

## 1. Independence

[Note – This first section has a different format from the remaining sections. It is much more detailed, and it can be used as an illustration of how more guidance can be provided for the ratings]

### Independence measures

### Rating

1. Is the tribunal established by statute?	0 No	5 Yes				
2. Funding—How much control does the tribunal have over its own budget and spending?	0 Weak	1	2 Intermediate	3	4	5 Stronger
<p><b>Weak:</b> the tribunal is funded from the budget of the portfolio department, which determines budget priorities, controls expenditures and can reallocate the tribunal's budget to other program areas.</p> <p><b>Intermediate:</b> the tribunal is funded from an appropriation for a courts and tribunals service, jointly managed by the heads of the jurisdiction.</p> <p><b>Stronger:</b> the tribunal is an independent body with its own parliamentary appropriation and is responsible for its own budget and expenditure.</p>						
3. Resources—How much control does the tribunal have over its facilities and services?	0 Weak	1	2 Intermediate	3	4	5 Stronger
<p><b>Weak:</b> the tribunal occupies or sits in premises shared with or provided by the host agency whose decisions it reviews, and relies upon the host agency to provide facilities and services.</p> <p><b>Intermediate:</b> the department provides accommodation, facilities management, security, IT, corporate, personnel management and other services on terms agreed between the President/Chair and the head.</p> <p><b>Stronger:</b> the tribunal controls its premises and in any given year has secure and sufficient funds to ensure provision of resources, facilities and services it needs to perform its functions.</p>						
4. Management—How much authority does the President/Chair have over the staff and operations of the tribunal?	0	1	2	3	4	5
	Weak		Intermediate		Stronger	

**Weak:** the President/Chair may have limited powers or time, and is dependent on the department or host agency to manage tribunal caseload, business and administration. The Act is silent as to the provisions for staff of the tribunal.

**Intermediate:** the President/Chair has the ultimate responsibility to manage caseload and tribunal administration but is unable to delegate management and administrative functions due to lack of senior or full time members or staff. The department must provide registry facilities for the tribunal and any staff that may be necessary; and the staff act under the direction of the senior staff manager at the Tribunal, who reports jointly to the department/Ministry and the President/Chair.

**Stronger:** the President/Chair has statutory powers to manage and direct the tribunal's case management system, constitution of panels and chairs and general administration, and can delegate functions to the Registrar or other members. The tribunal is a statutory agency for purposes of hiring and managing its staff. The President/Chair is the full-time CEO of the tribunal and the senior staff manager reports directly to the President/Chair.

5. How merit-based, transparent and de-politicized is the process for appointment?	0	1	2	3	4	5
	Weak		Intermediate		Stronger	

**Weak:** Minister appointments. Apart from statutory qualifications, criteria are ad hoc, implicit, opaque. The assessment process and panel is managed by the department. A member of the Minister's office may be on the panel. The President is consulted about the tribunal's needs.

Candidates' suitability is not assessed relative to others or is not assessed against explicit criteria or is not based on best evidence.

Recommendations are made through the department. Consultations are determined by cabinet procedures. No explanation is required.

**Intermediate:** Cabinet order (GIC or OIC) on nomination of portfolio minister. Applicants address the statutory qualifications and general criteria.

The President/Chair is involved in the recruitment and selection, with oversight and some involvement from the department or a central appointments secretariat

The interview panel may have political staff on it, and it assesses each applicant's relative suitability based on general criteria agreed by the government and/or the President/Chair Minister must consult another Minister or office on nominations. Minister may be required to justify the appointment process to Cabinet.

**Stronger:** Cabinet order on nomination of Justice minister.

Competency-based assessment criteria are publicized, and provided for applicants to address. The President/Chair oversees the assessment process, constitutes the assessment panel and ensures the process complies with procedures required by the Justice Minister.

A panel assesses each applicant's relative suitability against competency-based criteria and evidence.

