



# **Social Justice Tribunals Ontario Conflict of Interest Rules**

**2013**

## **SOCIAL JUSTICE TRIBUNALS ONTARIO CONFLICT OF INTEREST RULES**

### **Definitions**

“confidential information” means information that is not available to the public and that, if disclosed, could result in harm to Social Justice Tribunals Ontario (SJTO) or the Crown or could give the person to whom it is disclosed an advantage;

“conflict of interest” includes any interest, relationship, association or activity that is incompatible with a staff person’s or SJTO Member’s obligations to SJTO and to the Crown and includes both pecuniary and non-pecuniary interests;

“designated senior position” means designated senior position as defined in section 14 of O. Reg. 381/07 of the *Public Service of Ontario Act, 2006*, and includes the Chief Executive Officer/Executive Lead;

“employment” includes appointment by Order-in-Council;

“gift” includes a benefit of any kind;

“Hearings Officer” means an SJTO staff person who is appointed, designated or assigned as a Hearings Officer under Section 206.1 of the *Residential Tenancies Act, 2006*.

“LTB Member” means an SJTO Member who is a Member of the Landlord and Tenant Board;

“Member” means the Executive Chair and the Associate Chairs, the Vice-Chairs, and the Members of any of the constituent tribunals of Social Justice Tribunals Ontario, and may also be referred to as “SJTO Members”;

“process” or “proceeding” means any substantive part of a tribunal’s case processing and decision-making process;

“PSOA” means *Public Service of Ontario Act, 2006*, S.O. 2006, c.35, Schedule A, as amended from time to time;

“significant professional relationship” includes employment with or by a party or representative, or a solicitor/client relationship or partnership/association in a law firm or paralegal practice;

“Social Justice Tribunals Ontario” means the cluster of tribunals established under O. Reg. 126/10, as amended and any of its constituent tribunals, and “SJTO” has the same meaning;

“spouse” means,

- a) a spouse as defined in section 1 of the *Family Law Act*, or
- b) either of two persons who live together in a conjugal relationship outside marriage.

“tribunal” means any of the boards or tribunals within the SJTO.

### **Interpretation**

The core values of the SJTO are the guiding principles and the foundation on which it fulfils its mandate. These Conflict of Interest Rules are to be interpreted in accordance with SJTO’s core values of accessibility, fairness, independence, timeliness, transparency, professionalism and public service.

These Conflict of Interest Rules apply to SJTO staff persons and SJTO Members. These Rules govern the conduct of SJTO staff persons and SJTO Members from the commencement of their term of employment in, or appointment to, the SJTO. These Rules also set out the continuing responsibilities of SJTO staff persons and SJTO Members after they cease to be public servants.

These Rules will be considered and applied by the Ethics Executive, Associate Chair or designated manager, as appropriate, in setting performance objectives for SJTO staff persons and SJTO Members, reviewing their performance, providing professional development opportunities, and determining whether to recommend the reappointment of a SJTO Member.

Under the *PSOA* and the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, the Ethics Executive for SJTO staff persons is the Executive Lead and for SJTO Members (other than the Executive Chair) is the Executive Chair.

Where these Rules apply to the Executive Chair as an SJTO Member, references to the responsibilities of the Executive Chair are to be read as referring to the Conflict of Interest Commissioner.

**These conflict of interest Rules are based on those set out in Ontario Regulation 381/07. If a provision in these Rules establishes a degree of ethical conduct that is lower than those set out in the regulation, the provision in the regulation prevails.**

## **Part I Prohibited Conduct**

### **Benefiting Self, Spouse, Child, Parent, Sibling, or Close Associate**

1. An SJTO staff person or SJTO Member shall not use or attempt to use his or her employment in SJTO to directly or indirectly benefit himself or herself, or his or her spouse, child, parent, sibling, or any other person with whom they have a close business or personal relationship.
2. An SJTO staff person or SJTO Member shall not allow the prospect of his or her future employment outside of SJTO to detrimentally affect the performance of his or her duties to SJTO and the Crown.

