



# CAT Member Conflict of Interest Policy



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*Approved by the CAO Board of Directors on March 27, 2018*

## **Introduction**

A conflict of interest is any interest, relationship, association or activity that may adversely impact Member's performance of their duties or obligations to the Tribunal. A conflict of interest arises when a Member's private or personal interest may compete or take precedence over his or her responsibilities as an appointee. A conflict of interest may be real, perceived or potential. A conflict of interest may be financial and/or non-financial.

Members should be aware of relationships and activities outside of the Tribunal and have regard to the importance of impartiality and independence, and the appearance of impartiality and independence, and avoid situations that may give rise to conflicts of interest or allegations of an apprehension of bias.

Where a member has personal or financial interests that could raise an issue under the Conflict of Interest Policy, they must inform their Ethics Executive (EE). Members should also inform the EE if their activities might create a perception of bias or create a reputational risk for the CAT.

For the purposes of this Policy, the Chair is the EE for all other Members of the CAT. The Chair of the Board of Directors of the Condominium Authority of Ontario is the EE for the Chair of the CAT.

## **General Duty to Disclose Potential Conflicts**

While the Condominium Authority Tribunal (CAT) will try to provide some guidance and predictability to activities that may cause a conflict of interest, the key responsibility of members is to disclose even the possibility of conflict of interest, to their EE, so that it may be assessed and dealt with in a proactive manner.

## **Disclosing Confidential Information**

1. A CAT Member shall not disclose confidential, or case-related information obtained while they are employed by the CAT to any person or entity unless they are required or authorized to do so by law, the CAT and the CAO.

## **Use of Confidential Information**

2. A CAT Member shall not use confidential information for personal benefit or in a business or undertaking outside of their work for the CAT.

## **Offering Assistance**

3. A CAT Member shall not assist or offer assistance to a person or entity dealing with the CAT other than the assistance given in the ordinary course of their employment by the CAT.

## **Engaging in Business**

4. A CAT Member shall not become employed by or engage in a business or undertaking outside their employment or duties in the CAT in any of the following circumstances:

1. if the CAT Member's private interests in connection with the employment or undertaking could conflict with their duties to the CAT and the CAO;
2. if the employment or undertaking would interfere with the CAT Member's ability to perform their duties to the CAT and the CAO;
3. if the employment is in a professional capacity and is likely to influence or detrimentally affect the CAT Member's ability to perform their duties to the CAT and the CAO;
4. if, in connection with the employment or undertaking, any person would gain, or may appear to gain, an advantage from the CAT Member's employment in the CAT.

## **Outside Activities**

5. 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 CAT into disrepute. Unless so authorized by the Chair, Members must not perform outside activities in a manner that appears to be officially supported by or connected to CAT, or appears to represent CAT opinion or policy. Members must not use their position with the CAT to lend weight to the public expression of a personal opinion.

## **CAT Resources**

6. Members shall use the CAT premises, equipment, and supplies only for work related to their employment with the CAT.

## **Prior Involvement**

7. A CAT Member shall not mediate, adjudicate, or participate in any part of a proceeding in which there has been any prior involvement by the CAT Member, any person with whom they are in a significant professional relationship (including their

spouse, child, parent, or sibling), or any other person with whom they have a close business or personal relationship.

## **Professional Relationship**

8. A CAT Member shall not mediate, adjudicate, or participate in any part of a proceeding involving a User or representative with whom they are currently, or were formerly, in a professional relationship.

## **Effect on Other Proceedings**

9. A CAT Member shall not mediate, adjudicate, or participate in any part of a proceeding in which the outcome may have an impact on any other legal proceeding in which the CAT Member, or their spouse, child, parent, sibling, or close associate, has a personal or pecuniary interest.

## **Appearance before the CAT: Current Members**

10. (1) A CAT Member shall not appear before the CAT as an expert or technical witness or as a representative for a User.

(2) A CAT Member shall not, other than in discharging their functions within the CAT, provide legal, consulting or technical services or advice to anyone in respect of a matter that is before the CAT, or on an appeal or review of a matter which was before the CAT, whether the services or advice are provided for remuneration or otherwise.

11. A CAT Member may commence or respond to an application or other matter before the CAT provided that they:

- are represented by counsel or a representative;
- immediately notify their EE;
- refrain from any communication about the matter except as may be required by law or by the rules of the CAT; and,
- refrain from involvement in any case which is directly related to the matter in question.

