



Society of  
Ontario  
Adjudicators and  
Regulators

## **Society of Ontario Adjudicators and Regulators (SOAR) Tribunal Adjudicators Performance Evaluation Preliminary Research**

Final Report

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## Executive Summary

In winter and spring 2023, the Society of Ontario Adjudicators and Regulators (SOAR) conducted preliminary research on current adjudicator performance evaluation practices focussed on Ontario tribunals. This research was a first step in a broader project of developing best practice guidelines for tribunals that wish to engage in such evaluation activities.

In a review of selected texts about adjudicator performance evaluation, SOAR observed both resistance to adjudicator performance evaluation in certain cases and the development of evaluation procedures by some tribunals. This current preliminary research suggests that there may now be less resistance to adjudicator performance evaluation than there was in the past. The current climate may therefore be conducive to developing best practices in this area.

Overall, 22 tribunals participated in this research. 20 tribunal representatives responded to a survey, 6 shared adjudicator performance evaluation procedures and 5 participated in interviews. SOAR also conducted brief document review, including of evaluation procedures shared by participants.

From this preliminary research, SOAR concludes that more extensive research in this area would be helpful. This includes but is not limited to collecting data from, adjudicators who are not in a management position at their tribunal and who have been evaluated. SOAR also observed that there are enough tribunals and lead adjudicators who have experience with adjudicator performance evaluation practices to start producing models for other tribunals who wish to develop such practices. Under SOAR's leadership, additional research and best practices development may simultaneously occur concurrently to allow each to inform the other.

## Background

The purpose of this preliminary research is to review current practices amongst tribunals (to the exclusion of courts of justice) and understand why they have (or have not) adopted their evaluation systems. This project will allow SOAR to reflect on how it could expand this research to develop best practices guidelines for tribunals that wish to learn from other tribunals and improve or build their own systems of evaluation.

SOAR wrote to 26 tribunal representatives and secured participation from 22 tribunals (16 based in Ontario and 6 Canada-wide), including 4 regulatory bodies. SOAR reviewed selected key documents, including performance evaluation procedures provided by participating tribunals. It also circulated an anonymous survey to participating tribunals and 20 tribunals completed it. Finally, SOAR conducted interviews with 5 participating tribunals, all of which have developed performance evaluation procedures.

This report summarizes preliminary research findings, starting with selected document review, followed by survey results, performance evaluation procedures review, and interview results. The report also includes recommendations for next steps and an appendix providing details about methodology.

## Selected Document Review

“In 1993, a performance management committee was established for the Society of Ontario Adjudicators and Regulators to examine performance standards for tribunal members. It was found that most tribunals do not have a performance management system. Ontario adjudicators noted several barriers exist in effecting an evaluation system, including resistance to change, inadequate resources and time, disagreement around who should conduct the evaluations, the perception that performance evaluation will interfere with decision-making independence, and concerns around how the results of the performance evaluation will be used. Tribunals were also concerned about how performance standards will be developed, and compliance will be measured (Performance Management Committee Society of Ontario Adjudicators and Regulators, 1995).”  
(McCaffrey, 2016, p. 17)

Reviewing four selected texts published between 2010 and 2017 about adjudicator performance evaluation (see Appendix A) revealed the following key points:

- Adjudicator performance evaluation appears to be a rare practice at tribunals;
- Adjudicator training seems to be the most common quality control mechanism;
- Performance evaluation models do exist, but the main issue seems to be to build trust amongst adjudicators in performance evaluation processes;
- Resistance to adjudicator performance evaluation is based on concerns related to fairness, independence, lack of time and resources to conduct such a process, and lack of trust in the process (how it would be conducted and how results would be used, including for reappointment decisions); and

- Past research on this topic was based on literature review and limited tribunal involvement through surveys.

The following information appears to be lacking about adjudicator performance evaluation:

- Details regarding how the few tribunals that conduct adjudicator performance evaluation do so;
- Details about the experience of adjudicators who either conduct evaluation or have been evaluated; and
- Information about the impact of such evaluation practices.

Based on these selected key documents, our expectation in conducting a survey was that most respondents would not have adjudicator performance evaluation procedures in place and that there would be resistance to the development of such procedures.

