



Law Society Tribunal
Tribunal du Barreau

Annual Report 2022

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Chair's message



In 2022, the Tribunal moved toward a “new normal,” restoring much of what was lost during recent years of remote work, while building on the pandemic-spurred modernization of systems and procedures that will continue to allow us to better fulfill our mission.

With no mandated workplace shutdowns in Ontario in 2022, we were pleased to welcome staff regularly back to the office, bringing back some of the buzz, bustle and collaborative atmosphere of the pre-pandemic Tribunal. Meanwhile, we continued to work towards rebuilding our capacity to conduct in-person hearings where appropriate.

At the same time, the pandemic forced us to innovate and be flexible in ways that are worth preserving, and we took several steps this year to enhance and expand on the digital tools we developed in recent years.

Part of that effort was a major overhaul of the Tribunal’s case management system (CMS), the application that allows us to organize and populate hearing panels, document delivery, and our website. This project, which was a significant undertaking, will enable us to reduce errors in the reporting of our work and better fulfill our commitment to transparency both with the public and with licensees. A more efficient system, the new CMS should also free up staff time to focus on other priority areas.

One such area in 2022 was the development of resources for licensees and licence applicants who represent themselves before the Tribunal. We began work on a comprehensive guide for self-represented litigants, to be published in 2023, that aims to demystify the Tribunal procedures for the 50-60 per cent of licensees who choose not to be represented by lawyers, paralegals, or assisted by duty counsel, ensuring they have all the tools they need to effectively navigate the process.

Another step we took this year to improve the experience of licensees, both self-represented and otherwise, is the implementation of Rule 21. This rule was developed to help the Tribunal address 'failure to cooperate' cases more efficiently, effectively and humanely, while at the same time reducing the burden on licensees, the Law Society and Tribunal

"It's little wonder that we've already seen an impact: in the months following the May implementation of Rule 21, caseloads were lightened, average hearing times reduced, and average hearing lengths shortened. In 2022, for the first time in five years, the Tribunal closed more files than we opened..."

resources. Given that such cases account for nearly twenty percent of all those before the Tribunal, it's little wonder that we've already seen an impact: in the months following the May implementation of Rule 21, caseloads were lightened, average hearing times reduced, and average hearing lengths shortened. In 2022, for the first time in five years, the Tribunal closed more files (177) than we opened (162), in part due to the implementation of Rule 21.

This report will provide more detail on what the Tribunal accomplished last year, including how we restored some of what was lost during the pandemic and built on some of what was gained, as well as notable themes that emerged from some of the 189 reasons published by the Tribunal in 2022. Back in the office, armed with better-than-ever digital tools, the Tribunal is well-placed to meet whatever this year brings – and to continue, with fairness, efficiency, and transparency, to regulate and preserve public trust in Ontario's legal profession.



Malcolm M. Mercer
Law Society Tribunal Chair

selected statistics

Average time to complete reasons
82 days

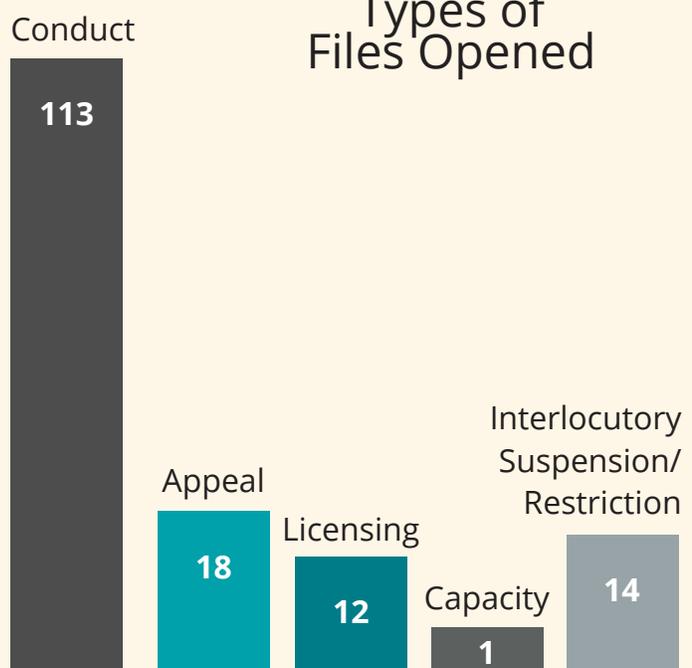
Percentage of applications initiated by the Law Society that were granted
76%

Average time from a file's start to close
60 weeks

Adjudicator Hours



Types of Files Opened



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 become Tribunal Members, the Tribunal holds two Adjudicator Education Sessions every year. In 2022, Tribunal staff were also invited to attend, in order to deepen their understanding of the Tribunal's processes and purposes.

