



# Civil Resolution Tribunal

## Code of Conduct for Tribunal Members

### 1. General

This Code of Conduct applies to all Members of the Civil Resolution Tribunal (“CRT”), including the Chair, Vice Chairs, and Members and temporary Members appointed under section 69 of the *Civil Resolution Tribunal Act* (the “CRTA”) (collectively, the “Members”).

The requirement to comply with this Code of Conduct is a condition of appointment. Each Member is responsible to the Chair for adherence to this Code. The interpretation and enforcement of the Code are matters within the Chair’s authority.

Members must faithfully, honestly, and impartially perform their duties (CRTA, s. 83) and must not, except in the proper performance of their duties, disclose to any person any information they have obtained as Members (CRTA, s. 87).

This Code establishes rules of conduct governing Members’ professional and ethical responsibilities to enhance public confidence in their integrity and fairness and that of the CRT as a justice sector institution.

The Code’s object is to provide guidance to Members about their professional and ethical obligations to render just and fair decisions.

The Code establishes reasonable minimum expectations governing Members’ conduct. While the Code is intended to assist Members by establishing appropriate standards of conduct in typical circumstances, the Code cannot anticipate all possible situations. In each case, it remains the individual Member’s responsibility to consider the appropriate standard and to act ethically and professionally.

#### 1.1 Decision-Making Responsibilities

##### Independence & Impartiality:

Members should uphold the principle of independence in decision making. Accordingly, Members should not be influenced by extraneous considerations and should not be influenced by partisan interest, public opinion, or fear of criticism.

Members must make their decisions based on the claim’s merits and the interests of justice. Members must

apply relevant law and policy to the evidence in good faith and to the best of their ability. Members must approach the hearing and determination of every claim with a genuinely open mind, and open to persuasion by convincing evidence and argument. Members must avoid doing or saying anything that would cause a reasonable, well-informed individual to think otherwise.

At any stage of a proceeding, Members must not communicate about the proceeding, directly or indirectly, with any non-defaulting party or their representative, or witness, except in the presence of all non-defaulting parties and/or their representatives, or unless the correspondence is copied to all the non-defaulting parties and/or their representatives.

### Conflict of Interest:

Members must prevent real, potential, or apparent conflicts of interest. Members should not have any involvement in activity that is incompatible the Member's duties and responsibilities or that may call into question their capacity to perform those duties and responsibilities.

A conflict of interest is any interest, relationship, association or activity that is incompatible with the Member's obligations to the CRT. For the purpose of this Code, a conflict of interest includes both **pecuniary** and **non-pecuniary** conflicts.

A **pecuniary** conflict of interest will exist where a Member has a financial interest that may be affected by the resolution or treatment of a matter before the CRT. 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.

A **non-pecuniary** conflict of interest will arise where a Member has an association, relationship or non-financial interest or engages in an activity that is incompatible with the Member's responsibilities as an impartial decision-maker. The relationships, interests or activities of a close family member or close associate may raise a potential conflict for a Member if those individuals will be affected beneficially or detrimentally by the CRT's determinations.

Where there is a circumstance which may give rise to a real or apparent conflict of interest, the Member must raise the matter with the Chair as soon as possible.

Where a party raises an allegation of a conflict of interest or bias in a dispute, the Member:

- (a) May hear submissions from the parties with respect to the alleged conflict or allegation of bias and make a determination on the allegation, or
- (b) Should recuse themselves from the matter immediately if the Member considers it appropriate given the nature and circumstances of the allegations (for example, if the Member acknowledges an actual pecuniary conflict).

Where a Member becomes aware of a possible conflict of interest, or of facts which may give rise to a perception of bias, and the related circumstances are unknown to the parties, the Member must immediately advise the Chair. Depending on discussions with the Chair, the Member may recuse themselves from the determination or advise the parties as soon as possible of the potential conflict, hear submissions on the

issue, and provide a written decision.

### **Panel Deliberations:**

The Chair may, occasionally, appoint a panel of up to three Members to hear a dispute (CRTA, s.79). After discussion and careful consideration, where a panel member is unable to agree with the proposed decision of a majority of the panel, that 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. Instead, the Member should prepare a reasoned dissent in a timely fashion.

### **Conduct towards Parties and Representatives:**

While upholding appropriate legal and procedural standards, the CRT strives to be as accessible and understandable as possible to the people who use it. Some participants may have barriers or have cultural backgrounds that make aspects of their behaviour and/or communication unfamiliar. CRT Members must endeavour to be aware of these types of issues and how best to work appropriately with all CRT participants.

At all times, Members must treat the parties and representatives appearing before the CRT with respect and patience. Members are responsible for ensuring that decisions are written in a neutral and respectful tone, in plain language, and are rendered within the applicable timeframe. Members must prepare their written reasons without undue delay. Peer reviewers should provide feedback at the earliest opportunity.

## **1.2 Confidentiality**

As a result of their duties, Members acquire confidential information. In accordance with CRTA sections 86 and 87, Members must not disclose to anyone such confidential information except as may be necessary to discharge their obligations.

