



Approved by the Conflict of Interest Commissioner and effective on the date published on the Commissioner's website

Environment and Land 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 the Environment and Land Tribunals Ontario (ELTO) 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 member's or Member's obligations to ELTO 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 *Public Service of Ontario Act, 2006*, and includes the Executive Lead of ELTO;

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

“Environment and Land Tribunals Ontario” means the cluster of tribunals established under O. Reg. 126/10 and any of its Constituent Tribunals, and “ELTO” has the same meaning;

“gift” includes a benefit of any kind;

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

“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 tribunals within ELTO.

Interpretation

The core values of Environment and Land Tribunals Ontario (ELTO) 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 ELTO’s Core Values.

These Conflict of Interest Rules apply to ELTO staff persons and ELTO Members and its constituent tribunals, being the Assessment Review Board, the Board of Negotiation, the Conservation Review Board, the Environmental Review Tribunal and the Ontario Municipal Board. Except as specifically noted, these rules apply to ELTO staff persons and ELTO Members in their roles, relationships and dealings with any of ELTO’s tribunals.

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

Under the *Public Service of Ontario Act, 2006* (PSOA) and the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, the Ethics Executive for ELTO staff persons is the Executive Lead, and for ELTO Members (other than the Executive Chair) is the Executive Chair. The Ethics Executive for former ELTO staff persons and former ELTO Members, and for the Executive Chair of ELTO, is the Conflict of Interest Commissioner. The Ethics Executive for the Executive Lead is the Conflict of Interest Commissioner.

Where these Rules apply to the Executive Chair as an ELTO Member, or the Executive Lead as an ELTO staff person, references to the responsibilities of the Executive Chair or Executive Lead as Ethics Executive 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, or Child

1. An ELTO staff person or ELTO Member shall not use or attempt to use his or her employment in ELTO to directly or indirectly benefit himself or herself, or his or her spouse or children.
2. An ELTO staff person or ELTO Member shall not allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to ELTO and to the Crown.

Accepting Gifts

3. An ELTO staff person or ELTO Member shall not accept a gift if a reasonable person might conclude that the gift could influence, or resulted from, the performance of his or her duties.

Nominal Gift

4. Rule 3 does not operate to prevent an ELTO staff person or ELTO 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 ELTO staff person or ELTO 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 ELTO staff person or ELTO Member shall not disclose confidential information obtained while he or she is employed in or appointed to ELTO unless he or she is authorized to do so by the law, ELTO or the Crown.

Use of Confidential Information

7. An ELTO staff person or ELTO Member shall not use confidential information in a business or undertaking outside of his or her work in ELTO.

Accepting a Gift in Exchange for Confidential Information

8. An ELTO staff person or ELTO 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 ELTO and to the Crown, an ELTO staff person or an ELTO Member shall not give preferential treatment to any person or entity, including a person or entity in which the ELTO staff person or ELTO Member, or a member of his or her family has an interest.
10. When performing his or her duties to ELTO and to the Crown, an ELTO staff person or ELTO 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 ELTO staff person or ELTO Member shall not offer assistance to a person or entity in dealing with ELTO other than assistance given in the ordinary course of their employment.

Hiring and Contracting with Spouse, Child, Parent or Sibling

12. An ELTO staff person or ELTO Member shall not, on behalf of ELTO, hire or propose the hiring of his or her spouse, child, parent or sibling. An ELTO staff person or ELTO Member shall not, on behalf of ELTO, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest.

Supervising Work of Spouse, Child, Parent or Sibling

13. An ELTO staff person or ELTO Member who hires a person on behalf of ELTO shall ensure that the person does not report to, or supervise the work of the person's spouse, child, parent or sibling.
14. An ELTO staff person or ELTO 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 ELTO staff person or ELTO Member shall not become employed by or engage in a business or undertaking outside his or her employment or duties in ELTO in any of the following circumstances:
- a) if the ELTO staff person's or ELTO Member's private interests in connection with the employment or undertaking could conflict with his or her duties to ELTO and to the Crown;
 - b) if the employment or undertaking would interfere with the ELTO staff person's or ELTO Member's ability to perform his or her duties to ELTO and to the Crown;
 - c) if the employment is in a professional capacity and is likely to influence or detrimentally affect the ELTO staff person's or ELTO Member's ability to perform his or her duties to ELTO and to the Crown;
 - d) if the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to an ELTO staff person or ELTO Member who is employed part-time in ELTO. This paragraph also does not apply to an ELTO staff person or ELTO 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 ELTO staff person's or ELTO Member's employment in ELTO; and
 - f) if government premises, equipment or supplies are used in the employment or undertaking.
16. An ELTO staff person or ELTO 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 Processing Matters and Decision Making

17. An ELTO staff person or ELTO Member shall not process, or participate in a proceeding or decision-making by ELTO if he or she, or his or her spouse, child, parent or sibling could benefit from the decision in the proceeding.
18. Rule 17 does not apply if an ELTO staff person or an ELTO 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 ELTO staff person or ELTO 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 ELTO or the Crown.
20. An ELTO staff person or ELTO Member described in Rule 19 shall inform the body or group if the circumstances described in that Rule exist.
21. If an ELTO staff person or an ELTO 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 ELTO Staff Persons and Former ELTO Members

Application

22. The Rules in this section apply with respect to every former ELTO staff person or ELTO Member who, immediately before he or she ceased to be a public servant, was employed in ELTO, 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 ELTO staff person or ELTO 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 ELTO staff person or ELTO Member shall not seek preferential treatment by, or privileged access to, public servants who work in a minister's office, a ministry, ELTO, or any other public body.

