



Law Society Tribunal  
Tribunal du Barreau

# Annual Report 2021

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# Chair's Message

After the tumult of 2020, last year provided an opportunity for the Tribunal to take stock, evaluate current processes, and consider changes that will make us more effective, both during and after the ongoing pandemic.

2021 was our first full year of operations during Covid-19, and I'm proud to report that the Tribunal was highly productive despite challenging times. Approximately 180 applications were filed during the year (a relatively high volume compared to past years), and approximately the same number were completed as well. Part of this success was due to the revision of the Rules of Practice and Procedure that was passed by Convocation in June 2021; the amendments permitted all filing to be done online, along with a variety of other measures that facilitate virtual hearings for the parties, adjudicators and Tribunal staff even beyond the Covid-19 pandemic.

The pandemic has required that we be nimble and quick to respond



to ever-changing public health recommendations. This has meant continuing our successful undertaking of remote hearings and appearances, as well as managing the return of staff to the office, which was followed by another pivot back to remote work. When possible, we staffed our offices on a limited in-person basis to better work together collaboratively, to resume mail service, and to deal with physical file reviews. And although in-person hearings did not resume this past year, we have worked toward holding hybrid and fully in-person hearings when doing so becomes appropriate.

In addition to adaptations made in response to the pandemic, the Tribunal continued to grow and evolve in all the ways we normally do; we welcomed several new adjudicators (including three new lay adjudicators), and said goodbye to some as well. We are working to update our case management systems in order to

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ensure better statistics tracking and an improved user experience. And we published several new practice directions and a guide to appeals to help licensees/licence applicants navigate the Tribunal with ease and confidence.

This report will go into further detail regarding our robust schedule of staff and adjudicator education, as well as some of the notable themes that arose in the panel decisions of 2021. You'll also read about a big change to the Rules of Practice and Procedure, the introduction of Rule 21, which will better equip the Tribunal to address alleged "failures to cooperate" with efficiency, fairness and compassion. And, of course, you'll be able to review highlighted statistics of the past year, which

provide a quantitative picture of the Tribunal's 2021.

2022 will surely bring its own challenges as we continue to adjust to the changing world. But after two years of pandemic operations, the Tribunal is not only well placed to meet whatever the year brings, but also more able than ever to fulfill its mandate and serve in a fair, timely, and efficient manner.



**Malcolm M. Mercer**  
Law Society Tribunal Chair

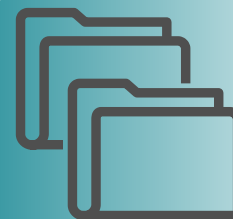
# Selected Statistics

## The Tribunal by the Numbers

The average length of time taken to complete reasons in 2021 was



**185**  
Number of files opened in 2021

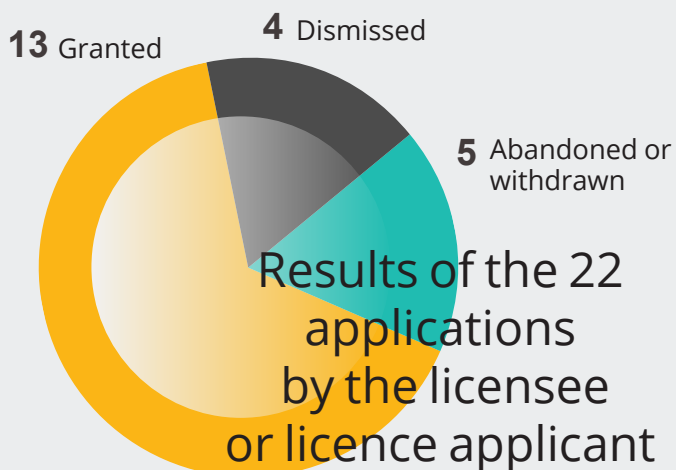
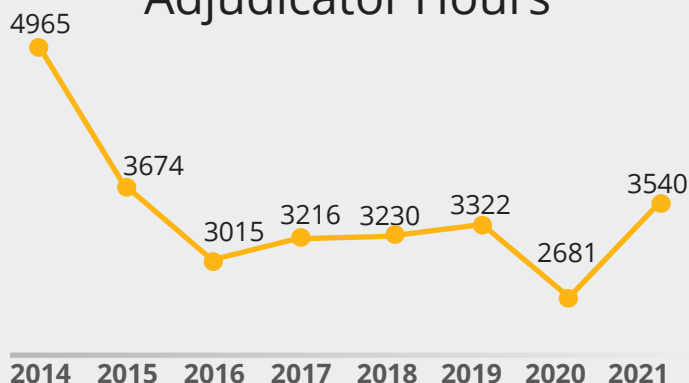


