[Français](http://www.ontario.ca/fr/lois/loi/09a33)

Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009

[S.o. 2009, chapter 33](https://www.ontario.ca/laws/statute/s09033)  
Schedule 5

**Consolidation Period:** From May 1, 2019 to the [e-Laws currency date](http://www.e-laws.gov.on.ca/navigation?file=currencyDates&lang=en).

Last amendment: [2018, c. 17, Sched. 35, s. 16](http://www.ontario.ca/laws/statute/S18017" \l "sched35s16).

Legislative History: [2017, c. 34, Sched. 46, s. 1](http://www.ontario.ca/laws/statute/S17034" \l "sched46s1s1); [2018, c. 17, Sched. 35, s. 16](http://www.ontario.ca/laws/statute/S18017" \l "sched35s16).

Purpose and Interpretation

Purpose

**1** The purpose of this Act is to ensure that adjudicative tribunals are accountable, transparent and efficient in their operations while remaining independent in their decision-making. 2009, c. 33, Sched. 5, s. 1.

Definitions

**2** In this Act,

“adjudicative tribunal” means an agency, board, commission, corporation or other entitythat is prescribed; (“tribunal décisionnel”)

“governance accountability documents” means the memorandum of understanding, business plan and annual report required by sections 11, 12 and 13, respectively; (“documents de responsabilisation en matière de gouvernance”)

“prescribed” means prescribed by regulations made under this Act; (“prescrit”)

“public accountability documents” means the mandate and mission statement, consultation policy, service standard policy, ethics plan and member accountability framework required by sections 3, 4, 5, 6 and 7, respectively; (“documents de responsabilisation à l’égard du public”)

“responsible minister”, in relation to an adjudicative tribunal, means the minister of the Crown who is responsible to the Assembly for the tribunal. (“ministre responsable”) 2009, c. 33, Sched. 5, s. 2.

Public Accountability Documents

Mandate and mission statement

**3** (1)  Every adjudicative tribunal shall develop a mandate and mission statement. 2009, c. 33, Sched. 5, s. 3 (1).

Contents

(2)  The mandate and mission statement must contain,

(a) a statement of the tribunal’s legislative mandate, with reference to the Act that establishes its mandate and to any Act or Acts that add to its mandate;

(b) the tribunal’s mission statement; and

(c) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 3 (2).

Approval

(3)  The mandate and mission statement must be approved by the tribunal’s responsible minister. 2009, c. 33, Sched. 5, s. 3 (3).

Consultation policy

**4** (1)  Every adjudicative tribunal shall develop a consultation policy. 2009, c. 33, Sched. 5, s. 4 (1).

Contents

(2)  The consultation policy must describe whether and how the tribunal will consult with the public when it is considering changes to its rules or policies, including consultation with any persons, entities or groups of persons or entities whose interests, in the opinion of the tribunal’s chair, would be affected by those changes. 2009, c. 33, Sched. 5, s. 4 (2).

Same

(3)  The consultation policy must contain any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 4 (3).

Approval

(4)  The consultation policy must be approved by the tribunal’s responsible minister. 2009, c. 33, Sched. 5, s. 4 (4).

Service standard policy

**5** (1)  Every adjudicative tribunal shall develop a service standard policy. 2009, c. 33, Sched. 5, s. 5 (1).

Contents

(2)  The service standard policy must contain,

(a) a statement of the standards of service that the tribunal intends to provide;

(b) a process for making, reviewing andresponding to complaints about the service provided by the tribunal; and

(c) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 5 (2).

Approval

(3)  The service standard policy must be approved by the tribunal’s responsible minister. 2009, c. 33, Sched. 5, s. 5 (3).

Relationship to other remedies

(4)  Nothing in the service standard policy shall be interpreted as affecting,

(a) a process or remedy available under the Ombudsman Act;

(b) a right of appeal from decisions of the tribunal available under any Act; or

(c) a right to bring an application for judicial review. 2009, c. 33, Sched. 5, s. 5 (4).

Ethics plan

**6** (1)  Every adjudicative tribunal shall develop an ethics plan. 2009, c. 33, Sched. 5, s. 6 (1).

Contents

(2)  The contents of the ethics plan shall be prescribed and must also include any matter specified in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 6 (2).