President/Chair recommends suitable candidates to Minister based on panel's assessment, with either a short and ranked list or one name per vacancy.

Minister must consult President about proposed nominations. No person may be appointed without the recommendation of the President/Chair. [Note – See s. 14(4) of Ontario's *Adjudicative Tribunals Accountability Governance and Appointment Act, 2009*. – <https://www.ontario.ca/laws/statute/09a33>]

6. How merit-based, transparent and de-politicized is the reappointment process?	0	1	2	3	4	5
	Weak		Intermediate		Stronger	
<p><b>Weak:</b> Incumbents can apply for new term in competition with external applicants and are assessed under the same process and criteria. There are no procedures specifying timelines for notification. Notification may be before or even after expiry of the term. A change in government results in most members not being reappointed.</p> <p><b>Intermediate:</b> The member is provided with a minimum of six month's notice of non-reappointment. The President/Chair recommends reappointment or non-reappointment to the Minister, after the tribunal's objective and impartial assessment of the performance of the member.</p> <p><b>Stronger:</b> No member may be reappointed without the recommendation of the President/Chair. [Note – See s. 14(4) of Ontario Adjudicative Tribunals Accountability Governance and Appointment Act, 2009. – <a href="https://www.ontario.ca/laws/statute/09a33">https://www.ontario.ca/laws/statute/09a33</a>]The strongest situation would be that the President/Chair has the power to reappoint members. Members facing non-reappointment may seek review by an independent council.</p>						
7. How long and secure is the member's tenure, and how much do the term and conditions support the security and adjudicative independence of the member?	0	1	2	3	4	5
	Weak		Intermediate		Stronger	
<p><b>Weak:</b> Appointments and/or reappointments are for less than two years. There is no commitment to provide any prior notification of non-reappointment. A member is entitled to such remuneration as the Minister or the Governor determines from time to time in respect of the member. Rate reviews are infrequent, unprincipled and opaque. A member holds office on such terms and conditions as are provided for by the Act or otherwise as determined by the Minister in writing.</p> <p><b>Intermediate:</b> The member is provided with a minimum of six months' notice of non-appointment. Rates are determined by the Governor or Minister for classes of member and specified in the instrument of appointment. Rates may be increased during the term. A member holds office on the conditions stated in the Act and any conditions (not inconsistent with the Act) as decided by the Governor or by the minister and stated in the instrument of appointment. There is a limit on the maximum number of years that members may serve, but exceptions may be made by the Minister or government with transparent criteria.</p> <p><b>Stronger:</b> Rates for classes of member are determined and published by a statutory tribunal, reviewed at regular intervals, and cannot be reduced during term. A member holds office on the conditions stated in the Act. If not specified in the Act, there is no limit on the maximum number of years that members may serve, or if there is a limit, exceptions may be made by the President/Chair with transparent criteria.</p>						
8. What protections do members have from being removed?	0	1	2	3	4	5
	Weak		Intermediate		Stronger	

<p><b>Weak:</b> The Minister may remove a member from office at any time, without any express statutory requirements as to the grounds or the process. Vague grounds, e.g., carelessness, incompetence, inefficiency, failure or incapacity to carry out duties satisfactorily; breach of code or performance agreement. Minister or cabinet order may suspend a member on same grounds as for removal. There is no time limit on suspension and no provision for a process following suspension.</p> <p><b>Intermediate:</b> The Minister or cabinet order may remove member, if satisfied that specified grounds exist, without any express statutory requirements as to the process. Cabinet order may remove member on Minister's recommendation, or President/Chair may suspend a member, if specified grounds exist, and must initiate processes of investigation, report, hearing, leading either to removal process or the lifting of the suspension.</p> <p><b>Stronger:</b> Cabinet order may remove member only on an address from both Houses of Parliament OR cabinet order may remove on Minister's recommendations after process of suspension, investigation, report, natural justice and consultation with President/Chair. Proved misbehavior or incapacity (same as for judiciary).</p>	
<p>9. How much are members protected from liability or being called as a witness?</p>	<p>0      1      2      3      4      5 Weak                      Intermediate                      Stronger</p>
<p><b>Weak:</b> No statutory immunity for members. Immunity depends on common law.</p> <p><b>Intermediate:</b> A member is not personally liable for acts or omissions done in good faith in the intended performance of tribunal functions; and cannot be compelled to testify or produce documents relating to tribunal proceedings except in the circumstances specified in the Act.</p> <p><b>Stronger:</b> A member has the same protection and immunity as a Supreme Court judge has in performance of a judge's functions.</p>	
<p>10. How much authority does the Government have to direct, review or overturn the tribunal's adjudicative decision making?</p>	<p>0      1      2      3      4      5 Weak                      Intermediate                      Stronger</p>

