

Code of Ethics

The Ontario Human Rights Commission is one of the first government agencies to introduce a Code of Ethics and Professional Conduct Standards. Currently, the Centre for Leadership and the Management Board Secretariat are conducting research regarding the implementation of a Code of Ethics for all Ontario civil servants. However, due to the specific nature of the work that the Commission does, and the degree of scrutiny to which the Commission is subjected, it is appropriate that the Commission maintain its own Code of Ethics.

A Code of Ethics will assist us in defining who we are, what we stand for, how we do things, and how we conduct ourselves. The consulting firm of EthicScan Canada was retained to develop a Code of Ethics and Professional Conduct Standards for the Ontario Human Rights Commission. The project, which was announced to staff by the Executive Director in September 1997, was completed within a three month time period.

The development of the Code of Ethics and Professional Conduct Standards included a review of the work conducted in this area by other Human Rights and fair practice Commissions in North America and Europe. The Ethics Committee, which consisted of staff from various positions and locations within the organization contributed to the formulation of this document. The committee not only participated in a variety of focus groups with EthicScan representatives but also provided input into the final draft.

Staff was invited to participate in the development process. Approximately 20 staff members from across the Commission took advantage of this opportunity, either on a volunteer basis or through a selection process. They participated in confidential personal interviews with EthicScan representatives. The results of these interviews have been incorporated into the final report.

A subsequent phase of the project involved the organization of focus groups. Members of the focus groups included: complainants and respondent advisors; representatives from social advocacy groups; and union and professional associations. Their comments and suggestions were incorporated in the final version of the Code of Ethics and Professional Conduct Standards.

The Ethics Committee submitted its final draft report to Senior Management for their review in December 1997. On February 2, 1998, the Executive Director distributed the Code of Ethics and Professional Conduct Standards sections of the report to all Ontario Human Rights Commission staff and requested that they review the document and provide their comments for review by senior management and the Chief Commissioner. Staff were also advised at that time that the full report would be available in each of the regional offices and branches.

The Chief Commissioner and Senior Management reviewed the final document prior to its placement on the agenda of the March 1998 Commission meeting. Upon review by the Commissioners, the Code of Ethics was approved at the March 17, 1998 Commission meeting.

CREDO

In accomplishing its mission, all policies, practices and decisions of the Ontario Human Rights Commission shall promote and reflect ethical principles.

UPHOLD PRINCIPLES OF THE ONTARIO HUMAN RIGHTS CODE

The Commissioners and staff of the Ontario Human Rights Commission shall uphold the principles of the Ontario *Human Rights Code* as expressed in its preamble.

Commissioners and staff shall perform their duties in a manner that is free from discrimination and harassment, and promotes equality and fairness. The Commission shall provide mechanisms for dispute resolution regarding discrimination and harassment that are neutral, fair to all parties, free from reprisal, and in compliance with the Ontario *Human Rights Code* and other legislation. The Commission shall pursue its legislative mandate with commitment and dedication, in order that it is perceived to have a major role in addressing, demonstrating and promoting human rights in Ontario.

Commissioners and staff shall be conscientious and respectful of all members of the public in their pursuit of the legislative mandate of the Human Rights Commission to remove discrimination and harassment through mediation and investigation of complaints, and by actively promoting human rights through policy initiatives and public education.

Professional Conduct Standards:

1. Corporate Commitment to Human Rights

The Ontario Human Rights Commission shall provide for equal rights and opportunities without discrimination that is contrary to law. This will be accomplished through engaging in educational, training and policy initiatives; offering high quality complaint-response services; and providing timely and regular information about the purpose and activities of the Commission.

The Commission has a legislative requirement to address societal discrimination beyond the merits of human rights complaints. The Commission shall exercise its right to initiate its own complaint if this is in the public's interest. This includes maintaining an effective means of monitoring and dealing with human rights issues, citizen complaints and discrimination-related inquiries. In addition, the Commission is required to publicise settlements that may have broad sectoral impact on human rights, as well as public reporting on such statistics.

