



**Code of Professional and Ethical Responsibilities
for Tribunal Adjudicators**

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Purpose of Code

1. The purpose of this Code is to establish rules of conduct governing the professional and ethical responsibilities of tribunal adjudicators. The rules cover the primary areas of responsibility of adjudicators, as motions adjudicators or members of a hearing panel or review board, that is, the conduct of hearings and decision-making, as well as the institutional responsibilities of adjudicators to colleagues, to the Tribunal Chair or the Chair's designate as head of the tribunal, and to the tribunal itself.
2. The Code has been developed in recognition of the fundamental and over-riding responsibility of all tribunal adjudicators to maintain the integrity, competence and effectiveness of the tribunal as a whole. The rules are intended to assist adjudicators by establishing appropriate standards of conduct in typical administrative justice circumstances. It is recognized, however, that the Code cannot anticipate all possible fact situations in which adjudicators may be called upon to exercise judgment as to the appropriate standard of conduct. Some circumstances will require that the rules in the Code be adjusted to reflect a different standard of conduct, whether more or less onerous. In each case, it remains the responsibility of each individual adjudicator to consider the appropriate standard and to act in an ethical and professional manner.

Application of Code

3. The rules in this Code apply to all tribunal adjudicators: Benchers, public representative members, and non-Bencher lawyers. For simplicity, the term “**adjudicator**” is used to include all panel members unless otherwise specifically differentiated. Similarly, the term “**panel**” is used to include all types of hearing panels and review boards. Where certain responsibilities of the Tribunal Chair have been delegated to a designate, the term “**Tribunal Chair**” in this Code should be taken to include such designates.

4. The Code governs the conduct of adjudicators from the commencement of the term of appointment or, in the case of lawyer-Benchers, election. Also included are the continuing responsibilities of adjudicators after completion of their terms.
5. The Code may be amended from time to time to reflect the developing experience of the Tribunal.

Conflict of Interest

Definitions

6. A “conflict of interest” is any interest, relationship, association or activity that is incompatible with an adjudicator’s obligation of impartial adjudication. A conflict of interest is defined for the purpose of this Code to include both pecuniary and non-pecuniary conflicts.
7. When the circumstances surrounding a proceeding raise a possible conflict of interest, the test as to whether the adjudicator should be disqualified is whether the facts could give rise to a reasonable apprehension of bias in the mind of a reasonable and informed person. That should be determined with reference to the applicable common law.

Avoid conflicts and reasonable apprehension of bias

8. If an adjudicator has, or may have, a conflict of interest in a matter:
 - a) Until the issue is resolved, they must stop adjudicating in the matter, or participating in any panel discussions regarding the matter, except in discussions addressing the potential conflict of interest.
 - b) If the possible conflict of interest arises during the course of a hearing, the decision as to whether the adjudicator should be recused will be discussed by the panel and decided by the majority.

- c) If the possible conflict of interest arises during a preliminary motion, the motions adjudicator will make the decision as to whether they should be recused.
 - d) If the possible conflict of interest arises in advance of a hearing or a preliminary motion, the adjudicator may decide they should be recused, or if there is a possible conflict of interest, or circumstances that may raise a reasonable apprehension of bias, the adjudicator must immediately inform the Tribunal Chair.
9. By way of examples, an adjudicator must not participate in any proceeding, or participate in tribunal discussions of any matter (with the exception of deciding a potential conflict of interest), in any of the following circumstances:
- a) The adjudicator or his or her family member or close associate has a financial interest in the outcome of the matter.
 - b) The adjudicator or a family member or close associate has had any prior involvement in the proceeding (This does not prohibit a motions adjudicator from hearing preliminary matters and then sitting on a panel with respect to that matter).
 - c) The adjudicator has expressed views evidencing bias regarding a party or an issue that is before the Tribunal.
 - d) The hearing involves a party, witness or counsel with whom the adjudicator was formerly in a significant professional relationship until a period of three years has elapsed from the termination of the relationship. A significant professional relationship includes employment, solicitor/client or partnership/association in a law firm.
 - e) The hearing involves a party, witness or counsel with whom the adjudicator has a close family or personal relationship. For example, an adjudicator should consider withdrawing from a hearing if counsel for one of the parties is a close friend. The appropriate response varies depending on the facts, but

in every case, the particular circumstances of the relationship and the position of the other parties should be considered carefully.