Approval

(3)  The ethics plan must be approved by the Integrity Commissioner appointed under the Public Service of Ontario Act, 2006. 2009, c. 33, Sched. 5, s. 6 (3); 2018, c. 17, Sched. 35, s. 16.

Conflict with *Public Service of Ontario Act, 2006*

(4)  In the event of any conflict between an adjudicative tribunal’s ethics plan and the conflict of interest rules made under the Public Service of Ontario Act, 2006 that apply to the tribunal, the conflict of interest rules prevail. 2009, c. 33, Sched. 5, s. 6 (4).

**Section Amendments with date in force (d/m/y)**

[2018, c. 17, Sched. 35, s. 16](http://www.ontario.ca/laws/statute/S18017" \l "sched35s16) - 01/05/2019

Member accountability framework

**7** (1)  Every adjudicative tribunal shall develop a member accountability framework. 2009, c. 33, Sched. 5, s. 7 (1).

Contents

(2)  The member accountability framework must contain,

(a) a description of the functions of the members, the chair and the vice-chairs, if any, of the tribunal;

(b) a description of the skills, knowledge, experience, other attributes and specific qualifications required of a person to be appointed as a member of the tribunal;

(c) a code of conduct for the members of the tribunal; and

(d) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 7 (2).

Approval

(3)  The member accountability framework must be approved by the tribunal’s responsible minister. 2009, c. 33, Sched. 5, s. 7 (3).

Publication, Amendment and Review of Public Accountability Documents

Publication of public accountability documents

**8** Every adjudicative tribunal shall make its public accountability documents, approved as required by section 3, 4, 5, 6 or 7, as the case may be, available to the public. 2009, c. 33, Sched. 5, s. 8.

Amendments to public accountability documents

**9** An adjudicative tribunal may amend its public accountability documents, and the person required to approve the original document is also required to approve any amendment to the document. 2009, c. 33, Sched. 5, s. 9.

Review of public accountability documents

**10** Every adjudicative tribunal shall review its public accountability documents to determine whether they require amendment every three years after their initial publication. 2009, c. 33, Sched. 5, s. 10.

Governance Accountability Documents

Memorandum of understanding

**11** (1)  Every adjudicative tribunal shall enter into a memorandum of understanding with its responsible minister. 2009, c. 33, Sched. 5, s. 11 (1).

Contents

(2)  The memorandum of understanding must address,

(a) the financial, staffing and administrative arrangements for the tribunal;

(b) the accountability relationships of the tribunal, including its duty to account to its responsible minister;

(c) the recruitment, orientation and training of the tribunal’s members;

(d) the committee structure of the tribunal, if any;

(e) the tribunal’s planning and reporting requirements; and

(f) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 11 (2).

Expiry

(3)  The memorandum of understanding expires five years after the day it is entered into, and may be renewed before that day for another five years. 2009, c. 33, Sched. 5, s. 11 (3).

Review

(4)  The tribunal and its responsible minister shall review the memorandum of understanding after there is a change in the responsible minister or the chair of the tribunal, and, in any event, at least once before it expires. 2009, c. 33, Sched. 5, s. 11 (4).

Continuation of expired memorandum

(5)  A memorandum of understanding that has expired continues in effect, despite its expiry, until it is renewed or replaced. 2009, c. 33, Sched. 5, s. 11 (5).

Publication

(6)  The tribunal’s responsible minister shall make the memorandum of understanding available to the public. 2009, c. 33, Sched. 5, s. 11 (6).

Transition

(7)  An adjudicative tribunal and its responsible minister may agree that a memorandum of understanding entered into by them before the day that subsection (1) becomes applicable to the tribunal and that is still in effect on that day is a memorandum of understanding entered into by them on the day subsection (1) becomes applicable to the tribunal for the purposes of this section. 2009, c. 33, Sched. 5, s. 11 (7).

Business plan

**12** (1)  Every adjudicative tribunal shall develop a business plan for a prescribed period of time. 2009, c. 33, Sched. 5, s. 12 (1).

Contents

(2)  The contents of the business plan shall be prescribed and must also include any matter specified in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 12 (2).

