



ALBERTA LAW ENFORCEMENT REVIEW BOARD

MEMBERS' CODE OF CONDUCT & PERFORMANCE EXPECTATIONS

July 19, 2018

This document has two parts. The first is the code of conduct ("Code") of the Law Enforcement Review Board ("Board"), which applies to all Board members. The second part sets out the performance expectations that apply to all Board members.

Both parts are reviewed annually by the Chair with a view to ensuring ongoing effectiveness.

Each member of the Board must annually affirm to the Chair her or his ongoing agreement to abide by this Code and to meet the performance expectations as part of the member's annual evaluation.

PART 1—CODE OF CONDUCT

Context

Albertans have a right to expect that the Board's powers, duties and functions are exercised and performed with impartiality and integrity, including by ensuring that no actual or apparent conflict exists between the private interests of Board members and members' duties under the *Police Act* and at law.

The Code reflects a commitment to the Board's values and provides a framework to guide ethical conduct in a way that upholds the integrity and reputation of the Board. Members are expected to behave in a way that conforms to this Code. Because members understand that this Code does not cover every specific scenario, they agree to use the spirit and intent behind it to guide their conduct where its provisions do not apply directly.

To demonstrate transparency and accountability, this Code is available to the public on the Board website, as well as on the Public Agency Secretariat website.

This Code applies to all members of the Board, including the Chair, who is therefore a member referred to in this Code. Board members who are employees of the Government of Alberta are also subject to the Code of Conduct and Ethics for the Public Service. Employees who support the Board are Government of Alberta employees and therefore are subject to the Code of Conduct and Ethics for the Public Service. They nonetheless are expected to consider the principles and values set out in this Code as they perform their duties and functions for the Board.

This code comes into force upon the expiry of 30 days from and after the date set out on the first page of this code.

Interpretation

1. The following definitions are used in this code:

- (a) “Chair” means the person appointed under the *Police Act* as the Board’s Chair;
- (b) “Code Administrator” means the chair of the Board, who is responsible for administering this code;
- (c) “Board” means the Law Enforcement Review Board;
- (d) “Deputy Minister” means the deputy minister of Justice and Solicitor General;
- (e) “member” means a member of the Board, including the Board’s Chair.

Core Values

2. The Board’s core values are as follows:

- a) Members act with impartiality and integrity.
- b) Members demonstrate respect and accountability.

General Rules

3. These requirements govern the behaviour and decisions of members:

- a) Members must act in good faith, with objectivity, without bias, with impartiality, with integrity, and in accordance with the law.

- b) Members must place the interests of the Board and the public above their own private interests. Members must not take part in a decision knowing that the decision might further their private interests or those of a person directly associated with them.
- c) Members must behave in a way that demonstrates that their actions and decisions are ethical, impartial and independent.
- d) Members enjoy the same rights in their private dealings as any other Albertan, unless it is demonstrated that a restriction is necessary in the public interest.
- e) A member who is subject to more than one code of conduct must consider the expectations in all codes. Members understand that this Code is not intended to conflict with other codes of conduct, and will discuss any potential conflicts between codes with the Code Administrator.
- f) The Code applies to all members unless a specific exemption is granted in writing by the Code Administrator.
- g) A member who becomes aware of a real or apparent conflict of interest on their part, existing or potential, they must at the first opportunity disclose the matter, in writing, to the Code Administrator.
- h) Members understand that disclosure of a real or apparent conflict of interest itself does not remove it.
- i) Members encourage their colleagues to act in accordance with this Code, and know that they are able to raise concerns about a suspected breach by another member to the Code Administrator without fear of reprisal.
- j) Members know that breaches of this Code may result in rescission of their appointment as a member of the Board.
- k) If they have any questions about this Code, or are not sure how to apply these principles, members should consult with the Code Administrator.
- l) Each member confirms on an annual basis their understanding of, and commitment to, this Code.

