



2020 Annual Report

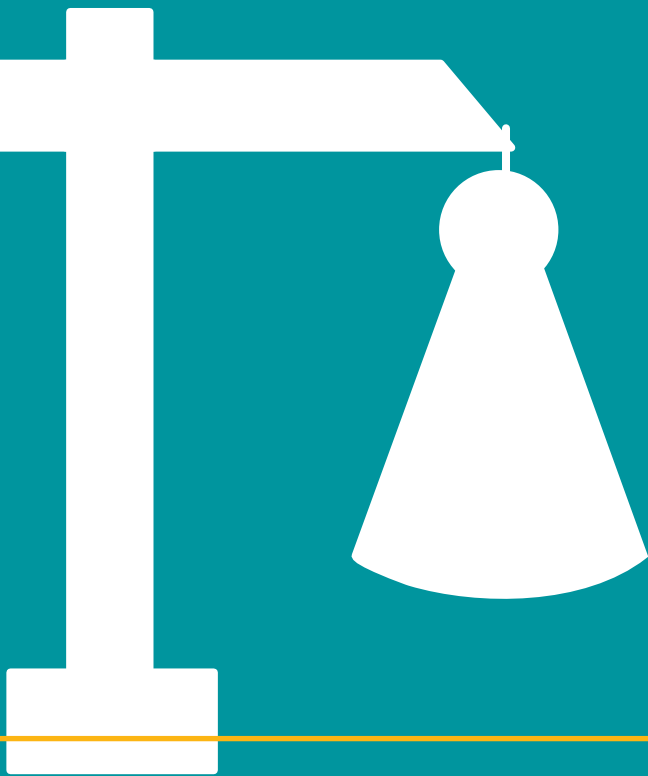




Table of Contents

Chair's Message 2

Selected Statistics 4

Adjudicator Education 6

Tribunal Jurisprudence 7

COVID-19 and Tribunal Operations 11

People 13

Chair's Message

Malcolm M. Mercer



As the new Chair of the Law Society Tribunal, I am pleased to present the 2020 Annual Report, which details a year that was significant for the Tribunal in a number of important ways.

First, I'd like to introduce myself. I have been actively involved in legal ethics issues for many years, with the Canadian Bar Association, the Law Society and the Canadian Association for Legal Ethics, teaching at Osgoode Hall Law School, and as a writer and speaker. I firmly believe that the work of the Tribunal is important to lawyers, paralegals, clients, the public and the administration of justice. As the new Chair of the Tribunal, I hope to continue the legacy of my predecessor, David A. Wright in overseeing a Tribunal that is dedicated to the fair, effective and transparent adjudication of professional regulatory issues.

This report will summarize a few facets of the Tribunal's operations in order to give you a glimpse of what we've worked on and accomplished in 2020. As always, the year past has seen many notable cases that have contributed to Tribunal jurisprudence and will help to inform future panel decisions. This year, we have chosen to highlight cases that have developed our understanding of advertising, interlocutory orders, and licensing. In addition to this qualitative review, you will find a quantitative analysis of 2020 on our Tribunal at a Glance page, which provides significant statistics from the past year. You will also read about how, despite the unusual nature of 2020, we continued to prioritize what we consider to be one of the most important aspects of our process: the continued education of our adjudicators.

2020 was a year of change and challenge for most organizations and for the people that make them up. The Tribunal faced these challenges with boldness and ingenuity. Tribunal staff and adjudicators pivoted quickly to online hearings, learning new skills on tight timelines and seamlessly adapting our services to ensure high standards of quality and timeliness.

This report will chronicle in more detail the Tribunal's response to the COVID crisis, and some of what we've learned about accessibility in the process.

Accessibility has been a watchword for the Tribunal since its inception, and to this end, we also created seven new practice directions this year to help licensees and licence applicants understand and interact with the Tribunal with clarity and ease. Effective practice directions can save licensees and licence applicants time, effort, and stress during what can already be a very stressful time. And for Tribunal staff, cases can be moved forward more quickly and easily when everyone involved has a solid understanding of the process and what is expected of them.