All inquiries from the media must be referred to the Chair, and in their absence, to the Registrar/Executive Director. Under no circumstances are Members authorized to speak to the media on the CRT's behalf.

### **1.2.1 Protection of Privacy outside CRT's Offices**

CRTA sections 86 and 87 create obligations on Members about the security and protection of confidential information. Members must comply with these guidelines to protect the privacy and security of confidential records.

The following practice directive applies to Members' handling of documents, files, and electronic files and information where these are taken outside the CRT offices. Members must:

- a) Log in and log out files using procedures outlined by CRT,
- b) Transport paper files, notes, or printed documents in a locked carrying case and, if possible, keep them with the Member at all times,

- c) If it is necessary to review the files while travelling, ensure that they are not in open view,
- d) Always store paper files in a locked carrying case, locked filing cabinet, or locked room, to ensure they cannot be viewed by anyone other than Members or staff,
- e) Not leave files unattended in unlocked premises (whether at home, office or in a hotel),
- f) Not leave files in a vehicle, even if it is locked. If absolutely necessary, files may be locked in a trunk if the vehicle is parked in a secure location,
- g) Not leave electronic information, database materials, and related electronic file information unattended or in an area where they can be viewed by visitors, family members or other unauthorized individuals,
- h) Follow all security policies and practices established for computerized systems,
- i) Not take physical or electronic files stored on a device outside of Canada. Under certain circumstances, Members may securely access cloud-based files while travelling,
- j) Return files to the CRT offices as soon as possible.

If, despite the above precautions, a theft occurs and files and/or electronic systems containing personal information are stolen, Members must immediately:

- a) Notify the Chair or the Registrar/Executive Director, and
- b) File a police report.

The Chair or their designate will notify:

- a) The Office of the Information and Privacy Commissioner of the theft,
- b) Individuals whose personal information was stolen of the theft and what information about them was taken.

## 2. Conduct

### 2.1 General

Members will not engage in discriminatory behaviour contrary to the *Human Rights Code*. Members will not engage in harassment of a personal, sexual, or racial nature. Members will not engage in retaliation against anyone raising a concern or making a complaint in good faith under the *Human Rights Code*.

A Member will conduct themselves according to, and will be evaluated on, the factors identified in the position description for Members.

### 2.2 Collegial Responsibilities

Members must endeavour to promote collegiality among Members and with CRT staff. For a court (or tribunal), there is an expectation of judicial collegiality with positive connotations of cooperativeness and joint efforts toward achieving appropriate aims, operations, and functioning of the court or tribunal as an institution (see encyclopedia.com).

Members' conduct and language must meet acceptable social standards and must contribute to a positive work environment. A Member's conduct must be professional and not compromise the integrity of other Members, the CRT, or the public service.

Members will foster a collegial approach in performing their adjudicative functions and exchange views, information, and opinions in a spirit of professionalism and respect for each other's role as independent decision makers.

Members will be available for consultations or discussions on tribunal policy, legal, or practice or procedural issues during which Members will treat colleagues, and their opinions and views, with respect and professionalism.

### **To the CRT**

Members will maintain a high level of expertise in adjudication and procedural issues, as well as in the relevant law in the CRT's jurisdictions. Members will make every effort to comply with the CRT's policies, procedures, and standards.

Where Members question the appropriateness of any policy, procedure or standard, they will raise that issue with colleagues and the Chair in the appropriate forum.

Members will not publicly criticize the decisions, procedures, or structures of the CRT or individual staff or Members. A Member will not publicly comment, orally or in writing, on any matter before the CRT, or on a colleague's conduct, and will not divulge confidential information unless legally required or appropriately authorized to do so.

## ***2.3 Skills and Training***

Members will endeavour to develop and enhance their knowledge of both substantive and procedural matters related to CRT claims and proceedings and will participate in ongoing training and professional development.

Members will make themselves available to participate, as assigned, in other functions and activities such as training new Members, peer reviewing decisions, participating in committees, or developing practices and procedures.

## ***2.4 Personal Relationships between Members***

Members and employees who are direct relatives, or who permanently reside together, may not be employed in situations where:

- a) A reporting relationship exists where one Member/employee has influence, input or decision-making power over the other employee's performance evaluation, salary, premiums, special permissions, conditions of work and similar matters, or
- b) The working relationship affords an opportunity for collusion between the two individuals that would have a detrimental effect on the CRT's interests.

The above restriction on working relationships may be waived if the Chair is satisfied that sufficient safeguards are in place to ensure that CRT's interests are not compromised.

Members must disqualify themselves as participants in personnel decisions when their objectivity would be compromised for any reason, or a benefit or perceived benefit could accrue to them.

## ***2.5 Use of CRT Assets***

Members must not use CRT assets, internet facilities, space or time for any non-CRT purpose without the prior authorization of the Chair or their designate. The Member must comply with all applicable laws and regulations and must respect the legal protection provided by copyright and licenses with respect to both software programs and data.