## Survey Results

“Performance metrics are taken seriously at our Tribunal, and we also include a 360-feedback component where vice-chairs and full-time member inputs are considered in the overall assessment. We have built a collegial team absent of interpersonal drama - proud of it.”

- Survey respondent

On the contrary, our survey revealed that 79% of respondents had such procedures. The level of trust of respondents in their tribunal adjudicator performance evaluation process was also higher than expected (85% of respondents either trust or highly trust this process). Three quarters (75%) of respondents who do not yet have adjudicator performance evaluation procedures in place also said that they would trust their tribunal in developing or redesigning fair and appropriate procedures. In short, both the number of tribunals having adjudicator performance evaluation procedures in place, and the general trust in tribunals developing or implementing such procedures was higher than expected.

Based on the survey, current adjudicator performance evaluation procedures have the following characteristics:

- More than 50% of them were adopted more than 5 years ago.
- Their main goals are to:
  - o Improve training/professional development; and
  - o Inform re-appointments/employment decisions.
- The lead adjudicator (chair/vice-chair) is typically responsible for conducting performance evaluation.
- Close to half of tribunals (47%) conduct performance evaluation once per year.
- The top four methods that are used are:
  - o Feedback from lead adjudicator (chair/vice-chair) (100%)
  - o Review of written decisions (93%)

- Self-evaluation (80%)
- Quantitative measures (i.e., statistics on timeliness of decisions or number of decisions rendered) (73%)
- Evaluation impacted adjudicator training, either by helping to identify areas for future training (73%) or increasing training (80%).
- In most cases, performance evaluation results were considered a factor in re-appointment/employment decisions.

Tribunals that **did not** have adjudicator performance evaluation procedures provided the following information:

- Only two tribunals (out of four) had had past discussions about adopting such procedures.
- The two main reasons why respondents' tribunals had not adopted procedures were:
  - Lack of time; and
  - Lack of models that would be appropriate for adjudicators.

As stated above, it seems clear that performance evaluation models exist, but they may not necessarily be readily available for use by all tribunals. These findings confirm that making adjudicator performance evaluation templates accessible for tribunals to use would be helpful.

### **Performance Evaluation Procedures Review**

A total of 6 tribunals confidentially shared their performance evaluation procedures. One tribunal, which agreed to make its participation in this research public, has published its procedures on its website: see the Consent and Capacity Board's [Peer Performance Evaluation Program](#) and [Member Performance Standards on its website](#).

Reviewing performance evaluation procedures revealed the following key points:

- Standards against which adjudicators are evaluated are clearly detailed.
- Lead adjudicators generally have an important role to play in the evaluation process. However, at larger tribunals, other adjudicators who have a management role or have been identified for their leadership skills also evaluate colleagues.
- Evaluation forms or interviews allow the adjudicator who is being evaluated to comment on their evaluation.
- The following evaluation methods are commonly used:
  - Self-evaluation
  - Review of hearing recordings
  - Review of written decisions
  - Comments from peers
  - One on one meeting with the lead adjudicator
- Subjects covered include:

- Personal qualities (respectful conduct and communication, collegiality, contribution to the work environment, etc.)
- Knowledge (law, industry, equity, diversity and inclusion, information technology, English and French languages, etc.)
- Hearing-related considerations (preparedness, management, appropriate procedure, etc.)
- Decision writing (clarity, accuracy of reference to applicable law, intelligibility, etc.)
- Productivity and timeliness
- Participation in training

## Interview Results

As stated above, five tribunals agreed to be interviewed for this research. Four interviewees were lead adjudicators at their respective tribunals and one interviewee was an adjudicator delegated by the lead adjudicator, due to their knowledge regarding adjudicator performance evaluation procedures. As these tribunals also shared their tribunal's performance evaluation procedures prior to interviews, we were able to discuss their procedures during interviews, in addition to addressing general questions related adjudicator performance evaluation.

Interview results are summarized below, based on four themes that emerged from interviews: the importance and purpose of evaluation, other quality control mechanisms, current practices, and adjudicator perception of evaluation.