2020 has shown that the Law Society Tribunal would not be what it is without the contributions of so many.

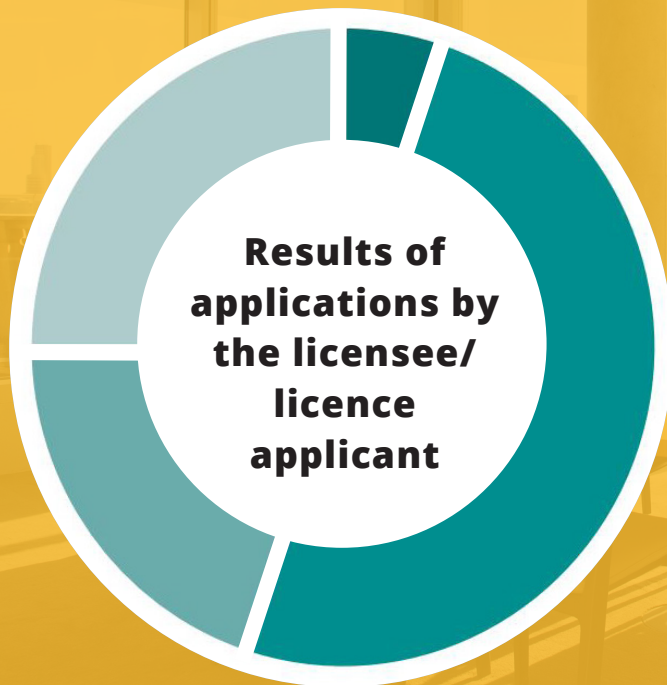
In addition to our practice directions on the Tribunal book of authorities and on adjournments, we have now published practice directions on accommodation, filing documents, public access, serving documents, transcripts and recordings, and witnesses, as well as an introduction to practice directions. We hope that our library of resources will continue to grow in the coming year as well.

I'd like to conclude by expressing my gratitude to the adjudicators and staff who have continued to strive for excellence and who responded so well to a global crisis. I would also like to thank the members of the Tribunal Committee and the Chair's Practice Roundtable, without whom our important work would be impossible. 2020 has shown that the Law Society Tribunal would not be what it is without the contributions of so many.