Behavioural Standards

3. Behavioural standards help members make appropriate decisions when the issues they face involve ethical considerations. Behavioural standards cannot cover all situations but provide guidance in support of day-to-day decisions. All members must adhere to the following standards:

- a) Members must not engage in any criminal activity and must comply with all relevant laws, regulations, policies and procedures. If a member is charged with an offence under a statute of Canada or a statute of Alberta, the member must immediately report the charge to the Code Administrator. If the Chair is charged, the Chair must immediately report the charge to the Deputy Minister or the Ethics Commissioner.
- b) Members must not use their status or position with the Board to influence or gain a benefit or advantage for themselves or others.
- c) Member conduct must contribute to a safe and healthy workplace that is free from discrimination, harassment of any kind, or violence.
- d) Members must not use drugs or alcohol in a way that affects their performance and safety or the performance and safety of their colleagues, or that negatively impacts the Board's reputation or operations.
- e) Members must not comment publicly about the Board or its work without first consulting with the Chair. Members must not comment at all in the media about the Board or its work. Members must promptly notify the Chair of any media requests for comment and the Chair will deal with them. Members must not comment about the Board or its work on social media.
- f) Members must take reasonable steps to avoid situations where they may be placed in a real or apparent conflict between their private interests and the interests of the Board. In other words, actions or decisions that members take on behalf of the Board must not provide them with an opportunity to further the private interests of themselves, their families, their business associates or others with whom they have a significant personal or business relationship.

Specific Rules

4. The following specific requirements apply to members:

- a) Members must protect confidential information, must use it only for the work of the Board, and must not use or disclose it for personal gain. Members also must comply with the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, as applicable. Members are also expected to comply with the related requirements set out in Appendix A to this Code.
- b) Members must not accept or receive gifts and gratuities other than the normal exchange of gifts between friends or business colleagues, tokens exchanged as part of protocol or the normal presentation of gifts to people participating in public functions or

on speaking occasions. The value of any one of these gifts must not exceed \$100 and the total value of gifts from any one source must not exceed \$100 in any calendar year.

- c) Members may accept hospitality, including meals, and sporting and cultural events, but the value of the hospitality must not exceed \$100 on any one occasion. Hospitality exceeding \$100 on any one occasion must be approved by the Code Administrator in advance. The total value of hospitality from any one source must not exceed \$100 in any calendar year.
- d) Members must avoid participating in outside activities that conflict with the interests and work of the Board.
- e) Members must not hold interests in a business directly or indirectly through a relative or friend that could benefit from, or influence, the decisions of the Board.
- f) Members must promptly disclose to the Code Administrator any business or financial interest that may affect the actions taken or decisions made by the member in the course of executing his or her Board duties. If an apparent, or actual, conflict of interest exists under this section, the Code Administrator will determine how to resolve the situation, including through use of a blind trust, divestment of an asset, or other appropriate actions to manage the conflict of interest in a manner fair to the member and that preserves the Board's actual and perceived impartiality.
- g) Members must not accept or participate in employment that affects their performance or impartiality. Before accepting any employment a member must notify the Code Administrator in writing about the nature of the employment. The Code Administrator will review the employment for any conflict of interest and will advise the member of the Code Administrator's assessment.
- h) Members may participate in political activities, including membership in a political party, supporting a candidate for elected office or seeking elected office. However, a member must not participate directly in soliciting contributions for a political party. In addition, any political activity must be clearly separated from activities related to the work of the Board, must not be done while carrying out the work of the Board and must not make use of Board facilities, equipment or resources in support of these activities.
- i) If members are involved in volunteer work, the activity must not influence or conflict with decisions relating to the Board or affect their performance or impartiality. Before accepting a volunteer position where a conflict of interest might arise, a member must notify the Code Administrator in writing. In the case of the Chair, the Chair must notify the Deputy Minister or Ethics Commissioner.

- j) The Chair is subject to the following additional rules:
 - a) The Chair must not take part in a decision in the course of carrying out his or her office or powers knowing that the decision might further a private interest of the Chair, a person directly associated with the Chair, or the Chair's minor or adult child;
 - b) The Chair must not use his or her office or powers of influence to seek to influence a decision made by or on behalf of the Crown or a public agency to further a private interest of the Chair, a person directly associated with the Chair, or to improperly further any other person's private interests;
 - c) The Chair must not use or communicate information not available to the general public that was gained by the Chair in the course of carrying out his or her office or powers to further seek to further a private interest of the Chair or any other person's private interests; and
 - d) The Chair must appropriately and adequately disclose a real or apparent conflict of interest.

