

1. Overview

This policy's aim is to set out a fair and transparent framework for the Chief Adjudicator's management of Adjudicators' performance. The policy promotes the Capital Markets Tribunal's goals of excellence, efficiency, high-quality service, and Adjudicators' continuing professional development.

The Chief Adjudicator will use the information gathered through the process described here to:

- assess the performance of each Adjudicator;
- identify needs and opportunities relating to professional development, including continuing education, for each Adjudicator and for the Tribunal overall; and
- generate merit-based recommendations by the Chief Adjudicator to the Minister of Finance about renewal or non-renewal of Adjudicators' appointments.

Adjudicators will use the framework in this policy to guide their own self-evaluation as part of an annual assessment process.

2. Adjudicative independence

The framework must achieve the above goals while at the same time preserving adjudicative independence, a fundamental principle of administrative tribunals. Adjudicative independence ensures that when adjudicators are making decisions, they are free from external pressures and they do not fear consequences (e.g., less likelihood of their being recommended for reappointment) flowing from **what** they decide, as opposed to **how** they reach and communicate their decisions.

In keeping with the importance of adjudicative independence, Adjudicators' performance will be assessed according to the criteria set out below, without reference to the outcome of any specific hearing.

3. Assessment criteria

The performance management framework incorporates many criteria, which are grouped here into three core areas: (i) general personal qualities, (ii) knowledge, and (iii) hearing-related considerations. The criteria are as follows:

- General personal qualities
 - works professionally and constructively in every respect
 - is willing to allocate necessary time
 - demonstrates a willingness and ability to learn, and a commitment to continuous improvement
 - communicates and works respectfully, inclusively, cooperatively, and effectively with peers and staff
 - contributes to the Tribunal generally (e.g., participation in group discussions, volunteering for committees or projects, offering suggestions for improvement)
 - embraces Tribunal-related technology
 - responds promptly to communications
 - works efficiently

- Knowledge
 - understands the mandate and jurisdiction of the Tribunal
 - understands administrative law concepts
 - has expertise in, or an advanced understanding of the law, rules and policies in, one or more of: (i) finance, (ii) administrative law, (iii) products, (iv) registrants, (v) marketplaces, (vi) issuers, (vii) mergers and acquisitions, and (viii) market misconduct

- is able to interpret and apply relevant legislation, e.g., *Securities Act*, *Commodity Futures Act*, *Statutory Powers Procedure Act*
- Hearing-related considerations
 - prepares conscientiously for hearings
 - demonstrates integrity, good judgment, and sound analytical capability
 - acts impartially, objectively, independently and with an open mind
 - shows respect toward, listens actively to, and communicates clearly with, persons appearing before the Tribunal
 - fairly assesses the credibility and reliability of evidence
 - writes well-crafted and timely reasons for decisions
 - with appropriate experience and/or training, and in appropriate circumstances, is capable of being a panel chair

4. Methods of assessment

Each Adjudicator will participate in a performance assessment at least annually, near the anniversary date of their appointment. The process will begin with a self-evaluation by the Adjudicator, using the criteria set out above.

The Chief Adjudicator will also solicit comments from other Adjudicators, the Corporate Secretary & Director, and the Manager, Adjudication Legal Services, and may solicit comments from other staff of the Governance & Tribunal Secretariat, in discussions structured using the above criteria. Comments from any of these individuals about an Adjudicator will not be for attribution unless the commenter gives express prior consent. In discussing any colleague feedback with the Adjudicator being assessed, the Chief Adjudicator will ensure that to the extent any such feedback is communicated to the Adjudicator, it will be done in aggregate and in a way that does not allow the Adjudicator to identify the source of the feedback.

In addition to those two formal parts of the process, the Chief Adjudicator will rely on: (i) frequent informal discussions between Chief Adjudicator and Adjudicator, (ii) the

Chief Adjudicator's involvement as a fellow panel member of the Adjudicator, (iii) the Chief Adjudicator's monitoring, as an observer or by transcript, of hearings in which the Adjudicator is or was a panel member, and (iv) an assessment of the Adjudicator's allocation of time to various tasks, as reflected in the Adjudicator's claims for remuneration.

The assessment process will end with a 1-on-1 discussion between the Chief Adjudicator and the Adjudicator. The Chief Adjudicator will then give the Adjudicator a copy of the assessment.

5. Professional development plan

Immediately following the assessment, the Adjudicator will work with the Chief Adjudicator to develop a plan to further the Adjudicator's professional development. The plan will contain target activities for the coming year. Target activities may include:

- attendance at, or contribution to, organized continuing education sessions, either internal or external;
- self-study; and
- specific opportunities and roles associated with proceedings before the Tribunal (e.g., chairing a panel, writing reasons).

The Adjudicator and Chief Adjudicator will discuss the Adjudicator's progress against the professional development plan at the six-month mark and as part of the Adjudicator's annual assessment.