



Administrative tribunals are a long-standing feature of Canadian governance.

By design and convention, tribunals work at greater distance from the Government than the vast majority of bodies in the executive branch. Tribunals typically have powers similar to those of courts; are masters of their own procedures; are bound by the same sorts of fairness and process obligations as those that apply to courts; and have specialized expertise that is recognized by the courts, which show substantial deference to tribunal decisions.

Independence in the performance of tribunals' decision-making functions and related activities such as investigations and dispute resolution is at the heart of their *raison d'être* and should never be compromised, or be seen to be compromised, by direct or indirect interference, influence, or pressure.

Key attributes of tribunal independence

The following practices help ensure appropriate levels of institutional and administrative autonomy and of specialized expertise:

Legislation, rules, and regulations

- Tribunals operate under enabling statutes that clearly delineate their responsibilities and authorities and include appropriate safeguards of independence.
- Rules for the tribunal's processes and procedures are made by the tribunal.
- Tribunals are involved in the development, and approval where appropriate, of the regulations they apply.

Decision-makers

- Decision-makers serve on good behaviour.
- Chairs play an active role in determining the required qualifications for decision-maker positions and identifying a roster of qualified candidates for possible appointment.
- Decision-maker vacancies are filled in a timely fashion through transparent, merit-based processes.

Communications

- Tribunals control external communications pertaining to the discharge of their mandates and responsibilities and are not required to obtain approvals from central agencies, portfolio departments, or Ministers' offices.

Resources

- Tribunals have sufficient resources to deliver their responsibilities.
- Tribunal funding is predictable and stable.
- Decisions on the staff competencies, internal organizational structures, and internal budgetary allocations needed to deliver tribunal mandates are made by Chairs or, where tribunals receive support services from an external organization, jointly by Chairs and the head of that organization.
- Chairs lead reviews of tribunal resource needs and opportunities for internal savings, with the involvement, as appropriate, of central agencies and portfolio departments.

Relationship to Ministers

- Tribunals report to Parliament through Ministers; they do not report to Ministers.
- Where a tribunal's role is to decide appeals from decisions made by departmental officials on behalf of a Minister and the Minister is a party to the appeals, the Minister is a party without special status.
- Where legislation explicitly allows for Ministerial or Cabinet direction to tribunals or review of their decisions, these authorities are used sparingly and in a targeted and transparent fashion.

Centrally-mandated processes

- Centrally-mandated processes and formats for matters such as the assessment of candidates for decision-making positions and reports to Parliament on plans and results are adjusted, in consultation with Chairs, in ways consistent with tribunal independence.
- Chairs are fully informed and meaningfully consulted, based on their experience administering the existing regime, during reviews of tribunals' enabling statutes, governance, responsibilities, and authorities, and on any broader policy changes with material implications for their tribunals.

Ultimately, respect for tribunals' independence and appearance of independence is essential to preserving their credibility and ability to achieve the public policy purposes for which they were established, and is therefore in the interests of all Canadians.