10. An adjudicator must refrain from publicly taking a substantive position in respect of an issue currently under consideration in any proceeding before the Tribunal.
11. An adjudicator must not accept money, awards or gifts from persons who may become, or have been, affected by a tribunal decision. When a gift is, or may be perceived to be, offered because of membership in the tribunal, the Tribunal Chair must be advised forthwith. An adjudicator is normally allowed to accept a small token gift offered as an honorarium for a speaking engagement. Other gifts should be returned immediately or delivered to the Tribunal Chair for prompt action.
12. An adjudicator must not appear as an expert witness or character witness or as an agent or representative for a party before the tribunal or in court in an appeal or review of a tribunal decision.
13. An adjudicator must not act as a professional or legal consultant in the preparation of a case before the tribunal or in any matter relating to the work of the tribunal, including an appeal or review of a tribunal decision.
14. An adjudicator must not take improper advantage of information obtained through official duties and not generally available to the public, to obtain a personal benefit. This does not, in most cases, include contributions to professional educational activities, such as public conferences.

Procedure for potential or alleged conflict or bias

15. It is the responsibility of each adjudicator to consider and actively inquire into any circumstance that might suggest a possible conflict of interest or raise a reasonable apprehension of bias in respect of any of his or her responsibilities. The adjudicator may be the only person in a position to recognize a possible conflict or an issue of bias. As soon as a potential conflict, or grounds for a

reasonable apprehension of bias, is identified, an adjudicator should immediately take appropriate steps as outlined below.

16. When an adjudicator has a potential conflict of interest in respect of a matter before the tribunal but not assigned to the member for adjudication, the adjudicator must refrain from participation in any discussion of the matter and must not be present for such discussions.
17. If an adjudicator becomes aware of a conflict of interest, prior to accepting an appointment to adjudicate a particular matter, the adjudicator should decline to act. If an adjudicator becomes aware, prior to commencing the hearing in a matter, that circumstances exist that suggest a possible conflict of interest on the part of the adjudicator, or that may raise a reasonable apprehension of bias, the adjudicator must immediately inform the Tribunal Chair. If the Tribunal Chair determines that the circumstances are insignificant, the adjudicator may continue with the hearing; subject to the Tribunal Chair or the adjudicator deciding that the issue should be placed before the parties for submissions at the commencement of the hearing and any decision on the issue following those submissions.
18. When an allegation of conflict of interest or reasonable apprehension of bias is raised by a party during a hearing before a panel, the adjudicator concerned should consult the other members of the panel, and the panel will discuss and decide by majority whether:
 - a) the adjudicator must withdraw from the proceeding at once given the nature and circumstances of the alleged conflict (for example, when the adjudicator recognizes an actual pecuniary conflict);
 - b) they will hear submissions from the parties with respect to the alleged conflict and reserve to consider the submissions; or
 - c) they will schedule a time for submissions on the allegation of conflict.

19. When an adjudicator, who is a member of a panel, becomes aware during a hearing of a possible conflict of interest, or of facts that may give rise to a reasonable apprehension of bias, and the related circumstances are unknown to the parties, the adjudicator must advise the other members of the panel and may:
 - a) advise the parties without delay of the possible conflict and hear submissions on the issue; or
 - b) recess the hearing to consult with the panel and decide as a panel whether the possible conflict is serious and whether it is appropriate to inform the parties of the circumstances and hear submissions.
20. When an allegation of conflict of interest or reasonable apprehension of bias is raised by a party during a hearing before a motions adjudicator, the adjudicator concerned may:
 - a) withdraw from the proceeding at once if the adjudicator considers it to be appropriate given the nature and circumstances of the alleged conflict (for example, when the adjudicator recognizes an actual pecuniary conflict);
 - b) hear submissions from the parties with respect to the alleged conflict and reserve to consider the submissions; or
 - c) schedule a time for submissions on the allegation of conflict.
21. When an adjudicator sitting as motions adjudicator becomes aware during a hearing of a possible conflict of interest, or of facts that may give rise to a reasonable apprehension of bias, and the related circumstances are unknown to the parties, the adjudicator may:
 - a) recess the hearing to consider whether the possible conflict is serious and whether it is appropriate to inform the parties of the circumstances and hear submissions; or

