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

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Code of Professional and Ethical Responsibilities for Tribunal Adjudicators

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, both as 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 President or the President'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 President have been delegated to a designate, the term "**President**" in this Code should be taken to include such designates. "**Tribunal**" refers collectively to all types of hearing panels and review boards.

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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 adjudicator 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. An adjudicator must not adjudicate in any proceeding, or participate in tribunal discussions of any matter, if the adjudicator has a conflict of interest.
9. By way of examples, an adjudicator must not participate in any proceeding, or participate in tribunal discussions of any matter, 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;

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- (c) the adjudicator believes that his or her impartiality may be affected or appear to be affected by a personal interest or by a relationship with one of the parties or a representative;
 - (d) the hearing involves a party or representative 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 or representative with whom the adjudicator has a close 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 President 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 President 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.

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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. An adjudicator who becomes aware, prior to accepting an appointment to adjudicate a particular matter or prior to commencing the hearing, 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, must immediately inform the President. If the President determines that the circumstances are insignificant, the adjudicator may continue with the hearing unless he or she decides that the issue should be placed before the parties for submissions at the commencement of the hearing.
18. When an allegation of conflict of interest or reasonable apprehension of bias is raised by a party during a hearing, the adjudicator concerned should consult the other members of the panel and may:

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- (a) withdraw from the proceeding at once if he or she considers this 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.
- 19. When an 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 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 consider whether the possible conflict is serious and whether it is appropriate to inform the parties of the circumstances and hear submissions.
- 20. 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 adjudicator determines, upon reflection, that the potential issue is trivial and of no significance. An adjudicator may wish to consult tribunal counsel or the President before making this determination.
- 21. 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 recuse himself or herself unless there are valid grounds for doing so.
- 22. Determinations on issues of conflict of interest or reasonable apprehension of bias are for the adjudicator to make. However, 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 panel should inform the President of the nature of the allegations made.

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23. When a party before the tribunal has made submissions challenging the neutrality of an adjudicator, it is advisable in most cases for the adjudicator 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 President

24. If the President 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 President is adjudicating, the procedural protocol established in this Code for adjudicators must be followed with appropriate adjustments.
25. If the President determines that he or she has a possible conflict of interest or a potential bias in respect of a matter that is before the tribunal but that the President is not adjudicating, the President must instruct tribunal staff that all communications regarding the matter are to be directed to another designated Bencher. The file must be marked “No Access to President.” 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 President.

Conduct of the Hearing

26. 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.
27. 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.
28. 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.

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29. 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 the hearing administrator or tribunal counsel. Correspondence to or from a party or counsel should be handled by the hearing administrator or tribunal counsel and forwarded to all parties and representatives not already copied.
30. 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 he or she may not be familiar with cultural norms affecting the manner of the witness.
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.

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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 the hearing administrator, tribunal counsel or the President or in compliance with para. 64.
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.

Decision-Making Responsibilities

41. An adjudicator must make each decision on the true merits and justice of the case, based on the law and the evidence.
42. 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 he or she believes is correct based on the law and the evidence.
43. All members of a panel are responsible for ensuring that decisions are rendered promptly. Written reasons should be prepared without undue delay. In most

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cases, the decision of the panel should be in the hands of the hearing administrator within 60 days of the end of the oral hearing or the receipt of final written submissions.

44. 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.
45. 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.
46. An adjudicator must endeavour to use clear language and avoid legal or other jargon in decision-writing.
47. An adjudicator must never communicate with the media regarding any decision of the tribunal. All inquiries from the media must be referred to the President or to the parties.

Collegial Responsibilities

To Colleagues

48. An adjudicator must, through his or her conduct, endeavour to promote collegiality among adjudicators and with tribunal staff.
49. An adjudicator must be available on a timely basis for consultation or caucus discussions initiated by a member on any policy, legal or procedural issue.
50. In discussions and consultations with other tribunal members, an adjudicator must demonstrate respect for the views and opinions of colleagues.

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51. 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

52. When sitting as a panel, adjudicators must comply with the Law Society Rules 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.
53. 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.
54. 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, he or she should respond at the earliest opportunity.
55. 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.
56. When a member of a hearing panel is unable, after discussion and careful consideration, to agree with the proposed decision of a majority of the panel, he or she must prepare, in a timely fashion, a reasoned dissent.

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To the President

57. Each adjudicator is responsible to the President for adherence to this Code. The interpretation and enforcement of the Code are matters within the authority of the President. Failure to comply may result in the President recommending against re-appointment of an adjudicator.
58. 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 President of the circumstances as soon as practicable.
59. An adjudicator must immediately inform the President 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

60. An adjudicator must make every effort to attend training sessions required by the tribunal at the earliest opportunity.
61. An adjudicator must make every effort to comply with the policies, procedures and standards established for the tribunal. This includes, for example, rules regarding permissible expenditures, documentation of expenses, travel and accommodation, as well as procedural rules and practice directions governing the conduct of proceedings.
62. Where an adjudicator questions the appropriateness of any policy, procedure or standard, he or she should raise that issue with colleagues and the President in the appropriate forum.
63. 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.

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64. An adjudicator must not divulge confidential information unless legally required to do so, or appropriately authorized to release the information.
65. An adjudicator must not engage in conduct that exploits his or her position of authority.

Post-Term Responsibilities

66. 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.
67. 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.
68. An adjudicator must not take improper advantage of past office after ceasing to be a member of the tribunal.