



# Generic Valuation Tool

## Adjudication

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# Generic Valuation Tool (GVT)

## ADJUDICATION

How to use this tool:

- This tool is designed for IM specialists to use with relevant business areas when identifying information resources of business value (IRBV) and retention specifications.
- The IRBV and retention specifications contained in this document are recommendations only and should be customized to apply in each institutional context. The complete document should be read before using any recommendations.
- **This GVT does not provide Government of Canada institutions with the authority to dispose of information.** GVTs are not Records Disposition Authorities (RDA) and do not replace the Multi-Institutional Disposition Authorities (MIDA).

**Validation:** The business processes and IRBV of this GVT have been validated by subject matter experts from the following departments: Public Servants Disclosure Protection Tribunal Canada, Canada Industrial Relations Board, Copyright Board of Canada, Patented Medicine Prices Review Board, Canadian international Trade Tribunal, Canadian Transportation Agency, Canadian Human Rights Tribunal, Canadian Nuclear Safety Commission and Immigration and Refugee Board of Canada.

### Defining the Activity

Adjudication occurs “when a decision-maker resolves a dispute after considering the law and the evidence and arguments of the parties.”<sup>1</sup>

For the purposes of this GVT, Adjudication is considered to encompass only quasi-judicial decision-making, which falls outside of the formal court system. This activity is commonly performed by administrative tribunals, boards, and commissions. In a quasi-judicial system, procedure is less formal than it would be before the courts. The rules of evidence<sup>2</sup> may or may not be strictly observed and the notion of precedent<sup>3</sup> may or may not apply.

The decisions rendered by the Adjudication activity have the legal effect of a court decision but may be subject to judicial review at a higher court. This GVT is not

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<sup>1</sup> *Introduction to Administrative Justice and Plain Language*, Council of Canadian Administrative Tribunals, (Ottawa: Ontario, 2007), 47.

<sup>2</sup> The rules of evidence “specify what evidence can be filed and the applicable criteria and circumstances for its filing”, *ibid.* 36.

<sup>3</sup> The notion of precedent is the need for the decision-maker to be guided by previous decisions on similar questions.

applicable to appeals held in a judicial court such as the Federal Court of Canada, the Federal Court of Appeal, the Tax Court of Canada, or the Supreme Court of Canada. However, when appeals are heard by another quasi-judicial body (and not a court) this GVT can still be applied.

Adjudication is not necessarily expressed in the Program Alignment Architecture (PAA) by that term. Based on a review of multiple institutions that perform this activity, it may also be referred to as reviews and appeals, hearings, and decisions. For clarity, in this GVT, adjudication will be referred to as an activity, though it may also appear at the sub-activity level in an institution's PAA.

Adjudication generally follows a legal process common to administrative tribunals in provincial and federal jurisdictions. The process followed is often detailed in the enabling legislation or statute of the institution carrying out the activity. No common federal standard exists for adjudication. As such, this GVT relies on legislation, policies and guidelines from multiple adjudicative bodies across the GC.

Adjudication often involves Alternative Dispute Resolution (ADR) activities, including mediation, conciliation, arbitration and negotiation. ADR is employed as a measure to resolve disputes without formal adjudication. Due to the informal and confidential nature of ADR, information resources are either not produced, or are destroyed after the mediation.<sup>4</sup> Since these information resources are not filed in the corporate repository, they do not appear in the table below.

The activities of adjudication and authorization have been separated into two GVTs, but in practice, the separation is often less clear. Both activities involve making a decision. Many GC institutions that perform authorization are quasi-judicial bodies (i.e. boards or tribunals) that also adjudicate. For the purposes of the GVTs, a distinction has been made that “adjudication” involves making a decision in a dispute, while “authorization” involves making a decision to grant permission, sometimes by means of a licence, sometimes not. The process of granting a licence or certificate is usually straightforward, while the process of granting authorization can be more complex. When the decision-maker granting authorization is able to use discretion in making a decision, the institution may decide that the Adjudication GVT is more appropriate. Institutions need to assess which GVT best suits their needs and activities.

## **Relationship to Other GVTs**

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<sup>4</sup>*National Mediation Rules*, 2011, pp. 9-10, ADR Institute of Canada,  
[http://www.adrcanada.ca/resources/documents/National\\_Mediation\\_Rules\\_2011April15withtaxnote\\_001.pdf](http://www.adrcanada.ca/resources/documents/National_Mediation_Rules_2011April15withtaxnote_001.pdf)

**Management and Oversight:** The creation of policy related to quasi-judicial adjudication is addressed in the Management and Oversight GVT.

**Legal Services:** Litigation performed by legal service units in GC institutions (i.e. in cases where the institution in question is a litigant) are addressed in the GVT for Legal Services.

**Investigating:** Many investigations are conducted for the purposes of resolving disputes and the case may be escalated to an adjudicative body following the investigation. The business processes and resulting IRBV of the investigation up to the issuance of the final report are found in the Investigating GVT. If the investigation then results in a hearing before an administrative tribunal, those further business processes are addressed in this Adjudication GVT.

**Regulatory Compliance and Enforcement:** Adjudication may occur at the end of the regulatory compliance and enforcement activity as a result of non-compliance. It is one of many measures to respond to non-compliance, and may occur only once other possibilities are exhausted.

**Authorization:** The Adjudication and Authorization GVTs are closely related. As stated, institutions should ensure they choose the GVT that is appropriate for their business activities. The Authorization GVT includes the business processes for the issuance of licenses, certificates, or other tools which either allow an individual or an institution to perform a relevant activity, or approve the sale or use of a product, process, or service.

## **Business Processes**

The business processes and information resources of business value were identified based on a thorough review of secondary literature, as well as an examination of relevant legislation and policies from GC institutions that perform adjudication.