Approval

(3)  The business plan must be approved by the tribunal’s responsible minister. 2009, c. 33, Sched. 5, s. 12 (3).

Publication

(4)  The tribunal shall make the business plan available to the public. 2009, c. 33, Sched. 5, s. 12 (4).

Annual report

**13** (1)  Every adjudicative tribunal shall prepare an annual report, provide it to the responsible minister no later than 90 days after the end of the tribunal’s fiscal year and make it available to the public. 2017, c. 34, Sched. 46, s. 1 (1).

Same

(2)  The tribunal shall comply with such directives as may be issued by the Management Board of Cabinet with respect to,

(a) the form and content of the annual report; and

(b) when and how to make it available to the public. 2017, c. 34, Sched. 46, s. 1 (1).

Same

(3)  The tribunal shall include such additional content in the annual report as the responsible minister may require. 2017, c. 34, Sched. 46, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2017, c. 34, Sched. 46, s. 1 (1)](http://www.ontario.ca/laws/statute/S17034" \l "sched46s1s1) - 01/01/2018

Tabling of annual report

**13.1** The responsible minister shall table each adjudicative tribunal’s annual report in the Assembly no later than 30 days after determining that the annual report meets the requirements of section 13 and shall comply with such directives as may be issued by the Management Board of Cabinet with respect to when and how to make that determination. 2017, c. 34, Sched. 46, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2017, c. 34, Sched. 46, s. 1 (1)](http://www.ontario.ca/laws/statute/S17034" \l "sched46s1s1) - 01/01/2018

This Act prevails re annual reports

**13.2** In the event of any conflict between section 13 or 13.1 and a provision of another Act or a regulation respecting an adjudicative tribunal’s annual report, section 13 or 13.1 prevails. 2017, c. 34, Sched. 46, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2017, c. 34, Sched. 46, s. 1 (1)](http://www.ontario.ca/laws/statute/S17034" \l "sched46s1s1) - 01/01/2018

Appointment to Adjudicative Tribunals

Adjudicative tribunal members to be selected by competitive, merit-based process

**14** (1)  The selection process for the appointment of members to an adjudicative tribunal shall be a competitive, merit-based process and the criteria to be applied in assessing candidates shall include the following:

1. Experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal.

2. Aptitude for impartial adjudication.

3. Aptitude for applying alternative adjudicative practices and procedures that may be set out in the tribunal’s rules. 2009, c. 33, Sched. 5, s. 14 (1).

Tribunal-specific qualifications

(2)  If a member of an adjudicative tribunal is required by or under any other Act to possess specific qualifications, a person shall not be appointed to the tribunal unless he or she possesses those qualifications. 2009, c. 33, Sched. 5, s. 14 (2).

Publication

(3)  The responsible minister of an adjudicative tribunal shall make public the recruitment process to select one or more persons to be appointed to the tribunal and in doing so shall specify,

(a) the steps intended to be taken in the recruitment process; and

(b) the skills, knowledge, experience, other attributes and specific qualifications required of a person to be appointed. 2009, c. 33, Sched. 5, s. 14 (3).

Chair to recommend appointments, reappointments

(4)  No person shall be appointed or reappointed to an adjudicative tribunal unless the chair of the tribunal, after being consulted as to his or her assessment of the person’s qualifications under subsections (1) and (2) and, in the case of a reappointment, of the member’s performance of his or her duties on the tribunal, recommends that the person be appointed or reappointed. 2009, c. 33, Sched. 5, s. 14 (4).

Conflict with other Acts, regulations

(5)  In the event of any conflict between this section and a provision of another Act or of a regulation made under another Act respecting the appointment of members of an adjudicative tribunal, the provision of the other Act or regulation prevails. 2009, c. 33, Sched. 5, s. 14 (5).

Tribunal Clustering

Designation of clusters

**15** The Lieutenant Governor in Council may by regulation designate two or more adjudicative tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone. 2009, c. 33, Sched. 5, s. 15.

Governance structure of clusters

Executive chair

**16** (1)  The Lieutenant Governor in Council may appoint an executive chair to be responsible for all of the adjudicative tribunals included in a cluster. 2009, c. 33, Sched. 5, s. 16 (1).

