PERFORMANCE ASSESSMENT FOR MEMBERS – FRAMEWORK

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This is a framework to guide the development of a performance assessment system for adjudicative tribunals. In addition to a policy, forms and processes, the development and implementation of such a plan should also involve a consultation and communications plan.

Four Broad Areas for Discussion

1. Purposes of Performance Assessment

2. Indicators of Performance

3. Ratings

4. Process of Performance Assessment

1. Purposes of Performance Assessment

Clarity about the purposes of the member performance assessment process is required because that will guide the decisions to be made in the other three areas. Several possible purposes, which overlap and are interdependent, are:

(a) Member development – Performance assessment supports members in their continuous improvement by identifying strengths and areas for improvement, learning needs and career development opportunities;.

(b) Tribunal excellence – Performance assessment contributes to the tribunal meeting its goals of quality and productivity, in providing its core services of fair and accessible dispute resolution;

(c) Reappointments recommendations – A credible and fair performance assessment process is needed to support the chair's reappointment recommendations. In Ontario, this is required under s. 14(4) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, which provides that no person shall be reappointed unless the chair recommends that reappointment "after being consulted as to his or her assessment of . . . the member's performance of his or her duties on the tribunal."

2. Indicators of Performance

To be effective, a performance assessment system should have clear indicators or standards that the member is expected to meet. Discussion should focus on the following:

(a) Functions-based approach versus a competencies-based approach, or a hybrid
  − this will determine the main headings (i.e., conduct hearings versus communications skills?);
  − coordinate this with the job description of a member
  − decide how many main areas versus sub-areas, and how general or detailed this should be;
  − a hybrid approach could identify the member competencies but only assess them if there are concerns when assessing the member's performance of the functions;
  − consider setting out the details of competencies or functions in a separate document or manual;

(b) Specific indicators in each main area
  − decide how many specific indicators, and how general or detailed the indicators should be;
  − generally, there should not be too many (e.g. five maximum) – these should be observable or measurable behaviours – e.g., "responds to and disposes of issues in a timely way"; "Member explains legal concepts in clear and simple language, focusing discussion on matters of relevance, and explaining appropriate procedure";

(c) How to measure for each indicator
  − possible use of numerical indicators (such as number of hearings or decisions, timeliness of decisions);
  − individual member statistics may be reported, may be compared against provincial or regional average, or may be compared against a target (which may be tribunal-wide or individualized);

(d) Relative weight to be attached to each indicator
  − e.g., collegiality may be of lesser importance than writing skills;

(e) consider whether there needs to be a core set of indicators that are tri-wide, and then some more detailed indicators that may be relevant only for specific divisions of the tribunal or cluster.

3. Ratings

There is a wide range of options to provide ratings:

(a) Ratings by the member (self-assessment) and ratings by the assessor – by both of them, or just one of them;

(b) Only one rating at the end of the form, or one rating for each main area, or rating for each specific indicator;

(c) Rating categories:
- two categories of ratings – meets expectations, does not meet expectations;
- three or four categories of ratings, non-numerical e.g. – below expectations, meets basic expectations, meets all expectations, exceeds expectations;
- numerical ratings – e.g., 1 to 5;

(d) No rating categories at all, just descriptive text or comment, e.g. – in a space on the form marked "general assessment";

(e) Alternatives include having no ratings for each area or indicator, but the form can require comments for each indicator that is below satisfactory or that exceeds expectations;

(f) To support possible reappointment recommendations, should there be a different standard or rating that supports the first reappointment after the initial two-year term versus a later reappointment of a more senior member – i.e., are the expectations different?

4. Process of Performance Assessment

The areas of discussion include the following:

(a) Sources of information for the performance assessment – e.g. – supervisor observing hearings, reading decisions;

(b) Role of Member – self-assessment;

(c) Role of Vice-Chair;

(d) Role of Legal Services and Other Staff;

(e) Procedures – steps, timing;

(f) Dispute resolution for disagreements about the assessment.

5. Other

(a) Coordination of performance assessment system with other policies and processes in the organization:
- Member Position Descriptions
- Vice-Chair Position Descriptions
- Tribunal's Professional Development Plan
- Code of Conduct
- Cross-appointments Policy
- Reappointments Process (including criteria, use of the performance assessment)
- Other?

(b) Consultation and communication – internal consultation; communication strategy.