This year's summer session focussed on penalties. Led by Malcolm Mercer, Margaret Leighton and Raj Anand, the summer session included such topics as:

- The purposes of penalty orders in conduct cases
- An investigation of the Aguirre factors
- Relevant jurisprudence
- Presumptive revocation

The winter session focussed on professional regulation, including the function and structure of the Law Society of Ontario's part in investigating and litigating licensees and licence applicants.

Led by Glenn Stuart, Nadia Liva, Nadia Musclow and Bill Trudell, the winter session included such topics as:

- Complaints, investigations and regulatory outcomes prior to transfer to litigation services
- The role of litigation services prior to filing an application and potential regulatory outcomes
- The involvement of defence counsel before transfer
- Potential Proceedings Authorization Committee outcomes
- Dealings between litigation services and defence counsel during an application
- The role and work of duty counsel

online access



The Law Society Tribunal has long been committed to openness and transparency. Transparency is, in fact, one of our four core values, along with Timeliness, Fairness, and Quality. But transparency today means something quite different from what it meant eight years ago, when the Tribunal as it exists now was first formed. Increasingly in this digital age, transparency means online accessibility.

It's safe to say that most interactions people had with the Tribunal in 2022, whether they were licensees, journalists, members of the public, or adjudicators, happened virtually. In 2020 and 2021, during the COVID-19 pandemic, our operations went virtual out of necessity. But now, as things are slowly returning to normal, we continue to take advantage of many of the online processes we created during that time because they are convenient, cost-effective, and make information easier to access for a wide range of interested parties located all over the world.

Anyone with a computer and access to the internet can read through the *Rules of Practice and Procedure*, file an application with the Tribunal, attend conferences with an adjudicator, file document books and affidavits, check out one of our useful Proceedings Guides, and eventually attend a hearing. Someone else might read a new notice posted on our website, check our Upcoming Hearings Calendar, attend the hearing via Zoom, and receive an update via our weekly proceedings email when the final order is made. Someone else might find a set of old reasons on our website and request to review a long-closed file, receiving scanned documents via our file-sharing service. Reporters can check in on case progress, licensees can browse through available dates, adjudicators can issue endorsements—all online.

Of course, the Tribunal is aware that online access does not mean universal access, and we have worked towards ensuring that our transparency is the same for everyone, regardless of circumstances or ability.

Two years ago, when it became clear that the pandemic would result in a large-scale shift towards virtual engagement, the Tribunal undertook a major effort to make our website accessible, surpassing the *Accessibility for Ontarians with Disabilities Act* standards. This meant reformatting tens of thousands of documents so that they would be compatible with screen readers, changing type size and orientation to make pages more comprehensible, and adapting our processes so that all materials posted to our website would continue to be fully accessible in perpetuity.

For those who, for whatever reason, don't have access to the internet, we are also able to adapt by pivoting back to previous ways of doing things. Though we now have the capacity to do most of our work online, documents can still be requested by phone, and can be mailed to interested parties. Hearings can still be convened in-person, when the need arises. And the Tribunal office is staffed every day of the work week, so that anyone with a question can quickly and easily get an answer just by walking through the front door.

Here at the Tribunal, we take transparency very seriously. Our mandate—to operate in a manner that is fair, just, and in the public interest—can not be fulfilled without it.

what we publish to our website

By decision of Convocation, the Tribunal publishes the following information on our website:

- **All final orders, or orders that make some other important determination, such as costs**
- **Links to all reasons for decision**
- **Notices that initiate an application, until a final order is made in that application**
- **Our upcoming hearing schedule**

In rare instances, a panel may order that any of the above be made Not Public and thus not published to the Tribunal website, if it is in the interest of justice to do so.



Tribunal jurisprudence

costs in licensing applications

When should an unsuccessful licencing applicant bear the costs of the hearing? There are differing opinions on the matter.

One is that the Law Society should not pay costs when it is the successful party. Another is that unsuccessful lawyers and paralegals applicants should not be saddled with expenses after discovering that their years of training and education will not lead to their being allowed to practice in Ontario. The third approach, and the most common in 2022, is a hybrid, which allows costs to be ordered against unsuccessful licence applicants, but leaves room for mitigating those costs based on a variety of factors.