Before Members Leave the Board

1. Members considering a new offer of appointment or employment must be aware of and manage any potential conflicts of interest between their role as a member of the Board and the appointment or employment, and must remove themselves from any decisions affecting their appointment or employment.

After Members Leave the Board

2. After a member leaves the Board, the member must not disclose confidential information of which they became aware while a member and must not use contacts with former colleagues to gain an unfair advantage for their current situation. To avoid the appearance of conflict, real or perceived, former members may not appear as a representative before the Board, or provide advice to others appearing before the Board, for a period of 12 months after the termination or expiry of their appointment.

Use of Board Property

3. Members may have limited use of the Board's premises and equipment for authorized incidental purposes, but only to the extent the use involves minimal additional expense to the Board, and the use must not be performed on the member or government employee's work time, must not interfere with the work or role of the Board and must not support a personal, private business or employment.

Related Persons or Parties

4. Members must avoid dealing with those in which the relationship between them might bring into question the impartiality of the member.

Code-Related Administrative Processes

5. Administrative processes help members manage ethical dilemmas, including any real or apparent conflict of interest concerns.

Administration

6. The Code Administrator receives and ensures the confidentiality of all Code disclosures and ensures that any real or apparent conflict of interest is avoided or effectively managed. As well, the Code Administrator is responsible for providing advice and managing all concerns and complaints concerning potential breaches of the Code, including conflicts of interest within the Board. Even though the Board may have a delegated process for responding to and managing concerns, the Code Administrator is responsible for ensuring procedural fairness.
7. If the Code Administrator requires advice and guidance in determining whether misconduct has occurred or a conflict exists, or needs clarification regarding any matter related to the Code, the Chair may discuss the matter with the Deputy Minister or the Ethics Commissioner.
8. In the event a potential conflict or breach is reported involving the Chair, an internal committee comprised of two members (one being a lawyer) selected by the Secretary to the Board will act. Neither member of the committee can be a member who made the allegation. The committee will review the allegation involving the Chair. The committee may ask the Deputy Minister or the Ethics Commissioner to conduct an investigation and provide a ruling. The committee will report its findings to the member making the allegation and to the Chair.

Disclosure

9. A member must declare in writing to the Code Administrator private interests and relationships that they think could be seen to impact the decisions or actions they take on behalf of the Board. When there is a change in their responsibilities within the Board or in their personal situation, members must promptly disclose to the Code Administrator, in writing, any relevant new or additional information about those interests or their situation. Where a real or apparent conflict of interest cannot be avoided, members must take the appropriate steps to manage the conflict, including as contemplated in this Code.
10. A member must promptly disclose any real or apparent conflict of interest to the Code Administrator, in writing, so that the Code Administrator is aware of situations that could be seen as influencing the decisions or actions the member is making or taking on behalf of the Board.
11. Members acknowledge that, where a real or apparent conflict of interest cannot be avoided, they must take appropriate steps to manage it. Members acknowledge that actions they may be required to take to minimize or remove a conflict of interest include:
 - a) removing themselves from matters in which the conflict exists or is perceived to exist;
 - b) giving up the particular private interest causing the conflict;
 - c) in rare circumstances, resigning their position with the Board.

Reporting a Potential Breach

12. Members are encouraged to report to the Code Administrator, in writing, any apparent or potential breach of this Code by another member, and know they are able to raise concerns about a suspected breach by another without fear of reprisal.

Responding to Potential Breach

13. If an apparent or potential breach has been reported, the Code Administrator will review the circumstance and details and will notify the member involved. The member has the right to complete information and the right to respond. The identity of the member who reported the matter will not be disclosed unless required by law or in a legal proceeding. The Code Administrator will make a decision and complete a report of the review in a timely manner. All materials related to the report of a breach, the Code Administrator's review of the matter, and her or his report on the matter will be sealed in an envelope with the words "Confidential Investigation re Conflict of Interest" marked on the envelope, along with the date of the Code Administrator's determination, and will be held securely by the Board's Secretary.

