

1. Mandate

Our mandate is to exercise the powers conferred on the Capital Markets Tribunal (a division of the Ontario Securities Commission) under the *Securities Act* and the *Commodity Futures Act* and to determine all questions of fact or law in any proceeding before the Tribunal under those Acts.

The Tribunal exercises those powers independently from the Commission's regulatory function, without oversight by the Commission's Board of Directors.

2. Application

In this Code, "Adjudicator" includes the Chief Adjudicator, unless the context suggests otherwise. "Board Director" refers to an appointed member of the Commission's Board of Directors and includes the Chair of the Commission.

This Code applies to Adjudicators appointed to the Tribunal and to staff in the Commission's Governance & Tribunal Secretariat who support the Tribunal.

Everyone to whom this Code applies must also act in accordance with:

- the Commission's *Code of Conduct* (as applicable);
- all policies of the Tribunal; and
- statutory and other legal requirements governing administrative tribunals.

3. Impartiality and fairness

3.1. General

Adjudicators shall not participate in a hearing if:

- doing so would violate this Code;
- the Adjudicator would be, or would reasonably be seen to be, biased (see s.3.2 below); or
- for some other reason, the Adjudicator believes they should not participate.

3.2. Bias

Adjudicators must conduct hearings and render decisions fairly and impartially. The ability to do so is undermined by actual bias or a reasonable apprehension of bias.

To decide whether an Adjudicator may reasonably be seen to be biased, one must ask whether a reasonable and informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that the Adjudicator is biased, thereby preventing them from adjudicating the matter fairly and impartially.

3.3. Before a hearing begins

If, before a hearing begins, an Adjudicator knows of circumstances that may give rise to bias, or to a reasonable apprehension of bias, the Adjudicator must consult with the Chief Adjudicator. Following that discussion, if the Chief Adjudicator or the Adjudicator concludes that the Adjudicator may be biased, or that there may be a reasonable apprehension of bias, the Adjudicator will not be a member of the panel presiding over the hearing.

3.4. During a hearing

3.4.1. General

This section 3.4 applies where an Adjudicator becomes aware, during a hearing, of circumstances that may give rise to bias or a reasonable apprehension of bias.

3.4.2. Assessment of bias

If the Adjudicator concludes that they may actually be biased, the Adjudicator shall adjourn the hearing and advise the Chief Adjudicator. The Adjudicator will no longer be a member of the panel presiding over the hearing.

If the Adjudicator is of the preliminary view that they are not actually biased, but that there may be a reasonable apprehension of bias, the Adjudicator shall inform the parties of the circumstances and ask for their submissions. If the parties do not consent to the Adjudicator's continued participation, but the Adjudicator decides that no reasonable apprehension of bias exists, the Adjudicator should provide reasons for their decision.

3.4.3. Multi-member panels

In the case of a multi-member panel, the Adjudicator shall, at the earliest reasonable opportunity, alert their fellow panel members and consult with them before the panel takes any of the above actions.

3.4.4. Where a party alleges bias

If a party alleges that an Adjudicator is biased and asks that the Adjudicator no longer preside over the hearing, the panel should provide reasons for its decision.

4. Panel assignment

4.1. Assignment of Adjudicators

The Chief Adjudicator, or their delegate, shall consider the following factors when deciding whether to assign an Adjudicator to be a member of a panel or to chair a panel:

- the issues involved in the hearing;
- any conflicts of interest that may arise for the Adjudicator;
- the Adjudicator's experience and expertise; and
- the Adjudicator's availability.

4.2. Independence of the assignment process

When assigning Adjudicators to panels, the Chief Adjudicator or their delegate may consult with Adjudicators or with staff of the Governance & Tribunal Secretariat. However, no person shall attempt to influence the assignment process unless asked for their views by the Chief Adjudicator or their delegate.

5. Staff of the Governance & Tribunal Secretariat

5.1. Communicating with others

Staff of the Governance & Tribunal Secretariat shall not communicate with any of the following, about any matter that is or was at issue in a proceeding, except as directed by the chair of the panel:

- Board Directors
- any party to a proceeding, including staff of the Commission
- any party's representative
- any witness

This prohibition does not apply to communications that are procedural or administrative in nature, or to comments made in a public forum (e.g., an educational conference) at which any of the above people may be in attendance.

5.2. Confidentiality

At no time shall staff of the Governance & Tribunal Secretariat disclose panel deliberations or other confidential information to anyone other than:

- members of the panel, or
- other staff of the Governance & Tribunal Secretariat,

without the panel's consent, or if legally required to make the disclosure.

5.3. Role of counsel

Counsel in the Governance & Tribunal Secretariat may give legal advice and other assistance to a panel, unless doing so would be inconsistent with this Code or applicable law.

