



ADR Institute of Canada
Institut d'arbitrage et de
médiation du Canada™/MC

CODE OF CONDUCT for ADJUDICATORS AND ARBITRATORS

1. INTRODUCTION

This Code of Conduct (the “Code”) applies in its entirety to every Adjudicator and Arbitrator who is a member of the ADR Institute of Canada (“ADRIC”) or any of its Affiliates, or who accepts an appointment by ADRIC or any of its Affiliates. While practitioners come from varied professional backgrounds and disciplines, every Adjudicator and Arbitrator must adhere to the Code as a minimum. The Code sets out the standards of professional conduct and practice expected of Adjudicators and Arbitrators. An Adjudicator or Arbitrator should be guided as much by the spirit of the Code as by its express terms.

The Code contains ethical guidelines that are not intended to contradict, detract from, or replace any obligations imposed by law upon Adjudicators and Arbitrators. Such legal obligations continue to apply to their conduct as Adjudicators or Arbitrators and, in the event that any guideline contained in the Code is inconsistent with such legal obligations, the Adjudicators or Arbitrators must comply with the applicable law.

2. DEFINITIONS

2.1 In the Code:

- (a) “Adjudication” and “Arbitration” mean the use of an impartial third person or persons to assist the parties to resolve a dispute, but does not include mediation;
- (b) “Adjudicator” and “Arbitrator” mean an impartial person who is a member of ADRIC or accepts from ADRIC or any of its Affiliates an appointment as an Adjudicator or Arbitrator and who is engaged to assist the parties to resolve their dispute, but does not include a mediator unless they are acting as a Med-Arbitrator or by consent of the parties;
- (c) “ADRIC” is a national non profit organization that provides national leadership in the development and promotion of negotiation, mediation, arbitration, and other ADR services in Canada and internationally.
- (d) “Affiliate” refers to other Canadian regional not-for-profit organizations engaged in the development and promotion of negotiation, mediation, arbitration, and other ADR services for their Members in the

relevant Province or Territory as understood by ADRIC and each of the not-for-profit organizations;

- (e) “Code” means ADRIC’s Code of Conduct for Adjudicators and Arbitrators;

- (f) “Confidential Information” means any information in the possession of an Adjudicator or Arbitrator or acquired by the Adjudicator or Arbitrator in the course of or for the purposes of the adjudication or arbitration process, whether or not it is identified as confidential, and whether recorded or not, and however fixed, stored, expressed or embodied, including, but not limited to, the names and contact information of the parties, the facts of the dispute, and information relating to the dispute. Confidential Information does not include information that is otherwise publicly available;

- (g) “Conflict of Interest” means a situation where an Adjudicator or Arbitrator has a real or perceived interest, pecuniary or non-pecuniary, direct or indirect, sufficient to appear to influence the objective exercise of the Adjudicator’s or Arbitrator’s duties. Conflicts of Interest include prior or current connections to the parties, perceived or actual, and prior or current involvement in the matter. A real or perceived interest of an Adjudicator’s or Arbitrator’s spouse, child, parent, close relative or person who is closely connected with the Adjudicator or Arbitrator is considered the equivalent of an Adjudicator’s or Arbitrator’s interest for the purpose of this definition;

- (h) “Losses” means liabilities, costs, damages and expenses (including legal, expert and consulting fees); and

- (i) “Party” or “Parties” mean the Claimant(s) or the Respondent(s) in an adjudication or arbitration proceeding.

3. PURPOSE

3.1 The Code’s main objectives are:

- (a) To set out the standards of professional conduct and practice expected of Adjudicators and Arbitrators;
- (b) To promote confidence in Adjudication or Arbitration as processes for resolving disputes; and
- (c) To provide protection for members of the public who use Adjudicators and Arbitrators who are members of ADRIC or any of its Affiliates, or who accept appointments by ADRIC or any of its Affiliates.