Consequences of a Breach

14. Members who do not comply with the standards of behaviour identified in this Code, including taking part in a decision or action that furthers their private interests, may be subject to disciplinary action up to and including removal of the member.

Review of a Decision

15. Members can request in writing that the Deputy Minister or the Ethics Commissioner review a decision that has been made by the Code Administrator about a real or apparent breach of this Code, including a conflict of interest involving that member.

Other Resources

Where to Get Advice

16. A member, who requires advice and guidance in determining whether misconduct or a conflict exists, or who needs clarification, may seek it from the Code Administrator or, in the case of the Chair, from the Deputy Minister or the Ethics Commissioner.

Questions to Consider

17. When members are faced with a difficult situation, the following questions may help them decide the right course of action:
- a) Have I reflected on or consulted with the Code Administrator about whether I am compromising this Code's values, principles or behavioural standards?
 - b) Have I considered the issue from a legal perspective?
 - c) Have I investigated whether my behaviour aligns with a policy or procedure of the Board?
 - d) Could my private interests or relationships be viewed as impairing my objectivity?
 - e) Could my decision or action be viewed as resulting in personal gain, financial or otherwise?
 - f) Could my decisions or actions be perceived as granting or receiving preferential treatment?

Affirmation

18. The Code is reaffirmed annually by the Board and each member to ensure it remains current and relevant. If the Code changes between annual affirmation dates, the changes come into force 60 days after the date set out on the first page of the Code, during which time all members are expected to affirm the updated Code. Pursuant to the *Conflicts of Interest Act*, this Code conforms to any requirement in, and includes any matter specified in the regulations to, the *Conflicts of Interest Act* that are enacted from time to time.

PART 2—PERFORMANCE EXPECTATIONS FOR BOARD MEMBERS

a. Performance Expectations Relating to Board Decisions

The Chair is accountable for the management and administration of the Board. The Board is an independent, quasi-judicial administrative tribunal. It must perform its functions and duties in accordance with the law. It also strives to produce legally sound, well-reasoned, clearly written and timely decisions.

Accordingly, the performance standards for Board members set out below are intended to assist members in meeting the goal of producing legally sound, well-reasoned, clearly written and timely decisions. They have been crafted to do this while respecting adjudicative independence.

With regard to timeliness, the *Police Act* provides that the Board must issue its decisions in writing within 60 days after the Board concludes an appeal. This time can be extended and the Board has done this routinely over the years. Nonetheless, it is recognized that the *Police Act* framework for accountability and transparency in police discipline matters depends on timely decision-making by the Board and others. The Chair has therefore devised performance standards and measures for the Board aimed at ensuring that as many Board decisions as possible are issued within the 60-day timeline under the *Police Act*. Further, preliminary applications are often made to the Board, such as applications for disclosure of material redacted from the record below, applications for additional evidence and applications for a stay of proceedings. The Chair expects Board members to complete and issue such decisions in accordance with the expectations set out below, provided that such decisions should in each case be completed well within those expectations wherever practicable.

In order to meet the 60-day timeline under the *Police Act*, Board members are expected to meet respecting the preparation and issuance of decisions:

- a) For the purposes of these performance standards, a hearing of an appeal or interim application is considered to have been completed on the later of the date on which any

oral hearing was concluded and the date on which the last of any written submissions are received by the Board from the parties;

- b) Immediately after the conclusion of a hearing, the Board panel that heard the matter must confer with a view to reaching consensus on the disposition of all issues;
- c) The panel must, before or at its post-hearing conference, select one panel member who will draft the decision;
- d) The author of a decision must complete a draft decision disposing of all of the issues no later than 28 days after the conclusion of a hearing;
- e) Promptly after its completion, the author must send the draft to the other panel members, who must provide their comments to the author within 10 days after their receipt of the draft;
- f) The panel's decision must be completed and ready for formatting and issuance no later than 45 days after completion of a hearing;
- g) Where a panel considers that it will not complete a decision within 45 days after conclusion of a hearing, the panel's presiding member must, as promptly as practicable, inform the Chair of the reasons for this and the panel must consider any expectations expressed by the Chair as to the timing of completion and issuance of the decision and make reasonable efforts to meet those expectations.

