

CONFLICT OF INTEREST GUIDELINES



The Reason for SRRB Conflict of Interest Guidelines

The Sahtú Renewable Resources Board (SRRB), or ʔehdzo Got'ıne Gots'é Nákedı, is the wildlife and wildlife habitat co-management board established by the Sahtú Dene and Métis Comprehensive Land Claim Agreement (SDMCLCA).ⁱ

The SRRB is the main instrument of wildlife management in the Sahtú region and acts in the public interest.ⁱⁱ The SRRB's objectives are to conserve and protect wildlife and wildlife habitat and to protect the rights of Sahtú Dene and Métis to harvest wildlife and actively participate in wildlife decision-making.ⁱⁱⁱ

The Board Members of the SRRB are nominated by Sahtú organizations and government.^{iv} SRRB Board Members do not officially represent their nominating organizations, but are expected to bring their various perspectives to the decision-making table. The SDMCLCA provides that SRRB Board Members are not in a conflict of interest only because they are employees of government or Sahtú organizations.^v

Many of the SRRB's Board Members are, indeed, employees or leaders in Sahtú or government organizations. This will occasionally mean that there are questions from the Board Members and the public about how to ensure that SRRB Board Members maintain their independence and avoid conflicts of interest or bias in the decision-making process.

The SRRB regularly assesses how the Board can maintain a fair and independent process for decision-making on wildlife and wildlife habitat matters in the unique context of a northern Aboriginal land claim area. The SRRB has developed, and is making publicly available, these Conflict of Interest Guidelines in order to be transparent about the process that the SRRB follows to ensure a fair and independent process for making decisions.

The Procedural Fairness Requirements for the SRRB

The SRRB is an administrative tribunal dealing with wildlife policy. As an administrative tribunal, the SRRB has a duty to act fairly. The duty of fairness (including the need to avoid bias and conflicts of interest) applies to all administrative bodies. The extent of that duty depends on the nature and the function of the particular tribunal and the context in which the tribunal operates.^{vi}

Different factors affect the scope of the SRRB's duty of fairness (and thus the way in which SRRB Board Members must avoid bias or conflicts of interest). The SRRB's decisions are policy-oriented rather than court-like in nature. The SDMCLCA, which creates and gives authority to the SRRB, explicitly provides that Board Members can also serve in other capacities as members or employees of Sahtú organizations and government. The SRRB also functions in a unique northern and Aboriginal context.

These considerations affect the steps the SRRB is expected to take to act fairly when making decisions, and how to evaluate situations where there is the potential for bias or a conflict of interest.

General Expectations of Board Members

SRRB Board Members are expected to:

- freely express their opinions at Board Meetings;
- be able to maintain involvement in other organizations;
- remain open to the arguments of others and capable of being persuaded when dealing with SRRB matters; and
- act independently from the interests of the other organizations they are involved with, and in the interest of the SRRB, when making SRRB decisions.

Guidelines for Disclosing and Determining Conflicts of Interest

The SRRB will take the following steps to ensure that Board Members avoid conflicts of interest when participating in SRRB decisions:

Guideline 1 – Oath of Impartiality

The SRRB requires Board Members to swear an oath of impartiality, as required by the SDMCLCA.^{vii}

Guideline 2 - Disclosure of Potential Conflicts of Interest

The SRRB requires Board Members to disclose to the Chair and fellow Board Members any potential conflict of interest as early as possible in a hearing or decision-making process. Specifically:

- For Board Meetings: Board Members are required to disclose a potential conflict of interest about any agenda matter at the beginning of each Board meeting.
- For Public Hearings: Board Members are required to disclose a potential conflict of interest at the beginning of any process where the Board is considering holding a public hearing.

Guideline 3 – Opportunities for the Public To Raise Concerns

The SRRB will ensure that hearing and decision-making processes provide an opportunity for parties and the public to raise a concern, objection or issue with respect to conflict, fairness or bias prior to and/or during the hearing or process.