2. Staff Commitment to Human Rights

All staff, by their actions, shall demonstrate their appreciation, of and support for, the principles of the Ontario *Human Rights Code*. If during the course of duty, staff discovers unlawful discriminatory practices, staff will report the matter to management and seek to correct them, using due process, and seek preventive or remedial action to counteract their harmful effects. This means upholding notions of procedural fairness and neutrality in specific cases, while actively supporting and enforcing the principles of the Ontario *Human Rights Code* through public education and by serving as an informed, reliable source of information on matters pertaining to the Ontario *Human Rights Code*.

3. Integrity of Services

Staff shall listen carefully to public questions and complaints, and help individuals to resolve claims of discrimination and/or harassment. This includes treating complainants and respondents with dignity, and helping citizens to make direct contact with appropriate offices or agencies that can best deal with their complaints. Staff must ensure that complainants acknowledge and agree that the contents of their complaint are their version of the events. Respondents have the right to be informed that a complaint has been filed and they must be given the opportunity to respond to the allegations.

5. Outside Employment

Staff must act in a manner which complies, in letter and spirit, with the *Public Service Act* (Regulation 977, Section 15) which prohibits them from engaging in any outside work or business undertaking which:

- (a) interferes with the performance of their duties;
- (b) is a competitive advantage accruing to their public service position;
- (c) which is *de facto* full time employment; or
- (d) is likely to influence or affect the carrying out of their duties.

6. Conflict of Interest and Post Employment Rules

Staff will adhere to existing Government guidelines and procedures related to conflict of interest, corporate and travel account and post-termination, post-retirement and surplusing from employment.

MAINTAIN NEUTRALITY

Commissioners and staff shall be, and shall be perceived to be, neutral and without personal or corporate bias in their duties.

Commissioners, in reviewing human rights complaints, shall be neutral and unbiased in their analysis and assessment of information and data, and in their subsequent decisions and judgements.

Commissioners and staff shall be neutral, truthful, and unbiased in their response to inquiries, in their procedures for intake, and in staff's recommendations to Commissioners.

Professional Conduct Standards:

1. The Principle of Neutrality

In carrying out their duties, inquiry and intake officers, mediators, investigators, legal, policy, public education and all staff working for the Ontario Human Rights Commission shall be, and appear to be, neutral in their professional dealings. However, staff is not neutral with respect to the purpose or values of the *Code* and the public interest.

During mediation, the mediator serves as an impartial third party who attempts to facilitate the resolution of a complaint. Mediators shall not act where there is a personal interest incompatible with the unbiased exercise of official judgement. To further maintain neutrality, a mediator shall have no contact with the parties before mediation. Because the mediation process is strictly confidential, staff must ensure that any statement made by a party during mediation, or any information obtained from a mediation meeting, will not be admitted as evidence at any further stage of the process, including at the

Board of Inquiry. Legal and policy staff assisting them will act accordingly. However, in accordance with the “Guidelines for Dealing with Challenging Customers”, staff who become aware of a criminal threat or offence shall report it to their immediate supervisor.

Investigators shall conduct impartial investigations. They should be fair and unbiased but, since their job is to protect the public interest, they must be advocates for the *Code*, legislation and its enforcement rather than advocate for either complainants or respondents. Their obligation is to collect information related to the complaint, analyze and evaluate it, and subsequently make recommendations to the Commission. Legal and policy staff assisting them will act accordingly about appropriate disposition.

2. Reporting Offers of Gifts, Benefits, Gratuities and Hospitality

Commissioners and staff shall act in a manner that complies with the provision of the *Criminal Code* and the Rules of Conduct for Public Servants which make it an offence for government officials to demand, accept, or offer to accept for themselves or any other person any advantage or benefit, whether direct or indirect, for any act or omission which is connected with or related to the business of government.

Notwithstanding this rule, incidental gifts, hospitality or benefits are not prohibited if they:

- (a) are within the normal bounds of propriety, a normal expression of courtesy, or within normal standards of hospitality;
- (b) would not bring suspicion upon the employee's objectivity and impartiality; and
- (c) would not compromise the integrity of the Commission.

The Executive Director may require for staff and the Chief Commissioner may require for Commissioners that a gift be retained by the Commission or disposed of for charitable purposes. Where it is not possible to decline an unauthorised gift, hospitality or benefit, Commissioners must report the matter immediately to the Chief Commissioner and staff must immediately report the matter to the Executive Director for direction.

