

Memorandum of Understanding between the Chair of the Board of Directors of the Ontario Securities Commission and the Chief Adjudicator of the Capital Markets Tribunal

Purpose

1. The purpose of this Memorandum of Understanding is to set out the accountability and reporting relationship with respect to the Tribunal and the Board pursuant to the Memorandum of Understanding signed by the Minister and the Chair.
2. This agreement should be read together with the Minister's MOU, the Acts and any other related legislation. This agreement does not affect, modify or limit the powers of the Commission as set out under any act, regulation or rule, or interfere with the responsibilities of any of its parties. In case of a conflict between this agreement and any act, regulation or rule, the act, regulation or rule prevails.

Definitions

- a. "AAD" means Treasury Board/Management Board of Cabinet's *Agencies and Appointments Directive*;
- b. "Acts" means the *Securities Commission Act*, the *Securities Act* and the *Commodity Futures Act*;
- c. "adjudicative functions" includes:
 - i. presiding over, deciding, and issuing reasons and orders in, Tribunal proceedings; and
 - ii. the Chief Adjudicator's related functions, including:
 - i) recruiting Adjudicators,
 - ii) orientation, training and education of Adjudicators,
 - iii) assigning Adjudicators to hearings,
 - iv) overseeing Adjudicators,
 - v) monitoring and evaluating the performance of Adjudicators;
 - vi) setting service standards relating to Tribunal proceedings; and
 - vii) ensuring an appropriate orientation and training framework is in place for Governance & Tribunal Secretariat staff who support the Tribunal.
- d. "Adjudicators" means the individuals appointed as adjudicators to the Tribunal pursuant to the SCA, excluding the Chief Adjudicator;
- e. "Annual Report" means the annual report referred to in article 10.2 of the Minister's MOU;
- f. "Applicable Directives" means the Government and TB/MBC directives, policies, standards and guidelines that apply to the Commission, as may be amended or replaced from time to time, which are listed in Appendix 3 to the Minister's MOU;

- g. “Board” means the board of directors of the Commission;
- h. “Business Plan” means the annual business plan described in article 10.1 of the Minister’s MOU;
- i. “Chief Adjudicator” means the Chief Adjudicator of the Tribunal, designated as such pursuant to the SCA;
- j. “CEO” means the Chief Executive Officer of the Commission;
- k. “Commodity Futures Act” means the *Commodity Futures Act*, RSO 1990, c C.20;
- l. “Chair” means the Chair of the Commission;
- m. “Commission” means the Ontario Securities Commission;
- n. “Ethics Executive” means the Ethics Executive of the Commission;
- o. “FIPPA” means the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31;
- p. “Fiscal Year” means the 12-month financial reporting period beginning April 1 and ending March 31 of the following year;
- q. “Governance and Tribunal Secretariat” means the Governance and Tribunal Secretariat advisory and governance branch of the Commission;
- r. “Government” means the Government of Ontario;
- s. “MBC” means the Management Board of Cabinet;
- t. “Minister” means the Minister of Finance or such other person who may be designated from time to time as the Minister responsible for the Acts in accordance with the *Executive Council Act*;
- u. “Minister’s MOU” means the Memorandum of Understanding signed by the Minister and the Chair;
- v. “PSOA” means the *Public Service of Ontario Act, 2006*, SO 2006, c 35, Sched A;
- w. “SCA” means the *Securities Commission Act*, SO 2021, c 8, Sched 9;
- x. “*Securities Act*” means the *Securities Act*, R.S.O. 1990, c. S.5;
- y. “Statement of Priorities” means the document which sets out the Commission’s priorities in connection with the administration of the *Securities Act*;
- z. “TBS” means the Treasury Board Secretariat;
- aa. “TB/MBC” means the Treasury Board/Management Board of Cabinet;
- bb. “Tribunal” means the Capital Markets Tribunal, established as a division of the Commission under section 25 of the SCA.

Guiding Principles

3. The Tribunal is a division of the OSC. It has full independence with respect to its adjudicative functions. Neither the Chief Adjudicator nor any of the Adjudicators holds any other position within the OSC.

4. The Tribunal has exclusive jurisdiction to exercise the powers conferred on it under the Acts and other legislation, and to determine all questions of fact or law in any proceeding before it.
5. The Chair and Chief Adjudicator recognize the Tribunal's independence, and further recognize that the Tribunal's adjudicative decisions need to be made, and be seen by the public to be made, in an independent and impartial manner.
6. The Board is responsible for overseeing the management of affairs of the Commission so as to fulfill its mandate, which includes the Tribunal's compliance with the Board's administrative directions but excludes the Tribunal's adjudicative functions.
7. The Chief Executive Officer is responsible for the management and administration of the Commission, other than matters relating to the Tribunal's adjudicative functions. The Board and Chief Adjudicator will, subject to ensuring the Tribunal's independence within the Commission with respect to its adjudicative functions, work collaboratively to avoid duplication of support services wherever appropriate, and promote compliance with all applicable legislation, Applicable Directives, and the Minister's MOU.

