



## Recusal Obligations of Members of Administrative Tribunals

Members of administrative tribunals occasionally find themselves in situations where they need to withdraw from cases that they have been asked to hear. Some of these situations may involve conflicts of interest within the meaning of the [Conflict of Interest Act](#), necessitating a public declaration of recusal. Others may be triggered by circumstances beyond the scope of the Act, in which case no public declaration would be required. While tribunal members may be subject to their own recusal guidelines, they are also subject to the Act. As such, it may be useful to review their obligations.

This document seeks to provide administrative tribunal members with some general guidance in order to help them comply with their recusal obligations under the Act.

As explained more fully below, the primary consideration under the Act is whether the outcome of the administrative proceedings over which administrative tribunal members preside has the potential to further their own private interests or those of relatives or friends, or to improperly further the private interests of another person. Where such potential exists, administrative tribunal members may be required to recuse themselves and make a public declaration to that effect under the Act.

### *Recusal Rules*

As Governor in Council appointees, all administrative tribunal members are considered public office holders (POHs) for purposes of the [Conflict of Interest Act](#) and are subject to its general rules on avoiding conflict of interest, including those related to recusals:

- Subsection 6(1) prohibits POHs from engaging or participating in official decision-making in circumstances which they know or ought to know would place them in a conflict of interest.
- Section 21 requires POHs to recuse themselves from any discussion, decision, debate or vote on any matter in respect of which they would be in a conflict of interest.

Section 4 of the Act states that “a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person’s private interests.”

Administrative tribunal members who exercise their official duties or functions on a full-time basis, or who exercise them on a part-time basis but receive an annual salary and benefits, are considered reporting public office holders (RPOHs) under the [Conflict of Interest Act](#). Subsection 25(1) of the Act requires RPOHs to make a public declaration to the Conflict of Interest and Ethics Commissioner when they recuse themselves because of a conflict of interest within the meaning of the Act, within 60 days after the day on which the recusal takes place.

### *Identifying Recusal Situations*

In order for there to be a conflict of interest within the meaning of the [Conflict of Interest Act](#), the proceedings must have the potential to affect private interests—those of the administrative tribunal member, those of a relative or friend or those of another person.

Conflict of Interest and Ethics Commissioner Mary Dawson has interpreted the Act's reference to "friends" as follows: "I do not think that this prohibition was intended to relate to individuals other than those who have a close bond of friendship, a feeling of affection or a special kinship with the public office holder concerned. It does not include members of a broad social circle or business associates." Thus, administrative tribunal members may be required to recuse themselves and make a public declaration to that effect in cases where they have a close personal relationship with an individual whose private interests could be affected by the administrative proceedings in question.

Asking themselves the following questions can help administrative tribunal members determine if they need to seek advice from the Office of the Conflict of Interest and Ethics Commissioner about whether they may be in a conflict of interest within the meaning of the [Conflict of Interest Act](#):

- **Do I have a personal financial interest related to the proceedings?** As a general rule, the more direct the administrative tribunal member's pecuniary interest related to the proceedings and the more likely that the proceedings could affect that interest, the stronger the case for recusal. However, some situations may be less obvious, such as those that involve less direct pecuniary interests or those where the impact of the proceedings on the private interests is more remote.
- **Do I have ongoing and close personal relationships with individuals or corporations closely connected to the proceedings whose private interests could be affected by them?** The nature, depth and currency of such relationships must be assessed in order to determine if they are sufficiently close that a reasonable person would question the administrative tribunal member's impartiality in situations in which these associates' private interests could be affected by the outcome of the proceedings. This type of potential recusal situation may arise not only when the administrative tribunal member has a close

relationship with a party to the proceedings, but also when he or she has a close relationship with anyone else who has a significant interest in their outcome, including important witnesses and legal counsel.

Situations that administrative tribunal members might identify by asking themselves the following question do not generally give rise to a conflict of interest under the [Conflict of Interest Act](#). Tribunal members should, however, be cautious under such circumstances:

- **Have I engaged in conduct that casts doubt on my ability to remain impartial?** There may be cases where the administrative tribunal member's statements or behaviour, either before or during the proceedings, would lead a reasonable observer to conclude that the tribunal member cannot, or has failed to, act impartially and thus should not hear the case. On its own, however, conduct that signifies a lack of impartiality will not automatically give rise to a conflict of interest within the meaning of the Act. To fall under the Act, such conduct would also have to arise in a situation in which the outcome of the proceedings has the potential to further the tribunal member's private interests or those of an individual within whom he or she has a close personal relationship, or to improperly further another person's private interests.

In general, administrative tribunal members are required to recuse themselves under the [Conflict of Interest Act](#) if their private interests or those of a relative or friend could be furthered by the proceedings' outcome. In the absence of such private interests, recusals based on prejudgement of issues, or statement or conduct connoting partiality are unlikely to involve conflicts of interest as defined by the Act.

This document is intended as a guide only. Administrative tribunal members are strongly encouraged to contact the Office of the Conflict of Interest and Ethics Commissioner for confidential advice about specific recusal situations. Please call 613-995-0721 or email [ciec-cciec@parl.gc.ca](mailto:ciec-cciec@parl.gc.ca).

*Ce document est également disponible en français.*

<http://ciec-ccie.parl.gc.ca/>