

# **SOCIAL BENEFITS TRIBUNAL**

## **Member Conduct Complaint Procedure**

Members of the Social Benefits Tribunal are required to comply with the “Rules of Conduct and Conflict of Interest Guidelines for Members of the Social Benefits Tribunal and the Social Assistance Review Board”. It is important to the integrity of the adjudication process that persons who have concerns about the conduct of an adjudicator can be confident that their complaint will be dealt with in a fair manner. The purpose of this Procedure is to outline the process for ensuring that all complaints related to the conduct of a member of this Tribunal are dealt with quickly, fairly and in a manner that is appropriate given the nature of the complaint. At the same time it is essential that the independence of an adjudicator is not compromised, and that any investigation of a complaint not interfere with the adjudicator’s role in conducting a fair hearing and rendering a decision. In this regard the Chair will determine the nature of the investigation and remedial action warranted in each individual case.

### **Complaint in Writing**

A complaint about the conduct of a member of the Social Benefits Tribunal shall be made in writing to the Chair of the Tribunal. The person making the complaint must be willing to disclose his or her name and address and the particulars of the complaint. If the complaint relates to a specific hearing, the Tribunal file number and date of hearing should be provided. If the complaint relates to general conduct outside of a hearing then information about the incident and the person’s connection to the event should be provided.

The Chair will satisfy himself that the Tribunal is complying with all requirements of the *Freedom of Information and Protection of Privacy Act*, before information is released in relation to each complaint.

### **Chair’s Acknowledgement of Complaint**

The Chair of the Tribunal will acknowledge the receipt of the complaint in writing.

### **Termination of Complaint**

If the Chair determines that the complaint is frivolous he may decide not to proceed any further and so advise the complainant.

This Complaint Procedure does not apply to a situation where the complaint relates to a Tribunal member’s adjudicative decision or exercise of discretion in the course of rendering a decision. The Chair will advise the complainant that this Complaint Procedure does not apply to a complaint where the complainant does not agree with a decision that the member has rendered. The Chair will

advise the complainant that no further action will be taken in relation to the complaint in its present form.

The Chair will not find misconduct simply because the complainant is unhappy with a member's decision. Where appropriate the complainant will be advised of the reconsideration, appeal and judicial review remedies available to challenge an adjudicative decision of the Tribunal. In appropriate circumstances the complainant will be asked if he or she wishes to have the complaint treated as a request for a reconsideration of the Tribunal's decision.

### **Informing Members**

Members will not be advised of complaints that the Chair has terminated without an investigation.

For complaints involving a member in relation to a specific hearing, the general practice is that members will not be informed of the complaint until after the member has issued a final decision in the matter. In extraordinary circumstances, it may be necessary to deal with the issue of conduct immediately. For example, in those instances where the complaint relates to the late release of a decision, the Chair may deem it necessary to deal with the complaint immediately in order to determine the nature of the delay and to attempt to ensure that legislated timelines are complied with.

If the concern about member conduct relates to an issue of bias or conflict of interest, and the hearing in which the concern has arisen has not yet been concluded, then the complainant will be advised to raise the issue in the hearing and ask the member to rule on the question.

Otherwise the Chair will advise the complainant that no steps will be taken to investigate the complaint or discuss it with the member until the member has rendered a final decision and is no longer involved in the appeal.

### **Member Response**

Once the final decision has been rendered the Chair will provide a copy of the complaint, in accordance with freedom of information requirements, to the member. The Chair will invite the member to respond in writing.

In the course of investigating the complaint the Chair may discuss the complaint with any Tribunal staff having relevant information in relation to the matter. Where the complaint relates to a hearing the Chair may also review the file including the Record of Hearing.

The Chair may delegate the investigation of any complaint, or any part of the investigation, to the responsible Vice Chair of the Tribunal. In this event the Vice

Chair will report back to the Chair the results of his or her investigation and the Chair will make the final decision on the complaint.

Once the investigation is complete the Chair will make a decision about the complaint. This decision will include any remedial steps which he feels are warranted. This decision will be communicated in writing to the complainant and the member. The decision of the Chair is final.

### **Members' Professional and Ethical Responsibilities**

This Procedure does not apply to complaints that a member may have about another member of the Tribunal. The member's responsibility in that regard is governed by the " Rules of Conduct and Conflict of Interest Guidelines for Members of the Social Benefits Tribunal and Social Assistance Review Board"

64. When an adjudicator becomes aware of conduct of a colleague that may threaten the integrity of the tribunal or its processes, it is the duty of the adjudicator to advise the tribunal chair of the circumstances as soon as possible.

The Code also requires a member to:

61. Inform the Chair immediately of any basis on which an allegation of bias or conflict might be raised with respect to any activity, interest or relationship of the adjudicator.