Accountability Relationships

8. The Chief Adjudicator is accountable to the Minister for the Tribunal's performance in exercising its jurisdiction. That accountability includes the following obligations:
 - 8.1. to report to the Minister, as requested, on the Tribunal's adjudicative activities, provided that such reporting shall not include discussion or the exchange of confidential information about current, past or future proceedings before the Tribunal; and
 - 8.2. to ensure timely communications with the Minister regarding any issue that affects, or can reasonably be expected to affect, the Minister's responsibilities for the Tribunal.
9. The Chief Adjudicator is accountable to the Chair for the Tribunal's performance in fulfilling the Board's administrative directions. This accountability includes the Tribunal's compliance with all applicable legislation, Applicable Directives, the Minister's MOU, and applicable Commission administrative policies, but excludes the Tribunal's adjudicative functions.
10. The Chief Adjudicator shall contribute to regular operational reports to the Board and shall] report to the Board on operational and administrative aspects of the Tribunal, including information required by the Board to ensure the Tribunal's compliance with all applicable legislation, directives, Applicable Directives, the Minister's MOU, and applicable Commission administrative policies. Such reporting shall exclude matters related to the Tribunal's adjudicative functions.
11. The Chief Adjudicator shall provide to the Chair information related to the Tribunal's activities, to be included in the Commission's Annual Report, Business Plan, Statement of Priorities, or any other general reporting that the Commission is required to do. The Chief Adjudicator shall provide such information in a timely manner, having regard to the timelines specified in the Acts, Applicable Directives and Appendix 1 of the Minister's MOU.

12. The Chair shall ensure that any such information provided by the Chief Adjudicator is integrated into the Commission's Annual Report, Business Plan and Statement of Priorities, and that the Business Plan reflects and incorporates the operational requirements of the Tribunal.
13. The Chief Adjudicator shall cooperate with, and shall ensure that the Tribunal cooperates with, any review or audit of the Tribunal directed by the Minister, Auditor General of Ontario, or TB/MBC, or any audit of the Commission.

Ethical Framework

14. The Chief Adjudicator shall act as the Ethics Executive for Adjudicators for purposes of the PSOA and compliance with the Commission's Code of Conduct and associated policies. The Chief Adjudicator is responsible for ensuring that Adjudicators are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Tribunal.

Financial Arrangements

15. Annually, the Chief Adjudicator shall submit to the Board a proposed budget containing the estimated amounts required to fund the proper operation of the Tribunal for the coming fiscal year, which budget shall be included in the Commission's annual business planning process.
16. The Board shall allocate sufficient funding for the proper operation of the Tribunal. The Chief Adjudicator shall raise with the Board any concern that existing or proposed funding impairs the Tribunal's ability to carry out its adjudicative functions.
17. Where the Commission budget cannot accommodate the needs of the Tribunal and the rest of the Commission priorities, the Board will engage in option analysis and decide on the budget allocation and Commission fee implications if any.
18. The Commission shall pay Adjudicators, including the Chief Adjudicator, the remuneration and expenses fixed by the Lieutenant Governor in Council, including reasonable expenses incurred in carrying out their duties in accordance with applicable directives.
19. The Chief Adjudicator is responsible for reviewing and approving claims by Adjudicators for remuneration and expenses. The Chair of the Commission's Audit and Finance Committee is responsible for reviewing and approving the Chief Adjudicator's claims for expenses.
20. The Chief Adjudicator shall ensure that the Tribunal's operations comply with the Commission's financial and procurement policies.

Information Sharing, Education and Training

21. The Tribunal shall provide information that may be required from time to time by the Commission to ensure the Commission's compliance with all applicable legislation,

directives, Applicable Directives, the Minister's MOU, and applicable Commission administrative policies.

22. The Tribunal, Chief Adjudicator and Adjudicators shall not share confidential information regarding Tribunal proceedings with the CEO, the Chair, the Board, Commission staff (except for Commission staff supporting the Tribunal), or any other person outside of the Tribunal, unless legally required to do so.
23. Governance and Tribunal Secretariat staff assigned to assist the Tribunal shall not share confidential information regarding Tribunal proceedings, with the CEO, the Chair, the Board, Commission staff, except for Commission staff supporting the Tribunal, or any other person outside of the Tribunal, unless legally required to do so.
24. The Chief Adjudicator is responsible for ensuring that an orientation, training and education framework is in place for Adjudicators, including maintaining their expertise in law or policy relating to the capital markets.
25. The Tribunal and the Board may engage in joint orientation, education and training subject to ensuring that such orientation, education or training, shall respect the independence of the Tribunal and shall not include, other than in a public forum, discussion of law or policy relating to the capital markets, or compliance or enforcement priorities or techniques.

Administrative and Legal Support

26. The Commission shall provide administrative and operational support to the Tribunal, as provided in the Operations Protocol between the Chief Adjudicator and the CEO.

Service Standards and Complaints

27. The Chief Adjudicator is responsible for developing a service standard policy and a complaints process for the Tribunal, and, in this regard, may rely on the Commission's service standards and complaints process as set out in the Operations Protocol.

Creation, Collection, Maintenance and Disposition of Records

28. The Chief Adjudicator and the Chair acknowledge that the Tribunal is bound to follow the requirements set out in the FIPPA in relation to the collection, retention, security, use, distribution and disposal of records
29. The Chair is designated as the institution head in Ontario Regulation 460 under the FIPPA for the purposes of the FIPPA for records.
30. The Chief Adjudicator and the Chair acknowledge that the FIPPA no longer applies to Tribunal "adjudicative records" as defined in the Tribunal Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sched. 60 ("TARA") which came into force July 1, 2019. TARA applies to the public disclosure of such adjudicative records.
31. The FIPPA may still apply to other Tribunal records that are not "adjudicative records."
32. Requests made under the FIPPA for tribunal records will be addressed in accordance with the Chair's Delegation of Powers and Duties under the FIPPA.

33. The Chief Adjudicator is responsible for ensuring the Tribunal’s compliance with applicable legislation, Applicable Directives, and applicable Commission administrative policies.

Signatures

“Kevan Cowan”

April 14, 2023

Chair, Ontario Securities Commission

Date

“Timothy Moseley”

April 14, 2023

Chief Adjudicator, Capital Markets Tribunal

Date