12. On receipt of such notification, the Ethics Executive shall take all reasonable measures to ensure the application is segregated and that firewalls are in place to limit internal access to the file to appropriate individuals.

13. If the CAT Member must appear as a witness in a proceeding to which they are not a party, they shall notify their EE, and provide sufficient advance notice to permit the EE to take appropriate action to protect the integrity of the CAT and its processes.

## **Appearance before the CAT: Former Members**

14. A former CAT Member shall not appear as a representative or an expert or technical witness before the CAT for a period of 12 months from the end of their appointment or, 12 months after the release of their last decision if that is later.

## **Undertaking**

I will adhere to this Conflict of Interest Policy and commit to supporting standards contained in the policy.

I will review my compliance with the Policy on a regular basis.

I acknowledge that I have read and understand the policy and agree to conduct myself in accordance with it.

Signature of Member

Date:

Signature of Witness

Date:

# Appendix: Conflict of Interest Scenarios

## A. Member Activities or Roles That May Cause Conflict of Interest

While the CAT will try to provide some guidance and predictability to these situations, the key responsibility of members is to disclose even the possibility of conflict of interest to their Ethics Executive, so that it may be assessed and dealt with in a proactive manner. Each situation must be considered on a case-by-case basis, since there are many different factors, such as the level of involvement in an organization or activity, the time period involved, any relevance to a particular matter etc.

1. Involvement with organizations related to condominiums – e.g., Canadian Condominium Institute (CCI), Association of Condominium Managers of Ontario (ACMO), etc.

- various roles – e.g., member, active volunteer, committee member, board of directors, other leadership position, etc.

1. Involvement with speaking, training or published articles related to condominiums –

- various roles – e.g., trainer, organizer, writer, publisher, etc.

1. Own business or work – e.g., law firm, arbitration firm, mediation firm

- various roles – e.g., litigator, advisor to condo boards, arbitrator, mediator, law clerk, administrator, etc.

1. Business associates or other relationships – e.g., partner, co-worker, colleague, spouse, other family member, etc.
2. Involvement with own condominium unit or board – e.g., condo board member or executive; condo property manager

## B. Standard Restrictions:

The Conflict of Interest Policy includes the following standard restrictions:

1. No use of confidential information
2. No helping of any CAT Users, Representatives, witnesses, etc.
3. No involvement in specific CAT cases that involve or affect the Member or family, friends, close business associates, etc.
4. Cooling off periods after leaving the CAT

## C. Possible Application of Provisions

**Sections 4(b) and (c)** – “A CAT Member shall not become employed by or engage in a business or undertaking outside their employment or duties in the CAT ... (b) if the employment or undertaking would interfere with the CAT Member's ability to perform their duties to the CAT and the CAO; or (c) if the employment is in a professional capacity and is likely to influence or detrimentally affect the CAT Member's ability to perform their duties to the CAT and the CAO.”

- This means that part-time members should not make public statements (e.g., as a trainer, speaker or writer) or in a senior position in organizations that make public statements, that may lead to a possible apprehension of bias, or that may affect the integrity or reputation of the CAT or CAO. Depending on how strictly this is interpreted or applied, it may be a significant barrier to having people be CAT members if they want to continue being active as speakers or trainers in condo matters, or active in condominium organizations.

**Section 4(d)** – “A CAT Member shall not become employed by or engage in a business or undertaking outside their employment or duties in the CAT ... if, in connection with the employment or undertaking, any person would gain, or may appear to gain, an advantage from the CAT Member's employment in the CAT.”

- This means that part-time members must not refer to their position in the CAT when conducting their private business – e.g., no promotional or other materials should mention that they are a CAT member.

- Also, see discussion below.

**Section 9(2)** – “A CAT Member shall not, other than in discharging their functions within the CAT, provide legal, consulting or technical services or advice to anyone in respect of a matter that is before the CAT, or on an appeal or review of a matter which was before the CAT, whether the services or advice are provided for remuneration or otherwise.”

This provision is less restrictive than some Ontario tribunals which prohibit their members from providing advice or services about any matter that is within the jurisdiction of the tribunal, not just any actual case at the tribunal. The more restrictive approach would be a significant barrier to having lawyers or mediators be CAT members, especially when the CAT's jurisdiction later expands to cover all kinds of condo disputes. With this less restrictive wording, the risk will be that members who engage in their condo-related business might use information or may be seen to give an unfair advantage to their clients, even if the member does not actually represent the client before the Tribunal if the dispute later gets to that stage.