3. Personal Bias

Commissioners and staff shall excuse themselves from any public service duty or transaction where they have, or may appear to have, a conflict of interest that compromises their objectivity and/or where a reasonable person could conclude that personal beliefs are a driving force in determining case outcomes that violate the provisions of the Ontario Human Rights Code. If a conflict arises between the personal interests of a Commissioner or an employee and the official duties and responsibilities of that person, the conflict shall be resolved in favour of the public interest.

5. Information to Parties

Complainants, respondents and related parties should have confidence that information regarding the status of their cases will be available. Written case analyses containing staff recommendations shall be disclosed to them. Under the Freedom of Information and Protection of Privacy rules, Commission staff will respond to requests for information.

MAINTAIN PUBLIC CONFIDENCE AND TRUST

Commissioners and staff shall ensure that their conduct and decisions are performed in a manner that is fair and reasonable.

The Commission's services and communications with the public will be clear and honest; all procedures will be respectful of the people involved, transparent, and be perceived to be fair, reasonable and consistent.

Professional Conduct Standards:

1. Referral to Other Organizations

The Ontario Human Rights Commission should enjoy a broad measure of public confidence and trust if its processes are open, honest, well organized, and accessible and if its decisions are perceived to be compassionate, fair, and consistent with the *Code*. Where complaints are denied because another agency is more suitable to address these concerns, the reasons for referral shall be clearly communicated, preferably as early in the complaint process as possible, to ensure that complainants are left with effective options.

2. Commission Decisions on Merit

The Commission's reputation is enhanced when it is seen to lead in the area of specialised human rights investigations. The fact that an alternative process exists elsewhere, as outlined in Section 34, does not necessarily mean that the Commission will make a decision not to deal with a file. For example, certain types of harassment or cases reflecting complex human rights issues may require in-depth investigation that are better suited to a Human Rights Commission. Every case will be decided on its own facts and merits. Nothing in this Code of Ethics is meant to fetter the decision making authority of the Commissioners under the Ontario *Human Rights Code*.

3. Public Relations

The Commission shall respect the right of the public through the media to know what is going on within the organisation, when this is in the public interest. To enhance credibility and effective communications, the Commission may designate spokespersons to speak on its behalf to the media. The general public has a right to expect accurate reports from Commissioners and staff regarding the Commission's processes, procedures and policies.

4. Freedom of Information with Respect to Settlements

In order to guard the public trust and respect as well as the confidentiality and integrity of the Commission's process, the Commission shall abide by the terms of *The Freedom of Information and Protection of Privacy Act* when releasing information regarding a particular case.

5. Case Related Information

The Commission will initiate public information on a case when a settlement, a Board of Inquiry decision or a Commission decision to refer the case to the Board of Inquiry is in the public interest, provides for broad applicability or offers potential to establish an important precedent or affect industry-wide or geographically widespread practices.

6. Transparency

The general public has a right to information about the programs and services of the Commission in a format that is understandable and accessible. Anyone making use of the Commission's services should be informed of what they can expect in terms of the complaint process and its duration.

7. Accountability

The Commission shall annually set out the priorities for the organisation and establish clear measures of performance in terms of quality and timeliness of service. In addition, the public should be informed regularly of the results achieved by the organisation. This provides for a strong accountability between the organisation and the public it serves. The Commission is also accountable through the Minister of Citizenship, Culture and Recreation to the Legislature for program results and the effective expenditure of public funds.

8. Investigative Ethics

Investigative practices and the collection of evidence should occur without resorting to deceit. Misleading interviewees reduces personal trust, undermines the credibility of the Commission, erodes confidence in the process, and jeopardizes the admissibility of testimony. "Testing" may be undertaken in specific investigative circumstances, provided that no entrapment is involved and that non-Commission staff are used. External independent expertise should be sought when required. Officers should seek only that amount of evidence that is needed to make an informed recommendation to the Commission. The public has a right to expect that officers will conduct all investigations thoroughly and professionally, without bias, and within the constraints established by the Commission's Enforcement Procedures Manual and the Ontario *Human Rights Code*. The Commission has a duty to direct an investigation so that all complaints are investigated fairly, honestly and appropriately.