Neither the above timeliness expectations nor any expectations expressed by the Chair as to timing in any way affects adjudicative independence respecting any appeal or matter.

Board members are also expected to produce written decisions that are clearly reasoned, clearly written and legally sound. The quality of Board decisions is important in order for the Board, as an institution, to demonstrate that it is discharging its mandate, functions and duties in a transparent and accountable manner and according to the highest practicable standards of quality.

Accordingly, Board decisions are to be written in as plain English as practicable. This includes avoiding the use of legal jargon, the passive voice and unnecessarily complex sentences. This expectation aims to enhance the quality of the Board's decisions. This expectation also acknowledges that many appellants are self-represented and not legally trained.

In this light, Board members are expected to write decisions that:

- a) Provide an introductory overview of the appeal or matter by adequately outlining the relevant events and factual circumstances underlying the complaint or matter;
- b) Clearly explain the nature of the complaint and the related disciplinary processes that took place leading up to the appeal;
- c) Succinctly and clearly set out the issues to be disposed of;
- d) Give reasons for the disposition of each issue that: (a) briefly, yet adequately and fairly, summarize the positions of the parties on each issue (as part of the panel's discussion of each issue, and not separate from the panel's discussion of each issues); (b) review and explain any applicable statutory provisions and case law; and, (c) explain the reasoning

of the panel clearly, logically and with sufficient detail to enable readers to understand the panel's reasoning on the issue;

- e) Conclude by stating at the end the disposition on each issue, with the relief granted being clearly stated, issue-by-issue where applicable;
- f) Avoid excessively detailed summaries of the parties' arguments and avoid wherever practicable lengthy quotes from court or other decisions; and
- g) To the extent practicable, without affecting the transparency or substance of the decision, avoid disclosure of sensitive personal information of individuals involved in appeals and other matters, such as health or medical diagnosis information, information about addictions or substance abuse, details of intimate personal matters such as sexual relations or affairs (information that could reasonably be expected to identify a confidential police informant must never be included).

Board decisions are to be drafted using the templates from time to time issued by the Board and in conformance with any Board style guide as issued from time to time.

b. Performance Expectations for Working Relationships

Board members are expected to demonstrate in all aspects of their work with the Board the following qualities and competencies, which the Chair will assess as part of each member's annual performance assessment:

- a) Collegiality and professionalism in dealings with other Board members and staff;
- b) Consensus-building skills when working with other Board members;
- c) Strong listening and communication skills in dealings with other Board members and in relation to those who appear before the Board;
- d) Open-mindedness, neutrality, impartiality, respect and fairness;
- e) A sound understanding of all applicable legislation, relevant case law (including administrative law principles), the Board's appeal rules, and the application of each of these to the issues and facts of each appeal and decision.

At least annually, the Chair will conduct an evaluation, in writing, of each member's performance measured against the above expectations and the member's performance generally. The Chair will meet with each member in person, or by phone if necessary, to discuss the evaluation while it is in progress. The Chair will provide the member with a copy of the member's evaluation and a copy will remain on file in the Board office. The Chair will give a member an opportunity to provide his or her perspective on the evaluation, and on any other matters, once the member's evaluation is complete. The Chair will consider any comments the member makes about the evaluation. The Board's copy of the evaluation will be annotated with any comments that are submitted in writing.

APPENDIX A
Law Enforcement Review Board Code of Conduct & Performance Expectations

Protection of Personal Information

The Board is a ‘public body’ under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The privacy provisions in Part 2 of FIPPA impose on the Board obligations respecting the protection of personal information. In the course of its activities, the Board collects personal information about individuals involved in appeals. Examples include the sometimes sensitive employment or health information found in employment records of officers involved in appeals. Another example is information that may identify someone as a confidential source of law enforcement information. The Board takes reasonable steps to protect this information from unauthorized disclosure and other risks, as required by s. 38 of FIPPA. That section requires the Board to make “reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.”