### **Accepting Gifts**

3. An SJTO staff person or SJTO Member shall not accept a gift resulting from or that could be seen to be connected to, his or her position or duties to SJTO and the Crown.

### **Nominal Gift**

4. Rule 3 does not operate to prevent an SJTO staff person or SJTO Member from accepting a gift of nominal value (\$50.00 or less) given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances.

### **Obligation to Disclose Gifts**

5. Where an SJTO staff person or SJTO Member receives a gift in circumstances described in Rule 3 that is not exempted by Rule 4, he or she must inform his or her Ethics Executive.

### **Disclosing Confidential Information**

6. An SJTO staff person or SJTO Member shall not disclose confidential information obtained while he or she is employed in the SJTO to any person or entity unless he or she is required or authorized to do so by law, the SJTO and the Crown.

### **Use of Confidential Information**

7. An SJTO staff person or SJTO Member shall not use confidential information for personal benefit or in a business or undertaking outside of his or her work in the SJTO.

### **Accepting a Gift in Exchange for Confidential Information**

8. An SJTO staff person or SJTO Member shall not accept a gift directly or indirectly in exchange for disclosing confidential information.

### **Preferential Treatment**

9. When performing his or her duties to SJTO and the Crown, an SJTO staff person or SJTO Member shall not give preferential treatment to any person or entity, including a person or entity in which the SJTO staff person or SJTO Member, or a member of his or her family, or any other person with whom they have a close business or personal relationship, has an interest.
10. When performing his or her duties to SJTO and the Crown, an SJTO staff person or SJTO Member shall not behave in a manner that could create the appearance that preferential treatment is being given to a person or entity.

### **Offering Assistance**

11. An SJTO staff person or SJTO Member shall not offer assistance to a person or entity dealing with the SJTO other than the assistance given in the ordinary course of their employment.

### **Hiring and Contracting with Spouse, Child, Parent or Sibling**

12. An SJTO staff person or SJTO Member shall not, on behalf of the SJTO, hire or propose the hiring of his or her spouse, child, parent or sibling.
13. An SJTO staff person or SJTO Member shall not, on behalf of the SJTO, enter into a contract with his or her spouse, child, parent, sibling, any other person with whom they have a close business or personal relationship, or any person appearing before the SJTO or with a person or entity in which any of them has a substantial interest.

### **Supervising Work of Spouse, Child, Parent or Sibling**

14. An SJTO staff person or SJTO Member who hires a person on behalf of the SJTO shall ensure that the person does not report to, or supervise the work of the person's spouse, child, parent or sibling. An SJTO staff person or SJTO Member who reports to, or supervises the work of his or her spouse, child, parent or sibling shall notify his or her Ethics Executive.

### **Engaging in Business etc.**

15. An SJTO staff person or SJTO Member shall not become employed by or engage in a business or undertaking outside his or her employment or duties in the SJTO in any of the following circumstances:
  - a) if the SJTO staff person's or SJTO Member's private interests in connection with the employment or undertaking could conflict with his or her duties to the SJTO and the Crown;
  - b) if the employment or undertaking would interfere with the SJTO staff person's or SJTO Member's ability to perform his or her duties to the SJTO and the Crown;
  - c) if the employment is in a professional capacity and is likely to influence or detrimentally affect the SJTO staff person's or SJTO Member's ability to perform his or her duties to the SJTO and the Crown;
  - d) if the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to an SJTO staff person or SJTO Member who is employed part-time in the SJTO. This paragraph also does not apply to an SJTO staff person or SJTO Member who is on an authorized leave of absence from his or her position, so long as the employment is not contrary to or inconsistent with the terms of the leave of absence;
  - e) if, in connection with the employment or undertaking, any person would derive, or may appear to derive, an advantage from the SJTO staff person's or SJTO Member's employment in the SJTO; and
  - f) if government premises, equipment or supplies are used in the employment or undertaking.
16. An SJTO staff person or SJTO Member shall disclose, in a timely way, to his or her Ethics Executive any existing or proposed outside undertaking or employment which could fall within the provisions of Rule 15.