6. Adjudicators' responsibilities

6.1. Independence

Adjudicators must perform their responsibilities independently of any other obligations or interests they may have.

6.2. Conduct of hearings

Adjudicators must conduct hearings fairly, and in a manner that is orderly and that is respectful of all parties, representatives, witnesses, members of the public, and staff of the Governance & Tribunal Secretariat.

6.3. Impartiality

Adjudicators must approach every hearing with an open mind. Adjudicators must ensure that hearings are, and are seen to be, conducted fairly, impartially, and transparently, with all parties having an opportunity to present their case.

6.4. Self-represented parties

Adjudicators should assist self-represented parties to the extent permitted by law. Such assistance might include, for example, an explanation of procedural steps or rules of evidence. However, in giving assistance, Adjudicators must remain mindful of their duty of impartiality.

7. Communications by Adjudicators about a proceeding

7.1. Communicating with parties and others

Other than in a hearing, and except as provided below regarding written communications through the Registrar, Adjudicators shall not communicate with any of the following about any matter that is or was at issue in a proceeding:

- Board Directors
- any party to a proceeding, including staff of the Commission
- any party's representative
- any witness

A panel may ask the Registrar to send, and may receive from the Hearings Registrar, written communication that includes all parties.

7.2. Communicating publicly

Adjudicators shall never communicate publicly about a proceeding before its final disposition, being the later of (i) the expiry of the applicable time for the filing of an appeal, and (ii) the exhaustion of the appeal process before the courts.

Any public comment by Adjudicators about a proceeding after its final disposition must comply with the Commission's *Media Relations Policy*.

When commenting publicly (other than through reasons issued in a proceeding), Adjudicators must ensure that their comments cannot be seen to be criticizing another decision of the Tribunal, reasons for such a decision, or a court decision that referred to, or was an appeal from, a Tribunal decision.

Adjudicators should be mindful of the principle that "the reasons speak for themselves".

7.3. Confidential information

Unless legally required to do so, or as allowed by this section 7.3, Adjudicators shall not disclose confidential information related to a proceeding or a confidential settlement conference.

Adjudicators may communicate confidential information about a proceeding or confidential settlement conference with staff of the Governance & Tribunal Secretariat who are involved with the proceeding or confidential settlement conference.

8. Deliberations, decisions and reasons

8.1. Decisions

Adjudicators must reach their decisions independently, fairly and impartially, and in accordance with this Code and applicable law, including principles of procedural fairness.

The prospect of disapproval from any person, institution or group, including other Adjudicators, shall not deter an Adjudicator from making a decision that they believe is fair and just.

8.2. Issues not raised in a hearing

Adjudicators should consider only those issues that were raised in the hearing. Their decision should be restricted to those issues, and be based on:

- relevant law;
- the evidence before them;
- anything of which the Tribunal is entitled to take notice, under s.16 of the *Statutory Powers Procedure Act*; and
- the parties' submissions.

If an Adjudicator believes that the parties failed to raise or address a relevant issue, law or authority that might significantly affect the Adjudicator's decision, the panel should ask the parties for submissions on the issue, law or authority.

8.3. Consultations with an Adjudicator who is not a member of the panel

A panel may consult informally with an Adjudicator who is not a member of the panel, so long as that Adjudicator would not have a conflict of interest, or be biased or reasonably seen to be biased.

Consultations may include questions of substantive law, procedure, evidence, or policy. A panel may, through counsel, ask another Adjudicator to review draft reasons, in accordance with the Tribunal's policy about such reviews.

No consultation shall detract from a panel's independent decision-making responsibility. An Adjudicator who is consulted by a panel shall neither participate in the panel's deliberations nor comment on the panel's assessment of facts.

8.4. Departing from prior decisions of the Tribunal

Adjudicators should give due consideration to prior decisions of the Tribunal. If a panel departs from a prior decision, it should explain in its reasons for decision why it did so.

8.5. Privacy

In any decision or reasons for decision, Adjudicators should, to the extent possible, protect non-parties' personal information.

For names of non-parties, Adjudicators may substitute initials or other anonymous identifiers.

8.6. Timeliness

Adjudicators should conduct proceedings as efficiently and expeditiously as possible, with due regard for fairness to the parties.

Panels should issue their decisions, and reasons for their decisions where applicable, in a timely way. In general, decisions should be issued within 90 days of the last submissions. Longer periods may be required:

- for unusually long or complex hearings;
- because for unavoidable reasons a panel member is not available; or
- due to other unforeseeable circumstances.

9. Review by the Tribunal of its own decisions

Nothing in this Code constrains the Tribunal, after the final disposition of a proceeding, from engaging in a discussion about the proceeding or any appeal from the proceeding. In any such discussion, no Adjudicator who was a panel member in the proceeding shall disclose any confidential information, including the panel's deliberations.