- b) advise the parties without delay of the possible conflict and hear submissions on the issue.
- 22. Circumstances that may raise a conflict of interest, or a reasonable apprehension of bias, should be disclosed to parties and representatives as soon as they are known unless the panel determines, by majority, that the potential issue is trivial and of no significance. An adjudicator may wish to consult Tribunal Counsel or the Tribunal Chair before making this determination.
- 23. While it is essential that an adjudicator not participate in a proceeding when there is a conflict of interest or a reasonable apprehension of bias, it is equally important that an adjudicator not be recused unless there are valid grounds for doing so.
- 24. Given that allegations of conflict and bias affect the credibility and integrity of the tribunal as a whole, when an adjudicator's neutrality is challenged, the motions adjudicator, hearing panel or review board should inform the Tribunal Chair of the nature of the allegations made.
- 25. When a party before the tribunal has made submissions challenging the neutrality of an adjudicator, it is advisable in most cases for the motions adjudicator or panel hearing the matter to issue a written decision on the allegation of reasonable apprehension of bias or conflict of interest.

Potential or alleged conflict or bias affecting the Tribunal Chair

- 26. If the Tribunal Chair becomes aware of a possible conflict of interest or of facts that may give rise to a reasonable apprehension of bias with respect to a matter that the Tribunal Chair is adjudicating, the procedural protocol established in this Code for adjudicators must be followed with appropriate adjustments.
- 27. If the Tribunal Chair determines that they have a possible conflict of interest or a potential bias in respect of a matter that is before the tribunal but that the Chair is not adjudicating, the Tribunal Chair must instruct tribunal staff that all communications regarding the matter are to be directed to another designated

motions adjudicator. The file must be marked “No Access to Tribunal Chair.” All decisions regarding the choice of panel, the scheduling and conduct of the hearing, and the release of the decision must be made without the participation of the Tribunal Chair.

Conduct of the Hearing

28. An adjudicator must approach every hearing with an open mind with respect to every issue, and must avoid doing or saying anything that could cause any person to think otherwise. Adjudicators should interact with all parties fairly and even-handedly.
29. An adjudicator must show respect for the parties, representatives and witnesses and for the hearing process itself, through demeanour, timeliness, dress and conduct throughout the proceeding.
30. An adjudicator must not, in the course of a hearing, have significant social interaction with a party, representative or witness, except if all parties and representatives are present and there is no discussion with respect to the subject matter of the hearing.
31. An adjudicator must not communicate directly or indirectly with any party, witness or representative in respect of a proceeding, except in the presence of all parties and their representatives. Telephone calls to the adjudicator should be referred to tribunal staff. Correspondence to or from a party or counsel should be handled by tribunal staff and forwarded to all parties and representatives not already copied.
32. An adjudicator must listen carefully and with respect to the views and submissions of the parties and their representatives.
33. An adjudicator must demonstrate a high degree of sensitivity to issues of gender, ability, race, language, culture and religion that may affect the hearing process. Such issues may, for example, affect the affirmation or swearing of witnesses, the scheduling and time of the hearing or the attire of the participants, among other

things. In considering the demeanour of a witness in the context of an assessment of credibility, an adjudicator should recognize that they may not be familiar with cultural norms affecting the manner of the witness. Adjudicators should be sensitive to their own biases and consider different points of view with an open mind.