### Importance and purpose of Evaluation

“As with government appointments, accountability in the context of tribunal appointments is not the same as it would be in a regular organization, so it is good to bring as much accountability as possible within that context.”  
- An interviewee

Interviewees agreed that evaluation was important, highlighting the following points:

- Performance evaluation is important, but it is not the only way to produce adjudicator excellence. Recruitment practices, ongoing collegial discussion between adjudicators, review of each other's work, support from legal teams, training, mentoring, and coaching are other key quality control mechanisms.
- The purpose of performance evaluation is to ensure good governance, accountability, fairness, transparency, excellence and merit-based employment or reappointment recommendations.
- Lead adjudicators find evaluation procedures helpful to plan training for adjudicators, manage productivity, distribute work equitably, and inform reappointment recommendations.

- At larger tribunals, one on one performance evaluation meetings between an adjudicator and the lead adjudicator are important for the adjudicator to share their experience and for the lead adjudicator to get insight into this experience.

### Other Quality Control Mechanisms: Connection and Collaboration

“Regular internal round tables where all adjudicators and counsel talk about different topics, about things that affect our work, are essential. It is educational, but it also gets discussions going between adjudicators.”

- An interviewee

Interviewees believe that adjudicator performance evaluation on its own cannot ensure quality control. Connection and collaboration between adjudicators were perceived as equally important:

- Smaller tribunals can more easily create collegiality and collaboration between adjudicators through regular meetings and reviewing each other’s decisions.
- Larger tribunals use other strategies to increase interaction and collegiality between adjudicators, such as dividing adjudicators in smaller groups led by a manager adjudicator, organizing regular virtual trainings where all can participate, planning informal virtual social gatherings, and using break out rooms during trainings or gatherings to facilitate discussion.
- At larger tribunals where adjudicators work alone most of the time, isolation is an obstacle to adjudicator excellence. Additional support mechanisms, opportunities to receive feedback, and strategies to connect with colleagues are required to cope with this problem.

### Current Practices

“As manager, I want to read written decisions. Most decisions are oral so I can’t read all transcripts, but I read all written decisions. I review a sample of transcripts (three per member, twice per year). If had time, would like to sit in and listen but I can’t do this, and it might be intimidating.”

- An interviewee

“All new appointees have a mentor who meets with them regularly.”

- An interviewee

Interviews provided an opportunity to gather information regarding current adjudicator performance evaluation practices, which also highlighted best practices in this area:

- It is important for adjudicators to know the standards against which they will be evaluated.
- Evaluation is important for adjudicators of all levels of experience.
- Evaluation procedures must be updated regularly as the law and expectations of adjudicators’ work change.

- At some tribunals there are procedures to evaluate the lead adjudicator, but not at others.
- Conducting evaluations more than once per year is considered excessive and unnecessary. In the context of two-year mandates, mentorship and training combined with one evaluation prior to reappointment is considered appropriate. In the context of longer mandates, mentorship and training at an early stage, mid-mandate evaluations, and pre-reappointment evaluations are considered helpful. The presence of other quality control mechanisms can help assess the appropriate frequency of evaluation.
- Evaluation procedures should be adapted to the circumstances of each tribunal (size, type of work, role of each adjudicator, etc.).
- Performance evaluation processes that do not allow for communicating constructive feedback and assessing adjudicators' work in detail are not helpful.
- Some tribunals have involved adjudicators in designing performance evaluation procedures at the beginning but have not always sought feedback from them on an ongoing basis. Some tribunals use ad hoc committees to review evaluation procedures.

### Adjudicator Perception of Evaluation

"In my first year doing these evaluations, I provided brief comments, and I was surprised that people wanted more comments with examples. People want feedback. This is the only way to get feedback. People respond well in general."  
 - An interviewee

Interviewees shared views on how adjudicators at their tribunal perceive evaluation:

- There is no significant pushback against performance evaluation procedures.
- When done respectfully and fairly, adjudicators like receiving feedback on their work.
- The use of quantitative measures can be confronting for adjudicators. However, some tribunals have successfully used a limited number of quantitative measures mostly to evaluate full-time members, such as average time to render written decisions. In these cases, expectations regarding timeliness were communicated clearly on an ongoing basis, were realistic and provided some flexibility.
- Where a tribunal encounters stakeholder criticism regarding adjudication quality or timeliness, review processes are more challenging to conduct. Such processes need to properly support adjudicators, otherwise they will not be well received.
- While all agree that adjudicator independence is important, none consider that performance evaluation impedes on independence. Evaluations cover how adjudicators work, but not what they decide.