3. Appropriate/Reasonable Use of Government Property

The Commission expects that staff shall not directly or indirectly use or allow the use by others of government property for anything other than for official use. This includes facilities, equipment and automobiles. In special circumstances, and with prior approval of a direct supervisor, Commission equipment such as computers may be used to support work-related educational and community activities of employees.

4. Reporting

Commissioners and staff are encouraged to report suspected cases of illegal, unethical, or unprofessional conduct. The Commissioners are to report to the Chief Commissioner and staff is to report to their immediate supervisor or the Executive Director. The more serious cases involve neutrality, conflict of interest, harassment, personal bias, and self dealing. When in doubt about the suitability or necessity of such action, one can discuss it in confidence with the Ethics Advisor. The individual, not the Advisor, has responsibility to act on this suspicion or knowledge. The Commission does not assume wrongdoing on the part of either party, and commits to address or investigate the matter fairly and expeditiously.

5. Fair and Ethical Business Practices

In order to maintain a reputation for fair and ethical business practices, the Commission shall set out administrative policies and procedures that ensure competitive processes for procurement, and prompt payment practices. In addition, all Commission contracts shall include provisions consistent with the Ethics Code, including:

- testimonial that the contractor is not employing a former Commission official who is not in compliance with OPS post-service policies; and
- safeguards that existing Commission employees are not being offered nor are receiving inappropriate benefits or inducements.

ETHICS ADVISOR

An Ethics Advisor will be appointed to respond to questions from Commissioners and staff regarding ethics related issues. The Advisor is to provide ethically appropriate answers and guidance, using the Code of Ethics, approved by the Commission, as a reference tool. The role of the Advisor is to clarify options for individuals, leaving the resolution of issues to the initiator of the ethics related question or problem.

The Ethics Advisor will be appointed by the Chief Commissioner and will not be a member of the Ontario Human Rights Commission. In the selection of the Advisor, the Chief Commissioner will ensure that the appointee has the following attributes:

- (a) Ability to listen;
- (b) Ability to maintain confidence;
- (c) Solution oriented;
- (d) Integrity and honesty; and
- (e) Related background e.g. professional training or ethics related experience.

Prior to appointing the Ethics Advisor, the Chief Commissioner will ask Commissioners and staff to recommend the names of individuals who may qualify. The Chief Commissioner, before making the final selection, will consult with the Ethics Committee.

The Ethics Advisor will be appointed for a period of two years with the possibility of reappointment. The Chief Commissioner will decide on the remuneration for the Ethics Advisor.

The Ethics Advisor, on an annual basis, will prepare two separate reports highlighting the general problems that were encountered without providing any details of the individuals involved. One report will be forwarded to the Chief Commissioner listing the problems by topic that were brought to the attention of the Advisor by the Commissioners and a second report will be provided to the Executive Director listing the problems by topic from staff.

The Ethics Advisor, although appointed by the Chief Commissioner, is an independent advisor who has been appointed to help Commission staff and Commissioners. The process is confidential where only advice is given. The resolution of an issue will be dependent upon the actions taken by the initiator of the ethics-related question or problem.

PRINCIPLES

Uphold Principles of the Ontario *Human Rights Code*

The Commissioners and staff of the Ontario Human Rights Commission shall uphold the principles of the *Human Rights Code* as expressed in its preamble.

Internal Relationships

Relations and interactions on the part of the Commissioners and staff shall reflect the principles and intent of the *Code*, in a spirit of equality, fairness and mutual respect.

Demonstrate Integrity

Commissioners and staff shall demonstrate integrity in all aspects of their duties.

Maintain Neutrality

Commissioners and staff shall be, and shall be perceived to be, neutral and without personal or corporate bias in their duties.

Standard of Quality Public Service

The Commissioners and staff shall provide the highest quality service that is accessible, flexible and sensitive to a diverse population. Services must be equitable and respectful of the dignity of all persons and their right to be fully informed and free from discrimination. As such, the process must be and be perceived to be reasonable, transparent and committed to fairness and the principles of natural justice, as well as is compliance with the law.

Maintain Public Confidence and Trust

Commissioners and staff shall ensure that their conduct and decisions are performed in a manner that is fair and reasonable.

Support Corporate Goals

Commission staff shall support corporate goals and strategies developed to fulfil the intent and purpose of the Commission's mission.