Malcolm M. Mercer
Law Society Tribunal Chair

Selected Statistics

The Tribunal by the Numbers



- Granted in part
- Granted in full
- Dismissed
- Abandoned/withdrawn

69%

of all files opened were conduct-related

*9% were licensing applications
8% were appeals*

173

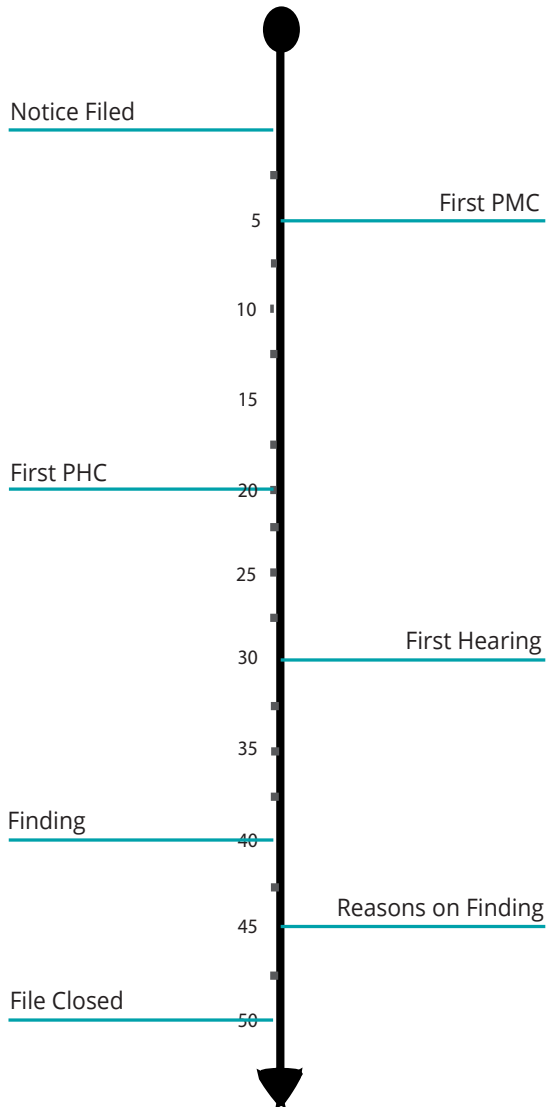
Reasons published

*24 oral reasons
149 written reasons*

Files opened per year



Average weeks between milestones



4231

Adjudicator hours

Including pre-hearing conferences and proceeding management conferences

476

Pre-hearing conferences

Compared to 324 pre-hearing conferences in 2019

Examples of Tribunal case subject matter

33

Integrity

33

Failure to Serve Clients

6

Misappropriation

2

Mortgage Fraud

Adjudicator Education

2020's focus on online adjudication

The Law Society Tribunal is committed to the continuous improvement of our adjudicator's skills and knowledge, and as such, we hold compulsory adjudicator education sessions every year. Past adjudicator education sessions have covered topics such as memory in adjudicative contexts, evidence law, solicitor-client and litigation privilege, and advanced reasons writing.

In addition to providing adjudicators with the framework to learn new techniques or delve into specific areas of jurisprudence, these sessions are an opportunity for adjudicators to discuss issues in adjudication and procedure, both with their fellow adjudicators and with Tribunal Counsel and the Tribunal Chair.

In response to the shift to videoconference hearings at the Law Society Tribunal, this year's adjudicator education session focused on online adjudication.

The topics covered included:

- best practices for electronic hearings;
- preparing for videoconference hearings;
- managing the hearing;
- dealing with remote witnesses;
- what counsel wishes to see from adjudicators in videoconference hearings;
- making credibility determinations;
- setup of technology and communication with other panel members during the hearing.

Session Panel



David A. Wright (Moderator)
Former Chair, Law Society Tribunal



Christopher Brett
Former Vice-Chair, Appeal Division



Susan Heakes
Former Discipline Counsel & Practice Lead, Law Society of Ontario



Barbara Murchie
Vice-Chair, Appeal Division & former Chair, Tribunal Committee

Tribunal Jurisprudence

Notable developments from the past year

Advertising and Marketing

Background

As a result of Law Society initiatives to address rapidly evolving issues in legal advertisements and marketing, the Tribunal has seen an increase in advertising-related cases over the past several years.

In an effort to protect the public from false or misleading advertisements by lawyers and paralegals, the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* both include provisions on how legal services may be marketed. Advertising must be demonstrably true, accurate and verifiable, unlikely to mislead, confuse or deceive the audience, and consistent with a high standard of professionalism.

Jurisprudence

In 2020, a case about advertising, *Goldfinger* 2018 ONLSTH 103, was considered on appeal. The decision of the hearing panel was helpful in elucidating the kinds of advertising that the Tribunal considers to be professional misconduct. The decision on appeal provided further assistance in

clarifying what is permitted and what is not.

In 2018, the Law Society alleged that Mr. Goldfinger had had improperly marketed his legal services by, among other things, marketing of the provision of second opinions and advertising a specialization in personal injury law, which had not been certified by the Law Society. Additionally, the Law Society argued that Mr. Goldfinger's claim that he had the "Golden Touch" was not verifiable and so could mislead the public.

The hearing panel had accepted the parties' agreement that the marketing constituted misconduct. However, in their reasons for decision, the hearing panel pointed out that a lawyer named Goldfinger suggesting that he has a "Golden Touch" is unlikely to mislead members of the public, who would likely take the statement simply as a play on words.

This past year, in *Goldfinger* 2020 ONLSTA 3, the majority of the appeal panel concluded that, while the hearing panel had erred procedurally, nevertheless the "Golden Touch" slogan was a play on words, would be taken as such, and did not constitute professional misconduct.