The panel in *Singh v. Law Society of Ontario*, 2022 ONLSTH 150 took the third approach, mitigating the costs ordered against the unsuccessful licence applicant based on the respective behaviour of the two parties. The Law Society requested \$20,000 from Ms. Singh, while she argued that costs should be closer to \$2,000.

In making their decision, the panel noted that, regardless of the viability of her re-licensing application, she had readily co-operated with the hearing, while the Law Society had unnecessarily lengthened the hearing with adjournment requests that were only partially successful, and had produced a docket of costs that was incomplete. Considering these mitigating factors, the panel

**In 2022, costs were
awarded to the
Law Society in
7 out of 16
licensing applications**

The average amount awarded was

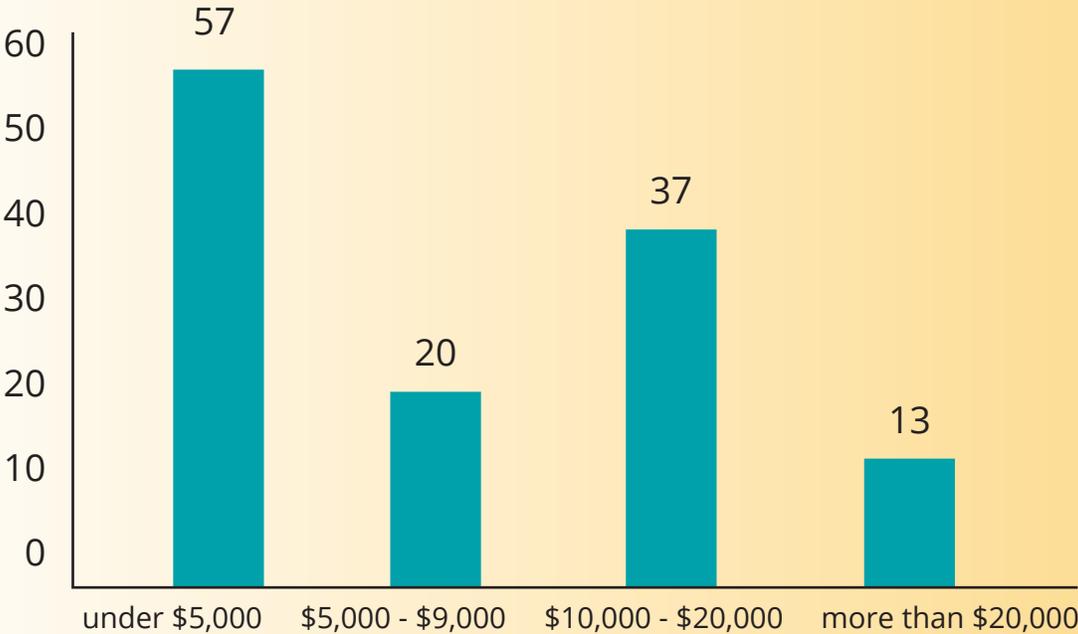
\$14,008

reduced the costs against Ms. Singh to \$8,000, giving her two years to pay.

The panel in *Zaher v. Law Society of Ontario*, 2022 ONLSTH 143 took the same approach of evaluating the case for factors that might mitigate costs against the unsuccessful applicant. In this case, it assessed whether Ms. Zaher had good reason to think that her application would be successful. After her licence was revoked when she knowingly fabricating a refugee claim for a client (an act of misconduct that also resulted in criminal convictions), Ms. Zaher waited just ten days before applying to be re-licenced.

The panel found that Ms. Zaher could not have rehabilitated herself in such a short time, and further, that this was a result she should have expected. Because she should have known the application would fail, and because there were no other mitigating factors, the panel did not lessen the costs requested by the Law Society, and ordered that she pay the full \$12,000.

range of costs awarded in 2022



Tribunal jurisprudence

conduct unbecoming and professional misconduct



Why do cases of conduct unbecoming so often include allegations of professional misconduct as well?

Unlike professional misconduct, conduct unbecoming is behaviour in a licensee's personal life that tends to bring discredit upon the legal profession. Conduct unbecoming has included committing a criminal act, taking improper advantage of another, or any actions that are dishonest or undermine the administration of justice.

Though the Tribunal sees many cases of professional misconduct without allegations of conduct unbecoming, a case of conduct unbecoming on its own is quite rare. Examining three cases from this year may provide some clarity into why conduct unbecoming is so frequently paired with professional misconduct.