**175**  
Number of files closed in 2021

### 2021 Milestones

	Days taken
First PMC	46
First PHC	127
First hearing	260
Decision on finding	311
Last hearing / submissions	304
Reasons on finding	346
File closed	385

### Adjudicator Hours





# Adjudicator Education

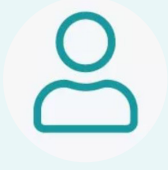
Adjudicator Education Sessions are an opportunity for the Tribunal to provide adjudicators with the latest information on best practices, jurisprudence, procedural updates, and more. In addition to the robust training and orientation that adjudicators undertake when they first come on board as Tribunal Members, the Tribunal usually holds two Adjudicator Education sessions every year.





## This year's spring session

focussed on mental health, providing information and tools to make decisions in cases that involve addiction or mental health in a way that is both fair and respects human rights. This session was run by Raj Anand, Naomi Overend and Margaret Leighton.



- The duty to accommodate under the Human Rights Code
- Managing and documenting requests for accommodation
- Discrimination
- Undue hardship
- The evolution of approaches to capacity proceedings



## Our fall session

was presented in three parts:

### Joint Submissions, presented by Shayne Kert

Ms. Kert discussed:



- Approaches towards joint submissions taken by appellate courts
- The stringent public interest test
- Processes for rejecting a joint submission
- Allowing a plea withdrawal

### Abuse of Process Claims, presented by Raj Anand

Mr. Anand discussed:



- The multiple meanings of abuse of process
- The test for delay as an abuse of process
- Fairness in investigations

### Recusal for Bias, presented by Malcolm M. Mercer

Mr. Mercer discussed:



- Bias vs. impartiality
- The reasonable apprehension of bias test
- Various kinds of bias (personal interest, prejudgement)

# Staff Education

In addition to our usual Adjudicator Education Sessions, this year the Tribunal held its first Staff Education Session, with the goal of bringing the Tribunal's office staff together to discuss both the operations and the purpose of the Law Society Tribunal. Led by the Tribunal Chair and the two Tribunal Counsel and organized by the Tribunal Administrator, these education sessions were hugely successful, creating a space for Tribunal employees to ask questions and share their perspectives. Staff came away with a deeper understanding of the importance of their roles in the functioning of the Tribunal, as well as of the vital role the Tribunal plays in the regulation of Ontario lawyers and paralegals and in the province's legal community more broadly.



Over the course of three sessions, topics included:

- The history of the Tribunal
- A history of professional regulation
- Conduct applications, licensing applications,
- capacity applications and interlocutory applications
- Rules, ethics and the Tribunal
- Procedural fairness and the Human Rights Code
- The life cycle of a Tribunal file





## **Tribunal Jurisprudence 2021: Transcript Costs**

*Unless otherwise ordered, licensees who want to appeal a Tribunal decision are required to file transcripts of the original hearing. Transcripts are required so that the appeal panel has all the information that the hearing panel had in making their decision.*

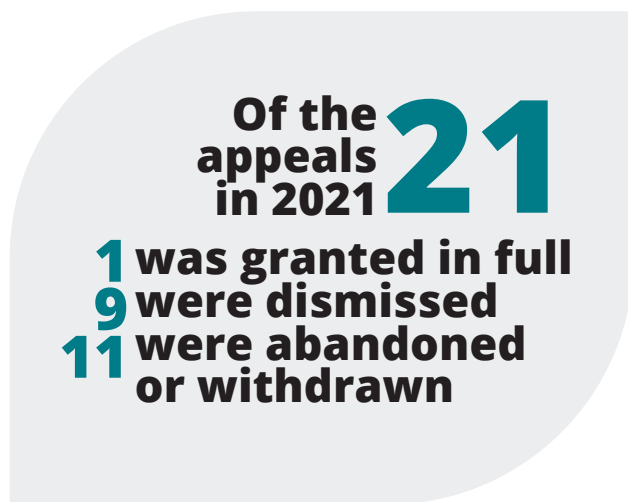
*The Tribunal arranges for private court reporting services at all Tribunal hearings and appearances. Parties may obtain an audio recording or a transcript from the reporting service for a fee.*

*Tribunal jurisprudence (in this case originating in an earlier form of the Rules of Practice and Procedure) dictates that appeals panels may vary the requirement that appellants pay for transcripts "in the interest of justice," though the use of this provision is "exceptional".*

*In 2021, four licensees brought motions to request that the fees for these transcripts be mitigated. For varying reasons, all four motions were dismissed.*

Ms. Zareian Jahromi, in *Zareian Jahromi v. Law Society of Ontario*, 2021 ONLSTA 1, requested that the Law Society pay for transcripts of certain cross-examinations, an amount of between \$1,250 and \$1,300. The panel stated that having the Law Society, and therefore the professions, pay for transcripts should be done only when it will prevent an abuse of process.