The Adjudicating activity consists of three sub-activities, with a number of associated business processes.

### **1. Preparing for a Hearing:**

All activities which occur before a hearing are included in this step. The adjudication process begins with an application to the tribunal or other quasi-judicial institution. This may be the principle application or it may be an appeal of a previous decision, usually by another institution. (The business processes are almost the same whether an original hearing or appeal so the IRBV identified in the chart below apply to either.) Before the hearing the applicant submits the appropriate forms and supporting documentation.

The institution communicates among the applicant, the respondent and other parties to inform them of the date and time of the hearing as well as any other administrative matters. Witnesses may be subpoenaed or the institution might order document disclosure. Sometimes a decision is reached prior to the hearing, through dismissal or alternative dispute resolution. All the business processes which prepare for the hearing of evidence are included in this step. This documentation, which may be textual or electronic, is often maintained in a case file.

## **2. Holding a Hearing:**

Hearings before administrative tribunals have a range of complexity and formality. This process includes paper-based reviews, tele-conferences, video conferences as well as in-person meetings. A hearing can be as simple as decision-makers reviewing the case file they have been presented without the parties present. In other situations witnesses are subpoenaed, testify and are cross-examined. Some administrative tribunals retain recordings or transcripts of proceedings. Regardless of the format of the hearing, it is at this point that the evidence is considered. Sometimes interim decisions are taken at this time, such as the postponement of proceedings to a later date.

## **3. Making a Decision:**

While decisions are sometimes delivered orally at the hearing, most often the decision and the reasons for the decision are written at a later date and delivered to the parties. Sometimes the decision results in a further action, for example, a fine or compensation.

## **Retention**

There are no GC-wide pieces of legislation or regulations that govern the retention specifications of information resources associated with the Adjudicating activity.

Recommended retention specifications in GVTs are determined based on traditional or best practices, a review of government-wide legislation and policy, and validation with subject matter experts. Retention periods are suggestions only; departments must take into account their own legislative requirements and business needs.

The recommended retention specifications are based on generic best practices observed in various institutions. Business practices at the following institutions were verified: Canadian Industrial Relations Board, Canadian Artists and Producers Professional Relations Tribunal, Canadian Cultural Property Export Review Board, Canadian Human Rights Tribunal, Canadian Transportation Agency and the Public Service Labour Relations Board.

## Business Value and Retention Recommendations

### 1. Preparing for the Hearing

Business Processes	Recommendations: Information Resources of Business Value (IRBVs)	Recommendations: Retention Period
Receiving the application	<ul style="list-style-type: none"> <li>Principle application, motion, complaint or appeal</li> <li>Supporting documentation</li> <li>Request for review</li> <li>Order from higher court for retrial</li> <li>Report of proceedings from original institution (eg. Arbitration Board)</li> <li>Order to stay filing of decision that is under appeal (until review/appeal is completed)</li> </ul>	10 years after case closed and all avenues of appeal have been exhausted.
Corresponding with parties	<ul style="list-style-type: none"> <li>Acknowledgement letter to applicant or appellant</li> <li>Notification of respondent</li> <li>Notice of hearing</li> <li>Notice of appeal/leave to appeal</li> <li>Request for information</li> <li>Responses from parties</li> <li>Authorization of agent or counsel to act on behalf of applicant or respondent</li> <li>Subpoenas</li> <li>Summons</li> <li>Discovery order</li> <li>Correspondence with Minister (as appropriate)</li> <li>Dismissal of case</li> </ul>	10 years after case closed and all avenues of appeal have been exhausted.
Consider pre-hearing/preliminary applications	<ul style="list-style-type: none"> <li>Application for intervention</li> <li>Application for postponement</li> <li>Motion for particulars</li> <li>Motion for inadmissibility</li> <li>Application to amend</li> <li>Request for extension of deadline for submissions</li> <li>Request for change of decision-maker</li> <li>Request for exclusion of witnesses or <i>in camera</i> hearing</li> <li>Response of Tribunal/Board to above (including dismissal of case)</li> </ul>	10 years after case closed and all avenues of appeal have been exhausted.
Conducting pre-hearing meetings	Summary of pre-hearing meeting	10 years after case

	Agreement among parties	closed and all avenues of appeal have been exhausted.
Alternative Dispute Resolution	Agreement among parties (most information resources created will be confidential and therefore not be filed in the corporate repository)	N/A

## 2. Holding a Hearing

Business Processes	Recommendations: Information Resources of Business Value (IRBVs)	Recommendations: Retention Period
Considering evidence	Documentary evidence Written expert reports Objects or photos of objects Affidavits Transcripts/recordings of proceedings Summary of oral evidence	10 years after case closed and all avenues of appeal have been exhausted.
Hearing applications	Application to set aside a proceeding for irregularity	10 years after case closed and all avenues of appeal have been exhausted.
Making interim decisions	Agreement among parties Notification of withdrawal by applicant or appellant Notification of parties Notice of postponement Notice of adjournment	10 years after case closed and all avenues of appeal have been exhausted.

## 3. Making a Decision

Business Processes	Recommendations: Information Resources of Business Value (IRBVs)	Recommendations: Retention Period
Recording a decision	Statement of decision (report, letter, etc.) Statement of reasons for decision (report, letter, etc.) Statement of findings	10 years after case closed and all avenues of appeal have been exhausted.

Communicating the decision	Request for written decision Request for reasons for decision Order from higher court requesting reasons for decision Correspondence with parties Public announcement (see <i>Communications Services GVT</i> )	10 years after case closed and all avenues of appeal have been exhausted.
Enforcing the decision	Statement of action Orders arising from decision (e.g. Stay of benefits, payment of compensation, etc.)	10 years after case closed and all avenues of appeal have been exhausted.