Associate chairs

(2)  The Lieutenant Governor in Council may appoint an associate chair for each adjudicative tribunal that is included in a cluster. 2009, c. 33, Sched. 5, s. 16 (2).

Alternate executive chairs

(3)  The Lieutenant Governor in Council may appoint one or more of the associate chairs as alternate executive chairs of the cluster, and an alternate executive chair shall act in the place of the executive chair if the executive chair is unable to act or if the position of executive chair is vacant. 2009, c. 33, Sched. 5, s. 16 (3).

Vice-chairs

(4)  The Lieutenant Governor in Council may appoint one or more vice-chairs for each adjudicative tribunal that is included in a cluster, and a vice-chair shall act in the place of the tribunal’s associate chair if the associate chair is unable to act or if the position of associate chair is vacant. 2009, c. 33, Sched. 5, s. 16 (4).

Chairs must be members of tribunals

(5)  The executive chair and each alternate executive chair must also be members of each of the adjudicative tribunals in the cluster and the associate chair and each vice-chair must also be members of the tribunal to which they are appointed as associate chair and vice-chair. 2009, c. 33, Sched. 5, s. 16 (5).

Powers, duties, etc., of executive chair

**17** (1)  The executive chair shall have the powers, duties and functions assigned to the chair of each adjudicative tribunal that is included in the cluster by this or any other Act or by any regulation, order-in-council or ministerial or Management Board of Cabinet directive. 2009, c. 33, Sched. 5, s. 17 (1).

Delegation

(2)  The executive chair may delegate to an associate chair or vice-chair of an adjudicative tribunal that is included in the cluster any power, duty or function, except a power, duty or function he or she may have as an ethics executive under the Public Service of Ontario Act, 2006. 2009, c. 33, Sched. 5, s. 17 (2).

Protection from liability

(3)  The executive chair, alternate executive chair and associate chair of an adjudicative tribunal that is included in a cluster shall be entitled to the same protection from liability as the chair of the tribunal. 2009, c. 33, Sched. 5, s. 17 (3).

Same

(4)  The vice-chairs and members of an adjudicative tribunal that is included in a cluster shall be entitled to the same protection from liability as the members of the tribunal. 2009, c. 33, Sched. 5, s. 17 (4).

Crown liability

(5)  Any provision in another Act that addresses the Crown’s liability for the actions or omissions of an adjudicative tribunal that is included in a cluster or of a chair, vice-chair or member of an adjudicative tribunal that is included in a cluster applies with necessary modifications to the adjudicative tribunal. 2009, c. 33, Sched. 5, s. 17 (5).

References to chair in other Acts, etc.

(6)  Except as provided in a regulation made under this Act, any reference in this or any other Act or a regulation to the chair of an adjudicative tribunal that is included in a cluster shall be read as a reference to the tribunal’s executive chair. 2009, c. 33, Sched. 5, s. 17 (6).

Joint accountability documents

**18** (1)  All the adjudicative tribunals included in a cluster shall jointly develop, prepare or enter into, as the case may be, the public accountability documents and governance accountability documents required by this Act. 2009, c. 33, Sched. 5, s. 18 (1).

Same

(2)  Section 3, 4, 5, 6 or 7, as the case may be, and sections 8, 9 and 10 apply with necessary modifications to any public accountability document jointly developed by all the adjudicative tribunals in a cluster. 2009, c. 33, Sched. 5, s. 18 (2).

Same

(3)  Section 11, 12 or 13 to 13.2, as the case may be, applies with necessary modifications to any governance accountability document jointly developed, prepared or entered into, as the case may be, by all the adjudicative tribunals in a cluster. 2009, c. 33, Sched. 5, s. 18 (3); 2017, c. 34, Sched. 46, s. 1 (2).

**Section Amendments with date in force (d/m/y)**

[2017, c. 34, Sched. 46, s. 1 (2)](http://www.ontario.ca/laws/statute/S17034" \l "sched46s1s2) - 01/01/2018

This Act prevails re governance of clusters

**19** In the event of any conflict between section 16 or 17 and a provision of another Act or a regulation respecting the governance of an adjudicative tribunal that is included in a cluster, section 16 or 17 prevails. 2009, c. 33, Sched. 5, s. 19.