Having failed to provide any financial information that showed that she couldn't



pay the amount herself, the panel saw no reason why Ms. Zareian Jahromi's request was necessary or justified. Concluding that she had not met the high bar set for motions to vary transcript cost responsibilities, the panel dismissed her motion.

In *Amendola v. Law Society of Ontario*, 2021 ONLSTA 11, Mr. Amendola was also denied an order that the Law Society pay the \$1,997.84 for transcript costs. Here, though, the rationale was not just related to the licensee's ability to pay. The panel cited *Law Society of Ontario v. Bogue*, 2019 ONLSTA 19, which states that, in order to qualify for relief of transcript costs, an appellant must show that one or more of their grounds for appeal raise a reasonable prospect

of success. Because none of the grounds for appeal in this case showed a reasonable prospect of success, the panel dismissed Mr. Amendola's motion.

After unsuccessfully moving for the Law Society to fund the purchase of transcripts for him in *Law Society of Ontario v. Fuhgeh*, 2020 ONLSTH 17, Mr. Fuhgeh, in his appeal (*Fuhgeh v. Law Society of Ontario*, 2021 ONLSTA 24), made a slightly different request; he moved for the Law Society to order the third-party reporting service, Neeson's, to provide him transcripts and an audio recording at a discounted price. The panel determined that the Tribunal did not have the jurisdiction to order Neeson's to provide transcripts and audio recordings at a discounted price. Also, that this order was not necessary to prevent abuse of the Tribunal's processes. The panel reasoned that, if Mr. Fuhgeh wanted a detailed record of the hearing, he could have requested to record it (as he is entitled by the *Rules of Practice and Procedure* to do), or he could have taken notes.

Lastly, Mr. Isaac, in *Isaac v. Law Society of Ontario*, 2021 ONLSTA 4 sought an order that he be excused from having to pay for full transcripts, on the basis that he would not be using the full transcripts in his appeal, but merely portions (which he would pay for). Though past panels had excused licensees from having to file transcripts for their appeals, this was only done when the issues on appeal were questions of law. Because facts were not at issue, transcripts were not deemed necessary. Mr. Isaac declined to agree that the factual findings of the hearing panel were accurate, and so the panel concluded that transcripts were necessary. For this reason, as well as the fact that Mr. Isaac did not support his claim of impecuniousness with evidence, the panel dismissed the motion.



## **Tribunal Jurisprudence 2021: Re-Licensing**

*Licensing hearings occur when something in the licence applicant's past conduct suggests that the applicant may not be of good character, and thus not eligible for a lawyer or paralegal licence. Biographical details, like a past criminal conviction, can result in a licensing hearing, to determine if the applicant is currently of good character. When a lawyer or paralegal whose licence was previously revoked or surrendered applies to be licenced again, they must also go through a licensing hearing.*

*While the test for good character is the same in all licensing applications, finding current good character may be particularly difficult where the prior misconduct was serious enough to result in loss of license. The panel in *Puchiele v. Law Society of Upper Canada*, 2018 ONLSTH 19, described the fundamental rationale for good character when considering applications from people whose licenses had been revoked: the protection of the public, the maintenance of high ethical standards, and the preservation of public confidence in the legal profession, as well as, of course, a determination of current good character.*

*In 2021, three such cases came before the Tribunal, two successful and one unsuccessful.*