### **Participating in Proceedings and Decision Making**

17. An SJTO staff person or SJTO Member shall not process, or participate in a proceeding or decision-making by the SJTO if he or she, or his or her spouse, child, parent or sibling could benefit from the decision.

18. Rule 17 does not apply if an SJTO staff person or SJTO Member obtains the prior approval of his or her Ethics Executive to participate in or process a matter or participate in decision-making about it.
19. An SJTO staff person or SJTO Member who is a member of a body or group, shall not participate in or attempt to influence decision-making by the body or group with respect to a matter if he or she could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the SJTO or the Crown.
20. An SJTO staff person or SJTO Member described in Rule 19 shall inform the body or group if the circumstances described in that Rule exist.
21. If a SJTO staff person or SJTO Member begins work on a matter that might involve the private sector as defined by section 10 of Ontario Regulation 381/07, he or she must make a financial declaration to the Conflict of Interest Commissioner, in accordance with section 11 of Ontario Regulation 381/07. He or she is also subject to the restrictions on certain purchases as set out in section 12 of Ontario Regulation 381/07.

## **Part II**

### **Prohibited Conduct for Former SJTO Staff Persons and Members**

#### **Application**

22. The Rules in this section apply to every former SJTO staff person or SJTO Member who, immediately before he or she ceased to be a public servant, was employed in SJTO, unless he or she ceased to be a public servant before the day on which these rules are posted by the Conflict of Interest Commissioner. In that event, the conflict of interest rules which formerly governed the individual, whether pursuant to specific rules approved by the Conflict of Interest Commissioner or by virtue of the application of O. Reg. 381/07, apply.
23. A former SJTO staff person or SJTO Member has an obligation to notify the Ethics Executive of any potential issue with respect to the post service Rules or seek a determination from the Ethics Executive concerning his or her obligations under the *PSOA*.

#### **Preferential Treatment**

24. A former SJTO staff person or SJTO Member shall not seek preferential treatment by, or privileged access to, public servants who work in a minister's office, a ministry, the SJTO, or any other public body.

## **Disclosure of Confidential Information**

25. A former SJTO staff person or SJTO Member shall not disclose confidential information obtained during the course of his or her employment in the SJTO to a person or entity unless required or authorized to do so by law or by the Crown.
26. A former SJTO staff person or SJTO Member shall not use confidential information obtained during the course of his or her employment in the SJTO in a business or undertaking.

## **Restriction on lobbying**

27. (1) This section applies to a former SJTO staff person or SJTO Member who, immediately before ceasing to be a public servant, was employed in a designated senior position.
- (2) For 12 months after ceasing to be a public servant, the former public servant shall not lobby any of the following persons on behalf of a public body or another person or entity:
  - a) a public servant who works in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant;
  - b) the minister of any ministry in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant; and
  - c) a public servant who works in the office of a minister described in paragraph b.

## **Restriction on employment, etc.**

28. (1) This section applies to a former SJTO staff person or SJTO Member who, immediately before ceasing to be a public servant, was employed in a designated senior position and who, at any time during the 12 months before he or she ceased to be employed as a public servant, in the course of his or her employment as a public servant:
  - a) had substantial involvement with a public body or another person or entity; and
  - b) had access to confidential information that, if it were to be disclosed to the public body, person or entity, could result in harm to the Crown or to the SJTO, or could give the public body, person or entity an unfair advantage in relation to one or more third parties.



- (2) For 12 months after ceasing to be a public servant, the former public servant shall not accept employment with the public body, person or entity or serve as a member of the board of directors or other governing body of the public body, person or entity.
- 29.
- (1) This Rule applies to a former SJTO staff person or SJTO Member who, while employed in the SJTO, advised the Crown about a particular proceeding, negotiation or other transaction;
  - (2) The former SJTO staff person or SJTO Member shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it; and
  - (3) Despite paragraph 2, the former SJTO staff person or SJTO Member may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction.