In *Law Society of Ontario v. Grant*, 2022 ONLSTH 11, a licensee was found to have engaged in egregious misconduct, which resulted in “devastating, lifelong” consequences for the victims. Mr. Grant provided drugs and alcohol to minors, impregnated an underaged former client who was a Crown ward, sexually assaulted an employee at the firm where he worked, sexually propositioned a potential client, and assaulted a domestic partner, among other things.

Mr. Grant's criminal behaviour in this case was widespread—his misconduct spanned both his personal and professional lives. This is often the case in instances of conduct unbecoming.

In *Law Society of Ontario v. Aujla*, 2022 ONLSTH 77, Mr. Aujla was also found to have engaged in both conduct unbecoming and professional misconduct. However, here the conduct unbecoming was specific and targeted, not widespread.

The panel found that Mr. Aujla's threatened his wife (resulting in legal charges), logged on to his wife's online nursing accreditation account to request that her application for accreditation be cancelled, and sought to interfere with her application to the College of Nurses of Ontario. Each of these, the panel found, constituted conduct unbecoming, as the conduct was not related to Mr. Aujla's professional activities. But failing to report the criminal charges to the Law Society became an instance of professional misconduct, since licensees must report criminal charges to the Law Society in a timely manner as part of their professional responsibilities.

Here, failing to be candid about conduct unbecoming led to additional allegations of professional misconduct.

There were 22 cases of conduct unbecoming this year
Professional misconduct was also found in all but 2 of these cases



Law Society of Ontario v. Gossage, 2022 ONLSTH 89 is a counter-example. This is one of the fewer than ten percent of conduct unbecoming cases that was not paired with professional misconduct.

While working in various positions at a bank, Ms. Gossage filed numerous false health insurance claims, receiving just under \$10,000 from her insurer for services that had not been paid for. When the insurer conducted a random audit, it

found that the claims were false, and Ms. Gossage paid the money back and alerted the Law Society.

Unlike in Grant, Ms. Gossage's dishonourable behaviour was limited to one type of action (though she did it more than a hundred times over the course of three years), instead of several crimes encompassing both the personal and professional spheres. And unlike in Aujla, Ms. Gossage reported the charge to the Law Society in a timely manner, thereby avoiding the allegations of professional misconduct that would have followed had she sought to keep her behaviour a secret.

Tribunal jurisprudence

rejecting joint submissions



It is rare that panels reject joint submissions, but when it happens, the parties generally have two paths forward.

Joint submissions are occasionally made to the panel, when both sides can come to an agreement on what they see as a fair outcome on finding and/or penalty. Joint submissions reduce expenses for the parties, save valuable hearing time, and allow both applicant and respondent to satisfy themselves that they have found an appropriate penalty.

*Almost invariably, panels accept joint submissions. The bar for a panel to reject joint submissions is high; only when the panel determines that the joint submission is “so unhinged from the circumstances of the case that it must be rejected” (*Bradley v. Ontario College of Teachers*, 2021 ONSC 2303) will a panel refuse to accept it. Two possible outcomes of this uncommon decision are illustrated in the following cases from 2022.*

*In *Law Society of Ontario v. Diamond*, 2022 ONLSTH 28, the parties signed an agreed statement of facts in which Mr. Diamond admitted to the professional misconduct, and jointly submitted a penalty of a reprimand, the least-severe of the Tribunal’s possible penalties. The panel found long-term, widespread misconduct by Mr. Diamond, ruling that Diamond & Diamond’s advertising and marketing intentionally misrepresented his practice and expertise.*

The panel rejected the joint submission. It concluded that, among other things, the severity of the misconduct, the fact that Mr. Diamond had been previously cautioned and had provided assurance to the Law Society, and the fact that he received substantial financial benefit as a result of the misconduct, meant that a reprimand was not an appropriate penalty, and was in fact so “unhinged from the circumstances” that it would bring self-regulation of the legal professions into disrepute.

The rejection of the joint submission prompted Mr. Diamond to attempt to seek recusal of a panel member and to withdraw his admission of professional misconduct. The matter continued for more than a year, and has only recently been completed by the hearing panel.

But a rejection of a joint submission doesn't always create an issue. The panel



Of the conduct files closed in 2022, there were 62 suspensions, 26 revocations & 8 reprimands

in *Law Society of Ontario v. Daoust*, 2022 ONLSTH 131, too, found a joint submission “unhinged from the circumstances”; however, in this case the panel objected to the penalty as being too severe.