4. CONFLICT OF INTEREST, INDEPENDENCE AND IMPARTIALITY

4.1 An Adjudicator or Arbitrator shall not act as an advocate for any party to the adjudication or arbitration and shall be and shall remain at all times during the adjudication or arbitration:

- (a) Wholly independent; and

- (b) Wholly impartial.

4.2 An Adjudicator or Arbitrator shall not conduct an adjudication or arbitration in which the Adjudicator or Arbitrator has or may reasonably be perceived to have any personal interest or other Conflict of

Interest. The Adjudicator or Arbitrator shall have no Conflict of Interest, and shall continue to have no Conflict of Interest, in any adjudication or arbitration for which the Adjudicator or Arbitrator is selected or appointed.

4.3 Before accepting an appointment as Adjudicator or Arbitrator, after accepting such an appointment and throughout the adjudication or arbitration process, an Adjudicator or Arbitrator must disclose all circumstances, interests, relationships and matters likely to affect the Adjudicator's or Arbitrator's independence or impartiality or that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality in the adjudication or arbitration of a dispute.

4.4 Where an Adjudicator or Arbitrator is or becomes aware that he or she is not able or may not be able to maintain the required degree of independence or impartiality, the Adjudicator or Arbitrator must immediately:

(a) advise the parties of the possible Conflict of Interest and hear submissions on the issue; and

(b) advise and request advice from ADRIC.

4.5 Where a Party to an adjudication or arbitration raises an allegation of Conflict of Interest, the Adjudicator or Arbitrator must immediately inform ADRIC of the allegation. After receiving advice from ADRIC, the Adjudicator or Arbitrator may choose either to resign or to hear submissions from the Parties on the issue of the alleged Conflict of Interest. After submissions, the Adjudicator or Arbitrator may resign or determine that the Adjudicator or Arbitrator does not have a Conflict of Interest.

5. CONFIDENTIALITY

5.1 The Adjudicator or Arbitrator shall inform the parties, their representatives, and any other participants in the adjudication or arbitration, of the applicable rules of confidentiality.

5.2 The Adjudicator or Arbitrator shall keep confidential and shall not disclose to any non-party any and all information, documents, and communications that are created, disclosed, received, or made available in connection with the adjudication or arbitration except:

(a) With the Parties' written consent;

(b) When ordered to do so by a court or otherwise required to do so by law;

(c) When the information/documentation discloses an actual or potential threat to human life;

(d) In respect of any report or summary that is required by the Parties or by applicable law to be prepared by the Adjudicator or Arbitrator for public disclosure;

(e) Where the data about the Adjudication or Arbitration is for research and education purposes only, and where the parties and the dispute are not, nor may reasonably be anticipated to be, identified by such disclosure; or

(f) Where the information is, or the documents are, otherwise available to the public.

5.3 The Adjudicator or Arbitrator shall maintain confidentiality in the storage and disposal of Adjudication or Arbitration notes, records, files, information, documents and communications and take all precautions necessary to avoid unauthorized access, use or misuse of Confidential Information. Adjudicators and Arbitrators shall ensure that their electronic devices (such as mobile phones, computers and tablets) are password protected.

5.4 Adjudicators and Arbitrators shall not use Confidential Information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body.

5.5 When an Adjudicator or Arbitrator ceases to be a member of ADRIC or a member of an Affiliate of ADRIC, or the appointment to adjudicate or arbitrate a dispute comes to an end, the duty not to disclose or release any Confidential Information continues.

5.6 If an Adjudicator or Arbitrator becomes aware of a potential disclosure of Confidential Information, the Adjudicator or Arbitrator shall immediately inform ADRIC in writing of the potential disclosure.

5.7 Adjudicators and Arbitrators agree to be personally and solely liable and agree to indemnify ADRIC for any Losses arising from or related to any failure by the Adjudicator to protect the Confidential Information.

6. COMPETENCE AND FAIRNESS

6.1 Adjudicators and Arbitrators should only accept an appointment to conduct an adjudication or arbitration if they are confident that they possess the necessary experience and skill to perform their functions competently and fairly.

