

OFFICE MANAGEMENT

How to Appraise Lawyer Performance

By Anthony G.V. Tobin

THE PARTNERS ARE HOLDING their annual draft meeting. The question on everyone's mind, particularly the firm's seven articled students, is "who will make the draft?" You'd think the partners would be in an excellent position to make their selection. After all, the students have been with the firm for a year and are in the office from dawn till dusk every day.

As usual, the partners begin the selection process by filling in appraisal forms that ask them to comment on such things as attitude, research ability, client relations, business development and support to partners.

The partners know there are openings for two associates in the civil litigation section. But, unfortunately, the information on the appraisal forms tells them nothing about the students' abilities and aptitude for the tasks of litigation lawyers. Although the comments are interesting, most are general and vague, supplying little detailed and objective information to aid the decision-making process.

So, one of the senior partners mentions that his student, John, has made several applications in Chambers during the year, seems to get along with everyone and would probably "fit" quite well. The other partners, not having any less subjective opinions to offer, don't want to challenge the senior partner's view.

Hence, John is offered one of the positions. A year later, when he leaves the firm, the partners will discover John's real interest and ability was in solicitor's work. They'll learn he accepted the associate position because, at the time, he had no other opportunities. His work on litigation files proved to be disastrous and a drain on the firm's resources.

Although this is an extreme example, it does illustrate the problems that can arise when a law firm lacks accurate, detailed and objective information about students' and lawyers' performance. It's trite to say that lawyers are the firm's major investment, yet the methods used to appraise them are often less sophisticated than the decision-making



process involved in the firm's purchase of a computer system.

Few articled students undergo any objective appraisal of their performance as barristers or solicitors before they are offered positions as associates. Few associates undergo any type of sophisticated appraisal before they are offered partnerships. The only objective information usually available to partners doesn't relate to the quality of performance, but simply counts lawyer output in billable hours. Such information says little, if anything, about an individual's skills and abilities as a barrister or solicitor.

The disadvantages of not having an effective performance appraisal program seem

obvious. Articled students and associates find themselves involved in a high-stakes career game without really knowing the applicable rules. The only rule anyone is sure about is: "Keep Up Billable Hours."

The firm's management also finds itself faced with personnel decisions, but lacking hard criteria and sound information. And, with no ongoing evaluation process, a key opportunity for effective training and staff development is lost.

A performance appraisal program tailored to a law firm's needs can deliver information relating not only to specific legal tasks but also to the firm's general goals. Appraisals are useful not only when it's time to hire asso-

ciates or "take on" partners; they also help with other aspects of management within the firm, such as:

- selecting counsel for each department;
- setting levels of remuneration;
- designing bonus and incentive schemes;
- identifying needs in skills upgrading;
- hiring and firing paralegals and support staff;
- making promotion decisions;
- setting performance goals and standards;
- providing employee evaluation and feedback;
- documenting employee performance; and
- researching ways to improve performance through changes to the work environment.

These areas need an accurate information base for effective and cost-efficient decisions to be made. But, choosing the method to gather the information must be done carefully. The appraisal methods must match their purpose and be simple enough to be administered by lawyers within the firm. Of the various ways to evaluate performance, these are the most common:

Essay Appraisal: This calls for the evaluator to write a short essay on the employee's strengths, weaknesses, potential, etc. It's a useful technique for generating general impressions, but not for comparing individual performances. The biggest drawback is that the essays tend to vary in length, content and assessment criteria. Although this is a common method used by law firms, it doesn't serve personnel selection well.

Graphic Rating Scale or Behaviourally Anchored Rating Scale (BARS): This requires the evaluator to assess performance by using a rating scale. The criteria are described in ways that make it possible to objectively measure performance. This rating scale will assess both the quality and quantity of an individual's work. It's more consistent and reliable than the essay technique and is the most widely used.

Forced-Choice Rating: The evaluators are asked to choose, from a list of statements, those that best describe the individual. Each statement holds a different value in the result. The theory is that the evaluator doesn't know these values and so can't play favourites. The rating statements are difficult to develop, but can help translate vague concepts, such as attitude, into concrete terms.

Critical Incident Appraisal: This calls for the supervisor or evaluator to keep a "little black book" on each employee and to record incidents of positive and negative behaviour. The drawback to this technique is that the employee is usually not aware of what



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amounts to positive or negative behaviour or what is "reportable." It's time-consuming for the supervisor, and can lead to paranoia among employees.

Management By Objectives: This requires that the employer and employee establish goals against which the employee's performance will later be measured. It's useful as an appraisal technique when the issue isn't whether to hire, but to ensure a high standard of performance and motivation. The goals are both quantitative and qualitative in nature.

THERE ARE TWO TYPES OF BARRIERS to watch out for when developing a performance appraisal program: "systemic" and "behavioural." The systemic barriers are those resulting from poor program design, such as a mismatch between program goals and the evaluation techniques used. The behavioural barriers are the apprehension

and suspicion experienced by employees and management over the perceived hidden agenda of the appraisal program. Employees are threatened and suspect the worst. Managers tend to worry about the damaging effect that negative evaluations may have on their relationship with employees.

To avoid these barriers, five design principles should be kept in mind when developing and implementing a performance appraisal program:

Keep it participatory: Ensure employee involvement at every stage of design, implementation and review. Most experts stress that effective participation of employees is critical to the complete success of a performance appraisal program.

This element becomes even more crucial when the program is aimed at lawyers, since certain assumptions already exist about professional standards, competence and autonomy. In the early stages, the most direct way to involve employees is to circulate a brief questionnaire on every aspect of the proposed program.

This also involves giving all lawyers feedback on the results of survey data. For example, the general development of the law firm program can be facilitated by using an in-house committee composed of articled students, associates and partners.

Keep it simple: Make it easy to understand and easy to implement.

Keep it focused: It's critical that the aims of the program be identified in detail. If those stated intentions change, then the new goals should be communicated to all involved.

Keep it responsive: Modify it when necessary; seek feedback and monitor it to ensure it's working well. It's essential that there be a planned and methodical approach. Someone has to be responsible for overseeing the program, ensuring it meets stated goals, the goals are still relevant and the implementation is consistent and fair.

Keep it confidential: Ensure the information is kept confidential by using lawyer codes or numbers on appraisal forms. Keep the records in a computer database with password access only.

The law firm that can objectively appraise, train and choose its lawyers given hard and objective information about their performances, is in a much better position to make effective personnel decisions and to provide detailed feedback to its lawyers about the quality of their work.

Managing human resources effectively calls for a planned, systematic and objective approach. In-house performance appraisal can offer this and more. •

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