Motions for Interlocutory Suspension or Restriction

Background

The *Law Society Act* authorizes the Tribunal to suspend or restrict a lawyer or paralegal's licence if there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice. However, the panel must take into account the impact a suspension would have on a lawyer or paralegal's livelihood where effective lesser restrictions are available and appropriate in the circumstances.

Two interlocutory cases in 2020 are particularly illustrative of the panel's authority to grant an interlocutory suspension order, based either on risk of harm to members of the public or to the public interest in the administration of justice.

Jurisprudence

In *Fathi* 2020 ONLSTH 28, the Law Society brought a motion for an interlocutory suspension or restriction after Mr. Fathi was charged with three counts of uttering a death threat to a former client. Although the charges were very serious, the panel decided that Mr. Fathi was not at risk of harming members of the public, because the alleged crime, though serious, was limited to one incident. Additionally, the person at risk was already protected by a recognizance requiring that Mr. Fathi have no contact with them. Mr. Fathi had also undertaken not to take on new clients, and the Law Society

investigation was nearly complete, meaning that a fuller understanding of the situation would shortly be available.

In the circumstances, the panel decided that the risk to the public was sufficiently addressed by restrictions on Mr. Fathi's licence rather than by a suspension. Subsequently, the investigation was completed and a suspension order was made by a different panel.

In *Junger* 2020 ONLSTH 37, another interlocutory case from 2020, Mr. Junger was retained by the vendor to act on the sale of a house. After closing, the evidence indicated that Mr. Junger retained \$300,000 from the proceeds of sale which he did not pay to his client. His client obtained a *Mareva* injunction to keep him from dealing with his assets, and the Law Society became trustee of his legal practice. In the face of these proceedings, Mr. Junger apparently emptied all of the monies in his trust account to an unknown bank account.

Here, as in *Fathi*, there were measures in place to protect the public from harm, namely the *Mareva* injunction and the trusteeship. However, in this case, the panel decided that an interlocutory suspension order was necessary to protect public confidence in the integrity of the profession and, by extension, the administration of justice, reasoning that it was important that the kinds of egregious actions apparently taken by Mr. Junger result in suspension of a licence to practice, pending a full hearing.





Licensing

Background

In order to be issued a lawyer or paralegal licence in Ontario, the applicant must be of current good character. When the Law Society has reason to believe that an applicant may not be of good character, the Tribunal holds a licensing hearing. During a licensing hearing, lawyer or paralegal applicants must prove that they are currently of good character, and therefore eligible for a lawyer or paralegal licence.

Panels that hear licensing cases consistently return to the test set out in *Armstrong* 2009 ONLSHP 29, which advises the panel to consider:

- the nature and duration of the misconduct;
- whether the applicant is remorseful;
- what rehabilitative efforts, if any, have been taken, and the success of such efforts;
- the applicant's conduct since the proven misconduct; and
- the passage of time since the misconduct.

Each case is different, and panels examine the specifics of the particular

licence applicants, as well as the circumstances that have brought them to the Tribunal. 2020's licensing hearing outcomes provide a useful sample of the issues panels weigh in making these life-changing decisions.

Jurisprudence

Several licensing applications were granted in 2020 to applicants who had committed serious crimes in the past, but had shown sufficient remorse and rehabilitation that the panels deemed them to be currently of good character.

In *Sriskandarajah* 2020 ONLSTH 122, Mr. Sriskandarajah's past involvement over a decade before with the terrorist organization The Liberation Tigers of Tamil Eelam (LTTE) had been extremely serious, but so too were his efforts at making amends, which included assisting in the creation of three orphanages in Sri Lanka. The panel found Mr. Sriskandarajah's conduct since the incident with the LTTE to be exemplary, the evidence of his remorse to be overwhelming, and his maturation and community support to be significant, and so decided that he was currently of good character.



Three other licence applicants, *Dubey* 2020 ONLSTH 134, *George* 2020 ONLSTH 23 and *Silverstein* 2020 ONLSTH 107, were found to be currently of good character following past criminal convictions after they showed that they felt genuine remorse and had undertaken fulsome rehabilitative efforts, ranging from volunteer work to the creation of a philanthropic non-profit organization.