<b>Weak:</b>	The Minister can give a written direction that is binding upon the tribunal provided that it is lawful. Statute allows the minister or agency to revoke or terminate a decision or order of the tribunal, or to alter its operation or effect.
<b>Intermediate:</b>	The tribunal must apply a lawful statement of policy that has been certified by the Minister. No executive body or minister is given power to revoke, overrule or alter a decision made or affirmed by the tribunal.
<b>Stronger:</b>	The tribunal is free to apply or depart from government policy when reviewing a decision in accordance with the legislation or common law. The statute expressly states that no minister or executive official or body can overrule or alter a decision of the tribunal in respect of a matter. The government has effective restrictions on Ministers and other political staff to prohibit contact with the tribunal about specific active cases.

11. Overall percentage of Tribunal Independence	0	1	2	3	4	5	6	7	8	9	10
	Weak						Stronger				

## 2. Tribunal Leadership and Effective Management

### Leadership measures

### Rating

14. Has a vision for the tribunal been developed and translated into concrete, measurable objectives and priorities?	0 No	1	2 Partially	3	4	5 Yes
15. Is the tribunal's vision communicated adequately among stakeholders?	0 No	1	2 Partially	3	4	5 Yes
16. Does the tribunal manage change, proactively and efficiently, to adapt to meet future demands?	0 Never	1	2 Sometimes	3	4	5 Always
17. Is there a defined leadership group within the tribunal which meets on a regular basis?	0 No	1	2 Partially	3	4	5 Yes
18. Does the leadership group promote a culture that stimulates and inspires innovation and continuous improvement?	0 Never	1	2 Sometimes	3	4	5 Always
19. Does the tribunal regularly publish its performance results and provide information on its service delivery to the public?	0 Never	1	2 Sometimes	3	4	5 Always

20. Overall perception of tribunal leadership and management	0	1	2	3	4	5	6	7	8	9	10
	Very poor						Excellent				

### 3. Fair Treatment

#### Fair treatment measures

	Rating						Score					
21. Does the tribunal take active steps to provide a fair hearing?	0 Never	1	2 Sometimes	3	4	5 Always						
22. Does the tribunal provide a free interpreter service in all community languages?	0 Never	1	2 Sometimes	3	4	5 Always						
23. Does the tribunal promote cultural competency to tribunal members and staff through ongoing training and practice?	0 Never	1	2 Sometimes	3	4	5 Always						
24. Are tribunal proceedings open to the public? (Pick yes if enabling statute mandates in camera hearing. Choose yes or no if statute does not.)	0 No	5 Yes										
25. Are all hearings recorded?	0 No	5 Yes										
26. Are parties (and the public) able to obtain copies of recorded hearings (or transcripts) available at a reasonable cost?	0 Never	1	2 Sometimes	3	4	5 Always						
27. Are tribunal decisions subject to a fair and efficient appeal mechanism?	0 No	1	2 Partially	3	4	5 Yes						
28. How do you rate the tribunal's overall capacity to deliver fair treatment?	0	1	2	3	4	5	6	7	8	9	10	
	Very poor						Excellent					

