



1 Purpose and Application

This Guideline sets out standards of conduct concerning the professional and ethical responsibilities of the Secretary to the Commission, Office of the Secretary staff, and the Members of the Ontario Securities Commission when performing an adjudicative function.

This Guideline supplements the Commission’s Code of Conduct. Persons fulfilling the roles referred to above must also act in accordance with the law governing administrative tribunals.

2 Impartiality and Fairness

(1) General Rule

Members shall not participate in a hearing where:

- (a) To do so would violate the Commission’s Code of Conduct;
- (b) To do so would give rise to bias (explained in s. 2(2)); and/or
- (c) The Member believes he or she should not participate.

(2) Bias

Panel Members have a duty to conduct hearings and render decisions in a fair and impartial manner. The ability to discharge that duty is undermined by actual bias or a reasonable apprehension of bias. The test to be applied in determining whether a reasonable apprehension of bias exists is “would a reasonable and informed person, viewing the matter realistically and practically — and having thought the matter through — conclude that there is bias on the part of the Panel or individual Panel Members impairing their duty to fairly and impartially adjudicate the matter?”

Unless the context shows otherwise, actual bias and reasonable apprehension of bias are collectively referred to as “bias” in these Guidelines.

(3) Before the start of a hearing

A Member who becomes aware of circumstances that may give rise to bias before a hearing begins, should:

- (a) Inform the Secretary that he or she cannot be a Panel Member, and the Member will not be assigned to or will be removed from the Panel; or
- (b) Request the Secretary’s advice on whether the circumstances give rise to bias. If the Secretary determines that the circumstances give rise to bias, the Member will not be assigned to or will be removed

from the Panel.

(4) During a hearing A Panel Member who becomes aware of circumstances at any time during a hearing that may give rise to bias shall:

- (a) Inform the other Panel Members and the Secretary that he or she will remove himself or herself from the Panel. The other Panel Members shall, without requiring reasons or explanation from the Panel Member, immediately inform the parties of that decision; or
- (b) Request the other Panel Members' advice as to whether the circumstances might give rise to bias.

If the other Panel Members determine that the circumstances might give rise to bias, the Panel Member should consider removing himself or herself immediately. In the alternative, the Panel may decide to inform the parties of the circumstances and invite them to make submissions on the Panel Member's continued participation in the hearing. The Panel should provide the parties with reasons for its decision.

(5) If a party submits bias exists If a party brings a motion seeking the removal of a Panel Member on grounds of bias, the Panel should provide reasons for its decision on the motion.

3 Panel Assignment

(1) Assignment of Panel Members The Commission has delegated to the Secretary the independent authority to manage and administer the assignment of Panel Chairs and Panel Members. The Commission requires that in assigning Panel Members, the Secretary consider, among other things, the particular experience, expertise and availability of Members and the nature of the issues that will be involved in the hearing.

The Secretary will not assign the Chair of the Commission to any Panel.

(2) Conflict of interest When assigning Members, the Secretary shall take reasonable steps to ensure that no Member assigned to a Panel has a conflict of interest.

(3) Independence of assignment process While the Secretary may in his or her discretion consult with any Member with respect to the assignment of a Panel for a proceeding, no Member, including the Chair of the Commission, nor any party including Commission staff, should attempt to influence or participate in the selection of a Panel.

4 Office of the Secretary Staff

(1) Communicating with parties Office of the Secretary staff shall not communicate with any party including Commission staff, the Chair of the Commission, any witness, representative or interested person, with respect to any matter that is or was at issue in a proceeding before a Panel, except as instructed by the Panel and in

Adjudication Guideline http://www.osc.gov.on.ca/en/Proceedings_index.htm

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accordance with this Guideline.

Office of the Secretary staff may communicate procedural or administrative information related to the proceeding.

(2) Confidentiality Office of the Secretary staff shall not at any time disclose Panel deliberations or reveal confidential information to any person other than a Panel Member or other Office of the Secretary staff, without the consent of the Panel, unless legally required to do so.

(3) Role of Adjudicative Counsel Adjudicative counsel may provide independent legal advice and assistance to a Panel, as determined by the Panel.

Adjudicative counsel shall not provide counsel or assistance to a Panel where to do so would be inconsistent with this Guideline, the Commission's Code of Conduct or applicable law.

5 Responsibilities of Members

(1) Independence of adjudicative responsibilities Members should perform their adjudicative responsibilities independently from their other responsibilities as Members of the Commission, and should make sure that their other responsibilities as Members of the Commission, or otherwise, do not detract from the performance of their adjudicative responsibilities.

(2) Role of the Chair of the Panel The Chair of a Panel should ensure the hearing is conducted in a fair and orderly manner.