PRINCIPLES AND PROFESSIONAL CONDUCT STANDARDS

Uphold Principles of the Ontario *Human Rights Code*

1. Corporate Commitment to Human Rights
2. Staff Commitment to Human Rights
3. Integrity of Services

Internal Relationships

1. Reflect Principles of the Code
2. Respect for Staff Rights
3. Ethics Advisor
4. Hiring and Promotion
5. Ethics in Job Specifications
6. Code of Ethics Review

Demonstrate Integrity

1. Integrity of Commissioners
2. Integrity of Management
3. Integrity of Staff
4. Integrity as a Standard Beyond
Legal Compliance
5. Outside Employment
6. Conflict of Interest and Post
Employment Rules

Maintain Neutrality

1. The Principle of Neutrality
2. Reporting Offers of Gifts, Benefits,
Gratuities and Hospitality
3. Personal Bias

Standard of Quality Public Service

1. Standards of Public Service
2. Public Information
3. Public Education
4. Caseload Management
5. Information to Parties

Maintain Public Confidence and Trust

1. Referral to Other Organizations
2. Commission Decisions on Merit
3. Public Relations
4. Freedom of Information with Respect
to Settlements
5. Case Related Information
6. Transparency
7. Accountability
8. Investigative Ethics
9. Personal Use of Inside Information
10. Security of Information

Support Corporate Goals

1. Individual Accountability
2. Dealing with Ex-Employees
3. Appropriate/Reasonable Use of
Government Property
4. Reporting
5. Fair and Ethical Business Practices

RECOMMENDATIONS

Commission's response to final "immediate" recommendations of the report The 1 year and 3 years recommendations will be reviewed in due time

Recommendation

1. The Commission should ratify and formally adopt a Code of Ethics, including a Credo, Code of Ethics, and Professional Conduct Standards.
2. The Commission should extend the mandate of the Ethics Committee for a period from six to twelve months to supervise the introduction of the ethics program, including offering ongoing advice to the Executive Director.
3. The Commission should provisionally adopt a Statement of Responsibility to Stakeholders initiative and formally ratify it after a year of experiment.
4. The Commission should set up the function of a confidential internal ethics Ombudsperson to serve staff and Commissioners, and appoint such a person.
5. The Commission should train all existing and future staff, both permanent and contract, in its Code of Ethics, using peer trainers.
6. The Commission should mandate the Ethics Committee to undertake and/or supervise assessment or implementation of initiatives recommended in the EthicScan report that will introduce ethical enhancements into administration procedures, procedural manuals, and performance management.

Response

- The Commission will introduce a Code of Ethics that will be preceded by a Code and that will include standards of professional conducts.
- The Ethics Committee mandate will be extended for one year from April 1, 1998 to April 1, 1999.
- The Commission will review this recommendation during the new fiscal year.
- The Commission will appoint an Ethics Advisor.
- The Commission will provide ethics training as recommended.
- The mandate of the Ethics Committee will be dependent upon the Commission's decision regarding the proposed Code of Ethics.

Recommendation

7. The Commission should encourage the introduction and use of a common “sniff test” for all Commissioners and staff when individuals are confronted with a workplace-related moral or ethical dilemma.

8. The Commission should incorporate the Code of Ethics in its Annual Report to the legislature in order to reinforce attention to and use of that Code.

9. As part of its commitment to open participation in this process, the Commission should (a) issue a progress mini-report to all staff by e-mail in January, 1998; (b) make the full EthicScan report available on request to staff (c) arrange a suitable translation of the report for staff who are visually challenged; and (d) make the Code of Ethics available to Commission officers in other jurisdictions who, during EthicScan’s research on behalf of the Commission, requested a copy.

10. The Executive Director should engage in direct discussions with other government officials at the Ministry of Citizenship and Management Board with respect to recommendations in this report involving policies on gifts, post-termination employment, whistle-blower protection, outside employment, and asset and relationship disclosure reports.

Response

The Commission does not intend to introduce this.

Once approved the Code will be highlighted in the Commission’s Annual Report.

All of these have been or are in the process of being completed.

The Executive Director has informed the Ministry and the Centre for Leadership, Cabinet Office, of the Commission’s intention to introduce the Code of Ethics and has also provided them with a copy of the Committee’s report.