

Tribunal Operations Protocol between the Chief Adjudicator and the CEO

This Operations Protocol between the Chief Adjudicator and the CEO provides for resource sharing and operational support between the Tribunal and the rest of the Commission. It should be read together with the Minister's MOU and the Memorandum of Understanding between the Chief Adjudicator and the Chair.

Definitions

- a. "Acts" means the SCA, the *Securities Act*, R.S.O. 1990, c. S.5 and the *Commodity Futures Act*, RSO 1990, c C.20;
- b. "Adjudicators" means the individuals appointed as adjudicators to the Tribunal pursuant to the SCA, excluding the Chief Adjudicator;
- c. "Applicable Directives" means the Government and Treasury Board / Management Board of Cabinet 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;
- d. "Board" means the board of directors of the Commission;
- e. "Business Plan" means the annual business plan described in article 10.1 of the Minister's MOU;
- f. "Chief Adjudicator" means the Chief Adjudicator of the Tribunal, designated as such pursuant to the SCA;
- g. "CEO" means the Chief Executive Officer of the Commission;
- h. "Chair" means the Chair of the Commission;
- i. "Commission" means the Ontario Securities Commission;
- j. "Governance and Tribunal Secretariat" means the Governance and Tribunal Secretariat advisory and governance branch of the Commission;
- k. "Government" means the Government of Ontario;
- l. "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*;
- m. "Minister's MOU" means the *Memorandum of Understanding Between Minister of Finance and Ontario Securities Commission*;
- n. "SCA" means the *Securities Commission Act*, SO 2021, c 8, Sched 9;
- o. "Shared Services" means functions and services providing common operational support to regulatory and Tribunal functions of the Commission. They include financial, human resources, information technology, information security, knowledge management, records management, facilities management, business continuity, business planning and corporate reporting, risk, internal audit, inquiries and contact centre, communications, legal, and support of the Governance and Tribunal Secretariat, and such other support as may be agreed to by the Chief Adjudicator and the CEO from time to time;

- p. "Tribunal" means the Capital Markets Tribunal, established as a division of the Commission under section 25 of the SCA.

Business Plan and Budget

1. In accordance with the processes and timelines provided for the rest of the Commission, the Chief Adjudicator will prepare:
 - 1.1. a proposed Tribunal business plan that identifies the Tribunal's forecasted needs and changes in usage of Shared Services, as well as planned major capital projects (e.g., IT systems) that are dedicated to the Tribunal, and
 - 1.2. a proposed Tribunal budget reflecting the Tribunal's direct costs.
2. If the CEO is of the view that changes should be made to the proposed Tribunal budget, the CEO and the Chief Adjudicator will discuss those proposed changes. If the Chief Adjudicator and CEO are unable to agree on the proposed Tribunal budget, the following process applies:
 - 2.1. Both the Chief Adjudicator's proposed budget and the CEO's proposed changes will be submitted to:
 - a. the Chair of the Audit and Finance Committee, in advance of the normal budget process, and
 - b. the Audit and Finance Committee, as part of the normal budget approval process.
 - 2.2. In advance of discussion at the Audit and Finance Committee, and if requested by the Chair of the Audit and Finance Committee:
 - a. Shared Services will prepare a detailed costing analysis for both the Chief Adjudicator's proposed budget and the CEO's proposed changes,
 - b. the CEO will provide an assessment of how and to what extent implementing the Chief Adjudicator's proposed budget will impact the overall Commission budget (e.g., fees, Shared Services, other needed cuts),
 - c. the Chief Adjudicator will provide an assessment of how and to what extent the CEO's proposed changes will affect the proper operation of the Tribunal, and
 - d. the Chair of the Audit and Finance Committee will work with the Chief Adjudicator and the CEO to narrow the issues.
 - 2.3. The Audit and Finance Committee will consider the proposed budget and the proposed changes, along with any other information provided, and may work with the Chief Adjudicator and CEO to further narrow the issues. The Audit and Finance Committee must provide the Board with the Chief Adjudicator's proposed budget and the Chair's proposed changes. The Audit and Finance Committee will make a recommendation to the Board about the Tribunal budget.
 - 2.4. The Chief Adjudicator and CEO are both entitled to present to the Board and must answer questions from the Board.

3. The Board has final decision-making authority about the Tribunal budget and the Tribunal business plan. The Board shall allocate sufficient funding for the proper operation of the Tribunal in each fiscal year, in accordance with subsection 17(2) of the SCA and acknowledging the importance for the Commission to have an effective tribunal.