Mr. Daoust admitted to having engaged in professional misconduct by failing to cooperate with the Law Society and failing to provide a compliance report. The panel found that the misconduct, though serious, was limited, and somewhat mitigated by circumstances. And so, when the parties jointly proposed a penalty of immediate revocation, the panel rejected it. However, unlike in Diamond, the parties were able to re-formulate their joint submission, based on the panel's response.

In the end, the joint submission that the parties brought to the panel gave Mr. Daoust another chance to comply with the Law Society before his licence was revoked. The new joint submission suggested an immediate suspension, with a revocation

only to occur if he had not co-operated with the Law Society by a proscribed date. The panel accepted it. In this case, unlike in Diamond, the initial rejection of the joint submission caused the parties to propose a more appropriate penalty—one that was not “unhinged from the circumstances.”

registrar's message



As Registrar, my duties include managing the administrative team and working to continuously improve operational policies and performance standards.

When the pandemic hit, the Tribunal had to switch gears and accelerate its business model around operating in a virtual world. This meant, among other things, rapidly transitioning to videoconference hearings and appearances, eliminating the use of paper by managing and maintaining digital files, and using a file sharing platform to share documents with parties and adjudicators.

In 2022, we took the opportunity of the seismic global shift towards a hybrid working model to refine and enhance the way we do things. Early this year, we engaged a Canadian software consulting organization to help build a web-based platform that would meet the Tribunal's case management requirements. This included automating the entire case management process, improving the calendar and scheduling functions, increasing file storage and document management capabilities, enabling reports for key performance indicators and statistical data, and creating a portal that will allow virtual access for parties and adjudicators.

Although it sounds technical, this work was done with a simple outcome in mind; to make dealings with the Tribunal better for parties, their representatives, adjudicators, members of the public and staff members. As with all large-scale projects that are undertaken at the Tribunal, our new case management system will have a positive impact on our core values of fairness, quality, transparency, and timeliness.

Phase one of this approach, which was completed in late 2022, involved configuring the system to meet the Tribunal's business requirements.

The new case management system is set to be released in January 2023.

The next phases will involve training our adjudicators on how to access and use the system, and enabling the e-filing and portal functions, so that parties and their representatives can file new applications and view their cases.

We are eager to see how the new system will modernize our internal processes and improve user experience.

How the Tribunal's new Case Management System addresses our Core Values

Fairness Both parties have access to the same platform for filing an application.

Quality Automation and pre-populated fields reduce the risk of clerical errors.

Transparency The new content management system increases ease-of-access for parties, their representatives, adjudicators and members of the public to case-related materials.

Timeliness A streamlined approach, less manual data entry, and newly-automated statistical reports mean Tribunal staff have more time to focus on other aspects of their cases.

people who contributed to the Tribunal in 2022

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, Jean-Jacques Desgranges, John Fagan, Sam Goldstein, Philip Horgan, Michael LeSage, Cecil Lyon, C. Isfahan Merali, Geoff Pollock, Chi-Kun Shi

Tribunal Office

Malcolm M. Mercer (Chair), Lisa Mallia (Tribunal Counsel), Tina Yuen (Tribunal Counsel), Cynthia Pay (Tribunal Counsel), Aderonke Taiwo (Administrator, Executive Assistant), Celia Lieu (Registrar), Lawrence Barker (Acting Registrar), Ivy Johnson (Communications Coordinator), Romeo Benedicto (File Management Coordinator), Laila Butt (File Management Coordinator), Sochima Egbeocha (File Management Coordinator), Leah McCoy (File Management Coordinator), Rosine Iriho (File Management Coordinator), Natalie Meikle (File Management Coordinator), Eileen Bright (Scheduling Coordinator), Erik Eide (Publication Coordinator)

Tribunal Adjudicators



Malcolm M. Mercer
Chair



Jack Braithwaite
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, Jared Brown, Robert Burd, Murray Walter Chitra, Joseph Chiumminto, Suzanne Clément, Thomas G. Conway, Cathy Corsetti, Jean-Jacques Desgranges, Teresa Donnelly, 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, Sophie Martel, 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

Chair's Practice Roundtable

Malcolm M. Mercer, Lisa Mallia, Tina Yuen, Cynthia Pay, Celia Lieu, Lawrence Barker, Ivy Johnson, Blair Bowen, Norm Emblem, Louise A. Hurteau, Nadia Liva, Kristina MacDonald, Nadia Musclow, Janani Shanmuganathan, Glenn Stuart, William Trudell, Matthew Wilton, Stephen Wishart



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