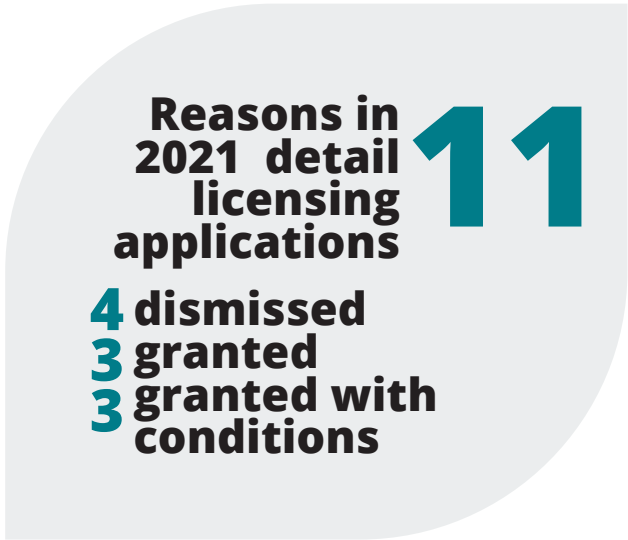
Mr. Pachai, in *Pachai v. Law Society of Ontario*, 2021 ONLSTH 18, had been revoked in 2010 for misappropriating funds from a client by participating in the defrauding of an insurance company. Though the misconduct was of the most serious kind, the panel was convinced that, in the intervening decade since the misconduct, Mr. Pachai had demonstrated that he was genuinely remorseful, and had made efforts to rehabilitate himself. Additionally, Mr. Pachai had himself proposed, in the interest of public confidence in the legal profession, restrictions on his licence to practice, should he be re-licensed.

Mr. Munir's case, *Munir v. Law Society of Ontario*, 2021 ONLSTH 17, was somewhat different. In 2014, while defending a client, Mr. Munir learned that the charges against the client had been dropped. Instead of passing this information along to the client, Mr. Munir instead extorted the client, saying that if he wanted the charges dropped, he had to give Mr. Munir \$1,000 to bribe the police officers, otherwise the client would be charged and deported. The scheme was discovered and Mr. Munir was charged and spent some time in jail.

Although the panel found that Mr. Munir had overcome the alcohol addiction that had contributed to his misconduct, it also voiced concerns that the alcohol addiction could be triggered anew by personal and professional stresses that would likely reoccur, and that Mr. Munir hadn't done sufficient work to show that he would be able to handle those stresses in a healthier way. The panel also found, though he seemed genuinely remorseful about the events that had occurred since the misconduct, he didn't demonstrate empathy towards the client he had wronged. These factors, as well as the fact that not much time

had passed between the misconduct and his application for re-licensing, led the panel to determine that Mr. Munir was not currently of good character, and therefore not entitled to be re-licensed.

In *Williams v. Law Society of Ontario*, 2021 ONLSTH 155, the most serious misconduct, and the misconduct that led to her presumptive revocation (more about presumptive revocations in the next section) was one count of reckless, and therefore knowing, participation in mortgage fraud, more than 15 years earlier. While the Law Society argued that Ms. Williams' refusal



to admit dishonesty showed that she had not taken full responsibility for her past mistakes, the panel concluded that she had, and had demonstrated an understanding of her fundamental error in judgement. Taking into account her genuine remorse and her excellent conduct after the revocation (which included charitable work and further legal training), and the joint submission that conditions be placed upon her licence, the panel decided that Ms. Williams should be granted a licence again.



## **Tribunal Jurisprudence 2021: Presumptive Revocation**

*Some kinds of misconduct, such as misappropriation or knowing participation in mortgage fraud, can result in what is termed 'presumptive revocation'—that is, having been found to have engaged in those kinds of misconduct, the licensee has to show exceptional circumstances in order to avoid the penalty of revocation.*



This was the case in *Law Society of Ontario v. Levy*, 2021 ONLSTH 167; Ms. Levy admitted in an agreed statement of facts to misappropriating \$6,500 and mishandling \$10,000 of her firm's trust accounts during a payment dispute with her paralegal partner. She made no submissions on penalty showing exceptional circumstances that might have persuaded the panel away from choosing the presumptive penalty of revocation, and so the presumptive penalty was made.

The question of whether presumptive revocation should apply more generally was considered twice by panels in 2021, once by a hearing panel and once on appeal.

In *Law Society of Ontario v. Schulz*, 2021 ONLSTH 178 (now under appeal), the Law Society submitted that presumptive revocation should apply in cases where the licensee has been found guilty of child pornography offenses. Mr. Schulz, having been convicted of being in possession of child pornography, was found by the panel to have engaged in conduct unbecoming a licensee (conduct by the licensee in a personal or private capacity that tends to bring disrepute upon the profession). The Law Society argued that the criminal conduct should not only result in Mr. Schulz's loss of licence, but that revocation be the presumed penalty in all cases henceforth where a licensee is guilty of child pornography offenses, unless they can show exceptional circumstances. Taking into account the fact that prior cases of licensees involving child pornography did not necessarily carry a penalty of revocation, and the fact that presumptive revocation has until now been applied only to professional misconduct and not conduct unbecoming, the panel chose not to consider presumptive revocation, and to instead apply an individualized framework for consideration penalty rather than a presumption.