### **Part III**

## **Additional Conflict of Interest Rules for SJTO Staff Persons, Former Staff Persons, Members, and Former Members**

### **Financial Interest**

- 30.
- (1) An SJTO staff person shall not process, and an SJTO Member shall not adjudicate, or participate in processing or discussions of, any matter in relation to a proceeding where the SJTO staff person or SJTO Member or his or her spouse, child, parent, sibling, or close associate could benefit from the decision or has a significant financial interest in relation to one of the parties to the proceeding.
  - (2) For the purpose of this Rule, the following would not constitute a significant financial interest:
    - a) a legal or beneficial interest in a mutual fund within the meaning of subsection 1(1) of the *Securities Act*, even where that mutual fund includes securities of a corporation or entity that is a party to a proceeding before the SJTO, provided that the mutual fund is not one described in subsection 11(1)4 of O. Reg. 381/07;
    - b) fixed-value securities issued or guaranteed by a government or a government agency;

- c) a guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments; and
- d) a registered pension plan, an employee benefit plan, an annuity or life insurance policy or deferred profit sharing.

### **Personal Relationship**

- 31. An SJTO staff person shall not process, and an SJTO Member shall not adjudicate, or participate in processing or discussions of, any proceeding involving a party or representative with whom he or she has a close personal relationship, including his or her spouse, child, parent, or sibling.

### **Prior Involvement**

- 32. An SJTO staff person shall not process, and an SJTO Member shall not adjudicate, or participate in processing or discussions of, any proceeding, in which the SJTO staff person, SJTO Member, any person with whom he or she is in a significant professional relationship, or his or her spouse, child, parent, sibling, or any other person with whom they have a close business or personal relationship, has had any prior involvement.

### **Professional Relationship**

- 33. An SJTO Member shall not adjudicate, or participate in processing or discussions of any proceeding involving a party or representative with whom he or she was formerly in a significant professional relationship until a period of 12 months has elapsed from the termination of the relationship, or while there is any monetary indebtedness connected to that relationship.

### **Effect on Other Proceedings**

- 34. An SJTO staff person shall not process, and an SJTO Member shall not adjudicate, or participate in processing or discussions of any proceeding in which the outcome may have an impact on any other legal proceeding in which the SJTO staff person or SJTO Member, or his or her spouse, child, parent, sibling, or close associate, has a significant personal or pecuniary interest.

### **Appearance before the SJTO: General**

- 35. When an SJTO staff person or an SJTO Member or former SJTO staff person or SJTO Member has any dealings with or appears before an

SJTO tribunal, there is an obligation on them and the SJTO to ensure that the integrity of the SJTO tribunal is maintained.

#### **Appearance before the SJTO: Current Staff Persons and Members**

36. (1) An SJTO staff person or SJTO Member shall not appear before any SJTO tribunal as an expert or technical witness or as a representative for a party.
- (2) An SJTO staff person or SJTO Member shall not, other than in discharging his or her functions within SJTO, provide legal, consulting or technical services or advice to anyone in respect of a matter that is, or may come before, an SJTO tribunal, or on an appeal or review of a matter which was before an SJTO tribunal, whether the services or advice are provided for remuneration or otherwise.
37. An SJTO staff person or SJTO Member may commence or respond to an application, appeal or other matter before an SJTO tribunal provided that they do so through counsel or a representative, immediately notify the Executive Chair and the Executive Lead, refrain from any communication about the matter except as may be required by law or by the rules of an SJTO tribunal, and refrain from involvement in any case which is directly related to the matter in question.
38. On receipt of such notification, the Executive Lead shall take all reasonable measures to ensure the application or appeal is segregated and that internal access to the file is limited to appropriate individuals. The SJTO staff person or SJTO Member who is a party to the application or appeal shall have no access to the file. An SJTO Member will not be assigned to files which raise issues which are similar to those in the matter in question.
39. If, in order to protect his or her own rights or interests in a matter before an SJTO tribunal, an SJTO staff person or SJTO Member must appear as a witness or otherwise make his or her identity known to the SJTO tribunal, they shall notify the responsible Ethics Executive in sufficient time to permit him or her to take appropriate action to protect the integrity of the SJTO tribunal and its processes.

