

PERFORMANCE MEASUREMENT FOR TRIBUNALS – QUALITY

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Introduction

This brief conference paper will focus on tribunal-wide performance goals and targets, particularly as they relate to quality. Performance measurement for tribunals is one of the most challenging areas in administrative justice. But it is essential to meet the demands of the public for greater accountability and better service. An effective performance measurement system will include both individual and organizational components. Tribunals can benefit greatly from performance appraisals for individual staff and adjudicators; this includes appraisals of those who manage and lead them. In addition to the individual component, tribunals also need overall goals and targets that address their productivity and quality. This organizational component will be the focus of this paper.

The trend towards greater accountability for public agencies is clearly demonstrated in Ontario with its new *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*. This Act (not yet fully in force) will require all adjudicative tribunals to have certain policies or documents in place that relate to public or governance accountability, and it will require that the appointment of members be a competitive, merit-based process. This will have a positive impact on many tribunals by imposing the same sound public service management principles that apply to all government departments. But the distinctive identity of adjudicative tribunals should be recognized with a parallel move towards greater protection for adjudicative independence and impartiality. For tribunals, this is also an essential hallmark of quality.

Performance Measurement for Tribunals – Quality

Performance measures should be valid, cost-effective and timely. They should also be clear, accurate and consistent. Performance goals for efficiency or productivity are relatively easy in the sense that they can be numerical, quantified and objectively measured. But indicators of quality are much more elusive.

It is a challenge to have direct or numerical measures of goals such as fairness or quality. Examples of direct measures would be a survey of hearing participants, or an assessment of the quality of a hearing or decision by experts. But these measures may be difficult or expensive to implement, or they may infringe upon the adjudicative independence of the decision-makers if they are implemented improperly.

It may be more feasible to measure fairness or quality by using indirect or proxy indicators. Examples of this would include indicators such as:

- a merit-based appointments and reappointments process
- an effective member performance appraisal system
- delivering focused professional development
- providing access to effective legal services for members
- establishing an effective complaints policy

Some of the items above are reflected in the eight accountability documents that are required of all adjudicative tribunals in Ontario's new *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*. These documents are: memorandum of understanding, business plan, annual report, mandate and mission statement, consultation policy, service standard policy, ethics plan and member accountability framework.

But the existence of these policies or resources in a tribunal may not be enough to satisfy government or external expectations for performance indicators that are objective and measurable. Tribunals must find ways to measure quality in ways that are quantitative and direct where possible, but also feasible and appropriate to implement. The chart in the Appendix below provides an example of a performance measurement system that is focused on quality.

Core Activities of Tribunals

Tribunals should focus on performance measurement as it relates to the core activities of tribunals. This can cover three areas.

1. Case Management and Processing (Pre-Hearing)

- this should be accessible and timely
- this could numerically measure indicators such as timeliness, hearing readiness and rescheduling or adjournments
- it could also look at non-numerical factors such as how accessible the tribunal's forms and procedures are, or how courteous the staff are

2. Hearings and Other Proceedings

- these should be fair and focused
- this could numerically measure indicators such as length of hearings, adjournments, and cases overturned by the Court on grounds of the tribunal having violated natural justice
- it could also look at non-numerical factors such as how proactive or fair the hearings are, and how competent and trained the members are

3. Decisions and Reasons

- these should be high quality, consistent and timely
- this could numerically measure indicators such as timeframes for reserved decisions, and cases overturned by the Court on grounds related to the tribunal’s findings of fact or law
- it could also look at non-numerical factors such as a qualitative assessment of a random sample of decisions (with established criteria for quality decisions and reasons – i.e. – clear, complete and concise)

Sample Tribunal Performance Chart – Focus on Quality

The chart in the Appendix below is an example of how a tribunal may establish very specific performance goals, and measurable targets related to each goal. It starts from a broad concept of the three main stages of a tribunal’s work – pre-hearing, hearing and decision – with general outcomes stated for each of these stages.

As indicated, the focus is on quality. A complete performance system would include objective and measurable targets related to productivity goals – such as how quickly various steps of the tribunal process are completed, how much each proceeding costs, how many hearings a member completes on average, and so forth.

The development and implementation of a tribunal performance measurement system is beyond the scope of this brief conference paper. That process will need to consider issues such as:

- setting the foundation for action by aligning performance measurement with a tribunal’s values and vision (e.g. – values that include adjudicative independence; a vision that involves excellence; or a vision that involves a tribunal being accountable, predictable and proactive)
- internal and external consultation
- an action plan that realistically considers the practicalities involved and the resources required for implementation
- a communication strategy for informing the members and staff, and the external stakeholders about the results
- a mechanism for review of the plan and ongoing improvement

Appendix – Sample Tribunal Performance Chart – Focus on Quality

Outcomes	Performance Goals	Performance Targets
PRE-HEARING Timely and accessible pre-hearing processes that promote early resolution and hearing readiness	PH-G1 Cases are resolved without a hearing as early as possible.	PH-T1 At least ___ % of cases are resolved without a hearing.
	PH-G2 Files that go to a hearing are hearing ready. (a) Files are complete and organized, and provided to the members in a timely manner. (b) Follow-up has been made with parties and counsel to ensure compliance with rules and time limits. (c) Matters that might lead to an adjournment or to an inefficient hearing are dealt with before the hearing.	PH-T2 (a) Selected sample of cases are assessed for compliance with the hearing readiness checklist, with a numerical target of ____. (b) No more than ___% of hearings are re-scheduled or adjourned due to lack of hearing readiness.
HEARINGS AND PROCEEDINGS Fair and focused hearings and other proceedings	H-G1 Hearings and other proceedings are fair. (a) Principles of natural justice are followed (parties have opportunity to be heard by an impartial decision-maker). (b) Proceedings are conducted in a respectful and courteous manner.	H-T1 (a) Selected sample of proceedings are assessed for compliance with the fair proceedings checklist, with a numerical target. (b) No more than ___% of cases are overturned by the Court on basis of violation of natural justice.
	H-G2 Hearings are focused on the key issues required for the decision. (a) Key issues are identified. (b) Evidence and submissions are focused on the key issues. (c) Timeframe expectations are set and met.	H-T2 (a) Selected sample of proceedings are assessed for compliance with the proactive hearing checklist, with a numerical target of ____. (b) No more than ___% of hearings are adjourned due to insufficient time.
DECISIONS Clear, complete, concise reasons, and timely decisions	D-G1 Reasons are clear, complete and concise. (a) Reasons are transparent and intelligible. (b) Reasons include the key issues, law and evidence, and provide useful findings and analysis to justify the necessary conclusions. (c) Reasons do not have unnecessary detail.	D-T1 Selected sample of reasons are assessed against the checklist for clear, complete and concise reasons, with a numerical target of _____.
	D-G2 Decisions are issued as soon as practicable.	D-T2 ___ % of decisions issued within 30 days and ___% within 60 days.