

‘Principles of Conduct for Members of Merit Review Tribunals’*

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Council involvement

As many of you will be aware, the Administrative Review Council is presently in the final stages of a project on professional standards for merits review tribunal members.

Work to date on the project

The Council’s work to date on the project has passed two important milestones:

- release of the Council’s exposure draft *Principles of Conduct for Members of Merits Review Tribunals*,¹ in December 2000; and
- conduct of public consultation forums in Melbourne, Sydney and Canberra, in April and May of this year.

The release of the exposure draft and the public consultation forums were undertaken to maximise the input from key stakeholders in the project before publication of a final version of the principles of conduct and a more detailed commentary.

The forums attracted the interest of Commonwealth, State and Territory tribunal members and presiding officers, users of tribunals, legal practitioners and representatives of applicants for review and decision making agencies. Their support was valuable, thoughtful and considered.

Based on feedback from the forums, as well as written submissions, the Council is now preparing its final report to the Attorney General.

Origins of the project

The project had its origins in a series of ethics workshops conducted by the Council several years ago. The workshops were well received and the Council was encouraged to develop a set of principles of conduct.

Though clearly a project in its own right, the Council’s work in this area is also a logical progression from the issues of tribunal management, practice and procedure examined by the Council in its 1995 *Better Decisions* Report.²

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¹ The Principles of Conduct released in the December 2000 Exposure Draft are reproduced at the end of this paper. It should be noted that the draft Principles may be amended in the Council’s final report. The Exposure Draft also included a commentary, elaborating on the intended application of each Principle. The full text of the Exposure Draft, including the commentary, is available from the ARC Secretariat (ph. 02 62505800) or the ARC website law.gov.au/arc

² *Better Decisions: review of Commonwealth Merits Review Tribunals*, Report No. 39, Administrative Review Council. See in particular the discussion of performance appraisal of members (paragraphs 4.74-4.83) and the types of information that should be made available to members of the public by tribunals (paragraphs 5.76-5.87)

The broad ethical environment

The project is also timely having regard to a heightened interest in recent years, both in Australia and overseas, in standards of conduct for public officers. A prominent example is the Australian Public Service Values and Code of Conduct promulgated under the *Public Service Act 1999*.

Other national, international and regional bodies active in this area include the UK Committee on Standards in Public Life ('the Nolan Committee'), the Council of Europe, the Organisation for Economic Cooperation and Development, the Organisation of American States and the United Nations. In Canada, bodies such as the Federal Tribunal Heads Code of Conduct Steering Committee and the Society of Adjudicators and Regulators have played prominent roles in developing principles of conduct for tribunal members, while in New Zealand, there have been significant public sector reforms in recent years.

The level of interest signals neither a breakdown in ethical standards, nor the expectation of one.

For some, the phenomenon is attributable to tensions associated with public management reforms including the:

“increased application of private sector methods and facilities in public service, the introduction of transparent accountability systems focusing on outputs and outcomes and the emphasis upon economic efficiency in public service.”³

Other factors are said to include increased media focus and greater general public education and expectation of their public officers.⁴

Scope of the Project

The Council's statutory role under the *Administrative Appeals Tribunal Act 1975* is to monitor the Commonwealth administrative review system. Therefore, the project nominally focuses on standards of behaviour for members of Commonwealth merits review tribunals. However, the draft Principles were not developed with any particular tribunal in mind. It is also hoped that they will be a useful guide for State and Territory merits review tribunals.

The draft Principles apply to tribunal heads, and full and part time members. A theme of the exposure draft was that to be effective, ethical standards need to be embraced from the top down. It has been said in this regard that:

“An agency will not have a culture of ethical behaviour unless that culture is manifest in the senior management.”

³ Paper produced by the OECD Secretariat in association with an OECD Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries, 3 November 1997 (may be viewed on the OECD website at <http://www.oecd.org/puma/ethics/symposium>).

⁴ See for example, comments by the Hon B S J O'Keefe AM QC in a speech delivered on 24 February 1999 entitled 'Australian Public Service Values at Work: Building the Foundation – APS Values at Work, page 13. (May be viewed at the Public Service Merit Protection Commission Website – <http://www.psmpc.gov.au/media/vcdokeefe.htm>).