34. An adjudicator must endeavour, in accordance with the Law Society Rules and policies, to ensure that the hearing room and process is accessible and barrier-free for all parties, representatives and witnesses.
35. An adjudicator must endeavour to conduct all hearings expeditiously, preventing unnecessary delay while ensuring that all parties have a fair opportunity to present their case.
36. An adjudicator must avoid undue interruption and interference in the examination and cross-examination of witnesses. It is permissible for an adjudicator to question a witness in order to clarify the evidence, but unnecessary leading questions should be avoided. An adjudicator must not show undue impatience or a negative attitude towards a witness.
37. An adjudicator should avoid unnecessary interruptions in the submissions of a party or representative. Interruptions may be necessary to clarify a submission or to ensure the relevance of a particular argument.
38. An adjudicator must attempt to ensure that parties who are unrepresented are not unduly disadvantaged at the hearing. While an adjudicator cannot act as counsel to an unrepresented party, it is appropriate to explain clearly the procedure to be followed in the hearing. In the course of the hearing, the adjudicator may, in clear and simple language, outline for the party relevant evidentiary and procedural rules that have a bearing on the conduct of the proceeding.
39. An adjudicator must treat as strictly confidential all information and documents received in the course of a hearing, including the panel's deliberations. There should be no discussion of the matter outside of the panel itself, except to seek

appropriate assistance from tribunal staff, Tribunal Counsel or the Tribunal Chair or in compliance with para. 71.

40. An adjudicator must not make public comment, orally or in writing, on any aspect of a matter before the tribunal. An adjudicator must not discuss with anyone outside the tribunal, even in private, any aspect of a matter before the tribunal.
41. Adjudicators who choose to use social media should exercise great caution in their communications and associations within these networks, including expressions of support or disapproval. This includes adjudicators informing themselves about the functioning, and the application, of security and privacy settings appropriate to their use of social media. Adjudicators should be vigilant in minimizing reasonable apprehensions of bias or claims of lack of impartiality arising from these communications and associations.
42. In a digital world, information is much more accessible. Accordingly, adjudicators should be vigilant to avoid inappropriately acquiring or receiving outside of a hearing information related to the parties, witnesses or issues under consideration in matters before them. Fairness issues may need to be considered by the adjudicator should this happen.

Decision-Making Responsibilities

43. An adjudicator must make each decision on the true merits and justice of the case, based on the law and the evidence.
44. An adjudicator must apply the law to the evidence in good faith and to the best of his or her ability. The prospect of disapproval from any person, institution or community must not deter an adjudicator from making the decision that they believe is correct based on the law and the evidence.
45. Motions adjudicators and all members of a panel are responsible for ensuring that decisions are rendered promptly. Written reasons should be prepared without undue delay. In most cases, the decision of a panel should be in the hands of

tribunal staff within 60 days of the end of the oral hearing or the receipt of final written submissions. In most cases, the decision of a motions adjudicator should be in the hands of tribunal staff within one week of the end of the oral hearing or the final date of submissions.

46. An adjudicator must not ignore relevant tribunal decisions on a question at issue before the adjudicator. When previous decisions are relevant and are not followed, the adjudicator must explain the reasons for the departure clearly and respectfully in written reasons. Due weight must be given to previous tribunal jurisprudence and the need for a degree of consistency in the interpretation of the law.
47. An adjudicator is responsible for ensuring that decisions are prepared in accordance with tribunal guidelines on form and language and meet tribunal standards with respect to the quality of written decisions.
48. An adjudicator must endeavour to use clear language and avoid legal or other jargon in decision-writing.
49. An adjudicator must never communicate with the media regarding any decision of the tribunal. All inquiries from the media must be referred to the Tribunal Chair or to the parties.

Collegial Responsibilities

To Colleagues

50. An adjudicator must, through his or her conduct, endeavour to promote collegiality among adjudicators and with tribunal staff.
51. An adjudicator must be available on a timely basis for consultation or caucus discussions initiated by a panel member on any policy, legal or procedural issue.

- 52. In discussions and consultations with other tribunal members, an adjudicator must demonstrate respect for the views and opinions of colleagues.
- 53. An adjudicator must not comment publicly on a decision of a colleague, or the conduct of another tribunal member during a hearing.