When using the CRT's internet resources, users are responsible for ensuring that their use of internet access is appropriate and consistent with ethical conduct under the current applicable policy. This policy does not prohibit Members from making or receiving occasional brief personal electronic messages or private telephone calls.

## ***2.6 Accepting Gifts***

Members must not directly or indirectly ask for or accept a gift, favour, service, or promise of future benefit from any individual or organization that appears before the CRT.

This provision is not intended to prohibit the normal presentation of gifts to persons participating in public functions, or the normal exchange of gifts between friends that does not amount to a real or apparent conflict of interest or does not otherwise call into question the Member's objectivity and impartiality. This provision is also not intended to prohibit infrequent attendance at lunches, dinners, or public events of a common and reasonable nature in the company of an individual or representative of an organization which regularly appears before the CRT.

If there is any doubt about the propriety of accepting a gift or accepting an invitation to attend an event, the Member should consult with the Chair.

## ***2.7 Outside Activities***

Members must ensure that their outside activities do not interfere with the impartial, effective, and timely performance of their responsibilities. Members must not engage in activities that bring the CRT into disrepute. Unless authorized by the Chair, Members must not perform outside activities in a manner that appears to be officially supported by or connected to the CRT or appears to represent the CRT's opinion or policy. Members must not use their position with the CRT to lend weight to the public expression of a personal opinion. Members must not use CRT letterhead for personal correspondence or non-CRT related matters.

Members are free to engage in political activities so long as they are able to maintain their impartiality and the

perception of impartiality in relation to their duties and responsibilities. Members' political activities must be clearly separated from activities related to their role as Members. Members must not engage in political activities during working hours or use CRT facilities, equipment, or resources in support of such activities.

Members will not introduce partisan politics at the local, provincial, or national levels into the workplace. This does not apply to informal private discussions among co-workers.

## ***2.8 Outside Remunerative and Volunteer Work***

Members may engage in remunerative employment with another employer, carry on a business, receive remuneration from public funds for activities outside their position, or engage in volunteer activities, provided it does not:

- a) Interfere with the performance of their duties as a CRT Member,
- b) Bring the CRT or the government into disrepute,
- c) Represent a conflict of interest or create the reasonable apprehension of a conflict of interest,
- d) Appear to be an official act or appear to represent the CRT or government opinion or policy,
- e) Involve the unauthorized use of work time or government premises, services, equipment, or supplies to which they have access by virtue of their employment,
- f) Gain an advantage that is derived from their employment as a CRT Member,
- g) If applicable, result in a violation of the prevailing Treasury Board Directive on remuneration of Members; or
- h) If applicable, result in payment while the Member is in receipt of short term and/or long-term disability plan payments.

## ***2.9 Reporting and Consequences***

### ***Breach of the Code of Conduct***

Members who are concerned that the conduct of another Member may threaten the CRT's integrity have a duty to confidentially discuss the issue with the Member in question, where appropriate, and the Chair or their designate as soon as practicable.

Any Member who, in good faith, believes there has been a breach of this Code, and reports the matter to the Chair or their designate, is protected from any reprisal.

The Chair will, if the allegation is not considered frivolous or vexatious, make whatever inquiries or investigations the Chair determines to be necessary and may, if appropriate, report the results and any steps taken to the person who made the report. If the Chair considers the allegation is substantive, the Chair will notify the Member whose conduct has been reported and give the Member an opportunity to respond, both to the allegation and to any proposed disciplinary action.

Failure to comply may result in the Chair recommending against the Member's reappointment and subject to action up to and including rescission of the Member's appointment under CRTA section 74. If the breach

occurs in good faith, or through inadvertence, such factors will be considered in determining if discipline is imposed and the disciplinary sanction warranted.

### ***Reporting of Wrongdoing under the Public Interest Disclosure Act (“PIDA”):***

PIDA provides a framework for employees to report specific kinds of serious wrongdoing.

Under PIDA, Members are considered “employees.” CRTA sections 1(1) and 68 defines “tribunal members” to include full and part-time members, temporary members, the chair, and vice chairs. This means that tribunal members, current and former, may avail themselves of the processes and protections available under PIDA in a safe way.

Under section 7 of PIDA, Members can make good faith disclosures about wrongdoings as defined in PIDA that they reasonably believe may have occurred or are about to occur.

Section 9 of PIDA requires organizations to have procedures to manage requests for advice and disclosures by its employees. The CRT has established procedures that are posted internally. A CRT employee may make a disclosure to or request advice directly from their supervisor or the CRT’s Designated Officer, Vice Chair – Quality Assurance, or through a confidential email address.

## **3. Obligations after Ceasing to be a Member**

Members who cease to hold office continue to be bound by the confidentiality obligations for any matter arising while they were a Member. Members who cease to hold office may not take improper advantage of their former office.

Members who cease to hold office are prohibited from appearing or making written submissions in a proceeding or matter before the CRT as counsel, advocate, or a party’s representative until at least six months after the Member’s appointment ends.