6.2 Adjudicators and Arbitrators shall carry out their professional work with due skill, care and diligence and with proper regard for the applicable rules and standards. Adjudicators and Arbitrators shall not engage in behavior that will bring them, ADRIC or its Affiliates into disrepute.

6.3 Adjudicators or Arbitrators shall conduct the adjudication or arbitration in a manner that permits the Parties to participate effectively in the adjudication or arbitration, as required by the applicable rules and standards, and that encourages respect among the parties.

6.4 Adjudicators and Arbitrators shall be familiar with the provisions of the Legislation and Regulations in the jurisdiction applicable to the arbitration or adjudication.

7. ADVERTISING

7.1 In advertising or offering services to parties or the general public, the Adjudicator or Arbitrator shall provide accurate information about his or her education, background, relevant training and experience and designations in any oral or written representation or biographical or promotional material.

7.2 An Adjudicator or Arbitrator shall not contact any Party, Party's representative or other person for

the purpose of being selected as the Adjudicator or Arbitrator for a dispute.

8. COSTS AND FEES

8.1 Adjudicators or Arbitrators shall ensure that the costs and the time required for the adjudication or arbitration are proportionate to the value of the claim and the Parties' expectations.

8.2 Adjudicators and Arbitrators shall ensure that the procedure adopted for the adjudication or arbitration process is appropriate for the nature and value of the claim. Adjudicators or Arbitrators shall not unduly delay the adjudication or arbitration process.

8.3 To ensure proportionality and avoid excess or unnecessary expense, Adjudicators and Arbitrators must prepare appropriately for adjudications and arbitrations.

9. COMMUNICATION AND ETIQUETTE

9.1 Adjudicators and Arbitrators must communicate in an appropriate and professional manner with the Parties, their representatives and any witnesses or other third parties involved in the adjudication or arbitration.

9.2 All communications, direct or indirect, oral or in writing, with a Party, witness, witness' representative, or a Party's representative, must be done in the presence of all Parties and their representatives. Email and written communications to a Party, witness, witness' representative, or a representative of another Party must be copied to all Parties and their representatives.

9.3 Any communication by Adjudicators or Arbitrators concerning ADRIC, or related in any way to an adjudication or arbitration based on an appointment by ADRIC or any of its Affiliates, shall be conducted only in a way that is pre-approved by ADRIC as appropriate and secure.

9.4 Adjudicators and Arbitrators must treat the parties, ADRIC staff, and others involved, respectfully and appropriately and must abide by the ADRIC Respectful Workplace Policy (see Appendix A).

9.5 An Adjudicator or Arbitrator who considers that an Adjudication or Arbitration in which they are involved may give rise to ethical concerns (including, without limitation, the furtherance of a crime or a deliberate deception) may take appropriate action, which may include adjourning or terminating the process, and must immediately inform ADRIC of the concern.

10. ENFORCEMENT

10.1 Adjudicators and Arbitrators must seek the advice of ADRIC if they believe, or become aware of, allegations that there has been, or may be, a breach of any provision of the Code.

10.2 ADRIC and its Affiliates are empowered to investigate alleged breaches of the Code and may temporarily suspend any Adjudicator or Arbitrator

from any of their rosters/panels or from membership pending the outcome of an investigation. It is the objective of ADRIC to ensure that complaints against Adjudicators or Arbitrators are investigated fairly.

10.3 Any Adjudicator or Arbitrator who has acted in a manner that ADRIC believes is contrary to a provision of the Code may have their designation suspended or cancelled or be removed from ADRIC's rosters/panels or may be required to complete additional training or education, as deemed appropriate by ADRIC.

11. OTHER CONDUCT OBLIGATIONS

11.1 Nothing in the Code replaces or supersedes any other ethical standard or code that may govern the Adjudicator or Arbitrator, whether by applicable law or by ADRIC. Where there are multiple such standards or codes, the Adjudicator or Arbitrator shall be responsible for complying with applicable law or, if there is no applicable law, by the stricter or strictest standard or code.

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