“The first duty of managers and supervisors in providing leadership in the area of ethics is...to provide a consistent example of highly ethical conduct.”⁵

The purpose of principles

Concise and well-publicised principles of conduct play a valuable role in informing tribunal members and users of the basic behavioural standards that are expected to apply and in clarifying where the boundaries of acceptable behaviour lie.

Principles of conduct can also:

- reassure the public of the role and responsibility of the tribunal;
- set reference standards for the development and implementation of performance management programs;
- inform tribunal users about the standards of behaviour and conduct expected of tribunal members; and
- facilitate tribunal training activities.

It is hoped that the Council’s project will promote discussion and awareness of issues of conduct amongst both members and tribunal managers. In this sense, the primary purpose of the Principles is educative, although that is not to say that there should not be mechanisms in place within tribunals to deal with breaches of the principles.

For tribunal users, principles or a code of conduct can provide a basis for determining what is acceptable behaviour with the tribunal. For instance, it has been said that:

“...if an agency’s publicly available code of conduct sets clear and unambiguous rules in relation to gifts, benefits and entertainment, it is much less likely that staff will be faced with the need to deal with improper offers from those who deal with the agency. And if they occur, the code of conduct is a readily available reference for the public sector member to quote to the offerer in refusing the offer.

“In such circumstances, there should be no unsolicited champagne found on one’s doorstep...”⁶

I note that the forums considered the scenario of a tribunal member receiving a case of champagne at Christmas from a practitioner with a substantial practice before the tribunal. While participants readily agreed that a gift of a case was inappropriate, discussion suggested that somewhere there was a point where receipt would be appropriate. At the forums members’ discussed experiences of receipt of minor gifts such flowers, fresh eggs, chocolates etc. Clearly, the value of the gift and the expectations (real or apprehended) of the giver become important. The option for a tribunal policy not to accept any gifts might provide certainty, but perhaps goes too far (for all tribunals at least). The Council’s exposure draft Principles proposed as the relevant principle:

⁵ MAB/MIAC Report No.19 May 1996, ‘Ethical Standards and Values in the Australian Public Service’, at page 14 of the report.

⁶ Hon B S J O,Keefe AM QC, *ibid*, page 10.

“A tribunal member should not accept gifts of any kind where the offer is related to or could reasonably be perceived to be related to the office of the member or the tribunal.”⁷

Importantly, this attempts to link the gift to the tests of perception and the discharge of tribunal functions, but discussion at the forums suggested even this might be too narrow given that even the gift of eggs is related to the office of the member. At a practical level, this also illustrates why documents such as the Council’s draft *Principles* are a resource, and that tribunals need to develop their own statements, for there will be tribunals where it might be appropriate, or agreed, that as a matter of policy no gifts (whatever the value) will be accepted.

An ethical infrastructure

Principles of conduct should not exist in a vacuum.

A theme in the Council’s exposure draft was the importance of a clearly articulated tribunal commitment to a standards and ethical values framework, and a systematic educational strategy for increasing awareness and understanding of such values.

For example, such commitment might involve incorporating ethical principles in a tribunal’s corporate plan along with corporate values and objectives. Some tribunals promote ethical standards in their performance appraisal process.⁸

The need for a tribunal commitment to support members (of which training is a part) was seen as an important aspect of developing principles or a code of conduct for individual tribunals. Induction training is important in this regard, but it must not stop there. Given the changes to tribunal membership over time, and the changing demands and expectations on all members, ongoing and up to date training are also necessary.

While the focus of such training will need to be on the practices within each tribunal, the Council’s Principles should provide a general starting point for the identification and enforcement of tribunal member values. It is anticipated that the Principles may be of particular assistance to smaller tribunals with more restricted training budgets and resources. Members of tribunals with fewer members might benefit more from regular structured discussion of these issues, as opportunities for informal liaison with colleagues might be more limited.