Disclosure of Confidential Information

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

Restriction on Lobbying

27. (1) This section applies to a former ELTO staff person or ELTO 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 ELTO staff person or ELTO 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 ELTO, 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 ELTO staff person or former ELTO Member who, while employed in ELTO, advised the Crown about a particular proceeding negotiation or other transaction;
- (2) The former ELTO staff person or ELTO 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 sub-rule (2), the former ELTO staff person or former ELTO 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 ELTO Staff Persons, Former Staff Persons, ELTO Members, and Former ELTO Members

Financial Interest

30. (1) An ELTO staff person shall not process, and an ELTO Member shall not adjudicate, or participate in a proceeding or in discussions of, any matter in relation to a proceeding where the ELTO staff person or ELTO Member or his or her spouse, child, parent or sibling 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) 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 a tribunal, 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 Relationships

- 31. An ELTO staff person shall not process, and an ELTO 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 personal relationship.

Prior Involvement

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

Professional Relationship

- 33. An ELTO 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 professional relationship until a period of 12 months has elapsed from the termination of the relationship, or while there is any indebtedness connected to that relationship.

Effect on Other Proceedings

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

Appearance before ELTO: General

- 35. When an ELTO staff person or an ELTO Member or former ELTO staff person or former ELTO Member has any dealings with or appears before an ELTO tribunal, there is an obligation on them and ELTO to ensure that the integrity of the ELTO tribunal is maintained.

Appearance before ELTO: Current Staff Persons and Members

- 36. (1) An ELTO staff person or ELTO Member shall not appear before any ELTO tribunal as an expert or technical witness or as a representative for a party.

- (2) An ELTO staff person or ELTO Member shall not, other than in discharging his or her functions within ELTO, provide legal, consulting or technical services or advice to anyone in respect of a matter that is before, or may come before, an ELTO tribunal, or is on an appeal or review of a matter which was before an ELTO tribunal, whether the services are provided for remuneration or otherwise.
37. Despite rule 36, a part-time ELTO Member may appear as an expert or technical witness in a proceeding before an ELTO tribunal to which he or she is not appointed where the retainer preceded the date of the adjudicator's appointment and was disclosed contemporaneously with the appointment provided that:
- (1) as soon as the proceeding is commenced:
 - a. the retainer is disclosed to the parties, and
 - b. the part-time ELTO Member refrains from all contact with the ELTO tribunal to which he or she is appointed until the matter has been determined;
 - (2) the retainer is disclosed to any additional parties, interveners, participants or presenters who are added to the proceedings; and
 - (3) the part-time ELTO Member notifies the Ethics Executive and complies with the directions of the Ethics Executive
38. Rule 37 does not affect the jurisdiction of an ELTO Member to raise or determine the issue of whether bias or the appearance of bias arises from the participation of an adjudicator as an expert or technical witness.
39. An ELTO staff person or ELTO Member, or the spouse, child or parent of an ELTO staff person or ELTO Member may commence or respond to an application, appeal or other matter before an ELTO tribunal provided that they do so through counsel or a representative, immediately notify the Executive Chair and Executive Lead, refrain from any communication of or about the matter except as may be required by law or by the rules of an ELTO tribunal, and refrain from involvement in any case which is directly related to the matter in question.
40. 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 ELTO staff person or ELTO Member who is a party to the application, appeal or other matter shall have no access to the file. An ELTO Member will not be assigned to files which raise issues which are similar to those in the matter in question.

41. If, in order to protect their own rights or interests in a matter before an ELTO tribunal, an ELTO staff person or ELTO Member must appear as a witness or otherwise make their identity known to the ELTO 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 ELTO tribunal and its processes.

Appearance before ELTO: Former Staff Persons and Members

42. A former full-time or part-time ELTO Member shall not appear as a representative or an expert or technical witness before an ELTO tribunal of which they were a member for a period of twelve months from the end of their appointment or, twelve months after the release of their last decision if that is later.
43. A former full-time ELTO Member shall not appear as a representative or expert or technical witness before any other ELTO tribunal for a period of six months from the end of their appointment or six months after the release of their last decision if that is later.
44. A former part time ELTO Member shall not appear as a representative before any ELTO tribunal of which they were not a Member for a period of six months from the end of their appointment or six months after the release of their last decision if that is later.
45. A former ELTO staff person shall not appear as a representative before any ELTO tribunal for a period of six months from the end of their employment at ELTO.