Compliance

4. The CEO will consider the Tribunal's needs in the Commission controls, processes and policies that are developed to ensure the Commission's adequate control of operational risks and the Commission's compliance with applicable legislation, Applicable Directives and the Minister's MOU.
5. The Chief Adjudicator is accountable for the Tribunal's compliance with applicable legislation, Applicable Directives and the Minister's MOU where they are relevant to the Tribunal's operations. The Chief Adjudicator will promote the Tribunal's adherence to the Commission controls, processes and policies that are relevant to the Tribunal's operations.
6. The Chief Adjudicator will direct Adjudicators and Commission staff assigned to the Tribunal to support any internal audits related to compliance with policies, procedures and effectiveness of internal controls.
7. The CEO will consult the Chief Adjudicator, in as timely a way as is practicable, before the Commission makes, changes or revokes an administrative policy, where that action by the Commission could affect the Tribunal's operations.

Support and Facilities

8. The CEO will ensure, including by the allocation of Commission funds, that Shared Services provide adequate, timely and quality support of the Tribunal's operations. The Commission will provide sufficient support and facilities for the proper operation of the Tribunal, having regard to, among other things:
 - 8.1. the Tribunal's obligation to fulfill its mandate in accordance with the Acts,
 - 8.2. the Tribunal's independence,
 - 8.3. the Tribunal's mandate to be accessible, and to operate fairly, efficiently, expeditiously and transparently, and
 - 8.4. the dignity of the Tribunal's proceedings.
9. Staff of the Governance and Tribunal Secretariat will support the Tribunal's adjudicative functions, including by providing legal advisory services, and case and hearing management support. The Chief Adjudicator will provide guidance to Commission staff assigned to the Tribunal as necessary in carrying out their duties to support the Tribunal, including supervising the Corporate Secretary & Director, Governance and Tribunal Secretariat regarding the affairs of the Tribunal.
10. The Chief Adjudicator will participate in recruiting, and evaluating the performance of, the Corporate Secretary & Director, Governance and Tribunal Secretariat.

Communications and Records

11. The Chief Adjudicator is responsible for carrying out effective public communications and relations for the Tribunal.
12. Any public representations made by the Chief Adjudicator about the Commission (other than about the Tribunal) will be made only after consultation with the CEO.
13. Any public representations made by the CEO about the Tribunal will be made only after consultation with the Chief Adjudicator.
14. The CEO will consult with the Chief Adjudicator when developing any Board, Government or public documents that incorporate or refer to Tribunal operations (e.g., the Statement of Priorities, Business Plan, quarterly financial analysis).
15. The CEO will notify the Chief Adjudicator when receiving direction from the Minister or stakeholder feedback that may impact Tribunal operations.
16. Inquiries relating to the Tribunal, or its proceedings, will be addressed as follows:
 - 16.1. media inquiries will be addressed by the Commission's Communications and Public Affairs branch, working collaboratively with the Tribunal,
 - 16.2. general inquiries by the public will be addressed by the Commission's Inquiries and Contact Centre, working collaboratively with the Tribunal, and
 - 16.3. inquiries by parties to Tribunal proceedings will be addressed by the Governance and Tribunal Secretariat.
17. Records related to ongoing proceedings will be managed by the Governance and Tribunal Secretariat. Records related to completed proceedings will be managed by the Commission's Records and Information Management branch.

Risk Management

18. The Tribunal is included in the Commission's risk management practices. The CEO will consult with the Chief Adjudicator on the development, and review, of the Commission's risk management practices that affect Tribunal operations.
19. The Chief Adjudicator will consult with the CEO on risks that affect the Tribunal and will notify the CEO in a timely manner about any risks arising from Tribunal operations that may have, or could reasonably be expected to have, a significant negative impact on the Commission's reputation or ability to fulfil its mandate.

Service Standards and Complaints

20. The Chief Adjudicator will advise the CEO of any Commission service standards on which the Tribunal relies. The Chief Adjudicator will be consulted on any changes to these Commission service standards and any new service standards that may affect Tribunal operations.
21. The Commission is responsible for establishing a formal process for responding to complaints about the quality of services received from members of the public and stakeholders that is consistent, as appropriate, with the Government's service quality standards.

22. The Chief Adjudicator will be responsible for responding to complaints about the Tribunal, including Adjudicator conduct.

23. The Commission will be responsible for responding to complaints about Commission staff.

Signatures

“Timothy Moseley”

April 14, 2023

Chief Adjudicator, Capital Markets Tribunal

Date

“D. Grant Vingoe”

April 14, 2023

CEO, Ontario Securities Commission

Date