The appeal panel in *Law Society of Ontario v.*

*Manilla*, 2021 ONLSTA 25 shared the caution of the Schulz panel in expanding presumptive revocation to cases beyond misappropriation and mortgage fraud without due consideration. (Indeed, the Schulz panel referred to the Manilla appeal panel's rationale in its own reasons.)

The original panel hearing Mr. Manilla's case, in *Law Society of Ontario v. Manilla*, 2021 ONLSTH 33, decided that presumptive revocation should apply to misconduct, like Mr. Manilla's, which involved forgery and false representations. Mr. Manilla had filed affidavits that were substantively true but had not in fact been signed or sworn by his client. However, the

**There were 20 revocations in 2021**  
**14 lawyers and 6 paralegals**

hearing panel found exceptional circumstances in Mr. Manilla's case and, instead of revocation, ordered a three-month suspension.

Both Mr. Manilla and the Law Society agreed on appeal that the hearing panel ought not to have applied the presumptive revocation principle. The appeal panel agreed that revocation for cases involving fraud and misappropriation was firmly anchored in Tribunal jurisprudence, but was reticent to extend the types of misconduct for which presumptive revocation should apply without a similar anchoring in the jurisprudence, noting that revocation can and should be ordered where appropriate without the need for a presumption. However, the appeal panel rejected Mr. Manilla's submission that he should only have been reprimanded, and sustained the hearing panel's original penalty of a three-month suspension.

# Rule 21

## An Innovation in Hearing Failure to Co-operate Cases

This year saw the development of a new rule, Rule 21, which will help the Tribunal address 'failure to co-operate' cases more efficiently, effectively and humanely, while at the same time reducing the burden on licensees, the Law Society and Tribunal resources.

Licensees are required to respond promptly and completely to Law Society regulatory investigations. When they are alleged not to have done so, this can result in the initiation of a specific type of conduct application called 'failure to co-operate'. Failure to co-operate is by far the most common type of alleged professional misconduct. In 2020, failure to co-operate cases amounted to 61%

of all conduct cases heard by Tribunal panels. (This year, it was 33%.)

Many failure to co-operate cases can be streamlined; they are usually fairly straightforward to decide and the penalties are relatively standardized, depending on whether there is history of other misconduct and whether, by the time of the hearing, the licensee has brought themselves into compliance and co-operated with the investigation. The new rule provides for oral hearings where there are factual and legal issues to address, but triages cases which do not require oral hearings by converting them into a written hearing.

### **What is Rule 21?**

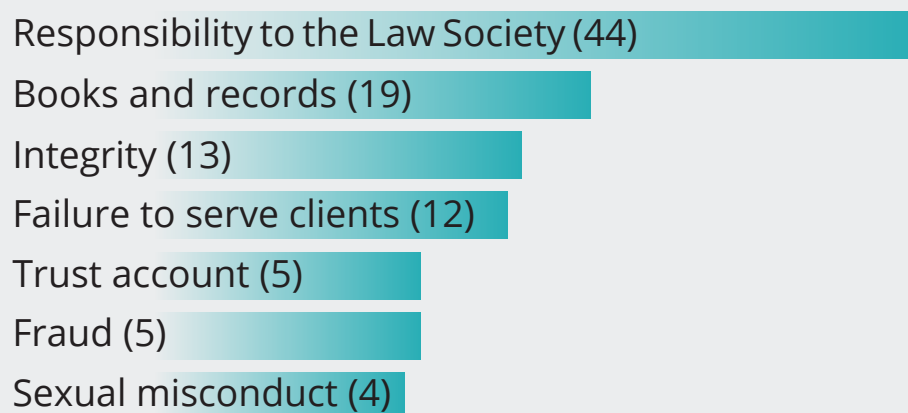
*Rule 21 states that, unless there is reason to do otherwise, failure to cooperate cases in which the licensee does not contest the allegations be heard in writing. Depending on whether and when answers to outstanding inquiries have been provided, the panel will order a standardized penalty.*

*In addition to saving time and money for both parties, Rule 21 facilitates early cooperation, which could result in a no-costs order and either a conversion to an 'invitation to attend' or a reprimand (the Tribunal's two least-severe orders).*

As well as simplifying the process where appropriate, the new rule allows licensees to avoid a finding of professional misconduct (and a penalty order) on a one-time basis if the licensee provides answers to outstanding

consult with duty counsel to help them better understand their rights and obligations, and to allow duty counsel to help divert cases, where appropriate, because of mental health, substance use or other reasons. The duty counsel

**Top  
subject  
areas of  
conduct  
files  
opened  
in 2021**



investigative inquires within 14 days of the case having been brought.

