

107 Code of Conduct

107.1 Application

1. The rules in this code apply to all members of the board whether full or part-time members and includes persons appointed pursuant to Section 4, 13 and 18 or Section 20 of *The Municipal Board Act*.
2. The code governs the conduct of members from the commencement of the term of appointment. Also included are the continuing responsibilities of members after completion of their term.
3. The code may be amended from time to time to reflect the developing experience of the board.
4. Each member is responsible to the board chair for adherence to this code. The interpretation and enforcement of the rules are matters within the authority of the chair. It is recognized that failure to comply may result in the chair recommending against reappointment of a member.

107.2 General Conduct

1. Conflict of Interest and Bias

Members should strive to conduct themselves in a manner that does not create bias nor raise a reasonable apprehension of bias. Bias can be defined as a lack of neutrality or impartiality on the part of a decision-maker regarding an issue to be decided. A biased decision-maker is predisposed to decide to a party's favour or detriment, based on considerations that are improper and extraneous to the evidence, law or argument before the decision-maker. Bias may be actual or perceived. Perceived bias is as damaging to the decision-making process as actual bias. Members should strive to decide every case impartially.

2. Independence

Members should fulfill their duties and responsibilities free of influence from any person, interest group or the political process. Members should apply the principle of independence in decision-making; accordingly, they should not be influenced by extraneous considerations. Members should decline offers of gifts, hospitality and other benefits, other than those of minimal value, offered by parties who have an interest in matters that may come before the board. The criteria for independence is the freedom to decide according to one's own conscience and opinions. For that reason, members should not allow any outside influences to interfere with their decisions.

Upon appointment to the board, a member should review all organizational memberships, and consider resigning from membership in organizations having a partisan interest in issues that may come before the board.

3. Impartiality and Objectivity

Members should not prejudge a case. Members of the board may hold tentative views on matters in issue, but they should be open to persuasion and alternative points of view.

4. Pecuniary Interest, Personal Interest or Perception of Bias

This policy supplements the specific provisions of the *Municipal Board Act* which deals with conflict of interest.

Members should not participate in a matter in which they have a direct or indirect pecuniary or personal interest that may give rise to a perception of bias. A pecuniary interest exists where the member or a person related to that member may benefit or suffer financially from the decision. A personal interest exists when a member may favour persons to whom he or she has an emotional connection, such as a relative, friend, or business associate. Any pecuniary or personal interest in a case, however slight, raises the possibility of a perception of bias.

A direct pecuniary interest in the outcome of the decision always leaves a member open to allegations of bias. If the member stands to suffer a financial detriment or gain a financial benefit from the decision, it is likely that a party will be able to demonstrate that the

member cannot be objective. Close personal relationships should also be regarded as a cause for disqualification, as they could raise a reasonable apprehension of bias.

It is the responsibility of each member to consider and actively inquire into any circumstance that might suggest a possible conflict of interest or raise a perception of bias in respect of any of his/her responsibilities. The member may at first be the only person in a position to recognize a possible conflict or an issue of bias. As soon as a potential conflict, or grounds for a perception of bias, is identified, a member should take appropriate steps as outlined.

A member will inform the board chair forthwith 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.

Where a member has a potential conflict of interest in respect of a matter before the board, but not assigned to the member for adjudication, the member will refrain from participation in any discussion of the matter, and will absent him/herself from such discussions, and advise the chair of the circumstances. If the member becomes aware of the potential conflict during a board meeting, he or she must absent him/herself from the relevant portion of the meeting. If minutes of the meeting are being recorded, the member should ask that his absence be noted and the secretary is required to record the declared conflict of interest in the minutes.

Where a member becomes aware prior to commencing the hearing, that circumstances exist that suggest a possible conflict of interest on the part of the member, or that may raise a perception of bias, he or she shall inform the chair forthwith. If the board determines that the circumstances are insignificant, the member may continue with the hearing unless he or she decides that the issue should be placed before the parties for submissions at the commencement of the hearing.

A member should not participate in a proceeding involving a party or representative with whom he or she was formerly in a significant professional relationship until a period of six months has elapsed from the termination of the relationship. A significant professional relationship would include employment, solicitor/client or partnership/association in a law firm.

A member should not participate in a proceeding involving a party or representative with whom he or she has a close personal

relationship. For example, a member should consider disqualifying him/herself from a hearing if counsel for one of the parties is a close friend. The appropriate response will vary depending on the facts, but in every case, the particular circumstances of the relationship, and the position of the other parties should be considered carefully.

Where a party raises an allegation of conflict of interest or bias during a hearing, the member may:

- Resign from the proceeding if he or she considers this to be appropriate given the nature and circumstances of the alleged conflict (for example, if the member recognizes an actual pecuniary conflict);
- Request that the panel hear submissions from the parties with respect to the alleged conflict and recess to consider the submissions; or
- Request that the panel schedule a time for submissions on the allegation of conflict.