Guideline 4 – Determination of a Board Member Conflict of Interest

If a Board Member discloses a potential conflict of interest, or if another Board Member, party or member of the public raises a conflict of interest concern, the Board Chair will consult with other Board Members, and if necessary with legal counsel, to determine whether a conflict of interest exists.

Factors that the Board Chair will use in considering whether a conflict of interest exists include:

- a. Section 13.8.4(a) of the SDMCLCA which provides that, “Board members shall not be considered to have a conflict of interest by reason only of being public servants or employees of the organizations of the participants.”
- b. The policy-oriented nature of the SRRB’s authority, which allows more flexibility in applying rules of procedural fairness.

- c. The unique northern and Aboriginal context in which the Board operates.

If the Board Chair determines that a conflict of interest or bias situation exists for a Board Member, the Board Chair will determine the appropriate steps to be taken to address the conflict of interest or bias.

Guideline 5 - Determination of a Board Chair Conflict of Interest

If the Board Chair discloses a potential conflict of interest, or in the event that another Board Member, party or member of the public raises a concern about the Board Chair having a conflict of interest, the Board Members will meet and determine whether a conflict of interest exists based on the factors listed in Guideline 4 and the appropriate steps to be taken to address the conflict of interest. The Board Members may consult legal counsel in making this determination.

References

ⁱ *Sahtú Dene and Métis Comprehensive Land Claim Agreement, 1994* (“SDMCLCA”).

ⁱⁱ Section 18.8.1(a) of the SDMCLCA provides that, “A Renewable Resources Board shall be established to be the main instrument of wildlife management in the settlement area. The Board shall act in the public interest.”

ⁱⁱⁱ Section 13.1.1 of the SDMCLCA provides that: “13.1.1 This [Wildlife Harvesting and Management] chapter has the following objectives:

- (a) to protect for the future the right of participants to gather, hunt, trap and fish throughout the settlement area at all seasons of the year;
- (b) to conserve and protect wildlife and wildlife habitat and to apply conservation principles and practices through planning and management;
- (c) to provide participants with certain exclusive, preferential and other harvesting rights and economic opportunities related to wildlife;
- (d) to respect the harvesting and wildlife management customs and practices of the participants and provide for their ongoing needs for wildlife;
- (e) to involve participants in a direct and meaningful manner in the planning and management of wildlife and wildlife habitat;
- (f) to integrate planning and management of wildlife and wildlife habitat with the planning and management of all types of land and water use in order to protect wildlife and wildlife habitat;
- (g) to ensure that traditional harvesting by other aboriginal peoples who have harvested in the settlement area can be accommodated in this agreement; and
- (h) to deal fairly and equitably with persons who hunt, trap, fish or conduct commercial wildlife activities in the settlement area and who are not participants.”

^{iv} Section 13.8.3 of the SDMCLCA provides, “The Board shall consist of seven members appointed as follows:

- (a) six members and six alternate members to be appointed jointly by the Governor in Council and Executive Council of the Government of the Northwest Territories (“Executive Council”), of whom three members and three alternate members shall be appointed from nominees put forward by each of the Sahtu Tribal Council and government, provided that government shall ensure that the Board shall include at least one resident of the Northwest Territories who is not a participant; and

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- . (b) a chairperson, resident in the settlement area, to be nominated by the members of the Board appointed under (a) and appointed jointly by the Governor in Council and Executive Council.

^v Section 13.8.4(a) of the SDMCLCA provides that, “Board members shall not be considered to have a conflict of interest by reason only of being public servants or employees of the organizations of the participants.”

^{vi} *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623. See also *Committee for Justice & Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 which established the principle that, when assessing whether a reasonable apprehension bias exists, the Court must take into consideration the special circumstances of the tribunal in question.

^{vii} Section 13.8.4(b) of the SDMCLCA provides that, “Each member shall, before entering upon his or her duties as such, take and subscribe before an officer authorized by law to administer oaths, an oath in the form set out in schedule III to this chapter.”

The Board members’ oath set forth in Schedule III of the SDMCLCA is, “I do solemnly affirm (or swear) that I will faithfully, truly, impartially and honestly, and to the best of my judgement, skill and ability, execute and perform the duties required of me as a member of the Board.”