The need for a tribunal commitment is arguably heightened if principles issues are linked to performance management, as was contemplated in the Administrative Review Tribunal Bill 2000⁹. Feedback from the forums indicated this was a particular concern of members, motivated not so much from a resistance to such developments *per se*, but more on the basis that proper support for members was essential. I note that establishment of a body or a person

⁷ Exposure Draft *Principle* 2(d)

⁸ For example, the Migration Review Tribunal and the Refugee Review Tribunal both have non-legislative codes of conduct linked to performance agreements obliging members to:

- observe standards of justice and fairness dealing with persons before the tribunal;
- protect the tribunal’s reputation in the wider community; and
- act appropriately when a conflict arises between a member’s private interest and their duty to the tribunal.

⁹ The ART Bill linked each member’s performance agreement (clause 24) with a member’s code of conduct. Non-compliance with the code may result in a direction from the President (clause 26) or removal from office (clause 28).

that members could approach for advice concerning specific conduct issues is one approach that has been adopted.¹⁰

Consultation processes

The best ethical guidelines are those which take account of the views of those to whom they are intended to apply, and those most likely to come into contact with tribunals and their members.

Principles of conduct emanating from a body external to individual tribunals, with no sense of ownership or participation on the part of tribunal members and other stakeholders, are likely to end up little used and quickly forgotten. To be of real assistance to tribunal members, principles of conduct must be developed with their active participation. Members should have a sense of having been involved in the development process.

At the forums conducted by the Council, full and part time tribunal members at all levels canvassed a range of issues arising from the draft Principles. The first hand experience underlying such views provides a sound basis for the Council to finalise its report to the Attorney General. More importantly, perhaps, it demonstrates the interest and willingness of tribunal members to actively discuss issues of ethics and conduct and how they might apply to their tribunals.

Shaping the draft principles

To be effective, principles of conduct need to be derived from and consistent with tribunal values.¹¹ As a starting point in the development of the draft principles, the Council turned to the five values which it has previously identified as critical elements of the administrative system, and by extension, administrative tribunals – lawfulness, fairness, rationality, openness and transparency, and efficiency.¹²

These considerations provided the basis for the seven values for tribunal members proposed in the exposure draft, namely:

- respect for the law;
- fairness;
- independence;
- respect for persons;
- diligence and efficiency;
- integrity; and
- accountability and transparency.

The Council's exposure draft sets out relevant principles for each value.

¹⁰ This role is performed by the office of the Canadian Federal Ethics Counsellor. See comments by the Ethics Counsellor in 'Ethics and Governance' Notes for a presentation to the 'II Global Forum Democratic State and Governance in the XXI Century', Brasilia, Brazil, May 2000 at page 4.

¹¹ See for example, comments by the Hon B S J O'Keefe AM QC, *ibid*, page 13.

¹² Highlighted in the Council's 1996 submission to the Senate Legal and Constitutional Affairs Committee.

Why have principles of conduct?

In common with similar instruments developed by other bodies, the principles of conduct should be read in conjunction with provisions relating to tribunal members in tribunal legislation and in the law generally.

Indeed, a number of the issues covered in the draft principles reflect matters dealt with at law. For example, principles of fairness such as bias and the right to be heard are well-articulated concepts under the general law; issues of financial accountability are addressed legislatively.

Having regard to this, and more broadly perhaps, to the general professionalism of tribunal members, it is sometimes argued that the only obligation that should be placed on tribunal members is compliance with the law. Indeed, that view was put in the consultation process, but it was not the generally accepted position.

Members of many occupational and professional groups in society are subject to well-developed ethics codes, extending beyond mere observance of the law. In some cases, continued membership of the group can depend on the observance of the relevant ethical standards. The legal and medical professions are examples, but there are others. It can be argued that these codes of conduct help to build public confidence in the group. If members of the group are seen to observe high standards, public confidence in the professional or occupational group as a whole is enhanced.

High standards of behaviour have long been expected of public officials. By virtue of the nature of their office, public officers are widely regarded as being accountable not only to those who employ them, but also to members of the public who place their confidence and trust in them by virtue of their office.¹³ The expectation is that:

- those who perform the functions of public office will adhere to high standards of conduct;
- high standards of conduct are necessary to maintain confidence in our public institutions; and
- high standards assist good decision making.