#### **Appearance before the SJTO: Former Staff Persons and Members**

40. A former SJTO Member shall not appear as a representative or an expert or technical witness before an SJTO tribunal of which he or she was a Member for a period of twelve months from the end of his or her appointment or, twelve months after the release of his or her last decision if that is later.

41. A former SJTO Member shall not appear as a representative or expert or technical witness before any other SJTO tribunal for a period of six months from the end of his or her appointment or six months after the release of his or her last decision if that is later.
42. A former SJTO staff person shall not appear as a representative before any SJTO tribunal for a period of six months from the end of his or her employment at SJTO.

**Part IV**  
**Additional Rules Specific to SJTO Members Appointed  
to the Landlord and Tenant Board (LTB) or Hearings Officers  
designated under the *Residential Tenancies Act***

43. An LTB Member or Hearings Officer shall not participate in a proceeding by the LTB if he or she:
  - a) is, or has been during the past six months, a member of the executive of any association or group of landlords of rented residential property;
  - b) is, or has been during the past six months, a member of the executive of any association or group of tenants of residential complexes; or
44. An LTB Member and his or her spouse or Hearings Officer and his or her spouse, shall not, alone or with others:
  - a) have or acquire any interest in one or more residential complexes with a total of seven or more rental units, or in any way act as the landlord of such complexes; or,
  - b) have a controlling interest in any company which owns or acts as landlord of one or more residential complexes containing seven or more rental units.
45. An LTB Member or Hearings Officer shall not, alone or with others:
  - a) manage one or more residential complexes for a landlord, other than for a family member or their spouse's family member on a non-remunerative basis;
  - b) act as an agent or broker in the sale, purchase or financing of any residential rental complex; or,

46. An LTB Member or Hearings Officer shall not belong to any association or group of landlords, tenants, property managers or persons who invest in residential rental property. An LTB Member or Hearings Officer will be permitted to be a member of the tenants' association for the residential complex in which he or she resides, but will not ordinarily be permitted to serve on the executive of the association. Even in respect of his or her own tenants' association, an LTB Member or Hearings Officer shall not take any role in representing other tenants in proceedings before the LTB or the court.
47. Rules 43, 44 or 45 do not operate to prevent an LTB Member or his or her spouse and a Hearings Officer or his or her spouse from having an interest in residential rental property which is remote, such as through membership in a pension plan, owning shares of a publicly traded company or mutual fund, or participation in policies of insurance.
48. On appointment, an LTB Member and upon being designated under the *Residential Tenancies Act*, a Hearings Officer, already holding an interest in residential rental property or shares in any company inconsistent with these Rules, or who acquires such an interest after becoming an LTB Member or Hearing Officer (for example, through inheritance) shall divest him/herself of such interest within six months after becoming an SJTO Member or acquiring such interest, as the case may be.
49. If the spouse of an LTB Member holds an interest in residential rental property that contains seven or more rental units or shares in any company with such holdings, or acquires such an interest after the LTB Member's appointment, the LTB Member shall ensure that the spouse divests him/herself of such interest within six months after the LTB Member is appointed or the spouse acquires such interest, as the case may be.
50. To comply with Rules 47 and 48 the LTB Member or his or her spouse shall divest themselves of the interest by selling or transferring the interest for good and valuable consideration in an arms' length transaction or by transferring the interest to a blind trust and confirm to the Executive Chair this has been done.

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