In collaboration with both the Law Society and defence counsel, Tribunal resources have been provided to fund independent duty counsel services for licensees who are at risk of failing to co-operate. Before a case is brought, licensees will be provided with opportunity to confidentially

roster is organized by defence counsel and funded by the Tribunal to ensure effective, independent and confidential legal assistance.

Rule 21 was first introduced to the Tribunal Committee in September 2021. After consultation and revision, the final version was approved by Convocation in February 2022, and, when passed, will go into effect on May 1, 2022.

# People

who contributed to the Tribunal in 2021

## Tribunal Office

*Malcolm M. Mercer (Chair), Lisa Mallia (Tribunal Counsel), Tina Yuen (Tribunal Counsel), Aderonke Taiwo (Administrator), Celia Lieu (Registrar), Lawrence Barker (Acting Registrar), Ivy Johnson (Communications Coordinator), Leah McCoy (Administrator, File Management Coordinator), Romeo Benedicto (File Management Coordinator), Sochima Egbeocha (File Management Coordinator), Chloé Dussarrat (File Management Coordinator), David Kapala (File Management Coordinator), Eileen Bright (File Management Coordinator, Scheduling Coordinator), Shalini Vyas (Scheduling Coordinator), Erik Eide (Publication Coordinator)*

## Tribunal Committee

*Julia Shin Doi (Chair), Ryan Alford (Vice-Chair), Marian Lippa (Vice-Chair), Malcolm M. Mercer (ex-officio), Jack Braithwaite (ex-officio), Barbara J. Murchie (ex-officio), Catherine Banning, Jared Brown, Paul M. Cooper, Jean-Jacques Desgranges, John Fagan, Sam Goldstein, Philip Horgan, Michael LeSage, Cecil Lyon, C. Scott Marshall, Isfahan Merali, Geneviève Painchaud, Geoff Pollock, Chi-Kun Shi, Tanya Walker*

## Chair's Practice Roundtable

*Malcolm M. Mercer, Lisa Mallia, Tina Yuen, Celia Lieu, Lawrence Barker, Ivy Johnson, Blair Bowen, Norm Emblem, Ian Godfrey, Louise A. Hurteau, Nadia Liva, Kristina MacDonald, Leslie Maunder, Janani Shanmuganathan, Ian R. Smith, Glenn M. Stuart, William Trudell, Matthew Wilton, Stephen Wishart, Amanda Worley*

## Tribunal Adjudicators

*Malcolm M. Mercer (Chair), Jack Braithwaite (Vice-Chair, Hearing Division), Paul M. Cooper (Vice-Chair, Hearing Division), Barbara J. Murchie (Vice-Chair, Appeal Division), Ryan Alford, Raj Anand, Laura Arndt, Larry Banack, Catherine Banning, Ingrid Berkeley, S. Margot Blight, Christopher D. Bredt, Robert Burd, Murray Walter Chitra, Joseph Chiumminto, Suzanne Clément, Thomas G. Conway, Cathy Corsetti, Jean-Jacques Desgranges, Randi Druzin, W. Paul Dray, Seymour Epstein, Etienne Esquega, Sam Goldstein, Jacqueline M. Harper, Philip Horgan, Jacqueline Horvat, Shayne Kert, Eva Krangle, Vern Krishna, Shelina Lalji, Barbara A. Laskin, Cheryl Lean, Margaret Leighton, Michael B. Lesage, Atrisha Lewis, 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, Jorge Pineda, Lubomir Poliacik, Geoff Pollock, Maurice A. Portelance, Brian L. Prill, Michelle Richards, Quinn Ross, Linda Rothstein, Frederika M. Rotter, Clayton Ruby, Jay Sengupta, Chi-Kun Shi, Julia Shin Doi, Megan E. Shortreed, Anne E. Spafford, John F. Spekkens, Andrew Spurgeon, Harvey T. Strosberg, Marilyn J. Thain, Tanya Walker, Peter C. Wardle, Doug Wellman, Eric Whist, Alexander Wilkes, Claire Wilkinson, Bradley H. Wright*



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