filed with the court. Otherwise, the dispute will continue through the CRT's dispute resolution process.

If you have any questions or concerns about this issue, please do not hesitate to contact me.

[Registrar's Name]

Executive Director and Registrar