General Matters

Chair is responsible for tribunals

**20** (1)  The chair of an adjudicative tribunal is responsible for ensuring that the tribunal performs the duties and functions required of it under this or any other Act and that it is in compliance with any other Act or any regulation applicable to it. 2009, c. 33, Sched. 5, s. 20 (1).

Effect of failure to comply

(2)  Any failure of an adjudicative tribunal or its chair to comply with this Act does not affect the validity of any action taken or decision made by the tribunal or the chair. 2009, c. 33, Sched. 5, s. 20 (2).

Review of tribunals

**21** (1)  An adjudicative tribunal’s responsible minister shall direct a public servant employed under Part III of the Public Service of Ontario Act, 2006 or any other person to conduct a review of the adjudicative tribunal at least once every six years. 2009, c. 33, Sched. 5, s. 21 (1).

Matters for review

(2)  The review required by subsection (1) must address,

(a) the tribunal’s mandate and whether it continues to be relevant;

(b) the functions performed by the tribunal, and whether they are best performed by the tribunal or whether they would be better performed by another entity;

(c) the tribunal’s governance structure and management systems, and whether they continue to be appropriate to its mandate and functions;

(d) the tribunal’s financial and human resources and its financial and information systems;

(e) the tribunal’s business planning, performance measurement and reporting practices;

(f) whether the tribunal has effective processes in place to ensure its compliance with any applicable Act, regulation or directive of the Management Board of Cabinet;

(g) whether the tribunal is effective in achieving its mandate and serving the public;

(h) whether changes should be made to the tribunal or whether the tribunal should be discontinued; and

(i) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 21 (2).

Additional reviews

(3)  An adjudicative tribunal’s responsible minister may at any time direct a public servant employed under Part III of the Public Service of Ontario Act, 2006 or any other person to conduct a review of the adjudicative tribunal in respect of any of the matters listed in subsection (2). 2009, c. 33, Sched. 5, s. 21 (3).

Protection of personal information

(4)  Nothing in this section authorizes a person conducting a review under subsection (1) or subsection (3) to collect, or an adjudicative tribunal to disclose to such person, any information that is personal information within the meaning of the Freedom of Information and Protection of Privacy Act or personal health information within the meaning of the Personal Health Information Protection Act, 2004. 2009, c. 33, Sched. 5, s. 21 (4).

Application of *Public Service of Ontario Act, 2006*, *Management Board of Cabinet Act*

**22** Nothing in this Act affects any obligation or requirement imposed by or under the Public Service of Ontario Act, 2006 or the Management Board of Cabinet Act on a person who is appointed as a chair, vice-chair or member of an adjudicative tribunal. 2009, c. 33, Sched. 5, s. 22.

Regulations

Regulations

**23** The Lieutenant Governor in Council may make regulations,

(a) prescribing agencies, boards, commissions, corporations or other entities for the purpose of the definition of “adjudicative tribunal” in section 2;

(b) prescribing the contents of the ethics plan required by section 6;

(c) prescribing a period of time for the purpose of subsection 12 (1) and the contents of the business plan required by section 12;

(d) governing the publication of the recruitment process required by subsection 14 (3);

(e) respecting the waiver of any requirement set out in section 14, including waiving any such requirement;

(f) prescribing references in this or any other Act or in a regulation to the chair of an adjudicative tribunal that are to be read other than as described in subsection 17 (6) and prescribing how such references shall be read in relation to the adjudicative tribunal that is included in a cluster;

(g) prescribing other matters to be addressed in a review of an adjudicative tribunal required by section 21;

(h) prescribing other matters to be addressed or included in any public accountability document or governance accountability document;

(i) prescribing the date by or time within which an adjudicative tribunal must comply with any provision or requirement of this Act or of a regulation made under this Act respecting a public accountability document or governance accountability document;

(j) prescribing the form and format of any public accountability document or governance accountability document;

(k) governing the publication of the public accountability documents or governance accountability documents or of the review required by section 21. 2009, c. 33, Sched. 5, s. 23.

24Omitted (provides for coming into force of provisions of this Act). 2009, c. 33, Sched. 5, s. 24.

25Omitted (enacts short title of this Act). 2009, c. 33, Sched. 5, s. 25.

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