Mere compliance with the law, amounting to no more than an expression of the minimum standard of behaviour expected of all members of society, is insufficient. This sentiment is reflected in the following comments from the present Chief Justice of Australia:

“It may be assumed that we come to a consideration of this question [ie. ethics] upon the premise that at the very least people will obey the law. There is no particular virtue in that. Sanctions by way of penalty exist to compel obedience. It may also be assumed that, other things being equal, people will follow the dictates of their own self interest and will do so in an enlightened fashion which recognises that such self-interest requires at least some degree of consideration of the rights and interests of others. There is no particular virtue in that either. It is not necessary to be a student of Hobbes to realise, as most people do almost

¹³ See for instance Justice Paul Finn citing *R v Boston* (1923) 33 CLR 386, and *Horne v Borbes* (1920) 27 CLR 501-2, in ‘Public Officers: Some Personal Liabilities’, (1977) 51ALJ 313 at page 315. See also Michael Jackson, ‘Merit, accountability and ethics’, (1994) 66 (3) *Australian Quarterly* 37 at page 44; *Bacon’s Abridgement*, Offices and Officers, vol 6, 7th edition, 1832, 41; Justice Paul Finn, ‘Controlling the Exercise of Power’, (1996) 7 *Public Law Review* 86 at pages 8708.

instinctively, that a life devoted to completely self-regarding activity would be “solitary, nasty, brutish and poor.”¹⁴

The view was also put at the Council’s forums that an understanding of the importance of acting fairly and rationally, and understanding the role and jurisdictional limits of a tribunal member, are matters best dealt with through the appointment of members with the appropriate skills and knowledge.

It is critical that the highest standards are applied in the appointment of tribunal members. However, just as tribunals should accept an ongoing commitment to the highest performance standards, so must individual members.¹⁵

General rather than specific principles

The Council’s draft Principles do not attempt to cover every situation which requires a judgment as to the appropriate standard of conduct. They are expressed broadly. Support for such an approach can be drawn from the High Court’s decision in *Ebner’s* case, where, addressing the topic of bias, Gleeson CJ, McHugh, Gummow and Hayne JJ said:

“Issues such as the present are best addressed by a search for, and the application of, a general principle rather than a set of bright line rules which seek to distinguish between the indistinguishable, and which were formulated to meet conditions and problems of earlier times. Furthermore, the brightness of lines sometimes dims over time, as circumstances change or issues are raised in different forms.”¹⁶

A more prescriptive approach could invite circumvention and leave members of the public with the impression that tribunal members have very little common sense. However, while not seeking to remove the responsibility of an individual member to determine the appropriate standard of behaviour and to conduct him or herself accordingly, principles of conduct should be specific enough to provide members with some degree of guidance. Drafting such a document clearly involves a delicate balance.

There is no “one size fits all” set of principles. Each tribunal’s statutory framework, subject matter and the nature of applicants who appear before it will affect the relevance and emphasis of particular matters. For example, the Council’s draft Principles provide:

“A tribunal member should ensure that each person party to a proceeding, or their representative, is afforded the opportunity to put his or her case.” (draft *Principles* 2(a))

This principle will not be relevant to jurisdictions where role of representatives is limited. Similarly, some tribunals do not permit agency representatives.

¹⁴ The Hon Justice MA Gleeson, Opening Address to a Symposium on the Law the Corporation and the Individual, 25 October 1989, St James Ethics Centre, Sydney.

¹⁵ Draft Principle 5(d) provides that “A tribunal member should take reasonable steps to maintain and to enhance the knowledge, skills and personal qualities necessary for the execution of his or her functions as a tribunal member.”

¹⁶ *Ebner v the Official Trustee in Bankruptcy; Clenae Pty Ltd v ANZ Banking Group* (2000) 176 ALR 644, at p 652.