Two applicants successfully argued that the lack of integrity they had shown while attending law school were not indicative of their character and were instead isolated incidents.

In *Nsamba* 2020 ONLSTH 62, Mr. Nsamba plagiarized while at law school. Mr. Nsamba explained that he had been under enormous stress during the 12-month period during which the plagiarism took place, and had lacked a support system to help him through a difficult time. Character references attested to Mr. Nsamba's current moral fibre, and Mr. Nsamba showed that he had developed coping mechanisms that would prevent a relapse into his prior dishonesty.

In *Mitchell*, 2020 ONLSTH 118, Mr. Mitchell had engaged in sexual activity with a fellow law



student without her consent, although Mr. Mitchell's evidence was that he believed otherwise at the time. The panel found Mr. Mitchell had demonstrated both remorse and rehabilitation and found Mr. Mitchell to be currently of good character despite what it concluded was a one-off aberration.

Two licensing applicants were denied in 2020, both for reasons related to the passage of time.



The panel decided that insufficient time had passed before Mr. Pierre applied for licensing in *Pierre* 2020 ONLSTH 148, as his misconduct had continued up until four years prior to the hearing and Mr. Pierre remained on probation. In this short span of time, the panel stated that Mr. Pierre had not demonstrated sufficient rehabilitation.

In *Turner*, 2020 ONLSTH 95, the licence applicant had engaged in criminal misconduct between 2000 and 2016. As of the time of the hearing, an arrest warrant remained outstanding. Here, again, the panel found not enough evidence of rehabilitation following a long history of criminality and dishonesty that had only recently ended.



COVID-19 and Tribunal Operations

How we coped with a global crisis



When Toronto's initial COVID-19 lockdown on March 13th forced the Tribunal to close its physical doors, we began adapting our services immediately. We released a notice to the professions and the public that expanded the ability to file documents with the Tribunal electronically. All hearings, after a brief initial postponement, were re-scheduled as videoconferences, as were Pre-Hearing Conferences. Proceeding Management Conferences were converted to teleconference. The Tribunal went virtual.

The Tribunal promptly updated its website to assist everyone with new procedures for attending Zoom hearings. Because transparency has always been one of the Tribunal's watchwords, we took steps to ensure that the process of connecting

to a Zoom hearing was as easy as possible for anyone, computer-savvy or not, whether they were friends or family of the licensee, members of the media, or simply interested onlookers.

Next, we created a step-by-step Zoom guide for parties, counsel, witnesses and attendees to a hearing and posted it on our website. This guide gives some simple but effective pieces of advice that improve the ease and efficiency of online hearings, including how and when to mute or turn off your video, how to position the camera, and how to troubleshoot some common technical problems. This guide has been indispensable in ensuring that hearings run as smoothly online as in-person.

It was critical to ensure that panels, too, felt comfortable on our new hearing platform, not only using videoconferencing technologies, but also applying their various adjudicative skills to a completely different form of hearing. To this end, following a technical Zoom training geared towards the particular needs of adjudicators sitting on panels, we also held our annual Adjudicator Education session to address deeper issues in online adjudication.

Decisions about virtual hearings found their way into Tribunal caselaw for the first time in 2020. Pre-COVID, the panel in *Marusic* 2020 ONLSTH 18 had dealt with a motion to allow a 78-year-old witness, residing in Florida and struggling with various health conditions, to appear by videoconference link. The panel allowed this motion, and, on the request of counsel for both parties, the testimony was given in an official examiner's office in Florida with all counsel present.

"The overwhelming majority of Courts, tribunals and administrative bodies have adopted these new technologies for hearings, to the extent that they are now commonplace. While there are disadvantages to videoconference technology, the panel continued, there are significant advantages as well."

