

SECTION: Procedure

Effective date: October 8, 2014
REVISED DATE: January 1, 2022

SUBJECT: JURISDICTION – JUDICIAL IMMUNITY

Purpose:

The Manitoba Human Rights Commission (“Commission”) can only act within the authority given to it by *The Human Rights Code* (“*The Code*”) and other laws. This policy sets out circumstances in which the Commission does not have jurisdiction to consider a complaint due to the doctrine of judicial immunity. Where there is any conflict between this policy and *The Code*, *The Code* will be followed.

Context:

The doctrine of judicial immunity prevents the Commission from considering complaints against judges and decision makers of quasi-judicial administrative bodies.

The rationale is that in order to protect the independence of the judiciary or quasi-judicial decision makers, their comments and actions must be generally immune from scrutiny by the public. This in turn prevents individuals from complaining that those actions are discriminatory under *The Code*. Unless malice or bad faith can be shown, judges and quasi-judicial adjudicators are generally immune from actions (see *Dechant v. Stevens*, 2001 ABCA 39 (CanLII)).

For example, in *Cartier v. Nairn*, 2009 HRTO 2208 the Ontario Human Rights Tribunal confirmed that a human rights tribunal has “no jurisdiction to hear applications against courts and tribunals based on the execution of their duties as adjudicators because of the doctrine of judicial immunity.” That “doctrine is rooted in the principle of judicial independence, the purpose of which is to ensure that judicial actors are free to execute their decision-making duties with independence and without fear of consequences”.

In *Agnew v. Ontario Association of Architects* (1987), 64 O.R. (2d) 8 (Div. Ct.), the Ontario Divisional Court clarified that judicial immunity applies not only to judges, but also to administrative tribunal decision makers.

The Provincial Court of Manitoba, the Court of Queen’s Bench (including Masters and Small Claims Court), and the Court of Appeal are all courts to which judicial immunity applies. Examples of quasi-judicial administrative bodies to which judicial immunity would apply include the Taxicab Board, Manitoba Health Appeals Board, Automobile Injury Compensation Appeal Commission, Residential Tenancies Commission, Labour Board and Public Utilities

Board, and

the Workers' Compensation Board – Appeal Commission. A complete list may be found at <http://www.manitoba.ca/government/abc/alpha.html>.

The Commission will not consider complaints alleging that these judicial or quasi-judicial decision makers have contravened *The Code* while exercising their judicial or quasi-judicial duties. In these situations, the Commission must dismiss the complaint without investigation under subsection 26(2)(c) of *The Code*, or following investigation under subsection 29(1)(c) of *The Code*.

APPROVED BY:

“John Burchill”
Chairperson

January 1, 2022
Date