Extension of principles to tribunal member's personal lives

Obligations arising from the duties of public officers have been held to extend to dealings in an officer's private as well as his or her public capacity.¹⁷

It has been said that:

“...A public official is not off duty if words or deeds off duty may discredit public office...”¹⁸

Although relating principally to conduct in public office, the Council's draft *Principles of Conduct* extend to a tribunal member's behaviour outside the tribunal to the extent that such behaviour may impact adversely upon the tribunal. See for example *Principles 1(b) and 2(d)*:

“In his or her private life, a tribunal member should demonstrate a respect for the law and should endeavour to comply with the law at all times.” (*Principle 1(b)*)

“A tribunal member should have regard in his or her private life to the potential impact of his or her activities on the impartial and efficient discharge of his or her duties as a tribunal member.” (*Principle 2(d)*)

Clearly, in the area of bias and conflict of interest, aspects of a tribunal member's private life will be relevant to the performance of their functions as tribunal members. Additionally, the Principles suggest a more general duty upon tribunal members, at all times, to uphold the integrity and reputation of their tribunal. In discussion there was concern that this set too high a requirement, that members would be answerable for the most insignificant breaches which have no impact on their tribunal duties. In drafting, we considered the expression “respect for the law” to be a forgiving phrase; encapsulating the undoubted expectation that persons who make judgements about others' credibility and compliance with the law would demonstrate a high degree of respect themselves, but would also allow room for ‘slippage’ and minor breaches which do not put public confidence in the tribunal in issue.

The balance between specific and general standards is particularly critical with respect to tribunal members' private lives. As one tribunal head commented, perhaps a useful test for whether the balance in a code of conduct is right is whether the issue (or its expression) is something that the relevant tribunal head can positively influence through their relationship with the member. If it isn't something that can or will be followed up by the tribunal head, should it be in the code at all?

Bias / Conflict of Interest Particularly for Part Time Members

The draft principles prompted much discussion in the difficult areas of bias and conflict of interest.

¹⁷ See Finn, ‘*Public Officers: Some Personal Liabilities*’, *ibid*, at page 317.

¹⁸ Michael Jackson, ‘Merits, accountability and ethics’, (1994) 66(3) *Australian Quarterly* 37 at 45. The approach that private activities can impact on public duties has been adopted in the Australian Public Service Code of Conduct, the Canadian General Principles of Conduct for Members of Federal Administrative Tribunals, the UK Nolan Committee's ‘Standards in Public Life’, the Canadian ‘Ethical Principles for Judges’, the New Zealand State Services Commission ‘Public Service Code of Conduct’, the NSW Fair Trading Tribunal Members' Code of Conduct

Memberships and associations can be difficult areas. In the House of Lords *Pinochet* case,¹⁹ Lord Hoffman saw no conflict in the fact that he was a Director and Chairman of Amnesty International Charity Limited when its affiliated body Amnesty International had intervened in the *Pinochet* proceedings. The failure to declare this potential conflict and to sit on the *Pinochet* appeal caused the House of Lords for the first time in its history to set aside an earlier House of Lords judgement and order a new hearing.

The problem of avoiding a potential conflict of interest or bias is perhaps more difficult for part-time members of tribunals. Because members of tribunals are often drawn from the field of interest in which the tribunal operates, they may be members of social and professional organisations that also have an interest in tribunal proceedings.

This issue gave rise to much discussion in the consultation forums. The draft *Principles* drew from the Hon Justice Thomas' treatment in this area:

“Part-timers (in any court or tribunal) cannot be subject to the same out-of-court disciplines as full-time judges. They may wear a variety of different hats when they leave the courtroom. They earn their living by other means than judging. They may have people appearing before them who brief them in private practice, and though intrinsically undesirable, this is practically unavoidable. Members would have to consider questions of bias and appearance of bias from case to case. The government with the power to appoint them has chosen not to make them full members of the judicial community, and they cannot be expected to adhere to the restrictive disciplines that are expected of full-time judicial officers...”

“This is not to say that part-time members do not have ethical duties except when they sit. If, for example, a member of a building tribunal received a gift of whisky from the Master Builders' Association, he should return it. But generally speaking, it is not fair to expect the same level of discipline out of court from part-time members.”²⁰

It is not practical or necessary to require members to cancel all of their memberships. Indeed, some tribunal heads commented that good tribunal members are often those that have an active interest in a particular area or issue, and that tribunals would be the lesser if restricted to members with no relevant associations. However, it is important for all members to be aware of the potential problems that membership of such organisations may create.