Where the member becomes aware during a hearing of a possible conflict of interest, or of facts that may give rise to a perception of bias, and the related circumstances are unknown to the parties, the member shall:

- Advise the parties forthwith of the possible conflict and request that the panel hear submissions on the issue; or
- Request that the panel recess the hearing to consider the seriousness of the possible conflict and whether it is appropriate to inform the parties of the circumstances and hear submissions.

A member may wish to consult the secretary or chair before making this disclosure.

Once an apprehension of bias has been alleged by a party or raised by a member and the member does not resign from the panel, the panel will decide whether the member's continued participation on the panel is appropriate and adjourn the hearing if necessary.

Where a party before the board has made submissions challenging the neutrality of a member, it will be advisable in most cases for the written decision to address the allegation of bias or conflict of interest.

5. Competence and Knowledge

Members should foster their professional competence and knowledge. For the board to discharge its responsibilities, there is a need for persons having specialized skills, a breadth of knowledge, a grasp of legislative objectives and an awareness of the social implications of their decisions. In addition, board members must have the ability to use discretion and their own judgment, rather than to merely adhere to rigid rules.

To fully carry out their responsibilities, members should maintain a high level of expertise in adjudication, procedural and technical issues, as well as in the relevant law in the subject area of the committee on which they sit.

6. Diligence

Members should perform their official duties and responsibilities fully and diligently. Members should conduct hearings as expeditiously as the circumstances and considerations of fairness permit. Members have a duty to respond to applications, complaints and appeals in a timely manner. Decisions should be issued as soon as possible after the hearing is completed or within the statutory deadline. Members should not procrastinate in undertaking the work assigned to them.

7. Courtesy, Discretion and Integrity

Members should treat each person who appears before them with dignity and respect. Members should conduct themselves generally with reserve, courtesy and discretion. Members should endeavour to maintain the integrity of the decision-making process. The actions of a board member should be irreproachable. Irreproachable behaviour can be described as including patience, courtesy, attentiveness, understanding and discretion. Members should always be sensitive to potential bias concerns being raised and accordingly should adopt a demeanour that will avoid raising any reasonable apprehension of bias.

8. Collegiality

Members should foster a collegial approach in performing their official duties and responsibilities; accordingly, they should assist colleagues through the exchange of views, information and opinions in a spirit of respect for the special skills and qualities of each member of the board.

A good working environment is generally conducive to good morale and therefore productivity. As a means of meeting the board's responsibilities, members should nurture good working relationships with each other and share their experiences, knowledge and views. A collegial approach is conducive to instilling confidence and maintaining integrity of the decision-making process.

A member will make him/herself available on a timely basis for consultation or caucus discussions initiated by any member on panel, policy, procedural, or technical issues he/she is involved with. Members should comment on draft decisions provided to them at the earliest opportunity.

In discussions and consultations with other board members, a member will conduct him/herself in a manner which demonstrates respect for the views and opinions of colleagues.

When sitting as a hearing panel, members will comply with the board's statutory or policy guidelines governing the respective roles of the chair and the other members in the conduct of a hearing and in making interim rulings on procedural and substantive questions.

Panel members should discuss in advance their mutual expectations with respect to matters such as dealing with objections, questions to parties, and panel caucusing.

A member shall not engage in conduct that exploits his/her position of authority.

9. Outside Activities

Members should not engage in any outside activities that could have the effect of bringing disrepute upon themselves or the board. Members' conduct outside the context of their official duties or a specific hearing can reflect on their impartiality and independence, as well as the integrity of the board. It is acknowledged that members live in the real world, and often have been appointed to the board as a result of their previous activities or expertise. However, in determining whether a particular outside activity, including political activity at the local, provincial or federal level, is permissible, members should consult any specific legislation or policy directives, which may affect them. Members should consider whether their participation in or association with the activity could give rise to a conflict of interest or reasonable apprehension of bias.

107.3 Ceasing to be a Member

A member is discouraged from appearing before the board 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 later.

A member is discouraged from acting as a professional or legal consultant in the preparation of a case before the board or in any matter relating to the work of the board until at least six months after ceasing to be a member.

A member, who, having ceased to be a full-time member of the board, continues on a per diem basis in respect of certain ongoing proceedings, shall continue to be bound by the restrictions and obligations of these rules, including the responsibility of maintaining confidentiality.

A member should not take improper advantage of past office after ceasing to be a member of a board.

107.4 Specific Considerations for Hearing Process

1. Contacts prior to commencement of proceedings

Members should be cautious of their contacts prior to the commencement of proceedings and should avoid discussing any matter that could be expected to come before the board.

2. Preparation for a hearing

Members should be fully prepared for a hearing by reviewing file material provided and being conversant with the issues. Public confidence in the competence and fairness of the board is enhanced when members present themselves as prepared and capable of undertaking the responsibilities assigned them.