### 4. Accessibility

#### Accessibility measures

	Rating					
29. Does the tribunal have a strategy for dealing with self-represented persons?	0 No	5 Yes				
30. Are the tribunal's fees affordable and proportionate to the nature of the proceeding?	0 Never	1	2 Sometimes	3	4	5 Always (or not applicable)

31. Does the tribunal offer fee relief/waiver based on financial circumstances?	0 No	5 Yes			
32. Does the tribunal offer e-filing?	0 No	1	2 Partially	3	4 5 Yes
33. Does the tribunal provide access to telephone and videoconferencing facilities to save parties travel time and costs?	0 No	5 Yes			
34. Does the tribunal publish user guides in its main areas of jurisdiction?	0 Never	1	2 Sometimes	3	4 5 Always
35. Does the tribunal have a functional and easy to access website?	0 No	5 Yes			
36. Is there access to pro-bono legal services and are parties made aware of these services?	0 Never	1	2 Sometimes	3	4 5 Always
37. Are tribunal staff trained to explain tribunal processes and other practical information to tribunal visitors and users?	0 No	5 Yes			
38. Does the tribunal have an information desk or reception staff to assist users and visitors?	0 No	5 Yes			
39. Is there a provision to hold hearings in other locations away from the main location of the tribunal to reduce party travel time and transaction costs?	0 No	5 Yes			
40. Does the tribunal hold hearings at times which may be more convenient to the parties (e.g. in the evenings and/or on weekends)?					
41. Do people with disabilities or elderly people have easy access to tribunal facilities and processes?	0 Never	1	2 Sometimes	3	4 5 Always
42. Are the waiting and hearing rooms properly equipped and of a reasonable standard?	0 No	5 Yes			
43. Are there rooms available where lawyers and other representatives can meet with their clients?	0 No	5 Yes			
44. Does tribunal staff have sufficient time and training to provide parties with an appropriate level of assistance?	0 Never	1	2 Sometimes	3	4 5 Always

45. Are members sufficiently trained to provide appropriate information to the participants in the proceedings, while still maintaining the impartiality and fairness of the tribunal?	0 Never	1	2 Sometimes	3	4	5 Always
46. Are the participants in proceedings, and the public, treated with courtesy and respect?	0 Never	1	2 Sometimes	3	4	5 Always

47. How do you rate the tribunal's overall accessibility to users and the public?	0	1	2	3	4	5	6	7	8	9	10
	Very poor						Excellent				

## 5. Professionalism and Integrity

### Professionalism and integrity measures

Rating

48. Is there an initial competency profile used for tribunal members at the start of their appointment?	0 No	5 Yes					
49. Does the tribunal have a strategic approach to professional development, aligned to key competencies?	0 No	1	2 Partially	3	4	5 Yes	
50. Is there a Code of Conduct for tribunal members?	0 No	5 Yes					
51. Is there a formal ongoing appraisal system for members?	0 No	5 Yes					
52. Are the number of successful challenges to tribunal decisions recorded and made available to the public?	0 No	5 Yes					
53. Is there an internal process for discussing decisions that have been overturned on appeal?	0 No	1	2 Partially	3	4	5 Yes	
54. Do tribunal members practice a form of peer review (discussion of cases between colleagues)?	0 No	5 Yes					
55. Are tribunal members taught ADR techniques (such as mediation)?	0 Never	1	2 Sometimes	3	4	5 Always	
56. Are there specific methods used to promote legal certainty, for example is there a system of binding internal jurisprudence, guidelines, or does the organization hold regular meetings to discuss relevant jurisprudence?	0 No	1	2 Partially	3	4	5 Yes	



57. How do you rate the tribunal's overall professionalism and integrity?	0	1	2	3	4	5	6	7	8	9	10	
	Very poor									Excellent		

## 6. Accountability

### Accountability measures

Tribunals serve the public through the provision of accessible, fair and efficient dispute resolution services. In delivering that service they are accountable to the public. An effective complaints mechanism is an important means of ensuring that the public's expectations of members and staff are being met. Regular stakeholder/community engagement and reporting tribunal performance are also part of ensuring that the tribunal is accountable to the public.