### Conclusion

Adjudicator performance evaluation processes, and adjudicator perception of such processes, seems to have changed from what was observed in the review of selected



documents. A significant number of tribunals in Ontario and Canada conduct adjudicator performance evaluation without encountering resistance. Although this preliminary research involves a limited number of tribunals, which may affect results, it appears that adjudicators are more open to performance evaluation than they might have been in the past. Models for such evaluation have been developed and could be used by more tribunals.

Key factors for successfully conducting adjudicator performance evaluation, include the following:

- Involving adjudicators in the development or review of procedures.
- Informing them of performance standards that apply to them.
- Ensuring that procedures are adapted to the activities and size of each tribunal.
- Having other quality control mechanisms in place.

In that context, we anticipate that SOAR's future efforts at developing best practices and templates for adjudicator performance evaluation would be helpful and well received by tribunals.

### **Future Recommendations**

Recommendations arising from this research includes a need for conducting further and more in-depth research. This report also suggests that if there is an immediate need for adjudicator performance evaluation best practices to be developed, it would be possible to start producing such best practices based on currently available information and update them as research evolves. As such, next steps could include:

- Conducting additional research, including to gather data from adjudicators who are not in a leadership position at their tribunal and have experienced being evaluated.
- Considering the following key best practices emerging from this preliminary research:
  - o Adjudicator performance evaluation should only be used as one quality control mechanism amongst others.
  - o Evaluation procedures should be adapted to the context, activities, and size of each tribunal.
  - o The lead adjudicator should be evaluated, as much as other adjudicators.
  - o Adjudicators who evaluate colleagues should be trained on how to conduct performance evaluations.
- Setting up a working group to develop best practices for adjudicator performance evaluation and templates for such evaluation, for tribunals of different sizes.
- Sharing best practices and templates widely, to facilitate use by tribunals.

## Appendix A: Methodology

The first step in the research was to review the following four key documents, some of which are publicly available through the Council of Canadian Administrative Tribunal's [Member Performance Assessment Repository](#):

McCaffrey, Cassie, "Appraising administrative tribunal member performance," applied project conducted in the context of the Athabasca University MBA Program (October 31, 2016) (not available online).

Society of Ontario Adjudicators and Regulators, "Results of research into the process of appointments and re-appointments to administrative tribunals in Québec," prepared by Rita Zinejda, April 2016 ([link](#)).

Society of Ontario Adjudicators and Regulators, "Systems of evaluation of Tribunal members in Quebec," prepared by Zina Rita, 2017 ([link](#)).

Yee, Gary, "Performance measurement for tribunals – Quality," conference paper presented at the Conference of Ontario Boards and Agencies, November 4, 2010 ([link](#)).

These documents were chosen because some of them provided an overview of SOAR's past work on adjudicator performance evaluation, and others provided a mix of academic research and practitioner observations on the same topic.

SOAR then reached out to tribunals to invite them to participate in the research. SOAR contacted mainly Ontario-based tribunals, but also included some Canada-wide tribunals. Overall, SOAR wrote to 26 tribunal representatives and secured participation from 22 tribunals (16 based in Ontario and 6 Canada-wide), including 4 regulatory bodies. Participating tribunals were provided with reassurance that their identity, as well as the identity of their representative, would be kept confidential and that research results therefore would be shared anonymously unless they consented to be identified publicly.

It is important to note that tribunals that chose to participate in this research likely have a greater level of interest in the subject matter, which may affect results.

The third step in the research was to circulate a survey to participating tribunals, which was done in February 2023. A total of 20 tribunals completed the survey, which represents a high participation rate at 77%.

Participating tribunals that have adjudicator performance evaluation procedures were then asked whether they would be willing to share such procedures. Six tribunals agreed to share their procedures.

Finally, five tribunals that have adjudicator performance evaluation procedures were invited to participate in interviews to complete the research. These five tribunals accepted this invitation and offered helpful insight into the research.