

## **Institutional guidelines for preventing and managing the risk of appearance of bias and other ethical issues arising from the appointment to the Division de la santé mentale of administrative judges who continue to act as psychiatrists in a designated hospital**

### **1. Objectives**

The purpose of these institutional guidelines is to prevent and manage ethical issues and the risk of an appearance of bias due to the appointment to the Division de la santé mentale (DSM) of administrative judges who continue to act as psychiatrists in a designated hospital.

To hear all accused persons under its jurisdiction within the mandatory time limits set out in the *Criminal Code*, as well as persons named in a proceeding under the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*,<sup>1</sup> the DSM must significantly increase the number of hearings it holds. To do so, it must recruit psychiatrists to act as part-time administrative judges, while they continue their practice as attending physicians in a designated hospital.

This situation can give rise to various ethical issues, including the appearance of bias. These institutional guidelines set out various measures designed to address these issues and to prevent risks and manage problematic situations where necessary.

### **2. Scope of application**

These guidelines apply to the DSM of the Tribunal administratif du Québec, more specifically in the context of the appointment of part-time administrative judges who continue to act as attending psychiatrists in a designated hospital.

### **3. Measures**

#### ***3.1 Training program***

The Tribunal has developed an ethics and conflict of interest training program to meet the specific needs of part-time administrative judges who continue to act as attending psychiatrists. They must complete this training as soon as possible, but at the latest within six months of their appointment. This training is in addition to the general ethics course offered to all new administrative judges at the Tribunal, to clarify the aspects specific to their situation.

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<sup>1</sup> CQLR, c. P-38.001.

The three-hour training course is provided by the Tribunal's Direction des affaires juridiques and covers the following aspects in particular:

- The notions of independence and impartiality;
- Separating the roles and statuses of psychiatrist and administrative judge;
- The duty to act in a reserved manner and to be loyal;
- Confidentiality;
- Apprehension of bias due to certain actions or involvements.

The content of this training is essentially theoretical, but time is devoted to exchanges and discussions concerning certain situations that could raise ethical issues.

The content of the training program will be reviewed annually to ensure it remains relevant.

### ***3.2 Measures inherent in the operation of the Tribunal***

Several measures to ensure the impartiality of administrative judges are already in place at the Tribunal. In addition to the *Code of Ethics*<sup>2</sup> that applies to them and the training they receive, administrative judges can refer to an ethics officer if needed.

In addition, the following elements are likely to encourage part-time administrative judges who continue to act as psychiatrists to comply with their ethical obligations despite holding multiple positions:

- After their appointment to the Tribunal, administrative judges take an oath of office<sup>3</sup> reminding them of their duty of impartiality.
- Each DSM panel is composed of at least three administrative judges: a jurist (mandatory), a psychiatrist (mandatory) and another administrative judge (generally a psychologist, social worker, or physician).
- Most DSM administrative judges work exclusively for the Tribunal.
- DSM administrative judges may rely on the Tribunal's large body of jurisprudence.

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<sup>2</sup> CQLR, c. J-3, r. 1.

<sup>3</sup> *Act respecting administrative justice*, CQLR, c. J-3, s. 68.

### **3.3 Special case management and hearing schedule measures put in place due to the appointment of part-time administrative judges who continue to act as psychiatrists in a designated hospital**

The Tribunal is putting safeguards in place to limit any risk or contestation related to the appearance of bias or other ethical issues arising from the appointment of part-time administrative judges who continue to practice as a psychiatrist in a designated hospital.

The measures are as follows:

- These psychiatrists do not hear cases involving the hospital in which they practise;
- These psychiatrists do not sit on the same panel as administrative judges who hear them testify in cases involving accused followed by the hospital where they act as physicians;
- The DSM is putting in place computer access controls so that part-time psychiatrists can access only cases assigned to them. Therefore, they do not have access to the files of accused persons followed at the hospital where they practise their profession.

To achieve the first two objectives, the Tribunal creates groups of administrative judges composed primarily of one of these administrative judges who is a psychiatrist, an alternate chairperson and a third administrative judge with the status of hybrid administrative judge in the Division des affaires sociales.<sup>4</sup> This way, it can assign its administrative judges so that administrative judges who continue to act as psychiatrists in a designated hospital do not have to testify before colleagues with whom they are sitting or will have to sit.

These measures will be reviewed annually to ensure they are sufficient and effective.

### **3.4 Committee responsible for managing conflicts of interest and other ethical issues**

When administrative judges wish to discuss an ethical issue, they may contact the chair of the Commission d'examen des troubles mentaux (CETM), the ethics officer for administrative judges or the person in charge of ethics and integrity.

When an issue requires deeper consideration because of the concerns raised, it may be referred to the committee responsible for managing conflicts of interest and other ethical issues. Six people compose this committee: the chairperson of the CETM, a coordinating administrative judge who is a jurist, an administrative judge who is a social worker or a psychologist, an administrative judge who is a psychiatrist, the ethics officer for judges and the person in charge of ethics and integrity.

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<sup>4</sup> An administrative judge with hybrid status sits in both the Section des affaires sociales de la Division de la santé mentale. In addition, at least one hybrid administrative judge works exclusively for the Tribunal.

The committee has a quorum of four and recommendations are adopted by a majority vote. In the event of a tie, the conflicting recommendations are submitted to the chair and director general of the Tribunal, who decides which recommendation will be forwarded to the administrative judge.

The committee meets as required when specific situations or problems are brought to its attention. The committee advises, assists and guides individuals or groups in their reflections when certain complex situations arise. The committee has the power to make recommendations to administrative judges.

A complaint may be lodged with the Conseil de la justice administrative against an administrative judge who does or does not follow a committee recommendation.

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