In the end there was general consensus at the forums that while ethical choices can arise more frequently for part-time than for full-time members, the standards applying to part-time members were the same as those for full-time members. In accepting public office, part-time members have a responsibility in performing their tribunal functions to deliver the same standards of decision making as full-time members. The factors that would ground an allegation of bias do not alter their character in relation to a part time member of a tribunal.

¹⁹ *R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte* [2000] 1 AC 119, although note that English and Australian judicial treatment of the law of bias differs – see *Minister for Immigration and Multicultural Affairs v Jia; Re Minister for Immigration and Multicultural Affairs* [2001] HCA 17 (29 March 2001).

²⁰ The Hon Justice J B Thomas, 'Judicial Ethics in Australia', (2nd edition), Law Book Company Information Services, 1997, at page 199.

It was suggested in the consultation forums that the test for identifying conflicts of interest could be aided by thinking about how the public might react if one's memberships and connections were made public. That is, because of their position, public officers are expected to conduct themselves in such a way that public confidence in their office is not damaged. In respect of decision making by public office holders, Kirby J has commented that:

“If the appearances are just, and the procedures manifestly fair, the likelihood is that just and fair conclusions will follow. As well, appearances affect the confidence of the community in the decisions of those who exercise power on the community's behalf.”²¹

Other valuable suggestions to come out of the consultation process in this respect included:

- with respect to political involvement, the standard for tribunal members should be similar to the one prescribed for public servants under the *Public Service Guidelines* rather than the higher standard commonly thought to be applicable to judges.²²
- there may be different considerations involved in relation to disqualification on the ground of bias depending on how far a hearing has progressed. If it has not proceeded beyond the preliminaries, the most appropriate approach may be for a member to disqualify him or herself.
- alternatively, if proceedings have reached an advanced stage, it might be in the best interests of the parties, whilst declaring the interest and subject to the wishes of the parties, to continue.

Interesting debate was also prompted during the forums with regard to the related principle of ‘independence’.

In considering the extent to which tribunal members should maintain relationships with interest groups, legal firms and agencies, a distinction was made between the role of tribunal heads and ordinary members. The general consensus seemed to be that, while tribunal heads have an important and legitimate function to maintain such relationships, individual members should refrain from attending functions which were not “public”, and where representatives from one stakeholder group were present. Another distinction was drawn between attending individual firm functions, as opposed to those hosted by a peak body.

Conflicting duties

Importantly, the consultation process highlighted a number of areas in which tribunal members could find themselves subject to potentially conflicting obligations. For instance, a standard requiring thoroughness in the performance of tribunal duties may be directly at odds

²¹ *Minister for Immigration and Multicultural Affairs v Jia; Re Minister for Immigration and Multicultural Affairs*, ibid, at paragraph 136.

²² Chapter 6 of the *APS Guidelines on Official Conduct of Commonwealth Public Servants* provides that:

Political participation by public servants as part of their normal involvement in community affairs is quite acceptable.

However:

... where a public servant is involved in publicly promoting party or other views on certain issues, and where his or her duties are directly concerned with advising or directing the implementation or administration of government policy on those issues, then there is potential for conflict of interest.

Public Service Commission, Canberra, 1995, Chapter 3, page 37.

with one relating to timeliness, an essential ingredient of good tribunal performance and indeed, one that is enshrined in legislation relating to many administrative tribunals.²³

Accountability and independence are also areas of potential conflict, although it has been suggested that these concepts are reconcilable if:

- they are both aimed at maintaining the public’s confidence in tribunal members; and
- tribunal members can perform their tribunal duties and make their decisions without interference from the executive or legislative branches of government.²⁴

Again, a balance must be struck. The commentary to the *Principles* will be informed by the feedback from written submissions and the consultation forums. The Council’s final report will be a starting point for tribunals and members to work these issues through in their own particular contexts to develop the appropriate balance for themselves.

A Principle for Tribunal Managers

In the course of this discussion, I have adverted several times to the need for tribunal management to uphold and otherwise actively support principles of conduct.