By August, standards regarding the use of videoconference as a hearings format had changed dramatically. When, in *Regan* 2020 ONLSTA 15, a lawyer appealed from a summary hearing decision and asked that the appeal hearing be delayed until an in-person hearing could be held, the panel denied the motion, stating that the the administration of justice should not wait for the pandemic to be over. The panel went on to say that the overwhelming majority of Courts, tribunals and administrative bodies have adopted these new technologies for hearings, to the extent that they are now commonplace. While there are disadvantages to videoconference technology, the panel continued, there are significant advantages as well.

And so, after being forced to find a new way of operating, the Tribunal's next big challenge will be in assessing which of these measures should end once in-person hearings can resume, and which, having improved accessibility, costliness, efficiency, and ease for all involved, should be preserved.

People who contributed to the Tribunal in 2020

Tribunal Office

David A. Wright (Chair until November 2020)

Malcolm M. Mercer (Chair from November 2020)

Vashti Ramsukh (Executive Assistant to the Chair)

Lisa Mallia, Joe Zaffino (Tribunal Counsel)

Celia Lieu (Registrar)

Ivy Johnson (Communications Coordinator)

Leah McCoy (Administrator)

Romeo Benedicto, Sochima Egbeocha, Chloé Dussarrat,

Eileen Bright (File Management Coordinators)

Shalini Vyas (Scheduling Coordinator)

Erik Eide (Publication Coordinator)

Tribunal Committee Leadership

Isfahan Merali (Chair until August 2020)

Julia Shin Doi (Vice-Chair until August 2020, Chair from August 2020)

Ryan Alford (Vice-Chair from August 2020)

Marian Lippa (Vice-Chair from August 2020)

Tribunal Committee

Larry Banack, Jack Braithwaite, Jared Brown, Jean-Jacques Desgranges, Paul M. Cooper, John Fagan, Michael LeSage, Malcolm M. Mercer (ex-officio), C. Scott Marshall, Barbara Murchie, Geneviève Painchaud, Gina Papageorgiou, Lubomir Poliacik, Chi-Kun Shi, Tanya Walker, David A. Wright (ex-officio)

People who contributed to the Tribunal in 2020

Chair's Practice Roundtable

David A. Wright, Celia Lieu, Ivy Johnson, Blair Bowen, Ian Godfrey, Louise A. Hurteau, Nadia Liva, Marcy Segal, Ian R. Smith, Glenn M. Stuart, William Trudell, Matthew Wilton, Amanda Worley

Tribunal Leadership

David A. Wright (Chair until November 2020)

Malcolm M. Mercer (Chair from November 2020)

Paul M. Cooper (Vice-Chair, Hearing Division)

Gina Papageorgiou (Vice-Chair, Appeal Division until May 2020),

Barbara J. Murchie, (Vice-Chair, Appeal Division from May 2020)

Tribunal Adjudicators

Andrea Alexander, Ryan Alford, Raj Anand, Larry Banack, S. Margot Blight, Jack Braithwaite, Christopher D. Bredt, Robert Burd, Murray Walter Chitra, Thomas G. Conway, Jean-Jacques Desgranges, Teresa Donnelly, W. Paul Dray, Seymour Epstein, Etienne Esquega, Sam Goldstein, Jacqueline M. Harper, Philip Horgan, Shayne Kert, Eva Krangle, Vern Krishna, Shelina Lalji, Barbara A. Laskin, Cheryl Lean, Margaret Leighton, Kathleen Lickers, Marian Lippa, Michelle M. Lomazzo, Cecil Lyon, Sabita Maraj, C. Scott Marshall, Anna Mascieri-Boudria, Isfahan Merali, Ross W. Murray, W. Andrew Oliver, Geneviève Painchaud, Lubomir Poliacik, Geoff Pollock, Maurice A. Portelance, Brian L. Prill, Jonathan Rosenthal, Linda R. Rothstein, Frederika M. Rotter, Clayton Ruby, Jay Sengupta, Chi-Kun Shi, Julia Shin Doi, Megan E. Shortreed, Anne E. Spafford, John F. Spekkens, Harvey T. Strosberg, Marilyn J. Thain, Tanya Walker, Peter C. Wardle, Doug Wellman, Eric Whist, Alexander Wilkes, Bradley H. Wright

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