3. Hearing the parties

Members will make every effort to comply with the policies, procedures and standards established for the board. This will include, for example, procedural rules and practice directions governing the conduct of proceedings.

A member shall endeavour to conduct all hearings expeditiously, preventing unnecessary delay while ensuring that all parties have a fair opportunity to present their case.

Members have the duty to give a person affected by a decision an opportunity to present his or her case. Persons affected by the decision have the right to have adequate notice of the hearing, to know the case to be met, to answer it and to put forward their position.

Members shall listen carefully and with respect to the views and submissions of the parties and their representatives. A member shall show respect for the parties, representatives, witnesses, and for the hearing process itself, through his/her demeanour, timeliness, dress and conduct throughout the proceeding.

Members must demonstrate a high degree of sensitivity to issues of gender, ability, race, language, culture and religion, which may affect the conduct of a hearing. Such issues may, for example, affect the affirmation/swearing-in of witnesses, the scheduling and time of hearing day, the attire of participants. In considering the demeanour of a witness in the context of an assessment of credibility, the member should recognize that he or she might not be familiar with cultural norms affecting the manner of the witness.

A member shall avoid undue interruption and interference in the examination and cross-examination of witnesses, and when hearing the submissions of a party or representative. It is permissible for a member to question a party in order to clarify the evidence or submission, or to ensure the relevance of a particular argument, but unnecessary leading questions should be avoided. A member should not show undue impatience or a negative attitude towards a witness.

Members shall attempt to ensure that parties who are unrepresented are not unduly disadvantaged at the hearing. While a member cannot act as counsel to the unrepresented party, it is appropriate for the chair to clearly explain the procedure to be followed in the hearing. In the course of the hearing, the chair may, in clear and simple language, outline for the party the relevant evidentiary and procedural rules, which have a bearing on the conduct of the proceeding.

4. Maintaining a Judicial Temperament

Members should maintain a judicial temperament. During the hearing, members should pay particular attention to the public perception of their conduct. Members should be courteous and reserved. They should take care not to display feelings of antagonism and hostility toward a party, nor should they behave in a manner that may indicate partiality or favouritism.

5. Member Communications

A member shall not communicate or meet directly or indirectly with any party, witness or representative in respect of a proceeding, except in the presence of all parties and their representatives at any time prior to the hearing, during the hearing (including breaks), while the decision is being drafted, and after the decision has been delivered to the parties. Telephone calls to the member should be referred to the secretary. Correspondence to or from a party or counsel should be handled by the secretary and forwarded by the board to all parties and representatives not already copied.

A member 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 with respect to the subject matter of the hearing.

When, during a hearing, a member becomes aware of a difference of opinion among members of a hearing panel on a procedural or substantive issue affecting the conduct of the hearing (including the

relevancy of questions asked of the parties), he or she should request a recess to allow the panel to discuss the issue and reach a decision on how to proceed.

A member should not publicly criticize or negatively comment on the decisions, procedures or structures of the board. The actions and behaviours of members have a large bearing on the public's perception of the board. Public criticism by a member of the decisions of other members, the board's procedures or organizational structure, even if well founded, has the effect of reducing public confidence in the board.

A member who is dissatisfied with any aspect of the board's operations should bring the concerns to the attention of the chair and the matter should be dealt with internally.

A member shall not discuss in private, outside the board, any aspect of a matter before the board.

A member shall not divulge confidential information unless legally required to do so, or is appropriately authorized to release the information.

A member shall never communicate with the media regarding a decision of the board. All inquiries from the media shall be referred to the secretary.

6. Post-hearing Deliberations and Rendering Decision

He who hears must decide. A member is responsible for ensuring that all decisions are rendered promptly.

A member shall make each decision on the merits of the case, based on law and evidence.

A member shall apply the law to the evidence in good faith and to the best of his/her ability. The prospect of disapproval from any person, institution, or community must not deter a member from making the decision, which he or she believes is correct based on the law and the evidence. Members must be prepared to go where the evidence and law fairly takes them. A member of a hearing panel will consider carefully the reasons of colleagues where there is a difference in their proposed determinations on an interim or final decision. 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.

In circumstances where a member of a hearing panel is unable, after discussion and careful consideration, to agree with the proposed decision of a majority of the panel, he or she shall prepare, in a timely fashion, a reasoned dissent.

A member shall not ignore relevant board decisions on a question at issue before them. Where previous decisions are relevant and are not followed, the decision must explain the reasons for the departure clearly and respectfully. Due weight must be given to previous board jurisprudence and the need for a degree of consistency in the interpretation of the law.

A member is responsible for ensuring that decisions are prepared in accordance with board guidelines on form, language and length, and meet board standards with respect to the quality of written decisions.

A member shall endeavour to use clear language in decision writing.