	Rating					
58. Does the tribunal provide an effective and transparent complaints mechanism?	0 Never	1	2 Sometimes	3	4	5 Always
59. Is there regular reporting of tribunal performance to stakeholders?	0 Never	1	2 Sometimes	3	4	5 Always
60. Does the tribunal undergo regular community/ stakeholder engagement?	0 Never	1	2 Sometimes	3	4	5 Always
61. Are tribunal decisions publicized (website, CanLII, etc)?	0 No	5 Yes				
62. Does the tribunal have any "open days" to provide an opportunity for the community to visit the tribunal?	0 No	5 Yes				
63. Does the tribunal have a customer service charter?	0 No	5 Yes				
64. Does the tribunal publicly report on its performance on a regular basis? (*if you do not have established metrics or do not report publicly, select "0")	0 Never	1	2 Sometimes	3	4	5 Always
65. Are tribunal decisions subject to appeal or judicial review?	0 No	5 Yes				
<p><b>Weak:</b> There is provision for review on the merits by an appeal division constituted with judicial officers, or by a higher tribunal whose decisions are subject to judicial review.</p> <p><b>Intermediate:</b> Judicial review is restricted by a privative clause and there is no provision for appeal to a higher tribunal with judicial officers.</p> <p><b>Stronger:</b> There is provision for judicial review of tribunal decisions by a superior court, OR an appeal lies to a court on a question of law.</p>						

66. How do you rate the tribunal's overall accountability?	0	1	2	3	4	5	6	7	8	9	10
	Very poor  Excellent										

## 7. Efficiency

### Efficiency measures

### Rating

67. Have appropriate performance benchmarks been established for case disposition (by case type)?	0 No	1	2 Partially	3	4	5 Yes
68. Has a performance benchmark been established for the delivery of reserved decisions?	0 No	5 Yes				
69. Have policies and procedures been implemented, where appropriate, to minimize parties' costs?	0 No	1	2 Partially	3	4	5 Yes
70. Does the tribunal provide timely and appropriate access to ADR and early resolution?	0 Never	1	2 Sometimes	3	4	5 Always
71. Is there a system to monitor the effective utilization of each member?	0 No	1	2 Partially	3	4	5 Yes
72. Is there the flexibility to assign members to particular areas of the tribunal's jurisdiction in order to meet changes in demand? <i>(if not applicable, select 5)</i>	0 No	1	2 Partially	3	4	5 Yes
73. Is there a system for measuring whether tribunal hearings start on time?	0 No	1	2 Partially	3	4	5 Yes
74. Have the parties the opportunity to request priority treatment of the case if there are legitimate reasons to do so?	0 No	5 Yes				
75. Are measures taken to speed up cases that become delayed and to reduce any backlog that occurs?	0 Never	1	2 Sometimes	3	4	5 Always
76. Does the leadership group periodically evaluate tribunal performance?	0 No	5 Yes				
77. Is it possible to determine the total number of new, pending and decided cases in a given period?	0 No	5 Yes				

78. How do you rate the tribunal's overall efficiency?	0	1	2	3	4	5	6	7	8	9	10
	Very poor								Excellent		

### 8. Client Needs and Satisfaction

Client needs and satisfaction measures

Rating

79. Has the tribunal established user groups that meet regularly and provide constructive feedback in respect of each jurisdictional area?	0 No	1	2 Partially	3	4	5 Yes
80. Does the tribunal survey parties in order to measure user satisfaction?	0 No	5 Yes				
81. Does the tribunal regularly meet with key stakeholders?	0 Never	1	2 Sometimes	3	4	5 Always

82. How do you rate the tribunal's client satisfaction?	0	1	2	3	4	5	6	7	8	9	10
	Very poor								Excellent		