During the Council’s consultations, it was also suggested that if a tribunal’s principles of conduct are to be used as a management tool, then those principles should also contain some express recognition that tribunal management should ensure that adequate training and resources are available to assist member compliance.

Conclusion

In closing, I would like to emphasise that the draft principles are not intended to be a static statement of tribunal members’ conduct obligations. Rather, it is anticipated that they will evolve over time and that tribunal members will be sensitive and responsive to changing public expectations of them.

²³ Compare draft Principle 5(a) “A tribunal member should diligently discharge his or her tribunal and administrative responsibilities and, in the exercise of his or her decision making functions, should consider all relevant information and be thorough” with Principle 7(a) “A tribunal member is accountable for his or her decisions and actions as a tribunal member and must submit him or herself to all applicable legislative and administrative scrutiny.”

²⁴ I note that the Commonwealth Administrative Review Tribunal Bill 2000 was criticised for undermining the independence of the proposed tribunal – see for example the minority report of the Senate Legal and Constitutional Legislation Committee *Inquiry into the Provisions of the ART Bill 2000*, February 2001, particularly paragraphs 1.9-1.14. More generally, see the speech by Mtre Jean Pierre Arsenault, President of the Commission des Lesions Professionnelles, Annual Council of Canadian Administrative Tribunals, 12 June 2000, Ottawa, at page 13 of the speech, also, A.W. Mackay, *Judicial Free Speech and Accountability: Should Judges be Seen and Not Heard?* (1993) 3 *National Journal of Constitutional Law*, page 159

Draft principles of conduct

1. Respect for the law

A tribunal member should endeavour to discharge his or her functions as a tribunal member in accordance with all applicable law.

In his or her private life, a tribunal member should demonstrate a respect for the law and should endeavour to comply with the law at all times.

2. Fairness

A tribunal member should ensure that each person party to a proceeding, or their representative, is afforded the opportunity to put his or her case.

A tribunal member should act without bias in the exercise of his or her decision making functions, and should not give preferential treatment to any organisation or individual.

A tribunal member should be pro-active and comprehensive in disclosing to all interested parties interests that could conflict (or appear to conflict) with the review of a decision.

A tribunal member should have regard in his or her private life to the potential impact of his or her activities on the impartial and efficient discharge of his or her duties as a tribunal member.

A tribunal member should not accept gifts of any kind where the offer is related to or could reasonably be perceived to be related to the office of the member or the tribunal.

3. Independence

A tribunal member must exercise his or her tribunal functions independently and free of external influence.

4. Respect for others

A tribunal member should be patient, dignified and courteous to parties, witnesses, legal and personal representatives and others with whom he or she deals and should require similar behaviour of lawyers, personal representatives, staff, tribunal officials and others subject to his or her direction and control.

A tribunal member should understand and be sensitive to the needs of parties involved in proceedings before the tribunal.

5. Diligence and efficiency

A tribunal member should diligently discharge his or her tribunal and administrative responsibilities and, in the exercise of his or her decision making functions, should consider all relevant information and be thorough.

A tribunal member should take reasonable steps to maintain and to enhance the knowledge, skills and personal qualities necessary for the execution of his or her functions as a tribunal member.

6. Integrity

A tribunal member should act honestly and truthfully in the performance of his or her duties as a tribunal member and in his or her private life.

A tribunal member must not use any information received in the performance of his or her duties for any purpose other than the performance of his or her duties as a member.

A tribunal member should not use his or her influence as a tribunal member to improperly obtain, or seek to obtain, benefits, preferential treatment or advantage for him or herself or for any other person or body.

A tribunal member should be scrupulous in the use of tribunal resources including equipment and facilities.

A tribunal member should in his or her private life behave in a way that upholds the integrity and good reputation of the tribunal.

7. Accountability and transparency

A tribunal member is accountable for his or her decisions and actions as a tribunal member and must submit him or herself to all applicable legislative and administrative scrutiny.

A tribunal member should be as open as possible about all decisions, action and lack of action that he or she takes in the performance of his or her tribunal duties; and restrict the supply of information only when the public interest clearly demands such restriction.