The Board stores personal information securely in its office, but given the part-time status of Board members, it is often necessary for the Board to distribute personal information to members so they can perform their duties. The Board expects members to take reasonable measures to protect all personal information and to protect personal information stored on computers or portable storage media used by members for their work. These expectations apply to members’ places of business and residences, as well as when members are travelling with personal information.

The Board also often has in its custody law-enforcement-related information, such as information about investigative techniques, that it may not disclose except through an access to information request under FIPPA or where compelled by law. These expectations for protection of personal information also apply to that kind of information.

Moreover, members of the Board should keep in mind the privacy protection requirements of the *Personal Information Protection Act* (“PIPA”). When discharging their powers, duties and functions as Board members, they are not acting in a personal or domestic capacity, such that they may, whether incorporated or in a practice, be considered to be an ‘organization’ covered by PIPA. PIPA imposes information on organizations’ security obligations that are substantially the same as those under FIPPA. Accordingly, Board members may wish to consider this guidance in relation to any obligations on their part under PIPA.

In this light, the following guidance is intended to assist Board members in meeting the expectation that they will protect personal information in their custody or under their control:

- In this guidance: (a) “storage device” means desktop computers, laptop computers, tablets, smart phones, USB storage keys, and any other electronic storage media of any kind; and (b) “information” means personal information and other information mentioned above.

- Do not travel with information unless it is truly necessary to have it with you. If you take information with you, take the least amount that you need and leave the rest behind. If records you need to take are too voluminous to carry with you, contact the Board to have the Board arrange for a secure courier.
- Storage devices are to be password protected with a robust alphanumeric password using a combination of numbers, upper case letters and lower case letters, with consideration being given to use of symbols such as \$, *, # or +.
- Electronic records of sensitive personal or law enforcement information should, when taken away from your office or home, be encrypted.
- When travelling or working outside the office or your home, keep information under your control, including during meals and other breaks. If this is not possible, store the information in a secure location, such as a locked room or desk drawer. Do not leave information in plain view or unattended in an insecure place, such as an unlocked office, meeting room or hotel lobby.
- Do not leave records containing information in plain view in your hotel room. If your hotel room has a safe, store the information there where its volume permits.
- While away from your office or your home, storage devices containing information should be kept in a locked briefcase or other container that is kept with you. If you must leave a storage device somewhere outside your office or home, do so in a way that it is secure from theft or loss.
- When working outside the office or your home, log off or shut down your laptop or computer when you are not using it, with the automatic locking function set for activation after a brief period of idleness.
- Do not share a storage device that has Board-related information on it with other individuals, including family members and friends, unless you have separate user accounts for them and your account is both a user and administrator account and is password-protected.
- Avoid viewing information from appeal records in public, including while travelling on airplanes, trains, buses and public transit. Do so only if you absolutely must and take precautions so that no one else can view the information. For example, your laptop screen should not be viewable by fellow passengers and your laptop should be set to automatically lock after a short period of idleness. Also consider installing a privacy screen filter on your laptop screen, to hinder viewing of the screen from an angle.
- Avoid discussing information in public, including on transit systems and in airplanes, restaurants or on the street. If you must do so, ensure others cannot overhear.

- Records have gone missing over the years when locked vehicles have been broken into or the vehicle has been stolen. Although the trunk of a vehicle is generally considered more secure than the interior of a vehicle, records have been stolen from locked trunks, so extreme caution must be exercised. Records should only be left in a vehicle if there is no other option and for as brief a period as possible. They should be locked in the trunk, not left in plain view in the vehicle interior. They also should be left only if the vehicle is parked in a secure location.
- When working at home, you should separately store information in a filing cabinet or other secure place when it is not being used.
- You should ensure your desktop computer, laptop computer or tablet has effective Internet security measures such as anti-virus software and firewalls. If you have a wireless network connection in your home or office, ensure that it is encrypted and that the password complies with the guidance above. Whenever possible, do not use unencrypted wireless connections, such as those in cafes or airports, when away from your home or office.
- If information is stolen or lost, or has been inappropriately accessed by someone else, immediately notify the Chair and follow any directions he or she gives.