(3) Conduct at hearings Panel Members will conduct hearings in a manner that is respectful to and does not discriminate against any party, their representative(s), witnesses, or members of the public, and will require the same from all other persons.

(4) Impartiality Panel Members should approach every hearing with an open mind. Panel Members will ensure that hearings are, and are seen to be, conducted fairly, impartially and transparently, with all parties having an opportunity to present their case.

(5) Self-represented parties Panel Members should assist self-represented parties, where possible, to promote the parties' opportunity to be heard. This might include, for example, an explanation of procedural steps or rules of evidence. However, Panel Members should remain mindful of their duty of impartiality in 5(4).

6 Communications relating to a proceeding

(1) Communicating with parties Other than in a hearing, a Panel Member shall not communicate orally with any party including Commission staff, the Chair of the Commission, any witness, representative or interested person, with respect to any matter that is or was at issue in the proceeding before the Panel Member, except in the

presence of all parties, their representative(s) (if any) and the other Panel Members.

Written communications by the Panel may only be made through the Registrar with a copy sent to all parties.

- (2) Communicating publicly A Member shall not communicate publicly about a proceeding before its final disposition. A proceeding is considered to be finally disposed of only after the later of the expiry of the statutory time period for filing an appeal and the exhaustion of the appeal process before the courts.

Any public comment by Members about a proceeding following the final disposition of a proceeding must comply with the Commission's *Media Relations Policy*, which forms part of the Commission's *Code of Conduct*.

Any public comment by a Member shall not appear critical of another Member's decision or reasons or an appellate decision that may have been critical of or overturned a Commission decision.

- (3) Confidential information A Panel Member shall not share confidential information related to a proceeding, unless legally required to do so.

- (4) Office of the Secretary staff Notwithstanding anything in this section of this Guideline, Panel Members may discuss issues relating to a proceeding with Office of the Secretary staff.

7 Panel Deliberations, Decisions and Reasons

- (1) Decisions Panel Members must make decisions on a fair and impartial basis, in accordance with this Guideline and applicable law, including complying with principles of procedural fairness and natural justice.

Panel Members shall conduct their deliberations and make their decisions independently. The prospect of disapproval from any person, institution or group, including other Panel Members or Members not on the Panel, shall not deter a Panel Member from making a decision that he or she believes is fair and just.

- (2) Issues not raised in the proceeding A Panel should only consider issues raised in the proceeding, and its decision should be restricted to those issues. The Panel should reach its decision based on relevant law, the evidence presented to it, and the submissions made by the parties. If the parties failed to raise or address a relevant issue, law or authority that could significantly affect a Panel's decision, the Panel should request that the parties make submissions on the issue, law or authority.

- (3) Consultations with Member not on a Panel A Panel may consult informally with a Member not assigned to the Panel, so long as that Member is neither the Chair of the Commission nor a Member who would be disqualified under subsection 2(1) above. Such consultation may include questions of substantive law, procedure, evidence, or policy. It

may also include a review of the draft reasons of the Panel for clarity, coherence and internal consistency. However, such consultation shall not detract from a Panel Member's independent decision-making responsibility. A Member who is consulted by a Panel in accordance with this Guideline shall not participate in Panel deliberations or comment on the assessment of facts by a Panel.

All consultation with Members not assigned to the Panel should be conducted through the adjudicative counsel assisting the Panel.

- (4) Departing from prior Commission decisions
Panel Members should give due consideration to previous Commission decisions. A Panel may depart from previous decisions of the Commission, but should explain the reasons for the departure in its reasons.
- (5) Privacy and personal information of non-parties
When making a decision, and in any accompanying reasons, a Panel will, to the extent possible, not refer to any personal information of non-parties.
Where appropriate, and at the Panel's discretion, initials or similar anonymous identifiers should be substituted for the names of non-parties referred to in the decision and in any accompanying reasons.
- (6) Timeliness of Proceeding
Panel Members should take reasonable steps to conduct proceedings in a timely manner.
- (7) Timing for releasing decisions
A Panel should endeavour to issue its decision, including the reasons for its decision, if any, without undue delay and within a reasonable period following the conclusion of the hearing and the receipt of written submissions. Decisions should generally be issued within 90 days. If a decision is issued with reasons to follow, then those reasons should generally be issued within 90 days of the decision.

A longer period than set out above may be justified in circumstances such as, but not limited to, an unusually lengthy or complex hearing, a Panel Member's illness or otherwise unavoidable absence, or other unforeseeable circumstances.

8 Review

- (1) Commission review
Notwithstanding any other section in this Guideline, after final disposition of a proceeding Panel Members may participate in any discussion or review by the Commission of any matter that was the subject of the proceeding or any appeal of the proceeding. In doing so, Panel Members should not comment on confidential information including a Panel's deliberations.