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1.5.2 ETHICAL PRINCIPLES FOR APPEAL PANEL

ENABLING POLICY

1.5 Appeals to the Board

The following statements and principles describe the very high standards towards which all appeal panel members strive. They are principles of reason to be applied in light of all the relevant circumstances and consistently with the requirements of judicial independence and the law.

This document is advisory in nature. It is to assist panel members with the difficult ethical and professional issues that confront them and to assist the members of the Emily Carr University of Art + Design (University) community to better understand the judicial role of Appeal Panels.

An independent judiciary is the right of every member of the University community. The panel must be and be seen to be free to decide honestly and impartially on the basis of the law and of the evidence, without external pressure or influence and without fear of interference from anyone.

A. JUDICIAL INDEPENDENCE

Statement

An independent judiciary is indispensable to impartial justice. The panel should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Principles:

1. Panel members must exercise their judicial functions independently and free of extraneous influence.
2. Panel members must firmly reject any attempt to influence their decisions in any matter before it.
3. Panel members should exhibit and promote high standards of judicial conduct so as to reinforce public confidence of its independence.

B. INTEGRITY

Statement

Panel members should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the panel itself.

Principles

1. Panel members should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons.
2. Panel members, in addition to observing this high standard personally, should encourage and support its observance by their colleagues.

C. DILIGENCE

Statement

Panel members should be diligent in the performance of their judicial duties.

Principles

1. Panel members should endeavour to perform all judicial duties, including the delivery of judgments, with reasonable promptness.
2. Panel members should not engage in conduct incompatible with the diligent discharge of duties or condone such conduct in colleagues.

D. EQUITY

Statement

Panel members should conduct themselves and proceedings before them so as to assure equality according to law.

Principles

1. Members should carry out their duties with appropriate consideration for all persons without discrimination.

E. IMPARTIALITY

Statement

Panel members must be and should appear to be impartial with respect to their decisions and decisions making.

Principles

1. Panel members should strive to ensure that their conduct, both in and out of the hearing, maintains and enhances confidence in their impartiality and that of the panel.
2. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person.

F. CONFLICT OF INTEREST / BIAS

Statement

Panel members should strive to conduct themselves in a manner that does not create bias nor raise a reasonable apprehension of bias.

Principles

1. Panel members should disqualify themselves in any case in which they believe they will be unable to judge impartially.

2. Panel members should disqualify themselves in any case in which they believe that a reasonable, fair minded and informed person would have a reasoned suspicion of conflict between a panel member's personal interest and a panel member's duty.
3. Disqualification is not appropriate if no other tribunal can be constituted to deal with the case, or because of urgent circumstances, failure to act could lead to a miscarriage of justice.
4. Panel members should not be involved in any activity or association that could reflect adversely on their impartiality or interfere with the performance of their judicial duties.
5. Panel members should not give legal advice.
6. Bias is a lack of neutrality or impartiality on the part of a decision-maker regarding an issue to be decided. Bias may be actual or perceived.

Notes: Courts have identified five common situations that will attract an allegation of bias or reasonable apprehension of bias:

- a) where a panel member, or person related to the member, has a material interest in the outcome of the case;
- b) where the members has an association or prior involvement with one of the parties (i.e. related to or closely involved with a party, witness or counsel);
- c) prior participation by the member in the process or a related process (i.e. if a member previously represented one of the parties now appearing before the panel on the same matter or similar matter);
- d) actual conduct that shows bias or hostility (i.e. a member who makes public statements which suggest that he or she has made up his or her mind on the outcome before having heard all of the parties);
- e) where the institutional structure of the decision making environment brings undue influence to bear upon the member (i.e. compulsory consultation sessions among members; members' remuneration being controlled by one of the parties, etc.).