When Sitting as a Panel

- 54. When sitting as a panel, adjudicators must consider the Law Society Rules and tribunal practice directions governing the respective roles of the chair and the other panel members in the conduct of a hearing and in making interim rulings on procedural and substantive questions. With respect to matters not dealt with in the Rules, members of a panel should discuss the appropriate approach in advance of taking any steps. In many cases, it will be appropriate to give the parties the opportunity to make submissions before the panel makes a final decision.
- 55. When, during a hearing, a panel chair becomes aware of a difference of opinion among members of the panel on a procedural or substantive issue affecting the conduct of the hearing, the chair should call a recess to allow the panel to discuss the issue and reach a decision on how to proceed. Again, in many cases, the panel should invite submissions from the parties before making a final decision.
- 56. All members of a panel must be available on a timely basis for discussions with their panel colleagues on the conduct of the proceeding and on the substance of the determinations to be made. When a draft decision is provided to a panel member for comments, they should respond at the earliest opportunity.
- 57. A member of a panel should consider carefully the reasons of colleagues where there is a difference in their proposed determinations on an interim or final decision. However, an adjudicator should not abandon firmly-held views on an issue of substance, either for the sake of panel unanimity or in exchange for agreement on any other point.

58. When a member of a panel is unable, after discussion and careful consideration, to agree with the proposed decision of a majority of the panel, they must prepare, in a timely fashion, a reasoned dissent.

To the Tribunal Chair

59. Each adjudicator is responsible to the Tribunal Chair for adherence to this Code. The interpretation and enforcement of the Code are matters within the authority of the Tribunal Chair. Failure to comply may result in the Chair recommending against re-appointment of an adjudicator.

60. Adjudicators who:

- a) are subject to a complaint, or investigation by a professional regulator; or
- b) are charged with an offence, under a federal or provincial statute, or an equivalent offence in another jurisdiction,

must immediately inform the Tribunal Chair. No notification is required under subparagraph 60 b) if an adjudicator is issued, or served with, a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

61. To maintain public confidence, when an adjudicator is subject to a complaint, investigation or charge described in para. 60, the adjudicator will not be scheduled as a motions adjudicator or assigned to a panel until the matter is resolved. The Tribunal Chair will determine whether the adjudicator may complete an ongoing hearing.
62. Adjudicators facing complaints related to their adjudicative role will not be scheduled as a motions adjudicator or assigned to a panel until the complaint is resolved. The Tribunal Chair will determine whether the adjudicator may complete an ongoing hearing. Allegations of bias or conflict of interest raised by the parties before or during a hearing are not considered complaints for the purpose of this

section and are to be addressed and decided by the panel as a whole or by the motions adjudicator hearing the matter.

- 63. If an adjudicator becomes aware of conduct of a colleague that may threaten the integrity of the tribunal or its processes, the adjudicator must advise the Tribunal Chair of the circumstances as soon as practicable.
- 64. An adjudicator must immediately inform the Tribunal Chair of any change of circumstance that may affect the adjudicator's ability or availability to participate in the work of the tribunal.

To the tribunal

- 65. An adjudicator must make every effort to attend training sessions required by the tribunal at the earliest opportunity.
- 66. An adjudicator must make every effort to comply with the policies, procedures, practice directions and standards established for the tribunal. This includes, for example, rules regarding permissible expenditures, documentation of expenses, travel and accommodation.
- 67. Where an adjudicator questions the appropriateness of any policy, procedure or standard, they should raise that issue with the Tribunal Chair.
- 68. An adjudicator must not publicly criticize the decisions, procedures or structures of the tribunal, except as may be required in a Bencher's role as a policy decision-maker.
- 69. An adjudicator must not divulge confidential information unless legally required to do so, or appropriately authorized to release the information.
- 70. An adjudicator must not engage in conduct that exploits his or her position of authority.

Post-Term Responsibilities

71. An adjudicator must not appear before the tribunal as a representative, expert witness or character witness or consultant until three years after ceasing to be a member of the tribunal or after the release of any outstanding decisions, whichever is later.
72. An adjudicator whose appointment has expired but continues to participate in an unfinished matter continues to be bound by the restrictions and obligations of this Code, including the responsibility of maintaining confidentiality.
73. An adjudicator must not take improper advantage of past office after ceasing to be a member of the tribunal.